



Mary B Adams/NRS/USDAFS

07/22/2008 01:23 PM

To Michael Rains/NRS/USDAFS@FSNOTES

cc Rose Sook/NRS/USDAFS@FSNOTES

bcc

Subject letter to request OGC opinion...

Michael, attached is a slightly revised letter, based on input from Clyde Thompson, requesting a legal opinion on OGM development and endangered species.



final_Letter_to_request_legal_opinion.doc

Mary Beth Adams
USDA Forest Service
Timber and Watershed Laboratory
Parsons, WV 26287
304-478-2000, X-130
mbadams@fs.fed.us

We would like to request a legal opinion on the extent of Forest Service authority and responsibilities under section 7 of ESA with respect to surface and subsurface mineral development and threatened and endangered species, when the mineral rights are privately held, and the mineral exploration and development proposed is located entirely within the private mineral estate. Since Forest Service authority differs for reserved and outstanding mineral rights, we request the opinion be provided each of the differing circumstances.

Forest Service policy and direction regarding private mineral rights outlines Forest Service authority as being derived from the specific terms of the deeds by which the surface and subsurface owners acquired their interests, and Federal and State laws and regulation for both reserved and outstanding mineral rights, and the applicable set of Secretary of Agriculture rules and regulations for reserved mineral rights (FSM 2830). In practice, application of this Forest Service policy and direction results in the Forest Service having decision authority on private minerals limited to that which is spelled out in the mineral severance deed or applicable Secretary of Agriculture rules and regulations. As such, the scope of the federal action undertaken by the Forest Service regarding exercise of private mineral rights is limited, and not understood to extend to consultation under section 7 of ESA.

Furthermore, what takes precedence, and what is the extent of Forest Service authority when applying multiple and oftentimes divergent federal regulations to the administration of private mineral rights on National Forest System land?

A specific question relates to Forest Service responsibilities relative to above and belowground habitat, in particular hibernacula for endangered Indiana bats? If the proposed mineral development involves the same bedrock layer as a cave serving as hibernacula, does the Forest Service have the responsibility to protect the habitat of the hibernacula?

We would like to respectfully suggest that the Fish and Wildlife Service solicitors might be consulted in regards to these questions, so that actions by the two agencies, which should be complimentary, are considered. In particular, Wayne Babcock with DOI solicitors office in Pittsburgh (412-937-4020) has indicated a willingness to discuss this issue with you.




Mary B Adams/NRS/USDAFS

07/31/2008 10:46 AM

To Nadine Pollock/R9/USDAFS@FSNOTES

cc Clyde N Thompson/R9/USDAFS@FSNOTES, Ivette E Torres/WO/USDAFS@FSNOTES, Jack Tribble/R9/USDAFS@FSNOTES, Jim A McDonald/R9/USDAFS@FSNOTES, Linda L Tracy/R9/USDAFS@FSNOTES, Paul Stockinger/R9/USDAFS@FSNOTES, Thomas R Doane/R9/USDAFS@FSNOTES, Thomas Schmidt/NRS/USDAFS@FSNOTES, Tom_chapman@fws.gov

bcc

Subject Re: AAR Notes B-800 Well Final Version 

I've just heard this morning that Michael Rains, and Kent Connaughton have decided that our request for a new legal opinion, one outcome from the AAR, would not go forward to OGC under their signatures. MBA

Mary Beth Adams
USDA Forest Service
Timber and Watershed Laboratory
Parsons, WV 26287
304-478-2000, X-130
mbadams@fs.fed.us

Nadine Pollock/R9/USDAFS



Nadine Pollock/R9/USDAFS

06/13/2008 01:04 PM

To Clyde N Thompson/R9/USDAFS@FSNOTES, Tom_chapman@fws.gov, Mary B Adams/NRS/USDAFS@FSNOTES, Linda L Tracy/R9/USDAFS@FSNOTES, Jack Tribble/R9/USDAFS@FSNOTES, Ivette E Torres/WO/USDAFS@FSNOTES, Paul Stockinger/R9/USDAFS@FSNOTES, Thomas R Doane/R9/USDAFS@FSNOTES, Jim A McDonald/R9/USDAFS@FSNOTES, Thomas Schmidt/NRS/USDAFS@FSNOTES

cc

Subject AAR Notes B-800 Well Final Version

All,

Thanks to all for providing input to the draft of these notes. I've incorporated all and finalized.

-Nadine

[attachment "B800 Meeting Notes.doc" deleted by Mary B Adams/NRS/USDAFS]

Nadine Pollock
Natural Resources Group Leader
Monongahela National Forest
200 Sycamore Street
Elkins, WV 26241
304-636-1800 Ext. 242 (voice)
304-636-1875 (fax)
e-mail: npollock@fs.fed.us