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COMMUNITIES
BY PROTECTING OUR ENVIRONMENT

► Responsible Mining ► Water Quality Protection ► Smart Growth ► Clean Air

After more than six years of extensions

Hearing on Tyrone reclamation plan set for April 6

On Tuesday, April 6, barring yet more unforeseen complications, the Mining and Minerals Division (MMD) of the state Energy, Minerals and Natural Resources Department will hold a public hearing on Phelps Dodge's plan for reclaiming the Tyrone Mine when it shuts down. The hearing will take place at 5:00 pm in Western New Mexico University's Besse-Forward Global Resource Center on 12th St. between Florida and Kentucky.

The hearing offers residents a chance to express their concerns about any aspect of what is called the mine's "closeout" plan, including how well groundwater will be protected, how soon tailing ponds and waste rock piles will be covered, how wildlife will be protected, and how much money Phelps Dodge will have to deposit with the state to guarantee that the work will get done even if the company goes bankrupt.

The MMD expects to issue a deci-

sion within a week of the hearing. It is very likely to approve the closeout plan, since neither GRIP nor Phelps Dodge opposes it, although both parties will try to convince the agency to make important changes before final approval.

Are we done yet?

Initially submitted by PD in May, 2001, the closeout plan has been heavily modified to incorporate many objections raised by GRIP and regulators. Nevertheless, GRIP will press for stronger protections for wildlife, better financial assurance, and timely reclamation of inactive portions of the mine, among other concerns. (See Major issues at stake, page 3.)

If the MMD does approve the plan, it will bring to a close a process that the Mining Act's regulations initially required to be completed by the end of 1997. The deadline was postponed several times until GRIP persuaded the state Mining Commission to reject

a fourth proposed extension in order to put adequate financial assurance in place. Our efforts forced the MMD finally to issue a Notice of Violation in October, 2002. Under the terms of that notice, PD has until April to gain approval of a plan.

GRIP will press for stronger protections for wildlife, better financial assurance, and timely reclamation

The closeout plan and associated permit are considered "conditional" as extensive technical studies still need to be conducted. The results of these studies will be used to re-evaluate reclamation plan activities to be sure that water quality standards can be met.

Many of the requirements of the closeout plan have been modeled after **see Tyrone Closeout Plan, page 3**



The grass isn't greener. A recent visit to the Cananea copper mine 35 miles south of Arizona revealed a blatant disregard for the environment. Here, tailings run several miles over bare earth to an impoundment.

photo: Harry Browne

Water fever hits area

It is often said that water flows upstream to money since large sums are spent to bring it from where it is to where it isn't. Things are no different here in southwestern New Mexico where public and private interests are currently battling to gain control of a significant quantity of Gila River flow.

Since 1968, New Mexico has had the legal right to capture 18,000 acre-feet per year of Gila River water but has had no practical means of doing so. That's enough water to meet the residential needs of 60,000 people, to irrigate 6,000 acres of alfalfa, or to keep one large copper mine and smelter in full-scale operation.

The main problem is that the water doesn't exist nine years out of ten. That's because New Mexico is prohibited from removing water from the Gila if doing so would harm **see Water fever, page 4**

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Mission Statement

The mission of the Gila Resources Information Project is to protect the quality of life and environmental health in southwestern New Mexico.

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To become a member and receive a copy of *Get A GRIP*, a minimum donation of \$5.00 is appreciated. Your contribution is tax-deductible.

Your privacy is important to us. GRIP will never share your name or personal information without your consent. Thank you for supporting grassroots change in southwestern New Mexico and Grant County.

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Opinions expressed in this newsletter do not always represent the views of all our members.

Water quality commission weighs heavy questions in PD appeal of Tyrone closure plan

Should a polluter be required to minimize its contamination, or merely ensure that contamination remains within its property boundaries? Can contaminated groundwater effectively be contained within one property when, under natural conditions, it would flow elsewhere? What reclamation actions are necessary to protect groundwater quality? Should a polluter be required to follow all applicable surface water quality standards?

These questions and others await a decision by the state Water Quality Control Commission (WQCC) on an appeal by Phelps Dodge (PD) of the closure plan for Tyrone, which was approved April 8, 2003 by the Environment Department (NMED). A ruling on PD's appeal is expected in mid-April.

Background

On March 7, 2003, NMED hearing officer Felicia Orth took a strong stand in favor of protecting the state's precious groundwater resources by ruling that Phelps Dodge could not leave over 1,100 acres of its stockpiles unreclaimed, as it had proposed. PD had promised to contain and treat the large volume of contaminated groundwater that these bare stockpiles would have generated for centuries.

One month later, the NMED issued a closure plan for the Tyrone Mine based on Orth's decision. It is that plan that PD is appealing.

The Tyrone closure plan contrasts sharply with the one issued to the Chino Mine in the wake of a secret deal negotiated in August 2002 with the Johnson administration. That plan allowed PD to do just what it proposed at Tyrone: leave the sides of the stockpiles within a large area around the Santa Rita open pit unreclaimed.

For the Tyrone mine closeout plan, PD argued that, since it would need to pump water from the Tyrone pits in order to keep them dry anyway, it would be creating an artificial capture

zone there. Like at the Chino mine, PD asserted, they should be allowed to leave stockpile walls within the pit areas unreclaimed.

GRIP, on the other hand, argued that in neither case should the company be relieved of its legal responsibility to minimize the contamination it creates. We appealed the capture zone concept in the Chino closure permit, and PD appealed the lack of one in the Tyrone closure permit. Unfortunately, GRIP's appeal has been dismissed on a technicality, but PD's went to a grueling, two-and-a-half week hearing last October and November before the Water Quality Control Commission.

On behalf of GRIP, the New Mexico Environmental Law Center (NMELC) and Center for Science and Public Participation supported NMED's closure plan as the absolute minimum to protect groundwater quality given the information currently known about the site.

Closing Arguments

The WQCC has scheduled closing arguments on the PD appeal for April 13. GRIP's counsel, Roderick Ventura of NMELC, will argue that the open pit capture zone does not adequately prevent further contamination of groundwater and fails to fulfill the purpose of the Water Quality Act. Moreover, he will maintain that a conservative approach to mine reclamation is necessary to protect groundwater quality until technical studies provide additional information necessary to re-evaluate the terms of the permit. Until these additional studies are completed, the disputed conditions must remain intact as necessary to prevent water pollution.

The WQCC is expected to make its decision following closing arguments on April 13.

Tyrone closeout plan goes to hearing April 6

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the terms of a closely related permit for post-closure activities that was issued nearly one year ago by the Environment

Department (NMED).

This permit – called a “closure” plan – focuses on how PD will protect groundwater after the mine closes. The closeout plan, on the other hand, focuses on how the mine’s lands will be used after closure, and how they will be reclaimed so they can serve those uses.

Phelps Dodge has appealed the NMED closure permit to the Water Quality Control Commission (see article, page 2). If the company prevails on important points, it will request modifications to the MMD’s closeout plan that could reduce the extent and/or quality of the reclamation it performs at Tyrone.

Major issues at stake

Wildlife protection is inadequate under the closeout plan. One chance inspection of the Tyrone tailing ponds found at least 100 birds had died in and around its waters. It is probable that hundreds or thousands of other birds have died over the past ten years, during which time the ponds have been inactive.

The danger of further wildlife injury will be reduced as a result of last fall’s settlement of our appeal and an NMED enforcement action. That settlement requires PD to begin reclamation of the tailing ponds along Mangas Creek. Nevertheless, the Tyrone closeout permit needs to include more enforceable actions to ensure that the risk to wildlife is minimized in other areas of the mine.

Wildlife injury at the Chino, Tyrone and Morenci mines has been significant enough that the U.S. Dept. of Justice is investigating possible criminal violations by PD of the Migratory Bird Treaty Act. The investigation also includes possible civil violations of the Natural Resource Damage provisions of

the Superfund law.

The MMD has accepted GRIP’s proposal to require PD to construct and operate devices that will prevent wildlife from using ponded water in the pit and other areas. We had earlier

The danger of further poisonings will be reduced as a result of last fall’s settlement of our appeal and an NMED enforcement action.

succeeded in adding this change to the Chino Mine’s closeout plan.

PD should be required to improve its wildlife monitoring after closure. The plan requires that certain standards for plant life, deer pellets, and bird diversity be met. But deer and

birds are both well known to pass through both healthy and unhealthy ecosystems, and many plants are able to survive in the presence of toxic materials that can accumulate in animals higher in the food chain. GRIP believes that the permit needs to require an evaluation of whether metals uptake by plants would pose a significant ecological risk.

Financial assurance is required by the Mining Act to ensure that reclamation and cleanup take place even if a mining company goes bankrupt. It can take the form of a cash trust account, property as collateral, bonds, bank letters of credit, a third party guarantee, or a combination of these.

The form of financial assurance for PD’s Grant County mines was the subject of an agreement negotiated last May by the Richardson administration without public participation and only two days before a public forum the MMD had organized to inform that decision. The agreement proved not only untimely, but unwise for the state, since it allowed up to 70 percent of the financial assurance for each mine to be in the form of a parent company “guarantee.” Such a guarantee will leave the state holding the bag for around \$300 million in reclamation costs at the three mines if PD follows Enron, WorldCom, and K-Mart down the path to bankruptcy.

The Tyrone closeout plan requires

the company to post \$272 million of financial assurance. The form of that assurance is based on last May’s sweetheart deal for PD, and therefore includes a parent company “guarantee” for over \$190 million, or 70 percent of the total. GRIP believes that this sum represents an unacceptable risk for the state treasury and an inappropriate subsidy of one industry.

The closeout plan further requires Phelps Dodge to put \$17 million in a cash trust immediately, and to add \$2 million per year until the trust reaches \$27 million, including interest. In addition, the plan requires the company to place in escrow deeds for property and water rights valued at nearly \$65 million. These properties would belong to the state should the company default on its reclamation obligations. We concur with the state that contaminated properties should not be acceptable collateral, and we encourage MMD to make an accurate valuation of PD’s water rights.

Timely reclamation of inactive portions of the mine needs to be ensured. As it stands, the permit requires PD to begin reclamation on the tailing impoundments this year and finish by 2012. But there is no requirement that reclamation of waste dumps and leach piles begin until the entire mine is shut down, even if an individual unit is no longer used. This, together with conflicting definitions of when a mine ceases operations, leaves open the possibility that reclamation could be postponed for decades by the continued operation of a small portion of the mine. This tactic has been used by mines in other states.

Extensive follow-up required

Our work isn’t over yet. Because the closeout plan, permit and waiver may be revised in the future based on the results of almost 20 technical studies, GRIP will continue to track the process and provide technical review of work plans and studies to ensure that the Tyrone mine is cleaned up responsibly in order to protect our water and air quality, public health, and the environment.

Please join us and other environmental and conservation groups for light refreshments following the film

When: Sunday, May 9, 2004; 4:00 pm
Where: Global Resource Center Auditorium
Corner of 12th and Kentucky

Winged Migration

Screening of acclaimed documentary film

Mark your calendars.....

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Water fever ... and how to cure it

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downstream users from Safford to Phoenix. And, except in flood years, removing any more water than is already taken in New Mexico would indeed deprive downstream senior water rights holders of what is legally theirs.

Past efforts to dam the Gila were defeated by conservationists, environmentalists and fiscal conservatives, because the environmental and financial costs of these projects outweighed any benefit.

New Mexico's Congressional delegation is working on an amendment to the Arizona Water Settlements Act (S437/HR885) that would appropriate \$150 million in federal funding to capture and distribute the Gila River water. This estimate is based on the cost of construction of a reservoir in Mangas Creek. It is not clear whether the federal appropriation would be in the form of a loan or a grant, and the state of New Mexico may need to provide a match of \$70 million. And these costs don't count either the costs of operating the system – up to \$2 million per year – or the annual cost to the Central Arizona Project of approximately \$1 million.

Building a reservoir in the Gila watershed and doubling the amount of water withdrawn from the river will almost surely have a significant negative impact on the last free-flowing river in the Southwest. Supporting premier riparian areas, the Gila River is home to as many as 38 rare or endangered species and ecosystems. The survival of these

systems is dependent upon the natural cycle of water flows that changes with season and weather. Nor is a reservoir an efficient way to store water where 4000 - 6000 acre-feet of the 18,000 acre-feet of water captured could be lost to evaporation.

It is not clear that this water is in fact needed. According to the Southwest New Mexico Regional Water Plan, our area's future water needs can be easily met by modest increases in efficiency and use of water rights that are projected to be idle. Nevertheless, New Mexico's Interstate Stream Commission has been encouraging Grant, Luna, Hidalgo, and Catron counties to join forces to build political support for the project. Meetings have been held locally to discuss formation of the Gila-San Francisco Water Commission that would contract for the 18,000 acre-feet of Gila water. At a March 29 meeting of local governments, Silver City attorney, Robert Scavron, recited a laundry list of concerns he has with these plans. He emphasized that regional water planning should be the focus of the group's efforts in order to assess the full costs and benefits of a range of alternatives. The next meeting of the group is scheduled for April 26 at 10:00 am in the Grant County Commissioner's Chambers.

Help cool this water fever! **Please contact Senator Bingaman, Senator Domenici, and Governor Richardson and tell them that you want to protect the Gila River.** See the enclosed fact sheet from the Gila Conservation Coalition for more information or visit the GRIP web page at www.gilaresources.info.