

MINING AND MINERALS BRANCH
NATURAL RESOURCES - WASO
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GENERAL

OSM Continues Progress on EIS to Define "Valid Existing Rights" to Mine Coal

- Under the Surface Mining Control and Reclamation Act of 1977, entities are prohibited from mining coal in and adjacent to park units unless they possess "valid existing rights" (VER). What constitutes VER has been a highly litigated issue since the early 1980s. Currently, the Office of Surface Mining Reclamation and Enforcement (OSM) is working to develop a Federal definition for VER and hopes to publish a proposed rule in the Fall of 1995. As part of the rulemaking effort, Branch staff are working with OSM to assure that the EIS evaluating the alternative VER definitions adequately addresses park protection concerns. Recent progress on the document has slowed a bit due to data gathering difficulties experienced by other Federal agencies and recent talk about a possible moratorium on new rulemakings. (Moss, McCoy)

EPA Unveils Mining Framework at Federal Agency Meeting

- In March, the Environmental Protection Agency (EPA) sponsored a meeting with representatives from Federal agencies to discuss mining issues affecting the participants. In particular, EPA used the meeting as an opportunity to solicit feedback on a draft paper, known as the "Draft Hardrock Mining Framework." The framework lays out an integrated strategy for the EPA to adhere to in addressing the environmental problems posed by mining activities in the United States. It encompasses multi-media and multi-statutory handles for ameliorating current, past and future mining activities related to the metal, phosphate, uranium and industrial mineral sectors but not coal mining. EPA would like to use the framework in concert with other regulatory agencies responsible for protecting resources from the adverse impacts associated with mineral development. We welcome this opportunity to advance an integrated approach to minerals management and hope it produces positive results. Branch staff along with staff in the Water Resources Division will be working closely with EPA on its endeavor. Stay tuned for future updates. If you are interested in receiving a copy of the draft, please contact the Branch at (303)969-2011. (Smith)

Guidance on Alternative Closure Techniques Available - The Branch has just produced a "Closures Packet" that includes one page summary sheets on a variety of remediation techniques for abandoned mine land (AML) along with an identification of the pros and cons of employing them. Of late, mine closure techniques have proven to be a rapidly changing area of environmental mitigation. To help parks keep abreast of new developments, we intend to update this information periodically. If you are in the process of writing an AML plan, you may find it helpful to review and integrate the information contained in the packet into your plan or simply include it as an attachment. Also, we urge you to consider the varying liability associated with open mines at AML sites and addressing resource impacts associated with all mineral related surface disturbances including NPS created sand and gravel pits. Please contact your Regional Mineral Coordinator or Branch staff for more information. (Geniac)

Mixed Ownership Issues Arise at Abandoned Mine Sites - Branch staff attended an EPA sponsored meeting to discuss mixed ownership issues under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at abandoned mineral land sites. The goals of the meeting were to: educate EPA staff about the 1872 mining law and the management restrictions on the Federal land management agencies in regard to the mining law, share information, and determine future action. To facilitate coordination, EPA has assigned a mining coordinator in each region. EPA also has efforts underway to establish a Memorandum of Understanding (MOU) with the US Forest Service. The MOU will lay a foundation for addressing the requirements of Executive Order 12580 that was issued in 1987 on mixed ownership issues at mining sites, joint risk assessment decision making and priority setting at AML sites. In addition, the MOU will lay out a process by which land management agencies can access EPA funds for removal and remedial actions and receive EPA assistance in cost recovery actions. EPA is open to developing similar agreements with other land management agencies. (Smith)

Branch Provides Training at the BLM National Training Center - Branch staff spent the week of March 12-18 in Tucson, Arizona at the Bureau of Land Management's (BLM) National Training Center to assist the bureau in teaching proper procedures governing the conduct of validity examinations of mining claims. The BLM sought Branch help because of our staff expertise and the fact that we participate on BLM's Certification Board that sets criteria for government employees and contractors to be qualified to conduct validity exams. The week involved two days in the field at the San Xavier Mine southeast of Tucson teaching the class how to map and take underground samples. Classroom lectures were provided by Bill Peters, retired professor from the University of Arizona and Ed Jucevic, a consulting mining engineer. To illustrate proper procedures, the class took an indepth look at the mineral exam of the Old Yuma Mine outside Saguaro National Park. The week was topped off on Saturday by a

field trip to the ASARCO Mission Mine south of Tucson.
(Covington)

Trial May Not be Necessary in the Padre Island Litigation Over the Service's Authority to Regulate Non-Federal Oil and Gas Development

- In March of 1994, the owners of privately owned oil and gas underlying Padre Island National Seashore in Texas sued the Federal Government claiming, among other things, that the NPS lacks authority to control development of non-Federal oil and gas in the park. On March 1, 1995, the parties filed their respective Motions for Summary Judgment which basically urge the judge to decide the case in their favor without a trial. Parties to a lawsuit file such a motion when they can agree on all material facts in a case, but disagree as to the applicable law. A ruling in favor of either party disposes of the case without necessity for further litigation. The outlook for the NPS is bright. The Eighth Circuit Court of Appeals recently reversed a case upon which Plaintiffs put heavy reliance, Duncan v. U.S. Forest Service (see discussion below). In addition, through the discovery process, the government has collected evidence to refute many of the Plaintiffs factual assertions. Though there is no set date for oral argument on the motions, the NPS expects that the judge will hear both parties in mid to late April and perhaps rule on their motions in May. Stay tuned. This is an important case that has potential implications for the ability of the NPS to regulate activities, not just mineral related activities, on private land in parks. (Kassman, McCoy, Shaver, Woods, Heise, O'Dell, Boucher).

Eighth Circuit Court of Appeals Overturns Key Case Challenging Federal Government's Authority to Protect Public Resources - In a long awaited ruling, the Eighth Circuit Court of Appeals reversed the North Dakota District Court and upheld the Secretary of Agriculture's authority to regulate surface access to private outstanding mineral rights within Forest Service lands. The case is Duncan Energy Co., et al. v. United States Forest Service, No. 93-4005 (8th Cir. March 21, 1995). On September 30, 1993, Judge Patrick Conmy of the North Dakota District Court issued an opinion which held, among other things, that "[w]here the United States has acquired only the surface estate through purchase, Congress and the Agency managing the surface ownership use do not have the authority to impose requirements and conditions for mineral estate exploration, development, mining or extraction different from or greater than those imposed by the State in which the property was purchased.." This broad ruling had implications for all Federal land managing agencies where that agency sought to apply its regulations to non-Federal mineral operations. The Eighth Circuit's reversal was not unexpected. Much of the District Court opinion was antithetical to well established rules under the Property Clause and the Supremacy Clause of the U.S. Constitution. Not surprisingly, the Plaintiffs challenging the NPS's ability to regulate non-Federal oil and gas development at Padre Island National Seashore relied heavily on the Duncan District Court opinion. The Eighth

Circuit's reversal of the lower court is especially timely for the NPS as the trial date of June 5 in the Padre litigation draws near. (Kassman)

Funding for Park Geology Projects Available - The U.S. Geological Survey's Office of Regional Geology plans to redirect \$2 million in FY 96 to fund new park projects in geologic resources management, hazards, mapping, and interpretation. Teams have been established in each region to assess park geology project needs, and to work with USGS liaisons to match high-priority proposals with the best-qualified USGS geologists. The USGS has agreed to use the Service's National Resources Protection Program (NRPP) as the vehicle for allocating monies. Interested parks should prepare proposals using the NRPP guidelines in this year's unified call that was distributed to regions on March 3. Each region may submit up to four proposals and four alternates to a joint NPS/USGS national assessment team that will meet the week of May 22. Highly ranked projects that cannot be funded by the USGS will still be eligible for financial support. Certain projects, particularly those involving geologic mapping, may also be eligible for 50-50 Federal/State support under the auspices of the National Geologic Mapping Act of 1992. The 50% Federal share could be contributed by the park, region, NRPP, or through the Challenge Cost-Share Program. For further information, please contact your Regional Chief Scientist, or Lindsay McClelland at 202 208-4958. (McClelland)

Branch Poster Sessions Stress GIS Technology and Interagency Cooperation - Branch staff and DSC Geographic Information Systems Branch will be presenting a poster session and GIS demonstration at the George Wright Society Meeting in Portland, Oregon (4/17-21) and the Department of Interior Conference on the Environment in Colorado Springs, Colorado (4/24-28). The display focuses on the use of GIS technology, and digital databases developed or compiled by the Branch to simplify interagency communication. Effective land management planning requires information that goes well beyond individual agency boundaries. By using interagency GIS data, the Branch has improved mineral-issue awareness, coordination, and communication with neighboring land management agencies throughout the National Park System. The GIS map overlays in association with ArcView® software have enabled staff to: produce quick graphics for reports and memos; respond accurately to who, what, and where questions from management, parks and the public; and track land-use planning or mineral leasing efforts.

To date, in conjunction with DSC, the Branch has developed map overlays of the following:

- park boundaries
- major hydrographic/transportation features
- BLM resource areas & districts
- state/county boundaries
- national forests and grasslands

- mineral industry location system (MILS) points
- areas within 5 and 10 miles of park boundaries
- oil and gas pipelines within 10 miles of parks

If you wish to obtain copies of these digital databases, please contact the Branch or the DSC Geographic Information Systems Branch. (Ziegenbein)

PACIFIC NORTHWEST REGION

Shi Shi Beach Mineral Owners Now Seek Buy Out - Branch staff attended a meeting in Seattle with the purported owners of minerals underlying Olympic National Park near Shi Shi Beach in the State of Washington. For nearly two years, the alleged owners of reserved minerals and their representatives have threatened to conduct every conceivable type of mining operation on one of the top ten wilderness beaches in the United States. Over this period, the Branch has assisted Olympic in responding to a variety of permit applications and mining proposals. Recently, the owners and their representatives executed an about-face and stated their intent to not pursue mining operations, but rather to enter into negotiations for purchase. The meeting afforded an opportunity for all parties to discuss the issues now on the table (e.g., value of the mineral estate, access, title, and mineral ownership) and to attempt to move the acquisition process forward at a reasonable pace. The discussions primarily focused on fair market value of the mineral reservation. The mineral owners expressed an interest in limited, nondestructive exploration activities to determine the quality and quantity of gold, if any, located in the beach sand. The park stated their commitment to review such a plan and consider it for approval so long as the exploration plan would not be in violation or in conflict with any applicable laws. The ball is now in the mineral owner's court to decide whether or not to move forward and, if so, how. Stay tuned. (Kassman, Cloues, Shaver, Covington, Moss, Woods)

ROCKY MOUNTAIN REGION

Company Seeks to Shoot Seismic Lines Through Hovenweep National Monument - A seismic company approached acting Superintendent Art Hutchinson about acquiring necessary permits to run seismic lines across the Square Tower Unit of the park in Utah. The seismic data would provide a subsurface image that could identify possible oil and gas in the general area of the park. At the region's request, Branch staff contacted the Superintendent and informed him that the proposal triggered two distinct issues. First, no legal authority exists for allowing seismic activity to characterize Federal minerals in the park. Second, seismic activity adjacent to the park could adversely impact the ruins in the park. In coordination with the park, the Branch is following up on the latter issue with the company. At this point, the company is in a very preliminary stage of laying out their lines

and may move them entirely to private property. We will continue to monitor the situation. (Heise)

Company Way Off the Mark in Staking a Road to a Proposed Oil and Gas Well at Glen Canyon National Recreation Area in Utah - While giving new Glen Canyon Superintendent Joe Allston a field tour of a Federal oil and gas lease site held by the Viking Oil Company inside the park, Resource Manager John Ritenaur became aware that a survey of the access road and well pad fell some 1½ miles short of its mark. Because the error could impact the ability of the company to proceed with future development of the lease, John contacted the Utah Bureau of Land Management, the agency responsible for administering the lease. The Branch participated in the conversation at the park's request. The two agencies decided to approach Viking to learn why the road ended where it did. Per the company, the owner's son had actually done the staking and had no idea where he was. The park stressed that the deadline for the archeological survey along the road and pad remains June 1, 1995, and that both must be properly staked and surveyed in order for archaeologists to perform their survey. Viking acknowledged its error and committed to rectify it. The park is preparing a letter to document the incident and the conversation with the company. (Heise)

Company Seeks to Develop a Federal Oil and Gas Lease in Theodore Roosevelt National Park from a Location Outside the Park - The Bureau of Land Management (BLM) currently is contemplating approving a proposal to develop a Federal oil and gas lease inside the park from a site located on private land outside the park. While Federal mineral leasing is prohibited in the park, the existing lease dates back to the early 1970's. The proposal being advanced by the Amerada Hess Company would entail directionally drilling a well into the park. Under BLM regulations at 43 CFR §3109.2, the Bureau cannot approve a development proposal to a Federal mineral lease inside a unit of the National Park System without first obtaining NPS consent. The NPS must base its consent on a determination that the proposed activity would not have a significant adverse effect on park resources or administration. The NPS can condition its consent on the adoption of mitigation measures. Because the Federal lease is located along the Federal interstate and is already covered by an existing well pad, the park anticipates little impact to park resources. In addition to addressing park concerns, the BLM must also assure that the landowner and operator provide the Bureau with a written agreement (i.e., Surface Owner Agreement) that details the surface use protection of the environment and mitigation of impacts. If an agreement is not reached, or if it is determined that more protection is necessary and the reclamation plan inadequate, additional mitigation measures can be required by the BLM. The Branch advised the park that 1) the BLM cannot issue a permit until the NPS gives its consent and conditions the permit with NPS required mitigation measures and 2) the BLM cannot approve the Surface Owner Agreement if the operator's proposed mitigation and

reclamation does not meet the NPS conditions of approval. The park is working closely on this matter with Bureau staff in Dickinson, North Dakota. (Heise)

Branch Advocates Consideration of Another New World Tailings Impoundment Alternative Outside Yellowstone National Park - The Branch recently submitted an innovative alternative for handling tailings from the proposed New World mine located in Montana outside Yellowstone National Park. Branch staff suggested that when Yellowstone believes timing is appropriate, the park should submit the alternative to the lead agencies for inclusion in the draft Environmental Impact Statement (EIS). The Branch believes that upon further study this alternative could reduce impacts from the proposed New World tailings impoundment to the Greater Yellowstone Ecosystem. The issue of perpetual storage of 5.5 million tons of potentially toxic, acid generating tailings less than three miles northeast of Yellowstone is proving to be a significant environmental issue. Environmental concerns being addressed in the EIS include acid and heavy metals drainage, significant wetlands impacts, and possible future mass failure of the impoundment. The Branch's latest impoundment alternative consists of making use of a new fast-setting cementing compound to solidify materials in the tailings impoundment. Branch staff learned about the new cementing product and witnessed a small scale demonstration at the Colorado School of Mines. A Chinese research institute developed the cementing product. If the product lives up to the claims of it's developers, Crown Butte Mining Inc., the developer of the proposed mine, could mix the cementing compound with the tailings as they are slurried into the impoundment. Within about thirty minutes the slurry will begin to harden turning to a block of "man-made stone." In seven days, the concrete can support 57 tons per square foot. Upon hardening, this revolutionary compound will lock out the elements while locking in pyrites and other heavy metals constituents. Although not a panacea for all the issues surrounding the proposed New World mine, Branch staff believe 5.5 million tons of solid, impermeable mass is preferable to the proposed 5.5 million tons of "toxic pudding." Alternatives to the proposed impoundment are important because if the State of Montana approves the mine, the New World tailings may sit perched above Yellowstone for generations to come. (Moss, Cloues)

SOUTHWEST REGION

Exploration Well at Padre Island Is a Bust - Ensearch Oil Company drilled a well in Padre Island National Seashore during March. The company was hoping for a new discovery of natural gas. Like nearly 90 percent of all exploration wells drilled in the United States, Ensearch's well failed to find an economic source of oil or gas. As required under NPS regulations, the well has been plugged and abandoned and the drilling rig removed. Solid planning by the NPS and Ensearch played a significant role in resource protection. Under careful NPS oversight, Ensearch conducted their operations with due regard to the environment.

All drilling muds, fuels, and chemicals were properly containerized on a bermed location underlined with watertight material. Reclamation will be much easier on a site free of contaminants. When surface reclamation is completed, it will be difficult to see where the well was drilled. (O'Dell)

Well Plugging Plan Provides Reminder to Define an Operator's Area of Operations - The Branch recently evaluated a Phillips Petroleum Company proposed plan of operations to plug and abandon a well in Lake Meredith National Recreation Area in Texas. The plan also covered surface reclamation of the associated operations area. In hopes of easing the review and approval process, we tried to provide stipulations that would allow the Regional Director to accept the plan. Unfortunately, we concluded this plan lacked basic information needed to complete an environmental analysis. The main problem was that the plan failed to identify the area of operations. The area of operations includes present and past surface disturbance associated with the well, including access roads. The operator and the NPS are best served when the area of operations is clearly and accurately defined. Both parties can properly plan for reclamation. Also, operators will not be held accountable for disturbances not associated with their operations. (O'Dell)

WESTERN REGION

Efforts Underway in Western Regional Parks Could Help Parks Elsewhere Address Abandoned Mine Land Problems - Over the past few months, Branch staff have been reviewing a number of abandoned mine land plans for parks located in the Western Region. The impetus for the plans is a 1992 Western Regional Directive. The directive provides information on how to effectively structure abandoned mine land plans and rank sites for remedial action. Reliance on the directive, enables parks to comprehensively address safety, resource, interpretation, and reclamation issues related to past mineral development. We encourage other parks interested in developing an abandoned mine land plan to contact their Regional Minerals Coordinator or the Branch. (Geniac)

Over 139 Mining Case Files Reviewed and Turned Over to Staff at Mojave National Preserve - In an effort to help the newly established park contend with the resource protection and regulatory issues associated with over 9000 mining claims within its boundary, Branch staff helped the park review existing Bureau of Land Management (BLM) mineral case files. The Bureau had set up files on all claims or claim groups where operators had conducted or had expressed interest in conducting mineral development activities. Branch staff review over 139 mining case files of the BLM and San Bernardino County. They grouped the files into the following categories:

- approved plans to get NPS temporary approval (5)
- existing approved plans to be denied (4)

- expired plans which need further reclamation (10)
- trespass cases which need reclamation (9)
- expired BLM plans to be sent a closure letter (28)
- cases which are closed and need no action (80)
- case file numbers with no case files sent by BLM (3)

Operations range in size from 430 acres (Colosseum Gold Mine) to 1 or 2 acres with an average disturbance of 5 to 10 acres. Ten operations have hazardous material issues, another ten cases are in contest or appeal, and at least twelve sites have occupancy issues. Letters to operators were drafted and the case files were turned over to Frank Buono, Assistant Superintendent of Mojave National Preserve. (Covington, Ziegenbein)

Subsidence Problems Face Three Parks in the Desert Southwest -

Staff from Ft. Bowie National Historic Site (Arizona), Lake Mead National Recreation Area (Arizona/Nevada) and Joshua Tree National Park (California) recently reported subsidence of mine workings at old abandoned mine sites. Very often subsidence can be triggered by heavy rains or slight seismic activity in the earth at or near a site. The most recent expansion of existing abandoned mine land problems in these parks poses serious public safety hazards because they all occur in heavily visited areas. To remedy the situation will require additional unplanned expenditures to fix them and eliminate the hazard. The Branch will help the parks determine the magnitude of the problem, generate a suitable array of solutions and determine the cost in a timely manner to expedite necessary action. If weather conditions, seismic activity or other factors cause a change in conditions at abandoned mine land sites in your park, please inform the Branch. Park and Regional Safety Offices should also be informed if serious safety hazards are being created. (Higgins)

PROFESSIONAL DEVELOPMENT

Branch Staff Attend Sister Agency Conferences on Oil and Gas -

Branch staff attended two conferences in February sponsored by other Department of the Interior agencies. The Bureau of Land Management sponsored a Fluid Minerals Conference which stressed ecosystem management and diversity in the work place. The conference also served as the vehicle to unveil the first phase of the Bureau's Oil and Gas Program National Performance Review (NPR). Phase one of the review accounts for the need to protect sensitive adjacent lands from the spillover effects of Federal oil and gas development. The day long Ecosystem Management session paraded a variety of speakers, ranging from Assistant Secretary Bob Armstrong to an out of work logger's wife. The heated discussions covered the diametrically opposed views that ecosystems should be managed for sustainability and that ecosystems are best managed by all stakeholders, which appears to mean heavy local landowner and resident involvement in the decision making process. The inference here is that local citizens are the best people to determine what a given ecosystem

can sustain. No evidence was given supporting this premise. While there remains some confusion about ecosystem management, parks need to remind BLM staff about the need to address the bureau's commitment to sustainable ecosystems when minerals are a issue in planning documents. Those interested in receiving a copy of the phase one report regarding Federal oil and gas development should contact Bruce Heise at (303) 969-2017.

Branch staff also attended the U.S. Geological Survey's McKelvey Energy Forum titled "Energy and the Environment." Although originally intended as a forum discussing the interaction of these two issues, the conference devolved into a discussion of bolstering up the Survey in the face Republican budgetary cuts. Highlights of the Forum included:

- an unveiling of the 1995 USGS Assessment of U.S. Oil and Gas Resources,
- an excellent, although unpopular, poster of pipeline impacts,
- a joint BLM/USGS poster on Lecheguilla Cave protection, and
- a raucous forum pitting Greenpeace and Public Citizen against energy industry groups, a tape of which will be released as a USGS Open-File report.

The Branch's poster titled "Reclaiming the Scars of Energy's Past," received only moderate attention although over 100 abandoned mine land brochures were collected by stealth viewers. The poster depicted abandoned or poorly operated oil and gas operations to call attention to the issue of oil and gas in the parks, an the public is largely unaware of. (Heise)

Albright Grant Enables Staff Member to Sharpen Expertise - Thanks to an Albright Grant, a staff member has undertake graduate-level study of environmental economics and statistics. Knowledge gained will be directly applied to evaluate economic feasibility studies of mineral development proposals and reclamation of abandoned mine land sites. Course study will also prove helpful in reviewing the soundness of sampling and monitoring proposals. (Genaic)