

Groups question validity of PD's mining claim

By Greg Jones
Staff Writer

The San Carlos Apache Tribe and the Western Mining Action Project (WMAAP) don't believe Phelps Dodge's (PD) mining claims on selected lands in the Gila Mountains are valid.

The validity of the mining claims was assumed by the Bureau of Land Management (BLM) when it prepared its Environmental Impact Statement (EIS) and Record of Decision (ROD) to approve the proposed land exchange with Phelps Dodge for the proposed Dos Pobres/ San Juan mine, according to protests the groups filed with the BLM on Aug. 31.

The WMAAP protest accuses the BLM of basing the EIS and ROD on the assumption that the mine is going to be built "without determining if the projects would comply with federal law."

The protest says the BLM did not determine that the mine would not cause unnecessary degradation to public lands and resources. Without that determination, the bureau can't assume the mine will be approved.

According to its protest, WMAAP also contends that "BLM's assumptions are based on its view that the company's claims under the 1872 Mining Law are valid and perfected, and thus the company has rights under the Mining Law to conduct operations on those claims. There is no compelling evidence in the record to support that assumption."

Because of this, the WMAAP says the bureau's decision is not valid under the National Environmental Protection Act (NEPA) and Federal Land Policy Man-

agement Act (FLPMA).

The tribe also questions BLM's assumption that Phelps Dodge has the right to develop its unpatented claims on the selected lands. The tribe accuses the BLM of using this assumption to avoid a full analysis of the impacts of the mine.

"This has resulted in a NEPA analysis that is faulty and very limited in scope, focusing solely on the environmental effects of the land exchange only, while at the same time largely ignoring the impacts of the more environmentally devastating Dos Pobres Project," the tribe contends.

The tribe points out that records it received under the Freedom of Information Act show both the BLM and PD believe there "does not exist any significant mineral potential on all but a fraction of the selected lands... If taken at face value, this would also mean that there does not exist the requisite discovery of a valuable mineral deposit on these lands as required by the 1872 mining law."

Because of this, the tribe contends that the BLM assumption that the mine will be built with or without the land exchange violates the NEPA and FLPMA.

Environmental concerns

The tribe contends that BLM did not adequately analyze the short- and long-term threat of pollution and other environmental harms that will result from the land exchange.

According to their protest, "Even a short-term evaluation of history should tell the BLM that mining operations, especially large open pit mines like the proposed Dos Pobres/ San Juan

project, eventually result in contamination to the surface (and sediments and soil)... This contamination frequently occurs as a result of accidental spills, broken pipes or other conveyances, leaking liners and discharges from unlined waste stockpiles, process impoundments and pit lakes."

The tribe worries that pit lakes that will form after mining operations end will pollute the surrounding areas with sulfuric acid. Rocks crushed and exposed to air and water can generate acid, yet the BLM has not analyzed this possibility, according to the tribe's protest.

The simple formation of pit lakes is also an area of concern. The EIS does not explain whether these pit lakes will de-water supplies, or whether there will be outflows from the pit lakes into ground and surface water to the tribe's satisfaction.

Unlined developmental rock stockpiles also concern the tribe.

"A liner is not proposed for the development rock stockpiles, thus assuring that whatever can happen, will happen. The Apache Tribe submits that the presence of these unlined development rock stockpiles, which will cover up to 834 acres of the project site, pose a significant danger of contamination from acid rock drainage to surface water, sediments and soil."

The tribe opposes the land exchange because federal regulations are more stringent than state law. If the BLM retained ownership of the land, PD would have to abide by the stricter laws, thus protecting the public's safety. It would also require PD to post bonds or other cash equivalents that would guarantee the payment of the costs necessary to

reclaim the site.

"History has demonstrated that large-scale mining operations like the Dos Pobres/ San Juan project can and often do create large-scale environmental problems ... a mere corporate guarantee by Phelps Dodge Safford under Arizona law ... is likely to leave the public to pay the true costs of cleanup for the site," according to the tribe's protest.

This is not in the public interest, the tribe contends, and should give cause to the BLM to vacate its decision to approve the land exchange.

Other tribal concerns

The tribe said a long-standing dispute with various state and federal agencies over the boundary of the San Carlos Apache Indian Reservation was ignored when the BLM approved the land exchange. It claims the BLM is giving away land that belongs to the tribe, which it cannot do legally.

"During the years since the establishment of the San Carlos Reservation, federal agencies, including the BLM have continued to ignore the correct boundaries of the reservation. Nevertheless, the fact remains that all lands encompassed by the present reservation fences (improperly located); the crest of the Gila Mountains, the so-called Almagra Mountains and other mountains bordering the northern bank of the Gila River to the boundary with New Mexico near Steeple Rock ... are within the San Carlos Reservation." Therefore, the BLM cannot legally transfer title of this land to PD.

The tribe is worried the transfer of land mining operations will "disturb an unknown but likely large number of additional sacred, cultural and historic sites."

Environmental justice

The protest says a land exchange on Camelback Mountain or the McDowell Mountains in Phoenix and Scottsdale would be rejected. The only reason the exchange is being approved is because, "the San Carlos Reservation contains minority and low-income populations."

In addition to claiming the mine will be

an eye-sore, the tribe also contends it will create noise pollution from blasting 365 days a year, but no analysis of the impact of noise pollution was performed for the reservation.

The EIS predicted the noise levels experienced at the Mount Graham International Observatory would be "similar to noise generated by the pulse of a kitchen blender." Because the reservation is closer to the proposed site of the mine, the tribe contends noise levels will be five times greater there than on the mountain.

Lastly, the tribe contends that air pollution will be three to 19 times greater on the reservation than in Downtown Safford.

Arizona BLM State Director Elaine Zielinski has no time limit to respond to the complains. She has to respond to any protest that has standing.

If either group is not satisfied with Zielinski's response, it has 30 days to file an appeal. Appeals are assigned to the Interior Board of Land Appeals.

Diane Drobka, a spokesperson with the BLM, said she believes the issues raised in the protests have been addressed.

The Apache Tribe, represented by Sparks, Tehan and Ryley of Scottsdale and the Western Mining Action Project -- representing the Grand Canyon chapter of the Sierra Club, the Tucson-based Center for Biological Diversity, the Western Land Exchange Project and Earthworks -- filed the protests hoping to stop the land exchange.

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Editor's note: This is the second of a two-part series examining the issues raised in protests filed with the BLM. The first article appeared in the Wednesday, Sept. 8, issue of the Courier. Issues covered in the first article were the proposed mine's impact on water rights and quality and the value of the land offered for exchange.