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OXFAM AND MINING IN HAITI



Oxfam and Mining in Haiti

by Stu Levit

CSP² is nearing completion of the latest project working for Oxfam America, an international relief and development organization that creates lasting solutions to poverty, hunger, and injustice (<http://www.oxfamamerica.org/>). Oxfam seeks to ensure that communities have a right to say if, and therefore how, mining projects are carried out. It seeks to ensure that mining projects do not add to poverty and powerlessness and instead that mining projects should help communities overcome poverty and powerlessness in the form of environmentally and socially responsible development.

The project, focusing on Haiti's increasingly renewed mining activities in Haiti, seeks to ensure that

major mining activities are fully regulated and that mining does not degrade human health and the environment. CSP²'s Stu Levit has worked for Oxfam on select Oxfam's mining projects in Asia and South America. CSP²'s current role assisting Oxfam continues those efforts to provide Oxfam with independent, expert technical expertise.

CSP²'s latest work for Oxfam is in Haiti where CSP² provided two items: (1) A compilation of key considerations that must be included in any mining assessment, review, or permitting process and (2) Review of Haiti's draft mining law.

The first item was a compilation of key issues and elements. The goal was to help measure Haiti's legal and logistical capacity and preparedness to regulate mining in Haiti. Haiti is in the unique position of having very limited active mining activities. Haiti also has no de-



tailed, substantive mining law/regulations. The most recent mining decree (law/regulation) of 1976 lacked the vigor and detail necessary to adequately regulate mining in Haiti.

This lack of mining law can be seen as an opportunity to craft a mining law that incorporates the lessons and experiences of mining regulation in other countries that have struggled with balancing promoting mining and protecting human health, the environment, and public fiscal resources.

The compilation identified many of the key elements required for Haiti to develop and implement a mining regulatory scheme that best protects Haiti's resources, health, and funds - while at the same time recognizing the need to promote and develop mining resources as a potential source of revenue for its people and the state.

It was underlain by the understanding that public participation is critical to a legitimate process (and law) to independently verify Haiti's capaci-

ty, ensuring that the government cannot simply conclude that it has sufficient capacity to regulate mining.

The second item was a review/analysis and recommendations of the Haiti's proposed Draft Mining Law. This was first proposed in September 2013 and then revised in August 2014 by the Haitian government with assistance from the World Bank. It was intended to be adopted by Haiti. The review was to help improve the draft law to ensure that if all or parts of the law are adopted those parts are as protective as possible of human health and the environment.

Together, the two items sought to promote Oxfam's objective of focusing on the general intent and content of the law and identify improvements necessary to protect Haitians and Haitian resources.

We concluded that the draft law failed to adequately ensure that mining would not impact Haiti's environment and the well-being of impacted

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communities and restrict the Haitian government's ability to effectively regulate mining. He concluded that provisions relating to environmental impact assessments, financial transparency, compensation for taking of land, financial sureties and for closure and clean-up costs needed to be strengthened, among others.

But the law does not stand alone - it is inextricably intertwined with the people, environment, and economy upon which the law acts. The law depends on good regulations, and good regulations depend on guidelines and enforcement, etc. To protect its people and resources Haitian law must be complete and protective and the country must fully develop and maintain a sufficiently infrastructure to implement it (e.g. staffed and trained regulatory personnel, court system, etc.).

Haiti's 2012 election was delayed leaving the country without an active national Legislature and the president, Michel Martelly, largely filling the void. As of the writing of this report elections were held on August 9, 2015 and a runoff and presidential elections are planned for October 2015. Once seated, the new legislature and president will have many important issues to tackle and mining is likely to be one of them. International corporate interest and its potential influx of short and long term investment, combined with Haiti's potential mineral resources, ensure that there will be pressure to resolve the issue and move mining forward in one way or another.

To effectively protect human health and the environment and equitably benefit local communities and Haiti as a nation it is essential that the law and its implementing resources are fully reviewed, implemented, and transparent. CSP² is pleased to assist Oxfam in Oxfam's greater mission and hopes to continue this role in Haiti and elsewhere.

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FROM THE EXECUTIVE DIRECTOR

A short note on the Pebble Mine—we haven't heard much about it lately, but it is NOT dead. Since the release of the EPA's Bristol Bay Watershed Assessment in January 2014, the agency has recommended a veto of the mine on environmental grounds, and public opinion is firmly against the project (even in Alaska). However, the Pebble Limited Partnership (owned by Northern Dynasty Minerals, a subsidiary of Hunter Dickenson Inc, of Vancouver, Canada) is in full legal and public relations mode.



*Dave Chambers is the
Executive Director of CSP²*

Corporations don't file as many lawsuits as non-profits. They don't need to, since most disagreements with regulatory agencies are settled via negotiations, not legal intervention. Agencies have little incentive to negotiate with non-profits. When companies do litigate, they go for the kill. They sue on every potential vulnerability, and they have the legal resources (via outside attorneys) to research and litigate each of these points, no matter how small. The Pebble Limited Partnership filed three lawsuits against the EPA. At present only one is still moving forward. PLP's real objective may be to delay – delay until there is new administration that will give new guidance to EPA. In the meantime, the Pebble Project remains a possibility.

Most members of the general public that I talk with believe the Pebble Project is finished. Far from it. The Pebble Limited Partnership could win its remaining lawsuit. It has good attorneys. It can afford to appeal unfavorable decisions, and if it can get to the Supreme Court, the EPA has not fared well there. Getting to the Supreme Court will take years. The Pebble Limited Partnership is also attempting to rebuild its image in Bristol Bay. Most of the non-profits who have worked on Pebble have not received funding to work on this issue any more – including CSP². The worst thing that could happen is to let the Pebble Limited Partnership regain the offensive, and the conditions for that happening are ripe.

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