



United States Department of the Interior
FISH AND WILDLIFE SERVICE

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OFFICE OF SECRETARY
DOCKETING & SERVICES
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In Reply Refer To
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May 13, 1994

DOCKET NUMBER
PROPOSED RULE PR 51
(59 FR 14912)

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Docketing and Services Branch
Washington, D.C. 20555

Dear Sir/Madam:

The Utah Field Office of the Fish and Wildlife Service (Service) has reviewed the Notice of Intention (NOI) to prepare an Environmental Impact Statement (EIS) for reclamation of Atlas Corporation's Uranium Mill Facility, in Moab, Grand County, Utah (ER #94/0289).

The Service's Regional Office in Denver, Colorado, made extensive comments regarding the Environmental Assessment prepared for this project in August of 1993 (copy of comments enclosed). The Service has major concerns regarding contaminants and endangered species issues. The issues raised in this memo need to be fully addressed in the EIS. The Service is not satisfied with the statement in the NOI (p. 11) that water monitoring has identified no contamination in the Colorado River; therefore effects on biota will not be assessed. If the issues raised in the Service's September 1, 1993, memo are not addressed in the EIS, then they need to be addressed in a separate letter to this office. If they are not adequately addressed, the Service will raise them again at the time the Draft EIS is released for public comment.

Since an EIS is now being prepared for this project, the Nuclear Regulatory Commission is required to prepare a Biological Assessment under the Endangered Species Act. It is the Service's position that this project will likely adversely affect listed species, therefore formal consultation will be necessary.

If you would like to further discuss these issues in preparation of the EIS, please contact me or Susan Linner at (801) 524-5001.

Sincerely,

Robert D. Williams
Assistant Field Supervisor

Enclosure

cc: Department of Interior, Office of the Secretary, Washington, D.C. 20240
ARD, ES, R6, Denver, CO

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Mountain-Prairie Region

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SEP 1 1993

Memorandum

To: Regional Environmental Officer, USDI, Denver, Colorado

From: ^{Acting} Regional Director, Region 6
U.S. Fish and Wildlife Service
Denver, Colorado

Subject: Review of Activities Related to the Reclamation of the Atlas Mill
Disposal Area, Moab, Grand County, Utah (ER 93/671)

The Fish and Wildlife Service (Service) has reviewed the background materials and Environmental Assessment for closure of the Atlas Mill Disposal Area (Area) and has a number of concerns. First, the August 12, 1993, letter from Ray Hall to Lillian Stone, indicates that the reclamation plan is simply a modification of previous actions to correct flaws. The Service has examined available files and found that the Nuclear Regulatory Commission (Commission) had consulted informally on endangered species related to the Area by requesting a list of threatened and endangered species in the general vicinity. A response to this request was sent August 28, 1992. The Commission concluded in the Environmental Assessment that there would be no impacts on endangered fishes of the Colorado River system and formal consultation was not requested. Examination of available data for the Area indicates that the Commission conclusion on the need for consultation is questionable and should be reconsidered.

Information presented in the letter to Ms. Stone indicates a ground water contamination problem associated with the Area. From available documents, the Service is unable to determine the nature and extent of the ground water contamination, the location(s) where contamination was detected, or the adequacy of ground water monitoring data supporting conclusions in the environmental assessment.

The Service is particularly concerned about the following:

1. Selenium in surface water associated with the Area is proposed to meet the standard of .01 mg/L. This is the State of Utah water quality standard for protection of human health. The Federal water quality standard for protection of aquatic life is currently .005 mg/L. Most recent research indicates that selenium should be in the range of .002 mg/L for adequate protection of aquatic life. No assessment was presented on impacts from selenium or other toxic elements on endangered fishes of the Colorado River system. Concentrations of these elements associated with this project would trigger a "may affect" determination and require formal consultation.
2. Dust suppression will require a source of water during the construction phase. Any depletions of water from the Colorado River for dust suppression creates a "may affect" situation for endangered fishes that requires formal consultation under Section 7 of the Endangered Species Act.
3. The Service is concerned that after capping, the Area will continue to be a radiological hazard to wildlife. The U.S. Environmental Protection Agency standard is 4 pCi/m²/second for the radioactive particle emission rate protective of human health. Emission rates protective of wildlife health are generally unknown but likely occur at or below levels that protect humans. The expected emissions after capping are 20 pCi/m²/second. As described, the Area likely will be a nesting site for shorebirds requiring rocky/gravelly areas with little vegetation. Are these levels of radiation a hazard to migratory bird reproduction or a cause of cancer/tumors or other physiological conditions causing indirect mortalities? Such radiation induced disorders would violate the "taking" provisions of the Migratory Bird Treaty Act and could subject responsible officials to criminal prosecution because this law is a strict liability statute.
4. The Environmental Assessment claims that the existing disposal facility could structurally withstand high flows in the Colorado River. The Service believes that potential flows discussed in the Environmental Assessment would result in water levels 25 feet above normal river stage at elevations higher than the level of the tailings pile. This would result in substantial movement of water into the tailings pile creating a bank storage of toxic elements dissolved in water that subsequently would be released into the Colorado River when river levels returned to normal. No discussion of background concentrations of these elements in the Colorado River was presented.

5. Releases of toxic elements from this site will compound contaminants problems in the Colorado River system, and constitute a "may affect" situation for endangered fish species which requires the Commission to initiate formal consultation with the Service under provisions of the Endangered Species Act. In addition, the uncontrolled release from the Area of selenium, uranium, or other hazardous elements covered by the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), will trigger initiation by the Service of natural resource damage assessment against the parties responsible for such releases.
6. The Service is concerned that no discussion of the laboratory practices for chemical analysis of toxic elements, such as selenium, are discussed in the Environmental Assessment. Most data for selenium and some other biologically active elements are suspect until/unless methods of sample preparation and analysis can be confirmed as reliable. Accurate techniques for selenium determination in most environmental samples have only been available for the past 5 years and many analytical laboratories simply have not kept current on required procedures and equipment. The Environmental Assessment should be revised to address the quality assurance/quality control of analytical methods used to obtain chemical results.
7. The attitude that the Area will be a maintenance free closed system for 200-1000+ years is grossly in error and needs rethinking. The Colorado River alone, is a major challenge to the structural longevity of the tailings site because high flows during spring in the mainstem Colorado River are common (e.g. near-record runoff in 1993) and the tailings pile is in the immediate floodplain.
8. Information available to the Service indicates that no studies of contaminants in fish of the Colorado River have been conducted in relation to the Area. The Service believes that studies should be initiated to monitor for toxic elements and physiological conditions of fish indicative of contaminants problems.

In general, the Service believes that this site is improperly located and is likely to be a hazard to endangered fish species and migratory birds for hundreds of years. There is a bonafide need for the Commission to prepare a biological assessment and enter into formal consultation with the Service to address, at a minimum, the endangered species concerns listed above. The Commission should be required to enter into formal consultation before proceeding and should be notified of potential Endangered Species Act violations if consultation is not initiated. The Service believes the Commission's conclusion that the proposed action is simply to correct minor problems with the Area is seriously in error and needs revision to avoid future liabilities under Federal wildlife and hazardous materials law. In addition, it is the Service's opinion that the Commission should reconsider tailings disposal options and move the tailings out of the floodplain to a safer location. This approach has been accomplished in some other floodplain tailings sites in Durango and Grand Junction, Colorado.

This case is being referred to the Service's Law Enforcement Division for review and possible investigation. Technical questions about endangered species consultation requirements should be referred to the Regional Section 7 Coordinator (Mr. Wayne Wathen; 303-236-8166). Questions or needs for information about Federal hazardous materials laws applied to this case should be directed to the Regional Environmental Contaminants Coordinator (Mr. Tom Jackson; 303-236-8180).



WILBUR N. LADD JR.

cc: ARD, Law Enforcement,
Region 6