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ARIZONA DEPARTMENT of WATER RESOURCES

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July 27, 2017

Lee Decker
Gallagher & Kennedy
2575 E. Camelback Road, Suite 1100
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RE: Transportation of Water from Arizona to Utah by Energy Fuels, Inc.

Dear Lee:

On June 19, 2017, representatives of the Arizona Department of Water Resources (Department) and Energy Fuels Resources, Inc. (Energy Fuels) met to discuss Energy Fuels' past transportation of water across state lines from its Canyon Mine in Arizona to its White Mesa Mill (Mill) in Blanding, Utah. This meeting was followed by your email to me on June 26, 2017.

Energy Fuels' transportation of water across state lines was first brought to the Department's attention by the U.S. Forest Service, which had been contacted by a group known as Uranium Watch. On May 15, 2017, the Department received a formal complaint from Uranium Watch alleging that over 100 tanker trucks of water from the Canyon Mine had been transported to Utah from late 2016 to 2017 without approval of the Director of the Department, in violation of A.R.S. § 45-292.

The Department understands from Energy Fuels that the water Energy Fuels transported was a combination of clean groundwater from a perched aquifer and mine waste water pumped from a sump at the bottom of a mine shaft that is offset from the uranium ore body. According to the Arizona Department of Environmental Quality (ADEQ), the mine waste water was a combination of groundwater from the area (not including the water from the perched aquifer) and water used in the drilling and shaft sinking process.

It is the Department's understanding that Energy Fuels places the mine waste water in a lined impoundment for disposal by evaporation as required by an Aquifer Protection Permit issued by ADEQ. Energy Fuels informed the Department at the meeting on June 19, 2017, that although its preferred practice is to not place the clean groundwater from the perched aquifer in the lined impoundment with the mine waste water, it began doing so when a hoist in the mine shaft broke. Therefore, at the time Energy Fuels was transporting water from the impoundment across state lines, the water included both mine waste water and groundwater from the perched aquifer.

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Energy Fuels does not deny that it transported the mine wastewater and clean groundwater from the perched aquifer from Arizona to Utah. However, in your email and in past communications, you maintain that prior approval of the Director was not required under A.R.S. § 45-292 for two reasons. As explained below, the Department disagrees with both reasons.

First, in your email, you maintain that the Director's prior approval was not required because the water "was not transported from the state for a reasonable and beneficial use in another state." You point to language in A.R.S. § 45-292 that states: "A person may withdraw, or divert, and transport water from this state for a reasonable and beneficial use in another state if approved by the director pursuant to this article." You state in your email that this language requires approval by the Director only if the water is transported for a reasonable and beneficial use in another state. You argue that approval was not necessary in this case because Energy Fuels transported the water "for proper environmental management and ultimate disposal in another state," and not for a reasonable and beneficial use in another state.

The Department disagrees with this argument. It is undisputed that the water transported by Energy Fuels across state lines was put to a reasonable and beneficial use at the Mill. Thus, approval by the Director was required by the plain language of the statute. Moreover, even if the Department were to accept your argument that approval of the Director was not required because the water was not transported for a reasonable and beneficial use, the transportation would not have been allowed under Arizona law because, as the Department representatives stated at the June 19, 2017 meeting, A.R.S. § 45-292 allows a person to transport water across state lines *only* if the water will be put to reasonable and beneficial use in the other state and if all other requirements of A.R.S. § 45-292 have been satisfied.

Second, you argue in your email that prior approval of the director was not required under A.R.S. § 45-292 because "Energy Fuels did not ship 'water' as contemplated under the statute. What was shipped was in effect a waste material that contained water, for proper environmental management and ultimate disposal." The Department disagrees with this argument. There is no exception in A.R.S. § 45-292 for the transportation of mine waste water from this state to another state. It is the position of the Department that the mine waste water is water, and that the water may not be transported across state lines unless the water is put to a reasonable and beneficial use in the other state and prior approval of the Director is obtained pursuant to A.R.S. § 45-292. Additionally, the water from the perched aquifer was not mine waste water. The transportation of that water across state lines is therefore clearly subject to A.R.S. 45-292.

Regarding the past shipments of water by Energy Fuels from the Canyon Mine in Arizona to Utah, Energy Fuels represented that the transportation was undertaken to avoid overtopping at the lined impoundment near the mine. At the June 19, 2017 meeting, Energy Fuels represented that transportation across state lines ceased approximately three to four weeks prior to the meeting, and that it is implementing measures to eliminate the risk of overtopping at the impoundment in the future. These measures include greater reduction of water levels or depletion of water from the impoundment prior to high-precipitation winter months each year, the installation and use of electric boilers to enhance

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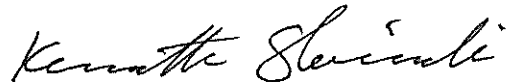
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evaporation rates, continued use of land sharks, segregation of the clean groundwater aquifer from the mine waste water, and possible on-site treatment of contaminated water.

Because shipments of water across state lines have ceased and because Energy Fuels is implementing measures to eliminate the need to transport water out of Arizona from the Canyon Mine, the Department will not take any action against Energy Fuels for the past transportation of water from the mine to Utah. However, Energy Fuels must comply with A.R.S. § 45-292 for any future transportation of water from the Canyon Mine out of state by filing an export application with the Department and obtaining the prior approval of the Director. Before the Director decides whether to grant the application, an administrative hearing must be held in the county from which the water would be transported. At this hearing, "any interested person, including the Department, may appear and give oral or written testimony on all issues involved." A.R.S. § 45-292(E). The processing of an export application, including time for an administrative hearing, could require over a year.

The Department appreciates the willingness of Energy Fuels to meet with the Department to discuss this matter and Energy Fuels' future compliance with state law.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Slowinski".

Kenneth Slowinski
Chief Counsel