



State of Utah

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Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

November 2, 2017

IN THE MATTER OF:

Renewal of 11e.(2) By Product License No. UT 1900479
Renewal of the Groundwater Quality Discharge Permit No. UGW370004
Energy Fuels Resources, Inc.
White Mesa Uranium Mill
San Juan County, Utah

NOTICE REGARDING SUBMISSION OF SUR-REPLY COMMENTS

TO: UTE MOUNTAIN UTE TRIBE
GRAND CANYON TRUST
URANIUM WATCH
FRIENDS OF CEDAR MESA
MARK KERR

In the above-referenced matter, the Division of Waste Management and Radiation Control has received detailed comments from a variety of sources. These comments are available on the Division's website on the page referenced below. Some of these comments are especially detailed and several commenting parties have submitted supplemental information with their comments. This notice relates specifically to the comments submitted by the parties listed above. These comments include those submitted by the Ute Mountain Ute Tribe, the Grand Canyon Trust, Uranium Watch, Friends of Cedar Mesa and Mark Kerr (the "Comments").

While the public comment period for this matter is now closed, the procedural provisions governing the permit review process set forth in the Utah Code anticipate that UDEQ division directors may solicit supplemental information in response to public comments. *See* Utah Code Section 19-1-301.5(9)(b)(vii). The statute does not afford the right to any person to unilaterally supplement the record, only in response to a request made by a division director. If the director then designates such requested information as the basis for the decision on any given permit order, it will become part of the official administrative record. *Id.*

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To assist the Division in its review of the Comments and to help create a more balanced administrative record, the Director has solicited the submission of reply comments from Energy Fuels Resources pursuant to a request dated October 2, 2017, addressing the following specific Comments:

Ute Mountain Ute Tribe

Part 1 Comment I-III-D Regarding Sec. 9.7 Cultural Resources Protections: The Tribe requests that procedures be implemented by the State of Utah at the White Mesa Mill for repatriation of human remains and related artifacts in the same manner as the Native American Graves Repatriation Act (NAGPRA).

Part 1 Comment I-III-E: The Tribe would like the Tribal Historical Preservation Officer to be added to the Memorandum of Agreement and have the Tribe provide comments and amendments to the current MOA.

Part 1 Comment I-III-Q: The Tribe requests that the Emergency Preparedness Plan be amended to include notification procedures to the White Mesa Community and Ute Mountain Ute Tribal officials. In addition, there are no specific procedures in the Emergency Response nor Environmental Monitoring Handbook for trucks delivering specifically delivering ISL Material; these need to be developed.

Part 3 (all of section 6)

Mark Kerr

All

Uranium Watch

Section 4.10 (including 4.10.1 through 4.10.5)

Grand Canyon Trust

Focus on Rec Plan 5.1 with specific attention paid to milestones, sequencing of closure and Cell 1 Liner (Sections III(B), (C) and (G))

In compliance with this request, Energy Fuels Resources has submitted reply comments that are currently under review and consideration. These reply comments are available online at the following address: <https://deq.utah.gov/businesses/E/energyfuels/noticesswman.htm#efr>

Given the complexity of the issues relating to this matter, at this time, the Director would like to provide an opportunity for the original commenting parties referenced above to submit sur-reply comments as to reply comments, on or before **November 17, 2017**. This request is optional and the submission of sur-reply comments is not required and failure to do so will have no impact on the Division's consideration of the Comments and will in no way implicate the legal principles of estoppel, waiver or similar doctrines.

If submitted, sur-reply comments must be strictly limited to the scope of the reply comments or they will not be considered by the Director and will not become part of the administrative record.

The Director's intent is to create a more complete and balanced administrative record for review and to serve the interests of due process. The Division does not intend to respond directly to either reply or sur-reply comments. Rather, it is the Director's intent to have this information in the record so that it may be considered prior to the time that the Director reaches a final decision in this matter. The Division also believes that reply and sur-reply comments will help others who may be asked to review the administrative record and the Division's permitting orders. Thus, this extended review process should serve the interests of transparency and efficiency on all levels.

If you have any questions, please call Bret Randall, Assistant Attorney General, at (801) 536-0284.

Sincerely,



Scott T. Anderson, Director
Division of Waste Management and Radiation Control

STA/al

c: Bret Randall, Assistant Attorney General, Attorney General's Office