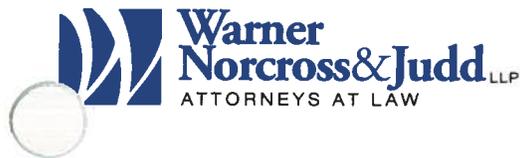


US EPA ARCHIVE DOCUMENT



RECEIVED

AUG 20 2008

UIC BRANCH  
EPA REGION 5

DANIEL P. ETTINGER

616.752.2168  
FAX 616.222.2168

dettinger@wnj.com

August 18, 2008

*Via Federal Express*

Mr. Robert Thompson  
Office of Regional Counsel  
USEPA Region 5  
77 West Jackson Boulevard  
Mail Code: C-14J  
Chicago, Illinois 60604-3507

Dr. Stephen Roy  
Underground Injection Control Branch  
USEPA Region 5  
77 West Jackson Boulevard  
Mail Code: WU-16J  
Chicago, Illinois 60604-3507

Re: **Kennecott Eagle Minerals Company's UIC Permit Application – NHPA  
Section 106 Report**

Dear Mr. Thompson and Dr. Roy:

This letter concerns Kennecott Eagle Minerals Company's ("Kennecott") Underground Injection Control ("UIC") permit application and EPA's consideration of that application under the terms of Section 106 of the National Historic Preservation Act ("NHPA").

We have enclosed for your review a comprehensive report prepared under the terms of Section 106 of the NHPA and the implementing regulations (36 CFR Part 800). It has been prepared by acknowledged experts in the fields of cultural resource management, history, archaeology, and anthropology, including an expert in Ojibwe culture. The report is being submitted in both paper and electronic forms. The report discusses the area of potential effects for archaeological resources and traditional cultural properties, examines whether there are any places of potential historic importance within the APE, and then assesses whether any of those places are eligible for listing in the National Register of Historic Places (36 CFR Part 60). Because the Keweenaw Bay Indian Community ("KBIC") and some other tribes have indicated to EPA that they believe the rock outcrop in the NW<sup>1</sup>/<sub>4</sub> of Section 12, T50N-R29W (which has recently been identified by KBIC as "Eagle Rock") is eligible for listing in the National Register, the experts paid particular attention to the rock outcrop.

The enclosed report ultimately concludes that there are no properties (archaeological sites or traditional cultural properties) eligible for listing in the National Register in the project area, including the rock outcrop. Because the experts did not find any eligible properties, a discussion of adverse effects or mitigation is not required under NHPA. The report therefore does not discuss either.

Mr. Robert Thompson  
Dr. Stephen Roy  
August 18, 2008  
Page 2

---

Kennecott continues to believe that the undertaking under Section 106 of the NHPA is limited to the permitting of the treated water infiltration gallery ("TWIS"), and that the scope of EPA's review under the NHPA should be limited accordingly (please see our May 20, 2008 letter to EPA for further discussion of Kennecott's position on this issue). Nevertheless, for purposes of the attached NHPA report, Kennecott asked the experts to take an expansive view and consider the entire mining project encompassed by Kennecott's Michigan Part 632 mining permit, including aspects of the project over which EPA has no licensing or permitting authority.

The experts considered all of the information that KBIC and other interested tribes submitted to EPA as part of the NHPA consultation process, as well as additional information provided by KBIC as part of its consultation with the State of Michigan, and information provided as part of the state's permitting process (including testimony provided by KBIC representatives at the Michigan Department of Environmental Quality's ("MDEQ") contested case hearing). The report also recounts the state permitting process for the Eagle project and sets forth the consultation history between Kennecott, EPA, MDEQ, the Michigan Department of Natural Resources ("MDNR"), SHPO, KBIC, and several other tribes. Further, the report provides an in depth discussion of the land use history for the Eagle site and the surrounding area, including the history of logging and mineral exploration on and around the rock outcrop.

We believe that the enclosed report is thorough, objective, and well-reasoned, and should be adopted by EPA and concurred in by SHPO. We are also submitting a copy of this report to the State Historic Preservation Office for its convenience. If EPA adopts the report and its conclusions, we expect that EPA will promptly notify SHPO so it can begin its statutorily-required 30-day review of EPA's determination. We also expect that EPA will concurrently provide the report to other consulting parties, including KBIC, the Lac Vieux Desert Band of Lake Superior Chippewa, the Grand Portage Band of Chippewa Indians, and the Sault Ste. Marie Tribe of Chippewa Indians, and ask that they provide any comments within 30 days of their receipt of the report. Because the report may include information considered sensitive by the tribes or others, we have marked the report "confidential." We leave it to the sound discretion of EPA and SHPO to determine whether it is appropriate to disseminate this report beyond the consulting parties.

While the experts have concluded that the rock outcrop is not eligible for listing in the National Register, Kennecott remains willing to consider reasonable measures to address KBIC's cultural concerns, as Kennecott has communicated previously to KBIC, EPA, and SHPO. Kennecott attempted to consult with KBIC in this regard beginning in early 2005, only to have KBIC break off communications shortly thereafter. Unfortunately, we have seen no indication thus far that KBIC seeks to do anything other than block the Eagle project. To date, KBIC has been steadfast in its opposition to the project – it has filed several lawsuits and

Mr. Robert Thompson  
Dr. Stephen Roy  
August 18, 2008  
Page 3

---

administrative appeals challenging the Surface Use Lease between Kennecott and the State of Michigan and the state permits granted by MDEQ in December 2007, all in an effort to prevent the Eagle project from moving forward. If KBIC is now interested in engaging in a non-adversarial dialogue, Kennecott remains willing to do so.

In this regard, we note that Kennecott has already agreed under the Surface Use Lease (Section 4.B.6) not to engage in any mining operations or activities on the exposed surface of the outcrop. In fact, Exhibit G to the Surface Use Lease actually shows the non-disturbance boundary around the outcrop. Further, Kennecott is required by state law to reclaim the project area after the cessation of mining activities, so the surrounding area will be restored.

We have attached to the report several documents that we believe will be helpful to EPA and SHPO as they fulfill their respective responsibilities under Section 106 of NHPA, including key consultation documents between Kennecott, EPA, MDEQ, MDNR, SHPO, and KBIC over the past 3½ years, the State Surface Lease for state land in Section 12 that includes the rock outcrop, and documents explaining why the location proposed by Kennecott for the surface facilities and the mine portal is the preferred alternative. Additional documents related to the Eagle project, including Kennecott's state mining permit application, the mining, groundwater, and air permits approved by MDEQ in December 2007, the complete Surface Use Lease, and the Mining and Reclamation Plan ultimately approved by MDEQ and MDNR, can be found at the following MDEQ and MDNR website addresses: [http://www.michigan.gov/deq/0,1607,7-135-3311\\_4111\\_18442-130551--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3311_4111_18442-130551--,00.html) and [http://www.michigan.gov/dnr/0,1607,7-153-10368\\_11800-161951--,00.html](http://www.michigan.gov/dnr/0,1607,7-153-10368_11800-161951--,00.html). Further, we are happy to provide any additional documents or information that might assist EPA as it completes the Section 106 process.

Thank you for your careful consideration of the enclosed report. We look forward to the timely completion of the Section 106 process. Please feel free to give me a call if you have any questions.

Sincerely,



Daniel P. Ettinger

Enclosures

cc: Brian Grennell, SHPO (with enclosures)  
Jon Cherry, KEMC

1573081