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Attachment 2

March 30, 1981

Mr. Marc Nelson
U.S. Geological Survey, Task Force Leader
Room 815
505 Marquette Street, N.W.
Albuquerque, NM 87125

Mr. William Allan
U.S. Bureau of Indian Affairs,
Task Force Leader
Room 322
123 Fourth Street, N.W.
Albuquerque, NM 87125

Re: Jackpile-Paguate Reclamation Environmental Impact Statement Request for Public Comment

Dear Messrs. Nelson and Allan:

The following comments are submitted by the Anaconda Copper Company, a Division of The Anaconda Company (Anaconda). Anaconda is the holder of leases with the Pueblo of Laguna on which the Jackpile-Paguate Mine is located. These comments are in response to a request for public input to the scoping process for an environmental impact statement proposed by the United States Geological Survey (USGS) and the Bureau of Indian Affairs (BIA).

The comments are in two parts. First, we will comment on USGS' authority to respond to Anaconda's reclamation plan for the Jackpile-Paguate Mine. Second, we will recommend procedures for USGS/BIA to follow during preparation of the EIS and approval of the reclamation plan, including composition of an EIS Task Force, establishment of criteria and preparation plans, review of alternatives and delineation of the scope of the EIS.

USGS Authority.

In response to a request by USGS in 1974, Anaconda prepared a mining and reclamation plan. One plan was submitted in 1977, and a revised plan was submitted in 1979. No approval action was taken with regard to either plan. In early 1980, Anaconda made a decision to close down open pit

operations by the end of February, 1981, approximately two years earlier than had been contemplated when the mining and reclamation plans were originally submitted.

On September 11, 1980, Anaconda submitted to the USGS the current reclamation plan incorporating the decision to shut down. On February 19, 1981, USGS and BIA jointly published a Notice of Intent to prepare an environmental impact statement (EIS) to assess the environmental consequences of a USGS approval of the plan. A scoping document was published, and USGS and BIA were designated joint lead agencies for preparation of the EIS. Public meetings were held on March 16, 1981 at Laguna and on March 18 in Albuquerque. Written comments were solicited on public concerns about the EIS process.

Anaconda has carefully reviewed the Notice of Intent, the scoping document, and USGS/BIA statements regarding their notion of the purpose of the EIS and their decision on approval of the reclamation plan. We feel compelled at this stage of the process to point out that the USGS perception of its role and authority is not consistent with that afforded it by statute or regulation.

The authority of the USGS over the mining operations is based on Anaconda's leases with the Pueblo of Laguna, and on continued mineral production from the leases. There are three outstanding leases, but mining operations have taken place on only two; Leases 1 and 4.

While Anaconda agrees that its continued mining operations on Indian lands subject it to USGS authority in some matters, it rejects the overly broad interpretation of USGS authority as expressed in the scoping document. On page 3 of that paper the following statement appears:

> The Federal regulations governing the project are contained in 30 C.F.R. 231 and 25 C.F.R. 177. These regulations require that Anaconda submit a mining and reclamation plan for the approval of the GS, with the concurrence of the BIA.

To the contrary, 25 C.F.R. section 177.2 exempts mining leases entered into prior to the effective date of the regulations, which includes Anaconda Leases 1 and 4. The USGS regulations at 30 C.F.R. 231 are supplementary to the Part 177 regulations according to section 231.1(c). Therefore, Part 177 regulations are controlling, and section 177.2 exempts Anaconda's leases. Clearly the regulations did not "require" submittal of a mining plan for USGS approval. Anaconda submitted mining and reclamation plans to USGS in response to a request, but that did not enlarge the underlying authority of the USGS.

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Anaconda, through its submittal of the reclamation plan for the Jackpile-Paguate Mine, has requested permission to conduct reclamation. Under the terms of its regulations and policy memoranda, USGS has two alternatives with respect to mining and reclamation plans; it may approve such a plan as is or disapprove it. If a plan is disapproved, USGS must give the reasons for disapproval and state how the plan can be revised so as to meet the USGS' objections. In the event USGS disapproves Anaconda's reclamation plan, Anaconda may then resubmit a revised plan for USGS review and approval.

The authority USGS cited for the decision to prepare an EIS was the National Environmental Policy Act of 1969 (NEPA). Under that statute, federal agencies are required to assess the environmental impacts of "major Federal actions significantly affecting the quality of the human environment." The stated basis for preparation of this EIS is that approval of the reclamation plan constitutes a "major federal action." The USGS contends that even though NEPA was promulgated in 1970, the Jackpile mine, which was well underway by that date, is subject to its terms. Anaconda does not agree with that assessment. Nevertheless, we have chosen not to challenge the Notice of Intent to prepare the EIS, but rather to work expeditiously toward an adequate EIS.

The Anaconda reclamation plan submitted to USGS for approval represents a realistic, carefully thought out plan exceeding state of the art practices in the industry, meeting all USGS requirements, and providing protection to the public health and environment. Anaconda intends to work with the USGS, BIA and Pueblo of Laguna to accomplish the reclamation goals. Nevertheless, we disagree with USGS' perception of the role that the EIS will play in its decision on Anaconda's reclamation plan, and of the scope of its authority in making that decision. The USGS has imbued the EIS and reclamation plan approval processes with substance and effect that they simply do not possess. This is best illustrated by the following statement, which appeared on page 4 of the scoping document.

> Upon the completion of the EIS, the decisionmakers will select the alternative that will result in the most appropriate reclamation techniques. Anaconda will then be required to reclaim the mine in accordance with the alternative chosen.

First, this statement appears to assume that the EIS itself will be a decision document. Neither NEPA, the Council on Environmental Quality regulations that detail its administration, nor the voluminous case law dealing with NEPA gives substantive content to the EIS process. Environmental impact statements are merely a procedural tool designed to enable Federal decisionmakers to make informed decisions. They are

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meant to provide information on the postulated environmental effects of federal decisions. This particular EIS may be used to review the environmental implications of USGS' approval of Anaconda's reclamation plan, and nothing more.

Second, the comment presupposes that USGS has the authority to compel Anaconda to perform reclamation on USGS' terms, after cessation of mining on the leases. This authority does not exist. USGS' regulations control mining only during the term of a lease. After the cessation of mineral production, Anaconda's Leases 1 and 4 will cease to exist. In fact, the USGS should examine the right of Anaconda to enter the property of the Lagunas after cessation of production, in order to carry out reclamation.

Procedures.

Anaconda has submitted a plan which meets or exceeds any standard currently in effect, and will protect the health and welfare of the Lagunas with an adequate margin of safety. Regardless of USGS' lack of authority, Anaconda intends to complete adequate and reasonable reclamation with agency and Pueblo of Laguna approval. Anaconda plans to cooperate in completing the EIS and reviewing the plan.

Anaconda makes the following suggestions regarding the manner in which the EIS process should be conducted.

1) The EIS Task Force currently being assembled has USGS and BIA as joint lead agencies, as well as several cooperating federal agencies. Since the Pueblo of Laguna as lessor has been included on the Task Force, and Anaconda also has a great stake in the EIS preparation, we hereby request that Anaconda as lessee also be formally included on the Task Force.

2) All decisions, plans, public inputs, and procedures should be documented in a Preparation Plan. At the conclusion of the scoping process, before the EIS is begun, the Preparation Plan should be made part of the public record.

3) Both the identification of viable alternatives to the Anaconda reclamation plan and the impact assessment cannot be accomplished until numerical evaluation criteria have been developed. It is essential to identify for the public the economic, environmental, and social assessment criteria which will be used by the EIS team and to describe the legal and technical justification to support the criteria. The cost-benefit analysis procedures which will objectively evaluate the Anaconda reclamation plan and all other alternative actions must be specified in advance.

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4) Statements made at the scoping hearings indicated that the Preparation Plan would consist of identification of the issues raised during the hearings and the identification of possible alternatives for future consideration. The Preparation Plan must also include all evaluation criteria to be applied in the EIS process and to be used to organize the entire EIS procedure. These criteria must not be developed at a later date independent of the Preparation Plan.

5) The Preparation Plan must also include a detailed schedule of activity for the entire EIS process. The schedule should address key dates, draft and final statements, public hearings, and all other relevant activities associated with the EIS process.

6) A decision on the regulations and guidelines which will be followed (USGS or BIA) in performing the EIS process should be made and described in the Preparation Plan - not determined at a later date independent of the Preparation Plan. This information is a key component for the total EIS effort and should be integrated into the basic planning.

7) A Memorandum of Understanding identifying the participating agencies in the EIS process and their respective responsibilities and resource commitment is a separate document required by the CEQ regulations. The completion and public release of this document, in conjunction with the expanded Preparation Plan, in an expeditious manner is required to insure an organized, timely EIS process - a goal which is in the interests of all parties.

8) The EIS process will result in the evaluation of Anaconda's reclamation plan and viable alternatives based on criteria set forth in the Preparation Plan. Identification of a preferred alternative and subsequent recommendation to the Secretary of Interior is anticipated. If the Decision Document incorporates modifications or additional conditions to the Anaconda reclamation plan, legal and technical justification in support of such conditions will be essential to allow Anaconda to evaluate the changes.

9) The scoping hearings conducted on March 16, 1981 and March 18, 1981 were conducted in a professional manner and provided numerous pertinent comments. The scoping document dated February 1981 distributed at the hearings briefly described the Anaconda plan and identified major issues the EIS should address. Certain misconceptions raised at the public hearing concerning the EIS procedure, purpose, and the role of the lead agencies need further clarification as follows:

(a) Several references were made concerning the development of environmental standards as a role

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of the EIS process. This is clearly outside the scope of the EIS process. Development of standards requires a rule making procedure completely independent of the EIS process.

(b) Several references were made to the role of the EIS as a decision making document. CEQ regulations require a separate decision document.

(c) Several issues were raised which are clearly outside the scope of the reclamation plan EIS. The Anaconda plan addresses the reclamation of the Jackpile-Paguate minesite located on the Laguna Reservation. Therefore, issues related to the mining activity, suspension of mining activity, socioeconomic and environmental considerations of mining activity, and off lease milling and related activity are issues which are not appropriate for consideration in the EIS process. These issues should be explicitly excluded from the Preparation Plan documentation of the EIS scope.

(d) An implication was made that cost considerations would not be uniformly applied in the evaluation of Anaconda's reclamation plan and all alternatives. To be adequate an EIS must contain an equally objective analysis of the cost benefit of all plans listed as alternatives.

10) The scoping document omitted a very important item - the listing of alternatives which would be evaluated in the EIS. One of the purposes of scoping is to determine realistic (and a manageable number of) alternatives to the proposed major federal action. In this case the proposed action is for the USGS/BIA to approve the Anaconda reclamation plan. The no action alternative, required by CEQ regulations as one of the assessed alternatives, is to not act on the Anaconda plan, which is equivalent to no additional reclamation being performed.

Other alternatives are for the USGS to suggest different plans for accomplishing the reclamation goal. Each alternative must satisfy the purpose of reclamation - to protect the health and welfare of the Lagunas with an adequate margin of safety. The criteria set forth in the Preparation Plan must be used to assess the impacts of all the alternatives. Each alternative must be compared to an extension of the existing conditions into the future.

11) Cost must be a key element of the EIS. In identifying cost issues, energy consumption, costs associated with the delay in commencing reclamation work, the cost impact to

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potential future recovery of uranium resources, along with other costs associated with the Anaconda plan and all other alternative actions, must be evaluated on a cost-benefit basis.

We appreciate the opportunity to make the foregoing comments.

Sincerely,

William Gray

William E. Gray
Chairman, Anaconda EIS Team

WEG/dp

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