
**PLUMAS COUNTY
ZONING ADMINISTRATOR**

Minutes of the Regular Meeting of October 11, 2023

The Plumas County Zoning Administrator convened in a meeting on October 11, 2023, at 10:03 a.m. in the Permit Center Conference Room, Quincy. Interim Zoning Administrator, Jim Graham, presiding. Assistant Planning Director (retired annuitant), Rebecca Herrin, is in attendance.

I. PUBLIC COMMENT OPPORTUNITY

No public comment is presented.

II. DETERMINATION OF VESTED RIGHTS OF MINING OPERATION(S) PER PLUMAS COUNTY CODE SECTION 9-5.05 VESTED RIGHTS – ENGELS-SUPERIOR MINES; CALIFORNIA-ENGELS MINING CO. (owner) / US COPPER CORP (applicant); APNs 007-080-004 & 007-090-003

The request for a determination of vested rights for the Engels and Superior mines, located at 9130 Diamond Mountain Road, north of Taylorsville, is presented. Rebecca Herrin, Assistant Planning Director (retired annuitant), gives a presentation as reflected in the staff report. Interim Zoning Administrator, Jim Graham, asks if the applicant's representative is present. Warren Coalson, President, with EnviroMINE, Inc. and Kerry Shapiro, Partner, with Jeffer Mangels Butler & Mitchell LLP, attorney for California-Engels Mining Co., are present. Coalson states today's meeting isn't about mining, it's a recognition of a legal right to mine. There have been no plans developed to conduct mining. The determination of vested rights is just to set the framework for the substantial amount of work that will be needed, for example, the California Environmental Quality Act (CEQA), reclamation, compliance with air, water, biology, etc. Shapiro states that the applicant supports the staff recommendation, conclusions, and findings.

The public hearing is opened at 10:20 a.m. Graham explains that by making a vested mining rights determination the County has 'side bars' on it in terms of what the County can and cannot do. The County has to look at it through set principles that if the applicant meets those factual and legal principles, then vesting rights are granted. There is a lot that goes into determining whether vested rights are granted or not, and that's going to be examined. Graham clarifies that this is not the County's decision as to whether the County thinks this mining operation is a good idea or not. The County cannot inject its personal opinion whatsoever as to whether or not the County thinks this is going to be socially, environmentally, or economically compatible with the surrounding area. The County is constrained by the laws regarding vesting rights.

James Norman questions if the County is recommending approval. Herrin responds that staff is recommending approval.

Daniel Kearns talks about the legal right to mine. Kearns states if vested rights are found to exist, then the mining operator does not have to follow CEQA protocols and does not have to apply for County permits. This isn't about whether or not they have the right to mine, it's a question of whether or not the County should be given its fair ability to collect revenue from the permitting process and ensure that everything they are doing is in accordance with what is best for our county. Kearns feels the mining operator should follow as many environmental laws as possible so we can have this economic opportunity for the community, but also ensure the safety of the community and public. Kearns disagrees with Coalson's statement that there has been no plan from the mining company, who changed their name to US Copper Corp. In 2018 Crown Mining Corp put out a 240-page technical report and preliminary economic assessment of the Moonlight deposit specifically, which is not one of the APNs being

considered today, but is within the property owned by US Copper Corp, and it goes over in fine detail all the intentions of US Copper Corp on that property. We are talking about billions of dollars' worth of copper, not counting gold, silver, etc. Going forward, Kearns feels staff should read the Crown Mining Corp technical report, which would help give them an idea of the scope of the project, the intent, and minerals being sought, as well as the methods, which are far, far different than any historical methods that have been used. Kearns explains that they intend to have open pit processing, including multiple large ponds over one acre in size, which contain crushed ore, dust, and debris where it is mixed with chemicals, which dissolve or conglomerate the materials together. The ponds would involve damming the Moonlight Creek drainage and filling it with the pond material. They also plan to use a low-permeable layer to line the bottom of the ponds.

John Simon, property owner on Diamond Mountain Road, comments that it seems we're putting the cart before the horse and cannot believe the County is asking for public comment on this much material. Simon questions the purpose of today's hearing. Herrin explains that she has investigated the County ordinance in light of the request for a vesting date for the owner and applicant. Continuing, Herrin states that mining is a present-day permitted use, outright, meaning the existing parcel zoning of General Forest (GF) allows mining without obtaining a special use permit. The 1958 Plumas County ordinance established a requirement for a special use permit for mining in certain areas. The County is tasked with determining based on the factual evidence if mining was established prior to 1958 and, therefore, would not need a special use permit.

Graham clarifies that the purpose of today's hearing is to determine whether or not vesting rights exist for the two parcels in question. If vesting rights are granted, the applicant can proceed with developing a reclamation plan, including financial assurances, to be submitted to the County and subject to state law requirements, as well as being subject to state and federal agencies' laws and regulations and CEQA. The applicant would not be required to obtain a permit to mine or a special use permit from the County.

Shapiro comments that this is not a land use hearing; rather, it is a hearing to adjudicate by the Zoning Administrator the existence of historical facts. It is a fact-gathering exercise, a look back at historical facts from the 1880s up until the time of the first County zoning ordinance in 1958 to determine, as of that date in 1958, if the facts support the findings and determinations in the staff report. Shapiro feels testimony from the public should be focused on the facts that existed at that time, so the Zoning Administrator has the full record of what facts existed to make a decision. Continuing, Shapiro states that this is about what is allowed to be done pre-1958, not what is going to be done or what could be done. It is also important to recognize that the public is not without recourse. This is the beginning of a process to determine if property rights exist. If property rights are determined to exist, the next process starts, such as preparing the reclamation plan. Today is not the day to address the impacts of a mining operation. There will be plenty of opportunity to involve the public when permits are applied for, etc.

Devin Cragg comments that this is a hearing about constitutional rights, but what most of the public are here for is to voice concerns. Whether or not this is the place for it, it is the time for it because the earlier we let you know our concerns, the earlier they can be addressed. Continuing, Cragg states we can acknowledge the potential economic benefits, while still worrying about the potential environmental and social impacts. The State has express powers in the Constitution to protect the health and safety of the public. A question to ask is what sort of protections can we derive from the legislation that will be applied. Surface Mining and Reclamation Act (SMARA) of 1975? CEQA? Herrin responds that the County's application process for a reclamation plan is according to SMARA state law, which spells out everything that will be evaluated.

Andrea Singer with *The Plumas Sun* questions why it would not need a special use permit. Herrin replies that the mining operation was established in 1880. It's what is called a lawful nonconforming use. This is a vested rights determination for mining.

Another member of the public questions if the vested right transfers to a new owner. Herrin replies that it does as long as they don't abandon their right to continue mining.

Shapiro adds that vested rights are property rights that run with the land.

John Shower questions what determines abandonment. Graham responds that there has to be the *intent* to abandon. There needs to be some sort of documentation that indicates that the landowner makes a statement that they intend to cease operations and not commence operations in the future. Herrin adds that the applicant provided documentation that mining continued subject to market forces and that the intent to resume mining was always present.

Emily Moghaddas questions the 'extensive record' that was referenced earlier. In making the determination of continuous operation, or intent to mine, Moghaddas requests Herrin's verification of the historical record be made public in writing, including the County's investigation and annotation of the entire set of historical documents provided by the applicant.

Mary Shero comments that the contents of this meeting are not a surprise at all. The article in *The Plumas Sun* explained pretty well what was going to go on here today. Shero doesn't think it's very accurate to state there isn't a plan that has been made to proceed with at this mine. She was first made aware of a pile of paperwork on this plan about a year ago. Shero would like to suggest that anyone who is here today pay more attention and get ahold of the paperwork that explains this plan. Ask questions such as where is the ownership, foreign or domestic. What does this type of mining look like in other countries. Shero is not saying that you should think one thing or another, just that this is the beginning of an inquiry process, and the public should be aware.

Susan Doran questions, if vesting rights are determined to exist and the next step is to prepare a reclamation plan, how long it would take before operations commence. Herrin responds that the reclamation plan takes a lot of time to process. The CEQA environmental review takes a lot of time. As far as the County's processing time for a reclamation plan application, it could take 6 months to a year.

John Simon questions how quickly the determination of vested rights will take. If the County determines they are vested, is the County more or less done and it moves on to the state and federal level. Graham responds that the next step that involves the County is a reclamation plan, and the Planning Department is responsible for processing the application. Continuing, Graham explains that the reclamation plan talks about how the site will be reclaimed pursuant to SMARA. There are a slew of guidelines regarding how reclamation will occur, the standards for reclamation, the need for posting a financial assurance cost estimate (FACE) and financial assurance mechanisms (FAM), be that a bond, letter of credit, etc., which is designed to cover the full cost of reclamation of the site. The reclamation plan needs to be consistent with Plumas County Code and SMARA and it is required to be taken to the Zoning Administrator for review, which includes a public hearing with public comment. The reclamation plan is also reviewed by the California Department of Conservation, Division of Mine Reclamation to make sure the County hasn't missed anything. State, local, and federal agencies look into all environmental concerns.

Laura Kearns states her concern is the County's ability to handle the permit processes that the citizens are going through. The permitting process seems to be a greater amount of work, and she's wondering if the County is seeking additional staffing, as she sees the County being overburdened. As a citizen, Kearns would like to empower the County to request from whomever to receive help, so all these concerns are not overlooked. The Planning Department exists so all these issues can be reviewed and met, for example, permitting, environmental, etc.

Daniel Kearns thanks the applicant's attorney, Kerry Shapiro, for clarifying that this is a determination of legal facts, and he would like to encourage County officials and anyone who is impacted by this project to do everything they can. Kearns feels it's in the County's best interest to hold a foreign company to the maximum environmental accountability as possible, as well as setting up our communities to benefit from this mining operation in the best possible way. Kearns feels the County needs to look at damage to roads, extra wear and tear, noise, housing, etc. Quoting from a legal firm in Sacramento, Kearns states, "A vested mining right is a constitutionally protected property right to continue operating in a certain location in a certain way without being required to conform to all current land use restrictions." Kearns understands this property has been a mine since the 1800s, and legally in past court cases "increased production level to meet market demands" doesn't constitute a different way; however, this area has never seen these surface ponds in any of its mining operations, has never seen a mining operation of this size before. There are multiple deposits on the property owned by US Copper Corp and if all of them were exploited, a project this size would be close to the same size as the largest open pit mine in the country. The entire property in question is 13 square miles. US Copper Corp has been exploring and drilling in the National Forest around the property they own. Kearns states again that this isn't about how you feel, but about what facts exist; however, the public has the ability, opportunity, and obligation to do everything in its power to protect us from just handing this over to a foreign entity who will make billions of dollars from it. Kearns requests that a decision not be made today to give staff enough time to go through the 400 pages the applicant submitted, and the 240-page report put out by Crown Mining Corp in 2018. Look at the intent and scope, and make sure you really understand that if not done correctly, the County will miss out on environmental protections and potential revenue for the County.

John Shower questions if US Copper Corp is allowed to circumvent CEQA if it's vested. Graham replies with vesting the applicant would not be required to obtain a County permit to mine, which is subject to CEQA. With that said, Graham continues, the reclamation plan is a separate approval process that would be required of the applicant and is subject to CEQA.

Gordon Keller comments that he grew up around mining and has spent a lot of his career on mine and quarry reclamation. Keller feels the problem with open pit mining is there's no single greater impact on the land. Historically, the mining around here was tunnels, which don't have the same impacts. Keller cautions people to look very hard at the reclamation plan to make sure the County is very thorough, noting that water quality issues are one of the biggest issues.

Mary Sherer questions when the application for the reclamation plan will be submitted if the mining operation is vested, and will it be something the public can get a copy of. Graham replies that the reclamation plan application would go before the Zoning Administrator and be noticed as a public hearing. Herrin adds that the public will have a lot of opportunity to review the reclamation plan. Herrin also notes that archaeological and cultural resources are required to be evaluated under CEQA.

Andrea Singer comments that it is important that information is transparent for the public; the public does not want to have to dig for the information. Herrin notes that the reason we're having this meeting is to involve the public.

A member of the public questions if the area in question is 13 square miles. Herrin responds that it is not.

John Simon questions what SMARA is and how it plays into today's decision. Graham explains that SMARA is an acronym for Surface Mining and Reclamation Act of 1975. It is the State law that went into effect in 1976. The County Code (Title 9 Planning and Zoning, Chapter 5 Permit to Mine and Reclamation) incorporates the requirements of SMARA. Continuing, Graham states Plumas County is the lead agency and processes all the permit to mine and reclamation plans and performs the annual mining inspections and reports to the state.

Dustin Moffet encourages the County to keep track of whether or not the County should have this company, this foreign entity, go through the permitting process so you have that extra accountability for a foreign corporation here within Plumas County. Moffet feels the County should keep as many controls as possible on any corporate interest, whether or not they have a vested right, because with a project of this scale you should keep tight reins on it, so you don't end up with a super fund site like Walker Mine, for instance. It's easy for corporate interest to come in and take what they want and then leave a huge gap in the community that they take from when they pull out. It could be any number of years and leave the pit mines wide open to where it will leak into Lights Creek, regardless. Continuing, Moffet states every leachfield mining operation he has seen historically has an environmental impact beyond the scope of what they originally set out as a plan; it always ends up messier than what they put down on paper. Moffet highly encourages this vestment meeting take the time to consider what you're up against. This is a large-scale operation, and it would behoove the County and citizens of the community to keep control of it. Make them accountable to everything they are doing and keep tight reins on the process. It would be senseless to lose control over this operation and you'd be doing the citizens a disservice.

Chris Woods states that the way he reads the law is you must have made substantial improvements to the property to be vested since 1976. He has no proof that the current owners have made any substantial improvements to the mining operation since 1976. Herrin replies that there is confusion with mining claims versus vested mining rights. Staff did not evaluate the scope of improvements. Herrin thinks that it is a mining claim where you must show you've made improvements and file the paperwork. This isn't a mining claim. Continuing, Woods states that to be vested, you must have made substantial improvements since 1976. Herrin responds that she doesn't know where that section of the Code is. You must show you have mined prior and retained the intent to mine, but it doesn't say you have to make improvements. Shapiro responds there is the phrase "substantial expenditures" and "investment," which refers to *prior* to vesting, not after. That is the standard that had to be met by US Copper Corp prior to 1958. Graham adds that the date of vesting is when the first entitlement was required by the County. It was either through the enactment of SMARA regulation in 1976, or if the local jurisdiction had the requirement for entitlement prior to that date. In this case the County had a requirement for a special use permit for mining in 1958, so that is the date of vesting.

Emily Moghaddas expresses concern that the County is relying on the applicant's attorney rather than having County Counsel present to answer questions from the public. Also, when the determination is made, she requests to know what the standards are that the applicant is held to and how they did or did not meet those criteria. Because as we've heard it's a simple verification of facts and every criminal trial is an evaluation of facts. Herrin responds that this action is quasi-judicial, so the Zoning Administrator acts as a judge in evaluating the facts, information, and evidence and Interim Zoning Administrator Graham understands the weight of the determination.

John Shower again comments this decision gets back to whether the mining operation is passive or active, because it seems as though that is still in question. Graham responds that you must have a *direct* intent to abandon the mining operation. It must be a direct and intentional abandonment action to be considered abandoned. Whether or not there have been significant improvements does not play into it.

James Norman comments that he knows we're here for vested rights and there is a lot of opposition to the mine; however, each mineral deposit is different. As far as he knows the Engel Mine doesn't have any arsenic in it and they've been testing the water regularly. Norman thanks everyone for coming here and agrees we need to be careful about what we do, but this is about vested rights. Norman feels we need to work as a community and acknowledge that there are people worried about the earth, but we just need to cooperate and have transparency.

Susan Stephens questions if vested rights include expansion of those rights, expansion of the type of mining. Will this vesting procedure include the type of mining they are proposing. Graham responds that it speaks to a legal principle as well, called Objective Manifestation of Intent. These are legal principles that describe when you operate on a mining patent and what your legal rights are to expand within that mining patent. There's legal precedence in what the court finds, and it speaks to mining in response to market demand. These are legal principles that are subject to interpretation by the court. Graham's reading is that they would be allowed to expand as long as they have the intent to meet market demand.

Dan Kearns clarifies that the vested right is going to these specific claims, the Engel and Superior mines. If they begin mining and the operation is on-going and there is suddenly a market demand for a particular mineral that is on property owned by US Copper Corp, but not on these specific APNs, the legal precedent has been set that they may now move over there and mine that in order to meet market demand. What that would mean is the entire property, regardless of these small areas that they are laying claim to now, would be open to that process.

Tracey Ferguson, Planning Director, comments in response to Laura Kearns' concerns that the Planning Department has a request for qualifications solicitation out now for both a SMARA consultant and CEQA consultant, so pending responses to that request, the County will have technical expertise for both CEQA and SMARA available to staff.

On the phone, Matt Fogerty states he is concerned about environmental destruction and pollution to Lights Creek. He finds it inevitable that the waterways will get polluted. The use of explosives will scare away the animals. Fogerty feels environmentally it will be a disaster. There will be some reclamation, but often reclamation doesn't make it wild and what it was again. By granting them vested rights, Fogerty believes they can avoid CEQA and there will be even more environmental destruction. In terms of getting vested rights, they would be grandfathered into the way they mined before; they used to do tunnels, but the proposal is an open pit. Herrin explains that what they've requested is, "Prior to the vesting date, operations occurred on the properties. Since operations commenced, evidence shows that the mining expanded over time and as necessary to produce multiple materials in response to market demand. Mining operations utilized all such mobile and processing equipment as reasonable and necessary to crush, wash, sort, stockpile, load, and otherwise manage copper, gold, silver, and construction aggregate." So those are the operations that they are claiming to be vested as what occurred on the property prior to 1958. Continuing, Herrin states that as far as the scope of any proposed operation or reclamation plan, that would be addressed, and how that would be evaluated and regulated, would be a discussion when the reclamation plan is submitted to the County. Certainly, if it's an open pit mine, accordingly, the County will address all the issues involved. But the County hasn't been presented with any proposed operation or a reclamation plan to evaluate.

Rose Buzzetta comments that a lot of her concerns are environmental. Greenville has taken a huge hit environmentally with past mining. In order to get your house reconstructed, there are issues with arsenic and debris from past mining that is showing up in the soils. Plumas County is not Appalachia and hopefully won't become that with their open pit mining and ruined water. Buzzetta feels that if this mining company has tunnels, then it should be limited to tunneling. Open pit mining should not be considered, especially on a mountain top that is directly connected to a water system that goes down to the valley that provides drinking water to other people. Buzzetta feels the County needs to look into the company. What have they done in the past? What have they left in the past?

Piers Strailey questions the County's liability going forward and what alternatives exist for the applicant if the County determines there are no vested rights. Graham states they could go through the courts for a determination. Planning Director Ferguson adds that there is a 10-day appeal process for any decision of the Zoning Administrator that then goes before the Board of Supervisors.

Strailey questions if it is US Copper Corp that is applying. Herrin responds that the property owner is California-Engles Mining Company and the applicant is US Copper Corp and that they are both involved in the process and jointly applied.

Devin Cragg comments that they are grandfathering in based on tunnel mining operations, and questions if vesting rights will give them the ability to do tunnel operations, or if it will allow them to go beyond that. Graham responds that there is legal precedent that talks about their right to expand mining operations in order to meet market demand (within the limits of *Hansen Brothers Enterprises, Inc.* decision). Continuing, Cragg questions if they resumed mining operations or started a pit mine and found another deposit of another mineral, would they need to submit another reclamation plan for approval, or do they have blanket approval. Herrin responds that the reclamation plan covers *all* operations. If the plan changes, they would need to submit an amendment to the reclamation plan or possibly a new reclamation plan.

Nizhoni O'Connell questions if the binder of compiled history of the mine is available online. Herrin replies it is on the County's Zoning Administrator webpage, with Ferguson adding that a hardcopy is available at the Planning Department counter for public review. O'Connell also questions how long the public comment period is and in what format because her concern is there wasn't enough time prior to this meeting to review the documents. If the public had had more time to review the documents, she for one could have had a better comment with regard to what vested rights mean and potential issues with vested rights. Also, the public would know if everything in the binder of documents is being addressed in the staff report.

Daniel Kearns thanks the County staff and everybody involved. He really appreciates the opportunity for the public to speak publicly without a time limit in order to air out our feelings, comments, and concerns, which is not always the case with County meetings. Kearns appreciates everyone who showed up, particularly those who disagreed with his point of view. He thanks those present for having this conversation in a civil and factual manner, adding that it's been a pleasure to be part of this process.

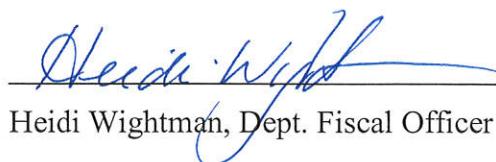
DECISION

Interim Zoning Administrator, Jim Graham, thanks everyone for showing up to this meeting. Graham states he has not had the opportunity to read the 400 plus page document, and he doesn't think the public has had the opportunity to dive in as much as they should be allowed to. Because of the fact that this decision would be giving up County rights, regardless of the other environmental assurances and permits the applicant may be required to take, Graham thinks it's in the County's best interest to retain as many permitting rights and associated CEQA environmental documentation requirements as possible moving into the future so the County can control as many actions by the applicant as possible and how those actions are conducted. If vesting rights in fact do exist, all of the County's rights will be based on legal facts, legal vesting rights and principles that have to be analyzed, as well as other facts and historical records. Graham's intent is to keep the public hearing open and delay a decision on this matter to the regularly scheduled meeting of the Zoning Administrator on December 13, 2023, to allow County staff and the public time to review the documentation presented, and to potentially secure the services of County Counsel to review these facts to make sure that the County is not giving up any rights that it can legally retain. Continuing, Graham states that he is not closing the public hearing at this time because he wants the public to have an opportunity at a later date to provide further comment after reviewing the documentation that was presented by staff and the additional documentation that was presented by other folks, which is also part of the public record. Graham states he is not making any findings with regard to vesting at this time because he thinks the issue needs to be looked at more carefully and thoroughly than he has had the opportunity to do, and County Counsel should have the right to investigate as well.

Zoning Administrator Notation: Any decision made as a result of this meeting may be appealed to the Board of Supervisors within ten (10) calendar days of the decision. If the tenth day lands on a Saturday, Sunday, or County holiday, the end of the appeal period will be the next working day. The appeal shall be based on relevant information stated or submitted at or prior to this meeting by (a) the applicant; (b) any owner of real property within 300 feet of the exterior boundaries of the property involved who was present at the hearing or who presented written testimony before the Zoning Administrator, or who may be adversely affected by the decision of the Zoning Administrator; (c) such other person whom the Board determines to have been adversely affected by the decision; or (d) any County department head whose department has an interest in the decision (Plumas County Code, Title 9, Chapter 2, Article 10, Section 9-2.1001). Appeals shall be filed with the Clerk of the Board of Supervisors, paying the fee according to the Planning & Building Services Fee Schedule.

ADJOURN

There being no further business, the meeting adjourns at 11:44 a.m. The next regularly scheduled Zoning Administrator meeting is set for November 8, 2023, at 10:00 a.m. at the Planning & Building Services Conference Room located at 555 Main Street in Quincy.



Heidi Wightman, Dept. Fiscal Officer II



Jim Graham, Interim Zoning Administrator