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June 4, 1997  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:  
Peter B. Bloch, Presiding Officer  
Charles N. Kelber, Special Assistant

**SERVED JUN -4 1997**

In the matter of

ENERGY FUELS NUCLEAR, INC.

(White Mesa Uranium Mill;  
Alternate Feed Material)

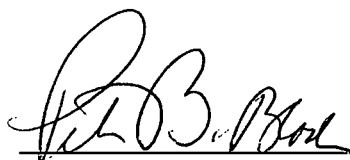
Docket No. 40-8681-MLA

Re: License Amendment

ASLBP No. 97-726-03-MLA

NOTICE

Yesterday I received the attached letter of May 30, 1997  
from the State of Utah. It is distributed for your information.  
It is not a part of the decisional record in this case.



Peter B. Bloch, Presiding Officer  
Administrative Judge

Rockville, Maryland

SECY-EHD-007

DS02

18345



# State of Utah

## DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF RADIATION CONTROL

Michael O. Leavitt  
Governor

Dianne R. Nielson, Ph.D.  
Executive Director

William J. Sinclair  
Director

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May 30, 1997

Peter B. Bloch, Presiding Officer  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Docket No. 40-8681-MLA , Energy Fuels Nuclear, White Mesa Uranium Mill;  
Alternate Feed Material

Dear Judge Bloch:

The purpose of the correspondence is to voice support for standing in the matter of the above referenced docket for (1) The Native American Peoples Historical Foundation (2) Westwater Navajo Community, and (3) Norman Begay. The Division has reviewed information provided by Energy Fuels Nuclear (now International Uranium Corporation) and the Department of Energy regarding the alternate feed request. Additionally, International Uranium Corporation and the Department of Energy made a presentation on May 9, 1997 to the Utah Radiation Control Board regarding this matter. The parties that have requested standing were also present and testified before the Board. A transcript of that discussion is enclosed for your information. Since the Board has no authority to take action on this matter, the parties were encouraged to petition the NRC for standing.

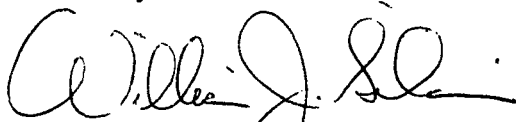
We request that you support the request for standing so a hearing can be held. The parties are frustrated by the very complicated NRC process for standing and hearing and simply want the opportunity and forum to express what they feel are valid concerns, some which uniquely apply to Native Americans. We feel that a hearing could provide the appropriate forum to address the issues associated with the request.



May 30, 1997  
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If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Sinclair". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William J. Sinclair, Director  
Division of Radiation Control

Enclosure

c: Dianne R. Nielson, Ph.D., Executive Director, UDEQ  
Joe Holonich, Chief, NRC Uranium Recovery Branch  
Harold Roberts, CEO, International Uranium Corporation  
Richard Bangart, NRC Office of State Programs  
Charles Hackney, NRC Region IV

**Excerpt from Utah Radiation Control Board minutes of May 9, 1997:**

**ITEM VI. URANIUM MILL TAILINGS UPDATE (Board Information Item)**

**a. Presentation and discussion on recent reprocessing approval for the White Mesa Mill by NRC**

Bill Sinclair stated that on April 2, 1997, the NRC approved a license amendment for the White Mesa Mill that would allow reprocessing of some material that had been stored for a period of time at the Nevada Test Site. The basis of the approval was the NRC "Final Position and Guidance on the Use of Uranium Mill Feed Material other than Natural Ores," which was approved by the NRC on September 22, 1995. This position paper was brought to the attention of the Board, both in draft form and as a final document. Bill Sinclair indicated he would turn some time over to Energy Fuels Nuclear and the Department of Energy to discuss this reprocessing request with the Board.

Harold Roberts of Energy Fuels Nuclear stated that the sale of the Energy Fuels Nuclear assets to International Uranium Corporation is taking place concurrently with this meeting. The NRC license has been transferred and the hurdles have been passed. The immediate plans for the new company are to begin mining ore from two mines on the Colorado Plateau and one mine in Northern Arizona. The mill should begin processing of these ores in the second or third quarter of 1998.

The White Mesa Mill has received authorization from the NRC to process material that came from the DOE known as the Cotter Concentrate. Energy Fuels became interested in the Cotter Concentrate through a proposal that the DOE was soliciting for treatment and disposal of this material. It was apparent to Energy Fuels that the Cotter Concentrate represented a significant quantity of uranium which could be obtained with little or no cost to the company and the processing of which could save the American taxpayers several million dollars for needless treatment and disposal costs.

Since the issuance of the NRC license amendment allowing Energy Fuels to process the materials, several issues have been raised by members of the public. In response, Energy Fuels has written a letter to the Governor of Utah, addressing a wide range of concerns. A copy of the letter was sent to DEQ and the main issues involved in the letter are available in the form of fact sheets. There are two primary issues. The first is the request that the NRC hold selected portions of their amendment application as confidential and second, whether the material can be safely processed at the White Mesa Mill.

Mr. Roberts continued by referring to the request by Energy Fuels that the details of the source of the feed material, the quantity of uranium in the concentrate be held confidential and the basis of this request was solely for commercial release reasons related to the company's desire that the specifics of their production, including quantities and costs, not be easily available to their competitors. This decision was prompted

because of an instance of adverse economic impact to the company due to specific information being published which detailed production figures and timing related to uranium obtained through an earlier, alternate feed contract. This information was obtained by a national trade journal through the license amendment procedure and was utilized by one of their customers during negotiations for acceleration and deliveries under an existing supply contract.

The NRC granted and maintained the confidentiality of the requested aspects of the amendment application. During the past few weeks, some items related to the confidential information have become the subject of public comment. Public comment does not change Energy Fuels' belief that its competitive advantage qualifies for protection and that the information claimed as confidential does, in fact, qualify for confidential treatment under applicable regulations. On April 27, 1997, Energy Fuels withdrew its request that the information be held confidential to allow a full and fair evaluation of the basis for approval of the license amendment,

Mr. Roberts stated that he sincerely regrets any misunderstanding the confidentiality request may have caused, but they will not stop their efforts to make the company and the White Mesa Mill as competitive as possible. This will help to ensure that the mill will continue to operate, providing well paying, stable jobs for up to 130 citizens of San Juan County, Utah. The company will commit to work toward preventing misunderstandings such as this from occurring in the future. Since Energy Fuels took over the mill from UMETCO Minerals in 1994, they have attempted to maintain an open dialogue with the Utah Radiation Control Board with respect to their ongoing operations. They will keep those channels open.

Mr. Roberts continued by talking about the second issue regarding the Cotter Concentrate which has to do with whether the material can be safely processed at the mill. The Cotter Concentrate averages approximately 10%  $U_3O_8$  while their normal ores run from 1/4 % to just over 1% uranium. The Cotter Concentrate is 10-15 times richer in terms of uranium content than the ores that are typically processed at the White Mesa Mill. Accordingly, an obvious question is whether the material can be safely processed.

Prior to submitting the request for the license amendment, Energy Fuels conducted an analysis of the issue and concluded the Cotter Concentrate does not present any unique or extraordinary safety issues. The NRC agreed that the material can be processed without posing additional risk or impacts to the environment, Energy Fuels employees or the public's health and safety. The safety of this processing was confirmed independently by a health physicist. He reviewed the potential health and environmental impacts that may be associated with the processing of the Cotter Concentrate. The physicist found that the data demonstrated conclusively that the material has no potential to increase any radiation risk to the general public or the environment. The company is taking all of the radiation safety precautions to protect their employees, the public and their environment.

In March of 1997, the NRC granted Energy Fuels a ten-year renewal to its operating

license. Ten-year license renewals are only granted to licensees who meet specific NRC criteria for safe performance. This licensing action by the NRC was posted in the Federal Register with a thirty-day comment period and no comments were received. Since mid-1994, the White Mesa Mill has had four full NRC inspections, resulting in only one minor violation for failing to notify the NRC of process changes made to further reduce emissions. Mr. Roberts stressed that they have nothing to hide with respect to the White Mesa Mill. They have not polluted the surface or ground waters. They do not physically infringe on the commercial, agricultural, industrial or cultural activities of their neighbors. What they have done is contributed over \$20 million to the economy of San Juan County over the past three years including jobs for over 95 local citizens, 25-40% of which have been minorities, mostly native Americans.

Carl Gertz from the Department of Energy in Nevada gave a presentation regarding the Cotter Concentrate. The Cotter Concentrate is a moist, solid residue from uranium ore processing that contains about 10% uranium. There are approximately 1220 55-gallon drums of Cotter Concentrate. DOE is now in the process of over packing the drums at the NTS into Department of Transportation compliant containers for shipping to EFN. EFN will do the uranium recovery and the byproduct of the recovery process will be disposed of in the mill tailings pond at EFN.

Mr. Gertz continued by providing a history of the Cotter concentrates. The material originally came from the Belgium Congo as an ore. It was processed by a company that extracted much of the uranium in St. Louis in 1942. In 1968, the material was purchased by the Cotter Corporation where they extracted more uranium plus copper, cobalt, and nickel. The Concentrate was sent to Mound which is a DOE facility in Miamisburg, Ohio where they attempted to extract still more materials in 1975. The materials stayed at Mound for a period of time and then the mission of Mound changed with the country's policies changing. The material was still considered to be valuable and was sent to the Nevada Test Site where it has been stored since 1987. In 1995, the Cold War ended and there was a decrease for raw materials for nuclear weapons production. As a result of this, the material was no longer considered strategic material and was considered waste by the DOE community.

Mr. Gertz continued by stating that since the Cotter Concentrate was stored at the Nevada Test Site and was considered waste, it fell under what is called the Federal Facilities Compliance Act. Therefore, they had to agree with the State of Nevada on what to do with the material. The estimate to complete an on-site treatment of the material was \$3.5 million dollars. In their attempt to stabilize the material, they decided that they weren't as smart as private industry and weren't able to come up with a cost-effective process, so they issued a request for proposals in the Commerce Business Daily. As a result of this, they had over 20 responses, one of which was from EFN. EFN's proposal was to recover the uranium content of the material through reprocessing at the White Mesa Mill. The DOE is now in the process of awarding a contract to EFN.

Mr. Gertz continued by stating that the DOE is shipping as an alternative to on-site

treatment and disposal. Another reason to ship is that commercial processes are available to extract the uranium and EFN has demonstrated that their process will work and, overall, there will be a \$2.5 million dollar cost savings to the taxpayer. The material will be shipped in 45 overpacked drums per truck, which amounts to about 28 truckloads. There will be about two truckloads per week and the overpack containers will be sent back and reused. The transportation will be shipped under the regulations of the Department of Transportation. Shipments will begin in mid-May and continue through mid-August.

Preston Truman asked why some of the overheads Mr. Gertz used in previous presentations were not the same as the overheads in the presentation made to the Board. Mr. Truman stated that some of the things that worried the public were left out of the presentation to the Board such as the failure to mention the fact that wherever this material has been in the past, it has ended up being a Superfund site with cleanup costs in the millions of dollars. Mr. Truman also stated that he could get no answer from the DOE when he asked specifically about isotopes. He stated that everywhere the material has been, there have been problems with contamination.

Mr. Gertz and Colleen O'Laughlin from the Nevada office of the DOE stated that their office was in the middle of a move and that is why Mr. Truman couldn't get the information he wanted regarding the isotope count. Mr. Truman allowed this fact, but added that it was interesting that the DOE was continuing to tell the press that everyone was OK with the material. Mr. Truman wanted to emphasize that he was casting no blame on Energy Fuels Nuclear in this situation. He added that there will be protests by not one, but several congressmen.

Mr. Truman asked what kind of problems would be raised if there were public meetings to go along with this process. Harold Roberts stated that there would not be a problem with public meetings; however, it is up to the NRC to decide what to send to public comment as far as licensing goes. Mr. Roberts stated that it is hard to decide where to have public meetings so as not to leave anyone out. Mr. Truman stated that the fact that there are members of the public upset about very specific portions of the deal with the DOE, should lead to public meetings. Mr. Roberts stated that this meeting is a good start and the lines of communication will be open with the public and with the Board. Mr. Gertz stated that the DOE will go anywhere at anytime to talk about anything that is not classified.

Bill Sinclair asked if Energy Fuels Nuclear has done any testing of the material to ensure that the recovery of uranium was feasible. Mr. Roberts stated that testing had been done on the Cotter Concentrate. When EFN finds an opportunity like this, they look at a sample of the material. They want to be able to recover uranium out of the material, that is the purpose of doing this. They got a broad range of samples from the DOE of this material and the recovery rate looks very good.

Alberta Mason spoke for Winston Mason as a member of the Native American Historical

Foundation (Avikan House). She stated that in 1989, they acquired 600 acres south of Blanding for the purpose of building a multi-million dollar facility of archives for Native American historical documents and artifacts. To the south of their land is a uranium processing plant that sits on six square miles of land that has been closed down. They are opposed to the Cotter Concentrate being taken from the Nevada Test Site to be re-processed and dumped into open tailings next to their property. It is their understanding that the contents of the Cotter Concentrate include radionuclides and hazardous constituents, some of which are heavy metals, organic wastes, and plutonium-244. It is also their understanding that it is illegal by Utah State law to allow hazardous materials, such as those mentioned, to come into the State of Utah as wastes. They are asking that the Board take a firm stand against such hazardous waste being brought into the White Mesa Mill.

Norman Begay is a citizen of the White Mesa Ute Reservation which is south of the White Mesa Mill. He stated that there will be an action taken because of the White Mesa Mill opening up again. He expresses regularly the fact that the members of the White Mesa Utes drink well water and his people are worried about the Cotter Concentrate coming to the mill. He stressed to the Board that the material is very dangerous. Mr. Begay is worried for his children, his neighbors and his people.

Lula Katso is a Navajo from Westwater which is west of Blanding, Utah. She is representing all of the Navajos there. She states that she loves the land at her home so much she doesn't want anyone to hurt it. They do not want the Cotter Concentrate to be brought to the White Mesa Mill. They believe hazardous materials such as these will bring bad spirits to their land and to their ancestral burial grounds.

Gary Edwards asked what kind of action the Board could take on this issue. Mr. Sunderland stated that the Division should be able to advise the Board at the next meeting, what kind of action they can take. Mr. Sinclair stated that when the approval was given by the NRC and parties were notified, they had an opportunity to file for standing in this action. Some of the parties that have come forward today have done so. They will have been granted standing by an NRC administrative law judge. Mr. Sinclair indicated that it was his understanding that NRC had already appointed an administrative law judge to consider standing requests in this matter.

Under the provisions of the NRC, if they make a determination that the parties have standing, they will have a hearing on this matter. This will allow the issues that have been brought forward by the individuals before the Board to get full consideration by the NRC. This may be in the form of an actual hearing held in the Blanding area or an exchange of briefs by the parties on this matter. The NRC in the past has been very sensitive to the Native American issues and Mr. Begay, who came before the Board today, was granted standing in a previous case. Mr. Sinclair's advice to the Board was to wait to see what the NRC does and keep the Board informed on the matter. The primary decision maker on this issue is the NRC. The state does not have delegated authority on uranium mills.



**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of

ENERGY FUELS NUCLEAR, INC.

(White Mesa Uranium Mill  
Request for License Amendment)

Docket No.(s) 40-8681-MLA

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing LB NOTICE DATED 6/4/97 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Adjudication  
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Washington, DC 20555

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Presiding Officer  
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Norman Begay  
White Mesa Ute Citizen  
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White Mesa, UT 84511

Docket No.(s)40-8681-MLA  
LB NOTICE DATED 6/4/97

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for Environmental Management  
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Nevada Operations Office  
P.O. Box 98518  
Las Vegas, NV 89193

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Blanding, UT 84511

Dated at Rockville, Md. this  
4 day of June 1997

  
Office of the Secretary of the Commission