



WESTERN NUCLEAR, INC.

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February 10, 2005

Mr. Gary S. Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
United States Nuclear Regulatory Commission
Washington D. C. 20555-0001

Dear Mr. Janosko:

The attached memorandum presents the current land ownership status of the "Red Mule" property within the proposed long-term care boundary for the Split Rock Uranium Mill Tailings facility. Specifically, details are provided regarding the recently purchased properties in the "Red Mule" area southeast of the tailings impoundment. In addition, a summary is provided of the actions that were taken in an attempt to acquire the one remaining parcel of land within the proposed long-term control boundary that is currently not controlled by Western Nuclear.

As you can see from the documentation, Western Nuclear has made a good faith effort to acquire the one remaining property. As the documentation shows, the landowner was made several different offers that covered the range from a life estate to outright purchase of the property. Each of these options was well in excess of the value of the property as determined by an independent appraiser and as determined by the price paid to other landowners with similar properties.

We understand from your staff that the issue of long-term control of the "Red Mule" property is the only remaining issue prior to issuance of alternative concentrations limits for the site. We believe that for the following reasons, the current proposals are adequate to provide for protection of human health and the environment:

- Western Nuclear owns the property or the rights to prohibit use of groundwater for domestic purposes for 3465 acres out of the 3470-acre proposed long-term control area.
- The remaining 5 acres that are not owned or controlled by Western Nuclear will not be adversely impacted by site-derived groundwater for at least 500 years and it is probable that it would never be impacted.
- As detailed in the attached letter from Harley W. Shaver, Esq., all of the property within the predicted 1000-year plume has been acquired to the extent reasonably achievable. It should also be noted that all property

[REDACTED]

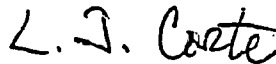
within the 200-year predicted plume has been acquired. Western Nuclear concludes that this is consistent with 10 CFR 40 Appendix A Criterion 6 which requires controls to "be effective for 1,000 years, to the extent reasonably achievable, and, in any case for at least 200 years".

- Western Nuclear has made a good faith effort to acquire the remaining private property. The offers for the property were well in excess of the appraised value of the property and of that paid to other landowners for similar property.
- Western Nuclear has proposed a groundwater monitoring scheme and a fund that would allow the long-term custodian to install an alternate water supply if and when it would become necessary in the future.
- Western Nuclear would be willing to install the alternative system before site transfer if that is desired by the long-term custodian and approved by the NRC.
- Western Nuclear would be willing to increase the long-term surveillance fund by the appraised value of the property, which would allow the governmental custodian to purchase the property if the property becomes available for purchase in the future or if the governmental agency chooses to condemn the property.
- 10 CFR 40 Appendix A states that "For licensees issued before November 8, 1981, the Commission may take into account the status of the ownership of such land, and interest therein, and the ability of a licensee to transfer title and custody thereof to the United States or a State".

We therefore request that the alternative concentration limits proposed in the October 1999 Site Closure Plan be adopted for the site and that the license be amended to reflect the new groundwater standards. The license should also be amended to eliminate the requirements for the groundwater corrective action program.

We look forward to your prompt attention to this matter.

Sincerely,



Lawrence J. Corte *by lm*
President

Cc: Lawrence J. Corte
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February 9, 2005

Mr. Gary S. Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
United States Nuclear Regulatory Commission
Washington D. C. 20555-0001

Dear Mr. Janosko:

This letter is to inform you of the status of Western Nuclear, Inc.'s (WNI's) efforts to acquire certain properties (lots) in the so-called Red Mule subdivision adjacent to WNI's former Split Rock uranium milling facility and to request final approval of WNI's application for alternate concentration limits (ACLs) at the site leading to final license termination. As will be discussed below, WNI has fully complied with the Commission's directive that a "good faith" effort be exercised to acquire each of the specific Red Mule properties in fee title or with appropriate institutional controls to ensure that public health and safety is adequately protected in accordance with 10 CFR Part 40, Appendix A criteria for long-term surveillance and control. Therefore, based on WNI's actions to date regarding these properties, WNI respectfully requests that NRC Staff approve its ACL application and its final site closure plan.

In accordance with the Commission's directive, as stated above, Western Nuclear, Inc. (WNI) has exercised a "good faith" effort to acquire all of the specific Red Mule lots and adjoining parcels which are projected to be within or near the long-term care boundary. WNI has acquired, in fee, eight of nine lots in the Red Mule Acres Subdivision, and three adjoining parcels to the East for a total of eleven (11) out of twelve (12) land parcels resulting in a total cost of \$436,425.00, plus the deeding of 79 acres.

However, WNI's negotiations to acquire Lot 1 in the Red Mule Subdivision from [REDACTED] have been unsuccessful. The last correspondence of January 7, 2005, from the [REDACTED] counsel demands a compensation package which totals in excess of \$600,000, an amount which far exceeds what can be termed a *reasonable* compensation package considering that the acquisition costs of the 11 other parcels combined were less than the [REDACTED] most recent proposal.

In support of WNI's "good faith" effort and its demonstration that acquisition of the [REDACTED] property is not economically feasible, the following documents are transmitted:

[REDACTED]

- A. A summary of the acquisition costs of the Red Mule parcels.
- B. Individual appraisals for all of the parcels by Keith F. Kasselder, a Wyoming General Certified Appraiser. The individual appraisals contain pictures of the subject properties, pictures of comparable properties, relevant information on the properties utilized in the appraisal and the qualifications of the appraiser. There is also a cover letter of October 31, 2001 from the appraiser summarizing an estimated value for the subject properties.
- C. A Red Mule Acres Subdivision Ownership list of owners as of the appraisal date.
- D. A Subdivision Plat map for Red Mule and a map of adjoining properties.
- E. A printout from the Fremont County Assessor's Office on the Market Value and Assessed Value for Lot 1, Owned by the [REDACTED] as Trustees.
- F. Correspondence from [REDACTED] counsel, of April 12 and July 23, 2004 and January 7, 2005 setting forth [REDACTED] demands for the sale of Lot 1 to WNI.
- G. Correspondence from Paul Hickey to [REDACTED] dated June 3 and November 24, 2004 and February 3, 2005 in response to [REDACTED] demands and setting forth alternative offers from WNI.
- H. Copies of deeds for the 11 acquired properties together with contracts and/or title policies and/or closing statements setting forth the acquisition costs.
- I. Property Acquisition Descriptions and Comparisons to [REDACTED] Property Negotiations

The following Section provides a brief discussion of the properties acquired by WNI as a result of its "good faith" effort and a comparison between such properties and the [REDACTED] property. Initially, as can be observed from the attached appraiser's summary, the estimated value of the [REDACTED] parcel was \$37,000. Lot 2, which adjoins [REDACTED] to the North, and owned by [REDACTED], was valued at \$40,000. Lot 4, the [REDACTED] property, was valued at \$25,000. Lot 6, the [REDACTED] property, was valued at \$32,500. Finally, the [REDACTED] property, consisting of 40 acres immediately to the east of the Red Mule subdivision, was valued at \$32,000. These properties will be discussed, as they were all owner-occupied parcels and closest in value to the [REDACTED] parcel.

¹ As can be observed from the appraiser's summary, the estimated value of the [REDACTED] parcel was \$37,000. Lot 2, which adjoins [REDACTED] to the North, and owned by [REDACTED] was valued at \$40,000. Lot 4, the [REDACTED] property, was valued at \$25,000. Lot 6, the [REDACTED] property, was valued at \$32,500. And the [REDACTED] property, consisting of 40 acres immediately to the east of Red Mule was valued at \$32,000. These properties are discussed as they were all owner-occupied parcels and closest in value to the [REDACTED] parcel.

The [REDACTED] property had a new, much larger home put on the property between the date of the appraisal and the date of WNI's acquisition, as the original home was destroyed by fire in 2002. Thus, the property was more valuable in 2004 than in 2001. The [REDACTED] property was a new, larger home with a new machine and welding shop located on 40 acres. At the time of the acquisition it was arguably the most valuable home and site of all the properties. WNI acquired the [REDACTED] property by granting them 79 acres in exchange for the 40 acres and a cash payment of \$87,775. The [REDACTED] may remove their house but the shop is not moveable. The [REDACTED] were offered 20 acres in exchange for their 4.7 acres plus \$175,000 cash and they could move or otherwise sell their improvements.

The [REDACTED] property (Lot 4) became run down, as it was unoccupied since 1999, the entire time between the appraisal date and the acquisition date. Thus, the [REDACTED] property was less valuable. The [REDACTED] property was valued by the appraiser at \$25,000 in October, 2001. WNI acquired the [REDACTED] property in 2004 for \$10,000 from the Conservator of the [REDACTED] Estate, after court approval. [REDACTED] had become institutionalized and supported by the State and the home had been vacant for some time and was in disrepair.

The [REDACTED] property (Lot 2) was acquired for \$135,000, and the [REDACTED] may retain and move any improvements. The [REDACTED] were not given any land in addition to the cash payment. This property value was estimated by the appraiser to be \$3,000 higher than the [REDACTED] property (\$40,000 vs. \$37,000). The [REDACTED] were offered \$175,000 for a similar arrangement where they could move or sell the existing improvements, PLUS the [REDACTED] would receive a 20 acre parcel overlooking the river in exchange for their 4.7 acre parcel.

The [REDACTED] property (Lot 6) was valued at \$32,500 by the appraiser. WNI acquired Lot 6 for \$46,000. In comparison, WNI offered the [REDACTED] \$195,000 for an outright purchase.

WNI, via letter dated November 24, 2004, made final proposals to the [REDACTED] after many months of negotiations. The [REDACTED] were offered four (4) distinct proposals ranging from an offer for an outright purchase for a cash payment of \$195,000 to a sale of the subsurface for \$50,000 with an agreement to abandon their present well in exchange for a new well to be provided by WNI at no cost. They also were offered the alternative of 20 acres of their choosing plus \$175,000 and the right to move or sell the existing improvements. Finally, the option of a sale to WNI with the retention of a life estate was also offered.

The [REDACTED] offer to WNI for the sale of Lot 1 was initially \$795,000 ([REDACTED] letter of April 12, 2004). Later, the [REDACTED] proposed that WNI should build them a new house on 20 acres of their choice and if they were satisfied, then they would go to closing. However if they were not satisfied, WNI would be forced to keep

the house and the property with no compensation for the newly constructed house ([REDACTED] letter of July 23, 2004). The [REDACTED] final response to WNI's above-listed proposals was a proposal for a \$600,000 compensation package, which would result in the construction of a new house on 20 acres overlooking the Sweetwater River.

WNI's offers to accommodate the [REDACTED] were in excess of the amounts which WNI spent acquiring similar property in the Red Mule subdivisions. Even if WNI could approach meeting the demands of the [REDACTED], it would be grossly unfair to the other property owners who negotiated and sold their properties in good faith. Thus, it is WNI's position that, for a property appraised at \$37,000 and assessed with a fair market value of \$20,000 by the Fremont County Assessor (Wyoming Statutes require an assessment based on *actual* fair market value), the offers presented to the [REDACTED] are more than *reasonable*. This is especially true in view of the acquisition prices agreed to by their neighbors.

As can be observed from the attached documents, WNI acquired property from owners who resided in Wisconsin, Ohio, Nevada, and Montana, as well as from the estate of an incompetent person. The acquisition of the 11 parcels was a time-consuming, expensive process with individual "good faith" negotiations with each of the owners. The last property owners to sell to WNI routinely asked for higher and higher prices, as they perceived an advantage of being "last in line" to the acquisition effort of WNI. The [REDACTED] however, have abused WNI's "good faith" effort to acquire their property in accordance with the Commission's directive and presented acquisition proposals that are *unreasonable* and grossly disproportionate to the *actual* value of their property.

Moreover, there is no reason that the [REDACTED] cannot remain the owners of Lot 1 and continue to reside there. As will be discussed below, WNI's revised groundwater model as accepted by NRC staff demonstrates that the identified plume from the site is not expected to impact the Red Mule subdivision for over 500 years, if at all. Further, given the conservative nature of the transport modeling and the fact that the [REDACTED] property is less than a five acre parcel on the very southerly edge of the predicted 1,000-year plume, there is a high probability that the plume would never reach the property.

With respect to another potential issue, since DOE has expressed some reluctance to being put in the position of having to install an alternate water supply for Red Mule residents, should it ever become necessary, as proposed in WNI's October 1999 site closure plan, WNI would now propose a modification to that submittal. If approved by the NRC, WNI would undertake to provide a well and pipeline for domestic water to the edge of Lot 1 from a location due east of Lot 1, which is located outside the proposed long-term care area and where the water quality is and will be of better quality than that currently used by the [REDACTED]. The proposed well and pipeline would be installed prior to license termination and site transfer to the long-term custodian, so the long-term custodian would not have a future obligation to do so. Easements would be provided and an appropriate amount for maintenance would be added to the long-term care payment at license termination.

Although the [REDACTED] property likely will not be impacted by the plume from the site for more than 500 years, if ever, the proposed installation of an alternate water supply for domestic use prior to license termination would alleviate any concerns regarding future implementation and would always give the owner of Lot 1 (the [REDACTED] or other property owners) the comfort of having access to background quality drinking water.

II. The Atomic Energy Act and NRC Regulations Support WNI's "Good Faith" Effort

Based on the discussion above, WNI asserts that its "good faith" effort to acquire the Red Mule subdivision properties should be sufficient to justify final approval of WNI's ACL application leading to license termination. Per its proposed final site closure plan, WNI has proposed to extend its final site closure boundary to include various properties in the Red Mule subdivision so that, to the extent necessary, the plume of 11e.(2) byproduct material identified by WNI may be safely contained and may not impact any of the Red Mule subdivision properties during the NRC-mandated closure period of 200 years and, to the extent practicable, 1,000 years. See 10 CFR Part 40, Appendix A, Criterion 6. In light of this proposal, as stated above, the Commission directed WNI to exercise a "good faith" effort to acquire each of the specific Red Mule subdivision properties in fee title or with appropriate institutional controls that would guarantee that the identified plume would not adversely impact public health and safety post-closure. As described above, WNI has successfully obtained fee title to each of the Red Mule properties within or adjacent to the proposed long-term care boundary, with the exception of the [REDACTED] property.

With respect to the [REDACTED] property, WNI asserts that it has exercised a "good faith" effort to acquire this property. WNI has engaged in negotiations with the [REDACTED] for more than a year, including the presentation of offers to purchase their property for amounts in excess of its market value through any one of four (4) distinct purchase arrangements, allowing WNI to obtain either fee title or appropriate institutional controls running with the [REDACTED] property. However, despite this "good faith" effort, as described above, the [REDACTED] have declined to accept any of WNI's *reasonable* offers to purchase fee title or appropriate institutional controls and have persisted in requesting that WNI pay them a purchase price well in excess of the value of their property, plus additional forms of compensation. WNI asserts that the [REDACTED] unwillingness to accept one of WNI's multiple *reasonable* offers or to propose a *reasonable* counteroffer has resulted in conditions that will make WNI unable to obtain either fee title to or appropriate institutional controls running with the [REDACTED] property.

Thus, as a result of these conditions and based on relevant statutory and regulatory provisions for sites containing 11e.(2) byproduct material, WNI asserts that its "good faith" effort, as described above, to acquire fee title to or appropriate institutional controls in the [REDACTED] property is sufficient to satisfy the Commission's directive

regarding a "good faith" effort to acquire the Red Mule properties and to justify final approval of WNI's ACL application leading to license termination.

The Atomic Energy Act of 1954 (AEA), as amended by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), provides NRC with Congressionally-mandated requirements for the closure and long-term surveillance and monitoring of sites containing 11e.(2) byproduct material. As a general proposition, the Commission retains full authority to promulgate regulations to guarantee that, prior to the termination of an NRC license issued for the possession of 11e.(2) byproduct material, "the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites...at which such byproduct material is deposited, and" that "ownership of any byproduct material, as defined in section 11e.(2), which resulted from such licensed activity shall be transferred to...the United States or...in the State in which such activity occurred..."¹ Pursuant to Section 83 of the AEA, as amended, the Commission *is required* to promulgate regulations that guarantee the transfer of such byproduct material and the land used for its disposal to either the United States or the State in which the site resides.²

With respect to the requirements for the transfer of title to such lands containing 11e.(2) byproduct material for NRC licenses such as that possessed by WNI, the Commission shall evaluate, *inter alia*,³ "the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State."⁴

Pursuant to the Commission's regulations for facilities with 11e.(2) byproduct material, licensees are required to adhere to its "technical, financial, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation" of facilities with 11e.(2) byproduct material.⁵ However, these requirements provide licensees with a degree of "flexibility" to satisfy the Commission's site closure criteria by proposing alternatives to such requirements. According to these requirements, "[a]ll site specific licensing decisions based on...alternatives proposed by licensees or applicants will take into account the risk to the public health and safety and the environment *with due consideration to the economic costs involved* and any other factors the Commission determines to be appropriate."⁶ This premise is consistent with the Commission's acceptance of the "as low as reasonably achievable" (ALARA)⁷ principle which allows licensees to examine the economic costs of a given action in comparison with the potential health and safety

¹ 42 U.S.C. § 2113 (a)(1-2).

² 42 U.S.C. § 2113(b)(1)(A)(i-ii).

³ The provisions of 42 U.S.C. § 2113(b)(4) apply only to licensees whose licenses were in effect on November 8, 1981. WNI's NRC's license was in effect at that time.

⁴ 42 U.S.C. § 2113(b)(4).

⁵ 10 CFR Part 40, Appendix A, Preamble.

⁶ *Id.* (emphasis added).

⁷ The terms "reasonably achievable" and "practicable" are to be used interchangeably. See 10 CFR Part 40, Appendix A, Preamble (Definitions).

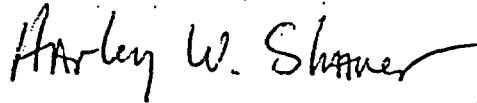
benefits that may be derived therefrom prior to determining whether such action is warranted. Indeed, the Preamble to 10 CFR Part 40, Appendix A states that, "[d]ecisions involving these terms ['practicable' and 'reasonably achievable'] will take into account...the economics of improvements in relation to benefits to the public health and safety...." Thus, it appears that the relevant statutory and regulatory authority grants the Commission latitude when evaluating a proposed site closure plan which would result in the termination of an 11e.(2) byproduct material license to consider reasonably achievable, practicable alternatives, even if the licensee does not possess fee title to all lands used for the disposal of such byproduct material.

Based on the language of the AEA, as amended, and the Commission's implementing regulations in 10 CFR Part 40, Appendix A, WNI asserts that it has satisfied the Commission's directive regarding acquisition of the Red Mule properties. Initially, as stated above, WNI has acquired each of the Red Mule properties in fee title with the exception of the [REDACTED] property. WNI also has presented numerous *reasonable* proposals to the [REDACTED] in an attempt to acquire either fee title to or appropriate institutional controls running with their property. Taking into account the economic costs associated with their final proposal (in excess of \$600,000), the acquisition of the [REDACTED] property would result in WNI paying compensation well in excess of the value of their property, thus making the acquisition of such property *unreasonable*.

Further, the potential health and safety benefits that may be derived from such an acquisition are minimal for the following reasons. First, should the [REDACTED] remain on their property after license termination, WNI's revised groundwater model, which has been accepted by NRC Staff, demonstrates that the identified plume will not reach the [REDACTED] property for at least 500 years. In addition, WNI proposes to provide the [REDACTED] with access to an alternate water supply, which likely will provide them with better water quality than their current water supply. This alternate water supply can be implemented prior to transfer of title to the Split Rock site to the long-term custodian so that the installation of such water supply need not be addressed by the long-term custodian. Moreover, as described in WNI's site closure plan, the [REDACTED] will have the benefit of a Commission-approved groundwater monitoring program that will provide the long-term custodian with ample notice of a potential impact to groundwater in the Red Mule subdivision prior to exposure of the [REDACTED] to such groundwater. While the United States Department of Energy (DOE) previously expressed concern over the presence of the Red Mule properties within the final site boundary, WNI has acted to minimize the potential impacts of such properties and, indeed, has minimized such properties to under five (5) acres of land in the outermost section of Red Mule (i.e., the property furthest from the groundwater plume). Thus, since the acquisition of the [REDACTED] property, despite WNI's "good faith" effort, as described above, is *not economically feasible* and since WNI has proposed additional measures (i.e., alternate water supply, groundwater monitoring, and minimization of property inside final site boundary) to mitigate potential exposure to the [REDACTED] on their property, WNI asserts that the provisions of the AEA, as amended, and the Commission's regulations for uranium mill tailings facilities support the approval of WNI's "good faith" effort to

acquire the Red Mule properties, in accordance with the ALARA principle. WNI hereby requests that final review of WNI's ACL application be completed and that the Commission proceed to approve all aspects of WNI's final site closure plan.

Very truly yours,

A handwritten signature in black ink that reads "Harley W. Shaver". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Harley W. Shaver

Cc: Lawrence J. Corte
Anthony J. Thompson
Joseph Holonich
Robert Nelson
Maria Schwartz