

URGEISCEmails

From: C WHITE FACE [bhdefenders@msn.com]
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To: NRCREP Resource
Subject: Re: Uranium Recovery GEIS

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U.S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

NRCREP.Resource@nrc.gov

Re: Uranium Recovery GEIS

Dear Sir:

Please accept our comments on the Nuclear Regulatory Commissions' Draft Uranium Recovery GEIS. Our comments are specifically about the Wyoming East Region (WY-E) and the Nebraska, South Dakota, Wyoming Region (NE-SD-WY). Our comments begin with the section on Historical and Cultural Resources. After reading these initial comments, the reader will understand our concerns with the Draft GEIS.

Historical and Cultural Resources

It is difficult to comment on the Draft GEIS when the gross misinformation in Sections 3.4.8.4.1, Places of Cultural Significance in South Dakota states: "There are no known culturally significant places listed in Butte, Lawrence, Pennington, Custer, or Fall River counties." This same comment holds true for Section 3.4.8.4.2, Places of Cultural Significance in Nebraska, and Section 3.3.8.4 which also states: "As described in Section 3.2.8, there are no known culturally significant places listed in the Wyoming East Uranium Milling Region."

These sections of misinformation are so blatant; it has a tendency to taint the entire document and offers a sense of disingenuousness on the part of the Nuclear Regulatory Commission. We sincerely hope this gross misinformation was just unfortunate and not deliberate. However, this blatant misinformation did color our perception of all the other information in the Draft GEIS and further added to our recommendation that only site-specific environmental studies must be completed on all uranium recovery projects.

To correct the record and the Draft GEIS, there are thousands of 'culturally significant places' in the counties named in South Dakota in the Draft GEIS. The U.S. Forest Service Black Hills National Forest Archaeologists can be consulted for much more information. There are also numerous cultural resources in Northwestern Nebraska and Eastern Wyoming. All of these resources might not necessarily be documented with the state historic preservation office, but the federal archaeologists, as well as tribal historic preservation officers, and other tribal cultural leaders should also be consulted before such generalized statements are made. This is a danger of offering a Generic Environmental Impact Statement.

Furthermore, in our experience with the South Dakota State Historic Preservation Office's staff during the permitting process of some uranium exploratory wells with the SD Board of Minerals and Environment, the SD SHPO was not consulted, as he stated under oath, and someone committed perjury on the permit when it stated that there were no cultural resources in the southern area in question. Under a state court order remanding the approved permit back to the Board, the SD SHPO stated that there were indeed numerous cultural resources in this area that is located in the southern portion of the NE-SD-WY Region of the Draft GEIS.

Therefore, extensive and exhaustive research must be taken in all of these areas of South Dakota, Nebraska, and Wyoming as they do contain innumerable cultural resources which cannot be mitigated or removed. There is no way to replace an archaeological, ancient burial or sacred site. The section on Historical and Cultural Resources cannot be addressed in a generic fashion and must be evaluated in site specific environmental studies.

Land Use Land Ownership

Although the Draft GEIS tries to address the issue of land ownership in these regions, WY-E and NE-SD-WY, there is more information that federal agencies and the American public in general have not been taught. Therefore, our comments include this additional information.

In the Draft GEIS, Page 1-15, Section 1.6.2 Tribal Agencies it is stated that "Consultations with Native American tribes would be conducted in a government-to-government relationship that exists based on applicable federal law and **treaties** (NRC, 2003a) during the ISL licensing process." (Author's emphasis)

The WY-E Region and NE-SD-WY Region are all within the confines of the Fort Laramie Treaty of 1868. The Treaty process of the United States with American Indian nations is established in the Constitution of the United States under Article VI (2) which states:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

On March 3, 1871, the Congress of the United States further passed a law which stated:

"...That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe..."

U.S. Statues at Large, 16:566

The Fort Laramie Treaty of 1868 [15 Stat., 635] was ratified by Congress on Feb. 16, 1869, and proclaimed on Feb. 24, 1869, and falls within the protection of not only the U.S. Constitution but also the March 3rd Act of 1871.

The United States was still a very young nation at the time of the ratification of the Fort Laramie Treaty of 1868. Quoting U.S. Supreme Court Justice, Thurgood Marshall, in *McClanahan v. State Tax Commission*, 1973:

"It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government."

Furthermore, Indian Tribal governments that were illegally created under the 1934 Wheeler-Howard Act, or the Indian Reorganization Act (IRA) as it is more commonly known, cannot address the Treaty issue. They are considered by many Sioux people to be an arm of the American federal government and do not represent the sovereignty of the Great Sioux Nation. Their government-to-government consultation with the NRC or the federal government are the same as a county or state government-to-government consultation and do not represent a nation-to-nation meeting.

The resolution of the land ownership named in these two Regions can only be addressed in an international arena, not by the Congress or the Courts of the United States. Treaties, which are made between two nations, cannot be unilaterally changed or mitigated. Hindering the resolution in an international arena by the United States only adds to and continues the injustice. We are sure the people of the United States, and federal employees including the NRC, once understanding this situation will only want justice for all involved and not wish to continue further this gross iniquity that has governed the relationship of the Great Sioux Nation with the United States. The American public has also been misled by the federal government, particularly those Americans located in these Regions who believe they have private ownership of land.

As all federal employees also take an oath to uphold the Constitution of the United States and the federal laws, it is unlawful for any federal employee to legally pursue any actions in western South Dakota, eastern Wyoming, or northwestern Nebraska until this issue is resolved. These Regions are within the confines of the 1868 Fort Laramie Treaty. Any action by any federal, state, city, or county employee in these Regions is also in violation of the U. S. Constitution and federal law, the March 3rd Act of 1871. We therefore question the legality of the Nuclear Regulatory Commission's authority to make any decisions regarding licensing uranium mining in the WY-E Region and the NE-SD-WY Region.

In order to add our voice and concerns to these issues which have been and continue to affect the people and environment of these Regions, we add the following comments.

Transportation

As the 'yellowcake' will be transported across more than 1,000 miles from these two regions, WY-E and NE-SD-WY, to Illinois, our concern is the lack of emergency response and hazardous material handling training specifically for radioactive material in all of the small towns and rural communities along the routes the trucks will travel. In addition, cleanup of radioactive accidents must be accomplished immediately and the public warned of areas where such accidents have occurred. Not to do so is irresponsible.

Geology and Soils

Our concerns regarding Geology and soils are the number of earthquakes in these Regions. Although small, many earthquakes frequently occur in these regions and will not only harm underground pipes as found with ISL operations, but also produce cracks in aquitards, or increase uplifts which can cause cross-contamination of aquifers. Individual site specific studies will need to take into consideration the number of earthquakes in these regions.

Water Resources

Surface Waters

Both the WY-E Region and the NE-SD-WY Region contain many hundreds of abandoned open-pit uranium mines and prospects which were opened more than 40 years ago in most cases. These abandoned mines and their runoff has contaminated the surface and ground water in these regions. Only site specific environmental studies would determine which areas have been affected by previous mining and to what extent the contamination has reached. From our own studies, and studies by the state of SD, it is known that uranium and radio nuclides are traveling from Wyoming into South Dakota in the Cheyenne River. Our studies further indicated that radioactive contamination is also entering the Missouri River through the Grand River. There are more than 89 abandoned uranium mines and prospects that runoff into the Grand River. Without a doubt, this radioactive contamination has reached the Mississippi River in the last 40 years. How far south has it traveled? How is it affecting the mouth of the Mississippi at the Gulf?

A report by Webb, Davis, and Hodge, in Rare Earth Elements at Abandoned Uranium Mines in the Southern Black Hills of South Dakota states "Potential exists for ground-water contamination of the local aquifer system. The nearby Cheyenne river is a hydraulic sink for the local, shallow ground water in the alluvium. Surface runoff patterns, surface and ground water quality, and flow patterns have been adversely affected by both open-pit and underground mines. No measures were taken during the early mining operations to prevent degradation of water quality. Surface-water runoff from the mine sites has also increased because of the lack of vegetative cover. Mines that are above the water table often act as sinks to collect runoff. Much of the runoff flows down-gradient from the mines into stock ponds."

How many abandoned open pit mines are in the WY-E Region? Does the Wyoming Department of Environmental Quality even know the answer? How is this affecting both surface and ground water? How is this affecting the local ranching community? Again only site specific environmental analysis can answer these questions.

Groundwater Excursions

Regarding the WY-E Region, the Wyoming Department of Environmental Quality at a public meeting in 2008 said that it does not know the number of uranium exploratory wells that were drilled in the past. However, in the NE-SD-WY Region, there already exist more than 7,000 uranium exploratory wells from past exploration. There has already been cross-contamination of some of the aquifers. As sated in a Report given by the Tennessee Valley Authority in May, 1980, authored by J.M. Boggs, and A.M. Jenkins, regarding two aquifers in the southern SD portion, "The test results indicate that the two aquifers are hydrologically connected via: (1) general leakage through the Fuson shale; and (2) direct pathways; probably in the form of numerous old (pre-TVA) unplugged exploration boreholes." How many other aquifers in these Regions have been cross-contaminated by previous exploratory bore holes? Site specific environmental studies would be the only way to determine cross-contamination.

Furthermore, how would it be possible to determine baseline aquifer information and monitor excursions in these regions due to previous cross contamination? Monitoring excursions does not mean “stopping” the excursions. In all of these regions, water is at a premium and excursions will only add to the current problems of cross-contamination. Because of the problems caused by cross-contamination, there would be no way to adequately and accurately assess the composition of the aquifers. No further exploration wells and particularly no ISL operations should be allowed until all the old, exploratory bore-holes or wells are filled and plugged, and the aquifers stabilized. Again this requires site-specific analyses and study.

Conflict of Interest

Section 2.2 Pre-Construction on page 2-6 of the Draft GEIS states: “Applicants are to determine baseline water quality for both the production zone and for adjacent un-mineralized zones (NRC, 2003a).” Although this procedure has been used in the past for uranium mining, and is now used especially with ISL uranium mining, it raises the question of a Conflict of Interest. The applicant should be required to amass baseline water quality data but should not be the one collecting water samples. An independent entity not associated with the mining company, such as a university, should be hired to determine baseline water quality data.

Meteorology, Climatology, and Air Quality

Meteorology and Climatology concerns should also include data on tornadoes. Both the WY-E and the NE-SD-WY have areas that are more subject to tornadoes than others. If an ISL facility is built in a tornado prone area, the consequences must also be considered. This would also include safety precautions for evaporation ponds and reflects on the character of air quality.

As a Class I Air Shed, Wind Cave National Park is located within the NE-SD-WY Region, studies should now be conducted for baseline information on air quality. Air quality studies should also be undertaken for the Pine Ridge Indian Reservation which is the most populated area to receive wind carried particles

whether from dust generated in construction, operation, or from evaporation from holding ponds. How fast do dust particles including microscopic particles travel is a question that must be answered and also requires further study for these Regions.

Environmental Justice Analysis

On page 6-2, the radius stated for facilities located in a rural area is 4 miles. This designation is far too short due to contamination traveling in air and water. The speed of travel of airborne particles, in surface and ground water must be studied and taken into consideration prior to the building or expansion of any uranium facility.

Conclusion

In all endeavors of government, the public benefit must be the guiding principle. No place in this Draft GEIS has the public benefit been addressed other than in monetary terms. The public that benefits from clean air and water, from the care given to endangered and threatened species, from the respect and access to sacred sites, to name a few, are all part of the public benefit. Monetary considerations should not be the overriding value guiding any endeavor that affects the public.

In conclusion, from our concerns as stated in these comments, only comprehensive and site specific environmental studies for each proposed uranium recovery operation must be completed due to the hazardous, long-term, and far reaching effects of the disturbance and use of uranium, whether in an In Situ Leach operation or the more traditional mining operation.

Respectfully submitted by,

Charmaine White Face, Coordinator

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