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## U.S. Department of Energy

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MAR 26 2003

Daniel M. Gillen, Chief  
Fuel Cycle Facilities Branch  
Mail Stop T-8A33  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Western Nuclear Split Rock Site Red Mule Subdivision Considerations

Dear Mr. Gillen:

As a follow-up to the meeting on February 5, 2003, between the Department of Energy Grand Junction Office (DOE-GJO) and the Nuclear Regulatory Commission, GJO would like to take this opportunity to articulate DOE concerns and to provide suggestions regarding the Red Mule situation at the Western Nuclear (WNI) Split Rock site near Jeffrey City, Wyoming. There are five points that DOE believes should be considered when determining a path forward.

1. If an alternate water supply is the chosen approach, DOE does not intend to become a defacto operator, responsible for providing a water supply, or to be responsible for the operation and maintenance of the system. There are several Title I sites that have alternate water supplies, and in none of those cases is DOE the water system operator. Other arrangements would have to be made before DOE would accept this approach.
2. If an alternate water supply is the chosen approach, DOE recommends that the system be installed, in operation, and transferred to Jeffrey City or some other operating organization, before the NRC terminates WNI's license.
3. DOE believes that WNI must demonstrate that the licensee has made a good faith effort to acquire the properties in question. This demonstration should be done prior to considering another alternative, such as an alternate water supply option. Good faith may include an offer to replace a current home with an equivalent home at another location nearby, or relocating a current dwelling if possible. For those properties without dwellings, perhaps a land swap should be considered for equivalent or better property nearby.
4. The concept of including private property within the licensed, long-term care area boundary is disturbing from a future liability perspective. DOE needs assurances that, in the future, a property owner will not file suit against the federal government because their land had been devalued by inclusion within the boundaries of a radioactive waste disposal site. A legal instrument of agreement signifying that the landowner accepts that all

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outstanding obligations have been met and that compensation is accepted must be presented for each property. Assurances are needed that the property owner (or successor owners in the future) will not cause disruptions that hinder proper care. Control of the land to that extent will need to be obtained through some legal instrument.

5. DOE believes that the cost estimate figure for the alternate water supply (approximately \$118,000) is low. DOE experience with alternate water supplies has been in the several hundred thousand dollar range for small systems that are of industry standard quality. It is, of course, less for a temporary system. The licensee should rigorously revisit this estimate. If the estimated cost of the alternate water supply were significantly greater, then the alternative of acquiring property is more desirable and valuable to the licensee.

Thank you for your consideration of these concerns. If NRC has comments or questions about this matter, please contact me at 970/248-6037.

Sincerely,



Art Kleinrath  
Program Manager

cc:

G. Beach, WDEQ  
J. Gilmore, DOE-GJO  
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Project File LSPR 9.4 (A. Temple)