Message

From: Chin, Lucita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA404E3F56574242AEE0811A07E309FC-CHIN, LUCITA]
Sent: 2/19/2016 7:26:30 PM
To: Matsumoto, Kimi [Matsumoto.Kimi@epa.gov]
Subject: FW: Dewey-Burdock ESA Consultation

Please see my next email for an explanation of what this is.

Lucita Chin
Associate Regional Counsel
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
303.312.7832

From: Suchomel, Bruce
Sent: Wednesday, February 17, 2016 1:35 PM
To: Chin, Lucita <Chin.Lucita@epa.gov>
Cc: Minter, Douglas <Minter.Douglas@epa.gov>
Subject: RE: Dewey-Burdock ESA Consultation

Ex. 5 Attorney Client (AC)

Bruce

From: Chin, Lucita
Sent: Wednesday, February 17, 2016 1:32 PM
To: Suchomel, Bruce <Suchomel.Bruce@epa.gov>
Cc: Minter, Douglas <Minter.Douglas@epa.gov>
Subject: RE: Dewey-Burdock ESA Consultation

Ex. 5 Attorney Client (AC)

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From: Suchomel, Bruce
Sent: Wednesday, February 17, 2016 1:26 PM
To: Chin, Lucita <Chin.Lucita@epa.gov>
Cc: Minter, Douglas <Minter.Douglas@epa.gov>
Subject: FW: Dewey-Burdock ESA Consultation

Lucita,

I corresponded with Mike Cepak (SD DENR) about the mitigation measures we currently have included in our Consultation. Mike's statement below states that "In general, the best management practice/mitigation measures would be acceptable to DENR." Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Bruce Suchomel
UIC Program - Environmental Engineer/Project Manager
USEPA Region 8 (P-W-UIC)
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303-312-6001

From: Cepak, Mike [mailto:Mike.Cepak@state.sd.us]
Sent: Tuesday, February 16, 2016 1:46 PM
To: Suchomel, Bruce <Suchomel.Bruce@epa.gov>
Cc: Cepak, Mike <Mike.Cepak@state.sd.us>
Subject: FW: Dewey-Burdock ESA Consultation

Hi Bruce,

I reviewed the list in the e-mail below and offered my comments between the brackets (< >). In general, the best management practice/mitigation measures would be acceptable to DENR. Some of these are listed in the DENR's recommended conditions for the Dewey-Burdock Project, and some are mentioned in the state mine permit application, and others are covered by state regulation. I, unfortunately, did not have the time to re-read the permit application to see if some of these items were addressed in the application.

In the recommended conditions, Condition 1 under General reads:

> The conditional approval of this permit application incorporates by reference those representation made by Powertech, as to plans, specifications, operations, environmental impacts, and reclamation as contained in the permit application ... **The representations contained in these documents are general conditions of this permit** unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the Board of Minerals and Environment (board).

Those items that are no currently on the list of state recommended conditions could be included in an amended list of conditions, or we could add a condition that would reference the list below. The amended list of conditions would be subject to approval by the State Board of Minerals and Environment.

I hope this is of help to you.

Mike Cepak
Engineering Manager I
Minerals and Mining Program
SD DENR
(605) 773-5418

From: Suchomel, Bruce [mailto:Suchomel.Bruce@epa.gov]
Sent: Thursday, February 11, 2016 2:20 PM
To: Cepak, Mike
Subject: Dewey-Burdock ESA Consultation

Hello Mr. Cepak,

I'm Bruce Suchomel with EPA Region 8, and I work right next to Valois Shea. I just left you a voice mail explaining my involvement in this project.

Having been brought in to complete the ESA consultation, I'm reviewing our statement on the best management practice/mitigation measures that would enable this project to support our species "affect" determination within our consultation.

I'm interested in hearing from you if these will indeed be enforceable mitigation commitments in the State Permit. If not, I'd like to discuss your thoughts on what would be best to include.

My contact information is at the bottom of this. Thank you for your assistance.

The following best management practices (BMPs) are expected to be enforceable mitigation commitments to support our conclusion that mining within the action area may affect, but is not likely to adversely affect listed species. The following mitigation commitments have been recommended for incorporation as permit conditions in the Large Scale Mine Permit by the staff at the South Dakota Department of Environment and Natural Resources and is included in their draft permit.

Reduce land disturbance and minimize wildlife access to areas where harmful solutions and chemicals are stored with protective structures

- Follow land use mitigation measures for land disturbance activities and access restrictions, which will also minimize impacts to vegetation and wildlife <Not specifically listed in the DENR recommended conditions, DENR could include as a condition>
- Minimize disturbance of surface areas and vegetation <Not specifically listed in the DENR recommended conditions, similar to state mining regulation ARSD 74:29:07:02 Minimizing of adverse impacts>
- Construct new roads, power lines, and pipelines in the same above ground and below ground corridors to the extent possible to reduce overall disturbance and minimize new surface disturbance <Not specifically listed in the DENR recommended conditions, similar to state mining regulation ARSD 74:29:07:02 Minimizing of adverse impacts, DENR could include as a condition>
- Impose dust control measures to limit dust deposition on vegetation, both on- and offsite <Not specifically listed in the DENR recommended conditions, DENR could include as a condition to the extent that dust is not radioactive which would then be an NRC issue >
- Promptly notify the Department of Game, Fish and Parks if species or critical habitat of species designated as threatened or endangered on state or federal lists are discovered within the permit area <Already listed in the DENR recommended conditions>
- Powertech shall obtain any required State or federal scientific collector's permits, as necessary, prior to taking, possessing, breaking or destroying any nest or the eggs of the kinds of birds, for which the taking or killing is otherwise prohibited <Already listed in the DENR recommended conditions>
- Implement weed control to limit the spread of noxious, invasive, and nonnative listed species on disturbed areas, including roads into and out of the project area <Discussed in the permit application, a general condition of the permit, weed control required by state statute (SDCL 45-6B-43)>

Restoration/Reclamation

- Reestablish temporary or permanent native vegetation as soon as possible after disturbance <Discussed in the permit application, note that non-native species could be used in the seed mix, the proposed land uses are rangeland and agricultural or horticultural crops>
- Minimize the spread of undesirable, invasive, and nonnative listed species (weeds) in disturbed areas. <Discussed in the permit application, weed control is a general condition of the permit, weed control required by state statute (SDCL 45-6B-43), note that non-native species could be used in the seed mix, the proposed land uses are rangeland and agricultural or horticultural crops >

- Construct new overhead power lines using BMPs to reduce bird and long-eared bat injuries and mortalities <Not specifically listed in the DENR recommended conditions or in the application, DENR could include as a condition>
- Enforce speed limits to minimize collisions with wildlife <Not specifically listed in the DENR recommended conditions, it is mentioned in the mine permit application, DENR could include as a condition>
- Use weed control techniques that incorporate BMPs approved by the BLM and SDDENR <Not specifically listed in the DENR recommended conditions, weed control required by state statute (SDCL 45-6B-43), DENR could include as a condition>

Transmission Lines

- Use existing roads when possible, and limit construction of new primary and secondary roads to provide access to more than one drill site to minimize wildlife and habitat disturbance <Not listed in the DENR recommended conditions, similar to state mining regulation ARSD 74:29:07:02 Minimizing of adverse impacts>
- Follow the Avian Power Line Interaction Committee guidance to avoid impacts (electrocution and perching) to birds, especially prior to the fledging of young (Avian Power Line Interaction Committee, 2006) <Not listed in the DENR recommended conditions, DENR could include as a condition>
- Bury transmission lines after (step-down) transforming to minimize risks to raptors and large birds <Not listed in the DENR recommended conditions, DENR could include as a condition>

Reduce Human Disturbances

- Promptly notify the Department of Game, Fish and Parks if species or critical habitat of species designated as threatened or endangered on state or federal lists are discovered within the permit area. <Already listed in the DENR recommended conditions>
- Restore diverse landforms; direct topsoil replacement; and construct brush piles, snags, and/or rock piles to enhance habitat for wildlife <Not listed in the DENR recommended conditions, DENR can't include wildlife habitat requirements as a condition since land will be reclaimed to pasture or crops, no provisions for wildlife habitat for these land uses>
- Prepare FWS-approved raptor monitoring and mitigation plan to minimize conflicts between active nest sites and project-related activities <Similar to one of the DENR recommended conditions>
- Report wildlife mortalities within 24 hours to the FWS and Department of Game, Fish and Parks. <Already listed in the DENR recommended conditions>
- Adhere to timing and spatial restrictions within specified distances of active raptor nests as determined by appropriate regulatory agencies [e.g., U.S. Fish and Wildlife Service, South Dakota Game, Fish, and Parks, and BLM) and as submitted in the final version of the avian monitoring and mitigation plan <Not specifically listed in the DENR recommended conditions, in final version of avian monitoring plan, DENR could include as a condition>
- Allow snakes and lizards that are encountered to retreat <Not listed in the DENR recommended conditions, DENR could include as a condition>
- Inform employees of applicable wildlife laws and penalties associated with unlawful taking and harassment of wildlife <Not listed in the DENR recommended conditions, DENR could include as a condition>
- Train employees on the types of wildlife in the area susceptible to collisions with motor vehicles, the circumstances when collisions are most likely to occur, and measures that should be taken to avoid wildlife–vehicle collisions <Not listed in the DENR recommended conditions, mentioned in mine permit application, DENR could include as a condition>

- Post advisory signs and install access gates as needed on all new and improved roads related to the proposed project to minimize public traffic <Not listed in the DENR recommended conditions, mentioned in mine permit application, similar to state mining regulation ARSD 74:29:07:02 (control of access), DENR could include as a condition>
- Comply with applicable state and local requirements to design or treat mud pits and ponds to prevent the development of mosquito-borne West Nile virus vector <Not listed in the DENR recommended conditions, DENR could include as a condition>

Protection of Wildlife

- Cover vent pipes with either netting or other devices to prevent bats, birds, or small mammals from being trapped <Similar to one of the DENR recommended conditions>
- Cover evaporation pond surface areas with netting or other avian deterrent systems to prevent bats and birds from skimming the water surface while feeding on waterborne insects <Already listed in the DENR recommended conditions>
- Fencing with mesh and height specifications for large and small mammal exclusion; <Already listed in the DENR recommended conditions>
- Design and operate ponds with avian deterrent systems such as solution covers or hazing systems to prevent bird and bat contact with toxic solutions while skimming the water surface to feed on waterborne insects; <Already listed in the DENR recommended conditions> and
- Design and operate ponds with provisions for facilitating egress should wildlife become entrapped in steep-sided ponds. <Already listed in the DENR recommended conditions>

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