



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

December 14, 2005

Derek Sandison, Department of Ecology
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Re: Buckhorn Mountain Project – Draft SEIS
Via E-mail at BuckhornComments@ecy.wa.gov

Dear Mr. Sandison,

Thank you for the opportunity to provide comments on the Supplemental Environmental Impact Statement for the latest proposal to mine gold from Buckhorn Mountain in northeastern Okanogan County, Washington.

The Center for Environmental Law & Policy (CELP) has a long-standing interest in protection of the streams and aquifers in and around Buckhorn Mountain. This is the second draft EIS we have commented on, the first round of comments having occurred in 1994 in response to the proposal put forth by Battle Mountain Gold (BMG). An addendum to that EIS, addressing water resource and wetland impacts, was circulated in 1997, however public comment was not allowed on that document.

Both the original EIS and the addendum failed to identify the impacts of the BMG proposal on aquatic resources and downstream, senior water users. Among other things, the proposed mitigation plan involved a speculative and technically suspect “perpetual” water treatment and distribution scheme. CELP repeatedly pointed out these deficiencies. Notwithstanding, the Department of Ecology chose to issue water resource and water quality permits for the mine. Left without further choices, CELP joined with Okanogan Highlands Alliance, the Colville Confederated Tribes and other individuals and groups, and appealed the agency permits.

The litigation was time-consuming and complex. At least ten lawyers were involved representing the various parties, including Jay Manning - current director of the Department of Ecology, who served as attorney for the agency at that time. In addition, a dozen or more expert witnesses testified on a host of technical issues. The PCHB conducted three weeks of hearings in May 1998 and September 1999, creating a voluminous record. It is fair to say that the substantial public and private resources were consumed by this litigation.

The PCHB issued its decision in January 2000. The decision contained 68 findings of fact and conclusions of law and was one of the most fact-intensive inquiries made to date by the Board. The Board’s findings analyzed the deficiencies of the streamflow depletion studies,

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and hydrogeological, geotechnical and geochemical modeling, and generally found that the technical work offered by the mining company in support of its proposal was riddled with “errors and uncertainty.”

The Board concluded that the mine would consume scarce water supplies, with adverse impacts to senior water right holders. Thus, a successful proposal would require “significant mitigation of adverse impacts to water supplies and water quality.” The Board rejected the BMG mitigation plan, finding that it was highly speculative and legally insufficient to support approvals of either new water rights or the 401 Certification.

Battle Mountain Gold Co. appealed the PCHB decision to Okanogan Superior Court, with the Department of Ecology intervening. Ultimately BMG and Ecology dismissed the appeal before hearing. The PCHB decision is the final decision in the matter and is therefore binding on all parties, including successors to BMG and your agency.

Against this formidable legal backdrop one would expect that a new proposal to mine Buckhorn Mountain would contain new and improved technical analyses, as well as a mitigation plan that would pass legal muster. The draft SEIS does not, however, accomplish this. Instead, the SEIS is supplemental to and relies upon documents and analyses previously held insufficient to support substantive decision-making for the mine. Moreover, the SEIS fails to propose a mitigation plan for adverse impacts that even begins to address the questions raised in the legally-binding conclusions of the PCHB.

The SEIS reliance on the use of “adaptive management” as a mitigation tool is particularly troubling. While adaptive management can be a valuable approach to learning about ecosystem functions, it cannot and should not substitute for permittee compliance with the law. It has been indisputably established that mining Buckhorn Mountain will disrupt regional hydrology and create significant consequences, both physical and legal (i.e., harm to senior water users). An environmental impact statement, with a related mitigation plan, that does not provide specific and concrete measures for mitigation based on sound technical analysis of impacts is, per se, inadequate.

Okanogan Highlands Alliance has prepared and is submitting by separate letter a set of comments regarding the draft SEIS. CELP endorses and adopts those comments as they pertain to water resources and water rights. We are particularly concerned about the SEIS’s dependence on prior documents that were held to be insufficient for water right and water quality permitting purposes, and are concerned about ambiguities in the documentation that underlies many conclusions. We ask that future documents identify with clarity the previous work upon which it relies.

Thank you for considering our comments.

Sincerely,

Shirley Waters Nixon

Staff Attorney

cc: David Kliegman, Okanogan Highlands Alliance