



Schorg, Amber <amber\_schorg@fws.gov>

## Gating agreement for Griffiths Cave

3 messages

**Cowan, Ben** <BCowan@lockelord.com>

Fri, Aug 9, 2013 at 3:25 PM

To: "Magnuson, Tom" <tom\_magnuson@fws.gov>, "Barcley, Steve (STEVE.BARCLEY@sol.doi.gov)" <STEVE.BARCLEY@sol.doi.gov>, "Amber Schorg (amber\_schorg@fws.gov)" <amber\_schorg@fws.gov>

Cc: "Bowman, Paul" <Paul.Bowman@eon.com>, "King, Bradford" <Bradford.King@eon.com>, "Andy Melka (andy.melka@eon.com)" <andy.melka@eon.com>

Good afternoon. Tom, good to see you earlier this week. As I mentioned when we spoke, we have been negotiating the terms of the easement that would allow us to install a gate on Griffiths Cave with the landowners of that cave, Regina and Randall Conkle. The Conkles had a few significant concerns with the draft that we initially prepared and revised in response to your comments. The primary substantive comment had to do with the duration of the easement. They were unwilling to grant a permanent easement, but have agreed to a 45 year easement which would take us through the permit term. There were certain minor changes to some of the Agreement language as well, and PTWF agreed to pay the sum of \$10,000 in exchange for the easement rights.

Attached is the revised Agreement reflecting the changes that have been made. With these changes the Conkles have agreed to the document and we are in the process of having title and lien searches run to ensure that the easement can be properly recorded and enforced. I expect to have those back by the end of next week. I trust that these changes will be acceptable to the Service but if you do have any concerns please let me know as soon as possible so that we can discuss them, and I can inform the Conkles if necessary.

PTWF would like to execute this agreement with the Conkles as soon as possible so we can secure the rights and begin design and engineering of the gate. Given that it is already August, however, I don't believe it will be possible to install the gate before this winter season, and thus not before we would expect the HCP process to be complete and the ITP issued. In that case the irretrievable commitment of resources issue may no longer be a concern. Nonetheless, before executing the Agreement (and paying the \$10,000 fee), we would like to obtain written assurance from the Service that this mitigation project when implemented will be acceptable and counted towards the ultimate mitigation requirement in the HCP.

Finally, we are still pursuing additional winter habitat mitigation opportunities at the Unimin Magazine Mine. We have provided information about our mitigation objectives to the U.S. Forest Service, but the Forest Service is still waiting on information from Unimin Corp. about the mine itself so it can determine how such a project might proceed. I spoke with the Forest Service again this morning and I expect to hear back from them with a further update next week. We have also begun to identify potential summer habitat mitigation opportunities.

I understand that Stantec is making progress on the EA. If it would be helpful to have a teleconference next week to discuss any issues please let us know and we will make ourselves available.

Thanks, and have a great weekend.

Best Regards,



Ben

M. Benjamin Cowan | Partner | Environmental and Energy Law

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**Gating Agreement (Pioeer Trail Wind Farm\_Griffith Cave).DOCX**

33K

**Magnuson, Tom** <tom\_magnuson@fws.gov>

Mon, Aug 19, 2013 at 9:01 AM

To: Amber Schorg <Amber\_Schorg@fws.gov>, Steve Barclay <steve.barclay@sol.doi.gov>

Cc: Lisa Mandell <Lisa\_Mandell@fws.gov>

Amber/Steve,

We have written letters in the past for the purpose that Ben eludes to...i.e., assurance that the gating project will count toward mitigation. However, not sure it is really needed if the gating project doesn't isn't going to get started until after the permit is issued and HCP approved. They can always get a purchase agreement for the easement signed with the landowner that is contingent on them getting a permit from FWS.

Nevertheless, we can do a letter if needed.

Tom

----- Forwarded message -----

From: **Cowan, Ben** <BCowan@lockelord.com>

Date: Fri, Aug 9, 2013 at 3:25 PM

Subject: Gating agreement for Griffiths Cave

To: "Magnuson, Tom" <tom\_magnuson@fws.gov>, "Barcley, Steve (STEVE.BARCLEY@sol.doi.gov)"

<STEVE.BARCLEY@sol.doi.gov>, "Amber Schorg (amber\_schorg@fws.gov)" <amber\_schorg@fws.gov>

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Thanks, and have a great weekend.

Best Regards,

Ben

M. Benjamin Cowan | Partner | Environmental and Energy Law

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Mon, Aug 19, 2013 at 10:31 AM

To: "Cowan, Ben" <BCowan@lockelord.com>

Cc: "Barcley, Steve (STEVE.BARCLEY@sol.doi.gov)" <STEVE.BARCLEY@sol.doi.gov>, "Amber Schorg (amber\_schorg@fws.gov)" <amber\_schorg@fws.gov>, "Bowman, Paul" <Paul.Bowman@eon.com>, "King, Bradford" <Bradford.King@eon.com>, "Andy Melka (andy.melka@eon.com)" <andy.melka@eon.com>

Ben,

Thanks for the update.

The easement is designed to restrict access...the gate being one way to do that. Unless I am reading it incorrectly, the Owner wants unrestricted access the cave. Can we get them to agree NOT to access the cave during Ibat hibernation?

Pls clarify.

thx,  
Tom

On Fri, Aug 9, 2013 at 3:25 PM, Cowan, Ben <BCowan@lockelord.com> wrote:

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