

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE APPLICATION)
OF STRATA ENERGY FOR AN IN SITU)
MINING PERMIT FOR THE ROSS ISR)
URANIUM PROJECT FROM THE LAND)
QUALITY DIVISION OF THE DEPARTMENT)
OF ENVIRONMENTAL QUALITY FOR THE)
STATE OF WYOMING)

Docket No. 12-4803

**STRATA ENERGY, INC.’S MOTION TO DISMISS CERTAIN
OBJECTIONS IN MERIT ENERGY’S PROTEST**

COME Now Strata Energy, Inc. (“Strata”) in its Motion to Dismiss Objection Nos. 4, 13-15, and 17 in Merit Energy Company, LLC, Merit Energy Partners, I, LP, Merit Energy Partners, III, LP, Merit Management Partners, I, LP, and Merit Management Partners, III, LP’s, collectively (“Merit”), Protest and Request for Hearing of Merit Energy on Strata Energy Inc.’s Application for an In Situ Mining Permit for the Ross ISR Uranium Project.

Merit filed a *Protest and Request for Hearing of Merit Energy on Strata Energy Inc.’s Application for an In Situ Mining Permit for the Ross ISR Uranium Project* on September 28, 2012. After reviewing Merit’s *Protest and Request for Hearing*, Strata respectfully asks the Environmental Quality Council (“EQC”) to dismiss Merit’s Objection Nos. 4, 13-15, and 17 for the following reasons:

Objection No. 4

Merit’s Objection No. 4 alleges that Strata’s operations will violate Wyo. Stat Ann. § 41-3-906 and reduce the available water, which will limit Merit’s ability to operate its waterflood-assisted oilfield operation. Any issues related to water rights should be addressed to the State Engineer’s Office not the EQC or Department of Environmental Quality, Land Quality Division (“LQD”). The EQC and LQD have no jurisdiction over water right issues. In fact, the Wyoming Environmental Quality Act expressly prohibits the Department from interfering in the jurisdiction of the State Engineer or Board of Control. *See* Wyo. Stat. Ann. § 35-11-1104(a)(iii) (stating nothing in the act shall limit or interfere with the jurisdiction,

duties or authority of the state engineer or the state board of control). Moreover, when Strata applies for industrial water rights, it will not be proposing to change the use of any water to a preferred use and, therefore, Strata contends Wyo. Stat. Ann. § 41-3-906 is not applicable. Thus, Strata respectfully requests that the EQC dismiss Merit's Objection No. 4 on the grounds that industrial appropriations are outside the jurisdiction of the Department, the EQC and that Wyo. Stat. Ann. § 41-3-906 is not relevant.

Objection No. 13

Merit asserts that Strata's use of the roads in the Deadman Creek Field area damages the roads that Merit must maintain, which results in an increased expense to Merit. While Strata acknowledges its use of the roads in the Deadman Creek Field area, any disputes over allocation of maintenance expense between Merit and Strata are private disputes beyond the scope of LQD authority. LQD has no jurisdiction over Merit or its operations and thus, could not order Merit to take any action to maintain the roads. To the extent there may be air emission issues related to the use of the roads required for the permit, they fall within the scope of the jurisdiction of the Air Quality Division and outside the authority of the LQD. Therefore, Strata respectfully requests the EQC to dismiss Objection No. 13.

Objection No. 14

Under Wyo. Stat. Ann. § 35-11-406(a)(ii), Strata must provide a "sworn statement stating that [it] has the right and power by legal estate owned to mine from the land for which the permit is desired." Thus, for purposes of compliance with the Environmental Quality Act, Strata must demonstrate to the administrator of the LQD that it has a legal right to mine. Merit does not challenge Strata's compliance with Wyo. Stat. Ann. § 35-1-406(a)(ii). Instead Merit asks the EQC to apply federal law regarding the accommodation of allegedly competing mineral claims. The EQC is not the proper forum for resolving such a dispute and its authority is limited to issues arising under the Wyoming Environmental Quality Act. For this reason alone, the EQC should dismiss Objection No. 14.

With regards to the allegedly competing federal mineral claims, Merit asserts that under the Mineral Leasing Act of 1920 and the General Mining Act of 1872, the first established mining claim has the valid and existing right that the second claim must

accommodate. Thus, according to Merit, the uranium claim must accommodate the oil field operations. This position is outdated and has been replaced by the Multiple Mineral Development Act of 1954, which promotes simultaneous use of lands for compatible operations when reasonably practicable. Regardless of the interpretation of federal law, if there is an issue regarding the compatibility of operations, the proper venue for resolving the compatibility of operations is a court of competent jurisdiction, not the EQC. For the above stated reasons, the EQC should dismiss Objection No. 14.

Objection No. 15

Strata agrees that the Multiple Mineral Development Act of 1954, specifically 30 USC 526, governs concurrent mining and leasing operations and, pursuant to the Act, the operations of Merit and Strata must be conducted, so far as reasonably practicable, in a compatible manner. It is Strata's position that Merit's and Strata's operations are compatible; however, if Merit believes Strata cannot simultaneously conduct operations Merit must petition a court of competent jurisdiction for a determination regarding the compatibility of the operations, specifically whether the proposed use outweighs the risk of injury to or interference with existing improvements, workings or facilities. 30 USCA § 526(d). The EQC does not have jurisdiction to determine whether Strata's and Merit's operations are compatible and, therefore, Strata respectfully asks the EQC to dismiss Objection No. 15.

Objection No. 17

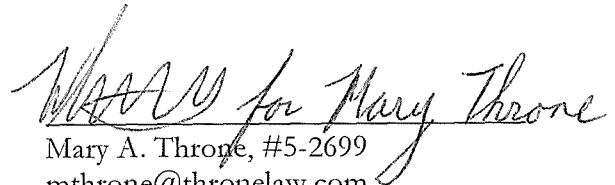
Merit alleges that the United States Nuclear Regulatory Commission's ("NRC") regulation of Strata's facility will interfere with its operations. How the NRC regulates Strata's operations is not matter for the EQC or LQD and certainly not a basis for rejecting Strata's LQD permit.¹ As discussed in Strata's response to Merit's Objection No. 15, the compatibility of Merit's and Strata's operations should be determined by the court upon petition of Merit if it believes both operators cannot simultaneously operate. Compatibility

¹ Wyoming Rule and Regulation ENV WQ Ch. 9 § 1, promulgated pursuant to the Wyoming Environmental Quality Act, expressly prohibits Wyoming's regulations from interfering or conflicting with the authority of the NRC under the Atomic Energy Act of 1954 and the Uranium Mill Tailings Radiation Contract Act of 1978. This regulation relates specifically to water quality; however, it demonstrates the basic policy that the EQC cannot infringe on NRC's authority.

of operations does not fall under the jurisdiction of the EQC. Furthermore, the NRC only restricts access at the in situ mining site. The NRC does not regulate access to roads or limit an oil and gas operator's access to its field. Moreover, any concerns Merit may have regarding the NRC's licensing proceeding for Strata's uranium facility should be submitted to the NRC not the EQC. Thus, Strata respectfully asks the EQC to dismiss Objection No. 17.

WHEREFORE, Strata respectfully asks the EQC to dismiss Objection Nos. 4, 13-15, and 17 of Merit's *Protest and Request for Hearing of Merit Energy on Strata Energy Inc.'s Application for an In Situ Mining Permit for the Ross ISR Uranium Project* for the reasons stated above.

DATED this 9 day of October, 2012

A handwritten signature in cursive script that reads "Mary A. Throne for Mary Throne". The signature is written in black ink and is positioned above the printed contact information.

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CERTIFICATE OF SERVICE

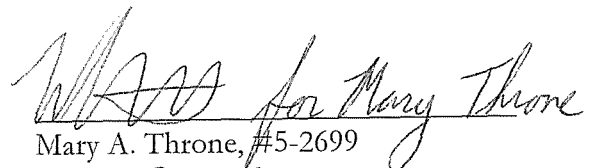
I certify the foregoing pleading was served on the 9 day of October, 2012, and that copies were served via electronic mail and U.S. Mail to the following:

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