

STATE OF UTAH
BEFORE THE RADIATION CONTROL BOARD

In the Matter of)
)
INTERNATIONAL URANIUM (USA) CORP.)
)
Revised 11e.(2) Materials License)
No. UT1900479 Amendment No.2)
)
Revised Groundwater Quality)
Discharge Permit UGW370004)
(June 13, 2006))

RADIATION CONTROL BOARD MEETING
FEBRUARY 2, 2007 * 12:58 p.m.

Location: Department of Environmental Quality
Conference Room 101, 168 North 1950 West
Salt Lake City, Utah 84114

Reporter: Diane W. Flanagan, RPR
Notary Public in and for the State of Utah

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A P P E A R A N C E S

RADIATION CONTROL BOARD MEMBERS:

Kent J. Bradford, Chairman
Stephen T. Nelson, Ph.D., Vice Chairman
Elizabeth Goryunova
John T. Thomson, M.D.
Gregory G. Oman
Joseph K. Miner, M.D.
Dianne Nielson, Ph.D, (via phone)
Peter A. Jenkins
Joetta Langianese (via phone)
Patrick D. Cone
Robert S. Pattison (via phone)
Frank D. DeRosso

ALSO PRESENT:

Fred Nelson, Attorney General's Office
Dane Finerfrock, Executive Secretary
Laura Lockhart, Attorney General's Office
Michael A. Zody, Parsons Behle & Latimer
Travis Stills, Energy Minerals Law Center

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1 P R O C E E D I N G S

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3 MR. BRADFORD: Welcome. Let's go ahead and
4 begin. Call to order the February meeting of the Utah
5 Radiation Control Board. I'd like to welcome Board
6 members and others who have come today. Just -- we do
7 have a court reporter who is here transcribing the
8 proceedings today, and so if you will, state your name
9 before you speak so that she can make an accurate
10 record. And especially Board members who are
11 listening on the phone and participating by phone,
12 it's important that you state your name before you
13 comment so that we know who's speaking.

14 Before we begin the discussion, we only have
15 one item on the agenda today. That is the
16 continuation of the adjudicative hearing which we
17 began last week in Blanding. Before we move into that
18 I want to give Fred Nelson just a minute to make a
19 comment.

20 MR. NELSON: As you recall, at the Blanding
21 hearing the Board received evidence, they had the
22 questioning and cross-examination of the witnesses,
23 and they heard closing argument. Since that time I've
24 been made aware of a number of e-mails that have been
25 sent to the Board, and perhaps there's correspondence

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1 or other contact with Board members concerning this
2 matter.

3 And I just wanted to reflect on the record
4 that any information or evidence or comments in those
5 e-mails are not considered, or any information you
6 have received are not considered, to be part of the
7 record in this case, and they are not evidence that
8 you can rely on without reopening the hearing and
9 hearing more witnesses and taking more testimony.

10 I feel like I need to explain why that's the
11 case. The process is not for the purpose of excluding
12 information from this Board. The Board needs to have
13 the relevant information that is appropriate for the
14 Board to have in order to make the proper decision.
15 But the way that that information is received has to
16 comply with constitutional due process, and that means
17 that it has to be fair to all the parties.

18 And the way that that is fair is by
19 following a number of very important principles, and
20 that is that evidence needs to be made available to
21 all the parties. It needs to be presented at the time
22 that all the parties are present so that all parties
23 can hear the matter and respond or make objections or
24 ask questions. And that process needs to be
25 preserved.

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1 In a courtroom process parties can't just
2 e-mail the judge on their own and give them
3 information without letting everyone know what is
4 happening. And the second part of it, too, is that in
5 order to present in an adjudicative hearing
6 information to the Board, you have to be a party to
7 the proceeding. You have to have demonstrated a
8 specific legal interest or right to be here, and those
9 rights are reviewed by the Board in evaluating the
10 decision of the Executive Secretary in this case that
11 was challenged.

12 So it's not a process of restricting the
13 Board from getting information. It's a matter of
14 making sure that the process is fair.

15 So if you have received e-mails, you should
16 not consider that information as part of the record.
17 You should not consider it in your deliberation in
18 your review of the decision that you will make today.

19 The -- just the last comment that I would
20 have is that an adjudicative hearing is for the
21 purpose of hearing an appeal that deals with specific
22 actions of the Executive Secretary, and there is a
23 legal context to that, and that's what you're
24 deciding. You're deciding whether the evidence that's
25 been presented is sufficient to either uphold or

1 modify or reject or remand or -- you're looking at
2 that decision of the Executive Secretary and making a
3 decision as to whether or not the laws have been
4 complied with and whether the procedure has been
5 complied with, and that's the focus of the
6 adjudicative process.

7 Is there any questions on what I just said?
8 I wanted to make sure that the record has that because
9 I know that that kind of communication has been
10 ongoing.

11 MR. STILLLS: If it please the Chair.

12 MR. BRADFORD: Yes.

13 MR. STILLLS: I just want to clarify. And I
14 appreciate Mr. Nelson's background. I have contacted
15 my client, and I can represent to the Board that the
16 e-mails that you were receiving were from the public
17 and not from my client or on behalf of my client. I
18 want to make that representation up-front so there's
19 no confusion here.

20 I understand and appreciate that this Board
21 deals with the public on a regular basis and
22 appreciate your efforts in taking that into account.
23 Thank you.

24 MR. NELSON: I appreciate that comment
25 because there was no assumption on my part that any of

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1 the parties had acted inappropriately.

2 MR. STILLIS: I didn't mean to make such
3 implication. I just wanted to make it clear.

4 MR. BRADFORD: With that, then, we left
5 off --

6 MR. ZODY: Can I get a clarification as to
7 who is present to the extent they're not here live?

8 MR. BRADFORD: Yes. We have three Board
9 members that are on the phone. We have Joette
10 Langianese, Dianne Nielson, and Robert Pattison.

11 MR. PATTISON: Yes, I'm here.

12 DR. NIELSON: Here.

13 MR. ZODY: Is Mr. Oman going to be here
14 today?

15 MR. BRADFORD: I don't believe so. We did
16 not receive confirmation from him that he would be
17 here.

18 MS. LANGIANESE: Kent?

19 MR. BRADFORD: Yes.

20 MS. LANGIANESE: May I ask a question?

21 MR. BRADFORD: Yes.

22 MS. LANGIANESE: Is it possible when people
23 in the room are talking that they can state their
24 names so we on the phone know who it is that's
25 speaking? That would be helpful.

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1 MR. BRADFORD: Okay. Thank you. We'll do
2 that. Mr. Zody was asking a question.

3 Do you have anything else, Mr. Zody?

4 MR. ZODY: I'll just express an issue in my
5 head as to whether someone who was present during part
6 of the deliberations and drops out halfway through, if
7 they're not here, how that's typically handled by this
8 Board. I don't know.

9 (Mr. Oman entered the room.)

10 MR. NELSON: The question has just been
11 answered.

12 MR. ZODY: Thank you.

13 MR. BRADFORD: Then we do have a full
14 quorum, the same quorum that met last week to consider
15 this issue.

16 MR. NELSON: Since Mr. Oman just arrived,
17 can I just mention a statement that I just made?

18 You may have received contact by e-mails or
19 correspondence over the last few days with respect to
20 this matter. My advice to the Board was that they
21 should not consider those to be part of the record nor
22 received in evidence, and any decision you make should
23 not be based on the information in that
24 correspondence.

25 MR. BRADFORD: Okay. Picking up then where

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1 we left off. We heard final arguments from the
2 parties, and we began discussion with the Board
3 members, and so I'd like to pick it up at that point.

4 Patrick Cone.

5 MR. CONE: This is Patrick Cone. I have a
6 question. Remember last week you got the groundwater
7 report basically that day? Is that considered
8 admissible as well? Did it miss the discovery
9 deadline, or how does it work?

10 MR. NELSON: No. It was submitted as part
11 of the pleadings and documents in the case by IUC.
12 There was an objection to the submittal by Sierra
13 Club, and the parties agreed to simply agree to
14 disagree on that issue.

15 There was also an objection by IUC with
16 respect to the testimony of Mr. Weber that it should
17 not be included and that -- similarly that objection
18 was entered and has not been ruled on. At this point
19 those documents are part of the record unless the
20 Board wants to take action to exclude the testimony of
21 Mr. Weber or to exclude the groundwater report.

22 MR. CONE: Okay.

23 DR. NELSON: This is Steve Nelson. As a
24 point of clarification, you know, after the meeting I
25 realized that this had been submitted to us a few days

1 before, and I was in error in not acknowledging that.
2 But that said, I suspect that I, as many others, had a
3 limited amount of time, and I frankly read the
4 prefiled testimony and the pleadings and had not
5 looked at the report up to that point.

6 MR. BRADFORD: What questions do you have or
7 what thoughts have you had regarding this issue? Are
8 there -- is anyone prepared to make a motion, or do we
9 have any discussion?

10 MR. CONE: I have a couple quick questions
11 having to deal with the questions on the groundwater
12 report. I know Director Nielson said that's probably
13 appropriate to talk about. Is it appropriate to ask
14 further questions along that line or is testimony
15 closed if it has to do with the record?

16 MR. NELSON: That's up to the Board. If
17 they want to reopen the discussion and ask questions
18 of witnesses concerning that, that's possible.

19 MR. BRADFORD: We don't have all of the
20 expert witnesses here today, but we do have the
21 parties. And if you feel like you need to address
22 some questions to them, they are available to answer
23 them.

24 MR. CONE: I guess my only question as I've
25 gone through these things and crossed out the things

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1 that are probably not applicable and don't make
2 really -- they might raise flags for me, but legally
3 not anything to worry about. It really comes down to
4 the groundwater discharge report for me, and I have
5 some questions about what's been done on some of the
6 flags that were rased by Mr. Morton.

7 According to the permit, there's a level of
8 things they have to do or there's some penalties or
9 there's some remediating they have to do. Wading
10 through all that, I never actually saw the response
11 and what's been done to address the -- primarily the
12 water sampling that's been done on the site. Maybe
13 someone else saw that in there, but I didn't see it.

14 MR. ZODY: I would be glad to jump in if
15 anyone wants me to answer any questions at any point.
16 I would welcome an opportunity to try and address your
17 concerns.

18 MR. STILLLS: If I may add --

19 MR. BRADFORD: Please state your name.

20 MR. STILLLS: I'm sorry. This is Travis
21 Stills. If I may add, based on my understanding of
22 the question I had asked at the last hearing, we did
23 not bring witnesses up for today because it was going
24 to be deliberations, so we're not prepared to add any
25 more testimony. And, again, that was our

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1 understanding from what had transpired last time --

2 MR. BRADFORD: That is correct, and I don't
3 believe there was an expectation that expert witnesses
4 be here today.

5 MR. STILLS: Okay. Thank you.

6 MR. BRADFORD: Mr. Zody?

7 MR. ZODY: Mr. Cone, as I understand your
8 comment, you refer to a couple of memoranda prepared
9 by Loren Morton in the year 2000. Those were internal
10 DRC memoranda that weren't addressed to my client.
11 Those are part of the process that started around that
12 time and probably earlier where the DRC was analyzing
13 whether to issue a groundwater permit for the
14 facility.

15 And Mr. Morton, who is a very careful and
16 hardworking person, looked at several issues and
17 discussed the design of the tailing cells, issues that
18 he felt could be improved upon, et cetera. Our view
19 is that those memoranda don't tell nearly the whole
20 story. The whole story comes in Exhibit 4 which we
21 submitted to this Board, and that is the statement of
22 basis for the groundwater permit. And I'll give you
23 an opportunity to find that.

24 This is Exhibit 4 in what the mill
25 submitted. And let me just explain the process a

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1 little bit. So in year 2000 Mr. Morton raises some
2 issues. The DRC looks at those issues and is trying
3 to decide whether the facility qualifies for a
4 groundwater discharge permit under the Utah
5 groundwater rules. The DRC analyzed those issues.

6 Mr. Morton's issues were analyzed and
7 addressed, and this is a 52-page document, very
8 detailed, that goes through how the Agency concludes
9 that a groundwater discharge permit is appropriate and
10 that the tailing cells meet the DMT, discharge
11 minimization technology rules, not the BAT rules, and
12 explains how the existing design of the cells are
13 deemed lawful.

14 And there are new requirements imposed.
15 They have to put in new groundwater monitoring wells.
16 There are a bunch of new monitoring parameters they
17 have to monitor for. And I think if you were
18 concerned about that area, that, in my view, answers
19 all of the issues raised by Mr. Morton. And that was
20 the entire purpose of the statement of basis.

21 So a groundwater discharge permit was issued
22 in March of 2005, and we view that as final Agency
23 action that is not before this Board at this time. So
24 that's, I think, in a nutshell our answer to that.

25 And so I would direct you to the statement

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1 of basis in the groundwater discharge permit, keeping
2 in mind the focus here is on Fansteel material and the
3 impact it might have.

4 MR. BRADFORD: Thank you.

5 Laura Lockhart.

6 MS. LOCKHART: I'd just like to add that we
7 did not in our briefs go through the entire statement
8 of basis and groundwater permit, but Loren Morton's
9 affidavits which are attachment 5 to our initial brief
10 and attachment A to the response brief both go through
11 the highlights of those and give Mr. Morton's and
12 Mr. Finerfrock's basis for concluding that they're
13 comfortable with making a recommendation that this
14 will be protective of human health and the environment
15 notwithstanding the concerns that were identified in
16 Mr. Morton's 2000 memoranda.

17 MR. BRADFORD: Mr. Stills?

18 MR. STILLS: This is Mr. Stills. And,
19 again, as we had presented last Friday, that takes us
20 up to the December 1, 2004 groundwater statement of
21 basis and the March 2005 groundwater permit. And as
22 we had pointed out in our attachments, and it's
23 labeled behind Exhibit 5 of our briefs, the
24 November 30, 2006 groundwater DMT performance standard
25 of monitoring report at DRC IUC DISC 113, in that

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1 neighborhood, shows that since that time there has
2 been an ongoing exceedance of groundwater standards
3 for selenium, manganese, and uranium.

4 As we pointed out in our opening and our
5 closing and our presentation, it would be impossible
6 for the public to know that reading the groundwater
7 monitoring report from 2004 on which the
8 December 2005 -- I'm sorry. The Safety Environmental
9 Report -- I'm sorry, I'm saying it incorrectly -- on
10 which the Safety Evaluation Report relied.

11 So it's all very well and good that we have
12 something from December 1, 2004, referenced, but there
13 was ongoing problems at the mill which you had to be
14 an insider to know about. And the purpose of the
15 Safety Evaluation Report was to let the public know
16 that there was a problem. That was not done.

17 MR. ZODY: I need to respond directly to
18 that. If you look at the statement of basis which is
19 cited in the Safety Evaluation Report, page 6, it
20 indicates several contaminants recently found exceed
21 respective groundwater quality standards: Manganese,
22 nitrates, selenium, uranium.

23 It was understood at the time the
24 groundwater permit was issued that because they had
25 not established the background levels yet there were

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1 certain constituents that were already exceeding the
2 default standards that were established. The process
3 is ongoing and will continue for another year or more
4 in establishing the background.

5 So the public was on notice of these issues.
6 These issues are fully addressed in the statement of
7 basis. This was all considered as part of the final
8 Agency action that goes -- if it were appealed, if
9 this groundwater permit had been appealed, it would
10 have gone before the Water Quality Board that has
11 extensive experience in understanding how the water
12 quality rules work.

13 So it is in the record. It was in the
14 record. This was known and part of the background of
15 this decision. The critical point, again, is we have
16 the Fansteel material. The rules say look at any
17 impacts from this material. We aren't relicensing the
18 whole facility or reopening the groundwater permit.

19 Thank you.

20 MR. BRADFORD: I'd like to pull this back to
21 discussion within the Board. We could go through a
22 another full day and hear all the testimony again, but
23 I don't want to do that. If you have a specific
24 question, then I think that's appropriate to ask the
25 parties, but I don't want to get back into responding

1 and rebutting.

2 Are there other discussion questions from
3 Board members?

4 MS. GORYUNOVA: I have one.

5 MR. BRADFORD: Okay. Elizabeth Goryunova.

6 MS. GORYUNOVA: I came from an area that
7 radiation would be unsafe and I have a scar here that
8 reminds me of it every day, and I understand that it's
9 very easy to get very emotional about this very
10 controversial subject to discuss. And so I would
11 really like to tell that we need to get back to the
12 question that was at issue before us and that is
13 whether the licensing will stand appropriately and
14 nothing beyond that. Otherwise we'll get to the
15 discussion on how to save the world and we'll never
16 end.

17 And this, as I can see, we can -- I think we
18 can solve this little problem of the licensing was
19 done properly in accordance with the regulations and
20 rules. If the rules and regulations are not the ones
21 that the public would like or we would like, then it's
22 another matter, and that may be a subject of
23 discussion for then. But let's get back to the
24 original question which is whether the license was
25 issued in accordance with the rules and regulations.

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1 MR. BRADFORD: Dr. Nelson, did you have a
2 comment?

3 DR. NELSON: Yes. I agree with the comment
4 that was just made. I just want to clarify a couple
5 of things. I've read the report, background report,
6 and I just want to make a couple clarifications before
7 we have a motion because it seems we're headed that
8 way.

9 I've read the background report. I liked it
10 for the most part. I have one or two issues with
11 things that weren't discussed or items that weren't
12 considered, parameters that weren't considered. And I
13 don't think they're particularly germane to making the
14 decision today, so I'll make those comments at a later
15 date for whoever to consider: IUC, the DRC staff.

16 I was pretty vehement in my -- in my
17 reaction to a couple of the expert witnesses from the
18 mill, and I wanted to make sure that I was on safe
19 ground in reacting the way I did, so I went back and
20 did a little looking and brushing up on my uranium
21 geochemistry.

22 I do find it quite surprising that on one of
23 the pages in the report evidence that uranium, next to
24 chloride and fluoride, is the most mobile of
25 constituents of concern at the mill. And I've

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1 presented a little analysis, if anybody thinks it's
2 important for them in their consideration. I've gone
3 back and I've looked at it.

4 And to make a long story short, the notion
5 of simply precipitating uranium, as we heard in the
6 expert testimony, underneath the mill due to
7 interaction with calcite -- it's not quite that
8 simple. And let me just leave it at that.

9 MR. NELSON: So the record is accurate,
10 Dr. Nelson has handed out a two-page, three-page
11 sheet. Those who are on the phone of course do not
12 have the sheet.

13 DR. NELSON: I'll be happy to describe it if
14 they're interested.

15 MR. PATTISON: Yes, I would like to know
16 about it, Steve.

17 DR. NIELSON: Yeah, I would, too, Steve.

18 DR. NELSON: Okay. Let me just go through
19 it point by point. One is that oxidized uranium is
20 much more soluble than reduced -- uranium VI is more
21 soluble than uranium IV, which is why they had sodium
22 chloride in the mill. Solubility does in fact
23 decrease as pH goes up, but once a minimum is reached
24 the solubility goes back up. And I chose to represent
25 solubility a mineral called Schoepite. I could have

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1 chosen one that was less soluble. And I chose a
2 conditioned partial pressure of carbon dioxide in the
3 groundwater of what we call a PCO₂ of 10 to minus two
4 which is typical for groundwaters.

5 And to make a long story short, the minimum
6 solubility is about -- the minimum solubility of
7 uranium is about eight times the MCL for uranium as
8 established by the EPA. And I was able to finally
9 squeeze some pH data out of the background report. I
10 found, oh, six or eight pH values for one monitoring
11 well. They were about eight to 8.25. And you can see
12 that if leakage were to come back into equilibrium
13 with calcite and reached these pH's, uranium
14 concentrations could be -- I'm not saying would be --
15 could be several hundred times EPA limit.

16 The solubility curve that I presented is
17 based on some solid that is precipitating. A solid
18 may or may not precipitate. It may be kinetically
19 inhibited. And fairly high total dissolved solid
20 values in groundwater lead to high ionic strengths.
21 High ionic strengths lead to low activity coefficients
22 which -- which is a lot of speak, technical speak, for
23 you can put more uranium into solution that way.

24 I also have a little figure which shows that
25 at a pH of about 5 and a half and above uranium

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1 species would expect it to be neutrally or negatively
2 charged. And the importance of that is that this can
3 inhibit -- negatively charged species tend not to be
4 retarded in aquifer systems relative to possibly
5 charged systems. That's one of the reason the
6 background report, as I read, stated, and I think
7 probably correctly, that next to chloride and
8 fluoride, uranium is expected to be fairly mobile.

9 Now, I'm not -- you know, one way to view
10 this is I wanted to -- I prepared this because I
11 wanted to make sure that my reaction was justified,
12 and I think at the -- at the hearing, and I think
13 there's some truth to that.

14 But, you know, to the extent that Board
15 members feel that this is an issue they want to
16 make -- they want to take into consideration in their
17 deliberation, I thought I would provide it.

18 MR. BRADFORD: Peter Jenkins?

19 MR. JENKINS: Along the same lines, based on
20 some of my comments I made regarding the handling of
21 nondetect samples, I also reviewed the report
22 specifically for the handling of nondetects and the
23 statistical analysis of those. And just in a short
24 time of reviewing the sections, I came to the
25 conclusion that I feel that the handling of nondetects

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1 in this report was inadequate. In other words, there
2 was a very, very high number of nondetects with
3 significant tracer elements as indicated in the
4 report, greater than 50 percent.

5 The EPA has specific guidance on handling
6 these type of nondetects or this level of nondetects.
7 The manner in which they chose to handle nondetects in
8 the report is consistent with the EPA's guidance when
9 there's less than 15 percent nondetects. We're
10 dealing with something that requires much more
11 rigorous statistical analysis.

12 Accordingly, the regression analysis that
13 was performed to try to identify trends, whether
14 stable, increasing, or decreasing trends, was
15 inadequate based upon several factors. No. 1,
16 probably the most blatant one in the documents that
17 they cite in here, which is in the reference as EPA
18 96, states that linear regression analysis is
19 inadequate for this type of sampling.

20 Nevertheless, the statistical analysis that
21 they used uses the R squared based upon their linear
22 regression of the data. So in my opinion as a
23 physicist dealing with environmental sampling, I feel
24 that no conclusion can be drawn from this report
25 whether in support of the conclusions or in support --

1 let me restate that. No conclusions can be drawn that
2 there is an increasing trend, that there is a stable
3 trend, or that there is a decreasing trend. I don't
4 believe that the statistical analysis is adequate to
5 form any opinion from the data presented here.

6 First and foremost is the handling of the
7 very high volume of nondetect samples. Secondly,
8 there doesn't appear to be any adjustment for seasonal
9 variation in the sampling. Thirdly, and probably most
10 importantly, when we're talking about gradients of the
11 wells, the report simply refers to upgradient and
12 downgradient. And there is only one brief section in
13 there where it even discussed gradient, and even that
14 demonstrates that the gradient isn't uniform across
15 the site boundaries.

16 However, I would submit that the gradient
17 that they have discussed is probably with reflect to
18 the volume flow of water rather than the diffusion
19 gradient of the individual constituents that we're
20 looking at. In other words, if you compare -- if you
21 go back to your diffusion theory and you look at the
22 diffusion, we know that things diffuse from areas of
23 high concentration to low concentration.

24 And from the brief description in here of
25 the shallow aquifer underneath the site, there doesn't

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1 appear to be any discussion at all concerning these
2 constituent gradients. In other words, I would
3 opinion based on this information that the gradient is
4 different for each of these constituents. The only
5 substantial evidence that they have of any uniform
6 flow in this document is upward gradient from steeper
7 surface Artesian wells rather than a uniform gradient
8 from northeast to southwest or north to south as is
9 indicated in the document.

10 So in summary, I think this groundwater
11 report is inadequate to use to form any basis of
12 opinion, and I would recommend to the State, to the
13 Executive Secretary, that the comments back to this --
14 because I understand that this report is going to be
15 used to establish background levels, that a more
16 rigorous analysis, statistical analysis, be performed
17 in order to adjust for these statistical variances,
18 these nondetects, these seasonal variances and bring
19 it -- actually the report that they use, the EPA
20 guidance, is 1996. However, there's a more recent
21 guidance specifically titled Sampling at Waste Sites
22 published in 2002 which I feel is even a better
23 document.

24 But, however, I do feel if they would have
25 even met what was given in the 1996 EPA guidance, they

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1 would have been more correct than what they were.

2 So again resummarizing, I think this
3 groundwater report is inadequate to use to form any
4 substantial opinion on.

5 MR. BRADFORD: Thank you.

6 Laura Lockhart.

7 MS. LOCKHART: My client is anxious to
8 remind you the Division hasn't really begun its review
9 of this yet. This is going to be contracted out, and
10 this is the beginning of a likely several-month
11 process, and we'll undoubtedly be looking at the
12 issues the Board members have raised.

13 DR. NELSON: This is Steve Nelson. Very
14 briefly, it was noted that about 40 percent of the
15 water quality analyses didn't charge balance, and
16 that's problematic. We typically accept plus or minus
17 5 percent charge balance, and about 40 percent didn't
18 meet that. You know, you can draw from that what you
19 will. You put your hand in a bucket of water, you
20 don't expect to get an electrical shock.

21 The -- so 40 percent, that certainly
22 wouldn't be acceptable in our laboratory. We don't
23 publish anything unless it -- only on very rare
24 occasions unless it charge balances to better than
25 5 percent. So that's just a piece of information when

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1 it comes to adequacy, and I realize the Division
2 hasn't begun its review, but it raises some questions
3 in my mind about how well IUC would certify their
4 analytical laboratory.

5 DR. NIELSON: Mr. Chairman?

6 MR. BRADFORD: Yes.

7 DR. NIELSON: This is Dianne Nielson.
8 Because I can't see other people, if there was someone
9 else that was going to speak, I didn't want to
10 interrupt, but I would like to make a comment on this
11 issue.

12 MR. BRADFORD: Please proceed.

13 DR. NIELSON: I believe that a number of
14 Board members have been concerned about the
15 groundwater issues and have done a good job of
16 expressing their concerns and the evaluations of the
17 information that was provided.

18 There has been a comment by attorneys,
19 particularly Ms. Lockhart, reminding us that the
20 groundwater permit itself and these issues are under
21 the jurisdiction of the Water Quality Board and that
22 Dane serves as a special assistant attorney general --
23 I'm sorry, as a special Executive Secretary to the
24 Water Quality Board for that purpose.

25 The important thing I think for us, though,

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1 in looking at this issue is that IUC in their
2 application to amend the license to accept the
3 Fansteel material indicated that there would not be
4 any incremental impacts on the groundwater over and
5 above existing licensed operation. And we heard a
6 good bit of testimony regarding that and had the
7 background report to substantiate that, as I
8 understood the objective.

9 And the concern is that for this material at
10 this point we don't know whether the impoundments are
11 leaking or not leaking. Absent this particular
12 application the mill can continue to operate under its
13 existing license and take virgin ore and process it,
14 and the impoundments are in compliance with State
15 groundwater regulation.

16 So my concern would be that as promptly as
17 possible the Division, the Executive Secretary, and
18 IUC pass the information that is necessary and provide
19 it to the Division and their consultants to make this
20 determination. When I'm hearing time frames of many
21 months -- I think that IUC's attorney suggested it
22 might be more than a year. This is an issue that is
23 under evaluation in one form or another regarding the
24 permit initially and then trying to establish
25 baselines since 2000, perhaps even before that.

1 And it's difficult for me to believe that if
2 IUC feels that the concentrations we're seeing are
3 typical of what is background in the area that we
4 couldn't be provided, or the Division couldn't be
5 provided, with the information to document that.

6 So I appreciate that's a matter for the
7 Water Quality Board, but I would like to urge that
8 that review be conducted and the determination of
9 whether the impoundments are leaking or not be made as
10 promptly as possible so that we can be assured that
11 the operations are protective of the environment and
12 particularly protective of groundwater.

13 MR. BRADFORD: Okay. Thank you. I guess my
14 thoughts go along that same line. This Division is
15 obviously moving ahead with this and needs to review
16 this report and has not done so in detail. I'm sure
17 when they do, they will present their comments back to
18 IUC, and they'll move forward with resolving the
19 questions, and if the impoundments are found to be
20 leaking, then they'll have to take appropriate action
21 which comes under the groundwater permit and is the
22 authority of the Water Quality Board.

23 So while I think it's interesting, it's
24 probably not the critical piece in making the decision
25 that is before us. It seems like the operation of

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1 those tailings ponds is not going to change really one
2 way or another with the addition of the tailings that
3 will come from processing the Fansteel material, in my
4 opinion.

5 Other comments from Board members?

6 MR. JENKINS: I guess -- this is Peter
7 Jenkins. I have a comment. I agree with those
8 statements both by the Chair and by Dr. Nielson. I
9 feel that there is a question that I would like to
10 hear some comments from other Board members on, and
11 that is what -- the feeling of -- first of all, I
12 think there's really two questions here.

13 Can they process the Fansteel material?
14 Based upon the evidence that we've been given, I think
15 it's not only -- the answer is yes. I think it's a
16 good idea. I think in principal recycling these types
17 of things is probably a good thing.

18 However, having said that, how do the other
19 Board members -- and I would like to hear this as a
20 discussion point -- feel about allowing more material
21 going into a pond without knowing whether it's leaking
22 or not? In my mind that's a question. I feel that we
23 have a responsibility to say, yes, they can continue
24 doing what they're doing, but do we -- should we allow
25 them to do something in addition to that without fully

1 knowing the consequences of that decision.

2 And I think that's a question that I still
3 have in my mind that if we get five years down the
4 road and we find out that these ponds are leaking and
5 we reflect back upon the decision that we make today
6 that we allowed even more stuff to go into that, what
7 type of stewardship did we have to the State and to
8 the public in making a decision that was not fully
9 informed? And that's really where my question is.

10 Mr. DeROSSO: This is Frank DeRosso. I
11 appreciate your comments, Peter, and I do agree with
12 you and have many of the same concerns, as my
13 understanding of the information I was presented to
14 was. I think that the Fansteel material meets the
15 definition of an alternative feed. It has some
16 uranium. All indications is we can recover some
17 uranium from that material.

18 There are some sort of shades of sham
19 disposal here due to the fact that Fansteel is paying
20 IUC to take this material. Nonetheless, I still think
21 it meets the legal definition and is within their
22 legal rights to have this transaction take place.

23 I don't believe based on information that
24 was presented that this will have any incremental
25 impacts above the permit limits, but I do have the

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1 same concerns also. I do think from the data that was
2 presented to us that the liners, if they aren't
3 leaking right now, certainly have the potential to
4 leak, in all probability will leak in the future
5 somewhere down the road.

6 And I do have some concerns that if we are
7 adding more material to the ponds that we will see
8 some results down the road. If that is the case and
9 we truly believe that, why is anything being added to
10 the ponds at this point right now?

11 Again, I don't think that's a question we've
12 been asked to deal with as a Board here. I believe
13 we've been asked to deal with two issues. Mainly does
14 the Fansteel material meet the legal definition of an
15 alternative feed that can be added to the -- or can be
16 processed at the IUC mill, and will it have any
17 incremental impacts above the permit limits. The
18 answer to the first one is, yes, it is legal alternate
19 feed material, and, no, we're not going to see any
20 incremental impacts above permit limits.

21 Again, back to what we're discussing. The
22 bigger issue is: Does the mill and conditions of the
23 tailings ponds as they are right now present an impact
24 to the human health and environment? And I think the
25 answer to that is unknown at this point. It's quite

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1 possible. We don't know that. I don't believe we're
2 being asked to deliberate that and decide on that as a
3 Board.

4 So my opinion is that we should uphold the
5 Division's amendment to the license and allow this
6 Fansteel material to be processed at the mill, and if
7 it's appropriate to make some recommendations to the
8 Division and Division of Water Quality to step up
9 their surveillance or do whatever they can and above
10 and beyond what they can to ensure and answer that
11 question whether or not these tailing ponds are
12 leaking and whether we are seeing any impact on human
13 health and the environment just because of the
14 questions that have been raised over these
15 deliberations.

16 MR. BRADFORD: Thank you. And I think it's
17 certainly within the purview and the authority of the
18 Board to ask the Division to come back and give us a
19 presentation once they have reviewed this report and
20 what they're going to do with it, what their
21 recommendations and requirements might be.

22 MS. LANGIANESE: Ken, this is Joette, if I
23 may make a comment.

24 MR. BRADFORD: Yes, go ahead. Please
25 proceed.

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1 MS. LANGIANESE: I appreciate Frank and
2 Peter's comments, and I agree with both of them. I
3 have some real issues with adding more to these cells
4 down there in San Juan County. I also have to
5 disagree a little bit with what our role is as a Board
6 as far as looking at the license and the legal
7 requirements of the license amendment.

8 I would think that one of the areas that the
9 State and the Board wants to make sure that we're
10 paying attention to is the human health and safety
11 issues that can be posed by this license amendment. I
12 would think that's something that would be considered
13 when -- when the Executive Secretary was reviewing
14 this license amendment.

15 I'm just really struggling with that, and I
16 understand -- I understand where -- you know, what our
17 responsibility is to some degree, but I just have a
18 real hard time with the fact that we shouldn't also be
19 looking at health and human safety issues when we look
20 at this license amendment. I have a lot of respect
21 for Loren. I know that he'll be working to -- if we
22 give him the direction, he'll be working to resolve
23 this issue.

24 But I think it's very unwise for us to put
25 more waste even though they're currently licensed to

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1 process ore -- but to allow more waste to come into
2 that facility until we determine what the problem is,
3 if there is a problem. I just -- I feel very
4 uncomfortable with that. I'd like to hear more
5 comments about it even though I know some of you
6 probably disagree that that's what our role is.

7 MR. JENKINS: This is Peter Jenkins again.
8 I think it becomes our role because in the license
9 application the mine stated that the -- that the -- I
10 forget the terminology now, but it would not be --
11 basically the health of the public would not be
12 impacted incrementally above that which is already
13 approved under -- whether it's the groundwater permit
14 or its previous licenses.

15 And I guess what I take an issue with is I
16 haven't seen the evidence to support that statement.
17 The only evidence I've seen just demonstrates that
18 that -- not only is it difficult to show, but the
19 evidence is inconclusive one way or the other. I
20 mean, it could be yes, it could be no, or it could be
21 nothing. I mean, there's just -- the evidence is
22 inconclusive and that's, I guess, the issue that I
23 think needs to be established.

24 Since they included that in their license
25 amendment application, do we just disregard that

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1 because we're relying upon the assistance of another
2 agency? It's a question.

3 DR. NIELSON: Mr. Chairman? I'm sorry.

4 MR. BRADFORD: Go ahead.

5 DR. NIELSON: I didn't mean to cut someone
6 off.

7 Perhaps I could explain just briefly what
8 the process would be to try and resolve this. From my
9 understanding of the record and -- because when an
10 amendment to a license or a permit is considered, it's
11 considered based on the information available to the
12 Division and Executive Secretary at the time, and it's
13 considered based on the law, the statute and the rules
14 that are in place at the time.

15 My understanding of the record is that based
16 on the information that the Division had and that the
17 Executive Secretary had, based on the requirements of
18 the law including the direction on alternate feed
19 material, that it was the determination of the
20 Executive Secretary that granting this license
21 amendment was protective of health and safety, did
22 meet the requirements of the definition of alternative
23 feed material. And that is, I think, exactly, as
24 people have said, the question before us.

25 In the normal process of looking at any

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1 compliance issue, but in this case a groundwater
2 permit, and any time when the Division's staff and the
3 Executive Secretary determine that there's a violation
4 of the groundwater permit, they have the ability to
5 right that violation, to require the company to take
6 action to resolve or correct the problem so that the
7 violation doesn't continue, including corrective
8 orders or action plans or other requirements to bring
9 the facility back into compliance.

10 They have the ability to allow the facility
11 to continue to operate while that corrective action is
12 being taken. They can require actions to ensure that
13 if there is contamination that the contamination is
14 captured so it doesn't go off-site. They can require
15 plans for extraction and remediation to correct past
16 contamination. If the problem is serious enough, they
17 also have the authority to basically shut down part of
18 the operation that is creating the contamination.

19 But what's before us today doesn't even come
20 close to describing or to matching that situation.
21 The Executive Secretary has not found that information
22 or that concern or that problem at this point,
23 although admittedly we're looking at documents that
24 they will further evaluate.

25 So as I see the issue, right now the

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1 Executive Secretary doesn't have a basis or a ground
2 for indicating that the facility is in noncompliance
3 and, certainly not in anything that we've seen, that
4 operations ought to be terminated.

5 But I think we need to place trust in the
6 fact that if that is determined at any time in the
7 future, the laws are in place to enable the Executive
8 Secretary to take whatever action is appropriate.
9 That's why I think it's important that the groundwater
10 evaluation be completed as promptly as possible, a
11 determination be made, if there isn't a problem, that
12 we have the confidence of knowing that and if there is
13 a problem that it can be promptly addressed so that it
14 doesn't continue and so it doesn't impact groundwater
15 as well as health and safety.

16 MR. BRADFORD: Thank you.

17 Elizabeth?

18 MS. GORYUNOVA: Dr. Nielson, when you say as
19 promptly as possible, do you have any specific term in
20 mind?

21 DR. NIELSON: You know, I don't, but I think
22 that Kent suggested a moment ago that we could ask the
23 Division to brief us on the report after they reviewed
24 it. I think we could also request that a schedule be
25 prepared to define what actions -- you know, so the

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1 Division could tell us what their next actions were.

2 But if they were requesting information from
3 IUC or if there were a schedule established for
4 responses and further evaluation, then the Board could
5 be made aware of that.

6 And I think I would go one step further and
7 ask -- or suggest that the Executive Secretary would
8 also brief the Water Quality Board, because at this
9 point that Board isn't aware of the sort of
10 discussions that we're having, and I think it would be
11 of benefit to them because the jurisdiction really
12 rests with that Board for them to be -- receive a
13 briefing and also be able to track this issue.

14 MS. GORYUNOVA: Thank you.

15 MR. BRADFORD: Other comments or questions?

16 Chair would entertain a motion if any of the
17 Board members would like to put forth one.

18 Dr. Nelson?

19 DR. NELSON: I have to ask one more
20 rhetorical question before we do that, and then I
21 promise not to say anything else. I think I promise.

22 Is anybody who has read the report concerned
23 about rising water levels on at least one-half side of
24 the facility, that that could be a groundwater mound
25 from leakage rather than natural recharge?

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1 MR. BRADFORD: Well, Kent Bradford here. I
2 am concerned about a number of issues, but I really
3 would prefer to wait and have the Division do their
4 review of the report and give us their analysis. I
5 think that if the ponds are leaking today, that the
6 facility is still operating, they're processing -- or
7 can process natural ore, and whatever maybe leaking
8 from the ponds doesn't seem like in my mine is going
9 to change based on processing the Fansteel material.
10 I think it is a separate issue, but we certainly need
11 to get some information there.

12 MR. JENKINS: This is Peter Jenkins. I'm
13 not in 100 percent opposition to those statements that
14 were just made by the Chair. However, I would ask
15 rhetorically this time whether or not if this report
16 demonstrated that there was at least some leakage from
17 the ponds how you would vote, if you would vote to
18 remand it back or if you would go ahead and say, well,
19 it's leaking, the tailings that are there now or that
20 may be there in the future. We'll just allow them to
21 put even more tailings in there. I'm just
22 wondering -- ask yourself how that would affect your
23 decision.

24 Personally I don't feel that a decision can
25 be made with a lack of information. So I would -- I

1 would be satisfied with -- I don't know if this is
2 possible -- with even tabling this until the -- until
3 the review can be completed adequately.

4 MR. BRADFORD: Patrick Cone?

5 MR. CONE: I just want to make a couple
6 clarifications here. I'm not really so concerned
7 about saving the world here as I am in protecting the
8 watershed between recapture and Cotton Creek. But
9 these decisions -- I mean, the Fansteel decisions are
10 pretty clear-cut. What happened is we saw something
11 over on the side of the decision that's concerning us
12 all right now.

13 The answer to the groundwater thing is we
14 say I hope it doesn't cause an impact. I don't think
15 that's a very good reason to make a decision on it. I
16 think we could also -- I make a motion to amend the
17 substitute motion, make it contingent on the
18 production of this report.

19 MR. BRADFORD: I'm not sure I understand
20 your motion. Could you restate it?

21 MR. CONE: I think we can amend the
22 substantive motion to approve the Fansteel --
23 upholding the Executive Secretary's decision, make it
24 contingent on the resolution of the groundwater report
25 and making sure basically that the discharge is not

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1 unsafe for health and welfare of humans and whatever
2 else.

3 MR. BRADFORD: Dr. Miner?

4 DR. MINER: Joe Miner. I don't think we can
5 make decisions now based on what happens -- what --
6 hypothetical happenings in the future. We need to
7 base the decision on what we know now, and then
8 obviously we'll make later decisions if there are
9 reasons to change.

10 But I don't think it's good to postpone and
11 just say, well, what if and if this is this, our
12 decision is this, and if it's this way, our decision
13 will be that. I think we decide today, and base it on
14 what we do know now and make the changes and decisions
15 later if we learn something different in the future.

16 MR. PATTISON: I agree with that.

17 DR. NIELSON: Mr. Chairman, this is Dianne
18 Nielson. I would agree with what Dr. Miner just
19 expressed also.

20 The Board of Water Quality and the Executive
21 Secretary for this matter have all the authority they
22 need to take action if there is a problem that's
23 determined to exist in the future.

24 MR. PATTISON: Yes.

25 MR. BRADFORD: Okay. We have a motion

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1 before us. I didn't hear a second, and without a
2 second we're not going to move forward here.

3 MS. GORYUNOVA: Could you repeat the motion,
4 please?

5 MR. BRADFORD: Would you repeat your motion?

6 MR. CONE: I was going to amend the
7 substitute motion just to make it contingent on the
8 production of this report showing that there is
9 actually positive data that shows there's no health
10 impact to the water issues we've been talking about.

11 MR. BRADFORD: I'm not hearing a second, and
12 I have a concern --

13 MR. PATTISON: Yes, I agree with that.

14 MR. BRADFORD: Are you seconding the motion?

15 MR. PATTISON: Yes.

16 MR. BRADFORD: Okay. Then let's discuss the
17 motion.

18 MR. PATTISON: That is -- Kent, that is to
19 put the stuff in the ponds, that's right.

20 MR. BRADFORD: Let me see if I can explain
21 my understanding of the motion, and you can correct
22 me, Pat, if I'm wrong. But if we -- say we agree with
23 the Executive Secretary's determination the facility
24 can go ahead and process the Fansteel material, then
25 we're putting on it a caveat that -- are you saying

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1 that they could not process the material until the
2 groundwater review is done, or are you saying --
3 because the license amendment -- once we concur with
4 that, they can go ahead and process that. Otherwise
5 it would be --

6 MR. CONE: I would make it contingent is
7 what we call that. In other words, it's approval with
8 conditions. That would be one of the conditions.

9 MS. GORYUNOVA: So does it mean that we'll
10 have to come back here and do --

11 MR. CONE: No.

12 Mr. DeROSSO: My concern with that -- I
13 understand where Pat is coming from, but who decides
14 whether the report is favorable or not favorable in
15 making a determination of whether human health and the
16 environment is impacted by the groundwater study?
17 Right now, I mean, Peter is saying the statistics in
18 the report maybe don't even allow that conclusion to
19 be made. So, I mean, who is going to decide? Are you
20 going to let IUC decide whether it's favorable, or the
21 Division?

22 I think we have to decide what the criteria
23 favorable versus unfavorable report might be if we
24 allow that contingency to be put on our decision.

25 MR. NELSON: Well, let me just interject

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1 here. With respect to the groundwater permit,
2 ultimately the one who decides is the Water Control
3 Board.

4 MR. BRADFORD: Patrick?

5 MR. CONE: Can we link our decision with
6 their decision?

7 MR. NELSON: Well, I guess I don't know
8 whether I understand the motion. Is the motion that
9 the materials cannot be processed until the
10 groundwater permit is approved or --

11 MR. CONE: That's a negative way to put it.
12 I would make a motion to approve the -- that Fansteel
13 be allowed to process the materials and place them in
14 the tailings pond contingent on the Water Quality
15 Board's report that it will be safe to do so having to
16 do with the groundwater discharge.

17 MR. NELSON: So they would not process the
18 material until the Water Quality Board approved it?

19 MR. CONE: That's correct.

20 DR. NIELSON: Mr. Chairman, this is Dianne
21 Nielson again. I think it's important to remember
22 that right now there is no action before the Water
23 Quality Board. The facility has a ground water
24 permit. What the Division of Radiation Control staff
25 are doing right now are evaluating additional

1 information with respect to the ongoing operations of
2 that facility and particularly the baseline. And
3 submitting this report was a condition of having a
4 ground water permit.

5 But there is no action before the Water
6 Quality Board and until and unless there were an
7 action brought either by some party based on timely
8 response to a decision or by the Executive Secretary
9 on a compliance issue that could not be resolved
10 administratively, there won't be a matter before the
11 Water Quality Board. So, again, conditioning the
12 determination from that of the report is a little bit
13 problematic because there is no action pending on that
14 report except for the administrative review of the
15 Division, as I understand it.

16 And if I'm incorrect, Laura Lockhart will
17 correct me on that, and I appreciate it.

18 MS. LOCKHART: No, that's right.

19 MR. BRADFORD: I think it would be -- if
20 that is the sense of the Board, I think it would be
21 cleaner to just deny the license amendment and ask the
22 Division to proceed with the groundwater analysis as
23 they're already doing.

24 But because they are separate issues, I
25 think -- and what I'm sensing is that the Board feels

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1 that the Fansteel material meets the requirements --
2 that we go ahead and approve what the Executive
3 Secretary has done there with that license amendment,
4 and then ask the Division to review that groundwater
5 report and establish a schedule to come back and
6 report to us on it. But we need to vote on the motion
7 that's before us here.

8 Robert, let me clarify. Did you second that
9 motion, or were you just asking for clarification?
10 Robert Pattison? Have we lost -- Robert, are you
11 there?

12 MR. PATTISON: Yes.

13 MR. BRADFORD: Could you clarify for me, did
14 you second that motion, or were you just asking for
15 some clarification there?

16 MR. PATTISON: Yes, I would say no problem
17 in putting that Fansteel material, none.

18 MR. BRADFORD: But the motion would -- the
19 motion before us would not allow them to process that
20 material until the groundwater study was completed.
21 Is your second --

22 MR. PATTISON: I don't know exactly what
23 your problem with it is. That's the problem I've got.
24 What's the problem?

25 MR. CONE: I don't believe he seconded.

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1 DR. NIELSON: Mr. Chairman, I'm not sure
2 we -- do we have a second on the motion?

3 MR. BRADFORD: I'm going to rule that we do
4 not have a second on that motion.

5 MR. CONE: I'll withdraw my motion.

6 MR. BRADFORD: The motion has been
7 withdrawn.

8 Gregory Oman?

9 MR. OMAN: I move that we sustain the
10 Executive Secretary in approving the license amendment
11 application to receive the Fansteel material.

12 MR. BRADFORD: Okay. We have a motion to --

13 DR. MINER: I'll second that.

14 MR. BRADFORD: And seconded by Dr. Miner.
15 The motion then is to approve the license amendment
16 which the Executive Secretary has issued.

17 MR. NELSON: I want to make sure -- this is
18 Fred Nelson -- that everybody on the telephone could
19 hear that motion and knows what the motion is, that
20 the motion is to approve what the Executive Secretary
21 did, uphold the decision.

22 Are all three of you on the phone -- do you
23 understand that.

24 MS. LANGIANESE: Yes.

25 DR. NIELSON: Yes.

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1 MR. NELSON: Bob, do you understand it?

2 MR. PATTISON: Yes.

3 MR. STILLS: Can I make a parliamentary
4 inquiry of the Chair?

5 MR. BRADFORD: Yes.

6 MR. STILLS: There are open questions of
7 evidence in front of the Board. Is the Board going to
8 take those up before it moves to make a substantive
9 decision in this matter?

10 MR. BRADFORD: No.

11 MR. STILLS: Thank you.

12 MR. BRADFORD: Okay. We have a motion
13 before us. Is there any further discussion on the
14 motion? If not, then I'll call the question. We'll
15 do this by roll call just so that I can make an
16 accurate record here. And I'm going to go by the
17 sheet that I have in front of me instead of
18 necessarily around the room, so if you'll bear with
19 me. So a yea vote then is supporting this motion to
20 accept the license amendment.

21 Patrick Cone?

22 MR. CONE: No.

23 MR. BRADFORD: Frank DeRosso?

24 Mr. DeROSSO: Yes.

25 MR. BRADFORD: Robert Pattison?

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1 MR. PATTISON: Yes.

2 MR. BRADFORD: Gregory Oman?

3 MR. OMAN: Yes.

4 MR. BRADFORD: Joseph Miner?

5 DR. MINER: Yes.

6 MR. BRADFORD: Stephen Nelson?

7 DR. NELSON: Abstain.

8 MR. BRADFORD: Dianne Nielson?

9 DR. NIELSON: Yes.

10 MR. BRADFORD: Dr. Thomson?

11 DR. THOMSON: Yes.

12 MR. BRADFORD: Elizabeth Goryunova?

13 MS. GORYUNOVA: Yes.

14 MR. BRADFORD: Peter Jenkins?

15 MR. JENKINS: No.

16 MR. BRADFORD: Let's see. I need Joette

17 Langianese.

18 MS. LANGIANESE: No.

19 MR. BRADFORD: Was that a no?

20 MS. LANGIANESE: That was a no, N-0.

21 MR. BRADFORD: Thank you.

22 The Chair is also abstaining, and we have

23 seven votes by my tally yea and three negative votes

24 and two abstentions. The motion carries. I believe

25 that concludes our business.

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1 MR. STILLS: If I may address the Chair?

2 MR. BRADFORD: Yes.

3 MR. STILLS: I would like to request orally
4 that this Board consider staying any action on this
5 matter in order that it may be reviewed by a competent
6 court of jurisdiction in Utah.

7 I believe we made a very substantive
8 objection to any deliberation or consideration of this
9 matter on the groundwater report due to what the
10 Supreme Court of the State of Utah has deemed
11 reversible error by putting that material in front of
12 a decision-making body without it having been
13 disclosed in a timely manner. The experts that IUC
14 brought in relied on that in their testimony. We made
15 timely objections.

16 The other issues that are here are of great
17 public importance, as the Board pointed out, including
18 the questions of the Board, and I appreciate the
19 Board's wrestling with these matters and the struggles
20 that folks have went over in the last week, and for
21 that reason and because it is a matter of great public
22 importance would ask that this Board stay all action
23 that could be taken pursuant to the decision for 30
24 days which is the time period in which a judicial
25 review could be sought.

1 That way this matter can be resolved before
2 these materials are irreversibly mixed into the IUC
3 pond which, as has been stated here, the only evidence
4 that it's not going into the ground is the groundwater
5 report. That would be my request of the Board, if I
6 could submit that at this time.

7 MR. NELSON: Let me clarify that the
8 decision of the Board is not final until it's reduced
9 to writing, so the 30 days doesn't start to run from
10 today. The 30 days would run from the day that the
11 Board approved a final written order. And my job in
12 the next -- before the next Board meeting is to
13 prepare what I believe to be the conclusion of the
14 Board to submit to the Board in writing for approval.
15 That would start the time frame.

16 I would suggest that if you would like to
17 make a motion for stay, under the rules there is a
18 specific provision that you can make a motion to stay.
19 It is supposed to be submitted in writing. The
20 criteria is listed in the rules for making that
21 motion. That in the next 30 days you evaluate that
22 and decide whether you want to make a motion for stay.
23 But the Board decision does not become final until
24 they approve the final writing.

25 MR. STILLIS: Thank you for that

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1 clarification. Perhaps at that time the motion that I
2 just described very briefly earlier would be
3 appropriate. But in the interim there has been a stay
4 in place until this Board reaches its decision, and
5 because part of that is to consider the written
6 opinion that Mr. Nelson will put together, I assume,
7 and circulate and see if it's okay, if this Board
8 would, and I would also ask -- I had given them a
9 heads-up that I would ask this -- for a voluntary stay
10 of any processing until this Board can come to a final
11 conclusion which I presume would be at the March Board
12 meeting?

13 MR. BRADFORD: Yes, I believe we'll have
14 that.

15 MR. NELSON: Yeah, I will have something in
16 writing by then, yes.

17 MR. STILLIS: I guess first I would ask if
18 IUC could voluntarily continue our agreement that
19 we've had throughout this proceeding that they will
20 not process until this Board makes a final decision,
21 and if we can't come to an agreement amongst the
22 parties, then I would present that to the Board.

23 MR. BRADFORD: Okay. We don't -- Mr. Zody
24 did you have a comment?

25 MR. ZODY: Yeah. I agree with Mr. Nelson

1 that I always like to see the motion and the legal
2 basis before I agree to something, but I think in the
3 spirit of cooperation that we've exhibited I'll talk
4 to you on the telephone and guarantee you in the next
5 couple days this won't happen, and I will discuss it
6 with my client. And I think there's a likelihood that
7 voluntary arrangement we had will continue for the
8 next 30 days. I don't want to make that decision
9 until I have a full chance to discuss it.

10 MR. STILLS: I appreciate that.

11 MR. ZODY: I give you my word until next
12 Wednesday nothing is going to happen.

13 MR. STILLS: Thank you.

14 MR. NELSON: If there is a disagreement and
15 you decide you need to file a motion for stay, you can
16 file a motion. And if we need to schedule a Board
17 meeting to hear that, that's part of the process.

18 MR. STILLS: I appreciate that. I have seen
19 some Boards act orally even if there are motion
20 requirements, so I wanted to present that orally.
21 Thank you very much.

22 MR. BRADFORD: I guess maybe one last thing.
23 We discussed the groundwater report, and perhaps we
24 could ask the Division to get back with us at -- we
25 won't ask for a schedule at this point, but if you

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1 could recommend one when you're ready, that would be
2 helpful.

3 MR. FINERFROCK: We're already working on
4 that, so we will have one for you in March.

5 MR. BRADFORD: Thank you.

6 MR. STILLLS: If I may add, because my
7 clients are members of the public, will there be a
8 public participation aspect of this? Because I know
9 we have information to bring to bear concerning data
10 that predates any that was in the groundwater report.
11 I just didn't have it as part of this proceeding.
12 There's data from 1978. There's a lot of data out
13 there that we want to be able to, as members of the
14 public, bring forward to the Division and the Board.

15 MS. LOCKHART: This is a combination of a
16 permitting action and to some extent also an
17 enforcement action. And enforcement actions typically
18 do go out for public notice and comment. Permitting
19 actions always do. So I believe there is going to be
20 opportunity for comment, and of course anything is
21 welcome at any time.

22 MR. STILLLS: Thank you. And like I said,
23 because we represent a particular client in this
24 proceeding and there's a larger public, I'd greatly
25 appreciate it if we could work together to make sure

1 that kind of outreach that you just described happens.

2 Thank you.

3 MR. NELSON: We're done with the hearing

4 transcript now.

5 (Proceedings concluded at 2:16 p.m.)

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1 REPORTER'S CERTIFICATE

2 STATE OF UTAH)
3) ss.

4 COUNTY OF SALT LAKE)

5 I, Diane W. Flanagan, Registered
6 Professional Reporter and Notary Public in and for the
7 State of Utah, do hereby certify:

8 That prior to being examined, the witnesses
9 were duly sworn to tell the truth, the whole truth,
10 and nothing bu the truth;

11 That said proceeding was taken down by me in
12 stenotype on February 2, 2007, at the place therein
13 named, and was thereafter transcribed, and that a
14 true, and correct transcription of said testimony is
15 set forth in the preceding pages;

16 I further certify that I am not of kin or
17 otherwise associated with any of the parties to said
18 cause of action and that I am not interested in the
19 outcome thereof.

20 WITNESS MY HAND AND OFFICIAL SEAL this 9th
21 day of February, 2007.

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Diane W. Flanagan, RPR
Notary Public
Residing in Davis County

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