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08/22/2008 09:31 AM

To Vicki.Rutson@stb.dot.gov, Evelyn.Kitay@stb.dot.gov,
Virginia.Strasser@stb.dot.gov, Diana.Wood@stb.dot.gov
cc "Remmert, Erik" <RemmertE@VMCMAIL.com>, "Tom
Ransdell" <transdel@swbell.net>

bcc

Subject RE: SGR -- USFWS Issue with Golden Cheeked Warbler

History: This message has been replied to:

All -- I am advised that USFWS is going to inform SEA that the rail project may move forward without further consultations. Additional surveys will be undertaken in phases in the quarry area as the quarry is developed, but apparently USFWS is now satisfied that SGR may proceed to build the railroad and loading loop. I understand that Vicki may receive a call on this as early as today and that a letter will follow from USFWS within the next few days. When you do receive the call, we would appreciate your confirmation that it has been received.

In short, it appears that this matter has now been resolved and any potential impediment to a Board decision removed.

Regards. David

From: Coburn, David

Sent: Wednesday, August 20, 2008 9:17 PM

To: Vicki.Rutson@stb.dot.gov; 'Evelyn.Kitay@stb.dot.gov'; 'Virginia.Strasser@stb.dot.gov'; 'Diana.Wood@stb.dot.gov'

Subject: SGR -- USFWS Issue with Golden Cheeked Warbler

Vicki, Evelyn, Ginny and Diana -- In advance of the meeting that SGR has scheduled with USFWS tomorrow to discuss the Golden-Cheeked Warbler (GCW) issue that USFWS has raised, I thought it would be useful to provide you with copies of the most relevant materials relating to this matter. I have thus attached relevant excerpts from the following: (1) the discussion of the GCW in the Nov. 2004 DEIS; (2) the 2001 and 2003 Biological Assessments that are reproduced at Appendix F of Volume II of the DEIS; (3) an excerpt from the Supplemental DEIS that addresses impacts to GCW habitat; (4) reports received by SGR from Horizon in 2002-03 on their review of property in the area for the GCW; and (5) relevant correspondence between USFWS and SEA and between USFWS and SGR.

The attached materials illustrate that the area of the rail line and quarry have

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been studied on several occasions for the presence of the GCW, which has not been sighted in the area during any of those studies. Nor was it sighted during the more recent visit by USFWS that prompted the July 2008 letter. There was one occasion in 2003 when a bird call may have been heard, but that one call came from off the site. Further, the habitat has been consistently described as marginal and perhaps suitable only for transient use by the GCW. The habitat that might be most suitable to the GCW is the area that will be set aside by Vulcan as a buffer zone and wildlife preserve area around the quarry.

In a Oct. 17, 2003 letter to Vulcan's consultant, USFWS agreed to phased further studies of the quarry area over time given the many years over which it will take to expand the quarry. Such further studies would occur prior to expanding the quarry into new areas. The phases of the quarry development are shown on the map which appears at page F-60 of Volume II of the DEIS.

Further, until its most recent letter, USFWS has concurred in the determination that "the project as proposed is not likely to adversely affect the golden cheeked warbler." See May 19, 2005 letter and USFWS "no action" stamp on SEA's July 18, 2006 letter.

The area visited by USFWS in July 2008 (USFWS' Allison Arnold advises that its visit to the area occurred for reasons unrelated to this proceeding) was an area adjacent to the northern boundary of the area into which the quarry might expand, probably not before 20 plus years from now. It is far from the area of the rail line and the loading loop/maintenance area. The area visited by USFWS exhibits more the of the type of trees that could support GCW habitat, but it is an area that USFWS has previously agreed could be surveyed in the future prior to any quarry expansion into the area. Again, the area where the rail line will be built -- and thus the area as to which there is STB jurisdiction -- has been studied and USFWS has previously signed off on construction of the rail line, including the loading loop.

In light of the above, and in view of the attachments, we are hopeful that USFWS will reconsider the position taken by its staff biologist in the July 2008 letter, who may have been unaware of USFWS's prior positions. If that does not happen, we look forward to discussing with you and USFWS the possibility of an agreement that would perhaps provide for a schedule of future pre-construction surveys in the quarry area, but also provide that STB would move forward with a decision on the rail line without awaiting any further surveys and while any further consultations that may occur under Section 7 of the Endangered Species Act are proceeding.

We will keep you apprised. Regards. David

<< File: Draft EIS.pdf >> << File: Supplemental DEIS.pdf >> << File: 2001
BA.pdf >> << File: 2003 BA.pdf >> << File: FW 4-22-03.pdf >> << File:
10-17-03 FWS Letter.pdf >> << File: FW 2-3-04.pdf >> << File: FW 3-1-04.pdf
>>

<< File: SEA 5-12-05.pdf >> << File: FW 5-19-05.pdf >> << File: SEA
7-18-06.pdf >> << File: SEA stamped letter.pdf >> << File: 020076te.doc >>
<< File: 030061te1.doc >> << File: 030061a01TE Layout1 (1).pdf >>

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