Center for Regulatory Effectiveness

MEMORANDUM on Environmental Safeguards for Oil Shale Development

---

There are Adequate Environmental Safeguards in Place to Ensure Oil Shale Development in an "Environmentally Sound Manner" Under the 2008 PEIS – The Three Phases of Environmental Analyses for Commercial Oil Shale Production

It is important to note, the 2008 oil shale Final EIS was not the final statement or environmental analysis for oil shale development. Specifically, the land use plans developed in the 2008 EIS were only the first of three steps in the decision-making process. The three steps are: (1) Land Use Planning; (2) Leasing; and (3) Project Development.

I. Land Use Planning

The Land Use Planning stage is the first step in which lands are allocated or closed to oil shale development. Lands allocated as open are those within which the Secretary of the Interior may initiate a call for nominations, and to which parties may submit applications to develop a project. This is the current stage of analysis addressed in the 2012 Draft PEIS.

II. Leasing

Leasing is a federal action subject to all pertinent law, regulations and policies, including NEPA, NHPA, and ESA. During the leasing phase, BLM must review the technical and economic aspects of any proposal to ensure its viability and BLM must ensure the necessary coordination and consultation with other entities, including other federal agencies, tribes, states, local governments, and the public in its consideration of a lease application. The Draft PEIS provides:

> The BLM's consideration of a proposal for an oil shale or tar sands lease must be sufficient to take into account predictable impacts of the action on natural and cultural resources, as well as other potential effects. If and when applications to lease oil shale or tar sands for commercial development are received and accepted by the BLM, it may be necessary to develop a reasonably foreseeable development scenario (RFDS). An RFDS is a critical component for the effects analysis required by NEPA, but the information contained in this PEIS is too speculative to permit adequate RFDSs for future leasing proposals. The analyses conducted as part of the review for a lease application may result in a decision to approve, modify, or deny a lease. The BLM may authorize a lease with

> stipulations and requirements for best management practices, and may amend local land use plans if necessary.[1]

Notably, during the leasing phase, BLM "may amend local land use plans if necessary."[2]

III. Project Development

After obtaining a lease, the oil shale developer must submit an application to approve a plan of development. The plan of development identifies the specifics of the development plan such as location, facilities, and timing. Approval of the plan of development constitutes a federal action that is also subject to NEPA, NHPA, and ESA. During this stage, BLM must review the plans of development for economic and technical viability and consultation with states, tribes, local governments, and the public. Moreover, "It is at this final stage, when the particulars of a project are known, that the BLM requires the most detailed analyses and may condition approval on specific requirements to avoid, minimize, or mitigate adverse impacts on various resources."[3]

Accordingly, it is during the final phase of actual project development for which the most environmental analysis is required and actions taken to minimize adverse impacts on the environment.[4]

The oil and lease program has not yet even made it out of the first stage. By reconsidering the 2008 allocations, BLM has prematurely reset the entire oil shale development program without ample justification. Furthermore, the second two stages provide adequate safeguards and required analysis to ensure that the development of oil shale does not adversely impact the environment.

---

[1]   2012 Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages 1-2, available at http://ostseis.anl.gov/documents/peis2012/vol/OSTS_VOLUME_2.pdf

[2]   *Id.*

[3]   *Id.*

[4]   *Id.*