



*U.S. Department of the Interior
National Park Service
Natural Resource Information Division*



Fact Sheet

Mineral Development in National Park System Units

February 1997

97-12

The U.S. Congress charged the National Park Service with the responsibility of preserving and protecting the natural and cultural resources of the 374 units of the National Park System¹ for current and future generations (National Park Service Organic Act; 16 U.S.C. §1 et seq.). In carrying out this mandate, the National Park Service must contend with the development of existing private mineral rights that predate the units and new mineral rights in the few units where federal mineral leasing is permissible.

Based on available data, individuals have rights to minerals in more than 200 units of the National Park System. Many rights will never be developed because of geologic and economic factors. Mineral development currently exists in approximately 30 units. It includes oil and gas wells, pipelines, open-pit mining, gold dredging in streambeds, and mineral exploration. All pose a variety of threats to park resources and values. Threats include degradation of water quality and quantity, disturbance of land, erosion, adverse effects on endangered species, air

pollution, visual intrusion, noise pollution, and soil contamination.

The National Park Service can protect the resources under its stewardship by a variety of means that range from regulation to land acquisition. The means depend on the type of mineral right, the proposed operation, and the language of the legislation that established a unit.

Types of Mineral Rights in National Park System Units

The three types of private mineral rights in park units are mining claims, nonfederally owned minerals, and federal mineral leases. Each is a legally recognized and constitutionally protected property interest. Nonetheless, under the U. S. Constitution and park statutes, the National Park Service may place limits on the development of such property interests. If the National Park Service seeks to acquire the interests, it must adhere to the process requirements of the U.S. Constitution and provide just compensation to the owners.

Mining Claims

Mining claims are in either of two broad categories: unpatented mineral claims and patented mineral claims. Under the Mining Law of 1872 (30 U.S.C. §21 et seq.), an unpatented claim gives a

claimant a property right interest to the minerals in the claim and the right to use as much of the surface and its resources as necessary to extract the minerals. The Mining Law of 1872 also establishes a process by which a claimant may bring a claim to patent. When patented, actual ownership of the minerals and usually the surface resources pass from the United States to the claimant. Although all units are closed to the location of new claims, approximately 5000 mining claims exist in 21 units today. The majority of the claims is located in Mojave National Preserve in California.

Nonfederally Owned Minerals

Between 1961 and 1980, the National Park System underwent rapid expansion. Many of the units created during this period were carved from lands that were a mixture of federal and private real estate. As a result, park resource managers now must carry out the park protection mandate in the face of existing and potential nonconforming uses of the private property rights.

Although private mineral rights exist in more than 200 units, the development of the rights depends on a variety of factors such as the concentration and extent of mineral deposit, depth and thickness of deposit, availability of transportation, proximity to markets, price, labor cost, and environmental mitigation

¹National parks and other entities of the National Park Service such as national monuments, national rivers, wild and scenic riverways, national scenic trails, and others are called *units* and collectively constitute the *National Park System*.

requirements. Currently, nonfederal operations are conducted in approximately 27 park units: 580 oil and gas wells or pipelines in 13 parks, 1 coal-mining operation on the New River Gorge National River, and 31 solid mineral operations in 16 parks.

Federal Mineral Leases

Nearly 50 years after establishing the mining claim method of transferring federally owned minerals to private hands, the Congress created another method for disposing of certain federally owned minerals that returns substantially greater revenues to the federal



government. This method, known as the *Federal Mineral Leasing System*, is governed by several statutes. Under the leasing system, a citizen obtains a lease that constitutes a right to develop certain federal minerals in exchange for paying the United States a royalty which is a percentage of the value of the extracted minerals. The United States through the U. S. Bureau of Land Management decides which lands and minerals will be leased. Under this system, the United States retains ownership of the lands and the minerals. The party that leases the minerals receives title to the minerals only after they are extracted. Leases expire after a fixed term of years (5, 10, or 20 years), unless the terms are extended by continuous mineral production.

Approximately five units are encumbered by federal mineral leases. These leases exist because the Congress specifically authorized leasing of federal minerals in

the acts that established three national recreation areas--Glen Canyon National Recreation Area in Arizona, Lake Mead National Recreation Area in Nevada and Arizona, and Whiskeytown National Recreation Area in California--and because lands were added to the National Park System already encumbered by federal leases. Examples of such units are Aztec Ruins National Monument in New Mexico and Capitol Reef National Park in Utah. Such leases, like a valid mining claim, are legally recognized and protected property interests. Since the early 1980s, companies and individuals have expressed little interest in new federal mineral leases in units.

Laws and Regulations that Govern Mineral Development in National Park System Units

Mining Claims

The Mining in the Parks Act of 1976 (16 U.S.C. §1901 et seq.) directed the Secretary of the Interior to regulate all operations in the exercise of mineral rights to patented and unpatented mining claims in units. The National Park Service promulgated regulations under this act and codified the regulations at 36 Code of Federal Regulations Part 9, Subpart A. The regulations are designed to permit claimants to exercise their rights while preserving the integrity of the National Park System units. The primary



method by which the National Park Service implements the regulations is to require prospective operators in units to

submit and obtain National Park Service approval of plans of operations for all proposed mineral development on patented and unpatented mining claims. The National Park Service also requires operators to post a bond to ensure that mining operations conform to the plan and that reclamation will be completed if an operator fails to carry out the plan's requirements. Oftentimes because of the need to further mitigate impacts, the National Park Service approves submitted plans on the condition that the operators agree to adhere to additional resource protection stipulations.

If, because of the presence of sensitive environmental resources, no level of mineral development would be acceptable, the National Park Service can extinguish the property interest in a mining claim by acquisition.

Nonfederally Owned Minerals

In the National Park Service Organic Act and the acts that established individual units, the Congress authorized the Secretary of the Interior to develop regulations for managing and protecting units. In addition, the Congress specifically authorized the secretary to promulgate regulations for controlling the development of nonfederal oil and gas in units such as Big Thicket National Preserve, Big Cypress National Preserve, Padre Island National Seashore, and Jean Lafitte National Historical Park.

Based on these authorities, the National Park Service promulgated regulations at 36 CFR Part 9, Subpart B, governing the exercise of nonfederal oil and gas rights in all units. The regulations for nonfederal oil and gas, as those for mining claims, require prospective operators to obtain National Park Service approval of their plans of operations and to secure reclamation bonds before they

commence operations in a unit. Because of regulatory exemptions, about 70% of the 580 nonfederal oil and gas operations in 13 units are outside the scope of the 36 CFR 9B regulations, that is, their operators do not have to obtain approval from the National Park Service to operate. The National Park Service is pursuing the elimination of the exemptions. Because the National Park Service has not yet promulgated regulations controlling the development of nonfederal minerals other than oil and gas, it uses special use permits under its general regulations at 36 CFR Parts 1 to 5 to protect park resources.



Federal Mineral Leases

In the three National Park System units open to federal mineral leasing and development (Glen Canyon, Lake Mead, and Whiskeytown national recreation areas) because of their enabling statutes, leasing may be permitted only if the National Park Service determines that the subsequent development will not have a significant adverse effect on the resources or the administration of the units. The appropriate regional director must make this determination before the U.S. Bureau of Land Management can issue a lease or site-specific permit. Where leases predate the establishment of a unit, the National Park Service works with the bureau to ensure the protection of park resources.

Assistance for Park Resource Managers with the Protection of National Park System Units

The Geologic Resources Division in the Natural Resources Program Center of the National Park Service assists resource

managers with meeting the many challenges posed by mineral development inside units. The assistance ranges from mitigation of adverse effects to regulatory interpretation and application. The division's staff consists of geologists, mining and petroleum engineers, minerals specialists, policy and regulatory analysts, and natural resource specialists.

For further information contact:

Carol McCoy, Chief
Policy and Regulations Branch
Geologic Resources Division
National Park Service
P.O.Box 25287
Denver, Colorado 80225-0287
e-mail:carol_mccoy@nps.gov