



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

APR 14 2005

In Reply Refer To:

ES/61411/W.26/WY9236

Mr. Gary S. Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Janosko:

Thank you for your March 7, 2005 letter requesting comments on the draft environmental assessment (EA) for the proposed amendment of Source Materials License No. SUA-1350 issued to the Kennecott Uranium Company for the Sweetwater Uranium Facility in Sweetwater County, Wyoming. In response to your request to review the proposed action, we are providing you with comments on (1) threatened, endangered and candidate species, and (2) migratory birds. The Service provides recommendations for protective measures for threatened and endangered species in accordance with the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Protective measures for migratory birds are provided in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119, 16 U.S.C. 742a-742j.

Tailings Impoundment Issues: The draft EA should address the following issues:

- the potential for migratory bird mortality in the 60-acre tailings impoundment due to exposure to oil and other contaminants; and measures to eliminate or minimize that risk;
- the concentrations of diesel range organics (DROs), metals and radionuclides in contaminated soil and groundwater that will be disposed of in the 60-acre tailings impoundment;
- the ultimate fate of the contaminated soils and groundwater in the 60-acre impoundment.

Since contaminated soils and groundwater containing DROs, metals and radionuclides will be deposited in the 60-acre tailings impoundment, we are concerned with the potential for migratory bird mortality in the impoundment. Impoundments containing water and other fluids, such as oil, can and do attract migratory birds. Birds have trouble distinguishing pristine wetlands from impoundments containing oil. Oil present in impoundments can entrap and kill migratory birds and other wildlife. Birds, including hawks, owls, and songbirds, are attracted to industrial ponds by mistaking them for natural bodies of water. Industrial impoundments also can attract bats, insects, small mammals, and big game. Songbirds and mammals may approach oil-covered impoundments to drink and can fall into the pits or they can become entrapped if the banks of the pits are oiled. Insects entrapped in the oil can also attract songbirds, bats, and small mammals. Hawks and owls in turn become victims when they are attracted by the struggling birds or small mammals. In Wyoming, Service personnel have found waterfowl, songbirds, bats, pronghorn, and deer in oil-covered pits. The sticky nature of oil entraps birds in the pits and they die from exposure and exhaustion. Birds that do manage to escape die from starvation, exposure or the toxic effects of oil ingested during preening. Birds ingesting sublethal doses of oil can experience impaired reproduction.

The draft EA should specify if the 60-acre tailings impoundment will contain oil or sheens at the surface as a result of the containment of contaminated soil and groundwater. If oil and sheens may be present, the draft EA should also specify what measures will be taken to eliminate or reduce the exposure risk to migratory birds and other wildlife. Immediate removal of oil from the impoundment is critical to prevent wildlife mortalities. If immediate removal of oil is not possible, then netting appears to be the most effective method of keeping birds and other wildlife from entering impoundments containing oil and/or sheens. Flagging is not an effective deterrent.

The Migratory Bird Treaty Act (MBTA), 16 United States Code Sections 703-707, prohibits any "take" of migratory birds. The definition of take includes the killing, possessing, or collecting of migratory birds. Migratory birds are listed in the Code of Federal Regulations, Part 50, Section 10.13. Most birds found in Wyoming are listed as migratory birds with the exception of English sparrows, European starlings, rock doves (common pigeons), and birds commonly referred to as upland game birds such as pheasants, chukkers, and grouse. Upland game birds are managed by the Wyoming Game and Fish Department.

All migratory birds killed by coming in contact with exposed oil, or hazardous materials will be considered as birds taken in violation of the MBTA. To prevent violations of the MBTA companies should take actions to insure that migratory birds do not come in contact with oil or hazardous materials. This can be done by use of physical barriers such as netting or closed containers that prevent birds from coming in contact with the oil, or by insuring that no oil is present on pits, tanks, etc. Exposed oil or hazardous material (even as the result of an oversight or equipment malfunction) will place the company at risk of violating the MBTA should a migratory bird be killed. Each violation will be referred to the Office of Law Enforcement for investigation. The maximum

criminal penalty for corporations unlawfully taking a migratory bird is a \$15,000 fine, and/or up to 6 months in jail, for each count.

The draft EA should specify the concentrations of DROs, metals and radionuclides present in the soil and groundwater that will be disposed of in the 60-acre tailings impoundment. Additionally the draft EA should specify what will be done with the contaminated soils and groundwater deposited in the 60-acre tailings impoundment. It is not clear if these materials will remain in the impoundment and, if so, what measures will be taken to ensure that these contaminated materials remain in place and are not released into the environment in the future.

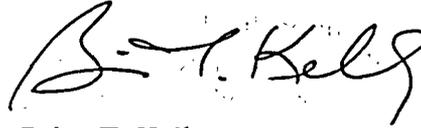
Threatened and Endangered Species: The draft EA states that the proposed action is not expected to impact federally-listed threatened and endangered species as none were identified on site and the activities will occur in an industrial area of the site. The Service has determined that based on the information provided, it is unlikely the proposed work will adversely affect any threatened or endangered species. You may consider this project, as proposed, to be in compliance with the Act. This Project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this Project.

Summary: As presented, the draft EA does not allow us to thoroughly evaluate potential impacts to migratory birds and other wildlife as a result of the proposed action. Again, the following information should be provided in the draft EA to better assess the impacts:

- the potential for migratory bird mortality in the 60-acre tailings impoundment due to exposure to oil and other contaminants; and measures to eliminate or minimize that risk;
- the concentrations of diesel range organics (DROs), metals and radionuclides in contaminated soil and groundwater that will be disposed of in the 60-acre tailings impoundment; and
- the ultimate fate of the contaminated soils and groundwater in the 60-acre impoundment.

If you have any questions regarding our comments please contact Pedro 'Pete' Ramirez of my staff at the letterhead address or phone (307) 772-2374 extension 36.

Sincerely,



Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: WDEQ, LQD Administrator, Cheyenne, WY (R.A. Chancellor)
WDEQ, SHWD Administrator, Cheyenne, WY (D.A. Finley)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)