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Attorneys and Counselors

August 18, 2011

VIA UPS OVERNIGHT DELIVERY

U.S. Fish and Wildlife Service
Attn: Cooperative Agreement Assessment
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256

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U.S. FISH AND WILDLIFE SERVICE
JACKSONVILLE, FLORIDA

To Whom It May Concern:

The Mosaic Company (Mosaic) is writing in regard to the June 2011 draft Cooperative Agreement between the Unites States Department of Interior Fish and Wildlife Service (USFWS) and Florida Fish and Wildlife Conservation Commission (FWC) for the Conservation of Endangered and Threatened Fish and Wildlife (hereinafter Agreement). The Agreement will be entered into pursuant to Section 6 of the Endangered Species Act.

Mosaic is the world's largest producer of finished phosphate products with 15% of the world phosphate production; half of these products are sold to North American customers. It has a large presence in Florida with over 300,000 acres of land holdings and more than 3,000 employees in the state. Mosaic interacts often with USFWS and FWC and has a long-standing history of involvement and commenting on wildlife matters that could potentially affect its business operations.

Thank you for the opportunity to comment on the Agreement. Mosaic appreciates the time and efforts of both agencies in drafting the Agreement and working with stakeholder groups over the past few years to re-write the FWC imperiled species rules to allow it to be possible. The new rules are in chapter 68A-27, *Florida Administrative Code*, and notably include a definition of "take" that mimics the federal definition. FWC has an extensive program of wildlife regulation and issues permits regulating the activities of those who work with or may impact certain species. As you know, Florida's program is among the most comprehensive program of any state. While USFWS has ecological services field offices in only three cities in Florida—Panama City, Vero Beach, and Jacksonville—FWC has its headquarters in Tallahassee, plus five additional regional offices throughout the state of Florida. This broad presence, along with the fact that FWC regulates a larger number of species in Florida than USFWS (see below), makes FWC an appropriate agency to process permits. Mosaic supports this aspect of the Agreement.

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There are some threatened and endangered species that are regulated by both USFWS and FWC (FWC regulates all species regulated by USFWS that occur in Florida in addition to state-listed species). Thus, an applicant currently is required to obtain one permit from USFWS and a second permit from FWC before undertaking certain activities. Mosaic has obtained such multiple permits in the past. As the agencies recognize, this duplicative permit regulation is burdensome to applicants without providing additional benefits to threatened and endangered species. The Agreement, if executed, would instead require an applicant to obtain a single permit. The level of protection of the species would be maintained while allowing the applicant and agencies to save time and costs by omitting unnecessary duplicative review and permitting.

Mosaic recognizes the long history of cooperation between USFWS and FWC and views this Agreement as a logical expansion of the historical relationship. The projected benefits come with built-in safeguards to ensure no negative impacts to threatened and endangered species. There are two general types of permits issued by wildlife agencies for threatened and endangered species: conservation permits and incidental take permits. Conservation permits, as defined on page 5 of the Agreement, are permits "authorizing take of any federally listed threatened fish and wildlife for conservation purposes that are consistent with the purposes of the [Endangered Species] Act." These permits not only prevent harm to these species, but promote benefits for the species as well. For example, scrub-jay relocation permits authorize an entity such as Mosaic to relocate individual scrub-jays in order to enhance the survival of the scrub-jay population. Incidental take permits authorize the take of endangered or threatened fish or wildlife incidental to an otherwise lawful activity. One example of this type of permit is authorization to impact habitat of wood storks or eastern indigo snakes. The incidental take permits must include measures to ensure any impacts to the species are properly avoided and mitigated and do not jeopardize the persistence of the species. The Agreement addresses each type of permit individually.

For conservation permits, it is proposed an applicant obtain a single permit from FWC, which permit would be recognized by FWS to preclude the need for a separate federal permit. As a prerequisite to issuance of the state permit, FWC will confirm that the applicant's proposed activities provide conservation purposes consistent with the Endangered Species Act. During the FWC permit process, the FWC will ensure that both the state and federal requirements for the specific species will be met. This streamlined permitting is welcomed by Mosaic and eases the existing regulatory burdens associated with dual conservation permits, especially in dealing with permits with differing expiration dates. It is difficult to know how much time can be saved by the streamlined process, but Mosaic estimates savings of 6 months, or even up to 12 months in some cases.

For an FWC-issued incidental take permit to be recognized by USFWS, the two agencies must have agreed-upon permitting guidelines for the specific species covered. This will require an initial expense of time to develop the guidelines, but will ultimately result in more expedited application review. Meanwhile, the protections to the threatened and endangered species will

not decrease, as the Agreement requires that permittee to meet the more stringent requirements of either the USFWS or FWC. Also, the permits will be enforceable by both USFWS and FWC, providing further protections to the threatened and endangered species. Notably, if the permitting guidelines do not work for an applicant, it can choose to opt out of the guidelines in favor of traditional consultation with USFWS and FWC (with conventional permitting requirements).

Mosaic supports the draft ESA Section 6 Cooperative Agreement as outlined in the Draft Environmental Assessment and looks forward to the finalization and implementation of this Agreement between USFWS and FWC. It is pleased that the agencies found a way to streamline permitting and reduce regulatory burdens while ensuring there are no negative impacts to the protections for threatened and endangered species.

Sincerely,
Hopping Green & Sams

Amelia Savage

by, Amelia Savage
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