

**From:** <John\_Cochnar@fws.gov>  
**To:** "Stephen Cohen" <SJC7@nrc.gov>  
**Date:** 10/01/2007 5:36:14 PM  
**Subject:** Re: Crow Butte Resources Environmental Assessment

Attached is the US Fish and Wildlife Service's response to the subject project.

(See attached file: FWS-NE 2008-046 \_Crow Butte\_.pdf)

John Cochnar  
Assistant Nebraska Field Supervisor  
U.S. Fish and Wildlife Service  
Nebraska Ecological Services Field Office  
203 West Second Street  
Grand Island, NE 68801  
(308) 382-6468, Ext. 20  
(308) 384-8835 Fax  
E-mail: John\_Cochnar@fws.gov  
"Where wildlife cannot live, humans will not survive"  
-Herters-

"Stephen Cohen"  
<SJC7@nrc.gov>

08/27/2007 01:59  
PM

To  
<john\_cochnar@fws.gov>  
cc  
<mike\_levalley@fws.gov>  
Subject  
Crow Butte Resources Environmental  
Assessment

Mr. Cochnar:

In July 2007, I sent a draft environmental assessment (EA) to Mr. Steve Anschutz regarding Crow Butte Resources, Inc. (CBR). CBR requested an amendment from the NRC to increase their processing plant throughput at their in situ leach (ISL) uranium recovery facility in Crawford, NE. This plant upgrade will occur by adding equipment to the inside of an existing building; therefore, no outside construction would occur. In the EA, NRC concludes that no impacts to endangered and threatened species would occur because all work would occur inside the existing building. I requested, from FWS, concurrence on this conclusion.

I was informed today that Mr. Anschutz retired and was given your name. I

wanted to again extend the opportunity for FWS to comment on the EA; therefore, I have attached the document and the figures. If you have any questions, please contact at the number or email address below.

Sincerely,

Stephen J. Cohen, PG  
Hydrogeologist  
US Nuclear Regulatory Commission  
Office of Federal and State Materials and  
Environmental Management Programs  
Mailstop T8F5  
Washington, DC 20555-0001  
301-415-7182  
sjc7@nrc.gov[attachment "Draft Upgrade EA.pdf" deleted by John  
Cochnar/R6/FWS/DOI] [attachment "CPP EA FIGURES.pdf" deleted by John  
Cochnar/R6/FWS/DOI]

**Mail Envelope Properties** (47016837.697 : 8 : 50839)

**Subject:** Re: Crow Butte Resources Environmental Assessment  
**Creation Date** 10/01/2007 5:35:16 PM  
**From:** <[John\\_Cochnar@fws.gov](mailto:John_Cochnar@fws.gov)>  
**Created By:** [John\\_Cochnar@fws.gov](mailto:John_Cochnar@fws.gov)

**Recipients**

nrc.gov  
OWGWPO03.HQGWDO01  
SJC7 (Stephen Cohen)

**Post Office**

OWGWPO03.HQGWDO01

**Route**

nrc.gov

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	2961	10/01/2007 5:35:16 PM
FWS-NE 2008-046 _Crow Butte_.pdf		45636
Mime.822	67535	

**Options**

**Expiration Date:** None  
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**ReplyRequested:** No  
**Return Notification:** None

**Concealed Subject:** No  
**Security:** Standard



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

September 28, 2007

**FWS: 2008-046**

Mr. Stephan J. Cohen  
US Nuclear Regulatory Commission  
Office of Federal and State Materials and  
Environmental Management Programs  
Mailstop T8F5  
Washington D.C. 20555-0001

**RE: Crow Butte Resources Environmental Assessment, Box Butte County, Nebraska**

Dear Mr. Cohen:

This responds to your letter dated August 27, 2007, requesting comments from the U.S. Fish and Wildlife Service (Service) regarding the subject project. The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals with are the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), Fish and Wildlife Coordination Act (FWCA) (488 Stat. 401; 16 U.S.C. 661 *et seq.*), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688-688d, as amended), and Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712, as amended). Compliance with all of these statutes and regulations are required for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347). In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote the conservation of fish and wildlife resources for the benefit of the American public.

Please note that the Service's position on a project under the authorities of ESA, BGEPA, MBTA, and NEPA cannot be assumed without our official written response. Pursuant to the "take" provisions under section 9 of ESA; 16 U.S.C. 688 (a and b) of BGEPA; and 16 U.S.C. 703 of MBTA, the project proponent is responsible for compliance with these federal laws regardless of whether the Service is able to respond within your requested time frame.

### **Endangered Species Act (ESA)**

Pursuant to section 7 of ESA, every Federal agency, in consultation or conference with the Service, is required to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any federally listed or proposed species and/or result in the destruction or adverse modification of designated and/or proposed critical habitat. In accordance with section 7(a) (2) of ESA, the lead federal agency should determine if any federally listed threatened or endangered species and/or designated/proposed critical habitat would be directly

and/or indirectly affected by this proposed project. The assessment of potential impacts (direct and indirect) must include an “affect” or “no effect” determination and be presented to the Service in writing. If the Service agrees with the lead federal agency’s determination, this office would provide a letter of concurrence. If federally listed species and/or designated/proposed critical habitat would be adversely affected by this action, the lead federal agency would need to continue section 7 consultation with the Service prior to making any irretrievable or irreversible commitments of resources in support of the proposed airport improvement projects.

Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that any of the federally listed species identified on our web site (<http://mountain-prairie.fws.gov/endspp/CountyLists/NEBRASKA.htm>) would occur in the vicinity of the proposed project. We concur that the proposed project will not adversely affect federally listed threatened and endangered species, or their designated critical habitat. No further section 7 consultation with the Service is necessary unless project plans change or new information becomes available.

#### **Bald and Golden Eagle Protection Act (BGEPA)**

The BGEPA provides for the protection of the bald (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) by prohibition, except under certain specific conditions, the taking, possession, and commercial use of such birds. Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that either the bald or golden eagle would be affected by the proposed project.

#### **Migratory Bird Treaty Act (MBTA)**

Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, stream, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period of April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. The Service further recommends that field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) until such time as construction on the proposed project has been completed.

The Service requests that the following be provided to this office prior to construction proceeding at the proposed project site if the above conditions occur. The purpose of the request

is to assist the project proponent to avoid the unnecessary take of migratory birds and the possible need for law enforcement action:

- a) A copy of any survey(s) for migratory birds done in conjunction with this proposed project, if any. The survey should provide detail in regards to survey methods, date and time of survey, species observed/heard, and location of species observed relative to the proposed project site.
- b) Written description of any avoidance measures implemented at the proposed project site to avoid the take of migratory birds.
- c) Written description of any circumstances where it has been determined by the project proponent that one or more active bird nests cannot be avoided by the planned construction activities.

### **Fish and Wildlife Coordination Act (FWCA)**

The FWCA requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of federal and federally funded, permitted, or licensed water resource developments. The comments in this letter are provided as technical assistance and predevelopment consultation and do not constitute a Service report under the authority of FWCA on any required federal environmental review or permit.

### Wetlands, Streams, and Riparian Habitats

If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Corps of Engineers may be needed. The Service recommends that impacts to wetlands, streams, and riparian areas be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 2:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that stream pattern, profile, and dimension be mitigated at a ratio of no less than 1:1 (stream length and number, pattern, and length of meanders created/restored versus stream length and number, pattern, and length of meanders impacted; sequence and number of pools and riffles created/restored versus sequence and number of pools and riffles impacted). Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaces for acres of riparian habitat impacted) The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.

### **National Wildlife Refuges**

In Nebraska, the Service manages six refuges and one wetland management district under the National Wildlife Refuge System. Based on the information provided, the Service has determined that the proposed project does not appear to impact any of these seven wildlife areas.

Due to budget deficits and reduced staffing in our office, it has become necessary for us to modify the manner in which we respond to formal requests (i.e., received in the mail via the U.S. Postal Service) for information or concurrences regarding the effects of proposed projects on

federal trust fish and wildlife resources. If you cannot submit such request to our office electronically, but must send it to us in the form of a letter, please include a return E-mail address in your letter so that we can provide an electronic response to it. Unless requested otherwise due to special circumstances, we no longer intend to reply on paper, but only through electronic means in order to reduce our costs for postage, mail handling, and clerical support. In the future, if you are requesting information or concurrence from the Service regarding a proposed project, please submit your request electronically to my attention at the following E-mail address: [John\\_Cochnar@fws.gov](mailto:John_Cochnar@fws.gov). Your cooperation and understanding regarding this matter is greatly appreciated.

We appreciate the opportunity to review and comment on the referenced project proposal. If you have any questions regarding our comments, please contact me at the above E-mail address or telephone number (308)382-6468, extension 20.

Sincerely,



John Cochnar  
Assistant Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Kristal Stoner)  
NGPC; Lincoln, NE (Attn: Carey Grell)