

JUNE 10, 2010

MEMORANDUM

TO: KEN GARDNER, CLIF TIPTON, DAVE ROSENKRANCE, PIPER GOESSEL, JOE KRAAYENBRINK, KRIS MARTINSON, MIKE LOPEZ, KEVIN BRACKNEY
CC: KARMA CHILDS, STEPHANIE LAUER, DAVE KIKKERT
FROM: BRIAN BUCK
SUBJECT: MAY 12, 2010 CONFERENCE CALL TO DISCUSS THE THOMPSON CREEK MINE EIS WITH THE NEZ PERCE TRIBE REPRESENTATIVES

A conference call was held May 12, 2010 to discuss the Thompson Creek Mine EIS. In attendance were Ken Gardner and Cliff Tipton, BLM; Piper Goessel, USFS; Mike Lopez and Kevin Brackney, Nez Perce Tribe; Dave Kikkert, JBR

Key Nez Perce Concerns

Following a brief project introduction by Ken, a wide range of issues was discussed. A summary of the discussion is presented in the following sections; however, the key concerns raised by the Nez Perce Tribe are listed below.

1. The water quality information provided on the scoping figure should include more detailed data.
2. The reclamation plans to cap the Pat Hughes waste rock facility may be insufficient to prevent leaching and contamination of ground and surface water.
3. Bonding should be sufficient to insure that reclamation activities are adequately funded and guaranteed.
4. The long-term water quality treatment plan and any plans for a new treatment plant should be provided.
5. The Nez Perce Tribe has concerns about the stability of the tailings impoundment.
6. If the land exchange occurs, continued agricultural hay production on the Broken Wing Ranch would not benefit the public.
7. Enhancement of steelhead spawning and rearing in Lyon Creek would benefit the public and would directly benefit the Nez Perce Tribe.
8. If the land exchange occurs, the Nez Perce Tribe would like to see any water rights from the Broken Wing Ranch applied to Salmon River instream flows

9. The Federal Land Policy and Management Act (FLPMA) says that the intended use of the exchanged Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian Trust lands. If there is a significant conflict, then the agencies will not be able to approve the exchange.
10. When conducting a feasibility analysis of the land exchange, the BLM should not overlook tribal treaty rights. The treaty right is a burden on the title and that burden on the title could affect the value to value exchange of the land.
11. The BLM should analyze the difference between State mining regulations (if the land exchange goes through and most disturbances are on private land) and Federal mining regulations (i.e., no land exchange with continued activity on Federal land).

Action Items

1. More data should be added to the summary tables in the water quality figure than just the number of exceedences.
2. Kevin requested more water rights information on the Broken Wing Ranch and Ken said he would send it.

Issues Discussed

1. Water Quality

Kevin had questions about whether or not there were documents showing what the water quality is coming out of the waste rock dumps. Kevin was also unclear about the data presented in the tables on the water quality scoping figure. Ken explained that although the mine does not need to discharge water from the mill, water is discharged at times from the waste rock facilities and that a very extensive water quality database exists. Dave explained that the information in the tables shows the number of times the Thompson Creek Mine (TCM) has exceeded water quality standards. Although the data comes from monitoring sites on the Salmon River, Thompson Creek, and Squaw Creek, data from the actual streams (Buckskin and Pat Hughes) is also available. Kevin requested that more specific information be added to these tables. Kevin also asked if there was documentation of requirements from the NPDES permit. Clif downloaded a relevant fact sheet from the EPA website and sent it to Kevin and Mike, and the request to add more data to the tables was added to the list of action items.

2. Waste Rock

Kevin raised the concern that the reclamation plans for the Pat Hughes waste rock facility may not be sufficient to prevent leaching into surface and groundwater.

This concern was noted as a key concern (#2 above). Ken explained that the EIS will look at what the quality of the surface and groundwater would be throughout the entire operations.

3. Bonding

The present bond was discussed, as well as what would transpire if the land exchange occurs. The TCM operation has been ongoing for 20 years and involves private land and land administered by the BLM and Forest Service. All agencies have legal bonding authority. Each agency holds a financial guarantee (bonding) for the portions of the operations that are on the prospective land each agency administers. Most of the mine is on private land. As a result, most of the money is held by the Idaho Department of Lands (IDL). Every five years the bond is updated. If BLM approves the land exchange, then, potentially, the mine could operate without disturbance on BLM land, just private and Forest Service land. In that case, those agencies would hold the bond. The amount would be approximately the same. Currently, IDL holds over 90% of the bonding. At this point in time the EPA does not have any legal authority to hold financial guarantees. Kevin explained that the tribe is concerned about fisheries and the guarantee of reclamation. Kevin mentioned that one of the aspects of the Cobalt Mine project that impressed the Nez Perce tribe was their commitment to a bond to insure that the reclamation activities be adequately funded.

4. Pit Stability

The reclamation plans for the pit were discussed. The EIS will have to look at the effects of backfilling the pit; however, the current estimate is around \$100,000,000.00 to replace the material in the pit. As a result, when the cost is analyzed, it is most likely it will not be feasible to select a backfill alternative. However, it will be analyzed. After mining ceases, the pit will fill with water and that is one of the reasons for the water quality studies going on now. This will be concern for a lot of people. Kevin mentioned that during a site visit, there was a landslide that happened on the side of the pit and questioned whether the pit walls would be stable during seismic situations. Ken explained that the EIS will look at 3 components of geotechnical stability: (1) the pit itself; (2) the waste rock piles, and; (3) the tailings impoundment. The analysis will look at under what circumstances will they be stable, and if there are failures, to what extent. This information will be provided to the public even though the pit is on private land.

5. Water Treatment Plant

The status of water treatment was discussed. There is an existing water treatment plant that was constructed in 2009 and there is another long-term water treatment plant for reclamation that is being proposed. The proposed plant for long-term reclamation is only conceptual in nature, and no design documents currently exist. Kevin asked whether the long-term plant would be analyzed in the EIS. Ken

indicated that it would, and that the BLM could not approve the changes to the Amended Plan of Operations without knowing the basic details of the plant. Ken also indicated that more specific information would be provided to the Nez Perce Tribe as soon as it is available.

6. Tailings Impoundment

Kevin noted that during the mine tour, TCM was just finishing a repair to the under drain in the tailings impoundment due to the drains having been wrapped in a geotextile fabric that had plugged. This raises questions as to what the stability of the dam will be if this fabric is used in the future. Ken replied that the mine has prepared a very detailed report on what they propose, with final configuration, and stating that “yes, this will be stable for the long term”. The agencies have hired a contractor, a series of experts. They have identified issues and are meeting next week to go through them. This is one of the issues they have on the agenda to discuss.

7. BLM Land Exchange

Ken explained the BLM land exchange procedure to be as follows: The land exchange is part of the proposed action and the BLM has to respond. The proposal was a block area of approximately 5000 acres south of the main operations. It is all BLM administered land. The Thompson Creek Mining Company (TCMC) has offered two parcels of private land in exchange. One is along the Salmon River and the other is in Garden Creek, near Pocatello. The land, itself, must be exchanged on a fair market dollar value. The decision made on the exchange is looked at by all issues in the public interest. The EIS will try to capture all of these issues and make it easier for the decision maker. There is a feasibility analysis that the BLM Director has to sign, then they sign an agreement to initiate, then newspaper notices, then completion of the NEPA Analysis, then we have a decision.

Kevin asked what the public interest is in acquiring the Garden Creek Property and Ken explained that it is considered great habitat for wildlife (big game). It would also help form a more contiguous block of public land in the upper Garden Creek watershed. Further, for the Shoshone Bannock Tribe, it would increase the amount of public land that lies within their seeded boundary. The current land use on the surrounding BLM land was discussed, and it is generally understood that it is used for grazing as well as motorized recreation.

Discussion then turned to the Broken Wing Ranch. The first item discussed was Ken explained that the BLM-Idaho Falls District RAC is appointed by the Secretary of Interior and that it represents a diverse group in the community. Cliff sent a link with the members of the RAC. It has 5 members from industry, conservation groups, elected officials, tribes, and academia. It has one Shoshone Bannock member. Kevin then expressed concern that agricultural hay production

does not seem to be in the public interest. Ken explained that if the BLM acquires a ranch like this that has been in production for many years, they are not able to stop growing without developing weeds. They continue production to prevent weeds. Over time, you can slow production. Also, on the resource advisory committee there are representatives from the area that had a preference to continue ranching as a value to the community. Kevin's concern over agricultural production and public benefit is documented in the Key Concerns section.

Kevin also explained that enhancement of steelhead spawning and rearing in Lyon Creek would benefit the public and would directly benefit the Nez Perce Tribe. This was also noted in the Key Concerns section. Clif then explained the restoration that has already been funded for the Broken Wing Ranch. This includes consolidating two pipelines into one, putting in 7000 feet of fence to keep the cows out of the Salmon River riparian area, removal of the dam on the pond on Lyon Creek, and protecting the inner flood irrigated pasture with a jack fence. Kevin asked if you could take the Lyon Creek water right and set it aside for Salmon River instream flows (i.e., have Idaho Fish and Game take over the water rights). Ken replied that he was unsure if BLM would have any control over the water once it enters the Salmon River; however, Clif emphasized that any efficiency that goes into Lion Creek goes right into the Salmon River. Kevin asked for a total of water rights on the Broken Wing Ranch and this was added as an action item.

8. Land Exchange Procedure

Mike asked whether the Forest Service land surrounding or adjacent to the proposed BLM parcel is all Salmon/Challis National Forest system land or if some is managed by the Sawtooth National Recreation Area (NRA). Ken and Piper replied that all Forest Service land abutting the selected lands is administered by the Salmon/Challis National Forest, not the Sawtooth NRA, and that this includes the land to the west of Thompson Creek. Mike further explained that there are some descriptive factors in the Federal regulations on how you determine the public interest. For the record, Mike wanted to make sure that it was discussed that Section 2200.0 of the land exchange policies in FLPMA direct BLM to look at the resource values in determining public interest. Section B.2 of the same regulations says that the intended use of the exchanged Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian Trust lands. Such findings shall be made part of the administrative record. Mike wants to make sure that, as the agencies are doing their analysis, they keep this regulation in mind (i.e., intended use cannot conflict with management prescriptions and direction on the abutting Salmon/Challis National Forest). If there is a significant conflict, then the agencies will not be able to approve the exchange. At least that is what the regulation states. Mike further explained that the BLM lands that are not going to be exchanged in the trade have management objectives that also have to be looked at. Assurances by BLM would have to be

made that those lands would not conflict with land that would be traded. Ken and Piper both agreed that this should not be overlooked and it was added to the list of Key Concerns.

Mike also explained that the Nez Perce Tribe has experience with land exchanges within its own territory. The one thing they find that Federal Agencies often overlook in the assessment or feasibility analysis is that they do not look at the Treaty Right. The Treaty Right is a burden on the title. It wouldn't necessarily show up in the title search, but it is something that exists. That burden on the title could affect the value to value exchange of the land. Mike urged the Federal Agencies to make sure they take into account the Treaty Right as a burden on the title. Ken replied that this concern will also be noted and that as the BLM goes through the NEPA process they will include something very specific to both the Nez Perce Tribe and Shoshone Bannock Tribes about their particular treaty rights, as well as the other significant Native American religious concerns.

9. Decision Making Timeline

The original schedule was to prepare everything through the summer with a draft EIS by the end of 2010 and a final out by the end of 2011. However, the schedule has been delayed until publication of the Notice of Intent (NOI), which has not received approval as of yet. The timeline has been delayed, minimally, 5 months. The earliest the DEIS could be prepared is April, 2011, with a final completed by April 2012.

10. Regulations

The mine does not require the land exchange to occur in order for them to mine. They would continue with the surface disturbance on public land instead of private land. However, Kevin mentioned that it appeared that it is not really a question of the viability of the mining operation and whether the land exchange proceeds, it is a matter of preference to the mining company as to who they answer to with respect to the mining regulatory authority. Another scenario of this transaction is if you let the land exchange occur you would lose a certain amount of regulatory oversight of TCMC's mining operations. Ken explained that most of the laws apply regardless of BLM being in the picture (i.e., the Clean Water Act, the Clean Air Act, other various state laws). If BLM goes out of the picture, the State would then manage, instead of the BLM. The regulatory and environmental laws are still there. The only change is who administers them. The BLM surface mining regulations would then not apply; it would be the State of Idaho mining regulations. By owning the land you are not getting away from complying with environmental laws. Kevin explained that there are differences in mining regulations, and in looking at the effects analysis, BLM should analyze these differences. Ken indicated that the concern regarding differences in regulations was noted.

11. Forest Service Land Exchange

Participants discussed there not been a land exchange proposed for the Forest Service land. There have, in fact, been some discussions between the Forest Service and TCMC regarding a potential for land exchange. However, these discussions are informal at this point, but ongoing. The Forest Service expects that TCMC will formally propose an exchange but they haven't yet. We can't speculate on this until an actual proposal is made.

12. Closing

Cliff stated that if Mike and Kevin had any other questions or concerns they could get in touch with him or Ken at the BLM at any time.

Kevin asked for a copy of the conference call notes. He stated they will present this to our Natural Resource subcommittee and then get some direction from our policy folks on next steps. The BLM will get a letter from us capturing our issues and concerns with respect to the proposal, at least for scoping purposes. Any further comments can be directed to McCoy Oatman, the new Tribal Chairman.

Ken: On behalf of the Federal Agencies, we appreciate your comments and you will be able to see that we get them all in the record. Feel free to contact any of us informally