

Saxton, John

From: Saxton, John
Sent: Monday, November 03, 2014 1:48 PM
To: John Cash
Cc: Glenn, Chad; Bjornsen, Alan; Gersey, Linda
Subject: Km and LC East Amendment Request

John,

This email documents discussions regarding the recent submittal of the KM and Lost Creek East Amendment request.

The request, as written, cannot be processed at this time for the following reasons:

Lacks an Archeological Report:	Lost Creek stated that they cannot submit an archeological report to an agency that does not have an archeologist on staff. By this e-mail, I am notifying Lost Creek that NRC will engage the services of an archeologist by contracted services as needed. Because it is anticipated that NRC will be a concurring party on any document prepared to satisfy the NHPA and thus will need a qualified archeologist to review any reports.
A Figure Mark Confidential	One figure in Appendix D9-2 has been marked "Confidential". This marking is not consistent with NRC requirements nor has Lost Creek submitted the appropriate affidavit.
WDEQ Original Permit to Mine Incorporated by Reference	May sections of the request "incorporate by reference" the original WDEQ Permit to Mine. NRC cannot incorporate by reference WDEQ Permit to Mine without fully evaluating the entire original document.
Lacking an Environmental Report	An environmental report is required.

As we discussed, the first two items can be remedied fairly easily by submitting the archeological report, with the appropriate marking of confidentiality and affidavit, and a redacted version of the figure in question.

To address the latter (incorporation of sections of the WDEQ Permit to Mine), NRC staff's position is to have an amendment request that may have sections, which are largely unchanged by the amendment request, that may incorporate by reference the respective section from the Approved NRC License Application. For those sections that are changed, Lost Creek should provide a description of the change. This can be accomplished by several methods (e.g., red-line strike of revisions to the approved license application, or additional subsections that address the changes or incorporates text in the recently submitted document provided that the text does not incorporate by reference a document that has not been reviewed by staff). If the amendment request were to be approved, Lost Creek will be required to submit a revised application; however, as we discussed, it is anticipated that the text may be revised during the review process and that a final red-line strikeout version can be delayed until that time provided Lost Creek provides sufficient information to staff to

understand the amendment changes and commits to providing the red-line strikeout version as a conditions of staff's approval.

As far as tables, figures and plates, NRC staff anticipates that the tables, figures and plates included in the recent submittal will be unchanged. Therefore, Lost Creek can incorporate by reference those items. NRC staff suggests that Lost Creek includes a new appendix or addendum in the application that lists the tables, figures or plates incorporated by reference.

This format for the application is consistent with NUREG-1569 which states:

"For amendments, the focus of the review should be on the changes proposed in the amendment (see Appendix A for guidance for reviewing historical aspects of site performance). Reviewers should not review other previously accepted actions if they are not part of the amendment unless the review of the amendment package identifies problems with other aspects of facility operation."

As we discussed, NRC will be working closely with BLM on the review under NEPA. However, 10 CFR 40.3(f) requires the submittal of an environmental report. 10 CFR 51.61 states:

"If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities."

As we discussed, the environmental report should document the latest EIS's and EA's prepared for the Lost Creek Facilities by NRC and BLM, describe the existing conditions especial those conditions changed from the issuance of those document (e.g., operating the facility), and the environmental effects from the proposed amendment request. In talking with Alan, he suggest that NUREG-1748 outlines the appropriate format.

Finally, as we discussed, if you could submit the revisions within 2 months we can continue on a schedule that coincides with BLM's schedule. I would suggest that the cover page states that the revision is a supplemental amendment request; in that way we can use the appropriate sections, figures, plates or tables in the existing document.

John