

April 29, 2011

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: NICHOLS RANCH IN-SITU URANIUM RECOVERY PROJECT IN CAMPBELL AND JOHNSON COUNTIES, WYOMING AND REQUEST FOR MEETING TO DISCUSS THE RESOLUTION OF ADVERSE EFFECTS

Dear Mr. Nelson:

On April 5, 2011, Mr. Richard Currit of the Wyoming State Historic Preservation Office (WY SHPO) requested that your office participate in consultation regarding the resolution of adverse effects for the proposed Nichols Ranch *In-Situ* Recovery (ISR) in Campbell and Johnson Counties, Wyoming. Under the Atomic Energy Act of 1954, as amended, the U.S. Nuclear regulatory Commission (NRC) is a licensing agency for ISR facilities that recover uranium that can be processed and used for various purposes, including nuclear power plant fuel. The NRC conducts safety and environmental reviews in parallel, including consultation to comply with the requirements of the National Historic Preservation Act (NHPA). The NRC staff has completed its environmental and safety reviews of the license application, and in January 2011, issued the Final Supplemental Environmental Impact Statement. However, the NRC needs to complete the NHPA Section 106 process before making a decision on whether to grant the license.

The NRC staff believes its NHPA Section 106 process for consultation with the interested tribes and the WY SHPO, has offered adequate opportunities for consultation within the licensing process and we are interested in bringing this process to a timely and favorable closure. We have previously sent a letter to the Advisory Council on Historic Preservation (ACHP) July 30, 2010, identifying the Pumpkin Buttes Traditional Cultural Property (TCP) and a potential adverse visual impact from the project. After further consultation with two Tribal Historic Preservation Officers and with the WY SHPO the NRC staff has included four additional TCPs to the list of historic properties potentially adversely affected due to visual impacts from the proposed project. We will be forwarding a separate letter to you with further information about the TCPs. The NRC staff has also developed a draft Memorandum of Agreement to address adverse visual impacts to these sites and has discussed drafts with the consulting parties for their review and comment.

As a follow-up to our April 6th call with Mr. Tom McCulloch, we are requesting a meeting or conference call between the NRC staff and your staff, so that we understand your expectations on how the NRC can complete the NHPA Section 106 process. Please let us know if there is further specific information we can provide that would assist you in reviewing this matter. Enclosed is a chronology to provide some background of the NRC staff's consultation efforts. As noted in the enclosed chronology, the applicant for the Nichols Ranch ISR project has recently proposed additional actions in response to tribal representatives' requests for tribal monitors during construction and on-site visits. Specifically, the applicant has offered to fund one additional site visit for the discussion of mitigation measures and fund one qualified tribal monitor to observe construction at the part of the site containing the identified TCPs (the proposed Hank Unit). We have forwarded this latest proposal to all consulting parties for consideration. In the transmitting e-mail, the NRC did copy Mr. McCulloch of the ACHP.

The NRC would like to request holding the meeting during the first week of May. Please have your staff contact Jennifer Davis at (301) 415-3835 if you have any further questions and to schedule a meeting.

Sincerely,

/RA/ KMcConnell for LCamper

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 040-09067

Enclosure:
Chronology of Section 106 Activities

As a follow-up to our April 6th call with Mr. Tom McCulloch, we are requesting a meeting or conference call between the NRC and your staff, so that we understand your expectations on how NRC can complete the NHPA Section 106 process. Please let us know if there is further specific information we can provide that would assist you in reviewing this matter. Enclosed is a chronology to provide some background of the NRC staff's consultation efforts. As noted in the enclosed chronology, the applicant for the Nichols Ranch ISR project has recently proposed additional actions in response to tribal representatives' requests for tribal monitors during construction and on-site visits. Specifically the applicant has offered to fund one additional site visit for the discussion of mitigation measures and fund one qualified tribal monitor to observe construction at the part of the site containing the identified TCPs (the proposed Hank Unit). The NRC has forwarded this latest proposal to all consulting parties for consideration. In the transmitting email, the NRC did copy Mr. McCulloch of the ACHP.

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Larry W. Camper, Director
Division of Waste Management
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Enclosure:
Chronology of Section 106 Activities

Distribution: PSwain RLinton KMcConnell JOImstead, OGC

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Name	AWalker-Smith	JDavis	KHsueh	DPersinko	JBiggins via email	KMcConnell	LCamper
Date	04/28/11	04/28/11	04/28/11	04/28/11	04/28/11	04/29/11	04/29/11

OFFICIAL RECORD COPY

NRC Section 106 Activities as of April 25, 2011, Nichols Ranch In Situ Recovery Project

For reference: The following documents are contained within Appendix A of the final Supplemental Environmental Impact Statement (SEIS) (NUREG-1910, Supplement 2). For references listed after January 2011, copies of this correspondence will be attached within Enclosure 3.

- Coordination with Wyoming State Historic Preservation Office (SHPO) regarding identification of historic properties that will be adversely impacted by the proposed project – July 2008.
- Communication with Bureau of Land Management (BLM) regarding tribes interested in the Pumpkin Buttes – November 2008.
- Communication with 11 tribes requesting information regarding tribal historic and cultural resources potentially affected by the proposed Nichols Ranch *In Situ* Recovery (ISR) Project – December 2008.
- NRC staff informal meetings with local, State SHPO, and Federal (Bureau of Indian Affairs and BLM - Rawlins) agencies in Wyoming regarding Moore Ranch, Nichols Ranch, and Lost Creek reviews – January 2009.
- Email communication with the Northern Cheyenne Tribal Historic Preservation Office forwarding comments about the spiritual importance of the Pumpkin Buttes and the THPOs concern for energy development activities occurring within close proximity of the Pumpkin Buttes – February 2009.
- Communication (via email) from BLM forwarding BLM's Final Programmatic Agreement for the Pumpkin Buttes – July 2009.
- NRC letter to the Advisory Council on Historic Preservation (ACHP) informing them of the proposed Nichols Ranch ISR Project – August 2009.
- NRC Communication with SHPO forwarding cultural resource and paleontological survey reports and adverse effect determination to the Pumpkin Buttes – August 2009.
- Communication from SHPO to NRC regarding documentation requirements – October 2009.
- NRC issues Draft SEIS for Nichols Ranch with copies forwarded to all consulting parties – December 2009.
- Communication from SHPO to NRC forwarding comments on the draft SEIS – January 2010.
- Email communication from Uranerz to NRC regarding Uranerz' letter to SHPO forwarding the Class I Literature Review – February 2010.
- DSEIS comment period extended through the end of March 2010.
- Email communications between NRC staff and Uranerz regarding Memorandum of Agreement (MOA) development – March 2010.

Enclosure

- NRC letter to nine interested tribes seeking information of historic properties regarding the proposed project area and invitation to be a signatory on the MOA – April 2010.
- Follow-up communications (email and calls) from NRC with interested parties and tribes requesting participation in developing the MOA – May 2010.
- NRC letter to SHPO forwarding the Anadarko Petroleum Corporation Dry Willow Phase 4 POD Class III Cultural Resource Inventory, Campbell County, Wyoming prepared by Arcadis U.S., in July 2008. This survey was conducted for a BLM review and the survey area contained part of the proposed Nichols Ranch ISR project area.
- Letter from SHPO to NRC dated July 8, 2010, regarding site eligibility determinations and recommendation to consult with Native American Tribes regarding sites 48CA6148, 48CA6748, 48CA6751, and 48CA6753 – July 2010.
- Communication from SHPO forwarding corrections to July 8, 2010 letter – July 2010.
- Circulation of a Draft MOA for comment among the interested parties and tribes – July 22, 2010.
- Email communication between NRC and SHPO regarding submittal of Isolated Resource Forms – July 2010.
- Uranerz hosted two tribal site visits with both the Northern Cheyenne and Fort Peck Assiniboine Sioux tribes to help identify historic properties – July 2010.
- NRC letter to ACHP forwarding notification of adverse effect to the Pumpkin Buttes TCP and plans to develop a MOA – July 2010.
- Communication from ACHP to NRC declining to participate as a consulting party (at this time) regarding the development of a MOA to resolve adverse effects to the Pumpkin Buttes – August 2010.
- NRC letter to SHPO forwarding determination of effects associated with the proposed Nichols Ranch ISR Facility – August 2010.
- Communication from Uranerz to NRC forwarding TRC's summary documenting two tribal site visits – August 2010.
- NRC letter to SHPO forwarding determination of effects regarding sites to four TCPs (48CA6148, 48CA6748, 48CA6751, and 48CA6753) identified through Native American consultation – October 2010.
- SHPO concurrence that four identified TCPs (48CA6148, 48CA6748, 48CA6751, and 48CA6753) are *National Register of Historic Places* -eligible under Criterion A and would be adversely effected by the proposed action – November 2010.
- NRC attempted to schedule a webinar/teleconference with interested parties to negotiate Draft MOA – November 2010.
- Tribal representatives requested a face-to-face meeting with all parties to negotiate MOA instead of participating in a webinar/teleconference and requested NRC pay tribal representatives' expenses to attend the meeting – December 2010.

- NRC offered to meet with each of the eight interested tribes individually for a face-to-face meeting to discuss the proposed Nichols Ranch ISR project – January 2011.
- NRC issued Final SEIS – January 2011.
- NRC staff met with representatives of the Northern Cheyenne Tribe, Northern Arapaho, Eastern Shoshone Tribe and Cheyenne River Sioux Tribal Council, who accepted NRC's offer for a face-to-face meeting – February 2011.
- NRC issued Summary of Tribal consultation meetings – February 2011.
- NRC scheduled a webinar/teleconference with the applicant, tribal, state, and federal government agencies to negotiate the MOA– March 2011.
- First webinar conducted March 24, 2011. Representatives from the NRC, applicant, SHPO, Northern Arapaho, Eastern Shoshone, and Cheyenne River Sioux tribes participated.
- NRC contacted all consulting parties to arrange a follow-up webinar for April 5, 2011 – March 30, 2011. A confirmation email was forwarded to all parties along with copies of revised draft MOA – April 1, 2011. NRC staff followed up with all parties via phone and email to confirm attendance.
- Second webinar conducted April 5, 2011. Representatives from the NRC, BLM, the applicant, SHPO, Northern Arapaho, Eastern Shoshone, Cheyenne River Sioux, and the Oglala Sioux participated during the webinar. During this webinar parties agreed to invite the ACHP to participate in Section 106 consultation.
- WY SHPO letter to ACHP requesting participation in the consultation process to resolve adverse effects associated with the proposed Nichols Ranch ISR project – April 5, 2011.
- NRC forwards Uranerz proposal for one additional site visit (to discuss mitigation at the Hank Unit) and one qualified Tribal Monitor for construction to consulting parties – April 20, 2011.