

Committee on Resources

Testimony

TESTIMONY OF
KARL ELMERS
CHAIRMAN OF THE BOARD
CROWN BUTTE MINES, INC.
BEFORE THE SUBCOMMITTEE ON ENERGY & NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON
MAY 20, 1997

Madam Chairwoman and the Members of the Subcommittee, my name is Karl Elers and I am Chairman of the Board of Directors of Crown Butte Mines, Inc., a Montana corporation. I assumed that position in March of this year. This is my first appearance before a congressional committee and I appreciate the invitation to be here.

The letter of invitation to testify indicated the committees' interest in the agreement reached between Crown Butte, the Administration and certain special interest groups in August of 1996. Crown Butte found the decision to enter into the August 12, 1996 Exchange Agreement a difficult one. By mid-year 1996, Crown Butte had already been in the permitting process for almost six years, promised dates for the release of the Draft Environmental Impact Statement had consistently not been met and the whole process had become fraught with delays and uncertainty. The Exchange Agreement provided a practical resolution to a unique set of circumstances and Crown Butte's management decided that the Agreement was in the best interest of the shareholders of the Company.

A brief chronology of the events leading up to our decision to execute the agreement will shed some light on why Crown Butte decided on this course of action. I hope it will assist the Committee in a better understanding of the current regulatory processes and the challenges they pose for those of us trying to operate in a responsible manner.

The area in dispute, known as the New World District, is a historic mining district dating back to 1869. A number of small mines and a copper smelter operated in this area intermittently until 1951. Sporadic exploration and development continued from 1955 until 1987 when the property was acquired and the issues now under review began.

I think it is also worth noting at this point, that in 1978 the Congress specifically considered and excluded the New World District from the Absaroka-Beartooth Wilderness due to past mining activity and mineral potential. Proposing a state-of-the-art, underground gold mine with a strong reclamation plan to remediate historic mining disturbances made sense. Yet, Crown Butte became the focus of a national and international debate.

To fully appreciate what has transpired during the process I would like to divide my remarks into two areas. First, the Permit & EIS Process which will highlight the events directly related to the permitting process, and second, Additional Concerns which will briefly describe a variety of other activities specifically designed to

thwart the project. From this discussion, I hope you will be able to understand the circumstances that lead to Crown Butte's willingness to execute a settlement agreement in August of 1996.

Permit & EIS Process

The permitting process for the New World Property began formally over six years ago in November 1990 when Crown Butte submitted an eleven volume document as its Operating Permit Application. This permitting process and related environmental studies continued to be Crown Butte's main project activities up to August 1996. The permitting process for the New World Property proved to be complex and time consuming and it was met with unusually high opposition.

Mining activities on federal lands within the state of Montana fall under the jurisdiction of both federal and state agencies. The Gallatin and Shoshone National Forests were designated as the lead for the federal agencies and the Montana Department of Environmental Quality was designated as the lead state agency for review of the application and development of an EIS for the project.

A number of other state and federal agencies were designated as cooperating agencies. These include the U.S. Environmental Protection Agency ("EPA"), the U.S. Army Corps of Engineers ("the Corps"), the National Park Service, the U.S. Bureau of Land Management (BLM), the U.S. Bureau of Reclamation, the Montana Department of Health and Environmental Sciences and the Wyoming Department of Environmental Quality. In all, more than 25 separate federal, state and county permits would be required prior to approval of the project. The major permits cover site construction, power line construction, mine operation, reclamation, modification of wetlands, water discharge, stormwater run-off and erosion control, air quality, and occupational health and mine safety.

As part of the Operating Permit Application, baseline studies were completed on a number of resource areas including aquatics, hydrology, wetlands, old growth, and wildlife. Geotechnical drilling and analyses were completed on both the proposed and alternative tailings disposal areas. Initial base-line and geotechnical work was completed for each alternative to address both regulatory and public concerns regarding the location of the tailings impoundment. Proposed plant and road locations were similarly evaluated.

During the very early stages of the permitting process opposition arose over the potential use of cyanide in Crown Butte's processing at the site. In 1992, Crown Butte's metallurgical testwork demonstrated that gold, copper and silver could be recovered without the use of cyanide. The revised process would use only gravity separation and froth flotation with gold recoveries indicated to be approximately 88% to 92%. As a result, Crown Butte withdrew two low grade surface mineable deposits (Como and McLaren) and the Fisher Mountain deposit from the permit area.

The Operating Permit Application was resubmitted to the Lead Agencies in November 1992 following extensive changes resulting from the decision to not use cyanide and to amend the Application to exclude the three deposits and to be responsive to agency review and comments upon the initial Application. The Lead Agencies completed, and Crown Butte responded to, a total of six reviews of the Operating Permit Application before the revised Operating Permit Application was declared complete on April 2, 1993.

A determination of completeness of the Operating Permit Application allowed the EIS process to begin. The EIS is required by state and federal law and involves an assessment of the project's proposed operating plan, a review of alternatives to this plan, potential impacts of the plan, and methods to mitigate significant impacts. Responsibility for conducting public scoping meetings, writing the EIS document and issuing a

decision rested with the Lead Agencies. They retained an independent third party consultant, paid for by Crown Butte, to assist in the process.

During 1993, a scoping document which determined what was going to be evaluated in the EIS process was prepared, and public comment was solicited. A number of potential environmental issues were identified for further study. The Lead Agencies then initiated the process of determining the impact of Crown Butte's proposed plan, identifying possible alternatives and comparing these alternatives. During the process, the Lead Agencies would select a preferred alternative and produce a draft of the EIS. The Draft EIS would include a biological assessment which evaluates potential impacts to threatened or endangered species.

Crown Butte was initially informed that the Draft EIS would be available in late 1994. This date was not met. In 1994 Crown Butte, was advised by the Lead Agencies that a draft of the EIS would be issued for public comment by the end of the second quarter of 1995. This date was not met and Crown Butte was subsequently advised by the State of Montana that the Draft EIS would be released in the Fall of 1995. This date was also not met.

During the period from January to August 1996, Crown Butte continued its efforts in the permitting process. A study on endangered species was completed and additional studies of wetlands and water quality issues were conducted. All requested data was provided to the Lead Agencies and internal drafts of sections of the Draft EIS were circulated by the Lead Agencies to the cooperating agencies, Crown Butte and the public for review and comment. None of the drafts made available to Crown Butte or the public identified the Lead Agencies' preferred alternative. In March 1996, Crown Butte was advised by the Lead Agencies that the Draft EIS would be released for public comment by late spring or early summer of 1996. The Draft EIS had not been released by August 12, 1996 when Crown Butte executed the Exchange Agreement. The EIS process has been suspended pursuant to the terms of the Exchange Agreement.

Additional Concerns

As I mentioned earlier, the New World District is a historic area. Crown Butte's activities at the site have included reclamation of historic mining activities and the Company's recent exploration activities. In December 1992 Crown Butte received an Excellence Award for Outstanding Commitment to Environmental Protection from the United States Forest Service. This award recognized the Company's innovative and successful efforts to mitigate adverse environmental impacts. In 1994, following a complaint by special interest groups, the Corps alleged that some of the Company's reclamation activities, conducted over the preceding three years, had been in violation of Section 404 of the U.S. Clean Water Act. Crown Butte responded that it did not believe these allegations were accurate. In September 1995, the Corps issued Crown Butte a Section 404 permit authorizing future reclamation activities.

Under the Comprehensive Environmental Response and Liability Act ("CERCLA"), the EPA initiated an investigation of continuing environmental impacts from previous activities in the Henderson Mountain vicinity. The investigation covers 6,720 acres of land, of which the New World Property is a part. Under CERCLA, certain sites are "listed" on the National Priorities List for cleanup under Superfund legislation. To determine whether a particular site is listed, EPA conducts a series of investigations and then using the results ranks the potential hazard of the property. The ranking determines the need for future action. A Preliminary Assessment was submitted to the EPA in August, 1994, a Field Sampling Plan for an Expanded Site Inspection was completed in July, 1995, and an Analytical Results Report was presented to the EPA in April, 1996. While the Henderson Mountain vicinity has been through preliminary investigations, it has not been completely evaluated or ranked based on potential hazard and is not currently listed on the National

Priorities List for Superfund cleanup.

On January 13, 1995, two special interest groups and an individual filed a complaint against the Company with the U.S. Department of the Interior in connection with Crown Butte's Mineral Patent Application. The complaint requests that the Secretary of the Interior take immediate jurisdiction over the Patent Application, that the Secretary take any other action necessary, including intervention in the proceeding, to protect the public interest by preventing the issuance of the patent, that the Secretary deny the Patent Application, or in the alternative, that the Secretary stay any action on the Patent Application until completion of the EIS then being prepared by the Lead Agencies. This complaint effectively asks that patents not be issued. Crown Butte has moved to have the complaint dismissed for numerous reasons. The complainants have claimed that the "comparative value test" should be applied in determining whether Crown Butte's claims are supported by a discovery, although imposition of the so-called "comparative value test" would be contrary to the long-standing practice of the Department of the Interior. There have been no actions or developments related to this matter since 1995 and the Company can not at this time predict the ultimate resolution of this matter.

In February 1995, a number of special interest groups requested that the World Heritage Committee (the "Committee"), formed pursuant to the United Nations 1972 Convention Concerning the Protection of World Cultural and Natural Heritage, investigate whether Yellowstone National Park qualified for inclusion on the "List of World Heritage in Danger." Such a determination would require the U.S. government, a signatory to the convention, to take unspecified steps to protect Yellowstone National Park. This request was followed in June 1995 by a letter from a senior official in the office of the United States Department of the Interior stating that Yellowstone National Park was in danger. The Committee visited Yellowstone National Park in September 1995. The National Park Service, a co-operating agency in the New World EIS, hosted the event. The Committee enumerated both "ascertained threats" and "potential threats" to the Park. The ascertained threats included endemic Yellowstone cut-throat trout, sewage leakage and waste contamination, road construction and visitor pressures year-round. The potential threats included impacts on quantity and quality of surface and ground water and other past and proposed mine-related activities, and proposed control measures to eradicate brucellosis in the bison herds. In December 1995, the Committee decided that Yellowstone National Park should be placed on the List of World Heritage in Danger and asked for continuing reports on the progress of the New World EIS and mitigating actions being taken to ensure in due course the removal of the site from this list.

By June 1995, Crown Butte had exhausted its cash resources and has been forced to rely on loans totaling approximately five million dollars to date to sustain day to day operations. Crown Butte intended to go to the equity markets upon release of the DEIS to raise the funds necessary to begin development of the site. The protracted delays placed Crown Butte in an unexpected cash bind.

In August 1995, the President interrupted a holiday in Wyoming for an aerial tour of the mine site. The tour was followed on September 1, 1995, by the Secretary of the United States Department of the Interior publishing a Notice of Proposed Withdrawal in the Federal Register with respect to an area of approximately 19,100 acres including the New World Property in Park County, Montana. The Notice resulted in a two-year moratorium on the location of new mining claims or millsite claims in such area. In September 1996, a notice of an amended withdrawal application was published. The amendment added an additional 2,960 acres of land and included a withdrawal of any private mineral interests that might be acquired by the United States pursuant to the Exchange Agreement. Pursuant to the requirements of the National Environmental Policy Act ("NEPA"), the Department of the Interior has prepared a Draft EIS to evaluate the potential impacts associated with the withdrawal. The Draft EIS was circulated for public

comment and comments were accepted through April 28, 1997. After reviewing the comments, the Department of the Interior will publish a Final EIS and the Secretary of the Interior is expected to make a final decision on the proposed withdrawal no later than August 31, 1997. The Company has located millsites for necessary facilities as proposed in the Company's Application for a Hard Rock Operating Permit and Proposed Plan of Operations, but has not located millsites for all alternative facility locations that were being analyzed in the NEPA process. During the period of any moratorium or withdrawal, the Company could not locate additional millsites on withdrawn ground, whether in new areas or to replace millsites in the event they were found to be invalid.

In September 1993, several special interest groups filed a complaint against Crown Butte and others in U.S. District Court, District of Montana, alleging that certain discharges from the New World Property were in violation of the U.S. Clean Water Act (CWA). On October 13, 1995, the District Court issued a Memorandum and Order ruling that Crown Butte and one other defendant were in violation of the CWA for not yet having obtained a CWA National Pollutant Discharge Elimination System permit for water coming from historic workings. The Company had applied for a CWA stormwater permit in October 1992. Crown Butte requested that the District Court allow an immediate appeal of the decision be taken to the Ninth Circuit Court of Appeals, which request was granted in January 1996, and the Company filed a petition with the Court of Appeals. On March 1, 1996, the Court of Appeals denied the Company's petition for permission to appeal, and the District Court subsequently set the matter for trial on the issues relating to civil penalties. A trial was scheduled for November 1996, but the District Court has stayed all proceedings in this case in light of the Exchange Agreement.

Conclusion

Madam Chairwoman and Members of the Subcommittee, I'm sure you can readily see that what began as an attempt to build a modern-day state-of-the-art mine, in an area where historic mining has occurred for over a century, and which was specifically excluded from wilderness designation by the Congress of the United States, quickly became a battle of national and international involvement.

By mid-year 1996, Crown Butte had already been in the permitting process for almost six years, promised dates for the release of the Draft Environmental Impact Statement had consistently not been met and the whole process had become fraught with delays and uncertainty. Even if Crown Butte had received the Draft EIS, it would still have been a long way from the issuance of the requisite Final EIS. Uncertainties with respect to Crown Butte's ability to obtain the necessary permits would have continued and the effort to obtain such permits would probably have taken many years. The economic realities of continuing in the face of well organized, well funded opposition and international organizations necessitated tough decisions. Costs and delays associated with permitting, litigation with significant potential liabilities and appeals had become unduly burdensome given the project economics.

Nevertheless, Crown Butte, as an environmentally responsible mine developer, found the decision to enter into the August 12, 1996 Exchange Agreement a difficult one. Crown Butte has always believed that its proposal to build and operate safely and responsibly a small state-of-the-art underground gold mine at New World was not only environmentally sound of itself, but also represented the best way to remediate the historic mining disturbances which date back more than 100 years.

In the end, the Exchange Agreement provided a practical resolution to a unique set of circumstances. The protracted permitting delays, legal challenges facing ongoing development, and potential liabilities related to historic mining in the New World District caused the economics of the project to deteriorate. Crown Butte's

management decided that the Agreement was in the best interest of the shareholders because, if consummated, it would provide an end to the long permitting process which might otherwise continue for many more years with no guarantee of success or economic return to the shareholders and provide assets that could be liquidated relatively promptly and which would compensate the Company for the amount it has spent to date in acquiring, exploring and attempting to permit the property.

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