

WCS_CISFEISCEm Resource

From: Richard Hanson <Richard.Hanson@tpwd.texas.gov>
Sent: Thursday, March 09, 2017 9:02 AM
To: WCS_CISFEIS Resource
Subject: [External_Sender] Docket ID NRC-2016-0231
Attachments: WL37585-WasteControlSpecialists-SpentFuelStorage-AndrewsCo-C-03-09-17.pdf

Attached are the Texas Parks and Wildlife Department comments on Docket ID NRC-2016-0231.

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March 9, 2017

Ms. Cindy Bladey
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RE: Docket ID NRC-2016-0231

Dear Ms. Bladey:

Texas Parks and Wildlife Department (TPWD) received the request for review on the scope of the U.S. Nuclear Regulatory Commission's (NRC) Environmental Impact Statement (EIS) for Waste Control Specialists, LLC (WCS) license application to store up to 5,000 metric tons of uranium (MTU) for a period of 40 years in a consolidated interim storage facility (CISF) to be located at the WCS site in Andrews County, Texas. TPWD staff has reviewed the information provided and offers the following comments and recommendations concerning this project.

Project Description

WCS has prepared a CISF license application for approval by the NRC. If the requested license is issued, WCS anticipates subsequently requesting an amendment to the license for authorization to possess and store an additional 5,000 MTUs of spent nuclear fuel (SNF) for each of the expansion phases to be completed over the course of twenty years. WCS anticipates that 40,000 MTUs of SNF would be stored at the CISF upon completion of all eight phases.

WCS currently operates a commercial waste management facility on approximately 1,338 acres of land. The CISF would be located north of the existing WCS radioactive waste storage, processing, and disposal facilities. The facility would be built in eight phases, with one phase being completed approximately every 2.5 years. Initial construction of phase one would encompass approximately 155 acres. Each phase would increase the overall footprint incrementally until the final footprint reaches approximately 320 acres with the completion of phase eight. Because the site is currently undeveloped, potential land use impacts would primarily be from site preparation and construction activities. Approximately 12 acres would be used for contractor parking and lay down areas during facility construction. The total disturbed area would be approximately 332 acres including the contractor parking and lay down area. The contractor lay down and parking area would be restored after completion of the facility construction.

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WCS has prepared an environmental report to evaluate the radiological and non-radiological impacts associated with construction and operation of the CISF for SNF and Reactor-Related Greater than Class C Low-Level Radioactive Waste.

Federal Laws

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits taking, attempting to take, capturing, killing, selling/purchasing, possessing, transporting, and importing of migratory birds, their eggs, parts and nests, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species. The U.S. Fish and Wildlife Service (USFWS) Migratory Bird Office can be contacted at (505) 248-7882 for more information on potential impacts to migratory birds.

Section 3.5.3.3 of the environmental report states "Birds were surveyed through observation and by call at the proposed CISF and its vicinity to document species, potential breeding species, seasonal migrants and winter residents."

Recommendation: If migratory bird species are found nesting on or adjacent to the project area, they must be dealt with in a manner consistent with the MBTA. TPWD recommends excluding vegetation clearing activities during the general bird nesting season, March through August, to avoid adverse impacts to this group. If clearing vegetation during the migratory bird nesting season is unavoidable, TPWD recommends surveying the area proposed for disturbance to ensure that no nests with eggs or young will be disturbed by operations. Any vegetation (trees, shrubs, and grasses) where occupied nests are located should not be disturbed until the eggs have hatched and the young have fledged.

Endangered Species Act

Federally-listed animal species and their habitat are protected from “take” on any property by the Endangered Species Act (ESA). Take of a federally-listed species can be allowed if it is “incidental” to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Any take of a federally-listed species or its habitat without the required take permit (or allowance) from the USFWS is a violation of the ESA.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)

Section 3.5.3.3 states “The USFWS currently lists the lesser prairie chicken as a threatened species.”

On April 10, 2014, the USFWS published a final rule which listed the lesser prairie-chicken (LPC) as a threatened species. LPC Final Rule, 79 Fed. Reg. 19, 974 (Apr. 10, 2014). By Order dated September 1, 2015, U.S. District Judge Robert Junell vacated this rule. See, *Permian Basin Petroleum Association, et al. v. Department of the Interior*, Cause No. 14-CV-00050, in the U.S. District Court for the Western District of Texas, Midland Division. The Order emphasizes the conservation efforts as set out in LPC Range-Wide Conservation Plan (RWP).

On July 19, 2016 the USFWS fulfilled the court ruling that had vacated the ESA listing decision by officially removing the LPC from the Federal List of Endangered and Threatened Wildlife. The USFWS is undertaking a thorough re-evaluation of the LPC’s status and the threats the species faces using the best available scientific information to determine whether a new listing under the ESA is warranted.

Recommendation: TPWD recommends the NRC and WCS monitor the listing status of the LPC. Future changes in listing status could require consultation, permitting, and mitigation with the USFWS.

Section 3.5.3.3 of the environmental report states “Historically a WCS ranch manager reported seeing a female lesser prairie chicken near the CISF (Ortega, Bryant, Petit, & Rylander, 1997) but the sighting was never verified.”

The LPC Interstate Working Group developed the RWP which is a voluntary plan administered by the Western Association of Fish and Wildlife Agencies. The Covered Area of the RWP includes public and private property that currently provides or could potentially provide suitable habitat for the LPC within the current

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estimated occupied range of the LPC and 10 miles around that range (EOR+10). The Covered Area is represented in the Southern Great Plains Crucial Habitat Assessment Tool (CHAT).

As seen on the attached map, the proposed project is within the EOR+10 in CHAT Category 3 (Modeled Habitat). Therefore, this project is eligible for enrollment in the RWP.

Recommendation: Enrollment is recommended for projects that are within the EOR+10 or where the impact buffer of a new project extends into the EOR+10. Additional information including a link to the RWP can be found at http://www.wafwa.org/initiatives/grasslands/lesser_prairie_chicken/

State Law

Parks and Wildlife Code, Section 68.015

Section 68.015 of the Parks and Wildlife Code regulates state-listed species. Please note that there is no provision for the capture, trap, take, or kill (incidental or otherwise) of state-listed species. A copy of *TPWD Guidelines for Protection of State-Listed Species*, which includes a list of penalties for take of species, can be found on-line at http://tpwd.texas.gov/huntwild/wild/wildlife_diversity/habitat_assessment/media/tpwd_statelisted_species.pdf. State-listed species may only be handled by persons with appropriate authorization from the TPWD Wildlife Permits Office. For more information, please contact the Wildlife Permits Office at (512) 389-4647.

Texas horned lizard (*Phrynosoma cornutum*) State-listed Threatened

Section 3.5.4 of the environmental report states "The Texas horned lizard has been reported as present on the property controlled by WCS by previous surveys."

Texas horned lizards are generally active in this part of Texas from mid-April through September. At that time of year, they may be able to avoid slow (less than 15 miles per hour) moving equipment. The remainder of the year, this species hibernates only a few inches underground and they will be much more susceptible to earth moving equipment and compaction.

Recommendation: TPWD recommends WCS avoid disturbing the Texas horned lizard and colonies of its primary food source, the Harvester ant

(*Pogonomyrmex* sp.), during clearing and construction. TPWD recommends a permitted biological monitor be present during construction to try to relocate Texas horned lizards if found. If the presence of a biological monitor during construction is not feasible, Texas horned lizards observed during construction should be allowed to safely leave the site.

A mixture of cover, food sources, and open ground is important to the Texas horned lizard and Harvester ant. Disturbed areas within suitable habitat for the Texas horned lizard should be revegetated with site-specific native, patchy vegetation rather than sod-forming grasses.

Species of Concern/Special Features

In addition to state and federally-protected species, TPWD tracks special features, natural communities, and rare species that are not listed as threatened or endangered. TPWD actively promotes their conservation and considers it important to evaluate and, if necessary, minimize impacts to rare species and their habitat to reduce the likelihood of endangerment and preclude the need to list as threatened or endangered in the future. These species and communities are tracked in the Texas Natural Diversity Database (TXNDD).

No records of rare, threatened or endangered species have been documented within 1.5 miles of the project site in the TXNDD. However, based on the project location the dunes sagebrush lizard (*Sceloporus Acrenicolus*) (DSL) may be impacted from the proposed project.

Section 3.5.4 of the environmental report states "The sand dune lizard has been reported in the area northwest of the proposed CISF in past site surveys."

In December 2010, the DSL, also known as the sand dune lizard, was proposed for federal listing under the ESA. Since that time, the USFWS has received new information regarding suitable and occupied habitat for this species, and voluntary conservation measures (discussed below) have been established. Based on these efforts, on June 13, 2012, the USFWS determined the DSL is no longer in danger of extinction. However, the USFWS will closely monitor the conservation measures to ensure they are being implemented and effectively address identified threats. The USFWS can then reevaluate whether the DSL requires protection the ESA.

A voluntary conservation program has been created to protect suitable habitat for the DSL and minimize adverse impacts from development. In February 2012, the

USFWS approved the Texas Conservation Plan for the Dunes Sagebrush Lizard, which was developed in consultation with the USFWS, the Texas Comptroller of Public Accounts, TPWD, and several other agencies. This plan can be found at https://www.fws.gov/southwest/es/Documents/R2ES/TX_Cons_Plan_DSL_20110927.pdf. The goal of the Texas Conservation Plan is to facilitate continued economic activity in this region and to promote conservation of the DSL in compliance with the ESA for covered activities.

Based on the Texas Conservation Plan final map of the permit area (probability of suitable DSL habitat) the project site includes an area that is High Likelihood of Occurrence for this species. Potential adverse impacts to this species could include removal, fragmentation, and destabilization of shinnery oak habitat during construction.

Recommendation: TPWD recommends WCS avoid adverse impacts to the DSL and suitable DSL habitat in implementing this project.

TPWD also recommends implementation of the following conservation measures within suitable DSL habitat:

- To minimize additional fragmentation of habitat, maximize use of existing developed areas and roads
- Within suitable DSL habitat confine construction to the period during which the DSL is inactive (i.e. October – March).
- Minimize the footprint of the development within DSL habitat
- Restrict vehicle traffic to the extent feasible
- Avoid aerial sprayed application of approved herbicide for weed control
- Avoid the introduction of non-native vegetation
- Reclaim DSL habitat with appropriate native vegetation using locally-sourced native seeds and vegetation
- During post construction, control mesquite and other invasive and problematic herbaceous and woody species that would degrade or impair DSL habitat

Please note that the absence of TXNDD information in an area does not imply that a species is absent from that area. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, the data from the TXNDD do not provide a definitive statement as to the presence, absence or condition of special species, natural

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communities, or other significant features within your project area. These data are not inclusive and cannot be used as presence/absence data. This information cannot be substituted for on-the-ground surveys. The TXNDD is updated continuously. As the project progresses and for future projects, please request the most current and accurate information at TexasNatural.DiversityDatabase@tpwd.texas.gov.

Recommendation: TPWD recommends the NRC and WCS review the TPWD county list for Andrews County, as rare species in addition to those discussed above could be present depending upon habitat availability. These lists are available online at <http://tpwd.texas.gov/gis/rtest/>. If during construction, the project area is found to contain rare species, natural plant communities, or special features, TPWD recommends that precautions be taken to avoid impacts to them. The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species. For the USFWS rare species lists by county please visit <http://ecos.fws.gov/ipac/>.

Determining the actual presence of a species in a given area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, taking into account all the variable factors contributing to the lack of detectable presence. If encountered during construction, measures should be taken to avoid impacting wildlife.

I appreciate the opportunity to provide preliminary input on potential impacts related to this project, and I look forward to reviewing the EIS. Please contact me at (806) 761-4936 or Richard.Hanson@tpwd.texas.gov if you have any questions.

Sincerely,

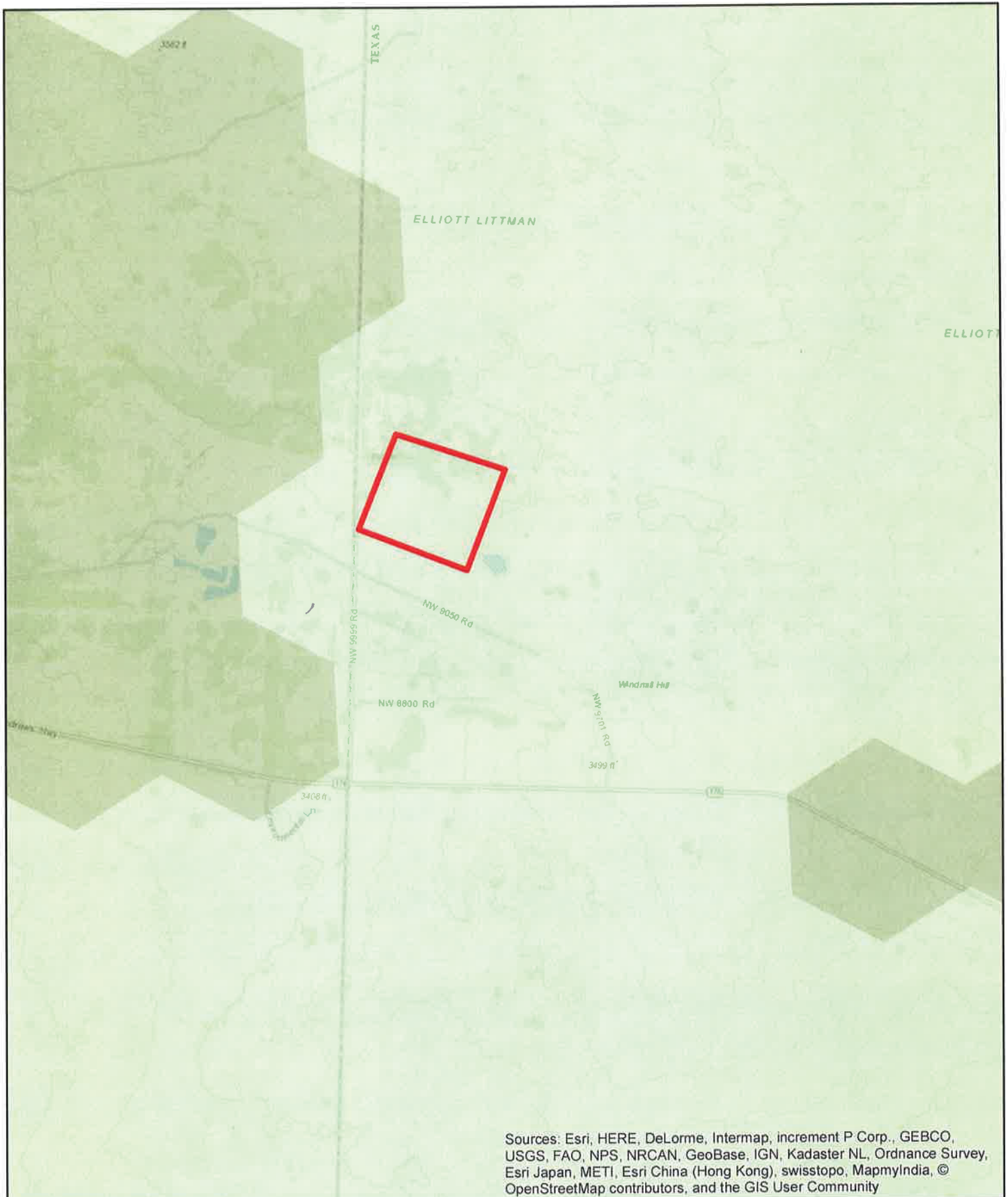


Rick Hanson
Wildlife Habitat Assessment Program
Wildlife Division

RAH:jn37585

Attachment

CHAT Score



Date: 02/21/17

Map compiled by the Texas Parks and Wildlife Department, Wildlife Habitat Assessment Program. No claims are made to the accuracy of the data or to the suitability of the data to a particular use.



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Legend

CHAT Score

- 1 Focal Area
- 2 Connectivity Zone
- 3 Modeled Habitat
- 4 Modeled Non-Habitat
- 5 Outside EOR +10 miles