

March 11, 2020
MEETING SUMMARY

Meeting Attendees

Community Working Group members present:

Pam Bennett – Queen Valley Community Liaison
Todd Pryor – Town of Superior
Jim Schenck – Rebuild Superior and Legends of Superior Trail
Bruce Wittig – Queen Valley Fire Department
Rick Cartier – Superior Chamber of Commerce
Hank Gutierrez - Superior Copper Alliance
JoAnn Besich – Superior Optimist Club
Fred Gaudet – Arizona Trail Association
Arlynn Godinez – Superior Unified School District Board / Maricopa County
JoAnn Besich – Superior Optimists Club
Fernando Shipley – Cobre Valley Regional Medical Center Board
Pamela Rabago – Superior Chamber of Commerce

Community Working Group members not present:

Karen Kitchayan Jones – San Carlos Apache Tribe
Tino Flores – Copper Corridor Economic Development Coalition
Anna Flores – Town of Kearny
Sylvia Kerlock – Town of Winkelman
Richard Matthews – Queen Valley Water Board
Cecil Fendley – Queen Valley Water Board
Tiffany Rowell – Superior community
Gloria Ruiz – Town of Winkelman
Roy Chavez – Retired Miners and Concerned Citizens
Lynn Martin – JF, JI Ranch
George Martin – JF, JI Ranch
Silvia Werre – Top of the World
Cathy Melvin – Gila County
Lynne Nemeth – Boyce Thompson Arboretum
Mila Besich – Town of Superior
Jeff Bunkleemann – Central Arizona College
Ricardo Provencio – United Superiorites
Tweedy Armitage – Superior Historical Society
Anthony Huerta – Town of Superior

Resolution Copper Company:

Vicky Peacey

Facilitators – Godec, Randall & Associates (GRA):

John Godec, Debra Duerr

Speakers:

Justin Bern - Arizona Department of Environmental Quality, CWA Permitting Program Manager

Public Guests:

Pierre Martin – Wind Spirit

Susan Murphy – Wind Spirit

Ben Zenner – Wind Spirit

Erica – Wind Spirit

Zachery – grandson of CWG member

Jenny Vaughn – BSR

Jesse Garcia – Superior Planning & Zoning, Chamber of Commerce member

Introductions & Housekeeping

John Godec welcomed the group and noted that this is probably the smallest gathering we've had. This is most likely because of the public health concerns related to the emerging corona virus. He pointed out that the Governor has declared a state of emergency today. There are 9 known cases in Arizona, 5 of which are in Pinal County. Vickey Peacey told the CWG that Rio Tinto and Resolution are focusing on "business resilience" measures. All travel has been stopped unless extremely essential, and they are starting to use video conferencing instead of in-person meetings. Large meetings and conferences are also an issue, and employees are being advised to attend via video. Work from home is also being encouraged. Resolution has even removed candy jars from its office, and coffee may come next.

At this time, the next well sampling by the Community Monitoring Task Force is scheduled for April 15, and the Recreation User Group is planning to meet again on April 11. These meetings will depend on the status of the corona virus situation in future.

Godec asked CWG members how they would like to operate in light of this unprecedented situation. The group suggested that we talk about it a week before the next scheduled meeting on April 8.

More copies of the RUG brochure and the Community Working Group flyer have been printed for distribution at the Superior Chamber of Commerce and Apache Leap Mining Festival and for anyone who would like more of them. Fred Gaudet distributed a new map of the Arizona Trail. It also shows small loop trails in the Superior area.

Local events that are scheduled in addition to the Mining Festival include the Climb-Fest and gala dinner for Wallace Garden on March 21, Superior Art Festival and opening of the new LOST trail on April 4, the car show in honor of Mike McKee in Superior on April 18. On March 25, the Globe Café will have a show featuring five comedians to benefit the Cobre Valley Youth Club.

Apache Leap Mining Festival CWG Booth Coordination

The Apache Leap Mining Festival is this weekend and the CWG will have a booth. Godec asked if anyone can volunteer to staff it for an hour or so. The hours of attendance are Saturday 9:00am

to 5:00pm and Sunday 10:00am to 5:00pm. Two CWG members said they would staff the booth for periods.

Clean Water Act Changes & Arizona Updates

Justin Bern, Arizona Department of Environmental Quality

Godec noted that the subjects of water quantity and water quality have been very important topics of interest to the CWG. Tonight, Justin Bern from the Arizona Department of Environmental Quality (ADEQ) will update the group on changes in the water regulatory situation.

Bern said his title is surface water protection permits manager, responsible for discharges to jurisdictional 'Waters of the United States' (WOTUS), and he has also worked for local governments as a permittee. His first interface with Resolution Copper was several years ago on the company's Arizona Pollution Discharge Elimination System (AZPDES) permit, which was a "bumpy road". The agency is now working on streamlining and improving their permitting processes. Bern told the group that ADEQ is hosting a permit-holder public meeting on the AZPDES at their office in Phoenix on March 24 from 1:00-4:00pm, if people are interested in participating. Vicky Peacey clarified that this relates to water discharges to a surface water, such as Resolution's permit to discharge mine water to Queen Creek.

Bern gave a short history of the Clean Water Act (1972) and of ADEQ, which began in 1987. The agency began to focus more on water quality standards for surface waters and designated uses applicable to WOTUS in 1992. In 1999 ADEQ received legislative authority to set water quality standards for waters of the state. In 2002 ADEQ received primacy from EPA on all AZPDES permits.

Currently, Arizona regulates "traditional navigable waters" and adjacent wetlands, e.g. Salt River, which include perennial (constant flow) and intermittent (not continuous) tributaries, certain wetlands and ephemeral (occasional flow, e.g. desert washes during floods) tributaries, and wetlands with a significant nexus. These have been interpreted as including waterways with historical significance. Queen Creek is regulated under the program now although it is considered an ephemeral stream.

The federal government is undertaking substantial revisions to Clean Water Act definitions of Waters of the United States. For Arizona, this will have significant effects on which waters are defined as 'jurisdictional' and therefore fall under state regulatory authority. The Final WOTUS rule will be published in March 2020 (Navigable Waters Protection Rule) but has not been implemented yet. The revision to the rule is intended to provide clarity for landowners about whether they need permits or not. Interpretations of what WOTUS are have been litigated in Arizona and the desert Southwest since 1982. Bern showed a graphic that illustrates this. The definition of WOTUS as originally proposed last November has changed somewhat and it is not, apparently, as draconian, but it has not been defined well or clarified to the point that the state

can calculate miles of jurisdictional waters; the original calculations of how state permit jurisdiction would be reduced were:

- Perennial/intermittent streams (3600 miles, reduced by 50%)
- Ephemeral drainages (28,800 miles, eliminated 100%)
- Lakes (2000 lakes, all urban lakes)
- All AZPDES permits types – stormwater, general and individual permit types (reduced by 98%)

The state is trying to figure out what happens for current permit holders who won't need a permit in future. They don't want people to just stop treating discharge water, nor do they want to eliminate other protective measures. Regarding Resolution Copper Mining, the big question is where they stand with permitting and how relevant determinations will be made in future.

Development of ADEQ's corollary Waters of the State program is partly driven by all the gaps in this new proposed federal regulatory framework. ADEQ has been considering, for about a year, whether and how to assume responsibilities for the Sec. 404 permit program, but after an extensive stakeholder engagement program the participants didn't think this was the right time to do this. Consequently, the state has tabled this proposal.

CWG members had a number of questions and comments:

- Queen Creek was either a perennial or intermittent stream, but mining has changed that. Are we looking back historically, or will the determination be made as of today?
 - There needs to be a process to determine this, but the new rule has changed the process, particularly for the Southwest. The state has asked the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (USACE) for more guidance for Arizona conditions.
- Will the Navigable Waters rule replace WOTUS?
 - No, it will change portions of the Section 404 permitting program under the Clean Water Act. Godec asked how this will affect discharges of Resolution Copper. The state is working on methodologies for deciding if affected waters are jurisdictional.
- A visitor said that people in his neighborhood (Dripping Springs area) are concerned about mining processes dumping pollutants over their aquifers; how can you say that the aquifer is protected if the soils above it aren't protected? He noted, "The water is not going to listen to our laws."
 - Bern said this issue is covered in the Aquifer Protection Program (APP), which regulates groundwater pollution. He emphasized that Arizona has always had a very protective system for protecting aquifers. This is one of the reasons the state is working on how to still protect surface waters.
 - Vicky Peacey explained that there are various parts of the Clean Water Act, so, for example, one could dredge or fill Dripping Springs under these new regulations, but you would still need to take measures to protect the groundwater.
- Do these regulations affect surface water flow or quantity?
 - No, but these issues still need to be assessed under the National Environmental Policy Act (NEPA).
- What about ephemeral drainages that drain to the Gila River?

- The state is still interpreting these as WOTUS, but this could change in 60 days.
- Godec asked Peacey how Resolution will handle this if these drainages are no longer defined as jurisdictional waters (so, technically, they would not need a permit).
 - USACE can determine that there is a pre-existing jurisdiction, so permits would still be required. Resolution has asked the Corps for this determination; however, regardless of the decision, Resolution intends to continue as if a permit is required. This approach will also include establishing compensatory impact mitigation. Vicky emphasized that Resolution has no intention of pulling their existing permits, particularly since there is still confusion over the proposed changes, which will likely be litigated.
- The USACE has told the Town of Superior that they will not need a permit for Queen Creek since it will no longer be jurisdictional. Todd Pryor said that he feels better if the company is committing to continue its permitting approaches and mitigation obligations.
- Has Congress passed these rules or is this an Executive Order?
 - It's an Executive Action.
- Can the state create rules to cover gaps in this program?
 - Yes, the state can develop regulations to cover state waters no longer covered under the CWA but can't impose more restrictions than the federal government does.
- Will the 404 permit still be part of the Record of Decision (ROD) for the Environmental Impact Statement?
 - Peacey clarified that there will be 2 RODs - one from the Forest Service and one from USACE on the 404 permit.
- Is the tailings being placed in Dripping Springs Wash?
 - Yes.
- The Town of Superior noted that Queen Creek has constant sub-alluvial flow, and asked if this qualifies it as a waterway?
 - There is an ongoing (Maui) case at the Supreme Court that includes this issue. We don't know the answer yet.
- A CWG member observed that this is the most confusing issue he's heard at this group.
 - Godec summarized that he wanted ADEQ to discuss how this could affect the Resolution Copper Project. For example, it could affect Dripping Springs that was a regulated ephemeral stream but will not be regulated in future. However, Resolution has made it clear tonight that they remain committed to continued mitigation and monitoring regardless of this.

Justin Bern invited group members to contact him and his staff to further discuss anything and ask questions. He distributed his business cards. An email address is:

watersofarizona@azdeq.gov

and the website is:

<https://azdeq.gov/woaz>

He emphasized that continued communication with people is key to the success of this whole program, because the state recognizes how frustrating and confusing this is to the regulated community.

Public Questions & Comments

Dripping Springs residents are afraid that because Resolution is buying surrounding land, there will be nobody left to complain if there are problems in future because there will nobody who's 'injured'. People in the area know that the tailings will be placed 5 miles upstream of them, and now people are trying to sell their land because they no longer want to live there. Water is necessary for survival, and we need to think about that when we're making decisions about who gets the water and what they can do with it. "What are we willing to tolerate?"

Peacey emphasized that these laws apply whether the project is on private property or not. She explained how monitoring wells are being installed and the monitoring protocol that will be used all the way to the Gila River. Resolution needs to prove they're not polluting. She understands that people may feel better if they can get independent information, and this is the purpose of the community monitoring program. The EPA has authority under CWA to enforce a 'national damage claim' at tremendous cost to the proponent; therefore, Peacey noted that it's much more cost-effective to comply and protect than to mediate and clean up.

A question was asked about how strong the pond liners are and whether they have been proven. Resolution said that these types of liners have been used on many types of facilities and proven effective for decades.

Todd Pryor invited this visitor to join the CWG and to be part of the Water Monitoring Group. CWG members explained the function and program of the Community Monitoring Task Force and suggested that the Dripping Springs area might want to get involved in this program with monitoring wells in their area.

Next Meeting

By agreement, the CWG will be canvassed about whether and how to hold a meeting in April, if this is still possible. The regular meeting date would be April 8.