FOREST GUARDIANS

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Chief, Rules Review and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, D.C. 20555-0001
email: nrcrep@nrc.gov

VIA FAX, ELECTRONIC AND POSTAL MAIL

Re: Report Number NUREG-1790

Dear Rules and Directives Branch,

These comments are submitted on behalf of Forest Guardians and its members. Forest Guardians seeks to preserve and restore native wildlands and wildlife in the American Southwest through fundamental reform of public policy and practices.

We have reviewed the environmental impact statement (EIS) for the proposed National Enrichment Facility in Lea County, New Mexico, and we remain concerned about impacts of this facility to imperiled species. We integrate by reference our scoping comments, dated March 18, 2004, in their entirety.

Eunice is located in Lea County, which is an important biodiversity hotspot in the state. The EIS indicates the presence of shinnery oak on the facility site. Sand shinnery communities should be rigorously safeguarded given that they are finite and host a highly specialized suite of wildlife. The sand shinnery community consists of oak forests which extend across five to seven million acres in New Mexico, Texas, Oklahoma, Arizona, and Utah and constitute the country's largest stand of oak. Sand shinnery communities are co-dominated by shrubs and a mixture of grasses, the compostion of which varies by region. Unfortunately, a bevy of threats face this ecosystem, including herbicide treatment, oil and gas development, livestock grazing, and habitat destruction such as that associated with the proposed facility. Altogether, over 1.2 million acres of sand shinnery have been lost to cropland conversion and the application of herbicides for rangeland conversion. As the sand shinnery is destroyed or degraded, the repercussions impact wildlife most closely associated with this unique landscape.

E-RIDS = ADM-03
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In addition to the lesser prairie-chicken and sand dune lizard, a bounty of other wildlife finds sustenance in the sand shinnery. Mule deer, white-tailed deer, pronghorn, and javelina are the most conspicuous. In addition, black-tailed jackrabbits, eastern cottontails, a variety of burrowing mammals (pocket gophers, kangaroo rats, moles, ground squirrels), shrews, songbirds, mammalian predators, raptors, turtles, snakes, arthropods, and others benefit from a healthy sand shinnery ecosystem.

Shin-oak commonly attain ages of hundreds and probably thousands of years. Most reproduction is by cloning, and reproduction by seed is rare. While seldom taller than two feet high, shin-oak has a disproportionately large underground stem system that serves a vital function in sand and soil stabilization. The lateral movement of shin-oak into adjacent areas is exceedingly slow, with plants failing to encroach on old fields surrounded by shin-oak and left fallow for over 50 years. Destruction of shin-oak therefore causes virtually permanent reduction of this ecologically vital plant community.

We think the impacts to lesser prairie-chicken, sand dune lizard, black-tailed prairie dog, black-footed ferret, swift fox, burrowing owl habitat are too quickly dismissed in the EIS. In particular, the cumulative impacts from this facility in conjunction with rampant oil and gas development, livestock grazing, and other harmful land uses should be examined more carefully in the EIS. Indeed, the New Mexico Department of Game and Fish raised this issue of cumulative impacts in its scoping comments (EIS at B-46). Amazingly, in the section of the EIS on cumulative impacts, there is no discussion of impacts to native wildlife and plant species (EIS at 4-65 to 66).

Moreover, while the EIS acknowledges potential habitat for many of the species about which we raised concerns in our scoping comments, the EIS finds that the species won't be harmed because the habitat is not occupied. However, in a world of ever shrinking habitat, and in particular, ever shrinking grassland and shinnery oak, potential (but unoccupied) habitats will become increasingly vital to preserving biodiversity.

Importantly, this EIS was released without completing consultation with the US Fish and Wildlife Service over impacts to the northern aplomado falcon and black-footed ferret, both of which are listed under the ESA (50 C.F.R. § 17.11). Without full consultation information, the public is unable to weigh in on this issue, in contravention of the National Environmental Policy Act. There is also no evidence that the Nuclear Regulatory Commission is taking seriously the mandate to promulgate conservation plans (defined as recovery under the ESA) for listed species, as mandated by the ESA at Section 7(a)(1) (See 16 U.S.C. § 1536(a)(1)).

We underscore that, in addition to our concerns about impacts of this project on imperiled species, we are also alarmed at potential impacts to water quality and quantity, air quality (e.g. spread of radioactive dust), and harms to human health should this plant be built and put into operation. These issues have not be sufficiently addressed nor mitigated in the EIS.

Forest Guardians has advocated for the protection of native animals, plants, and their habitat for 15 years in the state of New Mexico. We have over 1,500 members, most of whom reside in the state. We thank you for your thorough review of our concerns.

Sincerely,

Nicole J. Rosmarino, Ph.D.
Conservation Director