

# **Meeting Summary**

## **Bonita Peak Community Advisory Group**

### **January 27, 2022, 6:30—8:25 PM**

#### **Via Computer Conferencing**

CAG members in attendance: Peter Butler, Chara Ragland, John Ott, Russ Anderson, Parker Newby, Anthony Edwards, Terry Morris, Helen Mary Johnson, Charlie Smith, Susan Livenick, Justin Elkins, Ty Churchwell, and Marcel Gaztambide. Not in attendance: Melissa May and Brian Devine.

Also in attendance: Bill Simon, David Heinze, Rob Parker, Scott Roberts, Jon Kaminsky, Lisa Merrill, Pat Maley, Neil Westesen, Alyssa Richmond, Christina Prograss, Samantha Wright, Ryan Bennett, Becky Joyce, Athena Jones, Chris Stoneback, Rob Runkel, Scott Fetchenhier, Taryn Chaya, Rory Cowie, Tom Schillaci, Katherine Jenkins, Meg Broughton, Tanya Petach, and Mark Rudolph.

#### **Introductions and Announcements.**

Peter welcomed the new City of Durango representative, Justin Elkins to the CAG. He manages the Durango's water reclamation plant. He takes Levi Lloyd's place.

Peter noted that baseline for determining average water-equivalent snowpack in the San Juans has changed. Instead of using the years 1980-2010, the baseline has changed to 1990-2020 which is a lower snowpack period. In early January, the snowpack was 140% of average using the new baseline, but only 80% of normal using the old baseline.

#### **United States/Sunnyside Gold Corp. Settlement**

Christina Prograss of EPA is back as the main project manager for the BPMD after being away for eight months on assignment. Katherine Jenkins announced that she is leaving as Community Involvement Coordinator, and Meg Broughton from EPA Region 3 is taking over. Peter thanked Katherine for all her work and wished her well.

Christina led the discussion on the settlement agreement between the United States and Sunnyside Gold Corporation (SGC). The agreement was lodged with the Court as a consent decree last week, and public comment on the agreement started today. Comments can be sent to the Department of Justice (DOJ) about the consent decree through a link on EPA's website through Feb 28. <https://www.federalregister.gov/documents/2022/01/27/2022-01584/notice-of-lodging-of-proposed-consent-decree-under-the-comprehensive-environmental-response>

EPA can only comment on limited items regarding the settlement because the Court has yet to finalize the consent decree. The settlement calls for \$90 million in funding for release of a number of liabilities, half from SGC and half from a DOJ general settlement fund for

potential liabilities of federal agencies. The \$45 million from DOJ will be allocated to EPA, BLM, and FS, although the percentages each agency will receive has not yet been determined. EPA says that their portion will be allocated to a fund for specific use in BPMD. In addition, SGC contribution will also be allocated to EPA for BPMD.

Peter asks if comments are directed to EPA or court? Katherine says they go directly to the DOJ, and judge will review. EPA will not see comments until later. Ty says that the CAG will distribute the link for comments to its email list.

Susan asks if the funding is additive, meaning there will be no deduction from previous spending? Christina replies that it is new money for BPMD. Also, EPA needs to use the settlement money before they can allocate any of the funding coming from the new Infrastructure Bill to BPMD.

Marcel asks about how the settlement agreement was reached. He said he is still trying to understand about how liability is resolved before the remedial investigations are finished. Christina says she can't say much as it is still a draft. She does say this is not unusual, and it helps allay the burden of the taxpayer.

Scott Fetchenhier says the reason to study the mine pool was to determine if SGC had liability related to filling up the mine pool. Christina says that they are still interested in understanding the interconnectedness of the mine pool with the underground hydrology. They will continue to try to understand through well drillings.

Peter asks about money to BLM and FS. The settlement is pretty vague, saying that funds will be deposited in "appropriate federal accounts." What is the BLM and FS assurance that it will go to the Superfund cleanup? Melissa Smeins of BLM offers that she broadly understands BLM's allocation will go into central hazmat fund that they apply for money every year for response actions to BPMD. Thus, the funding can be used at other sites in the U.S. as well. The local BLM office intends to apply for funds to backfill monies that have already been spent at BPMD. Jon Kaminsky of BLM says the bulk of the allocation may go to reimbursement of funds already spent. Ben Martinez of FS said he is uncertain as to how the DOJ funding will be dispersed between agencies and how FS will utilize its portion.

Helen Mary asks if the BLM funding could go into an account specifically for Bonita Peak. BLM doesn't offer much of a response. Peter points out that this may be a good thing to put in comments for this settlement.

Susan asks about the funding presentation that Joy Jenkins gave eight months ago. Could EPA do a similar funding flow for this? Christina says that they can do something similar. The new presentation would probably be simpler with this funding.

Peter asks about liability issues. He understands that SGC is no longer liable and that the federal agencies will not sue each other; also, that SGC will not go after other PRP's, private or federal such as EPA, FS, and BLM. These are important aspects of the settlement, especially for FS and BLM. Is this her understanding? Christina says that yes, this is

basically correct for resolving liability. Peter says he hopes that FS and BLM will be more willing to share information now that most of their liability concerns should be resolved.

Ty asks what is possibility for other PRP's suing federal agencies? Peter says it is possible that EPA might pursue other PRPs. Most are small and have small holdings that are not contributing a lot of hazardous materials. Christina says that she thinks that is pretty accurate, but certainly it does not preclude other actions.

Marcel asks about comments from public on equitability of the settlement – will we get any new information in the next 30 days on this aspect? Christina says there won't be any DOJ information releases. She understands that this is difficult for community to make informed comments without more information.

Ty asks about the Mayflower tailings impoundments. This is an important element of the process, is there any additional information – does it change? Christina says Rob Parker can comment. EPA will take over the two main components: remedial investigation of the impoundments and future design of the repository. They will continue to investigate the sources and appropriate potential remedies for hazardous releases into that stretch of the river. Ty asks if the impoundments will remain a SGC property? Yes, that will not change. Peter says he thinks SGC will try to sell or transfer a lot of their holdings in the basin.

Scott asks that since 2015, EPA has spent \$75 million – is the \$90 million anywhere near what they need to finish the Superfund cleanup? Christina says they don't know how much of the \$90 million they will get or how long it will last. It will be many years with a lot of good work. With a site this big, this is a very expensive project and clean up may extend beyond the settlement funds. Peter says this \$75 million figure came out several years ago and included \$30 million for the Gold King response. The actual amount spent since the Gold King spill may now be quite a bit more.

After discussion of the settlement, Pat Maley of SGC said that they are proud of the work they have done and proud to continue their transparency. They will forward all their information about the Mayflower tailings impoundment investigations so that everyone can benefit from their work. They feel that the settlement is fair and are glad to see funding going to remediation rather than litigation. They encourage people to comment and hope people will support the settlement. He has enjoyed working on this project for the past seven years and the relationships he's made. At some point, he will be back with a backpack and a camera.

Peter thanks Pat for being open and transparent, and for his willingness to conduct site visits with the CAG. Local communities appreciate SGC work and their openness. Peter says anyone interested can contact him for access to information that SGC will provide. Ty says thanks to Pat for all his work as well.

Pat notes that this is the end of an era for SGC which started in 1875.

As chair of the county commissioners, Scott Fetchenheir also thanks Pat on behalf of San Juan County – and all the work they have done. Pat says SGC spent in excess of \$40 million before settlement.

### **Year-end Review of 2021 Activities.**

Christina began a review of EPA's activities over the past year by noting that EPA's general site goals are to improve water quality, stabilize source areas, and minimize unplanned releases. Then James Hou discussed the groundwater system in OU3 with a focus on the Red & Bonita reports on the bulkhead and water budget around Gladstone. He also discussed the investigations EPA has been doing in Upper Animas - test pits, soil borings, monitoring wells, surface and pore water.

Next Rob Parker talked about the Mayflower tailings impoundment #4 and Upper Animas investigations at some of the smaller mine sites. For the repository, EPA is using comments from CAG and others to make sure it is geotechnically sound, that capacity is maximized, and that it is operationally feasible. Over by Gladstone, EPA is evaluating the rock conditions with the 1,300-foot bore hole drilled next to the Gold King mine portal for potentially blasting a new tunnel.

Athena Jones discussed implementation of 2019 IROD activities and data management and communication. WQX portal is now accessible by public as is the BPMD Story Map. <https://edap.epa.gov/public/single/?appid=1cd9a412-2502-4462-b7c6-d4f875f8a92a&sheet=23b50404-3791-4599-ad8d-d4774f8fb78d&opt=cursel&select>

Katherine Jenkins talked about the Story Map. She asked for everyone to look at and give feedback to Meg Broughton.

Mark Rudolph with CDPHE briefed the CAG on its activities. Working with DRMS, they have mostly completed cleanup of the dispersed campgrounds. They will put a fence around the old smelter area.

Ben Martinez with USFS said they worked on the Brooklyn Mine and on fish and BMI surveys with Scott Roberts of MSI. He thanked EPA for their cooperation regarding access through the Ice Lakes fire closure.

Melissa Smeins with BLM discussed the worked on the Mighty Monarch, Lackawanna, and Forest Queen waste rock removal. They are also doing remedial investigations of Red Cloud and Burrows Gulch.

Peter asks if Red & Bonita report is available? James says one bulkhead report is complete but it is not uploaded yet. The second one will be available soon.

Peter comments that some CAG members have been looking at story map, and we are working on feedback. One of the goals of the CAG is to do more outreach to the public.

Peter asks Christina to talk about coming field season in the next meeting. She responds that they will be happy to do that.

## **Standards Proposal for Upper Mineral Creek**

The CAG has been working on a standards proposal for a reach of upper Mineral Creek. This section has seen dramatic water quality improvements over the last 20 years, about 70% reduction of cadmium and zinc, and 90% reduction of copper. Currently, brook trout inhabit this segment, and the CAG wants to add an aquatic-life use classification and standards protective of this use. The proposal would apply table value standards (TVS) which are protective of sensitive aquatic species while acknowledging that lead, copper, cadmium and zinc don't meet TVS during spring runoff. The CAG is still looking at whether TVS for these metals are attainable with remediation. The Water Quality Control Commission will approve a public notice for its June Rulemaking in February.

## **Administrative Items**

### **Meeting Summaries:**

Motion to approve December's summary by Marcel. Seconded by Helen Mary. There were no objections. Meeting summaries go on the CAG site. Peter asks Meg for presentations from today to go on CAG site as well.

### **Appointment of CAG Members:**

There are 15 members on the CAG. Every year, a third go up for re-appointment. This year there are three at-large seats, and appointments by the City of Durango, and the Town of Silverton. So far, two new people have expressed interest in being CAG members. There will be a deadline of Feb 11 for applications.

CAG Discussion Time. We meet for about an hour on Feb 9 at 6 pm.

Mandy of MSI asks if CAG will continue to meet every 4<sup>th</sup> Thursday of the month? Peter says that it will for now unless there are other conflicts. There may be a conflict if the Southwest Basin Water Roundtable starts meeting in person again.

*Future Agenda Items? Planned 2022 Field Activities, Tailings Sampling between Eureka and Howardsville, Plans for Howardsville Mill, Macroinvertebrate Data, Mayflower Repository, Site Specific Plans for Interim Remedial Actions, etc.*

**8:08 PM Adjourn**