

Introduction

Enefit American Oil is an Estonian company that holds leases for oil shale development to over 30,000 acres of federal, state, and private land in eastern Utah. Enefit's leases are on the Utah/Colorado border and the White River cuts through the lease areas.

Enefit American oil is a subsidiary of Eesti Energy.¹ Eesti Energy is 100% owned by the Estonian government.² While Enefit publically states that it is not subsidized by the Estonian government, this claim is inconsistent with the Estonian government's ownership of the company.

The first parcel Enefit hopes to develop is called "Enefit South" (a/k/a Skyline property). The 13,000 acre property lies along the Utah-Colorado boarder and is adjacent to (southeast of) Enefit's federal research, development, and demonstration (RD&D) lease and the federal land that Enefit would be able to expand into if it proves commercial viability of its process.

Development of the Enefit South property requires, among other things, a right-of-way (ROW) across BLM land for utilities— 19 miles of water supply pipeline, eight miles of natural gas supply pipeline, 10 miles of oil product line, 29 miles of powerlines, and five miles of upgrading to Dragon Road. This ROW will enable Enefit to build a 50,000 barrel per day oil shale operation by strip mining approximately 9,000 acres.

The BLM determined that an EIS is needed for the ROW, and that development of Enefit South property falls within the scope of the EIS. The DEIS is open for public comment until June 14, 2016, and public meetings about the ROW application are occurring May 3-5.

Issues of Concern

- The ROW project is not in public interest, due to the carbon footprint and air quality impacts of the oil shale project it would enable. See 43 CFR § 2804.26(a)(2)
 - Enefit has stated that its life cycle GHG emissions for the oil derived from its oil shale are approximately 128.8 gCO₂/MJ (as compared to 93.3 gCO₂e/MJ petroleum baseline for conventional oil).³
 - Air quality in the Uinta Basin and Salt Lake City region is among the worst in the nation. Enefit's project will add to emissions, including ground level ozone in the Uinta Basin. Additionally, oil produced at Enefit's project will be shipped to

¹ <https://www.enefit.com/en/news/-/news/2016/03/23/eesti-energia-earned-a-net-profit-of-eur-40-million-last-year>, <https://www.enefit.com/news-and-blog/-/news/media-coverage/2014/01/07/estonia-is-cleansing-oil-shale> ("Eesti Energia's subsidiary Enefit is developing two parallel oil shale projects in Jordan")

² <https://www.energia.ee/en/eesti-energiast>

³ http://www.costar-mines.org/oss/31/F-pres-sm-sec/12-4_Aarna_Indrek.pdf

- refineries in Salt Lake, adding to air quality issues in the Salt Lake area. These impacts are not in the public interest and are basis for the ROW to be rejected.
- BLM violated NEPA by failing to properly analyze cumulative impacts by failing to account for impacts of the South Project 43 CFR § 2804.26(a)(4)
 - BLM entirely failed to analyze any cumulative impacts that will result from the ROW, including development of the South Project and development of the RD&D lease. At minimum, BLM should delay its decision on the ROW until it is able to meaningfully analyze the cumulative impacts of the South Project – the entire reason the ROW is being constructed on federal public land.
 - Enefit’s ROW application will result in inconsistency with federal law. 43 CFR § 2804.26(a)(4)
 - In July 2012, the BLM approved Enefit’s oil shale RD&D lease plan. Enefit has subsequently (March 2013 and March 2014) submitted two changes to the approved plan that BLM refuses to release to the public.
 - In Enefit’s 2012 Development Plan for its RD&D lease, the company states: “The RD&D Development Phase activities will be carried out on both the BLM RD&D lease property and EAO’s adjacent private Skyline property...” Skyline is the South Project referred to in the DEIS.
 - However, conversion to commercial viability requires that the leaseholder provide a conversion application with “[d]ocumentation that there have been commercial quantities of oil shale produced **from the lease**, including the narrative required by the R, D and D leases.” 43 CFR 3926.10 (b)(1) and BLM will approve the application if, among other elements, “[t]here have been commercial quantities of shale oil produced **from the lease**,” 43 CFR 3926.10 (c)(1). Oil shale from Enefit’s South Project property is not “from the lease.”
 - Allowing Enefit to engage in RD&D activities on its Skyline property arguably violates or will lead to a violation of these “from the lease” requirements. At minimum – BLM should not accept proof of commercial quantities from the Skyline property as acceptable for conversion of Enefit’s RD&D lease to its preferential area.

Specific Issues of Concern with the South Project

- Flawed NEPA Analysis: As an overarching issue, Enefit’s failure to provide BLM or the State of Utah with a development plan for the South Project has fundamentally undermined the NEPA review. BLM is unable to assess impacts to air, water, the climate, and endangered species resulting from the South Project due to the lack of Enefit’s development plan. BLM must delay its decision on whether to issue a ROW until it can determine the impacts of the South Project that the ROW serves. Despite the lack of tangible information, the following bullets highlight some of the main concerns with the South Project:
 - Air Quality: The Enefit Project is located in the Uinta Basin. The Uinta Basin has some of the nation’s worst air quality and oil and gas activity contributes to this problem. BLM should not approve a project that will lead to any further degradation of the Uinta Basin’s air quality.
 - Water Resources: Enefit has not finally clarified either the source or quantity of water it will use to serve its project. The DEIS, at different times, indicates that Enefit may use

the Green River, may supplement its water right with additional water from the Green River or the White River, and may use groundwater. This position is unacceptable for the purposes of the EIS. The company must clearly identify all impacts to all groundwater resources in the entirety of its operational area, and those impacts must be accounted for in the EIS. Unless and until the company can provide such information, the EIS cannot be completed.

- RCRA: EPA has stated that the determination of whether oil shale waste is subject to RCRA's solid waste requirements must be made on a case-by-case basis. In order for BLM to be able to properly evaluate RCRA's applicability, Enfit should be required to spell out in detail the nature of the constituents that it plans to use and any it intends to release into the environment, any plans it has to contain both hazardous and solid wastes, and any mitigation proposals. In the EIS, BLM must identify and provide an in-depth analysis of the exact makeup of the waste streams that are proposed for placement in the environment. Each element and/or component of the waste stream must be analyzed to determine whether it: is a hazardous waste as defined by RCRA; is a solid waste as defined by RCRA; poses a threat to air quality; constitutes a threat to human health, wildlife, water quality or other aspects of the environment; and, has a cumulative or synergistic effect on human health or the environment. BLM cannot complete its NEPA analysis until it has this information.
- ESA Issues: The DEIS indicates that consultation with FWS under 7(a)(2) of the ESA (16 U.S.C. §§ 1536(a)(1), (a)(2)) has not occurred despite listed species occurring in the action area. Federally listed and candidate species occurring within the action area include but are not limited to greater sage-grouse, Mexican spotted owl, Yellow-billed Cuckoo, Bonytail chub, Colorado pikeminnow, Greenback cutthroat trout, humpback chub, razorback sucker, blackfooted ferret, Canada lynx, North American wolverine, clay reed-mustard, Graham beardtongue, pariette cactus, shrubby reed-mustard, barneby reed mustard, Uintah Basin hookless cactus, Ute ladies'-tresses, & White River beardtongue. ESA regulations require that each federal agency must review its "actions" at "the earliest possible time" to determine whether any action "may affect" listed species or critical habitat in the "action area." 50 C.F.R. § 402.14. This process occurs through consultation, a process between the federal agency proposing to take an action (the "action agency"), here BLM, and FWS. BLM has failed by not engaging in consultation at the DEIS stage, and by not obtaining a biological assessment to determine whether informal or formal consultation is required. BLM must engage FWS in formal consultation before considering the EIS complete.