

MINING AND MINERALS BRANCH
Land Resources Division - WASO
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GENERAL

Response to Litigation Challenging NPS Authority to Regulate Non-Federal Oil and Gas Operations in Parks Due August 1, 1994

- In March, owners of subsurface oil and gas rights at Padre Island National Seashore in Texas filed suit in Federal District Court alleging that the NPS lacked authority to regulate private oil and gas rights at the park. If the court does not agree, the owners allege in the alternative that application of the Service's regulations governing non-Federal oil and gas rights constitutes a taking of their private mineral rights. They seek compensation of not less than \$750,000,000. The litigation papers were filed erroneously in March and not corrected until June 1. Under Federal court procedures, the Government has 60 days from the date of filing to respond to the allegations. While litigation against the NPS is often handled directly by the local U.S. Attorney's Office, the Department of Justice has assigned one of its attorneys in Washington, D.C. to handle the case because of the litigation's precedent setting nature and the magnitude of money potentially at stake. The Solicitor's Office in the Department of the Interior similarly has assigned a Washington based attorney to assist Justice on the litigation. Staff from the park, Southwest Regional Office and the Branch are heavily involved in assisting the Department of Justice prepare the Federal Government's case in cooperation with our Solicitor's Office. (McCoy, Boucher, Kassman, Woods)

Revisions to NPS Regulations Governing Non-Federal Oil and Gas Development in Parks Continue to Move Through Department

- Branch efforts to revise the Service's regulations governing non-Federal oil and gas development in parks at 36 CFR Part 9, Subpart B continue despite minor setbacks. Based on extensive field input, the Branch seeks to eliminate provisions in the existing regulations that exempt 70% of the operations in parks from regulatory compliance. The Solicitor's Office has the draft proposed revisions but has indicated it will surname off on the package shortly. Once we obtain the Solicitor's Office surname, we will forward the package to the Director and then the Assistant Secretary for Fish and Wildlife and Parks for signature. We would like to publish the proposed regulations in the Federal Register by August. (McCoy)

NPS Identifies Issues Needing Attention As OSM Begins to Prepare an EIS on Regulations to Define "Valid Existing Rights" to Mine Coal

- The Office of Surface Mining Reclamation and Enforcement (OSM) has once again taken up the difficult task of defining what constitutes "valid existing rights" to mine coal in and adjacent to a variety of protected areas under §522(e) of the Surface Mining Control and Reclamation Act of 1977. In §522(e), Congress prohibits surface coal mining in and adjacent to units of the National Park System, among other areas, subject to valid existing rights (VER). However, Congress did not define what constitutes VER, leaving that task to OSM. Since the passage of the Act, the definition of VER has been a highly controversy and litigated

issue. On June 2, 1994, the Director sent a memo to the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) that identified several key issues relevant to park protection that need to be addressed in the EIS to the proposed rule. The Director underscored the importance of adopting a rigorous definition for VER in order to protect park resources from coal mining in and adjacent to units of the National Park System. Several prior rulemaking efforts downplayed the importance of the VER definition in protecting park resources from external coal mining. The Director also urged OSM to address the need for entities to have VER before they are allowed to explore for coal in parks. Branch staff will be working closely with OSM to evaluate impacts of alternative VER definitions in the EIS process. (McCoy, Woods)

BLM Proposed Regulations Expand Exemptions From Mining Claim Fees - On June 30, 1994, the Director signed a memo to BLM on the Bureau's proposed rules pertaining to the payment of maintenance fees on mining claims. Congress recently extended the period for which fees must be paid through September 30, 1998. While the NPS commended BLM for deleting obsolete provisions from its hardrock regulations, the Service questioned the inclusion of exemptions to the payment of fees in the proposed rule beyond those specified by Congress. The inclusion of additional exemptions thwarts the broad application of the maintenance fee requirement. One of the BLM proposed exemptions would make it easier for claimants to maintain claims in units of the National Park System relative to claims located on other public lands, a result that we believe is contrary to good public policy. (McCoy, Covington)

Branch Submits Recommendations for Management Policies Revisions - In late April, the Associate Director for Planning and Development announced that the Service was revising the 1988 NPS Management Policies and solicited recommendations on necessary changes. The intent of the revisions is to integrate the partnership programs into the Policies and to update the Policies with new policy directives. The Branch submitted several recommendations which included: update the existing Mineral Resources section, address abandoned minerals issues and the potential NPS liability should a visitor be injured at an AML site, and provide guidance for NPS extraction of sand and gravel for administrative purposes. The Associate Director plans to publish draft revised policies in the Federal Register by October 1994 for public comment. (Bates)

NPS Nominates Abandoned Mine Sites for Multi-Agency Reclamation Effort - The U.S. Environmental Protection Agency has offered to fund clean up of abandoned mine sites on Department of the Interior (DOI) land during fiscal years 1995 and 1996 as part of its Environmental Technology Initiative. To be eligible for funding, candidate sites must, at a minimum, contain liquid mine waste and be hardrock mine sites preferably in the western United States, excluding Alaska. The combined expertise of the U.S. Bureau of Mines and U.S. Geological Survey (USGS) will be used to find solutions. The Branch prepared brief summaries for the following eight sites and submitted them to the Bureau of Mines coordinator: the El Portal Barite Mine and Mill at Yosemite, the Lakeshore and Katherine Gold Mine and Mill complexes and Copper Mountain Mine at Lake Mead, the Gould Mine at Saguaro, the Snowville Quarry in Cuyahoga, miscellaneous limestone pits in Big Cypress, and the Warm Springs Canyon Talc Pit in Death Valley. If your park contains a good candidate site that we overlooked, please contact Philip Cloues. (Burghardt, Cloues)

Olympic Gold Pans Out for Abandoned Mine Projects through the National Park Foundation - A consortium of mining companies has donated \$20,000 to the National Park Foundation for each gold medal won by the U.S. Team in the 1993 Winter Olympics. The total contribution equals \$120,000. In response to an NPS request and given the funding source, the National Park Foundation

agreed to consider directing the money to remediate mining related problems in parks. Parks are encouraged to submit mining-related reclamation or education proposals to the Foundation. Of the parks that the Branch contacted initially, only Buffalo National River in Arkansas and Prince William Forest Park in Virginia were able to meet the tight June 15 deadline. The next deadline for submitting grant proposals is October 15. Parks should submit their proposals directly to the Foundation. For more information on how to prepare a proposal, contact Bob Higgins. (Burghardt, Higgins)

Bureau of the Mines Releases Guidance on Mine Closure Techniques - As one of the projects under our interagency agreement, the Bureau of Mines recently completed 11 one-page mine closure specifications sheets that will allow parks with ambitious maintenance departments or contract money to more easily choose an acceptable closure design. The closure concepts include: Bat Gates, Adit Backfill, Concrete Block Bulkhead, Native Rock Bulkhead, Riprap Bulkhead, Cable Net Closure, Concrete Bridge Panels Cap, Concrete Shaft Cap, Hollow Core Shaft, Polyurethane Foam (PUF) Shaft Closure, and Shaft/Stope Backfill. Copies may be obtained from Phil Cloues of the Mining and Minerals Branch. (Cloues)

Branch Assists Solicitor Office Evaluate Indian Mineral Claims - In response to a request from the Departmental Solicitor's Office, Branch staff reviewed and commented on two new appraisals prepared in an effort to help resolve an 82-year-old Arkansas Riverbed ownership dispute with the Cherokee, Choctaw, and Chickasaw Nations in Oklahoma. The negotiations have advanced to near a settlement. Oil and gas, coal, sand and gravel, hydroelectric royalties, and surface values are part of the complex equation affecting fair market value. Participation in this effort enhanced our knowledge of estimating fair market values for future NPS acquisitions. (Cloues)

Up Front Attention to Mineral Issues Encouraged in NPS Project Design - The Branch provided input to the Planning and Protection Division in their effort to update *NPS-70, The Design Process Guideline*. Comments centered on addressing minerals issues early in the design process in order to simplify project approval and avoid late stage project delays or cost overruns. Specific issues identified by the Branch as needing consideration included: in-park mineral material extraction for park projects, out-of-park mineral material extraction that may affect park resources, geologic hazards in project design, active or abandoned mineral activities and their effect on park project design, and available assistance and expertise from the Denver-based NPS Offices. (Ziegenbein)

Branch Participates in the 4th Annual Federal Acquired Lands Conference - On June 1, 1994, Branch staff participated in a panel discussion at this annual conference to discuss Federal management of acquired lands which is mainly an eastern states issue. Representatives at the conference included: the Bureau of Land Management, U.S. Forest Service, NPS and representatives from both the oil and gas industry, and the hardrock mining industry. In brief, industry representatives voiced their frustration with Federal land use planning efforts, land acquisition and Federal regulations. The Federal agencies listened to the frustrations and explained their Congressional mandates. They also committed to examining identified opportunities to improve the efficiency and effectiveness of governmental activities. (McCoy)

Presentation at BLM AML Coordinator Meeting Proves Mutually Beneficial - Branch staff presented its findings on the accuracy of existing data sources on abandoned mine lands (AML) at a meeting of BLM state office AML coordinators. Because the Bureau is just beginning the process of compiling an AML inventory of BLM lands, lessons learned by the NPS should prove helpful to the

Bureau. The Branch's findings were based on a study of the accuracy of data sources covering AML in the Death Valley Nevada Triangle area. The study found that topographic quadrangle maps prepared by the U.S. Geological Survey (USGS) depicted 75% of the shafts and adits in the area. This accuracy rate far surpassed the quality of information available through USGS and U.S. Bureau of Mines automated databases and through aerial photography. During the presentation, Branch staff mentioned that it would be advantageous to be able to use the BLM's OV-10 remote sensing aircraft to photograph AML sites in the California Desert Protection Act additions to the National Park System. Dan Sokoloski, BLM Assistant Deputy Director of Mineral Resources (BLM), agreed and said he would follow up on the idea with upper and lower BLM management. How to finance the remote sensing inventory of AML sites has yet to be determined. (Burghardt)

Branch Staff Participate in International Oil and Gas Conference - Branch staff presented a talk entitled, "Reducing the Surface Impact of Oil and Gas Exploration and Development: Soft Footprints on Public Lands," at the American Association of Petroleum Geologists' International Convention in Denver. The presentation drew heavily on examples of environmentally sound operations and techniques utilized in parks and was well received by the industry audience. Another talk relevant to parks dealt with brine contaminated soils, a vexing problem for Big Thicket National Preserve. On an international note, one particularly intriguing talk detailed the desire by former Soviet Union countries to have western style environmental standards utilized in oil and gas development in their own countries. The Branch has copies of abstracts and talks available for interested parties. (Heise)

Mineral Issues Discussed in Planning Beyond Park Boundaries Course - Branch staff presented a session on adjacent mineral development at the NPS *Planning Beyond Park Boundaries* course. The talk included an overview of mineral development adjacent to parks, potential impacts on park resources, and the regulatory framework available to protect park resources. Questions afterward addressed pipelines and off shore dredging operations. Staff strove to convey the magnitude of the issue, cooperative planning and tools available to parks, and assistance available from the Branch. (Heise, Ziegenbein)

Interns Join the Branch Staff - The Branch is pleased to have two interns helping out for the summer and fall. Brian Blaser, a recent graduate of the University of Colorado at Boulder in cartography and GIS, will work on the following two projects: 1) collecting data on active non-Federal mining operations (e.g., sand and gravel) in park units, and 2) identifying abandoned and active mineral operations in the proposed California Desert park areas and mapping these features on a Geographic Information System. The active operations data will be used as background for the development of regulations to cover currently unregulated mining in parks. Barbara Moore, a second-year environmental engineering graduate student at the University of Colorado at Boulder, will design a water treatment system that combines passive chemical and biological treatment techniques to remedy acid mine drainage at Friendship Hill National Historic Site as a master's thesis project. Branch staff is looking forward to working with Brian and Barb in the future! (Smith)

Brette Bates Moves to NPS Legislation and Congressional Affairs Office - Effective July 11, 1994, Brette Bates will join the staff of the Service's Office of Legislation and Congressional Affairs in Washington, D.C. In her new position, she will draw heavily on her legislative experience as a Congressional staff person to advance legislative initiatives to protect the National Park System. Her departure from the Branch will leave a significant gap in our coverage of mineral related policy and regulatory matters in Washington, D.C. The Branch will be filling the position as soon as possible and seeks candidates with a policy/regulatory/legislative background, lots of energy, and initiative.

Anyone interested should contact the Branch. We wish Brette the best and look forward to working with her on pertinent legislative proposals. (McCoy)

MIDWEST REGION

Cuyahoga Valley National Recreation Area Requires Reclamation As Part of Land Donation - Cuyahoga Valley in Ohio is nearing acceptance of the donation of a Haydite Mine. The 31-acre area includes a 300-foot-deep quarry for shale that has operated since 1869. Originally, the shale was turned into bricks. Today, the shale undergoes a process that yields a light weight material used in concrete and water filtration systems. To preclude the use of the mined out quarry pit for a solid-waste landfill, the State of Ohio, working with the town of Independence, will buy the land from the developer then donate it to the NPS. The operator of the mine will continue operations on privately owned adjacent properties in the park. To avoid accepting the mine with outstanding safety and reclamation liabilities, the park is stipulating that several items be included in the deed as restrictions. These include requirements such as: (1) the operator shall complete reclamation on the donated parcels, (2) new mining on adjacent private parcels shall also meet NPS reclamation standards, and (3) the operator shall post a reclamation bond, set at 100 percent of the estimated cost of reclamation for the Haydite Mine currently estimated at \$110,000. So far, because of the settlement price, the operator has agreed to these conditions. The handling of this land donation illustrates the following: (1) creative solutions exist for resolving reclamation problems associated with acquired properties, and (2) performance bonds must be set at 100 percent of the cost to perform all reclamation work if they are to be meaningful. Other park units may use this as a model example of how to obtain property with disturbed lands. (Steensen, Cloues, Kassman)

PACIFIC NORTHWEST REGION

Branch Completes Cape Johnson Mineral Survey at Olympic National Park - Branch staff performed a mineral reconnaissance survey of the 3.25-acre Cape Johnson parcel on the Washington coast in the park. We conducted the survey in response to a request from the Regional Office in support of a land transfer from the Bureau of Land Management. The survey involved a 9-mile round-trip hike along the shore and an examination of the geology of the area. The parcel appears to be non-mineral in character. A mineral report will be prepared for the region as part of the transfer procedure. (Covington)

Hardrock Mine Reclamation Planned at Craters of the Moon National Monument - Branch staff traveled to Craters of the Moon in Idaho to assist park staff plan and design the reclamation of the Martin Mine, a silver and gold mine that operated in the 1920's. The site is located in and around Little Cottonwood Creek, the only perennial stream in the park. The site consists of four waste rock piles, one tailings pile, three depressions that could be subsided mine workings, one boat dock structure, and a myriad of abandoned roads. Within ¼-mile downstream of the site, the stream completely infiltrates into the alluvium. Two groundwater wells in this vicinity serve as the park's water supply. Reclamation at the site, scheduled for September 1994, will entail using heavy machinery to recontour spoil piles, cut roads, relocate topsoil, and landfill waste rock on site. Park staff have demonstrated significant initiative and energy in managing this site. The park has completed a preliminary assessment under the Comprehensive Environmental Response, Compensation, and Liability Act; a draft EA for the reclamation project; and has established an agreement with the adjacent BLM area to share equipment and staff on this project. (Smith, Steensen)

Branch Meets With Park Managers To Discuss a Proposed Mineral Operation In Olympic National Park

- Branch staff met with park resource managers and representative from the Pacific Northwest Region to discuss options and strategies with respect to a proposal to extract privately owned hardrock minerals and oil and gas at the park. The proposal is seriously flawed and the park so notified the purported owners of the mineral estates and their independent contractors ("the applicants"). Since January 1993, the applicants have been seeking to develop all the minerals associated with the subsurface mineral estate located at Shi-Shi beach in the park. The Federal Government owns the surface estate. In April 1994, the applicants submitted a 57-page special use permit to the park for approval. The Branch evaluated the proposed permit and forwarded 19 pages of comments to the park and Region. Basically, the applicants are proposing to conduct any and every conceivable kind of mineral operation of their mineral estate. The Branch's analysis of the proposal raised serious doubt as to the existence of commercially viable deposits of any minerals, including oil and gas, associated with the applicants' mineral estate. The proposal smacks of " . . . little more than a thinly veiled attempt to establish, and grossly inflate, the value of the mineral estate . . . manifested by the inclusion in the application of conjectural mineral "reserve" and mineral "value" data, combined with the absence of a genuine development proposal." Specifically, the Branch concluded that the applicants failed to adequately offer sufficient proof of title to the mineral estate or a signed operating agreement between the purported owners and the independent contractors. The applicants also failed, among other things, to specify discrete plans for each type of operation proposed, to identify access to the site given that the mineral estate is mostly surrounded by NPS designated wilderness, to provide sufficient information to enable the NPS to evaluate the proper bonding amount for the proposed operations, to ensure adequate compliance with the Service's regulations governing non-Federal oil and gas operations in parks, or to provide proof that they have obtained all necessary Federal, state, and local permits. (Moss, Kassman, Shaver, Woods, Cloues, Covington)

ROCKY MOUNTAIN REGION

Task Directives Will Help Guide Minerals Management at Curecanti National Recreation Area and Black Canyon of the Gunnison National Monument

- Branch staff provided minerals related comments on the draft Task Directives for Curecanti and Black Canyon in Colorado. The draft Task Directives will guide revisions to the General Management Plans for each park. Branch comments suggested that the respective draft Task Directives address administrative use of sand and gravel, abandoned mine lands, in park private mineral operations, and interagency coordination to deal with adjacent mineral operations possibly affecting park resources or visitor experience. When each of these items are added to the final Task Directives, park managers will be well suited to deal with minerals issues from their resulting revised General Management Plans. (Moss)

SOUTHEAST REGION

NPS Concludes that Proposed Coal Mine Outside Cumberland Gap National Historic Park Will Adversely Affect Park Resources

- On June 2, 1994, the Southeast Regional Director notified the Office of Surface Mining Reclamation and Enforcement (OSM)'s Knoxville Field Office that the NPS believes that the proposed coal mine adjacent to the park will adversely affect the park and therefore necessitates a "valid existing rights" (VER) determination. Under §522(e)(3) of the Surface Mining Control and Reclamation Act, entities must have VER to mine coal if their proposed operations would adversely impact a publicly owned park or places on the National Register of Historic Sites. Cumberland Gap National Historic Park located in Tennessee, Kentucky and Virginia qualifies as both

types of areas. Based on preliminary review, the NPS believes that the mine, proposed by Appolo Fuels, Inc., will cause water quality and watershed impacts sufficient enough to trigger the §522(e)(3) prohibition. In its memo to OSM, the NPS stated that a VER determination at this time would be fiscally prudent given the impacts associated with the proposed mine. The NPS is reluctant to spend scarce resources reviewing Appolo Fuel's proposed mine plan in detail when a more generalized review indicates that the company will need VER to mine the coal adjacent to the park. While OSM indicated that it is sympathetic to the Service's position, OSM nevertheless believes it must undertake a detail review of the company's proposal before it conclusively determines that VER is triggered. OSM so notified the NPS in writing on June 27, 1994. OSM wants to assure that a conclusion of adverse impact is backed by legally supportable documentation and that it gives Appolo Fuels the chance to mitigate the mine's impacts. OSM encouraged the NPS to supply more detailed information as to its conclusion by July 22. The Branch, in cooperation with the park, is undertaking an in-depth review of the mine plan. (McCoy, Moss)

Big Plans for Big Cypress National Preserve - In March 1993, Calumet Florida, Incorporated bought Exxon's oil operations in Big Cypress in Florida lock, stock, and barrel. At that time NPS anticipated that Calumet would expand operations beyond the 23 active wells operated by Exxon. Calumet recently submitted a Master Plan of Operations that includes proposals to drill 16 new wells over the next three years. Calumet proposes to drill 10 wells consecutively in Raccoon Point and mobilize a second rig to drill 4 wells at Bear Island and 2 wells at Pepper Hammock. The plan also includes proposals for seismic surveys and additional production facilities at the Raccoon Point Field. The Branch found Calumet's plan to be substantially complete for purposes of formal review of existing operations and the proposed drilling program, and that the plan accounted for park resources. However, since Calumet did not demonstrate a legal right to conduct the proposed seismic operations, a formal NPS review of the seismic proposal is not appropriate at this time. In its Master Plan, Calumet proposes to use existing well pads and roads for new wells and production facilities. New drilling would increase noise and traffic in the near term and extend the life of the fields. However, the proposed new wells would not increase the area influenced by oil and gas operations above current level. Calumet's proposal comes on the heels of a proposal for a single exploration well on the Miccosukee Indian Reservation adjacent to Big Cypress. The BLM's draft environmental impact statement on the Miccosukee well received 425 comment letters that were overwhelmingly "nonsupportive" in nature, and over 350 people attended an emotionally charged public hearing on the well. We believe that Calumet's proposal will also stimulate broad public participation. (O'Dell)

PROFESSIONAL DEVELOPMENT

Branch Staff Attend Regulatory Takings Conference - To broaden our understanding of this complex area of the law, Branch staff attended a three day regulatory takings conference at the University of Colorado School of Law in Boulder. Conference speakers included some of the most respected names in this field, including Professor Carol M. Rose, Yale Law School; Professor J. Peter Byrne, Georgetown University Law Center; John Echeverria, National Audubon Society; and I. Michael Heyman, Special Counsel to Interior Secretary Babbitt. Department of the Interior Solicitor John Leshy also gave a presentation at the conference. The speakers covered several medias including wetlands regulation, mining regulation, Endangered Species Act, and water use. Implicitly, the speakers all agreed that most takings challenges ultimately fail. However, when a takings challenge is successful, it gains notoriety and skews the public's perception of the prevalence of governmental takings. The Branch is following up on the information gained at the conference to

assist parks in understanding potential challenges to their regulatory authority over mining and mineral uses. (Kassman, McCoy, Shaver)

Diverse Group Attends the Third International Mining History Conference - Presenters from around the world shared information on mining history and preservation at the above noted conference held in Golden, Colorado during the week of June 5th. The highly successful conference was coordinated by Bob Spude, NPS Rocky Mountain Region historian, and included several presentations by NPS personnel. The NPS presenters and their topic included: Logan Hovis, Alaska Regional Office (ARO) historian, "Historic Mine Sites Survey: Alaska Examples" and "Western Hard Rock Miners and the Debate over Exceptionalism, Technology and the Workplace"; Ann Kain, ARO historian, "Arthur O. Reynolds: Subsistence Miner of the Yukon"; Linda Greene, Death Valley Chief of Cultural Resources, "Theft, Vandalism and Decay: Problems of Onsite Preservation and Interpretation of Mining Artifacts"; Bill Fink, Superintendent of Keweenaw National Historical Park, "Keweenaw National Historical Park: Partnerships for Interpretation and Preservation." Branch staff presented a poster display on historic mining sites located in the National Park System. (Wood, Ziegenbein)

Branch Staff Attend Albright Training Workshop on Natural Resources and the Law -During the week of June 20th, Branch staff participated in an excellent overview course sponsored by the Albright Employee Development Center entitled, "Natural Resource Management Protection and the Law." Park superintendents and resource managers from all over the country came to Fort Mason located in San Francisco to learn about Constitutional Law, the NPS Organic Act, the Clean Water Act, the Clean Air Act, CERCLA, Oil Spill Response and Natural Resource Damage Assessments, the Endangered Species Act, and Mineral Rights. Dave Shaver, Chief of the Mining and Minerals Branch, provided participants with a sound foundation on the basis for and types of mineral rights that exist in parks. The course gave all participants valuable information on the Service's statutory authority and legal tools to protect park resources. Participants firmly believe that courses of this type need to be encouraged and offered more widely to NPS employees. (Kassman, Bates, Shaver)

Branch Staff Attend Regulatory Drafting and Process Course - Staff from the Branch attended a regulatory process course organized by the Regulatory Group, Inc. of Washington, D.C.. The two-day course provided an overview of the regulatory process. Topics included: regulatory negotiation, basic principles of regulatory drafting, administrative law and the rulemaking process. The course emphasized what information needs to go into preambles to proposed and final rules. Attendees included staff from EPA, Department of Transportation, the Federal Aviation Administration, the Internal Revenue Service and the Department of Veterans Affairs. This course proved very helpful in enhancing staff understanding of and skills in the regulatory drafting arena. We hope to put it to good use in advancing the Service's proposed revisions to 36 CFR Part 9, Subpart B through the system in a timely and well-prepared manner. (Bates)