

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alex S. Karlin, Chair
Paul B. Abramson
William M. Murphy

DOCKETED
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May 28, 2009 11:50 pm

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

COGEMA MINING, INC.
(Christensen & Irigaray Ranch
Facilities)

Docket No. 040-08502
ASLBP No. 09-887-01-MLR-BD01

May 28, 2009

PETITIONER'S MEMORANDUM RE: ORDER DATED MAY 21, 2009

Petitioner, the Oglala Delegation of the Great Sioux Nation Treaty Council ("Oglala Delegation"), hereby submits this Memorandum pursuant to the Board's Order dated May 21, 2009.¹

DISCUSSION

1. **Oglala Delegation As Local Governmental Body and/or Federally Recognized Indian Tribe**

A. **The Oglala Delegation Is a "Local Governmental Body."**

The Oglala Delegation has a long history with the United States.² The Oglala Delegation is the unbroken traditional entity established by the Oglala Lakota to negotiate and enter into treaties between the Oglala Lakota and the United States, and to ensure the enforcement of the same. The Oglala Delegation

¹ Order dated May 21, 2009 at Part A, slip. op. at p. 3.

² See Affidavit of Chief Oliver Red Cloud dated April __, 2009 [sic] filed with the Petition, which incorporates by reference Chief Red Cloud's July 28, 2008 Affidavit at Accession No. ML082170263, and which describes the relevant experience of the Oglala Lakota with the United States.

is the only entity so selected and maintained through the traditional governing mechanisms of the Oglala Lakota.

In comparison, the Oglala Sioux Tribe (“OST”) is a creation of Section 16 of the Indian Reorganization Act (Wheeler-Howard Act) of June 18, 1934 (the “IRA”)³, and as such, is, by definition, beholden to the laws of the United States. Section 16 of the IRA gives Indian tribes the right to organize under a constitution and bylaws approved by the Secretary of the Interior.⁴

Section 19 of the IRA defines the term “Indian” to include “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, **and shall further include all other persons of one-half or more Indian blood.**⁵ The term “Tribe” “shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.”⁶ Under the IRA, in the event that the OST were to vote in the future to exclude itself from the IRA, “all treaty provisions affecting any Indian reservation...shall be deemed to be continuously effective as to such reservation, notwithstanding the passage of” the IRA.⁷ Therefore, there is a continuing underlying interest of the Oglala Lakota people that the Oglala Delegation will continuously enforce the 1851 and 1868 Ft. Laramie Treaties.

³ P.L. 73-383; see 25 USC §476.

⁴ 25 USC §476(a).

⁵ 25 USC §479 (emphasis added).

⁶ *Id.* Note also 25 USC §479a.

⁷ 25 USC §478b.

Unlike the OST, the Oglala Delegation is an expression of the sovereign will of the Oglala Lakota people. The Oglala Delegation is not a creation of, or beholden to the IRA. It is beholden to the traditions of the Oglala Lakota and to its, now largely unilateral, adherence to the terms negotiated and agreed in the treaties. It is the only body appointed directly by the Oglala Lakota to decide treaty matters, including most importantly, land claims. It is an expression of the sovereignty of the Oglala Lakota people in accordance with Lakota culture and traditional political ways and it is what remains under the IRA should the OST vote to exclude itself from Section 16 of the IRA.

Therefore, it is clear that the Oglala Delegation should be respected as a “local governmental body.”

B. The Oglala Delegation is a “Federally Recognized Indian Tribe” Under Applicable Federal Law.

As John Echohawk, a noted Indian law scholar⁸, timely pointed out in last week’s *Indian Country Today*, “So what’s an Indian Tribe? Indian tribes are signatories to treaties. Treaties are signed by sovereign nations.”⁹ The Oglala Delegation and Chief Red Cloud’s Great-Grandfather signed the treaties with the United States. The Oglala Delegation continues to express the sovereign will of the Oglala Lakota in accordance with traditional Oglala Lakota ways.

Over the last century and a half, the US has used the full weight of its power to attempt to destroy the Oglala Lakota and the rest of the Great Sioux

⁸ Executive Director of the Native American Rights Fund, and brother of Larry Echohawk, recently appointed by President Obama as Assistant Secretary of the Interior for Indian Affairs.

⁹ “Don’t Know Much About History: Indian Law Experts Provide Educational Session for Connecticut Legislators” *Indian Country Today* (May 22, 2009)
<http://www.indiancountrytoday.com/home/content/43848952.html>.

Nation, as it is called. Through the years of genocide, forced relocation and conversion to the English language and religions, the Oglala Lakota has remained an intact cultural group with original language, traditions and spirituality (ordered system of religious beliefs).

If the Oglala Delegation, as representative of the Oglala Lakota in matters related to treaty territory, is not a “federally recognized Indian tribe” then the definition employed by the US to recognize an Indian tribe is flawed, arbitrary and capricious.

The mere fact that the Oglala Delegation is required to argue to justify ‘recognition’ of its own existence, in English, with the very nation that has the most interest in ignoring it strains the trust responsibility owed to the Oglala Delegation. If there is any real doubt that the Oglala Delegation represents the Oglala Lakota on matters related to the treaties and treaty territories, then find an Oglala Lakota who questions it. Finally, under the Canons of Construction which are applicable in this case, as described in Petitioner’s Reply, any ambiguity must be resolved in favor of the Oglala Delegation and any laws, rules and regulations must be interpreted in the manner in which it would be understood by the Oglala Delegation.

There is simply no way to explain to Chief Oliver Red Cloud in Lakota that the United States does not recognize the Oglala Delegation of the Great Sioux Nation Treaty Council. Therefore, there is no way that this Board can rule to that effect and at the same time comply with the trust doctrine and Canons of

Construction required thereby.

C. **The Oglala Delegation is an Entity that Must Be Consulted under NHPA and Applicable Executive Orders**

The National Historic Preservation Act, 36 CFR Section 800.2(c)(2). (“NHPA”) lists the legal requirements where federal agencies must consult with Indian tribes. Although not a party to this proceeding due to budgetary constraints¹⁰, the OST has identified in another ASLBP proceeding¹¹ the name of its Tribal Historic Preservation Officer (THPO). The OST THPO has not appeared in such other ASLBP proceeding or in this proceeding. There is no record in the Application of any response by the OST THPO. It is not known if the OST THPO is a full-time, part-time or volunteer position within the OST. Accordingly, there is no active, operating THPO functioning to undertake the responsibilities of a SHPO. Accordingly, the OST does not operate on this, or any other matter, to the exclusion of the Oglala Delegation.

Even if the OST were taking an active role in assessing the historic properties of the lands in question, the Oglala Delegation would still be entitled to consultation due to its unique relationship with the U.S. government and its traditional representative capacity with the Oglala Lakota.

Where, as here, the SHPO functions have not been assumed or performed by the OST THPO, 36 CFR 800.2(c)(2)(i)(B) applies requiring consultation with the Oglala Delegation. 36 CFR 800.2(c)(2)(i)(B) specifies that where Tribes have not assumed SHPO functions, as the OST has not, the agency “shall consult with

¹⁰ Which budgetary constraints themselves are arguably a violation of the trust responsibility and treaty obligations of the United States to the Oglala Lakota.

¹¹ Crow Butte Expansion and Renewal Proceedings. 5

a representative designated by such Indian tribe.”¹² Further such consultation is required with “any Indian tribe” that “attaches religious and cultural significance to historic properties that may be affected by an undertaking.”¹³ As the Petition clearly shows, the Oglala Delegation attaches religious and cultural significance to the Unceded Lakota treaty territory, and its stewardship obligations concerning the Eagles (Wanbli), Environment, Water (Mni), in addition to the Oglala Lakota People (Oyate) and other wildlife.

The Act goes on to remind the agencies of the “unique legal relationship” that the federal government maintains with Indian tribes and directs that, “Consultation should be conducted in a sensitive manner respectful of tribal sovereignty.” The regulations note that “[n]othing... [in the applicable sections] alters, amends, repeals, interprets or modifies tribal sovereignty, any treaty rights or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.”¹⁴

As described above and advanced consistently throughout its submissions, the Oglala Delegation is the treating partner with the United States on behalf of the Oglala Lakota. It is with great honor and privilege that the Oglala Delegation presents its eldest representative, Chief Oliver Red Cloud and with further honor that we present this direct descendant of a signer of the 1851 and 1868 Treaties. The Oglala Delegation expects the ‘sensitive manner’ described in the Regulations to include recognition of the Oglala Delegation as an “Indian Tribe”, in addition to granting of standing as a Tribe and/or Local Governmental Body

¹² 36 CFR 800.2(c)(2)(i)(B).

¹³ 36 CFR 800.2(c)(2)(ii).

¹⁴ Id. at (ii)(B).

and further that the respect and honor be accorded to the Oglala Delegation and Chief Red Cloud that is accorded to Nations that enter into treaties with the United States of America, and the duly authorized representatives thereof.

The Oglala Delegation attach great cultural, religious and historic significance to the lands in question and are entitled to the “sensitive” consultation that is “respectful of tribal sovereignty” as mandated in the Act.

D. The Oglala Delegation Is an Indian Tribe For Purposes of 36 CFR Section 800.16(m).

As articulated in Chief Oliver Red Cloud’s Affidavit, since first contact between persons of European descent and the Lakota people, there have been significant cultural differences, particularly linguistic, that have resulted in violence and continuing repression of the aboriginal culture of the Oglala Lakota.¹⁵

When the United States sought to enter treaties with the Oglala Lakota, it found great difficulty identifying the “leaders” of that nation. The Oglala Lakota operate within a highly developed social and cultural framework, the Lakota language has been in common usage for at least three thousand years, and quite likely, far longer. The social structure within the traditional Lakota tiospaye system is not readily defined by the English language. Suffice it to say, that when the Lakota chose to enter treaty negotiations with the United States, the Lakota created treaty councils to represent their interests. The Oglala Delegation maintains the duties and responsibilities first ascribed to it a century and a half ago in accordance with such Lakota traditions.

¹⁵ See Red Cloud Affidavit (July 28, 2008) Paragraphs 1-5 and 11-16.

While the Oglala Delegation, itself, is not an “Indian tribe” as it is not a stand-alone band or nation, it represents the Oglala Lakota, which is clearly an “Indian Tribe” under the IRA and the above-referenced regulations.

The Oglala Lakota are the traditional sovereign unit afforded nation-status within the Lakota socio-political system. The Oglala Lakota, through the Oglala Delegation, negotiated and signed treaties with the United States. Treaty making was only engaged in by the United States with other sovereign entities. Upon entering the treaties, the Oglala Lakota became eligible for certain “special programs and services provided by the United States,” among them, the provision of farming implements, seeds, a tract within the reservation, and education under an ‘agricultural program’ provided by the United States.¹⁶ These services were provided by the United States per the terms of the treaty because of the Oglala Lakota’s “status as Indians” as contemplated by 36 CFR Section 800.16(m).

Specifically, Article 6 of the 1868 Treaty expressly provides:

If any individual belongs to said tribes of Indians...being the head of a family shall desire to commence farming, he shall have the privilege to select...a tract of land within said reservation...so long as he or they ("family") may continue to cultivate it.¹⁷

Article 8 of the 1868 Treaty which obligates the United States to provide a head of the family which "intends in good faith to commence cultivating the soil for a living...seeds and agricultural implements" for up to four years.¹⁸ The agricultural provisions of the Fort Laramie Treaty of 1868 continue in effect as Article 1 of the

¹⁶ See, e.g., Articles 6 and 8 of the Ft. Laramie Treaty of 1868.

¹⁷ Id.

¹⁸ Id.

Treaty establishes its terms as: "From this day forward...."¹⁹ Therefore, such agricultural program remains in effect entitling the Oglala Delegation to special services from the United States due to their status as Indians. Accordingly, the Oglala Delegation fits within the definition of Indian Tribe for purposes of 36 CFR Section 800.16(m).

2. **Additional Information Under 10 C.F.R. Section 2.309(d)(1).**²⁰
2.309(d)(1)(i)

Oglala Delegation of the Great Sioux Nation Treaty Council.

(i) The name, address and telephone number of the requestor or petitioner:²¹

Oglala Delegation of the Great Sioux Nation Treaty Council, Pine Ridge Indian Reservation.

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding:

Organizational: The Oglala Delegation of the Great Sioux Nation Treaty Council is its own organization separate from Oliver Red Cloud, individually, and separate from the Red Cloud Tiwahe and the Red Cloud Tiospaye; although the Red Cloud Tiawahe is part of the Red Cloud Tiospaye and the Red Cloud Tiospaye is among the Tiospaye represented by the Oglala Delegation. By virtue of the organization of the Oglala Delegation pursuant to Oglala Lakota traditions,

¹⁹ Article I of the 1868 Ft. Laramie Treaty.

²⁰ Much of this information was supplied in Petitioner's Reply dated May 12, 2009, at 38-46, and is incorporated by reference herein.

²¹ Nothing in Section 2.309(d) requires a Petitioner to provide Personal Identifying Information ("PII") in this publicly filed document. Petitioner lives in a rural area which happens to be entirely without street signs; people who live at Pine Ridge rely on Post Office Box addresses. However, the geographic location has been provided for Petitioner sufficient to identify location for purposes of evaluating standing and contentions. The addresses and telephone numbers of the undersigned Attorneys for Petitioner may be used for Petitioner to satisfy Section 2.309(d)(1)(i). 9

it is sufficient for the Board to accept the statements by Chief Oliver Red Cloud describing the Oglala Delegation.²²

Since no one has come forward from the Oglala to challenge the organizational integrity of the Oglala Delegation and the OST has not objected to the involvement of the Oglala Delegation in this proceeding, the Petitioner's right under the Act to be made a party to the proceeding as a federally-recognized Indian Tribe and as a local governmental body should be recognized.²³ The very existence of the organization is to enforce Treaty Rights and the other rights of the Oglala Lakota described herein and to represent the Oglala Lakota people and those of which the Oglala Lakota have stewardship responsibility, in any negotiations or matters pertaining to the matters covered by the treaties with the United States or are within the Unceded Lakota treaty territory.

The Oglala Delegation is responsible for formally voicing the views of the Oglala Lakota and taking action to enforce the rights of the Oglala Lakota concerning any and all matters arising out of or related to the 1851 Treaty, the 1868 Treaty, or occurring within the treaty territory, and any and all related rights owed by the United States to the Oglala Lakota people such as Winters rights, reserved rights, rights under the trust doctrine, etc.

The Oglala Delegation is responsible as the steward of the People (Oyate) (past, present and future, including historical and cultural artifacts, and graves), the sacred Eagles (Wanbli) in the area of the mine sites and the environment (Unci Maka – 'grandmother earth'), and water (Mni). These Lakota

²² See Affidavit of Chief Oliver Red Cloud (April 2009, incorporating his Affidavit dated July 28, 2008); see footnote 2 *infra*.

²³ As discussed *infra* at Section 1 above.

responsibilities include serving at this time as a steward for past, present and future generations of the People (Oyate), Eagles (Wanbli) and other wildlife and environment in the area of the mine, and water (Mni) – aquifers, streams, rivers, specifically including Willow Creek and the Powder River (collectively, the “Stewardees”).

It is known that not so many years ago, Oglala Lakota Oyate (People) fought, killed and were killed on the land in the area where the mine is located. There is the blood of the Oglala Lakota on that land. Such is Petitioner’s interest in this matter.

Representational: In addition, by virtue of Oliver Red Cloud’s position as the Chief of the Oglala Delegation, he conveys representational standing for the organization. Chief Oliver Red Cloud, great-grandson of Chief Red Cloud, signer of the Ft. Laramie Treaty of 1851 and the Ft. Laramie Treaty of 1868, is also the Chairman of the Oglala Delegation of the Great Sioux Nation Treaty Council.²⁴ As such, he is responsible for formally voicing his views and those of the Oglala Lakota and taking action to enforce the rights of the Oglala Lakota in the same manner as described above with respect to the Oglala Delegation.

Oliver Red Cloud is recognized by traditional Lakota Tiospaye, in traditional Lakota ways²⁵, as Chairman of the Oglala Delegation, and he is expected to fulfill traditional Lakota responsibilities. These Lakota

²⁴ Although not a party to this matter, it is also important to note that Chief Red Cloud is also the Chairman of the Great Sioux Nation Treaty Council.

²⁵ In a manner similar to when a court complies with the business judgment rule not to second guess the decisions of a corporate board, or the internal workings of a corporate decision in the absence of fraud or other challenge. 11

responsibilities include protecting his Tiwahe, his Tiospaye, the Oglala Delegation, the People (Oyate) (past, present and future, including historical and cultural artifacts, and graves), the sacred Eagles (Wanbli) in the area of the mine sites and the environment (Unci Maka – ‘*grandmother earth*’), and water (Mni).

These Lakota responsibilities include serving at this time as a steward for the Stewardees.

It is noteworthy that no other American Indian tribe or group has stepped forward to protect or steward this area for future generations, or to inquire as to the nature of the artifacts and possibility that there are graves at or near the mine site. No other American Indian tribe or group has stepped forward to protect the Eagles, the environment or water other than Petitioner. It is part of traditional Lakota ways for an elder or warrior to step forward to protect and steward for these unrepresented interests and people within the Un-ceded Lakota Territory – the Stewardees.

(ii) The nature of this Petitioner’s right under the Act to be made a party to the proceeding: The AEA specifically requires atomic energy and source materials to be regulated in the US national interest to assure the common defense and security and to protect the health and safety of the public.²⁶ To the extent that Applicant’s ISL mining operation may interfere with this Petitioner’s health and safety, the Oglala Delegation has rights to not have its stewardship responsibilities frustrated by this licensing proceeding without giving the Oglala Delegation an opportunity to fulfill such stewardship responsibilities for the Stewardees.

²⁶ AEA Section 2012(a), (c)(d)(e).

The Oglala Delegation has rights that the Oglala Lakota Oyate (People) and the other Stewardees be continuously protected against activities that might harm them as members of the general public referred to in the AEA.²⁷ These are referred to herein as “General Public Rights”).

The Oglala Delegation’s General Public Rights would be frustrated by the issuance of the renewal.

The Oglala Delegation has rights as a Native American organization under the trust responsibility and federal Indian law (hereinafter referred to as “Native American Rights”) and as Oglala Lakota under Treaties with the United States of 1825, 1851 and 1868 (“Treaty Rights”). These Native American Rights and Treaty Rights require the NRC to consult with Petitioner and to confirm with Petitioner that there are no graves or other artifacts deemed by the Oglala Delegation to be of historical and/or cultural significance and/or arrange for the protection of such graves and/or artifacts. The Treaty Rights include rights under

Article I of the 1868 Treaty provides:

[i]f bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.²⁸

²⁷ *Id.* and AEA Section 2239(a).

²⁸ Article I of the 1868 Ft. Laramie Treaty.

This is a currently enforceable obligation of the United States.²⁹ How is it possible for the Oglala Delegation to ensure that Article I of the 1868 Treaty is being enforced if it is excluded from participating in this proceeding?

The Stewardees have the right to clean water for drinking and to irrigate gardens with water from Willow Creek and the Powder River. The Stewardees have the right to have clean water for bathing. The health and safety of the Stewardees are adversely impacted due to flows of contaminants through the land and also due to flows of contaminants from the mined aquifer nearby aquifers through faults, fractures, and also due to surface spills into the land and also into the Willow Creek. As a result, the health of the Stewardees is jeopardized.

The Oglala Delegation has an absolute obligation to the Oglala Lakota people, and a fundamental right to express the interests of the Oglala Lakota people as it has done historically on a continuous uninterrupted basis for many generations.

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding:

Organizational: The Oglala Delegation has an organizational interest fulfilling its traditional Lakota stewardship obligations to the Stewardees and in furtherance thereof, in obtaining complete public disclosure of information related to Applicant's ISL mine in order to protect the natural resources of the unceded

²⁹ See Lavetta Elk v. US, US Ct. of Federal Claims, (05-186L) (April 28, 2009) slip. op. available at http://www.uscfc.uscourts.gov/opinions_decisions_general/Published?op0=%3D&filter0=**ALL**&op1=%3D&filter1=4&op2=OR; see "Judge rules treaty obligations include reimbursement for pain and suffering" *Rapid City Journal* (April 30, 2009) <http://www.rapidcityjournal.com/articles/2009/04/30/news/local/doc49f8af4b84ccc843787154.txt>.

Lakota territory including its air and water, wildlife, sacred Eagles (wanbli) and environment (Unci Maka). The Oglala Delegation has an interest in having any and all facts relevant to a determination as to whether there has been a treaty violation, including a violation of Article I of the 1868 Treaty, and in enforcing the Treaty Rights, including such Article I.

The Oglala Delegation also has an organizational interest in protecting against any disrespect or destruction or interference with any historic or cultural items or artifacts deemed significant by the Oglala Delegation or any graves of Oglala Lakota people that are or may be near the mine site.

Representational: By virtue of its Tiospaye members including the Red Cloud Tiospaye led by Chief Oliver Red Cloud, the Oglala Delegation has a substantial interest in protecting and preserving the General Public Rights, Native American Rights, Treaty Rights and Lakota Cultural Rights, as described above.

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest:

The possible effect of a decision on this Petitioner's interest is a denial of the License Renewal until Applicant proves that there is no health impact to the people, environment, wildlife, or Stewardees in the unceded Lakota territory which includes the mine site. Denial of the renewal would ensure that there is no treaty violation by Applicant within the un-ceded treaty territory.

(a) The rights referred to in subsection (iii) above would be impaired or substantially restricted if Applicant's ISL operation is licensed for renewal without obtaining reasonable evidence that its operations are not causing pollution

at Petitioner's location or at the mine site or any disturbance to any Stewardees or any historic or cultural items or artifacts deemed significant by the Oglala Delegation or any graves of Oglala Lakota people that are or may be near the mine site.

(b) The Oglala Delegation's stewardship efforts would be frustrated by contamination of the air, surface water and groundwater in and around the property that may be caused by the mine and which would affect one or more of the Stewardees.

(c) The Stewardees have their health put at risk and may be damaged by continued uranium mining, further "Excursions" and continued contamination of the air, surface water and groundwater unless it is proven that the ISL operation is not causing any adverse health impacts to the Stewardees, including the Eagles, environment and water near the mine site.

(d) An approval of the renewal would put the Stewardees at further risk of personal health problems associated with contamination of the air, surface water and groundwater by CMI's operations.

(e) An approval of the renewal would increase the probability that historic or cultural items or artifacts deemed significant by the Oglala Delegation and/or graves would be impacted by CMI's operations. Without the involvement of the Oglala Delegation, there is no way to determine whether any historic or cultural items or artifacts at or near the mine site have any significance to the Oglala Delegation.

3. **Affidavit from Chief Oliver Red Cloud Authorizing Oglala**

Delegation. The requested Affidavit is filed contemporaneously herewith.

CONCLUSION

For all the foregoing reasons and those expressed in the Petition and Petitioner's Reply, the Board should rule in favor of the standing of the Oglala Delegation and admit the contentions of the Oglala Delegation.

Dated this 28th day of May, 2009.

Respectfully submitted,

~ electronically signed by
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alex S. Karlin, Chair

Paul B. Abramson

William M. Murphy

In the Matter of

COGEMA MINING, INC.
(Christensen & Irigaray Ranch
Facilities)

Docket No. 040-08502

ASLBP No. 09-887-01-MLR-BD01

May 12, 2009

AFFIDAVIT

I am Chief Oliver Red Cloud, (Oglala Lakota) Chairman of the Black Hills Sioux Nation Treaty Council ("the Delegation").

I hereby designate the Delegation as my authorized representative in the COGEMA Mining, Inc. license renewal proceeding. Thomas J. Ballanco and David C. Frankel, shall be our counsels for this proceeding.

This Affidavit is submitted in accordance with 10 C.F.R. Section 2.304(d) and 28 U.S.C. Section 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2009, at Pine Ridge, South
Dakota


CHIEF OLIVER RED CLOUD
Chairman,
Black Hills Sioux Nation Treaty Council

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
COGEMA MINING, INC.
(License Renewal In Situ Leach Facility,
Irigaray & Christensen Ranch, WY)

Docket No. 040-08502
ASLBP No. 09-887-01-MLR-BD01
May 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies "PETITIONER'S MEMORANDUM RE: ORDER DATED MAY 21, 2009" in the above captioned proceeding has been served on the following persons by electronic mail (or fax as indicated); on this 28th day of May, 2009:

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Respectfully submitted,
/s/ - electronically signed by
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Hearing Docket

From: David Cory Frankel [davidcoryfrankel@gmail.com]
Sent: Thursday, May 28, 2009 11:50 PM
To: Hearing Docket; OCAAMAIL Resource; Catherine Marco; Brett Klukan; Ron Linton; Shannon Anderson; Tom Ballanco; communication@areva.com; Deb White Plume; Elizabeth Lorina; Bruce Ellison; Shane Robinson; Anthony Baratta; Anthony Eitrem; Rebecca Giitter; Nancy Greathead; Nancy Greathead; Roy Hawkens; Emile Julian; Brett Klukan; Linda Lewis; Catherine Marco; Evangeline Ngbea; MSHD Resource; OGCMailCenter Resource; Christine Pierpoint; Tom Ryan; gmaragani@morganlewis.com; rkuylar@morganlewis.com; Christine Jochim Boote; agutterman@morganlewis.com; jglasgow@morganlewis.com; sburdick@morganlewis.com; Alex Karlin; William Murphy; Anthony Eitrem; Paul Abramson; Christine Jochim Boote; Emile Julian; Alex Karlin; Evangeline Ngbea; Megan Wright
Subject: Transmitting for Filing Docket No. 040-08502 - ASLBP No. 09-887-01-MLR-BD01
Attachments: Petitioner Memo re Order Dated 05212009 final 05282009.pdf; Cogema COS EIE Conformed 05282009.pdf; Red Cloud Affidavit 05282009.pdf

Dear All,

Pursuant to the Board's Order dated May 21, 2009, attached for filing are:

- 1) Petitioner's Memorandum re: Order dated May 21, 2009;
- 2) Affidavit of Chief Oliver Red Cloud dated May 28, 2009
- 3) related COS, conformed to the most recent EIE Service List

Sincerely,

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Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov
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23:51:25 -0400

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Return-Path: <davidcoryfrankel@gmail.com>

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Date: Thu, 28 May 2009 17:50:23 -1000

Subject: Transmitting for Filing Docket No. 040-08502 - ASLBP No.

09-887-01-MLR-BD01

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Thread-Topic: Transmitting for Filing Docket No. 040-08502 - ASLBP No. 09-887-01-MLR-BD01

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