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# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:

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October 14, 2009

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UIC BRANCH  
EPA REGION 5

Rebecca L. Harvey  
Chief, Underground Injection Control Branch  
Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

RE: Informal Section 7 Consultation for the issuance of an Underground Injection Control Program permit to Kennecott Eagle Minerals Company for a proposed underground mine in Marquette County, Michigan.

Dear Ms. Harvey:

We are responding to your August 19, 2009 letter requesting consultation under section 7 of the Endangered Species Act (Act). This proposed action is the issuance of an Underground Injection Control Program permit to Kennecott Eagle Minerals Company. The permit will cover the construction and operation of a treated water infiltration system to dispose of industrial waste water generated from the operation of a proposed copper and nickel mine. The infiltration system is an essential component of the proposed mine. The underground mine will be located 25 miles northwest of the city of Marquette, Michigan in T50N, R29W, Section 12 in Marquette County.

In your endangered species effects analysis, you described the Action Area as the land area necessary for the above ground mining operations. This includes 145 acres of fenced land and an access road. Approximately 92 of the 145 acres will be disturbed by construction. For purposes of this consultation, we include the underground portion of the project (shown on Figure 4-2 provided with your request).

Your analysis addresses potential effects on the Kirtland's warbler (*Dendroica kirtlandii*), Canada lynx (*Lynx canadensis*), and gray wolf (*Canis lupis*).

Kirtland's warbler

A Kirtland's warbler was detected approximately two miles away from the Action Area during the 2006 and 2008 Kirtland's warbler census. Per our recommendation, habitat in and around the Action Area was mapped and areas suitable for Kirtland's warbler were identified (King & MacGregor 2006). Additionally, surveys for Kirtland's warblers and other bird species were conducted during the breeding season in 2006, 2007, and 2008 (King & MacGregor 2008a, King & MacGregor 2008b, and King & MacGregor 2006). King and MacGregor (2006) concluded that only Stand B, which is outside the Action Area, provided potential Kirtland's warbler habitat. They did not document Kirtland's warblers in the Action Area.

Upon review of the King & MacGregor (2006) report, including the attached photographs, we have determined that portions of Stand D may also provide habitat suitable for Kirtland's warbler. At 6 – 15 feet in height, the jack pine in this stand are in the correct height range for the species. Observational data provided in the report indicate that optimal tree density and ground cover may not be consistently present throughout this site. Kirtland's warblers, however, sometimes utilize stands where tree densities and ground cover are sub-optimal. We advise, based on the information provided, that Stand D could be occupied by Kirtland's warblers in the future.

The proposed mine will directly impact portions of Stand D. If Kirtland's warblers occur in this stand in the future, activities associated with the mine could result in take, which is prohibited under The Endangered Species Act. Please advise the applicant of this possibility, as the take prohibition applies to both private and public entities.

Because portions of the project area provide suitable habitat, we recommend annual Kirtland's warbler surveys within the Action Area until the trees are at least 20 feet in height. In the event a Kirtland's warbler is observed during a survey, you or the applicant should contact our office within 24 hours. No further project activities should proceed until EPA re-initiates section 7 consultation.

You determined that this project is *not likely to adversely affect* the Kirtland's warbler. We concur with this determination for the following reasons:

- A survey for Kirtland's warbler within the Action Area was conducted in June 2006, 2007 and 2008 and no Kirtland's warblers were observed.
- Observations of Kirtland's warbler on the Yellow Dog Plains were approximately two miles away from the Action Area. Due to the distance between the proposed project and occupied habitat it is unlikely that disturbance associated with mine construction, operation, and maintenance will impact Kirtland's warblers.
- Over the potential life of the mine, suitable habitat adjacent to the Action Area may be occupied by Kirtland's warblers and could be impacted indirectly by mine related disturbances (noise associated with mine activities, noise and dust from mining truck traffic). We expect, however, that this potential impact will be insignificant.

Kirtland's warblers currently nest adjacent to areas which experience noise and other disturbances (such as adjacent to oil and gas wells and roads with logging trucks) without measurable or noticeable negative consequences.

Based on this information, we expect any potential effects from this project on Kirtland's warbler to be insignificant. As indicated, however, results of future surveys may warrant re-initiation of consultation.

### Gray Wolf

According to your analysis, wolf tracks and scat have been observed at or near the project site. Recent information from the Michigan Department of Natural Resources also indicates that a wolf pack has been observed in the vicinity of the project (Brian Roell, Michigan Department of Natural Resources, pers. comm. 2009).

- Wolves could be disturbed as a result of noise and activities associated with the above ground construction and on-going mining activities. We expect that the wolves will respond to this increased disturbance by simply avoiding the project site.
- Only a small area of land will be impacted by this project when compared to the total area available for wolf foraging and breeding activities.
- Wolf prey availability or populations are unlikely to be affected by the project.
- Fencing around the above ground portion of the project would limit future interactions between mining activities and wolves.

Based on this information, we expect any potential effects from this project on gray wolf to be insignificant.

### Canada lynx

Currently, the best available information, including historic records and recent surveys, indicates that Canada lynx in the Upper Peninsula, if present, are likely limited to a small number of dispersing individuals. There is no indication of recent or current lynx breeding in the Upper Peninsula. None of the environmental surveys in the vicinity of the project site have detected Canada lynx. This information indicates that lynx are not likely present in the action area. Based on the following information, we concur that the proposed action is *not likely to adversely affect* the lynx.

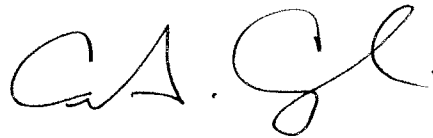
- The construction and mining activities could directly disturb lynx that are within or adjacent to the Action Area. However, as previously discussed, lynx are extremely unlikely to be exposed to project activities because they are present in such low numbers, if at all, in the Action Area.

- If lynx were in the area, the construction and mining activities will impact only a small area when compared to the surrounding landscape. We expect Canada lynx, if in the area, could simply utilize other undisturbed areas.

Based on this information, we expect any potential effects from this project on Canada lynx would be discountable or insignificant.

We appreciate the opportunity to cooperate with the Environmental Protection Agency in conserving threatened and endangered species. If you need further assistance, please contact Christie Deloria, of our Upper Peninsula Sub-Office, at 906-226-1240.

Sincerely,

A handwritten signature in black ink, appearing to read "C.A. Czarnecki". The signature is fluid and cursive, with a period after the first name and another after the last name.

Craig A. Czarnecki  
Field Supervisor

cc: Chris Hoving, Michigan DNR, Wildlife Division, Lansing

References Cited

King & MacGregor Environmental, Inc. 2008a. 2007 Wildlife Species & Vegetative Assessment. March 28, 2008. Prepared for: Kennecott Eagle Minerals Company, Eagle Project Site, Marquette County, Michigan.

King & MacGregor Environmental, Inc. 2008b. 2008 Wildlife Species & Vegetative Assessment. December 19, 2008. Prepared for: Kennecott Eagle Minerals Company, Eagle Project Site, Marquette County, Michigan.

King & MacGregor Environmental, Inc. 2006. Assessment of the Presence of the Kirtland's Warbler at the Eagle Project Site. July 18, 2006. Prepared for: Kennecott Eagle Minerals Company, Marquette County, Michigan.