

July 30, 2010

Mr. Reid Nelson
Director, Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
Suite 803
Old Post Office Building
Washington, DC 20004

SUBJECT: NOTIFICATION OF POTENTIAL ADVERSE EFFECT TO A CULTURAL RESOURCE AND ASSOCIATED MEMORANDUM OF AGREEMENT FOR NICHOLS RANCH IN-SITU URANIUM RECOVERY PROJECT IN CAMPBELL AND JOHNSON COUNTIES, WYOMING

Dear Mr. Nelson:

With this letter, in accordance with 36 CFR Part 800.6(a)(1), the U.S. Nuclear Regulatory Commission (NRC) is notifying the Advisory Council on Historic Preservation (ACHP) of a potential adverse effect to Site 48CA268 (Pumpkin Buttes Traditional Cultural Property [TCP]), as a result of the proposed Nichols Ranch In-Situ Uranium (ISR) Project in Campbell and Johnson Counties, Wyoming. The Pumpkin Buttes TCP is a *National Register of Historic Places* (NRHP)-eligible site. Attached to this letter is a draft Memorandum of Agreement (MOA) that has been prepared by the NRC to mitigate the potential adverse effects to the Pumpkin Buttes TCP.

For your reference, this letter includes background on the NRC's activities pursuant to Section 106 of the National Historic Preservation Act (NHPA) to date, as well as updates to the cultural resource information contained in the draft Supplemental Environmental Impact Statement (SEIS) for the proposed Nichols Ranch ISR Project.¹ NRC staff requests your comments and recommendations within 30 days of receipt of this letter and associated materials.

BACKGROUND:

In November 2007, Uranerz Energy Corporation (Uranerz) submitted its application for a new source material license, and in April 2008, Uranerz's application was accepted by the NRC for detail review. At that time (April 2008), the NRC became the lead federal agency, in accordance with 36 CFR Part 800.1(a).

¹ The draft SEIS is publicly available in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://www.nrc.gov/reading-rm/adams.html>. The accession number for the DSEIS is ML093340536.

By letter dated July 1, 2008,² NRC staff initiated consultation under Section 106 of the NHPA with the Wyoming State Historic Preservation Office (WY SHPO) concerning the proposed Nichols Ranch ISR Project.

The Area of Potential Effect (APE) for the proposed undertaking has been completely inventoried. With the new source material license application, Uranerz submitted two Class III reports for newly inventoried areas and one Class I report for previously inventoried areas with its license application. The reports are listed below:

- *Class III Cultural Resource Inventory of the Uranerz Energy Corporation, Hank In-Situ Uranium Project.* Prepared by Frontier Archaeology. November 2007.
- *Class III Cultural Resource Inventory for Uranerz Energy Corporation's 80-acre Parcel in the Hank Unit, Campbell County, Wyoming.* Prepared by TRC Environmental Corporation. October 2008.
- *Class I Literature Review of Uranerz Energy Corporation's Nichols Ranch ISR Project, Campbell and Johnson Counties Wyoming.* Prepared by TRC Environmental Corporation. March 2010.

In addition to these reports, an additional survey was completed for an unrelated coal bed natural gas plan of development project whose inventoried areas overlap with the proposed Nichols Ranch ISR Project site:

- *Anadarko Petroleum Corporation Dry Willow Phase 4 POD Class III Cultural Resource Inventory Campbell County, Wyoming.* Prepared by Arcadis U.S., Inc. July 2008.

The NRC determined that the identification efforts detailed in the four reports meet the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716).³ The NRC staff used the cultural reports as well as information contained in Uranerz's license application as the basis of NRC's environmental review required by NRC regulations in 10 CFR Part 51, which implements Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended. The review identified potential adverse impacts to cultural resources that would result from the undertaking.

The NRC staff also contacted the U.S. Bureau of Land Management (BLM) to obtain a list of tribes that may have interest in activities surrounding the Pumpkin Buttes TCP. Subsequent contacts were made with nine tribes⁴ to request information regarding historic, cultural, and

² NRC. 2008. Letter to M. Hopkins, State Historic Preservation Officer from G. Suber, Branch Chief, Office of Federal and State Materials and Environmental Management Programs. Subject: Initiation of Section 106 Process for Uranerz Energy Corporation's Nichols Ranch Uranium Recovery Project License Request (Docket No. 040-09067). July 1, 2008. ADAMS No. ML081760693.

³ 48 FR 44716, National Park Service. "The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation." *Federal Register*. Volume 48, pp. 44716. Washington, D.C. September 29, 1983.

⁴ The nine tribes are: the Blackfeet Tribe, the Cheyenne River Sioux, the Crow Tribe, the Eastern Shoshone Tribe, the Ft. Peck/Assiniboine Sioux Tribe, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, and the Three Affiliated Tribes.

archaeological resources potentially affected by the proposed Nichols Ranch ISR Project⁵. The NRC has also consulted with the WY SHPO. Correspondence related to the Nichols Ranch ISR Project Section 106 consultation can be found in Appendix A of the draft SEIS.

The NRC staff documented its preliminary findings in the draft SEIS for the Proposed Nichols Ranch Project, which was published in December 2009. The draft SEIS identified nine NRHP-eligible sites, one of which (Pumpkin Buttes TCP) may be affected by the proposed project.

UPDATES TO INFORMATION IN THE DRAFT SEIS:

Tables 3-10 and 3-11 in the draft SEIS identify archaeological sites on the proposed Nichols Ranch ISR Project Site within the two units of land (the Nichols Ranch Unit and the Hank Unit) that would be licensed under the proposed action. Since the publication of the draft SEIS, the NRC staff has identified changes to the NRHP eligibility of several cultural sites. Additionally, NRC staff has added information on Uranerz's commitments to avoid certain cultural sites that were made in a February 24, 2010,⁶ supplement to Uranerz's license application, and information contained in letters from the WY SHPO dated July 8, 2010⁷ and July 19, 2010⁸. The following table lists the NRHP eligible and potentially eligible sites for the proposed Nichols Ranch ISR Project. Site 48CA268 is included in the following table because it was not included in Table 3-11 of the draft SEIS in error, though the site was discussed in detail in the text of the draft SEIS.

All of the sites listed in the table except for Site 48CA268 would not be affected by the project as planned through the use of fencing and avoidance. The potential adverse effects to Site 48CA268 and the resulting MOA are discussed in the following section.

MEMORANDUM OF AGREEMENT

During its environmental review and as documented in the draft SEIS, the NRC staff identified potential adverse effects to Site 48CA268 (Pumpkin Buttes TCP). The TCP is located outside any proposed physical disturbance areas and will be completely avoided by the project. The proposed action will have no effect on the physical remains of the Pumpkin Buttes TCP.

⁵ NRC. 2008. Letter to Tribes from G. Suber, Branch Chief, Office of Federal and State Materials and Environmental Management Programs. Subject: Request for Information Regarding Tribal Historic and Cultural Resources Potentially Affected by the Proposed Nichols Ranch ISR Project in Campbell and Johnson Counties, Wyoming (Docket No. 040-09067). December 24, 2008. ADAMS No. ML083260467.

⁶ Uranerz. 2010. Letter to R. Linton, Project Manager, U.S. Nuclear Regulatory Commission, from M. Thomas, Environmental, Safety, and Health Manager, Uranerz Energy Corporation. Subject: Responses to the Open Issues to the Safety Evaluation Report for the Nichols Ranch ISS Project License Application. February 24, 2010. ADAMS No. ML100740143.

⁷ WY SHPO. 2010a. Letter from R.L. Currit. Wyoming State Historic Preservation Office. Subject: Uranerz Energy Corporation, Nichols Ranch In-Situ Uranium Recovery Project (SHPO File #0708RLC009). July 8, 2010. ADAMS No. ML102000147.

⁸ WY SHPO, 2010b. Letter from R.L. Currit. Wyoming State Historic Preservation Office. Subject: Uranerz Energy Corporation, Nichols Ranch In-Situ Uranium Recovery Project (SHPO File #0708RLC009). July 19, 2010. ADAMS No. ML102020089.

**Nichols Ranch ISR Project NRHP Eligible and
Potentially Eligible Archaeological Sites**

| Site ID | Site Type | NRHP Finding and Comments/Stipulations |
|---------------------------|---|---|
| Nichols Ranch Unit | | |
| 48CA5391 | Prehistoric: lithic scatter with feature Historic: debris scatter | Eligible – site will not be affected by project as planned (fencing and avoidance) |
| Hank Unit | | |
| 48CA268 | Prehistoric/Historic: Traditional Cultural Property | Eligible – pending Native American consultations and mitigation through MOA |
| 48CA6148 | Prehistoric: lithic scatter with stone circles | Unevaluated for NRHP eligibility pending Native American consultations – site will not be affected by the project as planned (fencing and avoidance) |
| 48CA6475 | Prehistoric: open camp | Unevaluated for NRHP eligibility pending evaluative testing – site will not be affected by project as planned (fencing and avoidance) |
| 48CA6490 | Prehistoric: open camp | Eligible – site will not be affected by project as planned (fencing and avoidance) |
| 48CA6748 | Prehistoric: lithic scatter with FCR and activity areas | Unevaluated for NRHP eligibility pending evaluative testing and Native American consultations – site will not be affected by project as planned (fencing and avoidance) |
| 48CA6751 | Prehistoric: lithic scatter with activity areas and possible stone circle feature | Unevaluated for NRHP eligibility pending evaluative testing and Native American consultations – site will not be affected by project as planned (fencing and avoidance) |
| 48CA6753 | Prehistoric: lithic and FCR scatter | Unevaluated for NRHP eligibility pending evaluative testing and Native American consultations – site will not be affected by project as planned (fencing and avoidance) |
| 48CA6754 | Prehistoric: lithic and FCR scatter with FCR concentration | Unevaluated for NRHP eligibility pending justification – site will not be affected by project (fencing and avoidance) |
| 48CA6927 | Prehistoric: lithic scatter with features | Eligible – site will not be affected by project as planned (fencing and avoidance) |

However, the undertaking would have a potential adverse effect to the viewshed of the Pumpkin Buttes TCP.

Through Section 106 consultation and as recommended by the WY SHPO, the NRC has prepared a Memorandum of Agreement (MOA) to mitigate the potential adverse effects to the Pumpkin Buttes TCP. The NRC extended an invitation to the nine tribes previously identified in

this letter to become signatories to the MOA by letter dated April 23, 2010.⁹ Following this invitation, the Three Affiliated Tribes indicated that they were not interested in becoming a signatory to the MOA. Therefore, in addition to the NRC and the eight interested tribes, the MOA will also include the following signatories: the BLM Buffalo Field Office, the WY SHPO, and Uranerz. The NRC forwarded a copy of the MOA for comment and signature to the signatories on July 23, 2010.¹⁰

The MOA, as sent to the signatories, is attached to this letter. The NRC has not received any comments on the MOA from any signatories to date.

As mentioned in the introduction to this letter, NRC staff requests your comments and recommendations within 30 days of receipt of this letter and associated materials. If you have any questions or require additional information, please contact the Environmental Project Manager, Mrs. Irene Wu at (301) 415-1951, or at Irene.Wu@nrc.gov.

Sincerely,

/RA/

Kevin Hsueh, Chief
Environmental Review Branch B
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 40-9067

Enclosure:
Memorandum of Agreement
(ML101600556)

⁹ NRC. 2010. Letter to Tribes from K. Hsueh, Branch Chief, Office of Federal and State Materials and Environmental Management Programs. Subject: Request for Information Regarding Historic, Cultural, and Archaeological Resources Potentially Affected by the Proposed Nichols Ranch ISR Project in Campbell and Johnson Counties, Wyoming (Docket No. 040-09067) and Invitation to Become a Signatory to Associated Memorandum of Agreement. April 23, 2010. ADAMS No. ML100880084.

¹⁰ NRC. 2010. Letter to Signatories from D. Skeen, Acting Deputy Director of the Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs. Subject: Memorandum of Agreement for Nichols Ranch In-Situ Uranium Recovery Project in Campbell and Johnson Counties, Wyoming – State Historic Preservation Office File #0708RLC009. July 23, 2010. ADAMS No. ML101600535.

