

Meeting Notes
After Action Review – Berry Energy B-800 Well Project
May 28, 2008

Attendees: Debra Holler (facilitator), Clyde Thompson, Tom Chapman (FWS), Mary Beth Adams (NRS), Tom Schmidt (NRS), Nadine Pollock, Linda Tracy, Jack Tribble, Ivette Torres (WO), Paul Stockinger (RO), Tom Doane, (RO), Jim McDonald (RO).

Meeting Objectives:

- Gain a better understanding of the workings of reserved & outstanding mineral rights.
- Review the Berry Energy B-800 project issues to determine which activities worked well and which areas need improvement.
- Prepare a strategy for future pipeline and well activities.

The morning was spent with a brief overview of the rules and regulations for managing outstanding and reserved mineral estates, a review of the B-800 project chronology, and preparing a list of project successes and areas that need improvement.

Attachment A: Outstanding and Reserved rights defined.
Attachment B: B-800 project chronology
Attachment C: Proponent Plan of Operation chart

Project Successes:

- High quality relationships were maintained with the well operators
- Good verbal communications occurred between the Monongahela National Forest supervisor and the FWS field leadership.
- Good communications occurred between staff specialists of the FS and FWS.
- Willingness was shown by the FS staff to consider mitigating measures offered by the FWS.
- Strong personal commitment was exhibited by all for protecting the resources.
- Weekly project updates were prepared for distribution to all interested parties.
- Good negotiations occurred on the location change for the previous B-782 well site.

Areas in need of improvement:

- Closure is needed on the FWS portion of the well site NEPA.
- More 3-way communication is needed between the leadership of the FS, FWS, and NRS. IE: all 3 parties should be involved at the same time. The well operator and staff specialists should be invited when necessary and appropriate.
- The roles of the federal action agency and the Service needs defined as it relates to outstanding and reserved mineral rights, and the prohibitions imposed on federal agency actions contained in section 7 of the ESA. At this point in time, during informal consultation, and when a “may affect” determination has been

made by the action agency, the Service must concur in writing with this finding. Tom Chapman has indicated the Service cannot procedurally complete consultation, without first concurring in writing with the findings of the action agency, and certainly not after the project is underway. Additionally, he indicated if this occurs, and it is the opinion of the Service that adequate provisions to avoid the likelihood of adverse effects to listed species have not been taken then he will send a letter to the FS and the mineral producer stating his finding and recommend the FS pursue formal consultation to avoid violating the take prohibition of section 9 of the ESA.

- There needs to be more consideration given to NRS research on road damage and repair.
- Clarification is needed as to who can sign the road use permits.
- More respect is needed for Fernow authorities. Need to get agreement on those authorities.
- There needs to be an understanding of the NRS responsibility to manage the Fernow for long-term research, and consideration of conflicting responsibilities.
- Need broad understanding that well/pipeline work is a work in progress and repairs to apparent impacts will be made as appropriate (not everything is a crisis).
- Need a better defined process for working cooperatively to achieve future goals in the OGM arena.

Action items:

Local:

- Schedule regular conference calls on OGM issues as they relate to the Fernow. (Clyde) Participants will be determined by the issues being discussed.
- Continue weekly updates as appropriate.

Regional:

- Request an OGC opinion on how to apply ESA to outstanding and reserved rights. (Mary Beth and Tom C.)
- Provide regional, integrated NEPA guidance to be applied consistently.

Pipeline Strategy:

- Ground truth (with Berry Energy) the pipeline proposed by the FS and NRS. (Linda and biologists)
- Initiate early informal consultation discussions between FS and FWS staff and continue to keep Clyde and Tom C. briefed on the status.
- Work to improve and implement the above noted “areas in need of improvement”

Long Term OGM Strategy:

- Review current staffing and plan future staffing to be responsive to a potential increase in gas exploration activities.
- Review budget and prepare annual requests to appropriately respond to an increased OGM program.
- Work with the State O&G Chief on T&E issues.
- Define our lessons learned as we work through these projects.

Attachment A: Privately owned mineral rights under NFS lands.

Reserved rights are mineral rights retained by the seller in a deed conveying land to the U.S.

Outstanding rights are mineral rights owned by a party other than the surface owner at the time the surface was conveyed to the U.S.

Attachment B: B-800 Well Project Chronology.

May 11, 2007	Berry contacts the FS with project map & asks for input.
May 23, 2007	FS letter identifying issues with proposed site.
June 21, 2007	Joint Berry & FS review of the site/issues on the ground.
July 20, 2007	FS & Berry review of proposed E&S plan.
August 2007	Internal & Partners update on Berry's plans and progress on issues.
Sept. 11, 2007	FS receives copy of WV well work permit application.
Sept. 21, 2007	WV approves well work permit application.
Nov. 2, 2007	Decision Memo signed.
Dec, 2007	Appeal period ends – no appeals received.
Jan. 2008	Timber on access road/well site sold to Berry/cut by Fernow crew.
Feb.-April, 2008	Construction of access road/well site.
April 8, 2008	Well drilling began.
May 16, 2008	Drill rig left the site.

Attachment C: Proponent Plan of Operation process (60 days FSM 2830.3)

1. FS Review, analyze , & evaluate for consistency with mineral reservation (FSM 2831)
2. Concur with plan of operation or negotiate with operator to implement measures to address resource concerns not addressed by the mineral reservation or State law
OR
3. Reject due to inconsistency with mineral reservation or work with the operator to achieve consistency.

WV Natural Gas Well Permitting Process: (15 days)

1. Proponent files WV well work permit application
2. FS supplies comments to Chief of Office of Oil & Gas for WV on application.
3. WV Chief of Oil & Gas denies or conditions the permit based on certain criteria.