

Denali Citizens Council



Advocating for Denali's Wilderness, Wildlife and Way of life.

September 24, 2014

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Alaska Department of Natural Resources
Attn: Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 95501

Re: Healy Creek Exploration Project Plan of Operations comments

To Whom It May Concern:

On behalf of the Board of Directors and more than 300 members of the Denali Citizens Council, and in accordance with 11 AAC 02, I am filing an appeal to the decision of the Division of Oil and Gas (LO/AK 14-002, dated 9/5/14), regarding an exception to the monitoring plan requirements found in the Healy Basin Final Best Interest Finding (Final BIF). Our members have shown great interest in plans to explore for gas in the Healy Basin. Our interests are largely focused on the west side of the Nenana River and in residential or sensitive wildlife areas. No matter the location, we feel strongly that any gas exploration or development activities should be done according to best practices, and utilizing the mitigations required by the Final BIF.

Reconsider exception for monitoring plan requirement

To guarantee that assurances provided in the Final BIF are maintained, the Denali Citizen's Council (DCC) feels it is necessary to appeal the exception granted to the applicant to dismiss monitoring plan requirements for the Healy Creek Exploration Project. According to the Final BIF, a monitoring plan is required in the Plan of Operations (Mitigation A.1.a.v), unless compliance "is not practicable or that the licensee will undertake an equal or better alternative to satisfy the intent of the mitigation measure."¹ The Division of Oil and Gas decision ignores Final BIF requirements for exception requests, and instead granted the exception based on waste disposal at the site, despite the fact that there is no connection between waste disposal and monitoring plan requirements found in the Final BIF.

DOG reasoning ignores Final BIF requirements

The Final BIF outlines the conditions that an exception can be made for mitigation measures under certain conditions. DOG's decision acknowledges this granting of exceptions in the Final BIF when the mitigation would not be practicable, or if an equal

¹ Healy Basin Final Best Interest Finding, page 9-1
see *DCC v. DNR*, Alaska Supreme Court No. S-14896, p. 17: "not practicable standard"
would be no more permissive than the "not feasible or prudent standard"
see Division of Oil and Gas decision LO/AK 14-002, response to comment #42)

or better alternative exists that could meet the intent of the mitigation. In the Final BIF, “practicable means feasible in light of overall project purposes after considering cost, existing technology, and logistics of compliance with the mitigation measures.” The Alaska Supreme Court reviewed the term practicable as it related to an exception (and compared to the older term “feasible and prudent”), and found that “the new standard is no less stringent than the old.”²

Rather than basing their decision on exception guidelines found in the Final BIF, DOG points to design and monitoring requirements for drilling waste disposal facilities (18 AAC 60.430(a)(1)(C) and (D)). DOG goes on to state “Since Usibelli is not proposing to discharge waste into a waste storage cell at the well site location the Division will not require Usibelli to develop a monitoring plan for the Healy Creek Prospect.”³

The Final BIF requirement for a monitoring plan was never linked to waste disposal. In fact, temporary storage of waste was permitted for up to six months (Mitigation Measure A.5.b). Even with temporary storage of drilling waste allowed on-site, the Final BIF mitigations still required a monitoring plan (Mitigation Measure A.1.a.v), “tailored to the specific situation and potential impacts of proposed activities.” Yet in this decision DOG appears to be suggesting that an exemption to the requirement for a monitoring plan in the Plan of Operations can be granted simply by the fact that solid waste will not be disposed of at the site. This does not comply with the Final BIF exception guidelines, and pursuant Supreme Court decision.

Information required from applicant to meet Final BIF requirements

Rather than explaining why a monitoring plan was not practicable, or that a better alternative existed, the applicant stated that it was not necessary.⁴ According to the decision, “The Division will treat this response as a request for an exception to Mitigation Measure A.1v requiring a monitoring plan.” DOG then granted this exception citing waste disposal.

If an exception were to be considered, the Final BIF requires that “Requests and justifications for exceptions must be included in the plan of operations.” This was not done according to the standard outlined in the BIF. Rather than linking monitoring plan requirements to waste disposal, DOG should have required a meaningful justification of whether a monitoring plan was not practicable, or identify another reasonable alternative. This justification was not provided, and there is no indication in the Plan of Operations that a monitoring plan would not be practicable for the applicant, or that other alternatives exist.

Limited monitoring could be in place by 2013 commencement of activities

We encourage DOG to reconsider the decision noticed on September 5, 2014 that would allow an exception to Final BIF requirements for a monitoring plan. Because of the scope of the project, we agree that this monitoring plan may be more limited in scope than if

² See *DCC v. DNR*, Alaska Supreme Court No. S-14896, p. 17: “not practicable standard” should be no more permissive than the “not feasible or prudent standard”

³ See Division of Oil and Gas decision LO/AK 14-002, response to comment #42)

⁴ Additional reasoning was provided as to why the applicant felt the monitoring plan was unnecessary (i.e. limited nature, shallow depth of the well, previously disturbed site, etc.), but no exception was requested, and no justification according to the Final BIF requirements.

exploration activities were to continue or increase, but we do not agree that eliminating the requirement for it complies with the intent of mitigation measure requirements in the Final BIF.

We do not see this as a burden to the applicant, as Usibelli Coal Mine, Inc. is already engaged in various monitoring programs throughout the area, and has staff onsite to conduct monitoring for coal mining operations. Rather than allowing the exception, DOG should require a plan for monitoring that includes, at a minimum:

- Surface water quantity and quality reporting, including quantity of water used for exploration activities.
- Groundwater monitoring.
- Baseline acoustical data and noise monitoring.

For DOG to consider an exception, a more thorough justification from the applicant regarding why such an exception is necessary (i.e. why a monitoring plan would not be practicable, or another alternative is in place) should be required.

Please understand that we are not appealing for increased protections here, and instead are simply asking that the monitoring requirements, as outlined in the Final BIF, be met. We are particularly interested in ensuring that baseline information is obtained, and that monitoring continues through the duration of exploration activities and future phases to ensure awareness of any potential impacts of gas exploration activities over the course of this phased undertaking.

We understand that exploration activities have likely commenced, and do not wish to slow activities this fall, but ask that the state require a plan for monitoring according to Final BIF requirements before activities commence next year. This plan should be noticed publicly, using the same procedures as Plan of Operations are noticed under, as it should have been a part of the Plan of Operations initially.

Provide Additional Information

There are several other areas that we feel are inadequately covered in this decision, and hope to receive more clarification. While these points may not require changes to the Plan, we feel that they should be clarified.

Future wells should comply with public process requirements

We requested information regarding how many exploratory wells would be authorized by this Plan of Operations, and at how many different locations. It is explained in the revision to this Plan of Operations: “Additional information outlining the proposed operations for 2015 wells will need to be submitted to the Division for review and approval prior to commencing operations.” It is unclear whether this review and approval process will be publicly noticed. Because only one exploratory well (and waste disposal, water usage, etc.) is considered in this decision, we would like to confirm with DOG that public notice and additional information will be provided for any future wells.

Clarify location of drilling waste disposal

In DCC's comments on the Plan of Operations for the Healy Creek Exploration Project, we requested specifics about the location for drilling waste disposal. It is still unclear to us where the disposal of inert wastes and other drilling wastes on Usibelli Coal Mine property will be. We are aware of a permit to dispose of coal mining waste (along with other inert wastes) in various areas within the Poker Flats mining area. It would be helpful for public understanding and awareness if specific locations (or even a general area) were provided, or if additional information could be provided regarding reporting requirements that would allow the public to get this information. DCC would like to ensure that drilling waste locations are accounted for, and that drilling waste disposal is done to highest standard that is practicable.

Scheduling

In the Director's response to comments, it is stated "This decision does not approve any operations prior to the date of this Plan approval." Yet, it is well known locally that drill pads were cleared (adjacent to the air strip) by the spring of 2014. This contradicts with statutory guidance, and shows a lack of effort on the part of the state to monitor activities and ensure compliance with land use activities within the existing UCM Coal Lease. In addition, despite requests for amended scheduling (Section 3, Schedule), dates still reflect start dates that are prior to the Plan of Operations approval. This is misleading.

Thank you for your consideration of our appeal. Feel free to contact us with any questions or for further explanation or information.

Sincerely,

/s/ Hannah Ragland, DCC President
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