

Mendiola, Doris

To: Chris Pugsley
Subject: RE: National Mining Association Comments on Draft SEISs for Lost Creek, Moore Ranch, and Nichols Ranch ISR Projects

From: Chris Pugsley [mailto:cpugsley@athompsonlaw.com]
Sent: Wednesday, March 03, 2010 3:25 PM
To: LostCreekISRSEIS Resource; MooreRanchISRSEIS Resource; NicholsRanchISRSEIS Resource
Cc: Sweeney,Katie; Gallagher, Carol
Subject: National Mining Association Comments on Draft SEISs for Lost Creek, Moore Ranch, and Nichols Ranch ISR Projects

Dear Sir or Madam:

Please find attached for filing a PDF copy of the National Mining Association's comments on the Draft Supplemental Environmental Impact Statements for the Lost Creek, Moore Ranch, and Nichols Ranch ISR projects. If you have any questions, please do not hesitate to contact me at the number listed below. Thank you for your time and cooperation on this matter.

Christopher S. Pugsley, Esq.
Partner
Thompson & Pugsley, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036
(202) 496-0780
(fax) (202) 496-0783
(cell) (202) 870-3387
cpugsley@athompsonlaw.com

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I. Yu (Iwy1)
B. Shroff (bfs2)

THOMPSON & SIMMONS, PLLC.

1225 19th Street, N.W., Suite 300
Washington, D. C. 20036
202.496.0780/202.496.9111
Fax: 202.496.0783

440 Meadow Street
Waterbury, Connecticut 06702

ANTHONY J. THOMPSON
ajthompson@athompsonlaw.com
Admitted in D.C. and Virginia

CHARLES T. SIMMONS
csimmons@athompsonlaw.com
Admitted in CT and D.C.

CHRISTOPHER S. PUGSLEY
cpugsley@athompsonlaw.com
Admitted in MD

March 3, 2010

VIA ELECTRONIC AND FIRST CLASS MAIL

United States Nuclear Regulatory Commission
Attn: Michael Lesar, Chief
Rulemaking and Directives Branch
Mail Stop TWB-05-B01
Washington, DC 20555-0001

**Re: NUREG-1910, Supplements 1-3, Lost Creek, Moore Ranch, and Nichols Ranch
Draft SEISs, Comments
Docket Nos: NRC-2008-0391, NRC-2009-0364, and NRC-2008-0339**

Dear Mr. Lesar:

By this letter, the National Mining Association (NMA) hereby submits these general comments on the United States Nuclear Regulatory Commission's (NRC's) three draft supplemental environmental impact statements (DSEISs) prepared as appendices to NRC's NUREG-1910 entitled Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (NUREG-1910). NMA is the national trade association representing the producers of most of America's coal, metals, including uranium, industrial and agricultural minerals; the manufactures of mining and mineral processing machinery, equipment and supplies; and engineering, transportation, financial and other businesses that serve the mining industry. NMA's uranium recovery members include current conventional and/or in situ leach uranium recovery (ISL) licensees, as well as potential future conventional and/or ISL license applicants.

COMMENTS

1. Each DSEIS provides a "preliminary recommendation" with respect to whether the license applicant should be issued a combined source and 11e.(2) byproduct material license. NMA believes that the language in each DSEIS is inadequate and should be re-worded, as it does not provide a clear understanding that the environmental review of each license application has resulted in a finding that such a license should be issued in each case. NRC has an existing environmental impact statement for an ISL facility containing language that is satisfactory. For example, page xxi of NUREG-1508 entitled *Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico* contains language regarding NRC Staff's final environmental review determination:

“On the basis of its independent review, the NRC staff concludes that the potential significant impacts of the proposed project can be mitigated, and that HRI should be issued a combined source and 11e.(2) by-product material license from NRC....However, the license...should be conditioned on the commitments made by HRI in its license application and related submittals...and the various NRC staff mitigation requirements and recommendations....”

NMA suggests that NRC Staff adopt this language, or language similar to this, prior to issuing each SEIS in final form.

2. As a general proposition, NRC Staff should be clear and consistent when describing certain aspects of each SEIS with respect to the use of terms and the explanation of how particular regulations or policies apply to ISL facilities. The following list provides several examples of this point:
 - a. NRC Staff should not refer to the license to be issued to each license applicant as a “source material license.” This term does not accurately reflect the Atomic Energy Act of 1954 (AEA) materials that will be managed at ISR facilities. All such references should be changed to either “uranium recovery license” or “combined source and 11e.(2) byproduct material license.”
 - b. NRC Staff should make clear in each Final SEIS that the terms “ISL” and “ISR” can be used interchangeably as some transition to the use of “ISR” has been a recent occurrence.
 - c. In a number of locations in each Final SEIS, NRC refers to the proposed licensed operation as “mining.” If NRC intends to continue to exert regulatory authority over actions in ISL wellfields, NRC Staff should consistently refer to this process as “milling.”
 - d. NRC Staff should use the term “proposed” throughout each Final SEIS when referring to actions to be taken at each ISL site. NRC Staff should also use the term “potential” throughout each Final SEIS when referring to impacts associated with ISL operations. Further, when discussing “potential impacts,” NRC Staff should use the word “could” and not “would” when discussing such impacts as it is not definite that such impacts will occur during licensed operations.
 - e. NRC regulations require that ISL operators restore the surface at each ISL facility for unrestricted use. There has been considerable confusion on the part of interested stakeholders regarding the difference between a conventional uranium mill tailings facility, which is subject to 10 CFR Part 40, Appendix A long-term surveillance and monitoring (LTSM) requirements, and the tailings impoundment portion that is not available for unrestricted use and ISL facilities which are released for unrestricted use at the time of license termination. As a result, NRC Staff should consistently use the term “unrestricted use” throughout each Final SEIS when referring to completed surface reclamation activities.

f. NRC Staff needs to make sure that all Final SEIS charts and tables detailing applications or requests that have been or will be filed by a license applicant are updated as several of the DSEIS tables and charts are not up-to-date. Further, there are several references to a proposed Memorandum of Understanding (MOU) between the Bureau of Land Management (BLM) and NRC. NRC Staff should update these references to reflect the fact that the MOU has been finalized.

3. NRC Staff should more thoroughly explain the licensing process for the benefit of those who are not familiar with NRC's approach to licensing AEA facilities such as ISL projects. Accordingly, each Final SEIS will be prepared after reviewing a license applicant's *entire* license application, including its technical and environmental reports, and after consulting with NRC technical staff during the joint technical/safety review. Each DSEIS contains language intimating that it was prepared wholly independent of the technical aspects of the license applications and NRC Staff's technical review. This could be misleading since NMA believes that review of most, if not all, site-specific aspects of an ISL facility, whether technical or environmental in nature, are inextricably linked. For example, this must be the case since, if it were not, Section 4 impact analyses would not assess issues such as "public and occupational health."

4. NRC should revise its discussion of its statutory mission under the AEA, as amended, in the introductory sections of each Final SEIS. This is critical since, as noted above, interested stakeholders and other members of the public who may not be familiar with NRC licensing processes can be made aware of how the Commission approaches licensing to avoid confusion. For example, NRC is an independent regulatory agency and, as such, approaches agency actions in a different manner than agencies such as the United States Environmental Protection Agency (EPA). To assist in this endeavor, NMA suggests that NRC replace all references to its statutory mission under the AEA with the following language:

"NRC must license facilities, including ISR operations, in accordance with the AEA and the Commission's implementing regulations to protect public health and safety from potential radiological and non-radiological hazards associated with AEA materials and operations."

In addition, as noted above, demonstrating the relationship of all aspects of NRC's licensing process is critical to the public's understanding.

5. NRC's discussion of "aquifer exemptions" should be more detailed as it is a critical aspect of the ISL process. There have been several misconceptions on the part of interested stakeholders regarding the water quality in an ISL facility's recovery zone prior to the commencement of licensed ISL operations. By statute (the Safe Drinking Water Act (SDWA)), an ISL operator cannot engage in licensed ISL operations in an aquifer that serves, or can serve, as a public source of drinking water. As a result, an ISL operator is required to obtain an aquifer exemption prior to commencing any licensed ISL operation. NRC needs to emphasize in each Final SEIS that, by definition, an aquifer that is exempted means that it cannot now, nor ever in the future, serve as a source of public drinking water. Thus, NRC needs to communicate to

members of the public that ISL operations are never conducted in so-called “pristine drinking water sources.”

6. NRC Staff’s brief discussion of the regulatory programs that are applicable to ISL operations outside the context of the AEA should be expanded wherever appropriate to demonstrate how highly regulated ISL operations are in the United States. NRC also should be more specific as to all of the regulatory programs that apply to such operations and should not limit the discussion in each Final SEIS to 10 CFR Part 51 National Environmental Policy Act (NEPA) regulations. On many occasions, it has been stated that ISL operations are subject to the AEA and the National Environmental Policy Act (NEPA) without mention of other statutory programs such as the SDWA (aquifer exemptions and underground injection control (UIC) permits) and the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA), as implemented in accordance with NRC Staff responsibilities there under, as well as various State programs applicable to mining. NRC’s Final SEIS evaluations should make clear to members of the public and interested stakeholders how extensive the regulatory regime is for ISL operations so that there is no confusion with respect to the fact that governmental oversight ensures that public health and safety and the environment are adequately protected. In addition to the multiple agencies that oversee ISR operations, these overlapping and cross-jurisdictional regulatory regimes often result in two, or even three, layers of financial assurance for each ISR project that more than assures that adequate site-specific decommissioning and decontamination (D&D) will be performed.

7. NRC Staff’s discussion of waste management in each Final SEIS needs to be reformatted so that members of the public and interested stakeholders clearly understand the difference between wastes at ISL facilities that are classified as 11e.(2) byproduct material and wastes that are not. NMA suggests that NRC Staff adopt the format provided by its Generic Environmental Report (GER) that was submitted as comments on NUREG-1910 and that separates each solid and liquid waste stream into categories of “11e.(2) byproduct material” and “non-11e.(2) byproduct material.” Given that each waste stream is handled in a different manner based primarily on this classification, NRC Staff should adopt this format for each waste management section. As written in the DSEIS, there is the potential for misunderstanding with respect to liquid and/or solid non-radiological materials that are, in fact, 11e.(2) byproduct material.

8. NRC Staff’s description of the licensing process in each Final SEIS should be expanded to include more information regarding public participation processes, development of NUREG-1910, drafting and completion of the Safety Evaluation Report (SER), and license applicant meetings with NRC Staff. A more detailed description of these items will provide members of the public and interested stakeholders with a better understanding of how focused NRC’s licensing process is on transparency and public participation and how extensive the process is on the issues of protecting public health and safety and the environment on a site-specific basis. This is critical because, prior to the development of NUREG-1910, the major concern raised by interested stakeholders was the potential lack of site-specific technical and environmental review. By providing such stakeholders with this information, NRC Staff can address this concern in a more effective manner.

9. NRC's DSEISs are structured to indicate that aquifer restoration, which is a sequential process, is separate and distinct from the surface reclamation stage of an ISL facility's lifecycle. NRC regulations require that an ISL operator conduct wellfield-specific restoration concurrently with the development of new wellfields for uranium recovery. However, surface reclamation does not occur until the very end of the ISR project lifecycle and after the uranium recovery process and groundwater restoration is complete. Accordingly, there is considerable confusion as to whether or not 10 CFR § 40.42 timeliness in decommissioning and alternative schedule requirements can be applied to groundwater restoration. Indeed, there is some further confusion about the requirement for a D&D plan within twelve months after licensed operations are concluded pursuant to 10 CFR § 40.42, and the Commission's requirement set forth in the HRI administrative litigation that a restoration action plan (RAP), which includes both financial assurance cost estimates for groundwater restoration and D&D, be approved by NRC Staff prior to the issuance of an ISL license, because licensees are required to post an NRC-approved financial assurance instrument prior to commencement of licensed operations.

10. NRC should be more specific in each Final SEIS as to when license conditions are imposed on its licensees with respect to control (e.g., elimination or mitigation of a potential impact) so that members of the public and interested stakeholders are aware that NRC is regulating that activity. For example, even though license applicants typically propose to commit to such requirements, NRC traditionally imposes a license condition on ISL operators regarding an ongoing responsibility to monitor for unidentified historic and cultural resources during site construction and operation and, when such resources are identified, to cease operations for appropriate consultations. However, there is no discussion in each DSEIS regarding that approach. Given that historic and cultural resource preservation is a critical issue for all uranium recovery operations, NMA believes that NRC should be more specific on this issue and on all other issues for which license conditions are traditionally imposed to convey this message to interested stakeholders and other members of the public.

11. NRC should be specific in each Final SEIS as to what their policy is going to be regarding review and approval of wellfield packages. The language of each DSEIS appears to indicate that NRC Staff's policy will be to review and approve *all* wellfield packages. However, industry was under the impression that NRC Staff would review and approve the initial wellfield packages until it becomes more familiar with the corporate structure and operation of each licensee. As a general matter, NMA reiterates that review and approval of *all* wellfield packages is contrary and detrimental to the Commission's policy supporting performance-based licensing and that NRC Staff should continue to allow licensee Safety and Environmental Review Panels (SERP) to review and approve wellfield packages under traditional performance-based license conditions as utilized in the past. In the event NRC Staff insists that some initial agency review and approval is required, this process should be strictly limited to the first wellfield package; otherwise, NRC Staff is invalidating Commission policy *sua sponte*. In addition, it is worth noting that, with respect to projects in the State of Wyoming, the Wyoming Department of Environmental Quality (WDEQ) conducts detailed reviews of all wellfield packages for ISR facilities. NRC's suggested reviews of one or multiple wellfield packages constitutes nothing more than unnecessary duplicative review.

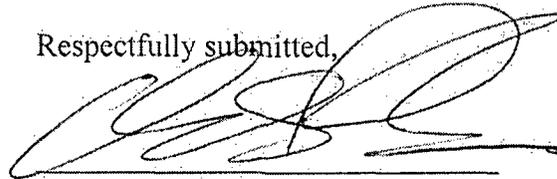
12. NRC should be more specific as to what technologies and processes are employed at ISL facilities that provide additional protection of public and occupational health and safety. For example, most ISL facilities utilize downflow IX columns and vacuum dryers, both of which provide additional protections by limiting or eliminating potential public or worker exposure to radon and yellowcake dust. These points should be emphasized when demonstrating that a proposed ISL facility is adequately protective of public health and safety.

13. Each DSEIS contains a cursory discussion of financial assurance that needs to be much more detailed. Financial assurance is a key component of ISL facility licensing and has been a contentious issue in the past, including the aforementioned HRI litigation. NRC's discussion does not properly identify the types of financial assurance instruments available to licensees, how financial assurance cost estimates are developed, when a financial assurance cost estimate needs to be approved and posted with the agency, and when it is to be updated. Financial assurance is an excellent example of a mitigation measure to protect against a licensee's potential financial difficulties. While the description is sufficient for the purposes of these DSEISs, NRC Staff should consider re-drafting this section in the future to address each of these points so that the public may be given additional information on NRC's regulatory process.

14. NRC Staff's discussion of radiation protection issues should reference comparisons of potential radiation dose to natural background and should not limit its comparison only to NRC dose limits. Typically, while the potential dose to a member of the public from an ISL facility is a tiny fraction of NRC's dose limits, the incremental dose to members of the public from an ISL facility is an even smaller fraction of natural background.

NMA would like to thank NRC for the opportunity to submit these comments. However, NMA would like to make clear that, while these comments are intended to provide NRC with its uranium recovery members' insight on these DSEISs, it does not want NRC to address any comments that would result in any additional delay of the issuance of the three licenses associated with these DSEISs. If you have any questions regarding these comments, please do not hesitate to contact me at (202) 496-0780 or Katie Sweeney, General Counsel of NMA, at (202) 463-2627. Thank you for your time and cooperation in this matter.

Respectfully submitted,



Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036
COUNSEL TO THE NATIONAL MINING
ASSOCIATION

Dated: March 3, 2010