

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	Docket No. 040-08502
)	
COGEMA MINING, INC.)	License No. SUA-1341
)	
(Irigaray & Christensen Ranch Facilities))	June 2, 2009
_____)	

COGEMA’S ANSWER TO PETITIONER’S MEMORANDUM
RE: ORDER DATED MAY 21, 2009

I. INTRODUCTION

On May 28, 2009, the Oglala Delegation of the Great Sioux Nation Treaty Council (“Delegation”), a petitioner in the above-captioned proceeding, filed “Petitioner’s Memorandum Re: Order Dated May 21, 2009” (“Delegation Brief”). The Delegation filed the Delegation Brief in response to the Licensing Board’s Order requiring the Delegation to provide additional briefing regarding standing issues.¹ As allowed by the Order, COGEMA Mining, Inc. (“COGEMA”) provides this answer to the Delegation Brief.² As demonstrated below, the Delegation Brief does not provide any additional information or arguments that support the Delegation’s standing in this proceeding.³

¹ See Order (Setting Oral Argument and Briefing of Specified Issues), at 3-4 (May 21, 2009) (unpublished) (“May 21 Order”).

² See *id.* at 4.

³ It should also be noted that, to support standing, the Delegation is generally not permitted to rely upon additional information provided subsequent to its initial petition. See *Entergy Nuclear Operations, Inc. & Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC ___, slip op. at 5 (Aug. 22, 2008) (“it is not acceptable, in NRC practice for a petitioner to claim standing based on vague assertions, and when that fails, to attempt to repair the defective pleading with fresh details offered for the first time in [its reply]”). The Commission’s decision in *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-09, 69 NRC ___, slip op. at 14-15 (May 18, 2009), does not reverse this rule. The Commission afforded petitioners an opportunity to cure certain defects in authorizing affidavits, because the affidavits were deficient under a standard that was clearly articulated for the first time in CLI-09-

II. BRIEFING TOPICS

A. Questions Regarding the Status of the Delegation

1. The Delegation Is Not a “Local Governmental Body”

The Licensing Board posed the question of whether the Delegation “[i]s a ‘local governmental body’ duly elected, appointed or established by the relevant procedures within its Nation.”⁴ The Delegation responded that it is “the unbroken traditional entity established by the Oglala Lakota to negotiate and enter into treaties between the Oglala Lakota and the United States, and to ensure the enforcement of the same”⁵ and it serves the interest of the Oglala Lakota people to “continuously enforce the 1851 and 1868 Ft. Laramie Treaties.”⁶ Additionally, the Delegation stated that it “is an expression of the sovereign will of the Oglala Lakota people” and it “is the only body appointed directly by the Oglala Lakota to decide treaty matters.”⁷

The Delegation’s response to the Licensing Board’s question does not demonstrate that it is a “local governmental body” that is entitled to standing in this proceeding. The NRC regulations, 10 C.F.R. § 2.309(d)(2), provide for different standing evaluations for a “local governmental body.” However, this regulation explains that a local governmental body is a “county, municipality or other subdivision.”⁸ The Delegation has not claimed that it is a county, municipality, or other subdivision.⁹

09. Thus, the Board here properly afforded the Delegation the opportunity to cure the same defect in Chief Red Cloud’s original affidavit. The Delegation cannot cure any other deficiencies in support of its standing claims.

⁴ May 21 Order at 3.

⁵ Delegation Brief at 1.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ 10 C.F.R. § 2.309(d)(2)

⁹ *Cf., e.g., Consumers Energy Co. (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 412 (2007)* (stating that certain organizational petitioners, including two school districts, must demonstrate standing because the facility is not within their boundaries and they have not alleged that they are a county, municipality, or other

Even if the Delegation were a governmental body, it would only be a *local* governmental body with respect to the Pine Ridge Reservation, not with respect to the COGEMA facility.¹⁰ The Delegation is located on the Pine Ridge Reservation in South Dakota, which is more than 150 miles from COGEMA’s facility.¹¹

2. The Delegation Is Not a “Federally-Recognized Indian Tribe”

The Licensing Board posed the question of whether the Delegation “[i]s a ‘federally recognized Indian tribe’ as that term is used in 10 C.F.R. §§ 2.309(d) or 2.315(c), or any other relevant Federal law or regulation.”¹² The Delegation responded that it is an Indian Tribe because it signed treaties.¹³ Additionally, the Delegation further stated that having to argue that it is a Federally-recognized Indian Tribe strains the trust responsibility owed to it and there is no way to explain to Chief Red Cloud that the United States does not recognize the Delegation.¹⁴

The Delegation’s response to the Licensing Board’s question does not demonstrate that it is a “Federally-recognized Indian Tribe” that does not need to demonstrate standing in this proceeding. The Delegation attacked the question rather than provide a legal response for why it is a Federally-recognized Indian Tribe.

subdivision). Moreover, the Delegation does not claim that it is “duly elected, appointed or established by the relevant procedures within its Nation” for anything other than treaty matters. May 21 Order at 3. This proceeding does not involve treaty matters.

¹⁰ See *Palisades*, CLI-07-18, 65 NRC at 412 (rejecting standing under Section 2.309(d)(2) for various entities, in part because the facility was not located “within their boundaries”).

¹¹ COGEMA’s Answer Opposing Oglala Delegation of the Great Sioux Nation Treaty Council Request for Hearing and Petition for Leave to Intervene, at 14 (May 5, 2009) (“COGEMA Answer to Delegation”).

¹² May 21 Order at 3.

¹³ See Delegation Brief at 3.

¹⁴ See *id.* at 4.

The phrase “Federally-recognized Indian Tribe” was added to 10 C.F.R. § 2.715 (the predecessor to 10 C.F.R. § 2.315) as part of a 1999 Direct Final Rule¹⁵ and was added to 10 C.F.R. § 2.309(d)(2) as part of a 2004 rulemaking.¹⁶ The Statement of Considerations for the Direct Final Rule stated that this change was necessary to meet the goals of Executive Order No. 13084 of May 14, 1998.¹⁷ Executive Order No. 13084 states that an Indian Tribe “means an Indian . . . tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.”¹⁸

As COGEMA explained in its Answer to the Delegation’s Petition, the Department of the Interior publishes a list of Federally-recognized Indian Tribes.¹⁹ The list is published to satisfy the requirements of the Federally Recognized Indian Tribe List Act of 1994, identified in Executive Order No. 13084.²⁰ Thus, only the entities specified on that list are Federally-recognized Indian Tribes as designated in the NRC regulations. The Delegation is not on that list.²¹ Therefore, the NRC regulations that refer to Federally-recognized Indian Tribes, 10 C.F.R. §§ 2.309(d)(2) and 2.315, do not apply to the Delegation.

¹⁵ Direct Final Rule, Formal and Informal Adjudicatory Hearing Procedures; Clarification of Eligibility to Participate, 64 Fed. Reg. 29,212 (June 1, 1999).

¹⁶ Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2239 (Jan. 14, 2004).

¹⁷ Formal and Informal Adjudicatory Hearing Procedures; Clarification of Eligibility to Participate, 64 Fed. Reg. at 29,212.

¹⁸ Executive Order 13084 of May 14, 1998, Consultation and Coordination with Indian Tribal Governments, 63 Fed. Reg. 27,655, 27,655 (May 19, 1998); 25 U.S.C. 479a is also Pub. L. 103-454, title I, Sec. 104.

¹⁹ COGEMA Answer to Delegation at 9.

²⁰ Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 73 Fed. Reg. 18,553, 18,553 (Apr. 4, 2008) (stating that the notice is published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act, Pub. L. 103-454).

²¹ *See id.* at 18,553-557.

3. The Delegation Does Not Need to Be Consulted Under the National Historic Preservation Act Pursuant to 36 C.F.R. § 800.2(c)(2)

The Licensing Board posed the question of whether the Delegation “[i]s an entity which must be consulted under the National Historic Preservation Act pursuant to 36 C.F.R. § 800.2(c)(2).”²² In response, the Delegation appears to make the following points: (1) the Oglala Sioux Tribe (“OST”) has not assumed the responsibilities of the State Historic Preservation Officer (“SHPO”), so 36 C.F.R. § 800.2(c)(2)(i)(B) “applies”;²³ (2) under that regulation, the NRC “shall consult with a representative designated by such Indian tribe”;²⁴ (3) under 36 C.F.R. § 800.2(c)(2)(ii), “such consultation is required with ‘any Indian tribe’ that ‘attaches religious and cultural significance to historic properties that may be affected by an undertaking’”;²⁵ and (4) the Delegation “attaches religious and cultural significance” to certain territories that presumably include the COGEMA facility.²⁶ This analysis, however, contains various fatal errors and leaps of logic that cannot obscure the two fundamental obstacles that defeat the Delegation’s arguments: it is not a Federally-recognized “Indian tribe” and there are no “historic properties” located on or near the COGEMA facility as defined below.

First, 36 C.F.R. § 800.2(c)(2)(i)(B) is not relevant to this proceeding because the COGEMA facility is not located “on tribal lands.” Tribal lands, as defined in 36 C.F.R. § 800.16(x), “means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.” The Delegation does not assert that the COGEMA facility is located on lands that meet this definition. To the extent the Delegation elsewhere relies upon the

²² May 21 Order at 3 (emphasis in original).

²³ Delegation Brief at 5.

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6 (quoting 36 C.F.R. § 800.2(c)(2)(ii)).

²⁶ *Id.* at 6.

1851 and 1868 Fort Laramie Treaties to assert title to the land where the COGEMA facility is located,²⁷ such claims are invalid.²⁸ Thus, because the COGEMA facility is not located on tribal lands, 36 C.F.R. § 800.2(c)(2)(i)(B) is inapplicable to this proceeding.

The Delegation's second point is irrelevant because it relies upon the same inapplicable regulation. In addition, it is also inapplicable because the Delegation does not document or demonstrate that it is either an Indian tribe, or a representative designated by such tribe. And as explained in Section II.A.4, below, the Delegation is not an Indian tribe as defined under the relevant regulations.

The Delegation's third point is also fatally flawed. The Delegation cites 36 C.F.R. § 800.2(c)(2)(ii), under which the NRC must "consult with any Indian tribe . . . that attaches religious and cultural significance to historic properties that may be affected by an undertaking."²⁹ Once again, however, the Delegation does not document or demonstrate that it is an Indian tribe; and as explained in Section II.A.4, below, it is not one. Nor does it identify any historic properties that may be affected. "Historic property" is also a defined term in 36 C.F.R. Part 800. Section 800.16(l) defines historic property as "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places ['NRHP'] maintained by the Secretary of the Interior." As the NRC's 1998

²⁷ Petition at 2-5.

²⁸ See COGEMA Answer to Delegation at 9-10 (citing *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC ___, slip op. at 18-21 (Nov. 21, 2008), *aff'd in relevant part*, CLI-09-09, slip op. at 5-6).

²⁹ 36 C.F.R. § 800.2(c)(2)(ii).

Environmental Assessment explains, however, there are no sites eligible for the NRHP at the COGEMA facility.³⁰

The Delegation's fourth point fails to dispute this information. Although the Delegation asserts religious and cultural significance for certain territories and items (eagles, the environment, water, the "Oglala Lakota People," and "other wildlife"),³¹ it fails to document or demonstrate that any of these items are a "prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in," the NRHP.³² Thus, the Delegation presents no information suggesting that any historic properties are, or even may be, located at the COGEMA facility.

In sum, because the Delegation has failed to show that it is an Indian tribe, *and* because it has failed to show that there are any historic properties on or near the COGEMA facility, it is not entitled to consultation under 36 C.F.R. § 800.2(c)(2).

4. The Delegation Is Not an "Indian Tribe" Within the Meaning of 36 C.F.R. § 800.16(m)

The Licensing Board posed the question of whether the Delegation "[i]s an 'Indian Tribe' within the meaning of 36 C.F.R. § 800.16(m)."³³ Rather than answer the Board's question, the Delegation recites its history with reference to the abrogated Fort Laramie Treaty of 1868.³⁴ The Delegation is unable to show that it is an Indian tribe, because it is not one.³⁵

³⁰ See Environmental Assessment for the Renewal of Source Material License No. SUA-1341, at 16 (1998) ("1998 EA"), available at ADAMS Accession No. ML081060063 (Attachment 1 to COGEMA's Brief Regarding the Impact and Significance of CLI-09-09).

³¹ See Delegation Brief at 6.

³² 36 C.F.R. § 800.16(l).

³³ May 21 Order at 3.

³⁴ See Delegation Brief at 7-9.

³⁵ In fact, the Delegation admits that it is not itself an Indian tribe. *See id.* at 8.

Under 36 C.F.R. § 800.16(m), an “Indian tribe means an Indian tribe, band, nation, or other organized group or community . . . which is *recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*”³⁶

Under the Federally Recognized Indian Tribe List Act of 1994, the Secretary of the Interior publishes, “in the Federal Register a list of all Indian tribes which the Secretary *recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*”³⁷ As explained in COGEMA’s Answer to the Delegation,³⁸ the most recent list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” does not include the Delegation.³⁹ Thus, the Delegation is not an Indian tribe within the meaning of 36 C.F.R. § 800.16(m).

B. “Additional Information” from the Delegation Does Not Demonstrate Standing

In its Petition, the Delegation requested additional time, following a decision that it is not entitled to standing under Section 2.309(d)(2), to submit “additional information” to show it is entitled to standing under Section 2.309(d)(1).⁴⁰ In its May 21 Order, the Board instructed the Delegation to “[s]ubmit whatever ‘additional information’ . . . that documents and demonstrates

³⁶ (Emphasis added). The definition of an “Indian tribe” in Section 2(15) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101(15), contains essentially the same language.

³⁷ Pub. L. 103-454, 108 Stat. 4791, 4792 (Nov. 2, 1994) (emphasis added). As stated by the U.S. Court of Appeals for the D.C. Circuit, “[w]hether a group constitutes a ‘tribe’ is a matter that is ordinarily committed to the discretion of Congress and the Executive Branch, and courts will defer to their judgment.” *Cherokee Nation of Okla. v. Babbitt*, 117 F.3d 1489, 1496 (D.C. Cir. 1997).

³⁸ COGEMA Answer to Delegation at 52 n.244.

³⁹ See 73 Fed. Reg. 18, 553 (Apr. 4, 2008). The list does, however, include the “Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota,” *i.e.*, the OST. *Id.* at 18,555. The Delegation admits, however, that it is not the OST. Delegation Brief at 3 (“Unlike the OST, the Oglala Delegation is an expression of the sovereign will of the Oglala Lakota people. The Oglala Delegation is not a creation of, or beholden to the [Indian Reorganization Act of 1934.]”) (emphasis in original). Nor does the Delegation present any evidence that the OST has authorized the Delegation to represent it in this proceeding.

⁴⁰ Request for Hearing and Petition for Leave to Intervene, Oglala Delegation of the Great Sioux Nation Treaty Council, at 12 (Apr. 10, 2009) (“Delegation Petition”).

that the Oglala Delegation has standing as required by 10 C.F.R. § 2.309(d)(1).”⁴¹ The May 21 Order also required the Delegation to submit an affidavit from Chief Oliver Red Cloud authorizing the Delegation to represent him in this proceeding.⁴²

In response to the May 21 Order, the Delegation submitted additional information to support its claim to organizational and representational standing.⁴³ A review of the information shows that the Delegation has not provided any additional information to support its claim to standing, either as an organization or in a representational capacity. Rather, the arguments in the Delegation Brief mirror the arguments that the Delegation already made in its Petition. As COGEMA demonstrated in its answer to the Delegation’s Petition, this information is insufficient to show standing.

1. The Delegation Cannot Participate as a Federally-Recognized Indian Tribe in this Proceeding

As explained in Section II.A.2 above, the Delegation is not a Federally-recognized Indian Tribe entitled to standing under 10 C.F.R. § 2.309(d)(2) or to a potential opportunity to participate under Section 2.315. The Delegation claims that it can participate as the Federally-recognized Indian Tribe because the OST, the Federally-recognized Indian Tribe at the Pine Ridge Indian Reservation, is not participating in this proceeding and has not objected to the participation of the Delegation.⁴⁴ Regardless of whether the OST participates in this proceeding or OST’s alleged position on the Delegation’s participation, the Delegation is not a Federally-recognized Indian Tribe and cannot participate as one.

⁴¹ May 21 Order at 4.

⁴² *Id.*

⁴³ *See* Delegation Brief at 9-16.

⁴⁴ *See id.* at 10.

2. The Delegation Is Not Entitled to Standing as a Steward for People, Land, Water, and Wildlife

The Delegation claims that it is the steward of the people, water (including Willow Creek and the Powder River), eagles, and other wildlife and the environment in the area of the COGEMA facility.⁴⁵ The Delegation further claims that the “health and safety of the Stewardees are adversely impacted due to flows of contaminants through the land and also due to flows of contaminants from the mined aquifer [to] nearby aquifers through faults, fractures, and also due to surface spills into the land and also into the Willow Creek.”⁴⁶

COGEMA already responded to these arguments in its answer to the Delegation Petition.⁴⁷ First, the Delegation has not shown that any animals or the environment will be negatively affected by the granting of the license renewal.⁴⁸ Second, the Delegation has not identified a single member (or, for that matter, an actual individual) who will be injured by the continued operation of the Facilities.⁴⁹ Third, the Delegation has not provided any information to support its claim that the aquifer used for mining will communicate with other aquifers. The failure to provide any information in support of its claim is fatal in light of the NRC Staff’s uncontroverted conclusion that groundwater flow will be generally confined within the

⁴⁵ See *id.* at 10-11.

⁴⁶ *Id.* at 14. The Delegation uses the term “Stewardees” to refer to the people, water (including Willow Creek and the Powder River), eagles, and other wildlife and the environment in the area of the COGEMA facility. See *id.* at 11.

⁴⁷ Additionally, even if the Delegation were an Indian tribe, it would not prevail on these arguments. As the U.S. Court of Appeals for the Tenth Circuit has explained, “an Indian tribe may not unilaterally create sovereign rights in itself that do not otherwise exist.” *Kansas v. United States*, 249 F.3d 1213, 1229 (10th Cir. 2001). Furthermore, “[a]n Indian tribe retains only those aspects of sovereignty not withdrawn by treaty or statute.” *Id.* (citing *United States v. Wheeler*, 435 U.S. 313, 323 (1978)). The Delegation’s argument that it exercises “stewardship” over vast areas, in which it alleges COGEMA’s facility resides, ignores the fundamental point that any sovereignty by the Delegation over such areas was withdrawn by Congress in the Fort Laramie Treaty of 1877. See COGEMA Answer to Delegation at 9-10.

⁴⁸ See COGEMA Answer to Delegation at 16.

⁴⁹ See *id.* at 16-17.

production aquifer.⁵⁰ In any case, the Delegation has not shown that it will be injured by any potential communication between aquifers. Finally, the Delegation refers to surface spills and spills into Willow Creek, but fails to show how any spills or potential spills caused injury to it or any of its members.⁵¹ With regard to Willow Creek, the Delegation could not show an injury because Willow Creek and its tributaries are ephemeral⁵² and because there is no physical way for surface water from the license site to reach the Pine Ridge Reservation.⁵³

3. The Delegation Has Not Shown Standing Based on Alleged Harm to Potential Cultural Resources

The Delegation also claims it is entitled to standing because it has an “organizational interest in protecting against any disrespect or destruction or interference with any historic or cultural items or artifacts deemed significant by the Oglala Delegation or any graves of Oglala Lakota people that are or may be near the site.”⁵⁴ In its answer to the Delegation Petition, COGEMA explained that this claim to standing failed because the Delegation failed to identify any specific cultural resources on the site.⁵⁵ In the Delegation Brief, as in its Petition, the Delegation has not identified any specific cultural resources at the COGEMA facility that would be affected by the license renewal. In particular, as explained in Section II.A.3, above, there are no historic properties on the site of the COGEMA facility, and the Delegation presents no information to the contrary. That failure is what distinguishes the Delegation from the OST in

⁵⁰ See *id.* at 79 (citing 1998 EA).

⁵¹ See *id.* at 17-18.

⁵² See *id.* at 14 (citing 1998 EA).

⁵³ See *id.* at 15.

⁵⁴ Delegation Brief at 15.

⁵⁵ See COGEMA Answer to Delegation at 11-13.

Crow Butte.⁵⁶ In *Crow Butte*, the OST was granted standing because it showed an interest in *identified* cultural resources and artifacts.⁵⁷

4. The Delegation Has Not Shown Representational Standing Based on Chief Red Cloud

In order to show representational standing, the Delegation must identify one member by name and address that has authorized it to represent him or her, and show that the identified member is entitled to standing in this proceeding on his or her own.⁵⁸ In this proceeding, the Delegation has submitted two affidavits from Chief Red Cloud in support of its claim of representational standing. The first undated affidavit was submitted with its initial Petition. That affidavit incorporates by reference an affidavit filed in the *Crow Butte* proceeding. That affidavit was deficient, however, because it did not specifically authorize the Oglala Delegation to represent Chief Red Cloud in this proceeding.⁵⁹ In any case, neither the affidavit nor any other information submitted by the Delegation demonstrated that Chief Red Cloud was entitled to standing in this proceeding. Thus, the Delegation failed, through the first affidavit or any information submitted in its Petition, to show that it is entitled to representational standing through Chief Red Cloud.

Now, as required by the May 21 Order, the Delegation has submitted an additional affidavit in which Chief Red Cloud specifically authorizes the Delegation to be his authorized representative in this matter. Neither the original, nor the new affidavit provides any information that demonstrates that Chief Red Cloud is entitled to standing in this proceeding. Specifically, the Delegation still has not shown that Chief Red Cloud will suffer an injury-in-fact caused by

⁵⁶ See *id.* at 11-12.

⁵⁷ See *id.* (citing *Crow Butte*, LBP-08-24, slip op. at 19, 21).

⁵⁸ See COGEMA Answer to Delegation at 7-8 (discussing standard for representational standing).

⁵⁹ See May 21 Order at 4.

the licensing action at issue that can be redressed in this proceeding.⁶⁰ Furthermore, the Delegation has not submitted any other declarations or even mentioned other members who may suffer an injury. Because it has not presented a single member who is entitled to standing, the Delegation has failed to demonstrate it is entitled to representational standing.

III. CONCLUSION

For the foregoing reasons, the additional arguments and information presented in the Delegation Brief do not support the standing of the Delegation in this proceeding. Therefore, the Delegation should not be admitted as a party.

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler

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Dated in Washington, D.C.
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⁶⁰ See COGEMA Answer to Delegation at 18.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	Docket No. 40-08502-MLR
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COGEMA MINING, INC.)	License No. SUA-1341
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(Irigaray & Christensen Ranch Facilities))	June 2, 2009
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2009 a copy of “COGEMA’s Answer to Petitioner’s Memorandum Re: Order Dated May 21, 2009” was served by the Electronic Information Exchange on the following recipients:

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