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United States Nuclear Regulatory Commission
Attn: Mr. Thomas Lancaster, Project Manager
Division of Decommissioning, Uranium Recovery, &
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Dear Mr. Lancaster:

Western Nuclear, Inc. (WNI), holder of current Wyoming Agreement State License WYSUA-56, hereby submits these comments on the recently issued United States Department of Energy's (DOE) Office of Legacy Management Draft *Long-Term Surveillance Plan for the Split Rock, Wyoming, UMTRCA Title II Disposal Site, Jeffrey City, Wyoming* (Docket No. 40-1162) for the United States Nuclear Regulatory Commission's (NRC) Staff's consideration when proceeding forward with eventual site closure and license termination of the Title II former uranium milling site known as the Split Rock site in Jeffrey City, Wyoming. As a current Agreement State licensee, WNI is responsible for preparing its site for site closure and license termination by ensuring that it has a fully compliant Atomic Energy Act of 1954 (AEA) license with the appropriate regulatory authority (e.g., the State of Wyoming). After that license is deemed fully compliant with applicable Agreement State regulations, the State's regulatory entity or the Wyoming Department of Environmental Quality (WDEQ) is required by NRC Staff guidance at SA-900 entitled *Termination of Uranium Milling Licenses in Agreement States*¹ to prepare and submit a Completion Review Report (CRR) to NRC Staff detailing how the Agreement State has correctly followed its own AEA-compliant regulations as reviewed by NRC under its Integrated Materials Performance Evaluation Program (IMPEP) program and how the site's current status allows for it to be transferred pursuant to the AEA to the mandatory federal long-term custodian (i.e., DOE) for long-term surveillance and monitoring (LTSM). Closely following the submission of this CRR, DOE prepares and submits as a de-facto general license application an LTSP to NRC Staff for its consideration stating its intent to assume formal control of the subject site after license termination for the statutory mandated closure period of two hundred (200) years and, to the maximum extent practicable, one thousand (1,000) years.

¹ United States Nuclear Regulatory Commission, *Termination of Uranium Milling Licenses in Agreement States*, (May 17, 2010).

Per the requirements above and in accordance with Wyoming Agreement State regulations, WNI completed its final required license amendment action to revise its alternate concentration limit (ACL) associated with the constituent of concern (COC) selenium and received WDEQ approval for the requested amendment. In April of 2020, WDEQ submitted its CRR in compliance with SA-900 guidance and said document was formally docketed with NRC. To date and absent any future revisions associated with DOE's LTSP, WNI does not dispute WDEQ's CRR submission.

By letter dated April 29, 2020, DOE submitted its 2020 LTSP for the Split Rock site to further facilitate the site closure and license termination process. This draft LTSP represents the third attempt to apply for a general license for the Uranium Mill Tailings Radiation Control Act of 1978-mandated LTS&M closure period, which has been modeled and confirmed for 1,000 years. WNI has maintained contact with WDEQ on its CRR and DOE on the content of its draft LTSP over the past several years and asserts that NRC Staff should expeditiously proceed with the site closure and license termination process. With that said, WNI offers the following comments on DOE's draft LTSP. This list is not intended to be exhaustive should other issues arise, but it believes that it adequately represents the views of the licensee. WNI reserves its right to offer further comments as this process proceeds forward.

COMMENTS

1. As part of the current draft LTSP's proposed long-term groundwater and surface water monitoring program, DOE proposes to use a surface water sampling location known as "SW-1" as a background surface water monitoring location, which has historically been located outside the upgradient edge of the proposed long-term control boundary (LTCB). Sampling at the SW-1 monitoring location has been used historically by WNI as part of its monitoring program per its materials license. DOE has included SW-1's current sampling location as part of its long-term monitoring program based on its historic use and available background data. However, as initially raised in 2010 and in accord with a thorough evaluation of the historical data and monitoring objectives, WNI continues to advocate for the re-location of the SW-1 monitoring location from its current location *outside* the long-term control boundary (LTCB) to a new location near the upgradient edge of the proposed LTCB where access is logistically easier, legally more secure, and technically representative.

The present SW-1 surface water monitoring location utilized by DOE in its third draft LTSP is separated from the LTCB by almost three quarters of mile of river and lands that will not be controlled by DOE after license termination, which introduces the potential for unnecessary inaccuracies in establishing background conditions for the specific sampling events. In addition, WNI asserts that this current SW-1 location also poses unique and otherwise onerous legal requirements regarding location access that can be avoided with a simple relocation of the SW-1 location from its current location to a new location within the current LTCB. WNI will address each of these points individually below and believes that these discussions, taken together, show that WNI's proposed re-location of SW-1, as originally raised in 2010, is preferential to DOE's ultimate goal of UMTRCA compliance.

The SW-1 surface water monitoring location utilized by DOE is located approximately three quarters of mile upstream of the LTCB and is separated from the LTCB by private lands

known to have active agricultural and livestock grazing land use. The potential for these land uses, which DOE does not and will not control, to cause increased turbidity and dissolved constituent concentrations in the surface water introduces the potential for unnecessary inaccuracies when establishing background surface water quality conditions for individual sampling events. Due to the dynamic nature of the flowing surface water system of the Sweetwater River, background concentrations samples are collected at approximately the same date and time as the compliance monitoring samples against which potentially impacted surface water results are compared, rather than relying on historical background statistics, as used for much slower moving groundwater systems. To ensure that the observed differences between background sample data and potentially impacted water surface water data are due solely to the licensed site discharges, all reasonable efforts should be made to eliminate the potential for non-site-related changes to surface water quality. This potential exists if the background sampling location does not monitor the increased turbidity and constituent concentrations between the background sampling location and the compliance monitoring locations caused by 3rd party land uses. Relocation of the SW-1 monitoring location to the upgradient-most edge of the LTCB removes this potential while ensuring that the background surface water quality is representative of un-impacted surface water conditions.

DOE has raised a concern that moving the location of the SW-1 surface water monitoring location could compromise the usefulness and/or applicability of historic data due to a lack of spatial continuity (location) for of the surface water quality data. However, though historical background surface water measurements are useful to the extent that they identify the range of "normal" surface water conditions and may assist in identify potential anomalies and/or outliers, these historic data have little applicability to assessing date and/or time-specific compliance conditions and whether or not contributions to surface water quality are from site or non-site-related activities or materials². Therefore, moving DOE's present SW-1 surface water sampling location to a new location near the upgradient edge of the proposed long-term control boundary (LTCB) does not diminish the value of the historical data and reduces the unnecessary potential for non-site-related impacts to affect interpretation of compliance monitoring data.

Moreover, WNI's proposed re-location of the SW-1 surface water monitoring location is upgradient and outside the zones of groundwater discharge to the River as demonstrated by extensive site characterization and groundwater modeling (WNI, 1999) and, thus, does not represent a material change in the draft LTSP's approach. Previous evaluations of potential flow pathways of materials from the licensed operation have evaluated the water quality from surface water sample over the closure period and the movement of the DOE current SW-1 location to the location proposed by WNI within the site boundary falls within the parameters evaluated by NRC and WDEQ in past license amendment applications and associated modeling approaches.

² By way of example, the background conditions for the river on June 20, 2020 are the relevant data for evaluating potentially affected surface water quality on June 20, 2020 and not the statistical range of historical data. Thus, hypothetically, the upper 95% confidence interval of uranium data in background from 1989 to 2006 (hypothetically, say it is a value of 0.1 mg/L) would be immaterial to assessing if a June 20, 2020 uranium value at a downstream location (SW-3b) of 0.11 mg/L is compliant or protective if the SW-1 uranium value for June 20, 2020 was 0.12 mg/L or if it was 0.05 mg/L.

Therefore, WNI asserts that DOE acceptance of its proposed re-location of the SW-1 sampling location to the location proposed by WNI only requires a minor revision to the draft LTSP.

The lack of a nexus between adequate protection of public health and safety and the current SW-1 surface water sampling location is further augmented by the land ownership status of the area where this location is situated. As of the date of these comments, the current SW-1 sampling location is situated on an area of Section 3 to which WNI does not own title or control access. Beginning in 2010, WNI's consultant Louis Miller communicated to DOE that, "[a]s we discussed, the up-gradient sampling point needs to be moved to the east -- to the boundary between sections 34 and 35 -- so that you have access. The current up-gradient location in section 3 is not under our control." Less than one year later in May of 2011, this issue appeared to have been resolved in DOE's draft LTSP, as it eliminated SW-1 as a necessary sampling location for long-term monitoring by stating:

"[o]f the 5 surface water locations on the Sweetwater River WNI monitored prior to site transition, one (SW-3) will continue to be sampled under the long-term monitoring. Locations SW-1, SW-2, SW-4, and SW-5 will be excluded..."

However, now DOE's draft LTSP has reinstated SW-1 as a sampling location for surface water. During a conference call between WNI and DOE, it was requested that the licensee provide its reasons for modifying the LTSP to either relocate the present SW-1 sampling location or to eliminate the location in its entirety. As discussed during a conference call with DOE officials and its contractors after submission of the draft LTSP, WNI was directed to submit specific reasons for re-locating the current SW-1 sampling location. The following summary articulates these reasons: (1) WNI does not own nor control the land in Section 3 at SW-1's historic location; and (2) in order to travel to that location, the individuals doing the water sampling must undertake a journey of over a mile on an ATV. The overland route to the location currently has no roads, and there are intermittent two-tracker lanes.

With reference to the attached map, the ATV would depart the Ore Haul Road from a point near the center of Section 10. The land colored in yellow on the map in Sections 10 and 3 needs to be circumvented as it is Fremont County land used for removing sand and gravel. The next huge obstacle is the Immigrant Irrigation Canal depicted by a blue line just to the south of the Sweetwater River. When there is water in the canal in the spring and summer, it cannot be crossed with any type of motorized vehicle. The current SW-1 location would have to be reached either by wading the canal and walking to the site or finding a bridge some distance to the east to go across. On the north side of the canal are hay meadows to the river's edge, and there are irrigation ditches as offshoots from the main canal. Of course, the site cannot be reached in the winter.

As can be seen on the attached site map, WNI owns the land which is colored in pink and extends to within about a quarter of a mile of the SW-1 location, but such land ownership does not alleviate the problems discussed above. DOE has recently provided WNI with an access agreement template which has been used at a different site. As can be observed in the attached template, the situations of topography and land ownership are entirely different. The template utilizes a map depicting monitoring sites as the "access area." WNI's property does not contain

the SW-1 monitoring location. An access agreement could only grant access to the edge of someone else's property where the site is located. DOE would then need to get an access agreement from the adjacent property owner granting access from the WNI property. DOE's access agreements are only for a period of five years and then must be renewed and, thus, legally durable and enforceable agreements would have to be renegotiated, redrafted, and renewed with different owners during the years of DOE future site management multiple times. After site transfer, WNI will, at some point in time, sell the ranch property not transferred to the United States, and the WNI owned land in Section 10 may not remain in single ownership but become even more fragmented than now.

One of the most important aspects of long-term monitoring is adequate and unfettered access to property where samples are to be obtained at any time during a calendar year the monitoring entity deems appropriate. Given natural site conditions, as well as somewhat convoluted property ownership questions that can only be answered by legally enforceable property instruments requiring renewal every five (5) years over a 1,000 year closure period depending on need, the simplest approach would be to move the sampling location to a site where WNI can provide DOE with ready and available access now or eliminate the location altogether as articulated in the 2011 draft LTSP. Given these issues and the aforementioned lack of nexus between adequate protection of public health and safety and the relocation of the SW-1 location and in order for the hydrological integrity of SW-1 to be maintained, WNI proposes that DOE re-locate the present SW-1 location about 3/4 of a mile downstream to the point proposed on the attached map for purposes of LTS&M. WNI respectfully suggests that DOE's draft LTSP should be modified to reflect a workable monitoring site as has been herein proposed.

2. These comments are directed at specific portions of the draft LTSP and merely represent suggested revisions to the document to solidify its regulatory recitations and analyses:

Cover Letter: While it appears to be understood, WNI think it is important for transparency purposes to communicate to interested stakeholders that the draft LTSP and 10 CFR € 40.28 general license requirements are done pursuant to the statutory mandate set forth by the United States Congress in 1978 when it amended the AEA to add UMTRCA.

Cover Letter: It may also be to DOE's benefit to include a brief discussion either in the cover letter or in the draft LTSP text itself on the interactions between DOE and WDEQ, as well as those with NRC, as there are provisions in the AEA for satisfying the UMTRCA statutory mandate with an AEA Section 274 Agreement State.

Cover Letter: DOE may also wish to note that the 10 CFR Part 40.28 general license for long-term custodians are specific to either DOE or the site's resident State, if the State chooses to accept that responsibility.

Pages 5-6: DOE may wish to confirm that all aspects of its site description, including travel coordinates, in its final LTSP text is consistent with the maps attached thereto for purposes of maintaining transparency for interested stakeholders. It appears there may be a directional inconsistency with the road to the site from Rawlins.

Page 16, Paragraph 3: The final cover for the site's tailings impoundment, as well as the associated radon testing, was installed in stages so that WNI could ensure that the rock cover was put on the cover in a manner providing timely stability of the radon cover. DOE also should note that WNI's rock cover for the tailings impoundment was installed pursuant to applicable NRC guidance, as NRC was the primary regulatory entity at the time of emplacement.

Page 28: Section 2.6's language regarding transfer of properties or property interests (subsurface) to DOE upon license termination should be consistent throughout the draft LTSP. *Compare* Page 29, Section 3.1 & Page 41, Section 3.8, Paragraph 2.

Page 28, Section 2.6: NRC's determination on institutional controls showed them to be "both durable and *legally* enforceable." Please insert the word "legally" in that sentence.

Page 29: The introductory paragraph may serve as an appropriate location for a brief statutory summary of UMTRCA's applicability to Title II sites. It likely can be summarized in two to three sentences.

Page 29: DOE should make clear that the licensee is also required to satisfy the 10 CFR Part 40, Appendix A, Criterion 10 financial contribution requirement to ensure that DOE is in full compliance with NRC general license requirements for Title II sites.

Page 33, Section 3.6.1: As is the case in the comment for the tailings cover above, the impoundment slope construction and rock cover were installed pursuant to NRC guidance.

Page 40: This is the specific Section where DOE may seek to revise the draft LTSP's language regarding the SW-1 surface water sampling location proposal discussed above. If DOE were to agree with WNI's proposal, then DOE should re-visit all Sections of the draft LTSP associated with this sampling location. *See e.g.*, Page E-57, Third Full Paragraph.

After its review of these comments and further consultation with WDEQ and DOE, as well as the United States Army Corps of Engineers (USACE) on the final property transfer package, WNI requests that NRC Staff strongly consider sponsoring a Category 1 public meeting to discuss schedules for approval of the CRR and draft LTSP and for final license termination, including but not limited to, any efforts required from the licensee in the interim period. WNI continues to actively maintain communication with all regulatory entities in this process and will, to the best of its ability, satisfy UMTRCA's requirements for license termination. Please do not hesitate to contact myself or my counsel at Thompson & Pugsley, PLLC at your earliest possible

convenience to schedule the aforementioned public meeting. Thank you for your time and consideration in this matter and I look forward to hearing from you soon.

Respectfully Submitted,



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Partner/Member
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FOR

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