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March 27, 2003

FEDERAL EXPRESS

Susan M. Frant, Branch Chief
Uranium Recovery Section
U.S. Nuclear Regulatory Commission
Mail Stop T8A33
Washington, D.C. 20555-0001

Attn: Bill von Till, Project Manager

Re: Docket No. 40-1162, License No. SUA-56

Dear Ms. Frant:

A conference call was held between representatives of Western Nuclear and the NRC Staff on January 9, 2003. Western Nuclear was informed during the course of that conference call by Bill von Till that the Commission would require that Western Nuclear make a good faith effort to purchase all affected, or potentially affected, property within the proposed long-term care area. If Western Nuclear were not able to purchase certain property, the property would have to be subject to durable and enforceable institutional controls. The types of controls that Western Nuclear now has in place on non-fee owned property (except for Red Mule) would be deemed acceptable. It was discussed that Western Nuclear would be able to satisfy the "good-faith" effort to acquire property by submitting an affidavit that the reason that the institutional controls were purchased, rather than the property, was because the landowners in question did not wish to sell their property.

I enclose the affidavit of John H. Licht notarized March 24, 2003 which addresses the entirety of Western Nuclear's property acquisitions and attempts to acquire property (except for Red Mule) which will be within the long-term care area. Pursuant to discussions during a meeting in Rockville with you and members of the Staff on March 24, 2003, Western Nuclear believes the Licht affidavit adequately addresses the concerns of the Commission.

Additionally, Western Nuclear informed the Staff during the course of the March 24th meeting that it had acquired two of the occupied Red Mule lots. Enclosed are copies of deeds to Western Nuclear which show the acquisition of Lot 5 from the Roberts and Lot 6 from the Bauers.

Sincerely yours,



Harley W. Shaver

HWS/vw

Encl.

c: Lawrence J. Corte, w/encl.
Anne Thomas, w/encl.
Tony Thompson, w/encl.

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March 14, 2003

U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, Maryland 20852

Attention: Bill Von Till, Project Manager

Re: Western Nuclear, Inc.. License No. SUA-56

Dear Sir:

Western Nuclear has been an NRC licensee at the Split Rock uranium mill in Fremont County Wyoming. The mill ceased operations in the mid-1970's. By the mid-1990's, the time to which this affidavit relates, Western Nuclear had been engaged in closing that mill under the dictates of the Uranium Mill Tailings Radiation Control Act (UMTRCA or the Act) and the regulations promulgated thereunder for some twenty years.

For purposes of this affidavit the relevant portions of the Act are 42 USC 2113(b)(1)(A), (b) (2), and particularly (b)(4). And for purposes of this affidavit the relevant portion of the regulations is 10 C.F.R. Part 40. Appendix A. Criterion 11, section C. These provisions generally require that title to byproduct material and the land used for its disposal be transferred to the United States for long term custodial care "as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interest therein and the ability of the licensee to transfer title and custody thereof to the United States or a State." Sub-section (b)(4), *supra*.

Western Nuclear had retained Shepherd Miller (now part of MFG Consulting), an environmental engineering consulting firm, to assist Western Nuclear in developing the means for Western Nuclear to comply with the Act and regulations. In this effort, Shepherd Miller learned that the mill tailings had seeped into the ground water, and Shepard Miller performed studies in attempting to determine how byproduct material had migrated with ground water and how it might migrate in the future.

The mill and its related surface disposal site was located in Sections 1, 2, 11, & 12. T 29 N, R 92 W. However, Shepherd Miller's studies indicated the ground water migration had carried some byproduct material outside of those 4 sections and would likely carry byproduct

material a further distance in the future. Among the lands impacted by the mid 1990's and/or thought to be possibly impacted in the future, some were not under Western Nuclear ownership. Western Nuclear would not be able to transfer those lands to the United States unless those lands could be first acquired by Western Nuclear. Among the lands that were then impacted and/or would possibly be impacted in the future which were owned by private parties were all, or portions, of the following:

- | | | | |
|----|---------------------------------|--|--|
| 1. | <u>Owner</u>
Claytor | <u>T 29 N, R 92 W</u>
S/2, S. 12; N/2, S. 13 W/2, S. 7 | |
| 2. | Jehovah's Witnesses
(Church) | | <u>T 29 N, R 91 W</u>
S/2, S. 5; N/2S/2, S. 4 |
| 3. | Peterson | <u>T 29 N, R 92 W</u>
S/2SW/4, S. 11;
S/2NE/4, S14 | |
| 4. | McIntosh | <u>T 29 N, R 92 W</u>
NW/4SW/4, S. 2;
NE/4SE/4, S. 3 | <u>T 30 N, R 91 W</u>
S/2SW/4, S. 31 |

In 1995, 1996 1997 and 1998, as one of Western Nuclear's attorneys. I contacted three of these four owners to arrange for Western Nuclear to purchase those lands so that Western Nuclear eventually would be able to transfer ownership of those lands to the United States pursuant to the Act and regulations. The fourth owner was initially contacted by another of Western Nuclear's attorneys, Terence A. Kippen, who was already acquainted with this owner. Voluntary purchase was the best option because the Act does not specifically grant eminent domain authority to either the licensee or to the Commission. Moreover, the portion of Sub-section (4) quoted above seemed inconsistent with any implied condemnation authority.

1. Claytor.

At the time, Claytor family members were ranching substantial areas including the above lands which were, in their view, an important part of their operation for winter sheltered pasturage. Because of this, Claytor family members were unwilling to sell. However, after protracted negotiations covering a year or more, Claytor family members did eventually agree to sell a subsurface ownership interest and to limit use of ground water under permanent enforceable restrictions in exchange for cash, conveyance of some two hundred acres then owned by Western Nuclear adjacent to other Claytor family members' ranch property and the lease of other lands owned by Western Nuclear. In my view, Claytor family members took full advantage of Western Nuclear's predicament and received considerably more than reasonable value in exchange for their conveyance of the subsurface ownership and ground water use restrictions.

2. Church

At the time, the Church had recently inherited the above described land along with several hundred additional acres and related state grazing leases and federal grazing allotments from one of its elderly members, a man named Hoffmeister, who had survived to more than 90 years of age, and who had operated his ranch for more than fifty years. The Church made clear that, although it was not in the ranching business, it was not willing to reduce the size of the ranch by selling the acreage sought by Western Nuclear. Again after protracted negotiations, however, the Church did agree to sell Western Nuclear the entire ranch and to transfer the related state grazing leases and federal grazing allotments. Having little choice, Western Nuclear did purchase the entire ranch, although doing so burdened Western Nuclear with increased land administrative responsibilities without reasonable prospect of satisfactory offsetting rental income or prospect of reasonable offsetting eventual sale proceeds.

3. Peterson

The Peterson family had settled their land as homesteaders in the 1920's. The land sought by Western Nuclear included the family's original house, and Peterson's were not willing to sell. Their emotional ties were of more importance to them than any money they might obtain from selling. Mr. Peterson lived in Washington or Oregon at the time, but he could not have been more personable or accommodating. For my convenience he traveled from his home on two different occasions over a period of several months to meet with me. He was well aware of Western Nuclear's difficulties, but he still was not willing to sell. However, without attempting to gouge Western Nuclear, he did agree to place permanent enforceable ground water use restrictions on his land in exchange for several years of annual cash payments calculated to offset the cost of his mother's nursing home care.

4. McIntosh

While I was dealing with the other three owners, Mr. Kippen contacted the McIntosh family members to arrange for Western Nuclear to obtain the above described lands. For reasons similar to those expressed by Claytors and Petersons, the McIntosh family members also were unwilling to sell, or even trade their lands for other lands. When protracted negotiations failed, Mr. Kippen and I worked with the family and arranged to obtain ground water use restrictions from McIntosh family members that were parallel to those obtained from Mr. Peterson.

Without hesitation, I affirm that Mr. Kippen and I used our best persuasive abilities in trying to acquire these lands for Western Nuclear and it was only when those attempts proved futile did we change directions to obtain groundwater use restrictions and place restrictive covenants in effect which appeared to serve the ultimate purpose of protecting the public health, welfare, and the environment from dangers, if any, posed by byproduct material.

Additionally, Western Nuclear attempted to acquire BLM land and State of Wyoming land that might fall within the proposed long-term control area. Western Nuclear was not successful in obtaining BLM land, as the Area Manager in Lander, Wyoming, Jack Kelly, did not wish to go through the administrative efforts required as prerequisites to selling the BLM parcels to Western Nuclear.

However, Western Nuclear was successful and did purchase Wyoming State land on three

occasions:

1994: W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 1; N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 11, T29N, R92W (200 acres)

1997: Lot 4, Section 1; S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 11; N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 12, T29N, R92W and S $\frac{1}{2}$ S $\frac{1}{2}$, Section 36, T30N, R92W (359.13 acres)

1999: Lot 5, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 6; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 7; SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 8, T29N, R91W (520.53 acres).

Although Western Nuclear acquired these parcels from the State of Wyoming, Wyoming retained the minerals in spite of our efforts. So far as I know, under Wyoming law, the mineral interests cannot be purchased.

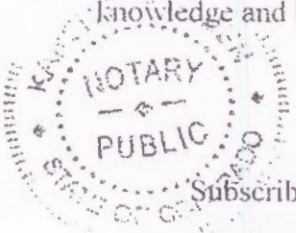
Very truly yours.

John H. Licht

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

I, John H. Licht, being first duly sworn and put upon my oath state that the facts and circumstances set forth in the foregoing letter are true and correct to the best of my recollection, knowledge and belief.

John H. Licht



Subscribed and sworn to before me by JOHN H. LICHT, this 24th day of March, 2003.

Witness my hand and official seal.

My commission expires:

8-28-2004

Notary Public