

MINING AND MINERALS BRANCH
Land Resources Division - WASO
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GENERAL

Branch Coordinates Servicewide Response to BLM on Federal Onshore Oil and Gas Program Review - The BLM is reviewing their Federal onshore oil and gas program as part of Vice-president Gore's "National Performance Review." The BLM sent the Branch a list of topics and concerns expressed at a series of industry and agency meetings held last December throughout the country. The BLM requested that the Branch act as a coordinator for all NPS comments. We targeted all parks having adjacent operations and also invited comments Servicewide through Ranger Activities's Morning Report. Overall, comments from the field indicated that primary NPS issues are adverse impacts on park resources from adjacent oil and gas exploration and production operations, and early notification by the BLM on pending adjacent oil and gas lease sales, revisions to BLM land use planning documents, and drilling permit applications. The Branch provided the BLM with a compiled list of NPS comments and expressed a strong desire to actively participate in the process. The list of NPS issues provided to the BLM is available from Bruce Heise (303-969-2017). (Boucher, Heise, O'Dell)

NPS Proposed 9B Regulatory Revisions Still Held Up in SOL - The NPS continues to be anxious to revise its regulations at 36 CFR Part 9, Subpart B governing non-Federal oil and gas development in parks. The current regulations contain two exemptions that allow approximately 70% of the 570 operations in parks to be free of NPS control. As a result, park resources and visitors are needlessly at risk. The NPS proposes to bring all non-Federal oil and gas operations in parks within the ambit of its regulatory authority. Operators of existing unregulated operations, for example, will need to develop contingency plans to assure readiness in the event of a spill, fence flaring well sites and post warning signs to protect the unsuspecting public, discontinue unsafe, poor maintenance practices. The NPS also proposes to strengthen and clarify measures designed to protect park resources. Unfortunately, the progress of our proposal has moved at less than a snail's pace in the Washington Solicitor's Office. To expedite the review process, SOL was given an advance copy of the Service's draft final proposed regulations in January and officially transmitted the complete rulemaking package in February. Despite this elongated review and the fact that the SOL has reviewed earlier versions of the Service's proposal, the SOL continues to be holding the progress of the much needed regulatory revisions. Hopefully, next month we have positive information to report. (McCoy, Bates)

NPS Drops Effort to Require Operators to Reimburse the Federal Government the Cost to Process and Monitor Plans of Operations - Based on a DOI Inspector General's Report, NPS had planned to require operators to reimburse the Federal Government the cost to review and monitor approved plans of operations under the Service's 9B regulations governing non-Federal oil and gas development. The NPS was going to do so via its proposed rulemaking effort to revise the 9B regulations. The Inspector General's Office harshly criticized the NPS in 1988 for failing to collect such monies. The Solicitor's Office, however, recently informed us that no legal authority exists for imposing such a requirement on

private mineral owners. The Solicitor's finding does not create any heartburn for the NPS. The Service was never keen on the idea. In fact, NPS park managers will be greatly relieved because their effort to collect such monies would not have generated additional monies for park budgets; all collected funds would have gone to the General Treasury. The process of collecting and tracking monies would have cut into time available for actual park resource protection. (McCoy, Bates)

NPS Mobilizes to Win Lawsuit Challenging NPS Authority to Regulate Non-Federal Oil and Gas Operations at Padre Island National Seashore - In March, owners of subsurface oil and gas rights at Padre Island filed suit in Federal District Court to defeat the Service's authority to regulate private oil and gas activities in the park. The owners have structured their complaint in two parts: first they argue that the NPS lacks legal authority to regulate private oil and gas activities in the park. If the court disagrees, then they argue the NPS's use of that authority constitutes a taking of their property interest under the 5th Amendment to the U.S. Constitution. They have requested the court to compensate them no less than \$750,000,000. This litigation has systemwide implications (12 other units have non-Federal oil and gas operations within their boundaries). It is the first suit ever challenging the NPS's authority under its 9B regulations. While we are confident that the court will rule against the owners on both counts, we are taking the challenge very seriously and, with assistance from the park and SWR, are aiding the Washington Solicitor's Office in preparing the Federal Government's case. Foremost, the Federal Government's authority to regulate private activity under the Property and Commerce Clauses of the U.S. Constitution is well established, especially where a strong Federal interest is at stake and the regulatory scheme is tightly tied to protecting that Federal interest. Unfortunately, due to misinterpretation and misinformation regarding several recent cases regarding takings, the public and many Federal employees have come to believe, although erroneously, that the Federal Government can not regulate private property rights. The second part of the owners' suit fails to recognize that the NPS has been regulating non-Federal oil and gas activity at Padre Island since the 1960s. Currently, 10 operations are occurring at the park and the 16-year history of the 9B regulations indicates that the NPS has authorized 54 operations at the park. (McCoy, Kassman)

Branch Presentation a Success at ASSMR Conference - One of the largest meetings (to date) on mined land reclamation was April 24-29, in Pittsburgh. The conference was a joint meeting of: (1) the American Society of Surface Mining and Reclamation, (2) the Canadian Land Reclamation Association, (3) the International Affiliation of Land Reclamationists, and (4) the International Conference on the Abatement of Acid Mine Drainage. Branch staff set up an exhibit on the NPS AML reclamation program (intended as an informational booth) which enjoyed a warm reception. Of course, the number one question was, "national parks have abandoned mines?" Conference attendees picked up 500 AML brochures. Staff also attended a workshop on AutoCAD applications to mine land reclamation and 3 days of technical sessions. (Steensen)

Branch Staff Make Presentations at Multi-Regional NPS Maintenance Conference - Branch staff made two presentations at a break-out session in the conference. The sessions addressed administrative sand and gravel issues and what park maintenance can do to help mitigate AML sites. Both sessions were well received. In addition to the presentation, the branch had a poster display on the two topics. The display was also well received, it generated numerous discussions with the conference attendees. Many handouts were distributed along with a hundred AML brochures. Maintenance staff is a target audience on these two issues as they will be instrumental in getting things accomplished. (Higgins, Ziegenbein)

OSM Again Commences Development of Regulations Addressing the Legal Right to Mine Coal and Subsidence - On April 28, 1994, the Office of Surface Mining Reclamation and Enforcement (OSM) published a notice of its intent to prepare an EIS covering rulemakings to (1) define what constitutes "valid existing rights" (VER) to mine coal under the mandatory §522(e) lands unsuitable provisions of the Surface Mining Control and Reclamation Act (SMCRA) and (2) determine whether subsidence resulting from underground mines is subject to those provisions. The issue of how VER is defined has been an important one to the Service. Under §522(e)(1), surface coal mining is prohibited in units of the National Park System subject to VER. Similarly subject to VER is the prohibition under §522(e)(3) that prevents coal mining adjacent to publicly owned parks if it will cause adverse impacts. Since the early 1980s, the NPS has underscored the importance of narrowly defining what constitutes VER in order to give meaning to the statute's prohibitions. Prior to 1991, subsidence incident to an underground mine was viewed as subject to the SMCRA's prohibitions. A Solicitor's Opinion, which is outside the rulemaking process, reasoned otherwise. Comments on OSM's intent to develop an EIS are due May 31, 1994 (see 59 FR 21996). (McCoy, Woods)

House Committee on Natural Resources Undertakes a Study of Commercial Activities on Federal Land - At the request of the House Natural Resources Committee's Subcommittee on Oversight and Investigations, Branch and committee staff met to discuss instances in which federally owned land in parks is used for commercial purposes. Committee staff plan to meet with all Federal land managing agencies to ascertain the extent to which private entities are benefitting from the commercial use of Federal land. From a mineral perspective, private uses occur through unpatented claims, Federal leases, and special use permits that allow use of sand and gravel where authorized in a unit's enabling statute (i.e., Lake Chelan). We also presented information on cases where use of private land in parks have spill over impacts to adjacent park resources and therefore can be interpreted as "consuming" park resources. Incompatible uses of patented mining claims, such as commercial cabins and lodges, represents such an instance. We followed up the discussion by providing a memo describing situations in Alaska and Death Valley where patented land is used for private purposes. Staff also explained how lands often must be bought by the taxpayer, sometimes at great sums, in order to avoid incompatible uses in parks. Committee staff continue to research this issue and plan to release a report in the upcoming months. (Bates)

USGS Invites Branch to Participate in 1995 McKelvey Energy Forum - The USGS has invited the Branch to make a presentation at the 1995 McKelvey Energy Forum to be held in Washington, D.C. Branch staff prepared and submitted to USGS a brief summary paper titled "Reclaiming the Scars of Energy's Past, Examples from the National Parks." The poster presentation will focus on the surface impacts and restoration needs of oil and gas, coal, and uranium operations conducted in National Park System units. (Heise)

Branch Provides WASO Planning with Ideas to Improve Process - In response to a request from the WASO Park Planning and Protection Division, the Branch provided input on streamlining the park planning document policy review process, particularly with respect to documents prepared by Denver Service Center (DSC). The Branch also provided a minerals management planning checklist identifying issues that parks should consider and assess early in the planning process. In terms of streamlining the review process, the Branch suggested that DSC send park planning documents directly to the Branch and other Denver-based WASO offices to eliminate yo-yoing documents between Denver and Washington. The minerals management planning checklist listed various issues and information needs pertaining to mineral development inside parks, mineral development adjacent to parks, and abandoned mineral lands. (Heise, Moss, Ziegenbein)

NPS Initiates Open Dialogue With the BLM and FS on Mining Issues - Branch staff took the initiative in March and April to meet with the minerals staff of the Forest Service and the BLM to exchange information on the administration of the various mineral programs and to introduce relative newcomer Brette Bates to these staffs. Staff were able to discuss issues of mutual concern with each agency and to exchange information and literature. We hope that these meetings shed light on the importance of ecosystem management to the NPS and will help to resolve transboundary issues as they arise. (Bates)

Outstanding Booklet Available that Explains "Takings Law" in Layman's Terms - The Land and Water Fund of the Rockies recently published a booklet that walks the reader through the seminal takings cases and squarely addresses many of the popular takings myths. It does so in 21 easily readable pages. "Takings" is the popular reference to the 5th Amendment of the U.S. Constitution. Under that amendment, among other things, "No person...shall be deprived of life, liberty, or **property**, without due process of law; nor shall **private property be taken for public use, without just compensation.**" (emphasis added) Copies of the booklet can be obtained for \$4/each by calling the Fund at 303-444-1188. (McCoy)

USGS National Coal Resource Assessment Workshop - Branch staff attended and spoke at the workshop convened by USGS to solicit input from federal agencies (OSM, USFS, BIA, USBM, BLM, and USGS) which utilize coal data in their planning process. The NPS presentation concerned internal and external environmental impacts such as acid mine drainage contamination, sedimentation, stormwater runoff, viewshed intrusion from roads, facilities, equipment, air quality degradation from dust and power plants, night sky lighting intrusions, transportation and power corridors, and subsidence potential. We suggested that the assessment address seam thickness, number of seams, depth, interburden thicknesses, acid generation potential, coal quality, and hazardous elements in coal that contribute to air pollution. An updated assessment will also help the NPS to arrive at fair market value determinations in the event that inholdings are purchased. (Cloues)

Branch Staff Comment on DOI Guidelines on Hazardous Substances Determinations in Land Acquisitions and Transfers - The branch provided comments on a package of four documents concerning hazardous materials in land acquisitions and transfers: Departmental Manual Part 602, Chapter 2 (602 DM 2) entitled "Hazardous Substances Determinations," a memorandum dated August 23, 1989, entitled "Interim Guidance on Acquisition," an August 14, 1989, document entitled "Interim Guidance on Implementation of S.O. 3127 and 602 DM 2," and a document entitled "Federal Real Property Transfer Rule Fact Sheet." The first recommendation was to incorporate the substance of all four documents into 602 DM 2. The branch emphasized the need to consider and evaluate hazardous materials issues prior to land acquisition or transfer, to reflect the cost of cleanup in the purchase price, and to provide funds for that cleanup at the time of acquisition or transfer. The need to develop training requirements and a certification program for those conducting determinations was stressed, as was the need to specifically mention hazardous materials issues relative to mineral exploration and development. (Burghardt, Heise, Ziegenbein)

Chief of Policy and Regulations Moves to Denver - On April 11, 1994, Carol McCoy happily joined the rest of the Branch's management in Denver. She previously advanced the Branch's mission from Washington, D.C. The change should help foster greater cohesiveness and better coordination amongst the Branch's three section chiefs. Carol's change in duty station leaves one Branch member in D.C., Brette Bates. Brette joined the NPS a year ago. She has over 5 years experience working on legislative and policy matters as a Congressional staff person. In addition to relying on Brette to keep abreast of Washington legislative, regulatory and policy matters as they relate to mining, we will be heavily relying

on e-mail and the phone. Carol and Brette can be reached at the following numbers, respectively: 303-969-2090 and 202-343-4960.

MIDWEST REGION

BLM Places End Date on Company's Right to Explore for Lead Near Ozark Riverways - The BLM Eastern States Office granted the Doe Run Company six additional months to explore for lead in the Mark Twain National Forest near Ozark. In January, the Director sent the Director of BLM a memo expressing NPS concern regarding the potential impact that the exploration and possible commercial development of lead could have on water quality and quantity in the park. The Director also raised concern about the questionable legal basis for the company's right to explore for lead absent a prospecting permit as required under BLM's leasing regulations. After extensive discussions with the Solicitor's Office and BLM and NPS policy makers, BLM agreed to end the company's right to explore on October 28, 1994. After that date, the company must make a showing that it has made a valuable discovery if it desires to obtain a Federal lease to the minerals. In conjunction with the park, we will continue to monitor this situation. (McCoy, Kassman)

ROCKY MOUNTAIN REGION

Branch Assists Hovenweep Seek Oil and Gas Industry Participation in Park Management Assessment - In response to the Superintendent's request, Branch staff assisted in arranging for oil and gas industry participation in the "management assessment" of Hovenweep scheduled for July 1994. Branch staff contacted several industry groups and determined some degree of interest in participating in the process. In light of past controversy surrounding oil and gas exploration and development activity on lands adjacent to the park, industry participation in the park management assessment process could be a productive exercise. (Heise)

SOUTHEAST REGION

Seismic Operations to Starboard Off of Gulf Islands Wilderness - Gulf Islands requested Branch recommendations on a proposed marine geophysical (seismic) exploration operation near Petis Bois and Horn Islands, both designated wilderness areas. The proposed operation is in adjacent State of Mississippi waters, but requires a permit issued by the US Army Corps of Engineers (COE). Mississippi rolled for industry and placed virtually no conditions on the proposed operation other than prohibiting the use of dynamite as an energy source for seismic purposes, a practice rarely used offshore since the 1960s. The COE has taken the position that if the company can satisfy NPS concerns, the COE will issue the permit. The Branch advised the park that seismic exploration projects using compressed air as an energy source are relatively benign compared to the use of dynamite, and the proposed operation should not pose a threat to park resources or values. The Branch recommended that the park make it very clear that their concurrence with the COE permit in no way guarantees that additional proposals for seismic, drilling, or production operations will receive similar concurrence by the NPS. (Heise)

Plans to Drill Oil and Gas Well on Miccosukee Reservation Near Big Cypress and Everglades Press On - Shell Western Exploration and Production, Inc. (SWEPI) continues to seek a permit from the Bureau of Land Management (BLM) to drill an exploratory well near Big Cypress and Everglades. The proposed drill site is on Miccosukee Indian Reservation lands approximately 4 miles east of Big Cypress and 25 miles north of Everglades. The surface location for the well is adjacent to Florida Water Conservation Area 3A (WCA 3A). SWEPI proposes to use direction drilling to reach a bottomhole target

beneath WCA 3A. The Branch reviewed SWEPI's proposal last year in the Draft Environmental Impact Statement prepared by the BLM and the Bureau of Indian Affairs. The Branch concluded that drilling and testing of the Miccosukee 3-1 well will not adversely affect the environments of either park. SWEPI plans to use some of the most environmentally sound technologies available to drill the well. Our main concern was anticipated impacts from additional exploration and production that would follow a hydrocarbon discovery. SWEPI avoids addressing full field development by seeking only the permit to drill and test the exploration well. Should a discovery occur, SWEPI will be subject to a new permitting and National Environmental Policy Act (NEPA) analysis for producing the well and drilling others. (O'Dell, Boucher)

Branch Meets With OSM On Proposed Apollo Coal Mine Near Cumberland Gap - Branch staff met with Willis Gainer and Rick Mann of the Office of Surface Mining (OSM) to discuss NPS/OSM interaction in the permitting of the proposed Apollo Fuels surface coal mine adjacent to Cumberland Gap (CUGA). This mine poses some interesting procedural questions. OSM regulations allow separate but related issues pertaining to the mine permitting process to proceed on parallel tracks. In this particular instance the parallel issues consist of (1) the mine plan completeness determination process, (2) a lands unsuitable for surface coal mining determination, and (3) a determination of Apollo Fuels' "valid existing rights" (VER). The sequence of events is as follows: Last February OSM received an application for a permit to surface mine coal in the Fern Lake watershed adjacent to CUGA. Three days later, but within an acceptable time frame, the city of Middlesboro and the National Parks and Conservation Association submitted a petition to have the subject lands declared unsuitable for surface coal mining. The lands unsuitable designation is provided for in Section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of August 3, 1977. In this Section SMCRA states ". . . no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted . . . which will adversely affect any publicly owned park or places included in the National Register of Historic Sites" Impacts to CUGA from the proposed mine may include significant visual degradation, water quality impacts, and destruction of the overall historical scene of the Cumberland Gap. If the NPS can prove the proposed mine will adversely affect the park, then Apollo Fuels must prove VER in order to mine the property. If Apollo Fuels cannot show they meet all requirements of VER prior to the date of enactment of SMCRA (1977), then they have no right to mine the property and park resources will not be adversely impacted. Now back to the parallel tracks issue. In an effort to "streamline" the permitting/unsuitability process, MMB asked OSM informally in the subject meeting, and will follow up by way of memorandum, to research Apollo's "right" to surface mine coal prior to implementing the labor intensive mine plan completeness determination process. Apollo's mine plan consists of three 3" binders of information. If OSM will agree to assessing the VER question prior to beginning the mine plan completeness review process, many staff hours, both in OSM and the NPS can be spared. Watch future MMB monthlies for more information on this interesting issue. (See entry below for more information on VER.) (Moss, McCoy)

Private Landowner Seeks Authorization to Prospect for Coal at Big South Fork - A landowner, apparently dissatisfied with the Federal Government's appraisal of his property, has informed the park and the Office of Surface Mining Reclamation and Enforcement (OSM) that he intends to prospect for coal in the park. OSM is involved because under the Surface Mining Control and Reclamation Act (SMCRA) it is the agency responsible for overseeing surface coal mining. Under §522(e)(1) of SMCRA, entities cannot mine for coal in units of the National Park System unless they have "valid existing rights" (VER) to mine the coal. What constitutes VER has been a politically sensitive and much litigated issue. In this particular case because the landowner seeks to "explore" for coal, not "mine" coal the issue of VER does not come into play. While the NPS has long advocated that allowing entities the right to

explore for coal absent VER defeats the purpose and protection of the SMCRA prohibition against coal mining in parks, OSM has not, to date, so interpreted the statute. OSM regulations do require entities seeking to prospect for coal in park units to comply with detailed permit requirements which the landowner has yet to do. While SMCRA does not provide the NPS an adequate handle to protect park resources for coal prospecting, the enabling statute for the Big South Fork does. Section 108(e)(3)(A) of that Act [or see 16 USC §460ee(e)(3)] prohibits coal mining, including prospecting, within the area of the park adjacent to the gorge unless the activity is conducted from an adit outside the park. We will continue to assist the park on this issue as needed. (McCoy)

SOUTHWEST REGION

Branch Evaluates American Exploration's Revised Plan for Oil and Gas Production in Padre Island

- Branch staff provided comments to the park and region on American Exploration's revised plan of operations for continued operation of six active or shut-in nonfederal oil and gas wells at Padre Island. Given the numerous information deficiencies in the original plan submitted by American Exploration to the NPS, this one was a great improvement. The Branch recommended clarification of the plugging schedule for all wells, and suggested additional or improved secondary containment around several of the production facilities. (Boucher, Heise)

Branch Sharing Scarce Skills with US Justice Department and Solicitor's Office - An 86-year-old claim settlement with three Indian Nations in Oklahoma, involving over 26,000 acres, is getting closer to a negotiated fair settlement with input from branch staff. Mineral revenues lost and fair market value determinations of mineral resources are being analyzed using the Uniform Appraisal Standards for Federal Land Acquisition 1992 as a guide. One need only imagine a room full of lawyers and economists to appreciate the difficulty of reaching any agreement. (Cloues)

Engineering Analysis of the Repair/Plugging of the Vendome Well in Chickasaw - At the request of the Water Rights Branch, branch staff completed an engineering analysis of the repair/plugging of the Vendome Well. The free-flowing well was drilled in 1922 and initially flowed in excess of 2,500 gallons of water per minute or more than 3-1/2 million gallons per day. Recent measurements have indicated that the flow has drastically decreased to less than 500 gallons per minute and that the cumulative high water production has contributed to the decline of both spring flow and the reservoir pressure. The casing of the well has alternately been laden with calcium precipitates and has corroded and perforated. The corrosion and perforations have left the casing in very poor condition making any remedial action expensive and problematic. The only viable and cost-effective method to control the well is to plug and abandon the well bore and redrill a new well. The drilling and casing of the new well would then fit today's standards and the well's flow could be monitored and checked. The analysis included procedures for both plugging and drilling, a cost analysis, and the necessary steps for contracting. (Boucher)

WESTERN REGION

Analysis of Abandoned Geothermal Well at Lassen Volcanic National Park - Branch staff completed an initial analysis of the Walker "O" geothermal well, drill pad and access road. Reports indicate that the access road and pad are both eroding and slumping and the well casing is disintegrating. This problem will be exacerbated if slumping of the well pad or fault movement occur in the area of the well. Continued deterioration of the site and well may lead to a final catastrophic failure, public safety hazards and damage to park resources. The analysis included a discussion of the liability of the former operator, Phillips Petroleum, alternative means of funding, and several action items. We recommended that the

plugging and abandonment of the Walker "O" Geothermal Well be included as a project in the Lassen Resource Management Plan; that a team be assembled to develop an integrated abandonment and reclamation plan for the site; that funding be found for the ultimate plugging of the well; and that the well be contracted to plug. (Boucher, Ziegenbein)

Protection of Parks from Mining Losing Ground Under House and Senate California Desert Bills -
On April 13, 1994, the Senate passed the "California Desert Protection Act of 1994" by a vote of 69 to 29. Included in the bill are provisions to allow the patenting of land in the expanded Joshua Tree and Death Valley National Parks. In the newly created East Mojave National Park, patents would be restricted to the mineral estate only. MMB has been working with the Legislative Division of the NPS to obtain a bill that completely prohibits the patenting of land in all three parks. During deliberations on the Senate Floor, Senator Craig offered an amendment to carve out 45 mining claims held by Pluess-Stauffer from East Mojave park designation. He withdrew the amendment when he realized his amendment would not pass the Senate. On May 4, 1994, the House Natural Resources Committee passed H.R. 518, the House version of the "California Desert Protection Act of 1994." This bill is devoid of any language addressing the patent issue. In fact, the bill that passed the Committee did not include the patent restriction for East Mojave National Park that was originally in the House bill. It appears that the Committee, and in particular Chairman Vento, want to stay away from the patent issue in light of the fact that the Congress is considering reforms to the Mining Law of 1872. As a result, mining claimants in the three parks could apply for a patent to their mining claims. We will continue to work with NPS Legislative Division and House staff to include language to preclude the patenting of claims in these three parks as the bill moves to the House Floor and then to Conference Committee between the House and Senate. (Bates)