

August 31, 2010

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

SUBJECT: NOTIFICATION OF ADVERSE EFFECT TO A HISTORIC PROPERTY AND ASSOCIATED MEMORANDUM OF AGREEMENT FOR PROPOSED AREVA ENRICHMENT SERVICES LLC EAGLE ROCK ENRICHMENT FACILITY PROJECT IN BONNEVILLE COUNTY, IDAHO

Dear Mr. Nelson:

With this letter, in accordance with 36 CFR 800.6(a)(1), the U.S. Nuclear Regulatory Commission (NRC) is notifying the Advisory Council on Historic Preservation (ACHP) of an adverse effect to site MW004 (John Leopard Homestead), as a result of the proposed AREVA Enrichment Services LLC (AES) Eagle Rock Enrichment Facility (EREF) project in Bonneville County, Idaho. The John Leopard Homestead is a *National Register of Historic Places* (NRHP)-eligible site. The NRC is drafting a Memorandum of Agreement (MOA) regarding the mitigation of the adverse effect to the John Leopard Homestead.

For your reference, this letter includes background on the NRC's activities pursuant to Section 106 of the *National Historic Preservation Act of 1966*, as amended (NHPA) to date, as well as a summary of the cultural resource information contained in the Draft Environmental Impact Statement (EIS) (NUREG-1945) for the proposed EREF. A copy of the EREF Draft EIS was provided to you by the NRC with a letter dated July 14, 2010 (Enclosure 1). In addition, the Draft EIS is available through the NRC's *Agencywide Documents Access and Management System* (ADAMS), at <http://www.nrc.gov/reading-rm/adams.html>. From this website, enter the Accession Number for the Draft EIS, ML101890384. The Draft EIS also may be accessed on the internet at <http://webwork.nrc.gov:300/reading-rm/doc-collections/nuregs/staff/sr1945/>.

Pursuant to 36 CFR 800.6(a)(1), the NRC staff invites the ACHP to participate in the NHPA Section 106 consultation for this project and requests your response within 15 calendar days of receipt of this letter and enclosures.

BACKGROUND

The NRC staff is reviewing an application submitted by AES for a license to construct, operate, and decommission a uranium enrichment facility, the proposed EREF, near Idaho Falls in Bonneville County, Idaho. AES submitted the original license application to the NRC on December 30, 2008. AES proposes to locate the facility in Bonneville County, Idaho, approximately 32 kilometers (20 miles) west of Idaho Falls. Revisions to the license application were submitted on April 23, 2009 (Revision 1), and April 30, 2010 (Revision 2). The proposed EREF, if licensed, would use a gas centrifuge process to enrich uranium-235 isotope found in natural uranium to concentrations up to 5 percent by weight. The enriched uranium would be

used to manufacture nuclear fuel for commercial nuclear power reactors. As part of the review of the application, the NRC has conducted an environmental review and prepared a Draft EIS, which includes an analysis of relevant environmental issues, including potential impacts on historic and cultural resources, and documents the NRC staff's preliminary determination regarding the environmental impacts from the preconstruction (e.g., site preparation), construction, operation, and decommissioning of the proposed EREF. The NRC is the lead Federal agency, in accordance with 36 CFR 800.1(a).

Note that many of the activities required to build a uranium enrichment facility (e.g., site clearing and grading, excavation, erection of fences, erection of support buildings) do not fall within the NRC's regulatory authority and, therefore, are not "construction" as defined by the NRC (see 10 CFR 51.4). Such activities are referred to as "preconstruction" activities in 10 CFR 51.45(c).

SECTION 106 CONSULTATION

By letter dated June 17, 2009 (Enclosure 2), the NRC staff initiated consultation under Section 106 of the NHPA with the Idaho State Historic Preservation Office (ID SHPO) concerning the proposed EREF project. Also, by the letter dated June 17, 2009 (Enclosure 2), and a supplemental letter dated February 17, 2010 (Enclosure 3), the NRC staff notified the ID SHPO that it will comply with its obligations under Section 106 of the NHPA, using the process set forth in 36 CFR 800.8(c). Pursuant to 36 CFR 800.8(c), the NRC staff is using the preparation of the EIS required by the *National Environmental Policy Act of 1969*, as amended (NEPA), to comply with its obligations under Section 106 of the NHPA. The NRC staff is using 36 CFR 800.8(c) in lieu of the procedures set forth in 36 CFR 800.3 through 36 CFR 800.6. As indicated below, consultation with the ID SHPO is ongoing.

In letters dated July 29, 2009 (Enclosure 4), and February 19, 2010 (Enclosure 5), the NRC staff also contacted the Shoshone-Bannock Tribes, identified as having potential interest in the proposed undertaking. To date, the Shoshone-Bannock Tribes have not responded to our consultation letters.

DRAFT EIS PRELIMINARY FINDINGS

To evaluate the potential impacts to historic and cultural resources resulting from the proposed EREF project, the NRC staff visited the proposed EREF site in June 2009, reviewed cultural resources survey reports prepared by AES's archaeological contractors, and conducted an independent historic and cultural resources records review. Preliminary findings regarding historical and cultural resources are summarized below and further discussed in the Draft EIS, Sections 3.3, 4.2.2, 4.2.16.2, and 4.3.2.

NOTE: Enclosures 6, 7, 10 and 12 identified below contain sensitive information and are withheld from public disclosure.

Proposed EREF Project Site

In the Draft EIS, the NRC staff presented its determination that the Area of Potential Effect (APE) for the NHPA Section 106 review of the proposed EREF project site is the 240-hectare (592-acre) portion of the proposed site that would be directly affected by preconstruction, construction, and operations activities. Two archaeological surveys have been undertaken by

an AES archaeological contractor for the proposed project site (Enclosures 6 and 7). The contractor directly examined 407 hectares (1005 acres) of the proposed AES property, within which the 240-hectare (592 acre) APE is included. The acreage surveyed included additional areas for expansion outside the presently proposed preconstruction, construction, and operations areas, which are no longer deemed necessary by AES for the proposed project.

Thirteen archaeological sites and 24 isolated finds were identified within the APE of the proposed EREF project site. Isolated finds are isolated occurrences of cultural resource material that are not associated with subsurface remains and are not considered archaeological sites. Three of the archaeological sites were prehistoric in age, six were from the historic era, and four contained evidence from both the historic and prehistoric periods. The prehistoric sites consisted of stone tools or evidence of stone tool manufacture. The historic sites were primarily historic trash scatters consisting of cans and glass. None of the isolated finds are considered eligible for listing on the NRHP. On the basis of the survey results, nine of the sites were recommended not eligible for listing on the NRHP. Site MW004, the John Leopard Homestead, is recommended eligible for listing on the NRHP for its potential to provide information on the practices of historic era farmers in the region. Several other sites of this type have been previously identified on Idaho National Laboratory property north of the proposed EREF site (see Enclosure 8), so removal of all sites of this type from the region is unlikely. Site MW004 consists of several structural remains including a cistern, privy and historic dugout house foundation. AES's archaeological contractor conducted additional research for the three other sites found during the survey and found that these sites lacked sufficient information to be considered significant (see Enclosure 6).

Site MW004 would be directly impacted by preconstruction of the proposed EREF. Preconstruction activities would destroy this site because it would be under the footprint of the proposed facility's security fence and an electrical substation for a transmission line that would bring power to the proposed EREF (see below). In a letter dated September 29, 2010 (Enclosure 9), the ID SHPO concurred with the evaluations and recommendations in the two AES survey reports, and agreed that site MW004 is the only one of the 13 sites located in the proposed EREF site eligible for listing on the NRHP, and recommended mitigation for the impacts to site MW004 to be included as stipulations in an MOA, discussed below.

Proposed 161-kilovolt (kV) Transmission Line Project

On January 19, 2010, AES informed the NRC of a license application change involving the addition to the proposed project of an electrical transmission line to power the proposed EREF. This new 161-kV transmission line would be run to the proposed EREF from Rocky Mountain Power's Bonneville Substation located to the east of the proposed EREF site, mostly along the right-of-way (ROW) of an existing 69-kV transmission line.

In the Draft EIS, the NRC staff presented its determination that the APE for AES's proposed 161-kV transmission line project is 202.3 hectares (500 acres) for the line itself. This is derived from the 22.12-kilometer (13.74-mile) proposed transmission line ROW length and 45.72 meters (150 feet) on either side of the centerline (91.4-meter [300-foot] total width). In addition to that, there is the fenced area at the proposed modified Bonneville Substation, which is 1.3 hectares (3.1 acres), and the proposed new Twin Buttes Substation that will occupy a 2.1-hectare (5.2-acre) fenced area on the proposed EREF site itself.

Portions of the proposed Twin Buttes Substation and of the proposed transmission line adjacent to the proposed EREF were surveyed previously as part of the survey for the main portion of the proposed EREF site (Enclosure 6). The ROW for the proposed transmission line has also been surveyed by an AES archaeological contractor for the presence of historical and cultural resources (Enclosure 10). This survey examined the 202.3-hectare (500-acre) APE. No historic and cultural resources were identified in these surveys. It is currently unclear whether additional areas would be needed for some aspects of the transmission line construction (e.g., pulling and tensioning sites). AES has provided an unanticipated discoveries and monitoring plan (Enclosure 11) to the NRC and Idaho SHPO, which will be in place during preconstruction and construction and which the NRC proposes to reference in the MOA.

MEMORANDUM OF AGREEMENT

As discussed above, during its environmental review and as documented in the Draft EIS, the NRC staff identified an adverse effect to the NRHP-eligible John Leopard Homestead (site MW004) located on the proposed EREF site. Preconstruction activities would destroy site MW004 because it would be under the footprint of the proposed EREF's security fence and an onsite electrical substation for the proposed 161-kV transmission line. In its letter dated September 29, 2009 (Enclosure 9), the ID SHPO recommended mitigation of the adverse effect through data recovery, historic research for the John Leopard Homestead site, and that all obsidian bifacial tools within the EREF project area be chemically traced to their geologic sources through x-ray fluorescence (XRF) analysis. Further, the ID SHPO stated that these mitigation measures should be drafted as stipulations in an MOA.

AES subsequently provided a Treatment Plan for site MW004 (Enclosure 12) that addresses the procedures that will be employed to conduct mitigation measures recommended by the ID SHPO. At the end of this plan is a letter that reports on the completed geochemical XRF analysis of obsidian artifacts collected at the ID SHPO's request (Letter to Kenneth Reid, State Archaeologist and Deputy State Historic Preservation Officer, Idaho State Historical Society, from Edward J. Stoner, Western Cultural Resource Management, Inc. December 18, 2009.). In a letter dated May 3, 2010 (Enclosure 13), the ID SHPO expressed its support for the proposed treatment of site MW004 and requested a report from AES that documents the investigations conducted as part of the mitigation along with photographs and other appropriate appendices and attachments.

The NRC is currently in the process of drafting an MOA as requested by the ID SHPO. As recommended in the ID SHPO's September 29, 2009, letter (Enclosure 9), AES's Treatment Plan (Enclosure 12) will be referenced with regard to the mitigation of site MW004; and as additionally stated in the ID SHPO's May 3, 2010, letter (Enclosure 13), the XRF analysis will be listed as completed mitigation, and any required monitoring will be described. Also, because AES has indicated that final design of the proposed EREF and associated 161-kV transmission line project will not be completed until after the NRC license is issued, the draft MOA will also address the survey by AES for historic cultural resources of any previously un-surveyed areas that may be identified following final design (e.g., transmission line construction pulling and tensioning sites). As such, AES's unanticipated discoveries and monitoring plan mentioned above (Enclosure 11) will be referenced in the draft MOA. The purpose of this plan is to: (1) monitor and protect existing and known archaeological sites and historic properties located within the proposed EREF site; (2) set forth the process for dealing with discoveries of human remains or previously unidentified archaeological sites that are discovered during activities that

cause surface or subsurface disturbances and may result in an irreversible loss of the resource; and (3) establish procedures for evaluation and treatment of unanticipated discoveries in accordance with 36 CFR 800.13.

Proposed signatories to this MOA will be the NRC, the ID SHPO, AES, and the ACHP, if it so chooses. Because the Shoshone-Bannock Tribes have not responded to our consultation letters, they are not included as either a signatory or concurring party.

As mentioned in the introduction to this letter, the NRC staff invites the ACHP to participate in the NHPA Section 106 consultation for this project pursuant to 36 CFR 800.6(a)(1) and requests your response within 15 calendar days of receipt of this letter and enclosures. If you have any questions or require additional information, please contact the Stephen Lemont, Senior Project Manager, at (301) 415-5163, or by email at Stephen.Lemont@nrc.gov.

Sincerely,

/RA/

Diana Diaz-Toro, Chief
Environmental Review Branch A
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.: 70-7015

Enclosures: See attached list

cc w/o enclosures: S. Pengilly, ID SHPO
J. Kay, AES

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DATE:	07/30/10	08/02/10	08/24/10	08/31/10

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LIST OF ENCLOSURES

1. Letter to Reid Nelson, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation, from D. Diaz-Toro, Chief, Environmental Review Branch A, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission. Subject: Section 106 Consultation, Notification of the Issuance of, and Request for Comments on the Draft Environmental Impact Statement for the Proposed AREVA Enrichment Services LLC Eagle Rock Enrichment Facility in Bonneville County, Idaho. July 14, 2010. ADAMS Accession No. ML101650142.
2. Letter to Janet Gallimore, Executive Director, Idaho State Historical Society, from Andrea Kock, Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission. Subject: Initiation of the National Historic Preservation Act Section 106 Process for AREVA Eagle Rock Enrichment Facility. June 17, 2009. ADAMS Accession No. ML091660205.
3. Letter to Janet Gallimore, Executive Director and State Historic Preservation Officer, Idaho State Historical Society, from Andrea Kock, Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission. Subject: Continuing Consultation under the National Historic Preservation Act Section 106 Process for the Proposed AREVA Eagle Rock Enrichment Facility. February 17, 2010. ADAMS Accession No. ML100471023.
4. Letter to Chairman Alonzo A. Cohy, The Shoshone Bannock Tribes, from Andrea Kock, Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission. Subject: Initiation of the National Historic Preservation Act Section 106 Process for AREVA Eagle Rock Enrichment Facility. July 29, 2009. ADAMS Accession No. ML092090444.
5. Letter to Chairman Alonzo A. Cohy, The Shoshone Bannock Tribes, from Andrea Kock, Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission. Subject: Continuing Consultation under the National Historic Preservation Act Section 106 Process for the Proposed AREVA Eagle Rock Enrichment Facility. February 19, 2010. ADAMS Accession No. ML100480141.

6. A Class III Cultural Resource Inventory of the Proposed Eagle Rock Enrichment Facility, Bonneville County, Idaho (Volume I: Report and Volume II: Cultural Resource Documentation). Prepared by Western Cultural Resource Management, Inc. November 21, 2008. ADAMS Accession Nos. ML101330115, ML101330103, ML101330104, ML101330106, ML101330107, ML101330108, ML101330109, ML101330110, ML101330125, ML101330112, ML101330113, and ML101330114. **NOTE: These documents contain sensitive information and are withheld from public disclosure.**
7. Amendment to: A Class III Cultural Resource Inventory of the Proposed Eagle Rock Enrichment Facility, Bonneville County, Idaho. Prepared by Western Cultural Resource Management, Inc. August 28, 2009. ADAMS Accession No. ML101330102. **NOTE: This document contains sensitive information and is withheld from public disclosure.**
8. Personal communication from Holly Gilbert, Idaho National Laboratory, to Daniel O'Rourke, Argonne National Laboratory. Subject: Uniqueness of Late 19th Century Homestead Sites in the General Vicinity of the EREF Property. April 26, 2010. ADAMS Accession No. ML101790310.
9. Letter to George A. Harper, Vice President, Engineering, Eagle Rock Enrichment Facility, AREVA Enrichment Services LLC, from Kenneth C. Reid, State Archaeologist and Deputy State Historic Preservation Officer, Idaho State Historical Society. Subject: Class III Cultural Resource Inventory of the Proposed Eagle Rock Enrichment Facility, Bonneville County, and amendment. September 29, 2009. ADAMS Accession No. ML092810293.
10. Archaeological and Historic Survey Report, Archaeological Survey of Idaho. In: *Eagle Rock Enrichment Facility Transmission Line*. NWI 10247.001. Prepared by North Wind, Inc. January 21, 2010. ADAMS Accession Nos. ML101330124 and ML101330101. **NOTE: These documents contain sensitive information and are withheld from public disclosure.**
11. Letter to U.S. Nuclear Regulatory Commission from Jim A. Kay, Licensing Manager, AREVA Enrichment Services LLC. Subject: Response to Request for Additional Information - AREVA Enrichment Services LLC Environmental Report for the Eagle Rock Enrichment Facility - RAI 6.a. Unanticipated Discovery Plan. September 18, 2009. ADAMS Accession No. ML092640684.
12. A Treatment Plan for Historic Site MW004 in the Area of the Proposed Eagle Rock Enrichment Facility, Bonneville County, Idaho. Prepared by Western Cultural Resource Management, Inc. January 28, 2010. ADAMS Accession No. ML100540693. **NOTE: This document contains sensitive information and is withheld from public disclosure.**
13. Letter to Stephen Lemont, Environmental Review Branch, Nuclear Regulatory Commission, from Susan Pengilly, Deputy SHPO and Compliance Officer, Idaho State Historical Society. Subject: AREVA Eagle Rock Enrichment Facility, Bonneville County, Idaho. May 3, 2010. ADAMS Accession No. ML101330126.