Conversation with Powertech (March 2019)

I. RA talking points on changes since the EPA projected the May 1, 2019 date for reissuing draft UIC permits for the Dewey Burdock project.

1. Upon further review and analysis of UIC regs, we find we have the authority to include mitigation measures related to our considerations under Federal law, specifically our obligations under the Endangered Species Act (ESA).
   a. As a result, we need to complete the Biological Assessment and conclude our consultation with the US Fish and Wildlife *before* we issue the second draft permits so we can include these mitigation measures for public comment.
   b. Our original plan was that we would not need to complete these tasks until the final permit decisions are issued, so time to complete this work was not included in the May 1 timeline.
   c. We also need to evaluate whether we need to include non-ESA mitigation measures related to other considerations under Federal law and issues identified in the Cumulative Effects Analysis (CEA). At this time, we do not anticipate the need to issue a second draft CEA.

2. After further review and consideration of public comments related to sacred sites, treaty rights, and federal trust responsibility, we have decided that these issues should be addressed in the Environmental Justice (EJ) analysis.
   a. We have identified the need to issue a second draft EJ analysis.
   b. We are also considering requesting input from Tribal governments on these topics through the tribal consultation process
   c. (internal note: we have not briefed Suzanne and Darcy on our proposed approach yet, so cannot say more about this yet).

3. Delay in initiation of contract work.
   a. Although we tried our best not to have it delay our development of the requirements for the geochemical model, the contract work did not begin until Feb 6 (internal note: Powertech has expressed concerns about the nature of the contract work itself as well as the potential for it to delay issuance of the draft permits).
   b. Reasons for delay in start date:
      i. The Region 8 work assignment was one of many the contracting officer had to process.
      ii. The all the regional work assignments hit her desk at the end of FY18/beginning of FY19, which is the busiest time in the contracting office.
      iii. Because of the government shut-down, we went past the deadline for getting the initial documents in place, (e.g. budget and work plan) so the contracting office had to issue a stop-work order. It took a few days after the end of the shut-down to lift all the stop-work orders issued.
   c. As a reminder, we are using a contractor to develop permit requirements in response to Powertech's request in comments to use a model instead of post-restoration monitoring requirements. Because we don't have this type of modelling expertise in house, we believe it will be more time efficient for us to use contractor support than to conduct the research and training needed for EPA staff to do this work.

d. We will want to have conversations with you (Powertech) about the geochemical model permit requirements in order to achieve two important goals:
   i. Provide enough specificity in the permit to reassure the public that the geochemical model can be as protective as the monitoring proposed in the first draft permit and
   ii. Avoid having permit requirements so prescriptive as to preclude flexibility to incorporate advances in technology in the modeling approach.

II. Background for RA on misconceptions and clarifications

1. Misconceptions
   a. (From Blake's email) "From previous conversations, a revised draft permit was to be completed by May 1, 2019, and potentially more quickly if we revised our request on the aquifer exemption boundary to minimise [*sic*] changes (which we have done and provided to your team)."
   b. "...especially considering the simplification of the aquifer exemption boundary process, which when previously discussed had the potential to shave off further time from the May 1, 2019 revised draft permits issuance date."

2. Clarifications
   a. We have clarified on more than one occasion that Powertech's decision on the AE boundary would not shorten our timeline. Powertech initiated this concept; it did not originate from the EPA. If the AE boundary was changed, the burden would be on Powertech to perform the time-consuming elements. The additional work to be performed by Powertech would not slow us down, because the work we need to get done outside the AE ROD is what is driving our schedule.
   b. We received more than 1000 pages of public comments, not including Powertech's detailed comments, and another thousand pages of documentation Powertech provided along with their comments. As we continue to review and address these comments, our understanding of the scope of our response is evolving. That is the reason we have identified the need to issue a second draft EJ analysis and ask for comment, including input from tribal consultation, on a number of topics related to EJ.

Ex. 5 Deliberative Process (DP)