

## Phelps Dodge prepared for land exchange litigation

By Lindsey Stockton

Though the Department of the Interior (DOI) approved the land exchange between Phelps Dodge Mining Company and the Bureau of Land Management (BLM), the victory could be short-lived if groups file suit against the DOI.

When the Record of Decision that approved the land exchange was released by the BLM in June 2004, a 45-day period followed. During that time, groups were allowed to file formal protests against the exchange. Two groups filed protests, the San Carlos Apache Tribe and Western Mining Action Project, both claiming the land exchange did not benefit the public interest and should not take place.

Representing the Grand Canyon Chapter of the Sierra Club, Western Land Exchange Project and the Center for Biological Diversity, Western Mining Action Project (WMAF) labeled the land exchange "lopsided, with PD receiving mining support lands and mineralized land that could help produce several billion dollars of copper ore, for a total price tag of about \$5.2 million." The WMAF complaint suggests the land could be used for residential development, which the BLM refuted by saying that the land was too steep for development and the best use for the land was support for future mining operations.

The San Carlos Apache Tribe agrees with the WMAF determination that the land exchange is unfair. Like the WMAF, the Apaches protest claims that the land Phelps Dodge is giving up is overvalued.

The tribe claims that by exchanging Tavaschi Marsh area, which is less than one mile from exposed copper mill tailings from the Phelps Dodge Clarkdale operation, the mining company is benefiting by relinquishing a parcel of land that has been and will continue to be exposed to environmental contamination.

Both groups also question the impact mining operations would have on springs and water holes in the area, the validity of Phelps Dodge's mining claims on the land, short- and long-term threat of pollution accidental from spills, broken pipes and conveyances, leaking liners and discharges.

The tribe was especially concerned that the pit lakes that will form after mining operations conclude will pollute the surrounding areas with sulfuric acid. Unlined developmental rock stockpiles also concern the tribe because, according to the protest, they pose a significant danger of contamination from acid rock drainage to surface water, sediments and soil.

The protest filed by the tribe also claimed that the BLM gave away land that belongs to the tribe, which it cannot do legally. It is worried that the transfer of land mining operations will disturb an unknown but likely large number of additional sacred, cultural and historic sites.

Both groups addressed a number of other conflicts that would arise as a result of the mining project in their protests

Though the federal process has been exhausted and dissenting groups cannot file an appeal to the Interior's

affirmation, they can file a lawsuit against the agency in federal court. Should this happen, Phelps Dodge will not be named as the defendant, though the company will likely be a participant in the suit.

"If (a lawsuit) happens, it will be filed against the Department of the Interior, not Phelps Dodge," Kimball Hansen, Phelps Dodge mining communications manager, said. "PD will be involved at some level with the litigation, but until that happens, it is difficult to pinpoint our involvement."

Rep. Rick Renzi (R-Ariz.) sees the Dos Pobres/San Juan mine as an opportunity for growth and prosperity in the Safford area and, therefore, is trying to bridge gaps between the Gila Valley and Apaches.

"I spoke with the San Carlos Apaches and brought them to the table about jobs and other things," Renzi said. "We were able to bring people together in partnerships, and, hopefully, we will be able to continue doing that."

Renzi also aided in the project by making a case for affirmation of the land exchange to the Interior and securing the funding needed to complete the necessary upgrades on the Eighth Street Bridge.

"We've had positive outcomes in this process so far, and we hope to have a positive outcome if litigation occurs," Hansen said.

"It was an enormously comprehensive and involved process including many agencies involved in looking at the project, which resulted in the indication that this was a good project."