

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



November 28, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0200

TITLE: EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE
OFF-SITE PROPERTIES IN CONJUNCTION WITH
DECOMMISSIONING ITS URANIUM RECOVERY SITE AND
THE NEED FOR INSTITUTIONAL CONTROLS

The Commission (with Chairman Diaz and Commissioners McGaffigan, Merrifield, and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 28, 2005. Commissioner Jaczko disapproved the paper.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-05-0200

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	11/17/05
COMR. McGAFFIGAN	X				X	11/16/05
COMR. MERRIFIELD	X				X	11/9/05
COMR. JACZKO		X			X	11/21/05
COMR. LYONS	X				X	11/15/05

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners McGaffigan, Merrifield, and Lyons approved the paper. Commissioner Jaczko disapproved the paper. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 28, 2005.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-05-0200 - EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE OFF-SITE PROPERTIES IN CONJUNCTION WITH DECOMMISSIONING ITS URANIUM RECOVERY SITE AND THE NEED FOR INSTITUTIONAL CONTROLS**

Approved ^{w/comments} xx *lu* Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

I approve Option 2 and agree that Western Nuclear Inc., has made a good faith effort to acquire all of the offsite properties.

Luigi...
SIGNATURE
Nov 17, 05
DATE

Entered on "STARS" Yes No _____

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

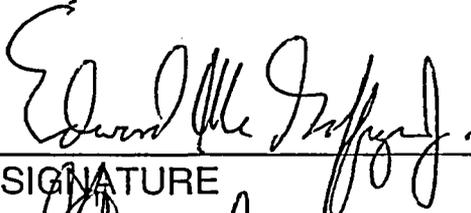
SUBJECT: **SECY-05-0200 - EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE OFF-SITE PROPERTIES IN CONJUNCTION WITH DECOMMISSIONING ITS URANIUM RECOVERY SITE AND THE NEED FOR INSTITUTIONAL CONTROLS**

Approved ^{w/comments} 8 Disapproved _____ Abstain _____

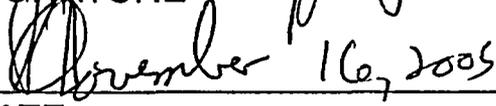
Not Participating _____

COMMENTS:

Approve Option 2. See attached comments.



SIGNATURE



DATE

Entered on "STARS" Yes 8 No _____

Commissioner McGaffigan's Comments on SECY-05-0200

I agree with Commissioners Merrifield and Lyons and approve the staff's recommended approach in Option 2, which requires that Western Nuclear Inc. (WNI) make one final offer to purchase the remaining Red Mule property or its real estate rights before site transfer, and if unsuccessful, WNI would be required to include funds equivalent to the final offer in its long-term surveillance payment. WNI also would, with NRC staff review and approval, relocate offsite monitoring wells; redefine the long-term care boundary to include all wells currently located offsite; or provide for institutional controls to provide DOE access to the wells and enforce use restrictions.

In addition to the actions described in Option 2, staff should immediately inform the owners of the remaining Red Mule property of the Commission's decision.

EMJ

11/16/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0200 - EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE OFF-SITE PROPERTIES IN CONJUNCTION WITH DECOMMISSIONING ITS URANIUM RECOVERY SITE AND THE NEED FOR INSTITUTIONAL CONTROLS**

Approved Disapproved Abstain

Not Participating

COMMENTS:

I approve option 2.



SIGNATURE

11/2/05

DATE

Entered on "STARS" Yes No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

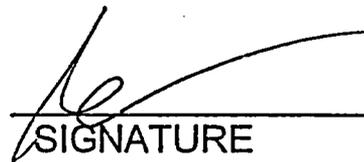
FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0200 - EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE OFF-SITE PROPERTIES IN CONJUNCTION WITH DECOMMISSIONING ITS URANIUM RECOVERY SITE AND THE NEED FOR INSTITUTIONAL CONTROLS**

Approved _____ Disapproved x Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE

 11/21/55

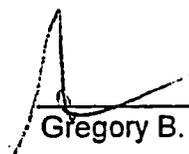
DATE

Entered on "STARS" Yes x No _____

**Commissioner Jaczko's Comments on SECY-05-0200
Efforts By Western Nuclear, Inc., To Acquire Off-Site Properties In Conjunction With
Decommissioning Its Uranium Recovery Site And The Need For Institutional Controls**

I disapprove of the staff's recommended option two which would have Western Nuclear Inc., make one final offer to purchase the adjacent property potentially subject to future contamination, to transfer funds equivalent to its final offer into its long-term surveillance payment if unsuccessful, and redefine the long-term care boundary to include all wells or provide DOE access to the wells to allow enforcement of use restrictions. While I understand that this site has a complicated history of decommissioning efforts and that the other option presented by the staff is "costly" to implement, I believe the approach recommended in option two strays from the NRC's proper role as a regulator. As a regulator, the NRC is responsible for protecting the public health and safety, while WNI, as an NRC licensee, is responsible for mitigating the contamination related to their licensed activities and known to be migrating toward this adjacent property. The NRC should not be in the business of finding ways to hasten decommissioning, but instead should be in the business of ensuring that NRC's regulations are met.

Moreover, the consequences of proceeding with option two could very well mean that the property in question is ultimately condemned and thus, the landowners or their heirs - members of the public who have no involvement with the contamination but have the misfortune of location - could ultimately suffer financially. There appears to be no other reason for the necessity of this potential outcome except that the licensee does not want to pay the landowner's asking price. Certainly there is a business decision that needs to be made in this instance which inevitably would compare a realistic purchase price of this property and the continued costs of maintaining the groundwater corrective action program. But I do not believe it is the role of the NRC to make this business decision or negate the need for it.



Gregory B. Jaczko 11/21/5 Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-05-0200 - EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE OFF-SITE PROPERTIES IN CONJUNCTION WITH DECOMMISSIONING ITS URANIUM RECOVERY SITE AND THE NEED FOR INSTITUTIONAL CONTROLS**

Approved Disapproved Abstain

Not Participating

COMMENTS:

Approve Option 2.



SIGNATURE

11/15/05

DATE

Entered on "STARS" Yes No