

Get A GRIP

PROMOTING HEALTHY
COMMUNITIES
BY PROTECTING OUR ENVIRONMENT

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

Wherefore Ought Thou Plan?

By Jennifer Six

Silver City and Grant County are nearing completion of the latest revisions to their comprehensive plans. These plans are intended to be guides to assist the city and county in managing future growth and development, and will serve as the basis for public works grant requests for the next five years. The process was launched in January of this year with unprecedented cooperation between the Town of Silver City and Grant County in sharing the resources of a grant for a parallel planning effort.



Photo by Jennifer Six

Citizens from Silver City and across Grant County are volunteering their time and energy to serve on two task forces established to provide input into the development of the plans. Over the past eleven months, residents have attended public meetings and input sessions and

responded to surveys to provide their thoughts and ideas to the process.

Why plan?

Why is planning so important, and how can it benefit our community? Just as families benefit by planning for retirement or college tuitions, and just as businesses

benefit from developing strategic plans, communities can sustain and improve the quality of life of their residents by anticipating growth and future needs, by encouraging certain kinds of development, and by restricting development that violates community values.

Planning must be done for three reasons:

1) We have to.

State and federal public works grants require local governments to have up-to-date comprehensive plans, just as a bank might ask for a budget with assets, debts, and projected income before approving a loan.

2) If we don't do it someone else will do it for us.

Regional and state planning processes may be mandated for other reasons, such as statewide water planning necessitated by interstate disputes over water delivery. This kind of planning is going on without us. Having and pursuing a local comprehensive plan which is integrated into this kind of regional and state planning increases local control.

See "Planning", Page Three

GRIP Defeats Rollback of Mining Act Financial Assurance Requirements

By Harry Browne

In a surprising, underdog victory for GRIP, the state Mining Commission last month rejected a proposal by the Mining and Minerals Division (MMD) to allow parent companies to 'guarantee' up to 75 percent of the reclamation liabilities of their subsidiaries, rather than having to post cash or other solid forms of financial assurance.

The New Mexico Mining Act requires financial assurance to ensure cleanup and reclamation of a mine will take place even if the company operating the mine cannot or will not do the work itself. The Act allows a "third party guarantee" as one of the five acceptable forms of financial assurance, as long as the guarantor is financially sound.

The MMD's proposal would have replaced the phrase "third party" with the word "corporate." This would have made it much more difficult to challenge the deal reached earlier this year between the Richardson administration and Phelps Dodge to allow the Phoenix-based parent to 'guarantee' 60 to 70 percent of the reclamation liabilities of its New Mexico subsidiaries, including the Chino, Tyrone, and Continental mines.

See "MMD Summary", Page Seven

ACTION ALERT!

GRIP Needs Your Presence

November 13
MMD Public Hearing on
Chino Closeout Plan
Bayard Community Center
5:30 pm

See Pull-Out Section For
More Details

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Mission Statement

The mission of 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 members names or personal information without their consent. Thank you for supporting grass-roots change in Grant County and Southern New Mexico.

All content in this newsletter is supported by credible sources. If you would like more information on any article, please contact us.

Opinions expressed in this newsletter do not always reflect the views of every member in our organization.

Letter From The Director

Open Letter to Our Members

Allyson Siwik, new Executive Director

It has been a very busy and exciting several months for me since I assumed Harry Browne's responsibilities as the new Executive Director of GRIP. Harry and his family are enjoying themselves in Chiapas, Mexico. We wish them lots of fun and adventure!

We here in the GRIP office continue the important work that Harry and Sally Smith officially began back in 1997. They have relentlessly pushed to force Phelps Dodge to take full responsibility for the present and future environmental impacts of their mines here in Grant County. They have also been actively involved in community-building and public health efforts such as the formation of the Grant County Community Health Council, implementation of the Mining District Health Study, and development of the Silver City Trails and Open Space Plan. I hope to continue GRIP's record of contribution to efforts such as these. In this issue of "GetaGRIP", we intend to further the dialogue and education on "smart growth" and comprehensive planning that are so important to the economic vitality and quality of life in this region

This fall is a significant time for setting the course for the future of our local environment. As described in the series of planning articles, the Silver City and Grant County Comprehensive Plans will be finalized. These plans are critical to guide future growth and development in the city and county. Settling issues related to its appeal of a decision by the Water Quality Control Commission on reclamation at the Tyrone mine, GRIP was instrumental in the negotiations that resulted in immediate reclamation of tailings ponds that have been inactive since 1982 and are responsible for the killing of wildlife and contamination of groundwater. Additionally, the Mining Commission heard a proposal in September to change the Mining Act rules on financial assurance. GRIP participated in those proceedings and proposed tight restrictions on allowing "guarantees" for mine reclamation and clean-up costs. A final decision by the Mining Commission on rule language is postponed to November 17.

I am honored to be filling in as the GRIP director during Harry's year-long sabbatical. It will be an exciting and challenging opportunity to be part of such a dedicated organization. Coming to GRIP with almost 12 years of experience with the U.S. Environmental Protection Agency, I hope to apply my regulatory, public outreach and consensus-building skills to the environmental and quality of life issues confronting our community. I look forward to working with you all as we strive for a healthy and prosperous Grant County!

Get a Grip - Volunteer!

As you can see from the articles in this issue, our plates are quite full. For those of you with skills and technical expertise and a willingness to volunteer your time, we are looking for help with our GRIP web page, fundraising, grant writing, and newsletter production. As always, we need participation in our newsletter "address label-sticking parties."

Help us build our member-volunteer database. Because we value your privacy, we are reluctant to solicit volunteers by phone or email. We are counting on you to invite us to ask you to volunteer. Ask to be put on our volunteer list so we can feel good about calling you the next time we need help manning a booth, mailing newsletters or whatever else the need is.

If you are interested, please give us a call in the GRIP office at 538-8078 or send an e-mail to GRIP@gilaresources.info

Comprehensive Planning: Where Do We Grow From Here?

Continued From Page One

3) It may help us bring jobs back to our community.

A well thought out and actively used comprehensive plan improves residents' quality of life by ensuring that growth and development reflect community values such as adequate roads and other public services, accessible open space and recreational

facilities, historic preservation, and pedestrian and bicycle safety. Such planning in turn can affect the kind and quantity of new jobs created in the area.

All these good reasons and we have not even had to resort to the Chicken Little cry,

"Growth is coming, growth is coming!" But of course it is.

What Is Good Planning About?

Getting from where you are to where you want to be. And what if where you want to be is to stay right where you are? Just ask Flagstaff: it has maintained its small town feel even though it has experienced a 23% increase in population over the past 13 years. But it takes planning.

Failing to plan is planning to fail. It's a platitude, but true nonetheless. Just ask Grant County citizens who watched the county slip near the brink of financial ruin when its Commissioners and County Manager failed to plan adequately for either the construction of the new County Administration Building or the looming budgetary shortfall. The practice requires long-term commitment to an on-going iterative process of assessment, formulating goals, taking action, and improving upon those actions.

Planning Phases

Each phase of planning is a continuing process that informs the next phase. The first phase of planning is assessment: identifying the task, the problem, the available resources, the strengths, and the needs. Part of assessment is gathering *subjective* data, asking for public input on what the problems are, what is worth saving, and what needs to be changed. But another part of assessment has to be

objective - what are conditions actually like on the ground? This requires collecting data and employing the expertise of field staff, mappers, managers, and engineers.

To determine whether the available services are optimized for the needs of the community requires bringing all this information and more together. The subjective input is integrated with the objective data and with the legislated priorities of state, county, and municipal authorities; a ranking is formulated, ordering and identifying levels of importance and urgency.

Next comes the plan. The written plan is a set of recommendations for action beginning with a formulation of long- and short-term goals with clear performance standards. If these truly represent input from the public, they will reveal conflicts of interest that must be acknowledged and resolved before the next step can occur.

When it comes to implementation, remember that the planning document is just a series of recommendations; actual implementation takes action by the county commissioners or city councilors, other elected officials, and public employees. And before asking city and county departments to implement any new plans, each department must have the tools that it needs to do the job required of it by law.

What is all the fuss about planning?

For many, comprehensive planning is a code word for zoning ordinances and growth regulation. But both those who support zoning and growth regulation as an approach to land use and resource management and those who oppose them in any form do planning an injustice by equating the two. Land use is just one part of a comprehensive plan and traditional zoning regulation is just one approach to managing land use.

Land use refers to the physical layout of a community, areas of development, preservation (national forest), or conservation (riparian areas, open space). Zoning is the most common land-use regulation in America. It was started in the 1920s to separate potentially conflicting land uses, such as houses and factories,

and thus to protect public health. In many areas, however, zoning has been used largely to protect middle-class residential housing values and has resulted in subsidized sprawl. But this result is avoidable; zoning can be a flexible tool that adapts to local characteristics and needs.

Efficient planning avoids reinventing the wheel

We should and can benefit from the experience of other similar communities. The "Smart Growth" movement, for instance, has developed effective principles and tools to create communities that leave room for open spaces, efficiently use our public investments in streets and utilities, meet the needs of our families, give us the options we need to travel during the day and week, and are attractive.

But what works in an urban setting is different from what will work in a rural western setting known for its tough individualists who set greater store by private property rights than by vague notions of the public good.

Public participation: A double edged sword?

The beginning of a solution is identifying the problem. All phases of the process must be open and accessible to the public. The danger is that the process can become stuck here in a circular rut in which the public and all parties involved are tempted to jump directly from subjectively identifying problems to dictating solutions.

In this round of revision of the Silver City and Grant County comprehensive plans, public participation has not been effective. We have missed several opportunities to involve a wider spectrum of participation, such as the Rodeo and Blues Festival or even in the Wal-Mart parking lot. What is required is proactively educating and involving the public at each subsequent stage. Our elected, appointed, and hired civil servants could and should be actively cultivating an informed citizenry to direct and support them in doing their jobs.

Jennifer Six is a member of the Grant County Comprehensive Plan Task Force. An active GRIP volunteer, Jennifer designed the GRIP webpage and continues to contribute to our programs such as the Sheep Basin Restoration Project and smart growth efforts. Contributions to this article were made by Jane Olson and Harry Browne

What if what we want is to maintain the small town and rural quality of life that we value? It is still true: it takes energy and planning to keep things the same.

Draft Comp Plan for Silver City Outlines Priorities

By Allyson Siwik

The Silver City Comprehensive Plan Task Force was established in January 2003 to update the town's 1996 plan. According to the draft of the latest plan, it "offers a guide for achieving balanced growth and development in Silver City" and recognizes seven key principles to guide that future growth (see box). Currently being reviewed by task force members and interested citizens, the draft addresses planning issues related to land use and community design, housing, transportation and circulation, public facilities and services, economic development and natural resources and hazards. The existing setting and future trends within each of these categories are discussed. For each category, goals, policies and implementation measures are also provided. These are the specifications of the plan that, if adopted by the Council and implemented by the Planning Dept., will guide decisions as the town develops over the next 10 years.

The draft 2003 comp plan is for the most part a reaffirmation of the goals and policies outlined in the 1996 plan. There are some notable shifts, however, such as the acknowledgement that annexation of areas within the Extra-Territorial Zone

(ETZ), as originally proposed in the 1996 comp plan, is not a popular alternative. The ETZ includes all lands within three miles of city limits. The 2003 comp plan recommends that the town and Grant County agree on a growth management approach for the ETZ including a joint planning authority and limited zoning.

Similar to the county comp plan, the Silver City plan identifies nine priority actions for implementing the plan. A process is outlined through which action teams would develop plans for each of the nine strategic actions. The action plans will be reviewed and approved by the Town Council. Some of the priorities reflected in the strategic actions include: economic development, growth management in the ETZ, affordable housing, transportation, downtown revitalization, parks and open space, and water and wastewater servicing.

GRIP views four action items as critical to the effective implementation of the plan:

1. Implement joint town-county planning and zoning in the ETZ – The highest growth is in the ETZ. Joint planning and zoning will ensure "quality growth as the town grows into the larger urbanizing area" and will prevent continued development in areas that aren't self-sustaining with respect to infrastructure.

2. Improve water resources management – As reported in the city's 40-year water plan, the area's water supply is not expected to meet future demand in the next 25 years. The city needs to a) develop a well management system b) help water associations to get grants for the purchase of storage tanks c) renegotiate all of the water contracts with water associations and d) conduct detailed hydrological studies.

3. Hire a transportation planner – Such a person would attempt to ensure that the transportation infrastructure needs of the town are adequately met.

4. Improve the condition and affordability of housing stock – Identified as a problem as early as 1970 in the city's master plan, the deteriorated condition of the housing stock continues to be of concern. According to the Board of Realtors, the median housing cost for the average home in the area rose from \$54,000 in 1990 to \$107,000 in 2002. Local residents are increasingly forced to purchase lower-priced mobile homes on the fringes of town.

Contributions to this article were made by Joe Hutto of the SC Comp Plan Task Force.

Key Principles for Guiding Growth in Silver City

- Develop a diverse and sustainable regional economy
- Establish principles and goals to guide town in creation of a growth management strategy for the ETZ
- Protect historic downtown and neighborhoods
- Preserve quality of natural environment, open space, water and other resources
- Maintain and enhance community facilities, parks, open space and recreational opportunities
- Protect Silver City's small town character
- Maintain town's cultural diversity and protect historic traditions

Land-use Planning: Critical to Silver City's Future

By Allyson Siwik and Jane Olson

Following adoption of the Silver City Comprehensive Plan in 1996, the town's Planning Department began developing policies and ordinances to implement the plan's land use and growth management goals. The resulting Land Use Code was passed in 1998. It outlines site plan and design standards to be used by developers to obtain a zoning or conditional use permit. The Planning and Zoning Commission reviews all development plans to ensure they conform to the Land Use Code.

Silver City's Land Use Code is considered very progressive for cities within New Mexico. It aims to establish a well-balanced community through cluster/planned unit and mixed-use zoning. In cluster development, a portion of a residential or commercial subdivision is used for high density lots and the rest is set aside as

open space for residents or the public to share. Mixed-use zoning involves allowing compatible forms of business and residential development to exist side-by-side. The Land Use Plan encourages this in the areas surrounding downtown and Western New Mexico University. By not directing all businesses away from the downtown area and into commercial strips like Highway 180, Silver City is attempting to preserve its walkable, small-town character. Silver City is also considered to be progressive for its subdivision requirement that .01 acre per housing unit be dedicated to the town as public open space.

The Extra-Territorial Zone

The Extra-Territorial Zone (ETZ) is the area outside but within three miles of the city. Much of the growth in population

See "ETZ", Next Page

By Allyson Siwik

In January of 2003, the Grant County Comprehensive Plan Task Force was formed to revise and update the 1994 county comprehensive plan. A draft of the revised plan is now being reviewed by the task force and interested citizens. It is largely a reiteration of the 1994 plan, apart from a section outlining strategic actions or priorities for implementation over the short-, medium-, and long-term.

The draft addresses planning issues related to land use and community design, housing, transportation and circulation, public facilities and services, economic development and natural resources and hazards. The current setting and future trends within each of these categories is discussed. Goals, policies and implementation measures are also provided for each category.

Most notably, the revised plan recommends that a review be conducted of the county's codes, guidelines and development principles citing the need for a sound regulatory framework for efficient development. The plan states that an evaluation of the need for a county zoning ordinance be given "very high priority" as a mechanism for implementation of the county comprehensive plan. Additionally, the plan suggests consideration of adopting design principles and guidelines as a means to preserve the interesting, small-town nature of many of the county's communities.

The suggestion for a zoning ordinance is not new to the Grant County Commission. Over the past years, there have been infrequent discussions about establishing a zoning ordinance to control the location, size, density and type of development throughout the county. Discussions have focused on the need for agricultural, residential and commercial or industrial districts. However, no decisions have been made, nor has there been much momentum for moving forward on this issue.

Five Strategies Recommended

The draft plan recommends the county adopt five strategies that reflect the most urgent needs expressed by many residents including strategies for intergovernmental coordination and community collaboration, revitalization of the mining district, economic development, water and wastewater servicing and protection and enhancement of the Gila and Mimbres Rivers.

GRIP Recommendations

The Grant County Comprehensive Plan is a good beginning representing the diverse interests of Grant County citizenry. What is *most needed* is the commitment to move forward and implement the plan. In addition to the overarching recommendations outlined in the pullout section of this newsletter, there are four priority areas that we view as critical activities for effective implementation of the goals of the county comprehensive plan:

1) **Integrated mapping of county-wide data**-- The county needs the capability of gathering and integrating objective information fundamental to county function. Integrated mapping for road maintenance, flood plain management, fire/EMS, land use, population and other data categories would allow more efficient management of county resources and better planning for future growth.

2) **Establish performance standards and accountability for each county department** reflective of goals, policies and implementation measures of the comprehensive plan.

3) **Initiate focused, broad-based discussion on regional issues** such as county water and wastewater servicing integrated with the regional water plan.

4) **Initiate focused, broad-based discussions regarding county land-use planning and growth management.**

Contributions to this article were made by Jennifer Six, Jane Olson and Harry Browne

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and housing in the county over the past 10 years has occurred in this area, even as the town's population shrank slightly. Both the town and county governments have legal authority to review the development plan of any subdivision in the ETZ that has lots smaller than five acres.

The extension of water and sewer lines to the ETZ has been one of the most controversial development issues in Silver City. Some areas within city limits do not have water and wastewater services, and residents there argue that they should have priority over residences outside the city. Additionally, the absence of a systematic plan for service extensions has resulted in higher costs and in some cases lack of service.

Although Silver City has the legal authority to enforce its zoning ordinance on the area that extends one mile outside of the city limits, so far this has not occurred. In 2000, the Citizen Steering Committee on Growth recommended that the Town Council immediately apply zoning criteria to the area. To zone beyond this one-mile zone would require either annexation of the land or a Joint Powers Agreement with the county. Because annexation has been strongly opposed by the county commission and by residents of the ETZ, this does not appear to be a viable option. However, a joint town-county task force has been discussing alternatives for planning within the ETZ that include city zoning within one mile of town and a joint town-county development review process. The draft of the 2003 Silver City Comprehensive Plan recommends an action team be formed to develop a plan for growth management in the ETZ.

Land Use Code Under Attack?

According to the draft 2003 comprehensive plan, the Planning and Zoning Commission is currently revising the town's Land Use Code to "determine what changes might better reflect the desires of citizens within the community." The Planning Department originally developed the Land Use Code as part of implementing the 1996 Comprehensive Plan. This time around, the group doesn't have the benefit of a completed 2003 Comprehensive Plan since it hasn't been finished yet. Furthermore, the draft of the plan recommends a different approach to revising the Land Use Code, in which neighborhoods and districts could adopt their own "area plans" that may be more appropriate to the characteristics of these areas than to the town. The draft comp plan suggests that the Land Use Code "be developed following the creation of these plans." GRIP supports the draft plan's recommended approach and hopes the code changes now being considered do not preclude its implementation.

Partial Settlement Reached On Tyrone Reclamation

Aerial View of Tyrone Tailings Photo by Steve Blodgett



By Harry Browne

The state Environment Dept., Phelps Dodge, and GRIP reached a settlement of several disputes last month that will eliminate, within eight years, the ongoing contamination of groundwater by tailing ponds at PD's Tyrone mine, the lethal threats to wildlife posed by acidic water on those ponds, and the massive clouds of dust that blow off them.

Tailings are finely ground rock that is removed from crushed ore in the concentrating process and is piped as slurry to constructed ponds, where it dries. It contains toxic metals and chemical residues. Tyrone stopped mining for concentrate in 1982, switching entirely to acid leaching, and has not needed the tailing ponds for its operations since. In 1989, an inspection by the Environment Dept. (NMED) discovered that acidic conditions were developing on the pond surfaces, brought about by the chemical effects of precipitation, wastewater, and process water coming into prolonged contact with sulfide minerals in the tailings.

In 1992 NMED authorized discharge to the tailings of plant sewage effluent and "good quality" mine dewatering water with a pH between 6 and 7 standard units. However, according to NMED, "collection and impoundment of contaminated acidic storm water has never been permitted although it frequently occurs." In 1989, inspection by NMED discovered acidic conditions developing on the pond surfaces, brought about by the chemical effects of precipitation, wastewater, and process water coming into prolonged

contact with sulfide minerals in the tailings. NMED inspections over the last few years indicate pH readings of 2 and 3 in ponded waters and inadequate hazing of wildlife.

GRIP has raised the issues of groundwater contamination and wildlife hazards at Tyrone's tailing ponds repeatedly over the past five years with both state and federal agencies. This past June, we appealed the NMED's approval of a closure plan for the Tyrone mine primarily because it failed to set a reclamation schedule for the tailings. As part of last month's settlement, GRIP agreed to drop this appeal.

The settlement does not address issues related to the closure and reclamation of other portions of the Tyrone mine, including how to regrade, cover, and vegetate the mountains of waste rock and leached ore. Phelps Dodge has appealed the requirements of the NMED's closure permit on these points. That appeal is being heard by the Water Quality Control Commission. GRIP supports the NMED's permit requirements in these areas and will provide expert testimony at that appeal hearing.

Details of the Settlement

The settlement requires PD to reclaim 2,300 acres of tailings in the headwaters of Mangas Creek, as well as areas farther downstream. PD had consistently opposed any reclamation of the tailings, arguing that in the future it may be technologically and economically possible to reprocess the tailings and recover much of the trace amounts of copper that remain in them. When this day comes, the company has

said, it will be inefficient to have to strip off any cover that has been placed on them.

The NMED agreed to take no enforcement action related to violations of the Water Quality Act at the tailing ponds. However, it reserved the right to pursue "claims for damages for injury to, destruction of, or loss of natural resources." (See article page 7 this issue.)

The settlement requires PD to place a minimum of two feet of earth on the tailings and to seed the cover with a mixture of plants. It also requires the company to establish "test plots" with three and four feet of cover earth and alternative seed mixtures, and to monitor how well these areas prevent rainwater from reaching the tailings compared to the two-foot covers. If the data shows that more cover is needed, the NMED will be able to require that through the conditions of its closure permit.

In exchange for this concession by the state, PD agreed to drop its appeal of the NMED's denial this summer of the company's request to renew Discharge Permit 27, which covers activities related to the tailing ponds. The company also withdrew portions of another appeal – of the closure permit issued by the NMED this spring – that addressed the reclamation of the tailings.

GRIP is pleased that the new NMED Secretary Ron Curry and his staff's settlement on DP-27 showed a determination to fully enforce environmental regulations. The penalties in the settlement start at \$500 per day per document, and increase to \$4,500 per day for any document more than 31 days late. GRIP is hopeful that these enforceable deadlines will translate into timely reclamation. We expect this work to retain and hopefully create new jobs and stimulate local economy.

Two Negotiating Victories for NMED

Earlier this year, the NMED and another state agency, the Mining and Minerals Division, reached an agreement with Phelps Dodge on the form of financial assurance to be required to ensure the eventual reclamation of the Tyrone, Chino, and Continental mines. The terms of that agreement were highly favorable to the company, leading GRIP and others to oppose it vigorously.

See "Settlement", Back Page

Upcoming Mining Issues in Brief

Closure/Closeout Plans:

- GRIP will continue to support the NMED's closure permit for the Tyrone Mine against PD's appeal. This appeal will first go to the Water Quality Control Commission and then, most likely, to district court.
- GRIP will go before State Engineer John D'Antonio to convince him that the use of clean groundwater by the Chino mine to dilute its contaminated water is contrary to the legislatively mandated conservation of water. PD's switch to adequate treatment at Tyrone helps make the point that such treatment is feasible and dilution is therefore no more than a waste of water.
- GRIP will oppose major concessions made by the state in its closure permit for the Chino Mine, including the approval of dilution instead of treatment and the designation of a huge "sacrifice zone" where groundwater contamination will be allowed. If these concessions remain in the permit that will be finalized in November 2003, GRIP intends to fight them.
- GRIP will continue to oppose PD's request for waivers of reclamation requirements on hundreds of acres of waste pile slopes at each mine by challenging the definition of economic "infeasibility" of specific reclamation projects.
- GRIP will participate in hearings and review/comment process for mine closeout permits for the Chino and Tyrone mines.
- GRIP will fight to ensure that a third Phelps Dodge mine in Grant County, the Continental Mine, also obtains required state permits that include adequate closure and reclamation.

Financial Assurance:

- GRIP will continue to participate in discussions with MMD and Phelps Dodge on the appropriate definition of "third party guarantee" that limits taxpayer liability and is consistent with the polluter pays principle. GRIP will participate in the Mining Commission's hearing on November 17 at which final decisions are expected to be made on the definition of "third party" and appropriate methodologies for reclamation and clean-up cost calculations.
- GRIP will participate in hearings and review/comment process for financial assurance proposals for the Tyrone, Chino and Continental mines and argue for adequate financial assurance by Phelps Dodge of the estimated \$500 million reclamation and clean-up costs for the three mines.

Operational Issues:

- GRIP will engage in review and comment process for renewals and appeals for operational discharge permits at Chino and Tyrone mines.
- GRIP will encourage the Mining and Minerals Division to enforce its own schedule on standby for the Little Rock mine, already one year overdue.

USFWS to Pursue Natural Resource Damage Claim Against PD

Four state and federal agencies in August determined there is sufficient evidence to successfully pursue a natural resource damage claim against Phelps Dodge for damages resulting from releases of hazardous substances at the Tyrone, Chino and Morenci mines. The determination was made in a "pre-assessment screening" report issued by the U.S. Fish and Wildlife Service, in coordination with the NM Office of the Natural Resource Trustee, the federal Bureau of Land Management, and the federal Bureau of Reclamation. Collectively, these agencies are known as the "Trustees" and are empowered by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to take actions necessary to protect and restore natural resources under its trusteeship that may have been injured by a release of a hazardous substances.

The "pre-assessment screen" presents findings related to five criteria upon which the Trustees based their determination. The Trustees conclude that releases of hazardous substances have occurred at the mines and that the quantity and concentrations of these releases are sufficient to cause injury to natural resources for which the Trustees have trusteeship. Potential damages examined include bird deaths at tailings impoundments, injury to other wildlife, and contamination of groundwater with high economic value as future drinking water sources.

To view the document on-line, visit:
http://ifw2es.fws.gov/Documents/R2ES/Phelps_Dodge_Final_Preassessment_Screen.pdf

A hardcopy of the document can also be found in the reference section of the Silver City Public Library.

MMD Hearing Summary

Continued from Page One

This was the second time in two years that GRIP and its allies convinced the state Mining Commission to reject an MMD proposal to weaken the Mining Act's application to PD. In late 2001, the commission rejected a joint proposal from the MMD and PD to extend the Mining Act deadline for gaining approval of reclamation plans by five years.

Mining Engineer Jim Kuipers, who has been a consultant to GRIP for four years, provided testimony that proved critical in swaying the commission's decision. "Montana learned the hard way that corporate guarantees can be worthless when a mining company goes bankrupt. The state's mining liabilities total approximately \$50 million, and state and federal taxpayers are expected to pay the bill in full." Several components to MMD's proposal were supported by GRIP and were approved by the commission. Among these were new rules governing the establishment of trust funds and the use of insurance policies as acceptable forms of financial assurance.

GRIP proposed strengthening the Mining Act rules governing third party guarantees to limit the extent to which one mining company can guarantee another's reclamation liability. GRIP suggested that by requiring industry diversification, the state would be protected against defaults due to cyclical declines in mining. The commission postponed a decision on this issue, but agreed with GRIP that the issue merits further consideration. It scheduled a hearing for November 17. GRIP, PD, the MMD, and other parties will propose definitions of what constitutes a "third party," and what restrictions should be put on third party guarantees, if any. PD has already argued strenuously that the parent corporation qualifies as a third party because it is incorporated separately.

