

Annual Mining and Public Land Law Update

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Outline

- Judicial
 - Patents
 - Mining Claims
- Administrative/Executive
 - Withdrawals, Wilderness, and Monuments
 - Regulatory Updates
- Legislative
 - Proposed Legislation

Patent – Railroad ROW

Marvin M. Brandt Revocable Trust v. United States
(134 S.Ct. 1257 (U.S. 2014))

- Quiet title action by U.S. for 66 miles of former railroad
- ROW under the General Railroad ROW Act of 1875
- Supreme Court held:
 - U.S. conveyed only a ROW to the railroad company
 - Upon abandonment, property subject to the railroad ROW no longer burdened by the ROW
 - U.S. had no interest in the former railroad ROW and could not use the former railroad for a recreational trail

Patent – Wilderness Area

McMaster v. United States

(731 F.3d 881 (9th Cir. 2013))

- Claims located prior to wilderness designation
- BLM patent only included mineral deposit based on DOI Solicitor Opinion No. M-36994
- Court:
 - Defer to Solicitor Opinion No. M-36994: mineral only patent when no “valid existing right”
 - No “valid existing right” because requires location of valid claim and compliance with patent requirements prior to wilderness designation

Patent – Unreasonable Delay

Sims v. Ellis

(972 F.Supp.2d 1196 (D. Idaho 2013))

- Patent application filed in 1992 for 7 millsite claims
- FHFC issued in 1995; BLM contest in 2000 but dismissed in 2006
- No further BLM action; lawsuit filed in 2012
- Court:
 - Unreasonable agency delay under the APA
 - Ordered BLM to act (renew contest or issue patent)

Claims – Claim Jumpers

Anderson v. Echols

(2013 WL 3894157 (E.D. Cal. July 25, 2013))

- Defendant located lode mining claim over plaintiff's prior-in-time placer mining claim
- Court:
 - Lode mine claimant trespassed on placer claim
 - Lode mine claimant must have express consent of placer claimant to search for or locate lode claim (based on US Supreme Court precedent)

Claims – Valuable Discovery

United States v. Garcia

(184 IBLA 255, GFS(MIN) 1(2014))

- Claimant: use high gold prices in 2010 (\$1450/oz)
- BLM: use historical averages circa patent application to predict future prices (circa 1991: \$382/oz.)
- IBLA:
 - Prudent man test: must be “presently marketable at a profit”
 - Marketability test does apply to precious minerals
 - Should rely on historical prices to predict likely future prices

Claims – Locatability

United States v. Armstrong
(184 IBLA 180, GFS(MIN) 19(2013))

- Claimant: laundry grade pumice is locatable
- BLM: no longer locatable because laundry grade pumice prices are the same as common variety pumice
- IBLA:
 - Valuable discovery not static; must maintain for life of claims
 - No longer profitable due to market conditions
 - Mining equipment costs count against profits even if equipment paid off

Claims – Withdrawals

Tetra Technologies, Inc.
(184 IBLA 65, GFS(MIN 14(2013))

- 2008: 2-year withdrawal under the Engle Act (military)
- 2010: BLM withdrew lands again for 2 years
- 2011: Claimant located mining claims on withdrawn land
- IBLA:
 - 43 C.F.R. § 2310.2(a): requires new reason for extending temporary withdrawal
 - Continued processing of application to permanently withdraw lands not a new reason

Withdrawals, Wilderness, and Monuments

- Legislative

- National Defense Authorization Act: withdrew 1.5 million acres near existing military facilities in CA, MT, NM and TX until 2039 (127 Stat. 672 (2013))
- Sleeping Bear Dunes National Lakeshore Wilderness: 32,000 acres in Michigan (128 Stat. 1017 (2014))

- BLM

- Solar Energy Zones: withdrew 303,900 acres in AZ, CA, CO, NV, NM, UT for 20 years (78 FR 40499)

Withdrawals, Wilderness, and Monuments (cont.)

- President (Antiquities Act)

- California Coastal National Monument: addition of 1,655 acres (79 FR 14603)
- New Mexico Organ Mountains-Desert Peaks National Monument: 496,000 acres (79 FR 30431)

Regulatory Updates

- Endangered Species Act:
 - Adopted: regulations concerning economic analysis in critical habitat designations (78 FR 53058)
 - Focus on incremental cost of designating habitat
 - Proposed:
 - Surrogate measures for incidental take (78 FR 54437)
 - Revise the definition of “destruction or adverse modification” of critical habitat (79 FR 27060)
 - Revise critical habitat designation process (79 FR 27066)
 - Draft policy to limit critical habitat exclusions (79 FR 27052)

Regulatory Updates (cont.)

- Clean Water Act:
 - Proposed: modify definition of “waters of the United States” (79 FR 22188)
 - In response to SWANCC (2001) and Rapanos (2006)
 - Key definitions added/modified:
 - Significant nexus
 - Neighboring
 - Riparian area
 - Floodplain
 - Tributary

Proposed Legislation

- Ensuring Public Involvement in the Creation of National Monuments (HR 1459)
 - Subject Antiquities Act monument designations to NEPA
 - Limit President's authority to designate one national monument in each state per four-year term
- Responsibly and Professionally Invigorating Development Act of 2014 (HR 2641)
 - Goal: streamline permitting by federal agencies
 - One environmental document for each project
 - Rely on state environmental documents
 - Completion of EIS within 2 years of complete application

Proposed Legislation (cont.)

- National Strategic and Critical Minerals Production Act of 2013 (HR 761)
 - Expedite permitting for “strategic and critical minerals”
 - Shortens deadlines:
 - 30-month deadline for NEPA review
 - Judicial challenges to mine permits must be filed within 60 days of approval
- Critical Minerals Policy Act of 2013 (S 1600)
 - Information gathering, goal to improve permitting process
 - “Critical minerals” - minerals with supply restrictions

Thank you

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