

Changes to speed up NEPA debated

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A congressional task force will hold a hearing this week aimed at making the National Environmental Policy Act less restrictive to natural resource activities such as mining and logging.

Task force chairwoman Cathy McMorris, R-Wash., said the panel's investigation during recent months has found that litigation is the primary cause for delays in permitting. Some groups use NEPA to entirely stop development, she said.

"Lengthy litigation has become a standard delay and obstruction tactic in the NEPA process," McMorris said. "Agencies and communities not only face a complicated process and tough decisions, but sometimes they are met with endless litigation and troubling consequences when considering certain projects."

The hearing in Washington, D.C., will be held Thursday. Changes in NEPA could affect future projects such as the Montanore Mine, the copper and silver project proposed for the Cabinet Mountains southwest of Libby.

Eric Klepfer, vice president of operations for Mines Management Inc., the company that wants to develop Montanore, updated Lincoln County Commissioners on the potential changes during a meeting last week. He said the current law is too restrictive to mining, particularly small projects.

"The pendulum needs to come back a little," Klepfer said.

However, a member of Cabinet Resource Group said weakening NEPA would threaten public health and jeopardize the environment. Cesar Hernandez said the W.R. Grace mine is an example.

"If NEPA had been conducted on the project like it has been on the proposed Rock Creek mine and the upcoming Montanore mine, perhaps the subsequent disclosure would have helped avert the tragedy playing itself out in Libby," he said.

Hernandez said the Troy mine under Asarco ownership was one of Montana's first mining projects to come under NEPA authority.

"CRG discovered extremely high levels of heavy metals scattered about the center of Troy at the mine rail load-out facility outdoors where concentrate from the Troy mine was shipped to Asarco's El Paso, Texas, smelter," Hernandez said. "Kids would ride their bicycles through this area and play in it. CRG threatened the state with a lawsuit if it didn't force a cleanup. The state checked things out and forced a cleanup."

He said CRG brought up the same issue during the NEPA process for the Rock Creek mine. As a result, Hernandez said, the railroad load-out facility for that project has to be fully enclosed.

"The town of Libby is currently enjoying the benefits of these actions because the Troy mine was forced to have an enclosed load-out facility before it reopened," he said.

Hernandez said improvements in mine operations forced by NEPA show that the act has value. He called complaints of litigation "a red herring."

"Why is it that when environmental, conservation, or consumer organizations use litigation to protect human health or the environment it is called harassment, but when corporate concerns like the tobacco industry or W.R. Grace use litigation to prevent disclosure it's just good business practice?" he asked.

"I think that corporations are on a roll with the current administration and are just trying to roll back a lot of the gains the public and the consumer have made in holding them accountable for the health, safety and aesthetic values of our society."

Montanore was brought up as an example of NEPA's potentially negative effects during a congressional hearing in March. Laura Skaer, executive director of the Spokane-based Northwest Mining Association, told the House Committee on Resources that appeals filed by "environmentalist obstructionist groups" stretched Noranda Minerals' permitting process to 10 years.

Noranda abandoned its interest in the project in 2002 after metals prices plunged.

"In January 2005, Mines Management submitted a 13-volume application for re-permitting and development of the Montanore project," Skaer said. "How long it will take is anybody's guess."

Revett Minerals' Rock Creek mining project, also in the Cabinet Mountains, was another example she gave committee members. Skaer said Revett has "endured 17 years of permitting analysis" for the proposed copper and silver mine.

In March, U.S. District Court Judge Donald Molloy of Missoula remanded the mine's biological opinion back to the U.S. Fish and Wildlife Service for another analysis. He wrote in his opinion that the federal agency didn't adequately consider harm the mine might do to grizzly bears and bull trout.

"This federal judge has substituted his opinion for 16 years of analysis by U.S. Fish and Wildlife professionals," Skaer said.

Those who support revamping NEPA say it should be changed so it can't delay or deny a project that complies with all other environmental laws and regulations such as the Clean Water Act, the Clean Air Act, and the Endangered Species Act.

Proponents of changing the law also suggest requiring project opponents to post a bond to

compensate development companies for costs resulting from appeals or lawsuits challenging a Record of Decision.