

APPENDIX A
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ENVIRONMENTAL IMPACT STATEMENT SCOPING PROCESS

SCOPING SUMMARY REPORT

Proposed Louisiana Energy Services National Enrichment Facility Lea County, New Mexico

April 2004



U.S. Nuclear Regulatory Commission
Rockville, Maryland

1. INTRODUCTION

By letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico.

The LES facility, if licensed, would enrich uranium for use in commercial nuclear fuel for power reactors. Feed material would be natural (not enriched) uranium in the form of uranium hexafluoride (UF_6). LES proposes to use centrifuge technology to enrich the isotope uranium-235 in the UF_6 , up to 5 percent. The centrifuge would operate at below atmospheric pressure. The capacity of the plant would be up to 3 million separative work units (SWU).¹

In accordance with NRC regulations at 10 CFR Part 51 and the National Environmental Policy Act (NEPA), the NRC staff is preparing an Environmental Impact Statement (EIS) on the proposed facility as part of its decision-making process. The EIS will examine the potential environmental impacts associated with the proposed LES facility in parallel with the review of the license application. In addition to the EIS, the NRC staff will prepare a Safety Evaluation Report (SER) on health and safety issues raised by the proposed action. The SER will document the NRC staff evaluation of the safety of the activities proposed by LES in its license application and the compliance with applicable NRC regulations.

As part of the NEPA process, the scoping process was initiated on February 4, 2004, with the publication in the *Federal Register* of a Notice of Intent to prepare an EIS and to conduct the scoping process (69 *Federal Register* 5374-5375). Scoping is an early and open process designed to help determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify significant issues related to the proposed action. Input from the public and other agencies is solicited so the analysis can be more clearly focused on issues of genuine concern.

On March 4, 2004, the NRC staff held a public scoping meeting in Eunice, New Mexico, to solicit both oral and written comments from interested parties. The public scoping meeting began with NRC staff providing a description of the NRC's role, responsibilities, and mission. A brief overview of the safety review process (i.e., preparation of the SER) was followed by a description of the environmental review process and a discussion on how the public can effectively participate in the process. The bulk of the meeting was allotted for attendees to make comments on the scope of the review.

This report has been prepared to summarize the determinations and conclusions reached in the scoping process. After publication of a draft EIS, the public will be invited to comment on that document. Availability of the draft EIS, the dates of the public comment period, and information about the public meeting will be announced in the *Federal Register*, on NRC's LES website (<http://www.nrc.gov/materials/fuel-cycle-fac/lesfacility.html>) and in the local news media when the draft EIS is distributed. After evaluating comments on the draft EIS, the NRC staff will issue a final EIS that will serve as the basis for the NRC's consideration of environmental impacts in its decision on the proposed facility.

¹SWU relates to a measure of the work used to enrich uranium.

Section 2 of this report summarizes the comments and concerns expressed by government officials, agencies, and the public. Section 3 identifies the issues the draft EIS will address and Section 4 identifies those issues that are not within the scope of the draft EIS. Where appropriate, Section 4 identifies other places in the decisionmaking process where issues that are outside the scope of the draft EIS may be considered.

2. ISSUES RAISED DURING THE SCOPING PROCESS

2.1 OVERVIEW

Approximately, 250 individuals attended the March 4, 2004, public scoping meeting concerning the LES National Enrichment Facility (NEF). During the meeting, 43 individuals offered comments. Of these 43 commenters, 33 individuals fully supported construction of the LES NEF. Two commenters provided petitions to the NRC staff at the meeting with over 2,080 signatures in support of the NEF licensing and construction. This petition stated that “the signers of this petition believe this facility will be safely operated, contribute to energy independence and security for the United States and provide substantial economic benefits to our communities.” In addition, 127 written comments were received from various individuals during the public scoping period, which ended on March 18, 2004. Of these 127 written comments, the NRC staff received approximately 60 letters expressing support for the proposed project.

This active participation by the public in the scoping process is an important component in determining the major issues that the NRC should assess in the draft EIS. Individuals providing oral and written comments addressed several subject areas related to the proposed LES facility and the draft EIS development. In addition to private citizens, the various commenters included:

- A Member of Congress.
- New Mexico State Representatives.
- Local officials from the cities of Eunice, Hobbs, Jal, Lovington and Andrews.
- Representatives of Federal agencies or organizations.
- Representatives of State of New Mexico agencies or departments.
- Representatives of other organizations including:
 - Citizens for Alternatives to Radioactive Dumping
 - Citizens Nuclear Information Center
 - Concerned Citizens for Nuclear Safety
 - Creative Commotion
 - *Eunice News*
 - Forest Guardians
 - Institute for Energy and Environmental Research
 - Hispanic Workers Council
 - National Association for the Advancement of Colored People
 - New Mexico Audubon Council
 - New Mexico Junior College
 - Nuclear Information and Resource Service
 - Nuclear Workers for Justice
 - Public Citizen
 - Southwest Research and Information Center
 - United Way of Lea County.

The following general topics categorize the comments received during the public scoping period:

- NEPA and public participation.

- Land use and site selection.
- Need.
- Alternatives.
- Ecology, geology, emissions, soil, and water resources.
- Socioeconomics.
- Environmental justice.
- Transportation.
- Waste management.
- Cumulative impacts.
- Decommissioning.
- Safety and risk.
- Nonproliferation and security.
- Terrorism.
- Credibility.

In addition to raising important issues about the potential environmental impacts of the proposed facility, some commenters offered opinions and concerns that typically would not be included in the subject matter of an EIS—these include general opinions about LES or issues that are more appropriately considered in the SER. Comments of this type are taken into consideration by the NRC staff, but they do not point to significant environmental issues to be analyzed. Other statements may be relevant to the proposed action, but they have no direct bearing on the evaluation of alternatives or on the decision-making process involving the proposed action. For instance, general statements of support for or opposition to the proposed project fall into this category. Again, comments of this type have been noted but are not used in defining the scope and content of the EIS.

Section 2.2 summarizes the comments received during the public scoping period. Most of the issues raised have a direct bearing on the NRC's analysis of potential environmental impacts.

2.2 SUMMARY OF ISSUES RAISED

As noted above, a large number of commenters expressed support for the facility. On the other hand, several individuals raised concerns regarding the construction and operation of the NEF. The following summary groups the comments received during the scoping period by technical area and issues.

2.2.1 NEPA and public participation

A commenter stated that given the level of interest in this EIS in New Mexico, a single scoping meeting in a remote location seemed inadequate. Another commenter stated that the public scoping meeting in Eunice, New Mexico, presented “no substance from LES or their supporters” but was a “really great pep rally.” Another commenter stated that the local community is capable of making its own decisions and does not want non-local intervener groups interfering with decision-making. Another commenter noted that “98% of the residents of Lea County are in favor of the enrichment facility.” Another commenter noted that “there are very few Nay

Sayers of the project” and most of the individuals, that the commenter has personal contact with, have “positive views” of the NEF.

Another commenter requested that the NRC include land use, transportation, geology and soils, water resources, ecology, air quality, noise, historical and cultural resources, visual and scenic resources, socioeconomics, environmental justice, public and occupational health, and waste management as topics for the EIS, and that particular attention be paid to environmental justice and waste management in the EIS and licensing process.

2.2.2 Land use and site selection

A commenter recommended that the NRC staff consult with the administrator of the Land and Water Conservation Fund (L&WCF) program in the State of New Mexico to determine any potential conflicts with existing L&WCF projects.

Several commenters suggested that the EIS should explain why LES is no longer pursuing alternative locations in Louisiana and Tennessee and the circumstances under which LES was required to withdraw their proposals in these States. Another commenter questioned why the NRC would allow LES to prey upon impoverished areas to site the NEF and noted that Eunice is the third such area that LES has approached. Another commenter noted that the United States Enrichment Corporation (USEC) was previously interested in Lea County for uranium enrichment using the Atomic Vapor Laser Isotope Separation (AVLIS) process in 1998 to 1999, but the project was canceled when AVLIS was proven to be unfeasible. The commenter felt that siting the project in Lea County would be more feasible and welcomed by the community.

2.2.3 Need

Several commenters raised concerns over the need for the facility. One commenter asked the NRC to explain (with accompanying facts and figures) where the need is for enriched uranium. Another commenter stated that the EIS must fully analyze the need for the proposed facility “in the light of the existing uranium enrichment capacity, which is meeting the domestic U.S. nuclear power plant requirements.” A commenter stated that the United States needs the LES NEF to help ensure national energy security by having a strong nuclear energy program nationwide.

2.2.4 Alternatives

Several commenters stated that the EIS should address all environmental impacts of a range of reasonable alternatives, including the no-action alternative. A commenter stated that Lea County should consider alternative (i.e., safer) economic development projects other than the proposed action. Commenters stated that the no-action alternative in the EIS should consider the nonproliferation merits of using downblended low enriched uranium fuel from U.S. and Russian surplus highly enriched uranium. In addition, the EIS should add an alternative that increases the quantity and pace of downblending the surplus highly enriched uranium into reactor fuel. For the proposed action, the NRC should compare the generation of additional

depleted uranium tails from the proposed action to the no-action alternative. A commenter stated that, in addition to the no-action and proposed action alternatives, another alternative of “storage of up to 15,727 uranium byproduct cylinders (UBCs) beyond the operational lifetime of the facility must be fully analyzed.” The commenter emphasized that this alternative is reasonable because “LES has made no other arrangements for the materials and wastes contained in those UBCs,” and no existing disposal option for the wastes exists. Another commenter suggested that windmills or other alternative power generators be considered as alternatives in the draft EIS.

2.2.5 Ecology, geology, emissions, soil and water resources

Ecology: Several commenters expressed concerns that the construction and operation of the facility may have an undue impact on birds, other wildlife, and habitat in New Mexico. A commenter stated the EIS should consider the impacts to imperiled species such as the lesser prairie chicken, sand dune lizard, black-tailed prairie dogs, black-footed ferret, mountain plover, swift fox, ferruginous hawk, burrowing owl, and northern aplomado falcon. Another commenter expressed concern over the “unintentional habitat” that would be created by effluents and process cooling water that could attract and potentially harm local wildlife. Another commenter was concerned that local dove and quail could become contaminated due to the facility. Another commenter expressed concern about the adequacy of the LES Environmental Report as it pertains to local wildlife resources like sand dune lizards and the lesser prairie chicken. Another commenter was concerned with the potential for bioaccumulation in the foodchain resulting from the proposed facility.

Geology, emissions, and soil: Several commenters expressed concern over the long-term effects of any emissions (particularly gaseous) or contaminated soil (i.e., radioactive dust) being transported offsite. A number of commenters felt that the construction and operation of the proposed facility would be hazardous to the local community due to soil contamination similar to the contamination from the Paducah and Portsmouth facilities operations. A commenter stated that the EIS must fully examine the effects of the continuous releases of small amounts of uranium and other materials in the air, including the possible large releases of these materials in the case of a significant accident. Another commenter suggested those impacts from the treated effluent basin such as fugitive dust and monitoring must be included in the EIS. Another commenter suggested that the NRC must review the geology of the site. Another commenter questioned the location of the facility in one of the largest karstland.

Several commenters requested that the NRC consider the potential impact of air emissions on the health and safety of New Mexico and Texas residents. Several commenters requested that the NRC include a thorough examination of the potential impact to human health and the environment from radioactive dust storms. A commenter stated that the EIS should evaluate the effects from air releases traveling beyond 50 miles due to the persistent winds in the region. The commenter further suggested that any environmental studies should include the high prevailing southerly winds that could quickly spread emissions.

Water resources: Several commenters expressed concern over the long-term effects of any liquids being transported offsite. A commenter noted that the facility would not have a serious impact on existing water supplies or users and submitted a letter that summarized the county’s

water-use audit demonstrating this conclusion. On the other hand, several commenters expressed concerns about the water volumes that are expected to be used by the proposed facility (e.g., volumes, consumptive uses, and associated water rights) and future usage with anticipated growth in the population. A commenter stated that the EIS must analyze the total water use, not just the consumption, as the total amount of water used would not be available for other domestic uses of the Hobbs and Eunice communities. According to this commenter, this analysis must include impacts of peak water use, as well as the amounts of water use based on the LES NEF design. Another commenter stated that the EIS should address all impacts on water levels in the Ogallala Aquifer, as well as for the cities of Hobbs and Eunice arising from the facility's proposed use of cooling water from municipal water supplies that draw upon the Ogallala Aquifer.

A number of commenters felt that the construction and operation of the proposed facility would be hazardous to the local community due to groundwater contamination. Commenters expressed concern about the impact of the proposed facility on the groundwater, specifically the Ogallala Aquifer over which the facility would be built. A commenter suggested that the NRC must review the hydrology of the site, as well as the relation of area aquifers to larger, regional aquifers such as the Ogallala Aquifer.

Several commenters expressed doubt that the values given on water usage from the county/local governments, water-resource boards, and LES are correct, and that the declining water level in the Ogallala Aquifer was a concern. Another commenter stated that LES has admitted to lying about the proposed facility's air and water emissions, and LES' questionable credibility puts the Ogallala Aquifer water supply in jeopardy.

A commenter stated that the EIS must consider the possibility that the containers in which LES plans to store depleted UF₆ may leak and allow contaminants to seep into groundwater. The commenter further noted that the NRC must thoroughly evaluate the LES proposed wastewater containment system and its ability to prevent the permeation of contaminated groundwater in the future. Another commenter stated the EIS must analyze all possible water discharge points and their capacity. Another commenter expressed concerns of contamination by the onsite "open contamination water pit." The commenter questioned the construction of the pit and the type of liner. Ingestion from these holding ponds should be evaluated, should pond overflow occur. Uncertainty was expressed as to the resources available to clean up any contamination.

2.2.6 Socioeconomics

Economic benefit: A number of commenters stated that the proposed facility would have a positive and beneficial economic impact on the community by bringing economic diversity and stability to the local area. A commenter stated that the project "will have a positive impact, not only on our economy in Lea County, but for the whole United States." Another commenter felt that it was necessary to bring in a variety of industries to keep jobs local for future generations and that the NEF would help stem the county's long-standing "brain-drain." Another commenter felt "this project and the many benefits that it will bring to the people of Lea County is very exciting." Commenters noted that "by supporting the construction of this facility, they were in reality, supporting the creation of 210 permanent jobs...[and] 400-800 short-term construction

jobs that will provide an estimated payroll of \$170 million.” Another commenter noted that the additions of these employees and families “would give needed stability and growth to the area.”

One U.S. Senator from New Mexico stated support for the proposed project because it would provide economic opportunity for southeastern New Mexico. Local officials from Hobbs submitted a resolution supporting efforts to locate the NEF in southeastern New Mexico, citing economic benefits that include stability, growth, job creation, and industry diversification. Other local politicians stated that they expected the LES to be a good corporate neighbor that would add to the quality of life in the area (e.g., LES donated money for the development of a safe playground).

Other commenters expressed reservations concerning the economic benefits of the proposed facility. A commenter stated concerns about the promise of jobs being used as motivation for public support of the NEF. Another commenter stated that many residents would move from Lea County before the NEF opens. Another commenter stated that the strengthened local economy as a result of the presence of the LES NEF is not enough reason to outweigh the possible cost in lives due to potential environmental contamination.

Another commenter requested the EIS to include an extensive and thorough examination of the number and quality of local jobs and to present a detailed job breakdown by number of local workers versus “imported” workers and by “worker upward mobility.” Other commenters requested that the EIS specify work titles and descriptions of duties, qualifications required, salary per job title, and quantity of workers. Another commenter also suggested the need for the economic multiplier that the LES NEF would add to the local economy. Also, the same commenter requested that the EIS investigate and document the number and nature of the potential jobs that LES can realistically offer the citizens of Lea County to establish any true economic benefits. Another commenter stated that businesses would have difficulty recruiting new employees. Another commenter questioned whether the revenue and product generated by the proposed facility would be staying within the United States or would it be sent overseas.

Tax and bonds: A commenter questioned why Lea County should provide tax breaks, municipal bonds, and other public funds for this project given both the questionable world market demand for enriched uranium and the financial health of at least one of its major partners, British Nuclear Fuels, Ltd. A commenter inquired as to what would be the impact of the \$1.8 billion bond agreement on Lea County if the project shuts down early or never opens. In addition, another commenter suggested that “the facility is not economical in that it can only operate if it has the \$1.8 billion Industrial Revenue Bonds,” and this fact must be included in the EIS. A commenter proposed a “socioeconomic alternative” (i.e., an across-the-board tax cut for the businesses and people of Lea County) that would give the people and businesses of Lea County a \$435 million tax break (instead of giving LES a \$180 million tax break) and would provide Lea County with “significantly more long-term jobs and free enterprise economic development.”

Property value: A commenter stated concern that, as a landowner of several properties, values for property could be adversely affected by a problem at the proposed LES NEF or by unintentional contamination of land or water resources. Another commenter suggested that the EIS should discuss the effects of effluents and potential accidents on the local property values.

Foreign-Trade Zone: A commenter questioned whether LES would be utilizing the Foreign-Trade Zone and possibly applying for a sub-zone. If so, the commenter asked if this information should be included in the EIS.

Public Service: A commenter expressed doubt that the local communities could handle the increased public service demands from an increased population.

2.2.7 Environmental justice

Several commenters suggested a detailed environmental justice review including an analysis of the effects on minority and low-income populations. Any disproportionate effect of minority or low-income populations should be subject to further investigation. A commenter stated that the EIS should examine all environmental justice issues, including the racial and economic makeup, expected composition of the workforce, and whether any claim to the land is held by any Indian tribes in the area around the proposed facility.

Another commenter representing the National Association for the Advancement of Colored People stated that they “unequivocally and without reservation support the construction...[and] operation of the Louisiana Energy Services plant.” Another commenter stated that the local communities of Eunice, Hobbs, and Jal are ignorant concerning the proposed facility. The commenter further noted that because over one-third of the population is Mexican-American and do not understand English, information about the plant is not often comprehended and accepted. Another commenter noted that LES and NRC staff have shown concern regarding the impact of the proposed NEF on local minority populations. The commenter noted that they would be sharing this information with the minority population.

2.2.8 Transportation

Several commenters expressed concerns regarding transportation to and from the proposed facility. A commenter stated that the EIS must consider the “wide variety of routes” and the impacts of the projected shipments of up to 16,000 UBCs. Another commenter voiced concern that all transportation routes should be evaluated to determine impacts (including environmental justice) on the public along the full length of those transport routes. A commenter expressed concern over the long-term road conditions of NM Highway 123 due to Waste Control Specialists (WCS), the landfill, and NEF traffic. The commenter noted surrounding roads are heavily used by pass-through recreational traffic (e.g., traffic to casinos and natural attractions).

Commenters stated that the EIS should include a precise, detailed analysis of the increased hazards of transporting UF_6 over great distances, especially to a site accessible only by two-lane highways. A commenter expressed concern about the deteriorating conditions of some New Mexico roadways and the resulting high incidence of accidents that represent safety-related issues and aspects that need to be addressed.

A commenter stated that LES must demonstrate that it has the full understanding and support of the Western Interstate Energy Board, which is responsible for communication and cooperation among its membership with specific regard to the development and management of

nuclear energy projects. The commenter felt this was important because the LES project involves the interstate transport of nuclear waste materials.

2.2.9 Waste management

General waste management: A commenter expressed concern that it is misleading to describe the LES project only as a processing facility—in reality, it is a nuclear waste storage facility. Another commenter stated that the EIS must include a complete and thorough investigation into gaseous, liquid, and solid waste production, treatment, and disposal at the proposed facility. Another commenter asked what would happen to worn out parts, tools, solvents, chemicals, etc. that are radioactive and whether these contaminated items would be disposed onsite. The same commenter also asked how much the cleanup of the LES plant would cost and objected to any nuclear waste being disposed of in landfills. Another commenter suggested that low-level waste from the proposed LES NEF could be sent to WCS.

Depleted uranium tails disposal: While several commenters felt that the wastes are manageable, some commenters stated opposition to the approval of the LES' application because "no place has been approved to take the waste product." A commenter asked why more waste should be added to waste already existing with no means of disposal. Another commenter expressed concern about the lack of a final disposal alternative for the depleted uranium tails that could lead to environmental exposure of radioactive materials in the long term. Another commenter proposed a condition for license approval to include final disposal of all waste must be out of State. Another commenter inquired as to where the waste would be stored and how soon it would be moved out of the State. Another commenter stated that the local community should mandate an agreement with LES prior to construction that any waste would be promptly removed. Another commenter stated that LES attempted to misrepresent to the public the amount of waste that would be stored in Lea County and, for this reason, LES' application for a license should be denied. Another commenter stated the NRC should evaluate waste characteristics of depleted uranium relative to transuranic waste in the scope of the EIS. Another commenter stated that "legitimate questions have been raised regarding the safe and secure storage and ultimate removal from New Mexico of the leftover uranium hexafluoride material, or tails, from the enrichment operation over the lifetime of the plant's operation." Another commenter stated that the EIS should examine the veracity of LES' statement that waste would be shipped offsite to a licensed disposal facility. In addition, the EIS should examine all additional environmental, radiological, and chemical impacts from construction and operation of a possible additional UF_6 conversion facility for ultimate disposal nearby or even at the proposed LES site. Another commenter expressed concern about what would ultimately happen to the waste at the proposed LES NEF and what assurances exist that the waste would not be deconverted and stored at WCS. Another commenter stated the NRC must consider the effects of using the depleted uranium in warfare, a potential application. Another commenter suggested that the tails generated should be seen as a resource rather than as a waste product and should be used to entice another company to locate a deconversion facility adjacent to the LES NEF.

Commenters stated that the NRC must analyze the impacts of the two disposal options for UBCs. These options include 1) establishment of a private conversion facility for processing and disposal of the converted waste in "an exhausted uranium mine" and 2) having the UBCs taken by the U.S. Department of Energy. In addition, the commenters stated that the EIS must

analyze the plausibility of these options much more extensively than was done in the LES Environmental Report. The commenters also suggested that the EIS analyze the costs of indefinite waste storage at the LES facility. Another commenter suggested the EIS must analyze the financial assurance of disposition of the wastes.

Life expectancy/safety of waste containers: Commenters inquired as to the life expectancy of waste storage containers that may be used at the proposed LES NEF and expressed concern about their safety.

2.2.10 Cumulative Impacts

Several commenters requested that the cumulative impacts of other activities such as oilfield operation be considered in the EIS and raised concern over the cumulative impacts of continued generation of depleted uranium. A commenter expressed concern that LES would not be able to contain radioactive contaminants in soil and plant life due to past and possibly ongoing contamination in southeast New Mexico. Another commenter stated that the environmental evaluation should include a consideration of long-term and cumulative environmental effects of the radioactive and hazardous waste created by the NEF, not excluding effects at any of the disposal or processing sites around the country. Commenters stated that in its EIS, the NRC should take into account past abuses and acts of malfeasance at domestic uranium enrichment facilities in determining the potential public health impact of the proposed plant. Commenters expressed concerns related to the Paducah and Portsmouth facilities' operations that involved cancer risks to workers and the public, impacts to wildlife, and adverse impacts on aquifer and groundwater, which they stated have damaged the environment and human health and safety. This damage would also occur at the proposed facility.

A commenter stated that LES must demonstrate that it has the full understanding and support of the Western Interstate Energy Board, which is responsible for communication and cooperation among its membership with specific regard to the development and management of nuclear energy projects. The commenter felt this was important because the proposed project involves potential impacts to the economies of both regional States and the Nation. Another commenter stated that the environmental analysis should include assessment of cumulative regional impacts on the sand dune lizards and the lesser prairie chicken. Commenters stated that the EIS must conduct a full investigation into the demographic makeup of the area near the proposed NEF, taking into account other nuclear facilities in the area near the proposed NEF such as the Waste Isolation Pilot Plant (WIPP) and the WCS toxic and radioactive waste repository and their cumulative effect on public health and ecological integrity. Another commenter noted two major accidents in Carlsbad and that they needed to be considered in the EIS analysis. The effects of such accidents at LES should be considered along with mitigation measures to prevent them.

2.2.11 Decommissioning

A commenter suggested that the EIS should include a detailed disposition and closure plan for the site, supported by a cost analysis.

2.2.12 Safety and Risk

Uranium hexafluoride (UF₆): A commenter asked who would regulate safety at the proposed facility. Another commenter inquired about the volatility of UF₆, how much would be onsite at any given hour of the day, and the worst-case scenario if an accident with UF₆ should occur. Another commenter proposed a condition for license approval to include limiting the amount and time of UF₆ storage onsite.

Risk and public health: Several commenters felt that the risks are manageable. One commenter stated that the uranium enrichment industry used lessons learned from past and current U.S. enrichment facilities to improve the safety and operation of the LES NEF. Another commenter stated that the local community would be safe by ensuring that LES meets the regulatory requirements. Another commenter noted that the local community demonstrated due diligence during the licensing of WCS and that this was being repeated for the LES NEF. Having worked at large-scale nuclear and industrial facilities, a commenter felt the anti-NEF groups were exaggerating the dangers. Several commenters who toured the gas centrifuge facility in Europe (Almelo, Netherlands) stated that the technology is clean and safe for workers, the public, and the environment. Another commenter stated that the NEF “would not pose a threat to their [the public] health and safety, that it would not harm the environment, and that they [the public] would not be left with the plant’s wastes.” Another commenter noted that the proposed enrichment facility would be “tremendous addition to our technology.” Another commenter stated LES “take safety and security very seriously based on what they have heard about LES and the uranium enrichment plant.”

A number of commenters felt that the construction and operation of the proposed facility would be hazardous to the local community due to possible radiation exposure. A commenter stated that the EIS should address all impacts to public health arising from the increase in routine and accidental radioactive emissions to the air and water as a result of the operation of the proposed facility. This analysis should consider work by Dr. John Gofman and numerous other scientists showing that low-level radiation is a significant contributor to deaths from heart disease and cancer. Another commenter stated that the EIS should include a complete investigation into potential worker and public exposure to toxic and radioactive materials resulting from NEF operations. Another commenter suggested that the draft EIS should address the risks from effluent releases as latent cancer fatalities per 10,000 people. Another commenter suggested that the EIS should include a plan for maintaining and updating workers’ records in a secure and public location where NEF employees would be able to access their radiation records.

Accident analysis: A commenter stated that the EIS should address all impacts on public health and the environment arising from a severe accident and the impacts. Another commenter expressed concern that the accident analysis would not be properly completed and requested that the following be included: 1) risk of fire, 2) impacts beyond a 50-mile radius, 3) evaluation of impacts from all transportation paths (feed, tails, wastes) including collisions with local oil and gas transport trucks, and 4) identification of emergency response preparedness for Lea County and all transportation routes. Another commenter stated that the LES NEF would not be as safe as some individuals are saying and expressed the concern that industries want to take shortcuts in operations that may lead to accidents.

Another commenter inquired about what type of evacuation plan and procedure is in place in the case of an accident at the plant site, and how would information about these emergency evacuations be disseminated. Another commenter stated that the EIS should address the impacts of any emergency response measures such as relocation of the population. Another commenter stated that the NRC must promise to shut down the proposed facility if any effluent releases exceed regulatory limits. Another commenter suggested that an impartial (i.e., non-LES) expert be on the site at all times to provide emergency information. This commenter also stated that medical and emergency personnel should immediately start getting the necessary background training that would enable them to handle radiation situations now, not later.

2.2.13 Nonproliferation and security

Several commenters expressed concern that advanced nuclear technology used at the LES NEF could be spread to other unfriendly governments as happened at Urenco. Another commenter expressed concern that there is “massive secrecy and cover up regarding the Urenco involvement in the spread of gas centrifuge uranium enrichment technology to Iraq, Pakistan, Iran, Libya, and North Korea which extends deep, far, and wide regarding nuclear proliferation and our national security problem.” For this reason, the commenter suggested that a thorough congressional investigation of Urenco and LES is desperately needed and that Congress should direct the NRC to withhold granting LES an operating license until that investigation is completed.

Several commenters stated that Urenco, Ltd. has been implicated in nonproliferation and security breaches and wondered what is going to be done to ensure this kind of security breach does not happen at the LES NEF. A commenter requested that “given the track records of both major backers of this project,” the EIS should provide “a detailed review of the national security and environmental policies of all the corporate participants in this project.” Another commenter expressed concern that Lea County leaders were unaware of these activities at Urenco, Ltd. Another commenter stated that the EIS should consider whether Urenco would likely adhere to U.S. national security policy that actively discourages the proliferation of nuclear technology worldwide.

Another commenter noted that local law enforcement was involved in the planning of security at the WIPP and it also intends to be involved in the planning of security at the proposed facility. Another commenter stated that the EIS should examine all impacts arising from increased security risks and tasks associated with the construction and operation of the proposed LES NEF.

2.2.14 Terrorism

A commenter stated that accident consequences and risks should include terrorist attacks like September 11, 2001, regardless of the probability of such an event. Another commenter suggested the EIS include an analysis of the amount of gas and radiation that would be released into the atmosphere in the event of a 9/11-type terrorist catastrophe. Another commenter expressed concern that the LES NEF may “open up our country for controversy and risk for terror attacks” due to the nuclear materials and activities.

2.2.15 Credibility

Several commenters stated that LES's officials have been straightforward, honest and complete in their responses with groups, the public and individuals. On the other hand, a commenter stated that LES seems to be less than truthful in their part of the licensing process. The commenter stated because LES has a record of polluting, future accountability should be an important factor in deciding whether the NEF should be constructed in a southeast New Mexico location. Another commenter suggested that LES needs to address why the operating license at the Almelo, Netherlands, facility was revoked twice and to discuss other multiple violations at the plant. Another commenter suggested that Urenco, Ltd. should open their books for audit.

Another commenter stated that LES was deceptive and misrepresented facts to local residents about air emissions, water contamination, waste disposal of tails, and planning for potential accidents. The same commenter questioned why the NRC would grant a license to a company that is both deceptive and incompetent to operate the proposed NEF.

Another commenter stated that NRC officials currently in charge of the licensing process are "ethically challenged and should be replaced" because they are not responding to LES' less than truthful statements.

3. SUMMARY AND CONCLUSIONS

3.1 SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT AND SUMMARY OF ISSUES TO BE ADDRESSED

NEPA (Public Law 91-90, as amended), and the NRC's implementing regulations for NEPA (10 CFR Part 51), specify in general terms what should be included in an EIS prepared by the NRC staff. Regulations established by the Council on Environmental Quality (40 CFR Parts 1500-1508), while not binding on the NRC staff, provide useful guidance. The NRC staff has also prepared environmental review guidance to its staff for meeting NEPA requirements associated with licensing actions ("Environmental Review Guidance for Licensing Actions Associated with Office of Nuclear Material Safety and Safeguards (NMSS) Programs", NUREG -1748).

Pursuant to 10 CFR 51.71(a), in addition to public comments received during the scoping process, the contents of the draft EIS will depend in part on the environmental report. In accordance with 10 CFR 51.71(b), the draft EIS will consider major points of view and objections concerning the environmental impacts of the proposed action raised by other Federal, State, and local agencies, by any affected Indian tribes, and by other interested persons. Pursuant to 10 CFR 51.71(c), the draft EIS will list all Federal permits, licenses, approvals, and other entitlements which must be obtained in implementing the proposed action, and will describe the status of compliance with these requirements. Any uncertainty as to the applicability of these requirements will be addressed in the draft EIS.

Pursuant to 10 CFR 51.71(d), the draft EIS will include a consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives to the proposed action. In the draft analysis, due consideration will be given to compliance with environmental quality standards and regulations that have been imposed by Federal, State, regional, and local agencies having responsibilities for environmental protection. The environmental impact of the proposed action will be evaluated in the draft EIS with respect to matters covered by such standards and requirements, regardless of whether a certification or license from the appropriate authority has been obtained. Compliance with applicable environmental quality standards and requirements does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. While satisfaction of NRC standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the draft EIS will also, for the purposes of NEPA, consider the radiological and non-radiological effects of the proposed action and alternatives.

Pursuant to 10 CFR 51.71(e), the draft EIS will normally include a preliminary recommendation by the NRC staff with respect to the proposed action. Any such recommendation would be reached after considering the environmental effects of the proposed action and reasonable alternatives, and after weighing the costs and benefits of the proposed action.

The scoping process summarized in this report will help determine the scope of the draft EIS for the proposed facility. The draft EIS will contain a discussion of the cumulative impacts of the proposed action. The development of the draft EIS will be closely coordinated with the SER prepared by the NRC staff to evaluate the health and safety impacts of the proposed action.

The goal in writing the EIS is to present the impact analyses in a manner that makes it easy for the public to understand. This EIS will provide the basis for the NRC decision with regard to potential environmental impacts. Significant impacts will be discussed in greater detail in the EIS, and explanations will be provided for determining the level of detail for different impacts. This should allow readers of the EIS to focus on issues that were determined to be important in reaching the conclusions supported by the EIS. The following topical areas and issues will be analyzed in the EIS.

- *Public and worker safety and health.* The draft EIS will include a determination of potentially adverse effects on human health that result from chronic and acute exposures to ionizing radiation and hazardous chemicals as well as from physical safety hazards. These potentially adverse effects on human health might occur during facility construction and operation. Impacts associated with the implementation of the proposed action will be assessed under normal operation and credible accident scenarios.
- *Alternatives.* The draft EIS will describe and assess the no-action alternative and other reasonable alternatives to the proposed action. Other reasonable alternatives to the proposed action will be considered such as alternative sites, enrichment sources, or technological alternatives to the proposed centrifuge technology.
- *Waste management.* The draft EIS will discuss the management of wastes, including byproduct materials, generated from the construction and operation of the NEF to assess the impacts of generation, storage, and disposition. Onsite storage of wastes will also be included in this assessment.
- *Depleted uranium disposition.* The draft EIS will address concerns about the depleted uranium hexafluoride material, or tails, resulting from the enrichment operation over the lifetime of the proposed plant's operation. These concerns include the safe and secure storage and ultimate removal of this material from New Mexico, and potential conversion of UF_6 to U_3O_8 and ultimate disposition.
- *Water resources.* The draft EIS will assess the potential impacts on groundwater quality and water use due to the implementation of the proposed action.
- *Geology and seismicity.* The draft EIS will describe the geologic and seismic characteristics of the proposed NEF site. Evaluation of the potential for earthquakes, ground motion, soil stability concerns, surface rupturing, and any other major geologic or seismic considerations that would affect the suitability of the proposed site will be addressed in the SER rather than in the draft EIS.
- *Compliance with applicable regulations.* The draft EIS will present a listing of the relevant permits and regulations that are believed to apply to the proposed NEF. These would include air, water, and solid waste regulations and disposal permits.
- *Air quality.* The draft EIS will make determinations concerning the meteorological conditions of the site location, the ambient air quality, and the contribution of other sources. In addition, the draft EIS will assess the impacts of the NEF's construction and operation on the local air quality.

- *Transportation.* The draft EIS will discuss impacts associated with the transportation of construction material, centrifuges, and feed and tails during both normal transportation and transportation under credible accident scenarios. The impacts on local transportation routes due to workers, large vehicles delivering needed equipment and materials, and vehicles removing waste from the proposed facility will be evaluated in the draft EIS.
- *Accidents.* The draft EIS will analyze the potential environmental impacts resulting from credible accidents at the NEF. The SER will assess the impacts associated with credible accidents at the proposed NEF, both from natural events and human activities. Based on the analyses, the EIS will summarize the potential environmental impacts resulting from credible bounding accidents at the proposed facility.
- *Land use.* The draft EIS will discuss the potential impacts associated with the changes in land use from predominately rangeland to industrial.
- *Socioeconomic impacts.* The draft EIS will address the demography, the economic base, labor pool, housing, utilities, public services, education, recreation, and cultural resources as impacted by NEF. The hiring of new workers from outside the area could lead to impacts on regional housing, public infrastructure, and economic resources. Population changes leading to changes to the housing market and demands on the public infrastructure will be assessed in the draft EIS.
- *Cost/benefits.* The draft EIS will address the potential cost/benefits of constructing and operating the NEF, and will discuss the cost/benefits of tails disposition options.
- *Cultural resources.* The draft EIS will assess the potential impacts of the proposed NEF on the historic and archaeological resources of the area and on the cultural traditions and lifestyle of Indian tribes.
- *Resource commitments.* The draft EIS will address the unavoidable adverse impacts, irreversible and irretrievable commitments of resources, and the relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity. In addition, associated mitigative measures and environmental monitoring will be presented.
- *Ecological resources.* The draft EIS will assess the potential environmental impacts of the proposed NEF on ecological resources including plant and animal species and threatened or endangered species or critical habitat that may occur in the area. As appropriate, the assessment will include an analysis of mitigation measures to address adverse impacts.
- *Need for the facility.* The draft EIS will provide a discussion of the need for the proposed NEF and the expected benefits.
- *Decommissioning.* The draft EIS will include a discussion of facility decommissioning and associated impacts.
- *Cumulative impacts.* The draft EIS will address the potential cumulative impacts from past, present, and reasonably foreseeable activities at and near the site.

4.0 ISSUES CONSIDERED OUTSIDE THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT

The purpose of an EIS is to assess the potential environmental impacts of a proposed action as part of the decision-making process of an agency-in this case, a licensing decision. As noted in Section 2.2, some issues and concerns raised during the scoping process are not relevant to the EIS because they are not directly related to the assessment of potential impacts or to the decision-making process. The lack of in depth discussion in the EIS, however, does not mean that an issue or concern lacks value. Issues beyond the scope of the EIS either may not yet be ripe for resolution or are more appropriately discussed and decided in other venues.

Some of these issues raised during the public scoping will not be addressed in the EIS. Major categories of these issues not analyzed in detail in the EIS include nonproliferation concerns, terrorism, security and safety issues, and credibility. The Commission has held that NRC staff is not required to consider terrorism in its EISs. In *The Matter of Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), 56 NRC 340 (2002), the Commission held that NRC is not required to consider terrorism in EISs. The Commission indicated, “the possibility of a terrorist attack ... is speculative and simply too far removed from the natural or expected consequences of agency action to require a study under NEPA.”

Some of these issues raised during the public scoping process for the proposed facility are outside the scope of the draft EIS, but they will be analyzed in the SER. For example, health and safety issues will be considered in detail in the SER prepared by NRC staff for the proposed action and will be summarized in the EIS. The draft EIS and the SER are related in that they may cover the same topics and may contain similar information, but the analysis in the draft EIS is limited to an assessment of potential environmental impacts. In contrast, the SER primarily deals with safety evaluations and procedural requirements or license conditions to ensure the health and safety of workers and the general public. The SER also covers other aspects of the proposed action such as demonstrating that the applicant will provide adequate funding for the proposed facility in compliance with NRC’s financial assurance regulations.

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Federal Register

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed LES Gas Centrifuge Uranium Enrichment Facility

ACTION: Notice of Intent (NOI).

SUMMARY: Louisiana Energy Services (LES) submitted a license application on December 12, 2003, that proposes the construction, operation and decommissioning of a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico. The U.S. Nuclear Regulatory Commission (NRC), in accordance with the National Environmental Policy Act (NEPA) and its regulations at 10 CFR part 51, announces its intent to prepare an Environmental Impact Statement (EIS). The EIS will examine the potential environmental impacts of the proposed LES facility.

DATES: The public scoping process required by NEPA begins with publication of this NOI and continues until March 18, 2004. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical.

The NRC will conduct a public scoping meeting to assist in defining the appropriate scope of the EIS, including the significant environmental issues to be addressed. The meeting date, times and location are listed below:

- **Meeting date:** March 4, 2004.

- **Meeting location:** Eunice Community Center, 1115 Avenue I, Eunice, NM.
- **Scoping meeting time:** 7 p.m. to 10 p.m.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Please note Docket No. 70-3103 when submitting comments. Due to the current mail situation in the Washington, DC area, commentors are encouraged to send comments electronically to LES_EIS@nrc.gov or by facsimile to (301) 415-5398, ATTN.: Melanie Wong.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the LES application, please contact: Tim Johnson at (301) 415-7299. For general information on the NRC NEPA process, or the environmental review process related to the LES application, please contact: Melanie Wong at (301) 415-6262.

Information and documents associated with the LES project, including the LES license application (submitted on December 12, 2003), are available for public review through our electronic reading room: <http://www.nrc.gov/reading-rm/adams.html>. Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

LES submitted a license application and an environmental report for a gas centrifuge uranium enrichment facility to the NRC on December 12, 2003. The NRC will evaluate the potential environmental impacts associated with LES enrichment facility in parallel with the review of the license application. This environmental evaluation will be documented in draft and final Environmental Impact Statements in accordance with NEPA and NRC's implementing regulations at 10 CFR part 51.

2.0 LES Enrichment Facility

The LES facility, if licensed, would enrich uranium for use in manufacturing commercial nuclear fuel for use in power reactors. Feed material would be natural (not enriched) uranium in the form of uranium hexafluoride (UF₆). LES proposes to use centrifuge technology to enrich isotope

uranium-235 in the uranium hexafluoride to up to 5 percent. The centrifuge would operate at below atmospheric pressure. The capacity of the plant would be up to 3 million separative work units (SWU) (SWU relates to a measure of the work used to enrich uranium). The enriched UF₆ would be transported to a fuel fabrication facility. The depleted UF₆ would be stored on site until it can be sold or disposed of commercially, or by the Department of Energy.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be to not build the proposed LES gas centrifuge uranium enrichment facility. Under this alternative, the NRC would not approve the license application. This serves as a baseline for comparison.

Proposed action—The proposed action involves the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility located near Eunice, NM. The applicant would be issued an NRC license under the provisions of 10 CFR parts 30, 40, and 70.

Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the EIS:

- **Land Use:** Plans, policies and controls;
- **Transportation:** Transportation modes, routes, quantities, and risk estimates;
- **Geology and Soils:** Physical geography, topography, geology and soil characteristics;
- **Water Resources:** Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- **Ecology:** Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- **Air Quality:** Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- **Noise:** Ambient, sources, and sensitive receptors;
- **Historical and Cultural Resources:** Historical, archaeological, and traditional cultural resources
- **Visual and Scenic Resources:** Landscape characteristics, manmade features and viewshed;
- **Socioeconomics:** Demography, economic base, labor pool, housing,

transportation, utilities, public services/facilities, education, recreation, and cultural resources;

- **Environmental Justice:** Potential disproportionately high and adverse impacts to minority and low-income populations;

- **Public and Occupational Health:** Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);

- **Waste Management:** Types of wastes expected to be generated, handled, and stored; and

- **Cumulative Effects:** Impacts from past, present and reasonably foreseeable actions at, and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from this list may occur as a result of the public scoping process.

5.0 Scoping Meeting

One purpose of this NOI is to encourage public involvement in the EIS process, and to solicit public comments on the proposed scope and content of the EIS. The NRC will hold a public scoping meeting in Eunice, New Mexico, to solicit both oral and written comments from interested parties.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

- Ensure that concerns are identified early and are properly studied;
- Identify alternatives that will be examined;
- Identify significant issues that need to be analyzed;
- Eliminate unimportant issues; and
- Identify public concerns.

The scoping meeting will begin with NRC staff providing a description of the NRC's role and mission. A brief overview of the licensing process will be followed by a brief description of the environmental review process. The bulk of the meeting will be allotted for attendees to make oral comments.

6.0 Scoping Comments

Written comments should be mailed to the address listed above in the ADDRESSES section.

The NRC staff will make the scoping summaries and project-related materials available for public review through our electronic reading room: <http://www.nrc.gov/reading-rm/adams.html>. The scoping meeting summaries and project-related materials will also be available on the NRC's LES Web page: <http://www.nrc.gov/materials/fuel-cycle-fac/lesfacility.html> (case sensitive).

7.0 The NEPA Process

The EIS for the LES facility will be prepared according to the National Environmental Policy Act of 1969 and the NRC's NEPA Regulations at 10 CFR part 51.

After the scoping process is complete, the NRC and its contractor will prepare a draft EIS. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's LES Web page, and in the local news media when the draft EIS is distributed. The final EIS will incorporate public comments received on the draft EIS.

Signed in Rockville, MD this 16th day of January, 2004.

For The Nuclear Regulatory Commission.
Lawrence E. Kokajko,
Chief, Environmental and Performance
Assessment Branch, Division of Waste
Management, Office of Nuclear Material
Safety and Safeguards.

[FR Doc. E4-179 Filed 2-3-04; 8:45 am]

BILLING CODE 7590-01-P

APPENDIX B
CONSULTATION LETTERS

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B.1 *Endangered Species Act* Consultation Letters

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GOVERNOR
Bill Richardson



STATE OF NEW MEXICO
DEPARTMENT OF GAME & FISH

One Wildlife Way
PO Box 25112
Santa Fe, NM 87504

STATE GAME COMMISSION
Guy Riordan, Chairman
Albuquerque, NM

Alfredo Montoya, Vice-Chairman
Alcalde, NM

David Henderson
Santa Fe, NM

Jennifer Atchley Montoya
Las Cruces, NM

Peter Pino
Zia Pueblo, NM

Dr. Tom Arvas
Albuquerque, NM

Leo Sims
Hobbs, NM

DIRECTOR AND SECRETARY
TO THE COMMISSION
Bruce C. Thompson

Visit our website at www.wildlife.state.nm.us
For basic information or to order free publications: 1-800-862-9310.

February 23, 2004

Chief, Rules and Directives Branch
Mail Stop T6-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket No. 70-3103
NMGF Project No. 9200

Dear Nuclear Regulatory Commission:

The New Mexico Department of Game and Fish (Department) has received the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Louisiana Energy Services (LES) gas centrifuge uranium enrichment facility, known as the National Enrichment Facility (NEF). We have reviewed the Environmental Report (ER) submitted by LES with their license application, as it pertains to wildlife resources, and offer our comments below. We also enclose for your information a copy of our September 30, 2003, scoping letter to LES contractor Framatome ANP.

The Department is concerned about the adequacy of the assessment in the ER of potential impacts to the NM State Threatened sand dune lizard (*Sclerophorus arenicolus*). Section 3.5.3 states that although "(t)he NEF site contains areas of sand dunes", "(a) survey of the NEF site did not identify any sand dune lizard habitats". Section 3.5.5 characterizes the site vegetation as dense shrubs, mostly shinnery oak (*Quercus havardi*), yet Section 3.5.6 concludes the habitat is unsuitable due to "low frequency of shinnery oak dunes and large blowouts". Section 3.5.8 asserts that "the site does contain sand dune - oak shinnery communities, that could be potential sand dune lizard habitat". Finally Section 4.5.7 refers to the site having "the potential to provide habitat for the sand dune lizard" but "various factors make it unsuitable". This accumulation of seemingly contradictory statements leaves it unclear whether there is in fact suitable habitat for the species or not.

The ER also refers to a survey for sand dune lizards that took place in October 2003 and did not find any. No information is given as to the participants or methods of the survey. If there is in fact suitable habitat, the Department requests information as to the qualifications of the individual(s) conducting the survey. Sand dune lizards are extremely difficult to identify and there are only a very few people qualified to conduct a presence/absence survey. October is rather late in the year for a survey; the lizards are likely to be dormant at that time.

The Department is likewise concerned about the adequacy of assessment in the ER of potential impacts on the lesser prairie chicken (*Tympanuchus pallidicinctus*), a federal Species of Concern. The document identifies the site as suitable habitat, states that the nearest known lek (breeding area) is 4 miles distant, and refers to a survey conducted in September 2003, that did not find any lesser prairie chickens. According to our prairie chicken biologist, the area around the project has not been adequately surveyed for lek sites. Surveys should be conducted in the spring (typically early to mid April, before sunrise). Lesser prairie chickens will use an area within two miles of the lek for nesting and rearing. Birds have been reported from the Eunice area. Since there is a large acreage of contiguous habitat, and a lek within four miles, it is reasonable to assume these birds may be impacted by the development.

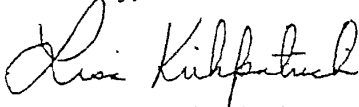
The National Environmental Policy Act (NEPA) analysis should include assessment of cumulative regional impacts on both of these sensitive species. Other impacts include grazing and oil and gas development.

Although not directly a wildlife habitat issue, the Department would like to express our concern regarding the lack of a final disposal alternative for the depleted uranium tails. The ER presents several plausible options, however each of them faces significant problems and would require many years of feasibility analysis and development. The safeguards and procedures for short- to medium-term storage of the materials seem adequate to prevent health or environmental hazards, however the lack of a viable solution for disposal may lead to environmental exposure of radioactive materials in the long term.

LES proposes a number of favorable mitigations, including the use of native plant species for revegetation, downshielding site illumination to reduce impact on bird behavior, various habitat improvements and following the Department's recommendations regarding pipeline trenching and exclusion of migratory birds from the evaporative ponds. These mitigations should be incorporated into the license approval, if granted. The Department remains available for further consultation on development of possible mitigations.

Thank you for the opportunity to participate in the preparation of NEPA analysis and documentation for this project. If you have any questions, please contact Rachel Jankowitz at 505-476-8159 or rjankowitz@state.nm.us.

Sincerely,



Lisa Kirkpatrick, Chief
Conservation Services Division

LK/rjj

cc: Joy Nicholopoulos, Ecological Services Field Supervisor, USFWS
Roy Hayes, SE Area Operations Chief, NMGF
Alexa Sandoval, SE Area Habitat Specialist, NMGF
Rachel Jankowitz, Habitat Specialist, NMGF



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 2, 2004

Ms. Joy Nicholopoulos
U.S. Fish and Wildlife Service
New Mexico Field Office
2105 Osuna Road NE
Albuquerque, NM 87113-1001

SUBJECT: REQUEST FOR INFORMATION REGARDING ENDANGERED SPECIES AND
CRITICAL HABITATS FOR LOUISIANA ENERGY SERVICES PROPOSED GAS
CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA COUNTY, NM

Dear Ms. Nicholopoulos:

Louisiana Energy Services (LES) has submitted a license application to the U.S. Nuclear Regulatory Commission (NRC) to construct, operate, and decommission a proposed gas centrifuge uranium enrichment facility. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) for the proposed facility to be located near Eunice, New Mexico, in Lea County. The proposed facility, as well as all associated construction, operation, and decommissioning activities and impacts, will be within the 220-ha (543 acre) LES National Enrichment Facility (NEF) site.

We are requesting a list of threatened or endangered species or critical habitats within the action area. The action area is defined as the NEF site which is located in Section 32 of Township 21 South, Range 38 East (New Mexico Meridian). The approximate center is at Latitude 32 degrees, 26 minutes, 1.74 seconds North and Longitude 103 degrees, 4 minutes, 43.47 seconds West. The action area is approximately 5 miles East of Eunice, New Mexico and is bordered on the South by New Mexico Highway 234.

After assessing the information provided by you, the NRC will determine what additional actions are necessary to comply with Section 7 of the Endangered Species Act. If you have any questions or comments, or need any additional information, please contact Matthew Blevins of my staff at 301-415-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Kokajko", is placed below the word "Sincerely,".

Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87113
Phone: (505) 346-2525 Fax: (505) 346-2542

March 26, 2004

Cons. # 2-22-04-I-349

Lawrence E. Kokajko, Chief
Environmental and Performance Assessment Branch
Division of Waste Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Kokajko:

Thank you for your March 2, 2004, letter requesting information on threatened or endangered species or important wildlife habitats that could be affected by a proposed project to construct, operate, and decommission a gas centrifuge uranium enrichment facility near Eunice, Lea County, New Mexico. The proposed facility and construction would disturb 543 acres of land located within the Louisiana Energy Services National Enrichment Facility site.

We have enclosed a current list of federally endangered, threatened, proposed, and candidate species, and species of concern that may be found in Lea County, New Mexico.¹ Under the Endangered Species Act, as amended (Act), it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with us further. If your action area has suitable habitat for any of these species, we recommend that species-specific surveys be conducted during the flowering season for plants and at the appropriate time for wildlife to evaluate any possible project-related impacts. Please keep in mind that the scope of federally listed species compliance also includes any interrelated or interdependent project activities (e.g., equipment staging areas, offsite borrow material areas, or utility relocations) and any indirect or cumulative effects.

Candidates and species of concern have no legal protection under the Act and are included in this document for planning purposes only. We monitor the status of these species. If significant declines are detected, these species could potentially be listed as endangered or threatened. Therefore, actions that may contribute to their decline should be avoided. We recommend that candidates and species of concern be included in your surveys.

¹ Additional information about these species is available on the Internet at <http://nmrareplants.unm.edu>, <http://nrmnhp.unm.edu/bisonnm/bisonquery.php>, and <http://ifw2es.fws.gov/endangeredspecies>.

Under Executive Orders 11988 and 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and floodplains, and preserve and enhance their natural and beneficial values. We recommend you contact the U.S. Army Corps of Engineers for permitting requirements under section 404 of the Clean Water Act if your proposed action could impact floodplains or wetlands. These habitats should be conserved through avoidance, or mitigated to ensure no net loss of wetlands function and value.

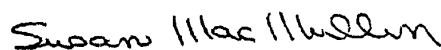
The Migratory Bird Treaty Act (MBTA) prohibits the taking of migratory birds, nests, and eggs, except as permitted by the U.S. Fish and Wildlife Service (Service). To minimize the likelihood of adverse impacts to all birds protected under the MBTA, we recommend construction activities occur outside the general migratory bird nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until nesting is complete.

The primary concern of the Service is the protection of the Nation's fish and wildlife resources including threatened and endangered species, migratory birds, and their habitats. Under its responsibilities in the Migratory Bird Treaty Act, the Service would be concerned if an open, hazardous waste impoundment attracted migratory birds or other wildlife to their detriment. During flight, migratory birds (as well as bats) would not necessarily distinguish between an impoundment and a natural waterbody and could be attracted to drink, rest, and perhaps feed on the insects that are invariably associated with impounded wastewater. The facility lighting could attract them as well. Therefore, the Service supports that any open hazardous waste lagoon, pond, or container be constructed with appropriate exclusion technology (*e.g.*, netting, fences, enclosed tanks, *etc.*) to prevent migratory bird access, and that any exclusion technologies are regularly maintained. To minimize the likelihood of adverse impacts to nesting migratory birds during facility construction, we recommend that construction activities occur outside the general migratory bird-nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until nesting is complete.

We suggest you contact the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division for information regarding fish, wildlife, and plants of State concern.

Thank you for your concern for endangered and threatened species and New Mexico's wildlife habitats. In future correspondence regarding this project, please refer to consultation # 2-22-04-I-349. If you have any questions about the information in this letter, please contact Dennis Coleman at the letterhead address or at (505) 346-2525, ext. 4716.

Sincerely,



Susan MacMullin
Field Supervisor

Lawrence E. Kokajko, Chief

3

Enclosure

cc: (w/o enc)

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico

Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry
Division, Santa Fe, New Mexico

Revised: September 2003

FEDERAL ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND SPECIES OF CONCERN IN NEW MEXICO
Consultation Number 2-22-04-I-349
March 25, 2004

Lea County

ENDANGERED

- Black-footed ferret (*Mustela nigripes*)**
- Northern aplomado falcon (*Falco femoralis septentrionalis*)

THREATENED

- Bald eagle (*Haliaeetus leucocephalus*)

CANDIDATE

- Black-tailed prairie dog (*Cynomys ludovicianus*)
- Lesser prairie chicken (*Tympanuchus pallidicinctus*)
- Sand dune lizard (*Sceloporus arenicolus*)

SPECIES OF CONCERN

- Swift fox (*Vulpes velox*)
- American peregrine falcon (*Falco peregrinus anatum*)
- Arctic peregrine falcon (*Falco peregrinus tundrius*)
- Baird's sparrow (*Ammodramus bairdii*)
- Bell's vireo (*Vireo bellii*)
- Western burrowing owl (*Athene cunicularia hypugea*)
- Yellow-billed cuckoo (*Coccyzus americanus*)

Index

Endangered	=	Any species which is in danger of extinction throughout all or a significant portion of its range.
Threatened	=	Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
Candidate	=	Candidate Species (taxa for which the Service has sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities).
Proposed	=	Any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under section 4 of the Act.
Species of Concern	=	Taxa for which further biological research and field study are needed to resolve their conservation status <u>OR</u> are considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies. Species of Concern are included for planning purposes only.
**	=	Survey should be conducted if project involves impacts to prairie dog towns or complexes of 200-acres or more for the Gunnison's prairie dog (<i>Cynomys gunnisoni</i>) and/or 80-acres or more for any subspecies of Black-tailed prairie dog (<i>Cynomys ludovicianus</i>). A complex consists of two or more neighboring prairie dog towns within 4.3 miles (7 kilometers) of each other.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 9, 2004

Ms. Joy Nicholopoulos
U.S. Fish and Wildlife Service
New Mexico Field Office
2105 Osuna Road NE
Albuquerque, NM 87113-1001

SUBJECT: REQUEST FOR CONCURRENCE ON THE DETERMINATION OF EFFECT ON
FEDERALLY LISTED SPECIES AND THEIR CRITICAL HABITATS FOR THE
PROPOSED NATIONAL ENRICHMENT FACILITY

Dear Ms. Nicholopoulos:

By letter dated March 2, 2004, the U.S. Nuclear Regulatory Commission (NRC) informed you of the preparation of an Environmental Impact Statement (EIS) on Louisiana Energy Services's (LES) proposal to construct, operate and decommission a gas centrifuge uranium enrichment facility to be located in Lea County, New Mexico. This letter described the action area and requested a list of threatened or endangered species or critical habitats within the action area. By letter dated March 26, 2004, you provided a current list of threatened, endangered, proposed, and candidates species, and species of concern that may be found in Lea County, New Mexico (Cons. #: 2-22-04-I-349).

After a review of the potential impacts of the proposed action, the NRC staff has determined that the proposed action would not affect any listed species or critical habitat. The supporting basis for this conclusion is included in the enclosed draft EIS.

In the March 26, 2004 letter, you also included candidates and species of concern for planning purposes only and recommended that candidates and species of concern be included in the surveys. The enclosed draft EIS evaluates the impact of the proposed action on these species. The NRC staff has concluded that the effects on candidates and species of concern would be small.

J. Nicholopoulos

-2-

We request your concurrence with the NRC staff's determination of "no effect" to any listed species or their critical habitat. If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,



Scott C. Flanders

Deputy Director for the Environmental and
Performance Directorate

Division of Waste Management and Environmental
Protection

Office of Nuclear Material Safety
and Safeguards

Enclosure: Draft EIS

Docket No.: 70-3013

cc: Service List

B.2 Section 106 Consultation Letters

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 PROCESS FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY

Dear Ms. Biella:

Louisiana Energy Services (LES) has submitted a license application to the U.S. Nuclear Regulatory Commission (NRC) to construct, operate, and decommission a proposed gas centrifuge uranium enrichment facility. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) for the proposed facility to be located near Eunice, New Mexico, in Lea County. The proposed facility will use gas centrifuge technology to enrich the isotope Uranium-235 in uranium hexafluoride (UF₆), up to 5 percent (assay level for practical use in nuclear reactors). This proposed facility, as well as all associated construction, operation, and decommissioning activities and impacts, will be within the 220-ha (543 acre) LES National Enrichment Facility (NEF) site. The forthcoming EIS will document the impacts associated with the construction, operation, and decommissioning of the facility.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified, with three of the sites found in the area of potential effects (APE) and one of these sites is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area, including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that the one site potentially eligible may be affected by an access road. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings. The NRC, in consultation with your office and any identified consulting parties, will provide a determination of eligibility after the Cultural Resources Report is received.

As part of the NRC licensing process, LES submitted an Environmental Report (ER) in support of the proposed NEF. In the ER, LES indicated it had contacted six Indian tribes at your request. As required by 36 CFR 800.4(a), the NRC is requesting the views of the State Historical Preservation Officer on further actions to identify historic properties that may be affected by the NRC's undertaking. As part of the EIS preparation the NRC will be hosting a public scoping meeting Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico from 7:00 p.m. until 10:00 p.m. The meeting will include NRC staff presentations on the safety and environmental review process, after which members of the public will be given the opportunity to present their comments on what environmental issues NRC should consider during its environmental review.

J. Biella

2

This scoping information, along with the forthcoming LES Cultural Resource Report, and any information you provide, will be used to document affects in accordance with 36 CFR Part 800.4 and 800.5. Additionally, we intend to use the EIS process for Section 106 purposes as described in 36 CFR Part 800.8.

We have attached additional background information relating to cultural resources as it appears in the LES ER. If you have any questions or comments, or need any additional information, please contact Matthew Blevins of my staff at 301-415-7684.

Sincerely,

/RA/

Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Enclosure: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Governor Sinclair:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will document the impacts associated with the NEF.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

The NRC staff is soliciting information from potential consulting parties as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office. As the NRC staff intends to use the EIS process for Section 106 purposes, we would also like to invite you to attend a public meeting that we will be hosting on Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico, from 7:00 p.m. until 10:00 p.m. The purpose of this meeting is to solicit comments from members of the public on the scope of the EIS review.

If you are unable to attend this meeting, we would still like to hear from you. You are invited to contact Matthew Blevins of my staff at (301) 415-7684 so we may hear your comments or concerns.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

cc: Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Identical Letter sent to:

Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

Jimmy Arterberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

Ms. Holly B. E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Ms. Holly B. E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Ms. Houghten:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will *document the impacts associated with the NEF.*

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

The NRC staff is soliciting information from potential consulting parties as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office. As the NRC staff intends to use the EIS process for Section 106 purposes, we would also like to invite you to attend a public meeting that we will be hosting on Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico, from 7:00 p.m. until 10:00 p.m. The purpose of this meeting is to solicit comments from members of the public on the scope of the EIS review.

Ms. H. Houghten

2

If you are unable to attend this meeting, we would still like to hear from you. You are invited to contact Matthew Blevins of my staff at (301) 415-7684 so we may hear your comments or concerns.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

cc: Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Identical Letter sent to:

Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

Jimmy Arterberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Chairman McKenzie:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will document the impacts associated with the NEF.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

The NRC staff is soliciting information from potential consulting parties as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office. As the NRC staff intends to use the EIS process for Section 106 purposes, we would also like to invite you to attend a public meeting that we will be hosting on Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico, from 7:00 p.m. until 10:00 p.m. The purpose of this meeting is to solicit comments from members of the public on the scope of the EIS review.

Chairman McKenzie

2

If you are unable to attend this meeting, we would still like to hear from you. You are invited to contact Matthew Blevins of my staff at (301) 415-7684 so we may hear your comments or concerns.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

cc: Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Identical Letter sent to:

Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

Jimmy Arterberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

Ms. Holly B. E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Jimmy Arterberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Mr. Arterberry:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will document the impacts associated with the NEF.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

The NRC staff is soliciting information from potential consulting parties as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office. As the NRC staff intends to use the EIS process for Section 106 purposes, we would also like to invite you to attend a public meeting that we will be hosting on Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico, from 7:00 p.m. until 10:00 p.m. The purpose of this meeting is to solicit comments from members of the public on the scope of the EIS review.

J. Arterberry

2

If you are unable to attend this meeting, we would still like to hear from you. You are invited to contact Matthew Blevins of my staff at (301) 415-7684 so we may hear your comments or concerns.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

cc: Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Identical Letter sent to:

Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

Ms. Holly B. E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 2004

Aionso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Chairman Chalepah:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF); a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will document the impacts associated with the NEF.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

The NRC staff is soliciting information from potential consulting parties as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office. As the NRC staff intends to use the EIS process for Section 106 purposes, we would also like to invite you to attend a public meeting that we will be hosting on Thursday, March 4, 2004, at the Eunice Community Center, 1115 Avenue I, in Eunice, New Mexico, from 7:00 p.m. until 10:00 p.m. The purpose of this meeting is to solicit comments from members of the public on the scope of the EIS review.

Chairman Chalepah

2

If you are unable to attend this meeting, we would still like to hear from you. You are invited to contact Matthew Blevins of my staff at (301) 415-7684 so we may hear your comments or concerns.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003

cc: Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Identical Letter sent to:

Jimmy Arterberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

Ms. Holly B. E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
March 18, 2004

Mr. Lewis Robertson
Lea County Archaeological Society
1980 NE 1001
Andrews, TX 79714-9154

SUBJECT: INITIATION OF THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN LEA
COUNTY, NEW MEXICO

Dear Mr. Robertson:

The U.S. Nuclear Regulatory Commission (NRC) has recently received an application from Louisiana Energy Services (LES) to construct, operate, and decommission the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility. The proposed NEF would be located near Eunice, New Mexico, in Lea County and would be within a 543 acre parcel of land that LES is in the process of acquiring from the State of New Mexico. The NRC is in the initial stages of developing an Environmental Impact Statement (EIS) which will document the impacts associated with the NEF. We would like your assistance in our review of the cultural resources impacts.

In September 2003, LES performed a survey of the proposed NEF site. Seven prehistoric archeological sites were identified with several of these sites occurring in the area of potential effects (APE). One site that may be affected is potentially eligible for listing on the National Register of Historical Places. The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. Attached is information LES provided in its Environmental Report relative to cultural resources. We are currently reviewing this information. LES has indicated that it intends to submit the complete Cultural Resources Survey Report of all survey findings.

L. Robertson

-2-

The NRC staff is soliciting information from a number of stakeholders as the NRC begins its Section 106 consultation with the New Mexico State Historical Preservation Office, as required by the National Historic Preservation Act. We request that you provide any information that you may have relative to this proposed action or the Section 106 consultation. Please contact Matthew Blevins of my staff at (301) 415-7684 if you have any questions.

Sincerely,



Lawrence E. Kokajko, Chief
Environmental and Performance
Assessment Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103

Attachment: Cultural Resources Information for LES National Enrichment Facility,
Environmental Report, December 12, 2003 (ML040500429)

cc: Ms. Jan Biella (without Enclosure)
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

Service List (without Enclosure)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 29, 2004

Ms. Jan Biella
Deputy SHPO
Historic Preservation Division
Office of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503

SUBJECT: CULTURAL RESOURCE INVENTORY FOR LOUISIANA ENERGY SERVICES
PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY IN
LEA COUNTY, NEW MEXICO

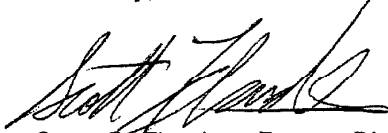
Dear Ms. Biella:

As discussed in our February 17, 2004, letter, Louisiana Energy Services has submitted a license application to the U.S. Nuclear Regulatory Commission (NRC) to construct, operate, and decommission a proposed gas centrifuge uranium enrichment facility at a site in Lea County, New Mexico. The NRC staff is in the initial stages of developing an Environmental Impact Statement for the proposed facility and is in the early stages of soliciting information from potential consulting parties.

Enclosed for your review is a cultural resource survey performed in September 2003 for the proposed site. Seven prehistoric archeological sites were identified, with four of the sites potentially eligible for listing on the National Register of Historical Places. One of these potentially eligible sites is considered within the area of potential effects (APE). The APE is considered the National Enrichment Facility site area, including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. The NRC staff, in consultation with your office and any identified consulting parties, will provide a determination of eligibility after the Cultural Resources Report is reviewed.

If you have any questions or comments, or need any additional information, please contact Matthew Blevins of my staff at 301-415-7684.

Sincerely,



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

Enclosure: Cultural Resources Inventory for the National Enrichment Facility

Docket No.: 70-3103

cc: Alonso Chalepah, Chairman (w/o enclosure)
Clifford McKenzie, Chairman (w/o enclosure)
Arturo Sinclair, Governor (w/o enclosure)
Jimmy Arterberry, Director of Environment (w/o enclosure)
Holly B. E. Houghten, Tribal Historic Preservation Officer (w/o enclosure)
Service List w/o enclosure (w/o enclosure)



STATE OF NEW MEXICO
**DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION**

228 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501
(505) 827-6320

BILL RICHARDSON
Governor

April 26, 2004

Matthew Blevins
Project Manager
Environmental and Low-Level Waste Section
U.S. Nuclear Regulatory Commission
Mail Stop T7J8
Washington D.C. 20555

Re: National Enrichment Facility Near Eunice, Lea County, New Mexico

Dear Mr. Blevins:

I am writing to follow-up the meeting held between our office, you, Melanie Wong and Paul Nickens, and David Eck from the NM State Land Office in Albuquerque on April 7, 2004. At our meeting we discussed the process for consultation under Section 106 of the National Historic Preservation Act and the archaeological survey report submitted by WCRM for archaeological survey of the National Enrichment Facility near Eunice, New Mexico.

WCRM discovered and recorded seven prehistoric archaeological sites within the project area and recommended that four of the sites (LA 140704, LA 140705, LA 140706, and LA 140707) are eligible for listing to the National Register of Historic Places. WCRM recommended that three sites (LA 140701, LA 140702, and LA 140703) are not eligible for listing to the Register. We do not concur with these recommendations of eligibility. In our opinion, all seven sites are similar site types and may contain buried cultural resources; therefore, archaeological sites LA 140701, LA 140702, and LA 140703 are of undetermined eligibility to be listed to the Register.

It appears from the site location map (Figure 4) of the survey report that three of the archeological sites (LA 140702, LA 140701, and LA 140705) are within the proposed construction footprint for the enrichment facility. Since these sites will be impacted by construction we have determined that the National Enrichment Facility will have an adverse effect on cultural resources.

In order to resolve adverse effects to cultural resources we suggest that our office and the NRC enter into a Memorandum of Agreement (MOA) that outlines agreed-upon measures that NRC will take to mitigate the adverse effects. An example of an MOA is enclosed for your reference.

NRC will need to notify the Advisory Council on Historic Preservation (ACHP) that there will be adverse effects to cultural resources and invite them to be a signatory to the MOA. The ACHP may decline to participate. The NRC must also re-contact Native American tribes, forward copies of the archaeological survey report for their review, and ask if they wish to be concurring parties to the MOA.

It is our understanding that the current land status is the NM State Land Office and that they have entered into a long-term lease agreement with Louisiana Energy Services for the project area, but that the land may be traded after the license from NRC is obtained. This trade will need to be discussed in the MOA and the Commissioner of Public Lands will also be a signatory to the MOA. An exchange from state land to private is considered an adverse effect, thus all seven sites, not just the three within the project area will have to be considered for mitigation.

As we discussed during our meeting, there are several options for mitigating the adverse effects to the archaeological sites. One option is to treat all seven sites as eligible for listing to the Register and considering them as a population of sites. A data recovery plan will be designed to treat all seven sites as a population, meaning that each site will not need full data recovery. This alternative may be the least costly since it eliminates the need for testing to determine eligibility.

A second option would be for Louisiana Energy Services to avoid and protect the sites outside of the project (LA 140703, LA 140704, LA 140706, and LA 140707) by nominating them for listing to the State Register of Cultural Properties. Enclosed are copies of the New Mexico Cultural Properties Act and Cultural Properties Protection Act. In these statutes you will find information concerning the responsibilities of state agencies (in this case the State Land Office) and the State Register of Cultural Properties.

Sincerely,



Michelle M. Ensey
Staff Archaeologist

Log: 70747

Enc. Sample MOA, Cultural Properties Act, Cultural Properties Protection Act

Cc: R.M. Krich, Vice President, licensing, Safety, and Nuclear Engineering, Louisiana Energy Services, One Sun Plaza, 100 Sun Lane NE, Suite 204, Albuquerque, NM 87109

Tim Leftwich, Principal, GL Environmental, Inc., 4200 Meadowlark Lane, Suite 1A. Rio Rancho, NM 87124

David C. Eck, Cultural Resource Specialist, NM State Land Office

Thomas J. Lennon, Principal Investigator, WCRM, 2603 West Main St., Suite B, Farmington, NM 87401

MEMORANDUM OF AGREEMENT

AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT,
AND
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICE,

REGARDING

DATA RECOVERY AT LA 740 AND LA 750
ALONG US 84/285,
SANTA FE COUNTY, NEW MEXICO

WHEREAS, the Federal Highway Administration (FHWA), in cooperation with the New Mexico State Highway and Transportation Department (NMSHTD) proposes to construct an interchange and associated local access road near Cuyamungue on US 84/285 between Santa Fe and Pojoaque, on highway right of way acquired from private sources, (NMSHTD project AC-HPP-MIP-084-6(59)177, CN 2155); and

WHEREAS, the FHWA, acting as lead agency, has determined that the Project adversely affects LA 740 and LA 750, archaeological sites eligible for inclusion in the National Register of Historic Places under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council) and the New Mexico State Preservation Officer (SHPO), pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act; and has determined that data recovery is the most appropriate form of treatment to mitigate adverse effects of the Project on this site; and

WHEREAS, the Advisory Council has declined to be a signatory to this Agreement; and

WHEREAS, the Data Recovery Plan, provided in Appendix A, has been developed and prepared in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and the Council's handbook, *Treatment of Archaeological Properties*;

NOW THEREFORE, the FHWA, NMSHTD, and the SHPO agree that the project shall be administered in accordance with the following stipulations in order to take into account the effect of the Project on historic properties and to satisfy responsibilities under Section 106 for the Project.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO, the FHWA and the NMSHTD will ensure that the measures and procedures specified in the data recovery plan by the consultant are implemented; this Agreement addresses all aspects of the data recovery plan developed by the consultant.

II. The consultant will prepare a final report discussing the findings resulting from the data recovery efforts. The report will be reviewed by the NMSHTD and the SHPO and any necessary revisions will be completed by the consultant. The NMSHTD will have 30 days for review; following this time period the SHPO will have 30 days to review the report.

III. Data recovery on state lands (highway right of way acquired from private sources) will be done by a cultural resource consultant via a permit issued by the Cultural Properties Review Committee (CPRC).

IV. DISCOVERY SITUATIONS

A. In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during data recovery, or it is recognized that such actions may effect a known historic property in an unanticipated manner, the FHWA/NMSHTD will terminate data recovery in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the SHPO regarding significance and effect can be concluded. The FHWA/NMSHTD will notify the SHPO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. The FHWA/NMSHTD will notify the SHPO of any time constraints, and the FHWA/NMSHTD and the SHPO will mutually agree upon time frames for the consultation. These procedures will be addressed in the Monitoring and Discovery Plan included as part of the data recovery plan.

V. TREATMENT OF HUMAN REMAINS

B. Since the site is on state lands, the treatment and disposition for any burial or "human remains and associated funerary object, material objects or artifacts" will be in accordance with Section 18-6-11.2 of the State's Cultural Properties Act and 4 NMAC 10.11 regulations, including consultation through HPD and the Office of Indian Affairs with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration for the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

VI. CURATION

A. The FHWA/NMSHTD shall ensure that the consultant provides for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79.
a. Artifacts will be curated at the Museum of New Mexico/MIAC.

VII. DISPUTE RESOLUTION

A. Should any Signatory to this Agreement object within 30 calendar days to any action(s) provided for review pursuant to this Agreement, the FHWA/NMSHTD shall consult with the objecting party to resolve the objection. The objection must be specifically identified, and the reasons for objection documented. If the FHWA/NMSHTD determines that the objection cannot be resolved, the FHWA/NMSHTD shall forward all documentation relevant to the dispute to the Council, pursuant to 36 CFR 800.7(b), and notify SHPO as to the nature of the dispute. Within 45 calendar days of receipt of all pertinent documentation, the Council shall provide the FHWA/NMSHTD with recommendations in accordance with 36 CFR 800.7(C)(2).

B. Any Council comment provided in response to such a request will be taken into account by the FHWA/NMSHTD in accordance with 36 CFR 800.7(b)(4) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the FHWA/NMSHTD and the consultant responsibilities to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

VIII. OBJECTIONS

A. At any time during the implementation of the measures stipulated in this Agreement, should an objection be raised by a consulting party or a member of the public, the FHWA/NMSHTD shall take the objection into account, notify the SHPO of the objection, and consult as needed with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Council and request that the Council comment.

B. After receipt of the pertinent documentation, the Council shall either:

1. Provide the FHWA with recommendations to take into account in reaching a final decision regarding the dispute; or
2. Notify the FHWA that the Council will comment in accordance with 36 CFR Section 800.6(b)(2) and proceed to comment.

C. Any Council comment provided in response to such a request shall be taken into account by the FHWA in accordance with 36 CFR Section 800.6(c)(2) with reference only to the subject of the dispute. The FHWA responsibility to carry out all other actions and activities under this MOA that are not the subject of the dispute remain unchanged.

IX. DURATION OF AGREEMENT/TERMINATION

A. Should the proposed project be approved by the FHWA/NMSHTD and the SHPO, this MOA shall remain in effect until all construction associated with the interchange has been completed, and when all requirements of the treatment and data recovery plans and stipulations of the MOA have been met. If implementation is delayed for more than two years after the date of execution of this MOA, the FHWA/NMSHTD shall review this MOA to determine whether revisions are needed. If revisions are needed, the FHWA/NMSHTD will consult in accordance with 36 CFR Part 800 to make such revisions.

B. Any signatory to this agreement may terminate it by providing 30 days notice to the other parties, providing that the parties will consult during the period prior to the termination to seek agreements or amendments or other actions that would avoid termination. In the event of termination, the FHWA/NMSHTD will comply with 36 CFR 800.3 through 800.6.

X. AMENDMENT

A) Any Signatory to this Agreement pursuant to 36 CFR 800.6(c)(1) may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.

XI. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT

In the event that the terms of this Agreement are not completed, the FHWA/NMSHTD shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

XII. SCOPE OF AGREEMENT

A. This Agreement is limited in scope to the construction of the Cuyamungue interchange and the associated local access road adjacent to US 84/285, CN 2155, and is entered into solely for that purpose, should the proposed project be approved by the FHWA/NMSHTD.

B. Execution of this MOA, its subsequent filing with the Council, and implementation of its terms, evidences that the FHWA/NMSHTD has afforded the Council an opportunity to comment on the US 84/285 Cuyamungue interchange project (CN 2155) and its effects on historic properties, and has, therefore, taken into account the effects of the project, if it is approved, on historic properties and has satisfied its Section 106 responsibilities for all individual actions of this undertaking.

Memorandum of Agreement: Signatories

DATA RECOVERY PLAN FOR PORTIONS OF LA 391 ALONG U.S. 84/285, SANTA FE COUNTY, NEW MEXICO

Federal Highway Administration

By: _____ Date: _____
J. Don Martinez
Division Administrator

New Mexico State Historic Preservation Officer

By: _____ Date: _____
Katherine Slick
State Historic Preservation Officer

New Mexico State Highway and Transportation Department

By: _____ Date: _____
R. Blake Roxlau
Cultural Resources Coordinator



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 27, 2004

Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
PO Box 1220
Anadarko, OK 73005

SUBJECT: CULTURAL RESOURCES INVENTORY REPORT FOR LOUISIANA ENERGY
SERVICES PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT
FACILITY IN LEA COUNTY, NEW MEXICO

Dear Chairman Chalepah:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico.

As described in our letter dated February 17, 2004, which requested information for the Section 106 process of the National Historic Preservation Act, LES performed a cultural resource survey of the proposed National Enrichment Facility (NEF) site in September 2003. Seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. A copy of the cultural resources report documenting the cultural resource inventory is enclosed. Site location information contained in the report may not be released to the general public under federal law, and it is essential that this information be protected.

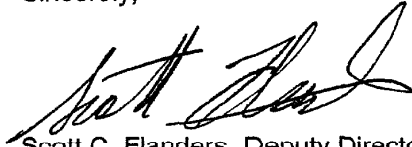
As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe have been identified. The NRC staff is interested in knowing if you have specific knowledge of any properties within the APE that you believe have traditional religious and cultural significance. In addition, we are interested in knowing if you are aware of or are concerned for any site, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure appropriate consideration in the Section 106 process.

Chairman Chalepah

2

If you have any questions or comments regarding this request, please contact Matthew Blevins of my staff at (301) 415-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders".

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

Docket No.: 70-3103

Enclosure: Cultural Resources Inventory
for the National Enrichment Facility

cc w/o enclosure: Ms. Jan Biella
Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 27, 2004

Jimmy Arteberry, Director of Environment
Comanche of Oklahoma
PO Box 908
Lawton, OK 73502

SUBJECT: CULTURAL RESOURCES INVENTORY REPORT FOR LOUISIANA ENERGY
SERVICES PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT
FACILITY IN LEA COUNTY, NEW MEXICO

Dear Mr. Arteberry:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico.

As described in our letter dated February 17, 2004, which requested information for the Section 106 process of the National Historic Preservation Act, LES performed a cultural resource survey of the proposed National Enrichment Facility (NEF) site in September 2003. Seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. A copy of the cultural resources report documenting the cultural resource inventory is enclosed. Site location information contained in the report may not be released to the general public under federal law, and it is essential that this information be protected.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe have been identified. The NRC staff is interested in knowing if you have specific knowledge of any properties within the APE that you believe have traditional religious and cultural significance. In addition, we are interested in knowing if you are aware of or are concerned for any site, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure appropriate consideration in the Section 106 process.

J. Arteberry

2

If you have any questions or comments regarding this request, please contact Matthew Blevins of my staff at (301) 415-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Flanders", written in a cursive style.

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

Docket No.: 70-3103

Enclosure: Cultural Resources Inventory
for the National Enrichment Facility

cc w/o enclosure: Ms. Jan Biella
Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 27, 2004

Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579 - Ysleta Station
El Paso, TX 79917

SUBJECT: CULTURAL RESOURCES INVENTORY REPORT FOR LOUISIANA ENERGY
SERVICES PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT
FACILITY IN LEA COUNTY, NEW MEXICO

Dear Governor Sinclair:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico.

As described in our letter dated February 17, 2004, which requested information for the Section 106 process of the National Historic Preservation Act, LES performed a cultural resource survey of the proposed National Enrichment Facility (NEF) site in September 2003. Seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. A copy of the cultural resources report documenting the cultural resource inventory is enclosed. Site location information contained in the report may not be released to the general public under federal law, and it is essential that this information be protected.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe have been identified. The NRC staff is interested in knowing if you have specific knowledge of any properties within the APE that you believe have traditional religious and cultural significance. In addition, we are interested in knowing if you are aware of or are concerned for any site, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure appropriate consideration in the Section 106 process.

A. Sinclair

2

If you have any questions or comments regarding this request, please contact Matthew Blevins of my staff at (301) 415-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders". The signature is fluid and cursive, with a large loop at the end.

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

Docket No.: 70-3103

Enclosure: Cultural Resources Inventory
for the National Enrichment Facility

cc w/o enclosure: Ms. Jan Biella
Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 27, 2004

Clifford A. McKenzie, Chairman
Kiowa Tribe of Oklahoma
PO Box 369
Carnegie, OK 73015

SUBJECT: CULTURAL RESOURCES INVENTORY REPORT FOR LOUISIANA ENERGY
SERVICES PROPOSED GAS CENTRIFUGE URANIUM ENRICHMENT
FACILITY IN LEA COUNTY, NEW MEXICO

Dear Chairman McKenzie:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico.

As described in our letter dated February 17, 2004, which requested information for the Section 106 process of the National Historic Preservation Act, LES performed a cultural resource survey of the proposed National Enrichment Facility (NEF) site in September 2003. Seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE is considered the NEF site area including permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. A copy of the cultural resources report documenting the cultural resource inventory is enclosed. Site location information contained in the report may not be released to the general public under federal law, and it is essential that this information be protected.

As you will see in the report, no properties of traditional religious and cultural significance to an Indian tribe have been identified. The NRC staff is interested in knowing if you have specific knowledge of any properties within the APE that you believe have traditional religious and cultural significance. In addition, we are interested in knowing if you are aware of or are concerned for any site, or object eligible for inclusion on the National Register of Historic Places that is not included in the report. This will assure appropriate consideration in the Section 106 process.

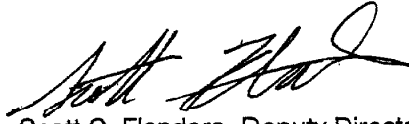
April 27, 2004

Chairman McKenzie

2

If you have any questions or comments regarding this request, please contact Matthew Blevins of my staff at (301) 415-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Flanders", is positioned above the typed name and title.

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

Docket No.: 70-3103

Enclosure: Cultural Resources Inventory
for the National Enrichment Facility

cc w/o enclosure: Ms. Jan Biella
Service List



MESCALERO APACHE TRIBAL HISTORIC PRESERVATION OFFICE

P.O. Box 227

Mescalero, New Mexico 88340

Phone: 505/464-4711

Fax: 505/464-4637

June 10, 2004

Mr. Scott C. Flanders
United States
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Cultural Resources Inventory Report for Louisiana Energy Services proposed Gas Centrifuge Uranium Enrichment Facility in Lea County, New Mexico

Dear Mr. Flanders:

(X) The *Mescalero Apache Tribe* has determined that the proposed Gas Centrifuge Uranium Enrichment Facility in Lea County, New Mexico **WILL NOT AFFECT** any objects sites, or locations important to our traditional culture or religion.

() The *Mescalero Apache Tribe* has determined that the proposed _____ project by _____ **WILL AFFECT** objects, sites, or locations important to our traditional culture or religion. We request that the _____ undertake further consultations to evaluate the effects of the project on the sites.

Thank you for providing the Mescalero Apache Tribe the opportunity to comment on this project. We look forward to reviewing and commenting on U.S. Nuclear Regulatory Commission projects.

CONCUR:

A handwritten signature in cursive script, appearing to read "Holly Houghten".

for Holly Houghten
Tribal Historic Preservation Officer

COMMENTS: _____



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 24, 2004

Mr. Alan Stanfill
Senior Program Analyst
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, CO 80228

**SUBJECT: NOTIFICATION OF INTENT TO PREPARE A MEMORANDUM OF
AGREEMENT FOR THE LOUISIANA ENERGY SERVICES PROPOSED
NATIONAL ENRICHMENT FACILITY**

Dear Mr. Stanfill:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico. The proposed enrichment facility covers an area of approximately 543 acres. Construction activities, including permanent plant structures, temporary construction facilities, contractor parking and lay-down areas, would disturb 200 acres.

In September 2003, LES performed a cultural resource inventory of the proposed site. Seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE is considered the proposed site area including the permanent and temporary building(s) footprints, parking and lay-down areas, and all site access roads. In addition, the undertaking is located on the land currently owned by the State of New Mexico. However, in a land exchange process, this land would be deeded to LES. This land exchange process would be considered an adverse effect to these seven sites. A copy of the cultural resources report documenting the cultural resource inventory is enclosed.

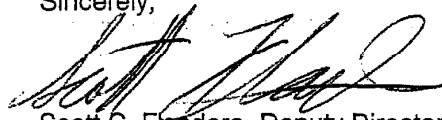
In accordance with NRC regulations at 10 CFR Part 51 and the National Environmental Policy Act, the NRC staff is preparing an Environmental Impact Statement (EIS) on the proposed facility which will assess the potential impacts of the proposed facility on the historic and archaeological resources of the area and on the cultural traditions and lifestyle of Indian tribes. The NRC staff will develop a Memorandum of Agreement (Agreement) with the New Mexico State Historic Preservation Officer, the New Mexico State Land Office and LES to ensure that the proposed action is undertaken in accordance with the requirements of Section 106 of the National Historic Preservation Act.

Pursuant to the requirements of 36 CFR 800, the NRC staff is notifying the Advisory Council on Historic Preservation (Council) of its intent to prepare the Agreement. The NRC staff recognizes that criteria exist for the Council's involvement in reviewing individual Section 106 cases. As described in Appendix A to 36 CFR 800, one of these criteria is whether the undertaking has the potential for presenting procedural problems. As discussed in the telephone conference calls on June 9, 2004 and June 22, 2004, the Agreement will address the land exchange process and its impacts on cultural resources.

Also, the NRC staff has offered Indian tribes that may be concerned with the possible effects of the proposed action on historic properties, an opportunity to participate in the Section 106 consultation process. As specified in 36 CFR 800.6, a copy of the executed Agreement will be submitted to the Council.

If you have any questions or comments, please contact Melanie Wong at (301) 415-6262.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", written over a horizontal line.

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

Docket: 70-3103

Enclosure: Cultural Resources Inventory
for the National Enrichment Facility (ML040930424)

cc: Service List (w/o enclosure)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 6, 2004

The Honorable Wallace Coffey, Chairman
Comanche Tribe of Oklahoma
P.O. Box 908
Lawton, OK 73502

SUBJECT: SECTION 106 CONSULTATION PROCESS OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY

Dear Chairman Coffey:

On April 27, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff provided you with a copy of the Cultural Resource Inventory, which documents the cultural resources at the proposed site of the Louisiana Energy Services (LES) National Enrichment Facility (NEF). During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE consists of: the proposed NEF site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads.

In the letter transmitting the Cultural Resource Inventory, the NRC staff requested information regarding properties within the APE that could have traditional religious or cultural significance. The letter also requested that you notify the NRC staff if you were concerned about any site or object eligible for inclusion on the National Register of Historic Places that is not included in the Cultural Resources Inventory.

On June 2, 2004, Mr. Samuel Hernandez of the NRC staff contacted Mr. Jimmy Arterberry (Director of Environment), to discuss the requested information. This is a follow-up letter confirming the information provided in the telephone conversation. Mr. Arterberry informed Mr. Hernandez that there are no properties of cultural and traditional significance to the Comanche Tribe of Oklahoma within the APE. If your understanding of the telephone conference between Mr. Hernandez and Mr. Arterberry differs from the above, please notify us as soon as possible.

The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified. As a result of the findings of adverse effects, a draft Memorandum of Agreement (Agreement) and Treatment Plan will be developed, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects. In the telephone conversation, Mr. Arterberry informed Mr. Hernandez that the Comanche Tribe of Oklahoma would like to be a concurring party to the Agreement.

Chairman Coffey

2

Once the Agreement and the Treatment Plan have been finalized, they will be forwarded for your review and comment. If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed NEF, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott C. Flanders for".

Scott C. Flanders
Deputy Director for the Environmental and
Performance Directorate
Division of Waste Management and Environmental
Protection
Office of Nuclear Material Safety
and Safeguards

Docket: 70-3103

cc: Jimmy Arterberry, Director of Environment
Section 106 Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 6, 2004

The Honorable Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

SUBJECT: SECTION 106 CONSULTATION PROCESS OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY

Dear Chairman Chalepah:

On April 27, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff provided you with a copy of the Cultural Resource Inventory, which documents the cultural resources at the proposed site of the Louisiana Energy Services (LES) National Enrichment Facility (NEF). During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE consists of: the proposed NEF site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified. As a result of the findings of adverse effects, a draft Memorandum of Agreement (hereafter Agreement) and Treatment Plan will be developed, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects.

In the letter transmitting the Cultural Resource Inventory, the NRC staff requested information regarding properties within the APE that could have traditional religious or cultural significance. The letter also requested that you notify the NRC staff if you were concerned about any site or object eligible for inclusion on the National Register of Historic Places that is not included in the Cultural Resources Inventory. During the month of June 2004, Mr. Samuel Hernandez of the NRC staff attempted on several occasions to contact a representative of your organization to *discuss the requested information but was unsuccessful.*

The NRC staff extends an invitation to the Apache Tribe of Oklahoma to be a concurring party to the Agreement and Treatment Plan. If the Apache Tribe of Oklahoma has information regarding properties within the APE and would like to be a concurring party to the Agreement, please notify us as soon as possible. If a response is not received within 30 days of receipt of this letter, the NRC staff will assume that the Apache Tribe of Oklahoma does not wish to be a concurring party to the Agreement.

Chairman Chalepah

-2-

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed NEF, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", with a large, loopy flourish at the end.

Scott C. Flanders
Deputy Director for the Environmental and
Performance Directorate
Division of Waste Management and Environmental
Protection
Office of Nuclear Material Safety
and Safeguards

Docket: 70-3103

cc: Bobby Jay, Cultural Resources Officer
Section 106 Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 6, 2004

Holly Houghten, Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

SUBJECT: SECTION 106 CONSULTATION PROCESS OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY

Dear Ms. Houghten:

On April 27, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff provided you with a copy of the Cultural Resource Inventory, which documents the cultural resources at the proposed site of the Louisiana Energy Services (LES) National Enrichment Facility (NEF). During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE consists of: the proposed NEF site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified. As a result of the findings of adverse effects, a draft Memorandum of Agreement (hereafter Agreement) and Treatment Plan will be developed, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects.

In the letter transmitting the Cultural Resource Inventory, the NRC staff requested information regarding properties within the APE that could have traditional religious or cultural significance. The letter also requested that you notify the NRC staff if you were concerned about any site or object eligible for inclusion on the National Register of Historic Places that is not included in the Cultural Resources Inventory. By letter dated June 10, 2004, you stated that the NEF will not affect any sites or locations important to the Mescalero Apache Tribe culture or religion.

During the month of June 2004, Mr. Samuel Hernandez of the NRC staff attempted on several occasions to contact Ms. Naida Natchez (Historic Preservation Officer), to discuss whether the Mescalero Apache Tribe would like to be a concurring party to the Agreement but was unsuccessful. If the Mescalero Apache would like to be a concurring party to the Agreement, please notify us as soon as possible. If a response is not received within 30 days of receipt of this letter, the NRC staff will assume that the Mescalero Apache Tribe does not wish to be a concurring party to the Agreement.

Ms. Houghten

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed NEF, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders for".

Scott C. Flanders
Deputy Director for the Environmental and
Performance Directorate
Division of Waste Management and Environmental
Protection
Office of Nuclear Material Safety
and Safeguards

Docket: 70-3103

cc: Section 106 Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 6, 2004

The Honorable Arturo Sinclair, Governor
Ysleta del Sur Pueblo
P.O. Box 17579
El Paso, TX 79917

**SUBJECT: SECTION 106 CONSULTATION PROCESS OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Governor Sinclair:

On April 27, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff provided you with a copy of the Cultural Resource Inventory, which documents the cultural resources at the proposed site of the Louisiana Energy Services (LES) National Enrichment Facility (NEF). During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE consists of: the proposed NEF site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads.

In the letter transmitting the Cultural Resource Inventory, the NRC staff requested information regarding properties within the APE that could have traditional religious or cultural significance. The letter also requested that you notify the NRC staff if you were concerned about any site or object eligible for inclusion on the National Register of Historic Places that is not included in the Cultural Resources Inventory.

On June 2, 2004, Mr. Samuel Hernandez of the NRC staff contacted Ms. Silvia Garcia (Secretary), to discuss the requested information. This is a follow-up letter confirming the information provided in the telephone conversation. Ms. Garcia informed Mr. Hernandez that there are no properties of cultural and traditional significance to the Ysleta del Sur Pueblo within the APE. If your understanding of the telephone conference between Mr. Hernandez and Ms. Garcia differs from the above, please notify us as soon as possible.

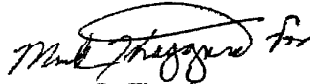
The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified. As a result of the findings of adverse effects, a draft Memorandum of Agreement (hereafter Agreement) and Treatment Plan will be developed, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects. In the telephone conversation, Ms. Garcia informed Mr. Hernandez that the Ysleta del Sur Pueblo would like to be a concurring party to the Agreement.

Governor Sinclair

2

Once the Agreement and the Treatment Plan have been finalized, they will be forwarded for your review and comment. If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed NEF, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", with a stylized flourish at the end.

Scott C. Flanders
Deputy Director for the Environmental and
Performance Directorate
Division of Waste Management and Environmental
Protection
Office of Nuclear Material Safety
and Safeguards

Docket: 70-3103

cc: Section 106 Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 26, 2004

The Honorable Clifford McKenzie, Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

SUBJECT: SECTION 106 CONSULTATION PROCESS OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY

Dear Chairman McKenzie:

On April 27, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff provided you with a copy of the Cultural Resource Inventory, which documents the cultural resources at the proposed site of the Louisiana Energy Services (LES) National Enrichment Facility (NEF). During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the Area of Potential Effects (APE). The APE consists of: the proposed NEF site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads.

In the letter transmitting the Cultural Resource Inventory, the NRC staff requested information regarding properties within the APE that could have traditional religious or cultural significance. *The letter also requested that you notify the NRC staff if you were concerned about any site or object eligible for inclusion on the National Register of Historic Places that is not included in the Cultural Resources Inventory.*

On June 2, 2004, Mr. Samuel Hernandez of the NRC staff contacted Ms. Martha Perez (Secretary), to discuss the requested information. This is a follow-up letter confirming the information provided in the telephone conversation. Ms. Perez informed Mr. Hernandez that there are no properties of cultural and traditional significance to the Kiowa Tribe of Oklahoma within the APE. If your understanding of the telephone conference between Mr. Hernandez and Ms. Perez differs from the above, please notify us as soon as possible.

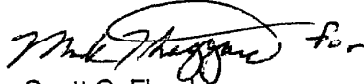
The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified. As a result of the findings of adverse effects, a draft Memorandum of Agreement (hereafter Agreement) and Treatment Plan will be developed, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects. In the telephone conversation, Ms. Perez informed Mr. Hernandez that the Kiowa Tribe of Oklahoma would like to be a concurring party to the Agreement.

Chairman McKenzie

2

Once the Agreement and the Treatment Plan have been finalized, they will be forwarded for your review and comment. If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed NEF, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", with a stylized flourish at the end.

Scott C. Flanders
Deputy Director for the Environmental and
Performance Directorate
Division of Waste Management and Environmental
Protection
Office of Nuclear Material Safety
and Safeguards

Docket: 70-3103

cc: The Honorable George Tahboun, Vice-Chairman
Section 106 Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 26, 2004

Mr. Samuel Cata
Tribal Liaison
Historic Preservation Division
228 East Palace Ave.
Santa Fe, NM 87501

SUBJECT: STATUS OF SECTION 106 CONSULTATION PROCESS OF THE NATIONAL
HISTORIC PRESERVATION ACT FOR THE PROPOSED LOUISIANA ENERGY
SERVICES NATIONAL ENRICHMENT FACILITY

Dear Mr. Cata:

As you are aware, by letter dated December 12, 2003, Louisiana Energy Services (LES) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a license to construct, operate, and decommission a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico. The proposed enrichment facility covers an area of approximately 543 acres.

In accordance with NRC regulations at 10 CFR Part 51 and the National Environmental Policy Act, the NRC staff is preparing an Environmental Impact Statement on the proposed facility which will assess the potential impacts of the proposed facility on the historic and archaeological resources of the area and on the cultural traditions and lifestyle of Indian tribes. In addition, the NRC staff will develop a Memorandum of Agreement (Agreement) with the New Mexico State Historic Preservation Officer (SHPO), the New Mexico State Land Office, Indian tribes and LES to ensure that the proposed action is undertaken in accordance with the requirements of the Section 106 consultation process of the National Historic Preservation Act.

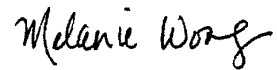
On May 18, 2004, Ms. Jan Biella (Deputy SHPO) recommended contacting you as the Governor appointed Tribal Liaison to discuss the proposed project and determine which Indian tribes should be contacted. On June 4, 2004, the NRC staff provided you information related to the Section 106 consultation process including NRC letters initiating the Section 106 consultation process with the affected Indian tribes. We are currently in the process of developing the abovementioned Agreement and a Treatment Plan, that outlines agreed-upon measures that LES will undertake to avoid, minimize, or mitigate any adverse effects.

S. Cata

2

We would very much appreciate your providing any comments you may have on the proposed project in a timely manner. If you have any questions or concerns, please do not hesitate to contact me at (301) 415-6262.

Sincerely,

A handwritten signature in black ink that reads "Melanie Wong". The signature is written in a cursive, flowing style.

Melanie Wong, Project Manager
Environmental and Low-Level Waste Section
Division of Waste Management
and Environmental Protection
Office of Nuclear Material Safety
and Safeguard

Docket 70-3103

cc: Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2004

Mr. Rod Krich, Vice President
Licensing, Safety, and Nuclear Engineering
Louisiana Energy Services
2600 Virginia Avenue NW, Suite 610
Washington, DC 20037

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT AND TREATMENT PLAN FOR THE PROPOSED LOUISIANA
ENERGY SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Mr. Krich:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

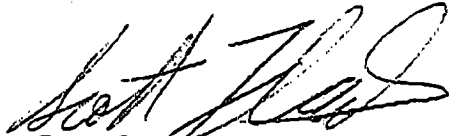
In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. The NRC staff provided consulting parties with a copy of the report documenting the cultural resources located within the APE. The report includes a recommendation for each site within the APE, with regards to each site's eligibility for inclusion into the National Register of Historic Places.

During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the APE. The APE consists of: the proposed National Enrichment Facility (NEF) site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified (Enclosure 1).

As a consequence of the findings of adverse effects, a draft Memorandum of Agreement (Enclosure 2) and Treatment Plan (Enclosure 3) have been developed that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. The NRC staff is requesting your comments on the draft Agreement and Treatment Plan within 30 days.

If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Anthropology Records (ML041900491)
2. Draft Agreement (ML042240026)
3. Draft Treatment Plan (ML042640105)

Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2004

Mr. Harry Teague, Commission Chairman
Lea County
100 North Main Street,
Suite 4
Lovington, NM 88260

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
 AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
 NATIONAL ENRICHMENT FACILITY**

Dear Commission Chairman Teague:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. The NRC staff provided consulting parties with a copy of the report documenting the cultural resources located within the APE. The report includes a recommendation for each site within the APE, with regards to each site's eligibility for inclusion into the National Register of Historic Places.

During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the APE. The APE consists of: the proposed National Enrichment Facility (NEF) site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified (Enclosure 1).

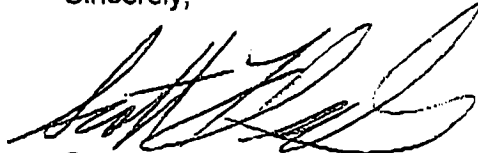
As a consequence of the findings of adverse effects, a draft Memorandum of Agreement (Enclosure 2) and Treatment Plan (Enclosure 3) have been developed that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. The NRC staff is requesting your comments on the draft Agreement and Treatment Plan within 30 days.

H. Teague

2

If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott C. Flanders', written in a cursive style.

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

Enclosure: 1. Anthropology Records (ML041900491)
2. Draft Agreement (ML042240026)
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Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

Mr. David C. Eck, Cultural Resource Specialist
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
 AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
 NATIONAL ENRICHMENT FACILITY**

Dear Mr. Eck:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. The NRC staff provided consulting parties with a copy of the report documenting the cultural resources located within the APE. The report includes a recommendation for each site within the APE, with regards to each site's eligibility for inclusion into the National Register of Historic Places.

During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the APE. The APE consists of: the proposed National Enrichment Facility (NEF) site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified (Enclosure 1).

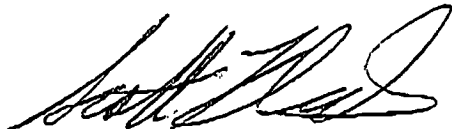
As a consequence of the findings of adverse effects, a draft Memorandum of Agreement (Enclosure 2) and Treatment Plan (Enclosure 3) have been developed that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. The NRC staff is requesting your comments on the draft Agreement and Treatment Plan within 30 days.

D. Eck

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If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", is positioned above the typed name and title.

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

Enclosure: 1. Anthropology Records (ML041900491)
2. Draft Agreement (ML042240026)
3. Draft Treatment Plan (ML042640105)

Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

Mr. Alan Stanfill, Senior Program Analyst
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, CO 80228

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
 AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
 NATIONAL ENRICHMENT FACILITY**

Dear Mr. Stanfill:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

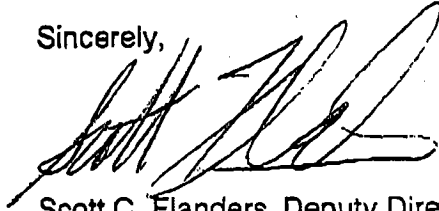
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If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott C. Flanders', written over a horizontal line.

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

Enclosure: 1. Anthropology Records (ML041900491)
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Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

Mr. Phillip A. Young, Planning Section Chief
State of New Mexico
Dept. of Cultural Affairs
Historic Preservation Division
228 East Palace Ave, Rm. 320
Santa Fe, NM 87501

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
 AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
 NATIONAL ENRICHMENT FACILITY**

Dear Mr. Young:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. The NRC staff provided consulting parties with a copy of the report documenting the cultural resources located within the APE. The report includes a recommendation for each site within the APE, with regards to each site's eligibility for inclusion into the National Register of Historic Places.

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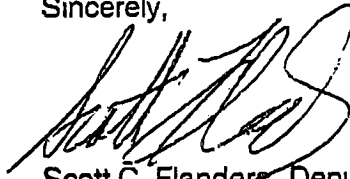
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P. Young

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If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", written over a horizontal line.

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

Enclosure: 1. Anthropology Records (ML041900491)
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Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

The Honorable Clifford McKenzie, Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

**SUBJECT: REQUEST FOR COMMENT ON THE DRAFT MEMORANDUM OF
 AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
 NATIONAL ENRICHMENT FACILITY**

Dear Chairman McKenzie:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

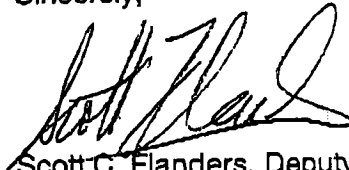
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During the inventory, seven prehistoric archeological sites were identified with several of these sites occurring in the APE. The APE consists of: the proposed National Enrichment Facility (NEF) site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified (Enclosure 1).

As a consequence of the findings of adverse effects, a draft Memorandum of Agreement (Enclosure 2) and Treatment Plan (Enclosure 3) have been developed that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. The NRC staff is requesting your comments on the draft Agreement and Treatment Plan within 30 days.

If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Flanders", written over a horizontal line.

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

Enclosure: 1. Anthropology Records (ML041900491)
2. Draft Agreement (ML042240026)
3. Draft Treatment Plan (ML042640105)

Docket: 70-3103

cc: The Honorable George Tahboun, Vice-Chairman
Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

The Honorable Wallace Coffey
Comanche Tribe of Oklahoma
PO Box 908
Lawton, OK 73502

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
NATIONAL ENRICHMENT FACILITY**

Dear Chairman Coffey:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

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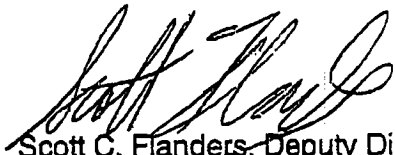
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W. Coffey

2

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Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", is written over the typed name.

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

Enclosure: 1. Anthropology Records (ML041900491)
2. Draft Agreement (ML042240026)
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Docket: 70-3103

cc: Jimmy Arterberry, Director of Environment
Section 106 Service List (copy of Draft Agreement only)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2004

The Honorable Arturo Sinclair
Ysleta del Sur Pueblo
PO Box 17579-Ysleta Station
El Paso, TX 79917

SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
NATIONAL ENRICHMENT FACILITY

Dear Governor Sinclair:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

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A. Sinclair

2

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Sincerely,

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

Enclosure: 1. Anthropology Records (ML041900491)
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Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 2, 2004

The Honorable Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

**SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
NATIONAL ENRICHMENT FACILITY**

Dear Chairman Chalepah:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

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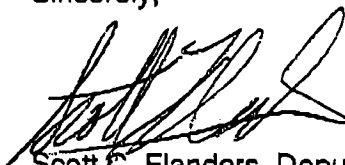
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A. Chalepah

2

If you have any questions or comments, please contact Anna Bradford, Project Manager for the environmental review of the proposed project, at (301) 415-5228. Thank you for your assistance.

Sincerely,



Scott C. Flanders, Deputy Director
Environmental and Performance
Assessment Directorate
Division of Waste Management
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Office of Nuclear Material Safety
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Enclosure: 1. Anthropology Records (ML041900491)
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Docket: 70-3103

cc: Bobby Jay, Cultural Resources Officer
Section 106 Service List (copy of Draft Agreement only)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2004

Ms. Holly Houghten, Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
NATIONAL ENRICHMENT FACILITY

Dear Ms Houghten:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

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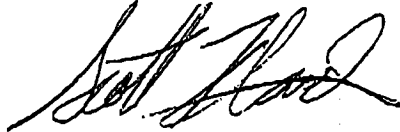
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H. Houghten

2

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Sincerely,

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

Enclosure: 1. Anthropology Records (ML041900491)
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Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2004

Ms. Jan Biella
Deputy State Historic Preservation Officer
Historic Preservation Division
New Mexico Department of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87501

SUBJECT: REQUEST FOR COMMENTS ON THE DRAFT MEMORANDUM OF
AGREEMENT FOR THE PROPOSED LOUISIANA ENERGY SERVICES
NATIONAL ENRICHMENT FACILITY

Dear Ms. Biella:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate a gas centrifuge uranium enrichment facility near Eunice, NM. By letter dated, February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

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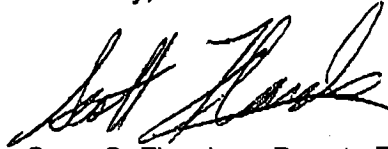
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3. Draft Treatment Plan (ML042640105)

Docket: 70-3103

cc: Section 106 Service List (copy of Draft Agreement only)

FINAL

**MEMORANDUM OF AGREEMENT
among the
U.S. NUCLEAR REGULATORY COMMISSION
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
NEW MEXICO STATE LAND OFFICE
LEA COUNTY
and
LOUISIANA ENERGY SERVICES
regarding the
MEASURES TO MITIGATE EFFECTS ON LA 140701, LA 140702, LA 140703, LA 140704,
LA 140705, LA 140706, AND LA 140707
in
LEA COUNTY, New Mexico**

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), the lead Federal agency, has received an application from Louisiana Energy Services (LES), for the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility (hereafter the undertaking), located in Lea County, New Mexico, as described in LES's application dated December 12, 2003, and revised February 27, 2004, July 30, 2004, and September 30, 2004; and,

WHEREAS, the approval or disapproval of the undertaking would be documented in a licensing action, according to NRC rules, regulations, and requirements; and,

WHEREAS, the New Mexico State Land Office (NMSLO), prior to the proposed undertaking, would convey trust lands to Lea County in exchange for a conveyance of non-trusts land by LES; and

WHEREAS, the undertaking's Area of Potential Effect (APE), as defined at 36 CFR 800.16(d) is shown in Figure 4 of An Intensive Cultural Resource Inventory of 543 Acres for the National Enrichment Facility Near Eunice, Lea County, New Mexico; and,

WHEREAS, pursuant to 36 CFR Part 800, the NRC has determined that the proposed project adversely affects LA 140701, LA 140702, LA 140703, LA 140704, LA 140705, LA 140706, and LA 140707, archaeological sites eligible for inclusion on the National Register of Historic Places (National Register) under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council), the State Historic Preservation Officer of New Mexico (SHPO), NMSLO, and LES on this Memorandum of Agreement (Agreement); and,

WHEREAS, pursuant to 36 CFR 800.3(f), the NRC has consulted with the Apache Tribe of Oklahoma, Kiowa Tribe of Oklahoma, Comanche Tribe of Oklahoma, Mescalero Apache, and Ysleta del Sur Pueblo regarding this Agreement; and,

WHEREAS, the NRC, as part of the National Environmental Policy Act review process, has sought public comments and notified the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800 and has considered the applicable

requirements of Section 106 of the National Historic Preservation Act in the course of the consultation; and,

WHEREAS, LES has submitted to the SHPO a Treatment Plan for the archeological sites, which has been developed and prepared in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 Fed. Reg. 44734-37) and the Council's Handbook, Treatment of Archaeological Properties; and,

NOW, THEREFORE, the signatories parties agree that the undertaking shall be administered in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties and to satisfy Section 106 of the National Historic Preservation Act.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO and NMSLO, the NRC will ensure that the measures and procedures specified in the Treatment Plan, as approved by the SHPO, are implemented; this Agreement addresses all aspects of the Treatment Plan developed by LES.

II. LES will prepare a final report discussing the findings resulting from the Treatment Plan efforts. This report will be reviewed by the signatory and concurring parties within a 30-day comment period and any necessary revisions will be completed by LES.

III. Discovery

In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during the Treatment Plan efforts, or it is recognized that such actions may affect known historic properties in an unanticipated manner, LES will terminate treatment in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the signatory and concurring parties regarding significance and effect can be concluded. LES will notify the NRC, SHPO and the NMSLO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. LES will further notify the NRC, SHPO, and NMSLO of any time constraints and they will mutually agree upon time frames for the consultation. These procedures will be addressed in the Treatment Plan.

IV. Contingency

LES shall prepare a draft nomination of the identified historic properties to the State Register of Cultural Properties prior to the land exchange. The draft nomination of these seven eligible archaeological sites shall be submitted to the SHPO, NMSLO, and Lea County for their review and files.

In the event that LES does not receive their NRC license for the National Enrichment Facility, Lea County shall formally submit the nomination to the Cultural Properties Review Committee for their consideration.

V. Human Remains

If human remains are inadvertently discovered during construction activities, LES will notify the signatory parties and cease all construction within 300 feet in all directions of the human remains. Treatment and disposition of remains and associated grave goods will be consistent with applicable Federal and State laws including consultation with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration of the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

VI. Curation

LES shall provide for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79. Artifacts will be curated at the Museum of New Mexico.

VII. Confidentiality

All signatory and concurring parties shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996).

VIII. Dispute Resolution

A. Should any signatory party to this Agreement object within 30 calendar days to any action proposed or any document provided for review pursuant to this Agreement, the NRC shall consult with the objecting party to resolve the objection unless otherwise specified in this document. If NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council.

- B. The Council will, within 45 days after receipt of all pertinent documentation, either:
1. Provide the NRC with recommendations, (any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the NRC in reaching a final decision regarding the dispute.); or
 2. Notify the NRC that it will comment in accordance with 36 CFR Part 800.7 and proceed to comment. (Any Council comment provided in response to such a request will be taken into account by the NRC in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.)

C. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the NRC's responsibility to carry out all actions under this Agreement that is not subject to dispute will remain unchanged.

D. Should any concurring party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action, the NRC shall consult with the

objecting parties to resolve the objection. The objection must be identified specifically and the reasons for the objection documented. Any timely objections by a concurring party shall be resolved by the NRC in such a manner as it deems appropriate, upon consultation with the signatory and concurring parties.

IX. Termination

Any signatory party to this Agreement may terminate it by providing 30 calendar days notice, in writing, to the other parties, provided that the parties consult during the period prior to termination to seek agreement or amendments or other action that would avoid termination. If any Signatory individually terminates its participation in the Agreement, then the Agreement is terminated in its entirety. In the event of termination, the Signatories will comply with 36 CFR Part 800 Subpart B.

X. Amendment

Any signatory to this Agreement pursuant to 36 CFR 800.6(c)(1) may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.

XI. Failure to carry out the terms of the Agreement

In the event that the terms of this Agreement are not carried out, the NRC shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

XII. Term of this Agreement

In the event that the terms of this Agreement are not carried out within two (2) years from the date of its execution, this agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

XIII. Execution of this Agreement

Execution and implementation of this Agreement evidences that the NRC has afforded the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties and that the NRC has taken into account the effects of the undertaking on historic properties.

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: _____

Date: _____

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

CONCURRING PARTIES:

APACHE TRIBE OF OKLAHOMA

By: _____

Date: _____

KIOWA TRIBE OF OKLAHOMA

By: _____

Date: _____

COMANCHE TRIBE OF OKLAHOMA

By: _____

Date: _____

MESCALERO APACHE TRIBE

By: _____

Date: _____

YSLETA DEL SUR PUEBLO

By: _____

Date: _____



Preserving America's Heritage

November 8, 2004

Mr. Scott C. Flanders
Deputy Director
Environmental and Performance Assessment Directorate
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

REF: *Proposed Louisiana Energy Services National Enrichment Facility.*

Dear Mr. Flanders:

We received your notification and supporting documentation regarding the adverse effects of the referenced project on a property or properties eligible for inclusion in the National Register of Historic Places. Based upon the information you provided, we do not believe that our participation in consultation to resolve adverse effects is needed. However, should circumstances change, please notify us so we can re-evaluate if our participation is required. Pursuant to 36 CFR 800.6(b)(iv), you will need to file the Memorandum of Agreement, and related documentation at the conclusion of the consultation process. The filing of this Agreement with the ACHP is necessary to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions, please contact me at (303) 969-5110 or via eMail to astanfill@achp.gov.

Sincerely,

Alan Stanfill
Senior Program Analyst
Western Office of Federal
Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

B-90

12136 West Bayaud Avenue, Suite 330 • Lakewood, Colorado 80228
Phone: 303-969-5110 • Fax: 303-969-5115 • achp@achp.gov • www.achp.gov



STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

228 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501
(505) 827-6320

BILL RICHARDSON
Governor

29 November 2004

Scott C. Flanders
Deputy Director,
Env. & Performance Assessment Directorate
Div. of Waste Mgmt. & Env. Protection
Office of Nuclear Material Safety & safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTN: Anna Bradford

Subject: Comments on the Draft Memorandum of Agreement (MOA) for the
Proposed Louisiana Energy Services National Enrichment Facility

Dear Mr. Flanders:

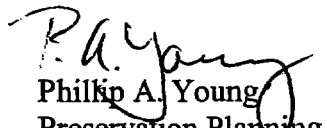
On 09 November 2004, the Historic Preservation Division (HPD) was pleased to receive your request for comments on the Draft MOA and Draft Treatment Plan for the proposed undertaking near Eunice, NM.

We believe the documents are much improved from earlier versions. We did note a mistake on Page 16, 4th paragraph of the Treatment Plan, where citing Meyer 1993 . . . The sentence reads "sedentary agriculturalists", and this should be "mobile hunters and gatherers." Starting with the previous sentence, it should state: "Some researchers believe that expedient lithic technology is associated with sedentary societies (cite references). Others, however, believe that it is more commonly associated with hunters and gathers (Meyer 1993, etc....)." We believe this was what Dr. Wheeler intended to write, but it got mixed up. An HPD archaeologist spoke to him about this, and he understood the Meyer 1993 argument.

We also recommend that the Treatment Plan should provide specific data needs (mutually exclusive data sets) for each question we're trying to answer. With mutually exclusive data sets, you can't say the presence of "lithics" is a key to defining a camp. Lithics are found on many different types of sites. However, you could say a specific type of tool, is expected at one site type, but not any other (depending on the site type and the assumptions presented by the researcher). Another would be that Pithouses are expected at villages, but not temporary camps, etc.

Anyway, thank you again for the opportunity to review this Draft. We look forward to seeing the finals. Feel free to call me at 505.827.6314 or Lisa Meyer at 505.827.7824 if you have any questions.

Sincerely


Philip A. Young
Preservation Planning

HPD Log # 72698



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 25, 2005

Mr. Rod Krich, Vice President
Licensing, Safety, and Nuclear Engineering
Louisiana Energy Services
2600 Virginia Avenue NW, Suite 610
Washington, DC 20037

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY**

Dear Mr. Krich:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

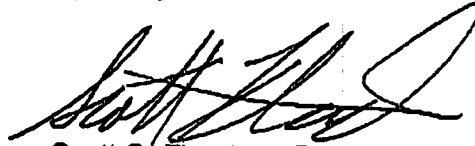
As LES is identified as a signatory party on the Agreement, the NRC staff requests that the appropriate LES official sign and date the Agreement in the designated location. By signing, LES is agreeing to fulfill the requisite stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of LES's receipt of this transmittal letter.

R. Krich

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 25, 2005

Mr. Harry Teague, Commission Chairman
Lea County
100 North Main Street,
Suite 4
Lovington, NM 88260

SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY

Dear Mr. Teague:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office, and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

As Lea County is identified as a signatory party on the Agreement, the NRC staff requests that the appropriate Lea County official sign and date the Agreement in the designated location. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

H.Teague

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

Mr. David C. Eck, Cultural Resource Specialist
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY**

Dear Mr. Eck:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

As the New Mexico State Land Office (NMSLO) is identified as a signatory party on the Agreement, the NRC staff requests that the appropriate NMSLO official sign and date the Agreement in the designated location. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

D.Eck

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

Ms. Katherine Slick, State Historic Preservation Officer
State of New Mexico
Dept. of Cultural Affairs
Historic Preservation Division
228 East Palace Ave, Rm. 320
Santa Fe, NM 87501

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY**

Dear Ms. Slick:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

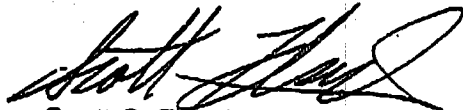
As the SHPO is identified as a signatory party on the Agreement, the NRC staff requests that the appropriate SHPO official sign and date the Agreement in the designated location. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

K.Slick

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Jan Biella, Deputy State Historic Preservation Officer
Phillip Young, Preservation Planning Manager
Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

The Honorable Billy Evans Horse, Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY**

Dear Chairman Evans Horse:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

As the Kiowa Tribe of Oklahoma is identified as a concurring party on the Agreement, the NRC staff requests that the appropriate Tribal official sign and date the Agreement in the designated location. By signing, the Kiowa Tribe of Oklahoma is concurring on the stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

B. Evans Horse

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: The Honorable George Tahboun, Vice-Chairman
Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

The Honorable Wallace Coffey, Chairman
Comanche Tribe of Oklahoma
PO Box 908
Lawton, OK 73502

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT FOR THE PROPOSED LOUISIANA
ENERGY SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Chairman Coffey:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

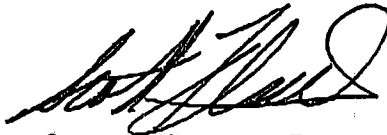
As the Comanche Tribe of Oklahoma is identified as a concurring party on the Agreement, the NRC staff requests that the appropriate Tribal official sign and date the Agreement in the designated location. By signing, the Comanche Tribe of Oklahoma is concurring on the stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

W.Coffey

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", written in a cursive style.

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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

The Honorable Arturo Sinclair, Governor
Ysleta del Sur Pueblo
PO Box 17579-Ysleta Station
El Paso, TX 79917

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT FOR THE PROPOSED LOUISIANA
ENERGY SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Governor Sinclair:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

As a consequence of the findings of adverse effects, on November 2, 2004, the NRC staff requested comments on a draft Memorandum of Agreement and Treatment Plan that outline agreed-upon measures that LES would take to avoid, minimize, or mitigate these adverse effects. Based on comments received, the Agreement (Enclosure 1) and Treatment Plan (Enclosure 2) have been revised accordingly and are hereby provided to you in their final form.

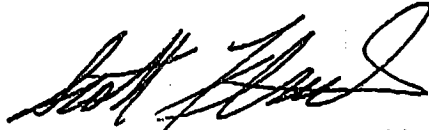
As the Ysleta del Sur Pueblo is identified as a concurring party on the Agreement, the NRC staff requests that the appropriate Tribal official sign and date the Agreement in the designated location. By signing, the Ysleta del Sur Pueblo is concurring on the stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

A.Sinclair

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Flanders", written in a cursive style.

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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

The Honorable Alonso Chalepah, Chairman
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT FOR THE PROPOSED LOUISIANA
ENERGY SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Chairman Chalepah:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

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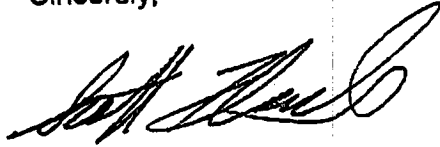
As the Apache Tribe of Oklahoma is identified as a concurring party on the Agreement, the NRC staff requests that the appropriate Tribal official sign and date the Agreement in the designated location. By signing, the Apache Tribe of Oklahoma is concurring on the stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

A.Chalepah

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Bobby Jay, Cultural Resources Officer
Section 106 Service List (copy of Agreement only)



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

February 25, 2005

Ms. Holly Houghten, Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

**SUBJECT: FINAL MEMORANDUM OF AGREEMENT FOR THE PROPOSED LOUISIANA
ENERGY SERVICES NATIONAL ENRICHMENT FACILITY**

Dear Ms. Houghten:

As you are aware, Louisiana Energy Services (LES), proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, NM. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act, with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office (SHPO) and with regional Federally recognized Indian tribes.

In September 2003, Western Cultural Resource Management Inc. (WCRM), a LES contractor, performed a cultural resource inventory of the proposed project area. All portions of the Area of Potential Effect (APE) were included in the study area. During the inventory, seven prehistoric archeological sites were identified, with several of these sites occurring in the APE. The APE consists of: the proposed site area, including permanent and temporary building(s) footprints; parking and lay-down areas; and all site access roads. The proposed NEF site is located on land currently owned by the State of New Mexico. However, as part of a land exchange process involving the State, Lea County, and LES, the land for the proposed NEF would be deeded to LES. This land exchange process would be considered an adverse effect to the seven prehistoric archeological sites identified.

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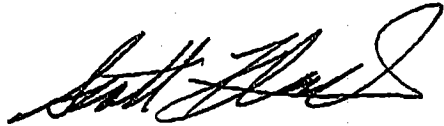
As the Mescalero Apache Tribe is identified as a concurring party on the Agreement, the NRC staff requests that the appropriate Tribal official sign and date the Agreement in the designated location. By signing, the Mescalero Apache Tribe is concurring on the stipulations in the Agreement. The NRC staff requests that the signed original of the Agreement (as provided) be returned to the NRC within 14 days of your receipt of this transmittal letter.

H.Houghten

2

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,



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

Enclosure: 1. Memorandum of Agreement (ML050530238)
2. Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)

FINAL

**MEMORANDUM OF AGREEMENT
among the
U.S. NUCLEAR REGULATORY COMMISSION
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
NEW MEXICO STATE LAND OFFICE
LEA COUNTY
and
LOUISIANA ENERGY SERVICES
regarding the
MEASURES TO MITIGATE EFFECTS ON LA 140701, LA 140702, LA 140703, LA 140704,
LA 140705, LA 140706, AND LA 140707
in
LEA COUNTY, New Mexico**

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), the lead Federal agency, has received an application from Louisiana Energy Services (LES), for the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility (hereafter the undertaking), located in Lea County, New Mexico, as described in LES's application dated December 12, 2003, and revised February 27, 2004, July 30, 2004, and September 30, 2004; and,

WHEREAS, the approval or disapproval of the undertaking would be documented in a licensing action, according to NRC rules, regulations, and requirements; and,

WHEREAS, the New Mexico State Land Office (NMSLO), prior to the proposed undertaking, would convey trust lands to Lea County in exchange for a conveyance of non-trusts land by LES; and

WHEREAS, the undertaking's Area of Potential Effect (APE), as defined at 36 CFR 800.16(d) is shown in Figure 4 of An Intensive Cultural Resource Inventory of 543 Acres for the National Enrichment Facility Near Eunice, Lea County, New Mexico; and,

WHEREAS, pursuant to 36 CFR Part 800, the NRC has determined that the proposed project adversely affects LA 140701, LA 140702, LA 140703, LA 140704, LA 140705, LA 140706, and LA 140707, archaeological sites eligible for inclusion on the National Register of Historic Places (National Register) under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council), the State Historic Preservation Officer of New Mexico (SHPO), NMSLO, and LES on this Memorandum of Agreement (Agreement); and,

WHEREAS, pursuant to 36 CFR 800.3(f), the NRC has consulted with the Apache Tribe of Oklahoma, Kiowa Tribe of Oklahoma, Comanche Tribe of Oklahoma, Mescalero Apache, and Ysleta del Sur Pueblo regarding this Agreement; and,

WHEREAS, the NRC, as part of the National Environmental Policy Act review process, has sought public comments and notified the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800 and has considered the applicable

requirements of Section 106 of the National Historic Preservation Act in the course of the consultation; and,

WHEREAS, LES has submitted to the SHPO a Treatment Plan for the archeological sites, which has been developed and prepared in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 Fed. Reg. 44734-37) and the Council's Handbook, Treatment of Archaeological Properties; and,

NOW, THEREFORE, the signatories parties agree that the undertaking shall be administered in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties and to satisfy Section 106 of the National Historic Preservation Act.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO and NMSLO, the NRC will ensure that the measures and procedures specified in the Treatment Plan, as approved by the SHPO, are implemented; this Agreement addresses all aspects of the Treatment Plan developed by LES.

II. LES will prepare a final report discussing the findings resulting from the Treatment Plan efforts. This report will be reviewed by the signatory and concurring parties within a 30-day comment period and any necessary revisions will be completed by LES.

III. Discovery

In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during the Treatment Plan efforts, or it is recognized that such actions may affect known historic properties in an unanticipated manner, LES will terminate treatment in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the signatory and concurring parties regarding significance and effect can be concluded. LES will notify the NRC, SHPO and the NMSLO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. LES will further notify the NRC, SHPO, and NMSLO of any time constraints and they will mutually agree upon time frames for the consultation. These procedures will be addressed in the Treatment Plan.

IV. Contingency

LES shall prepare a draft nomination of the identified historic properties to the State Register of Cultural Properties prior to the land exchange. The draft nomination of these seven eligible archaeological sites shall be submitted to the SHPO, NMSLO, and Lea County for their review and files.

In the event that LES does not receive their NRC license for the National Enrichment Facility, Lea County shall formally submit the nomination to the Cultural Properties Review Committee for their consideration.

V. Human Remains

If human remains are inadvertently discovered during construction activities, LES will notify the signatory parties and cease all construction within 300 feet in all directions of the human remains. Treatment and disposition of remains and associated grave goods will be consistent with applicable Federal and State laws including consultation with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration of the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

VI. Curation

LES shall provide for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79. Artifacts will be curated at the Museum of New Mexico.

VII. Confidentiality

All signatory and concurring parties shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996).

VIII. Dispute Resolution

A. Should any signatory party to this Agreement object within 30 calendar days to any action proposed or any document provided for review pursuant to this Agreement, the NRC shall consult with the objecting party to resolve the objection unless otherwise specified in this document. If NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council.

B. The Council will, within 45 days after receipt of all pertinent documentation, either:

1. Provide the NRC with recommendations, (any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the NRC in reaching a final decision regarding the dispute.); or
2. Notify the NRC that it will comment in accordance with 36 CFR Part 800.7 and proceed to comment. (Any Council comment provided in response to such a request will be taken into account by the NRC in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.)

C. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the NRC's responsibility to carry out all actions under this Agreement that is not subject to dispute will remain unchanged.

D. Should any concurring party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action, the NRC shall consult with the

objecting parties to resolve the objection. The objection must be identified specifically and the reasons for the objection documented. Any timely objections by a concurring party shall be resolved by the NRC in such a manner as it deems appropriate, upon consultation with the signatory and concurring parties.

IX. Termination

Any signatory party to this Agreement may terminate it by providing 30 calendar days notice, in writing, to the other parties, provided that the parties consult during the period prior to termination to seek agreement or amendments or other action that would avoid termination. If any Signatory individually terminates its participation in the Agreement, then the Agreement is terminated in its entirety. In the event of termination, the Signatories will comply with 36 CFR Part 800 Subpart B.

X. Amendment

Any signatory to this Agreement pursuant to 36 CFR 800.6(c)(1) may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.

XI. Failure to carry out the terms of the Agreement

In the event that the terms of this Agreement are not carried out, the NRC shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

XII. Term of this Agreement

In the event that the terms of this Agreement are not carried out within two (2) years from the date of its execution, this agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

XIII. Execution of this Agreement

Execution and implementation of this Agreement evidences that the NRC has afforded the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties and that the NRC has taken into account the effects of the undertaking on historic properties.

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: _____

Date: _____

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

CONCURRING PARTIES:

APACHE TRIBE OF OKLAHOMA

By: _____

Date: _____

KIOWA TRIBE OF OKLAHOMA

By: _____

Date: _____

COMANCHE TRIBE OF OKLAHOMA

By: _____

Date: _____

MESCALERO APACHE TRIBE

By: _____

Date: _____

YSLETA DEL SUR PUEBLO

By: _____

Date: _____



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 01, 2005

Mr. Alan Stanfill
Senior Program Analyst
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, CO 80228

SUBJECT: FINAL MEMORANDUM OF AGREEMENT AND TREATMENT PLAN FOR THE
PROPOSED LOUISIANA ENERGY SERVICES NATIONAL ENRICHMENT
FACILITY

Dear Mr. Stanfill:

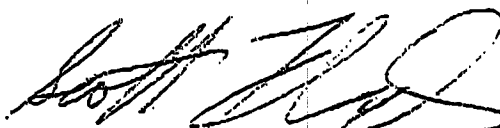
As you are aware, Louisiana Energy Services (LES) proposes to construct and operate the National Enrichment Facility (NEF), a gas centrifuge uranium enrichment facility, near Eunice, New Mexico. By letter dated February 17, 2004, the U.S. Nuclear Regulatory Commission (NRC) staff initiated the consultation process required by Section 106 of the National Historic Preservation Act (NHPA), with the State of New Mexico Department of Cultural Affairs, Historic Preservation Division, State Historic Preservation Office and with regional Federally-recognized Indian tribes.

In a letter dated June 24, 2004, the NRC staff informed the Advisory Council on Historic Preservation (Council) of its intent to develop a Memorandum of Agreement (Agreement) with the New Mexico State Historic Preservation Officer, the New Mexico State Land Office, Lea County, and LES to ensure that the proposed NEF Project is undertaken in accordance with the requirements of Section 106 of the NHPA (36 CFR Part 800). In your letter of response dated November 8, 2004, you indicated that the Council did not need to participate in consultation to resolve potential adverse impacts to cultural resources; however, the NRC would need to file the completed Agreement (signed by all Signatories) with the Council to complete the requirements of Section 106 of the NHPA.

The purpose of this letter is to inform the Council that the Signatories have completed the development of the Agreement and Treatment Plan for protection of cultural resources at the proposed NEF site. Accordingly, pursuant to the requirements of 36 CFR 800.6(b)(iv), the NRC staff is filing the Agreement and the Treatment Plan (enclosed) with the Council. By copy of this letter, the other Signatories to the Agreement are provided with a signed copy of the Agreement.

If you have any questions or comments, please contact Melanie Wong, Project Manager for the environmental review of the proposed project, at (301) 415-6262. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott C. Flanders", written in a cursive style.

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

Enclosures: Final Memorandum of Agreement
Treatment Plan (ML050480339)

Docket: 70-3103

cc: Section 106 Service List (copy of Agreement only)

cc: Section 106 Service List

Jan Biella
Deputy State Historic Preservation Officer
State of New Mexico
Department of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87501

James Brown
Mayor
City of Eunice
P.O. Box 147
Eunice NM 88231

Alonso Chalepah
Chairman
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

Claydean Claiborne
Mayor
City of Jal
P.O. Drawer 340
Jal, NM 88252

Clay Clarke
Assistant General Counsel
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

The Honorable Wallace Coffey
Director of Environment
Comanche of Oklahoma
P.O. Box 908
Lawton, OK 73502

Ron Curry
Cabinet Secretary
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

James R. Curtiss
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005-3502

David Eck

Cultural Resource Specialist
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504

Stephen R. Farris
Assistant Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508

James Ferland
President
Louisiana Energy Services
One Sun Plaza
100 Sun Avenue, NE
Suite 204
Albuquerque, NM 87109

William Floyd
Manager
Radiation Protection Program
New Mexico Environment Department
Radiation Protection Department
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, NM 87502

Tannis L. Fox
Attorney
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Glen Hackler
City Manager
City of Andrews
111 Logsdon
Andrews, TX 79714

Troy Harris
Mayor
City of Lovington
214 South Love
P.O. Box 1269
Lovington, NM 88260

cc: Section 106 Service List

2

Peter S. Hastings
Licensing & Safety Analysis Manager
Duke Cogema Stone & Webser
128 South Tryon Street
FC12A
Charlotte, NC 28202

The Honorable Billy Evan Horse
Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Holly B.E. Houghten
Tribal Historic Preservation Officer
Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

Bobby Jay
Cultural Resources Officer
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

Rod Krich
Vice President
Licensing Projects
Exelon General Co.
4300 Winfield Road
Warrenville, IL 60555

Lindsay A. Lovejoy, Jr.
Attorney-at-Law
Nuclear Information and Resource Service
618 Paseo de Peralta
Unit B
Santa Fe, NM 87501

Patricia A. Madrid
N.M. Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508

Melissa Y. Mascarenas

Legal Assistant
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Peter Miner
Licensing Manager
U.S. Enrichment Corporation - Licensing
Projects
6903 Rockledge Drive
Bethesda, MD 20817-1818

Monty Newman
Mayor
City of Hobbs
300 North Turner
Hobbs, NM 88240

Don Palmrose
Senior Nuclear Safety Engineer
ATL International, Inc.
20010 Century Blvd.
Suite 500
Germantown, MD 20874

David M. Pato
Assistant Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508

Richard Ratliff
Chief
Texas Department of Health-Bureau of
Radiation Control
1100 West 49th Street
Austin, TX 78756-3189

Betty Rickman
Mayor
Town of Tatum
P.O. Box 416
Tatum, NM 88267-0416

The Honorable Arturo Sinclair
Governor

cc: Section 106 Service List

2

Ysleta del Sur Pueblo
P.O. Box 17579, Ysleta Station
El Paso, TX 79917

Glenn Smith
Deputy Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508

The Honorable George Tahboun
Vice-Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Harry Teague
Commissioner
Lea County
P.O. Box 1500
Hobbs, NM 88241

Derrith Watchman-Moore
Deputy Secretary
New Mexico Environmental Department
P.O. Box 26110
Santa Fe, NM 87502-6110

Phillip A. Young
Preservation Planning Coordinator
State of New Mexico
Department of Cultural Affairs
Historic Preservation Division
228 East Palace Avenue
Room 320
Santa Fe, NM 87501

FINAL

**MEMORANDUM OF AGREEMENT
among the
U.S. NUCLEAR REGULATORY COMMISSION
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
NEW MEXICO STATE LAND OFFICE
LEA COUNTY
and
LOUISIANA ENERGY SERVICES
regarding the
MEASURES TO MITIGATE EFFECTS ON LA 140701, LA 140702, LA 140703, LA 140704,
LA 140705, LA 140706, AND LA 140707
in
LEA COUNTY, New Mexico**

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), the lead Federal agency, has received an application from Louisiana Energy Services (LES), for the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility (hereafter the undertaking), located in Lea County, New Mexico, as described in LES's application dated December 12, 2003, and revised February 27, 2004, July 30, 2004, and September 30, 2004; and,

WHEREAS, the approval or disapproval of the undertaking would be documented in a licensing action, according to NRC rules, regulations, and requirements; and,

WHEREAS, the New Mexico State Land Office (NMSLO), prior to the proposed undertaking, would convey trust lands to Lea County in exchange for a conveyance of non-trusts land by LES; and

WHEREAS, the undertaking's Area of Potential Effect (APE), as defined at 36 CFR 800.16(d) is shown in Figure 4 of An Intensive Cultural Resource Inventory of 543 Acres for the National Enrichment Facility Near Eunice, Lea County, New Mexico; and,

WHEREAS, pursuant to 36 CFR Part 800, the NRC has determined that the proposed project adversely affects LA 140701, LA 140702, LA 140703, LA 140704, LA 140705, LA 140706, and LA 140707, archaeological sites eligible for inclusion on the National Register of Historic Places (National Register) under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council), the State Historic Preservation Officer of New Mexico (SHPO), NMSLO, and LES on this Memorandum of Agreement (Agreement); and,

WHEREAS, pursuant to 36 CFR 800.3(f), the NRC has consulted with the Apache Tribe of Oklahoma, Kiowa Tribe of Oklahoma, Comanche Tribe of Oklahoma, Mescalero Apache, and Ysleta del Sur Pueblo regarding this Agreement; and,

WHEREAS, the NRC, as part of the National Environmental Policy Act review process, has sought public comments and notified the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800 and has considered the applicable

requirements of Section 106 of the National Historic Preservation Act in the course of the consultation; and,

WHEREAS, LES has submitted to the SHPO a Treatment Plan for the archeological sites, which has been developed and prepared in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 Fed. Reg. 44734-37) and the Council's Handbook, Treatment of Archaeological Properties; and,

NOW, THEREFORE, the signatory parties agree that the undertaking shall be administered in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties and to satisfy Section 106 of the National Historic Preservation Act.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO and NMSLO, the NRC will ensure that the measures and procedures specified in the Treatment Plan, as approved by the SHPO, are implemented; this Agreement addresses all aspects of the Treatment Plan developed by LES.

II. LES will prepare a final report discussing the findings resulting from the Treatment Plan efforts. This report will be reviewed by the signatory and concurring parties within a 30-day comment period and any necessary revisions will be completed by LES.

III. Discovery

In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during the Treatment Plan efforts, or it is recognized that such actions may affect known historic properties in an unanticipated manner, LES will terminate treatment in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the signatory and concurring parties regarding significance and effect can be concluded. LES will notify the NRC, SHPO and the NMSLO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. LES will further notify the NRC, SHPO, and NMSLO of any time constraints and they will mutually agree upon time frames for the consultation. These procedures will be addressed in the Treatment Plan.

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LES shall prepare a draft nomination of the identified historic properties to the State Register of Cultural Properties prior to the land exchange. The draft nomination of these seven eligible archaeological sites shall be submitted to the SHPO, NMSLO, and Lea County for their review and files.

In the event that LES does not receive their NRC license for the National Enrichment Facility, Lea County shall formally submit the nomination to the Cultural Properties Review Committee for their consideration.

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If human remains are inadvertently discovered during construction activities, LES will notify the signatory parties and cease all construction within 300 feet in all directions of the human remains. Treatment and disposition of remains and associated grave goods will be consistent with applicable Federal and State laws including consultation with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration of the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

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LES shall provide for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79. Artifacts will be curated at the Museum of New Mexico.

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All signatory and concurring parties shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996).

VIII. Dispute Resolution

A. Should any signatory party to this Agreement object within 30 calendar days to any action proposed or any document provided for review pursuant to this Agreement, the NRC shall consult with the objecting party to resolve the objection unless otherwise specified in this document. If NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council.

B. The Council will, within 45 days after receipt of all pertinent documentation, either:

1. Provide the NRC with recommendations, (any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the NRC in reaching a final decision regarding the dispute.); or
2. Notify the NRC that it will comment in accordance with 36 CFR Part 800.7 and proceed to comment. (Any Council comment provided in response to such a request will be taken into account by the NRC in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.)

C. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the NRC's responsibility to carry out all actions under this Agreement that is not subject to dispute will remain unchanged.

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X. Amendment

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In the event that the terms of this Agreement are not carried out, the NRC shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

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In the event that the terms of this Agreement are not carried out within two (2) years from the date of its execution, this agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

XIII. Execution of this Agreement

Execution and implementation of this Agreement evidences that the NRC has afforded the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties and that the NRC has taken into account the effects of the undertaking on historic properties.

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: 

Date: 1 April 2005

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: _____

Date: _____

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: *Katharine Stuch*

Date: *8 March 2005*

NEW MEXICO STATE LAND OFFICE

By: _____

Date: _____

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: Patrick A. Lyons / PAK

Date: 3/7/05

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: _____

Date: _____

LEA COUNTY

By: 

Date: 3-22-05

LOUISIANA ENERGY SERVICES

By: _____

Date: _____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By: _____

Date: _____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: _____

Date: _____

NEW MEXICO STATE LAND OFFICE

By: _____

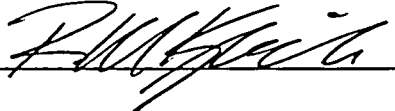
Date: _____

LEA COUNTY

By: _____

Date: _____

LOUISIANA ENERGY SERVICES

By: 

Date: 3/3/05

CONCURRING PARTIES:

APACHE TRIBE OF OKLAHOMA

By:_____

Date:_____

KIOWA TRIBE OF OKLAHOMA

By:_____

Date:_____

COMANCHE TRIBE OF OKLAHOMA

By:_____

Date:_____

MESCALERO APACHE TRIBE

By:_____

Date:_____

YSLETA DEL SUR PUEBLO

By:_____

Date:_____

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B.3 Other Consultation Letters

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IN REPLY REFER TO:
1790

United States Department of the Interior

Bureau of Land Management
Carlsbad Field Office
620 E. Greene Street
Carlsbad, NM 88220
www.blm.gov

MAR 16 2004

Ms. Melanie Wong
Chief, Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Ms Wong:

The U.S. Bureau of Land Management (BLM), Carlsbad Field Office appreciates the opportunity to provide technical assistance and participate in the scoping process for the proposed Gas Centrifuge Uranium Enrichment Facility as published in the Federal Register (Vol. 69, No. 23 – Wednesday, February 4, 2004). The BLM understands that the following locations are being considered by Louisiana Energy Services for location of the proposed facility:

- 1) Section 32, T21S, R38E – preferred by LES;
- 2) Section 24, T21S, R27E; and
- 3) Section 8, T22S, R31E.

Following are issues regarding the preferred location and identified alternative locations:

- 1) While the BLM does not manage any of the resources in section 32 the BLM does manage much of the subsurface minerals in adjacent sections and would be interested in how the proposed facility would affect management of those minerals.
- 2) The BLM manages both the surface and subsurface resources in the W¼, SW¼, Section 24 and therefore would have a strong interest in proposed facilities or management actions affecting that parcel of land as well as nearby federal land and mineral resources.
- 3) The BLM manages both the surface and subsurface resources in Section 8 and therefore would have a strong interest in proposed facilities or management actions affecting that parcel of land and adjacent federal land and mineral resources.

If the locations identified as alternatives (see #s 2 & 3 above) are carried forward through the National Environmental Policy Act (NEPA) analysis, the BLM is requesting formal cooperating agency status, according to the Council on Environmental Quality (CEQ) regulations for implementing NEPA. Please contact our office to establish the appropriate agreement documentation. However, if only the preferred alternative is analyzed, then the BLM role will be as an interested party and requests that the agency and Carlsbad Office, specifically, be kept informed through the process and provided NEPA documents to review as they are produced.

Please keep the Carlsbad Field Office (CFO) of the Bureau of Land Management (BLM) involved in the evaluation of this proposed action. The CFO-BLM contact for this project will be Peg Sorensen at 505-234-5983 or peg_sorensen@blm.gov. Again, thank you for the opportunity to provide comments.

Sincerely,

Leslie Theiss
Carlsbad Field Manager



United States Department of the Interior
NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
Intermountain Support Office
12795 West Alameda Parkway
PO Box 25287
Denver, Colorado 80225-0287



March 9, 2004

U.S. Nuclear Regulatory Commission
Washington DC, 20555-0001
Rules and Directives Branch
Mail Stop T6-D59, Attn: Chief

Subject: Comments on the Notice of Intent to Prepare an Environmental Impact Statement for Louisiana Energy Services Gas Centrifuge Uranium Enrichment Facility

To Whom It May Concern:

The National Park Service has reviewed the subject Notice of Intent based on the assumption that the project is near the city of Eunice in Lea County, New Mexico. We have reviewed this project in relation to any possible conflicts with the Land and Water Conservation Fund (L&WCF) and the Urban Park and Recreation Recovery programs, and find that the following L&WCF projects may be adversely affected:

35-00035, Eunice Municipal Park	35-00770, Marshall Memorial Park
35-00177, Eunice Municipal Recreation Park	35-00970, Marshall Park Sprinklers
35-00215, Eunice Municipal Golf Course	35-00987, Marshall Park Improvements
35-00358, Eunice Neighborhood Park	35-00989, Stevens Park Improvements
35-00527, Eunice Tennis Court Renovation	35-01096, Marshall Park Trail

We recommend you consult directly with the official who administers the L&WCF program in the State of New Mexico to determine any potential conflicts with Section 6(f)(3) of the L&WCF Act (Public Law 88-578, as amended). This section states: "No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses." The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location."

The administrator for the L&WCF program in New Mexico is Ms. Sandra Massengill, Planner Director, Department Energy, Minerals & Natural Resources, 1220 S. Saint Francis Drive, Santa Fe, New Mexico 87505-4000. Ms. Massengill's phone number is: (505) 476-3392.

Thank you again for the opportunity to comment on this project. If you have any questions, please contact Jane Beu, Outdoor Recreation Planner, in our Midwest Regional Office at (402) 221-7270.

Sincerely,

Cheryl Eckhardt
NEPA/106 Specialist

TAKE PRIDE[®]
IN AMERICA

Zeitoun, Abe

-----Original Message-----

From: Massengill, Sandra [mailto:SMASSENGILL@state.nm.us]
Sent: Monday, May 24, 2004 12:47 PM
To: Zeitoun, Abe
Subject: FW: Land & Water Conservation Fund Consultation

FYI

-----Original Message-----

From: Massengill, Sandra
Sent: Monday, May 24, 2004 10:47 AM
To: 'rabousleman'
Subject: RE: Land & Water Conservation Fund Consultation

Thanks so much for the response.

-----Original Message-----

From: rabousleman [mailto:rabousleman@leaco.net]
Sent: Monday, May 24, 2004 7:43 AM
To: Massengill, Sandra
Subject: Re: Land & Water Conservation Fund Consultation

Sandra:

The Eunice parks are not affected by the proposed NEF plant. The plant location is approximately five miles east of Eunice. All parks are located in the City except one which is located about five miles west of the City.

If you need other information, give me a call.

Ron

-----Original Message-----

From: Massengill, Sandra
Sent: Monday, May 03, 2004 11:18 AM
To: 'rabousleman@leaco.net'
Subject: FW: Land & Water Conservation Fund Consultation

Could you please verify that the Eunice Parks funded with LWCF funds is not affected by the proposed NEF facility so I can forward your response to Mr.. Zeitoun? Thanks!

-----Original Message-----

From: Zeitoun, Abe [mailto:AZeitoun@atlintl.com]
Sent: Thursday, April 01, 2004 12:33 PM
To: smassengill@state.nm.us
Subject: FW: Land & Water Conservation Fund Consultation

Dear Ms. Sandra Massengill,

In reference to our telephone conversation yesterday, please find attached the maps for Eunice and the maps that shows the proposed National Enrichment Facility in relation to the city of Eunice. The National Park Service raised concern that the construction and operation of the proposed facility may conflict with Section 6(f)(3) of the L&WCF program that you administer for the State of New Mexico. Projects cited in the National Park Service letter were: 035, 177, 215, 358, 527, 770, 970, 987, 989, and 1096. Please advise.

Thank You

Abe Zeitoun

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