



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



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For Meeting Date: March 13, 2008

Agenda Item No. 3: Receipt of Public Comments on 1872 Mining Law Reform.

INTRODUCTION: The General Mining Law of 1872 was signed into law by President Ulysses S. Grant, to promote the development and settlement of publicly-owned lands in the western United States. The General Mining Law of 1872 is a United States federal law that authorizes and governs prospecting and mining for economic minerals, such as gold and silver, on federal public lands. This law, approved on May 10th, 1872, codified the informal system of acquiring and protecting mining claims on public land, formed by prospectors in California and Nevada from the late 1840s through the 1860s, such as during the California Gold Rush. The Mining Law of 1872, as amended, has five elements: 1) discovery of a valuable mineral deposit, 2) location of mining claims and sites, 3) recordation of mining claims and sites, 4) maintenance (annual work/surface management) of mining claims and sites, and 5) mineral patents. The activities associated with the first two elements are carried out by the claimant. The Mining Law Administration program which is managed by the Bureau of Land Management (BLM) through its Mining Law Administration program involves primarily the last three elements: recordation, maintenance (annual work/surface management), and mineral patents. Surface management on National Forest System lands is administered by the Forest Service, Department of Agriculture.

There are three basic types of federal minerals on federal lands: locatable, leasable, and salable. These minerals have been defined by federal laws, regulations, and legal decisions. Under the Mining Law of 1872, all citizens of the United States of America 18 years or older have the right to locate a lode (hard rock) or placer (gravel) mining claim on federal lands open to mineral entry. These claims may be located once a discovery of a locatable mineral is made. Locatable minerals include but are not limited to platinum, gold, silver, copper, lead, zinc, uranium and tungsten. Leasable minerals include borax, soda ash, potash, sodium sulfate, and salt, which are derived mostly from Searles Valley Minerals' (SVM) Trona, Westend and Argus facilities at Searles Lake in Inyo and San Bernardino Counties. Sand, gravel or construction grade aggregate are examples of non-locatable minerals not subject to claims under the provision of the General Mining Law, and referred to as salable minerals.

There have previously been several attempts to reform the mining law. The latest attempt was on November 1, 2007, when the House of Representatives passed, by a vote of 244 – 166, the Hardrock Mining and Reclamation Act of 2007 (H.R. 2262). This bill was received by the 110th Congress, 1st Session on November 5, 2007, and moved to the Senate where it



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remains today. Early indicators suggest that it is not likely to advance from the Senate to the President.

The State Mining and Geology Board (SMGB) during its regular business meeting held on February 14, 2008, received comments from several individuals regarding concerns over mining reform on federal land. The SMGB after hearing these comments directed its Executive Officer to schedule a public hearing to receive comments pertaining to mining reform on federal lands in California.

STATUTORY RESPONSIBILITY: Pursuant to Division 1, Chapter 2, Article 2, Public Resources Code Section 672, *“The board shall represent the state’s interest in the development, utilization, and conservation of the mineral resources of the state and the reclamation of mined lands, as provided by law, and federal matters pertaining to mining, and shall determine, establish, and maintain an adequate surface mining and reclamation policy...”*

BACKGROUND INFORMATION: In California, federally managed lands comprise 45% of the State’s total land area. California’s Surface Mining and Reclamation Act of 1975 (SMARA) has a dual role, and provides for both mineral resource conservation and mined land reclamation. The SMGB (Resolution No. 81-5), and the United States Supreme Court (Granite Rock Company v. California Coastal Commission), have previously determined that SMARA applies to all lands in California, regardless of ownership.

In 2006, California ranked third among the states in non-fuel mineral production, accounting for approximately 7 percent of the United States total. There are approximately 800 active mines in the state. Construction sand and gravel was California's leading industrial mineral with a total value of \$1.5 billion produced for the year. In non-fuels mineral production, California ranks second behind Arizona, accounting for approximately 7 percent of the United State’s total. California ranks first in the production of sand and gravel, second behind Texas in the production of Portland cement, and second behind Florida for masonry cement. Metals produced were gold, silver and iron, with California ranking eighth among the states in gold production. California also produces about 25% of the world’s boron.

The major federal law governing locatable minerals is the Mining Law of 1872 (May 10, 1872), as amended (30 U.S.C. 22-54). This law provides citizens of the United States the opportunity to explore for, discover, and purchase certain valuable mineral deposits on those Federal lands that remain open for that purpose. These minerals include metallic minerals and certain nonmetallic minerals. The law also sets general standards and guidelines for claiming the possessory rights to valuable minerals discovered during exploration. Other provisions provide for the enactment of State laws that are consistent with Federal law.



Therefore, most States have enacted laws that prescribe the manner of locating and recording mining claims, tunnel sites, and mill sites on federal lands within their boundaries.

Topics and Issues: Several topics and issues have been raised in the recent version of H.R. 2262, and by various stakeholders. These topics and issues include, but are not limited to, limitation of patents on mining claims, royalties and fees, hardrock mining claim maintenance fees, mining permits, number of claims filed on federal lands, abandoned mines, among others.

Limitation of patents on mining claims: The 1872 Mining Law allows any citizen who stakes a legitimate mining claim on public lands to obtain property rights in both minerals and the surface within the boundaries of the mining claims. This incentive was created to encourage post Civil War citizens to venture westward to populate and reap the rewards of the vast and untapped natural resources of a developing United States. A patented claim is one for which the federal government has passed its title to the claimant, making it private land. A mineral patent gives the owner exclusive title to locatable minerals. It also gives the owner title to the surface and other resources. A mining claim is the right to explore for and extract minerals from a tract of land. The mining law of 1866 gave discoverers rights to stake mining claims to extract gold, silver, cinnabar (the principle ore of mercury), and copper. When Congress passed the General Mining Act of 1872, the wording was changed to “or other valuable deposits,” giving greater scope to the law.

Once a claim is made by an individual or company, the federal government does not surrender all rights. There is property rights vested to the claim holder; however, the federal government (both BLM and the Forest Service) still has the right and responsibility to regulate the activities of the claim holder. This provision would end the federal government’s practice of allowing individuals to patent a mining claim, which has gone basically unchanged since 1872, and allow more flexibility for the federal government to regulate these mine operators. Since 1994 there has been a congressionally-mandated moratorium on patenting.

H. R. 2262 would have prohibited the issuance of a patent by the United States for any mining claim located under the general mining laws, or under certain circumstances a millsite, unless a determination is made by the Secretary that 1) a patent application was filed with the Secretary on or before September 30, 1994, and 2) all requirements of the Revised Statutes for placer claims were fully complied with by that date.

The SMGB may hear testimony about the on-going need for a patenting process. Similarly, the SMGB may wish to inquire of those offering comments about their perspective on the need for patenting. Public lands advocates have generally opposed patenting as a method



for bringing public land into private ownership “on the cheap.” Mining advocates frequently cite patenting as an important means of helping ensure that mining can occur, given the speculative nature about the commodities mined, the other significant start-up costs, and the risk of a deposit not proving economic.

Royalties and Fees: The Mining Law of 1872 does not require any royalties or fees for the extraction of minerals.

California’s SMARA recognizes that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society. SMARA specifically states that the production and conservation of minerals are to be encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment. SMARA also requires that residual hazards to the public health and safety be eliminated and mined lands be reclaimed. In California, under its general mining statutes (Public Resources Code Section 2207, not SMARA), the owner or operator of any mining operation of whatever kind must file an annual report and pay an annual reporting fee not to exceed four thousand dollars (\$4,000) and not less than one hundred dollars (\$100), as adjusted for the cost of living. The monies collected are used by the State to ensure that mines subject to SMARA are regulated to ensure that adverse effects of mining are minimized or eliminated and that mines are reclaimed to a useable condition. California also collects five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state. The fees collected are to be used solely for the remediation of abandoned surface mines.

H. R. 2262 would have imposed an 8 percent royalty on the net smelter return of minerals on new claims, and a 4 percent royalty on existing claims. If this sort of royalty system were adopted, an estimated \$30 million to \$70 million would be collected for cleanup of abandoned mines on federal lands. H. R. 2262 also would have required 50 percent of the royalties for the Hardrock Reclamation Fund go to the states, in proportion to their royalty generation levels. Other amendments would have clarified “*valid existing rights*”, and allowed river watersheds to receive funding from the Abandoned Locatable Minerals Mine Reclamation Fund.

The Board may hear testimony about royalties from mines operating on federal lands. Discussion may focus on how royalties are calculated and whether they are calculated as a percentage of gross mine receipts or on net mine revenues. Some commentators may note that royalties are now paid by oil companies extracting oil from federal on-shore and off-shore lands and that – in the case of California – 50 percent of those royalties are returned to the state. Others may note that imposition of a royalty, either on a gross or net basis, could harm the profitability of mining or discourage mine operators from even seeking production on federal lands.



Hardrock Mining Claim Maintenance: Under the General Mining Law of 1872, mine operators who have staked a claim must perform a set amount of annual maintenance, up-keep and/or exploration on the claim to maintain the validity of the claim. For claims located after May 10, 1872, a minimum of \$100 worth of labor must be performed, or improvements made, during each year. For claims located prior to May 10, 1872, a minimum of \$10 worth of labor or improvements is required each year, for each 100 feet in length along a vein. Provided that work is completed, the mining claim remains valid and can, at some point in the future, be the subject of a request for patenting. In 1992, the only claimants that perform annual maintenance are the small miners (i.e., 10 claims or less). This became effective in 1993 when the “claim maintenance fee” replaced the work requirement. The fee was initially set at \$100/claim and was to be adjusted every five years. The Department of the Interior raised it to \$125/ claim in 2005. These fees are not shared with the States; whereas, the rental fees for leasable commodities are. The land holding costs for minerals are some of the highest in the world; Sierra Leone (artisanal miners) and Norway have some that are higher.

H. R. 2262 would have required a claim maintenance fee of \$150 per claim to hold an unpatented mining claim. This fee would have been in lieu of the assessment work requirement contained in the Mining Law of 1872.

The SMGB may wish to consider whether payment of a fee should meet the requirements for exploration, given that simply paying a fee may hold a claim open indefinitely, while maintenance and exploration of a claim must, inevitably, result in sufficient information for the operator to determine whether the claim shows any promise of mineral production.

Mining Permit: The Mining Law of 1872 gives individuals the right to enter upon the public lands, to file a mining claim, and commence mining. Federal agencies are often constrained in effectively regulating mining when the mine operator asserts that his “right to mine”, provided by the Mining Law of 1872, has priority over other regulations adopted subsequently to protect public health, safety, and the environment. The only documented cases where the Federal government has been required to compensate an individual claim owner or company for takings and infringing on a person’s “right to mine” is when an existing claim(s) has been included in a National Monument, National Park, Wilderness area or some other type of designation that may prevent an operation from going forward. In each case a validity exam would have to be conducted by the surface management agency (BLM or Forest Service). The agency might contest the validity of the claim if their evaluation did not indicate the presence of a “valuable mineral”, but the bar for meeting that standard is very high and meeting that bar has become more difficult over time. A claimant that was denied a patent because the claim did not contain a valuable mineral would have an opportunity to appeal the decision before the Department of the Interior’s Board of Land Appeals and then in federal court.



In California, even mines deemed to be “vested” as pre-SMARA (1975 for reclamation planning, and 1991 for current reclamation standards) must have a reclamation plan and financial assurances. There is no assertion allowed that a mine operator previously secured a “right to mine” by a local government’s land use permitting and, thus, does not need to meet environmental compliance standards for mine operation or reclamation.

Also, mines on federal land within the confines of California are required to comply with SMARA, obtaining reclamation plans and financial assurances, regardless of the federal requirements.

HR 2262 would have established an environmental standard that requires mineral activities on federal lands to be conducted in a manner that does not unduly degrade the environment or jeopardize public health and public safety, and to be conducted in a manner that recognizes the value of the lands for other uses. Further, H.R. 2262 would have mandated that land subject to mineral activities would be restored to a condition capable of supporting its prior uses or other beneficial uses that conform to applicable land use plans. Finally, H.R. 2262 would have required that a mine operator’s application for an operations permit include plans for operations, reclamation, monitoring, long-term maintenance, and accident contingency, as well as require mining operators to provide evidence of financial assurances sufficient to cover mine reclamation and restoration. These provisions are similar to those found in existing BLM and Forest Service regulations, in California’s SMARA and, in some cases, go beyond SMARA (though not necessarily beyond other California state laws).

The SMGB may wish to discuss whether there is any confusion about the application of California’s SMARA requirements and other laws to mines on federal land. Public land advocates likely will argue that federal rules are insufficient. Mining advocates likely will argue that state rules (such as SMARA) provide sufficient environmental protection and also that imposition of new rules on mines that are already operating could cause them to shut-down operations prematurely if the new costs of environmental compliance exceed their fiscal projections for environmental compliance costs over the life of the operation.

Filing of Claims: The BLM has tabulated the number of claims per agency (National Forest, BLM, National Parks Service, Military, and Fish and Wildlife Service). BLM as of February 2008 notes a total of 12,008 lode claims, 1,574 millsites claims, 10,690 placer claims, and 20 tunnel sites, for a total of 24,292 claims. The large number of filing claims near national parks and other federally protected lands has raised concerns from environmental groups. The main concern is that if even a small percentage of these claims turn into actual mining sites, the environmental impact on California’s national parks and other public lands could be significant.

The SMGB may wish to consider whether the process of allowing mining claims is still necessary, given that the original intent (“settle the West”) reasonably can be said to have



been accomplished. Public lands advocates likely would state that the claims process, like that of patenting, is out-dated and should be revised or abolished. Mining advocates likely would state that the claims process allows a mine operator to protect from modern-day “claim jumpers” by filing a claim and engaging in reasonable exploration until the mine operator is certain that a deposit exists.

Abandoned Mines: California’s federal and state Abandoned Mine Lands (AML) agencies estimate that there are about 47,000 abandoned mines located throughout the State. About 67 percent are located on federal lands, 31 percent on private land and 2 percent on State or local land. The large number of abandoned mines poses a serious threat to the environment and to public health, safety and welfare.

The royalty provisions of H. R. 2262 would have directed that some of those royalties be paid to states for remediation of abandoned mine hazards.

The SMGB may wish to consider whether funds from royalties on mining of federal lands should be returned to states with directives about how to expend the monies (for instance, on abandoned mine remediation or, perhaps, mineral classification studies). Public land advocates likely would argue that the royalties should be expended on remediation of abandoned mines, noting the parallel that they are the result of past mining. Mining advocates likely would argue that royalties are unnecessary, but that if they are imposed, they should fund mineral classification studies to ensure better land use planning so that mineral resource needs can be met locally. Mining advocates likely also will argue that they should not be called upon to pay for past operations’ failures to clean-up.

EXECUTIVE OFFICER’S RECOMMENDATION: The purpose of this public hearing is for the SMGB to receive comments on mining law reform on federal land in California. No recommendations are offered at this time.

Respectfully submitted:



Stephen M. Testa
Executive Officer

