

**Public Participation Summary (PPS)**

Radioactive Material License UT1900479  
Amendment #9  
License Condition 9.7

Energy Fuels Resources (USA) Inc.  
White Mesa Uranium Mill  
San Juan County, Utah

## **GLOSSARY of Terms**

Below is a list of words, terms, and acronyms used for this licensing action. These words, terms and acronyms are based off of regulatory, technical and industry definitions and are not always the same definition found in dictionaries and other common reference sources. The definitions that come from regulatory sources are the required definitions the Utah Division of Waste Management and Radiation Control Staff use.

**Bureau of Land Management** - Also known by the acronym BLM.

**Director** - As defined in UAC R313-12-3 “means the Director of the Division of Waste Management and Radiation Control.”

**License** - Also known by the acronym RML (Radioactive Material License). As defined in UAC R313-12-3 “means a license issued by the Director in accordance with the rules adopted by the Board.”

**Licensee** - As defined in UAC R313-12-3 “means a person who is licensed by the Department in accordance with these rules and the Act.”

**Mill** - Means the White Mesa Uranium Mill.

**Nuclear Regulatory Commission** - Also known by the acronym NRC. The NRC was established by the Energy Reorganization Act of 1974. The NRC is assigned the regulatory and licensing responsibilities for the civilian uses of nuclear materials and facilities. (NRC.gov)

**Site Boundary** - As defined in UAC R313-12-3 “means that line beyond which the land or property is not owned, leased, or otherwise controlled by the Licensee or registrant.”

**Tribe** - Ute Mountain Ute Tribe. Also known by the acronym UMUT.

**Utah State Historic Preservation Office** - Also known by the acronym SHPO. Utah SHPO is the State of Utah agency who has authority for cultural resources in the State of Utah.

## **INTRODUCTION**

The Radiation Control Act, Utah Code Title 19 Chapter 3, provides the Department of Environmental Quality's Waste Management and Radiation Control Board the authority to make rules to protect the public and environment from significant sources of radiation. The Division of Waste Management and Radiation Control (DWMRC or the Division) is the agency charged with administering these rules and regulating activities in the State of Utah that involve radioactive materials. Pursuant to regulation implementation, the Division has issued a Radioactive Material License (RML) to the Licensee to possess and manage radioactive materials and 11e.(2) byproduct material. An RML may be modified as per Utah Administrative Code (UAC) R313-22-38.

As part of its legal responsibility, the Division enforces requirements defined by the State of Utah rules. The specific rule that deals with uranium mills is found in the UAC, Section R313-24, "Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements." Section R313-24 references other rules that are contained in the UAC including: Sections R313-12 "General Provisions", R313-15, "Standards for Protection Against Radiation", R313-18 "Notices, Instructions and Reports to Workers by Licensees or Registrants - Inspections", R313-19 "Requirements of General Applicability to Licensing of Radioactive Material", R313-21 "General Licenses", R313-22, "Specific Licenses" and R313-70 "Payments, Categories and Types of Fees." Federal regulations and NRC Regulatory Guides are also applicable via reference in UAC R313-24, in License Conditions contained in EFRI's RML and in the License Renewal Application.

The White Mesa Mill is licensed by the Division under State of Utah Radioactive Materials License No. UT1900479. This license and its amendments authorize Energy Fuels Resources (USA) Inc. (EFRI or Licensee) to receive and process natural uranium-bearing ores and certain specified alternate feed materials, to dispose of certain specified byproduct materials, and to possess byproduct material in the form of uranium milling tailings and other uranium byproducts generated by milling operations.

### **History of this Amendment:**

On July 31, 2017, the Ute Mountain Ute Tribe (UMUT) provided comments during the public comment period of the White Mesa Uranium Mill's (Mill) Radioactive Material License Renewal. Included as part of the UMUT's comments were two comments (comments I-III-D and I-III-E) that related to cultural resources on the Mill's property and License Condition 9.7. License Condition 9.7 of the Mill's RML references the Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC), Utah State Historic Preservation Office (SHPO), and the former owner of the Mill, Energy Fuel Nuclear. The MOU outlined how the owner of the Mill would comply with cultural resource regulations on the Mill property.

On November 15, 2017, the Utah Division of Waste Management and Radiation Control (DWMRC) sent the UMUT a letter (DRC-2017-008785) indicating the Division's willingness to work with the UMUT, SHPO, and EFRI to review the MOU referenced in License Condition 9.7 and determine if changes needed to be made. This letter was mailed to the UMUT's Chairman.

The letter was also hand delivered to representatives of the UMUT during a meeting with the UMUT, the Division, and the Governor's office on December 15, 2017.

On January 24, 2019, a representative of the UMUT with the UMUT's Tribal Historic Preservation Office contacted the DWMRC to "engage" the Division, SHPO and EFRI to "review and reevaluate" the MOU in License Condition 9.7. In response to this request, on March 7, 2019, the DWMRC, SHPO and the Utah's Attorney General's office had a meeting to discuss, License Condition 9.7.

After that meeting, it was determined that License Condition 9.7 needed to be modified to reference the appropriate State of Utah Rules. SHPO consulted with the United States National Advisory Council on Historic Preservation (ACHP), the ACHP representative determined that when the State of Utah became an Agreement State for uranium recovery in August 2004, the MOU that was referenced in License Condition 9.7 was no longer valid. In reviewing the matter, both SHPO and the DWMRC concluded that the Utah Code and the Utah Administrative Code have requirements for the protection of cultural resources that are substantially the same as Federal requirements. As a result, compliance with the substantive requirements of Federal law equates to compliance with the substantive requirements of state law respecting cultural resources. SHPO also informed the DWMRC that because EFRI holds a Radioactive Material License that has been issued by the State of Utah, EFRI is already required to follow Utah State law for cultural resource protection regardless of the existence of a license condition. Based on this rationale, a license condition that references Utah State law for cultural resource protection may not be needed because the requirements are already found in Utah State law. However, the Division has concluded that the continuation of the existing License Condition 9.7 that references the correct, State legal standards would be helpful for a variety of reasons, including defining the roles of the DWMRC, SHPO, and EFRI, recognizing past cultural survey work, recognizing that state regulation of the Mill under the License is a triggering state action, and a good reminder that EFRI is required to comply with State law in regards to cultural resources.

On July 31, 2019, the Division, in the cooperation with the UMUT, organized a meeting to discuss License Condition 9.7 and to explain that Utah state law applies in lieu of the Federal requirements. In attendance were representatives from the DWMRC, the UMUT, SHPO, the Utah Attorneys General's Office, the State of Utah's Utah Division of Indian Affairs, and EFRI. In addition to License Condition 9.7, the UMUT also used this time to discuss other concerns that the UMUT regarding the Mill. During the meeting, EFRI likewise addressed issues and preliminary comments relating to the Division's proposal to amend License Condition 9.7 to reflect State legal requirements instead of Federal requirements.

After evaluating the comments and issues that were addressed at the July 31, 2019 meeting, the Division drafted a new proposed License Condition 9.7 with assistance from SHPO, and the Utah Attorney General's Office. The Director sought preliminary comments from EFRI on the draft language. After considering preliminary comments made by EFRI, on January 21, 2020, the Division provided the UMUT with an advance copy of the proposed language and requested that the UMUT provide any additional comments for the Division to consider prior to the start of the formal public comment period (February 21, 2020).

By letter dated February 18, 2020, the UMUT provided additional response to the Director's request for the Division's draft language for Condition 9.7. Instead of providing substantive comments on the proposed Condition 9.7, the February 18, 2020 letter indicates that the UMUT did not have a complete understanding of the potential impacts of the proposed amendment and requested an additional, in-person consultation involving the Division and members of the UMUT in the Blanding area, to discuss cultural resource and related issues.

By letter dated February 27, 2020, the Director accepted the UMUT's invitation for an in-person meeting and consultation in the Blanding area, and included several potential dates when such a meeting could occur. Because potential meeting dates were so far in the future, however, the Director's letter also indicated that the Director decided to proceed with a formal amendment of the License so as to avoid a potential regulatory gap. The in-person meeting addressed in the February 27, 2020 letter has not been scheduled and will likely be delayed in light of the current pandemic situation. However, the Director has concluded that he has already provided adequate opportunities for in-person and other consultations with the UMUT that it is appropriate to proceed with the formal amendment process before the newly-requested, in-person meeting takes place. The Director does not consider the UMUT letter dated February 18, 2020 to include substantive comments relating to the present amendment matter. Moreover, the UMUT did provide formal comments on the proposed amendment during the formal comment period, as discussed below. Therefore, the UMUT February 18, 2020 letter is not addressed further in this PPS.

## Summary of Comments Received

The only formal comments received during the public comment period were from the UMUT. These comments are addressed below.

### SECTION 1.0 DIVISION RESPONSES

*Dear Director Howard:*

*I am writing you today regarding the proposed revision to License Condition 9.7 of Radioactive Material License UT1900479. The Ute Mountain Ute Tribe has the following comments that should remain part of the administrative record in this regard.*

- 1. Protection of cultural resources on and around White Mesa is of extreme interest and importance to the Tribe and its White Mesa community. The Tribe recognizes the need to revise the Mill License condition to ensure that the License accurately identifies and fully protects all the significant cultural resources previously inventoried on Mill lands, as well as any cultural resources that may be identified in the future. Any revision should strengthen and not relax cultural resource protections. We also appreciated the opportunity to review the proposed amendment prior to the public at large.*

#### **Division Response #1**

The Division and the Director recognize the legitimate interests of the UMUT in cultural resources and human remains. The amendment does not result in a substantive change in cultural resource requirements relating to operations and activities at the Mill under the License. The Director finds that the requirements for the protection of cultural resources, including human remains, under State Law (Utah Code § 9-8-404) are “adequate and legally enforceable restrictions” for the Licensee as under Federal Law (*see* 36 C.F.R. § 800.5(a)(2)(vii)). Further, Utah Code Section 9-8-309 protects human remains on private property, including the Mill property. The amendment does nothing more than change the License’s cross-references to the substantive legal requirements by deleting references to the MOU between the NRC, Utah SHPO and the former owner of the White Mesa Uranium Mill Energy Fuels Nuclear, is no longer in effect and will be formally terminated. Under the amendment, the License references the appropriate State of Utah statutory provisions and rules that govern cultural resources. By operation of law, these new State Law references apply to EFRI’s operations at the Mill regardless of whether or not they are mentioned in Condition 9.7. This situation was discussed in a meeting that was attended by the Tribe, the Division, the Licensee, the Utah Attorney General’s Office and SHPO on July 31, 2019.

- 2. At a meeting with the Ute Mountain Ute Tribe's historic preservation representatives on July 31, 2019, it was the Tribal representatives' understanding that a new Memorandum of Agreement (MOA) would be drafted for the purpose of replacing the 1979 MOA and distributed for review · by the Tribe, Utah State Historic Preservation Office (SHPO), and Energy Fuels Resources (USA), Inc. (EFRI). The Tribe understood the Division would be reengaging consultation on a MOA. Instead, the Division has proposed license amendment that does not include the aforementioned MOA because the Division never*

*undertook the process of drafting and distributing a MOA. The Tribe was not informed why the Division changed the approach outlined at the July 31 meeting and ceased dialogue on a MOA outlining the relative roles in the ongoing cultural resource protections at the White Mesa Mill. We request that the Division follow through on its commitment from the July 2019 meeting, draft and distribute the MOA, and bring the various parties together to agree on a new MOA to be referenced in Condition 9.7 in concert with each party's respective role in this mutual goal of cultural resource protection. With that, the license amendment process should be restarted at the appropriate time to accomplish the inclusion of the MOA.*

## **Division Response #2**

The Director acknowledges the importance of meaningful consultations with the UMUT regarding operations at the Mill. The purpose of the July 31, 2019 consultation with the UMUT was in response to the Division's invitation to the Ute Mountain Ute Tribe dated November 15, 2017. At that time, the cultural resource issues contained in License Condition 9.7 were discussed at length. The Division recognizes that one of the matters addressed during that consultation was the concept of a Memorandum of Agreement (MOA) as between the Division and UMUT relating to consultation processes. This is something still under consideration by the Director. The Director also recognizes that the Department has already adopted a written policy in response to the Governor's Executive Order EO/2014/005: Executive Agency Consultation With Federally-Recognized Indian Tribes. This executive order and the Department's policy already provide significant detail regarding the respective roles and responsibilities of governmental agencies like the Division and recognized tribes like the UMUT relating to consultations over any number of issues, including cultural resources. In reviewing this matter, the Division has concluded that its past consultations with the UMUT regarding the Mill have been undertaken in compliance with the executive order and the Department policy, without the need for an MOA. The Department policy and the Governor's executive order were not addressed during previous consultations between the Division and the UMUT. The Director's letter dated February 27, 2020 requested that the UMUT create an agenda for an in-person meeting. Among other issues, the Division would like to explore the purpose and scope of an MOU, specifically identifying specific topics and gaps (if any) that are not already adequately addressed in the Department's existing consultation policy and the Governor's executive order.

Finally, if there is to be a MOA, it would be between the Division and the UMUT, not the Licensee. The Governor's EO/2014/005 and the Department's policy envision consultations to occur on a government-to-government level. While these consultations may result in an impact on operations at the Mill, it does not appear to be appropriate to include EFRI as a party to an MOA. However, this particular topic has not been addressed and should be included on the agenda referenced above for further discussion and evaluation. Since the License dictates what EFRI is required to do to maintain compliance with Federal and State law it is not appropriate to reference an MOA between the Division and the UMUT in License Condition 9.7.

- 3. In addition to tailing cell construction and other mill facility construction that may disturb new ground at the facility warranting the cultural resource protections of Condition 9.7, the State has directed Energy Fuels Resources (USA) to develop dozens of groundwater monitoring wells in the last 15 years and continues to do so routinely. These*

*do not simply involve a hole in the ground, but require clearing and leveling of an area to get a drill rig in safely, and do in fact bore through potential cultural resources at each well location. This constitutes significant disturbance of potential archeological resources as well as potential implications under the Utah Native Grave Protection and Repatriation Act. The Tribe requests that well drilling be specifically identified as among the activities that require implementation of Condition 9.7. Further, if this is already the case and being implemented, the Tribe requests advance notification of drilling activity beforehand and sharing of all records of the cultural resource inventory reports or drilling monitor reports produced as a result of the efforts at each well site.*

### **Division Response #3**

Groundwater monitoring wells around the White Mesa Uranium Mill facility are essential to characterize known contamination present in the local perched aquifer (chloroform and nitrate), and are an important tool to investigate and monitor potential leakage from the on-site tailings cells. Monitoring wells and piezometers are also critical to characterize groundwater flow velocity and direction, and to characterize the hydraulic parameters and geology of the perched aquifer. The current and proposed future wells are necessary in protecting human health and the environment. An archeological survey has been completed for the proposed 5A and 5B tailings cells and the locations of the proposed new monitoring wells associated with that project were included during the survey. Generally speaking, the disturbance area and depth for installation of a monitoring well is minimal (shallow scraping and grubbing) and is minimized to the extent possible. However, by operation of law referenced in the proposed amended Condition 9.7, whenever cultural resources were (in the past) or are (in the future) encountered during the installation of any monitoring well, including those not associated with a major construction activity (e.g. tailings cell construction), the law required in the past, and requires in the future, that the licensee to stop monitoring well installation activities. The law required in the past and requires in the future that Licensee/Permittee move the installation of the monitoring well to another location, as directed by SHPO with concurrence from the Division (or the Counsel/NRC as to operations prior to 2004). These substantive legal requirements have been in effect both before and after the State took over the License in 2004. The amendment does not alter any substantive legal requirements

Finally, the Director acknowledges the UMUT comment regarding advance notification of monitoring well construction. The Licensee/Permittee is required to provide the DWMRC with two weeks of advance notice of well installation. This allows Division staff the opportunity to be present during installation. These notifications are already available to the UMUT on the Utah Department of Environmental Quality's E-z records search found at <http://eqedocs.utah.gov/>. No additional notification will be made to the UMUT.

- 4. The UMUT does not agree that the conferral of Agreement State status on Utah in any way changed the obligations of the Licensee to comply with the terms of Condition 9.7 and the requirements or the agreements referenced therein. The UMUT has not seen evidence or public notification of any formal federal process or action by the Nuclear Regulatory Commission (NRC) or the ACHP to terminate the agreements and protocols referenced in Condition 9.7 or to transfer responsibilities to Utah. If such a process is*



*underway, it should be completed in accordance with applicable federal administrative procedures, before references to the federal conditions and agreements are removed from Condition 9.7. In any event, conferral of Agreement State status on Utah or any other action by NRC could not and would not in any way limit the obligations of the BLM under the 1985 BLM Cultural Resources Easement discussed below.*

#### **Division Response #4**

When SHPO consulted with the ACHP, it was determined that when Utah became an Agreement State in 2004, the NRC relinquished its authority to regulate source materials and byproduct material from the State of Utah uranium mining industry. Due to this state agreement, as of 2004, the NRC relinquished its regulatory authority relating to the Mill, including as to cultural resource issues. Section 106 reviews at this mill are not required due to this state agreement. State Law now applies and has, in fact, applied since the date that Utah became an Agreement State in 2004. The Division understands that the ACHP and NRC are initiating tribal consultation on the formal termination of this original MOU given the reality of NRC relinquishment, but those consultation procedures and the timing of the federal processes are outside the purview of the Division. Based on the foregoing, it is the Director's view that proceeding with this amendment is required regardless of whether or when the NRC and ACHP take formal action on their MOU. By operation of law, federal cultural resource requirements ceased to apply to the Mill as of the date the state became an Agreement State in 2004. The NRC's and ACHP's formal termination of their MOA was not and is not required. The amendment under consideration here does nothing more than reflect the legal realities. However, because federal and state laws governing cultural resource issues are substantially identical, this change in the legal citations and authorities has no impact. There is no reason to wait until after the NRC and ACHP have taken formal action. Finally, it may well be that Condition 9.7 is not even required because it does little more than cross-reference applicable law. Based on the foregoing considerations, the Director has decided to finalize the proposed amendment to Condition 9.7 without waiting for the federal agencies to take action.

5. *All previously identified archeological sites on the Mill lands, including all the sites previously referenced in Condition 9.7 and all sites identified in the 1985 BLM Cultural Resource Easement (described below), should be comprehensively and accurately listed, along with relevant information about the status of each site. Past lists referenced in Condition 9.7 have not been accurate or complete.*

#### **Division Response #5**

The issues raised in Comment No. 5 fall outside of the Division's jurisdiction, Condition 9.7, and this amendment process. Resolution of this comment should be as between Utah SHPO and the UMUT, outside of the current amendment process. The Division does not have a qualified archaeologist on-staff and, therefore, does not have access to the archeological records. The Division must rely on SHPO and other qualified persons to manage the actual surveys and access to information. For informational purposes only, the following narrative reflects the Division's understanding of the current facts relating to this comment. Utah SHPO maintains any and all lists of archeological sites within the State of Utah, including those at the White Mesa Uranium Mill. These lists are protected documents and any entity wishing access to this information must work with Utah SHPO. Towards that end, after the July 31, 2019 meeting, Utah SHPO has been

working with the UMUT to allow direct access to the archaeological records in compliance with state and federal laws regarding that site information. The last communication between the SHPO and UMUT was on October 23 of 2019, when Nichol Shurack, Cultural Resources Contract Administrator filled out the necessary forms to release data but merely needed a notary. Since this time Utah SHPO has not yet received that completed form. But for the reasons stated, this comment is not relevant to the present amendment.

6. *Condition 9.7 should reference the document or documents that comprehensively and accurately list(s) all identified cultural resource sites and should identify the custodian of such lists and supporting documents so the lists of sites and documents may be accessed in the future by the appropriate authorities.*

#### **Division Response #6**

As with Comment No. 5, the issues raised in this comment fall outside of the Division's jurisdiction, Condition 9.7, and this amendment process. Resolution of this comment should be as between Utah SHPO and the UMUT, outside of the current amendment process. For informational purposes only, the following narrative reflects the Division's understanding of the current facts relating to this comment. Utah SHPO maintains any and all list of archeological sites within the State of Utah, including those at the White Mesa Uranium Mill. These lists are protected documents and any entity wishing access to this information must work with Utah SHPO. But for the reasons stated, this comment is not relevant to the present amendment.

7. *The BLM has responsibility for the sites that were subject of the "Energy Fuels BLM Land Exchange Cultural Resource Easement Agreement between the BLM and Energy Fuels Nuclear, dated August 26, 1985 (the "1985 BLM Cultural Resource Easement"). The subject of the cultural resources easement expressly reserved to the United States under Land Exchange Patent No. 43-85-0028, dated October 10, 1985 and recorded November 4, 1985 as Entry No. 1H10635 in M. Book 672 at Pages 482-83 of the records of the Recorder of San Juan County, Utah. ("1985 Land Exchange Patent") in the approximately 2,591.42 acres of federal land conveyed to Energy Fuels by that patent. Copies of the 1985 BLM Easement and 1985 Land Exchange Patent are attached to these comments.*

#### **Division Response #7**

For the reasons stated in the Division Responses #5 and #6, the issues raised in this comment fall outside of the Division's jurisdiction, Condition 9.7, and this amendment process. This is not to say that the issues raised in the comment are not important. They are. However, resolution of the issues raised in this comment should be as between the BLM, EFRI, and possibly Utah SHPO, outside of the current amendment process. This comment has no bearing on the validity of Condition 9.7.

8. *The 1985 BLM Cultural Resource Easement Agreement provides, in part:*
  - *"At such time as a surface disturbing activity is proposed on the subject land described as:  
T. 37 S., R. 22 E., SLBM, Section 29: SE 1/4 SE 1/4 Section 33: SW 1/4*

*T. 38 S., R. 22 E., SLBM, Section 4: N 1/2, SW 1/4, W 1/2 SE1/4, W 1/2 E 1/2 SE 1/4, Section 5: All, Section 6: E 1/2, Section 8: NE1/4, Section 9: All the Patentee (Energy Fuels, Ltd.) or its heirs, successors-in-interest or assigns shall determine the potential adverse affect [sic] of proposed land disturbing activities on the cultural sites, as shown on Attachment "A" which have been identified as potentially eligible for inclusion on the National Register of Historic Places, and complete the following steps: ... [list of steps to be taken] .... "*

*The 1985 Land Exchange Patent provides, in part:*

- *"An easement for exclusive use and control of all cultural sites on and in the lands described above, along with the right of ingress and egress to the sites; until such time as all or part of the cultural resource sites are excavated or otherwise cleared in accordance with requirements of the Cultural Resources Easement Agreement dated August 26, 1985, by and between Energy Fuels, Ltd. And the United States of America .....* "

### **Division Response #8**

See Division Response #7.

9. *Condition 9.7 should reference the 1985 BLM Cultural Resource Easement and the related reservation under the 1985 Land Exchange Patent and require that the Licensee comply with their terms and provide confirmatory documentation to UDWMC that Licensee has complied and continues to comply with the 1985 BLM Cultural Resource Easement and any corresponding mitigation plans approved by the BLM.*

### **Division Response #9**

See Division Response #7.

10. *Condition 9.7 should not impose an artificial distance requirement, such as the proposed 100 feet, within which impact to cultural resources is deemed unavoidable, without any protective measures being taken. Condition 9.7 should stress that preservation of cultural resources and sites is the primary goal, no matter how close the cultural resources may be to mill activities and structures, and require that the Licensee make the required showing that avoidance of adverse effects is not reasonably feasible with respect to all cultural resources regardless of their proximity to mill activities or structures.*

### **Division Response #10**

This provision of Condition 9.7 adopts and preserves the requirement from the original issued license where all sites within 100' of proposed disturbance was to be archaeological recovered. The Division understands that this requirement is based on standard SHPO requirements that apply state-wide. Because, arguably, Condition 9.7 is not even required to be in the License, the Division has concluded that the issues raised in this comment fall outside of its jurisdiction, Condition 9.7, and this amendment process. Resolution of this comment should be as between Utah SHPO and the UMUT, outside of the current amendment process. Until Utah SHPO otherwise requires, the Division will enforce the longstanding 100-foot requirement. New construction at the mill will need to follow the same data recovery measures as before (those

sites within 100' of proposed disturbance), so as to avoid any inadvertent impacts to cultural resources during construction.

11. *Condition 9.7 should require that Licensee's reclamation plan address how sites that were or will be buried under overburden stockpiles will be preserved during and after reclamation.*

#### **Division Response #11**

As a matter of law, the State requirements summarized in License Condition 9.7 will still apply during reclamation activities because the License will not be terminated until the transfer of the Mill site to the Department of Energy is completed. No change needs to be made to the license condition.

12. *The proposed language in Condition 9.7 identifies the SHPO Director as "Director," but the "Director" for the rest of RML UT1099479 is you, the Division Director. It would be clearer to the public and the regulated entity to differentiate which Director is which in the license.*

#### **Division Response #12**

This comment raises a valid observation that Division staff and SHPO representatives also noted when reviewing the proposed amendment text. A change to the license condition will be made correcting the reference to the State Historic Preservation Officer so as to avoid any potential ambiguity.

Since the close of the public comment and based on the comments received from the public, the following changes have been made to License Condition 9.7 (shown in redline/strikeout):

9.7. Before engaging in any activity not previously assessed, the licensee shall ensure that all disturbances associated with the proposed development undertaken by the licensee, are completed in compliance with the following: (a) Utah’s antiquities law in Utah Code Section 9-8-301 *et seq.* and its implementing regulations; (b) Utah’s historic sites law in Utah Code Section 9-8-401 *et seq.* and its implementing regulations; and (c) the Utah Native American Grave Protection and Repatriation Act in Utah Code Section 9-9-401 *et seq.* and its implementing regulations, in accordance with the following specific conditions.

Before engaging in any activity not previously assessed, the licensee shall comply with the following specific requirements relating to operations and activities within the boundaries of the Mill facility defined in License Condition 9.1 that will result in a surface disturbance:

- Contract to complete a survey, as defined in Utah Code Section 9-8-302(21), if an acceptable survey does not already exist for the given area. This work shall be carried out by a person holding a principal investigator survey or excavation permit from the State of Utah’s Public Lands Policy Coordinating Office.
- Report in writing the discovery of any archaeological resources as defined in Utah Code Section 9-8-302(4), which shall be deemed to include historical artifacts, ancient human remains and historic properties, to the State Historic Preservation Officer Director (“Director”) of the Utah Division of State History (“Division”) within 30 days of completion of the survey for review and submittal to the Utah State Historic Preservation Office (“SHPO”) in accordance with Utah Code Section 9-8-404(1)(a)(ii).
- In the event of the discovery of possible, previously unknown or unidentified historical artifacts as defined in Utah Code Section 9-8-102(5), immediately cease any activity in the area of the discovery, at which point the newly discovered historical artifacts shall be collected, preserved and inventoried in a repository or curation facility with assistance from the SHPO in accordance with Utah Code Section 9-8-304(2)(c). No further disturbance shall occur until the licensee has received authorization from the Director to proceed.
- In the event the licensee knows or has reason to know that it has discovered ancient human remains, immediately cease any activity in the area of the discovery, make a reasonable effort to protect the remains discovered, and notify the Director and SHPO in accordance with Utah Code Section 9-9-403(4). Activity in the area may not resume until the licensee has fulfilled the requirements of Utah Code Sections 76-9-704 and 9-8-309 or has otherwise received authorization from the Director to proceed.
- If historic properties, as defined by Utah Code Section 9-8-402(1)(b) and as further defined below, will be adversely affected by any proposed activity not previously assessed, the licensee shall avoid by project design, where reasonably feasible, any historic properties. For purposes of the License, “historic properties” shall include all archaeological sites designated as “contributing” in any previous archeological survey conducted and documented at the Mill site starting from 1978 Environmental Report for the White Mesa Uranium Project to the present time. Where it is not reasonably

feasible to avoid an historic property, the licensee shall institute a data recovery program for it that is based on a research design that takes into account current U.S. Advisory Council on Historic Preservation's Archaeology Guidance. It is understood and agreed that it is not feasible to avoid any historic properties located in or within 100 feet of borrow areas, stockpile areas, construction areas, or the perimeter of the reclaimed tailings impoundments. Therefore, disturbance of such historic properties is deemed unavoidable. Where disturbance of historic properties is unavoidable, such historic properties shall be recovered through archaeological excavation. Data recovery fieldwork shall be completed prior to the start of any project-related disturbance, but analysis and report preparation need not be complete prior to the time of disturbance.

**Explanation of Changes:**

After discussing Comment #12 with the State Historic Preservation Officer, he acknowledged that there technically is not a Director of SHPO and a better response would be to reference the position of the State Historic Preservation Officer which is a Governor appointed position and SHPO is the Staff.