



U.S. Department of Energy

Grand Junction Office
2597 B³/₄ Road
Grand Junction, CO 81503

MAY 08 2001

WM-62

Mr. Dan Gillen, Acting Branch Chief
Fuel Cycle Licensing Branch
Division of Fuel Cycle Safety and Safeguards
U.S. Nuclear Regulatory Commission
Mail Stop T7C6
Washington, D.C. 20555-0001

Subject: Department of Energy UMTRA Ground Water Project Request for Review and Interim Institutional Control Approval, New Rifle, Colorado

Dear Mr. Gillen:

The Department of Energy Grand Junction Office (DOE-GJO) is in the process of finalizing the Ground Water Compliance Action Plan (GCAP) for the New Rifle UMTRA site. I had sent you a draft GCAP in September of 1999. Since that time, the DOE has initiated a pilot pump and treat to address a small area of dissolved vanadium within the contaminated plume. Other than vanadium, all of the other constituents of concern are expected to naturally flush within 100 years.

The DOE-GJO is also in the process of finalizing a "stand-alone" cooperative agreement with the City of Rifle, County of Garfield, State of Colorado, and DOE. The purpose of this agreement is to detail the need and process forward for establishing a viable and enforceable institutional control (IC) to prevent inappropriate uses of the shallow, contaminated ground water that resulted from past uranium milling activities.

The DOE proposes to fund an extension of the municipal water supply out to the West Rifle Interchange. The remaining area where contaminated ground water exists would be addressed with reverse osmosis units on an as-needed basis.

I have asked the City of Rifle and the County of Garfield to draft language that captures the approach that the local governments are proposing for the ICs.

The purpose of this letter is to request Nuclear Regulatory Commission review of the enclosed language and to respond back to DOE-GJO with their analysis of the review with regard to the proposed IC language as meeting the intent and spirit of a viable and enforceable IC according to the guidance in 40 CFR 192, Subpart B.

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Mr. Dan Gillen

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Please provide your analysis within 120 days of receipt of this letter. If you have any questions, my telephone number is 970/248-7612.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald R. Metzler", with a long, sweeping underline that extends to the right.

Donald R. Metzler
Technical/Project Manager

Enclosures

cc w/enclosure:

K. Hooks, NRC

M. Layton, NRC

M. Schwartz, NRC

E. Greybourne, DOE-GJO

R. Plieness, DOE-GJO

C. Wayman, DOE-GJO

C. Bahrke, MACTEC-ERS

S. Marutzky, MACTEC-ERS

Legal File 2636

Project File GWRFL 10.3 (P. Taylor)

cc w/o enclosure:

E. Green, Garfield County

L. Leavenworth, Esq.

S. Myers, City of Rifle

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LEAVENWORTH & KARP, P.C.
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APR 27 2001

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**(Please direct all correspondence
to our Glenwood Springs Office)*

April 26, 2001

Mr. Donald Metzler
Technical/Project Manager
U.S. Department of Energy
2597 B 3/4 Road
Grand Junction, Colorado 81503

VIA FAX AND U.S. MAIL

Re: West Rifle Institutional Controls

Dear Don:

This letter is intended to offer some clarification regarding the Institutional Controls proposed for the West Rifle area. The US Department of Energy's participation in the West Rifle Institutional Controls consists of the following two tasks to provide potable water to property owners affected by the plume of contaminants: the creation of a fund to pay for reverse osmosis (R.O.) systems for every 35 acres west of the West Rifle Interchange and the funding of a municipal water line from the City limits to the Interchange. This letter will outline the strategy and legal controls of the area west of the Interchange not capable of connecting to the City's water supply and the area east of the Interchange that will be adjacent to the extended municipal water line.

Property West of the Interchange

The property west of the Interchange is comprised of large ranches, mostly owned by a single landowner. C.R.S. §30-28-101(10)(b) exempts from the definition of subdivision any division of land in the County which creates parcels of land each of which comprises thirty-five (35) or more acres. Therefore, any subdivision of land creating parcels of 35 acres or more requires no land use approvals from the County. County regulations only allow one residence per parcel. Although zoning regulations may allow more density, a land use application would be necessary for any development beyond one residence. C.R.S §37-92-602 exempts from obtaining a water right a 15 gpm well on a 35 acre tract that is used for ordinary household purposes, lawn and garden irrigation of up to one acre, fire protection and the watering of domestic animals. Therefore, an owner of a 35 acre parcel could obtain a well permit and drill a well without any administrative approval.

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In short, under current Colorado law, property can be developed in 35 acre parcels with one house per parcel without land use approval from the County. This formed the basis for DOE's responsibility to fund R.O. systems for one house for the number of potential 35 acre parcels west of the Interchange because that is all those owners have a "right" to develop. Any further development of this area will require the property owner to provide his or her own R.O. system because pursuant to C.R.S. §30-28-133(3)(d) and (6), the Board of County Commissioners cannot approve a subdivision unless the land use applicant provides "evidence to establish that definite provision has been made for a water supply that is sufficient in terms of quantity, dependability, and quality to provide an appropriate supply of water for the type of subdivision proposed." Emphasis added. If a property owner desires greater density than one house per 35 acres, he or she must obtain approval from the County, which means the landowner will need to provide a potable water supply at the developer's cost.

In Conclusion, DOE will meet its obligation if it funds R.O. systems for one house on the potential number of 35 acre parcels west of the Interchange. It is currently envisioned that the County will, as part of the Institutional Controls, require evidence of a potable water supply for the issuance of a building permit for a house on a 35 acre parcel in the area affected by the contamination and DOE will fund the R.O. systems for these owners. Any development of a greater density than one house on 35 acres is not a development by right, and DOE is therefore not responsible for providing an R.O. system for that density. Because State Statutes require evidence of a potable water supply, the County cannot approve such development in this area unless the landowner provides an R.O. system at his or her expense.

Property East of the Interchange

To provide uncontaminated water to the property between the City limits and the West Rifle Interchange, DOE is proposing to pay for the extension of the City's water line to the Interchange to which property owners can connect. Questions have arisen regarding water service for landowners within this area that refuse to connect to the City's water line, either because they do not want to execute a pre-annexation agreement with the City, which is a requirement to receive City water, or for any other reason.

Under Colorado law, the County cannot force these landowners to connect to the City's water line. However, as discussed above, State Statutes require evidence of a potable water supply to develop more than one house on a 35 acre parcel. In addition, pursuant to the proposed Institutional Controls, the County will require evidence of a potable water supply for the issuance of a building permit for a house on a 35 acre parcel. Therefore, these landowner have the choice of connecting to the City's supply or provide an R.O. system in order to develop the property. If the landowner refuses to connect to the City's water supply, the R.O. system will be at the landowner's expense because DOE has satisfied its obligation by providing a potable supply of water to these landowners with the extension of the City's water

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line. As a result, the City's water line will be the obvious source. Also, any development east of the Interchange will most likely propose urban densities that are more suitable for the City and the landowner will want to utilize the City's water system and eventually annex.

The construction and maintenance of an R.O. system to meet the densities likely to be proposed will be cost prohibitive and impose a stigma on the property. In addition, the City will be installing a sewer line along with the water line to the Interchange. Connecting to the City's sewer line will also be necessary for most developments because the cost of construction and maintenance of an individual wastewater treatment system or wastewater treatment plant to serve the likely proposed density would be cost prohibitive compared to connecting to the City's system. Therefore, we believe property developing east of the Interchange will connect to the City's water line.

In conclusion, the requirement of evidence of a potable water supply for any development east of the Interchange will ensure a landowner either connects to the City's water line or constructs an R.O. system. Because DOE has provided these landowners with a potable water source by funding the extension of the City's water line, it has met its obligation to these owners and the landowner will need to pay for the R.O. system if he or she refuses to use the City's supply. Most likely, however, economics will compel these developments to connect to the City's water line.

Oversight of R.O. Systems

One issue remains that needs to be discussed and resolved. What kind of regulatory oversight will be required for those R.O. systems that are installed and who will monitor and pay for this oversight?

This letter has been reviewed by Don DeFord, Garfield County Attorney.

LEAVENWORTH & KARP, P.C.

Mr. Donald Metzler

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If you have any questions or if we can be of further assistance, please do not hesitate to call.

Very truly yours,

LEAVENWORTH & KARP, P.C.



for: Loyal E. Leavenworth

LEL:

cc: Selby Myers, Manager, City of Rifle
Bill Sappington, P.E., Public Works Director, City of Rifle
Jeff Simonson, P.E., Schmueser Gordon Meyer, Inc.
Pat Hopkins, Planner, City of Rifle
Davis Farrar, Western Slope Consulting
Don DeFord, Esq, Garfield County Attorney
Cheri Bahrke, US DOE
Cooper Wayman, Esq, US DOE

Cooperative Agreement for the Water Line Extension at Rifle

The DOE has been working with the City of Rifle, County of Garfield, and the State of Colorado to develop a cooperative agreement that obligates the forenamed parties to the following actions:

- DOE will provide 90% of the funding (not to exceed \$2.1 million) to extend the current water line along Highway 6 & 24 from the west edge of the New Rifle site to the west Rifle interchange on I-70.
- The State of Colorado will provide a 10% cost share to complete the capital funding for the project.
- The City of Rifle will provide project management and will construct the water line extension.
- The County of Garfield will enact enforceable administrative institutional control (ICs) that limits access to the alluvial groundwater within the boundary established as requiring these controls.

Current Status/Potential Concerns

At the meeting of the principle parties in January, the City of Rifle representatives stated their intent to have landowners sign a pre-annexation agreement as a condition of tapping into the new water line. Since the meeting in January, concerns have arisen with Garfield County representatives that it may be illegal for them to compel annexation as a condition of receiving the water/sewer service. The only condition Garfield County feels it can impose is the requirement for potable water. They believe they must give landowners the option to provide, at the landowner's cost, a point-source treatment unit for domestic water. There are two potential problems, 1) who will monitor these systems to ensure compliance and 2) will the NRC accept this potentially fragmented approach. Initially the concept of one zone overlay or county ordinance that compelled landowners to tap into the newly installed water line appeared the simplest and best option for administrative ICs. Since approval from the NRC on the ICs is a given, and since having the ICs in place is a condition precedent to executing the agreement and providing the funding, there is a potential time lag in moving forward with the agreement. The specific details of the ICs need to be worked out and the specific ICs concept/language needs to have written approval from the NRC before funds are committed.

The principle parties to the agreement recognize that there is not an immediate user-driven need for the waterline. There are no plans for near term development between the present city limits and the west Rifle interchange. It may even be concluded from the differing views on annexation that there is not agreement between the City and County on a 'Master Growth Plan' for the area in question. DOE has been able to meet any requirement for domestic water within the ICs boundary and can continue to do so until these issues are resolved.

The State of Colorado also must resolve the issue of which organization is/will be a party to the agreement. CDPHE contends that they no longer have capital construction

authority and any cost-share funds must be supplied by DOLA. DOLA contends that their role is to grant monies to municipalities. Neither organization is willing to take on project management oversight for this project. It is uncertain how difficult or timely this is to settle.

DOE will proceed with all obligations that accompany the remediation strategy at the New Rifle site including completing any outstanding environmental documents. DOE is continuing to monitor the ground water, surface water, and will commit to sample any RO units that it funds. In addition, DOE will continue to remediate the vanadium plume on the site.

Of additional concern is the potential budget impact for next fiscal year. The agreement is subject to the availability of funds. It may be that funds originally targeted for this project may be more appropriately used elsewhere.

Recommendations

Mr. Lee Leavenworth has been informed of Don's need to have the ICs language for presentation to the NRC. Mr. Leavenworth did not promise this on any date certain. Cooper recommends that DOE-GJO receive concurrence/approval on the proposed ICs from NRC before funds are allocated for this project. Don may be able to use this time lag to allow some of the issues to become resolved. Waiting for the NRC response is also a valid avenue to avoid the perception that DOE may be backing away from a commitment. During that time, DOE-GJO funding will become more certain. DOE and UGW management will better be able to assess how this project fits within the risk and priority of other planned UGW actions. While waiting for NRC response and resolve on other issues, DOE can reassure the City and County that DOE will provide RO units for any domestic water requirements within the ICs boundary.