INTER AGENCY MEMORANDUM

To: Craig Jones, Senior MEPA/MSFA Coordinator, Montana Department of Environmental Quality

From: Linnaea Schroeer, MEPA Coordinator, Montana Fish, Wildlife & Parks
Date: January 26, 2018
RE: Amendments to Dec 8, 2017 letter regarding Black Butte Copper Mine EIS.

Dear Craig;

In my effort to meet DEQ's request for some possible areas of collaboration and points of discussion regarding the proposed Black Butte Mine operations plan and environmental analysis in a timely manner, I shared some thoughts that had not been reviewed by Director Williams and did not accurately reflect FWP's position on several issues. Please accept this letter as a replacement for the December 8 memo, with my apologies.

FWP remains committed to working in partnership with DEQ to best serve the people and resources of Montana.

Sincerely,

Linnaea Schroeer

MEPA Coordinator, Montana Fish, Wildlife & Parks

Overview

As FWP has shared with DEQ in joint meetings, FWP field staff are interested in assisting DEQ in considering potential impacts to a wide range of resources from the proposed Black Butte mine. This includes potential impacts to fisheries and water quality and quantity, wildlife, FWP and other State-owned lands in the area, local recreational opportunities and experiences, the socio-economics of the region, law-enforcement demands on FWP wardens, and other issues.

During the EIS analysis of the proposed mine operating permit, we encourage DEQ and its contractor to include a thorough assessment of the broad spectrum of resources present in the area and the impacts that could occur to those resources during all phases of the mine (exploration, development, operations, restoration, and post-mine activities). We also hope you will consider incorporating proactive and effective conservation tools that other companies in Montana have successfully employed, should the mine be permitted to proceed. FWP would welcome the opportunity to share some ideas for mitigation and bonding at the appropriate time.

Water Quality and Quantity

FWP suggests that DEQ consider the possibility of chronic impacts to fisheries and aquatic resources from mining activities. While the mining permit will likely require the applicant to comply with discharge permits that enforce numeric surface water quality standards, it would be beneficial to consider whether there could be chronic impacts that fall below enforceable thresholds but could still cause negative impacts to aquatic resources if they occur for extended periods of time. FWP recommends that the applicant adopt an aquatic monitoring program that would aid in detecting these chronic changes over time, and to create a mechanism for remediation if elevated levels occur or if chronic impacts are detected.

FWP recommends DEQ consider the Montana Water Quality Act – Non-Degradation Rules (17.30.701) in the EIS analysis and specifically define a mixing zone in accordance with ARM 17.30.501. We are uncertain if the mine compound, tailings pond and water treatment facility would be permitted under a traditional MPDES and MS4-type permit. One area of concern with the MS4-type permit is that the permittee is required to develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in ARM 17.30.1102(7)) into the permitted Small MS4 for illicit discharge, detection and elimination of pollutants. FWP would recommend DEQ and other responsible agencies work closely with the permittee to develop BMPs and a program that affords a high degree of assurance against accidental discharge or exceedance of standards. In the event an applicant fails to comply with Non-Degradation Rules or discharge permit standards, what is the risk of losing section 401 Federal Clean Water Act certification for the project? We recommend these issues receive consideration and analysis in the EIS.

FWP holds many water rights in the Smith River basin and pays close attention to potential cumulative impacts to water quality and quantity from mining activities and other pre-existing and evolving demands and impacts, including climate change. The present demands on water resources in the Smith River basin are extreme. If current conditions continue, it will be increasingly critical that the available water in the Smith River watershed be as high quality as possible. FWP requests that DEQ's contractors include a thorough analysis of cumulative impacts to water resources in its EIS.

Fisheries

The area surrounding the proposed mine contains a wealth of supporting habitat that helps maintain wild fish populations throughout the basin. FWP-conducted research shows that some fish species migrate between the Smith Rivera and its tributaries to the Missouri River and back again, covering hundreds of miles in their lifetimes. Negative impacts to a localized area could have far-reaching consequences and influence on these populations. While fish numbers in the Smith River and its tributaries are generally healthy, periods of low water, high water temperatures, and other regularly occurring stressors can negatively affect these populations and make them more vulnerable to other impacts. FWP recommends that the EIS analyze all the potential impacts to the fisheries resources of the area, and recognize the important economic benefit that a healthy sport fishery provides to the residents of Meagher County and the state of Montana.

Recreation

The Smith River corridor is a national treasure protected by a permit access system to manage recreation for our constituents, provide a high-quality experience, and keep resource impacts within acceptable standards. Montana FWP manages Smith River State Park, Newlan Creek Reservoir, Sutherlin Reservoir and Fort Logan FAS, and there are numerous other streams, lakes and reservoirs in the basin that provide angling and other forms of terrestrial and water-based recreation to the public. It may be beneficial for the EIS to consider whether there may be effects on public access from USFS trails, additional use of Camp Baker for non-Smith river floaters, and increased violations, conflicts, and complaints and the necessary law enforcement response. Some of the potential impacts are social in nature as demographics change due to the influx of workers from diverse backgrounds and cultures. Examples of potential problems include a lack of understanding of fish and game laws and basic outdoor ethics, increased camping and possibly squatting on public land, trespassing, and others. When large projects like the proposed Black Butte mine are first initiated, the necessary community infrastructure often lags, which could lead to a shortage of housing and other services that cause people to use neighboring public land for camping, bathing, etc.

Wildlife

Wildlife throughout the basin and the surrounding areas provide opportunities for hunting and wildlife viewing and are part of the natural ecosystem. Successful management of the many game and non-game species in the area depends on cooperation and buy-in from private landowners. Landowners are generally more willing to collaborate with FWP on wildlife management endeavors and allow public hunting and recreational access when their private property rights are honored and trespass and other forms of conflict with the general public are kept to a minimum. An influx of new residents to Meagher County could affect that delicate balance, as people from outside the state don't always understand and/or follow Montana property and hunting laws and ethics. It is important that the EIS analyzes those potential impacts, as well as those from mining activities such as roads, traffic, lights, noise, etc.

As the number of employees increase, both worker and mine-related traffic also increases. This could result in more vehicle/wildlife collisions. Wildlife and human safety become a concern and can have cumulative effects on wildlife populations along with illegal take, change to migration patterns and habitat use. When combined with other impacts, the influx of workers could reduce wildlife populations of non-game and large game animals. Changes in wildlife populations create management challenges and can cause an increase in workload for FWP staff as they seek to find solutions and bring populations

back within objectives. Some of these potential issues could be avoided with proactive public awareness and education programs put on by FWP and we welcome the opportunity to work with DEQ and the applicant to implement such mitigation measures.

Of additional concern is the fact that the grizzly bear is now present in the vicinity of the proposed mine area. This ESA-listed species requires additional management and educational resources as FWP works to decrease conflicts with humans, livestock, etc. The EIS should consider potential impacts to grizzlies, such as potential for illegal killing, collisions with vehicles, habitat loss, etc. The EIS should include an analysis of impacts to this federally listed species, and the operational plan should provide protections.

Enforcement

It may be beneficial for the EIS to consider whether the influx of mine employees might result in an increase in hunting, fishing, recreation and trespass violations, as has been observed in the Baaken and other areas. That could put additional demands on FWP enforcement and may result in some violations not being investigated due to the heavy workload.

Secondary impacts to consider could include less enthusiasm by landowners for Block management, public access programs, and land uses on the Smith river corridor and the larger area. Other programs like boating safety, snowmobile and ATV trail use, and others could also be impacted.

Mitigation

During meetings between FWP and DEQ on the proposed project, the topic of mitigation has been discussed. FWP offered to come up with some ideas for mitigation that could include a bond, a conservation fund, or other tools. In our previous letter we laid out possible frameworks for some of those ideas, which was premature for this state in the environmental review process. However, we remain committed to working with DEQ to develop such mitigation instruments at the appropriate time.