

September 2, 2004

Ms. Sarah Fields  
P. O. Box 143  
Moab, Utah 84532

Dear Ms. Fields:

This is in response to your August 2, 2004 e-mail requesting clarification of the United States Nuclear Regulatory Commission's (NRC) responsibilities with respect to the nomination of properties to the National Register of Historic Places. This letter also responds to your August 4, 2004 letter requesting that the NRC submit a request for an eligibility determination for Section 16, Township 38 South, Range 22 East, as an addition to the White Mesa Archaeological District, to the Keeper of the National Register, and to your August 19, 2004 e-mail quoting a recent Department of Energy's (DOE), Grand Junction Office (GJO), publication about DOE's "Cultural Resources Management Plan" for the Moab Mill Project.

In your e-mails and letter you reference Section 111 of the National Historic Preservation Act of 1966, as amended (Act; 16 USC 470h-2), entitled "Historic properties owned or controlled by Federal agencies." Section (a) requires: (1) the heads of all Federal Agencies to assume responsibility for the preservation of historic properties which are owned or controlled by such agency; and (2) each Federal agency to establish (unless exempted pursuant to Section 214), in consultation with the Secretary, a preservation program for the identification, evaluation and nomination to the National Register of Historic Places, and protection of historic places. These programs are to be established to ensure that historic properties under the jurisdiction or control of the agency, are identified, evaluated and nominated to the National Register.

In the instant case, this Section of the Act does not apply to the NRC. Section 111 applies to Federal agencies that exert ownership over land or properties, such as DOE or the Bureau of Land Management (BLM). Although the NRC exercises jurisdiction over licensed activities that take place at various sites, the NRC, an independent agency, does not have Federal land management responsibilities nor does it exert ownership or control over property. For this reason, the NRC is not required to establish a Historic Preservation Program. Additionally, the NRC does not directly engage in maintaining or restoring historic properties that may be identified during the environmental review process for issuing permits or licenses for sites.

The NRC does comply with Section 106 of the Act, which is implemented by 36 CFR Part 800. Section 800.1, "Purposes," requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council of Historic Preservation a reasonable opportunity to comment on such undertakings. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency officials and other parties with an interest in the effects of the undertakings on historic properties. The goal of the consultation process is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

During the White Mesa Mill license application review process, the NRC consulted with the State Historic Preservation Officer (SHPO) regarding the proposed licensing action. During that process, the SHPO agreed that the property within the International Uranium Corporation's proposed boundary, was eligible for inclusion in the National Registry. Either the NRC or the SHPO could have taken the lead to request the Keeper of the National Registry to make such a determination. Because the request originated as part of the NRC's license review process, the NRC, although not required, and in order to facilitate the process, requested the determination. As you know, the determination of eligibility was made. Under 36 CFR 63.6, the Keeper of the National Register is responsible for requesting a nomination from the SHPO or the Federal owner (which is not applicable in this case); however, the NRC is not aware that a nomination request was ever made.

Whether or not the property was nominated for inclusion in the National Register, the NRC has required the licensee to manage its activities, through license conditions, as if the White Mesa Archaeological District had been listed as a historically/archaeologically important area. In response, the licensee has complied with the provisions of the Act and its license, and has taken the mitigative measures necessary to protect this area as if it had been included in the National Register, (i.e., as a historically/archaeologically important area).

I would also like to take this opportunity to inform you that the NRC has entered into an amendment to the Agreement of March 29, 1984 with the State of Utah pursuant to Section 274 of the Atomic Energy Act, providing for discontinuance of regulatory authority of the Commission with respect to 11e.(2) byproduct material (mill tailings and other wastes from uranium milling). This amendment became effective on August 16, 2004, and transfers to the State the regulatory authority over the White Mesa Site. The Federal and State statutes related to historical and archeological preservation shall continue to be applicable to the uranium milling licensees in Utah.

As we previously suggested, you should contact the State Historic Preservation Officer if you have any questions on the current status of the White Mesa Archaeological District or any other sites in the State of Utah.

If you have any questions regarding this communication, please contact me at (301) 415-3340 or Mr. Osiris Siurano at (301) 415-2307 or e-mail: [osp@nrc.gov](mailto:osp@nrc.gov).

Sincerely,

*/RA/*

Paul H. Lohaus, Director  
Office of State and Tribal Programs

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Paul H. Lohaus, Director  
Office of State and Tribal Programs

**Response to Incoming Document(s): ML042390234; ML042360094; & ML042390325**

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