

December 20, 2000

Mr. Ralph Morgenweck
Regional Director
U.S. Fish and Wildlife Service
Post Office Box 25486
Denver Regional Center
Denver, Colorado 80225-0486

SUBJECT: FISH AND WILDLIFE SERVICE REQUEST TO REINITIATE CONSULTATION

Dear Mr. Morgenweck:

This is in response to your letter of December 7, 2000. In your letter, you request that the U.S. Nuclear Regulatory Commission (NRC) reinitiate formal consultation with the U.S. Fish and Wildlife Service (FWS) with respect to actions currently being considered by our licensee for the former Atlas Corporation mill site near Moab, Utah. You specifically request formal consultation on interim measures to alleviate high concentrations of ammonia found in the Colorado River by the U.S. Geological Survey and discussed in its report dated March 27, 2000.

As you are aware, the licensee for the site, the Moab Mill Reclamation Trust through its trustee, PricewaterhouseCoopers (PWC), has been developing a plan to prevent or ameliorate local pockets of high ammonia in the river. In July 2000, the licensee prepared a report in which it identified six options to address the situation. The trustee has been working through the Enlibra process which was initiated by the State of Utah to bring all the stakeholders together to try to reach consensus resolution of issues. The trustee worked with the ground water subcommittee of the Enlibra group to identify and develop the six options and has been working with that subcommittee to try to reach a consensus on the best option to put forward. That option would then be proposed to NRC in the form of a request to amend the license to allow the licensee to implement the option. NRC has not yet received that license request and thus does not have the information necessary to prepare a biological assessment and request formal consultation.

We suggest that, in order to expedite the actual implementation of measures beneficial to endangered fish, FWS consult with NRC and our licensee informally rather than through a formal consultation process. FWS is represented on the Enlibra ground water subcommittee and is aware of the options under consideration. If FWS were to provide the benefit of its knowledge with respect to issues critical to protecting endangered fish, it could help the subcommittee reach agreement on a preferred option. As FWS would have been involved in the development and possible revision of that option, it would already have provided informal consultation. We believe that a sequential formal consultation starting later in the process when the amendment is submitted would only delay implementation, expend scarce Trust resources, and not provide any additional benefit to the endangered fish, as we would expect that the informal Enlibra process with FWS participation would already have identified the best alternative.

If our approach is not agreeable to you, an alternative that you seem to be considering would entail your withdrawal of the July 1998 biological opinion, including the incidental take statement. The trustee has stated in the past that if it does not have the protection of the incidental take statement, it will stop work at the site. Currently, the trustee is implementing its

December 20, 2000

dewatering plan, in conformance with reasonable and prudent alternative 1a of the biological opinion. Dewatering the tailings will provide benefit to endangered fish by removing some contaminated water from the tailings pile, that otherwise could eventually seep into the river. Furthermore, dewatering will be beneficial to the U.S. Department of Energy (DOE), in its effort to remediate the site, as required by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2000. As no money was appropriated by Congress for work at the site this fiscal year, we understand that DOE is looking to the trustee to complete as much work as is possible, with trustee resources, before transfer. We conclude that withdrawal of the biological opinion could impede the effort to remediate the site.

With respect to the date of transfer of the site to DOE, recognize that all parties involved are moving expeditiously to accomplish that transfer. However, the transfer of the site and termination of the NRC license require a number of procedural actions that must be accomplished and could take a considerable amount of time. Additionally, DOE may not want to accept the site early, if the trustee is prevented from completing the work now underway and DOE lacks the resources to do the work itself.

We will be happy to meet with you to discuss these issues. As you may be aware, the State of Utah is attempting to schedule an Enlibra meeting in January to discuss recent events and current plans, including the impact of the recently enacted Federal legislation. We would welcome further discussion of this issue as part of the stakeholders meeting. If you have any questions or would like to arrange a meeting, please contact me at (301) 415-7212 or Myron Fliegel, NRC's Project Manager for the Moab Mill Site at (301) 415-6629 or mhf1@nrc.gov.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Michael F. Weber, Director
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

cc: See attached list

December 20, 2000

dewatering plan, in conformance with reasonable and prudent alternative 1a of the biological opinion. Dewatering the tailings will provide benefit to endangered fish by removing some contaminated water from the tailings pile, that otherwise could eventually seep into the river. Furthermore, dewatering will be beneficial to the U.S. Department of Energy (DOE), in its effort to remediate the site, as required by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2000. As no money was appropriated by Congress for work at the site this fiscal year, we understand that DOE is looking to the trustee to complete as much work as is possible, with trustee resources, before transfer. We conclude that withdrawal of the biological opinion could impede the effort to remediate the site.

With respect to the date of transfer of the site to DOE, recognize that all parties involved are moving expeditiously to accomplish that transfer. However, the transfer of the site and termination of the NRC license require a number of procedural actions that must be accomplished and could take a considerable amount of time. Additionally, DOE may not want to accept the site early, if the trustee is prevented from completing the work now underway and DOE lacks the resources to do the work itself.

We will be happy to meet with you to discuss these issues. As you may be aware, the State of Utah is attempting to schedule an Enlibra meeting in January to discuss recent events and current plans, including the impact of the recently enacted Federal legislation. We would welcome further discussion of this issue as part of the stakeholders meeting. If you have any questions or would like to arrange a meeting, please contact me at (301) 415-7212 or Myron Fliegel, NRC's Project Manager for the Moab Mill Site at (301) 415-6629 or mhf1@nrc.gov.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,
/RA/
Michael F. Weber, Director
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

cc: See attached list

DISTRIBUTION: FCSS r/f FCLB r/f PUBLIC BSpitzberg/RIV
ACNW CNWRA MSchwartz/OGC
LClark/OGC

Document Name:C:\Request to Reinitiate Consu~.wpd

Accession No. ML

| | | | | | | | | | | |
|-------------|----------|--|----------|--|-----------------------------|--|----------|--|----------|--|
| OFC | FCLB | | FCLB | | OGC | | FCLB | | FCSS | |
| NAME | MFliegel | | DGillen | | MNordlinger | | PTing | | MWeber | |
| DATE | 12/20/00 | | 12/20/00 | | verbal approval 12/19/00 | | 12/20/00 | | 12/20/00 | |

Addressees for Letter Dated: December 20, 2000

William Abington, Partner
PricewaterhouseCoopers LLP
1201 Louisiana, Suite 2900
Houston, Texas 77002-5678

Sylvia Barrett
Metropolitan Water District of
Southern California
700 Moreno Avenue
LaVerne, California 91750

Richard Blubaugh
Vice President of Environmental
and Government Affairs
Atlas Corporation
370 Seventeenth Street, Suite 3140
Denver, Colorado 80202

Paul Boudreaux
Department of Justice
Environment and Natural Resources
Division
Wildlife and Marine Resources Section
601 Pennsylvania Avenue, NW
Room 500
Washington, DC 20004

R.L. Christie, ATL
P.O. Box 1366
Moab, Utah 84532

John E. Cook, Reg. Dir.
Rocky Mountain Region
National Park Service
U.S. Department of the Interior
12795 Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

Walt Dabney, Superintendent
Canyonlands National Park
National Park Service
2282 S. West Resource Blvd.
Moab, Utah 84532

Susan Daggett
Earthjustice Legal Defense Fund, Inc.

1631 Glenarm Place, Suite 300
Denver, Colorado 80202

John Darke
Box 603
Moab, Utah 84532-0603

Keith Eastin, Director
Financial Advisory Services
PricewaterhouseCoopers LLP
1201 Louisiana, Suite 2900
Houston, Texas 77002-5678

Dale Edwards
Radiation Protection Coordinator
Atlas Corporation
P.O. Box 1207
Moab, Utah 84532

Gina Guy
Office of the Solicitor
U.S. Department of the Interior
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

Grand County Library
25 South 100 East
Moab, Utah 84532

Dave Hutchenson
Grand County Administrator
125 East Center
Moab, Utah 84533

Dan Kimball, Chief
Water Resources Division
National Park Service
U.S. Department of Interior
1201 Oakridge Drive, Suite 250
Fort Collins, Colorado 80525

William Lamb
Associate State Director
Bureau of Land Management
324 South State Street
Salt Lake City, Utah 84111-2303

Milton K. Lammering
U.S. Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

Bart Leavitt
Grand County Council
125 East Center
Moab, Utah 84533

Al McLeod
Grand County Council
125 East Center
Moab, Utah 84533

Henry Maddux
U.S. Fish and Wildlife Service
Lincoln Plaza, Suite 404
145 East 1300 South
Salt Lake City, Utah 84115

Dave Mathes
EM-45
U.S. Department of Energy
19901 Germantown Road
Cloverleaf Building
Germantown, MD 20874-1290

Harvey Merrill
Grand County Council
125 East Center
Moab, Utah 84533

Marcia Moore
W0760
Bureau of Land Management
1849 C Street, NW
Washington, DC 20240

Kerry Moss
National Park Service
Mining and Minerals Branch
P.O. Box 25287
Denver, Colorado 80236

Dianne Nielson
Executive Director
Department of Environmental Quality

State of Utah
168 North 1950 West
Salt Lake City, Utah 84114-4810

Ray Plieness
U.S. Department of Energy
Grand Junction Office
2597 B $\frac{3}{4}$ Road
Grand Junction, Colorado 81503

Vijai Rai
Senior Environmental Review Officer
Office of Environmental Policy and
Compliance
U.S. Department of the Interior
1849 C Street, NW
Mail Stop 2340
Washington, DC 20240

Steve Rauzi
416 West Congress #100
Tucson, Arizona 85701

Robert M. Reed, Supervisor
Environmental Analysis and
Assessment Section
Oak Ridge National Laboratory
Bethel Valley Road
P.O. Box 2008
Oak Ridge, Tennessee 37831-6200

Larry Shanks
U.S. Fish and Wildlife Service
Region 6
P.O. Box 25486
Denver Federal Center
134 Union, Suite 400
Lakewood, Colorado 80225-0486

Gabrielle Sigel
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
State of Utah
168 North 1950 West
P.O. Box 144850
Salt Lake City, Utah 84114-4850

Anthony J. Thompson
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037-1128

Christine Turk, Chief
Branch of Compliance
National Park Service
12795 W. Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225

Wes Wilson
U.S. EPA - Region III
999 18th Street, Suite 500
Denver, Colorado 80202-2405