

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)
) Docket No. 72-1050
INTERIM STORAGE PARTNERS LLC)
)
(WCS Consolidated Interim Storage) September 12, 2019
Facility))

**SIERRA CLUB’S RESISTANCE TO ISP’S MOTION TO DISMISS SIERRA
CLUB’S CONTENTION 13**

Comes now Sierra Club and in support of this Resistance to ISP’s Motion to Dismiss Sierra Club’s Contention 13, states as follows:

INTRODUCTION

Sierra Club Contention 13 states as follows:

The ER states that two species of concern, the Texas horned lizard and the dunes sagebrush lizard, have been seen at the ISP site or may be present. But there is no discussion of any studies or surveys to determine if the species are present and the impact of the project on those species. Therefore, the ER is inadequate in describing the affected environment.

In discussing the basis of the contention and the facts supporting the contention, Sierra Club pointed out that an ER must adequately discuss and document the affected environment and the impact of the proposed project on the environment, including impacts to important species and their habitats.

Sierra Club further pointed out that the ER, 3.5.2 and 3.5.4, describes the horned lizard as being present at the proposed CIS and that the dunes sagebrush lizard might occur there. Contention 13 then pointed out that the ER, 4.5.10, claimed, with no factual support, that the CIS project will have no impact on the species.

Finally, Contention 13 noted that the sources cited in the ER as supporting the discussion of the two species were not available to the public. So there was no way for Sierra Club to verify the information in the ER.

On August 23, 2019, the ASLB issued its ruling admitting Sierra Club Contention 13 as a contention of omission as to the unavailability of the sources relied on in the ER. However, the Board did not address the main focus of Contention 23, that in spite of the statements in the ER that the two species are or might be present at the CIS site, the ER concluded without any factual support that there would be no impact to the species.

CONTENTION 13 SHOULD NOT BE DISMISSED

Sierra Club Contention 13 was admitted for hearing by the ASLB as a contention of omission based on the fact that sources allegedly relied on by ISP were not available to the public, including Sierra Club. ISP has now made available the sources it claims to have relied on. Those four documents constitute new information that forms the basis for an amendment to Contention 13.

The four documents are an ecological assessment from 1997, a species survey from 2004, a supplemental survey from 2007, and an environmental assessment from 2008. These documents were submitted with a cover letter from ISP, at ADAMS Accession No. ML19248C910. It is significant that all four documents relate to the existing WCS low-level radioactive waste storage facility site, not the site of the proposed CIS project. Also, as shown by the dates, these documents are 11-22 years old.

The 1997 document, at page 3, states that it only considered species within one mile of the core area of the LLRW site. The CIS site at issue in this case is beyond that

one mile radius. Page 4 of that document states that reptiles and amphibians were observed, but this appears to refer to just casual observations, not a scientific survey. So, this document supports Contention 13, that the two species are or likely are present at the CIS site and more current scientifically supported surveys should be conducted.

The 2004 document, at page 6, states that the sand dune lizard was observed in the area of the LLRW site. Further, the document, at page 7, states that there is no suitable habitat for the sand dune lizard within 1.5 km (1 mi) of the LLRW site. The document goes on to state, however, that suitable sand dune lizard habitat exists west, north, northeast, south, and southeast of the LLRW site. Significantly, the proposed CIS site is just northeast of the LLRW site. In fact, the document states, at page 7, that the study area was a 3.1 mile radius of the LLRW site and that the two lizard species occur within that area, and that the area around the LLRW site (which would include the CIS site) should be protected to preserve the habitat for both species.

The 2007 document, at page 59, as in the previous documents, states that the sand dune lizard does not occur on the site of the LLRW project, but suitable habitat does occur in the area around the site. The area around the LLRW site would include the CIS site. A table on page 60 of the 2007 document lists the Texas horned lizard as being observed on the LLRW site, but there is no discussion of the horned lizard in the document.

The 2008 document is an environmental assessment relating to the relicensing of the WCS LLRW facility. The assessment was apparently limited to a very narrow set of issues regarding the LLRW operation and impacts on the site itself. There is no indication

that any review was made of the area surrounding the site. Pages 11-12 of the document mention the horned lizard and dunes sagebrush lizard but it simply says that the horned lizard is in the area and there is no dunes sagebrush lizard habitat on the site.

Taking all of these sources into consideration, the important conclusion is that the statements in Chapter 4 of the ER that there will be no adverse impact on the two lizard species or their habitat are demonstrably false. Section 4.5.8 of the ER says, “No communities or habitats that have been defined as rare or unique or that support threatened and endangered species have been identified on the CISF.” However, the sources described above were focused on the LLRW site adjacent to the CIS site. Therefore, the statement in Section 4.5.8 of the ER, that “[s]urveys were conducted at the WCS CISF sit in 2004” is not correct. The CIS site was not even identified at that time. Even so, the 2004 document states that suitable sand dune lizard habitat exists northeast of the LLRW site, and that that area should be protected. That is exactly where the CIS facility is to be located. Likewise, the 2007 document states that suitable habitat for the dune sagebrush lizard occurs in the area around the LLRW site, i.e., the area of the CIS site. The foregoing also puts the lie to the statement in the ER, 4.5.8, that “[a]reas to the west, south, and east of the site do not appear to have suitable habitat for the sand dune lizard within 16 to 32 km (10 to 20 mi.).”

Therefore, the statement in the ER, 4.5.10 that “the Texas horned lizard and the sand dune lizard either do not occur on the CISF or are highly adaptable” is not supported by the very sources upon which ISP contends that it relied in preparing the ER. So, Sierra Club Contention 13 was correct as written. But the new information provides further

proof and clarification that the statement in the ER alleging no impact to the two lizard species was false.

The documents allegedly relied upon by ISP in preparing the ER are 11 to 22 years out of date; were prepared to focus on the LLRW site, not the CIS site; there was apparently no credible species survey conducted, just random observations; and even so, the documents clearly confirm the main point of Sierra Club's Contention 13, that the two lizard species and their habitat are present at the CIS site, so the conclusion in the ER that there will be no impact to the species is not supported by the evidence and is false. Therefore, it is no surprise that ISP did not make these documents public. These documents confirm that Contention 13 was correct in showing an issue material to the findings the NRC must make to issue the requested license and in showing the existence of a genuine dispute with the ER on a material issue.

Sierra Club will file a motion to amend Contention 13 and an amended Contention 13. So, rather than dismiss Contention 13, the Board should allow Sierra Club to file its amended Contention 13 and admit the amended contention for an adjudicatory hearing.

CONCLUSION

Based on the foregoing, ISP's Motion to Dismiss Contention 13 should be denied and Sierra Club should be allowed to file an amended Contention 13 based on the newly disclosed documents as discussed herein.

/s/ *Wallace L. Taylor*

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Sierra Club's Resistance to ISP's Motion to Dismiss Sierra Club's Contention 13 were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

/s/ *Wallace L. Taylor*

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