

MINING AND MINERALS BRANCH
Land Resources Division - WASO
Monthly Report - September 1994

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GENERAL

NPS Optimistic that Assistant Secretary Frampton Will Sign Proposed Rulemaking to Amend NPS Regulations Governing Non-Federal Oil and Gas Development in Parks - Assistant Secretary Frampton's staff has reviewed the proposed rulemaking to revise 36 CFR Part 9, Subpart B and does not anticipate any impediments to the package clearing that office. Based on extensive field input, the NPS has sought to revise the regulations to eliminate regulatory provisions that exempt approximately 65% (379) of the 580 non-Federal oil and gas operations in parks from regulatory control and to enhance the effectiveness of the regulations in protecting park resources. Once signed by the Assistant Secretary, the rulemaking will be sent to the Department for final clearance before being published in the Federal Register. The proposed revisions provide for a 60 day public review and comment period. (McCoy)

The Branch Completes Environmental Assessment for Proposed Rule Change - See above for current status of the 9B Regulations Revision Package. The environmental assessment analyzes three alternative actions and their environmental consequences. Under the preferred alternative, the NPS would revise its regulations. The primary revision removes provisions that exempt about 65% of active operation from plan and bonding requirements. Also, proposed language revisions improve an operator's ability to comply with the regulations while enhancing the NPS's ability to administer and enforce the regulations. A no action alternative serves as a baseline for evaluating the other alternatives. The third alternative would require acquisition of outstanding nonfederal oil and gas rights as a method to ensure resource protection. Acquisition of all nonfederal oil and gas rights may require Congressional amendments to some parks' enabling acts. Compared to the preferred alternative, the acquisition alternative is cost prohibitive and would likely experience long time delays due to increased Congressional involvement. Copies of the environmental assessment will be sent to each Region's mineral coordinator and each of the park units where active oil and gas operations occur. Additional copies are available from the Mining and Minerals Branch upon request. We thank the many people in the

Regions and parks who contributed to the environmental assessment.
(O'Dell)

New Judge Assigned to Hear 9B Lawsuit and the Government Prepares Initial Responses to Plaintiffs' Discovery Requests - Private owners of the mineral estate underlying Padre Island National Seashore filed suit against the National Park Service and Padre Island Superintendent alleging, among other things, that the Park Service has no authority to regulate oil and gas operations on federal surface estate. At the beginning of the August 29, 1994 pretrial conference, Judge Hayden Head removed himself from the case citing a conflict of interest with Plaintiffs. The case was reassigned to a relatively new judge, Janis Graham Jack. No date for a new pretrial conference has been set. Meanwhile, branch and park staff prepared responses to Plaintiffs lengthy Requests for Admissions. Plaintiffs also filed Requests for Production of Documents. DOJ Attorneys are busy examining the park's and region's files, index those files, and edit those files to separate the files Plaintiffs are and are not entitled to view. Sometime in early November, all members of the litigation team will meet in Denver for a strategy session to prepare for the months ahead. (Kassman, McCoy, Woods, Boucher, Heise, O'Dell)

1872 Mining Law Reform Dies With the Close of the 103rd Congress - Senate and House Conferees were unsuccessful in their effort to reform the archaic Federal statute governing hardrock mining on the public lands. Talks stalled as the dramatic differences between the House and Senate passed bills could not be worked out in the waning hours of the 103rd Congress. The current law allows private entities to "patent" their claims which essentially allows them to gain fee title ownership of Federal land for a nominal fee and places few controls on actual mining operations. The House passed bill called for the elimination of the patenting process and environmental safeguards. Neither bill provided adequate funding to address the abandoned hardrock mine clean-up problems. The lack of reform has been met with mixed emotions. Industry advocates, including a number of members of Congress, were emboldened with their ability to block substantive reform. Environmentalists, while dismayed by the lack of reform, were at least heartened that a greatly weakened bill did not pass, thereby leaving open the ability to pursue reform efforts with the 104th Congress. Unfortunately, current polls indicate that the makeup of that Congress will likely be much more conservative and less likely to enact reform legislation. (McCoy)

12th Mineral Examiners Certification Panel Meeting Held in Reno - The 12th Meeting of the Bureau of Land Management (BLM) Mineral Examiners' Certification Panel was held at the Nevada State Office (NSO) in Reno, Nevada on September 7 and 8, 1994. All of the Panel members were present. Also in attendance were Roger Haskins and Paul Politzer from the BLM Washington Office (WO) and (briefly) Tom Leschendorf, Deputy State Director for Minerals in the NSO. Four applications were received for Certified Mineral Examiner (CME) and all were approved. Two applications were received for Certified

Review Mineral Examiner (CRME). One was rejected and the other was delayed until the panel receives verification of a third mineral report. A major issue facing the Panel was the BLM WO review of patent reports. All validity exams and reports recommending the patenting of mining claims are reviewed by the WO after technical review and approval by the CRME. This policy/procedure is not well received by the review mineral examiners, they view it as unnecessary "looking over the shoulder." Two original members of the panel resigned: Terry Maley, BLM Idaho State Office and Jim Evans, BLM California State Office. They will be missed, both have considerable years of experience as mineral examiners and Terry Maley's presence on the panel lent it a sense of prestige. Of interest to the Park Service is the revision to the Field Handbook for Mineral Examiners (H-3890-1) begun in this office, and our attempts to obtain updated claims information from the Alaska State Office. (Covington)

16th Annual AML Conference Big Success - This year's national conference was held in Park City, Utah from September 19-21, 1994 and was attended by over 400 state, federal, university, and private company representatives involved in the active participation of remediation of abandoned mine sites throughout the nation. The technical sessions covered bat habitat and its significance in reducing the use of pesticides, closure methodology, administration of programs, funding, acid mine drainage treatments, and a host of other worthwhile topics. Valuable contacts for future projects in the parks were made and will enhance our program through technical assistance and shared funding. The Office of Surface Mining Director Bob Uram presented the national awards for top abandoned mineral land (AML) projects which included the Rush Run Coal Mine project at New River Gorge National River. Foam Concepts, Inc. exhibited their new polyurethane foam packs and discussed its use at Glacier Bay National Park. The Branch's poster session developed by Jim Wood highlighted significant historic sites and structures, and was one of the outstanding displays presented during the conference. The National Park Service continues to play a leadership role in the Department's AML program. Bob Higgins participated on a multidisciplinary panel that discussed the status of 1872 Mining Law reform and its prospects for the future. (Cloues/Higgins)

Fall 1994 Colorado Earth and Space Education Network Meeting - The Branch represented the NPS at this meeting sponsored by the U.S. Geological Survey on September 23, 1994. Attendance numbered over 50 people connected with education in the area of earth science and space. The goals of the meeting included networking with other science educators and Washington, D.C. coordinators, learning about the latest earth and science resources, examining the Colorado science content standards for Kindergarten through 12th grade, and several field visits to resource facilities on the Denver Federal Center. The NPS Abandoned Mineral Land Brochure was distributed to interested teachers and curriculum planners. The emphasis on education initiatives involving the NPS as a resource for educators is taking on new momentum which can only benefit the leadership

role of the NPS as a national institution of progressive environmental activism in minerals management and earth science. The branch's continued involvement will be limited to available personnel and funding. (Cloues)

Colorado Mineral Information Center Hosts National Meeting in Golden - The Branch represented the NPS at the planning table at the Colorado School of Mines on September 16, 1994 along with the Bureau of Mines, U.S. Geological Survey, Forest Service, Bureau of Land Management, Fish and Wildlife Service, Environmental Protection Agency, academia, environmental representatives, and industry representatives to discuss the future of mining and environmental mitigation. The one day session focused on the continuing role of the Bureau of Mines but highlighted changes in the 1872 Mining Law and future expectations of the Bureau. The discussions were candid, energized, democratic, lively, bold, and optimistic. The NPS presence was another opportunity to participate actively in the molding of the Bureau into a more environmentally based role of balancing mining with alternative land uses. Agendas appeared to be open to constructive change. Future involvement will depend on ongoing workload and priorities. (Cloues)

Successful Demonstration of Backpackable Foam for Adit and Shaft Closure - A report is available that documents the recent success of the cooperative effort to use a new product that allows the backpacking of foam kits to remote abandoned mine shafts and adits requiring closure for health and safety purposes. The kits require no heavy equipment at the site and offer additional advantages discussed in the report. When properly designed and installed, the product provides a long term, and cost effective mitigation tool for sites accessible to hikers but restricted from access to heavy equipment because of vegetation, steep slopes, streams, or legal constraints. The product was also successfully used in Glacier Bay National Park to close several abandoned mine openings. A donated demonstration by Foam Concepts, Inc. will take place in Lake Mead National Recreation Area in November of this year. Copies of the report may be obtained from the branch. (Cloues)

A Comparison Study of Polyurethane Foam Plug Closure Methods is Available - A study has been completed summarizing the branch's experience with four different polyurethane foam (PUF) products for plug construction in the closure of abandoned mine openings. Comparative costs, portability to remote or sensitive sites with access restrictions, and ease of application are analyzed. The 6-page, fully-illustrated report will help park staffs understand PUF applications, and will be helpful for planning in-house mitigation of hazardous abandoned mine openings. Interested parties should contact the branch for a copy of the report. (Burghardt)

Video Requests Roll In - Last month, the Branch announced the creation of a minerals video library. The response from the field has been encouraging. Because of a number of requests for certain videos, we have created a waiting list. If you plan on requesting

a video and need it for a specific date, please be sure to request it well in advance of the proposed viewing date. (Geniac)

External Planning Data and Maps Sent to Regions - Much of the mineral planning by the U.S. Forest Service and the Bureau of Land Management is done in their broad scope planning process: the creation or revision of Forest Plans and Resource Management Plans, respectively. Last year, the Branch began annually tracking the status of these plans. Tracking allows the Branch to alert parks of the opportunity to work with adjacent land managing agencies in the early stages of minerals planning. Such cooperation helps to eliminate or mitigate mineral development that could impact park resources. The data sheets list the plan type, contacts, and parks within ten miles of the planning area. The maps highlight the planning areas and show the extensive amount of planning in progress. The Branch offered assistance to any parks needing help with the identification of specific adjacent minerals development issues and impact mitigation alternatives for presentation to the adjacent land manager. Following existing protocol, Branch staff sent the data and maps to the affected regions. Regions were asked to forward the information to parks. Next year's mailing will be changed to reflect updated data and the reorganization of the Service, if the reorganization is approved by congress. (Geniac)

State Permits for Stormwater Discharge at Abandoned Mines, May Become a Reality in 1995 - The Environmental Protection Agency (EPA) is urging states and the Department of the Interior (DOI) to come to grips, and design and begin issuing general permits for the discharge of pollutants from stormwater runoff at abandoned mines. EPA has had its "strawman" draft general permit out for review for over a year. Montana has recently completed a draft permit of its own that is quite different than EPA's. Colorado plans to begin working on their permit this Fall. The Park Service is part of an interdepartmental task force that is putting together a draft general permit. Key points to the interdepartmental general permit are: (1) it will require a statewide permit from each federal agency, (2) it will take a watershed approach centering around "stakeholders" in the watershed, and (3) it establishes a statewide watershed management advisory board and individual watershed management groups. There is considerable activity to come up with a suitable general permit. This permit will be very important to the NPS because it may require the agency to request a statewide permit for inactive mine sites, oil and gas operations and landfills. The permit will require data gathering to determine if waters are being impaired and to what extent. Then plans must be developed and mitigation measures implemented within a ten-year timeframe. There is every reason to believe it will take substantial resources to comply with these "stormwater" discharge permits. The Park Service has over 3,400 active and abandoned mines and over 1,300 active and abandoned oil and gas wells not including the 3 million acres recently added to the system through the California Desert Parks Act. We will keep you informed as the situation develops and hopefully becomes more clear in 1995. (Higgins)

MIDWEST REGION

Historic Mining Investigated at Keweenaw - At the request of Superintendent William Fink, the Mining and Minerals Branch participated in an orientation visit to the new park to become familiar with the park's unique resources. Established in 1992, the park commemorates the heritage of native copper mining on the Keweenaw Peninsula in northern Michigan, which attracted the attention of early explorers in the mid-1660s. The General Management Plan is currently under development and will have key public input through the Keweenaw National Historical Park Advisory Commission. The units have been designed from inception to contain private property which will remain private. The field trip included meetings with private historic associations, and academicians from Michigan Technological University which houses the incredible Seaman Mineralogical Museum with its more than 65,000 specimens, of which 20,000 are on display as one of the park's cooperating units. Tours included the Village of Calumet, the Quincy Mine Hoist, Quincy Shaft Rock House, Quincy underground mine tour, Quincy Smelter site, and towns of Houghton and Hancock. Lands pending donation to the park were also inspected. The economic mainstay of mining has given way as the copper was depleted through mining, and the area is incorporating a unified shift to regional tourism as one of the current and future contributors to the economy and health of the area. The NPS promises to be a key component in the area's future. The level of enthusiasm witnessed throughout the communities exemplified the cooperation and leadership of the new superintendent and local leaders in a spirit of total dedication of preserving the proud mining heritage of the area. (Cloues/Wood)

PACIFIC NORTHWEST REGION

Branch Breaks Ground - Real Ground - at Craters of the Moon - In cooperation with Craters of the Moon National Park, Idaho, Branch staff designed and directed the complete restoration of the abandoned Martin Mine. The Martin Mine, a gold and silver operation, was active during the 1920s. The property remained as an inholding until 1967 when the park's Natural History Association purchased the land and the mining claim was relinquished. In the early 1980s, four shafts were permanently closed and the mine buildings removed. The park received funding from the Pacific Northwest Region to restore the remaining disturbances: four waste-rock dumps and several associated mine roads. The waste-rock dumps were of concern from two main perspectives: (1) there was no revegetation over the past 70-year period, caused by adverse textural and chemical conditions, and (2) they were contributing elevated concentrations of contaminants (e.g., arsenic, cadmium, zinc, lead) to a nearby stream. Branch staff conducted a site assessment in June 1994 to evaluate the potential for transport of detrimental materials to the stream and to perform volumetric surveys in order to design treatments, determine heavy equipment needs, and estimate costs. Actual work was performed by an hourly

equipment rental contract and through a cooperative agreement with the Bureau of Land Management.

This project highlights the relationship between and the respective roles of the Branch and the parks. For the Martin Mine reclamation project, the Branch provided:

- technical assistance in geomorphic evaluations, tailings sampling, surveying for reclamation design, interpretation of sample results, reclamation design, preparation of contract specifications, and equipment hour estimates,
- on-site supervision of actual work, including minor modifications in reclamation design (to adapt to unseen conditions below the surface). With our on-site participation in the project, we effectively supervised the project to maximize cost-effectiveness and were flexible to adapt to site conditions.

The park, principally Vicki Snitzler-Neeck (Chief, Resource Management), adeptly accomplished equally valuable tasks:

- the park initiated the project. They wrote a work statement for the RMP, solicited funding from the PNRO, and coordinated the entire process of the project, including: (1) a Water Resources Division evaluation, (2) a water quality study through Boise State University, (3) the reclamation design phase and specifications with the Branch, (4) wrote the agreement to use the BLM dozer, (5) obtained names of contractors from the local office of the Soil Conservation Service, (6) worked with PNRO contracting with details other than work specifications, and (7) designed the revegetation treatment and purchased seed and straw mulch, and
- performed consultations, acquired permits, and completed necessary compliance.

If you are interested in further details about this project, or would like to receive a copy of the yet-to-be-produced video tape, contact the Branch at (303) 969-2092. You may also contact Vicki Snitzler-Neeck at Craters of the Moon at (208) 527-3257. (Steensen, Smith)

Branch Helps Lake Chelan Develop a Minerals Management Plan - Branch staff attended field meetings and site visits in the Stehekin Valley to kickoff the development of the park's "Sand Rock and Gravel Plan." The enabling legislation specifically provided for NPS disposal of sand, rock and gravel to the residents of the Stehekin Valley. However, the sale and disposal of material cannot have significant adverse effects on the administration of the recreation area. The Sand, Rock and Gravel Plan is a required element of the Lake Chelan National Recreation Area General Management Plan (GMP). The NPS must prepare the GMP due to a consent decree between the North Cascades Conservation Council and

the Secretary of Interior. The Sand, Rock and Gravel Plan will address NPS and private mining methods, pit design, concurrent reclamation techniques, material sale permitting procedures, the criteria for application review, appropriate uses of the material, mitigation measures, fair market price of the material, control of exotic species, and reclamation of abandoned pits. An interdisciplinary and interoffice team has been assembled to develop the plan. The team consists of the following specialists: a geologist, a CAD specialist, a resource specialist, plus operations and maintenance specialists from the park; a project manager/biologist from Denver Service Center's Western Team; and a mining geologist/reclamation specialist from the Mining and Minerals Branch. The NPS must complete the plan by August 1995 to meet the court-imposed deadline. (Ziegenbein)

ROCKY MOUNTAIN REGION

Boundary Lands Restoration Project Underway at Yellowstone - The Boundary Lands Area of Yellowstone National Park, Montana is the setting of a major project to restore natural ecological processes to nearly 4,000 acres. Yellowstone acquired the Boundary Lands between 1928 and 1932 to provide winter range habitat for herds of park ungulates. Unlike most of Yellowstone, this area was previously homesteaded and, as a result, includes a mosaic of development and altered landforms. Yellowstone received a NRPP grant for FY94 through FY96 to accomplish this work. At this time, revegetation research is underway and soil surveys are completed. To advance the project, the park requested assistance with the physical restoration requirements. Branch staff conducted a site analysis that included: (1) evaluating the relations between the human-caused disturbances and the natural geomorphic conditions, and (2) performing volumetric surveys to design treatments, determine heavy equipment feasibility and needs, and to estimate costs. Preliminary findings show that the complete physical restoration phase will require \$225,000 for heavy equipment work, using a third-party contractor. The park's project team, however, creatively suggested that they probably could cut this cost dramatically by using the Montana National Guard and allowing the Federal Highway Administration to use the sand and gravel in the railroad grade for road reconstruction projects elsewhere in the park. (Steensen)

Even With R.S. 2477 Rights-of-Way, Entities Still Need an NPS Permit - Branch staff commented on the first chapter of the Draft Environmental Impact Statement (EIS) for the proposed Warm Springs coal mine adjacent to Glen Canyon NRA (GLCA). The glaring omission in the draft EIS was the document's failure to list NPS permitting authority for commercial vehicle use of the Warm Creek road crossing a portion of the park. Andalex Inc., proposes to use approximately 11 miles of the Warm Creek road through Glen Canyon to access an adjacent federal coal lease. Kane County, Utah, has also asserted a right-of-way for the Warm Creek road under R.S. 2477, a Federal revised statute passed in 1866 that allowed entities to established rights-of-way across available public lands

so long as there had been construction of a public highway. Congress abolished R.S. 2477 with the passage of the Federal Land Policy and Management Act in 1976. The county's assertion that it qualifies for such a right-of-way is still unproven. The branch offered three scenarios in the comment memorandum to inform Andalex of the commercial vehicle use complexities: 1) should Kane County's R.S. 2477 assertion prove invalid for the entire portion of the Warm Creek road in GLCA, the NPS is precluded from considering issuance of a Special Use Permit (SUP) for commercial vehicle access across park lands (36 CFR §5.6(c)); 2) in the event the entire length of the Warm Creek Road in GLCA is determined a valid R.S. 2477 right-of-way, the NPS maintains clear authority to consider issuing a SUP for commercial vehicle use of the road. The advance notice of proposed rulemaking regarding the development of regulations to govern the use of R.S. 2477 rights-of-way states "[t]he courts have explicitly recognized the authority of the Department to regulate such rights-of-way" [59 FR 39228 (August 1, 1994)]; and, 3) major road "improvements" suggested by Andalex are outside the scope of allowable activities on an R.S. 2477 right-of-way. The Department does not interpret the R.S. 2477 savings provision to authorize improvements that expand the scope of the right-of-way as it existed on the latest available date" [59 FR 39220 (August 1, 1994)] (emphasis added). We are anxious to receive a response from the lead EIS agencies (Bureau of Land Management and Office of Surface Mining) since R.S. 2477 is a hot issue throughout the Service at this time. (Moss, McCoy)

Active Mining Concerns Raised in Virginia City Special Resource Study - Virginia City, an 1860s-vintage mining town and National Historic Landmark in Montana, is the subject of a special resource study just released by the Denver Service Center and Rocky Mountain Region. Certain buildings in the town are being considered for acquisition, and the landmark or some portion thereof is the region's top priority for establishment of a new park unit. The study suggests alternatives for Congress to consider in establishing a National Historic Site. While participating in a Level I Contaminant Survey on the site, branch staff became aware of two active and numerous potentially active mining properties associated with an estimated 30 patented and 100 unpatented mining claims within the proposed park boundary. Branch staff prepared segments of the study on the potential consequences of including or excluding mining properties within a park boundary. As a result of MMB input, the study now suggests as additional alternative with, a smaller National Historic Site boundary excluding mining properties, surrounded by a protected buffer zone in which the NPS would ultimately have condemnation authority in the event that new mining would threaten the historic fabric of the unit. (Burghardt)

PROFESSIONAL DEVELOPMENT

Branch Staff Attend Second Annual Lands Conference at the University of Colorado School of Law -The conference focused on the question of who governs the public lands?--Washington, the West or the Community? It did so by assembling a broad array of speakers

to address particular resource issues governing wilderness designation, grazing, water rights and the endangered species conflicts in national forests of the Pacific Northwest. While the conference raised more rhetorical questions than it answered, it did underscore the need for Federal policy makers to engage local interests in resource management decisions in order to increase local acceptance of decisions aimed at carrying out national objectives. (McCoy, Kassman)

Branch Staff Attend Discussion of Recent Case on Takings - The Natural Resources Law Center of the University of Colorado School of Law sponsored a noon hour discussion of Dolan v. City of Tigard, a recent U.S. Supreme Court takings case involving a controversy in the State of Oregon. The case arose when a store owner challenged the City of Tigard's conditioning its approval of a permit to expand the store on the dedication of a portion of the land for a public greenway and a bike path to relieve traffic congestion. The Court found that although the city's conditions did relate to legitimate public purposes, the city had failed to demonstrate that the public exactions were **proportional** to the likely public harm generated by the store owner's proposed expansion and paved parking lot. In the discussion, differing views on the significance of the case were presented by a local government attorney and an attorney representing development interests. The latter attorney identified the following practical implications of the case: 1) the time and money devoted to the development process will likely increase as we see developers and government planners preparing more detailed analyses on projects, 2) litigation will likely increase over the sufficiency of data supporting governmental decisions, 3) local governments will likely increasingly rely on impact fees to counter the incremental costs associated with the provision of city services to new development, 4) we will likely see increased reliance on legislative action to put into effect measures previously the domain of administrative agencies, 5) governmental entities will likely increasingly use their condemnation authority, and 6) more development proposals needing permits will likely be denied those permits. In the case of Dolan, while the store owner was successful in her takings challenge to the city's exactions, she still lacks the needed permits to expand her facility. (McCoy, Geniac, Heise)