

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL

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Before  
JUDGE PETER B. BLOCH, PRESIDING OFFICER  
and,  
DR. CHARLES N. KELBER, SPECIAL ASSISTANT

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of

ENERGY FUELS NUCLEAR, INC.

Docket No. 40-8681-MLA

ASLBP No. 97-726-03-MLA

(Source Materials License  
No. SUA - 1358; White Mesa Uranium  
Mill Request for License Amendment)

SUPPLEMENT TO HEARING REQUEST

CHALLENGE TO LICENSE AMENDMENT ISSUED BY NRC STAFF  
DOCKET 40-8681-MLA

AFFIDAVIT AND PETITION  
OF  
THE COUNCIL OF DIRECTORS  
OF  
THE NATIVE AMERICAN PEOPLES HISTORICAL FOUNDATION'S  
GREAT AVIKAN HOUSE PROJECT

"IN HONOR OF THE GREAT CREATOR"

The Native American Peoples Historical Foundation, Inc.'s Great Avikan House Project, hereinafter referred to as "AVIKAN," in accordance with the Federal Code of Regulations 10 CFR Ch. 1, Subpart L, and also in accordance with the Memorandum and Order of Presiding Officer Judge Peter B. Block ("Additional Filings Required"), hereby submits the following additional affidavit as supplementary filings to its April 16, 1997 Request for Standing/Hearing, and its April 25, 1997 clarification of request, regarding its challenge to the implementation of the

license amendment to Source Materials License No. SUA-1358 Docket No. 40-8681, the "White Mesa Source Materials License," hereinafter referred to as the "Cotter Amendment." The license amendment allows Energy Fuels Nuclear, Inc. (EFN), now named International Uranium [USA] Corporation (IUSA), hereinafter referred to as EFN/IUSA, the receipt and processing of alternate feed material (i.e. material other than natural ore) at Licensee's White Mesa Uranium Mill located near Blanding, Utah. AVIKAN states that specific actions proposed to be taken under the license amendment would inflict "injury in fact" (harm) upon individuals, programs, and lands that are a part of the AVIKAN project.

AVIKAN's original petition (Attachment A) was hastily prepared, and therefore has a number of typographical errors and pertinent informational omissions. The hasty preparation of the petition was due to the fact that license amendment Docket No. 40-8681, together with date of approval and appeal deadlines, was not listed in the National Register as of April 16, 1997, and therefore, AVIKAN had no verified documentation as to actual deadlines for petitions for leave to intervene to be filed with the Nuclear Regulatory Commission (NRC) as required by 10 CFR Paragraph 2.1205(c)(1). This absence of information, therefore, required the hasty and incomplete request for a hearing. AVIKAN wishes to gratefully acknowledge the Presiding Officer's timely judgment in granting license for additional filings, and for extending deadlines for filings. And now, through the elaboration of statements of concerns from AVIKAN's original petition for Standing, including "Additional Filings" as required by Presiding Officer Judge Peter B. Block's Memorandum and Order served May 27, 1997 (Attachment B), AVIKAN will demonstrate that "injury in fact" will occur if the actions of the Cotter Amendment are continued to be carried out by EFN/IUSA.

### STATUS OF PROCEEDING

On April 2, 1997 an amendment was granted by the NRC staff to allow the receipt and processing by EFN's White Mesa Uranium mill of "alternate feed material" (i.e. material other than natural ore) consisting of approximately 790,000 pounds of World War II's original Atomic Bomb Nuclear Mixed Waste materials called "Cotter Concentrates," (hereinafter referred to as "Cotter" or "Cotter Concentrates"). Cotter Concentrate is defined by the April 2, 1997 Department of Energy Nevada Test Site Proposal, hereinafter referred to as DOE/NTS, as "Mixed Waste containing Radionuclides and Hazardous Constituents" comprising "Eighty-eight percent of NTS current Mixed Waste inventory." (Attachment C)

On April 16, 1997, in a letter to Ms. Shirley Jackson, Chairperson of the NRC, AVIKAN, through a letter signed by Winston M. Mason, Head of Council, petitioned for standing in



challenge of the Cotter Amendment. (Attachment A)

On April 24, 1997 Emile L. Julian, Assistant for Rulemakings and Adjudications telephoned AVIKAN requesting clarification as to what type of hearing was requested by AVIKAN, and on April 25, 1997 AVIKAN sent a letter clarifying its original petition for standing ".....requesting an Adjudicatory Hearing" before the Atomic Licensing Committee. The request continues, "If, for some reason, this request is denied, we hereby request a Commission Hearing at the NRC in Washington. If this is not granted we would request a Staff Meeting to be held in Blanding, Utah." (Attachment D)

On April 25, 1997 AVIKAN received an unsigned letter from NRC's Mr. John C. Hoyle in acknowledging receipt of AVIKAN's request for standing, which stated that, "A response is under preparation which will be forwarded to you shortly." (Attachment E)

On April 28, 1997 AVIKAN's request for an "adjudicatory hearing and background material provided by the staff" was forwarded by John C. Hoyle, Secretary, to Chief Administrative Judge, B. Paul Cotter, Jr. of the Atomic Safety and Licensing Board Panel. (Attachment F)

On April 29, 1997 (served April 30, 1997) Administrative Judge Peter B. Bloch was appointed as Presiding Officer in the case, with Dr. Charles N. Kelber as Special Assistant. (Attachment G)

On May 5, 1997, the appointment of Administrative Judge Peter B. Block as Presiding Officer in AVIKAN request for hearing was posted to the Federal Register. (Attachment H)

On May 9, 1997 AVIKAN and other petitioners attended a meeting of the Utah Division of Radiation Control (DRC) where they were on the agenda to witness DOE/NTS' and EFN/s presentation to the DRC on the re-milling and disposal of the Cotter Concentrates, together with future propositions regarding other DOE/NTS Nuclear wastes. AVIKAN Designated Speaker of Council, Alberta Mason, protested the proposed implementation of the Cotter Amendment (Attachment I, paragraph 19). Other petitioners who attended the meeting and spoke against the Cotter Amendment were Mr. Norman Begay representing the White Mesa Ute Reservation Community (Attachment I, paragraph 20), and Ms. Lula Katso representing the Navajo Nation's Westwater Community. (Attachment H, paragraph 21) Ms. Mason asked that the DRC ".....Board take a firm stand against such hazardous waste being brought into the White Mesa Mill." Petitioners also voiced concerns over DOE's hauling of Cotter prior to a decision by NRC regarding standing of petitioners. Dr. Sunderlan, DRC Chairman indicated to those present that the material would not be transported and the license implemented until the petitioners requests for standing with the NRC had been resolved. Mr. Preston Truman, DRC Public Representative,

asked DOE/NTS' Carl Gertz why the proposal being present to DRC was missing the information on the hazards of the material that were in the original proposal. Mr. Truman also questioned why he had been requesting the isotope figures on the Cotter Concentrate for almost a month, with the DOE not surrendering the "public" information to him. Mr. Gertz had no answer, other than that they had been moving their office and things were mixed up. (Attachment I, paragraphs 15-17) (Note: As of June 9, 1997, Mr. Truman has still not been given the isotope statistics).

On May 9, 1997, Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC Staff, consented to the transfer of the EFN license and amendments to International Uranium [USA] Corporation (IUSA), stating that "An environmental review was not performed since these are administrative actions which are categorically excluded under 10 CFR 51.22(c)(11). (Attachment J)

On May 9, 1997, Mr. John T. Hull, Counsel for NRC Staff, filed a "wishes to participate as a party in this proceeding, if an adjudicatory proceeding is in fact conducted" request with Presiding Officer, Judge Peter B. Bloch and Special Assistant Dr. Charles N. Kelber. Mr. Hull also filed notice of appearance for NRC Staff Counsel Sherwin E. Turk, Esq. (Attachment K)

On May 16, 1997, Mr. Harold Roberts, former President of EFN, notified the NRC Office of the Secretary, as Executive Vice President of International Uranium [USA] Corporation (IUSA) that "various properties and associated licenses and permits" formerly held by EFN had been transferred to IUSA effective May 10, 1997. (Attachment L)

On May 20, 1997, AVIKAN wrote a letter to U.S. President Bill Clinton, requesting intervention against the implementation of the Cotter Amendment based on President Clinton's February 16, 1994 Executive Order on Environmental Justice, and informing the President of the NRC Staff's "secret" practice of "retrofitting" (backdating) public documents (Attachment M), and charging that the NRC's practice of "reclassifying" materials from "Hazardous" and "Regulated" Nuclear wastes, and mixed wastes, to common "Feedstock" in order ".....for the EFN mill to dump the extremely dangerous materials into its open air tailings ponds, is a blatant example of Environmental Racism against our Ute Indian people who live adjacent to the tailings ponds."

On May 21, 1997, Mr. Sherwin Turk, Counsel for NRC Staff, filed a Staff Response, 14 days late of 10 CFR paragraph 2.1205 regulation on allotted time for NRC response, regarding the AVIKAN petition, requesting ".....leave to file the instant response at this time," and submitting that the AVIKAN request for hearing failed to establish that the requestor be granted "....standing to participate in this proceeding and, in the absence of any further information, the

request(s) should be denied." (Attachment N)

On May 23, 1997, Rich A. Munson, Attorney at Law, filed before the Presiding Officer a "MOTION FOR ORDER APPROVING SUBSTITUTION OF PARTIES," substituting International Uranium [USA] Corporation (IUSA) for Energy Fuels Nuclear, Inc. (EFN) in the petition proceedings. (Attachment O)

On May 23, 1997, Rich A. Munson, Attorney at Law, filed before the Presiding Officer a MOTION FOR ORDER GRANTING LEAVE TO FILE RESPONSE regarding Amendment to Source Material License (Docket No. 40-8681), along with "Exhibit A": "RESPONSE OF INTERNATIONAL URANIUM (USA) CORPORATION TO HEARING REQUESTS REGARDING AMENDMENT TO SOURCE MATERIAL LICENSE (DOCKET NO. 40-8681)." (Attachment P)

On May 24, 1997, in reply to Staff Counsel Sherwin Turk's Response recommending denial of petitioner's request for Standing/Hearing, AVIKAN petitioned NRC Chairman Shirley Jackson for a review of the Staff's initial decision according to 10 CFR Ch.1, Subpart L. AVIKAN's letter was jointly written with Native American petitioners for standing, Norman Begay of the White Mesa Ute Reservation, and Lula Katso of the Navajo Nation's Reservation Community of Westwater. Concerns of violations of President Clinton's Executive Order on Environmental Justice were raised, relative to NRC Staff's practice of "Retrofitting," or backdating, documents in order to suppress information from the public regarding implementation of license amendments. (Attachment Q)

On May 27, 1997, a "Memorandum and Order" from Administrative Judges Peter B. Bloch, Presiding Officer, and Dr. Charles N. Kelber, Special Assistant, was served in response to NRC Staff recommendation regarding denial of AVIKAN standing, allowing that "Additional Filings" were required of AVIKAN, as well as of the other petitioners, if they wished to establish standing in the matter being protested. The Order set forth the procedural requirements, including the date of Monday, June 9, 1997 as the date by which said additional filings were to be filed by AVIKAN. The Memorandum and Order of May 27, 1997 also granted NRC Staff's "out-of-time" response in it's 14 day late filing. (Attachment R)

On May 29, 1997 a "Notice" was served by Presiding Officer Judge Peter B. Bloch, and re-served on May 30, 1997 outlining to AVIKAN and other petitioners his role as Presiding Officer, and also re-outlining some of the requirements and processes which a petitioner would need to satisfy in order to be granted standing. (Attachment S)

On May 30, 1997 Mr. Sherwin Turk, Counsel for NRC Staff, wrote a 2 1/2 page letter to AVIKAN responding to AVIKAN's (and other petitioner's) May 24, 1997 letter of appeal to Chairman Jackson concerning Staff's recommendation that, ".....in the absence of any further



information, the requests should be denied at this time." (Attachment T)

On May 30, 1997, the first shipment of Cotter Concentrate, entered the EFN/IUSA White Mesa Mill via a "RANGER" transport semi-truck labeled "DOE." (Attachment U)

On June 4, 1997, Presiding Officer Judge Bloch forwarded a letter from William J. Sinclair, Director of the Division of Radiation Control of the State of Utah's Department of Environmental Quality, voicing the division's support in behalf of AVIKAN for standing with the NRC in the matter of opposition to the Cotter Amendment, stating, "We request that you support our request for standing so a hearing can be held.... We feel that a hearing could provide the appropriate forum to address the issues associated with the request." (Attachment V)

On June 8, 1997, an extensive search of the Federal Register was conducted by AVIKAN, with the result being that the April 2, 1997 Cotter Concentrate license amendment Docket No. 40-8681-MLA has not yet been posted to the Federal Register.

On June 9, 1997, AVIKAN filed Additional Filings with the Presiding Officer and Special Assistant at the Atomic Safety and Licensing Board Panel via Facsimile Transmissions to FAX No. (301) 415-5599 and FAX No. (301) 415-7405, with conforming copies being sent via U.S. Mail, to Administrative Judges Peter B. Bloch, Presiding Officer, and Dr. Charles N. Kelber, Special Assistant, at the address of Third Floor, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852.

#### STANDARDS AND BASIS OF LAW

AVIKAN applied for a hearing on April 16, 1997, and petitioned for leave to intervene under the provisions of Code of Federal Regulations 10 CFR paragraph 2.1205(a)(c), addressing areas of concern in the NRC's licensing of the Cotter Amendment Docket No. 40-8681-MLA to Energy Fuels Nuclear, Inc.'s White Mesa Mill. (Attachment A). Further, under the provisions of "Memorandum and Order" ASLBP No. 97-726-03-MLA, served upon AVIKAN, EFN/IUSA, and other participants by Presiding Officer Judge Peter B. Bloch May 27, 1997, "Additional Filings Required," the Presiding Officer ordered, "At this stage of the proceeding, I will interpret the petition favorably to the petitioner and will not require the same kind of proof of injury that would be required to render a decision in its favor." (Attachment R). By the two preceding standards, AVIKAN was granted additional time to describe "a plausible mechanism for injury."

In the filing of its original petition, AVIKAN was able to comply with 10 CFR paragraph 2.1205(c)(1) within the allotted time of 30 days following the date of the license amendment (April 2, 1997) and of the date that the action was required by Federal Code to be listed on the

Federal Register, even though the Cotter Amendment was not listed on the Register as of April 16, 1997. It was, in fact, upon notification through other channels, that AVIKAN was able to meet the first deadline. AVIKAN, however, upon study of the Code of Federal Regulations 10 CFR, points out that later filings would have been legal for AVIKAN, and are still available to AVIKAN and other interested parties, according to 10 CFR paragraphs 2.1205(2)(i)(ii)(iii), which allow up to one hundred and eighty (180) days, or more, following the NRC's granting of a license, depending upon when an interested party received "actual" notification of the license, or license amendment. Therefore, these particular Regulations may yet be relied upon.

Although it is not the intent of AVIKAN, in this particular petition, to discuss justification, or non justification, regarding past license amendments granted the EFN/IUSA mill, still, the argument should prove germane that the history of the granting of some of these prior licenses, particularly in view of the NRC Staff's practice of "retrofitting" (backdating) public notices (Attachment W), thereby allowing some amendments to be implemented without any opportunity on the part of the public to be made aware of, or to contest, them in times specified by 10 CFR paragraph 2.1205(c), may in fact have an influence on how the law might be interpreted regarding the Cotter Amendment as well as other amendments which might be applied for by EFN/IUSA in the future. Therefore, AVIKAN will enter information on past license amendment activities, only as they appear to have a bearing of influence in the implementation of the Cotter Amendment, and how those licenses, along with the Cotter Amendment, constitute a plausible mechanism for injury to AVIKAN's people and environment. Injury to AVIKAN's people and environment will be argued on the basis spiritual, religious, and cultural rights, including related economics, as well as according to physical and psychological health and safety, in the course of the "pursuit of happiness." Environmental Justice will be a prime basis for argument according to Constitutional Rights insured by statute and law, including Presidential Executive Order of February 16, 1994, and the National Environmental Justice Advisory Council's May 16, 1997 "Indigenous Peoples Resolution #23. (Attachment X)

A factor not to be disregarded in this, or any other proceeding of law, is the fact that in the Constitution of our particular United States' Democracy, which is agreed upon by the people of this nation to be "of the people, by the people, and for the people," law is proposed, written, presented, ratified, interpreted, and verified, by the people through elected lawmakers, together with elected and appointed judges and citizen juries. Therefore, whenever a majority of the people petition in behalf of a particular concern, the law, and/or its necessary amendment, is self-evident. Laws are established to protect the rights of the people, not to protect the law only. The law is established on the basis of Justice and Mercy, and, in the

absence of these elements of the law, law and order is null and void. Much of the process and practice of the Democratic philosophy adopted by the citizens of the United States of America is known to have been originally derived by this Nation's Founding Fathers through their observations of the democratic processes and practices of the Indigenous People of America. AVIKAN, therefore, being an organization founded to represent the historical, cultural, spiritual, physical, psychological, and economic interests of all indigenous peoples of the lands and territories of the United States of America, will naturally appeal to this principle of law.

Now, therefore, standing upon the aforesated Standards and Basis of Law, AVIKAN respectfully submits itself into the Hands of Justice.

### AREAS OF CONCERN

AVIKAN is an "all tribes" non profit project, established in 1989 for the preservation of the historical and cultural traditions and rights of Indigenous People. AVIKAN purchased a 600 acre parcel of land in 1990 which sits approximately one-half (1/2) mile north of the EFN/IUSA mill site. The land was purchased during a time when the mill was closed down for an extended period, due to lack of economic feasibility in milling normal Uranium ore.

AVIKAN has set forth its elaboration of concerns over the Cotter Amendment from its original petition in the following areas:

1. INJURY IN FACT THROUGH TRADITIONAL FEARS (RESPECT) REGARDING DESECRATION OF SACRED AVIKAN PROJECT LANDS, AND REPRESENTED LANDS AND BURIALS.

PROXIMITY: AVIKAN's original petition (Attachment A) directed to NRC Chairman, Shirley Jackson, states that the EFN Uranium mill lies next to "sacred traditional land" upon which AVIKAN is building its "all tribes" Native American historical archive called the Great Avikan House. The AVIKAN property actually sits about 1/2 mile to the north of the EFN/IUSA Mill property. The 600 acres of sacred land comprising AVIKAN's project contains numerous Native American burials. Avikan, in the Ute language, means "The Homeland Where I (We) Rest." The Utes are the caretakers of The land of Avikan, which encompasses the greater part of America's Four Corners Region. Avikan is the legendary "Red Earth Homeland" spoken of in the traditional stories handed down among Native American Tribes throughout North and Central



America. The Heart of Avikan is the area of San Juan County, Utah -- Blanding, White Mesa, Montezuma Creek, Bluff, Mexican Hat, Valley of the Gods, and Monument Valley. Here rests Poturnuche, the "Heart of the Earth," where God comes out from the sky on a white horse to teach the people. The Aztecs refer to Avikan as Asatlan, "The Land of the Cranes," and further define it as, "Where the Three Great Rivers join in the Red Earth Land. The Rivers are the Colorado River, the Green River, and the San Juan River. Navajos call the land Dinétah -- "Home of the People." Shoshones, Mohawks, and many other Native Americans refer to Avikan as the "Land of the Spiritual Cross." The "Spiritual Cross" is representative of the "migrations" of the people -- both the temporal and the spiritual migrations. Most tribes' legends claim that all the people will one day return to the center of the migrations in the land of the Red Earth.

According to the Hopi Priesthood, the great ruin which sits on the site of the AVIKAN project is "an Ancient Hopi Temple," named "Standing Rainbow." The site is consecrated by the Hopi Priesthood as an official Hopi shrine. Sacred "Prayer Feathers" are prepared in the Kivas of Walapi each year and brought to the shrine. The Hopi "Badger Clan's" members are descendants of the Brown, Gray, and Black Badger Clans referred to by anthropologists and archaeologists as the Pueblo Anasazi. The Ute Indians of White Mesa are cousins of the Hopis and descendants of the Basketmaker Anasazi. When the Hopi Badger Clans left Avikan during the great drought of the 13th Century to conduct their "migrations of refinement," the nomadic Utes remained behind as the assigned guardians of the sacred lands and ancestral burials which rest at the Center places in the Red Land to which all the people will one day return.

In addition to the land being colored red, and the three great rivers joining in the Red Land, the surest sign of the Center of the Migrations of the people is depicted where the Tavaya Kwimlux Pakwit -- "The River Which Flows Toward The Setting Sun," or the "River Which Follows The Sun," crosses over Tuvwup Oaov -- "The Backbone Of The Earth." This giant cross, formed where the San Juan River (the River Which Follows The Sun) crosses the Comb

Ridge (the Backbone of the Earth), is the sure sign that leads the people home to the lands given them in the Beginning by the Creator. There are very few traditional old people throughout north and central America who do not claim that one day they will return to the Red Land, where the River Crosses Mother Earth's Backbone.

Preserving the sacred places of the People has not been easy for the Avikan Wilitapunuche (White Mesa) Utes. Following the signing of the Treaty of 1868 between the Colorado Utes and the U.S. Federal Government, the Avikan Utes engaged in a 55 year war with the Federal Government, ending in 1923 with the "Posey War." After the Posey War, the Federal Government finally admitted defeat and granted allotments to the Utes in their revered sacred center places of Avikan, eventually including the right to build their homes in the spiritually comfortable site of their traditional home of Wiisuvu Kaniagat (Yucca Village), now called White Mesa.

As a cultural preservation society representing all tribes who recognize the central Homeland of the People, AVIKAN is dedicated to the preservation of the lands and values of the people of the Red Earth Homeland, with particular concern for the White Mesa Utes who are the "host" people of the AVIKAN project.

The Cotter Amendment brings the fifty year old Nuclear wastes from the original World War II Atomic Bomb which killed 1,000,000 people, to be dumped them on the graves of our Native American Ancestors in the EFN/IUSA tailings ponds. (Attachment C) All of the Native American People associated with the AVIKAN project have expressed that these particular wastes might carry with them evil spirits which will torment the people's minds and spirits, causing many types of illnesses. The psychological fears that accompany the Cotter Concentrate will distress, or drive away, many Native American people who would otherwise participate in the all tribes Great Avikan House project.

AVIKAN's participants are principally Native Americans from different tribes, therefore they bring with them to AVIKAN the cultural and religious beliefs of the tribes which

they represent. Of common interest among Native Americans is a respect for the remains of the dead as well as a respect for the departed spirits of those who once lived as mortals. Since the legends of many tribes tie their people to the Red Earth Motherland of Avikan, it would therefore reasonably follow that many of the AVIKAN participants would be bound by similar respect and fears with regard to the desecration of sacred lands and burial grounds. The psychological burdens carried by Native Americans in such situations is very real, and can be devastating to them.

The six square miles of land purchased by Union Carbide for the EFN/IUSA White Mesa Mill contains numerous burials from the Anasazi Pueblo and Basketmaker people, as well as burials of more recent Utes and Navajos. Modern warrior Jess Posey, among others, is buried on land owned by EFN/IUSA. "Spiritual Contamination" from the evil spirit of the Cotter Concentrate will desecrate Indian burials both in AVIKAN lands and in EFN/IUSA owned property. It is not acceptable under any circumstance for the Cotter Concentrate to be dumped anywhere in the sacred Four Corners Red Earth Homeland of AVIKAN. (Appendix Y)

The EFN/IUSA mill tailings ponds into which the Cotter Concentrate residues will be dumped, sit on the ancient Hopi and Ute Burial Grounds. The land is sacred. The people of the AVIKAN can never discontinue to fight alongside the Utes, Navajos, Hopis, and others, to insure that such desecration and accompanying psychological results are not allowed to be forced upon the people of Avikan. Since the first shipments of Cotter Concentrate have already arrived, and the license amendment implemented bringing psychologically feared evil spirits into sacred Indian lands, AVIKAN declares that injury in fact has already been imposed upon AVIKAN participants.

## 2. INJURY IN FACT THROUGH FEARS RELATING TO STATISTICAL INFORMATION AND AWARENESS REGARDING POTENTIAL IMPACT OF THE COTTER AMENDMENT ON THE HEALTH AND SAFETY OF AVIKAN LANDS AND PEOPLE

AVIKAN surveys project that the only available water for the AVIKAN project will need to be brought up from the same deep water aquifers from which EFN/IUSA draws its water.

At the present time, most the people of the White Mesa community, whose only source of



drinking water is also from the same deep aquifer wells, no longer drink water from their community wells due to fears connected to the high rates of kidney disease, diabetes, heart and respiratory disease, thyroid problems, bone aches (including hard lumps in the hands, feet and ankles), headaches, depression, suicide and mental retardation. Most people buy their water in gallon jugs, or haul it in jugs and barrels from neighboring communities.

Tests performed on the White Mesa water wells (information temporarily withheld to protect source) show an increase copper and other metals which are known byproducts of Uranium processing, demonstrating that contaminants are currently migrating off site and will also potentially pollute AVIKAN water supplies. (Source will be revealed after final documentation arrives).

AVIKAN attests to the fact that when the mill is processing, smoke from the mill's smokestacks is constantly smelled and inhaled by individuals visiting or working on the land, thus demonstrating that residue contaminants from Hazardous materials are migrating onto AVIKAN property through the airways and are being ingested in the lungs.

To verify the hazardous nature of the Cotter Concentrates, AVIKAN will begin by offering into evidence the Department of Energy/Nevada Test Site's own "Cotter Concentrate Project" proposal prepared by Project Manager Colleen O'Laughlin, April 2, 1997 (Attachment C).

The DOE/NTS proposal classifies Cotter Concentrate as "Mixed Waste containing Radionuclides and Hazardous Constituents," comprising "Eighty-eight percent of NTS current Mixed Waste inventory.

Statistical information regarding the Radioactivity in the Cotter Concentrate which was attached to the Bill of Lading transporting the Cotter Concentrates from Miamisburg, Ohio's Mound facility to the Nevada Test Site verifies that the Cotter Concentrate is extremely hazardous nuclear waste. Although DOE/NTS refuses to disclose public information regarding the isotope content of Cotter, still, figures on the surface radiation, as well as the Curies per ton, are able to be computed. Cotter Concentrate runs between .8 and 1.8 Curies per ton, or, 800,000 to 1,800,000 Pico Curies per Gram (Attachment Z).

Normal Uranium tailings run from 500 to 1,000 Pico Curies of radioactivity per Gram. The "hottest" radioactive waste allowed by law to be taken into Utah's Envirocare commercial waste dump runs at 2,000 Pico Curies per Gram, meaning that the Cotter Concentrate is approximately 1,000 times more radioactive than the hottest wastes allowed in Utah's Commercial waste facility. It is apparent that a material of such high radioactivity should not be processed in a normal Uranium mill, and should certainly not be placed in open air tailings ponds adjacent to significant populations. AVIKAN, mill workers, and adjacent populations will

all be put in jeopardy by the milling and dumping of Cotter Concentrate.

In addition to the Radionuclides, Cotter Concentrate contains "Hazardous Constituents, including heavy metals and organic materials. These wastes will inevitably migrate into the AVIKAN property through the airways, (as evidenced through the odors when mill is running), and have the possibility of seeping into the water aquifers from which AVIKAN water will be drawn.

Due to the known content of the Cotter Concentrate, together with its past history in creating three EPA Superfund cleanup sites, AVIKAN argues of injury in fact.

### 3. INJURY IN FACT IN DIMINUTION IN AVIKAN PROPERTY AND PROJECT VALUES

AVIKAN argues that project and property values will be diminished with the implementation of the Cotter Amendment, as it is such a known hazardous waste, and furthermore, values and opportunities will continue to diminish due to the fact that the Cotter Amendment will lead to the bringing of other wastes, as stated in the DOE/NTS O'Laughling Proposal (Appendix C). As an example, in 1994, AVIKAN received the commitment from financial benefactors to begin construction in August of that year on the \$40,000,000 Great Avikan House. With the threat of the NRC's issuing of a license amendment to Union Carbide's Energy Fuels Nuclear, Inc. to dispose of the Monticello Uranium Mill tailings at its White Mesa Mill tailings ponds, benefactors withdrew their commitment until sufficient proof is given that the mill site is not going to be converted into a Nuclear dump. The Cotter Amendment, followed by other DOE proposals of record, verify that the mill site is indeed a Nuclear dump, and that there will be continual injury in fact placed upon the AVIKAN project and people from the implementation of the Cotter Amendment.

### 4. INJURY IN FACT, AS TAXPAYING CITIZENS

AVIKAN points out the Environmental Protection Agency (EPA) has declared a Superfund cleanup site in all three places where Cotter was processed and stored before being taken to the Nevada Test Site. The Superfund sites were St. Louis, Missouri; Lincoln Park, Colorado; and Miamisburg, Ohio. DOE/NTS argues in the O'Laughlin Proposal that 2.5 million dollars of taxpayers money will be saved through disposing of the Cotter Concentrate at White Mesa (Attachment C). However, the EPA will necessarily need to declare White Mesa a Superfund site, as the others have been, due to the nature of the waste materials, and this will needfully be managed at the expense of hundred of millions of taxpayers dollars. As individual taxpayers, AVIKAN participants argue injury in fact through this misdirection of citizen's funds.

Civil lawsuits and overwhelming taxpayer's burdens have followed this material from

place to place. Why? Because it is extremely hazardous, and cannot be left near the waterways and airways of human populations. O'Laughlin's proposal states that the DOE was "Unable to stabilize Cotter Concentrate." (Attachment C, page 6) When the DOE appealed to private industry to help solve its half-century old "unsolvable" problem, EFN/IUSA offered to take the material and mill it, and then dispose of it in its White Mesa Mill tailings ponds.

This is precisely what has been done at three other sites. AVIKAN declares that DOE's decision of allowing such an activity is inexcusable, by any standard of decency and justice, in the democracy in which American Citizens live. AVIKAN suggests that this is an act of oppression of Indigenous People, willfully imposed, and that the act, in and of itself, because of the documented track record of Cotter Concentrate, demonstrates injury in fact upon the rights of the participants in the AVIKAN project.

Secret EFN/IUSA proposals indicate that the Cotter Concentrate is being given to EFN/IUSA free of charge. This practice is charged by AVIKAN as the same as awarding government contracts, kickbacks, and payoffs to campaign contributors or in house government officials. As taxpayers, AVIKAN suggests that the citizens be reimbursed, by EFN/IUSA being required to pay for the material to ease the taxpayer's burdens regarding Superfund cleanup sites and other like projects; otherwise, AVIKAN participants declare injury in fact.

##### 5. INJURY IN FACT THROUGH ENVIRONMENTAL RACISM

President Bill Clinton's February 16, 1994 Executive Order states that "... each federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensure that such programs, policies, and activities do not have the effect of ....subjecting persons, (including populations) to discrimination under such programs, policies or activities, because of their race, color or natural origin." Since the Cotter Amendment implemented the processing and dumping of hazardous wastes, along with their feared evil spirits and their high level radionuclides and hazardous constituents, into the waterways and airways, and also into the psyche of participants in AVIKAN's all tribes Indian Cultural project, said participants, hereby declare injury in fact on the basis of violation of Environmental Justice.

AVIKAN's basis of injury in fact, in addition to the known harmful ingredients of Cotter Concentrate, also includes the NRC Staff's practice of "retrofitting" (a form of backdating) documents to suppress information regarding license amendment applications from the public until after the implementation of the license. A good example is this very amendment, Docket 40-8681-MLA, which, as of June 8, 1997, has not yet appeared on the Federal Register, even



though the amendment was granted on April 2, 1997. Since the NRC has retrofit three hundred thirty eight current documents pertaining to licenses and amendments for the EFN/USA mill, it is apparent that the intent is to establish a massive nuclear dump next to AVIKAN's Indian project as well as next to the White Mesa Ute Reservation, with no awareness by the public until after the fact. An explanation of how the NRC Staff's retrofit document system works, along with instructions in following the process is found in Attachment M.

#### 6. CONTINUATION OF INJURY IN FACT

AVIKAN stated concern in its original proposal due to the Cotter Concentrate Proposal's suggestion that following the successful implementation of disposal of residuals in the White Mesa tailings ponds, EFN would then be granted license to bring wastes from "Fernald and other DOE sites," including the "entire NTS waste stream." (Attachment C) AVIKAN argues an ongoing continuation of injury in fact, because of the implementation of the Cotter Amendment.

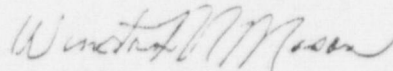
#### CONCLUSION

AVIKAN concludes that by the DOE/NTS' definition of Cotter Concentrate as "Hazardous Mixed Wastes," and by proof of the hazardous contents of the Cotter Concentrates herein presented, the milling and dumping of such wastes near AVIKAN lands constitutes injury in fact upon the participants, lands, projects, sacred sites, and burials of AVIKAN.

WHEREFORE, AVIKAN respectfully requests that the Presiding Officer accept this Affidavit as evidence of injury in fact and issue his Order granting AVIKAN's Request for a Hearing before the Atomic Safety and Licensing Board in protest of License Amendment Docket No. 40-8681-MLA.

Dated this 9th day of June, 1997.

For the Council



Winston M. Mason, Head of Council  
GREAT AVIKAN HOUSE  
3 East Center Box AVIKAN  
Blanding, Utah 84511 (801) 678-2805

# GREAT AVIKAN™ HOUSE

NATIVE AMERICAN PEOPLES HISTORICAL FOUNDATION

3 East Center Street Box AVIKAN™ Blanding, Utah 84511 (801) 678-2805

April 16, 1997

COPY

Ms. Shirley Jackson, Chairperson  
Nuclear Regulatory Commission  
11555 Rockville Place  
Rockville, MD. 20555

Dear Ms. Jackson:

We are hereby petitioning for standing in the matter of your agency's consideration of Energy Fuels Nuclear's requests for license amendments allowing the transporting, re-milling, and waste storage of the Cotter Concentrates, which contain mixed wastes of radionuclides and other hazardous constituents, at its White Mesa Uranium Mill. The mill lies adjacent to the sacred traditional land upon which our organization is building the all tribes Native American historical archive called the Great Avikan House. We are made aware through our Native American benefactors, as well as others, that such approval on your part would place this valuable project in jeopardy; therefore, we are requesting standing.

We are aware that the Cotter Concentrate has been reclassified from a Regulated Solid Waste to "Feedstock Material," in order to comply with Energy Fuels Nuclear's request to dispose of this hazardous material in their tailings ponds. We are also aware that a 1996 report indicates that the said concentrates cannot be stabilized.

Energy Fuels Nuclear has requested that this license amendment be granted this month (April 1997), and they also intend to start shipping the Cotter Concentrates this month, without any public hearings or awareness; therefore, time is of the essence. We are also aware that following the successful deployment of their plan, they are intent on requesting license amendments for permission to bring thousands of tons of hazardous wastes from Fernald and other Department of Energy sites.

Since Energy Fuels Nuclear is currently in the process of restructuring and renaming their company "International Uranium (USA) Corporation" (IUC), therefore we must state that, no matter the name of the company involved, we are hereby requesting standing in all issues which are now before you, or which might come

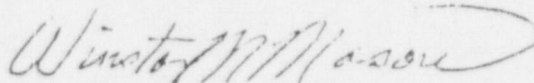
Page 2, Request for Standing to NRC, April 16, 1997

before you in the future, regarding changing the dispositions of Nuclear's wastes and other hazardous constituents in order to justify bringing them to the White Mesa Mill tailings ponds.

As an all tribes historical agency, we are also aware of the significance of the land upon which the White Mesa Mill was originally built. It is a sacred Ute Burial ground, as well as an ancient Anasazi site containing numerous human burials, as well as ceremonial kivas. The Mill sits adjacent to the Ute Reservation community of White Mesa which has over 300 residents. The White Mesa community was not even mentioned in the original environment impact studies conducted on behalf of Energy Fuels Nuclear prior to building the mill. Therefore, in addition to our own interests, we also officially support this Native American community in their plight.

We hereby request standing, and demand that public hearings be implemented in this, and other matters affecting the people and property of this area, before any decisions are either made or implemented.

Sincerely,



Winston M. Mason  
Head of Council

cc: Governor Michael Leavitt, Governor, State of Utah  
Mr. Hugh L. Thompson, Jr., Acting Executive Director for Operations, NRC  
Mr. William Sinclair, Secretary, Utah Division of Radiation Control  
Mr. Preston Truman, Public Representative, Utah Division of Radiation Control  
Members of Utah's Congressional Delegation



6/1/97  
Gen. Sec'y

10M  
May 17 1997  
97 M-27 03 13

UNITED STATES OF AMERICA OFFICE OF  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

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

SERIAL MAY 27

In the matter of	Docket No. 40-8681-MLA
ENERGY FUELS NUCLEAR, INC.	Re: Alternate Feed Material.
White Mesa Uranium Mill	
License Amendment	ASLBP No. 97-126-03-MLA

MEMORANDUM AND ORDER  
Additional Filings Required

This proceeding involves a challenge to a license amendment that was issued by Staff of the Nuclear Regulatory Commission (Staff) on April 2, 1997.<sup>1</sup> The amendment permits the receipt and processing of alternate feed material (i.e. material other than natural ore) at Licensee's White Mesa Uranium Mill.

<sup>1</sup> Letter from Joseph J. Holonick, Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Materials, Safety and Safeguards, April 2, 1997. Attachment 4 to the Letter of the Native American Peoples Historical Foundation, April 28, 1997.

# *Cotter Concentrate Project*

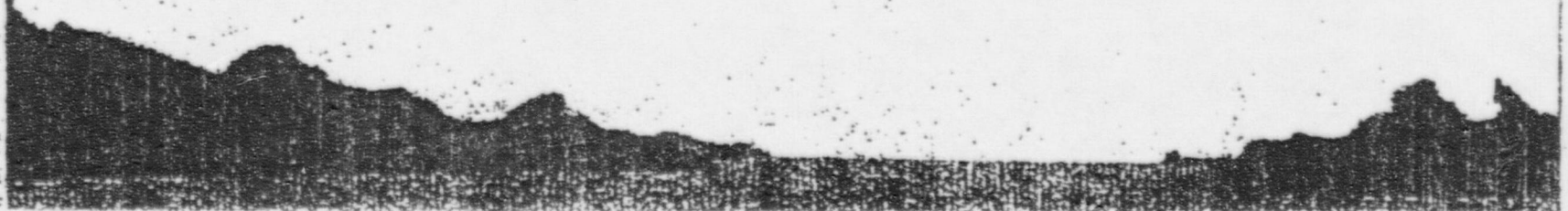
**Colleen O'Laughlin**  
Project Manager

April 2, 1997

# Cotter Concentrate

## *What is it?*

- Form of Belgian Congo Ore
- Sludge-like Residue from Uranium Ore Processing
- Mixed Waste containing:
  - Radionuclides
  - Hazardous Constituents
- 1220 55-gallon drums of waste
- Eighty-eight percent of NTS current Mixed Waste inventory

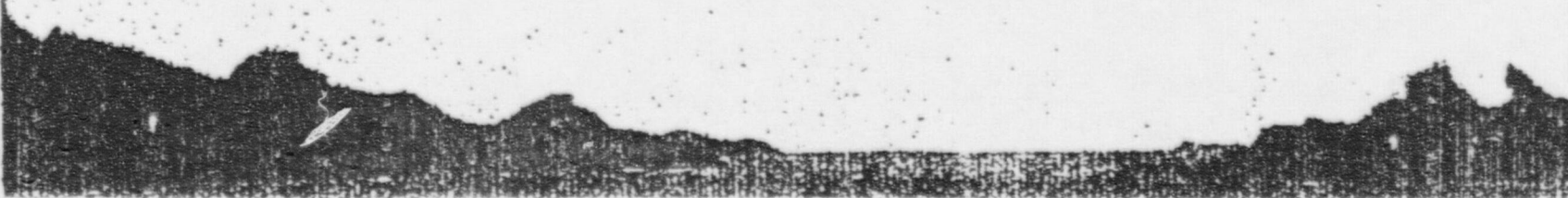




# *Cotter Concentrate*

## *Project Description*

- Reclassify Cotter Concentrate from Regulated Solid Waste to Feedstock Material to comply with Energy Fuels Nuclear, Inc. (EFN) Nuclear Regulatory Commission (NRC) License
- Overpack each 55-gallon container in DOT-compliant container
- Ship material to EFN for Uranium Reclamation
- Dispose of Residual Waste in EFN's NRC-Licensed Mill Tailings Pond



## *Cotter Concentrate*

### *History*

- 1942 - Mallinckrodt Company in St. Louis generated radioactive residue while extracting uranium from Belgian Congo ore
- 1968 - Cotter Corporation of Golden, Colorado bought residues and extracted more uranium, plus copper, cobalt, and nickel
  - Residues now called Cotter Concentrate
- 1975 - Cotter Concentrate sent to Mound facility in Miamisburg, Ohio
  - Mound extracted thorium-230 and protactinium-231
  - Mound discontinued extraction operations

## *Cotter Concentrate*

### *History (cont.)*

- 1987 - Mound shipped 1244 drums of Cotter Concentrate to NTS for storage
  - Considered a "strategic material"
- 1995 - Decreased demand for raw materials for nuclear weapons production
  - Removed "strategic material" designation
  - Now considered waste



## *Cotter Concentrate*

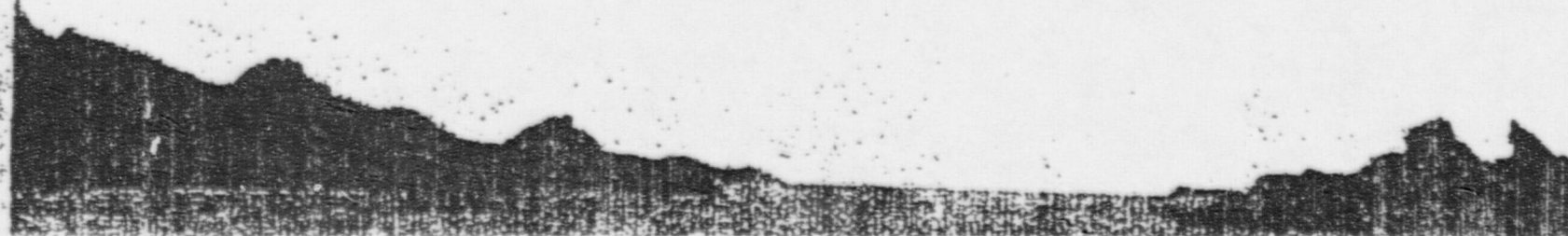
### *History (cont.)*

- 1996 - Federal Facility Compliance Act Consent Order negotiated between NDEP and DOE/NV
- Included schedules for treatment via stabilization at proposed on-site facility
  - Cost of proposed on-site treatment facility: \$3.5 million
  - Unable to stabilize Cotter Concentrate

## *Cotter Concentrate*

### *History (cont.)*

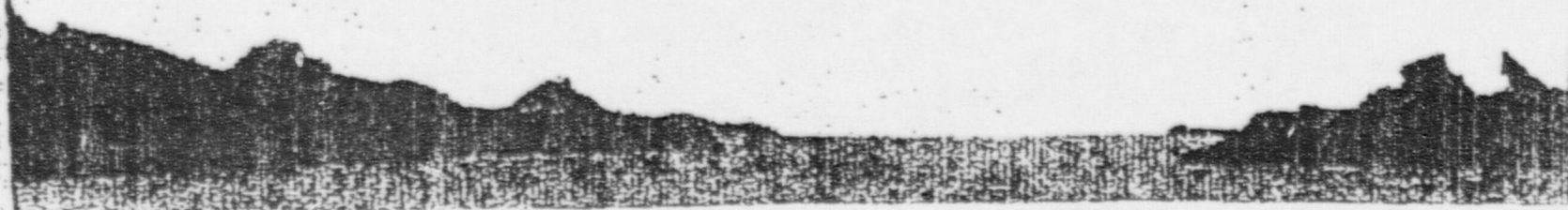
- 1996 (cont.) - Issued Request for Proposals to treat Cotters
- Energy Fuels Nuclear, Inc. responded. Awarded proposal to perform additional uranium extraction and dispose of residuals.



## *Cotter Concentrate*

### *Why Are We Shipping? (cont.)*

- Reprocessing Cotters at EFN instead of on-site treatment and disposal equals \$2.5 million cost savings
- Project will demonstrate the commercial feasibility for full-scale implementation
  - Applicability to Fernald and other DOE sites
  - Thousands of tons of material potentially reclaimed at EFN
  - May remove need to construct some DOE complex treatment facilities

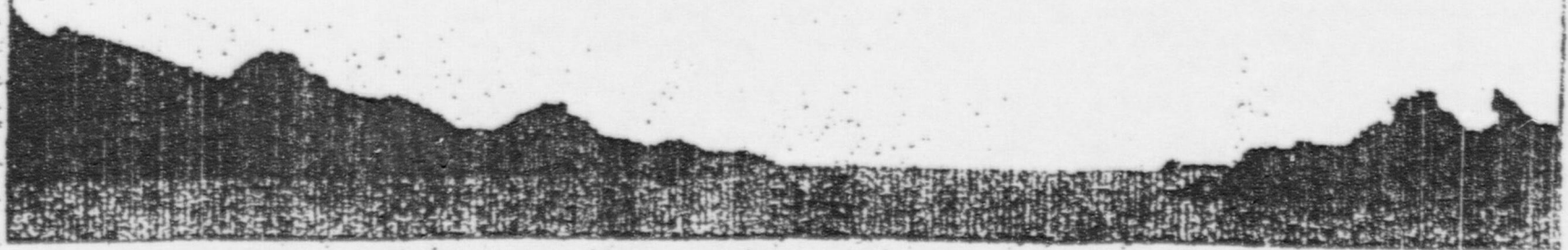




# *Cotter Concentrate*

## *Why Are We Shipping?*

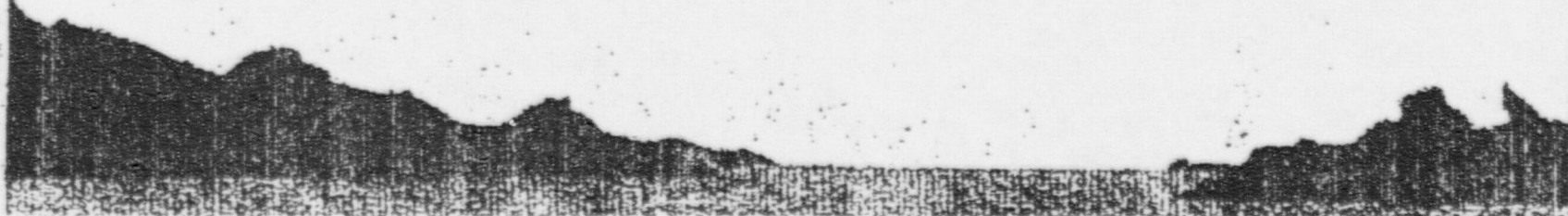
- Alternative to On-Site Treatment and Disposal
- Commercial process available to extract Uranium from material containing 1% Uranium
- Cotter Concentrate contains approximately 10% Uranium
- EFN's process successfully demonstrated on Cotter Concentrate samples



## *Cotter Concentrate*

### *Anticipated Project Accomplishments*

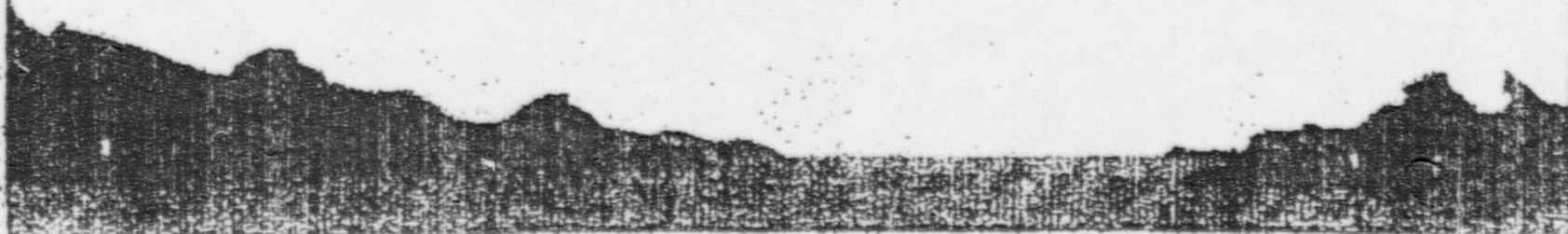
- Process majority of NTS current inventory of Mixed Waste
- Eliminate entire NTS waste stream
- Reclaim material instead of treating and disposing of it on site
- Dispose of Residual Waste in EFN's NRC-Licensed Mill Tailings Pond
- Fund majority of project with outside funds
- Demonstrate process to other DOE sites with similar waste



# *Cotter Concentrate*

## *Where Is It Going?*

- From NTS to Energy Fuels Nuclear, Inc. in Blanding, Utah
- Transport approximately 45 overpacked drums per truck
- Twenty-eight trips
- Empty overpack drums returned and reused
- Route not yet finalized
- NEPA

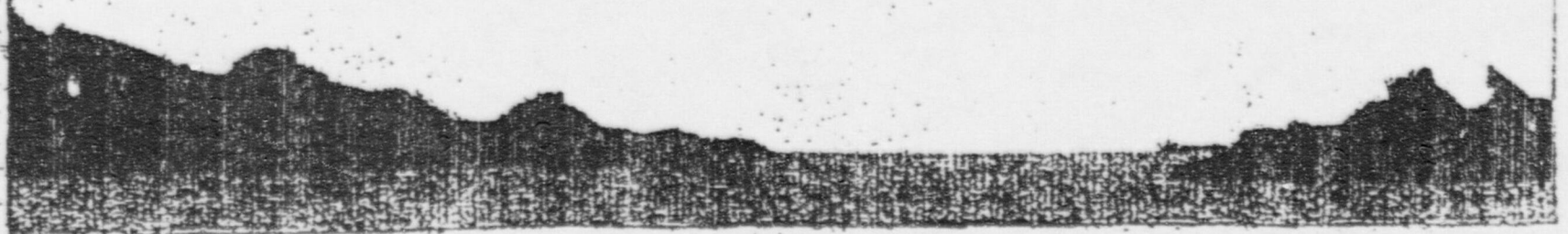




# *Cotter Concentrate*

## *When Is It Going?*

- April 1997 EFN receives approval of NRC License Amendment
- April 1997 Initiate material loading and transport
- August 1997 Complete material transport to EFN
- September 1997 Complete Final Project Report



# GREAT AVIKAN™ HOUSE

NATIVE AMERICAN PEOPLES HISTORICAL FOUNDATION

3 East Center Street Box AVIKAN™ Blanding, Utah 84511 (801) 678-2805

April 25, 1997

Ms. Shirley Jackson, Chairperson  
Nuclear Regulatory Commission  
11555 Rockville Place  
Rockville, MD. 20555

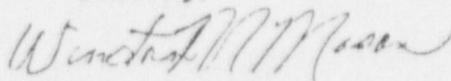
Dear Ms. Jackson:

At the request of your office, by a telephone call on April 24, 1997, we are clarifying our original petition for standing which was faxed to you on April 16, 1997.

As to the type of hearing, we are requesting an Adjudicatory Hearing before your Atomic Licensing Committee. If, for some reason, this request is denied, we hereby request a Commission Hearing at the NRC in Washington. If this is not granted we would request a Staff Meeting to be held in Blanding, Utah.

Thank you for your assistance in this matter.

Sincerely,



Winston M. Mason  
Head of Council

cc: Governor Michael Leavitt, Governor, State of Utah  
Mr. Hugh L. Thompson, Jr., Acting Executive Director for Operations, NRC  
Mr. William Sinclair, Secretary, Utah Division of Radiation Control  
Mr. Preston Truman, Public Representative, Utah Division of Radiation Control  
Members of Utah's Congressional Delegation  
Mr. Cullen Battle, Esq., Attorney at Law

FAXED

4/28/97

(301) 415-1757

(301) 415-2162



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

April 25, 1997

Mr. Winston M. Mason  
Head of Council  
Native American Peoples Historical  
Foundation  
3 East Center Street  
Box AVIKAN  
Blanding, Utah 84511

Dear Mr. Mason:

This is to acknowledge receipt of your letter dated April 16, 1997 to Chairman Shirley Ann Jackson requesting standing in consideration of Energy Fuels Nuclear's request for license amendments at the White Mesa Uranium Mill.

A response is under preparation which will be forwarded to you shortly.

Sincerely,

John C. Hoyle





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

April 28, 1997

MEMORANDUM TO B. Paul Cotter, Jr.  
Chief Administrative Judge  
Atomic Safety and Licensing Board Panel

FROM: *John C. Hoyle*  
John C. Hoyle, Secretary

SUBJECT: REQUEST FOR HEARING SUBMITTED  
BY THE NATIVE AMERICAN PEOPLES  
HISTORICAL FOUNDATION

Attached is a request for hearing dated April 16, 1997, submitted by the Native American Peoples Historical Foundation (Foundation). The hearing request, which is styled as a "request for standing", was faxed to the Executive Director for Operations and referred to the Office of the Secretary on April 18, 1997. The request is for a hearing on an amendment to the Source Material License of Energy Fuels Nuclear (Docket No. 40-8661) to allow receipt and processing of uranium-bearing material. The license amendment was granted by the Nuclear Regulatory Commission staff on April 2, 1997. Additional attachments include a letter from the Foundation dated April 25, 1997, clarifying its desire for an adjudicatory hearing and background material provided by the staff.

The request for hearing is being referred to you for appropriate action in accordance with 10 C.F.R. §2.1261.

Attachments: As stated

cc: Commission Legal Assistants  
OGC  
CAA  
OPA  
EDO  
NMSS  
Michelle R. Rehmann  
Energy Fuels Nuclear, Inc.  
Winston M. Mason  
Native American Peoples  
Historical Foundation

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DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ENERGY FUELS NUCLEAR, INC  
Docket No. 40-8681-MLA  
ASLBP No. 97-726-03-MLA

97 APR 29 P3:59

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED APR 30 1997

DESIGNATION OF PRESIDING OFFICER

Pursuant to delegation by the Commission dated December 29, 1972 published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding:

ENERGY FUELS NUCLEAR, INC  
White Mesa Uranium Mill

(Request for License Amendment)

The hearing, if granted, will be conducted pursuant to 10 C.F.R. Subpart L of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Native American People Historical Foundation on an amendment to the Source Material License of Energy Fuels Nuclear, Inc. to allow receipt and processing of uranium-bearing material. The license amendment was granted by the Nuclear Regulatory Commission staff on April 2, 1997.

4/28/97 - 2

On May 5, 1997, the appointment of Administrative Judge Peter B. Block as Presiding Officer in AVIKAN request for hearing was posted to the Federal Register. (Attachment H)



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

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

- 1 Bill Sinclair stated that on April 2, 1997, the NRC approved a license amendment for the White Mesa Mill that would allow reprocessing of some material that had been stored for a period of time at the Nevada Test Site. The basis of the approval was the NRC "Final Position and Guidance on the Use of Uranium Mill Feed Material other than Natural Ores," which was approved by the NRC on September 22, 1995. This position paper was brought to the attention of the Board, both in draft form and as a final document. Bill Sinclair indicated he would turn some time over to Energy Fuels Nuclear and the Department of Energy to discuss this reprocessing request with the Board.
- 2 Harold Roberts of Energy Fuels Nuclear stated that the sale of the Energy Fuels Nuclear assets to International Uranium Corporation is taking place concurrently with this meeting. The NRC license has been transferred and the hurdles have been passed. The immediate plans for the new company are to begin mining ore from two mines on the Colorado Plateau and one mine in Northern Arizona. The mill should begin processing of these ores in the second or third quarter of 1998.
- 3 The White Mesa Mill has received authorization from the NRC to process material that came from the DOE known as the Cotter Concentrate. Energy Fuels became interested in the Cotter Concentrate through a proposal that the DOE was soliciting for treatment and disposal of this material. It was apparent to Energy Fuels that the Cotter Concentrate represented a significant quantity of uranium which could be obtained with little or no cost to the company and the processing of which could save the American taxpayers several million dollars for needless treatment and disposal costs.
- 4 Since the issuance of the NRC license amendment allowing Energy Fuels to process the materials, several issues have been raised by members of the public. In response, Energy Fuels has written a letter to the Governor of Utah, addressing a wide range of concerns. A copy of the letter was sent to DEQ and the main issues involved in the letter are available in the form of fact sheets. There are two primary issues. The first is the request that the NRC hold selected portions of their amendment application as confidential and second, whether the material can be safely processed at the White Mesa Mill.
- 5 Mr. Roberts continued by referring to the request by Energy Fuels that the details of the source of the feed material, the quantity of uranium in the concentrate be held confidential and the basis of this request was solely for commercial release reasons related to the company's desire that the specifics of their production, including quantities and costs, not be easily available to their competitors. This decision was prompted

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

- 6 The NRC granted and maintained the confidentiality of the requested aspects of the amendment application. During the past few weeks, some items related to the confidential information have become the subject of public comment. Public comment does not change Energy Fuels' belief that its competitive advantage qualifies for protection and that the information claimed as confidential does, in fact, qualify for confidential treatment under applicable regulations. On April 27, 1997, Energy Fuels withdrew its request that the information be held confidential to allow a full and fair evaluation of the basis for approval of the license amendment.
- 7 Mr. Roberts stated that he sincerely regrets any misunderstanding the confidentiality request may have caused, but they will not stop their efforts to make the company and the White Mesa Mill as competitive as possible. This will help to ensure that the mill will continue to operate, providing well paying, stable jobs for up to 130 citizens of San Juan County, Utah. The company will commit to work toward preventing misunderstandings such as this from occurring in the future. Since Energy Fuels took over the mill from UMETCO Minerals in 1994, they have attempted to maintain an open dialogue with the Utah Radiation Control Board with respect to their ongoing operations. They will keep those channels open.
- 8 Mr. Roberts continued by talking about the second issue regarding the Cotter Concentrate which has to do with whether the material can be safely processed at the mill. The Cotter Concentrate averages approximately 10%  $U_3O_8$  while their normal ores run from 1/4 % to just over 1% uranium. The Cotter Concentrate is 10-15 times richer in terms of uranium content than the ores that are typically processed at the White Mesa Mill. Accordingly, an obvious question is whether the material can be safely processed.
- 9 Prior to submitting the request for the license amendment, Energy Fuels conducted an analysis of the issue and concluded the Cotter Concentrate does not present any unique or extraordinary safety issues. The NRC agreed that the material can be processed without posing additional risk or impacts to the environment, Energy Fuels employees or the public's health and safety. The safety of this processing was confirmed independently by a health physicist. He reviewed the potential health and environmental impacts that may be associated with the processing of the Cotter Concentrate. The physicist found that the data demonstrated conclusively that the material has no potential to increase any radiation risk to the general public or the environment. The company is taking all of the radiation safety precautions to protect their employees, the public and their environment.
- 10 In March of 1997, the NRC granted Energy Fuels a ten-year renewal to its operating

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

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

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

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

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



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

- 15 Preston Truman asked why some of the overheads Mr. Gertz used in previous presentations were not the same as the overheads in the presentation made to the Board. Mr. Truman stated that some of the things that worried the public were left out of the presentation to the Board such as the failure to mention the fact that wherever this material has been in the past, it has ended up being a Superfund site with cleanup costs in the millions of dollars. Mr. Truman also stated that he could get no answer from the DOE when he asked specifically about isotopes. He stated that everywhere the material has been, there have been problems with contamination.
- 16 Mr. Gertz and Colleen O'Laughlin from the Nevada office of the DOE stated that their office was in the middle of a move and that is why Mr. Truman couldn't get the information he wanted regarding the isotope count. Mr. Truman allowed this fact, but added that it was interesting that the DOE was continuing to tell the press that everyone was OK with the material. Mr. Truman wanted to emphasize that he was casting no blame on Energy Fuels Nuclear in this situation. He added that there will be protests by not one, but several congressmen.
- 17 Mr. Truman asked what kind of problems would be raised if there were public meetings to go along with this process. Harold Roberts stated that there would not be a problem with public meetings; however, it is up to the NRC to decide what to send to public comment as far as licensing goes. Mr. Roberts stated that it is hard to decide where to have public meetings so as not to leave anyone out. Mr. Truman stated that the fact that there are members of the public upset about very specific portions of the deal with the DOE, should lead to public meetings. Mr. Roberts stated that this meeting is a good start and the lines of communication will be open with the public and with the Board. Mr. Gertz stated that the DOE will go anywhere at anytime to talk about anything that is not classified.
- 18 Bill Sinclair asked if Energy Fuels Nuclear has done any testing of the material to ensure that the recovery of uranium was feasible. Mr. Roberts stated that testing had been done on the Cotter Concentrate. When EFN finds an opportunity like this, they look at a sample of the material. They want to be able to recover uranium out of the material, that is the purpose of doing this. They got a broad range of samples from the DOE of this material and the recovery rate looks very good.
- 19 Alberta Mason spoke for Winston Mason as a member of the Native American Historical

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

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

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

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

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



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20585-0001  
May 9, 1997

Earl E. Hoellen, President  
International Uranium (USA) Corporation  
Independence Plaza, Suite 950  
1050 Seventeenth Street  
Denver, Colorado 80265

SUBJECT: TRANSFER OF NRC SOURCE MATERIAL LICENSES SUA-1358 FOR THE  
WHITE MESA URANIUM MILL (AMENDMENT 2) AND NRC SOURCE  
MATERIAL LICENSE SUA-1558 FOR THE RENO CREEK PROJECT  
(AMENDMENT 4)

Dear Mr. Hoellen:

The U.S. Nuclear Regulatory Commission staff hereby acknowledges receipt from International Uranium (USA) Corporation of the following Standby Trust Agreement and Reclamation Performance Bond (collectively, the "Bond Documents") in satisfaction of the financial assurance requirements for the White Mesa Uranium Mill, as set forth in NRC Source Material License SUA-1358:

Standby Trust

Grantor: International Uranium (USA) Corporation  
Trustee: Norwest Bank Colorado, N.A.  
Beneficiary: United States Nuclear Regulatory Commission

Reclamation Performance Bond

Principal: International Uranium (USA) Corporation (IUSA)  
Issuer: National Union Fire Insurance Company of Pittsburgh, PA  
Bond Number: 18-23-17

The NRC staff has reviewed the Bond Documents and finds the proposed financial surety arrangement to be acceptable. This completes the financial surety requirements for the transfer of Source Material License SUA-1358 for the White Mesa Uranium Mill from Energy Fuels Nuclear, Inc. (EFN) to International Uranium (USA) Corporation (IUSA).

Additional details of EFN's December 31, 1996, request to transfer NRC Source Material Licenses SUA-1358 for the White Mesa mill and Source Material License SUA-1558 for the Reno Creek Project are discussed in the NRC staff's Technical Evaluation Report (TER). Additional information was provided by EFN and IUSA by letter dated April 27, 1997, by facsimile, and finally by hand-delivery on May 9, 1997. The TER documents the basis for the NRC staff's evaluation of the amendment request and is provided as Enclosure 1.





OFFICE OF THE  
GENERAL COUNSEL

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

May 9, 1997

Peter B. Bloch, Esq.  
Administrative Judge  
Presiding Officer  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

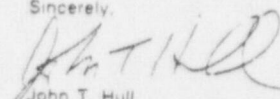
Dr. Charles N. Kelber  
Administrative Judge  
Special Assistant  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
Energy Fuels Nuclear, Inc.  
(White Mesa Uranium Mill: Request for License Amendment)  
Docket No. 40-8681-MLA

Dear Administrative Judges:

In accordance with 10 C.F.R. § 2.1213, the NRC Staff ("Staff") has determined that it wishes to participate as a party in this proceeding, if an adjudicatory proceeding is in fact conducted. Notices of appearance for the undersigned and for Sherwin E. Turk, Esq., are enclosed herewith.

Sincerely,

  
John T. Hull  
Counsel for NRC Staff

cc: Service List

9705790115



# GREAT AVIKAN HOUSE

NATIVE AMERICAN PEOPLES HISTORICAL FOUNDATION

3 East Center Street Box AVIKAN • Blanding, Utah 84511 (801) 678-2805

May 20, 1997

United States President Bill Clinton  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

COPY

Dear President Clinton:

This letter is an urgent request that, in accordance with your February 16, 1994 Executive Order on Environmental Justice, you intervene in behalf of your Native American Ute and Navajo Citizens of America's Four Corner's Region in an issue that is absolutely critical to the preservation of the Constitutional Rights of "life, liberty, and the pursuit of happiness" of the affected peoples.

Our Native American organization owns a 600 acre parcel of sacred Indian Land next to Energy Fuel's Nuclear, Inc.'s defunct White Mesa Uranium mill. We, along with, and in support of, the Ute Community of White Mesa and the Navajo Nation's Westwater Community have petitioned the Nuclear Regulatory Commission (NRC) for "Standing" against the bringing of the extremely hazardous Cotter Concentrate, the Department of Energy's (DOE) biggest Nuclear mixed wastes problem since World War II, to be dumped in the open air tailings ponds of the Energy Fuels Mill which sit over our water aquifers and upon the graves of our American Indian Ancestors.

Regrettably, we must call to your attention the fact that some of your Staff members at the NRC and DOE have been, and are now, conspiring with private industry, namely Energy Fuels Nuclear, Inc., in imposing gross "Environmental Racism" upon the Ute and Navajo People of San Juan County Utah for the sake of monetary profit for big business. Through the use of "secret" and "retrofit" documents, NRC, and DOE have been grooming a defunct Union Carbide Uranium mill as one of the Nation's largest (six square miles) commercial Nuclear and Hazardous Waste Dumps, without any public awareness or input. For several years now EFN, masquerading as a Uranium mill and through the help of some of the three hundred and thirty eight (338) retrofit NRC documents concerning the Union Carbide operation, has been guilty of slipping hazardous non nuclear wastes into the mill's open air tailings ponds.



EFN President Harold Roberts has denied to the public, as well as to the Utah Radiation Control Board, that his company has any desire to transpose itself into a commercial waste dump. However, Mr. Roberts and other UMETCO (Union Carbide) officials have now exposed their intentions by threatening to sue Envirocare, Utah's major commercial nuclear waste dump, accusing them of playing a role in defeating an earlier license amendment (DOE's Monticello Mill tailings) in an effort to keep EFN's White Mesa Mill out of the commercial waste business.

NRC's illicit practice of "reclassifying" materials from "Hazardous" and "Regulated" Nuclear wastes, and mixed wastes, to common "Feedstock" in order for the EFN mill to dump the extremely dangerous materials into its open air tailings ponds, is a blatant example of Environmental Racism against our Ute Indian people who live adjacent to the tailings ponds. This violation is compounded even further by the fact that in the original feasibility study (FES), the adjacent Ute Reservation community of 300 people was not even mentioned as a population of concern, while the town of Hanksville, situated 130 miles to the northwest was cited. Not only was the community of White Mesa not mentioned in the FES, but neither were any of the community's culinary water wells (which are situated on the same water aquifers as EFN's wells) even tested as required by law. This is obviously an intentional act, demonstrating total disregard for human health and safety, and is therefore another reason for the charge of Environmental Racism.

President Clinton, time is of the essence, due to the fact that NRC "retrofit" documents have already authorized Energy Fuels Nuclear, Inc. to begin processing the extremely hazardous "Cotter Concentrate," World War II's original Atomic Bomb residues. We have been informed that the concentrate is being shipped this week from the Department of Energy's Nevada Test Site to the White Mesa Mill. In a meeting with the Utah Radiation Control Board (RCB) on May 9, 1997, the RCB informed EFN and DOE that the materials could not be shipped until the NRC had answered to our organization's petition for Standing, as well as the petitions from the Ute and Navajo Citizens. However, with evidence in hand of the NRC's practice of "retrofitting" the dates of notices in the past, we believe that the NRC and DOE have likely already committed to allow EFN to start processing this week, without any of the petitioners having yet received notice of their "denials" for Standing. In hopes that the rumors are not true, we are anxiously awaiting word from the NRC as to the status of our requests for Standing.

According to Native American traditional beliefs, the Cotter Concentrate residues from World War II's original Atomic Bomb which killed nearly 1,000,000 human beings carry a very bad spirit. The teachings of our people warn that things of this nature must not be dumped upon the graves of our ancestors. Archaeological

reports verify the fact that the EFN mill and tailings ponds were built on traditional American Indian burial sites. The graves of Jess Posey and other important Ute and Navajo leaders of the past two centuries are also on EFN lands which have not yet been disturbed. As Native Americans we cannot allow further desecration of our ancestor's graves.

Native Americans and non Indian citizens of San Juan County Utah have gathered 2,000 individual signatures on petitions opposing these or any other waste materials being brought to the EFN mill site, including a nearly 100% opposition from the Ute Reservation. Official Navajo Nation Chapter Resolutions representing virtually 100% of the Ute and Navajo people of the county have also been garnered. When former Assistant Secretary of Energy Thomas P. Grumbly gave way to these petitioners in the 1994 proposal to transport DOE wastes to White Mesa he said, "Your actions and involvement are a testimony to the power of a democratic process." No matter what the decisions and actions of the government agencies turn out to be in this matter, because of our traditional beliefs and in the pursuit of our rights in a democratic society under the Constitution of the United States, we will never cease to fight against this life threatening and racially discriminating business which the NRC and DOE are attempting to force upon us.

Again, President Clinton, as Native Americans we appeal to you to intervene on the basis of your Executive Order on Environmental Justice. We thank you for your sensitivity which brought about this compassionate order of justice in the first place. We will wait to hear from you.

Respectfully,



Winston M. Mason  
Head of Council

cc: Utah Governor Michael O. Leavitt  
Fredrico Pena, Secretary of Energy  
Shirley Ann Jackson, Chairman NRC  
Eni Faleomavaega, US Congress  
Chris Cannon, US Congress  
Merrill Cook, US Congress  
James Hansen, US Congress  
Orin Hatch, US Senate  
Robert F. Bennett, US Senate  
Rebecca Lorenz, The Law Firm of Melat, Pressman, Ezell & Higbie

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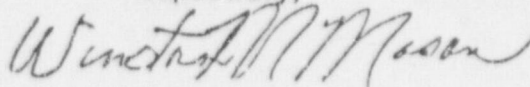


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Head of Council

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Shirley Ann Jackson, Chairman NRC  
Eni Faleomavaega, US Congress  
Chris Cannon, US Congress  
Merrill Cook, US Congress  
James Hansen, US Congress  
Crin Hatch, US Senate  
Robert F. Bennett, US Senate  
Rebecca Lorenz, The Law Firm of Melat, Pressman, Ezell & Higbie

RECEIVED  
5/24/97

May 21, 1997

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
ENERGY FUELS NUCLEAR, INC.	)	Docket No. 40-8681-MLA
	)	
(White Mesa Uranium Mill;	)	
Alternate Feed Material)	)	

NRC STAFF'S RESPONSE TO THE  
REQUESTS FOR HEARING FILED BY  
(1) THE NATIVE AMERICAN PEOPLES HISTORICAL  
FOUNDATION, (2) WESTWATER NAVAJO COMMUNITY,  
(3) NORMAN BEGAY, AND (4) THE UNITED STATES  
DEPARTMENT OF ENERGY (NEVADA OPERATIONS OFFICE)

INTRODUCTION

On April 2, 1997 (reissued April 8, 1997), the NRC Staff ("Staff") granted an application filed by Energy Fuels Nuclear, Inc. ("EFN" or "the Licensee") to amend Source Material License No. SUA-1358 (Amendment No. 1), to permit the receipt and processing of certain specified alternate feed material at the Licensee's White Mesa Mill. Requests for hearing were then filed concerning this amendment by (1) the Native American Peoples Historical Foundation (filed on April 16, 1997, as modified April 25, 1997), (2) the Westwater Navajo Community (filed on April 30, 1997), and (3) Norman Begay (filed on April 30, 1997). In addition, on May 2, 1997, the United States Department of Energy (Nevada Operations Office) (DOE/NV), submitted a letter stating that it has an interest in the license amendment at issue herein, and requesting that it be

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allowed to participate in any proceeding that may be held concerning the subject amendment.

In accordance with 10 C.F.R. § 2.1205, the NRC Staff ("Staff") hereby files its response to these requests for hearing.<sup>1</sup> For the reasons set forth below, the Staff respectfully submits that the requests for hearing filed by Mr. Begay, the Native American Peoples Historical Foundation and the Westwater Navajo Community fail to establish that the requestors have standing to participate in this proceeding and, in the absence of any further information, the requests should be denied at this time.<sup>2</sup>

---

<sup>1</sup> Pursuant to 10 C.F.R. § 2.1205(g), the Staff's response to the hearing request of the Native American Peoples Historical Foundation was due to be filed within 10 days of the designation of the Presiding Officer, *i.e.*, on or before May 9, 1997; and the Staff's responses to the hearing requests of Norman Begay and the Westwater Navajo Community appear to have been due to be filed by May 16 and May 20, respectively. Due to some confusion arising from the indirect and delayed service of these requests for hearing and a misunderstanding as to the response deadlines, the Staff inadvertently failed to file its responses within the allotted time. The Staff regrets any inconvenience which may have been caused by this oversight, and respectfully requests leave to file the instant response at this time. Staff Counsel has spoken with Mr. Norman Begay, who stated that he does not oppose the granting of this request. Staff Counsel attempted without success to reach Counsel for the Licensee (Rich Munson, Esq.), the Native American Peoples Historical Foundation (Winston Mason), and the Westwater Navajo Community (Lulu Jim Katso) prior to the filing of this response, and is therefore unable to state their positions with respect to this request.

<sup>2</sup> In the event that the Presiding Officer determines to afford the requestors an opportunity to amend their requests for hearing in order to demonstrate their standing to participate in this proceeding, the Staff requests that it be afforded an opportunity to respond to those submittals, as may then be appropriate.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE PRESIDING OFFICER

(5/28/97)  
SS

In the Matter of	)	
	)	Docket No. 40-8681-MLA
ENERGY FUELS NUCLEAR, INC.	)	
	)	ASLBP No. 97-726-03-MLA
(Source Materials License	)	
No. SUA-1358; White Mesa Uranium	)	
Mill Request for License Amendment)	)	

**MOTION FOR ORDER APPROVING SUBSTITUTION OF PARTIES**

Comes now International Uranium (USA) Corporation ("IUSA"), by its counsel of record, and moves the Presiding Officer for his order (i) approving substitution of IUSA for Energy Fuels Nuclear, Inc. ("EFN") in this proceeding, (ii) changing the caption of this case to reference IUSA in place of EFN, (c) that EFN's status as a party to this proceeding be terminated and (iv) that EFN be deleted from the Mailing/Service List for the proceeding.

In support of this Motion, IUSA hereby respectfully states the following:

1. On April 2, 1997, the Nuclear Regulatory Commission ("NRC") staff approved an amendment (the "Cotter Concentrates Amendment") to Source Materials License SUA 1358 (the "White Mesa Mill Source Materials License") allowing the receipt and processing of approximately 790,000 pounds of uranium bearing material commonly referred to as the "Cotter Concentrates". At the date of the approval of the Cotter Concentrates Amendment, EFN was Licensee.

2. Letters requesting standing and/or hearings on the Cotter Concentrates Amendment were submitted to the NRC after approval of the Cotter Concentrates Amendment and a Presiding Officer was appointed to consider those requests. At the time of the appointment of the Presiding Officer, EFN was Licensee.

3. On May 9, 1997, the NRC approved the transfer of the White Mesa Mill Source Materials License from EFN to IUSA pursuant to the letter dated May 9, 1997, a copy of which is attached hereto as Exhibit A.<sup>1</sup>

4. The transfer of the White Mesa Source Materials License occurred in conjunction with the sale of substantially all of the assets of EFN, including the White Mesa Source Materials License, by EFN and its affiliates to affiliates of IUSA in accordance with the terms and conditions of that certain Asset Purchase Agreement dated as of December 19, 1996. A copy of the Asset Purchase Agreement was delivered to the NRC in December of 1996.

---

<sup>1</sup> The letter from the NRC to IUSA is attached as Exhibit A along with page 1 of the reissued White Mesa Mill Source Materials License. The other enclosures referenced in the May 9, 1997 letter are not deemed relevant for this proceeding and accordingly are not attached hereto but are available upon request.

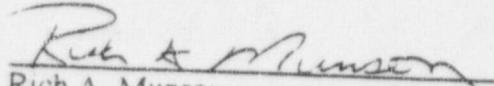
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5. As a result of the acquisition by IUSA and its affiliates of the assets of EFN and its affiliates, including the White Mesa Source Materials License, EFN has ceased to have a legal interest in licensing actions affecting the White Mesa Source Materials License, and that, effective May 9, 1997, IUSA has become the real party in interest in all such matters, including the Cotter Concentrates Amendment and this proceeding.

6. While there is no express provision on substitution of parties in the rules and regulations promulgated by the NRC that governs this proceeding, there is provision for substitution of parties in the Federal Rules of Civil Procedure ("F.R.C.P."). F.R.C.P. 25(c) provides that in the case of a transfer of interest, the court, upon motion, may direct the transferee to be substituted in the action. There is no compelling reason that a similar procedure should not be followed in this proceeding.

WHEREFORE, IUSA respectfully requests that the Presiding Officer issue his Order granting this Motion for Substitution of Parties.

Dated this 23rd day of May, 1997.



Rich A. Munson,  
Attorney at Law  
One Tabor Center, Suite 1000  
1200 Seventeenth Street  
Denver, CO 80202

Telephone: (303) 893-6996  
Facsimile (303) 904-4989

Counsel for International Uranium (USA)  
Corporation, Licensee

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE PRESIDING OFFICER

RECEIVED  
9/29/97

In the Matter of	)	Docket No. 40-8681-MLA
ENERGY FUELS NUCLEAR, INC.	)	ASLBP No. 97-726-03-MLA
(Source Materials License	)	
No. SUA-1358; White Mesa Uranium	)	
Mill Request for License Amendment)	)	

**MOTION FOR ORDER GRANTING LEAVE TO FILE RESPONSE**

Comes now International Uranium (USA) Corporation ("IUSA"), by its counsel of record, and moves the Presiding Officer for his order granting leave for IUSA to file the Response of International Uranium (USA) Corporation to Hearing Requests Regarding Amendment to Source Material License (Docket No. 40-8681).

In support of this Motion, IUSA hereby respectfully states the following:

1. On April 2, 1997, the Nuclear Regulatory Commission ("NRC") staff approved an amendment (the "Cotter Concentrates Amendment") to Source Materials License SUA 1358 (the "White Mesa Mill Source Materials License") allowing the receipt and processing of approximately 700,000 pounds of uranium bearing material commonly referred to as the "Cotter Concentrates".
2. Letters requesting standing and/or hearings on the Cotter Concentrates Amendment were submitted to the NRC after approval of the Cotter Concentrates Amendment and a Presiding Officer was appointed to consider those requests.
3. On May 9, 1997, the NRC approved the transfer of the White Mesa Mill Source Materials License from EPN to IUSA pursuant to a letter dated May 9, 1997.
4. The transfer of the White Mesa Source Materials License occurred in conjunction with the sale of substantially all of the assets of EPN, including the White Mesa Source Materials License, by EPN and its affiliates to affiliates of IUSA in accordance with the terms and conditions of that certain Asset Purchase Agreement dated as of December 19, 1996. A copy of the Asset Purchase Agreement was delivered to the NRC in December of 1996.
5. As a result of the acquisition by IUSA and its affiliates of the assets of EPN and its affiliates, including the White Mesa Source Materials License, IUSA has become the real party in interest in all such matters, including the Cotter Concentrates Amendment and this proceeding.
6. On even date herewith, the undersigned counsel for IUSA has entered an appearance in this proceeding.
7. On even date herewith, IUSA has filed a Motion for Order Approving Substitution of Parties.

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## NATIVE AMERICAN PETITIONERS

In The Matter Of Energy Fuels Nuclear, Inc.'s License Amendment Request  
Docket No. (S) 40-8681-MLA

May 24, 1997

TO: Shirley Ann Jackson, Chairman  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD. 20555

**COPY**

RE: Petitions for Reconsideration of Initial Decisions, and,  
Petitions for Reconsideration of Final Decisions

Dear Chairman Jackson:

We appeal to your sense of Justice.

Since your NRC Commission attorney, Sherwin E. Turk, has not dignified us as separate bona fide clans, communities, and organizations by giving us separate replies to separate requests for standing with your Commission, we will take justification, at his lead, to join in one letter in making our individual responses to his letter of denial dated May 21, 1997, and to our individual "Petitions for Reconsideration of Initial Decisions." Let us make it clear, that we are separate entities, with certain diversifications of interest in the matter of Energy Fuels Nuclear, Inc.'s license amendment request Docket No. (S) 40-8681 - MLA which would bring the Hazardous "Radionuclides and Mixed Wastes," of the "Cotter Concentrate," World War II's original Atomic Bomb residues, to be dumped in open air tailings ponds directly adjacent to, and within harms way of our communities and projects. We do, however, have a common concern for the health and safety, both physical and psychological, of the Native American clans, communities, and organizations to be affected.

Yesterday, May 23, 1997, we received notification VIA U.S. FIRST CLASS MAIL (postmarked May 21, 1997 with no Certified Receipt), signed by Sherwin E. Turk, Counsel for NRC Staff, that your NRC Staff initial decision is suggesting to your Commission that our three individual requests for hearings in the matter of Energy Fuel's Nuclear, Inc.'s license amendment Docket No. 8681-MLA should be conjointly denied. Mr. Turk's letter of notification, dated May 21, 1997, and received May 23, 1997, is fourteen days late of the legal date of notification as required by law regarding the Native American Peoples Historical Foundation's request for Standing. Likewise, Mr. Turk's notice is seven days late of Mr. Norman Begay's legal and rightful date of notification, and four days late of the Navajo Nation's Westwater Community's legal and rightful date of notification. This circumstance appears to be more than coincidental. If this is not indicative of willful suppression of information, then it is most certainly indicative of incompetence in the staff lawyers and judges who are entrusted in such a high governmental office as the NRC. This circumstance alone gives reason and just cause to expect that these individual and separate appeals to you and your Commission, dated May 24, 1997, will be granted.

Further, the Commission's Staff statement to us is ill prepared. In what appears could very well be another ploy in delaying and disrupting proper proceedings, we were sent a 23

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page "Memorandum and Order" "Denying Hearing Request" of petitioner John Frances Darke in the matter of Atlas Corporation's Docket No. 40-3453-MLA, rather than receiving any adequate documentation of reasons for denial in our own case. Again, if this is not an intentional diversion in the suppression of information, it is a prime example of negligence and incompetence in high government offices. Mr. Turk stated to our three Native American parties, in the same letter, ".....the Staff inadvertently failed to file its responses within the allotted time. The Staff regrets any inconvenience which may have been caused by this oversight, and respectfully requests leave to file the instant response at this time." Mr. Turk's claim that in a telephone conversation Mr. Norman Begay stated that he did not oppose the granting of Counsel's request regarding late notification is far removed from Mr. Begay's understanding.

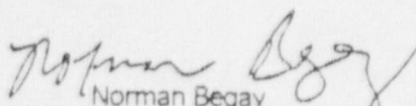
It may be noted here that this "instant response" mentioned by Mr. Turk was written on the same day (May 21, 1997) that the Native American Peoples Historical Foundation's letter was dated and faxed to President Bill Clinton, requesting his intervention and investigation of NRC Staff's practice of "retrofitting" documents to conceal the discrepancy between NRC's document dates and the actual dates that the information was made known to the public. A considerable number of the situations involved in the approximately 3,000 "retrofit" documents generated by the NRC since 1994 manifest strong implications of environmental racism, since they have to do with Nuclear projects on or near Indian Reservations or other minority communities. President Clinton's Executive Order on Environmental Justice provides that "....each federal agency shall conduct its programs, policies, and activities that substantially effect human health or the environment, in a manner that ensure that such programs, policies, and activities do not have the effect of . . . subjecting persons (including populations) to discrimination under such programs, policies or activities, because of their race, color or natural origin." We thank the Great Creator for President Clinton's insightful and compassionate understanding of Justice relative to the people of this American Democracy over which he is a temporary steward. We are sure that because of this Executive Order alone, if he remains faithful to his own Order, President Clinton, despite whatever his failings might be proven in time to be, will rank in future remembrances of the people of this nation alongside Abraham Lincoln, John Kennedy, and Martin Luther King for his stand on Environmental Justice.

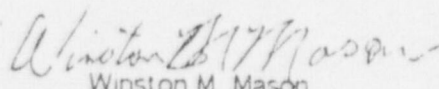
Please allow us to point out that of the 1,818 current Union Carbide/Energy Fuels Nuclear, Inc (EFN) White Mesa Uranium Mill documents, 338 are retrofits, meaning they were suppressed from the public until after the license was already implemented. Since early 1995, other than for a short Uranium processing run in 1996, the EFN mill has posted a sign saying "Plant Closed." Today, May 24, 1997, it still says these words. It seems strange that NRC would grant so many licenses to a plant that is closed down. It is no secret among members of the communities of Blanding and White Mesa with family members who have, or do, work at the mill that year after year barrels and truckloads of "unknown" (to the workers) materials are brought to the mill which are eventually dumped in the mill's tailings ponds. These ponds sit next door to the Ute Reservation Community of White Mesa, and to the Native American Peoples Historical Foundation's Great Avikan House site. The hazardous debris from the mill's smoke stacks are inhaled and ingested through the airways, and the poisonous radionuclides and hazardous constituents are put into open air tailings ponds to further enter the airways and also to leech and seep into the water aquifers from which our Native American People draw our water. And your Staff, Chairman Jackson, informs us that we have no grounds for a hearing? Is it any wonder we are accusing your staff of environmental racism? We are sure that you can

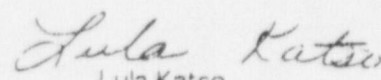
see, Chairman, that these materials must not keep coming here to further pollute our lands and our people. But what is to be done? Why not Justice?

Chairman Jackson, correspondence from certain NRC Staff members has criticized our groups for sending our requests and information directly to you. However, because of the practices mentioned above, we have not yet been given any reason to trust your staff members. And, desiring to believe that you, yourself, are an honorable person to be trusted, and are not a part of those practices, we are again petitioning you, personally. Therefore, Honorable Chairman Jackson, before exhausting our individual and separate currently available remedies under the law, and prior to our seeking Judicial Reviews, we do hereby petition you and your Commission for separate reviews of the Staffs initial decisions regarding our individual petitions under Energy Federal Code of Regulations, 10 CFR Ch. 1, Subpart L, Hearings, ¶ 2.1253 - "Petitions for review of initial decision," and also in accordance with the procedures set forth in 10 CFR Ch. 1 Subpart L, Hearings ¶ 2.786 and 2.763, or, upon motions of your Commission. If the Commission's final decision is not in favor of any one or all of the individual petitioning parties, then said parties, in advance of, and as of the date of this letter, do hereby petition for Judicial Review, in accordance with the provisions of 10 CFR Ch. 1, Hearings ¶ 2.1259 (b) and ¶ 2.771, for a reconsideration of that final decision.

We, each, separately, sincerely thank you for your kind consideration of these filings.

  
Norman Begay  
White Mesa Community  
Box 1138  
White Mesa, Utah 84511

  
Winston M. Mason  
Native American Peoples  
Historical Foundation, Inc.  
Box AVIKAN  
Blanding, Utah 84511

  
Lula Katso  
Westwater  
Navajo  
Community  
264 W. 100 N.  
Blanding 84511

cc: President Bill Clinton  
Hugh L. Thompson, Jr. NRC Acting Ex. Dir. of Operations  
Governor Michael Leavitt  
Congressman Chris Cannon  
Congressman Merrill Cook  
Senator Robert F. Bennett  
Congressman James Hansen  
Senator Orin Hatch  
Congressman Eni Falaomavaega  
William Sinclair, Utah Radiation Control Board  
Preston Truman, Public Representative, URCB  
Sherwin E. Turk, Counsel for NRC Staff  
Cullen Battle, Counsel for Norman Begay  
Rebecca Lorenz, The Law Firm of Melat, Pressman, Ezell & Higbie, Counsel for Petitioners  
Don Howarts and Katy Jacobs, The Law Firm of Howarts & Smith

\*Note: Other Copies in these "new" filings will be served as directed by Chairman Jackson.



97 MAY 27 03 33

UNITED STATES OF AMERICA OFFICE  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

SERVED MAY 27

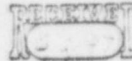
In the matter of  
ENERGY FUELS NUCLEAR, INC.  
White Mesa Uranium Mill  
License Amendment

Docket No. 40-8681-MLA  
Re: Alternate Feed Material  
ASLBP No. 97-726-01-MLA

MEMORANDUM AND ORDER  
Additional Filings Required

This proceeding involves a challenge to a license amendment that was issued by the Staff of the Nuclear Regulatory Commission Staff on April 2, 1997. The amendment permits the receipt and processing of alternate feed material, i.e. material other than natural ore, at Licensee's White Mesa Uranium Mill.

Letter from Joseph J. Holmich, Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, April 2, 1997, Attachment 4 to the Letter of the Native American Peoples Historical Foundation, April 25, 1997.



DOCKETED  
USNRC  
May 29, 1997  
97 MAY 29 P2:00

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

\* SERVED MAY 28 1997

\* RE-SERVED MAY 30 1997

In the matter of

Docket No. 40-8681-MLA

ENERGY FUELS NUCLEAR, INC.

Re: License Amendment

(White Mesa Uranium Mill;  
Alternate Feed Material)

ASLBP No. 97-726-03-MLA

NOTICE

Today I received: (1) a letter to Shirley Ann Jackson, Chairman, Nuclear Regulatory Commission, from Native American Petitioners, May 28, 1997; (2) a letter from Harold R. Roberts, International Uranium (USA) Corporation; (3) a letter to Shirley Jackson, Chairman, Nuclear Regulatory Commission, from Lula J. Katso, Community Spokesperson, Westwater Navajo Community, April 30, 1997; and (4) motions<sup>1</sup> filed by Richard A. Munson, Attorney

<sup>1</sup> The documents received from Mr. Munson include a Notice of Appearance, May 23, 1997, a Motion for Order Approving Substitution of Parties, May 23, 1997 (to which petitioners may respond as provided for in Subpart L.), a Motion for Order



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

May 30, 1997

Mr. Norman Begay  
White Mesa Community  
P.O. Box 1138  
White Mesa, Utah 84511

Ms. Lula Jim Katso  
Westwiler Navajo Community  
264 West 100 North  
Blanding, Utah 84511

Mr. Winston M. Mason  
Native American Peoples  
Historical Foundation, Inc.  
Box AVIKAN  
Blanding, Utah 84511

In the Matter of  
Energy Fuels Nuclear, Inc.  
(White Mesa Uranium Mill, License Amendment 1)  
Docket No. 40-8681-MLA

Gentlemen/Madame:

I have received a copy of your letter to Dr. Shirley Ann Jackson, Chairman of the Nuclear Regulatory Commission, dated May 24, 1997. In your letter, you express various concerns regarding the NRC Staff's licensing actions with respect to the White Mesa Uranium Mill, as well as concerns regarding a legal response ("Response") which I filed on May 21, 1997, as Counsel for the NRC Staff, to your requests for hearing in the ongoing "Cotter Concentrate" license amendment proceeding. I wish to reply briefly to the concerns you have expressed regarding my filing of the Staff's Response. The other matters raised in your letter will be addressed separately, as may be determined to be appropriate.

You later expressed the following concerns with respect to the Staff's Response: (1) the Response failed to "dignify" each of your groups "as separate bona fide clans, communities, and organizations," inasmuch as it addressed all of your requests for hearing in one response rather than in separate responses; (2) the Response was sent to you by first class mail "with no Certified Receipt"; (3) the Response was filed 14, 7, or 4 days later than permitted by NRC regulation -- which you state "appears to be more than coincidental," and to be indicative of either "willful suppression of information" or "incompetence in the Staff lawyers and judges"; (4) the Response was "prepared in what appears could very well be another ploy in delaying and disrupting proper proceedings" since it attached a 23-page decision on standing issued in a proceeding concerning the Atlas Corporation, "rather than ... any adequate documentation of reasons for denial in our own case," which you describe as being either "an intentional diversion in the suppression of information" or "a prime example of negligence and incompetence in high government offices"; (5) "Mr. Turk's claim that in a telephone conversation Mr. Norman Begay stated that he did not oppose the granting of Counsel's



# Uranium Route Miffs Moabites

## White Mesa Utes: We Don't Want Tailings

BY BRENT ISRAELEN  
THE SALT LAKE TRIBUNE

A truck containing roughly 14 tons of low-level nuclear waste rolled quietly through Moab on Thursday en route to a uranium processing facility near Blanding.

It is one of 28 scheduled shipments that have caught Moab residents off guard and prompted an American Indian group to call for the dismissal of Utah's director of radiation control.

Winston Mason, head of an Indian heritage group, said Utah Gov. Mike Leavitt has been "uninformed" about the waste and called for the governor to fire Bill Sinclair, director of the state Division of Radiation Control.

Sinclair on Friday said his job is not in jeopardy. "I'm not going to get into a shouting match with opponents," he said.

Mason is head of the Council for AVIKAN, a group of various American Indians trying to build a multimillion-dollar Indian genealogy and resource center next door to the White Mesa uranium mill, just outside of Blanding.

Owned by Denver-based Uranium International Corp. (UIC), the mill is the final destination of the waste shipments that began Thursday.

The waste, 400 tons in all, is coming from the U.S. Department of Energy's Nevada Test Site, 100 miles north of Las Vegas. It is called the "Cotter Concentrate" and is among the last remnants of original uranium ore used in producing the nation's first atomic weapons in World War II.

DOE originally had planned to stabilize and dispose of the waste in Nevada at a cost of \$3.5 million, said DOE spokesman Carl Gertz. Then the mill's former owner, Energy Fuels Nuclear Inc., proposed taking it off the DOE's hands for free.

UIC, which took over Energy Fuels Nuclear in April, plans to reprocess the waste and extract uranium, whose price is rising on the commercial market.

The shipments to White Mesa

See URANIUM, Page D-3

## Uranium Plan Angers Utes And Moabites

■ Continued from D-1

will cost just more than \$600,000, Gertz said.

Indian tribes, particularly the White Mesa Utes, who live downwind and downslope of the mill,

are opposed to any nuclear waste coming to the mill. They say the waste could leak radioactive ions into their groundwater.

But their biggest objection is that the waste is an affront to sacred hunting and burial grounds adjacent to the mill property.

In a flurry of letters written this spring to Leavitt and President Clinton, Mason called the shipments a circumvention of federal laws and an example of "environmental racism" perpetrated on the Indians by the government.

"The Cotter Concentrate residues from World War II's original atomic bomb, which killed nearly 1 million people, carry a very bad spirit," Mason wrote to Clinton. "Things of this nature must not be dumped upon the graves of our ancestors."

Sinclair said the shipments are the jurisdiction of the U.S. Nuclear Regulatory Commission, not the state. But Sinclair has written a letter asking the NRC to give the Indians standing in their petition to protest the shipments.

Meanwhile, Moab residents say they have been caught off guard by the shipments and are expressing concern that they are coming through Moab, a rapidly growing resort town whose Main Street is often choked with tourist traffic.

"There's no place for a nuclear [waste] spill there," said Karen Nelson, a Castle Valley resident who makes frequent trips to Moab.

Grand County Councilman Al McLeod first learned of the shipments Friday from an inquiring *Tribune* reporter.

"I don't like this," McLeod said. "We weren't notified or warned that this would be the route. Maybe they didn't want us to know. They just wanted to slide it on through with the least amount of resistance."



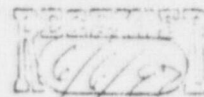
Michael O. Leavitt  
Governor

Dianne R. Nielson, Ph.D.  
Executive Director

William J. Sinclair  
Director

DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF RADIATION CONTROL

168 North 1950 West  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850  
(801) 536-4250 Voice  
(801) 533-4097 Fax  
(801) 536-4414 T.D.D.



COPY

May 30, 1997

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

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

Dear Judge Bloch:

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

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



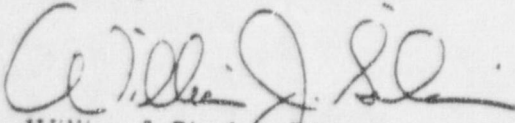
9706120230

May 30, 1997

Page 2

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

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Sinclair". The signature is fluid and cursive, with a long horizontal stroke at the end.

William J. Sinclair, Director  
Division of Radiation Control

Enclosure

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



FOR FURTHER INFORMATION ON NRC'S PRACTICES:

Contact: NRC Staff 1-800-368-5642  
NRC Public Document Room 1-800-397-4209

Call the Public Document Room and order a free printout of an annotated index of White Mesa Mill Docket No. 40-8681 NRC licensing documents. VERY IMPORTANT: Request printout to be done by date of document, not by date of Accession Number (the Accession Number is the unique individual document number, the first 5 digits of which indicate when the document was put onto the NRC document control system to be made publicly available).

Since many documents were made publicly available long after the date of the document, the most useful, understandable, researchable printout is one in which the documents are indexed chronologically by date of document.

Since 1994 the NRC has been "retrofitting" Part 40 Licensee Dockets with the documents which should have been made publicly available by the Uranium Recovery Field Office, but were not. Field=TSX:TF, URF0 indicates a "retrofit" document. Note the difference between document date and ACN (Accession Number) date (Enclosed sample page from 40-8681 printout).

Approximately 8,000 Task URF0 documents have been retrofit thus far. This constitutes a massive suppression of documents by the NRC. Out of 1,818 current White Mesa Mill documents, 338 are retrofits.

In addition to the fact that NRC retrofits their notices in order to hide information from the public, the public also misses out on information because most local citizens living and/or working at or near Uranium mills usually do not know how to access NRC Public Documents (the NRC never comes out to tell anyone), and there are no local Public Document Rooms near Uranium mills which would have the actual documents on microfiche.

The NRC issued a Commission Paper, called a SECY, on August 15, 1995 which was the final revised guidance and disposal on non-Atomic Energy Act of 1954, Section, 11e.(2) by product material in tailings impoundments, and the final position and guidance on the use of Uranium mill feed material other than natural ores (SECY-95-211). The SECY includes the final guidance, the May 13, 1992 (57FR20525) proposed guidance, and NRC staff responses to comments on the May 13 proposed guidance. The Accession for SECY-95-211 is 9508230349.

When you call for information, ask for all fields,

except maybe key words. Again, be sure they do it by date of document. Ask them to QC it and double check that it is done right.

The PDR will give you information on how to order documents. Two helpful booklets you can request: (1) "Citizens Guide to U.S. Nuclear Regulatory Commission Information" NUREG/BR-0010 Rev. 2, and (2) "Public Document Room User's Guide," NUREG/BR-0004, Rev. 2. These booklets explain Internet access to NRC information. Printouts come with information to explain printout fields.

HERE ARE THE NRC PRINTOUTS TAKEN FROM EFN'S REQUEST TO  
PROCESS COTTER CONCENTRATE  
LICENSE AMENDMENT DOCKET 40-8681

9704110173 -- (Accession Number)

970305 (Date of Document)

fiche:

Energy Fuels to NRC

Revised Request to amend source Material License SUA-  
1358 White Mesa Mill Docket 40-8681

(Description of Document)

9704110172

970317

fiche:

M. Rehman (EFN) to J. Holonich (NRC)

Requests that ref. amendment request be modified by  
replacing copyrighted copy of alternate feed guidance  
provided with enclosed photocopy of same guidance.  
Proprietary and no-propietary request for amendment  
enclosed.

Proprietary version withheld.

9704080040

970402

fiche: 92377: 327-341

J. Holonich to M. Rehman

Informs that license has been amended by adding  
condition

10.8 Per 10CFR40

9704040267

970402

fiche: 92356: 162-163

J. Holonich to R. Munson (EFN)

Informs that commercial information re: license  
amendment for SUA-1358 will be withheld from public  
disclosure.

974160309

970408

fiche: 92535: 326-334

J. Holonich

Amendment 1 to License SUA-1358 for Energy Fuels  
Nuclear, Inc.

9704160307

970408

fiche: 92535: 325-334

J.R. Park (NRC) to M. Reimann

Forwards reissued Amendment 1 to License SUA-1358



10184/1019#160

ACN: 9411100230  
 DATE: 790510  
 DTC: CL/\*CORRESPONDENCE-LETTERS, OUT/\*OUTGOING CORRESPONDENCE  
 EST\_PAGES: 1  
 L1: FORWARDS FES ON ENVIRONMENTAL CONSIDERATIONS RE WHITE MESA  
 L2: U PROJECT & NOTICE WHICH HAS BEEN TRANSMITTED TO OFFICE OF  
 L3: FR FOR PUBLICATION  
 FICHE: 81825:021-81825:021  
 PFL: ADOCK-4008681-C-790510  
 DKT: 4008681/NUMETCO MINERALS CORP BLANDING, UT,  
 TSK: TF, URFQ  
 RN#1: VINCELETTE M D  
 AN#1: SCARANO R A  
 RA#1: EECENER/ENERGY FUELS NUCLEAR, INC  
 AA#1: NOMWURL/URANIUM RECOVERY LICENSING BRANCH  
 PACKAGE: 790510-9411100239

*Retro-fit Document*

10184/1285#161

ACN: 9411080258  
 DATE: 790511  
 DTC: FRN/FEDERAL REGISTER NOTICES, TF/\*TEXT-CODE OF FEDERAL REGULATIONS  
 EST\_PAGES: 3  
 L1: NOTICE OF AVAILABILITY OF FINAL ENVIRON STATEMENT FOR WHITE  
 L2: MESA U PROJECT  
 FICHE: 81758 174-81758:176  
 PFL: ADOCK-4008681-C-790521  
 DKT: 4008681/NUMETCO MINERALS CORP , BLANDING, UT,  
 TSK: TF, URFQ  
 AN#1: SCARANO R A  
 AA#1: NOMWURL/URANIUM RECOVERY LICENSING BRANCH  
 PACKAGE: 790521-9411080257A  
 OTHER: 9411080257

*Retro-fit Document*

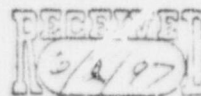
1006/2739#162

ACN: 7906180677  
 DATE: 790518  
 DTC: CL/\*CORRESPONDENCE-LETTERS,  
 NTO/\*NRC TO OTHER U S GOVERNMENT AGENCY/DEPARTMENT,  
 OUT/\*OUTGOING CORRESPONDENCE  
 EST\_PAGES: 13  
 L1: FORWARDS FES FOR FACILITY (NUREG-0556) DISTRIBUTION LIST  
 L2: ENCL  
 PFL: ADOCK-4008681-B 790518  
 DKT: 4008681/NUMETCO MINERALS CORP , BLANDING, UT,  
 RTR: NUREG-556  
 RN#1: WILSON K W  
 RN#2: GALLER S R  
 RN#3: BLANCHARD B  
 AN#1: SCARANO R A  
 RA#1: EUSEPA/ENVIRONMENTAL PROTECTION AGENCY  
 RA#2: EUSDOC/COMMERCE, DEPT OF  
 RA#3: EUSDOI/INTERIOR, DEPT OF

## ENVIRONMENTAL JUSTICE

Executive Order No. 12898, adopted by President William Clinton  
February 16, 1994:

".....each federal agency shall conduct its programs, policies, and activities that substantially effect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of....subjecting persons (including populations) to discrimination under such programs, policies or activities, because of their race, color or natural origin."



Low Level Radioactive Waste Forum  
c/o Aflon Associates, Inc.  
403 East Capitol Street  
Washington DC 20003  
(202) 547-2620  
fax (202) 547-1668

*by facsimile transmission, first of four pages*

May 19, 1997

To: Forum Participants and Alternate Forum Participants  
Federal Liaisons and Alternates

From: Laura Scheele *LS*  
Federal Liaison

Re: National Environmental Justice Advisory Council Resolution re  
Indigenous Peoples, Waste Disposal, and Ward Valley California

On May 16, 1997, the National Environmental Justice Advisory Council (NEJAC) to the U.S. Environmental Protection Agency unanimously passed a resolution on indigenous peoples; waste disposal siting; and the Ward Valley, California site in particular.

On May 15, the Indigenous Peoples Subcommittee of NEJAC had passed Resolution Number 23, which was then adopted, with amendments, by the full NEJAC on May 16.

The NEJAC was established by EPA under the Federal Advisory Committee Act (FACA) to advise, consult with, and make recommendations to the EPA Administrator on matters relating to environmental justice. Upon receipt of a NEJAC resolution, EPA is required to consider the substance of the resolution, determine the appropriate agency response to the resolution, and convey the agency response to the NEJAC.

Attached for your information is a copy of the final resolution, as amended. The Indigenous Peoples Subcommittee resolution appears in regular type with amendment language by the full NEJAC shown in italics. Please note that the amendment language was recorded by observers at the meeting. EPA will not have a final version of the amended resolution until the transcribed tapes have been reviewed, which could take a number of weeks.

Please contact me at (202)547-2620 if you have any questions.



INDIGENOUS PEOPLES RESOLUTION NO. 23  
National Environmental Justice Advisory Council  
May 16, 1997

Whereas, the National Environmental Justice Advisory Council (NEJAC), Subcommittee for Indigenous Peoples, has heard from several Indigenous communities regarding environmental impacts on areas that are of cultural and spiritual significance to these communities, and

*Whereas, the NEJAC is concerned that Indigenous communities' claims regarding the cultural significance of areas are often overlooked by non-Indigenous decisionmakers because of a lack of respect for or understanding of Indigenous Peoples' cultural connection to those areas, and*

Whereas, for example, the Ft. Mohave Indian Tribe (the Tribe) has come before the Subcommittee on behalf of the alliance of the five Lower Colorado River Tribes (which include the Quechan, Fort Mojave, Cocopah, Chemehuevi, and Colorado River Indian Tribes) to present its concerns regarding the siting of a low-level nuclear waste facility in areas of cultural significance to the Tribes, and

Whereas, in addition to the location of the facility in an area of cultural significance to the Tribes, the Tribes are also concerned by the site-selection process for the waste facility, and the ability of the state of California to construct a facility that will not jeopardize the health and the environment of the surrounding community, and

Whereas, the State of California has come before the Subcommittee to provide an overview of its site selection process and its dealings with affected tribes, and

Whereas, areas of cultural or spiritual significance to Indigenous communities, whether on or off reservation, often go to the heart of what defines an Indigenous community as culturally and politically distinct, and

Whereas, federal environmental law recognizes impacts to areas of cultural significance as impacts on the human environment which require consideration and mitigation, and

Whereas, because of the essential role these areas play in the life ways of Indigenous communities, mitigation is often not an option, and the only acceptable alternative is complete avoidance of any impacts, and

Whereas, because many Indigenous communities are forced to live on small remnants of what were once large aboriginal territories, and because these areas are now generally "remote" by today's standards, these areas are now frequently targeted for siting of hazardous waste facilities (including nuclear waste facilities and test sites), and the indigenous communities that live in these areas may be disproportionately impacted by such facilities, and

Whereas, large-scale activities (e.g. mining or waste facilities), frequently disturb or even obliterate aspects of the physical environment that are essential to the cultural or spiritual integrity of Indigenous communities, and

Whereas, the NEJAC is concerned that disproportionately high and adverse impacts on Indigenous communities are occurring as a result of insufficient consideration being given to cultural and spiritual impacts on these communities, and

Whereas, the Subcommittee recognizes that areas of cultural significance to Indigenous communities are often located in areas that are not within the boundaries of Indian reservations, and are therefore not under the direct control of Indigenous communities, and

Whereas, Indigenous communities rarely have either the political clout or financial resources to ensure that these issues are adequately addressed, and therefore rely significantly upon their federal trustees to assist communities in identifying and preventing these impacts, and

Whereas, as a result of discussions with the state of California over issues at Ward Valley, the Subcommittee has expressed its concern to the NEJAC that states have not been provided with sufficient guidance on how to address environmental justice issues of concern to Indigenous peoples, especially in the area of impacts on cultural resources, and

Whereas, the Subcommittee is also concerned that the Lower Colorado River Tribal Alliance has not had sufficient opportunity to communicate its concerns directly to high-level federal representatives.

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INDIGENOUS PEOPLES RESOLUTION NO. 23 • National Environmental Justice Advisory Council  
May 16, 1997 • Page 2

The Indigenous Peoples Subcommittee resolution appears in regular type with amendment language by the full NEJAC shown in italics. The amendment language was recorded by observers at the meeting. EPA will not have a final version of the amended resolution until the transcribed tapes have been reviewed

The Indigenous Peoples Subcommittee resolution appears in regular type with amendment language by the full NEJAC shown in italics. The amendment language was recorded by observers at the meeting. EPA will not have a final version of the amended resolution until the transcribed tapes have been reviewed.

THEREFORE, be it resolved by the NEJAC that EPA should adopt procedures that ensure that Indigenous communities are involved in all phases of decision making when activities impact or potentially impact areas of cultural significance to such communities.

Be it further resolved that when initiating procedures to select a site for locating waste facilities, impacts to areas of cultural significance should be identified at the outset, so these impacts can, to the maximum extent possible, be avoided altogether when making initial decisions about where to consider locating such facilities.

Be it further resolved that when a state is making a waste siting decision that impacts or potentially impacts areas of cultural significance to Indigenous communities, EPA should document that environmental justice issues are appropriately addressed, and, if necessary, conduct a study of its own to address such issues.

*Be it further resolved that EPA should presume that Indigenous communities' claims regarding the cultural significance of areas are legitimate and act to support such claims and prevent impacts to these areas.*

Be it further resolved that EPA should request a high level meeting among the Administrator, other appropriate executive branch leaders, and the five Colorado River Tribes to discuss the Tribes' concerns regarding the siting of a low level nuclear facility in Ward Valley.

Be it further resolved that the EPA should conduct an environmental justice analysis of the siting of the Ward Valley nuclear waste site, including but not limited to a review of the process of consultation with the Lower Colorado River Tribes, the consideration of alternative locations for the facility, the impacts of current storage practices of low-level radioactive waste on environmental justice impacted communities, and the consideration of impacts to areas of cultural significance to the Tribes.

Be it further resolved that EPA should develop environmental justice guidance



NATIVE AMERICAN PEOPLES HISTORICAL FOUNDATION

# THE GREAT AVIKAN HOUSE

BOX AVIKAN BLANDING, UTAH 84511 (801) 678-3230

## STATEMENT OF OPPOSITION

AGAINST

UNION CARBIDE/PRAXAIR'S UMETCO  
RADIOACTIVE TAILINGS/WASTE IMPORTATION PROPOSAL

January 12, 1994

IN HONOR OF THE GREAT CREATOR, the Council of Directors of the Native American Peoples Historical Foundation, Inc., a neighboring property owner to Union Carbide/Praxair, Inc. UMETCO Mineral Corporation's White Mesa Mill project, opposes the proposed expansion of UMETCO's operations to include the importation, relocation, and disposal of radioactive materials from other states and places into the UMETCO site. Our Native American People look upon this as a "moral" offense against Mother Earth encompassing physical, spiritual, psychological, and economic considerations.

Our organization is currently in the process of building, adjacent to UMETCO, a 400,000 square foot International Archive/Repository, known as "The Great Avikan House" for Native American Family and Tribal Records. Our 640 acre site of sacred land is covered with many ruins of our Ancient People's homes, as well as a large and unique Pueblo Temple. Our purpose is to preserve the sacred historical and cultural heritage of all Native Americans, and our lands and project have been blessed by our Holy Men accordingly.

In 1990, when we purchased the land north of UMETCO, it was our understanding that plans and statutes dictated that the UMETCO facility

would continue as a Uranium and Vanadium processing plant until the useful economic life of the facility was expired, at which time there would be a mandatory clean up according to federal and state laws. The plans to expand the facility indefinitely into a "tailings importation" business were not made public until now. In the meantime we have spent hundreds of thousands of dollars in preparation to begin our building this year.

Native Americans from throughout the hemisphere look to this area, where the "River Which Flows Toward The Setting Sun" crosses the "Backbone Of The Earth," as the Ancient Red Earth Homeland to which the Great Spiritual Gathering of the People is to take place. Because of this, and other mentioned reasons, we cannot even consider anything other than the removal of this project from the Sacred Lands of our American Indian People. We have no choice but to call upon Native Americans and friends from throughout the world to plead in our behalf that Union Carbide/Praxair, Inc.'s UMETCO Minerals Corporation not be allowed to conduct its activity as proposed.

Therefore, again, in consideration of moral, physical, spiritual, psychological, economic, and other factors effected by the proposal to relocate radioactive contaminants from other places to the UMETCO site, the Council of Directors of the Native American Peoples Historical Foundation, Inc. respectfully states an adamant and continuing opposition to this, and any other like proposal.

IN HONOR OF THE GREAT CREATOR

*Winston M. Mason*

Winston M. Mason  
First Speaker of Council  
Native American Peoples Historical  
Foundation, Inc.  
The Great Avikan House

FROM MONSANTO RESEARCH CORPORATION, MOUND FACILITY  
a subsidiary of Monsanto Company

MIAMISBURG, OHIO  
FOR THE UNITED STATES DEPARTMENT OF ENERGY

11/10/87

ROUTING

RANGER VAN

SHIPPER'S NO.

38084

SHIPPED TO

REYNOLDS ELECTRICAL & ENGINEERING CO., INC.  
FOR U. S. DEPARTMENT OF ENERGY

NEVADA TEST SITE  
ATTN: GENE BENDALL

CITY, STATE: HONOLULU, HI 96825

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without payment on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

Per

(Signature of Consignee)

TO ATTENTION OF

DATE, NOTIFY HRC-MOUND'S TRAFFIC DEPT.

CALL "COLLECT" 8:00AM - 4:00 PM (313) 865-3257

CONSIGNEE'S NO.

PREPAID

CARRIER'S NO.

CAR OR VEHICLE INITIALS AND NO.

NO. PKGS.	RM	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS, AND EXCEPTIONS	WEIGHT (LBS. TO OZ.)	CLASS OR RATE	CK. COL.	TO INSURE PAYMENT FOLLOW THESE INSTRUCTIONS:
0125		RADIOACTIVE MATERIAL, LBR, 410.31 KA RADIOACTIVE MATERIAL OF THE URANIUM ORE CONCENTRATE AND DAGUERRE, SOLID, DATE - 14.1 Curies  For individual package contents See attached MD-CC-06 No Labels Required Placard: "RADIOACTIVE" COTTER CONCENTRATE  "STRATEGIC MATERIAL"  RANGER VAN NO. 87421 SEAL NO'S 19000 & 19001 EXCLUSIVE USE OF VEHICLE  "Transportation under this tender is for the U. S. Department of Energy, and the actual total transport- ation charges paid to the carrier(s) by the Consignor or Consignee are assignable to, and are to be reimbursed by the Government."  DEPARTED HRC-MOUND 11-13-87 10:00AM ETA-NTS 11-13-87  <b>EMERGENCY</b> For help in chemical emergencies involving spill, leak, fire or exposure: CALL COLLECT: MOUND FACILITY (313) 865-4020 OR CHEMTREC (800) 424-9300  PLEASE NOTE: SHIPMENTS WILL ONLY BE RECEIVED AT THE NTS MONDAY THROUGH FRIDAY (EXCEPT HOLIDAYS) FROM 8:00AM THROUGH 2:30PM.	410.31			1. SHIPPER'S NUMBER MUST SHOW ON FREIGHT BILL. 2. YOUR STATEMENT MUST SHOW YOUR PRO. NO. AND MONSANTO'S SHIPPER'S NO. OPPOSITE EACH AMOUNT. 3. NOTE FREIGHT TERMS IN "PRE PAID BOX" ABOVE. 4. FORWARD ALL ORIGINAL PRE PAID BILLS TO ATTENTION: TRAFFIC DEPT., MONSANTO SEARCH CORP., MOUND ROAD, MIAMISBURG, OHIO 45342 5. THIS SHIPMENT IS FOR THE AC COUNT OF THE U.S. GOVERN- MENT WHICH WILL ASSUME THE FREIGHT CHARGES, AND IS SUB JECT TO THE TERMS AND CON- DITIONS SET FORTH IN THE STANDARD FORM OF THE U.S. GOVERNMENT BILL OF LADING AND TO ANY AVAILABLE SPE- CIAL RATES OR CHARGES.  10721(b)(1)  If the shipment moves between two points by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."  NOTE—Where the rate is dependent on value, the agreed or declared value of the property is hereby specifically stated to the shipper to be not exceeding
						CENTS PER POUND
						SHIPPING REQUEST NOS.

It is to certify that the above named materials are properly classified, described,  
marked, labeled and are in proper condition for transportation, in  
accordance with the regulations of the Department of Transportation.

MONSANTO RESEARCH CORPORATION, A.F. HEITKAMP 19804  
MOUND FACILITY, Shipper, Per (Signature)

Nearest post office address of shipper, P. O. BOX 22, MIAMISBURG, OHIO 45342

SHIP DATE  
11-10-87

CARRIER'S AGENT

PER

Ranger

MOUND FACILITY OPERATED FOR THE  
U.S. D.O.E. UNDER CONTRACT NO.  
DE-AC04-76DP00053



PAGE 2 OF 2

MD-CC- 06

BOX/DRUM NUMBER	RADIONUCLIDE	CURIES	MR/HR @ CONTACT	MR/HR @ 1 METER	WEIGHT
<u>0098</u>	URANIUM ORE	<u>1.04</u>	<u>11.0</u>	<u>3.2</u>	<u>3368</u>
<u>10099</u>	CONCENTRATE	<u>1.15</u>	<u>9.5</u>	<u>3.1</u>	<u>3666</u>
<u>10103</u>	& DAUGHTERS	<u>1.06</u>	<u>10.0</u>	<u>3.0</u>	<u>3108</u>
<u>10104</u>	*	<u>0.94</u>	<u>6.5</u>	<u>1.9</u>	<u>3024</u>
<u>10108</u>	*	<u>1.60</u>	<u>11.0</u>	<u>3.0</u>	<u>3565</u>
<u>10109</u>	*	<u>1.37</u>	<u>6.0</u>	<u>1.8</u>	<u>3244</u>
<u>10110</u>	*	<u>1.17</u>	<u>5.0</u>	<u>1.5</u>	<u>3491</u>
<u>10115</u>	*	<u>1.40</u>	<u>13.5</u>	<u>3.4</u>	<u>3359</u>
<u>10120</u>	*	<u>1.34</u>	<u>11.0</u>	<u>3.5</u>	<u>3657</u>
<u>10130</u>	*	<u>1.17</u>	<u>9.5</u>	<u>2.8</u>	<u>3375</u>
<u>10155</u>	*	<u>1.28</u>	<u>5.0</u>	<u>2.0</u>	<u>3266</u>
<u>10232</u>	*	<u>0.58</u>	<u>3.0</u>	<u>1.4</u>	<u>2305</u>
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TOTAL 12 Boxes		<u>14.1</u>			<u>40228</u> <sup>16</sup>

NATIVE AMERICAN PEOPLE'S HISTORICAL FOUNDATION, INC.

In the Matter of  
ENERGY FUELS NUCLEAR, INC.  
(Request for Standing Against  
White Mesa Mill License Amendment)

DOCKET NO. (S) 40-8681-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PETITION FOR STANDING have been served upon the following persons by U.S. Mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFT Sec. 2.712.

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
Washington, D.C. 20555-0001

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
One White Flint North  
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Rockville, Maryland 20852

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge  
Dr. Charles N. Kelber  
Special Assistant  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

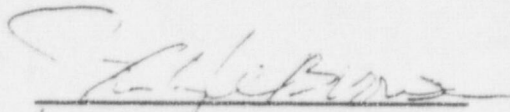
Dated at Blanding, Utah this  
9th day of June 1997

Administrative Judge  
Peter B. Bloch, Presiding Officer  
Atomic Safety & Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
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Executive Director  
Native American Peoples  
Historical Foundation

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERNATIONAL URANIUM (USA)  
CORPORATION  
(White Mesa Uranium Mill;  
Alternate Feed Material)

Docket No.(s) 40-8681-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (GRANTING MOTION...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
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Norman Begay  
White Mesa Ute Citizen  
Box 1138  
White Mesa, UT 84511



Docket No.(s)40-8681-MLA  
LB M&U (GRANTING MOTION...)

G. Leah Dever, Asst. Manager  
for Environmental Management  
Department of Energy  
Nevada Operations Office  
P.O. Box 98518  
Las Vegas, NV 89193

Lula J. Katso  
Westwater Navajo Community  
c/o M. Hutchins  
264 West 100 North  
Blanding, UT 84511

Winston M. Mason  
Great Avikan House  
Native American Peoples Historical  
Foundation  
3 East Center Street, Box AVIKAN  
Blanding, UT 84511

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

*Adria T. Byrdson*  
Office of the Secretary of the Commission