United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 10 2003

Honorable Jim Gibbons
House of Representatives
Washington, D.C. 20515

Dear Mr. Gibbons:

You recently wrote to Secretary of the Interior Gale Norton on the issue of mill sites. I am pleased to respond.

In 1997, the Interior Solicitor's Office issued an opinion under the Mining Law of 1872 that determined no more than one mill site could be located or patented for each mining claim. Recognizing that this opinion represented a significant departure from longstanding administrative practice and interpretation, in 1999 Congress passed and President Clinton signed legislation limiting the application of this opinion. Members of Congress from both sides of the aisle have written to the Department asking us to review this opinion.

The Solicitor's Office undertook a review of the Solicitor's 1997 opinion, to determine whether it properly interprets the Mining Law of 1872. That review has been completed. On October 7, 2003, Deputy Solicitor Roderick E. Walston issued an opinion, concurred in by Secretary Norton, concluding that the Solicitor's 1997 opinion was wrong as a matter of legal interpretation, and that the Mining Law does not limit mill sites to one per mining claim. The Deputy Solicitor's opinion is based on an analysis of the Mining Law, its legislative history, and the congressional purpose of the Mining Law to encourage development of the nation's mineral resources.

The Deputy Solicitor's 2003 opinion is consistent with the Department's longstanding administrative practice of allowing more than one mill site to be located or patented for each mining claim, in cases where applicants can demonstrate that they need additional mill sites and are using or occupying each site for milling purposes. This practice has been in effect at least since 1954. In that year, BLM issued written guidance stating that more than one mill site can be located for each claim, and this guidance has been followed in actual practice since then.

Today, we are sending a rule to the Federal Register that reflects the conclusions of the Deputy Solicitor's 2003 opinion and will return the Department to its traditional administrative practice and interpretation of the Mining Law's mill site provision.

Mining is an integral part of many rural economies in the West. Recently, Senators Harry Reid (D-NV) and John Ensign (R-NV) stated:

> Since the Millsite Opinion was issued in 1997, exploration spending and exploration projects in the United States have declined by more than two-thirds. Plans of Operations for new mines or mine expansions have declined by 60 percent. Investment in mineral exploration and development continues to shift overseas, accompanied by related technical expertise. [¶] The decline in mineral exploration and development has had a profound impact on Nevada and other western states, which contain over 90% of our public lands and account for most of the domestic mineral production. The mining industry provides jobs, capital spending, and tax monies that are essential to the economic well being of many rural communities, and are important to the economies of many western states.

Similarly, Representative Jim Matheson (D-UT) has stated:

> The uncertainties created by the Millsite Opinion will impede future exploration and development of the mineral resources of Utah, denying Utah high-paying jobs and tax revenues.

In a recent letter co-signed by House Resources Chairman Representative Pombo (R-CA), Cubin (R-WY), Cannon (R-UT) and Rehberg (R-MT) you stated:

> The Millsite Opinion creates substantial uncertainty, deterring the development of mines on public lands in each of our states and contributing to this nation's ever increasing reliance on mineral imports.

The Chair of the Lander County Board of Commissioners, in Nevada, recently explained:

> As mining is the primary source of gainful employment, tax revenues, and general economic activity in many Nevada communities, reduced mining activity has direct and profoundly negative implications for residents of these communities.

The Deputy Solicitor's 2003 opinion will remove the cloud of uncertainty that has hung over mineral exploration and development on federal lands since issuance of the 1997 Solicitor's opinion. The chilling effect of the Solicitor's 1997 opinion has contributed to a significant decline in exploration for and development of the nation's mineral resources, with a concomitant loss of job opportunities. If the congressionally expressed purpose of the Mining Law–to encourage development of the domestic minerals industry–is to be changed, that responsibility rests with Congress.

All federal and state environmental laws applicable to mill sites at the time that the Solicitor's 1997 opinion was issued continue to remain in effect under the Deputy Solicitor's 2003 opinion. These include BLM Subpart 3809 regulations, state and federal environmental laws and mining-specific state laws. A National Academy of Science study in 1999 found that:

> The overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective. The structure reflects regulatory responses to geographical differences in mineral distribution among the states, as well as the diversity of site-specific environmental conditions. It also reflects the unique and overlapping federal and state responsibilities . . . .

An attachment to this letter describes the various environmental laws that will remain in effect under the new opinion. Existing BLM rules apply to all mining operations on public lands, whether those operations occur on mining claims, mill sites, or unclaimed lands. Any mine that does not meet the performance standards cannot and will not be approved by BLM under rules approved by the Bush administration. The same level of BLM environmental review will occur under the Deputy Solicitor's 2003 opinion that occurred under the Solicitor's 1997 opinion. As Representative Berkley (D-NV) has noted:

> [M]illsites remain under the jurisdiction of the Bureau of Land Management's rules for environmental review and performance of mining projects on public lands. Also, mining on public and private lands is governed by numerous state and federal environmental statutes.

Moreover, in the last two years, this Department has taken steps to ensure strong protection of the public lands, as the attachment indicates.

The Secretary remains committed to working with Congress and the interested public in a bipartisan, open process to effect meaningful mining law reform that will further protect taxpayers and help us administer the mining program more effectively. The Secretary, on October 25, 2001, stated in a letter to Congress addressing this issue, that legislation should include the following:

- Permanent authorization of a mining claim holding fee;
- Revision of the patent system;
- Authorization of a production payment system;
- Authorization of administrative penalties; and
- An expanded role for the states in managing the mining program.

We believe the Deputy Solicitor's 2003 opinion, together with the complementary mill site regulations that are being promulgated concurrently to continue the administrative practice and interpretation of the last half century, will promote the

development of the nation's mineral resources and economic growth without in any way lessening the environmentally responsible management of the public lands to which this Administration is committed.

Sincerely,

Rebecca W. Watson

Rebecca W. Watson
Assistant Secretary,
Land and Minerals Management

Enclosure

ATTACHMENT 1
OTHER APPLICABLE REQUIREMENTS

The following is a list and brief description of major laws, regulations, executive orders, permits, licenses, and reviews that could apply to mineral projects on public lands permitted by the Bureau of Land Management (BLM).

GENERAL REQUIREMENTS

The following acts and executive order establish general review requirements or management objectives that apply to mineral projects on public lands.

Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579. Section 302(b) states that "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

BLM is responsible for implementing FLPMA. As an "organic" act, FLPMA defines BLM's organization and provides the basic policy guidance for management of the Public Lands. FLPMA is the primary law guiding all BLM activities; BLM accordingly implements other legislation in a manner that conforms to FLPMA and its overall intent.

As stated in Section 102: "The Congress declares that it is the policy of the United States that ... the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use ..."

Land use plans (Section 202), which describe how the BLM will manage the public lands, must "... provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans ..."

"[a] finding of a violation of ... applicable State or Federal air or water quality standard or implementation plan ..." is required under Section 302 to revoke or suspend land use or development authorizations..

Finally, under Section 505, "each right-of-way [provision] shall ... require compliance with applicable air and water quality standards established by ... Federal or State law ..."

Executive Order 12088 - Federal Compliance with Pollution Control Standards, October 13, 1978. Executive Order 12088 directs executive agencies to take all necessary actions to prevent, control, and abate environmental pollution from activities and facilities under their control. This order further directs those agencies to comply, to the same extent as any other person is required to do so, with both the procedural and substantive requirements of pollution control standards, including the Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation, and Liability Act; Clean Water Act; Safe Drinking Water Act; and state and local laws and rules.

National Environmental Policy Act of 1969 (NEPA), P.L. 91-190. The National Environmental Policy Act directs federal agencies to consider the environmental impact of their decisions. NEPA requires BLM to prepare environmental assessments or environmental impact statements for the approval of Plans of Operations. Some states, such as Montana and California, have state laws similar to NEPA.

The 1970 Mining and Mineral Policy Act, P.L. 91-631, Dec. 31, 1970, **and The 1980 Natural Materials and Minerals Policy, Research, and Development Act,** P. L. 96-479, Oct. 21, 1980. Both of these acts direct that the public lands be managed in a manner that recognizes the Nation's need for a domestic source of mineral production.

> "The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining ... (and) the orderly and economic development of domestic mineral resources ..."
>
> **Mining & Minerals Policy Act of 1970**

AIR QUALITY

The federal statutes pertaining to air quality protection are contained in the following acts.

Clean Air Act (CAA), P.L. 84-159 (Air Pollution Control Act; July 14, 1955), 42 USC 7401 et seq., as amended numerous times.

The U.S. Environmental Protection Agency (EPA) is responsible for developing CAA standards, rules, guidance, and program oversight to protect and enhance the quality of the Nation's air resources to promote public health, welfare and productive capacity of the people. The states have the primary responsibility for enforcing air quality regulations and standards as defined in an EPA-approved "state implementation plan," and may establish more stringent regulations and standards. These responsibilities may be further delegated to local authorities. Tribal governments are responsible for enforcing standards on their lands, based on EPA-approved "tribal implementation plans." BLM is responsible for assuring that all of its activities (either directly or through use authorizations) comply with all local, state, tribal, and federal air quality laws, regulations, and standards.

Resource Conservation and Recovery Act (RCRA), P.L. 94-580, as amended by the **Solid Waste Disposal Act Amendments of 1980**, P.L. 96-482, USC 6901 et seq. The Resource Conservation and Recovery Act (RCRA) is the federal law governing management of solid and hazardous waste. RCRA divides wastes on two regulatory tracks: Subtitle D (solid waste) and Subtitle C (hazardous waste). In October 1980 Congress amended RCRA by adding Section 3001(b)(3)(A)(iii) (known as the Bevill exclusion or amendment) for solid waste from the extraction, beneficiation, and processing of ores and minerals. The Bevill amendment excluded such mining waste from regulation as hazardous waste under Subtitle C of RCRA, pending completion of a study and report to Congress. All extraction and beneficiation wastes and 20 special mineral processing wastes are excluded from RCRA Subtitle C regulation by virtue of the Bevill amendment (see 40 CFR 261.4(b)(7)).

RCRA emphasizes the primary role of the states in managing both conventional solid wastes and hazardous wastes. The legislation provided a federal support role with minimal enforcement and regulatory process for conventional solid wastes. Actual regulation and enforcement of solid-nonhazardous wastes was left to the states, which were to follow broad guidelines established at the federal level.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC 9601 et seq.; as amended by **Superfund Amendments and Reauthorization Act (SARA)**, P. L. 99-499, October 17, 1986. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the amendment of the Superfund Amendments and Reauthorization Act (SARA) authorized response to releases or threatened releases of hazardous substances that may endanger public health, welfare, or the environment. The law outlines the procedures for reporting any environmental releases of a hazardous substance that exceeds a reportable quantity and also includes provisions for permanent cleanups, known as remedial actions, and other cleanups referred to as removals. SARA created the **Emergency Planning and Community Right-to-Know Act (EPCRA),** 42 U.S.C. 11001 et seq. (1986), a statute designed to improve community access to information about chemical hazards and to facilitate the development of chemical emergency response plans by state and local governments.

Toxic Release Inventory (TRI). The Toxic Release Inventory (TRI), is mandated by a provision of the EPCRA, 42 U.S.C. 11001 et seq. (1986), which requires specified industries to report releases of more than 650 chemicals and chemical categories to air, land, and water. The TRI's purpose is to give citizens information about chemicals being used, processed, manufactured or released from facilities in their communities. As of 1999, mining was added to the groups of industries that need to report under TRI. If a mining company has a certain number of employees and chemicals, it must report any releases

Uranium Mill Tailings Remediation and Control Act of 1978 (UMTRCA), P.L. 95-604, Nov. 8, 1978; 92 stat. 3021; as amended by P.L. 95-106, Nov. 9, 1979, 93 stat. 799; and P.L. 97-415, January 4, 1983, 96 stat. 2078. The Uranium Mill Tailings Radiation Control Act (UMTRCA) regulates mill tailings at active and inactive uranium mills that present a hazard to public health. The act provides that efforts must be made to stabilize, control, and dispose of uranium mill tailings in an environmentally sound and safe manner. UMTRCA provides (1) a program of assessment and remedial action at abandoned mill sites and (2) a program regulating mill tailings during processing at active processing mills.

WATER RESOURCES

Clean Water Act (CWA), P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117; 33 USC 125. et seq. The objectives of the Clean Water Act are to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The act protects surface "navigable" water through federally enforceable regulations, with emphasis on discharge of pollutants to surface waters.

The CWA is implemented by the states with EPA oversight. Authority to protect groundwater is vested in the states. Although regulations for protecting groundwater are not included in the CWA, the Act clearly delineates a federal role in protecting groundwater quality in federal actions. Section 313 requires federal compliance with valid state and local government requirements to the same extent as any nongovernmental entity. Sections 208(b).2 requires that individual states develop processes to identify and control the following:

Surface mining and underground mining-associated pollution of surface water and ground water;

intrusion of salt water into fresh groundwater aquifers;

the disposition of residual wastes that could degrade the quality of surface or groundwater; and

the disposal of pollutants on land or in excavations wherein adjacent surface water or groundwater quality degradation could ultimately result.

The CWA Section 404 also regulates the protection of wetlands and dredge and fill placement in waters of the United States. A permit under Section 404 of the act is required for mining that would disturb wetlands or other waters of the United States. This permitting program is administered by the U.S. Army Corps of Engineers and the U.S. EPA.

Safe Drinking Water Act (SDWA), P.L. 93-523, as amended by P.L. 95-190, 42 USC 300 et seq. In 1974 Congress passed the Safe Drinking Water Act to direct EPA to establish minimum requirements for state programs to protect the public health and welfare through the prevention of underground injection that endangers groundwater resources of public supply systems. This program became known as the Underground Injection Control Program (UIC). Authority to regulate under this Act has been delegate to the States by EPA.

Wild and Scenic Rivers Act, P.L. 90-548, Oct. 2, 1968, 82 stat. 906 and as amended. Portions of this act provide for control of activities that are on land next to rivers and could cause or contribute to pollution of waters, or could degrade water quality through erosion and siltation of riverbank lands, and contamination of groundwater sources feeding the river.

Executive Order 11990, Protection of Wetlands, May 24, 1977, 44 FR 1955. Executive Order 11990 directs all agencies to provide leadership and take action to minimize the destruction, loss, or degradation of wetlands according to the National Environmental Policy Act. The order covers aspects of federal activities affecting wetlands, including land management, facilities development, and licensing regulations. Agencies are asked to minimize the impacts of federal actions on wetlands and their related beneficial effects, such as groundwater recharge. In carrying out any activities affecting wetlands, federal agencies must consider such factors as public health, safety, and, welfare, including such things as water supply and quality, recharge, and discharge areas for groundwater and pollution.

CULTURAL RESOURCES

Antiquities Act of 1906, P.L. 59-209. The Antiquities Act provides for the protection of archaeological resources on Federal lands through criminal sanctions against excavation, injury, or destruction of archaeological sites without permission.

National Historic Preservation Act of 1966 (NHPA), P.L. 89-665 as amended by P.L. 94-422, P.L. 94-458, and P.L. 96-515. The National Historic Preservation Act (NHPA) is the basic federal mandate for managing and protecting historic properties, Section 106 requires federal agencies to account for the effects of their actions on historic properties on public and private lands. It allows the public, the State Historic Preservation Officer and the President's Advisory Council on Historic Preservation to comment on federal undertakings before authorization. Section 110 requires agencies to systematically inventory all lands for historic properties and protect them through active management. Amendments enacted in 1992 direct agencies to account for the effects of proposed activities on traditional cultural properties associated with Native Americans, ranching communities, and other traditional lifeways.

American Indian Religious Freedom Act of 1978, P.L. 95-341. The American Indian Religious Freedom Act requires federal agencies to consider the effect of their policies on Native American traditional beliefs. BLM Manual 8161 - Native American Consultation addresses the intent of American Indian Religious Freedom Act.

Native American Graves Protection and Repatriation Act (NAGPRA), P.L. 101-106. The Native American Graves Protection and Repatriation Act (NAGPRA) pertains to Native American human remains, funerary items, sacred objects, and items of cultural patrimony removed from public lands. This law has two major provisions. The first vests ownership of NAGPRA items with Native Americans and requires agencies to consult with Native Americans to repatriate them. The second requires ongoing consultation and coordination with Native Americans about discoveries of NAGPRA items during activities on public lands. NAGPRA regulations are being written. BLM Manual 8161 and its consultation handbook provide guidance for BLM consultation.

Archaeological Resources Protection Act of 1979 (ARPA), P.L. 96-96. The Archaeological Resources Protection Act (ARPA) requires a permit for any excavation or removal of archaeological resources from public lands and provides civil and criminal penalties for violation of permit requirements. Given these penalties, ARPA is the basis for most prosecutions and suits involving archaeological resources. It also provides the mandate for the Cultural Resources Use Permit System, as well as archaeological resource interpretive and education programs. ARPA also requires the systematic inventory of all federal lands to find and protect archaeological resources. ARPA is implemented at 36 Code of Federal Regulations 296: 43 Code of Federal Regulations 3 and 7 and in BLM Manual 8151 - Cultural Resource Use Permits.

National Environmental Policy Act of 1969 (NEPA), P.L. 91-190. The National Environmental Policy Act directs federal agencies to consider cultural resources in fostering environmental quality and preservation of important historic, cultural and natural aspects of our national resources. NEPA documentation routinely considers impacts to cultural and paleontological resources. BLM Manual 8130 – Cultural Resources Planning further clarifies and implements the cultural resources aspects of NEPA.

Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579. The Federal Land Policy and Management Act (FLPMA) directs BLM to inventory cultural resources and to protect scientific, historic, and archaeologic resources within the framework of multiple use management. FLPMA is the basis for the paleontological resources management program. FLPMA also requires coordination of BLM land use programs "of and for" Indian tribes by considering the policies of approved state and federally recognized tribal land resource management programs in land use planning. BLM Manual 8100 - Cultural Resources Management implements the cultural resources aspects of FLPMA.

Executive Order 11593, May 13, 1971. Executive Order 11593 supplements the National Historic Preservation Act and Archaeological Resources Protection Act by directing federal agencies to locate and inventory all cultural resources under their jurisdiction and to ensure that actions do not affect significant cultural resources. It also directs agencies to consider the effects of their actions on nonfederal lands.

Executive Order 94-3175. Executive Order 94-3175 directs federal agencies to deal with Native American tribal governments on a government-to-government basis and to pay special attention to federal Indian trust responsibilities.

Additional Regulations. Requirements for managing archaeological collections and other museum property are at 36 C.F.R. 79. These regulations require work to inventory and properly curate museum property and collections.

AMERICAN INDIAN CONSULTATION AND COORDINATION

Executive Order 13084, May 14, 1998. Executive Order 13084 requires "regular and meaningful consultation and collaboration with Indian tribal governments in developing regulatory practices on federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments."

The American Indian Religious Freedom Act of 1978(AIRFA), P.L. 95-341 **and Executive Order 13007,** May 24, 1996. The American Indian Religious Freedom Act of 1978, (AIRFA) and Executive Order 13007 require federal agencies to evaluate their policies and procedures to protect the religious freedom of Native Americans.

CAVE RESOURCES

The Federal Cave Resources Protection Act of 1988 (FCRPA), P.L. 100-691. The Federal Cave Resources Protection Act (FCRPA) provides for the designation of significance by six criteria: biota, cultural, geologic/mineralogic/paleontologic, hydrologic, recreational, and educational or scientific values. Upon discovery, the cave is evaluated to determine its significance. If a cave is determined to be significant, its entire extent, including passages not mapped or discovered at the time of determination, is deemed significant.

FISH AND WILDLIFE RESOURCES

Although a variety of laws, regulations, policies, and programs relate to wildlife, the following have a major affect on the protection of wildlife resources in relation to mining.

The Endangered Species Act (ESA), P.L. 93-205 (1973), P.L. 94-359 (1974), P.L. 95-212 (1977), P.L. 95-632 (1978), P.L. 96-159 (1979), P.L. 97-304 (1982), P.L. 100-653 (1988). The Endangered Species Act's (ESA) purpose is to identify and conserve species that are threatened or endangered with extinction. The ESA prohibits the taking of species listed as threatened or endangered, either directly or indirectly through habitat loss or modification. This prohibition applies to all activities regardless of land ownership.

Migratory Bird Treaty Act (MBTA), P.L. 86-732 (1960). The Migratory Bird Treaty Act (MBTA) is an international treaty that prohibits the taking of any migratory bird without permit or authorization. The activities and species of birds have been vastly expanded and very few avian species are not protected. This prohibition applies to situations where, for example, migratory waterfowl land on a tailings pond or process solution pond that contains toxic levels of contaminants. Any resulting wildlife deaths would be (and have been) violations of the MBTA. This prohibition applies to all activities regardless of land ownership.

Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. 661-667e, March 10, 1934, as amended 1946, 1958, 1978 and 1995. The Fish and Wildlife Coordination Act's (FWCA) purposes are to recognize the vital contribution of our wildlife resources to the Nation, and their increasing public interest and significance, and to provide that wildlife conservation receive equal consideration and be coordinated with other features of water-resource development programs through planning, development, maintenance, and coordination of wildlife conservation and rehabilitation. In furtherance of the stated purposes, the Secretary of the Interior is authorized to provide assistance to, and cooperate with, federal, state, and public or private agencies and organizations in developing, protecting, rearing, and stocking all species of wildlife, resources thereof, and their habitat; controlling losses from disease or other causes; minimizing damages from overabundant species; providing public shooting and fishing areas, including easements across public lands; carrying out other necessary measures. The Secretary is also authorized to make surveys and investigations of the wildlife of the public domain, including lands and waters or interest acquired or controlled by an agency of the United States and to accept donations of land and contributions of funds in furtherance of the purposes of the FWCA.

Executive Order 13112, Invasive Species, February 3, 1999. Executive Order 13112 directs all agencies to take action to prevent the introduction of invasive species, detect and control invasive species populations, monitor invasive species, provide for restoration of native species, conduct research on invasive species and develop technologies to prevent the introduction of invasive species, and promote public education.

Lacey Act, P.L. 91-135. The Lacey Act enhances penalties for violation of other wildlife protection laws.

Bald Eagle Act of 1940, as amended by P.L. 92-535 (1972). The Bald Eagle Act of 1940 protects the bald eagle and golden eagle by prohibiting except under certain specified conditions, the taking, possession, and commerce of such birds.

Sustainable Fisheries Act (SFA), P.L. 104-297 (1996). Among other things, the SFA amended the habitat provisions of the Magnuson Act. The renamed Magnuson-Stevens Act (MSA) calls for direct action to stop or reverse the continued loss of fish habitats. Toward this end, Congress mandated (1) the identification of habitats essential to managed species (essential fish habitat) and (2) measures to conserve and enhance this habitat. The SFA requires federal agencies to consult with the Secretary of Commerce on any activity or proposed activity authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat. On BLM managed public lands, essential fish habitat refers to those waters and substrate necessary to salmon for spawning, breeding, feeding, or growth to maturity (Magnuson-Stevens Act, 16 U.S.C. 1801 et seq), see also definitions (EFH Interim Final Rule, 62 FR 66531).

WILD HORSES AND BURROS

Wild Free-Roaming Horses and Burros Act of 1971, P.L. 92-195, as amended by P.L. 94-579 (1976) and P.L. 95-514 (1978). The Wild Free-Roaming Horses and Burros Act protects wild free-roaming horses and burros, directing BLM and the Forest Service to manage such animals on public lands under their jurisdiction.

PLANTS

Executive Order 13148, Greening the Government Through Leadership in Environmental Management, April 22, 2000. Executive Order 13148 directs agencies to incorporate regionally native plants in site design and implementation where cost-effective and to the maximum extent practicable on all Federal projects or federally-funded projects.

SPECIAL STATUS AREAS

Wilderness Act, 16 U.S.C. 1131-1136. The Wilderness Act (WA) Section 4 (b) states "... wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." The objective of these regulations is to manage the public lands designated as part of the National Wilderness Preservation System to preserve and protect their wilderness character, provide for their use and enjoyment by the American people in a manner that will leave them unimpaired for future use and enjoyment as wilderness, and allow for recreational, scenic, scientific, educational, conservation, and historical use.

Subpart 8560.4-6 describes mining law administration in wilderness areas. These regulations require that mineral operations be conducted to maintain the wilderness character unimpaired consistent with the use of the land for mineral activities and that all facilities must be removed within 1 year after operations cease. This section also requires that validity examinations be conducted before allowing mining operations in wilderness areas to determine if valid existing rights were present as of the date of withdrawal.

Research Natural Areas, 43 CFR Subpart 8223. Research Natural Areas (RNAs) are a special designation under FLPMA and are protected from use or occupation that is destructive or inconsistent with the purpose of the research natural area/

BLM PERFORMANCE STANDARDS

APPLICABLE TO FEDERAL MINING CLAIMS

[66 FR 54861, Oct. 30, 2001]

§3809.420 __ What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) ***General performance standards*** -

(1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart. (2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence. (3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate. (4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands. (5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further. (6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.

(b) ***Specific standards*** -

(1) ***Access routes.*** Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) ***Mining wastes.*** All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state laws.

(3) ***Reclamation.*** (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands. (ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;
(B) Measures to control erosion, landslides, and water runoff;
(C) Measures to isolate, remove, or control toxic materials;
(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and
(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) ***Air quality.*** All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 et seq.).

(5) ***Water quality.*** All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 et seq.).

(6) ***Solid wastes.*** All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(7) ***Fisheries, wildlife and plant habitat.*** The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) ***Cultural and paleontological resources.*** (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.
(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery. (iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) ***Protection of survey monuments.*** To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) ***Fire.*** The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) ***Acid-forming, toxic, or other deleterious materials.*** You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:
(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control); (ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and (iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(12) ***Leaching operations and impoundments.*** (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation. (ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs. (iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and draindown from heaps during power outages in the design. (iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure. (v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions. (vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.
(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(13) ***Maintenance and public safety.*** During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.