



June 6, 2016

Ms. Jenna Whitlock
Acting Director
Utah State Office
Bureau of Land Management
P.O. Box 45155
Salt Lake City, UT 84145-0155

Dear Director Whitlock,

I am writing to follow up on my May 1, 2014, letter to Director Palma regarding the Bureau of Land Management's (BLM) authority to regulate Enefit American Oil's (Enefit) Oil Shale RD&D Lease #UTU-84087 in the Uintah Basin. This letter is submitted on behalf of Living Rivers, Western Resource Advocates' (WRA) client in this matter.

As background, the central trust of WRA's May 1, 2014, letter, as well as previous letters regarding the BLM's approval of Enefit's RD&D plan of development, was the incongruity between the requirements established in both BLM's oil shale leasing regulations and Enefit's RD&D lease, and Enefit's plan of development that the BLM approved. We appreciate the many substantive issues the BLM raised in its October 30, 2015, letter to Enefit, and agree that these need to be resolved.

At this time, there are two outstanding issues that warrant further attention, one of which is triggered by the Draft Environmental Impact Statement for the Enefit American Oil Utility Corridor Project (Utility Project) (hereafter "DEIS"). Please note, the following is not submitted as part of public comment on the DEIS, as those comments will be submitted through the appropriate channels.

Basis for Extending Enefit's Oil Shale RD&D Lease

As provided in Section 4 of Enefit's oil shale RD&D lease, the BLM may extend Enefit's lease for another five years "upon demonstration to the satisfaction of the authorized officer that a process leading to production in commercial quantities is being diligently pursued, consistent with the schedule specified in the approved plan of development." This standard is highly subjective and qualitative. In its October 30, 2015, letter to Enefit, the BLM pointed out this section of the lease, reinforcing the need for the company to demonstrate it is diligently pursuing a process that will lead to commercial development. However, missing from the lease form and the BLM's letter to Enefit is any indication of what the company will be required to provide to satisfy your agency's concerns. For this reason, BLM must establish and disclose publicly the analytical criteria it will use to determine whether the requirements of Section 4 are being met.

Absent any additional information that Enefit and/or the BLM makes public about the company's RD&D work, we strongly believe that Enefit has not met this standard. As discussed below, Enefit is seeking a right-of-way grant and temporary use permit, but is not diligently pursuing commercial production as required under the lease and in the applicable federal leasing regulations. This conclusion is based on three primary factors—public statements Eesti Energia's CEO has made, the lack of a complete plan of development submitted either to the BLM or State of Utah regulators, and the lack of any work on the lease.

Public Statements

Hando Sutter, Eesti Energia's CEO, has stated publicly that Enefit's Utah project has been stopped. A November 4, 2015, report on Estonian Public Broadcasting included the following:

CEO of state-owned energy giant Eesti Energia, Hando Sutter, said the project in the US state of Utah has been stopped and currently there is no business plan in place to continue. The company purchased oil-shale-rock-rich land in Utah years ago, and has so far invested 51 million euros, plus pay annual upkeep of around 600,000 euros. The land has around 2.6 billion barrels of shale oil. Sutter said only a few Eesti Energia employees are located in the United States, and they are obtaining environmental licenses. He added that these permits could be used in the future. Sutter also said the other side of the project is the business plan and viability, which are calculated in Estonia, adding that currently, there are no plans in place. Oil shale rock in Eesti Energia's land in Utah is easy to mine, with no need to remove earth. Sutter said the problem is the area's location. He said Eesti Energia uses the resource to produce shale oil, energy and natural shale gas but the area is far from civilization, there are no decent power grids and it takes long time to transport the oil.¹

Eesti Energia is Enefit's parent company.

Similarly, as reported in December 2015 in the Moab Sun News, "CEO Hando Sutter told an Estonian broadcaster that Enefit has no business plan to continue its Utah operations, noting that the area is far from civilization and decent power grids. Moreover, he said, it would take the company a long time to transport the oil from the remote site to the nearest markets."² Enefit has not refuted these claims, but has instead argued that its lack of progress is a reflection of low oil prices. Any arguments about low oil prices go to the bigger question—namely, whether the company can be expected to produce commercial quantities at a profit—but are not a basis for the company shirking the research requirements specified in the RD&D lease and federal leasing regulations.

¹ <http://news.err.ee/v/632891bc-26fd-45f2-b2ae-a90b79bd8d19>

² http://www.moabsunnews.com/news/article_3e4b3a8a-a4d5-11e5-aaf8-379b19a4a89c.html

In evaluating Mr. Sutter's public statements, it is important to note that Eesti Energia recently filed a EUR \$26M impairment loss with the London Stock Exchange for its Utah project, and shifted all but three employees from Utah to Estonia.³

Lack of a development plan

To the extent that Enefit staff tries to downplay the CEO's public statements, the lack of any plans submitted to state regulators is telling. Were Enefit actually looking to develop either its private, state or federal land holdings, the company, at a minimum, would have submitted plans for approval to Utah state regulators, and complied with the requirements specified in BLM's October 30, 2015, letter to Enefit.

Further, and as discussed in the DEIS, Enefit did not submit a mining or operations plan to the BLM as part of the DEIS process. Those plans and work on its South Property are critical ingredients that Enefit intends use to prove the commercial viability of its technology. (More on this issue below.)

Lack of any work on the lease

The BLM is acutely aware that Enefit has done little work on its RD&D lease. As the agency commented in its October 30, 2015, letter to Enefit, "[t]o date, the only activity that has occurred on the lease has been the drilling of one 3-inch core sample (OSEC-2). A bulk sample was also taken from a pile of material on the lease, but the source of that material is ex-situ and the BLM therefore will not consider data from that sampling effort to be probative."

Eesti Energia's annual report is likewise instructive. In prior years the company spoke at length about the Utah project and research efforts in Frankfurt, Germany. The recently published 2015 Annual Report limited the discussion of Utah to two short paragraphs.

In March 2011, Eesti Energia acquired an oil shale resource in Uintah County, Utah (USA), which is currently estimated to contain 6.0 billion tonnes of oil shale (based on the updated "best" in-place estimate). In Utah, Eesti Energia operates under the name of Enefit American Oil.

In 2015, the global business environment changed, causing Eesti Energia to reassess its capital investments and lower its operating costs. During the year, the project's business plan was re-evaluated with a focus on continuing development activities necessary for sustaining the project's long-term value and finding a lower end-product price enabling engineering solution by changing aspects of the mine plan, process engineering and development plan. Project's development functions were moved to Estonia. In 2015, the Draft Environmental Impact Statement was completed and is undergoing final review by the US Bureau of Land Management prior to being published in the Federal Register.⁴

³ see http://www.baltictimes.com/eesti_energia_to_record_65_6_million_euro_loss/ and https://www.energia.ee/-/doc/10187/pdf/concern/annual_report_2015_eng.pdf page 16

⁴ https://www.energia.ee/-/doc/10187/pdf/concern/annual_report_2015_eng.pdf

BLM staff leading the development of the DEIS are likewise aware of the lack of work and progress on the RD&D lease lands. As provided in the DEIS, the RD&D project “was not included in the quantitative analysis because there are no currently proposed projects on this lease. This project is only discussed qualitatively.”

Nexus of Enefit’s RD&D Plan to the DEIS⁵

Enefit’s RD&D development plan hinges on the company’s ability to develop oil shale at a profit on its South Project. As we explained in our June 12, 2013, letter to the BLM,

As Enefit makes clear in its Development Plan, very little actual work will take place on the RD&D lease. With the exception of taking a few core samples from its RD&D lease, the majority of the work Enefit has done and plans to do on its RD&D lease is and will be limited to collecting environmental data (i.e., ambient air quality conditions, raptor surveys, sage grouse survey, etc.). The majority of its research will focus on its private property adjacent to the RD&D lease tract (called the Skyline or South Property), the testing it plans to conduct at its research center in Frankfurt, Germany, and the experience it hopes to gain from operating the Enefit280 retort facility in Estonia.”

In its October 30, 2015, letter to Enefit, the BLM discusses the important nexus between Enefit’s development plan for this private property and federal land holdings (in this case the lands granted as part of the RD&D lease). One of the messages the agency conveys is that Enefit must submit for approval its “Industrial Development Phase” plan. That means, in short, that Enefit must explain the activities it proposes to undertake in that phase, and detail how such activities on the RD&D lease lands and the South Property will support the requirements defined in the applicable federal leasing regulations and the RD&D lease.

At the same time, in the DEIS the BLM dismisses as essentially irrelevant the fact that Enefit has not developed nor submitted to Utah state regulators or the BLM its development plan for the South Property. The agency has impliedly waived for the purposes of the DEIS its own requirement that Enefit submit an Industrial Development Phase plan as outlined in the October 30, 2015, letter to Enefit. While the BLM correctly states in the DEIS that Enefit’s South Project is “not within BLM jurisdiction for approval or denial,” work on that project goes directly to Enefit’s ability to prove the commercial viability of its technology and thus meet the terms of its federal oil shale RD&D lease.

Granting a right-of-way across federal land for a project that is only conceptual in nature, as the DEIS allows, makes little sense. Granting that same right-of-way for an undefined project, while the BLM simultaneously presses Enefit to submit an Industrial Development Phase plan as part of its RD&D work, creates conflicting agency policy. Either work on the South Property is of little importance and interest to the BLM, as the DEIS suggests, or it is critical to Enefit’s

⁵ In raising these issues WRA, on behalf of Living Rivers, is neither explicitly nor implicitly relinquishing the legal claims raised in prior communication with the BLM about the legal deficiencies of Enefit’s RD&D plan of development.

project and in turn the BLM's regulatory authorities as provided under the oil shale leasing regulations. It cannot be both.

WRA believes, as the BLM's policy has made clear starting in June 2007 with the issuance of the RD&D lease to Enefit's predecessor in interest, that the federal government has a vested interest in the actions and activities that Enefit proposes for its South Property. For that reason, the BLM must require Enefit to explain in detail its plans and timelines for work on its South Property before it can issue a legally-defensible EIS decision or grant the company an extension on its RD&D lease.

BLM's free pass to Enefit during the DEIS process and the requirement under the RD&D program for a clear and defined development plan for the South Property raise a number of legal and policy concerns. The only way to reconcile this disparate approach to Enefit's development plan is to require the company to submit a development plan to the appropriate State of Utah agencies and an Industrial Development Phase plan to the BLM prior to any consideration of the right-of-way. Only by having this information can the BLM appropriately evaluate the utilities corridor permit request, consider extending the company's research lease, or grant a commercial development permit.

Without Enefit's plan for the South Property, no one can be assured that the applicable federal regulations have been met, or that the actions have been appropriately evaluated and impacts mitigated or avoided.

Regards,



Rob Dubuc
Joro Walker
Attorneys for Living Rivers

cc: Neil Kornze, Principal Deputy Director, BLM
John Steiger, Office of the Regional *Solicitor*, Intermountain Region
Rikki Hrenko-Browning, CEO, Enefit American Oil

Encl.