1999 Federal Mining Law Update
by Stuart R Butzier
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INTRODUCTION

This paper highlights the significant federal mining law developments over the past year since the 44th Annual Rocky Mountain Mineral Law Institute. The paper is organized into four sections: (1) federal regulatory developments; (2) legislation considered by Congress; (3) federal appellate court decisions; and (4) federal district court and IBLA decisions. A number of the more significant topics touched on here will be covered more thoroughly by other presenters.

I. FEDERAL REGULATORY DEVELOPMENTS

- **DOI/DOA's Crown Jewel Mine Decision Implementing Limitation on Millsites**

In last year's Mining Law Update, Bruce Kirchhoff described the November 7, 1997 Department of the Interior Solicitor's Opinion on "Limitations on Patenting Millsites under the Mining Law of 1872." In that Opinion, Solicitor John Leshy concluded (among other things) that the Mining Law "imposes a limitation that only a single five-acre millsite may be claimed in connection with each mining claim." Opinion at 5; *citing* 30 U.S.C. § 42(a).

Pursuant to this policy opinion, on March 25, 1999, Solicitor Leshy and Department of Agriculture General Counsel Charles Rawls (together with their respective agency clients) wrote a letter advising the owners of the proposed Crown Jewel mine in Washington (Battle Mountain Gold and Crown Resources) that the agencies could not approve a pending plan of operations for the mine. According to the letter, since the owners hold only 15 lode mining claims, they were limited to 75 millsite acres, as opposed to the 555 millsite acres proposed for storage. The March 25, 1999 letter decision further opined that the Mining Law "does not permit use of a lode claim for facilities to support mining solely on other lode claims."

The March 25, 1999 letter decision was issued despite (1) a favorable record of decision from the BLM, (2) the companies' successful defense of a NEPA challenge to the EIS, and (3) the companies' expenditure of approximately $80,000,000 on the project. The Crown Jewel letter decision - in addition to inspiring a maelstrom of criticism from industry advocates - prompted Senator Gorton (R-Wash) to pursue a quick fix via a rider to a fiscal year 1999 emergency appropriations bill (HR 1141). The rider, enacted on May 21, 1999, bars the denial of plans of operations and patent applications submitted prior to May 21, 1999 pursuant to Solicitor Leshy's November 7, 1997 policy opinion. *See* PL 106-31.

- **DOI's Consideration of "Comparative Value" Standard for Mining Claims**

In *United States v. United Mining Corp.*, 142 IBLA 339 (February 10, 1998), an administrative appeal involving the Building Stone Act of 1892, the IBLA considered whether the statutory right to "enter lands that are chiefly valuable for building stone" permitted a comparison of the value of land for mining purposes against the value of land for aesthetic and geological purposes. Although the majority opinion held that comparisons between *quantifiable* values were contemplated by the "chiefly valuable" language, comparisons with *subjective* values such as aesthetic and geological values were not. Four dissenters, however, disagreed and would have adopted a "comparative value" test that included the consideration of aesthetic and geologic values. *See, e.g.*, 142 IBLA at 381(Irwin, A.J., dissenting), *citing* Willa Cather, A LOST LADY (A. Knopf, New York, 1923).

On October 2, 1998, DOI announced that Interior Secretary Babbitt would review the IBLA's decision and, moreover, would consider use of a "comparative value" test not only under the Building Stone Act, but also under the Mining Law of 1872, where the "prudent man/marketability test" currently holds sway in determining the validity of mining claims. The National Mining Association, joined by several state mining associations, have submitted procedural and substantive arguments as to why Secretary Babbitt cannot and should not adopt the "comparative value" test in determining the validity of mining claims. No decision has resulted from the Secretary's review as of this writing, but there is much speculation as to whether the Secretary might adopt the new standard and then expect BLM and the Forest Service to re-review the validity of claims under pending plans of operation and patent applications.

- **BLM's Proposed 3809 Regulations Concerning Mine Reclamation**

The saga initiated (most recently) by Secretary Babbitt's January 6, 1997 internal memorandum calling for regulatory reform of BLM's surface management regulations continued this year, despite a Congressional moratorium (PL 105-207 of October 21, 1998) on the issuance of "final" revisions to the 43 CFR 3809 regulations. Not to be deterred by the moratorium, which was intended to allow time for the National Academy of Science to analyze whether regulatory reform is needed (*see* PL105-277), the DOI came forth with a February 1999 Draft Environmental Impact Statement and proposed new 3809 regulations on February 9, 1999. The BLM also initiated a series of public meetings on the proposal. Meanwhile, the National Academy of Science study is in progress and a report currently is expected on July 29, 1999.

Like earlier drafts, the proposal is meant to respond to Secretary Babbitt's memorandum by preventing unnecessary and undue degradation of lands administered by BLM. Under DOI's proposal, *see* 64 F.R. 6422-6468 (Feb. 2, 1999), a full analysis of which is beyond the scope of this outline (and possibly premature in light of the ongoing National Academy of Science study), the highlights include:

1. Controversial provisions intended to allocate responsibilities and define the programmatic relationship between states and the federal government. For example:

a. Federal requirements apply in case of any conflict, but "there is no conflict if the state law or regulation requires a higher standard of protection for public lands . . . ." § 3809.3.

b. A state may request that BLM enter into an agreement whereby BLM may defer to state administration of the 3809 requirements for operations on public lands after comparing numerical standards and determining whether non-numerical standards are "functionally equivalent." §§ 3809.201(b) and 3809.202.

c. Any deferral agreement a state may obtain from BLM is limited by provisions (1) requiring BLM's concurrence in approvals of plans of operations, (2) recognizing that BLM retains full land use planning and regulatory enforcement authority, and (3) requiring BLM's concurrence for bond release. § 3809.203.

d. BLM retains oversight authority, including authority to terminate any deferral agreement with a state for failure of compliance following notice to the state by BLM. § 3809.203.

e. Existing agreements between BLM and states remain effective while the parties conduct a one-year review to determine whether any changes are necessary. § 3809.204.

2. Provisions classifying operations into "casual use" (no or negligible disturbance), "notice-level operations" (unreclaimed distubance limited to 5 acres of public land and no "leaching or storage, addition, or use of chemicals"), and "plan-level operations." §§ 3809.5, 3809.10 and 3809.11.

3. Provisions identifying the limited extent of grandfathering available for previously approved operations and operations with a pending plan of operations concerning which BLM has made public an environmental assessment or environmental impact statement prior to rule adoption. § 3809.400.

4. Extensive provisions concerning what information must be included when submitting a plan of operations, including detailed operator information, descriptions of operations, preliminary designs and operating plans, a reclamation plan, a monitoring plan and, at the discretion of BLM, baseline environmental information to characterize public and non-public lands and environmental and socioeconomic conditions. § 3809.401.

5. Provisions addressing the required financial guarantee and how it is calculated, approved, released and/or forfeited. §§ 3809.411(d), 3809.412 and 3809.500 to 3809.599. These provisions were included because the bonding requirements BLM previously promulgated were held to be in violation of the Regulatory Flexibility Act in *Northwest Mining Association v. Babbitt*, 5 F.Supp.2d 9 (D. D.C. 1998).

6. Provisions for the employment of "most appropriate technology and practices" (MATP). §§ 3809.5 and 3809.420(a)(1).

7. Provisions detailing general and specific environmental performance standards for operations and reclamation, some of which rely on already applicable state, federal and tribal standards, but many others of which overlap with existing requirements. For example, included are provisions for

pit reclamation; location and design of waste rock piles, tailings impoundments and leach pads; mitigation measures; recontouring and revegetation; wetlands and riparian areas; acid, toxic and "other deleterious leachate generation," and other matters. § 3809.420.

8. Provisions relating to inspections, penalties, enforcement and appeals. §§ 3809.600 to 3809.800.

Although the Congressional moratorium covering these proposed rules is still in place, further legislation has been proposed that would delay adoption of any final 3809 revisions until the Secretary has provided a period of not less than 120 days for accepting public comment once the National Academy of Science report is submitted. *See* S 544. The National Academy of Science has invited input from state regulators and others in its process of gathering information for its study, but it remains to be seen whether, as the mining industry would expect, the study will conclude that the 3809 revisions are unnecessary in light of the extensive state and federal laws already on the books.

- **OSM's Proposed Clarification of "Indian Lands" Under SMCRA**

On February 19, 1999, DOI's Office of Surface Mining Reclamation and Enforcement (OSM) issued proposed rules "clarifying the definition of 'Indian lands'" at 30 CFR 700.5 for purposes of the Surface Mining Control and Reclamation Act (SMCRA). *See* 64 FR 8464-8476 (Feb. 19, 1999). The proposed "clarification" stems from a settlement agreement between DOI, the Navajo Nation and the Hopi Indian Tribe that was approved in *Hopi Indian Tribe v. Babbitt*, Nos. 89-2055 and 89-2066 (D. D.C. 1995). In that dispute, the tribes contended, among other things, that the Secretary's refusal to delegate surface coal mining regulatory authority to the tribes was a violation of the Secretary's trust obligation to the tribe.

As a result of the settlement, the Secretary agreed to propose an expansive definition of Indian lands for purposes of SMCRA. Specifically, the Secretary agreed to include in the proposed definition "all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203." The effect of this is potentially significant in terms of regulatory jurisdiction under SMCRA, particularly in New Mexico, because the "land consolidation area" cited in the settlement "refers to a large expanse of lands" that the Navajo Nation established to augment the Navajo land base in accordance with the Indian Land Consolidation Act. These include not only reservation lands and lands within the traditional interpretation of "Indian country," but a host of other lands in the Four Corners, including six New Mexico counties.

Although not all of the lands within the Navajo "consolidation area" contain significant coal reserves underlying Indian allotted lands, companies with holdings in these areas, particularly coal holdings, are well-advised to consider the potential ramifications of the proposed rule. Of course, due to the flexible definition of "Indian country" relevant as well in non-SMCRA jurisdictional contexts (under which governmental control is a factor considered in characterizing lands) it is certainly

conceivable that the proposed rule, if adopted, might have broader implications than the limited SMCRA context in which the "clarification" has been proposed by DOI.

The preamble to the proposed rulemaking notes that there are eight actively producing coal mining operations within the Navajo land consolidation area. Five of those mines are in New Mexico, two are in Arizona, and one is in southwestern Colorado. Eight other New Mexico mines within the land consolidation area are currently in the reclamation phase. The proposed rulemaking explicitly recognizes and addresses impacts of the proposed rulemaking on the McKinley mine in New Mexico (currently owned by Pittsburg & Midway Coal Mining Co.), which encompasses part or all of 45 individual Indian trust allotments. All 45 of those allotments were the subject of a settlement agreement in *Mescal v. United States*, No. 83-1408 (D. N.M. 1997), whereby subsurface minerals that were previously reserved to the United States are to be conveyed to beneficial owners of the overlying allotments within six months of the termination of federal leases covering most of the coal. The settlement resolved a long-standing class action in which the allottees sought beneficial title to the minerals underlying their allotments.

The proposed clarification of the Indian lands definition would have the immediate effect of transferring regulatory jurisdiction from New Mexico's Mining and Minerals Division to OSM, with a long term potential for tribal jurisdiction. Although the notice asserts that the immediate effect may be limited to the McKinley mine, it also acknowledges that OSM would have regulatory jurisdiction for any future operations, or portions thereof, located on individual Indian trust allotments within the off-reservation portion of the Navajo land consolidation area. The potential longer-term impact on tribal jurisdiction under the "Indian country" formulation relevant beyond SMCRA, remains to be seen.

- **OSM's Proposed Rule On Permit Eligibility, Ownership and Control**

On December 21, 1998, OSM proposed to revise how ownership and control of mining operations are determined under under the permit block sanction in § 510(c) of SMCRA "so that applicants who are responsible for unabated violations do not receive permits." 63 FR 70580-70628 (Dec. 21, 1998). The proposed rulemaking follows the National Mining Association's successful challenge to earlier rulemakings on the same subject, which allowed permit denial when any person who owned or controlled the applicant was in violation of SMCRA. *See National Mining Association v. Department of the Interior*, 105 F.3d 691 (D.C. Cir. 1997) (finding SMCRA only authorizes permit denial when any surface mining operation owned or controlled by applicant is in violation).

Rather than simply scale back the earlier rule to bring the ownership and control definition within the permit block provision of SMCRA, the proposed rule represents OSM's relatively complete revamping of the system to ensure that "bad actor" are ineligible for permits under SMCRA. In doing so, OSM in the proposed rule has recast the basis for declining permits to owners or controllers of applicants and has enhanced its information gathering and evaluation processes, including use of the automated Applicant/Violator System (AVS). The National Mining Association continues to challenge OSM's efforts.

- **ACHP's Final Rule Implementing 1992 Amendments to the NHPA**

Although beyond the scope of this update, it is worth noting that the Advisory Council on Historic Preservation has issued its long-awaited final rule revising regulations governing the protection of historic properties. *See* 64 FR 27044-27084 (May 18, 1999).

II. LEGISLATION CONSIDERED BY CONGRESS

- **Appropriations Rider Addressing DOI's Limitation on Mill Site Acreage**

The 1999 Emergency Supplemental Appropriations Act, signed into law by President Clinton, contains a rider inserted by Senator Slade Gorton (R-Wash) to exempt the Crown Jewel plan of operations from the millsite policy in Solicitor Leshy's Opinion. *See supra*.

- **Mine Law Reform Bill Expected from Senators Murkowski and Craig**

Many have speculated that Senators Murkowski and Craig may soon introduce an industry bill along the lines of bills introduced in prior sessions of Congress. The bill, if introduced, may provide for royalties, specify reclamation requirements, retain patents subject to a right of reentry, and protect vested possessory property rights of mining claimants.

- **Comprehensive Mine Law Reform Bill Introduced by Representative Rahall**

HR 410, introduced January 19, 1999 by Representative Rahall, includes:

1. Provision for an 8 percent net smelter return royalty on production of all locatable minerals or mineral concentrates or products derived from locatable minerals. § 306.

2. Provisions for designating lands as unsuitable for mineral activities. § 209.

3. An extensive scheme for permits of up to five years for exploration activities. § 203.

4. An extensive scheme for 10 year permits for mining operations. § 204.

5. Bad actor provisions. §§ 204(b)(2) and 205.

6. Extensive baseline information and reclamation planning recuirements. §§ 203(c), 204(b) and (c).

7. A requirement to use the "best technology currently available" in meeting the detailed and stringent proposed reclamation standards. § 207(a)(2).

8. Fees to cover the anticipated cost of the program, to be deposited in an Abandoned Locatable Minerals Mine Reclamation Fund. § 203(g).

9. Financial assurance provisions. § 206.

10. A requirement to recontour to natural topography. § 207(b)(5).

11. Provisions for coordinating with states. § 208.

12. A provision abolishing patents unless, among other requirements, a patent was applied for on or before January 7, 1997. § 417.

13. Numerous other provisions addressing such topics as pit reclamation, monitoring and contingency plans, enforcement, etc.

- **Mine Law Reform Bills Introduced by Representative Miller**

1. HR 394. This bill would establish a 5 percent net smelter royalty from the production of locatable minerals or concentrates, impose quarterly reporting requirements, set up an Abandoned Minerals Mine Reclamation Fund, abolish patents unless (among other requirements) they were applied for on or before September 30, 1994, and impose $125 claim maintenance fees for claims located after enactment.

2. HR 395. This bill would impose reclamation fees on gross proceeds over $500,000 from minerals produced from patented lands in any calendar year beginning in 1997, and would establish an Abandoned Minerals Mine Reclamation Fund.
3. HR 397. This bill, titled the "Elimination of Double Subsidies for the Hardrock Mining Industry Act of 1999," would repeal the depletion allowance for certain hardrock mines under § 611(a) of the Internal Revenue Code.

- **Withdrawals, Wilderness Areas and International Conservation Designations**

During this session, numerous bills have been introduced concerning withdrawals, wilderness areas and international conservation designations. Among them are:

1. HR 488 (Shays). This bill would protect 20 million acres of northern Rockies wilderness in five states.

2. S 861 (Durbin) and HR 1732 (Hinchey). These bills would designate 9.1 million acres of BLM-managed land in Utah as wilderness.

3. HR 829 (DeGette). This bill would designate 1.4 million acres of land in Colorado as wilderness.

4. HR 1239 (Vento) and S 867 (Roth). These bills would designate 1.4 million acres of coastal plain of ANWR as wilderness.

5. HR 883 (Young) and S 510 (Campell). These bills would require Congressional approval of international conservation designations.

III. FEDERAL APPELLATE COURT DECISIONS

- **United States Supreme Court: Coal Estate Does Not Include Coalbed Methane**

Ending a long and sometimes contentious dispute, the United States Supreme Court recently reversed the *en banc* ruling of the Tenth Circuit and held that coalbed methane (CBM) is not included within the Southern Ute's coal estate reserved by the United States when it conveyed patents to western settlers pursuant to the Coal Lands Acts of 1909 and 1910. *See Amoco Production Co. v. Southern Ute Indian Tribe, et al.*, No. 98-830, __ U.S. __ (June 7, 1999). According to the Court, the term "coal" as used in the 1909 and 1910 Acts does not include CBM since, at the time, the gas was considered a dangerous waste product of coal mining, even though it is now a valuable energy source.

- **United States Supreme Court: Price-Anderson Trumps Tribal Exhaustion Rule**

In *El Paso Natural Gas Co., et al. v. Neztsosie*, et al., 119 S. Ct. 1430 (the United States Supreme Court determined that a federal court need not abstain from hearing claims brought by and on behalf of uranium miners under the Price-Anderson Act, when the claims were brought in the first instance in tribal court. The Court held that Congress, in adopting the Price-Anderson Act, favored a speedy resolution of such claims in a federal forum. In doing so, the Court reversed the Ninth Circuit, which had followed a similar holding from a case involving Kerr-McGee in the Tenth Circuit.

- **D.C. Circuit: Cannot Locate Mining Claims Even if Land Withdrawal Invalid**

In *Kosanke v. Department of the Interior*, 144 F.3d 873 (D.C. Cir. 1998), mining claimants under the 1872 Mining Law challenged the BLM's determination that their mining claims were void *ab initio* since two separate DOI actions had withdrawn the lands from entry under the Mining Law. The basis of the challenge was that the land withdrawals, made pursuant to FLPMA, were invalid. In ruling in favor of BLM, the Court determined that it did not need to decide whether the land withdrawals were valid. According to the Court, the BLM's noting the segregation of the lands in BLM's records "served to remove the subject lands from mineral entry, even if the underlying withdrawal of the land was effected or perpetuated in error." The notation removed the lands from entry until such time as the notation is terminated or nullified.

- **D.C. Circuit: Army Corps' "Tulloch Rule" Under CWA § 404 Invalid**

In *National Mining Ass'n v. Army Corp of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998), the Court affirmed the district court's invalidation of the so-called "Tulloch Rule" under the dredge and fill program in § 404 of the Clean Water Act. The Corps' Tulloch Rule had eliminated a prior exemption for de minimis "fallback" during dredging operations.

- **Tenth Circuit: DOI Solicitor's Opinions Not Entitled to Substantial Deference**

In *Manning v. United States*, 146 F.3d 808 (1998), the owner of a processing plant located on millsites in the Gila National Forest of New Mexico brought various claims against employees of the Forest Service who allegedly made an unauthorized inspection of the plant. The Court ruled that Multiple Use Mining Act of 1955 applies to millsites and provides a right of free access to the surface for regulation and

enforcement purposes. In its opinion, the Court noted that there was a Solicitor's opinion which had concluded that millsites were covered by the Act. Finding that "the Solicitor's opinion is not entitled to substantial deference afforded under *Chevron*," the Court nonetheless looked to the opinion for some guidance "given that the opinion is consistent with earlier and later pronouncements by the agency."

- **Tenth Circuit: CWA Citizens Suit Alleging Mine Seepage into River Rejected**

In *Amigos Bravos v. Molycorp, Inc.*, 166 F.3d 1220 (10th Cir. 1998), environmental groups brought a citizen suit against Molycorp for alleged violations of the Clean Water Act. In essence, the groups sought to challenge an EPA decision that the NPDES permit which EPA issued for the molybdenum mine need not cover alleged seepage from waste rock piles to a nearby river through ground water. According to the decision, a separate environmental group involved during the permitting process had asserted that the seepage should be covered by the NPDES permit. According to the Tenth Circuit, the district court correctly decided that it did not have jurisdiction to hear the citizen suit claim since the plaintiffs should have brought their claims in a petition for review of the permitting decision under a separate provision of the Clean Water Act. It did not matter to the Court that the EPA in other contexts has deemed similar seepages as discharges into waters of the United States. Plaintiffs likewise could have challenged that discrepancy through administrative and judicial review of the final permit decision.

- **Ninth Circuit: Developer Did Not Need Surface Owner's Consent Under ANCSA**

In *Leisnoi, Inc. v. Stratman*, 154 F.3d 1062 (9th Cir. 1998), the Ninth Circuit resolved a long-standing uncertainty for mineral developers under the Alaska Native Claims Settlement Act (ANSCA). ANSCA § 14(f) requires the consent of the surface owner prior to mineral development of certain split estate lands "within the boundaries of any Native village." The uncertainty stems from the fact that significant surface lands were patented to Village Corporations under ANSCA, and the question often posed (as in this case) is whether all land belonging to Village Corporations trigger the consent requirement or only lands actually occupied. The Ninth Circuit resolved the uncertainty by holding that, in order to be entitled to the consent opportunity under § 14(f), a Native village must show actual occupancy. The Court rejected Leisnoi's attempt to rely on such intermittent uses as hiking and fishing to establish historical occupancy.

- **Ninth Circuit: Uranium Mill Tailings Are Not "Pollutants" Under CWA**

In *Waste Action Project v. Dawn Mining Corp*., 137 F.3d 1426 (9th Cir. 1998), citizens sued the owner of a closed uranium operation under the Clean Water Act, alleging that a NPDES permit was needed for alleged discharges of pollutants from a tailings area. The Court held that the tailings constituted "byproduct material" regulated under the Uranium Mill Tailings Radiation Control Act and thus were excluded from the definition of "pollutants" under the Clean Water Act.

- **Ninth Circuit: Mining Claimant Had Valid Extralateral Rights in National Forest**

In *The Wilderness Society v. Dombeck*, __ F.3d __ (9th Cir. 1999), an environmental group challenged the Forest Service's determination that various mining claims on national forest lands were valid. Among other things, the group claimed that the mining claimants lost their extralateral rights under the Mining Law when, after their original location, the land was established as a wilderness area and thus withdrawn from entry under the Mining Law. The argument was based on a difference in language under 30 U.S.C. §§ 22 and 26. The Court rejected the argument and held that the Forest Service correctly determined that the mining claimants had valid and existing rights to their claims, including extralateral rights.

- **Ninth Circuit: Equal Access to Justice Act Applies to Mining Claim Contest**

In *Collord v. Dept. of the Interior*, 154 F.3d 933 (9th Cir. 1998), the Court held that the Equal Access to Justice Act applied to a contest of mining claims and millsites brought by the Secretary of DOI under the 1872 Mining Law. The reason, according to the Court, is that the mining claims and millsites constitute property interests for which the Constitution grants a right to a hearing before the agency can cancel the rights. Since the hearing is an adversary adjudication under § 554 of the Administrative Procedure Act, the EAJA applied to the hearing. As a result, the Court remanded to the agency to determine whether the mining claimant could establish a right to attorneys fees for defending against the DOI's overruled attempt to invalidate the claims in the contest proceeding.

- **Eighth Circuit: 1872 Mining Law Preempts County Surface Mine Prohibition**

In *South Dakota Mining Ass'n, Inc. v. Lawrence County*, 155 F.3d 1005 (8th Cir. 1998), mining claimants brought suit against a county in South Dakota which had adopted an ordinance prohibiting the issuance of new or amended permits for surface metal mining within an area that included federal lands. The Court held that the ordinance stood as an obstacle to accomplishment of the full purposes and objectives of Congress under the 1872 Mining Law, to encourage exploration and mining of valuable mineral deposits on federal land. Relying on the analysis of the United States Supreme Court in *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987), the Court found that the Mining Law preempted the ordinance.

- **First Circuit: City's Special Use Permit for Mining Not a Regulatory Taking**

In *South County Sand & Gravel Co., Inc.*, 160 F.3d 834 (1st Cir. 1998), an earth removal company brought a facial challenge to an ordinance that required a special use permit in order to "expand horizontally in surface area by more than 25%" of their existing excavated area. The challenge was based on procedural and substantive due process grounds, but the Court considered the claim to be a "garden-variety regulatory takings claim." Analyzing the case under the Takings Clause, the Court held that there was no showing that the legislation stripped the land of all significant value and no basis for considering the special use requirement to be an "arbitrary or irrational exercise of power."

IV. FEDERAL DISTRICT COURT AND IBLA DECISIONS

In the past year there have been several district court opinions and IBLA decisions worthy of note. These include:

A. *Cook v. United States*, 1999 WL 36214 (Fed. Cl. 1999) (mining claimant's description of mineral deposit as "block pumice" in patent application did not limit him to the block pumice exclusion under § 611 of the Multiple Use Act).

B. *Chanley Christensen, et al.*, 149 IBLA 14 (May 20, 1999) (upholding BLM decision invalidating mining claims where the claimant did not identify the located mineral).

C. *Mid-Continent Resources, Inc.*, 148 IBLA 370 (May 14, 1999) (setting aside BLM's refusal to allow mining of limestone as a locatable mineral from a stockpile of waste on grounds that BLM used an unacceptable grab sampling method).

D. *Smith Hill Ventures, Inc.*, 148 IBLA 239 (May 19, 1999) (a mining claim located on the same land as a townsite patent is only valid if mining was ongoing when the patent was issued).

E. *North Country Land and Dev. Co.*, 148 IBLA 281 (May 3, 1999) (earlier IBLA dicta that certain lands were "mineral in character" did not bind BLM to issue a supplemental patent covering 80 acres of mining claims on the lands).

F. *3R Minerals*, 148 IBLA 229 (April 22, 1999) (where there was no showing that mining was ongoing when lands were designated as a wilderness study area, mining claims were not grandfathered).

G. *Katheryn Firestone*, 148 IBLA 126 (April 1, 1999) (mining claimant's failure to identify the year in which she claimed a small miner exemption from the rental fee was a curable defect where the failure was unintentional; claims void for other non-curable defects).

H. *5M, Inc.*, 148 IBLA 36 (March 17, 1999) (coal lessee within wilderness study area was not prohibited from developing lease, and therefore BLM correctly denied request for lease suspension on the theory that BLM would not approve drilling).

I. *AgriBeef Co.*, 148 IBLA 52 (March 18, 1999) (expense of obtaining reasonable access to mining claims should be taken into account in determining whether the claimant has a valid discovery).

J. *Floyd Higgins, et al.*, 147 IBLA 343 (February 26, 1999) (where, during government's shut-down, BLM misled mining claimant on deadline for filing affidavit of assessment work, which claimant attempted to file on a timely basis, BLM was estopped to declare claims null and void for failure to file timely).

K. *Maypole Corp. et al.*, 147 IBLA 304 (February 18, 1999) (surface owner's application for conveyance of federally owned mineral interests was properly rejected by BLM since the mineral interests were withdrawn by Congress and would need an act of Congress to change the withdrawal).

L. *U.S. v. Bill Boucher*, 147 IBLA 236 (January 25, 1999) (upholding BLM declaration that mining claims were void for lack of a valid discovery; time for determining mineralization was the date when the lands were withdrawn).

M. *David J. Flaker*, 147 IBLA 161 (January 11, 1999) (BLM could not require a plan of operations for casual mining operations on 1-acre claim).

N. *FMC Wyoming Corp*., 147 IBLA 51 (December 17, 1998) (BLM required to give a royalty rate reduction for secondary and tertiary processing to recover soda ash).

O. *Estate of John Lighthill*, 147 IBLA 25 (December 14, 1998) (BLM properly limited patent issuance to subsurface where the patent had not been applied for before the surface was designated as a wild and scenic river).

P. *Melvin Helit,* 146 IBLA 362 (December 2, 1998) (disapproving of BLM's declaration that claims were null and void where that penalty was harsher than BLM had threatened in a compliance notice; IBLA nonetheless found the claims null and void due to inadequate descriptions of boundaries and claims).

Q. *U.S. v. Day Lee Waters*, *et al.*, 146 IBLA 172 (October 30, 1998) (affirming BLM decision to contest and nullify claims after determination of no valuable mineral deposit resulted from mineral examination).

R. *Creole Corp*., 146 IBLA 107 (October 20, 1998) (BLM properly required a new plan of operations where mining had been minimal, but BLM's invalidation of right-of-way was not proper without prior notice).

S. *National Wildlife Federation*, 145 IBLA 348 (September 23, 1998) (affirming BLM's approval of Summo USA Corp.'s Lisbon Valley open pit copper mine plan of operations except for determination that backfilling pit could be deleterious to the environment).

T. *Richard K. Hatch*, 145 IBLA 267 (August 26, 1998) (affirming denial of request for deferment of annual assessment work and payment of fees; difficulty of access was not a legal impediment affecting the right of the claimant to enter upon the claims).

U. *Sigma M Explorations Inc.*, 145 IBLA 182 (August 13, 1998) (BLM's declaration that 41 mining claims held by corporation and five individuals were ineligible for small miner exemption, but BLM's notice that the claims were null and void was inadequate in that it did not explain to the five individuals why they were ineligible for the small miner exemption).