

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW



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POWDER RIVER BASIN
Resource Council

To: Steve Cohen From: Shannon Anderson

Fax: 301-492-3444 Date: _____

Phone: _____ Pages: 6 (Including Cover Sheet)

Re: Docket NRC-2009-0040- CC:

9060

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•Comments:

See attached comments.

11/09/09

74 FR 57712

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VIA ELECTRONIC MAIL & FACSIMILE

December 9, 2009

Stephen Cohen
 Team Leader, Uranium Recovery Licensing Branch
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555
 stephen.cohen@nrc.gov
 Fax: 301-492-3446

RE: Draft Environmental Assessment for Exemption Request for Lost Creek ISR, LLC, Sweetwater County, WY, Docket ID NRC-2009-0040-9068, 74 Fed. Reg. 57712, *et seq.*

Dear Mr. Cohen:

The Powder River Basin Resource Council thanks you for the opportunity to submit comments on the draft Environmental Assessment for a proposed exemption from the commencement of construction requirements in 10 C.F.R. § 40.32(e) to Lost Creek ISR, LLC.

As we stated in comments to you dated May 11, 2009 regarding a regulatory issue summary on the topic, our members who live near proposed ISL facilities are very concerned about the implications of uranium companies being allowed to construct parts of ISL facilities prior to obtaining a license from the NRC. We believe that allowing companies to proceed with construction activities without a license will create significant impacts to public health and the environment and would subvert the NEPA process the NRC must comply with when issuing a license.

As identified in the Federal Register notice for the environmental assessment, Lost Creek ISR, LLC ("the company") submitted an application for a NRC license on March 28, 2008 and that application "is still under NRC review." Now the company, apparently upset with the time it has taken to receive a license,¹ has asked for an exemption from the commencement of construction requirements to allow them to conduct "certain site preparation activities" prior to obtaining a license. These activities would include:

1. "Leveling and surfacing of the area around the plant and maintenance building"

¹ Of course, the company should understand that one of the main reasons it has taken so long to get a license is because of the need to respond to various requests for additional information from NRC staff. Also, the license issuance is still within a two year time period that NRC staff has publicly stated as the goal for these licenses. The application is lengthy and complicated and NRC staff should not be rushed into issuing a license before all of the technical and environmental questions are answered.

2. "Maintenance building construction as approved by the NRC staff"
3. "Install[ation] of household septic systems for the plant and maintenance buildings"
4. "Install[ation] of fence around the plant and building area"
5. "Upgrad[ing] existing road access...to the plant"
6. "Install[ation] [of] fence for early wellfield area"
7. "Install[ation] [of] power line to the plant and maintenance buildings and drillers shed."
8. "Construct[ion] [of] a drillers shed and staging area."

We offer the following comments on the draft environmental assessment (EA) analyzing the impacts of approving these activities.

Purpose and Need Statement & Proposed Alternatives

The purpose and need statement offered by the NRC is simply that "the Applicant seeks permission." No rationale is offered for the permission and NRC has failed in its NEPA duties to detail why permission must be granted. As we have explained in various comments to the NRC, including comments on the Generic Environmental Impact Statement for ISL facilities, the purpose and need statement is not a mere formality. It is the basis from which an agency can develop a range of reasonable alternatives required by NEPA. If the NRC proposes to authorize whatever the company wants (outside of those activities that the agency is unable to authorize because of legal requirements), NRC is not fulfilling its requirements under NEPA to demonstrate a *public* need for the agency action and will be unable to develop a reasonable range of alternatives to satisfy that *public* need.

In fact, this is the case in the draft EA. NRC offers only two alternatives: "granting the request" and "not granting the request." Clearly, NRC has failed in its NEPA duties to demonstrate the purpose and need for the agency action and develop a reasonable range of alternatives. The final EA needs to do more and specifically demonstrate the *public* need for this agency action.

Coordination & Consultation with other Agencies

NRC states that "the staff plans to condition any exemption approval so as to protect endangered species and cultural and historic resources from the effects of site preparation activities." 74 Fed. Reg. 57714. However, the NRC states that it is "currently consulting" with agencies charged with those duties. The consultation process must be complete before the final EA is issued and any comments those agencies have regarding potential impacts to those resources must be integrated into the final document.

Additionally, we believe consultation with BLM and the Wyoming Game & Fish Department (WGFD) is particularly important. As BLM is well aware, this project falls within a sage-grouse "core area" designated by the Governor of Wyoming's Executive Order. Any uranium development in the area could be significantly curtailed as a result of the Executive Order and WGFD guidance (see attached). We believe this consultation must be complete before the final EA as the authorized activities will impact surface land, fragmenting habitat through construction of buildings and fences, and also create noise and other disturbance for local wildlife, including sage-grouse. In particular, authorizing construction of a power line (presumably overhead) is in direct conflict with WGFD recommendations.

Failure to Disclose Impacts of Authorized Activities

The draft EA states "The impacts of all site preparation activities will be evaluated as cumulative impacts in the supplemental environmental impact statement (SEIS) being prepared for this site." The draft EA does not disclose **any** of the impacts of the authorized site preparation activities in this NEPA document. This is a blatant failure to comply with NEPA's requirements and must be corrected in the final EA. NRC cannot abdicate its NEPA responsibilities only to comply with them at a later date.

Additionally, approving the pre-licensing activities *without* first determining the impacts of that approval may prejudice NRC's future review under NEPA and the application process because a commitment of resources will have the effect of making it more difficult for the NRC to deny a license or impose different conditions because of the equities involved. It is for these reasons that NEPA requires environmental review "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b); *See also Id.* § 1500.5(f) (requiring NEPA review "early in the process"); *Id.* § 1501.2 ("Apply NEPA *early* in the process") (emphasis added); *Id.* § 1502.5 (NEPA review must be completed "early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.").

At the very least, a NEPA document is a pre-action disclosure document and to comply with this purpose NRC must actually disclose the environmental impacts of its action. As the D.C. Circuit has explained, "NEPA requires an agency to evaluate the environmental effects of its action at the point of commitment . . . to insure that the agency considers all possible courses of action and assesses the environmental consequences of each proposed action." *Sierra Club v. Peterson*, 717 F.2d at 1415 (emphasis added).

As we stated in our comments on the regulatory issue summary:

The NRC license application process is the time to consider all issues upfront in order to avoid impacts, develop mitigation measures, and apply best practices. Allowing industry to construct facilities prior to receiving a license will create a forgone conclusion that facilities will be licensed as constructed. This takes away the opportunity of NRC staff and the public to participate in the process and work with industry to properly mitigate and avoid impacts to water, land, and air resources.

Thank you for your time and consideration of these comments.

Sincerely,

/s/ 

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7/31/08

Stipulations for Development in Core Sage Grouse Population Areas.

Goal for stipulations is to maintain existing habitat function by permitting development activities that will not cause declines in sage grouse populations.

A. Oil and Gas Lease Stipulations:

1. One well pad per 640 acres. No more than 11 well pads within 1.9 miles of the perimeter of occupied sage grouse leks with densities not to exceed 1 pad per 640 acres (Holloran 2005). Clustering of well pads may be considered and approved on a case-by-case basis.
2. Surface disturbance will be limited to < 5% of sagebrush habitat per 640 acres. Distribution of disturbance may be considered and approved on a case-by-case basis.
3. No Surface Occupancy within 0.6 mi of the perimeter of occupied sage grouse leks (Carr 1967, Wallestad and Schladweiler 1974, Rothenmaier 1979, Emmons 1980, Schoenberg 1982 as analyzed by Colorado Greater Sage Grouse Conservation Plan Steering Committee 2008).
4. Locate main haul trunk roads used to transport production and/or waste products to a centralized facility or market point \geq 1.9 miles from the perimeter of occupied sage grouse leks (Lyon and Anderson 2003). Locate other roads used to provide facility site access and maintenance \geq 0.6 miles from the perimeter of occupied sage grouse leks. Construct roads to minimum design standards needed for production activities while minimizing surface disturbance and traffic.
5. Locate electrical supply lines at least 750 m (0.5 miles) from the perimeter of occupied sage grouse leks. Design electrical lines to be raptor-proof by installing anti-perching devices, or burying them when possible.
6. Exploration and development activity will be allowed from July 1 to March 14. In Core Population Areas that also contain sage grouse winter concentration areas,

exploration and development activity will be allowed only from July 1 to December 1 in the winter concentration areas.

7. Limit noise sources to 10 dBA above natural, ambient noise (~39 dBA) measured at the perimeter of a lek from March 1 to May 15 (Inglefinger 2001, Nicholoff 2003).

B. Wind Energy

There is no published research on specific impacts of wind energy on sage grouse. Wind energy facilities should be designed to reduce habitat fragmentation and mortality to sage grouse. Tubular tower designs to reduce raptor perches and noise reduction to minimize disturbance to nesting birds are encouraged. Design criteria for these projects should include minimizing the facility footprint (including the road network required to service the generators) in sage-grouse habitat. Leasing in Core Population Areas should only be approved through a review process as described below. Wind farm permitting should include a requirement to acquire data on sage grouse response to development and operation.

C. In-situ Uranium

There is no published research on specific impacts on sage grouse. Since development scenarios (well density, roads, activity) are similar to oil and gas, assume impacts are similar to oil and gas development. Use same stipulations used for oil and gas. In-situ uranium permitting should include a requirement to acquire data on sage grouse response to development and operation.

D. Sagebrush treatment

Sagebrush eradication projects should not be authorized. Treatments to enhance sagebrush/grassland may be considered through the review process described below.