

September 23, 2011

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: FILING OF EXECUTED MEMORANDUM OF AGREEMENT AND REQUIRED DOCUMENTATION FOR THE PROPOSED AREVA ENRICHMENT SERVICES LLC EAGLE ROCK ENRICHMENT FACILITY PROJECT IN BONNEVILLE COUNTY, IDAHO

Dear Mr. Nelson:

Pursuant to 36 CFR 800.6(b)(1)(iv), the U.S. Nuclear Regulatory Commission (NRC) is filing a copy of the executed Memorandum of Agreement (MOA) (Enclosure 1), including the required documentation specified on § 800.11(f), with the Advisory Council on Historic Preservation (the Council), for the proposed AREVA Enrichment Services LLC (AES) Eagle Rock Enrichment Facility (EREF) project in Bonneville County, Idaho. An archaeological site--the John Leopard Homestead (MW004)--was discovered during the cultural resource surveys for the development of the Environmental Report for AES's EREF license application. Site MW004 is eligible for inclusion in the National Register of Historic Places. The proposed EREF project would have an adverse effect on this site. The enclosed MOA addresses the historic site MW004 mitigation.

The enclosed MOA has been executed by the required signatories--the NRC, the Idaho State Historic Preservation Office (SHPO), and AES. The Shoshone-Bannock Tribes were invited to sign the MOA as a concurring party (see Enclosure 2), but have not yet signed the agreement. If and when the Tribes sign the MOA, an amended copy of the MOA will be filed with the Council.

According to § 800.11(f), "*When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.*" The documentation associated with the filing of the enclosed MOA is as follows:

- **Substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).**

Pursuant to § 800.6(a)(1), by letter dated August 31, 2010 (Enclosure 3), the NRC notified the Council of the adverse effect finding for site MW004 as a result of the proposed EREF project; provided the documentation specified in § 800.11(e); and invited the Council to participate in the *National Historic Preservation Act* (NHPA) Section 106 consultation for this project. In a letter to the NRC dated September 20, 2010 (Enclosure 4), the Council

responded, "Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed at this time."

There have been no revisions to the documentation the NRC provided to the Council with the August 31, 2010 letter. However, there have been the following substantive additions to this documentation, copies of which are enclosed with this letter:

- 1) U.S. Nuclear Regulatory Commission, *Environmental Impact Statement for the Proposed Eagle Rock Enrichment Facility in Bonneville County, Idaho*, Final Report, NUREG-1945 (2 Volumes), February 2011. (Final EIS) (compact disc, Enclosure 5) – This report provides updated information on the completion of the mitigation of the adverse effect to site MW004 (by professional excavation and data recovery), the MOA, and consultation with the SHPO, the Shoshone-Bannock Tribes, the Council, and AES (see Sections 4.2.2 and B.2).
- 2) AREVA Enrichment Services LLC, "*Report of Archaeological Data Recovery at Site 10BV246: The John Leopard Homestead, Bonneville County, Idaho*," prepared by Western Cultural Resource Management, Inc. (WCRM), June 27, 2011. (Enclosure 6) – This is the final site MW004 archaeological data recovery report, prepared in accordance with a provision in the November 17, 2010 WCRM letter report to Dr. Kenneth Reid, Idaho Deputy State Historic Preservation Officer, summarizing WCRM's data recovery activities for site MW004 (see Final EIS, Section B.2). In the MOA, the SHPO acknowledged that AES completed the mitigation and data recovery for site MW004, and both the November 17, 2010 letter report and June 27, 2011 final site MW004 archaeological data recovery report are referenced.
- 3) The two documents listed below document the X-ray fluorescence (XRF), geochemical, and hydration analyses of five obsidian artifacts collected at the EREF site in 2010. These reports are referenced in the MOA.
 - (a) AREVA Enrichment Services LLC, "*Geochemical Analysis of Obsidian Artifacts Collected at the Eagle Rock Enrichment Facility Site*," Letter Report, prepared by WCRM, July 6, 2011. (Enclosure 7)
 - (b) AREVA Enrichment Services LLC, "*Geochemical and Hydration Analysis of Obsidian Artifacts Collected at the Eagle Rock Enrichment Facility Site*," Letter Report, prepared by WCRM, July 26, 2011.(Enclosure 8)

- **Evaluation of any measures considered to avoid or minimize the undertaking's adverse effects.**

The adverse effect to historic site MW004 is caused by the destruction of that site by AES to construct portions of a security fence and electrical substation for the EREF project. Regarding the evaluation of any measures to avoid or minimize this adverse effect, AES provided the following information in their May 2, 2011 response to questions from the NRC's Atomic Safety and Licensing Board (ASLB) on environmental matters related to the proposed EREF project (Enclosure 9). The ASLB's specific question in this regard was: "*Did AES/NRC consider other mitigation measures to preserve the resource, such as shifting the security fence and substation, rather than simply cataloging the site and if not, why not?*" AES's response to this question was:

"AES did consider other mitigation measures to preserve the resources associated with cultural site MW004; however, it was determined that the west side location for the substation was the preferred engineered solution providing for shorter and more direct runs from the substation to the points of high usage, and as noted below, following discussions with the State Historic Preservation Officer ("SHPO") mitigation of MW004 was recommended.

"The layouts for the security fence and substation began in 2008, concurrent with the development and issuance of the [Environmental Report for the proposed EREF] in December 2008. Simultaneously, cultural resource surveys of the site property were conducted. Reports were subsequently submitted to the NRC and the SHPO that described the results of the AES cultural resource contractor's evaluation and proposed recommendations for the 13 cultural sites within the project area. In early-fall of 2009, site MW004 was determined to be the only site (of the 13) eligible for nomination to the Historical Register. By that time, the status of the design for the EREF, including the security fence, substation and transmission line routes, precluded facility design modifications to preserve site MW004. Based on discussions with the SHPO and their findings, mitigation of site MW004 through data recovery was recommended."

As noted in the NRC's August 31, 2010 letter, the SHPO concurred with the evaluations and recommendations in AES's Class III Cultural Resource Inventory reports and recommended mitigation of the adverse effects to site MW004 through data recovery. Subsequently, the SHPO concurred on AES's proposed treatment of site MW004. As discussed above, the SHPO acknowledged completion of the mitigation in the MOA.

- **Summary of the views of consulting parties and the public**

Views of Consulting Parties

The consulting parties for the Section 106 consultation process for the proposed EREF project were the NRC, the SHPO, the Shoshone Bannock Tribes, and AES. The views of the SHPO are as discussed above. In summary, the SHPO recommended, supported, and acknowledged the completion of the mitigation of site MW004 through data recovery.

The NRC contacted the Shoshone-Bannock Tribes on several occasions for consultation regarding the proposed EREF project and the adverse effect to site MW004 (see Final EIS, Section B.2). As discussed below, the Tribes provided comments on the NRC's July 2010 Draft Environmental Impact Statement (Draft EIS) for the proposed EREF project. (Note that a copy of the Draft EIS was provided by the NRC to the Council with a letter dated July 14, 2010). Although the Tribes accepted the NRC's invitation to be a concurring party on the MOA, they have provided no comments on the draft MOA or written notification that they have no comments; and, as discussed above, they have not yet signed the MOA as an invited concurring party.

Views of the Public

In accordance with § 800.2(d), the NRC implemented public involvement for its Section 106 process as part of its public involvement activities for its July 2010 Draft EIS for the proposed EREF under the *National Environmental Policy Act*. The Draft EIS included information regarding the proposed EREF project and its potential environmental impacts, including the potential effects on historic and cultural resources and, in particular, the adverse effect to site MW004 and AES's proposed mitigation of the adverse effect through professional excavation. Starting on July 23, 2010, the Draft EIS was made available for a 45-day public review period during which the NRC accepted written comments from members of the public. Also during this review period, the NRC held two public comment meetings, in Boise and Idaho Falls, Idaho, at which the NRC accepted oral and written comments from the public. The NRC's public review and comment process is discussed in detail in Appendix I of the Final EIS.

All of the public's oral and written comments were reproduced in Appendix I of the Final EIS, where the NRC's response to these comments was also provided. The public's comments and NRC responses on historic and cultural resources are included in Section I.5.9. In summary, the public's comments regarding the NHPA Section 106 process focused mainly on requests to incorporate design features in the proposed EREF project to avoid or minimize impacts to cultural resources (including site MW004) and to prepare and implement plans (including an MOA) to mitigate impacts that cannot be avoided or minimized. In addition, members of the Shoshone-Bannock Tribes commented that the mitigation of impacts to aboriginal and ceded areas needs to be addressed, requested that the Tribes' Heritage Tribal Officer be notified of any inadvertent cultural or archaeological discoveries, and also requested training of EREF site workers in cultural resources regulations and laws (all of which are addressed in the enclosed MOA).

R. Nelson

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This filing completes the requirements of Section 106 of the NHPA for the NRC's undertaking for the EREF project. Please contact Mr. Stephen Lemont of my staff at (301) 415-5163, or by email at Stephen.Lemont@nrc.gov if you have any questions or need additional information.

Sincerely,

/RA/

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

Docket No.: 70-7015

Enclosures: Enclosures 1 through 9, as stated

cc w/Enclosure 1 (MOA):

Susan Pengilly, Idaho State Historic Preservation Office
Jim Kay, AREVA Enrichment Services LLC
Carolyn Smith, The Shoshone-Bannock Tribes
Willie Preacher, The Shoshone-Bannock Tribes

R. Nelson

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