



TRUSTEES FOR ALASKA

SUSTAIN | PROTECT | REPRESENT

Via E-mail

March 15, 2013

David Edmunds
Division of Oil and Gas
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 800
Anchorage, AK 99501
dog.permitting@alaska.gov

Re: Buccaneer West Eagle Well #1 Drilling Program, Kenai Peninsula, Alaska (LOCI 12-004)

Dear Mr. Edmunds,

Trustees for Alaska submits these comments on behalf of Cook Inletkeeper and the Kachemak Bay Conservation Society (collectively, “Inletkeeper”) regarding the application for Plan of Operations approval submitted by Buccaneer Alaska Operating, LLC (“Buccaneer”) for the West Eagle Well #1. We appreciate the opportunity to provide comments and assist with the Division of Oil and Gas (DOG) review of the proposed West Eagle Well #1.

Inletkeeper has serious concerns about the lack of information and detail in Buccaneer’s Plan of Operations and mitigation measure analysis, and is alarmed to see that many of Buccaneer’s representations to Kachemak Bay residents during public meetings last fall were not integrated into the Plan of Operations. The following sections provide Inletkeeper’s concerns with regard to Buccaneer’s Plan of Operations and discuss additional areas where Buccaneer has not properly implemented the appropriate mitigation measures for West Eagle Well #1.

Plan of Operations

The Commissioner of the Department of Natural Resources (DNR) is required to approve a plan of operations before any activities may be undertaken on or in the leased or licensed area.¹ An application for approval of a plan of operations “must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the commissioner to determine the surface use requirements and impacts directly associated with the proposed operations.”² The application “must include statements and maps or drawings” on the following

¹ 11 AAC 83.158(a).

² 11 AAC 83.158(d).

aspects of the project: (1) the schedule for the activities to be conducted in the lease area, including the date operations are proposed to begin and their proposed duration; (2) the “projected use requirements directly associated with the proposed operations, including the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;” (3) “plans for rehabilitation of the affected leased or licensed area after completion of operations or phases of those operations;” and (4) “a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased or licensed area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas.”³ When DNR reviews a plan of operations, DNR has the ability to amend the plan to add additional mitigation measures that are necessary to protect the state’s interest, including the state’s interest in protecting the environment.⁴

Material Handling

Under 11 AAC 83.158(d)(2), Buccaneer is required to provide statements and maps or drawings of the “location and design” of various elements of the project, including well sites, material sites, water supplies, solid waste sites, buildings, roads, and other facilities and equipment. Although Buccaneer provided a topographic map in Figure 1 showing the locations of some of the facilities, it has provided only minimal, if any, details about the design of the well sites and most other elements of the project. For example, Buccaneer shows the proposed location of a storage area in the topographic map of the Plan of Operations, but does not indicate whether that storage area will be for storage of the diesel fuel described in section 5.2 or whether the storage area will be for solid or other wastes. Buccaneer has not included information about the design of the waste storage pits and has not indicated in section 5.5 or elsewhere how long drilling or other wastes will be on the premises. Buccaneer’s statements about the fact that “[a]ll wastes will be disposed of prior to completion of the operations” and will only be “temporarily stored” do not provide an adequate basis from which the public can determine the threats posed by Buccaneer’s storage of waste materials on-site. Without more detailed information about the design and location of waste storage facilities, the public cannot understand the environmental risks regarding potentially toxic materials.

Under section 11.1 of the Plan of Operations, Buccaneer states that it will have an approved Oil Discharge Prevention and Contingency Plan (C-Plan). In sections A.4.a through A.4.e of the mitigation measures analysis, Buccaneer states that the mitigation measures related to the containment and storage of hazardous substances, fuel, and waste are “satisfied as described in existing C-Plan.” However, Buccaneer’s C-Plan is currently in sufficiency review and the Alaska Department of Environmental Conservation (ADEC) has yet to issue the C-Plan for public comments. Buccaneer should not be allowed to rely on a document that has yet to be finalized or reviewed by the public to satisfy the required mitigation measures. Because Buccaneer did not include any details about its plans for handling fuel, hazardous substances, and waste, Buccaneer has not complied with 11 AAC 83.158(d)(2) by providing information on

³ *Id.*

⁴ 11 AAC 83.158(e).

the design of various elements of the project and it is unclear whether Buccaneer has satisfied the relevant mitigation measures.

Water Supply and Quantity

Buccaneer's Plan of Operations is also ambiguous about the water supply for the project and the volume of water needed. Section 5.4 of the Plan of Operations indicates that Buccaneer will use anywhere from one thousand gallons of water per day up to one million gallons per day. Buccaneer states that this water will come from available local sources, such as water wells near the material site or commercial sources in the vicinity. However, there is no indication that there is a contract in place with the City of Homer and there is no explanation of how Buccaneer plans to use its temporary water use permit (TWUP). If Buccaneer withdraws water from nearby wells, there could be conflicts with residents over water rights and depletion of groundwater. Buccaneer's statements about its potential water use and water sources are too open-ended for the public to provide meaningful input about the impacts of Buccaneer's plan on local water resources.

Water use and water pollution were significant issues raised by Inletkeeper and other local residents at community meetings held last fall. As a result, Buccaneer's inability to convey accurate information about water use and impacts to the public is especially troubling. For example, in its public presentation to local residents, Buccaneer represented that it had secured a temporary water use permit.⁵ Yet in the Plan of Operations Application, Buccaneer stated that it was only "possible" that a TWUP would be required for the project. In the Plan of Operations, Buccaneer states in section 5.4 that a TWUP "may be required." However, Buccaneer does not indicate anywhere in the application that it has already secured a TWUP for withdrawing a significant amount of water from a new well near the pad, as well as from Eagle and Circle Lakes.⁶

Local water use is a significant concern for nearby Homer residents. Yet, Buccaneer does not discuss the apparent plan to use up to 50,000 gallons per day and up to 10 acre feet or 3.26 million gallons per year over the course of the next several years.⁷ In a frequently asked questions handout posted to Buccaneer's website and circulated to the local community, Buccaneer stated the following: "Q. When will there be environmental studies for creeks near West Eagle? A. At this time, Buccaneer's operations will not utilize water near the site"⁸ As is clear from the TWUP, Buccaneer is authorized to take millions of gallons of water a year from

⁵ PowerPoint Presentation by Buccaneer Alaska Operations, LLC, *West Eagle Drilling Program: Community Outreach 8*, available at http://www.buccenergy.com/uploads/res/a30a5831-d5af-4b7f-a154-36a3405d3ffa_West%20Eagle%20Presentation.pdf (last visited Mar. 14, 2013) [hereinafter *Buccaneer PowerPoint*].

⁶ Alaska Dep't of Natural Res., Temporary Water Use Permit No. A2012-128 (Oct. 10, 2012) (providing that Buccaneer is authorized to withdraw up to 10.0 acre-feet of water per year and up to 50,000 gallons of water per day from a well near the West Eagle pad, Circle Lake, and Eagle Lake between 10/12/2012 and 9/1/2017).

⁷ *Id.*

⁸ *Buccaneer Energy Alaska, West Eagle Onshore Site: Frequently Asked Questions*, available at: http://www.buccenergy.com/uploads/res/9ad5ae9d-32ba-4a72-bf90-84f4c44c89bf_West%20Eagle%20FAQ.pdf (last visited Mar. 14, 2013).

a well near the West Eagle pad, Circle Lake, and Eagle Lake between 10/12/2012 and 9/1/2017. Buccaneer has made no effort to inform the public in the Plan of Operations or elsewhere, however, about use requirements and possible impacts to local water sources during its operations as required by 11 AAC 83.158(d)(2). Buccaneer did not discuss the TWUP in the Plan of Operations, even though Buccaneer applied for the TWUP in August 2012 and DNR approved the TWUP in October 2012 — well before the November 14, 2012 Plan of Operations revision.⁹ This information was reasonably available at the time the plan was submitted for approval and should have been addressed in the Plan of Operations.¹⁰ It is also unclear whether Buccaneer plans to adopt mitigation measures related to these significant water withdrawals.

Rehabilitation

As noted above, Buccaneer was required to provide “plans for rehabilitation of the affected leased or licensed area after completion of operations or phases of those operations.”¹¹ Buccaneer has not provided sufficient information from which the public can determine the adequacy of Buccaneer’s plans for rehabilitation. Buccaneer also stated that it will comply with the applicable Alaska Oil and Gas Conservation Commission regulations when plugging or abandoning the well, but did not provide any details about what provisions of the regulations would control their activities.

Buccaneer’s Plan of Operations only addresses impacts and rehabilitation related to the exploratory phase of the project, and it is unclear whether Buccaneer will later be required to complete another Plan of Operations to address impacts from full-scale development of Well #1. If this Plan of Operations relates to all current and future plans to develop Well #1, DOG should require that Buccaneer resubmit a Plan of Operations that addresses impacts and concerns related to post-exploration development of Well #1.

Financial Security

The public, business entities, and the media have raised serious concerns about the financial ability of Buccaneer to develop oil and gas resources in an environmentally responsible manner.¹² DOG has already found Buccaneer to be in default on other unit agreements due to the company’s failure to drill.¹³ Because of the uncertainty and questions surrounding Buccaneer’s

⁹ Alaska Dep’t of Natural Res., Alaska DNR Case Abstract: File Number A2012-128, http://dnr.alaska.gov/projects/las/Case_Abstract.cfm?FileType=TWUP&FileNumber=A2012-128&LandFlag=y (last visited Mar. 14, 2013).

¹⁰ 11 AAC 83.158(d) (providing that the plan of operations should be based on data reasonably available at the time the plan is submitted for approval).

¹¹ 11 AAC 83.158(d)(3).

¹² See, e.g., Bob Shavelson, *Time to Put Brakes on Buccaneer’s Rush to Drill in Cook Inlet*, ALASKA DISPATCH (Dec. 25, 2012), available at <http://www.alaskadispatch.com/article/time-put-brakes-buccaneers-rush-drill-cook-inlet> (last visited Mar. 13, 2013).

¹³ Kristen Nelson, *Explorers 2012: Buccaneer Alaska in E&P Mode; Jack-Up Here*, PETROLEUM NEWS (Nov. 25, 2012), available at <http://www.petroleumnews.com/pntruncate/82891474.shtml> (last visited Mar. 13, 2013).

financial ability to develop Alaska's oil and gas resources at all, let alone in an environmentally responsible manner, the Commissioner should exercise his discretionary authority under 11 AAC 83.160(b) to require a bond that would cover the clean-up and restoration costs in the event that Buccaneer fails to adequately rehabilitate the well site area.

Impacts to Natural Resources, Including Fish and Wildlife

Buccaneer is also required to provide "a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased or licensed area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas."¹⁴ In section 11.3 of Buccaneer's Plan of Operations, Buccaneer acknowledges that owls, ravens, foxes, porcupines, moose, and brown and black bears could be in the area during the winter. Buccaneer's Plan of Operations lists in section 3 that activities to prepare and drill the site will occur throughout the year, but Buccaneer does not mention the animals that might be in the area during the spring, summer, and fall. Buccaneer's Wildlife Interaction Plan and Environmental Baseline Data under Section 14 also appear to focus on only the impacts to the immediate vicinity of the operations in the existing material site. However, Buccaneer is obligated under the regulations to adopt operations and procedures that minimize impacts to both the leased or licensed area *and* the adjacent area.¹⁵ Buccaneer appears to improperly assume that, because the facilities will be located in an existing material site, there will not be impacts to adjacent areas. DOG should require more detailed mitigation measures for preventing impacts to habitat and wildlife throughout the year both in the area and adjacent to it.

Buccaneer also failed to acknowledge that any birds except for owls are likely to be in the vicinity of the project and has not adopted any measures to minimize the impacts to local bird populations. In addition to impacts in the immediate vicinity of the project, West Eagle Well #1 is located upland and only a few miles away from Kachemak Bay and the Fox River Flats Critical Habitat Area.¹⁶ The Alaska Department of Fish and Game (ADF&G) describes the Fox River Flats Critical Habitat Area as "a major staging area for thousands of water fowl and upwards of a million or more shorebirds that stop to rest and feed during migration."¹⁷ Birds such as trumpeter swans, Canada geese, mallards, and numerous other species are found in the Fox River Flats area during various times of the year.¹⁸ Buccaneer did not include any discussion of the impacts and mitigation measures for birds in the leasing area or in adjacent areas such as the Fox River Flats Critical Habitat Area. Buccaneer similarly did not indicate in the mitigation analysis whether it conferred with ADF&G about the presence of trumpeter swan nesting sites in the vicinity of the project (mitigation measure A.2.f). Because Buccaneer did not include any information related to nearby bird populations or habitat, the public is unable to determine

¹⁴ 11 AAC 83.158(d)(4).

¹⁵ *Id.*

¹⁶ See Alaska Dep't of Fish & Game, Fox River Flats State Critical Habitat Area Map, *available at* http://www.adfg.alaska.gov/static/lands/protectedareas/foxriverflats/pdfs/fox_river_boundary.pdf (last visited Mar. 13, 2013).

¹⁷ Alaska Dep't of Fish & Game, Fox River Flats — Critical Habitat Area: Fish and Wildlife, <http://www.adfg.alaska.gov/index.cfm?adfg=foxriverflats.species> (last visited Mar. 13, 2013).

¹⁸ *Id.*

whether DOG should impose seasonal restrictions on any of Buccaneer's activities (mitigation measure A.2.h).

The measures adopted by Buccaneer to avoid impacts to fish and wildlife are also inadequate. Under the Plan of Operations, personnel will be instructed to not feed wildlife or attract wildlife to the vicinity, food will be kept inside buildings or containers, and hazardous materials will be stored in drums or secure containers. Buccaneer will design the buildings and drill pad to maximize visibility and minimize the number of hiding areas for bears. According to Buccaneer, on-site personnel will be informed of bear sightings and supervisors will maintain a log of bear sightings or other problems with wildlife. Buccaneer's statements about bear sightings are insufficient to implement the bear mitigation measures provided in A.2.i. Although Buccaneer discussed certain aspects of its human-bear interaction plan, Buccaneer did not discuss what would happen in the event bears do not leave the site (mitigation measure A.2.i.v) and did not indicate that personnel would be informed of the proper actions to take when bears are near or on facilities (mitigation measure A.2.i.iii). Additionally, while Buccaneer noted that the facilities would be designed to maximize visibility, Buccaneer apparently has no additional plans to minimize the interactions between humans and bears with precautions such as electric fencing (mitigation measure A.2.i.ii). DOG should impose measures to ensure that Buccaneer properly implements a human-bear interaction plan and that Buccaneer consults with ADF&G prior to commencing any activities that might be within one-half mile of any known brown bear dens (mitigation measure A.2.j).

Roads

In section 14.1 of the Plan of Operations, Buccaneer lists that the site has existing road access and that no new roads are required. However, Buccaneer told local residents at a public meeting last fall that widening and improvements to the existing road might be required in order to expand the turn radius for trucks carrying the drilling rig.¹⁹ Buccaneer has not addressed in the Plan of Operations whether expansion of the road is likely to occur or whether there are any impacts from expanding the road. Road construction and congestion could produce significant impacts for local residents traveling East End Road, and it is alarming that Buccaneer failed to include this topic in its plan.

Additional Comments on the Mitigation Measure Analysis

Inletkeeper has additional concerns with Buccaneer's analysis of the mitigation measures that apply to the West Eagle Well #1. As will be discussed in further detail below, multiple sections of the mitigation measure analysis form provide that Buccaneer is required to work "in consultation with" agencies and parties other than DOG. DOG's instructions on the mitigation analysis form indicate that the "applicant shall report [on their work with other agencies] by listing the agencies/parties, meeting dates and locations, and attendance roster (if available) in the 'Company Response' section of [the] form." Buccaneer did not document whether it worked in consultation with agencies and parties other than DOG. The only dates Buccaneer lists in the

¹⁹ Buccaneer PowerPoint, *supra* note 5, at 6-7.

mitigation analysis are the public meeting dates related to mitigation measure A.7.b. The public is not able to determine from Buccaneer's statements whether Buccaneer performed the required consultations with the other agencies indicated.

Mitigation measure A.1.b requires that facilities be designed and operated to minimize sight and sound impacts in areas with subsistence use and important wildlife habitat. Examples of mitigation measures include creating natural buffers and screening, sound insulation, or other measures approved by the director in consultation with ADF&G. Buccaneer explains that it has satisfied this mitigation measure because the facility is located in an existing and actively used material site. However, the fact that the facility is located in an existing material site is irrelevant to whether the project will have impacts that require mitigation measures such as sound insulation or whether there will be impacts to nearby habitat or hunting areas. In DOG's partial approval of Buccaneer's application to form the West Eagle Unit, DOG noted that the unit area provides habitat for various mammals, waterfowl, and fish, and that area residents use the unit area for subsistence hunting and fishing.²⁰ To minimize the effects of the proposed oil and gas activity on wildlife habitat and subsistence, DOG should impose appropriate mitigation measures, such as sound insulation, that are developed in consultation with ADF&G.

Under mitigation measure A.1.d, an applicant is required to minimize impacts to identified wetlands. Buccaneer stated that this mitigation measure is not applicable because the operation area is entirely in an upland area. However, the mere fact that a project is located in "uplands areas," as noted by Buccaneer, is irrelevant to whether or not there are wetlands in the vicinity of the proposed well. Buccaneer acknowledged in section 14.1 of the Plan of Operations that there was a stream and wetland areas within a half mile of the drilling site, but there is insufficient information from which the public can determine the potential impacts of the project on nearby resources.

Under mitigation measure A.3.a, lease-related use will be restricted when DOG determines it is necessary to prevent unreasonable conflicts between lease-related and other activities, including commercial use. Buccaneer claims that this mitigation measure is satisfied or not applicable because the activities will be located in an area currently used for commercial operations. Buccaneer has not acknowledged that there is a conflict between the location of the West Eagle Well #1 and a grazing lease held by the Van Oss family. DOG should impose lease-related use restrictions to minimize the conflicts between the drilling operations and the grazing lease.

Mitigation measure A.4.j provides that, wherever practicable, the preferred method for disposal of muds and cuttings from oil and gas activities is by underground injection. Other methods of disposal are only allowed "upon approval by the director, in consultation with the Alaska Department of Environmental Conservation (ADEC) and ADF&G." Buccaneer states in both the analysis of the mitigation measures and in section 5.5 of the Plan of Operations that muds and cuttings will be hauled to an approved offsite treatment and disposal facility in Nikiski

²⁰ DIV. OF OIL & GAS, ALASKA DEP'T OF NATURAL RES., APPROVAL IN PART OF THE APPLICATION TO FORM THE WEST EAGLE UNIT 6 (Feb. 14, 2013).

or Soldotna, or will be injected into an off-site disposal well. Because Buccaneer is considering unapproved disposal methods, DOG should require that Buccaneer consult with ADEC and ADF&G, receive approval from the director before using any alternative disposal options, and disclose this information to the public for comment.

Mitigation measure A.4.g provides that a freshwater aquifer monitoring well and quarterly water quality monitoring may be required down-gradient of a permanent above-ground liquid hydrocarbon storage facility. Under section 8, the mitigation analysis form defines “temporary” as no more than twelve months. By implication, a permanent facility would mean a facility that is likely to be in place for longer than twelve months. In the Plan of Operations in section 5.2, Buccaneer states that up to 10,000 gallons of diesel fuel may be stored at the drilling site in lined, bermed fuel storage areas. Buccaneer does not state how long it is likely to store diesel fuel at the drilling site. Because Buccaneer has not provided a time frame for storage of the fuel, the public cannot determine from the Plan of Operations or mitigation analysis whether DOG should require that Buccaneer develop water quality monitoring wells or other measures to prevent the fuel from contaminating the environment.

Conclusion

Overall, Buccaneer has provided the public with an inadequate amount of information on which to base its analysis of the West Eagle Well #1 project. As a result, Inletkeeper requests that DOG require that Buccaneer submit a substantially revised plan and provide an additional public comment period on the modified Plan of Operations to ensure the public has the opportunity to participate meaningfully in this important stage of the permitting process.

Please contact me at (907) 276-4244 x 115 with any questions regarding these comments.

Sincerely,

s/ Suzanne Bostrom
Suzanne Bostrom
Staff Attorney
sbostrom@trustees.org

cc: Cook Inletkeeper
Kachemak Bay Conservation Society