



National Mining Association
Foundation For America's Future

The National Environmental Policy Act Impact on Public Lands Mineral Development and Options for Reform

*Prepared for the National Mining Association by
David Delcour*

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1.0 PROJECT SUMMARY AND PURPOSE

National Mining Association (NMA) members find themselves increasingly frustrated by project delays and escalating costs associated with National Environmental Policy Act (NEPA) compliance. Earlier in the current generation of Nevada gold mines, for example, it was not uncommon for developers to negotiate the NEPA process in a matter of months. Now, two to three years is more common. With the added time comes added cost. Increasingly complex studies are being required.

NMA members wish to systematically examine application of the NEPA process to their projects. Specifically, they seek to identify the features of that process that have led to the frustrations described above. NMA has determined to undertake a survey of recent industry experiences with NEPA through interviews with mining industry personnel, other public land users and public land managers. This report presents the results of that survey and identifies possible NEPA reforms which might address the concerns of the survey participants.

2.0 THE SURVEY

2.1 Persons Interviewed

During the months of April and May 1997 interviews were scheduled with representatives of a number of mining companies, all of which had recent experience with NEPA. The list of interviewees was selected by the National Mining Association. Originally, 27 people, representing 24 companies were identified for interview. During the initial round of calls, however, referrals to six additional persons were made. Of the 33 industry representatives asked to participate in this survey, 20 were interviewed, two were unavailable and 11 did not respond to calls.

In addition to mining industry representatives, interviews were held with six of eight selected public land managers, each of whom had recent experience with mining projects subject to NEPA. Finally, four representatives of two other public land user groups, timber and oil and gas, were interviewed.

To increase the probability of candor, the people selected for interview in this project were assured that they would not be identified in any report; however, it is possible for the report author to contact any individuals whose participation in subsequent phases of this project is desired by the National Mining Association.

2.2 Interviews

With a couple of exceptions, interviews were conducted by phone and generally lasted for 20 to 40 minutes. Mining industry interview subjects were asked a series of questions designed to provide the interviewer with a general understanding of the project which triggered NEPA involvement. Thereafter, questions were asked to elicit information describing the source of land and mineral ownership, the NEPA triggering event, the scoping process, time requirements, costs and preparation of the environmental document which, in nearly all cases, was an environmental impact statement.

After providing project and NEPA process factual information, those interviewed were engaged in a general discussion of the qualitative aspects of their experience. Special emphasis was placed on those

aspects of NEPA which worked well and those which did not work well. Interview subjects were invited to suggest reforms that would have made NEPA operate more effectively or more efficiently.

Interviews are summarized in the Appendix. Projects are identified by state and commodity in order to assure the confidentiality promised participants.

Interviews with representatives of other industries and the public land management agencies did not focus on specific projects. Instead, issues raised in the mining industry interviews were presented for comment and response. Representatives of other industries provided insight into their own NEPA problems. Public land managers were refreshingly candid in providing their perspective on their agencies' management of the NEPA process as well as their evaluation of mining industry practices contributing to NEPA problems.

2.3 Mining Industry Interview Highlights

Although the mining industry representatives had a variety of NEPA experiences, a number of points were made repeatedly. They are summarized below.

1. In several instances, the scoping process has not generated criticism. Alternatives developed during scoping tend to be reasonable variations of the companies' proposed actions. Issues identified tend to be ones which the companies have anticipated. In cases where scoping has been troublesome, the problem relates either to the lead agency's inability to bring the scoping process to closure, the lead agency's failure to focus the process on issues critical to the resources to be affected by the project or the lead agency's inability to limit alternatives to those that are viable, reasonable and prudent.
 2. The overwhelming cause of escalating costs and lengthy delays in completing NEPA requirements appears to be an inability on the part of lead agencies to decide when enough information is in hand. Various reasons have been given for this deficiency. Some of the more common ones are: lead agency unwillingness to be assertive with cooperating agencies; a belief that draft environmental impact statements must preempt public comment; excessive fear of litigation; and lack of technical expertise or other resources within the agencies.
 3. The role of cooperating agencies requires revision or, at the very least, clarification. Under the worst circumstances, cooperating agencies have been identified by industry representatives as playing an adversarial role in the NEPA process. More common, however, are situations where cooperating agencies seem unable to reconcile their missions with those of the public land managers who seek to accommodate a wide range of land uses.
 4. Survey respondents were almost unanimously critical of the Environmental Protection Agency's (EPA) oversight role. Most respondents feel that EPA's insistence upon remaining aloof from the NEPA process until the very end is a major contributing factor to delays and unexpected additional studies. Although EPA's approach seems to vary somewhat among its regional offices, most characterized the agency as engaging in ambush tactics. Many reported frustration at their failure to involve EPA earlier in the NEPA process. A number complained that EPA reviews are superficial and that reviewers failed to fully understand their projects before preparing comments which, frequently, were not received until after the comment deadline.
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5. A number of companies acknowledged that their own actions have significantly contributed to their NEPA problems. The larger number of comments dealt with the consequences of revising their plans of operation after having triggered NEPA. There appears to be considerable uncertainty within the industry as to the best timing for initiating NEPA. Due to the lead time required to complete NEPA, there is pressure to initiate the process as early as possible. On the other hand, the costs and delays associated with major plan revisions suggest initiating the process as late as possible. In addition, several companies indicated that they should have sought to more aggressively work with the agencies to keep the process moving forward including entering into agreements with the agencies on time schedules for completing the NEPA process as allowed under Council on Environmental Quality (CEQ) regulation (40 C.F.R. §1501.8).
6. Some land managers discourage direct communication between project proponents and the third party contractors hired by the agencies to prepare environmental impact statements. Where this has happened, surveyed companies are unanimous in their criticism.
7. Those interviewed believe there needs to be a more constructive way to handle public participation in the NEPA process. Industry representatives were especially critical of the agencies' unwillingness to dismiss frivolous public commentary and of their unwillingness to separate ideological commentary from commentary focused on project specific environmental impacts.
8. Several of the people interviewed feel there needs to be a mechanism for ending baseline and other technical studies. They feel it is too easy for land managers to delay decision making by calling for additional studies. In some cases the situation has been exacerbated by third party contractors who have a financial interest in extending the number and scope of studies.

2.4 Other Industry Interview Highlights

The forest products industry's experience with NEPA is similar to that of the mining industry with one very important exception. For the mining industry, NEPA normally is triggered by a project proponent's application to the agency. Usually the application is for approval of a plan of operations, but applications for land exchanges, rights of way and similar land uses also can serve as the trigger. The forest products industry rarely is the initiator of NEPA. It is through the land managing agencies' planning process that NEPA usually affects the forest products industry. Only after a Federal Land Policy and Management Act (FLPMA) or National Forest Management Act (NFMA) planning document is made final, following an environmental analysis, will an agency offer timber for sale. As long as the sale has been proposed in the planning document, no further NEPA analysis is required. Accordingly, the forest product industry's participation in NEPA is limited to that of a public commenter. Another notable difference between the forest products industry's and the mining industry's experience is that the land managing agencies always prepare the environmental impact statements for their planning documents. A couple of forest product industry representatives indicated that utilization of third party contractors would be helpful.

Notwithstanding the important difference noted above, the forest products industry has been frustrated by NEPA in many ways that will be familiar to the mining industry. Those interviewed were very critical of the time required to navigate NEPA. The length of the process is attributed to several factors: decision avoidance through excessive analysis; agency insistence on analyzing all imaginable issues rather than limiting their studies to those issues which have significant resource implications; the advocacy role

played by single issue agencies; excessive aversion to being sued by citizen activist groups; and lack of adequate standing requirements for appealing records of decision.

Survey responses from the oil and gas industry were quite limited. Nevertheless, the industry's criticism is similar to that expressed by the mining industry. Apparently NEPA is often triggered when there is a flurry of drilling activity proposed for a certain area.

Lower levels of activity still can be permitted with environmental assessments and findings of no significant impact. When an Environmental Impact Statement (EIS) is required, they are done by third party contractors; however, sometimes costs can be shared among several lease holders active in the area subject to NEPA. Completion of an EIS used to take under one year, but recently they have been taking up to 2 ½ years to complete. The oil and gas industry shares the opinion of mining industry interview subjects who are critical of the nature of EPA's role in the NEPA process. Much of the additional time required to complete NEPA is attributed to industry opponents and the agencies' fears of litigation.

2.5 Public Land Manager Interview Highlights

Although public land managers speak from a different perspective than project proponents and do not endorse the criticism of their agencies, a number of their observations are strikingly similar to those expressed in the interviews of industry representatives.

1. Cooperating agencies do not have an adequate understanding of the multiple use mission of the Forest Service and the Bureau of Land Management (BLM), nor do they understand the impact of the Mining Law on agency discretion. Nearly all land managers complained that cooperating agencies try to force projects to advance their agencies' narrow agendas, without regard for the multiple use guidelines which govern the public lands agencies' decision making. A couple of land managers indicated that cooperating agencies see themselves as co-decision makers and as co-authors of environmental impact statements.
 2. Land managers also criticize specialists in their own agencies for the same short-sightedness noted in the above paragraph on cooperating agencies.
 3. Land managers acknowledge that they have become wary of litigation to the point where environmental impact statements are too lengthy, too detailed, too unfocused on critical resource issues, too time consuming and too expensive. One manager said his agency seeks to achieve a 90 to 95 percent confidence level that it will prevail in any challenge to its environmental impact statements and suggested that an 80 percent confidence level should be satisfactory and would greatly reduce the level of analysis now required. In another manifestation of this problem, managers say that they are reluctant to assert proposals will have no impacts on certain resources, resulting in unnecessary studies and a dilution of focus on the resource issues most in need of analysis and impact mitigation.
 4. Land managers would like to see all interested parties put their cards on the table early in the NEPA process. The practice of some environmental groups and EPA to keep their own counsel until commenting on a draft EIS results in land managers trying too hard to anticipate and address all possible reaction in the draft document. They believe a lot of overkill could be eliminated if issues were identified earlier and comments on the draft were kept within a previously agreed scope.
 5. BLM managers, but not Forest Service managers, believe it is too easy to file frivolous appeals and
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would like to see more rigorous standing requirements imposed.

6. The availability of personnel adequately trained to consider the environmental impacts of mine development varies among the National Forests and BLM districts. Not surprisingly, areas of considerable recent activity feel they have the necessary skills and areas of less recent activity feel they do not. Personnel from both agencies believe the Forest Service's Large Mine Team (agency experts from throughout the agency who are identified on a list and made available on a consulting basis) offers a lot of promise, but that, to date, it has been an under utilized resource.

7. There appears to be a lack of common understanding among land managers as to the proper relationships between a project proponent and a lead agency and between a project proponent and a third party contractor hired to prepare an environmental impact statement for the agency. Land managers seem to agree that maintaining rigid barriers, requiring formal, structured communication lines and requiring all communication to be on the public record does not work very well, but they disagree about the extent to which the law requires such controls.

8. Land managers believe that project proponents could do more to facilitate the NEPA process. The most frequently cited industry shortcomings are: industry's willingness to allow the agency to become the chief defender of an EIS and the proponents' preferred option; industry's unwillingness to make issues go away when there is an inexpensive solution; and industry efforts to compromise the independence of third party EIS contractors.

3.0 REFORM PROPOSALS

Section 2 of this report describes the observations of industry and public land managers who have had recent NEPA experiences. This section will discuss a number of NEPA reform ideas which have been suggested by the observations and experiences described above.

3.1 Impose Enforceable Time Limits on the NEPA Process

According to the CEQ, "even large complex energy projects would require only about 12 months for the completion of the entire EIS process." Were that to be the case, the mining industry's concerns with the NEPA process likely would vanish. As can be seen from a review of the projects described in the Appendix, a typical mining project requires between 18 and 36 months. Some of the projects required even more time.

A number of the companies interviewed suggested that enforceable time limits be imposed on the NEPA process. CEQ's regulations, while arguing the impossibility of imposing across-the-board time limits, already encourage agencies to enter into voluntary agreements to complete environmental impact statements within negotiated time frames. There appears to be adequate authority for the land managing agencies to commit to time limits in their own regulations and manuals. The dilemma is providing for acceptable consequences when an agency fails to adhere to either negotiated or regulatory time limits. Some states have provided that permits are deemed approved if applications are not acted upon within statutory deadlines. Experience in those states is mixed. While the deadlines impose pressure on the agencies to remain in compliance, the threat of denying a permit within the time limits generally compels project proponents to accept agency requests for extensions.

In the NEPA context, automatic issuance of a favorable record of decision when time limits are disregarded would require a change in the statute. In the current political climate it seems almost inconceivable that such a change could be enacted into law. A less radical measure might be a Congressional resolution urging completion of the NEPA process within 12 months and requiring agencies to publish their performance. If NEPA performance could be given the type of attention that airline "on-time" results generate, it is likely that agencies would exert greater effort toward timely completion.

3.2 Redefine the Role of Cooperating Agencies

There appears to be a great deal of confusion over the role of cooperating agencies in the NEPA process. CEQ has made it clear that lead agencies have the ultimate authority to resolve disputes with cooperating agencies, but also notes that failure to adequately consider cooperating agency concerns could lead to an EIS being found inadequate. Under these circumstances it should not be surprising that lead agencies go to great lengths to accommodate cooperating agencies, sometimes, as is shown in the Appendix, to the point of allowing the process to become paralyzed.

Survey respondents were particularly critical of what they believed to be cooperating agencies' failure to appreciate the multiple use management charters of the public land agencies. Since cooperating agencies always will have narrower missions than those of the public land agencies, CEQ regulations should make it clear that NEPA is not the proper place for agencies to advance their agendas. Rather, NEPA should develop the information necessary for agencies to make environmentally well informed decisions. The regulations should draw a clear distinction between the conflicting roles of cooperation agencies: (1) contributing their particular expertise to the scope and substance of the environmental analysis; and (2) discharging their own statutory duties relative to permit issuance or enforcement. While the current regulations clearly encourage the former role, they do not specifically preclude the latter.

Lead and cooperating agencies also should be encouraged to prepare and execute a Memorandum of Understanding (MOU) prior to initiating the NEPA process. The MOU would clearly define the role of the cooperating agencies and their expected contributions to the project. The MOU also could define the various agencies based on their needed involvement in the EIS process; that is, "cooperating" agencies would be those agencies that are using the NEPA document to satisfy their requirements for NEPA analysis for permitting purposes (e.g., Corps of Engineers for § 404 permit) and "advisory" agencies would be those agencies whose main purpose is to provide technical expertise in discrete areas. The MOU would highlight the multiple use mandates and restrictions thereunder of the lead land management agency. Conflicts would be resolved in favor of the lead agency's multiple land use mandates.

Unfortunately, there also are risks in narrowing the role of cooperating agencies. By restricting their advocacy during the preparation of environmental impact statements, project proponents could find themselves subjected to multiple environmental analyses of their plans, thereby effectively extending the time required for NEPA compliance. Even worse, agencies who feel they have been ignored during the NEPA process retain the ability to issue or deny permits within their own jurisdictions.

3.3 Reform the Role of EPA

42 U.S.C. Sec. 7609 requires the EPA to comment on all environmental impact statements. One of the consequences of this requirement has been to make EPA reluctant to involve itself early in the NEPA

process. As a result, both project proponents and public land managers feel that EPA raises new issues and objections so late in the process that accommodating their concerns threatens substantial delay (often including new studies) in the process. To avoid that, land managers tend to address every conceivable environmental issue rather than just the significant ones. The unfortunate irony is that land managers tend to impose delay and expense on the NEPA process in an effort to avoid what they perceive as the threat of even more delay and expense.

It would be tempting to suggest that agencies no longer be required to submit their environmental impact statements to EPA. Since the referral is a statutory mandate, however, it would be more productive to find a device to compel earlier EPA participation. The obvious place to provide for such a requirement would be the CEQ regulations, although it certainly would be within EPA's existing authority to voluntarily participate earlier. Persuading EPA to initiate such a reform on its own motion would require demonstrating that early and constructive participation would not compromise the agency's statutory duty to review environmental impact statements.

3.4 Adopt Standard Analyses for EIS Incorporation

Although the mining industry often argues correctly and persuasively that mines are site specific and that each must be evaluated on its own merits, there are a number of impacts associated with mine development that recur over and over again. While project proponents should always have the opportunity to propose new techniques and technologies, those who propose to replicate technology that has been examined repeatedly in the past should be able to avoid studies and analyses to establish a foregone conclusion.

The industry might consider proposing to the public land agencies the formation of a task force to identify those aspects of mine development which do not need further analysis. Whenever those aspects are incorporated in a project, their environmental impact should not be the subject of additional study unless either the agency or the project proponent believes there to be different impacts. A standard form of analysis could be prepared by the agencies for incorporation into appropriate environmental impact statements.

The risk in this proposal is that the agencies will become too rigid in their application of the standard analyses to the detriment of project proponents. In addition, industry arguments against applying a SMCRA type of regulatory regimen to the hardrock sector could be compromised.

3.5 Restrict Time When New Issues Can Be Raised

Although CEQ regulations encourage identification of all significant issues during the scoping process, they impose no restrictions on the injection of new issues later in the process. This matter could be addressed in several ways, all of which may create additional concerns.

1. The EPA review could be split into two phases: review of the scoping document and review of the environmental impact statement. After approval of the scoping document, EPA would be precluded from raising additional issues. Before pursuing this option, research should be undertaken to determine whether or not CEQ has adequate statutory authority to impose such a requirement. While this reform should lead to fewer surprises at the end of the NEPA process, it likely would also make the scoping process more contentious.

2. Similarly, public and cooperating agency input on issues requiring study could be formally restricted to the scoping phase of the NEPA process. Were this to be done, comments on the need for additional studies made in connection with a draft EIS could be disregarded by lead agencies. Knowing that the scope of the EIS would be fixed should make it easier for agencies to resist the temptation to address all issues in their draft documents rather than only those deemed significant.
3. The land management agencies should develop policies to disregard public comments directed toward agency policy rather than the technical soundness of the environmental analysis. Comments would still be received on policy questions and the agencies' proposed records of decision; however, the formal agency response to that category of comments could be eliminated, saving time and money.
4. The scoping process would be divided into two tiers: notification and scoping. The "notification" phase would be initiated by publication of a notice of intent in the *Federal Register*, public notice via a brief scoping letter, notice and development of MOUs with cooperating agencies, and other similar matters. The "scoping" phase would be initiated by release of a detailed scoping document that describes (a) known issues that are considered significant, (b) preliminary alternatives to address those issues, (c) other issues that are not considered significant and which will not be examined, and (d) the process by which effects related to the alternatives will be measured or evaluated. This detailed scoping document would be provided to the public for comment and to the EPA for approval, as noted under point 1 above.

3.6 National Expertise Should Be More Readily Available

The idea behind the Forest Service's Large Mine Team should be expanded. A similar capability should be developed by BLM. Both agencies should encourage the use of the specialists identified by the two agencies.

To be effective, the Large Mine Team must be utilized. Utilization would be encouraged if the agencies made it clear that Large Mine Team involvement would be under the direction of the local land managers charged with EIS preparation.

The national offices of both the Forest Service and the BLM should also establish a procedure for resolving disputes over the need for additional studies. While the Large Mine Team might have the technical competence to play such a role, that might make land managers less likely to call upon Team members for assistance. It would be better to identify a senior official with minerals management responsibility in each agency to resolve disputes between local managers and project proponents over the need for additional information.

3.7 Direct Communication Between Project Proponents, Land Managers and Third Party EIS Contractors Should Not Be Discouraged

There seems to be no persuasive justification for the practice of some public land managers to restrict project proponent communication with either agency personnel or contractors hired by the agencies to prepare environmental impact statements. The concern that such communications prejudice the process by excluding the public would seem invalid in view of the role accorded the public in the regulations and by the courts. In a similar vein, project opponents ought to have access to agency personnel without participation by project proponents.

NMA should urge both the Forest Service and BLM to issue national guidance on this matter.

3.8 Limit Alternatives to Reasonable Alternatives

It is settled law that an agency need consider only reasonable alternatives. See, e.g., Vermont Yankee Nuclear Power Corp. V. Natural Resources Defense Council, 435 U.S. 519, 551 (1978). An agency is not required to consider every possible alternative when preparing a NEPA document. See, e.g., Lidstone v. Block, 773 F.2d. 1135, 1137 (10th Circ. 1985). The land management agencies should be encouraged to use their expertise and limit the alternatives to be considered in the EIS only to those alternatives that are reasonably related to the proposed project. The lead agencies should be encouraged to dismiss from consideration those alternatives advanced during the scoping process that are not reasonably related to the proposed project.

4.0 CONCLUSION

There is a growing level of dissatisfaction with the application of NEPA to mine development activities. Environmental impact statements require far too much time and examine too many insignificant issues. Significant issues often are analyzed far beyond any reasonable requirements of the statute or the regulations. Public participation frequently leads to an inappropriate combination of technical and policy questions. Cooperating agencies and EPA sometimes seek to impose their own policy views on lead agency decision making.

Meaningful reform will not be possible without the active participation of CEQ. In particular, problems associated with inter-agency disagreement are unlikely to be resolved without being addressed in the CEQ. regulations. Absent the industry's ability to bring about needed reforms in the regulations, however, the land managers do have adequate authority to shorten the NEPA process by adopting standardized analyses of many environmental concerns, by making better use of experts found throughout the agencies and by committing to reasonable timetables at the outset of a project.

Appendix

COPPER - 1

Project:

The project is an open pit, heap leach copper mine in a heavily mined part of its state. The project is adjacent to another company's existing copper mine and access is on a road developed to serve the existing operation. The projected mine life is 18-20 years and the peak work force will be 300 employees, a number equal to recent layoffs at yet another mine in the area. In addition to the mine, the project will include haul roads, waste dumps and leach pads. Diversion of a creek will be required. The company proposes to disturb 300 acres.

Land Tenure:

Title to both the mineral land and the nonmineral land is controlled by both patented and unpatented mining claims. The orebody is about 75% covered with patented claims. Surface management for the unpatented claims is under a federal public land management agency.

NEPA Trigger:

NEPA was triggered by a plan of operations filed with the public land management agency.

Scoping Process:

The company describes scoping as "fairly benign." Very little public opposition was apparent; however, the one vocal opponent has challenged the company's plans at every opportunity. This, coupled with the project being the first proposal for a new mine in the applicable public land unit, has contributed to the cautious approach taken by the agency.

EIS Preparation:

The EIS is being prepared by a third party contractor which does extensive NEPA work for the federal government. The company believes the quality of the contractor's work has been of acceptable quality, but notes that the agency frequently has required additional studies. Archeological studies have been a big problem in connection with the project and have cost in excess of \$2 million. In a separate interview, an agency manager complained that industry consultant studies sometimes lack credibility.

The NEPA process began either in February 1992, when the original plan of operations was filed, or in January 1993, with the filing of an amendment to the plan of operations. In either event, the agency did not commit to a schedule for completing an EIS. CU-1

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In January 1995, the agency published a draft EIS which was pilloried by EPA. Specifically, EPA criticized the draft EIS for failing to consider several smaller mine options or mining elsewhere. As a result,

the final EIS is still pending and was expected by the end of May. NEPA compliance costs are between \$7 million and \$8 million.

Relations with the Corps of Engineers and the state permitting agencies were described as excellent. Indeed, the company has obtained all of the necessary state permits to build and operate its mine. Relations with the public land management agency were initially rocky, but have improved dramatically and for the past year are considered by the company to be quite good. In its concern for the length of time being taken to comply with NEPA, the company has sought and received expressions of concern and interest from the state's two United States Senators and the project area's United States Representative.

Concerns:

Although the company feels its NEPA compliance costs have been too high, especially considering the amount of existing mining activity in its project area, it is mostly concerned about the time required for compliance. It believes NEPA needs to be subjected to deadlines, and that deadlines negotiated on a project by project basis would make the most sense if they could be made enforceable against the government agencies.

A second major concern pertains to the role of EPA. The company feels that EPA needs to be involved in a constructive role early in the NEPA process and should be limited in its oversight role.

Finally, the company believes that the public land management agency needs to have more technical expertise available to it in order to reduce what it believes to be the agency's excessive demands for additional studies.

COPPER - 2

Project:

Construction of three new leach pads and a waste rock area at an existing copper mine, mill and smelter complex. The project, which is adjacent to and upgradient from the existing industrialized area, will disturb an additional 1300 acres.

Land Tenure:

The project is to be constructed on a combination of private, BLM and Forest Service land. The federally managed lands are controlled by unpatented mining claims.

NEPA Trigger:

The company prepared a single plan of operations, seeking to conform to both BLM and Forest Service regulations. As a result of this NEPA trigger, BLM and the Forest Service are joint lead agencies.

An alternative considered by the company was to seek to acquire the public land through a land exchange. This option was rejected because of the pace at which land exchanges have proceeded in the state and the fact that an exchange would still have been subject to NEPA.

Scoping Process:

The scoping process seems not to have gone very well. Although the project enjoyed substantial local support, the joint lead agencies used the scoping process to raise theoretical issues the company considered unrelated to the project. Scoping proceeded at a slow pace. The first meeting occurred seven months after the plan of operations was submitted to the agencies.

EIS Preparation:

The joint lead agencies selected a third party contractor to prepare the environmental impact statement. The company believes that the contractor has not been adequately assertive with the agencies. In addition, the agencies have sought to control the company's direct contacts with the contractor.

The pace of progress on the EIS has been very slow. Following scoping, a period of one year was spent narrowing 14 alternatives to the three still under consideration, undertaking baseline studies and preparing a state required Aquifer Protection Plan. Now three years after initially submitting a plan of operations, the draft EIS was finally expected by May 1. The final EIS and record of decision were slated for late summer.

The slow pace is attributed to identification of 59 cultural sites, 32 of which are considered eligible for National Register listing. The company contends that most of the sites are of no real cultural significance. More importantly, however, in August 1996, the one of the public land management agencies raised new air quality concerns for the first time. The agency's concerns related to the existing operation's contribution of PM10 to a Class I air shed. The company finally prevailed in its argument that existing operations were governed by a state issued operating permit which would have to be amended

should the expansion result in additional atmospheric loading. It is the company's belief that the agency was subverting the NEPA process to resolve its long-standing dispute with the company on air quality issues. As a result of these additional studies, environmental costs on the project have risen to \$2,500 per acre.

Concerns:

The company feels the delays it has encountered can be attributed to several factors. One of these is that the land managing agencies feel a need to assure that environmental impact statements are absolutely immune to judicial challenge. Also, one of the agencies insisted on developing its own preferred alternative. Finally, the company believes that too much time was spent dealing with frivolous criticism.

COPPER - 3

Project:

This project involves the construction of a new 1500 acre tailing pond at an existing copper mine. No expansion of mining or milling facilities are included. The only additional construction involves facilities ancillary to the new tailing pond, including some roads, tailing lines and water reclamation.

Land Tenure:

The land was acquired in fee simple by the company from the state at a public auction. Prior to its purchase, the company had leased the land for a number of years.

NEPA Trigger:

Since the project will fill 26 acres of dry wash, the company has had to apply for a permit under Section 404 of the Clean Water Act. The Corps of Engineers has determined that the fill will require an individual permit and that application for the permit will trigger NEPA.

Scoping Process:

To date there has been no scoping process since the Corps has agreed to prepare an environmental assessment prior to determining whether or not an EIS will be required. In what would appear to be a misstatement of the law, the Corps has told the company that an EIS will be required if enough people object to a finding of no significant impact.

EIS Preparation:

As previously noted, an environmental assessment rather than an EIS is currently in preparation. This course of action has been encouraged by the company which desires to avoid the additional time and the extensive public participation associated with preparing an EIS. If the Corps does issue a sustainable finding of no significant impact, the company expects to receive its 404 permit in November, ten months after having made application.

The primary issue of concern associated with the 404 permit is the presence of a threatened plant species. Accordingly the Corps has initiated consultation with the U. S. Fish and Wildlife Service under section 7 of the Endangered Species Act.

Technical work is being undertaken by firms under contract to the company. The biological survey, required by the presence of a threatened plant, has cost more than CU-3

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\$100,000, an amount the company believes is excessive. The delineation of waters of the United States is being undertaken by a different contractor and that work is not expected to exceed \$15,000, an amount the company considers to be reasonable.

Although only midway through the NEPA process, the company has described relations with the Corps

to be good, but is finding the U. S. Fish and Wildlife Service to be more difficult.

Concerns:

At this point, the company's principle concern is more directed toward the Endangered Species Act than toward NEPA. It is specifically concerned with the open-ended authority of the agency to seek extensive biological survey data and specify unreasonable mitigation measures.

With regard to NEPA, the company understands that it is taking a calculated risk by seeking a finding of no significant impact, but it feels the risk is worth taking since the time requirements for an EIS can be so great. It would like to have more options for NEPA compliance without having to face the lengthy time frames.

GOLD - 1

Project:

This project is an open pit gold mine. Recovery is by heap leaching and conventional milling operations. Ancillary facilities included a tailing impoundment, later modified to serve as a water storage facility. Access roads, leach pads and waste dumps were built.

Land Tenure:

The mineralized ground was controlled by both patented and unpatented mining claims. The nonmineral ground was controlled by unpatented claims; however, the company also obtained a right of way across federal surface for both access and a power line corridor.

NEPA Trigger:

NEPA was triggered by the company's submission of a plan of operations to one of the federal land management agencies.

Scoping Process:

Prior to scoping, the company undertook a number of baseline studies it believed would be required to successfully complete the NEPA process. Six months before scoping, and three months prior to delivery of the plan of operations, a memorandum of understanding among the federal land management agencies and the county government established a lead federal agency for NEPA compliance and named the county as the lead agency for the comparable state process. The MOU established responsibilities for each of the three signatory agencies and provided for monthly meetings at which a variety of interested agencies and members of the public could participate.

Following the notice of intent to prepare an EIS, formal scoping took about six months, included several public meetings and led to the development of several alternatives to the company's proposed action. Scoping also led to studying impacts over a broader area (3367 acres versus 2560 acres) and the need to expand the baseline studies beyond those previously undertaken by the company.

A final scoping report was issued six months after the process had begun.

EIS Preparation:

Once scoping was completed, seventeen months were required for completion of a final EIS.

While this seems to be rather fast for completing NEPA, there were a number of problems along the way. Several agencies commented that areas of their concern (specifically biological studies) were inadequately addressed. In addition, the company, in response to concerns relating to acid rock drainage, made some major changes in its design. These changes triggered additional studies and substantially increased the third party EIS contractor's fee requirement. Adding to the delays and increased costs was a decision by the county to hire, at the company's expense, a consultant to help it amend its general county land use plan to make it consistent with the project.

Unlike the scoping process, which had proceeded in a fairly cooperative fashion, public participation in consideration of the draft EIS was adversarial. Six of the 17 months required to complete the EIS fell after issuance of the draft and prior to issuance of the final report. At the end of the process, the company's preferred option was adopted with three modifications and the imposition of numerous mitigation measures not originally proposed by the company.

Concerns:

Although the company was able to keep the NEPA process within acceptable time frames, it feels it was only able to do so by agreeing to excessive and expensive mitigation demands.

Although the company believes that the MOU among the federal land managers and the county helped coordinate and facilitate the NEPA process, it nevertheless feels that additional coordination and facilitation are necessary. Some method of resolving disputes among all of the interested agencies is required. As things stand, a single agency can impose major disruptions on time-critical projects by simply refusing to modify an unreasonable position. The company believes that imposition of enforceable time limits on the agencies might level the playing field.

Early in the project, the governmental agencies, in an apparent effort to avoid creating a public perception of undue project proponent influence, tried to limit direct contact between the company and the third party EIS contractor. This created a number of inefficiencies that caused the agencies to eventually rethink their position. Thereafter the process worked more smoothly from the company's perspective.

GOLD - 2

Project:

Expansion of an existing open pit gold mine. This expansion consisted of adding four new pits to an existing operation. Ore would be processed at the existing mill which would be reached by an 11 mile haul road. The new disturbance would affect 800 acres.

Land Tenure:

Land was controlled by mining claims.

NEPA Trigger:

NEPA was triggered by the company's submittal of a plan of operations for the expansion to the appropriate federal land managing agency.

Scoping Process:

The scoping process went routinely. Public scoping meetings were held near the site and at the nearest large city. The leading concern raised in public scoping meetings was the visibility of the new pit areas from a nearby wilderness study area. Following the public meetings, the federal land managing agency announced its intent to prepare an environmental assessment.

EIS Preparation:

Technically, an EIS was not prepared since the agency opted to prepare an environmental assessment which eventually led to a finding of no significant impact.

The environmental assessment took 19 months to complete. The time would have been shorter; however, the agency felt the third party contractor's work evidenced a pro-mining bias and much of the document was rewritten in-house. The extra work caused NEPA compliance to be 20 percent over budget.

Despite concerns over bias in the draft environmental assessment, the technical quality of the work was considered by both the company and the agency to be good.

BLM determined that a cumulative impacts analysis would be required; however this was handled in a separate document which was summarized in the project environmental assessment. Apparently the cumulative impacts review did not lead to additional delays. AU-2

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Concerns:

The company felt that the land managing agency was overly sensitive to the comments of one environmental activist and believes that holding public meetings in a large city away from the project site merely facilitated the efforts of citizen critics.

The company also felt that local officials of the federal agency were overly resistant to input from the agency's state office where more mining project expertise resided.

GOLD -3

Project:

Open pit, heap leach gold mine. The mine will have a ten year life. The rate of production is 35,000 to 40,000 tons per day. Total material to be handled is 120,000 tons per day. Tailings generated from a small ball mill for high grade ore will be sent to the heaps for leaching. There will be no conventional tailing storage. Total surface disturbance will be 2,700 acres.

Land Tenure:

All of the land to be disturbed is controlled by unpatented mining claims on land administered by a public land management agency of the federal government.

NEPA Trigger:

Plan of operations. The company and the federal agency agreed that environmental impacts will be sufficient to require an environmental impact statement.

Scoping Process:

The scoping process went well. All of the alternatives generated by the scoping process were anticipated.

EIS Preparation:

The EIS is being prepared by a third party contractor and the process is estimated to be about one-third complete. The projected Record of Decision date is February 1998. If the schedule holds, total elapsed time from the award of the contract to the Record of Decision will be 15 months. The initial cost estimate for the third party contractor is \$250,000.

To date the contractor has worked well with the company. The contractor's work is believed to be technically sound and the contractor has been cooperative in utilizing company generated data.

Concerns:

Since the initial scoping, the lead agency has developed an additional option for mitigating impacts to wildlife habitat, generating a need for additional baseline data which can be obtained without imposing delays. Of greater concern is a the agency's request for additional geochemical testing of the ore since developing this information could impose a delay of six months. It is feared that additional data requests will be forthcoming. AU-3

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Despite the Memorandum of Understanding between the federal land management agency and the state environmental protection department, the two agencies do not appear to be very cooperative with one another. There have been instances where identical information has been required in different formats.

GOLD -4

Project:

Expansion of an open pit and underground gold mine, feeding common leach areas and two 18,000 ton per day mills. There are six autoclaves to treat refractory ore and two tailing disposal areas. Ancillary to the operations is a dewatering operation capable of pumping 70,000 gallons per minute. The total surface disturbance is 6758 acres.

Land Tenure:

With the exception of one railroad section which was purchased, the mineralized land is controlled through mining claims. After the EIS process was commenced, lode claims controlling the orebody were patented. Non-mineral land is controlled through patented mill site claims in addition to land acquired through a land exchange for tailing and waste rock. A second exchange is pending.

NEPA Trigger:

Until 1989, the mine operated pursuant to a series of Environmental Assessments. However, when pit expansion was proposed in 1989, the company did not resist federal land management agency suggestions that the new Plan of Operations would require a full Environmental Impact Statement. The pit expansion EIS was completed in 1991.

By 1994, the mine was pumping more water than the 1991 Final EIS projected and the agency determined that a supplemental EIS would be required. While that process was underway, patents were issued, possibly eliminating the EIS requirement. That notwithstanding, the company elected to continue with the Supplemental EIS since it still required a 4000 foot pipeline right of way across federal surface.

Scoping Process:

The company reports no major dissatisfaction with the scoping process. Reasonable alternatives were developed in connection with both the 1991 EIS and the Supplemental EIS which is still in progress. Interesting, however, is the growth in the number of individuals receiving specific notice of scoping meetings. Notice on the 1991 EIS went to 100 individuals in addition to various newspapers and Federal Register publication. By the time scoping started on the 1994 Supplemental EIS, notice went to more than 400 individuals.

EIS Preparation:

The 1991 EIS was prepared by a third party contractor and the Supplemental EIS is being prepared by a third party contractor. The 1991 EIS was completed in 25 months, and since it was the first agency mining EIS in the state, the company considers the time to have been fairly reasonable. The Supplemental EIS is proceeding at a slower rate due to an apparent lack of agency resources ranging all the way from a lack of mineral development specialists and scientific specialists to a lack of typists.

Costs for the 1991 EIS were in excess of \$1 million. Costs for the Supplemental EIS were not estimated by the company.

Concerns:

The company does not believe slow progress on the Supplemental EIS is due to any particular rules or policies in place. Indeed, it feels that NEPA case law has developed to the point where the process has considerable certainty and that any seemingly beneficial change might be more than offset by reduced certainty. It does believe that the lack of agency resources and current political trends pose substantial problems which cannot be overcome by regulatory revisions.

GOLD - 5

Project:

The project consists of an additional pit in an area of considerable recent mining activity in Nevada. The new pit would feed an existing processing complex . Adequate tailing capacity already exists and no expansion is planned. Other than the pit, the only additional surface disturbance will be for additional waste rock dumps and 4 miles of haulage road. Slightly over 500 acres will be disturbed.

Land Tenure:

The mineralized area and the new waste dumps are controlled mostly by unpatented mining claims on public lands. A small amount of the mineralized area is on private in holdings in the public land holdings. The portion of the haul road on public land is controlled by claims.

NEPA Trigger:

NEPA was triggered by the company filing a plan of operations with the public land managing agency.

Scoping Process:

The company feels the scoping process went well. Public scoping meetings were held in three cities in Nevada.

Four issues were identified in the scoping process and they remained the issues of concern throughout the NEPA process. No significant revision was required.

EIS Preparation:

The EIS was prepared by a third party contractor. The contractor was generally receptive to company input and company generated data. Total cost for the EIS, including contractor charges, agency oversight and data collection was \$1.5 million.

In order to expedite the NEPA process, the company identified key data requirements and commenced necessary studies during the year prior to actually submitting its plan of operations. Originally, the public land manager agreed to a nine month schedule for completing the EIS in a MOU executed between the company and the agency. Although this schedule slipped, only sixteen months elapsed from submittal of the plan of operations to issuance of the record of decision. AU-5

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“Agency skepticism” over the results of some hydrologic modeling led to additional studies and the need to further explain why the project’s hydrologic impacts were more positive than the land manager’s pre-conceptions would have suggested.

Notwithstanding the activities described above, the company feels both the agency and the contractor were cooperative and technically competent.

Concerns:

The scoping and draft document phases of the EIS preparation consumed most of the time involved in the NEPA process. This suggests that a more streamlined approach would be for the company to work with the agency toward the development of a draft document which generally meets agency concerns prior to involving the public.

A second, less radical suggestion is that cooperating agencies be required to "lay their cards on the table" early in the process. The process has been overly complicated by the involvement of the cooperating agencies and EPA overwhelming draft documents at the end of the comment period, or, in some cases, during an extension of the comment period. Since EPA resources are considerable, their comments can trigger major rewrites of draft documents as well as supplemental studies which impose significant delays and unanticipated additional costs for other agencies and the project proponent.

GOLD - 6

Project:

This project involves expanding the oldest continuously operating open pit gold mine in the state. The expansion includes four new pits, two of which will be below the water table. Pit dewatering will discharge about 100 gpm. In addition, new leach pads and twelve new waste dumps will be built. An existing mill and tailing disposal area will continue in operation. Total new disturbance is approximately 2000 acres.

Land Tenure:

The ground is controlled by a combination of patented ground (1300 acres, 1000 of which already are disturbed) and unpatented claims on federally managed surface (700 acres, 300 of which already are disturbed).

NEPA Trigger:

NEPA was triggered by a Plan of Operations. Earlier activities at the mine had been conducted under environmental assessments. The proposed expansion incorporated the entire project site and the issues covered under the previous EAs.

Scoping Process:

Public scoping meetings were held in a nearby city and in the state's second largest city. They were largely uneventful.

EIS Preparation:

EIS preparation has proceeded fairly well, except for front end delays. Although the Plan of Operations was submitted to the agency in August 1994, the scoping process wasn't initiated until April 1995. The delay was attributed to agency budgetary problems. Once initiated, preparation of the EIS encountered additional delays attributable to the need to monitor pit water quality. The company acknowledges that it could have moved more quickly to complete the required monitoring.

The company is developing the bulk of the technical data for the EIS. Cooperation with both the agency and the third party EIS contractor are considered to be excellent. The lead federal agency is said to be working diligently to assure that the draft EIS will be available by the end of 1997.

Concerns:

The company's only concern has been the delays noted above.

GOLD - 7

Project:

The project is an open pit gold mine. The pit is below the water table. Production is 800,000 ounces per year. Included in the project is a 10,000 ton per day mill. Ancillary facilities include roads, waste dumps, tailing impoundments and small leach pads (to handle about 10% of the material). Total disturbance is about 1200 acres.

Land Tenure:

The mineralized ground is controlled by unpatented mining claims and the non-mineral ground is controlled by unpatented mill site claims.

NEPA Trigger:

Plan of Operations.

Scoping Process:

The scoping process was largely uneventful though the company feels the process would have moved faster had it been more aggressive in framing alternatives. The federal land managing agency appeared to have not done a great deal of advance preparation for the scoping meetings.

EIS Preparation:

The EIS was prepared by a third party contractor. The selected firm was a large, full-service engineering and environmental contractor which often reassigned personnel, causing some of the delays experienced.

Because the project was the first in the state operating below the water table, the initial concerns developed through scoping related to dewatering. Due to unsatisfactory performance it became necessary to change hydrologic contractors. As the EIS evolved, however, the focus shifted to post-mining pit water quality. While this shift did not cause a reopening of the scoping process, it did result in substantial delays since additional modeling and studies were required.

The company estimates the cost of the EIS to be in excess of \$2 million. Forty-four months elapsed from submittal of the plan of operations to issuance of the record of decision.

Relations with the lead agency were fairly adversarial in the early phases of the project, but the company says they improved substantially as the EIS progressed. Much of the improvement is attributed to the more business-like approach taken by the agency following appointment of its current state director.

The final EIS and record of decision were favorable to the company; however, an appeal was filed by a citizen activist group in March 1996. No decision on the appeal is expected until 1998 due to the large case load in the reviewing authority. Nevertheless, the company decided to commence construction on the strength of the denial of the petitioner's motion to stay.

Concerns:

Most of the company's concerns relate to the delays it encountered at several steps during the project. It believes much of the early delay is due to its own failure to push the agency into action. Instead, it relied on the time frames contained in the memorandum of understanding negotiated with the agencies at the outset of the NEPA process. A second factor in the delays is the agency's lack of qualified personnel and financial resources to handle the large number of mine related EIS' in the state. To help remedy this problem, several companies have funded a clerical position to expedite the paper flow in the local land management agency office.

The company has suggested several additional steps which could help speed the NEPA process. These include: firm time limits for various phases of the process; limitations on scope revisions following completion of the scoping process; and the use of third party contractors to undertake peer review of the technical issues raised in the EIS.

GOLD - 8

Project:

The project is an open pit gold mine. The pit is above the water table. Initial plans call for gold to be recovered through a heap leach process. Should higher grades be encountered as exploration continues, the company will consider adding a mill. Ancillary facilities include haul roads, temporary housing, highway upgrades and waste rock dumps. The mine is in an existing town.

Land Tenure:

Except for a few patented mining claims, both the mineral and non-mineral ground is controlled by unpatented mining claims on federally managed surface.

NEPA Trigger:

NEPA was triggered by the filing of a plan of operations.

Scoping Process:

The company believes that the scoping process went well. It attributes this and the short time frame for completing the EIS to its having undertaken baseline studies prior to seeking approval for its plan of operations. Only a small number of alternatives were developed. About 20 comments were received during the scoping process and none of them were controversial. Aside from some lead agency concerns on wildlife, the company feels it anticipated all of the issues raised.

Prior to the formal scoping process, the company also assembled a group of interested local citizens, including local officials and nearby ranchers. This informal public participation group provided advice to the company as it developed its plans and prepared its plan of operations.

Although the scoping document generally held, additional alternatives were included to accommodate public comments on siting the waste dumps.

EIS Preparation:

The EIS was prepared by a third party contractor. The contractor selected by the land managing agency was a large national firm which had been selected by the company to prepare its state air quality permits.

Cost of the EIS was approximately \$500,000, though this amount does not include the eighteen to twenty four months of baseline work undertaken by the company prior to submittal of its plan of operations. Once a plan of operations was submitted, it took eighteen months to reach a record of decision.

The company found the agency to be cooperative and believes the current state director is playing an important role in developing the agency's professionalism.

Concerns:

Despite the relatively fast pace at which the EIS was completed, the agency initially committed to a nine month schedule.

The company does not believe there are any institutional problems with the NEPA process. Instead it feels success is largely dependent upon the people assigned to the process and their willingness and ability to work positively and objectively.

GOLD - 9

Project:

This project is an open pit gold mine. Ore is sent to an existing mill which had been constructed for an earlier operation. Existing tailing disposal facilities are adequate. In addition to the pit, the company will construct waste dumps and new heap leach pads. The new operation will disturb an additional 1200 acres.

Land Tenure:

Both the deposit and the nonmineral land are on a mixture of patented claims, unpatented claims and railroad sections.

NEPA Trigger:

NEPA was triggered by a plan of operations.

Scoping Process:

The company describes the scoping process as having been straight forward. Public participation was minimal. Prior to scoping, the company identified what it believed to be the critical issues and these were the issues that dominated the final scoping document. Although the company was required to do a number of additional studies to satisfy the third party contractor and the federal land manager the scope remained unchanged in all significant respects. A manageable number of reasonable alternatives were specified.

EIS Preparation:

The EIS was prepared by a third party contractor. According to the company, the technical work, with one exception, has been of high quality. Preparation time was three and one half years from submittal of the plan of operations; however, the first sixteen months were devoted to the agency's acceptance of the plan of operations as being adequate enough to start the process. The company did take advantage of the sixteen month delay by undertaking baseline studies.

Originally, NEPA compliance costs were estimated to be approximately \$1 million. As the process proceeded, however, cooperating agencies and the third party EIS contractor insisted on additional studies, including groundwater and other hydrologic modeling, causing costs to rise to \$6 million.

The company describes the lead agency as being cooperative and willing, but lacking in adequate resources.

Concerns:

One of the drawbacks of using a third party contractor to prepare an EIS is that it leaves the agency unable to defend its documents. In the case of this project, most of the defense of the EIS was deferred to the contractor at the company's expense.

company. By the end of its work on the EIS, the contractor's relationship with the co-lead agencies had deteriorated to the point where it qualified its responsibility for the final document.

During the contractor's work on the EIS, the company was discouraged from dealing directly with the firm. Officially, the company was instructed to deal directly with the contractor only on matters relating to the scope of the project and the budget. The co-lead agencies largely ignored technical information developed by both the company and the contractor, even though the company says, with the exception of wildlife, the contractor's technical work was of very high quality.

Public participation was massive at all stages of the EIS process. Much of the participation was encouraged by the agencies which distributed draft documents to a mailing list of several hundred and always included a self-addressed stamped return envelope. In addition, agency participation was unusually large. The company indicates that meetings scheduled to make decisions often had as many as 40 agency participants, many of whom came with a pre-selected agenda, the result of which was to add many additional studies to those developed through the scoping process. Of the agencies, EPA was the worst, usually commenting late and exhibiting a shallow understanding of the project.

The studies, whether undertaken by the company, the contractor or the agencies, normally produced data supportive of the project; however, the agencies treated positive studies with suspicion and often requested additional or supplemental studies.

Further complicating matters and adding to the delay was the lead agency's failure to replace the responsible local manager following a transfer. Instead, a series of several acting managers were appointed, none of whom served for more than one year.

When a draft EIS finally was published, advance copies were sent to opposition environmental groups, but not to the company. While this snub may be more symbolic than substantive, it well reflects the relationship between the company and the co-lead agencies.

The Final EIS consists of four volumes plus a summary document. Costs to the company have exceeded \$14 million, much of which was spent on studies.

Concerns:

Despite the myriad of problems it experienced, the company does not believe the NEPA process is fatally flawed. It believes most of its difficulties can be attributed to the lead agency local office's lack of experience on mining projects and its refusal to accept company offers to fund the relocation of qualified agency personnel from other offices.

The company believes there needs to be a more open relationship between project applicants, the agencies and the agencies' contractors, and notes that has been its experience on other projects. It also believes EPA's role in the NEPA process needs to be more constructive than was the case on this project. Finally, it believes agencies ought to face enforceable decision deadlines.

GOLD - 11

Project:

The project is construction of a third pit eight miles away from two existing open pit gold mines. No ancillary facilities are involved since existing mill and tailing storage are adequate to accommodate ore from the new pit. Total new surface disturbance is only seven acres.

Land Tenure:

The deposit is controlled with mining claims. The surface is privately held, presumably through Stockraising Homestead Act patents.

NEPA Trigger:

NEPA was triggered by the filing of a plan of operations with the federal surface manager. The existing operations had been the subject of two earlier environmental impact statements prepared by another federal land managing agency. The exploration at the new pit site, which had triggered some citizen opposition, was conducted under an environmental assessment prepared by the lead agency.

Scoping Process:

The company believes that the scoping process did not go badly from the standpoint of issues raised and alternatives developed. The lead agency decided to tier a supplemental EIS on top of the two documents which previously had been prepared by the other federal land managing agency. The company supported this approach in the belief that it would result in quicker NEPA compliance.

EIS Preparation:

The EIS was prepared by a third party contractor whose work quality ranged from good to excellent. The company, however, is critical of the lead agency's contribution to the technical work. Initially, costs for the EIS were estimated to be \$1 million, but additional studies required by the agency have raised the total to \$3 million.

The company submitted its plan of operations to the agency in 1991. The first record of decision was issued in November, 1994. Unfortunately, the result of the agency's decision, based on its requirement that there be no unnecessary or undue degradation, would have been to cut-off a substantial amount of gold reserves. The company responded by initiating additional hydrologic and geochemical studies in an effort to demonstrate that the potential for acid rock drainage would not create unnecessary or undue degradation. AU-11

As a result of the new studies, a new record of decision, acceptable to the company was issued in September 1995, and the plan of operations was finally approved in May 1996. All that notwithstanding, the company reports that the agency is continuing to press for yet additional acid rock drainage studies.

Concerns:

The company believes the lead agency's insistence on additional studies may reflect an obstructionist attitude on the part of some personnel opposed to mining; however, it feels that this situation could be improved if the agency would establish standard protocols for geochemistry by rock type. Additionally, less emphasis should be placed on expensive, unreliable modeling and more emphasis should be placed on monitoring and mitigation. The company believes land manager discretion should be replaced with regulatory standards which, once met, would allow a project to progress without additional study requirements.

URANIUM - 1

Project:

Closure of a uranium mine and mill.

Land Tenure:

All lands involved are owned in fee.

NEPA Trigger:

Initially, the Nuclear Regulatory Commission (NRC) prepared an environmental assessment and issued a finding of no significant impact in connection with the company's application for an amendment to its NRC License. Fifteen years later, following an agency reorganization which eliminated the responsible NRC office, a change in the form of the local county government from three commissioners to a seven member council and increased public controversy over closing the tailing site in place, the FONSI was reversed and a decision was made to prepare an environmental impact statement.

Scoping Process:

The scoping process was non-controversial and developed the three alternatives considered in the original environmental assessment (closure in place; removal; and no action).

The initial scope has generally held; however, one modification was necessary to study the impacts associated with obtaining the off-site borrow material necessary to implement the closure in place option.

EIS Preparation:

All NRC environmental impact statements are prepared by Oak Ridge National Laboratories (ORNL) under a standing contract. The company was not permitted direct contact with ORNL and could only deal with the NRC project manager. This led to numerous inefficiencies and a failure to take advantage of information developed by the company. In the most egregious instance, ORNL misidentified a water source. The company describes the quality of the technical work as generally being mediocre.

Costs were high. In addition to the \$700,000 paid to ORNL, the company paid oversight costs to NRC in the amount of \$124 per hour and was required to engage its own independent consultants to address various questions that have arisen.

At the outset of the process, NRC identified the environmental impact statement for fast track consideration. That should have resulted in a 12 to 15 month project; however, the company now estimates that up to three and one half years will have elapsed before the record of decision finally issues.

Concerns:

Despite remaining cooperative, the agency has been beset with staff turnover problems and there have been ensuing delays in completing the EIS. The company feels the agency has taken frivolous public

comments too seriously, resulting in delays and additional costs. Of particular concern has been the differential treatment accorded one of the cooperating agencies, which has been antagonistic toward the company's preferred option and has regularly worked to slow down the process. Uncertainties over the eventual outcome of the EIS have caused some of the company's potential business associates to back away from transactions.