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Subject: BBK Review of Vested Rights Issue for Engels Mine
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I am very grateful that the County retained the services of a knowledgeable and reputable firm to review the vested rights petition from US Copper Corp. The findings from BBK should be sufficient to deny the vested rights petition. However, there are two areas where the BBK Memorandum is deficient.

First, BBK acknowledges that there is a three-pronged test for making the vested rights determination, and lists the three "prongs" of that test.

First, the party must prove that the excavation activities were actively being pursued when the law became effective; Second, the party must prove that the area they or desire to excavate was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent; and ***Third, the party must prove that the continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood.*** (emphasis added)

The analysis considers the first two parts of that three-pronged test, but it fails to discuss the third listed criteria: that the project not have a *substantially different and adverse impact on the neighborhood.* (emphasis added) Perhaps, it is deemed unnecessary to consider the third "prong," as the petition fails the analysis of the first two prongs of the test.

Another reason that this "prong" is not addressed is obvious: the applicant's petition failed to discuss what mining methods are planned for the new development, should vested rights be granted, making it impossible to evaluate that part of the "three pronged test." Discussion of the planned mining methods for a wider project (a Preliminary Economic Assessment) has been widely circulated, but is not a part of the hearing record.

The "substantially different" test closely parallels the County's vesting requirement, that vested rights not represent a "substantial change" from existing operations. However, without any discussion of the planned mining method, the applicant has failed to submit a complete petition. (Though it is understood that US Copper plans to develop an open pit mine at the former site of these underground mines.)

The BBK Memorandum does not address this failure to discuss the planned mining method directly, but in the Response to Public Comments (Exhibit E; Page E-3), BBK points out:

[W]hen the applicant contemplates an expansion in the scope of operations of the mining, the determination must comment on the methods and whether they are a substantial change...

Once again, the County is unable to address this issue because the applicant provided no information (on the record) about what methods they intend to utilize in the new mining operations. And once again, the County should have rejected US Copper Corp's petition as incomplete.

The County's failure to acknowledge the deficiencies in this petition have resulted in a great deal of consternation for the community. We trust that the County will conduct a more thorough analysis of any future submittals concerning the long-closed mines in the Lights Creek watershed.

We appreciate the opportunity to comment on US Copper Corp's petition, and to have those comments heard by the Zoning Administrator.

Respectfully submitted,

Tom Peltier