

MINING AND MINERALS BRANCH - WASO
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GENERAL

"Coal Parks" Interested in Valid Existing Rights EIS - Just prior to Christmas, Branch staff issued a notice in the *Morning Report* to alert parks and regions to NPS involvement in the Office of Surface Mining's (OSM) draft EIS on the valid existing rights (VER) rulemaking to mine coal. The notice solicited in-park private mineral and coal acreage figures from parks located in coal bearing areas of the country, and further requested that interested park staff provide anticipated environmental impacts from coal mining in or adjacent to their NPS unit. Park staff response was excellent and questions/comments regarding the rulemaking effort are proving to be very helpful in formulating the NPS position. Park acreage and environmental information will facilitate the goal of getting NPS concerns adequately reflected in the draft EIS. The Branch will submit all information gathered through this effort to OSM in January 1995. The draft EIS on the VER rulemaking is due for release in April 1995. (Moss, Geniac)

Wyoming Environmental Groups Take Aim at BLM's Oil and Gas Performance Review - The Bureau of Land Management (BLM) is currently in the midst of an effort to improve the effectiveness and efficiency of its Federal oil and gas leasing program. Branch staff, representing the NPS, serve on the BLM's Performance Review Team focused on improving the BLM's planning function and compliance with the National Environmental Policy Act (NEPA). As part of a concerted outreach effort, the team met in Laramie, Wyoming, with a consortium of environmental groups, state agency, and Federal agency personnel to update them on the team's progress and to solicit additional input to better reflect the nature of the different issues and to incorporate additional comments. Environmental groups attending included representatives from the Wyoming Outdoor Council, Greater Yellowstone Coalition, Jackson Hole Alliance, Sierra Club, Colorado Environmental Coalition, Wyoming Wildlife Federation, Wyoming Environmental Cooperative. State and Federal agencies represented included Wyoming Fish and Game Department, Colorado Fish and Game Department, and U.S. Fish and Wildlife Service (USFWS). Similar update and comment meetings had been previously

held with the Rocky Mountain Oil and Gas Association, the Interstate Oil and Gas Commerce Commission, and the Montana Wilderness Alliance. The meeting was disappointing in that little of the team's preliminary findings submitted to interested agencies, environmental groups, and industry groups on the national level had trickled down to the field level. The environmental coalition indicated they were totally unaware of any aspects of the oil and gas performance review, as were USFWS attendees. To bring participants up-to-date, the team provided a package containing previous updates to meeting attendees. The bulk of the meeting was spent listening to the group's comments about existing controversy over BLM leasing in southwest Wyoming. In general, comments focused on more extensive pre-lease analyses, more site specific analyses, and questioning the legality of the leasing under a variety of Federal environmental statutes. No accords or action plans were reached. Updates on the Performance Review are available through the Branch by contacting Bruce Heise at (303) 969-2017 or through CCMail. (Heise)

Office of Management and Budget (OMB) Invokes Authority to Review Revisions to NPS Non-Federal Oil and Gas Regulations - While the Branch had been hoping to publish proposed revisions to regulations governing non-Federal oil and gas development in parks before January 1, OMB invoked its prerogative to review the draft regulations. Per administrative procedures, OMB can take up to 90-days to complete its review. Given recent talk of a 6-month Congressionally imposed moratorium on rulemakings, the NPS may not be free to publish proposed changes to the regulations until sometime after July 1995. The regulations, which have remained unchanged since 1978, need to be updated to reflect existing policy and the current cost of reclamation. They also need to be revised to eliminate provisions that exempt 65% of the non-Federal oil and gas operations in parks from compliance with the 9B regulations. (McCoy)

Branch Comments on Delegation of Authority to Superintendents - The NPS National Leadership Council called for Servicewide review and comment on a list of tasks that either could be eliminated or delegated to parks in the effort to streamline the Service. While such a review is warranted, the Branch cautioned the proponents to go slow in delegating complex permitting and legal responsibilities at least until Superintendents have staff on board that are fully conversant with the Service's statutory, regulatory and policy duties across a broad array of issues. With respect to minerals management, the Branch highlighted the delegation model used in the Southwest Regional Office where the Regional Director has delegated some minerals related determinations to the park level but has retained final permit approval in the region. In this way, the Regional Director has ensured consistency throughout the region and that necessary minerals expertise is brought to bear to resolve issues. Errors in judgment with respect to minerals management matters can be

very costly for park resources, visitor enjoyment and financial resources. (McCoy)

Bureau of Land Management Begins Developing Regulations for the Bodie Bowl Mining Claims - Title X of the California Desert Protection Act of 1994 directs the BLM to promulgate regulations governing mineral development of mining claims in the Bodie Bowl Area that are "no less stringent than" the NPS mining claim regulations. NPS regulations (36 CFR 9A) are somewhat more restrictive than current BLM mining regulations. To help the BLM with this effort, the Branch provided an electronic copy of the 9A regulations along with background material. In addition to working with the NPS, the BLM will be working closely with the State of California as directed by Congress. The Act requires the BLM to promulgate final rules by April 29, 1995. With the possibility that Congress may impose a moratorium on all new regulations, that date may likely slip. (McCoy)

Department Calls for Assistance in Responding to the GOP's Contract with America - Under the new Republican leadership, the House of Representatives is moving ahead with legislation to implement the jobs creation program contained in the "Contract with America." Title IX of the job creation bill calls for the Federal Government to compensate property owners when governmental action has diminished the value of their property by 10% or more. The Branch provided the Department with its analysis of the likely impact of Title IX on the Service's ability to protect park resources from mineral development. Title IX seeks to dramatically change existing Federal law regarding "takings." Under the 5th Amendment of the U.S. Constitution, the Federal Government cannot take private property for public use without compensation. The classic example of a "takings" is when the Federal Government condemns private land for a highway and pays the landowner fair market value for the property. The controversy arises when the Federal Government limits what individuals can do on their property, like filling wetlands, without compensation and diminishes potential economic value of the property. Courts have generally not found such limits to be takings. However, if enacted, Title IX will change that and will likely have a "chilling" impact on environmental regulations since the compensation for the diminution in value will come from agency budgets. (McCoy)

ALASKA REGION

Senator Murkowski (R-AK) Seeks to Expedite the Acquisition of Mining Claims in Denali - Branch staff reviewed the Senator's proposed bill and provided comments to the WASO Office of Legislation. While we support the stated goal of the legislation, the bill's methodology for doing so does not protect the Federal Government's interests either from a fiscal or natural resources management perspective. As currently drafted, the bill oversimplifies the process for valuing property and contains a heavy bias towards the financial interests of mining

claimants over that of the American taxpayers. Hopefully, modifications can be made in the bill to generate a win-win situation for both claimants and the Federal Government. (McCoy, Cloues, Covington)

ROCKY MOUNTAIN REGION

U.S. Forest Service Response to Theodore Roosevelt National Park as Cold as a North Dakota Winter - The picturesque badlands preserved by Theodore Roosevelt National Park have the double misfortune to sit on top of one of the most prolific hydrocarbon basins in North America as well as being surrounded by intermingled Little Missouri National Grassland (LMNG) and private property. Extensive oil and gas development has been the bane of the park's staff and a contentious interagency issue for years. The NPS opinion is the final LMNG Oil and Gas Leasing Environmental Impact Statement (EIS), issued in 1992, did not adequately protect park visual and auditory resources. The park's position has always been that the FS violated their own "visual quality guidelines" by allowing oil and gas development in the park's viewshed. Over the past two years park resource manager Roger Andrascik, armed with viewshed maps generated by the Rocky Mountain Region's GIS group, has met repeatedly with FS landscape architects to develop stipulations for leasable tracts on the LMNG in the park viewsheds.

As part of the park's efforts to obtain some relief from continued development along the boundary, Branch and park staff met in Dickinson, North Dakota, with local and regional U.S. Forest Service (FS) personnel. At this meeting, the Forest Supervisor made it quite clear that the FS's visual quality guidelines were just that, guidelines, and not binding on any management decision. The FS explored four options while considering the park's request. These were 1) no change to the EIS, 2) minor lease stipulation changes that would not require significant time or budget commitments from the FS, 3) additional "No Surface Occupancy" stipulations surrounding the park's designated wilderness (the park's preferred option), and 4) a significant no lease zone surrounding much of the park, an option recommended by the FS landscape architect after reviewing NPS GIS viewshed maps.

The FS chose option 2, which, while offering minor relief to some park vistas, still falls far short of what the park would have liked. No further discussion was entertained by the FS at the meeting. The decision was a major disappointment to the park and the Branch, as both offices had committed significant effort at working with the FS over the past four years. The best recourse for the park now is to maintain a close working relationship with local FS offices to ensure conditions of approval for future wells include requirements for visual and auditory mitigative measures. (Heise, Woods)

SOUTHEAST REGION

Administrative Sand and Gravel Extraction Issues to be Discussed at Southeast Region Workshop - At the request of Southeast Region, Branch staff will give a presentation at the region's Facility Management and Resource Management Workshop on the topic of sand and gravel extraction for park administrative purposes. The workshop will be held in Myrtle Beach, South Carolina, April 3-7, 1995. The presentation and a discussion period will address the Servicewide status of extraction operations and current issues, and will be given during the breakout sessions on April 5. (Geniac)

SOUTHWEST REGION

Operator Plans to Directionally Drill a Well Underneath Big Thicket - Hanson Production Company plans to drill an oil well directionally underneath Big Thicket National Preserve, Texas. The proposed surface location is an existing well pad just outside the unit. Hanson has requested a waiver from the NPS requirement for a plan of operations. Under NPS regulations a plan of operations may be waived if the Regional Director determines "[t]hat such operations pose no significant threat of damage to park resources, both surface and subsurface..."

In conversations with preserve staff, Hanson expressed their feeling that NPS nonfederal oil and gas regulations at 36 CFR Part 9B did not apply. Rather, Hanson was just trying to be a good neighbor by doing what the NPS asked them to do. The regulatory requirements are specific to directionally drilled wells. The regulations cover all activities related to nonfederal oil and gas development in park units "where access is on, across or through federally owned or controlled lands or waters." Directionally drilling for oil and gas into a park unit constitutes "through" for purposes of the 9B regulations thus making the proposed activity subject to the regulations.

Branch staff reviewed all data submitted by Hanson including the Drilling Prognosis Report, which covers the technical aspects of the well. As proposed, the well poses no significant threat of damage to park resources resulting from the proposed activities. Therefore, the Branch recommended that the Regional Director grant the requested waiver subject to any stipulations deemed necessary by the Preserve. We also recommended that the waiver include a statement to the effect that in the event adverse impacts do or may occur, the NPS may suspend operations until the company remediates the problem. (O'Dell, McCoy, Woods)

WESTERN REGION

Mining Claim Information Acquired on California Desert Parks - The California Desert Protection Act of 1994 expanded Death Valley and Joshua Tree, raised the units to "National Park" status, and created the Mojave National Preserve. Adding these

lands to the National Park System brought in many active, inactive and abandoned mining operations. The Bureau of Land Management (BLM), the previous land manager, had the case files on these operations in the resource area offices. Branch staff visited each BLM resource area office in the California Desert District to obtain these files and discuss the status of operations with BLM staff. Branch staff also visited county offices to obtain mining plans filed under the California Surface Mining and Reclamation Act (SMARA). During the two-week effort, Branch staff visited the following: San Bernardino County Planning Office, San Bernardino; Palm Springs-South Coast Resource Area Office, Palm Springs; Needles Resources Area, Needles; Barstow Resource Area, Barstow; Ridgecrest Resource Area, Ridgecrest; and Inyo County Planning Office, Independence. Mel Essington, Mining Engineer at Death Valley, joined us in Barstow, Ridgecrest, and Independence to gather and review mining operation case files for Death Valley. In addition, Branch staff field inspected the Storm Jade Mine and Paymaster Mine, both "active" operations in Joshua Tree, and inspected reclamation progress at the Colosseum Mine located in the Clark Mountains of Mojave. Branch staff are in the process of reviewing the 185 mining case files obtained to determine which files are open, which are closed, and current status of each active operation. (Covington, Ziegenbein)

Mining Claims Management Briefing at Saguaro - The recent expansion of Saguaro National Park, Arizona, brought the Old Yuma Mine into the park. Since mine claim management is now an issue for the park, Superintendent Doug Morris requested the Branch brief park staff on the history and present status of the mine and associated mining claims. Branch staff traveled to the park and conducted a one-day session on NPS management of mining claim management and specific issues associated with the Old Yuma Mine. A morning briefing was held with park managers and an afternoon briefing was presented to about 30 park staff members at an all employees meeting. The briefings were well received. (Covington)

Mining Claimants in California Desert Confused as to Requirements Given the Area's New National Park Lands - Two claimants with claims located under the 1872 Mining Law wrote the NPS inquiring as to the requirements for maintaining their claims and their interest in conducting mining operations in the newly established Mojave Preserve. On behalf of the Western Region's Land Resources Division, the Branch prepared a letter to the claimants informing them of their need to file proof of annual assessment work with the Bureau of Land Management by December 30, 1994. While Congress has replaced the need to perform annual assessment work with a \$100 annual fee effective through 1998, it has allowed "small miners" to be exempt from paying the annual fee with proof of annual assessment work. Annual assessment work is a requirement of the 1872 Mining Law that directs claimants to undertake at least \$100 worth of activity on their claims annually else forfeit their claims. The letter also informed the

claimants that NPS mining regulations apply, now that their claims are in a unit of the National Park System. Foremost, if claimants intend to conduct mining operations on their claims they would need to comply with the Service's regulations at 36 CFR Part 9, Subpart A. These regulations, promulgated pursuant to the Mining in the Parks Act of 1976, control mineral development associated with mining claims in parks. (McCoy, Covington)

Geothermal Well Plugging and Reclamation Plan Developed for Lassen Volcanic - In 1962 a private geothermal exploration company drilled the Walker "O" well on a private parcel in Lassen Volcanic National Park, California. Phillips Petroleum Co. (Phillips) purchased and deepened the well to over 4,000 feet in 1978. When Phillips proposed further work in 1979, the park acquired the parcel, including the well, due to potential adverse impacts to the park's geothermal features. The well has not been plugged and the access road and drill pad have not been reclaimed. Recently, information submitted to the Branch by the US Geological Survey suggested that the well is deteriorating and has a potential for catastrophic failure. Branch staff assembled an interdisciplinary, interagency team consisting of a Branch reclamation geologist and petroleum engineer, a US Geological survey hydrologist, a Bureau of Land Management geothermal well engineer, the California Division of Oil, Gas and Geothermal (the original permitting agency), and park resource management staff. The team visited and surveyed the site, and discussed well plugging measures and surface reclamation goals and options. The Branch then developed plugging specifications, reclamation options with site plans, and associated cost estimates for the park. The Branch estimates plugging costs to be \$28,000. Surface reclamation costs would range from \$0, for no action, to \$15,000 for total reclamation. The NPS must now find a funding source to complete the necessary work before the well fails and the environmental and financial costs rise exponentially. (Ziegenbein)