

**FILED**

**Oct 15, 2012**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING**

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 ) Docket No. 12-4803  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY FOR THE STATE OF )  
WYOMING )  
)  
)  
)  
)

**MERIT ENERGY COMPANY'S RESPONSE TO STRATA ENERGY, INC.'S  
MOTION TO DISMISS CERTAIN OBJECTIONS IN MERIT ENERGY'S  
PROTEST**

**COME NOW** Merit Energy Company, LLC, Merit Energy Partners, I, LP, Merit Energy Partners, III, LP, Merit Management Partners, I, LP, Merit Management Partners, III, LP, collectively ("Merit") and respond to *Strata Energy, Inc's Motion to Dismiss Certain Objections in Merit's Protest ("Strata's Motion to Dismiss")*.

***Response to Objection No. 4***

Strata asserts that the Environmental Quality Council ("EQC") and the Department of Environmental Quality, Land Quality Division ("LQD") have no jurisdiction over water rights issues. *Strata's Motion to Dismiss, Objection No. 4*. While Merit recognizes that water quantity and priority issues are addressed to the State Engineer's Office, the EQC and LQD have jurisdiction to hear Merit's water quality and quantity concerns. W.S. § 35-11-110(a)(iv) grants the power to *each* Administrator of the individual Divisions of the Department of Environmental Quality ("DEQ"), including the LQD, "[t]o determine the degrees of air, water or land pollution throughout the

state...” Such issues are also considered in a mining permit application, pursuant to W.S. § 35-11-406, which sets forth the application requirements:

(b) The application shall include a mining plan and reclamation plan dealing with the extent to which the mining operation will disturb or change the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The mining plan and reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated. The mining plan and reclamation plan shall include the following:

(xiv) The methods of diverting surface water around the affected lands where necessary to effectively control pollution or unnecessary erosion;

(xv) The methods of reclamation for effective control of erosion, siltation, and pollution of affected stream channels and stream banks by the mining operations;

(xvi) A statement of the source, quality and quantity of water, if any, to be used in the mining and reclamation operations[.]

W.S. § 35-11-406. Accordingly, the EQC has jurisdiction to hear matters involving water quality, quantity and reclamation efforts related to mining permit applications, and in fact, Strata must address the issues in its mine plan.

Strata’s proposed activities, contained in its mining permit application, will interfere with Merit’s available quality and quantity of water and will further obstruct its ability to conduct the waterflood-assisted oilfield operation. Strata has also admitted this fact, as evidenced by a string of emails between Neil Nadrash, a former Merit representative and WWC Engineer Ben Schiffer, Strata’s permit coordinator. In the emails, Schiffer stated that Strata’s proposed mining activities could place additional hydraulic stress on the Fox Hills formation aquifer and “reduce the amount of water

available for all users.” Thus, Strata’s proposed mining operations will interfere not only with Merit’s ability to use water, but with other users’ abilities as well. Schiffer described the interference as “essentially competition for the water.” *See January 12, 2011 emails between Ben Schiffer and Neil Nadrash, attached hereto and incorporated herein by this reference as Exhibit 1.* Moreover, in an August 24, 2011 letter from WWC Engineer Ray Moores to Eric Williams, a Merit representative, Moores stated that “[t]here is a strong possibility that at some point during the mining operations it will be necessary to plug and abandon two of Merit’s existing water supply wells (19XX18 and 789V) in order to ensure wellfield integrity.” *See August 24, 2011 letter from Ray Moores to Eric Williams, attached hereto and incorporated herein by this reference as Exhibit 2.* Since Strata’s proposed mining operations will affect both the quality and quantity of water available to Merit, the EQC should consider Merit’s claims during the permit application hearing in light of W.S. §35-11-406(b)(xiv)(xv)(xvi). There is no mechanism to challenge the water quantity issues since Strata has not applied for any groundwater permit from the State Engineer’s Office. The only available forum for relief is before the EQC in this proceeding. Further, in order for Strata to provide a complete and adequate mining and reclamation plan, pursuant to the statute, Merit’s claims must be addressed at the permit application hearing.

Moreover, W.S. § 35-11-406(m) provides the following:

The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:



(vii) The proposed operation constitutes a public nuisance or endangers the public health and safety[.]

The Wyoming Supreme Court has not defined “public nuisance.” As such, one looks to the Restatement (Second) of Torts for a definition.

According to Section 821B of the Restatement (Second) of Torts:

- (1) A public nuisance is an unreasonable interference with a right common to the general public.
- (2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
  - (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
  - (b) whether the conduct is proscribed by statute, ordinance or administrative regulation, or
  - (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Strata’s proposed mining activities constitute a public nuisance, particularly because the operations are long-lasting and will significantly interfere with the quality and quantity of water available to other users, including Merit. *See Exhibits 1 and 2.* Moreover, Strata has acknowledged that its mining operations could reduce the amount of available water in the aquifers. *See Exhibits 1 and 2.* In order for the EQC to find that the proposed mining operation is a public nuisance, it must determine that the common right available to the general public, namely the use and availability of safe water, will be interfered with unreasonably by the applicant’s proposed operation. To accomplish this, the EQC must be able to hear the water quality and quantity concerns raised by Merit at the permit

application hearing. Therefore, Merit's Protest No. 4 contained in the *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* must not be dismissed.

Further, W.S. § 35-11-406(m) provides the following:

The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

(iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States[.]

A loss of Merit's ability to extract all available oil from its field is a violation of the public policy of the State of Wyoming to prohibit waste of oil and to protect correlative rights, under W.S. §§ 30-5-101(a)(ix) and 35-5-102(a).

### ***Response to Objection No. 13***

Strata alleges that any dispute over the allocation of maintenance or damage expense between Merit and Strata is beyond the scope of the LQD authority. This information is relevant to the permit application hearing, and Merit has served discovery requests to Strata on the issue. Strata further asserts that, "[t]o 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. This is incorrect. W.S. §35-11-110(a)(iv) grants the power to *each* Administrator of the individual Divisions of the DEQ, including the LQD, "[t]o determine the degrees of air, water or land pollution throughout the state..." Therefore, it is within LQD's jurisdiction to hear any concerns about air pollution associated with Strata's operations and high

traffic on the roads in the Deadman Creek Field area. Furthermore, W.S. § 35-11-406(k) provides “[a]ny interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice...An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections...” The Legislature, through W.S. § 35-11-406(k), has provided the public with a comment period and opportunity to be heard at a hearing. In so doing, the Legislature did not limit the scope of written objections an interested party could make. In fact, the public is welcomed to comment on various mining and industrial projects. Therefore, Merit had the right to file its written objections, including those dealing with road use and maintenance, to Strata’s proposed mining activities and has the right to present its objections at the public hearing. Merit’s Protest No. 13 contained in the *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* must not be dismissed.

***Response to Objections Nos. 14, 15 and 17***

Merit agrees that the Multiple Mineral Development Act of 1954, specifically 30 USC § 526, governs concurrent mining and leasing act operations. Merit also acknowledges that this Act originated and developed from the Mineral Leasing Act of 1920 and the General Mining Act of 1872.

The operations of Merit and Strata, must be conducted, so far as reasonably practicable, in a compatible manner. Moreover, 30 USC § 526(c) provides that “operations shall be so conducted as not to endanger or materially interfere with any



*existing* surface or underground improvements, workings, or facilities which may have been made for the purpose of mining operations, or with the utilization of such improvements, workings, or facilities.” Merit’s oilfield operations were in existence long before Strata applied for a uranium-mining permit, and therefore are first in right. Strata’s proposed mining activities will materially interfere with Merit’s existing oilfield operations by negatively and materially affecting the water quality and quantity available to Merit’s waterflood-assisted oilfield operation. This will significantly reduce Merit’s oil production and is not compatible with Merit’s existing operations. This violates 30 USC § 526.

30 USC § 526(d) provides that an operator may petition any court of competent jurisdiction for a determination regarding the compatibility of the operations. The court will determine, whether the “injury or damage which would result from denial of such particular use would outweigh the injury or damage which would result to such then existing improvements, workings, or facilities or from interference with the utilization thereof if that particular use were allowed.” Merit will pursue Strata in the United States District Court under 30 USC § 526(d) and for any violations of the United States Nuclear Regulatory Commission, specifically under 10 CFR § 1-199. These issues of federal law are relevant to the permit application hearing for the following reasons.

Strata’s proposed mining activities will interfere with Merit’s existing operation, in violation of 30 USC § 526. Pursuant to W.S. § 35-11-406(m)(iii) (cited above), the permit application should be denied. Furthermore, as explained above, the Legislature, through the enactment of W.S. § 35-11-406(k), has provided any interested party with the

opportunity to file written objections and to be heard at a public hearing. Therefore, Merit had the right to file its written objections, including those dealing with competing mineral interests, to Strata's proposed mining activities and has the right to present its objections at the public hearing.

Finally, the purpose of this hearing is to address the viability and feasibility of Strata's proposed mining operation. One of the issues that must be addressed by the EQC is whether this operation can even proceed in light of Merit's interest in the water and land resources that are the subject of this application and the clear admission by Strata's engineers and consultants that the mining proposal will harm Merit's operations and its use of the water. Merit's Protest Nos. 14, 15 and 17 contained in the *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* must not be dismissed.

**WHEREFORE**, Merit respectfully requests *Strata Energy, Inc.'s Motion to Dismiss Certain Objections in Merit Energy's Protest* be denied for the reasons stated above and that Merit be allowed to present all of its protests at the permit application hearing, set for October 22 and 23, 2012.

///



DATED this 15 day of October, 2012.

  
Jane M. France, #7-4828  
Sundahl, Powers, Kapp & Martin, LLC  
PO BOX 328  
1725 Carey Avenue  
Cheyenne, Wyoming 82003-0328  
Tele: (307) 632-6421  
Fax: (307) 632-7216  
Email: jfrance@spkm.org

### CERTIFICATE OF SERVICE

I certify the foregoing pleading was served on the 15 day of October 2012, and that copies were served as follows:

Mary A. Throne  
Throne Law Office, P.C.  
P.O. Box 828  
211 W. 19<sup>th</sup> Street, Suite 200  
Cheyenne, WY 82003

U.S. Mail  
 Fed Ex  
 Fax  
 E-mailed

Luke Esch  
Wyoming Attorney General's Office  
123 State Capitol  
Cheyenne, WY 82002  
[Luke.esch@wyo.gov](mailto:Luke.esch@wyo.gov)

U.S. Mail  
 Fed Ex  
 Fax  
 E-mailed  
 Hand Delivered

Nancy Nuttbrock, Administrator  
Land Quality Division  
Department of Environmental Quality  
122 West 25<sup>th</sup> Street  
3rd Floor West  
Cheyenne, WY 82002

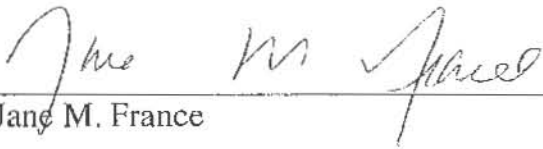
U.S. Mail  
 Fed Ex  
 Fax  
 E-mailed  
 Hand Delivered

Environmental Quality Council  
122 West 25<sup>th</sup> Street  
Room 1714  
Cheyenne, WY 82002  
[Joe.girardin@wyo.gov](mailto:Joe.girardin@wyo.gov)

U.S. Mail  
 Fed Ex  
 Fax  
 E-mailed  
 Hand Delivered

Jim Ruby, Executive Secretary  
Environmental Quality Council  
122 West 25<sup>th</sup> Street  
Room 1714  
Cheyenne, WY 82002

U.S. Mail  
 Fed Ex  
 Fax  
 E-mailed  
 Hand Delivered

  
\_\_\_\_\_  
Jane M. France

From: Ben Schiffer [mailto:bschiffer@wwcengineering.com]  
 Sent: Wednesday, January 12, 2011 12:29 PM  
 To: Nadrash, Neil  
 Cc: Tony Simpson; Melissa; Ray Moores  
 Subject: Re: Meeting w/Tony Simpson of Strata Energy

Mr. Nadrash--

My pleasure. Basically, Strata is proposing to recover uranium from the both Fox Hills FM and portions of the Lance via in-situ methods. In-situ requires a net over-production of water during operations to maintain a cone of depression towards the mining areas hence there is a potential that the withdrawals during mining activities (and follow-up groundwater reclamation) could place additional hydraulic stresses on these aquifers and hence reduce the amount of water available for all users. This interference is essentially competition for water. In terms of water quality, the present aquifer is only suitable for industrial use and that would not change during operations or reclamation. In-situ is very similar to conventional oil-field water flood systems only smaller, shallower wells and many more of them. I hope this helps and feel free to continue with questions just bear in mind I'll be traveling this afternoon. Take care.

Ben



On 1/12/2011 11:14 AM, Nadrash, Neil wrote:  
Ben,

I appreciate the info. If I can, I'd be curious to know a bit more about what you mean by interference in the Fox Hills formation. We use that water to inject into our Minnelusa formation as a means of secondary recovery. Are you saying that through the in situ process you are contaminating the Fox Hills because of residuals left in that water? Is it being re-injected back into the same Fox Hills we are pulling from? I understand a face to face discussion may help me understand in a bit more detail, I am just trying to get a general feel.

Regards,

Neil

**From:** Ben Schiffer [mailto:bschiffer@wwcengineering.com]  
**Sent:** Wednesday, January 12, 2011 11:52 AM  
**To:** Nadrash, Neil  
**Cc:** Tony Simpson; Melissa; Ray Moores  
**Subject:** Re: Meeting w/Tony Simpson of Strata Energy

Mr. Nadrash--

As Tony's permit coordinator I thought it might be helpful to give a little background and briefing prior to the our meeting on 1/21. Strata is in the process of permitting an in situ uranium mine in the area near the Deadman oil field in Crook County. For the permit applications, Strata has conducted extensive groundwater monitoring and modeling of the area and there is a potential for interference between the fresh water withdrawals used to enhance oil production and the proposed mining of the uranium in the area. Merit has been a partner with Strata in terms of roads and other areas of overlap and I believe we would like to discuss methods to continue/strengthen the relationship as the permitting process moves forward. One area that we would like to specifically address is this potential interference within the Fox Hills Aquifer by discussing alternatives along with getting a feel for Merit's intentions for the field in the future. In addition, there maybe other areas of mutual interest to discuss. I realize your time is valuable and on behalf of Strata we greatly appreciate this opportunity. Feel free to call either of Tony or myself (307) 217-2032 at anytime if you have questions or concerns.

Best Regards,



Ben Schiffer

On 1/12/2011 6:21 AM, Nadrash, Neil wrote:  
Tony,

We need to nail down a time ASAP. My time is filling up rather quickly. Let me know.

Neil

**From:** Tony Simpson [mailto:tsimpson@pel.net.au]  
**Sent:** Thursday, January 06, 2011 7:47 AM  
**To:** Nadrash, Neil; Melissa  
**Cc:** bschiffer@wwcengineering.com  
**Subject:** RE: Meeting w/Tony Simpson of Strata Energy

Hi Neil,  
Thanks for making the time to meet with us and we will take up the opportunity and meet you in Cody on the 21st. We are preparing a brief and will get it to you soonest?  
Thanks,  
Tony.

Tony Simpson  
Strata Energy Inc  
Tel; +1 307 689 6080  
e-mail; tjs@strataenergyinc.com  
406 W 4th Street,  
Gillette, WY 82716  
PO Box 2318,  
Gillette, 82717

**From:** Nadrash, Neil [mailto:Neil.Nadrash@meritenergy.com]  
**Sent:** Thursday, January 06, 2011 5:59 AM  
**To:** Melissa

Cc: Tony Simpson; bschiffer@wwcengineering.com  
Subject: RE: Meeting w/Tony Simpson of Strata Energy

It would probably work out best to do it the morning of the 21st in Cody. I am staying at the Holiday Inn in Cody and can probably find a small meeting room in the hotel to use.

It would be helpful if you could summarize some of the issues well as ideas and/or proposals that might be discussed. This would help me better prepare. If you have any questions please let me know.

Thanks,

Neil Nadrash

From: Melissa [mailto:melissa@pbprconsulting.com]  
Sent: Wednesday, January 05, 2011 4:59 PM  
To: Nadrash, Neil  
Cc: tsimpson@pel.net.au; bschiffer@wwcengineering.com  
Subject: Meeting w/Tony Simpson of Strata Energy

Hi, Neil – thanks for taking the time to visit with me today regarding meeting with Tony Simpson, COO of Strata Energy, Inc. to discuss the cumulative effects of Strata's proposed operations near Oshoto, Wyoming. Merit Energy currently operates 3 water supply wells within the proposed permit area (789V, 19XX, and 22X-19).

If at all possible, Mr. Simpson would prefer to travel to meet you when you are in the Cody area during the week of the 17th. Would it be possible to schedule approximately 2 hours (max) with you on either Thursday, January 20 or Friday, January 21? Wednesday the 19th would also work in a pinch.

Tony will be accompanied by Ben Schiffer of WWC Engineering, who heads up the permitting team for the Strata project.

Thank you for your consideration.

Melissa Butcher  
PB Communications & Strategic Solutions  
PO Box 293  
Ranchester WY 82839  
(307) 751-3789  
melissa@pbprconsulting.com

---

This email has been scanned by the MessageLabs Email Security System.  
For more information please visit <http://www.messagelabs.com/email>

---

Benjamin J. Schiffer, PG  
WWC Engineering  
1849 Terra Ave.  
Sheridan, WY 82801  
Ph. (307) 672-0761 ext. 148  
fax (307) 674-4265

Benjamin J. Schiffer, PG  
WWC Engineering  
1849 Terra Ave.  
Sheridan, WY 82801  
Ph. (307) 672-0761 ext. 148  
fax (307) 674-4265

August 24, 2011

Mr. Eric Williams  
Merit Energy Company  
13727 Noel Road Suite 500  
Dallas, TX 75240

**RE: Alternative Water supply plan for Merit's Deadman Oilfield**

Dear Eric:

As you know, Strata Energy (Strata), a subsidiary of Peninsula Energy, LTD is proposing to develop an *in-situ* uranium mine known as the Ross Project near Oshoto, Wyoming. A portion of the Ross Project will operate within Merit Energy Company's (Merit) Deadman Field. Currently, the Deadman Field is under water flood supplied by three wells completed in the lower Fox Hills Formation. These water supply wells are owned and operated by Merit Energy and are completed in the same aquifer that Strata proposes to mine for uranium. As a result, there is a potential for interference between Merit's water supply wells and Strata's proposed mining operation. Through meetings in January and April of 2011, Strata understands that Merit is amenable to finding an alternative water source for enhanced recovery operations. Strata has developed the following plan for an alternative to the water supply wells for Merit's water flood operations.

The water supply plan as developed thus far has the potential to benefit Merit in the following ways:

- 1) Potential water use conflicts will be avoided.
- 2) Strata is proposing to supply Merit the water necessary to continue water flood operations to Merit's preferred delivery point with no costs incurred by Merit for pumping, treatment, well maintenance, etc. Strata commits to providing this water supply through the life of the project.
- 3) Two of the existing water supply wells, 789V and 19XX18 were installed in the 1970's for uranium mining. These wells were not originally completed as long term water supply wells, and are likely approaching the end of their useful life. With that in mind, Merit will be able to avoid the costs associated with maintaining or replacing these older water supply wells.
- 4) Strata will be responsible for maintaining the water supply system to the specified delivery point. Therefore, Merit will avoid labor and maintenance costs associated with the pumps and pipelines upstream of the delivery point.





5) With Strata and Merit operating simultaneously within the same vicinity there is the potential for additional areas of mutual cooperation such as road maintenance, snow removal, etc.

Strata's water supply plan consists of a primary (contingent sources are discussed below) water source from Oshoto Reservoir, located approximately ½ mile north of Merit's existing 789V and 19XX18 water supply wells. Strata understands that Merit is concerned that the water from Oshoto Reservoir will be of suitable quality for water flood operations. Strata has requested, and is currently waiting for Merit to provide minimum water quality criteria required for water flood operations. Currently, Strata anticipates it will be feasible to treat, filter, and disinfect water from Oshoto Reservoir such that the supplied water will meet Merit's required water quality criteria and be successfully used as an alternative water supply source. The following points describe in more detail the feasibility of using Oshoto Reservoir as an alternative fresh water supply source.

- Strata is pursuing ownership of the Oshoto Reservoir which is currently permitted with The Wyoming State Engineer's office under permit number P6046R with a total permitted capacity of 172.7 acre-feet (ac-ft).
- The combined production of Merit's existing water supply wells is estimated at 40 gpm (64.5 ac-ft/yr).
- If Merit does a polymer flood, the injection rate is estimated to increase temporarily up to 2000 barrels per day (58 gpm or 94.1 ac-ft per year).
- During normal operations there is enough permitted storage capacity in Oshoto Reservoir to operate water flood for 2.6 years and almost 2 years under a polymer flood scenario.
- The mean annual runoff to Oshoto Reservoir (calculated using Figure 25 presented in Hadley and Schumm, 1961) is expected to be in the range of 180 ac-ft per year. Under normal hydrologic conditions Oshoto Reservoir will refill annually, resulting in a reliable supply of water sufficient to operate Merit's water flood operations.
- The water quality within Oshoto Reservoir has a lower sodium concentration, sulfate concentration, and TDS than the water currently utilized from the Fox Hills Formation. Table 1 summarizes water quality collected from Merit's water supply wells 19XX18 and 22X-19 and Oshoto Reservoir.

Table 1. Comparison of Select Water Quality Parameters between Merit's Fox Hills Formation Water Supply Wells and Oshoto Reservoir.

WQ parameter	Units	Oshoto Reservoir	Fox Hills Well 19XX18	Fox Hills Well 22X-19
pH	s.u.	8.1-9.5	8.5-8.8	8.9-9.0
Conductivity	µmhos/cm	654-1367	2790-3120	1987-2720
TDS	mg/l	460-920	1660-1790	1420-1520
Alk (CaCO <sub>3</sub> )	mg/l	301-619	521-659	462-472
Bicarbonate (HCO <sub>3</sub> )	mg/l	292-668	605-770	520-547
Carbonate (CO <sub>3</sub> )	mg/l	<5-88	15-27	13-26
Sulfate	mg/l	66-114	616-685	511-538
Calcium	mg/l	15-29	7-8	5-6
Magnesium	mg/l	17-28	2-3	2
Potassium	mg/l	10-15	4-5	4-5
Sodium	mg/l	123-263	499-655	444-507

Strata understands Merit's requirement for a dependable water supply source. As such, Strata's plan also includes several alternative water supply contingencies which will vary depending upon the particular phase of mining occurring at that time. Strata will accurately measure the capacity of and monitor the water levels in Oshoto Reservoir. If the measurements indicate less than a six month supply is available Strata will invoke the following contingencies:

- Contract with other operators in the area to deliver water to Merit Energy from other water supply wells not currently in use.
- In the event that Strata cannot acquire water from existing water supply wells within the area, additional water supply wells would be constructed specifically to supply water to Merit.
- As another secondary alternative, Strata may also explore the possibility of treating Merit's produced water for reinjection. Strata understands that this

solution will also require an additional water supply source to provide makeup water.

- Upon commencement of mining, there will be periods when water will be available from mining operations. In the event a secondary water supply source is needed, excess water from mining operations may be supplied to Merit as a backup to the Oshoto Reservoir water supply source. Please note that at this time there are regulatory considerations that would have to be resolved in order for this alternative to be feasible.
- Strata will leave Merit's existing water supply wells operational prior to mining. In the event Strata's alternative water supply sources are not able to provide adequate water for any reason, Merit can recommence using the existing water supply wells.
- There is a strong possibility that at some point during the mining operations it will be necessary to plug and abandon two of Merit's existing water supply wells (19XX18 and 789V) in order to ensure wellfield integrity. Obviously, prior to any actions regarding these two wells Strata will negotiate an agreement with Merit to do this work. Strata anticipates that if the existing water supply wells are plugged and abandoned Strata will have provided Merit water long enough that Merit would be comfortable with this action prior to it occurring.
- While Strata would prefer that 22X-19 is not used during mining operations, Strata does not anticipate it will be necessary to plug and abandon 22X19 for wellfield integrity purposes. As such, 22X-19 will remain available to Merit for use throughout the duration of the project.
- After mining has been completed, Strata will provide Fox Hills wells built for ISR activities to Merit that are strategically placed to minimize potential impacts to Strata's operations and work for Merit's operations. At that point the water delivery system and the new Fox Hills water wells will be turned over to Merit for their continued operations

Strata understands that additional evaluations will be necessary to determine the necessary level of water treatment needed to ensure alternative water supplied to Merit is compatible with the Deadman Field. After Merit supplies the required water quality parameters to Strata, Strata will further evaluate water treatment, disinfection, and filtering options. At that point it will be possible to provide Merit with more details regarding treatment and delivery of water from any alternative supply sources.



Mr. Eric Williams  
August 24, 2011  
Page 5 of 5

Based on the alternative water supply plan detailed above, Strata respectfully requests that Merit work with Strata to develop a letter of cooperative agreement which will provide Strata with a basis to further evaluate the alternatives. Feel free to contact us with any questions or concerns.

Sincerely,



Ray Moores, P.E.  
Project Engineer

RM

CC: Tony Simpson, Strata (via email)  
Mike Butcher, Strata (via email)

K:\Peninsula\_Minerals\09142\Strata\042 Merit Alternative Water Supply\Corr\Eric Williams\_C8-24-11.doc

#### References

Hadley, R.F. and S.A. Schumm 1961. Sediment Sources and Drainage-Basin Characteristics in Upper Cheyenne River Basin. U.S. Geological Survey Water-Supply Paper 1531-B. Report 88-4045. 111 p.