



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Denver Federal Center, Building 67, Room 118
Post Office Box 25007 (D-108)
Denver, Colorado 80225-0007



January 27, 2010

9043.1
ER 09/1239

1/27/2010
RDB Beard

Michael T. Lesar, Chief
Rulemaking and Directives Branch
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

12/11/09
74FR 65806
(6)

RE: Comments on Draft Environmental Impact Statement (DEIS) for the **Moore Ranch ISR Project in Campbell County, WY**, Supplement to the Generic EIS for In-Situ Leach Uranium Milling Facilities DEIS, Supplement 1, for the Moore Ranch In-situ Uranium Recovery Project

Dear Mr. Lesar:

The U.S. Department of the Interior has reviewed the subject environmental document, and provides the following comments.

GENERAL COMMENTS

Public Lands

The Bureau of Land Management (BLM) appreciates the opportunity to review and provide comment regarding the subject ER 09/1239. However, the BLM has no authority with respect to the proposed Moore Ranch uranium ISR project as it would be located on private surface. With surface owner consent, the uranium operator would not need to file a plan of operation pursuant to the 43 CFR 3809 regulations on lands patented under the Stock Raising Homestead Act.

The BLM Wyoming State Office commented on the Draft Generic Environmental Impact Statement (EIS), NUREG-1910 in a letter dated November 7, 2008, (noted as commenter 1173 in Appendix G of NUREG-1910) that the BLM administers all minerals under SRHA patented lands and that multiple mineral development conflicts, particularly between in-situ uranium recovery and oil and gas operations, should be avoided on such split estate lands. About one-half the land within the proposed Moore Ranch project is split estate where all minerals are reserved to the U.S. Government.

SONSI Review Complete
Memorandum = ADM-013

E-RIDS = ADM-03
Addr = B. Shroff (bfs2)

The Nuclear Regulatory Commission (NRC) did not recognize BLM as a formal National Environmental Policy Agency (NEPA) cooperating agency for developing the subject environmental document. However, the BLM and NRC have since entered into a Memorandum of Understanding (MOU) (see January 8, 2010, Federal Register notice <http://edocket.access.gpo.gov/2010/pdf/2010-116.pdf>) to work closely in review of uranium ISR projects in States where the NRC has primacy for licensing and the BLM has administrative responsibilities for surface management and/or minerals. The MOU will improve the interagency communications, facilitate the sharing of special expertise and information, and coordinate the preparation of studies, reports and environmental documents.

Mountain Plover

The U.S. Fish and Wildlife Service (USFWS) intends to reopen the comment period in April 2010, on the proposed rule to list the mountain plover as a threatened species (67 FR 72396, December 5, 2002). Following the comment period and USFWS' completion of the new finding, the mountain plover may be proposed for listing. Section 7(a)(4) of the Endangered Species Act (ESA), requires Federal agencies to confer with the USFWS on any action that is likely to jeopardize the continued existence of any species proposed for listing. Federal action agencies also may request a conference on any proposed action that may affect a species proposed for listing.

We encourage project planners to develop and implement protective measures should mountain plovers occur within project areas. Measures to protect the mountain plover from further decline may include: (1) avoidance of suitable habitat during the plover nesting season (April 10 through July 10); (2) prohibition of ground disturbing activities in prairie dog towns; and (3) prohibition of any permanent above ground structures that may provide perches for avian predators or deter plovers from using preferred habitat. Suitable habitat for nesting mountain plovers includes grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. We strongly encourage you to develop protective measures with an assurance of implementation should mountain plovers be found within the project areas.

SPECIFIC COMMENTS

Page 3-26, Section 3.6.1.1 Vegetation, Line 40: The Draft EIS states that, "no threatened or endangered plant species were encountered within the proposed license area" and that baseline vegetation and wetland surveys were conducted by the applicant during the spring/summer of 2007. Energy Metals Corporation (EMC) (2007a) provides a detailed description of the survey results.

Because a copy of the threatened and endangered species clearance surveys was not included in the Draft EIS, we are not able to determine if they were completed in accordance with USFWS recommended survey guidelines. We recommend that all threatened and endangered species clearance surveys be included in an appendix to the Final EIS.

Page 3-29, Section 3.6.1.2.2 Avian Species, Raptors Line 4: We recommend the NRC and their applicant work with the USFWS to develop a migratory bird conservation plan for this project. The Draft EIS identifies suitable habitat for several raptor species on the proposed Moore Ranch Project and within a 1.6-km (1-mi) perimeter of the site. Nests have been observed for the ferruginous hawk, red-tailed hawk, great horned owl, and Swainson's hawk, but not for the other raptors based on BLM data (BLM, 2007). Thirty-six raptor nest sites have been identified within the vicinity of the proposed Moore Ranch Project since 2003 (EMC, 2007a). Nineteen nest sites were located within the proposed Moore Ranch Project and the remaining 17 were located around the perimeter of the site (EMC 2007a).

We also recommend that the NRC and applicant contact the USFWS to discuss the likely impacts of the project on eagles. If project activities are likely to result in take of bald or golden eagles or nests, a permit from the USFWS would be required. If a permit to take eagles is sought, the process may take as much as 3 to 6 months so consultation should begin as soon as possible before the project start date.

The Final EIS should explain that, although bald eagles were removed from the list of threatened and endangered species under the ESA, protection of both bald and golden eagles and their nests is still provided by 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). Permits are required if the project (e.g., construction, operating, or maintenance activities) will take eagles or take active or inactive eagle nests. "Take" is defined to include pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb.

Page 3-30, Section 3.6.3 Protected Species, Threatened and Endangered Species: This section contains species descriptions for species listed as endangered, threatened, and proposed, for BLM sensitive species and migratory birds. The section does not segregate the species descriptions according to their protected status and as such is difficult to follow. We recommend grouping the species descriptions according to their protected status. For example, species can be grouped under the following subtitles: threatened and endangered species, species proposed for listing, species listed by the BLM as sensitive species, and migratory birds.

Page 4-40 Section 4.6.1.1.4 Impacts to Threatened and Endangered Species: The Draft EIS indicates that bald eagle roosts do not occur within the Moore Ranch Unit boundary based on information obtained in 2006 and 2007 and that the "nearest documented winter roost is along the Powder River, approximately 16 km (10 mi) to the northwest." However, recent information provided by the BLM Buffalo Field Office indicates that a bald eagle communal roost occurs within the Nichols Ranch Unit. The bald eagle roost on the Nichols Ranch Unit is approximately 8.5 miles from the Moore Ranch Unit boundary. Bald eagle roosting activity on the Nichols Ranch Unit include 7 bald eagles observed on December 10, 2007, 5 eagles on December 11, 2008, and 13 eagles on February 24, 2009. Information in the Final EIS should be expanded and clarified accordingly.

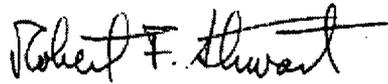
The BLM's *All Day Environmental Assessment* (page 20), may be referenced for bald eagle winter roosting information on the Nichols Ranch Unit, and may be accessed from the Buffalo Field Office's website by selecting "NEPA Documents" (along the right-hand side of the page),

then selecting FY 2009, Yates, and then selecting the *All Day Environmental Assessment*. You also can navigate to:

<<http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/bfodocs/pods/yates.Par.84132.File.dat/All%20Day_EA.pdf>>

We appreciate the opportunity to comment on the Draft EIS. If you have questions about BLM comments concerning public lands, please contact Mr. Pete Sokolosky in the BLM Wyoming State Office in Cheyenne at (307) 775-6261. If you have questions regarding comments on fish and wildlife resources, please contact Mr. Pete Ramirez in the USFWS Ecological Services Field Office in Cheyenne at (307) 772-2374 extension 236.

Sincerely,

A handwritten signature in black ink that reads "Robert F. Stewart". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Robert F. Stewart
Regional Environmental Officer