

May 12, 2004

MEMORANDUM TO: Scott Flanders, Deputy Director  
Environmental and Performance Assessment Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Nuclear Material Safety  
and Safeguards

FROM: Matthew Blevins, Project Manager **/RA/**  
Environmental and Low-Level Waste Section  
Environmental and Performance Assessment Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Nuclear Material Safety  
and Safeguards

SUBJECT: SUMMARY OF APRIL 7, 2004, SECTION 106 CONSULTATION  
MEETING WITH STATE OF NEW MEXICO FOR LOUISIANA ENERGY  
SERVICES PROPOSED NATIONAL ENRICHMENT FACILITY

On April 7, 2004, U.S. Nuclear Regulatory Commission (NRC) staff, its contractor, the State of New Mexico (NM) Deputy State Historic Preservation Officer (SHPO) and staff, and the NM State Land Office archeologist met to discuss Louisiana Energy Services Cultural Resources Inventory, dated January 26, 2004, and the Section 106 consultation process under the National Historic Preservation Act.

Summary of Issues Discussed:

1. The Deputy SHPO and the State Land Office archeologist had previously received and read the cultural resources inventory dated January 26, 2004, submitted by LES. Their consensus was the report was generally adequate in scope and well researched. In terms of the National Register of Historic Places (National Register) evaluations by the LES subcontractor, both State officials agreed with the assessment of the four archaeological sites designated as potentially eligible for the National Register. However, both offices felt that data contained in the report were not sufficient to evaluate the remaining three sites and reach a "not eligible" conclusion. Rather, both State officials felt that the eligibility was undetermined.
2. Based on the properties inventoried, a Memorandum of Agreement (MOA) between NRC and the SHPO will be necessary to conclude the National Historic Preservation Act Section 106 consultation process. The SHPO indicated that the MOA needs to be signed by the time Final Environmental Impact Statement Record of Decision (i.e., the license) is issued. Signatories would be NRC, NM SHPO, and the applicant. Potentially affected Indian tribes could be concurring parties.

3. A treatment (mitigation) plan for the adverse effects to National Register-eligible archaeological sites would be required as part of the MOA, and can either be prepared and appended or, alternatively, stipulated in the MOA. In any event, construction would not be allowed to commence until the field part of the treatment plan is executed.
4. Under provisions of a NM statute, "Cultural Properties Protection Act" (18-6A-1 to 1-6A-6), the transfer of State land to a private entity requires that the State Land Office insure that no inadvertent damage occurs (i.e., the State cannot transfer National Register-listed or -eligible sites to private ownership without mitigation).
5. For efficiency, the State officials suggested that all seven sites could be treated as eligible for the National Register, assume adverse effects, and proceed directly to developing a MOA. The Deputy SHPO also suggested that geomorphology testing could be conducted and encouraged NRC staff to have LES's cultural resource contractor work with the SHPO. The Deputy SHPO indicated that one option would be to conduct data recovery at all seven sites and LES would then have the flexibility to redesign without further concerns over cultural resources. Another option, offered by the Deputy SHPO, would be to collect data only at those sites affected and nominate the remaining sites not immediately affected by the LES proposal. The Deputy SHPO further stated that it might not be necessary to mitigate adverse effects at all seven sites, only a subset that would meet the State's expectations, as all seven sites appear to be similar in nature and mitigation of effects at all seven would be redundant.

Action Items:

- NRC: 1) Provide agency evaluations for National Register eligibility on NM archaeological site forms; 2) send cultural resource inventory report to potentially affected Indian tribes for their review; 3) discuss the above issues with LES, especially National Register evaluations and options for treatment plan.
- State of NM: 1) Provide NRC a copy of relevant state statutes; 2) Send NRC letter summarizing the above issues; 3) Send NRC an example of a previous MOA.

Attendees:

Melanie Wong, NRC  
Matt Blevins, NRC  
Paul Nickens, ATL  
Jan Biella, Deputy SHPO, NM Historic Preservation Division  
Michelle Ensey, Staff Archaeologist, NM Historic Preservation Division  
David Eck, Archaeologist, NM State Land Office

Docket No. 70-3103  
TAC No.: L31985

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**\*see previous concurrence**

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