

From: [Duncan, Will](#)
To: [Jacobs, Sara](#); [Williams, Laurie](#)
Cc: [Lee, Lily](#); [Hogan, Sean](#)
Subject: FW: NECR UNC - Follow up to Dariel Yazzie's Request for Evidence that NNEPA Supports the Selected Remedy
Date: Friday, March 5, 2021 3:34:44 PM
Attachments: [2009-9-25 Letter to Steve Etsitty.pdf](#)
[2011-7-7 Letter to Steve Etsitty.pdf](#)
[2011-9-20 Consultation Letter.pdf](#)
[2009-12-21 NN Consultation Letter.pdf](#)
[2011-9-1 Letter to Steve Etsitty.pdf](#)
[Action Memorandum Non-Time Critical 9-29-11.pdf](#)
[Navajo Consultation Letter 06.18.15.pdf](#)
[Five Year Plan consultation 4.16.pdf](#)
[Navajo 5YP consultation April 19 2016.pptx](#)
[Ten-Year Plan DD Cover Letter Email.pdf](#)
[Ten-Year Plan RA Cover Letter 7.27.pdf](#)
[NECR.msg](#)
[FW Proposed Plan Transcripts.msg](#)
Importance: High

FYSA

From: Duncan, Will
Sent: Friday, March 5, 2021 3:29 PM
To: darielyazzie@navajo-nsn.gov
Cc: Valinda <valinda.shirley@navajo-nsn.gov>; Hogan, Sean <Hogan.Sean@epa.gov>
Subject: FW: NECR UNC - Follow up to Dariel Yazzie's Request for Evidence that NNEPA Supports the Selected Remedy
Importance: High

Dariel,

This email and attachments further respond to your email from 12/30/2020 requesting documentation reflecting the position of the Navajo Nation regarding the selected remedy for the NECR site. Attachments include the five documents Sara Jacobs transmitted with her 1/4/2021 email along with seven additional documents we believe are relevant. In summary, we believe these attachments and the following overview demonstrate that the Navajo Nation *accepted* the remedy selected in the Action Memorandum signed in September 2011 and upheld this position in August 2012 at the Proposed Plan public meeting for the UNC Mill Site. Thereafter, we think it's important to highlight that the cleanup of the NECR site was included in the Five-Year Plan (2014-2018) and Ten-Year Plan (2020-2029) and the Navajo Nation didn't express any objections to the NECR remedy during the respective consultation meetings or in comments on these plans. We hope you will find this email and attachments to be helpful and we welcome the opportunity to discuss and respond to questions. Please note that we will also share this information with NRC and DOE so they have the same background. Thank you.

Overview

During the EE/CA public comment period, the Navajo Nation indicated that it supported removal of the NECR mine waste from the Navajo Nation and specifically supported the community's request for Alternative 2, "all mine wastes with concentrations above the Proposed Action Level of 2.24 pCi/g Radium would be excavated and disposed of off-site at a licensed and permitted disposal

facility such as at US Ecology, in Grandview, Idaho.” In response, USEPA paused work on selecting a response action, held further consultation with the Navajo Nation and held over ten community meetings between 2009 and 2011. At the end of this two-year consultation and community involvement period, and after completing additional studies requested by the Navajo Nation and community, USEPA concluded that it was unable to justify selection of Alternative 2 under its criteria. The selected response action, Alternative 5A, however, includes removing mine waste with the most elevated concentrations (>200 pCi/g Ra-226 or 500 mg/kg Uranium) to such an off-site facility.

Attached are 5 letters from USEPA to Navajo Nation documenting the government-to-government consultation meetings and extensive community outreach conducted between 2009 and 2011. These consultation- and community outreach meetings ultimately led to the attached letter from Jane Diamond to President Ben Shelly dated 9/20/2011 reflecting President Shelly’s acceptance of the NECR cleanup plan. This cleanup decision was captured in the attached Action Memo jointly signed by Region 6 and 9 (9/29/2011) and, thereafter, Navajo Nation didn’t express a change in their position. At the 8/30/2012 Proposed Plan public meeting (i.e., Region 6 Record of Decision to receive NECR Mine Site waste at the UNC Mill Site), NNEPA Executive Director Steve Etsitty explained to the public that there were limited options for off-site disposal (see Proposed Plan Transcripts). Thereafter, EPA requested and held government-to-government consultation meetings with the Navajo Nation on the Five-Year Plan (2014-2018) and the Ten-Year Plan (2020-2029), both of which described forthcoming efforts to implement the selected remedy at the NECR site. In each case, EPA did not receive any comments from the Navajo Nation or expressed concerns regarding the selected cleanup plan for the NECR site. At the government-to-government consultation with the Navajo Nation on the Ten-Year Plan in August 2020, Navajo Nation encouraged NRC to move quickly with the License Amendment Request for the UNC Mill site so that cleanup activities could proceed.

In summary, USEPA does not have a letter, or any other documentation from Navajo Nation explicitly stating support for the NECR response action. The attached documents reflect that the Navajo Nation did not support the proposed cleanup plan in 2009 but, following extensive community outreach and multiple government-to-government consultation meetings, the Navajo Nation accepted the cleanup plan that we’ve been pursuing since 2011. This cleanup plan was included in the Five-Year Plan (2014-2018) and Ten-Year Plan (2020-2029) and the Navajo Nation didn’t express any objections to the NECR remedy during the respective consultation meetings or in comments on these plans.

Documentation of Navajo Nation’s Communication on the NECR Clean-up Plan – Summary of attachments

2011 Action Memo Responsiveness Summary: The 2011 Action Memorandum summary and response to comments states, “The residential community generally was in support of Alternative 2, disposal of all mine waste at an off-site facility significantly removed from the local community. A number of organizations as well as the Navajo Nation government submitted comments supporting the residential community in this goal...” While U.S. EPA understands the desire to remove all mining related contamination, including the mill tailings, from the immediate area, U.S. EPA does not consider that action to be justified under EPA’s criteria for selecting removal actions.” (See Action Memo Non-Time Critical 9/29/11, p. 65).

2009-2011 Consultation Letters: In the September 20, 2011 Consultation Letter to President Shelly, Jane Diamond, then Director of the Superfund Division stated, “I was very pleased to hear your support for our NECR cleanup plan, which is the result of several years of collaboration among U.S. EPA and Navajo Nation EPA to address contamination from this former underground uranium mine.” In light of the other communications, USEPA understands that the “support” referenced by Director Diamond’s letter may be better characterized as Navajo Nation acceptance of the NECR cleanup plan, given the larger context for USEPA’s decision. (See 9/25/2009 Letter to S. Etsitty, 12/21/2009 Consultation Letter, 7/7/2011 Letter to Steve Etsitty, 9/1/2011 Letter to Steve Etsitty, and 9/20/2011 Consultation Letter).

2012 Proposed Plan Public Meeting Comments: Statement by Steve Etsitty at the 8/30/2012 public meeting, “This one is estimated to be at a million cubic yards, and the off-site position that we have where we want much of this contaminated waste, if not all of it, removed off of the Navajo Nation is challenged by the fact that there is a million cubic yards.” (See Proposed Plan Transcripts)

2014-2018 Navajo EPA Participation on the Design Review Team: During this time period Chandra Manandhar and Binod Chaudhary represented Navajo Nation EPA on the UNC/NECR Design Review Team. Navajo EPA participated in the review and commented on all Pre-Design Studies at the 30 percent-, 60 percent, and 90 percent design documents. Throughout this time, various drafts of the Design Administrative Order on Consent Documents were shared with NNEPA and Navajo DOJ.

Consultation on the Five-Year Plan (2014-2018): Attached are two letters requesting government-to-government consultation on the Five-Year Plan (2014-2018) and the slides that were used for the consultation meeting held on April 19, 2016, which includes an update on the cleanup at the NECR site (slide #10). There is nothing in the record reflecting any comments from the Navajo Nation (See Navajo Consultation Letter 6/18/16 and Navajo 5YP Consultation Letter April 19, 2016).

2020 10-Year Plan Consultation: Attached are two letters requesting government-to-government consultation with President Johathan Nez and with Speaker Seth Damon. Consultation meetings were held on January 23, 2020, February 28, 2020, and August 18, 2020. On August 18, 2020, Oliver Whaley, then NNEPA Executive Director, commented at the Ten-Year Plan consultation meeting that NRC should make efforts to accelerate the License Amendment Request so that cleanup activities at NECR can proceed. (See Ten-Year Plan DD Cover Letter and Ten-Year Plan RA Cover Letter 7/27)

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