

***1061 LAND IN LIMBO: MINING IN AND AROUND THE PETRIFIED FOREST NATIONAL PARK**

Potash mining will almost certainly come to Eastern Arizona. However, it remains to be seen what lands will be open to mining and what lands will be preserved in their current state. As it stands now, potash mining will likely occur on lands Congress authorized for expansion of the Petrified Forest National Park but never bought because the funds were never appropriated. Advocates for environmental preservation, however, are working to keep mining out of these lands.

Potash is mostly used as an ingredient in fertilizer.¹ Since potash is integral to the world's food supply, demand for it is expected to be significant in the future.² In the United States, potash is only produced in Michigan, Utah, and New Mexico, with about 85% of domestic consumption of potash being fulfilled by overseas production. The United States consumes roughly 9 million tons of potash annually, while producing only 1.5 million tons.³ Given the need for importing large amounts of potash, the prospect of increasing domestic production seems tempting. The United States Geological Survey estimates the potash deposits in Eastern Arizona are vast.⁴ Eastern Arizona contains up to half of known potash deposits in the United States and at a much more accessible depth than most other deposits.⁵ A single potash mine in Arizona should be able to double domestic production.⁶ Furthermore, mining companies have made lofty claims about the economics of potash mining. One prospective miner, Passport Potash, claims that the mines would require ***1062** approximately \$1.5 billion in capital investment and provide up to 500 permanent jobs paying around \$70,000 annually.⁷

However, the location of the potash in Eastern Arizona has made for controversy. According to the Arizona Geological Survey, the Eastern Arizona potash deposits are spread across three different types of land.⁸ Approximately 50% of the deposit sits beneath a combination of privately held lands and state trust lands.⁹ Approximately 20% of the deposit sits beneath the current Petrified Forest National Park (Park).¹⁰ The remaining 30% of the deposit sits under lands set apart for Park expansion by the Petrified Forest National Park Expansion Act of 2004.¹¹ However, unless the federal government actually purchases these appropriated lands and adds them to the Park--which it has yet to do--they remain the eminent solution for closing the United States' potash deficit.

I. THE PETRIFIED FOREST NATIONAL PARK EXPANSION ACT OF 2004

The Petrified Forest National Park Expansion Act of 2004 ("Act") was introduced in the U.S. House of Representatives with bipartisan support.¹² The Act passed easily in both chambers, by voice vote in the House and unanimous consent in the Senate.¹³ Arizona Senator John McCain spoke glowingly of efforts to expand the Park, and in 2005, the National Parks Conservation Association gave Senator Jon Kyl an award for his efforts in expanding the Park.¹⁴ Congress has therefore expressed a clear set of policy goals for the Park.

The Act authorized the Secretary of the Interior to purchase 125,000 acres of land to expand the Park.¹⁵ The area authorized for purchase included private land and land owned by the state of Arizona.¹⁶ In order to purchase the land, however, the

landowners had to be willing to either sell it or donate it for addition to the Park.¹⁷ Furthermore, in order to *1063 acquire the land, Congress would need to appropriate the funds necessary.¹⁸ As of March 2012, Congress has only appropriated funds sufficient to buy a small portion of the lands designated by the Act--one family ranch.

If these lands are to be included in the Park, Congress would not only need to find funds to purchase them, but it would also have to find willing sellers. Given the discovery of valuable potash deposits on these lands, potential sellers might be scarce. Furthermore, the Arizona Senate is working on legislation to make these lands open for mineral exploitation.

II. SENATE BILL 1089

Arizona Senate Bill 1089 ("SB 1089") amended section 27-235 of the Arizona Revised Statutes ("A.R.S.") to allow mining entry to state trust lands where that entry had previously been barred. The text was amended to authorize the State Land Commissioner to publicly auction mineral exploration permits for lands that had previously been closed by order of the Commissioner.¹⁹ This change to A.R.S. section 27-235 allows mining exploration and permitting to occur on state trust lands that were previously closed to mining entry--more particularly, the lands marked to become part of the Petrified Forest National Park. Arizona State Senator Sylvia Allen, whose district covers the land in question, introduced the SB 1089.²⁰

Regardless of Congress's intentions for this land, it remains owned and controlled by the Arizona state government. Since the land is controlled by the state of Arizona, the State retains the prerogative to use the land according to the mandate for state trust lands, which are governed by Article X of the Arizona State Constitution and by Title 37 of the Arizona Revised Statutes. According to A.R.S. section 37-231(A), state lands are subject to appraisal and sale unless otherwise provided. Furthermore, anyone over the age of 18 is entitled to purchase them.²¹ Once a proper application has been submitted, the land has been appraised, and the time for appeal has passed, "the department shall order the sale of the lands to the highest and best bidder therefor at public auction."²² It seems, therefore, that if these lands are not transferred to Petrified Forest National Park, mining companies will be able to acquire them under the current statutory scheme for land sales.

***1064 III. OPPOSITION TO MINING NEAR PETRIFIED FOREST NATIONAL PARK**

Local environmental groups have voiced opposition to mining in these lands. The Grand Canyon Chapter of the Sierra Club singled out SB 1089 for disapproval in its 2011 Legislative Session report.²³ The Sierra Club opposes mining on the state trust land. The land in question is rich with fossils that the Sierra Club would prefer to see preserved as a part of the Petrified Forest National Park.²⁴

The National Parks Conservation Association (NPCA) also opposes mining in the state trust lands.²⁵ The NPCA was involved in promoting the Petrified Forest National Park Expansion Act of 2004. The Southwest office of the NPCA highlighted the Expansion Act in its Southwest Region Field Report for 2011, celebrating the transfer of lands already purchased and opposing future mining on the state trust lands and private lands in the area.²⁶

CONCLUSION

Mining is almost certain to take place to some degree near the Petrified Forest National Park. However, Congress failed to act when it had the opportunity to acquire the lands slated for purchase. Proponents of mining in the area claim that exploitation of those resources will create hundreds of quality jobs. On the other hand, the opposition points to the cost of those jobs: the permanent loss of singular views, fossils, and petroglyphs in lands set apart as a national treasure. Congress can still appropriate the money and attempt to acquire these lands, but the price is rising quickly. Ultimately, the fate of these lands is in the hands of the private landowners and the State Land Commissioner. Until the use of the land has been resolved, they remain in a proverbial Limbo.

Footnotes

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¹ Teri Walker, *What is Potash?*, AZJOURNAL (Nov. 18, 2011), [http:// www.azjournal.com/2011/11/28/what-is-potash/](http://www.azjournal.com/2011/11/28/what-is-potash/).

² Lee Allison, *Potash Mine in Operation by 2014?*, ARIZONA GEOLOGY: BLOG OF THE STATE GEOLOGIST OF ARIZONA, [http:// arizonageology.blogspot.com/2011/12/potash-mine-inoperation-by-2014.html](http://arizonageology.blogspot.com/2011/12/potash-mine-inoperation-by-2014.html), (last visited Feb. 9, 2012).

³ Walker, *supra* note 1.

⁴ The Ariz. Geological Survey, *Major Potash Deposit near Holbrook, Arizona*, AZ.GOV: ARIZONA'S OFFICIAL WEB SITE, [http://www.azgs.az.gov/minerals_ potash.shtml](http://www.azgs.az.gov/minerals_potash.shtml) (last visited Feb. 9, 2012).

⁵ *Id.*

⁶ Walker, *supra* note 1.

⁷ Tom Billings, *Is Potash Mining Arizona's New Gold Rush?*, ARIZONA LAND GUY, <http://www.arizonalandguy.com/2011/03/is-potash-mining-land-arizonas-new-gold.html> (last visited Feb. 9, 2012).

⁸ The Ariz. Geological Survey, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *H.R. 1630: Petrified Forest National Park Expansion Act of 2004*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h108-1630> (last visited Feb. 9, 2012).

¹³ *Id.*

¹⁴ *Protect Petrified Forest National Park!*, SIERRA CLUB GRAND CANYON CHAPTER, http://arizona.sierraclub.org/political_action/tracker/SB1089.html (last visited Feb. 9, 2012).

¹⁵ Petrified Forest National Park Expansion Act of 2004, Pub. L. No. 108-430, § 3(a), 18 Stat. 2606, *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-108publ430/pdf/PLAW-108publ430.pdf>.

¹⁶ *Id.* at § 4(a)-(b).

¹⁷ *Id.*

¹⁸ *Id.* at § 6.

19 A.R.S. § 27-235(A).

20 *Sylvia Allen Member Page*, ARIZONA STATE LEGISLATURE, http://www.azleg.gov/MembersPage.asp?Member_ID=5&Legislature=50&Session_ID=102 (last visited Feb. 9, 2012). The Author contacted Senator Allen to request a comment, but the Senator did not respond.

21 ARIZ. REV. STAT. ANN. § 37-231(B) (2011) (West).

22 ARIZ. REV. STAT. ANN. § 37-236(A).

23 SIERRA CLUB GRAND CANYON CHAPTER, *supra* note 14.

24 *Id.*

25 *Potential Potash Mining at Petrified Forest National Park*, SW. REGION FIELD REP. (National Parks Conservation Association, Southwest Regional Office, Salt Lake City, Utah), Fall 2011, at 3, *available at* http://www.npca.org/assets/pdf/Southwest_Field_Report_Fall2011.pdf.

26 *Id.*