



U.S. Department of Energy

2597 B³/₄ Road
Grand Junction, CO 81503

MAR 30 2004

Gary Janosko, Chief
U.S. Nuclear Regulatory Commission
Fuel Cycle Facilities Branch, NMSS
Mail Stop T8 A33
Washington, DC 20555-0001

Subject: Consent to Sell the State-Owned Portion of the Falls City, Texas, UMTRCA Title I
Processing Site - WM-65

Dear Mr. Janosko:

This letter is to request the U.S. Nuclear Regulatory Commission's (NRC's) consent to allow the State of Texas (Texas) to sell the subject property to a private owner.

Among the conditions for the sale of the state-owned portion of the former processing site is Section 104(e)(1) of the Uranium Mill Tailings Radiation Control Act (UMTRCA), which allows the state to sell lands acquired under UMTRCA Section 104(a) if the Secretary (i.e., the U.S. Department of Energy [DOE]) and NRC consent to the sale.

The DOE has consulted with the Texas General Land Office and the Texas Bureau of Radiation Control to satisfy the conditions for sale imposed by UMTRCA and the Cooperative Agreement between DOE and Texas. On November 26, 2001, DOE determined that conditions for the sale were satisfied, and DOE approved the sale (see enclosed letters). On December 2, 2002, DOE conveyed to Texas the final land use restrictions to be incorporated into the deed (see enclosed letter).

Please respond to this request for consent to sell the subject property at your earliest convenience. Call me at (304) 285-4116 if you have any questions about this action. You may also communicate with me by e-mail at lmcgee@netl.doe.gov.

Sincerely,

Lou McGee
Site Manager

Enclosures

UMSS08

cc w/enclosures:

J. Caverly, NRC

H. Croft, Texas General Land Office

R. Ratliff, Texas Bureau of Radiation Control

D. Bergman-Tabbert, LM-50

S. Schiesswohl, LM-30

M. Tucker, LM-50

D. Johnson, Stoller

FCT015.20A (D. Roberts)

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U.S. Department of Energy

Grand Junction Office
2597 B 3/4 Road
Grand Junction, CO 81503

NOV 26 2001

Mr. Richard A. Ratliff, P.E.
Chief, Bureau of Radiation Control
Texas Department of Health
1100 W. 49th Street
Austin, TX 78756

Subject: Sale of Falls City, Texas, Site

Dear Mr. Ratliff:

On June 27, 2001, our Senior Legal Counsel, Cooper H. Wayman, wrote a letter to Mr. Hal Croft of the Texas General Land Office (see enclosure). That letter clearly laid out the conditions under which the U.S. Department of Energy (the Department) would agree to a sale of the subject property. Recently, the Department was furnished with a second appraisal prepared under the auspices of the Fort Worth District Corps of Engineers, and under the direction of Mr. Kenneth H. Price, Attorney at Law, Real Estate Division. Our Senior Legal Counsel has reviewed this appraisal and believes a price of \$206,000 for the 514.98-acre tract is realistic. With this in mind, I am recommending that a sale be undertaken as soon as possible.

This sale should adhere to all of the conditions our legal counsel has set forth in his letter dated June 27 to Mr. Croft. Specifically, the Department's agreement with the State of Texas requires that a right of first refusal must be extended to the party from whom the land was originally purchased, prior to the offering of sale.

As you know, our agreement with the State of Texas provides that the proceeds of the sale be split on a ratio of 90 percent to the Department and 10 percent to the State of Texas. The Department further requires that certain deed restrictions be employed in the conveyance and that both the State of Texas and the Department be afforded an access agreement as part of the sale.

Based upon the above conditions, I approve the State of Texas' position to offer the Falls City site for sale.

If you need additional information, please contact me at 970/248-6043 or Cooper H. Wayman at 970/248-7620.

Sincerely,

A handwritten signature in cursive script that reads "Eben Greybourne".

Eben Greybourne
Contracting Officer

Enclosure

cc w/enclosure:

B. Calder, Texas Department of Health

H. Croft, Texas General Land Office

J. Gilmore, DOE-GJO

A. Kleinrath, DOE-GJO

D. Metzler, DOE-GJO

C. Wayman, DOE-GJO

M. Plessinger, MACTEC-ERS

Project File LFCT 1.3 (A. Garcia)

Legal File

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U.S. Department of Energy

Grand Junction Office
2597 B $\frac{3}{4}$ Road
Grand Junction, CO 81503

JUN 27 2001

Mr. Hal Croft, Asset Management
Texas General Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, TX 78701-1495

Subject: Sale of Falls City, Texas, Site

Dear Mr. Croft:

This letter is in response to yours dated June 21, 2001, and to a telephone conversation I recently had with Bruce Calder. The purpose of this letter is to indicate the specific requirements of the Department of Energy (the Department) concerning the sale of the Falls City, Texas, site.

The requirements as set forth below are based on the Cooperative Agreement (Agreement) that was executed in 1987 between the Department and the State of Texas (the State). Other documentation to be followed is the Department's "Real Property Management" Order (DOE 4300.1C). The Agreement states on page 17 the following requisites:

1. Prior to sale of the property, the Department shall determine the fair market value of the property based upon the appraisal standards set forth in Appendix F.
2. Any appraisal shall be done at no cost to the Department.
3. The Department's Contracting Officer (CO) shall determine the fair market value based upon appraisals.
4. Prior to offering the sale of these lands, the State shall offer a first right of refusal to the person or persons from whom these lands were originally purchased.

On page 3 of Appendix F, guidance is provided concerning attributes of the appraisal, as follows:

1. The State shall obtain one appraisal per parcel. At the request of the CO, for parcels exceeding \$100,000.00, two appraisals may be required. Because the estimated appraised value is \$136,000.00, a second appraisal is required.
2. The appraiser must be qualified/expert in the area of the presence of residual radioactive materials and must be able to testify as to how these substances might diminish property values.

JUN 27 2001

3. If the State does the appraisal, there should be a minimum of two updatings if the appraisal date exceeds 6 months in duration.
4. Appraisals must be procured and prepared in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" (Appraisal Standards) and "A Procedural Guide for the Acquisition of Real Property by Government Agencies" (Department of Justice Procedural Guide).
5. The State must require the appraiser to prepare an appraisal report that conforms to Item 4 immediately above this paragraph.
6. The Department's Order 4300.1C requires the appraiser be a certified Member of the Architectural Institute and allows appraisal services by the U.S. Army Corps of Engineers.

Upon fulfillment of the appraisal requirements, the Agreement provides that the State pay to the Department (federal government) the lesser of either (1) 90 percent of the original acquisition costs or (2) 90 percent of the sales proceeds. (See page 1 of the attachment to the Agreement.)

The sale of this property must be conditioned upon certain deed restrictions limiting the use of ground water and/or development. In addition to certain deed restrictions, the Department requires an Access Agreement be prepared in order to sample, inspect, and monitor the site. The Department will utilize Donald R. Metzler, Technical/Project Manager for the Department, in preparation of institutional controls for the sale because he developed the site ground water compliance strategy.

Please remit the second appraisal to Eben Greybourne, Contracting Officer, at the above address. If you have any questions, you may contact me at 970/248-7620.

Sincerely,



Cooper H. Wayman, REM 9921
Senior Legal Counsel

cc:

B. Calder, Texas Department of Health
J. Gilmore, DOE-GJO
E. Greybourne, DOE-GJO
A. Kleinrath, DOE-GJO
D. Metzler, DOE-GJO
M. Plessinger, MACTEC-ERS
Project File GWFCT 3.4 (DOE)
Project File LFCT 1.3 (A. Garcia)
Legal File 2684



U.S. Department of Energy

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2597 B $\frac{1}{4}$ Road
Grand Junction, CO 81503

DEC 02 2002

Mr. Hal Croft
Evaluation Manager, Asset Management Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

Subject: Sale of Land in Falls City, Texas

Reference: Cooperative Agreement DE-FC04-87AL20532

Dear Mr. Croft:

Thank you for keeping me apprised of the status of the sale of the property at the Falls City, Texas, UMTRCA site. In response to your request I have enclosed the use restriction and access language that you should incorporate into each deed. This language has been reviewed and approved by our legal department.

In response to your question regarding expenses associated with the sale, the DOE considers all reasonable expenses normally associated with the sale of property to be allowable, e.g., marketing expenses; document preparation and recording expenses; professional service expenses; and title transfer fees. If applicable, these costs would be subtracted from the sale price prior to a division of the net proceeds between the State of Texas and DOE.

I hope that I have satisfactorily answered your questions. If not, please do not hesitate to contact me at (970) 248-6043.

Sincerely,

A handwritten signature in cursive script, reading "Eben Greybourne", is positioned above the typed name.

Eben Greybourne
Contracting Officer

Enclosure

cc w/enclosure:
C. Wayman, DOE-GJO
Project File LFCT 1.3 (A. Temple)
Legal File D4004.03J
CO File

cc w/o enclosure:
A. Kleinrath, DOE-GJO
D. Metzler, DOE-GJO

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The following restrictions should be placed in the deed of each parcel of Falls City, Texas UMTRCA land that is sold.

Special Limiting Conditions

The Grantee covenants to hold harmless the Grantor and the Department of Energy for any liability associated with disruption of any public purpose ventures on the property conveyed by this deed, the disruption of any improvement on said property made by the Grantee, its successors and assigns, and any temporary or permanent limitations to the use of the property, should the Grantor and the Department of Energy be required to perform additional surface remedial activities on the property by this deed.

The Grantee covenants (i) to comply with the applicable provisions of UMTRCA, 42 U.S.C. sec. 7901 et seq., as amended; (ii) not to use ground water in near surface aquifers from the site for any purpose, and not to construct wells or any means of exposing ground water to the surface unless prior written approval for such use is given by the Grantor and the U.S. Department of Energy; however, this provision (ii) would not apply to aquifers located below the Dilworth formation; (iii) that any sale or transfer of the property described in this deed shall have prior written approval from the Grantor and the U.S. Department of Energy, and that any deed or other document created for such sale or transfer and any subsequent sale or transfer will include information stating that the property was once used as a uranium milling site and all other information regarding the extent of residual radioactive materials removed from the property as required by Section 104(d) of the Uranium Mill Tailings, 42 U.S.C. sec 7014(d), and as set forth in the annotation attached hereto; (iv) not to perform construction and/or excavation or soil removal of any kind on the property without permission from the Grantor and the U.S. Department of Energy unless prior written approval of construction plans (e.g., facilities type and location), is given by the Grantor and the U.S. Department of Energy; (v) no human habitation structures shall be constructed on the property; and (vi) that its use of the property shall not adversely impact ground water quality, nor interfere in any way with ground water remediation under UMTRCA activities.

Grantee shall provide the Grantor and the U.S. Department of Energy free and unlimited ingress and egress to the property, which is the subject matter of this sale, in order to perform any necessary monitoring, well sampling, drilling of wells, or any other necessary surface and/or subsurface work as required to implement UMTRCA, 42 U.S.C. sec 7901, et seq.

These covenants are made in favor and to the benefit of Grantor and the U.S. Department of Energy. They shall run with the land and be binding upon the Grantee and its successors and assigns, and shall be enforceable by the Grantor and its successors and assigns.