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Memorandum

DEC 23 11 31 AM '93

Rocky Flats Office

ACTION

DEC 22 1993

EG&G
ROCKY FLATS PLANT
CORRESPONDENCE

EPD EAH 13626

Comments on Rocky Flats Plant Bald Eagle Protection Plan

Steve Nesta
Ecology and National Environmental Policy Act Division
EG&G Rocky Flats, Inc

Attached are comments prepared by the Environmental Protection Division, Department of Energy, Rocky Flats Office (DOE-RFO) on the Rocky Flats Plant Bald Eagle Protection Plan per your request (reference letter 93-RF-13935 from G Setlock to J Hartman dated November 10, 1993)

If there are any questions, please call Gail Hill at extension 3424

E A Howard
Environmental Protection Division

Attachment

- cc w/o Att
- S Olinger, AMESH, RFO
- G Hill, EPD, RFO
- A Howard, EPD, RFO
- J Wegrzyn, EPD, RFO
- P Powell, EPD, RFO

DIST	LTR	ENC
BENEDETTI R L		
BENJAMIN A		
BERMAN H S		
CARNIVAL G J		
COPP R D		
CORDOVA R C		
DAVIS J G		
FERRERA D W		
FRANZ W A		
HANNI B J		
HEALY T J		
HEDAHL T G	X	X
HILBIG J G		
HUTCHINS N M		
KIRBY W A		
KUESTER A W		
JAHAFFEY J W		
JANN H P		
MARX G E		
McKENNA F G		
MORGAN R V		
PIZZUTO V M		
POTTER G L		
SANDLIN N B		
SATTERWHITE D G		
SCHUBERT A L		
SETLOCK G H	X	X
SULLIVAN M T		
SWANSON E R		
WILKINSON R B		
WILSON J M		

nesta SVX

CORRES CONTROL	x	x
PATS/T130G		
ADMN RECORD/080	X	2

Reviewed for Addressee
Corres Control RFP

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DATE BY

Ref Ltr #

DOE ORDER # 5400-1

DOCUMENT CLASSIFICATION
REVIEW WAIVER PER
CLASSIFICATION OFFICE

Attachment I
Comments to:
"ROCKY FLATS PLANT BALD EAGLE PROTECTION PLAN-GHS-528-93"

December 1993

- **INTRODUCTION, p.1.:** DOE suggests the subject paragraph be revised to read as follows:

- **Paragraph 1:**

.. The bald eagle (*Haliaeetus leucocephalus*) is protected as an endangered species under the Endangered Species Act (ESA) of 1973, as amended, 16 U S C 1531, et seq. The species also receives protection under the Bald Eagle Protection Act (BEPA) of 1940, 16 U S C 668-668d, 54 Stat 250, as amended, and the Migratory Bird Treaty Act (MBTA) of 1918, 16 U S C 703-712, 40 Stat 755, as amended, and the State of Colorado, Non-game, Endangered, or Threatened Species Conservation Act, C R S 33-2-101 to 33-2-108. Due to its protected status, steps must be taken to avoid "take", as defined in statutes and regulations, when a bald eagle is encountered at Rocky Flats Plant (RFP) or within offsite locations where RFP related activities are being performed. "Take," as defined, is punishable under the several statutes and their associated regulations, by substantial fines and terms of imprisonment. A definition of "take," as defined under the ESA, is given below.

- **Paragraph2:**

bald eagles are known to *seasonally* frequent RFP and the surrounding vicinity.

Additionally, a pair of bald eagles constructed a nest and exhibited courtship behavior during the 1992-93 breeding season at a location within Operable Unit 3, approximately 1.2 mi from the RFP Buffer Zone boundary, adjacent to Standley Lake. Biologists with the U S Fish and Wildlife Service and the Colorado Division of Wildlife believe a viable nesting attempt may continue at that location for the foreseeable future.

- **DEFINITIONS, p.1.:** DOE suggests the definitions below be modified to read as follows.

- **Habitat -** Habitat is the general environment within which a living organism forages for food and water, and finds shelter and other conditions necessary to successfully live and reproduce. In the case of bald eagles in the RFP vicinity, habitat generally includes, but is not limited to, geographical areas between Eldorado Canyon and Standley Lake. Essential components within this bald eagle habitat include night roosts, foraging areas such as geographical areas containing prairie dog colonies, loafing trees and day perches, and fisheries within foraging areas including Great Western Reservoir, Mower Reservoir, Standley Lake, and possibly others.

- **Penalties** - Violation of the ESA may include fines up to \$200,000 and imprisonment up to one year or both. Violations prosecuted under the BEPA may include fines up to \$500,000 and imprisonment of up to two years or both. Additionally, violations under the MBTA may include fines up to \$500,000 and imprisonment up to two years or both.

• **DESCRIPTION OF BALD EAGLES AND SIMILAR SPECIES, p.2.:** DOE suggests that the description for Golden Eagle be revised as follows

Golden Eagle Golden eagles are protected by Federal statute under the Bald Eagle Protection Act and the Migratory Bird Treaty Act

• **BALD EAGLE PROTECTION STRATEGIES, p. 3.:** DOE suggests this section be revised as follows

- **Paragraph 1, sentence 3:** The RFP T&E Procedures also require the development of this Plan because bald eagles are *seasonal* residents, and golden eagles are year-round residents, these two species are considered resident threatened, endangered, and/or special species of concern at RFP

- **Paragraph 1, last sentence:** The actions described below must be implemented anywhere within the boundaries of RFP, and at any *RFP-associated* offsite locations,

- **Paragraph 2, sentence 3:** If the eagle(s) leaves the vicinity *of its own volition*,

- **Paragraph 2, sentence 4:** Note that immature bald eagles are very difficult for untrained *or unaccustomed* personnel to distinguish from golden eagles, particularly in the absence of good optical equipment .

- **Paragraph 2, sentence 5:** Also note that golden eagles are afforded protection from interference under the BEPA and MBTA

DOE suggests this modification because "take," other terms, and their enforcement are differ slightly depending on which of the three Acts is in question

- **Paragraph 2, last sentence:** If there is any doubt about the identity of an observed raptor, proceed as though it were identified as a bald eagle or golden eagle until positively determined otherwise

- **Paragraph 3, sentence 2:** the individual or work party must cease operations and retreat to a distance of not less than *300 yards and preferably to within the interior of a motor vehicle*

DOE recommends retreating to a distance consistent with approximately 0.25 mi. Also, raptors generally feel less threatened or anxious over the presence of humans when people remain within a motor vehicle

- **Paragraph 4:** DOE suggests Paragraph 4 be revised as follows

Protection of eagle habitat, as it applies to RFP, involves taking no action to *significantly affect, in an adverse manner, the food web, prey base, nesting, feeding, roosting and perching habitats used by bald and golden eagles*. This includes preserving *the integrity* of prey sources, *perches, retreat and loafing areas*, and other features potentially *recognized* for use by bald and golden eagles protected within the Buffer Zone for in excess of two decades. *Since bald and golden eagles are observed attempting nesting behavior in association with RFP habitats, RFP personnel should be especially wary of any ongoing and/or planned activities on their part which could result in violations of the ESA, BEPA and MBTA*. Numbers of bald eagles *observed* in the area have been increasing over the past several years.

- **REPORTING, p. 4.:** DOE suggests the second sentence of this paragraph be revised to read as follows: *Should any suspected bald eagle or golden eagle hunting, prey capture, or nest building activity be observed, such information shall be reported to END as soon as possible, but not more than 24 hours after the observation, to allow verification by END*