



American Exploration &
Mining Association
EST. 1895

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A Professional
Law Corporation

U.S. MINING LAW – SHORT COURSE

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Parsons Behle & Latimer

December 9, 2025

A Different
**LEGAL
PERSPECTIVE**

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For a pdf copy of today's presentation, please visit:
<https://parsonsbehle.com/mining-short-course>

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Mining Industry Experience

Headquartered in Salt Lake City Utah, Parsons Behle & Latimer was established in 1882 and is one of the oldest and best-known firms in the Intermountain Region.

Our first clients were in the business of mining, one of the major industries that helped fuel the growth of the West.

Exploration, Development, Mining, Environmental, Energy, Water and related areas of natural resources law continue to be the foundation of the Firm's practice today.

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**LEGAL
PERSPECTIVE**

With more than 220 attorneys and offices throughout the Intermountain West, Parsons has provided a broad range of legal expertise in various practices and industries since 1882.



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Mining Industry Experience

For more than 140 years Parsons Behle & Latimer has proudly served the mining industry in the U.S., Canada, Latin America and elsewhere by teaming with its clients for:

- Natural Resources M&A
- Mining deals
- Mining law issues
- Environmental issues
- Financing issues
- Tax issues
- Water law issues
- Indian Country issues
- Litigation support
- Corporate structures

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Presenters



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OVERVIEW OF U.S. LAND & MINERAL OWNERSHIP

Jason Steiert & Jake Herzik

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WHY DOES LAND AND MINERAL OWNERSHIP MATTER?

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Types of Land Ownership

- Public
 - Federal
 - State
- Tribal
- Private
- Split interests

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FEDERAL

US Territorial Acquisitions



<http://thehistoryjunkie.com/wp-content/uploads/2012/11/LouisianaPurchase.png>

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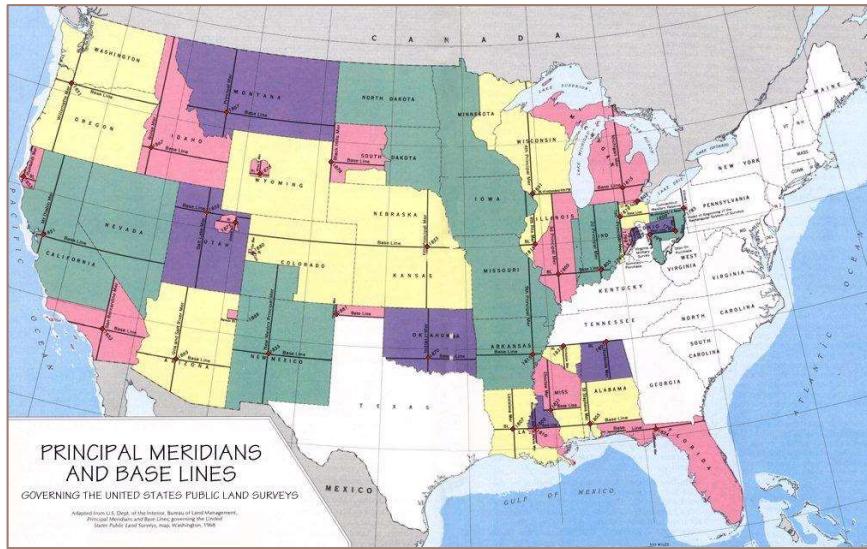
US SURVEY AND LAND COORDINATE SYSTEM

- Meridians and Base Lines
- Township and Ranges
- Sections
- Many Eastern lands by metes and bounds (300 feet westerly from the corner where the old Oak tree stands..)
- Spanish Land Grants

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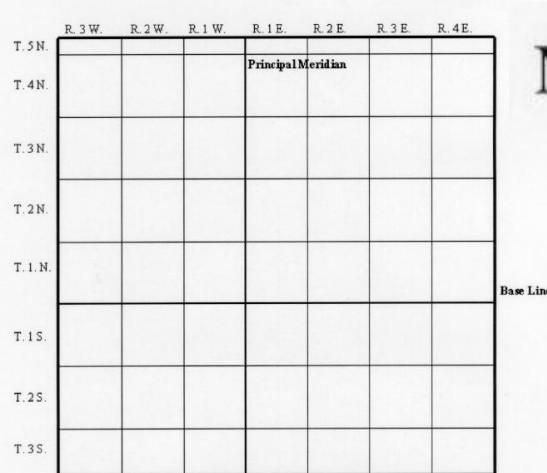
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US SURVEY MERIDIANS AND BASE LINES



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Township and Range Template

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Sections Template – Township/Range

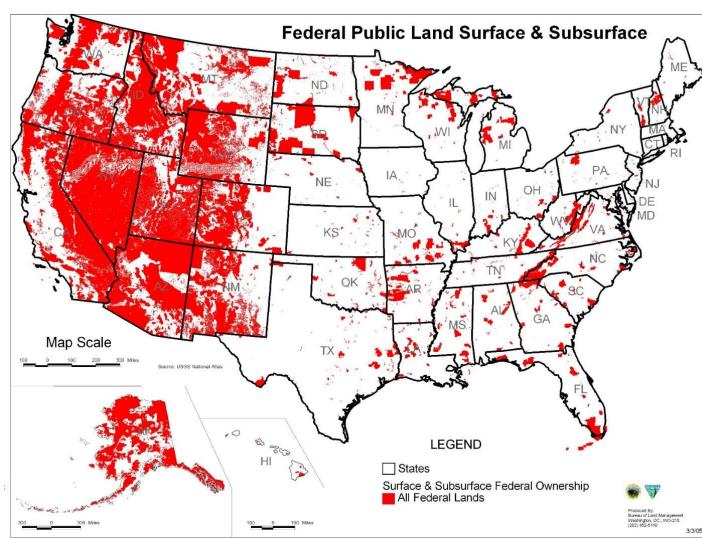
6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

N↑
SECTION

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Total Surface and Subsurface Federal Ownership of Lands – US States



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Percentage of Land Held by Federal Government in US States

Who Owns the West?



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State Lands

- East of the 100th Meridian, mostly private.
 - Some school land sections
- Western Public Land States:
 - Equal Footing Doctrine – admission on ‘same basis’ as Eastern states.
 - Mostly waived in Enabling Acts
 - State School Land Sections
 - Quantity Grants
 - Beds of navigable waters (Rivers & Lakes) if navigable “at statehood.”

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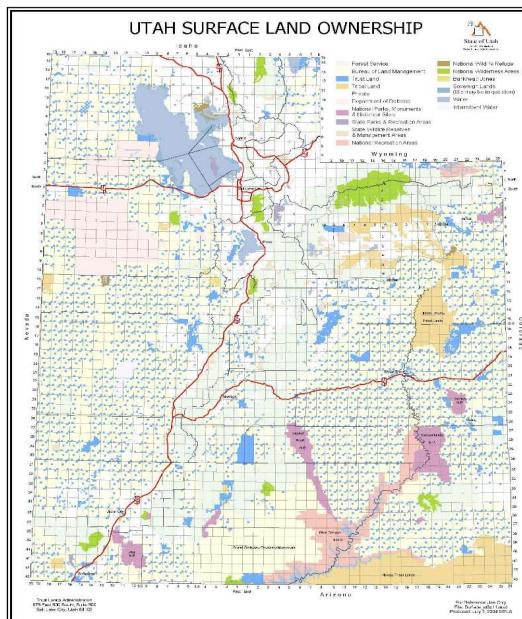
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STATE

Utah Land Status Map

State Trust Lands

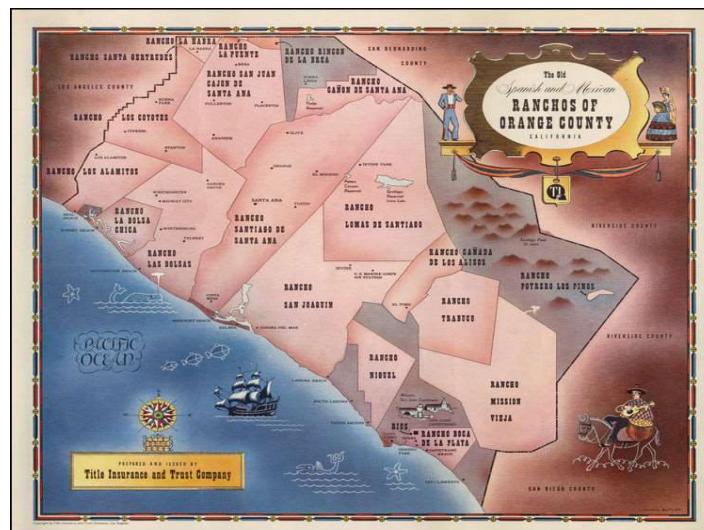
“Blue” = State School Land Sections



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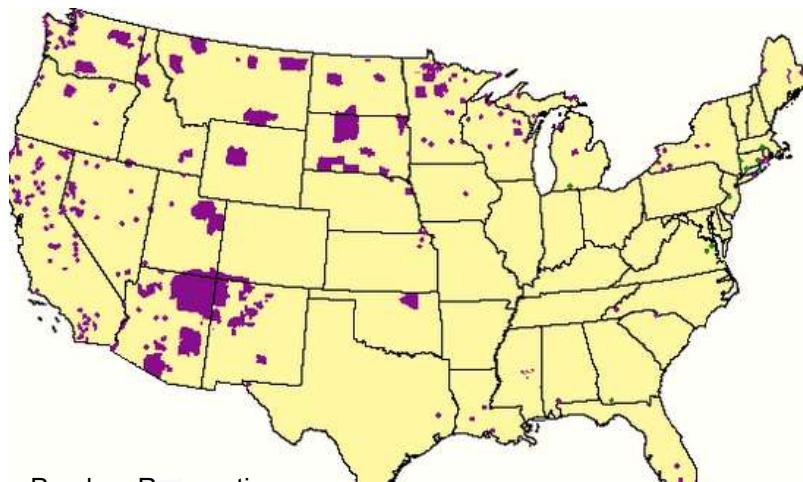
SPANISH AND MEXICAN LAND GRANTS



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TRIBAL LAND



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TRIBAL LAND

- “Domestic, Dependent Nations – Tribal Sovereignty
- For minerals located on Tribal lands, the relevant Tribe has primacy in granting exploration and development rights on Reservation lands
- But, in most cases, mineral development must be approved (and in many cases strictly overseen) by the Bureau of Indian Affairs
- The US holds title to Native Lands ‘In Trust’ for the Tribe

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FEDERAL LAND DISPOSALS

- After Revolutionary War – land sales to repay the war debt
- Later country needed way to encourage Western Settlement
- Free Soil Movement



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HOMESTEADING



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HOMESTEADING

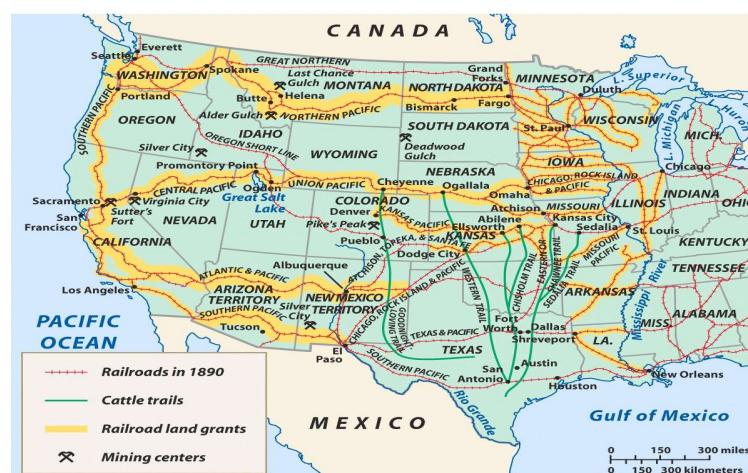
- To encourage settlement of the West Congress responded with 3 Main Homestead Acts
 - The Homestead Act remained in effect until repealed by FLPMA in 1976
 - Original Homestead Act – 1862
 - Patent to 160 Acres, with minerals
 - Predominately East of 100th Meridian
 - 1909 – Enlarged Homestead Act
 - Patent to 320 Acres, with Minerals
 - Dryland Farming
 - 1916 – Stockraising Homestead Act – no minerals

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RAILROAD LAND GRANTS

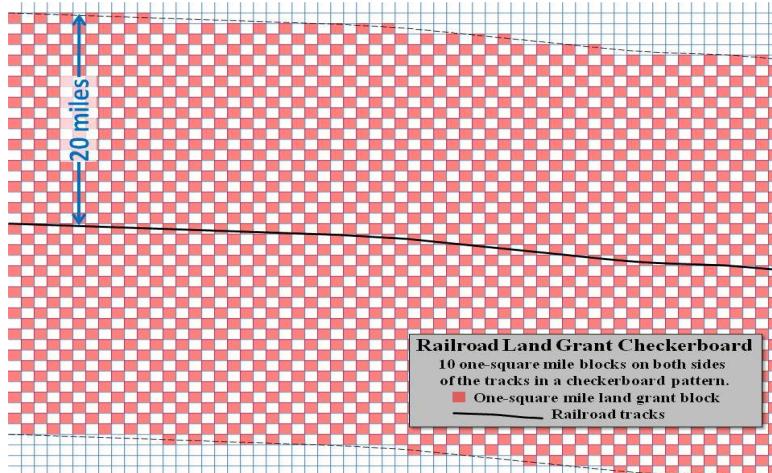
Alternate Sections
20 miles each side
of Tracks



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Railroad Land Grants continued ...



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SPLIT ESTATES

Fee Simple Absolute *with Livery of Seisin* – center of the earth to the sky (full bundle of ‘sticks’)

BUT THEN.....

SURFACE ESTATE

MINERAL ESTATE

VARIOUS ENCUMBRANCES/CARVEOUTS

Government

Private

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Split Estate

- Surface / Federal Minerals
- Why were the Surface and Mineral estates split?
- How does BLM manage split estates?

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1910 – Different Values

- Surface = Agriculture
- Subsurface = Minerals
- Concerns that strategic minerals needed to fuel the economy were being locked up by a few individuals
- 1914 – Congress began retaining the mineral estate

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Stock Raising Homestead Act – 1916

- 640 Acres for ranching purposes
- Minerals reserved to the government

“Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862).”



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Currently BLM Manages 58M acres – private surface/federal minerals

State	Acres Managed by BLM	Split Estate – Federal Minerals
Alaska	71.2M	0
Arizona	12.1 M	3.0M
Colorado	8.4M	5.2M
Idaho	11.8M	3.4M
Montana	8.0M	11.7M
Nevada	47.3M	0.3M
New Mexico	13.5M	9.5M
Utah	22.8M	1.2M
Wyoming	18.0M	11.6M

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Current BLM Policy

- Public Law 103-23 amended the SRHA in 1993 to include specific procedures for locating mineral claims on split estate lands patented under the SRHA
 - notification of the surface owner before their land is entered
 - due regard for the interests of the surface estate owner
 - occupy only those portions of the surface that are reasonably necessary to develop the mineral estate
 - landowner still has no right to prevent entry or stop mining from taking place on the property – minerals are the “dominant estate.”



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Procedures

- Before staking a claim on a homestead entry you must file a Notice of Intent to Locate (“NOITL”) a mining claim with the appropriate Bureau of Land Management (“BLM”) state office.
43 CFR 3838
- A separate NOITL must be served to each surface owner affected. By registered or certified mail, return receipt requested.
- 30 days from the date of service before entering the lands to locate any mining claim

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Procedures

- NOITLs are assigned a serial number and noted on the BLM's Master Title Plat
- Once a NOITL is filed, no one, including the surface owner, may conduct mineral activities except the person who filed notice
- 60 days to explore and stake mining claims
- While the surface owner is allowed to request that their lands be entered at a convenient time, they may not prevent entry

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Mineral Development on Split Estate Lands is Extremely Controversial and Complex



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Minerals on Public Lands

- Exploration and development of minerals on public lands depend upon the type of mineral at issue
 - Hard rock (locatable minerals) = developed under General Mining Law of 1872
 - Common varieties (sand and gravel) = Materials Disposals Act of 1947
 - Originally included in General Mining Law, removed in 1947
 - Leasable minerals (coal, oil and gas) = Mineral Leasing Act of 1920
 - Originally included in General Mining Law, removed in 1920
- This short course will focus on hard rock/locatable minerals



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Thank You

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THE GENERAL MINING LAW

Ashley Nikkel & Jason Steiert

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General

- The mineral tenure system in the United States is:
 - Complex, but depends largely on
 - (i) the type of minerals and
 - (ii) the ownership of the parcel containing the minerals
- The focus in this presentation is minerals located on public lands
- This system is self-executing



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The General Mining Law of 1872

- Unique among mineral development statutes
- Allows any citizen to enter onto public lands, stake a claim
- Royalty free
- Originally covered all “valuable” minerals on public lands, now only hard rock minerals
 - metallic minerals (gold, silver, cinnabar, lead, copper, tin, zinc, nickel, uranium, etc.)
 - nonmetallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones)
 - uncommon variety minerals (block pumice, certain grades of limestone)

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Critical Aspects

- Unique among US and Foreign mineral laws
 - Location is “self-initiated” (no prior permission needed from government)
- Five Elements of the Mining Law:
 - (i) Discovery of a valuable mineral deposit;
 - (ii) Location of mining claims and sites;
 - (iii) Recordation of mining claims and sites;
 - (iv) Annual maintenance (annual assessment work or annual fees) for mining claims and sites, and
 - (v) Mineral patents



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The Unique Nature of the Unpatented Mining Claim

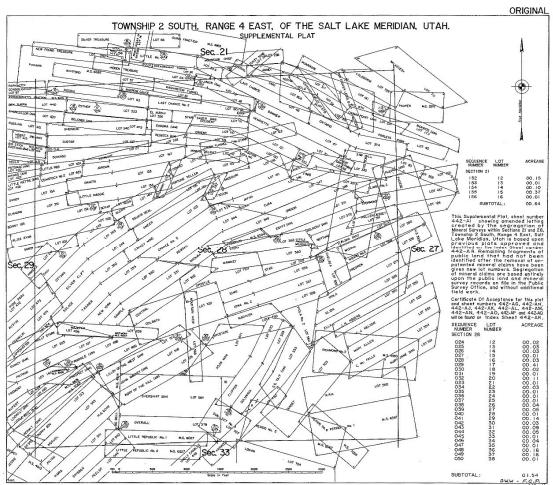
- Valid interest if:
 - Land was ‘open to location’
 - Location properly made
 - ‘Discovery’ of a valuable mineral
 - Properly maintained (maintenance fees/assessment work)
- Exclusive right to use and possess for mining purposes and free to develop and sell without royalty to the government
- Can be sold, mortgaged, inherited and treated like other real property, but paramount title in the US.

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Is (Was) the Land Open to Location



- Claim located on land not open to location:

- If claim's discovery is located on land not open to location—the claim is void in its entirety.
- If a claim partially overlaps on land not open to location, but has a discovery on the open land—the claim is only invalid to the extent of the overlap.

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Types of Mining Claims

Lode

Placer

Millsite

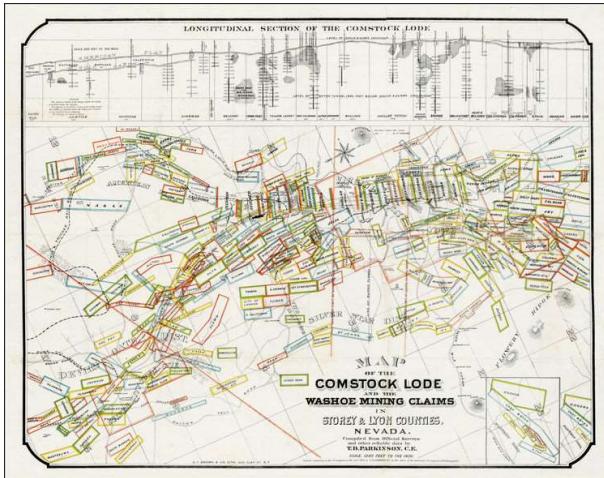
Tunnel

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Lode Claims

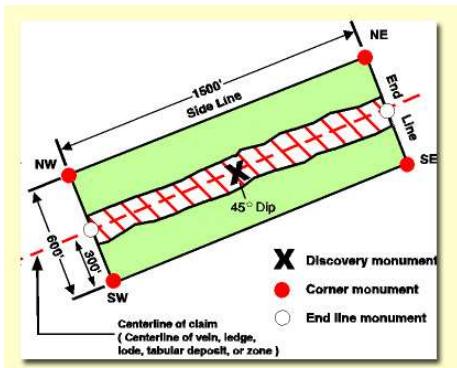


- Minerals are contained in “veins or lodes of quartz or other rock in place.”
- Generally, mineralized zone must be held in place by adjoining rock.

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Lode Claims



- Mined by drilling into the lode and blasting the rock to permit mucking, hauling and subsequent processing.
- Limited to a maximum of 1500 feet along the length of the claim and 300 feet on either side of the middle of the vein—roughly 20 acres.

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Placer Claims



- Not a lode: located on “all forms of deposits, excepting veins of quartz, or other rock in place. . . .”
- Deposits are typically heavy metals that have been transported from their point of origin to a new point where they are concentrated mechanically.

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Placer Claims

- A classic placer deposit is one where gold is found in loose sand or gravel in a stream bed.
- Maximum size of an individual placer claim is 20 acres.
- Two or more locators may form what is known as an association placer claim,
 - allows a larger claim up to a maximum size of 160 acres, and
 - must be a separate, and bona fide, locator for each 20 acres.

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Mill Sites



- A mill site can be located on up to five acres.
- Two types: dependent and independent.
- Can be located only on land that is *non-mineral* in character.

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Other Issues



- Lode v. placer
- Extralateral rights (lode claims)
- Association placer claims
- Tunnel sites

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Patented Mining Claims

Form 1800-9
(January 1988)
The United States of America
To all to whom these presents shall come, Greeting:

N-55693

WHEREAS

BARRICK GOLDSTRIKE MINES INC.
is entitled to a land patent pursuant to the general mining laws, R.S. 2325, as amended (30 U.S.C. 29) for the lands embraced within the POST No. 1, POST No. 2, POST No. 3, POST No. 4, POST No. 5, POST No. 6, POST FRACTION, and POST EXTENSION 1ode mining claim designated and described as:

Minera Survey No. 5059, within Section 24, Township 36 North, Range 45 East and Section 10, Township 36 North, Range 50 East, Mount Diablo Meridian, in the Lynn Mining District, Esmeralda County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat, which notes and plat are attached hereto, and incorporated herein, which are attached hereto, but excluding and excepting from this patent that portion of Section 19 within State Selection 9, aggregating 73.412 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto BARRICK GOLDSTRIKE MINES INC. the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto BARRICK GOLDSTRIKE MINES INC., its successors and assigns, forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES, a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

- Mining law allows claimants to patent unpatented claims or mill sites
- Application
- Validity examination
- Fee simple ownership
- Moratorium since 1994

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Five elements under GML

- Discovery of a valuable mineral deposit
- Location of mining claims
- Recordation of mining claims
- Annual maintenance (annual assessment work for fees)
- Mineral patent

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Section 22

- “That all **valuable mineral deposits** in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and **the lands in which they are found** to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.”



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Discovery

- “Valuable mineral deposit”
 - Not defined in the mining law
- Required on each claim based on actual physical exposure of the mineral deposit within the claim boundaries
- “Mineral in character” can be supported by geologic inference from adjoining lands and a reasonable opportunity for profitable extraction

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Tests for valuable mineral deposit

- “Prudent Man Test”

- Mineral in sufficient quantity & quality so that “person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine”
- Lode: (1) vein or lode of quartz or other rock-in place, (2) quartz or rock in place must carry gold or some other valuable mineral deposit, and (3) these two elements, taken together, must warrant a prudent man...
- Placer Claims: Each 10 acres must be “mineral in character”

- Marketability test - supplements

- Reasonable prospect of making a profit from the sale of minerals from a claim or group of contiguous claims



Mill site Issues

- Must be located on land that is *non-mineral* in character.
- Mill sites located in connection with a lode claim cannot be contiguous to the vein or lode, but they can be contiguous to the mining claim itself.
- A locator's rights in a mill site do not vest until the land is used in good faith for mining and milling purposes.
- BLM's regulations require that every two and one half acre portion of the mill site be used or occupied for mining or milling purposes.



Claims Contests

- Two types:
 - Administrative challenge to the validity of mining claim or site, typically filed by the government
 - Private dispute between mineral (and maybe nonmineral) entries
- Typically argue lack of discovery, non-mineral in character (lode and placers), mineral in character (mill sites), lack of marketability, not locatable, not being used or occupied for valid purposes under the mining law (aka not valid)
- OHA/IBLA versus state or federal court



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Pedis Possessio

- Although a claim is not valid until there is a “discovery,” doctrine of ***pedis possessio*** offers some protection prior to a discovery:
 - Claimant must be actually occupying the claim, diligently searching for a mineral and actively, *but peaceably*, excluding other miners.
 - Claimant is thus entitled to continued possession of the land while he attempts to establish a discovery.
- Protects *only* against rival claimants, but not against the government, which can challenge a mining claim at any time for lack of a discovery

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Relations with surface users (non-claimants)

- Mining claim on federal land—exclusive right to possession and enjoyment of the minerals and use of the surface; *provided that the surface use is reasonably related or connected to mining activities.*
- The Federal government retains the right to manage and dispose of the surface resources and to authorize other uses of the surface.
- Surface uses may not materially interfere with mining or milling operations.



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Relations with surface users (non-claimants) continued . . .

- Split estates also present the opportunity for conflict between mineral claimants and surface owners.
- Traditionally, the mineral estate is the dominant estate.
- The rights of the mineral estate holder, however, are not absolute.
 - *subjacent* support
 - *lateral* support
- Under the common law, mineral estate owner is obligated to maintain sufficient subjacent and lateral support.

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Claims/Claim Staking Questions?

The following Document contains no Personal Information
as defined by NRS 603A.040

**CERTIFICATE OF LOCATION
LODE MINING CLAIM**

TO ALL WHOM IT MAY CONCERN:

Name and mailing address of locator:

located the _____, Lode Mining Claim in the following quarter section(s):

1/4	Section	Township	Range	Meridian
_____	_____	_____	_____	MID&AM
_____	_____	_____	_____	MID&AM
_____	_____	_____	_____	MID&AM
_____	_____	_____	_____	MID&AM

in _____ County, Nevada, on the _____ day of _____, 20____

The Claim is approximately _____ feet long and _____ feet wide, such that _____ feet are claimed in a _____ direction and _____ feet in a _____ direction from the point of discovery (monument of location), at which the Notice of Location was posted, together with feet on each side of the monument of location and center of the Claim. The general course of the lode or vein is from the _____ to the _____ direction.

The number, location and markings on each corner monument are as follows:

Location	Markings	Description
No. 1: _____	_____	_____
No. 2: _____	_____	_____
No. 3: _____	_____	_____
No. 4: _____	_____	_____

As erected on the ground each corner monument is marked by _____ (metal tags, paint, etc.)

The undersigned certifies that work of location included making a claim map as provided in NRS 517.040.

Dated this _____ day of _____, 20____

By _____
Locator or Agent Signature
(circle one) _____
Locator or Agent Name (printed) _____

Suggested Form - Nevada Division of Minerals (REV. 8-27-2015)
Nevada Lode Certificate of Location - NRS 517.050



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Thank You

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LAND TENURE ALTERNATIVES

Kaycee Royer & Ashley Nikkel

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Land Tenure Options

- Private Land
- State Lands
- Mining Law
- Discretionary Grant
 - Permit, Easement, Lease
 - Right of Way
- Designations
- Land Exchanges
- Land Sales

- Related Concepts
 - Withdrawals
 - Segmentation
 - Classifications
 - “Rosemont” issues

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Discretionary Grants

- Permits
- Easement
- Leases
- Rights of Way



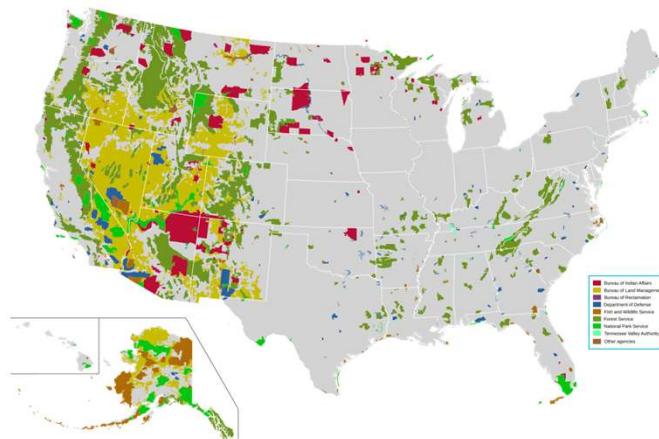
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Private and State Lands

- Private Lands
- State Lands
 - Leasing
- Reservations & Tribal Lands



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Designations

- Congress
 - National Parks, National Wildlife Refuges, National Recreation Areas,
 - Wilderness Areas
 - Specific Acts
- Executive
 - Antiquities Act (National Monuments)
 - National Wild and Scenic Rivers System
 - National Trail System
 - Areas of Critical Environmental Concern (BLM)

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Land Exchange under FLPMA

- Land exchanges are generally conducted under the authority contained in the Federal Land Policy and Management Act (FLPMA).
 - FLPMA was amended in 1988 by the Federal Land Exchange Facilitation Act (FLEFA).
- The types of interests to be conveyed generally fall into two categories:
 - Land for an Interest in Land.
 - Interest for Interest.
- Exchanges for the mineral estate are allowed when the proposed exchange serves to maintain and improve consolidated ownership of the surface and the mineral estate of Federal land.



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Forest Service Land Exchanges

- Variety of authorities
 - 1922 General Exchange Act
 - Weeks Act (1911)
 - Bankhead Jones Act
 - 1962 Forest Service Omnibus Act
 - Wild and Scenic Rivers Act
 - Organic Act/Wilderness Act
- Specific laws apply to specific areas
- 36 C.F.R. Part 254, Subpart A

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Land Sales

- General retention policy, but FLPMA allows for sales of lands identified for disposal in the resource management plans
- BLM land may be sold if
 - Acquired for a specific purpose and no longer needed for that or any other federal use
 - Disposal would serve important public objectives, which outweigh the public values of keeping the land in federal hands
 - Difficult and uneconomic to manage due to location or other characteristics and not suitable for transfer to another federal agency
 - Formal public comment and notice process
- USFS: more limited, mostly land exchanges instead



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Withdrawn Lands

- Claims must be located on Federal land that is “open to location” *at the time the claim was located and a discovery made*.
- Withdrawal is “subject to valid existing rights”
 - Validity determination
 - Field inspection by certified mineral examiner
 - Report and recommendation
 - Claim owner pays the cost – \$\$\$
 - Typically take over a year to complete
- For diligence purposes, must review BLM records to determine whether there are prior Federal actions or conflicting mining claims that may have closed the land to location.

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Withdrawals and Classifications

- Withdrawal removes Federal land from appropriation under particular public land laws.
 - May be temporary or permanent.
 - Remains in effect until expired, revoked, restored or otherwise terminated.
- A classification involves the evaluation of land for various uses and may result in disposal of the land, retention of the land in Federal ownership, or setting aside the land for a specific use.

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Withdrawals and Classifications

- Whether land is closed depends on the language in the segregating document and the authority for it.
- Often, determining when a withdrawal or classification was in effect or terminates is more difficult than determining if the action itself operates as a segregation.
- In the absence of specific regulatory or other authority, the *notation* or *tract book rule* may apply—action noted on BLM’s records closes the land until the notation is removed, even if the notation was made in error.

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“Segregated” Entries

- Under many statutes, reserved minerals are not subject to location.
- The Stock Raising Homestead Act is the most significant statute that allowed location of reserved minerals—for *locations made after 1992*, special rules apply.
- Also, prior to 1954, with certain exceptions, a mining claim could be not located on land subject to an outstanding oil and gas lease issued under the Mineral Lands Leasing Act.

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Patented Land

- When the Federal government issues a patent for land to a private party, without a reservation of minerals, the land is no longer Federal land and is not open to location.
- Patent protests
- Land transferred to a state government is also not open to location
- Diligence note: even if the patent contains a reservation of minerals, the statute under which the patent was issued and the governing regulations must be reviewed to determine if the reserved minerals are open to location

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Framing the Discussion

- Mining Law (mining claims) only applies to “locatable minerals”
 - Excluded from locatable minerals are leasable minerals, saleable, minerals, and common variety minerals
- Reform groups want locatable minerals to be treated more like leasable minerals, but have been unsuccessful at achieving legislation to amend or repeal the General Mining Law
 - Pursuing other avenues in executive and judicial branches (IWG, Rosemont arguments)
- Rights under the General Mining Law entitle the owner to certain use and access – government has limited discretion to veto project based on the mining law where it otherwise complies with substantive environmental standards

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Validity – Where Relevant

- Withdrawn Lands
- Patenting
- Claims Contests
- *Plan of Operations* submission



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Mining Law “Reform”

- Main argument in favor of reform
 - Public resource, but no direct public benefit (money) – only costs (environmental harms)
 - General Mining Law is a creature of Reconstruction America, ill-suited to modern needs (couched in reform but really mean repeal)
- Against reform
 - Mining is extremely capital-intensive, the existing system is the only way companies will invest in such a monumental financial undertaking
 - “Not your grandfather’s mining” – environmental stewardship, reclamation bonding and requirements



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“Validity” Issues

- Argument: no real property interest until discovery
- Counter-argument: entitled to occupy while developing discovery, no requirement on sequencing
- Historically, operators put facilities that support the extraction of ore atop nearby lands – shift to using claims for security of tenure
- 1990s Congressional Mining Law reform attempts failed
- Series of Solicitor Opinions
 - 2001 (Leshy ancillary use opinion)
 - 2005, restated in 2020

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Rosemont Decision

- BLM must now inquire into the validity of mining claims when an operator submits a plan of operations or amendment that proposes to place waste rock and tailings on public lands.
- Forest Service case, expanded to BLM in Thacker Pass & Eureka Moly
- 2023 Solicitor Opinion, but rescinded
- Additional litigation
- Legislative fix?



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Earthworks vs. DOI

- Mill sites
 - How many can be staked?
- D.D.C. history
- D.C. Circuit litigation

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MORNING BREAK



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<https://parsonsbehle.com/mining-short-course>

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PRELIMINARY AGREEMENTS AND UNPATENTED CLAIM DILIGENCE

J.D. Kesler and Jason Steiert

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Acquisition and Diligence

- Focusing on unpatented mining claims
- Acquisition Framework
 - Letter of Intent
 - Negotiation of terms
- Due Diligence to verify rights to property
 - Due diligence focuses on what level of risk the buyer is taking on with the property
 - Seller may want to perform due diligence before a deal to ensure no surprises arise
 - Bottom line: are the mining claims properly located and can they be developed?

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Confidentiality

- Confidentiality Agreements
- Non-Disclosure Agreements



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Letter of Intent



- Agreement to Agree
 - Establishes key terms agreed upon by the parties
 - Roadmap to the definitive agreement
 - Not legally binding unless stated otherwise
 - Implied covenant of good faith and fair dealing

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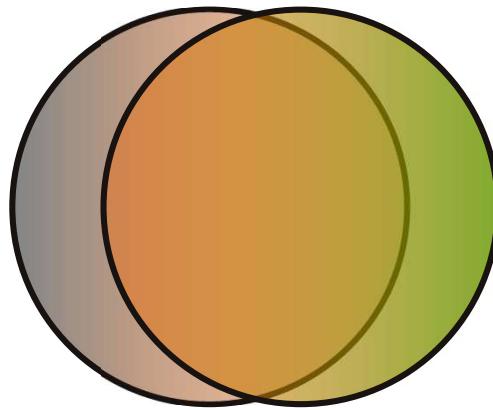
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Negotiation of Terms – Contracts

To allocate contractually the risks established during the due diligence process.



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Acquisition from Private Entity

- Outright Purchase or Lease of Claims – (Just Like Any Other Real Property Interest)
 - Unpatented Mining Claim Due Diligence Issues
- Option or Lease of Claims/Tenures
- Earn-In Arrangement

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Due Diligence

Seller's Due Diligence (Readiness to Sell – Do you *really* have what you want to sell?)

Buyer's Due Diligence (Are you getting what you think you are getting?)



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Seller's Due Diligence

- Key element in Readiness to Sell/Lease/Farmout
 - Seller should know more about what they are selling than the Buyer knows or learns.
 - Anticipate problems, deal points, representations and warranty issues, and liability allocation.
 - Critical for Deal Negotiations and Planning.
- Key to analyze unpatented mining claims.
 - Maintenance payments up to date.
 - Recording, staking, monumenting, 'Discovery' analysis.

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Buyer's Due Diligence

- Critical to know what you are buying and risks
- Price impacts – higher the risk, lower the price
- Key issues:
 - Unpatented mining claims
 - Paramount Title in United States.
 - Lack of a Discovery.
 - Monumenting – survey, claim type and size.
 - Payment of necessary maintenance fees.
 - Pedis possessio/overlap of other claims – record search.



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Overlapping Compliance Concerns

- Federal statutory requirements.
- Federal regulatory (BLM and Forest Service) requirements.
- State laws (western states and Alaska) affecting mining claims.
- State and federal courts (and IBLA)—interpretations of state and federal regulatory requirements.

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Checklist

- Citizenship
- Record evidence of valid location
 - Certificate or notice of location
- Comply with FLPMA filing requirements
 - Proper form
 - Assessment work requirements
- State law requirements



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Sources of Information

- Parties/data room
 - “Title Reports”
- BLM MLRS
- County Recorder
- Other

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Curable Defects

- If the defect relates to a *statutory requirement* – claim is void and not curable.
- If the filing complies with statutory requirements and the defect only relates to a *regulatory requirement*, the defect is generally curable. In such a case, the BLM must notify the owner of the deficiency and provide an opportunity to cure.

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Assessment Work & Maintenance Fees

- Prior to FLPMA, not less than \$100 worth of labor had to be performed or improvements made on each claim during *each* assessment year
- Starting in 1993, Congress imposed new payment framework
 - New claim maintenance fees for unpatented claims in lieu of assessment work & affidavit requirements
 - Payment required in the year of location – September 1st

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Location and Maintenance Fees 1993 to Present

- Starting in 1992 (for the 1993 appropriations year), Congress established a new scheme for location and maintenance filings for unpatented mining claims.
- Scheme implemented in appropriations bills:
 - Imposed a new “claim rental fee” for unpatented mining claims *in lieu* of the 1872 Law’s assessment work requirements and FLPMA’s requirement that assessment work affidavits be recorded and filed with the BLM on a yearly basis.
 - However, unlike the 1872 Law’s assessment provisions, and FLPMA, payment required *in the year of location*.



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Effect of Noncompliance

- Failure to perform renders the land open to location.
- As against third parties, the claimant can resume assessment work at any time *if* there have been no intervening claims.
- It is unclear when the Federal government might attempt to cancel a claim because of a deficiency in assessment work/maintenance fees -- risk that renders the claim subject to cancellation by the government.

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State Law Requirements

- Controls the contents of the affidavit of assessment work and the time for filing the affidavit in the county in which the claim is located. Filing periods and specific information for affidavits of assessment work varies from state to state.
- Generally, under state law, a proper affidavit of assessment work that has been timely recorded is *prima facie* evidence that the assessment work has been performed.



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Curing Defects in Mining Locations Amendments and Relocations

- Location defects cured by amendment or relocation.
- *Amendment* relates back to the date of the original location.
- *Relocation* begins a new title as at the date of the relocation.
 - Creates a new claim
- If a claim is invalid, the defect cannot be cured by amendment. The claim must be relocated.

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Transfers of Interest

- Must notify BLM of transfer of interest in claim.
- Notice should include claim serial number.
- Failure to file does not invalidate claim, but claimant will not receive notices.

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The Small Miner Exemption

- “Small miners”
 - Ten or fewer claims;
 - Able to elect either to
 - (1) pay the rental fees required by the Act or
 - (2) perform annual assessment work and FLPMA filings.
 - Related rules of which you should be aware:
 - Who constitutes a related party for calculating the number of claims;
 - Status of small miner who previously paid maintenance fees; and
 - When fees are due if a small miner transfers the claims to someone who does not qualify for small miner status.

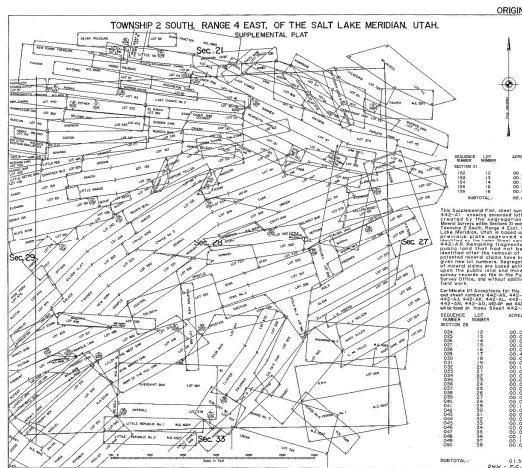
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Overlapping Claims

Typical Historical Claim Map



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Claim conflicts

- A senior valid claim prevails over a junior claim.
- Initially, claim conflicts are analyzed by reference to the recorded and filed documents to establish the claim(s) with “paper priority” over others.
- The extent and resolution of any conflicts cannot be determined without a close inspection of the ground covered by the conflicting claims.
- Partial conflicts: overlapping area of a junior claim over a senior claim is invalid, but depends on the location of the point of discovery for the junior claim

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EXPLORATION AGREEMENTS & JOINT VENTURES

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Top Concerns for Exploration Projects

- Are your mining claims set up to support the exploration you'd like to perform?
 - Diligence = Did you stake your own or buy from someone else? Are you leasing?
 - Marketing & Investment = Do you need or are you subject to a confidentiality agreement?
 - Buy-Outs/Litigation = Are there claim conflicts you need to address before proceeding with exploration?
- Is your project properly permitted and bonded? Scope of your project?
- Do you have the water, roads, and other resources you need to support exploration?
- Are your service contracts thorough and reviewed by professionals?

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Acquisition of the Claims

- Refer to our prior discussion on acquiring mining claims and buyer due diligence
- Problem areas we see:
 - Untouched land vs. land with preexisting disturbance
 - Asset vs. stock acquisition
 - Staking Issues:
 - Use of association placer claims (en vogue for lithium claims currently)
 - Land *open to location*
 - Locatable minerals
 - Lack of adequate diligence, including a robust title review



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A Note on Association Placer Issues

- Need one bona fide locator for each 20 acres included in the claim.
- May stake up to 160 acres.
- The law contemplates that each locator will have his or her own independent interest in the claim.
- Claimant cannot use the names of relatives or friends, who are not actually involved in the claim, to claim more than the allowed 20 acres.
- The use of so-called “dummy locators” will invalidate the claim.
- Functionally very difficult to transfer, advise avoiding use or insisting on restaking as regular placer claims prior to acquisition

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Confidentiality Agreements: Some Key Issues

- One-sided or Mutual
- Correct counterparty
 - Ability to share the information; with respect to land, interest in the land
- Identification and description of information that will be shared
 - Proprietary non-public information
- Exceptions to “Confidential Information”:
 - Information then or thereafter in the public domain non-fault.
 - Information received from a 3rd party without confidentiality restriction.
 - Own information.
 - Careful with ‘derivative’ information.



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Confidentiality Agreements: Some Key Issues

- Exception to confidentiality obligations:
 - Affiliates, Lawyers, Accountants, as legally required, others under C/A.
 - Disclosure for business purposes.
- “Use Restrictions”
 - Can be detrimental to the recipient – consider well tailored Area of Interest or Standstill clause
- Site Access
- Term:
 - Fixed Term; Term tied to disposition of the assets; Term tied to completion of deal; Trade secrets perpetual term; Reasonable Term
 - Ability to terminate prior to receipt of confidential information (AOI and Standstill provisions)

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Confidentiality Agreements: Some Key Issues

- Remedies
 - Injunction; Monetary Damages
- Area of Interest and Non-poaching
 - Ensures information is not used to acquire rights within a defined area
 - Broad or narrow restricted activity (prospecting, exploration, leases, stock, any rights whatsoever)
 - Definition of the area of interest – consider engaging a landman to accurately define boundaries; include map and land descriptions
 - No restrictions on deals entered into prior to agreement, property outside the AOI; set term
- Standstill
 - Limits recipient's ability to take certain actions with respect to the acquisition of the provider's securities or assets – carefully tailor the restrictions and exceptions

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Type of Exploration, Development Agreements

- Why an 'Agreement'?
 - Capital challenges
 - Technical challenges
 - Sovereign challenges
- Common law joint ventures
 - Form 5 deals
- Earn-Ins

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Common Law Joint Ventures

- Subset of common law 'partnership'
- Joint and several liability of co-venturers
- Co-owners of the property
- Bankruptcy risk (entire property may be sold)
- Forfeiture for non-contribution
 - Historical
 - Dilution concepts
- Right of 'partition'



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Form 5 LLC: Exploration, Development and Mining Limited Liability Company

- Rocky Mountain Mineral Law Foundation -- First Proposed in 1984.
 - Provided a 'template' for joint venture and dilution provisions.
 - Dilution concept – if a participant fails to contribute to a program and budget, the non-contributing participant's interest is 'diluted', or reduced proportionally.
 - Accelerated dilution if elect to participate, then default.
 - Softening of the common law forfeiture of entire interest concept.
 - Often provides 'distribution in kind', rather than a 'sell and distribute profits' concept.

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Form 5 continued . . .

- Original form – still governed as a common law partnership arrangement.
 - Joint and several liability.
 - Co-owners of property (although title normally held by one participant).
 - Insolvency risk.
 - Waiver of the right of partition.
 - Dilution provision:
 - Normal dilution – based on assumed original contribution base, plus additional contributions of each participant – never ‘decreased’ the base.
 - Resulted in minimal dilution for large expansion projects, disproportionate to cost.
 - Accelerated dilution – based on a multiple if party elected to participate, then defaulted.
 - Conversion to a non-working interest at some level (e.g., 10% working interest to 10% NPI, or 2% NSR.)



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Earn-In

- Normally at “Exploration” stage.
- Junior “Exploration” company.
- Earn-In Agreement:
 - Junior holds property (most of the time)
 - Major commits to making minimum expenditures for the benefit
 - Cash in lieu.
 - Minimum annual expenditures.
 - Earn X% of project if complete expenditures.
 - Multi-year term – committed period, optional period.

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Earn-In Continued . . .

▪ Advantages to Junior:

- Avoid further exploration expenditures
- Benefit of greater technical expertise
- Increase share price (sell the ‘sizzle’)
- Retain percentage upon earn-in
- Keep property if Major abandons
- Free up exploration teams for other projects

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Earn-In Continued . . .

▪ Disadvantages to Junior:

- Drilling may ‘sterilize’ potential
 - Stock effects
- Lose managerial and operational control if complete
- If significant discovery, capital flow burdens to retain percentage (holding onto the elephant)
 - Carried interest
 - Dilution/royalty
- Retain holding costs if Major abandons

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Earn-In Continued . . .

- Advantages to Major:

- Reduce risk on greenfield exploration in tight budget era.
- Minimize liability for existing conditions if do not 'earn-in.'
 - Owner/Operator liability under CERCLA.
- More efficient allocation of exploration resources (every 3,000 projects, one becomes a mine).
- Potential for increasing percentage after earn-in.
- Time to undertake more thorough diligence on target.



Rocky Mountain Mineral Law Foundation

www.rmmlf.org

- The Foundation publishes the following model form contracts for use in the mining and oil and gas sectors. Most Forms are available in Word format.

- [Form 1: Rocky Mountain Unit Operating Agreement – Oil & Gas \(Undivided Interest\)](#)
- [Form 2: Rocky Mountain Unit Operating Agreement – Oil & Gas \(Divided Interest\)](#)
- [Form 3: Rocky Mountain Joint Operating Agreement – Oil & Gas](#)
- [Form 4: Rocky Mountain Mining Joint Operating Agreement](#)
- [Form 5A: Exploration, Development, and Mine Operating Agreement](#)
- [Form 5 LLC: Exploration, Development and Mining Limited Liability Company](#) – New in 2015
- [Form 5A LLC: Exploration, Development and Mining Limited Liability Company](#)
- [Form 6: Gas Balancing Agreement](#)
- [Form 7: Confidentiality and Nondisclosure Agreement](#)



Choice of Entity

Most Common Options	
Corporations	S-Corporations
Limited Liability Companies (LLC)	General Partnerships (GP)
Limited Partnerships (LP)	Limited Liability Partnerships (LLP)

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Choice of Entity Considerations

- Non-Exhaustive Factors to Consider
 - Jurisdiction/Governing Law
 - Capital Requirements
 - Fundraising capabilities
 - Project Complexity
 - Tax Implications
 - Investment timeline
 - Ability for sustained investment
 - Risk
 - Protection against liability

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FINANCING THE PROJECT

Rew Goodenow & J.D. Kesler



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Introduction

- Private Debt Financings
- Private Equity Financings

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Private Debt Financings

- Structure of Loan
- Security

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Structure of a Loan

- Construction Loan
 - Amount
 - Equity
 - Debt
 - Uses of funds
 - Security
 - Term
 - Completion Tests

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Structure of a Loan

- Limited Recourse Financing

- Rolls up amount from Construction Loan
- Security
- Covenants
 - Negative Covenants
 - Affirmative Covenants
- Defaults



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Security

A security interest imbues to the holder the ability to exercise certain remedies against a debtor or its property

- Personal Property
 - Tangible, intangible, mixed
- Real Property
 - Fee land, patented/unpatented claims, leases
- Mixed Property

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Creation of Security Interests

- Personal Property
 - Security Agreement
 - Account Control Agreement
 - Pledge Agreement
 - Federally Registered Property



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Creation of Security Interests

- Real Property
 - Mortgage.
 - Two-party agreement
 - Judicial foreclosure
 - Deed of Trust
 - Three-party agreement
 - Power of sale

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Perfection

- Personal property
 - UCC-1 financing statement.
 - Deposit Accounts perfected by control.
 - Certificated securities perfected by possession.
- Real property
 - Priority depends on state law
 - Mortgage or deed of trust recorded
 - Filing with BLM is not enough



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Private Equity Financings

- Securities Considerations
- State Corporation Law Considerations

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Securities Considerations

- General Rule: the offer and sale of securities in interstate commerce in the United States must be registered with the Securities and Exchange Commission (“SEC”) pursuant to the Securities Act of 1933, as amended (the “Securities Act”), unless the offering falls under an exemption from registration.
 - Securities broadly defined
 - Interstate Commerce broadly defined
- Exemptions:
 - Regulation D
 - Regulation S
- Restricted Securities



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State Corporation Law Considerations

- Type of stock offered
 - Common Stock
 - Preferred Stock
- Review of Certificate of Incorporation
 - Authorization to issue preferred stock
 - Number of authorized shares
- Amendment of Certificate of Incorporation
 - Authorization of additional shares
 - Authorization of rights and privileges of preferred stock

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Type of Stock Offered

▪ Common Stock

- No special rights or privileges, unless agreed by contract
- Dividends as, if and when declared by Board of Directors

▪ Preferred Stock

- Receives certain rights and preferences not afforded to holders of common stock
- Nature of rights and preferences included in certificate of incorporation or, in combination with contract rights
 - Authorization of blank check preferred stock – authorizes board of directors to determine rights and preferences
 - No authorization of blank check preferred stock – rights and preferences must be approved by shareholder vote



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ROYALTIES, STREAMS, AND OFFTAKES

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Royalty Interests

- Two Principal Royalty Approaches:
 - Net Smelter Returns
 - Net Profits Interests (Net Proceeds)

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Net Smelter Return Royalty

Concept – “Net” Returns from the Smelting/Refining Process



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Net Smelter Return Royalty

- Allowable Deductions Limited to costs for:
 - Smelting, refining, etc., after the Raw Products leave the Mine and Mill;
 - Transportation, storage and insurance after leaving the Mine to the smelter or refinery and from there to the place or places of storage and sale to the ultimate purchaser;
 - Sales taxes and similar charges;
 - Sales including commissions; and
 - Smelting and Refining (Treatment) to produce Refined Product.



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Net Smelter Return Royalty continued . . .

- Definitions, accounting, payment and other terms set out in Royalty Deed recorded against the Property.
- Often contains a 'lesser interest' provision.
- May have allocation provisions for new royalties.
- May be created as a result of purchase of the Properties, or conversion from working interest.
- Often contains an 'Area of Interest' provision.
- Like a 'Deemed Receipt' in lieu of 'actual sale' concept.
- Capture 'Affiliate' transactions to eliminate transfer pricing risks.

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Net Smelter Return Royalty continued . . .

- May have a 'floating' percentage based on price (essentially price participation) – however, BEWARE inflation.
- Eliminate 'hedging' transactions.
- Typically ½% to 3% of Net Smelter Returns.
- Payment 'curve' smoother than NPI, but more burdensome on producer during periods of low prices.
- Often has a 'buy-out' or 'buy-down' provision.
- No 'diligent development' implied covenant.



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Net Profits Interest Royalty

- Highly negotiated deductions.
 - Deduct all NSR deductions AND full mining, operating costs.
 - Often have a 'capital recovery' charge, or implicit interest factor on CAPEX.
- Typically percentage much higher than NSR because deductions are much higher. Often 10% of Net Profits.

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Net Profits Interest Royalty continued . . .

- Much more variable payment curve – much higher during ‘bonus’ periods, much lower during low price periods.
- Much more beneficial to the operator. No profits, no pay.
- Other terms very similar to NSR including:
 - In a deed form as a burden on the Property.
 - Definitions, payment, audit, etc. in deed.
- Can be created upon purchase of the Properties or conversion to a non-working interest from a JV.



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Gross Royalty (“Bruto”)

- Percentage based on recovered product, with no other deductions.
- Rare, but periodically granted. More common in Latin Countries.
- Percentage is normally somewhat lower than NSR, to offset against no deductions.
- Remainder of concepts generally equivalent to NSR/NPI.

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Minimum and Advance Royalty Payments

- Minimum Royalty Payments:

- Intended to provide some cash flow prior to production and/or during shuttered periods.
- Generally credited against future actual royalty payments (but not so that actual payments fall below minimum).

- Advance Royalty Payments:

- Intended to provide some cash flow prior to production.
- As with minimum, generally credited against future actual royalty payments.



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Deed vs. Contract

- Royalties can be created by contract or by deed.

- Deed:

- Runs with the Properties as a lien on the Properties.
- Area of Interest may be problematic.
- Generally survives bankruptcy of operator.

- Contract:

- More flexible to draft/change.
- May not be binding on later owners of the Properties.
- “Executory” contract that may not survive bankruptcy of operator.

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Area of Interest

- Does the area of interest remain static, or move as claims are added or surrendered?
- Will the new claims be subject to the royalty?
- Will the new claims revert to the royalty holder, if the original claims revert to the royalty holder?

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Streaming Agreements

- Financing model where the “streamer” provides up front capital to a mining company in exchange for the right to buy all or a portion of the future metal production at fixed or discounted prices
- Can be for a term or life of the mine
- Benefits mine by providing up front financing
- Benefits streamer by reducing volatility in commodity pricing

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Offtake Agreements

- Long-term contract to sell/purchase mined material over a period of time
- Assures lenders of future revenues
- Provides price stability for certain quantities

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LUNCH BREAK

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THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Kaycee Royer and Jake Herzik

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Roadmap

- Important Laws/Regulations
- History of NEPA
- BLM and U.S. Forest Service Levels of Operations
- Document Preparation
- Substantive Areas of Concern



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U.S. Environmental Laws

- Federal laws
 - NEPA, Endangered Species Act, CERCLA
- Federal laws delegated to states
 - Clean Air Act, Clean Water Act, RCRA
- Federal Regulations
 - BLM: 43 CFR Subpart 3809
 - Forest Service: 36 CFR Part 228
- State and local laws and regulations



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History of NEPA

- 1970 – Enactment of NEPA
- 1978 – Formal CEQ Regulations enacted
- 1978-2010s – Development of framework, both regulatory and judicial
- 2020- Trump Administration Regulatory Overhaul
- 2022-2023- Biden Administration Phase 1 and Phase 2 Regulations
- 2023- Fiscal Responsibility Act Amendments to NEPA
- January 2025 – Unleashing Energy Dominance Through Efficient Permitting Executive Order 14154
- April 2025 – Official Recission of CEQ NEPA Regulations
- May 2025 – *Seven County*. SCOTUS holds courts should defer to the agency for any NEPA determinations so long as the agency drew a “reasonable and manageable line.”
- July 3, 2025 (effective Aug) – US Departments issue individual NEPA Regulations
- July 4, 2025 – One Big Beautiful Bill Amendments to NEPA
- September 2025 – CEQ issues NEPA implementation guidance and template



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National Environmental Policy Act (NEPA)

- Applies to
 - Major federal actions
 - An agency action that is subject to substantial Federal control and responsibility
- *(a.k.a. most mining projects that use public land)*

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National Environmental Policy Act (NEPA)

- No substantive standards – those are guided by other statutes (CWA, CAA, ESA, etc.)
- Agency must assess, disclose, and consider impacts
- Consider and evaluate reasonable alternatives
- Identify and discuss mitigation
- Public Notice and Comment
- Troublesome areas: connected actions, cumulative effects, segmentation, geographic scope for areas of analysis



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NEPA – EA or EIS

- Categorical Exclusion
- Determination of NEPA Adequacy (DNA)
- Environmental Assessment and FONSI
- Environmental Impact Statement

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BLM

▪ Casual Use

- No or negligible impacts
- Claim staking, sample collecting, mapping
- No use of mechanized, earth-moving equipment

▪ Notice-level Exploration

- Less than 5 acres of surface disturbance
- Financial assurance

▪ Plan of Operations



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Forest Service

▪ No Notice to Forest Service

- Claim staking, sampling that does not cause “significant surface disturbance,” subsurface operations with no surface impacts

▪ Notice of Intent

- Operations that might cause significant surface disturbance
- District Ranger decides if Plan of Operations is necessary

▪ Plan of Operations

▪ Forest Service is considering revisions to 228 regulations



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Plan of Operations

- Mining Plan

- Meet substantive environmental requirements
 - Comply with BLM Resource Management Plans/Forest Service Forest Plans

- Monitoring Plan

- Reclamation Plan

- Financial Assurance

- NEPA



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General NEPA Planning Timeline

- Operator contacts federal agency
- Initial Project Presentation
- Pre-Plan of Operations Kick-off meeting
- Document Information Needs (Baseline data)
- Pre-Plan of Operations Schedule
- Develop Plan of Operations
- Submit Plan of Operations
- NEPA

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EA/EIS Process

- Third-Party Contractor or Applicant Prepared (MOU)
- Baselines
- Cooperating agency letters/consultation
- Notice of Intent (NOI) – Federal Register publication
- Scoping/Public Comment
- OPTIONAL: Draft EIS and Public Comments at Draft Stage
- Final EIS – NOA in Federal Register
- Record of Decision



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Additional considerations

- NEPA Deadlines: EAs must be completed within 1 year; EISs within 2 years
 - Expedited timelines: EAs, 6 months; EISs, 1 year
 - Clock doesn't start ticking until NOI is published in Federal Register
- NEPA can run in tandem with substantive permitting processes
- Rights of way (roads, power lines, etc.) and Realty Actions – discretionary grant by BLM v. 3809 mine plan
- Local zoning ordinances
- Post-ROD litigation risk – citizen suits, NGOs, preliminary injunctions
- Are you in a jurisdiction that has a state-NEPA requirement? (e.g., California, Montana, Tahoe Planning Regional Compact, etc.)

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Thank You

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NHPA CONSULTATION AND ENGAGEMENT WITH NATIVE NATIONS

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NHPA Basics

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Section 106 of NHPA

“Stop, look, and listen” statute

- Procedural Mechanism
- Federal agencies take into account effects of federal undertakings on properties eligible for the National Register
- Required for all levels of NEPA (CX, EA, and EIS).



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Parties to a “consultation” May Include:

- The Federal Agency(ies) with jurisdiction over the undertaking or the land in question (required)
- The SHPO or THPO (or both) (required if available)
- The Advisory Council (AChP) (required)
- The Project Proponent – private or agency (helpful)
- All affected Tribes or tribal populations (helpful, required if no THPO)
- Historic Preservation Groups (helpful)
- “Interested parties” (helpful)
- And sometimes their lawyers (necessary evil)

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NHPA Applies to “Undertakings”



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The “Area of Potential Effect”

- Establish the “Area of Potential Effect” based on:
 - Nature of Undertaking
 - Nature of likely historic properties
 - Nature of likely effects (nature direct or indirect effects may require different APEs)
 - Geography/Topography



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Defining Areas of Potential Effect

May be defined differently for drill pad v. Coast Guard response to a major oil spill



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EVALUATION: Apply The National Register Criteria

- Agency must make “reasonable good faith effort” to identify historic properties.
- A site is eligible if it:
 - Is related to historical events or historical patterns (Criterion A)
 - Is related to important historical persons (Criterion B)
 - Has a distinctive design or physical characteristic (Criterion C) **OR**
 - Yields important information for history or pre-history (Criterion D)



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Traditional Cultural Places

- Properties of Religious or Cultural Importance also qualify as historic properties (also called TCPs)
 - If they meet one of the National Register criteria AND
 - Are important to the relevant community today
 - Have been important for at least 50 years
 - Have integrity of:
 - association with cultural practices or beliefs
 - condition, in terms of location, design, setting, materials, workmanship, feeling, or association

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The National Register Criteria: TCPS and Boundaries

Examples of TCPS

Landscape scale and discrete



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Assessing and Resolving Adverse Effects

▪ Adverse Effects may be direct or indirect:

- Physical destruction, damage or alteration
- Isolation of the property from its setting or alteration of its setting
- Lease or sale of the property
- Impacts on the viewshed



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Resolving Adverse Impacts With MOA/PA

What is the difference?

▪ **MOA/HPTP:**

- Specific
- Applies to known resources
- Finite commitments
- Requirements often completed before project begins
- Usually short-term

▪ **PA:**

- Broader in scope
- Outlines procedures for phased compliance - not necessarily full complement of mitigation
- Longer term



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NHPA and Confidentiality

▪ Section 304 of the NHPA outlines three instances where the Keeper of the Register may determine to keep information about, or the location of, a TCP confidential:

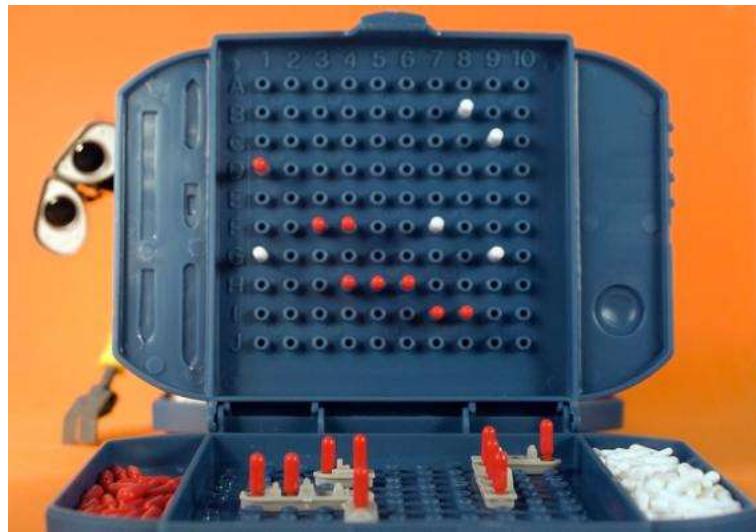
- Disclosure would constitute an invasion of privacy
- Disclosure would subject the site to serious risk of harm – or
- Disclosure would impede use of the site.

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Avoiding the Game of “Battleship”



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Ending Consultation

- Advisory Council on Historic Preservation (AChP) either approves an MOA or PA to end the Section 106 Process; **or**
- The agency formally terminates consultation, refers casefile to the Advisory Council
- The agency must respond in writing to any Advisory Council comments
 - prior to approving the undertaking,
 - but the agency is not bound to follow the Council's recommendations.

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Fundamentals of Engagement with Native Nations

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Basic Principles

Native Nations are not stakeholders.

*Education on general and specific
history is essential.*

Engage with parity.

*Approach as a relationship, not a
transaction.*

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Principle 1

Tribes are not stakeholders.



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Tribal Nations are Political Entities

Political entities run by elected and appointed officials

- Tribal elected officials are subject to a political process and elected by the Tribe's voting citizens
- Officers are either elected or appointed by the Council
- Employees appointed and/or hired by Council and/or administrator
- Government affairs relationship
 - Native Nations should be engaged like any other federal, state or local government
 - Subject to same internal political pressures
 - Learn about elections and internal political issues

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Each Native Nation is a Unique Political Entity

- Native Nations are not monolithic:
 - A political Tribal entity may be comprised of various cultural Tribal entities
 - May contain various factions
 - BIA constitution vs. traditional decision-making
- Each Tribal Nation possesses unique political structures, laws
 - Each Tribe sets its own membership requirements, government structures, laws and regulations
 - Native Nation engagement must be tailored
 - E.g., you would not permit a project in California the same way you would in North Dakota
- Many Tribes experience similar key issues:
 - Economic isolation; lack of tax base
 - Historical trauma
 - Health and welfare concerns
 - Losing youth to urban centers



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Principle 2

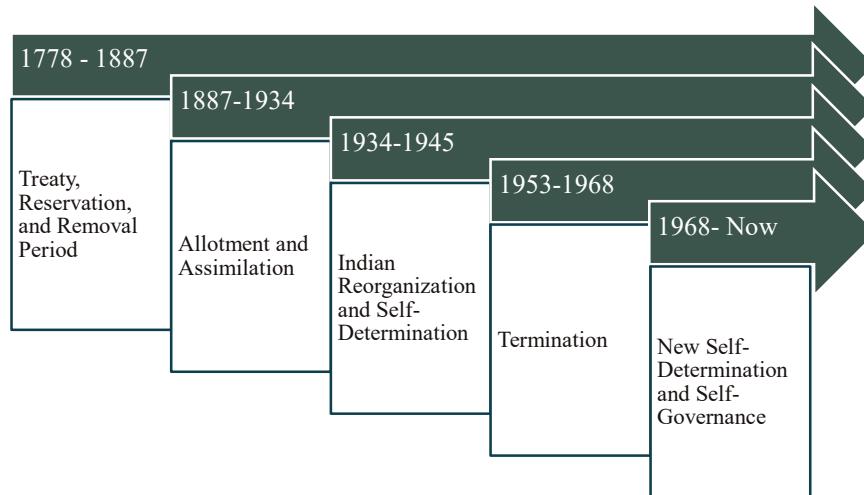
Educate yourself on the history of Federal Indian Policy and its impacts on each specific Tribal Nation.

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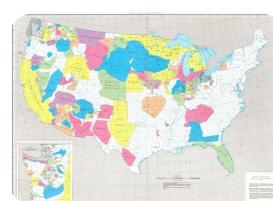
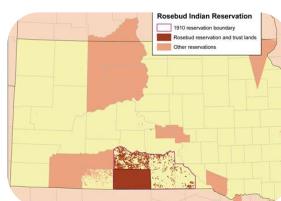
The Eras of Federal Indian Policy



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Tribal rights extend beyond the Reservation



Reservations:

- Areas granted by Treaty, Congress, or Executive Order, where a Native Nation maintains sovereign authority and jurisdiction

Fee vs. Trust Land:

- Fee Land: Both within and outside of a reservation
- Trust Land: Lands held by Federal government and held in Trust for Native Nations

Treaty Rights:

- Rights guaranteed by treaty – typically rights to hunt, gather, and fish, as well as rights to water –both within and outside of Reservations, and attach to federal and “open” lands

Ancestral Lands:

- Areas that historically occupied for various purposes, including homelands, traditional hunting and fishing areas, and areas of cultural and religious significance

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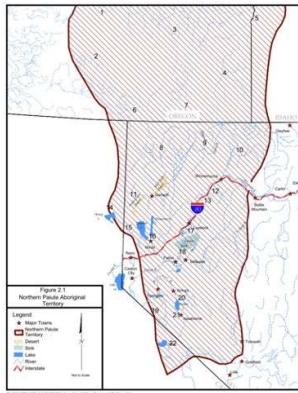
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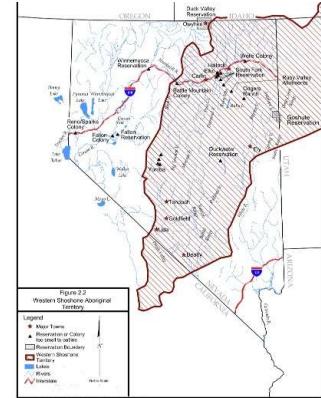
Nevada Reservations and Ancestral Lands



Reservations



Northern Paiute



Western Shoshone

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Principle 3

Engage with parity:

Build an internal framework and team that fits working with Tribal Nations as governments.

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Federal Consultation with Native Nations

- Consultation is a burden on Tribal governments
 - Consultation requires extensive resources
 - Viewed as Tribal governments subsidizing the Federal government's trust responsibility
- Consultation v. Coordination/Engagement
 - Consultation = conducted by federal government, agencies, and departments
 - Coordination/Engagement = conducted by non-governmental entities
- Coordination/Engagement an important part of project development
 - Should include parity, subject matter expertise, and multiple points of contact
 - Letters to Tribal Council
 - Executive to Executive Council

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Principle 4

Approach Native Nations as a relationship rather than a transaction

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Engagement Organized Around Permitting Timelines

Mining - Greenfield

- Staking
- Notice Exploration
- EPO
- MPO
- Closure

Mining – Acquisition

- Due Diligence
- Pre-Acquisition Engagement?
- Early post-acquisition discussions re plans

Regulatory/Permitting

- NEPA
 - Baseline Studies
 - Kickoff
 - Scoping
 - Draft
 - Final
 - ROD
 - NTP
- NHPA
 - APE
 - Native Nation Studies
 - Consultation

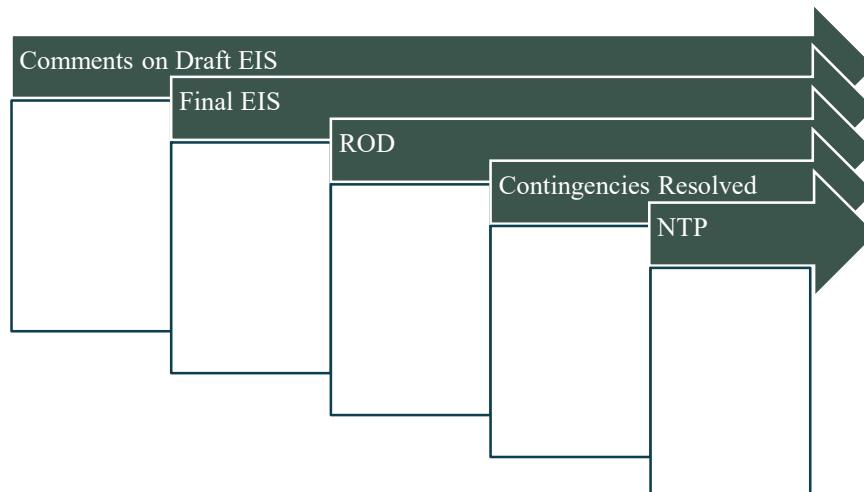
Native Nation

- Election Sequence
- Nation Events
- Cultural/Religious Timing
- Communications Protocol
 - Should address all 3 cadences
 - Confidentiality
- Impact Benefit Agreement?
 - Employment
 - Community Benefit
 - Funding for Studies?

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Regulatory Cadence - NEPA

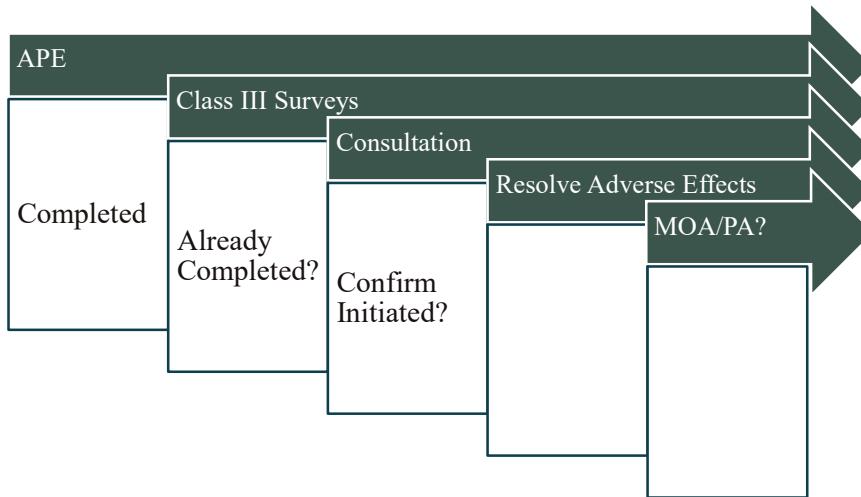


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Regulatory Cadence - NHPA

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Harmonizing Regulatory Calendar with Native Nation Outreach

- What are the upcoming “cadence points” on the regulatory side?
- When is Native Nation input needed?
- How will Company monitor BLM consultation?
- What Company outreach has occurred and results to date?
- What are next steps and who owns them?
- How will Company ensure internal accountability for agreed steps?
- Where does decision-making authority lie to update and/or change course?
- Who has decision-making authority to make commitments to Native Nation?
- Who monitors press and Native Nation websites?

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Thank You

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WATER LAW BASICS AND WATERS OF THE UNITED STATES

Justina Caviglia & Kaycee Royer

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Mining and Water Rights



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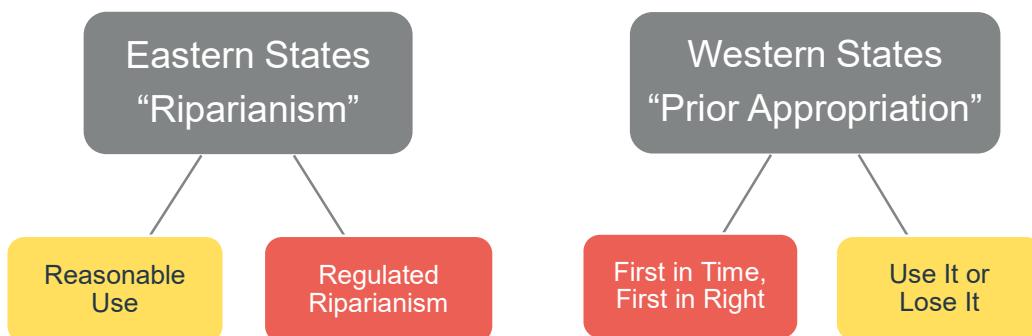
Applicable Law

- Water Rights are the Subject of **State Law**
 - There is no federal groundwater rights law
- Know your jurisdiction. Is your state:
 - Riparian
 - Prior Appropriation
 - Hybrid
- Administrative Agency in Charge?

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Two Primary Systems of Law



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Key Definitions

- **Acre-foot (AF)** is the volume of water that would cover 1 acre of land with water 1 foot deep (~326,000 gallons)
- **Diversion** is the rate at which water can be diverted (or pumped) from the source (cubic feet per second)
- **Duty** is the volume of water that can be pumped (million gallons or acre-feet annually)
- **Depletion** (or “consumptive” use) is the water that is “consumed,” i.e., water that is not returned to the system after use



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Riparianism – Eastern United States (and CA)

- Reasonable Use
 - Landowners adjacent to a waterbody entitled to reasonable use of the natural flow (reasonable determined by nature/consumptive element)
 - Appurtenance is key
 - When severed, parcels lose riparian status
 - Must be within watershed of source
 - Cannot unreasonably affect quantity or quality of flow of other riparian users
- The Evolution of “Regulated Riparianism”
 - Increasing demand and decreasing supply requires increased regulation and reporting

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Prior Appropriation – Western United States

- Water is a public resource owned by the state, subject to appropriation.
 - NRS 533.025: “The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public.”
 - ARS 45-141: “The waters of all sources...belong to the public and are subject to appropriation.”
 - Utah Code 73-1-1: “All waters in this state, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof.”



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Prior Appropriation: 2 Core Concepts

- “First in Time, First in Right”
 - First party to place water to beneficial use has the superior right to the resource.
 - Notice of intent is enough to gain initial right to water, but ...
- “Use It or Lose It”
 - “Beneficial Use” = the measure and the limit of the right to the use of water.
 - Cancellation vs. Forfeiture vs. Abandonment

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Acquiring Water Rights - Appropriation

- State Permits
- Common Law: statement of intent, beneficial use, vesting period
 - Pre-Statutory (Vested) Rights
- Today: Statutory Application and Permit Process
 - **Application** followed by notice and protest - Information
 - **Permit** allows conditional use for vesting period
 - **Certificate / License** issued after beneficial use proven



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Acquiring Water Rights - Purchase

- Water rights may be severed from land and sold/purchased as stand-alone commodity; or
- Land may be purchased with appurtenant water and water moved
 - “Buy and Dry” is purchase of land w/ water right and change of diversion/use
 - Strategy to protect price
- Appurtenance Doctrine - Water rights conveyed with land unless specifically reserved
- Lease

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Be Aware! Federal Reserved Rights

- On Federal Reserved Lands - Presumption that the federal government reserved sufficient water for purpose of the reservation
 - Senior to all appropriations after date of reservation
 - Evolution of reservation purposes
- Origin: Indian Reservations and the “Winters Doctrine”
 - From *Winters v. United States*, 207 U.S. 564 (1908) (Fort Belknap Reservation in Montana)
 - Extent of reserved right determined by “practicable irrigable acreage”



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Federal Reserved Rights

- Winters has Expanded to apply to all types of federal reservation:
 - *Cappaert v. United States* (Devils Hole, Death Valley Nat'l Park).
 - National Forests, National Parks and Monuments, etc.
- Recently further expanded to include groundwater (?)
 - *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., et al.*, 849 F.3d 1262 (9th Cir. 2017).
 - Not yet considered by SCOTUS.
- Must be adjudicated
- Non-transferable

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Developing Law: Dissolved Minerals

- Minerals in Solution (e.g., Lithium)
 - Regulated as Water? Mineral? Both? (see NRS Chap. 534B)
- Exploration and Mining involves pumping water
 - Mining Claims AND
 - Waivers/Water Rights Required
- Regulatory Intersection of mining law and water law must be navigated



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Developing Law: Dewatering

- Dewatering and Water Rights
 - “Temporary” nature of mining/milling rights (defined by mine life), and inclusion in appropriations under perennial yield?
 - Pit Lakes - Is a perpetual water right required for evaporation?
- Water Placed to Beneficial Use
 - Water right will be required; substitution for consumptive right

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Developing Law: Conjunctive Management

- 1904 Texas Supreme Court concluded that the “movement and course” of underground water are “**so secret, occult and concealed**” as to defy comprehension.
- Conjunctive Management: recognizes the interconnectivity of groundwater and surface water
 - NRS 533.024: “It is the **policy** of [Nevada]… To manage conjunctively the appropriation, use and administration of all waters of this State, regardless of the source of the water.”
 - How to codify policy? predict, quantify, and mitigate impacts?
 - How to prioritize?
 - States such as ID, UT have more robust conjunctive management systems



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Waters of the United States (WOTUS)



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Clean Water Act: Discharge of Dredge and Fill

- No discharge of dredge or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded
- Jurisdictional delineations (JD) determine which waters are "Waters of the United States" (WOTUS)
- Dredge/fill of all WOTUS requires Section 404 Permit from USACE

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Clean Water Act: Pollutant Discharges

- The CWA prohibits anybody from discharging "pollutants" through a "point source" into a "WOTUS" unless they have a National Pollution Discharge Elimination System (NPDES) permit
- Permit contains limits on what you can discharge, monitoring and reporting requirements, and other provisions
- "Point Source" = any discernible, confined and discrete conveyance
- "Pollutant" = any type of industrial, municipal, and agricultural waste
- Unlike Section 404, NPDES programs largely delegated to States

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Proposed WOTUS Rule- November 2025

- *Sackett II* – 2023 Supreme Court decision that found CWA jurisdiction only extends to relatively permanent bodies of water connected to traditional navigable waters and wetlands with a continuous surface connection to those waters (invalidating the broader “significant nexus” test)
- In November 2025, EPA/Corps proposed a new regulatory rule to clarify the definition of WOTUS in conformance with the *Sackett* decision

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Proposed WOTUS Rule- November 2025

- WOTUS
 - (1) traditional navigable waters and the territorial seas;
 - (2) most impoundments of WOTUS;
 - (3) relatively permanent tributaries of traditional navigable waters;
 - (4) wetlands adjacent (i.e., having a continuous surface connection) to traditional navigable waters, impoundments, and tributaries, and
 - (5) lakes and ponds that are relatively permanent and have a continuous surface connection to a traditional navigable water, territorial seas, or a tributary.

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Proposed WOTUS Rule- November 2025

- Defines:

- “**Relatively permanent**” as “standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season”
- “**Continuous Surface Connection**” as “having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water.”

- Clarifies Existing WOTUS Exclusions

- Waste Treatment Systems
- Ditches
- Prior Converted Croplands
- Groundwater

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Thank You

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AFTERNOON BREAK

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WILDLIFE RESOURCES

Ashley Nikkel & Jake Herzik

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Common Wildlife Issues for Mining

- Endangered Species
- Bald and Golden Eagles
- Greater Sage-Grouse
- Take Permit Nuts and Bolts
 - ESA
 - BGEPA
 - MBT

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Endangered Species

- Endangered Species Act (ESA) process begins during NEPA
- BLM/USFS determine whether listed species or critical habitat is present and may be adversely affected
 - Information for Planning and Consultation (IPaC)
- “Consultation” with U.S. Fish and Wildlife Service (FWS) to render Biological Opinion



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Endangered Species

- BiOp - Analyzes whether proposed action is likely to jeopardize species or adversely modify habitat
- If “jeopardy” or adverse modification (rare) - Reasonable and prudent alternatives
- If no “jeopardy” of species or adverse modification of habitat - Incidental Take Statement in BiOp and Permit
- “Take” = “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”



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BGEPA



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Golden Eagles

- 1940s: DDT, added Golden Eagle in 1962
 - 2007: Bald Eagle delisted from ESA
- The Bald and Golden Eagle Protection Act (BGEPA) prohibits anyone, without a permit, from "taking" bald or golden eagles, including their parts (including feathers), nests, or eggs.
- "Take" permits when "necessary . . . for the protection of other interests in any particular locality," where "compatible with the preservation" of eagles
- 2024 updates to Eagle regulations (more later)



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Greater Sage-Grouse

- Habitat Management Classifications
 - Priority, Important, General, Other
- 2015/2019/2024 ARMPA and revisions
 - Disturbance caps, required design features, management direction, mapping
- Sagebrush Focal Areas Withdrawal was being considered
- Increasing focus: habitat connectivity, leks, seasonal range and habitats



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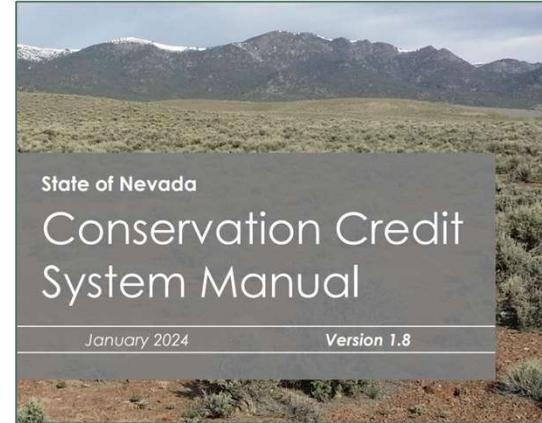
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Nevada's Mitigation Banking System

- Nevada Conservation Credit System
 - SEC
 - SETT
 - NAC 232.470: Any person proposing anthropogenic disturbance on public lands required to participate
 - Debits/Credits – HQT
 - Examples of credit projects



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Take Permits – Nuts and Bolts

- Common concepts under ESA & BGEPA
- Take: broadly defined
 - Harass, harm, wound, kill, collect
 - Incidental: unintentional
 - Causation
- Subject to civil and criminal penalties
 - Federal or citizen suits



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Do I Need a Take Permit?

- If endangered, threatened, or otherwise protected species occur within or around the project site, probably
 - Baselines
 - GRSG caveat
 - USFWS IPaC System
- If questionable case, evaluate whether comfortable proceeding without permit – risk unpermitted take
 - Consider impacts analysis and geographic scope



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Avoidable and Unavoidable Impacts

- Mitigation hierarchy
 - Avoid
 - Minimize
 - Mitigate
- If take unavoidable, need take authorization
 - ESA: Section 7 consultation process, Section 10 Habitat Conservation Plan/Incidental Take Permit Process
 - BGEPA: eagle take permit (direct or incidental)

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ESA Section 7

- Federal agencies must ensure any activity they authorize is not likely to jeopardize continued existence of a listed species or destroy its critical habitat
 - Consultation under Section 7 creates a safe harbor
- Consult with USFWS when a federal action “may affect” an endangered or threatened species or its designated habitat
 - Agency reaches a “may affect, likely to adversely affect” conclusion = formal consultation



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ESA Section 7 – Biological Opinions

- “No jeopardy” or no destruction/adverse modification determination accompanied by ITS and reasonable and prudent measures (not a permit) = safe harbor
- During formal consultation, FWS prepares a BiOp that concludes with the Service’s opinion as to jeopardy and/or destruction or adverse modification of critical habitat
 - BiOp must include an incidental take statement specifying impact and reasonable & prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions to implement minimization measures

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ESA Section 10 – Exception to No Take

- Authorizes FWS to permit incidental take of listed species cause by otherwise lawful activities (ITP)
- Habitat Conservation Plan (HCP) – prepared by applicant
 - Impacts likely to result from the taking
 - Steps applicant will take to minimize and mitigate such impacts, and
 - Alternatives that could avoid the incidental take and why those alternatives weren't chosen
 - Agency must approve HCP (likely will suggest revisions)



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Bald/Golden Eagle Take Permits

- 2009 take permit framework
 - Eagle nest removal
 - Individual/one time for specific amount
 - “Programmatic permits” for recurring take not caused solely by indirect effects occurring over a long time in locations not specifically identified (e.g. railroads marine ports, airports, but mostly wind energy)
 - Covered impacts from death/injury to “disturbance”
 - Agitate or bother BE or GE to a degree that causes (or is likely to) injury, decrease to productivity by substantially interfering with normal breeding, feeding, and sheltering behavior, or nest abandonment

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Bald/Golden Eagle Take Permits

- Immediate problems – mainly wind energy
 - Duration: programmatic only 5 years (project lifespans over 30 years)
 - Uncertainty: renewal, changing mitigation, monitoring, and mitigation requirements even though project did not change
 - Advance conservation practices: lack of clarity
 - Between 2009 and 2016, only one programmatic permit was issued
- 2013 Rule, Wind Energy Guidance, Permit Tenure Rule
 - 5 → 30 years tenure
 - Litigation, federal court set aside in 2015 for NEPA violation



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Bald/Golden Eagle Take Permits

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 - Litigation, federal court set aside in 2015 for NEPA violation

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Bald/Golden Eagle Take Permits

▪ 2016 Rule

- Programmatic take duration 30 years, now called ITP
 - Included permits for nest disturbance in same provision
 - 5 year “reviews” – FWS could reassess and amend T&C (CM requirements)
- More consistent standards
- Service struggled to actually issue permits, backlogs
 - But issues 703 ITP from 2017 to 2022



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Bald/Golden Eagle Take Permits

▪ 2024 Rule

- General permit pathway
 - Standard pathway in pre-mapped areas that have consistent and low eagle risk
- Specific permits
 - Increased or uncertain risk to eagles, up to 30 year duration
- Addresses wind energy collisions, power line collision and electrocution, eagle nest disturbance, and eagle nest removal for each type
- Intended to rely more heavily on categorical exclusions

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MTBA Take Permits

- Unlawful to pursue, hunt, take, capture, or kill covered birds
- 2021: FWS published ANPR announcing plans to develop regulatory framework for authorizing incidental take, would codify FWS's interpretation that the MBTA prohibits incidental take of birds
 - Three categories of mechanisms for incidental take:
 - Regulatory authorizations for low risk activities
 - General permits for moderate risk
 - Specific permits for high risk



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ENERGY SOURCES & EMISSIONS

Jacob Santini & Justina Caviglia

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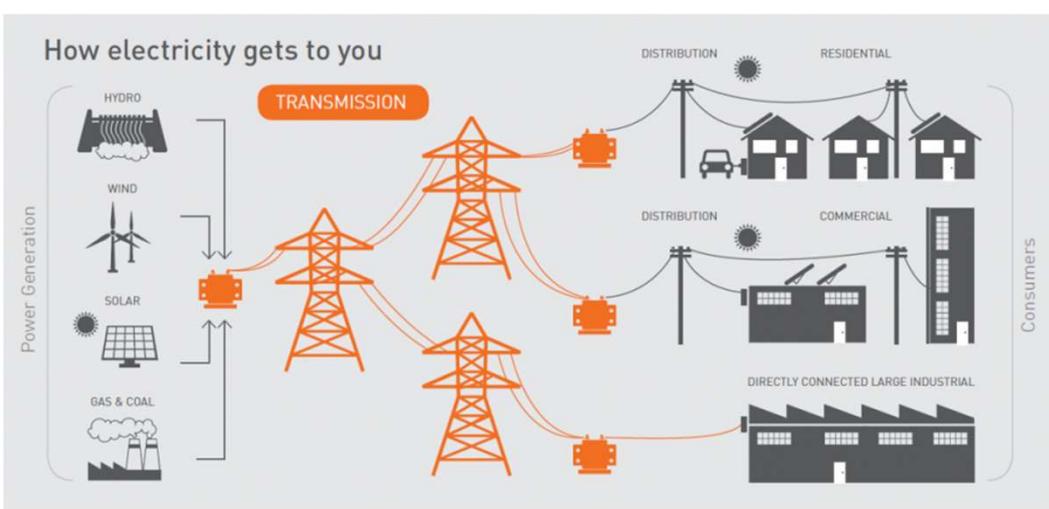
Powering Your Project

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Electricity 101



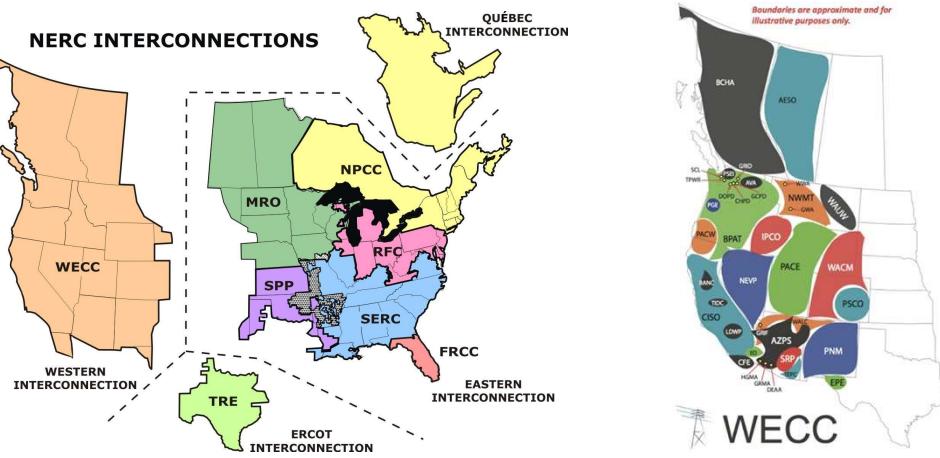
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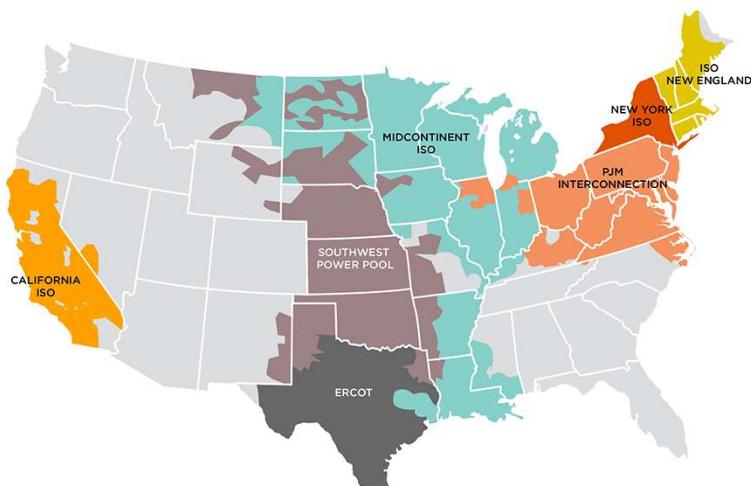
United States Electric Grid(s)



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RTO/ISO Wholesale Power Markets



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Utility Companies

▪ Investor-Owned Utilities (IOU)

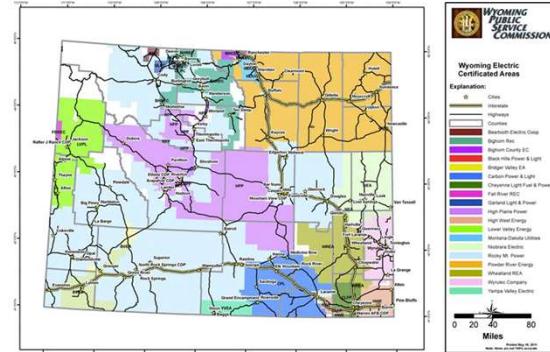
- For Profit Entity
- Subject to Public Utility Commission
- Earns Rates of Return on Investments

▪ Cooperative Utilities

- Non-Profit Entity
- Member owned and managed
- Limited Public Utility Commission jurisdiction

▪ Municipal Utilities

- Non-Profit Entity
- Limited Public Utility Commission jurisdiction



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IOU Approved Rate Increases

Regional retail residential electricity prices (2022 and 2025)
cents per kilowatthour



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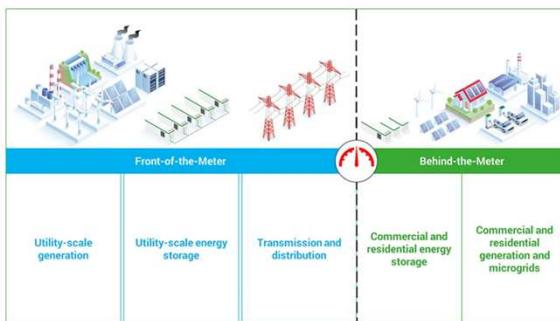
Energy Sourcing Arrangements

- Utility Customer/Otherwise Applicable Rates
 - Some states/utilities do have a MW limit that will automatically trigger an agreement with the utility (i.e. Idaho Power Schedule 20)
- Behind the Meter Generation
- Special Tariffs
 - Power Purchase Agreements
 - Energy Supply Agreements
- Renewable Energy Credits



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Behind the Meter Generation



- State Specific Limitations
 - MW
 - Approval by Public Utility Commission/municipal general improvement district
 - Net Metering
 - Credits/payment options
- Example
 - Robison Nevada Mining Company (KGHM) - 3 MW solar farm

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Special Tariffs/PPA/ESAs

- Special Tariffs have been approved by the applicable Public Utility Commission, which allows a large customer to take service under that tariff, mainly through a PPA/ESA
- Nevada
 - Large Customer Market Based Rate Tariff
 - Clean Transition Tariff
 - Nevada Green Energy Rider
- Idaho
 - Schedule 62 – Clean Energy Your Way Program



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Example of Special Tariff/ESA

- Public Utilities Commission Docket No. 24-06011 (pending approval)
 - NV Energy and Cour Rochester entered into an Energy Supply Agreement under the Clean Transition Tariff
 - ESA provides for a long-term energy supply from dedicated renewable resources
 - The ESA provides a set price for the term of the agreement
 - The ESA has a 25-year term that aligns with the Solar/BESS projects
 -

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Renewable Energy Credits/Portfolio Energy Credits

- RECs/PECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource.
- RECs/PECs can be bought or sold through various markets
 - RPS Compliance
 - Financing/Internal Goals



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Emissions

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Air Quality Issues

- How Does the Clean Air Act Regulate the Mining Sector
 - NAAQS – Nationwide Ambient Air Quality Standards
 - Source Category Controls – NSPS, NESHAP, MACT
 - Permitting – New Source Review, PSD, NANSR, Minor NSR
 - Operating Permits – Title V (major sources).

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Air Quality – What Matters to Mining

- NAAQS
 - Minimum Air Quality Standards (the floor) for six “criteria pollutants
 - NOx, SO2, CO, PM_{10/2.5}, Pb, and Ozone
 - Reviewed Every 5 years
 - Ozone – Implementation of the 2015 standard is ongoing
 - Unchanged in 2020 review
 - PM2.5 – lowered the annual standard in May 2024
 - Current administration announced it would re-review the standard as part of its implementation of Executive Orders
 - Has opted against defending the standard in an appeal pending before the D.C. Circuit

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Air Quality – PM NAAQS Review

- Current Standards

Pollutant	Averaging Period	Level
PM2.5	Annual	9 $\mu\text{g}/\text{m}^3$ (was 12 $\mu\text{g}/\text{m}^3$)
PM2.5	24-hour	35 $\mu\text{g}/\text{m}^3$
PM10	24-hour	150 $\mu\text{g}/\text{m}^3$

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PM NAAQS – Why it Matters to Mining

- NAA designation
 - SIP development
 - RACT/BACT applied
- Permitting
 - Projects must show compliance with the NAAQS (at ambient air boundary)
 - Tighter the NAAQS are, the more difficult it becomes to permit
 - Large projects could be unpermittable

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Air Quality – New Source Review

- New Source Review is the CAA's term for permit review
- NSR – preconstruction permit program
 - Required before construction or modification (physical change or change in the method of operation leading to an increase in emissions)
- Different types of NSR permits depending on emissions/locations
 - PSD – PTE > 100/250 tpy; attainment area
 - NANSR – major sources (PTE > 100/250 tpy); nonattainment areas
 - Minor NSR – triggering threshold depends on the state
 - Nevada – PM10/2.5, NOx, SO2 – 5 tpy; CO – 50 tpy; VOC – 20 tpy
 - Utah – 5 tpy of any pollutant

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Air Quality – Title V

- Title V – Operating Permits
 - Applies to major sources – PTE > 100 tpy
 - Purpose – compile all CAA requirements (permits/regulations) in a single document
 - Monitoring, Recordkeeping, Reporting may be added
 - Renewed every 5 years
 - Carefully review/compare renewal terms to existing T-V permit/NSR permits
 - Reporting obligations
 - SAMR; Annual Compliance Certification
 - Deviation Reporting

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Thank You

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HAZARDOUS WASTE, RECLAMATION, AND LEGACY ISSUES

Rick Angell & Jamie Tract

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Programs – Federal and State Level

▪ Federal Statutes

- Apply in all jurisdictions
- Includes Reservations
- Minimum standards
- Focus of today's discussion

▪ State Level

- Limited jurisdiction
- Can exceed federal requirements
 - Nevada “Discovery Events” and CEM Responsibilities
 - California Hazardous Waste Definitions.

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Due Diligence

- Perform All Appropriate Inquiry (AAI)
- Before you...
 - Contract for an interest in it
 - Drill it
 - Mine it
 - Reprocess it
- Because once you own it or operate it, you are responsible for it
 - Even if the release occurred long before you arrived
 - Even if others made it worse after you left

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CERCLA overview

Exploration

Operations

Closure/Divestment

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CERCLA (aka Superfund)

- Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9628.
- Response Actions to address release or threatened release of hazardous substances or pollutant or contaminant which may present an imminent and substantial endangerment.
- EPA has broad authority to make responsible parties clean up or pay up

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RCRA

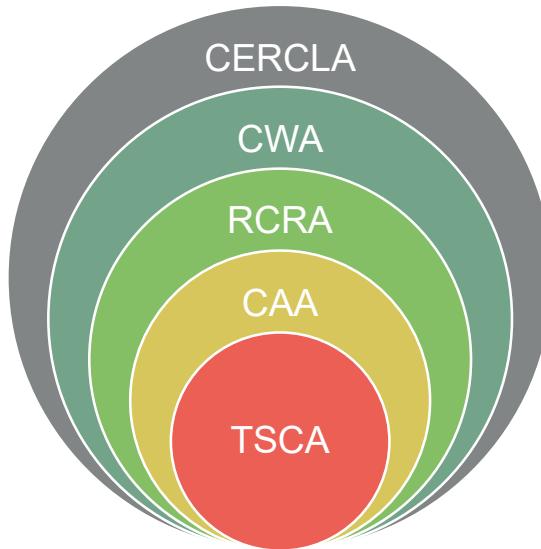
- Resource Conservation and Recovery Act (RCRA):
 - “Cradle-to-Grave” regulation of hazardous wastes
 - The “Bevill Amendment” exempts from RCRA waste from the extraction, beneficiation, and processing of ores and minerals
 - Bevill status influences how material is managed
 - Bevill Mixture Rule
 - RCRA violations carry both potential penalties and cleanup liability

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Hazardous Substances



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Responsible Parties liable for:

- all costs of removal or remedial action incurred by the U.S., or State, or Tribe
- any other costs incurred by any other person
- damages for injury to, destruction of, or loss of natural resources
- Cost of any health assessment or health effects study

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Liability is *retroactive, strict, and (often) joint and several!*

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Potentially Responsible Parties Include

- “Owner/operator” of the facility (i.e where hazardous substances have been deposited, stored, placed, released or disposed of)
- Past owner/operator of a facility at the time of disposal of hazardous substances at the facility
- Any person who arranged for treatment or disposal of hazardous substances
- Transporters of hazardous waste for disposal

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But maybe not a PRP if:

<ul style="list-style-type: none"> ▪ Innocent landowner ▪ Bona Fide Prospective Purchaser ▪ Contiguous landowner 	<ol style="list-style-type: none"> 1. All appropriate inquiry completed 2. Comply with continuing obligations 3. No relationship to party responsible for existing contamination
--	---

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All Appropriate Inquiry

- Inquiry into past uses and ownerships of a property and visual inspection of the property for evidence of releases and threatened releases of hazardous substances on, at, in, or to the subject property.
- Conducted by an Environmental Professional for the entity acquiring the property ("User")
- Within 1 year before acquisition of property or interest in property
- Certain parts good for only 180 days (interviews, review of government records, site visit and searches for environmental cleanup liens)
- ASTM Standard E1527-21
- ASTM Standard E2247-16 (rural or undeveloped land)

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Continuing Obligations

1. Provide legally required notices (releases)
2. Appropriate care upon discovery of hazardous substances
3. Cooperation, assistance and access
4. Comply with institutional controls
5. Comply with information requests or subpoenas
6. No third-party affiliation with responsible party

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Regulatory Protections



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Exploration



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(D) The nature or extent of a release or threatened release of a hazardous substance or potential or contaminant at or from a vessel or facility; and
(C) Information relating to the ability of a person to pay for or perform a cleanup.

Service, signed and complete with all schedules and attachments, including all Schedules K-1 for S-Corporations. If any of these tax returns were amended or audited, please provide complete copies of the amended returns in addition to the original returns.

7. Provide a full copy of the Company's asset depreciation schedule for the most recent fiscal year.

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A May 2023 aerial view of the former Gilt Edge Mine, an EPA Superfund cleanup site near Lead.
(Courtesy of EcoFlight)

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Categories of Legacy Sites

- Sites with impacts but little or no response action is underway
 - Historical waste rock piles and tailings impoundments
 - Mine drainage
 - Processing facilities
- Sites where response actions are underway or completed
 - Materials capped and consolidated
 - Water treatment – active or passive

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Coordinating New Activity with Old Impacts

- Water treatment
- Consolidated and capped materials
- Reprocessing
- Reclamation vs. Remediation
- Bonding and Financial Assurance

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Purchase and Sale Agreements – Key Provisions

1. Definitions (“Environmental Laws,” “Environmental Claims,” “Hazardous Materials”)
2. Environmental representations and warranties
3. Allocation of liability
4. Indemnity, defense and release
5. Covenants
6. Contingencies (e.g., Comfort letter, certificate of completion, insurance)
7. Surety for environmental performance

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Common Environmental Representations and Warranties (Best or actual knowledge / inquiry)

1. No use, generation, storage or treatment of hazardous substances
2. No release of hazardous substances (on, under, above or migrating from)
3. No pending or threatened litigation
4. No pending or threatened claims by any persons
5. No written notification of potential liability ("PRP Letters")
6. Not a CERCLA site
7. No violations of environmental laws or permits
8. Compliance with applicable laws
9. Disclosure of issues; copies of reports have been provided

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And after all that negotiation...

"No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section."

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42 U.S.C. § 9607(e)(1)

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State and Federal Coordination

- Land status
 - Private
 - State
 - Federal
- Memoranda of Understanding

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Exploration vs. Operations

- Exploration
 - Roads
 - Drill pads
 - Temporary
- Operations
 - Pits and surface facilities for underground operations
 - Processing facilities
 - Long term maintenance and water management

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Reclamation Plan, Permit and Bonding

- Reclamation Plan
 - Included in Plan of Operations
 - Must address slope management, runoff, revegetation, fluid management, etc.
- Nevada mining/reclamation permit:
 - Surety: Nevada Standardized Reclamation Cost Estimator (SRCE); re-evaluated at regular intervals
- Long-Term trust for post-closure activities (e.g. water treatment plants, monitoring)



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Reclamation Liabilities

- Attach to operator/permit holder
- Owners of surface and mineral estate may not have reclamation liability if they are not the operator
 - Consider lease terms clarifying lessee/operator responsibilities
 - Landowner specific reclamation performance and financial requirements
- Grandfathered disturbances
- Historical sites and wildlife habitat

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Financial Assurances

- BLM/State regulations require “surface management bond” covering reclamation costs
 - 3809 regulations require operator developing mineral resources to prevent undue degradation and reclaim disturbed areas
 - Financial assurance is the tool used to ensure disturbed areas are reclaimed
- Types of Bonds
 - Surety Bond – principal (operator), surety (guarantee), and agency (BLM)
 - Personal Bond – cash bond, letter of credit, certificate of deposit
- Cash collateralization requirements

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Financial Assurances

- Financial Assurances are required for exploration and operation
- Based on a Reclamation Cost Estimate (RCE)
 - Updated RCE every 3 years
- Increases – typically covered with a rider
- Transactions – replacement bonds are a critical component for closure
 - Replacement/substitute bonds are typically submitted pre-closing
 - BLM will approve post closing (state office v. district office).

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REGULATORY CHALLENGES AND OPPORTUNITIES

Panel

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Thank you for attending!



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