

Meeting #19
May 5, 2014
MEETING SUMMARY

Meeting Attendees

Community Working Group members present:

George Martin – JF Ranch
Lynn Martin – JF Ranch
Nancy Vogler – LOST Trail
Roy Chavez - Concerned Citizens and Retired Miners
Pam Rabago – Superior Chamber of Commerce
Bill Vogler – Superior Copper Alliance
Jeff Bunkelmann – Central Arizona College

Community Working Group members not present:

Matt Nelson – Arizona Trail Association
Steven Byrd – Superior Junior-Senior High School
Dominic Perea – Superior Junior-Senior High School
Martin Navarrette – Superior Little League
Bruce Wittig – Queen Valley Water Board
Fred Gaudet – Arizona Trail Association
Evelyn Vargas – Cobre Valley Medical Center
Mark Siegwarth – Boyce Thompson Arboretum
Pam Bennett - Queen Valley HOA
Cecil Fendley – Queen Valley Water Board

Facilitator – Godec, Randall & Associates (GRA)

John Godec
Debra Duerr

Guest Speakers:

Chris Horyza, formerly BLM
Al Burch, formerly BLM

Public Guests:

No guests

Housekeeping

Hewitt Station Road residents mentioned that they had had a second field trip with Resolution representatives to tour the tailings site, and this was much more detailed than the one the whole group attended. They suggested that another similar tour should be arranged for the CWG, possibly in the fall.

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John Godec pointed out the two posters the facilitators made outlining the CWG “ground rules” and “guidelines for visitors”. He asked members to review anything they didn’t agree with or that should be added.

The latest list of potential meeting topics was discussed, noting that tonight we will be talking about the Mining Law of 1872 and federal land exchanges.

Roy Chavez informed the group that he had consulted with other members of the Retired Miners and Concerned Citizens about making a presentation to this group. They feel that they want to do this kind of presentation in a public forum, and invite the CWG. They were uncomfortable with the proposed format of not having questions or discussion at a presentation to this group. They would prefer to advertise the presentation as a public meeting to a wider audience. Because their members come from around the state, such a meeting would be a big investment of time and effort for them. Godec asked who else is local; there are about 35 local members from Queen Valley and the Superior area.

Godec asked the group if they have suggestions for additional members, and noted that quite a few members couldn’t come tonight. Dr. Bunkelmann said that he is pursuing the idea of finding a community college student to participate. Several people reiterated that members of this group need to be able to commit to attending the meetings, and it’s disappointing when members don’t come. Everyone agreed to think about ways to improve attendance and to identify additional members as desired. Ideas included advertising in the newspaper, notifying residents known to members, and consulting with the Chamber of Commerce. Several members of the group wondered if we should open membership to people who do not specifically represent organizations and groups, as was the original intention.

Members said they are particularly interested in hearing from the Forest Service about the NEPA process. There was discussion about what the timing of this might be, based on the Tonto National Forest’s current review of the Mine Plan of Operations, and also about the ongoing Environmental Assessment on the tailings site characterization. Some thought there would be public comment on this EA in August or thereabouts. Resolution representatives were not in attendance to clarify these questions.

Regarding the ADHS health study discussion tentatively scheduled for May 21, a member asked if the people who initiated the letter would be notified about the meeting; this is probably an ADHS decision.

Federal Land Exchanges

Presenter: Chris Horyza, Former BLM Manager

Horyza explained that an administrative land exchange is one that an agency engages in under the laws that govern them. For example, the BLM operates under FLPMA (Federal Land Policy Management Act). Other agencies have similar guidelines. Such

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exchanges include a NEPA (National Environmental Policy Act) review and other required compliance.

The unique issue with the Resolution project is that part of the land was withdrawn by Executive Order in the 1950s. Therefore, the Forest Service, as an administrative agency, does not have the authority to exchange the withdrawn land because it is not under the authority of the Secretary of Agriculture. The only authority who can deal with such lands is Congress (or possibly the President through another Executive Order). Congress may or may not choose to apply the NEPA process to these actions. If Congress chose to apply the NEPA process to this land exchange, the study would be characterized as a Legislative EIS (Environmental Impact Statement). These types of documents can help inform Congress about the consequences of their actions.

The group had several questions and comments about this topic:

- Does NEPA apply to exchanged lands?
 - Congress could make NEPA apply to the exchange action, but if they did not, NEPA would not apply because it's private land. However, the concept of "connected actions" applies here; if other parts of the project rely on federal land or actions, then the entire project would be subject to environmental scrutiny under NEPA. There are two ways NEPA applies to private land: connected actions or cumulative impact analysis, which must include other reasonably-foreseeable actions in the same region.
- Would NEPA apply to the private land? Of particular interest are the mining method, hydrological analyses, etc.
 - Yes, if any part of the project is on public land. Without an assessment of how the various mining actions are connected vis-a-vis public land, we can't say today exactly how NEPA would apply.
- There is still concern in the community that NEPA can or will be circumvented for portions of the project, specifically the mining method.
- Is it true that NEPA won't stop the project, but could provide alternatives?
 - NEPA is purely a procedural process, and wouldn't stop the project; however, there are other laws like the Clean Air Act or Endangered Species Act that could stop it. Also, cumulative effects will need to be analyzed.
- The language of the withdrawal through presidential order would prevent Resolution from impacting that area by mining.
- A member noted that grazing is supposed to be excluded from the withdrawn Oak Flat area but is occurring.

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- There are generally two types of withdrawals: either Congressional or Secretary of federal agencies, e.g. Interior or Agriculture. If done by the Secretary, it can be withdrawn by him/her. This particular Oak Flat withdrawal was accomplished through Presidential Executive Order by President Eisenhower, reaffirmed by President Nixon. Without analyzing the specific language, we don't know who has the authority to alter it. It could be the President or Congress, but probably not the Secretary unless authority was granted to him/her.
- Regarding connected actions, why wasn't there an Environmental Assessment (EA) done when Resolution started dewatering the mine? A pipeline along the train tracks is being used for this. There were no public meetings conducted, either.
 - The group discussed who had jurisdiction over this from a regulatory perspective.
 - A member said that this pipeline was built in the rail line private easement owned by BHP, not on public land, so the NEPA analysis would not be required.
- There is concern among some group members that mine dewatering is having negative effects on private wells in the area (specifically Hewitt Station) and even drying them up.
- There was discussion about previous releases of water from the mine shafts.
- The tailings site, under the Mine Plan of Operations, will also receive rain water and storm water, which will all need to be captured. This water will not be released downstream. Resolution has said that the tailings will produce some acid rock drainage.
- Is there a federal preference for mines under environmental laws?
 - No, mines have no special privilege under NEPA. Mine rights and privileges will be addressed by the next speaker, Mr. Burch.
- Will groundwater effects of mining on surrounding areas be analyzed in the EIS?
 - Yes, they should be, by an independent analysis.
- Some members wondered who they should talk to about water and well impacts, and when should it be done?
 - It depends on who has jurisdiction. It could be the State Department of Water Resources.
- There was discussion about previous dewatering methods, disposal methods, and effects.

Mining Law of 1872

Presenter: Al Burch, Former BLM Manager

The General Mining Laws are the current term used to describe the Mining Law of 1872, which has actually been amended many times. There are certain rights granted to mining companies under this law, some of which have to do with water, so it's connected to the discussion we just had.

In defining terms, he explained that mineral resources are defined as earth resources that *have value to society*. There are two levels of ownership of land, as referenced in the mining laws: the "subsurface estate" and the "surface estate". The ownership of these can be divided among one, two, or many parties. The US mining laws were derived from European practices of "bergbaufreiheit", meaning free and open mining.

In the mid-1800s the US government wanted to promote development of the West. When gold was discovered, there were disputes between settlers and landowners about who owned what. Several laws were passed to address disputes, which resulted in the Mining Law of 1872. The General Land Office was charged with administration of this law, the first "environmental" law. It outlined provisions for protests against the US and against rival claimants, and provided for staking claims in lands that were open for location and entry. Types of mining claims include:

- lode claims (in rock)
- placer claims (not rock-in-place, e.g. sand and gravel)
- mill sites (up to 5 acres with land for mining-related facilities)
- tunnel sites (for exploration)

These types can overlay each other; for example, a placer claim can occur on top of a lode claim, and mill sites occur with lode claims. Claims need to be marked on the ground and recorded with counties and with the US Bureau of Land Management (BLM). There is a yearly fee now for maintaining claims.

Amendments to the mining law include about 160 amendments and guidance from courts. Oil and gas were removed from mining laws in 1920 and put into a leasing system that includes royalty payments to the US government. Consequently, there are now "leasable" minerals and "saleable" minerals, as well as "locatable" minerals (like copper), for which there is no federal tax or royalty applied.

The minerals under the withdrawn Oak Flat land are also withdrawn. In the case of a federal land exchange, the mineral resource would be appraised to determine fair market value, under the uniform standards of appraisal, known as the "yellow book". At one time the land exchange proposal had a provision for "equalization of value", balancing land and mineral values; Mr. Burch does not know if this provision is still included in the exchange bill language.

Entities that can stake a mining claim include agents for mining companies, citizens, and corporations. Claims give you a right of reasonable access to the minerals, and a

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possessory right to the mineral estate. An unpatented claim is considered property but the title to the land still belongs to the US. Claims can be bought and sold. Historically, once a patent is issued, the claimant obtains fee simple title. For the past 20 years or so, patented claims have no longer been allowed. Patents were how a lot of the land around Superior became mines, and how Resolution was able to assemble this project. The rest of the Resolution project includes unpatented mining lode claims and mill sites.

Burch discussed how surface and subsurface rights have been severed over time. A mineral estate is superior to a surface estate, under federal laws. So, for example if someone wants to mine the mineral estate under someone's surface property, they are not required to compensate the surface owner. Conversely, you cannot occupy the surface over a mining claim unless that occupancy is related to your work on the claim. He noted that a mill site claim would be the proper type of claim for the tailings site.

The right to mine needs to consider other applicable laws that govern surface resources, but cannot be stopped by surface ownership. There are federal agency regulations that govern how environmental analysis applies to mining operations. A claimant is supposed to demonstrate a viable mineral resource before filing a claim, but in practice this is not always done, possibly because it's a difficult process to test for the resource. A "mineral examination" is needed to demonstrate that there is a resource and that it can be viably developed.

Group questions and comments included the following:

- A member noted that rare earths are a category of saleable minerals (metals) that may occur here, but are also not subject to royalties.
- Is there a state agency that has authority over mining claims?
 - No, but there are state agencies that have environmental authority over mining, including AZ State Mine Inspector, Department of Environmental Quality, and Department of Water Resources as well as county authorities.
- Do you think there will be major revisions to the mining laws?
 - No, probably not.
- Is this because of the political power of the mining industry?
 - Not really, because the environmental industry is more influential now than the mining industry. It's probably because it's just not a priority of Congress.

Final CWG Comments and Future Meeting Planning

Next Meeting 5:30 pm May 21, 2014

The Arizona Department of Health Services will be here to talk about the Superior health study.