PROJECT INFORMATION & STAFF COMMENTS

PROJECT NAME: Colorado Lien Company

OWNER: Bureau of Land Management

LOCATION: Approximately 10 miles northeast of Rifle, west of the Rifle Fish Hatchery, off State Highway 325.

SITE DATA: The affected area is a 40 acre tract of land owned by BLM. The actual mine site and processing area would encompass approximately 26 acres.

PROPOSED ROADS: The applicant would haul by way of a public access road onto State Highway 325, then to State Highway 13, and then proceed to the respective destinations, either by way of State Highway 13 north, or possibly through Rifle to I-70.

ADJACENT ZONING:
North: A/R/RD
South: O/S
East: A/R/RD
West: A/R/RD

DESCRIPTION OF THE PROPOSAL:

The applicant proposes to develop an open pit mine to extract high calcium limestone and to crush and stockpile this product on a 26 acre parcel of BLM land. As mentioned above, the product would be transported by State Highway 325 from the site. The year-round employee count is expected to be eight miners. Five to six of these employees would be seasonal employees, living in temporary quarters. The remaining employees would be permanent; and they are expected to live either in Rifle or Glenwood Springs.

Colorado Lien's transport operations would be conducted 52 weeks per year, five days per week, at an average of 384 tons per day. This would require approximately 16 truck loads per day, or one truck every half hour. Colorado Lien has proposed certain provisions and guidelines by which they would transport their product, see attached Impact Statement, Item P.

The life of the operation is 75 years.

PREVIOUS HISTORY OF THIS REQUEST:

EARL

This application was first reviewed by the Garfield County Planning Commission in August of 1980. The Planning Commission recommended approval with conditions (see copy of August 1980 minutes from the Planning Commission, attached). On September 22, 1980, the Garfield County Board of Commissioners held a public hearing on this request. This hearing was continued until October 6, 1980, at which time the Board accepted further testimony. The hearing was then closed, and a decision was scheduled for October 20, 1980. On that date, the Garfield County Commissioners denied the application by Colorado Lien Company, due to the inadequacy of the road system providing access for the mine site, and due to the impact of this use and the resultant traffic on the recreational facilities in the area.

Subsequent to this decision by the Board, Colorado Lien filed suit against the county. However, when it was discovered that Colorado Lien had applied for the wrong type of permit, (special use vs. conditional use), the lawsuit was withdrawn.

The county, in the meantime, had amended the zoning regulations (Res. 81-145) to allow for a determination of certain uses on public lands to be either special or conditional uses, depending on the issue of Federal or State preemptive regulations in regard to the specific proposals.

G - Fed Register - BLM-mining laws
H - protest letter - Allan Schaefer
I - protest letter - Wayne Jewells
J - CO LITE letter

A - BLM map
B - application
C - POP - Glenwood Post
D - CRMR
E - Carry Green's statement of legal position of Colorado Lien
F - Earl's statement of legal position of

Ex. K - BLM extraction plan
Ex L - St Hwy June 1980 letter
M - St Hwy July 1980 letter
RE 2 School District - 1980 letter
3-17-82
N - O - City of Rifle 1981 letter - resolution
P - BLM letter

RECOMMENDATION:

If a determination is made that the Colorado Lien proposal is a special use, then the Planning Staff recommends that the Board refer the application to the Planning Commission for review and comment.

hold after concerns

If the Board determines that the Colorado Lien proposal is a conditional use, then staff recommends that the application be referred to the Planning Commission for advisory review.

MAJOR CONCERNS AND ISSUES:

1) Colorado Lien Company proposes to use State Highway 325 as its immediate access to the mining area. This road is recognized by the Colorado State Highway Department as being narrow and having numerous curves. The Department also acknowledges that the road base is not sufficient to carry the types of heavy traffic projected for the mining operations. Improvements to this road are not included in the Department's present five-year construction plan.

2) Colorado Lien proposes to limit its haul truck size to 38 feet in length. These trucks would carry an average load of 76,000 pounds. Due to the existing winding conditions of State Highway 325, and the narrow width of the road base, this type of heavy industrial traffic would have a major impact on the safety of the recreational and residential users of the highway.

3) The Colorado Lien proposal is for an estimated 75 year time frame.

4) Tourism and recreation play major roles in the economy of Garfield County. In the area of the mine site and along the applicant's proposed access route, there is considerable public investment in numerous tourist and recreational facilities.

   The Rifle Falls State Park and Rifle Gap Reservoir Area had a visitor count of 148,026 in 1981. The Rifle Gap State Park had a visitor count of 166,103 from July 1979 to June 1980. The State Fish Hatchery had an estimated count of over 30,000 visitors in 1981. These facilities indicated that slightly less than half of these visitors are from out of state.

   The City of Rifle Mountain Park also has substantial usage. In addition, the City of Rifle Planning staff is projecting the area's population to increase rapidly over the next few years. If the city's population continues to grow at the 1981 level of 34%, the area's population would increase from 6,000 to date to approximately 16,000 over the next five years. With the influx of this increasing population, projected not only for the Rifle area, but for other areas of the county as well, it can be expected that these recreational areas will also experience increased demand on their facilities.

5) Recent traffic counts are also showing an increase in usage of State Highway 325 over previous years. The 1980 annual average daily count for State Highway 325 just north of its intersection with State Highway 13, showed 1050 vehicles per day. The previous year indicated 900 vehicles per day. Increasing area populations will further stimulate an increase, as noted previously.

6) The Garfield County Comprehensive Plan encourages industrial expansion where similar development already exists in appropriate areas. The Plan also encourages industrial development in areas where adequate transportation facilities are available. Further, the Comprehensive Plan allows the county to deny a project based on inadequate road access which would lead to further deterioration of the road and large daily traffic volumes.

   The Comprehensive Plan addresses at length, the issue of compatibility of proposed and existing uses. Specifically, it speaks to a proposal's "adverse impacts on the desireability of the surrounding community," "alteration of the basic character of adjacent land uses" and "impairment of the stability or value of adjacent or surrounding properties."

7) Staff finds that the Colorado Lien proposal is incompatible with the Garfield County Comprehensive Plan. The proposed truck traffic would be a threat to the health, safety, and welfare of Garfield County citizens; and further, that the proposed operations would have an adverse impact on the substantial public investment made for tourist and recreational facilities in the area.

REVIEW AGENCY COMMENTS:

1) Ed Gebhardt, State Highway Department-comments of the previous hearing would still apply. (see attached)

2) Brent Bean, City of Rifle-comments of the previous hearing would still apply (see attached)

3) Dariel Clark, Superintendent of RE-2 School District-comments of the previous hearing would still apply (see attached)

4) Mike Grode, Division of Wildlife-letter forthcoming.

EX. E

EXHIBIT A

LEGAL POSITION OF COLORADO LIEN COMPANY

Garfield County Does Not Have The Authority Under Its Zoning Ordinance To Deny Colorado Lien Its Right To Mine Limestone On Federal Mining Claims.

I. Introduction.

Sec. 3.09 of the Garfield County Zoning Ordinance provides that unless included within another zone district all land owned by the United States Government shall be within the Open/Space district. Sec. 3.09.01 provides for the following uses within the Open/Space district:

> Uses, special or conditional: Extraction, processing, fabrication, and storage of natural resources and agricultural materials; water impoundments; sanitary landfills; aircraft landing strips; and utility facilities; recreational support facilities.
>
> The above uses shall be governed by a special use permit which shall be approved by the County Commissioners as provided for in this Zoning Resolution; except that where the authority for said use arises from a specific contract or permit with the U. S. Government for the use of property owned by that government, then that use shall be a conditional use, upon which the County Commissioners may impose conditions necessary to protect the health, safety and welfare of the people of Garfield County, provided that said conditions do not directly conflict with the federally imposed regulatory scheme. The procedure for obtaining such conditional use permit shall be that prescribed for any use otherwise authorized by conditional use permit.

The above form of Sec. 3.09.01 was adopted by the Board of County Commissioners by Resolution on August 24, 1981. This section is an effort by Garfield County to utilize the zoning power to regulate to the fullest legal extent the

enumerated uses on federal lands. It establishes a permit program whereby a use is a special use if in the mind of the Commissioners they have the authority to altogether deny the use but only a conditional use if the Commissioners may only condition the use to protect the public health, safety and welfare. It is a clear recognition that by virtue of conflicting statutory schemes Garfield County may have the authority to regulate a use but not to ultimately determine if the use can occur.[1/]

II. Garfield County Is Precluded From Applying Its Special Use Provisions To The Instant Application Because Of The Relationship Between The Federal Government And The Applicant.

The real property which is the subject of this application is owned by the United States Bureau of Land Management. The applicant, Colorado Lien Company, is the owner of the substance to be mined and has the legal right to enter the property by virtue of valid mining claims filed pursuant to the general mining laws of the United States, 30 USC 21, et seq. These statutes establish the federal government's intent to solely determine the existence of mining activities on federal land and thus preclude Garfield County from denying the applicant a permit to conduct its proposed mining activity.

The general mining laws of the United States, 30 USC 21, et seq., establish a scheme whereby public lands containing valuable minerals are subject to location and entry by the

---

1/ Sec. 3.09.01 of the Zoning Ordinance states on its face that uses on federal government property are conditional where the authority for such use arises from a specific contract or permit with the U. S. Government. We submit that while this language recognizes to some degree the limitations placed upon local governmental authority by conflicting federal and state laws, it is not an accurate enunciation of the full extent of the limitations imposed by the doctrine of preemption and is therefore unlawful. Similarly, we note other legal deficiencies in the language of Sec. 3.09.01 but do not advance them here, reserving, however, our right to raise them in a more appropriate forum.

public. See also, 43 CFR 3840, et seq. In fact, 30 USC 22 declares that all valuable mineral lands are "free and open" so that the public may locate and remove such valuable minerals. Furthermore, 30 USC 21a states that it is the policy of the federal government to foster and encourage the development of the country's mineral resources. 30 USC 26 guarantees to locators the exclusive right of possession and enjoyment of their mineral claims. Clearly, it is the policy of the United States Congress, as expressed in a pervasive statutory and regulatory scheme, that the right of use of valuable mineral lands remain free and available to provide for the extraction and development of natural resources necessary to the Nation's economy.

Where such an overriding national policy has been expressed and the terms thereof are clearly articulated, a local government does not have the authority to veto the activity permitted, encouraged, and regulated by the pervasive federal legislation. Kleppe v. New Mexico, 426 U.S. 529 (1976); Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), aff'd., 445 U.S. 947 (1980). This is precisely the situation in the instant case and the Ventura County case expresses the limitations imposed upon Garfield County. The federal regulation preempts Garfield County from denying the activity authorized by the federal government.

The applicant proposes to mine high calcium limestone from the quarry site located on real property owned by the Bureau of Land Management. Limestone is a valuable mineral, locatable under the general mining laws. Northern P. R. Co. v. Soderberg, 188 U.S. 526 (1903). Thus, the federal statutes outlined above guarantee the applicant free and open access to the minesite for its extraction of the resource. While Garfield County may reasonably regulate the activity to protect the public health, safety and welfare, it does not have the authority to determine the existence of the activity. The right to mine the resource has already been guaranteed the applicant by federal law and Garfield County does not have the power to withdraw that federal guarantee under the guise of denying a special use permit.

It is important to note that this case presents a factual situation in which it is even more clear that the County does not have the authority to deny applicant's

permit than was presented in Brubaker v. Board of County Commissioners of El Paso County, No. 81SA186, now pending before the Colorado Supreme Court.[2/] In this case there is no question about the legitimacy of the applicant's claim to valuable mineral lands. Applicant has the exclusive right of possession and enjoyment of its claims, 30 USC 26, and it is obligated to perform work upon the claim or forfeit it, 30 USC 28. See also 43 CFR 3850. For Garfield County to prohibit the applicant from mining by denying a special use permit is to not only unlawfully interfere with a preemptive federal statutory scheme but also to deprive the applicant of valid property rights without compensation.

For the foregoing reasons, it is clear that Garfield County does not have the authority to deny applicant the right to mine limestone on its federal mining claims. Under the current language of Sec. 3.09.01 of the Garfield County Zoning Ordinance, therefore, applicant's proposed use is a conditional use which can only be reasonably regulated by the Commissioners.

III. Garfield County Cannot Demand A Special Use Permit Of Applicant Because The Area Of Mining Regulation Has Been Preempted By State Law And The Permit Requirement Is Prohibited By C.R.S. 1973 34-32-109(6).

Sec. 3.09.01 of the Garfield County Zoning Ordinance, while recognizing the doctrine of preemption as applied to federal law, does not acknowledge that local government regulations can also be preempted by a state statutory scheme. Bennion v. Denver, 180 Colo. 213, 504 P.2d 350 (1972); Givigliano v. Veltri, 180 Colo. 10, 501 P.2d 1044 (1972). Thus, where the state has provided a comprehensive scheme to regulate the field, a county does not have authority to promulgate regulations which in any way contradict the state legislation. In Colorado, mining is such a field.

2/ Applicant agrees with the appellant in Brubaker that even in the circumstances there presented the District Court of El Paso County was incorrect in affirming the County Commissioners' denial of the special use permit.

The Mined Land Reclamation Act (MLRA), C.R.S. 1973 34-32-101, et seq., and the Preservation of Commercial Mineral Deposits Act, C.R.S. 1973 34-1-301, et seq., present a comprehensive, pervasive legislative scheme to regulate mining in Colorado, from the discovery of the mineral to the reclamation of the land after completion of extraction. Both statutes proclaim that the regulation of mining is of state-wide concern. The statutes together establish a state-wide program for all stages of mining and the issuance of permits therefor.

The MLRA creates the Mined Land Reclamation Board (MLRB) to which every mine operator must make application for a permit, 34-32-109, and which is the only arm of the state which has the authority to issue a permit for mining, 34-32-109(b). The MLRA thus creates a single state agency which is charged with permitting all mining throughout the state. Such state-wide regulation over an area declared to be of state-wide concern is classic preemptive legislation. In the face of such state legislation, Garfield County is without the power to impose contradictory regulations.

Yet, this is exactly what Garfield County has attempted to do by demanding special use permits of mining operations. The County is attempting to superimpose another permit system upon a state-wide system which specifically provides that no state entity except the MLRB has authority to demand a permit. Again, Garfield County has attempted to give itself a power of determination where only a power of reasonable regulation exists. Garfield County does not have the power to demand a special use permit of this applicant because the area of permitting mines has been preempted by state statute. See, C & M Sand & Gravel Co. v. Board of County Commissioners of the County of Boulder, 80CV1359-2, December 18, 1981.

More specifically, Garfield County does not have the authority to demand a special use permit of this applicant because of C.R.S. 1973 34-32-109(6). That section provides: "No governmental office of the state, other than the Board, nor any political subdivision of the state shall have authority to issue a permit or to require any performance or financial warranty of any kind for mining operations." By requiring a special use permit of mining operators,

Garfield County has attempted to assume the ultimate mining authority granted to the MLRB by this statute. In other words, Garfield County has attempted to place itself in a position of greater authority than the MLRB - a position where Garfield County, not the Board, determines whether mining occurs. This usurpation of authority by the County is patently offensive to the state statute. See, C & M Gravel Co., supra. Garfield County may have the power to reasonably regulate the health, safety and welfare aspects of a proposed mining operation but it cannot retain the discretion to altogether deny a permit which a state statute specifically grants to an independent state agency.

In the context of Sec. 3.09.01 of the Garfield County Zoning Ordinance, then, this applicant's proposed use must be a conditional use. Garfield County does not have the authority to demand a permit of this applicant which in the discretion of the County may be denied, because a state statute specifically prohibits it and the entire field of regulation of mining activity has been preempted by the state legislative scheme.

IV. Conclusion.

This applicant's proposed use is a conditional use which can only be reasonably regulated by Garfield County. The use cannot be a special use because the Garfield County Zoning Ordinance grants the County the discretion to altogether deny a special use. Garfield County does not have the authority to deny this applicant's proposed use by virtue of conflicting and preemptive federal and state law.[3/]

3/ In this document we have shown how the applicant's proposed use is a conditional use within the terms and conditions of Sec. 3.09.01 of the Garfield County Zoning Ordinance. We believe there are other constitutional and statutory reasons why Garfield County is constrained from altogether denying applicant its permit. Failure to discuss those reasons in a document of such limited scope as this does not constitute a waiver of any such issues which might be raised in a more appropriate forum,

The conditions heretofore imposed by the Garfield County Planning Commission and incorporated in the instant application will protect the health, safety and welfare of the citizens of Garfield County. The application for conditional use should therefore be granted.

Respectfully submitted,

DELANEY & BALCOMB, P.C.

By _____
Lawrence R. Green
P. O. Drawer 790
Glenwood Springs, CO 81602
(303) 945-6546

Attorneys for Colorado Lien Co.

GARFIELD COUNTY
COUNTY ATTORNEY'S OFFICE

P.O. Box 640 Glenwood Springs, Colorado 81602-0640 Phone 945-9158

March 2, 1982

Lawrence R. Green, Attorney
Delaney & Balcomb, P.C.
Drawer 790
Glenwood Springs, CO 81601

Dear Larry:

RE: Colorado Lien Co.

This letter is in response to your letter to Davis Farrar of February 9, 1982. The purpose of this letter is to set out a general procedure to be followed in regards to this application.

As I understand it, the proposed site for your operations is located in the open space zone district. The Garfield County Zoning Resolution of 1978, as amended by 81-145, provides that this use may either be a special use or conditional use, depending on the question of federal preemption of County zoning authority. I have reviewed this matter with the Commissioners in regards to the procedural approach to this decision. It is their feeling that this matter should be treated as a special use permit for purposes of procedure. Thus, the matter will be scheduled for a public hearing before the Board of County Commissioners. As I indicated to you, should the Commissioners decide that there is no federal preemption in this matter, they would have the option, in accordance with 9.03.04, to continue the public hearing so that the matter would be referred to the Planning Commission.

I have talked to Davis Farrar, and we have scheduled a tenative date for this hearing for April 5, 1982, from 10:00 a.m. to 12:00 p.m. I intend to respond to your legal memo as to your question of preemption, and have that available to you at least ten days prior to the hearing.

If you have any further questions about this, please don't hesitate to contact me.

Very truly yours,

Earl G. Rhodes
Garfield County Attorney

xc: Flaven Cerise
Davis Farrar

EX. F, following

GARFIELD COUNTY
COUNTY ATTORNEY'S OFFICE

P.O. Box 640 Glenwood Springs, Colorado 81602-0640 Phone 945-9158

March 24, 1982

Mr. Lawrence Green, Esquire
818 Colorado Ave.
Glenwood Springs, CO 81601

Dear Larry:

Pursuant to your request, attached please find a copy of my Memorandum of Law to the Board of County Commissioners, dated March 23, 1982, as to the Colorado Lien Company.

Very truly yours,

Earl G. Rhodes

Earl G. Rhodes
Garfield County Attorney

/tb
xc: Dennis Stranger, Director
Planning Department

EX. F

GARFIELD COUNTY
COUNTY ATTORNEY'S OFFICE

P.O. Box 640 Glenwood Springs, Colorado 81602-0640 Phone 945-9158

MEMORANDUM OF LAW

TO: Board of County Commissioners

FROM: Earl G. Rhodes, County Attorney

DATE: March 23, 1982

SUBJECT: Application of Colorado Lien Company

I. INTRODUCTION

By letter dated February 9, 1982, the attorney for the Colorado Lien Company has made application for a land use permit for its operations in the East Rifle Creek area off of Colorado Highway 325. Attached to this memo and marked exhibit "A" is the legal position of the Colorado Lien Company, which has been forwarded to the County Attorney's office for review. The purpose of this memo is to respond to that statement of legal authority, and to indicate to the Board the general parameters of the Board's authority as to the two issues raised by the attorney for the Colorado Lien Company: 1) Whether there is Federal pre-emption of County land use authority as a result of a mining claim under the 1872 mining act; and 2) whether State regulation of mining activity pre-empts County land use authority. By way of conclusion, it is the position of the County Attorney that neither State nor Federal pre-emption is applicable upon the facts as set forth by the Colorado Lien Company, and therefore, pursuant to §3.09.01 of the Garfield County Zoning Resolution, that the Colorado Lien Company's application can be treated as an application for special use permit. The implication of this conclusion is that the Board has the power to deny this application if it deems that appropriate.

II. HISTORY OF THE CASE

On September 22, 1980, this Board held public hearings in regards to the first application of the Colorado Lien Company for a limestone quarrying operation immediately to the west of the State fish hatchery off of State Highway 325 in the East Rifle Creek area. The matter was then continued until October 6, 1980, and the Board announced its decision on October 20, 1980. Subsequent to the announcement of the Board's decision, the applicant, Colorado Lien Company, brought suit in State District Court to challenge the denial of its application. After legal proceedings had gone on for some time, it was determined that an error had been made by both the applicant and the County Staff,

which error was that the permit which was applied for was a conditional use as opposed to a special use. As you are aware, under our zoning system the Board does not have the authority to deny a conditional use, whereas, it does have the authority to deny special use. Based upon the discovery of this error, the lawsuit was dismissed and the Colorado Lien Company has made application for a land use permit. At this time, the applicant is arguing that a conditional land use permit is appropriate here for the argument stated in the introductory section above.

Subsequent to the discovery of the error mentioned above, §3.09.01 was amended by resolution #81-145 so that in the open space zone district an activity may either be a special or a conditional use based upon the question of the extent of the County land use authority. Marked as exhibit "B" is the verbatim language of this section. In summary, when the Board determines that it does not have the power to deny a land use application because the Federal government has pre-empted the County's land use authority, the application is treated as a conditional use application. Where the Board determines that there has been no pre-emption, such activities are treated as special uses. The purpose of this memo is to outline for the Board what the Doctrine of Federal Pre-emption is and how the specifics of this case relate to that legal theory.

III. STATE PRE-EMPTION OF COUNTY LAND USE AUTHORITY

Before reaching the question of Federal pre-emption, it is appropriate to consider the issue raised by the applicant of whether the County's land use authority has been pre-empted by the State of Colorado, as a result of the activities of the Mine Land Reclamation Board. As the Board may be aware, this issue is presently in the Courts, as a result of the decision of the Boulder District Court Judge in the C&M Gravel case (80CV1359-2) in which case, on December 18, 1981, Judge Richard Dana ruled that the County has no land use authority as to the location of a gravel pit. By way of conclusion, the County Attorney's research indicates that Judge Dana's opinion is incorrect, as well as the stated position of the applicant, Colorado Lien Company, since both by tradition, and by legal interpretation, there is no conflict between the County's land use authority and the authority of the State Mine Land Reclamation Board.

Prior to discussing what authority the State has delegated to the Mine Land Reclamation Board, it is good to remember that the County's land use authority also comes from the State.

Although the manifestation of that authority is regulations enacted by the County, the authority to enact these regulations was promulgated by the State Legislature in §30-28-101 et seq. C.R.S. 1973, as amended. Thus, the County's land use authority does not spring from any inherent power in the County, but as a delegation of the responsibility from the State of Colorado. The sound reason for this is the determination that the Counties, which exists for the convenient administration of State government, are in a better position to make land use decisions than the State government itself. Thus, it is incorrect to characterize local regulations as being supported only by local authority since these regulations have been expressly authorized by the State of Colorado.

On pages four through six of the applicant's legal position paper, the applicant argues that there is comprehensive State legislation of the mining field, and therefore, no room for the County to exercise its State given land use authority. A reading of the statute indicates no such legislative intent, and in fact, exactly the opposite: express recognition of the County's land use authority. To begin with, the applicant's reliance upon the Preservation of Commercial Mineral Deposits Act, §34-1-301 et seq. (applicant's legal position paper, page 5) is misplaced for two reasons: 1) That act is not applicable to Garfield County, since its population is less than 65,000 [see §34-1-302(3)], and 2) The act defines at §34-1-302(1) a commercial mineral deposit to include "a natural mineral deposit of limestone used for construction purposes." In the last hearing in regards to this application, the applicant indicated that the purpose of its limestone was for a chemical to be used in scrubbing devices at the Craig power plant. This could not reasonably be included in the definition of "for construction purposes." Thus, the applicant's reliance upon the Commercial Mineral Deposits Act is misplaced, and to the extent that the Judge in the C&M Gravel case also relied heavily upon this act, the applicant's reliance upon that case is not well founded.

The applicant is correct in that its activities would be governed by the Colorado Mine Land Reclamation Act at §34-32-101 et seq., C.R.S. 1973, as amended. However, the applicant stretches beyond reasonable understanding of the intent of that act, when it interprets that act to exclude local land use authority. It is clear from reading the act that its intent is to cover the operation of mining activity, and specifically, the reclamation of land consumed by that activity. The language of the statute does not give the Mine Land Reclamation Board any authority over off-site impacts or the relationship of the mining activity to other uses in the neighborhood of the proposed mining site. This is made clear by the definition of mining operation in §34-32-103(8),

County land use authority. Rather, the State system contains regulation of specific areas deemed to be of State interest. Both because of the existence of State statutory authority for local land use control, and explicit references in the statute that mining permits will not be issued in violation of County zoning, it simply cannot be said there is State pre-emption of mining activities from local control.

IV. FEDERAL PRE-EMPTION

As the Board is aware, Garfield County contains 719,747 acres of property, the surface of which is owned by the United States Government, and additional acreage in which the minerals are reserved to the United States Government. As to these lands, there is concurrent jurisdiction of both County land use regulation and Federal proprietary management systems. It is an established principle of law that State law and State police power extend over the Federal public domain within its boundaries until pre-empted, and only to the extent pre-empted by Federal law. Texas Oil and Gas Corp. vs. Phillips Petroleum Company, (Western District Okla. 1967) 277 F. Supp. 366 Aff'd (10th Cir. 1969), 406 F.2d 1303; State of Idaho Ex Rel. Andrus vs. Click, 554 P.2d 969 (Idaho, 1976). In a recent Colorado Case the principle has been established that the Federal government must be responsive to local land use concerns. See City and County of Denver vs. Bergland, 517 F. Supp. 155 (1981).

It is well established in the law that where conflicts arise between Federal regulations and State and local regulations regarding public land, the latter are pre-empted. Kleppe vs. New Mexico, 426 U.S. 529, 96 S. Ct. 2285, 49 L. Ed. 2d 34 (1976); Ventura Company vs. Gulf Oil Corporation, 601 F.2d 1080 (9th Cir. 1979), Aff'd 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980). However, it is not self-evident that there is any inherent conflict between County land use authority and a Federal mining claim based upon the 1872 mining law, as is asserted by the applicant.

"It is often a perplexing question whether congress has precluded State action, or by the choice of selective regulatory measures has left the police power of the State undisturbed, except as the State and Federal regulations collide. Rice vs. Sante Fe Elevator Corporation, 331 U.S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447 (1947)." However, four tests have been developed to determine pre-emption:

1) The intent of congress, as revealed by the statute in its legislative history.

2) The pervasiveness of the Federal regulatory scheme.

3) The nature of the subject matter regulated, and whether it demands exclusive Federal regulation.

4) Whether, under the circumstances of a particular case, State law stands as an obstacle to the accomplishment of the purpose established by congress.

It should be noted that in applying these tests, the pre-emption should not be found unless "the act of congress, fairly interpreted, is in actual conflict with the law of the State." Huron Portland Cement Company vs. City of Detroit, Michigan, 362 U.S. 440, 80 S. Ct. 813, 4 L. Ed. 2d 852 (1960).

Applying the first test above, it is clear that the intent of the 1872 Mining Act was to provide for the development of the mineral resources of the country. However, there is no express declaration that State regulation is to pre-empted, and in fact, there is express references to local law:

> "...all valuable mineral deposits and lands belonging to the United States...shall be free and open to exploration and purchase...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." 30 U.S.C. Sec. 22,

Several cases have recognized that "nothing in the (Mining Law of 1872) or its legislative history (indicates) an attempt to pre-empt State regulation. Indeed the Federal statute specifically recognizes the State's right to impose additional requirements in some areas." Click, Supra; see also O'Donnel vs. Glen, 8 Montana 248, 19 P. 302, 306 (1888); see also Butte City Water Company vs. Baker, 196 U.S. 119, 123-124, 49 L. Ed. 409, 411 (1905).

Applying the second test, the Mining Law of 1872 is to be noted by its absence of regulation as opposed to a pervasive regulatory scheme. This is very important, since this allows the instant case to be distinguished from the Ventura case which is based upon the Mineral Lands Leasing Act of 1920, which is a much more comprehensive legislative scheme. In this regard, the language of the Garfield County Zoning Resolution, §3.09.01 is significant since it is the duty of the Board to determine whether the applicant operates by means of a permit or contract with the Federal government. In the instant case, the applicant merely has a claim, the use of which

does not require compliance with any Federally imposed conditions. This is the essence of the distinction between this matter and the drilling operation in the Ventura case.

Marked as exhibits "D" and "E" and attached hereto are memorandum of understanding between Garfield County and the Bureau of Land Management, United States Department of Interior. These agreements govern cooperation between the two entities in regards to land use matters on public lands. In exhibit "E", II, section h. the memorandum of understanding states:

> "To the maximum extent possible (the parties) agree that no lease, grant or other conveyance of public land shall exempt such lessee, grantee, or other conveyee from compliance with County land use plans, laws, or regulations which are or may be in effect as of the date of the lease, grant, or other conveyance."

In that the Bureau of Land Management is a responsible Federal entity for the property of interest to the applicant, this section is significant for giving the administrative interpretation as to local land use authority. Simply put, the above section indicates that the Bureau of Land Management will recognize the County authority unless its actions pre-empt the field. In the instant case, where a mining claim is involved, the Bureau of Land Management has issued no permits or contracts and has imposed no conditions on the operation of the applicant. Thus, according to section h. above, the Bureau of Land Management would respect the County's land use authority over the subject matter.

The third test above is that of national uniformity of the Federal legislation. In regards to this, it cannot be denied the State and local governments are vitally interested in the management of their natural resources. Indeed, congress is recognized in the National Environmental Policy Act of 1969, (NEPA), that the primary responsibility for implementing an environmental policy rests with State and local governments, 42 U.S.C. §4371 (b)(2); see also 42 U.S.C. §4331 (a). Also the Federal Land Policy Management Act of 1976 as recognized the rule of local governments in Federal decision-making. See 43 U.S.C. §1765. Thus, given the references in the 1872 mining law to local custom and the more recent Federal legislation, it cannot be said the national uniformity is presently an imperative objective of the mining laws.

The fourth test stated above is whether under the circumstances of a particular case, the application of State law is an obstacle to the accomplishment of the purposes set forth by Congress. It is to be admitted that the 1872 mining law was prompted mainly by hopes of economic development. Click, Supra, 976. However more recent legislation has tempered this one-sided policy. At 42 U.S.C. 4371, the National Environmental Policy Act declares:

> "(b)(1) There is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development. (2) The primary responsibility for implementing this policy rests with the State and local governments."

Given the above, Garfield County zoning regulations are consistent with, and not contrary to, the objectives and purposes of Congress. Further, the requirement for a County land use permit does not preclude mineral development, although it may make it more difficult. Therefore, since the regulatory scheme is not an absolute bar to development, it cannot be said that its application to the instant case is such as to thwart the purposes of Congress.

The above analysis strongly suggests that there is no Federal pre-emption in regards to claims filed on Federal property under the 1872 mining law. This conclusion is strongly buttressed by the applicant's failure to recognize that it willingly submits itself to the jurisdiction of the Mining Land Reclamation Board, and yet argues the local zoning authority, which is also derived from the State, is precluded by Federal pre-emption. From the point of view of Federal pre-emption, the authority of the Mine Land Reclamation Board stands in no better position than the County's land use authority. It seems obvious that the purposes of the Mine Land Reclamation Board, as well as local zoning, are compatible with the Federal legislation, since each is directed toward a different purpose, and that the applicant must comply with all laws, Federal, State and local, in order to undertake its operation.

BGR/tb

EXHIBIT A

LEGAL POSITION OF COLORADO LIEN COMPANY

Garfield County Does Not Have The Authority Under Its Zoning Ordinance To Deny Colorado Lien Its Right To Mine Limestone On Federal Mining Claims.

I. Introduction.

Sec. 3.09 of the Garfield County Zoning Ordinance provides that unless included within another zone district all land owned by the United States Government shall be within the Open/Space district. Sec. 3.09.01 provides for the following uses within the Open/Space district:

> Uses, special or conditional: Extraction, processing, fabrication, and storage of natural resources and agricultural materials; water impoundments; sanitary landfills; aircraft landing strips; and utility facilities; recreational support facilities.
>
> The above uses shall be governed by a special use permit which shall be approved by the County Commissioners as provided for in this Zoning Resolution; except that where the authority for said use arises from a specific contract or permit with the U. S. Government for the use of property owned by that government, then that use shall be a conditional use, upon which the County Commissioners may impose conditions necessary to protect the health, safety and welfare of the people of Garfield County, provided that said conditions do not directly conflict with the federally imposed regulatory scheme. The procedure for obtaining such conditional use permit shall be that prescribed for any use otherwise authorized by conditional use permit.

The above form of Sec. 3.09.01 was adopted by the Board of County Commissioners by Resolution on August 24, 1981. This section is an effort by Garfield County to utilize the zoning power to regulate to the fullest legal extent the

enumerated uses on federal lands. It establishes a permit program whereby a use is a special use if in the mind of the Commissioners they have the authority to altogether deny the use but only a conditional use if the Commissioners may only condition the use to protect the public health, safety and welfare. It is a clear recognition that by virtue of conflicting statutory schemes Garfield County may have the authority to regulate a use but not to ultimately determine if the use can occur. 1/

II. Garfield County Is Precluded From Applying Its Special Use Provisions To The Instant Application Because Of The Relationship Between The Federal Government And The Applicant.

The real property which is the subject of this application is owned by the United States Bureau of Land Management. The applicant, Colorado Lien Company, is the owner of the substance to be mined and has the legal right to enter the property by virtue of valid mining claims filed pursuant to the general mining laws of the United States, 30 USC 21, et seq. These statutes establish the federal government's intent to solely determine the existence of mining activities on federal land and thus preclude Garfield County from denying the applicant a permit to conduct its proposed mining activity.

The general mining laws of the United States, 30 USC 21, et seq., establish a scheme whereby public lands containing valuable minerals are subject to location and entry by the

---

1/ Sec. 3.09.01 of the Zoning Ordinance states on its face that uses on federal government property are conditional where the authority for such use arises from a specific contract or permit with the U. S. Government. We submit that while this language recognizes to some degree the limitations placed upon local governmental authority by conflicting federal and state laws, it is not an accurate enunciation of the full extent of the limitations imposed by the doctrine of preemption and is therefore unlawful. Similarly, we note other legal deficiencies in the language of Sec. 3.09.01 but do not advance them here, reserving, however, our right to raise them in a more appropriate forum.

public. See also, 43 CFR 3840, et seq. In fact, 30 USC 22 declares that all valuable mineral lands are "free and open" so that the public may locate and remove such valuable minerals. Furthermore, 30 USC 21a states that it is the policy of the federal government to foster and encourage the development of the country's mineral resources. 30 USC 26 guarantees to locators the exclusive right of possession and enjoyment of their mineral claims. Clearly, it is the policy of the United States Congress, as expressed in a pervasive statutory and regulatory scheme, that the right of use of valuable mineral lands remain free and available to provide for the extraction and development of natural resources necessary to the Nation's economy.

Where such an overriding national policy has been expressed and the terms thereof are clearly articulated, a local government does not have the authority to veto the activity permitted, encouraged, and regulated by the pervasive federal legislation. Kleppe v. New Mexico, 426 U.S. 529 (1976); Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), aff'd., 445 U.S. 947 (1980). This is precisely the situation in the instant case and the Ventura County case expresses the limitations imposed upon Garfield County. The federal regulation preempts Garfield County from denying the activity authorized by the federal government.

The applicant proposes to mine high calcium limestone from the quarry site located on real property owned by the Bureau of Land Management. Limestone is a valuable mineral, locatable under the general mining laws. Northern P. R. Co. v. Soderberg, 188 U.S. 526 (1903). Thus, the federal statutes outlined above guarantee the applicant free and open access to the minesite for its extraction of the resource. While Garfield County may reasonably regulate the activity to protect the public health, safety and welfare, it does not have the authority to determine the existence of the activity. The right to mine the resource has already been guaranteed the applicant by federal law and Garfield County does not have the power to withdraw that federal guarantee under the guise of denying a special use permit.

It is important to note that this case presents a factual situation in which it is even more clear that the County does not have the authority to deny applicant's

permit than was presented in Brubaker v. Board of County Commissioners of El Paso County, No. 81SA186, now pending before the Colorado Supreme Court.[2/] In this case there is no question about the legitimacy of the applicant's claim to valuable mineral lands. Applicant has the exclusive right of possession and enjoyment of its claims, 30 USC 26, and it is obligated to perform work upon the claim or forfeit it, 30 USC 28. See also 43 CFR 3850. For Garfield County to prohibit the applicant from mining by denying a special use permit is to not only unlawfully interfere with a preemptive federal statutory scheme but also to deprive the applicant of valid property rights without compensation.

For the foregoing reasons, it is clear that Garfield County does not have the authority to deny applicant the right to mine limestone on its federal mining claims. Under the current language of Sec. 3.09.01 of the Garfield County Zoning Ordinance, therefore, applicant's proposed use is a conditional use which can only be reasonably regulated by the Commissioners.

III. Garfield County Cannot Demand A Special Use Permit Of Applicant Because The Area Of Mining Regulation Has Been Preempted By State Law And The Permit Requirement Is Prohibited By C.R.S. 1973 34-32-109(6).

Sec. 3.09.01 of the Garfield County Zoning Ordinance, while recognizing the doctrine of preemption as applied to federal law, does not acknowledge that local government regulations can also be preempted by a state statutory scheme. Bennion v. Denver, 180 Colo. 213, 504 P.2d 350 (1972); Givigliano v. Veltri, 180 Colo. 10, 501 P.2d 1044 (1972). Thus, where the state has provided a comprehensive scheme to regulate the field, a county does not have authority to promulgate regulations which in any way contradict the state legislation. In Colorado, mining is such a field.

2/ Applicant agrees with the appellant in Brubaker that even in the circumstances there presented the District Court of El Paso County was incorrect in affirming the County Commissioners' denial of the special use permit.

The Mined Land Reclamation Act (MLRA), C.R.S. 1973 34-32-101, et seq., and the Preservation of Commercial Mineral Deposits Act, C.R.S. 1973 34-1-301, et seq., present a comprehensive, pervasive legislative scheme to regulate mining in Colorado, from the discovery of the mineral to the reclamation of the land after completion of extraction. Both statutes proclaim that the regulation of mining is of state-wide concern. The statutes together establish a state-wide program for all stages of mining and the issuance of permits therefor.

The MLRA creates the Mined Land Reclamation Board (MLRB) to which every mine operator must make application for a permit, 34-32-109, and which is the only arm of the state which has the authority to issue a permit for mining, 34-32-109(b). The MLRA thus creates a single state agency which is charged with permitting all mining throughout the state. Such state-wide regulation over an area declared to be of state-wide concern is classic preemptive legislation. In the face of such state legislation, Garfield County is without the power to impose contradictory regulations.

Yet, this is exactly what Garfield County has attempted to do by demanding special use permits of mining operations. The County is attempting to superimpose another permit system upon a state-wide system which specifically provides that no state entity except the MLRB has authority to demand a permit. Again, Garfield County has attempted to give itself a power of determination where only a power of reasonable regulation exists. Garfield County does not have the power to demand a special use permit of this applicant because the area of permitting mines has been preempted by state statute. See, C & M Sand & Gravel Co. v. Board of County Commissioners of the County of Boulder, 80CV1359-2, December 18, 1981.

More specifically, Garfield County does not have the authority to demand a special use permit of this applicant because of C.R.S. 1973 34-32-109(6). That section provides: "No governmental office of the state, other than the Board, nor any political subdivision of the state shall have authority to issue a permit or to require any performance or financial warranty of any kind for mining operations." By requiring a special use permit of mining operators,

Garfield County has attempted to assume the ultimate mining authority granted to the MLRB by this statute. In other words, Garfield County has attempted to place itself in a position of greater authority than the MLRB - a position where Garfield County, not the Board, determines whether mining occurs. This usurpation of authority by the County is patently offensive to the state statute. See, C & M Gravel Co., supra. Garfield County may have the power to reasonably regulate the health, safety and welfare aspects of a proposed mining operation but it cannot retain the discretion to altogether deny a permit which a state statute specifically grants to an independent state agency.

In the context of Sec. 3.09.01 of the Garfield County Zoning Ordinance, then, this applicant's proposed use must be a conditional use. Garfield County does not have the authority to demand a permit of this applicant which in the discretion of the County may be denied, because a state statute specifically prohibits it and the entire field of regulation of mining activity has been preempted by the state legislative scheme.

IV. Conclusion.

This applicant's proposed use is a conditional use which can only be reasonably regulated by Garfield County. The use cannot be a special use because the Garfield County Zoning Ordinance grants the County the discretion to altogether deny a special use. Garfield County does not have the authority to deny this applicant's proposed use by virtue of conflicting and preemptive federal and state law.[3/]

3/ In this document we have shown how the applicant's proposed use is a conditional use within the terms and conditions of Sec. 3.09.01 of the Garfield County Zoning Ordinance. We believe there are other constitutional and statutory reasons why Garfield County is constrained from altogether denying applicant its permit. Failure to discuss those reasons in a document of such limited scope as this does not constitute a waiver of any such issues which might be raised in a more appropriate forum.

The conditions heretofore imposed by the Garfield County Planning Commission and incorporated in the instant application will protect the health, safety and welfare of the citizens of Garfield County. The application for conditional use should therefore be granted.

Respectfully submitted,

DELANEY & BALCOMB, P.C.

By _____
Lawrence R. Green
P. O. Drawer 790
Glenwood Springs, CO 81602
(303) 945-6546

Attorneys for Colorado Lien Co.

EXHIBIT "B"

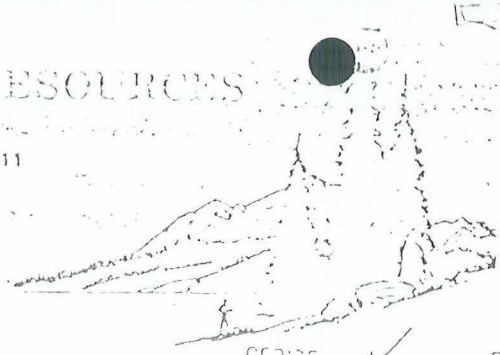
3.09.01

Uses, special or conditional:

Extraction, processing, fabrication, and storage of natural resources and agricultural materials; water impoundments; sanitary landfills; aircraft landing strips; and utility facilities.

Tha above uses shall be governed by a special use permit which shall be approved by the County Commissioners as provided for in this Zoning Resolution; except that where the authority for said use arises from a specific contract or permit with the U.S. Government for the use of property owned by that government, then that use shall be a conditional use, upon which the County Commissioners may impose conditions necessary to protect the health, safety and welfare of the people of Garfield County, provided that said conditions do not directly conflict with a federally imposed regulatory scheme. The procedure for obtaining such conditional use permit shall be that prescribed for any use otherwise authorized by a conditional use permit.

DEPARTMENT OF NATURAL RESOURCES
Monte Pascoe - Executive Director
1313 Sherman St., Room 718, Denver, Colorado 80203 839-3311



Division of Administration
Division of Mines
Division of Parks & Outdoor Recreation
Division of Water Resources
Division of Wildlife
Geological Survey
Oil and Gas Conservation Commission
Soil Conservation Board
Water Conservation Board
Mined Land Reclamation

CERISE
VELASQUEZ
FILE

OCT 6
GARFIELD COUNTY

October 2, 1980

Board of County Commissioners
Garfield County
Post Office Box 640
Glenwood Springs, CO 81601

RE: Policy of Department of Natural Resources and Mined Land Reclamation Board regarding County zoning resolutions

Gentlemen:

This office has been requested to provide the position of the Colorado Department of Natural Resources and the Colorado Mined Land Reclamation Board regarding the ability of county governments to exercise the zoning power recognized at C.R.S. 1973, 34-32-109(6), in light of the apparent prohibition on local permitting contained in the same section.

It is the policy and interpretation of the Department of Natural Resources and the Mined Land Reclamation Board that any county may exercise its zoning power through special use permits, conditional use permits or uses by right or by exception, provided that the zoning procedure (1) does not require the posting of surety for reclamation, (2) does not address the reclamation performance standards set forth in 34-32-116(a) through (r), and (3) does not purport to authorize mining operations without the issuance of the appropriate permit from the Board. Unless a county zoning process violates one of the above conditions, the Department and the Board consider compliance with the county zoning process prerequisite to issuance of any mining permit.

The basis of this opinion is found in 34-32-109(6) and (8) and 34-32-115 (4) and (4)(e). All of the cited sections provide in one way or another that mining and reclamation permits may not be granted by the Board if the application is "...inconsistent with..." or "...in violation of ..." county zoning or subdivision regulations.

Very truly yours,

Monte Pascoe
Executive Director

EXHIBIT P

MEMORANDUM OF UNDERSTANDING

REVIEWING REVIEW OF SUBDIVISION FILING PLATS AND PROPOSED CONSTRUCTION OF ROADS ACROSS NATIONAL RESOURCE LANDS

Between

Garfield County, Colorado
acting by and through its Board of County Commissioners

And

The Bureau of Land Management
United States Department of the Interior

The Parties to this Memorandum of Understanding, made this 14th day of January, 1974, between Garfield County, acting by and through its Board of County Commissioners, hereinafter referred to as the County, and the Bureau of Land Management, U.S. Department of the Interior, hereinafter referred to as the Bureau, witness that:

WHEREAS, Garfield County contains 719,747 acres of National Resource Lands of the United States and additional areas in which minerals were reserved to the United States, both of which are administered and managed by the Bureau; and

WHEREAS, changing land use resulting from the subdivision of privately owned lands for rural residential homesites or cabin sites and construction and maintenance of roads across National Resource Lands affects in varying degrees said lands and minerals administered and managed by the Bureau; and

WHEREAS, such development and construction has a direct effect on the economic and social well being of the county; and

WHEREAS, under the National Environmental Policy Act of 1969, Title 42 U.S. Code Section 4332, the Bureau has a continuing responsibility to maintain, enhance and restore the quality of the environment; and

WHEREAS, under the County's planning and zoning authority and the requirements of Colorado Senate Bill 35, the County has a continuing and increasing responsibility for proper land use throughout the County; and

WHEREAS, development of rural residential homesites or cabin sites is usually dependent, among other things, on the construction of access roads, some of which cross National Resource Lands under jurisdiction of the Bureau; and

WHEREAS, the responsibilities of the County and Bureau are dependent upon such roads being adequately designed, constructed, and maintained; and

WHEREAS, the County and Bureau recognize the right of reasonable access to and development of private lands;

Now Therefore, the following is understood and agreed to by the parties hereto:

That with respect to proposed subdivision filings:

The County will:

1. Refer proposed subdivision filings, together with the engineering design and supporting

material required under Colorado Senate Bill 35 to the Bureau of Land Management for evaluation of environmental impact and recommendations as soon as practicable after receipt in the County for initial review.

2. Give due consideration to the District Manager's recommendations when approval of the subdivision filings are being considered.

3. Invite the District Manager to participate in any negotiations with potential subdividers when the proposed subdivision is believed to have a significant impact.

The Bureau, through its District Manager in the area of the proposed subdivision, will:

1. Upon receipt of subdivision filings referred by the County, initiate prompt review.

   a. Where no significant impact is identified on National Resource Lands or on mineral rights or other rights reserved to the United States on non-Federal land, the County will be so advised within one week or less;

4. Where significant adverse impact on National Resource Lands or mineral rights or other rights reserved to the United States on non-Federal land is identified, the County will be so advised within one week, with an indication of the probable nature of the impact and the Bureau's best estimate of the time that will be required to fully evaluate the impact. The Bureau will analyze the environmental impact to the degree appropriate to the particular situation, and will recommend to the County,

1) Special conditions and stipulations needed to mitigate adverse impact on natural resources;

2) Modification of alignment of roads on other facilities;

3) That an Environmental Impact Statement is needed;

4) That the proposal be denied.

With respect to authorization of road construction across National Resource Lands, whether in connection with proposed subdivision developments or otherwise,

The Bureau will:

1. Require filing of a special land use permit application by land developer or others;

2. Refer copy of application, together with supporting engineering data, to the County for review;

3. Give due consideration to the County's recommendations concerning approval of the permit and any special stipulations or conditions required.

The County will:

1. Determine compatibility of road construction proposed with State and County transportation plan;

2. Whether engineering design will assure construction to County standards;

3. Whether road, at completion of construction can and will be accepted into County road system for perpetual maintenance;

4. Regardless of whether roadway will be accepted into County's transportation

system, recommend to the Bureau any special conditions deemed necessary for the permit;

5. Will determine when the road has been constructed to County standards.

Annual Review

At least once a year, representatives of both agencies will review this agreement for operating efficiency.

Modification

This agreement will become effective when signed by the designated representatives of both agencies.

This agreement shall remain in effect until modified by the parties in writing and is renegotiable at the option of aither party.

APPROVED:

State Director, Colorado

Bureau of Land Management

Jan 24, 1974
Date

Garfield County,
By and Through, its
Board of County Commissioners

Chairman

January 14, 1974
Date

Between

The Board of County Commissioners of Garfield County, Colorado

and

State Director, Bureau of Land Management
U. S. Department of the Interior

Dept. of Interior
RECEIVED
MAR 27
BUREAU OF LAND MANAGEMENT
GLENWOOD SPRINGS, COLORADO

This Memorandum of Understanding, made and entered into by and between the Board of County Commissioners of Garfield County, Colorado, and the State Director, Bureau of Land Management, Colorado, acting pursuant to the Federal Land Policy and Management Act of 1976, National Environmental Policy Act of 1969, Title IV of the Intergovernmental Cooperation Act of 1968, and the Local Government Land Use Enabling Act of 1974, as codified at §§ 106-105, C.R.S. 1973; §§29-1-201 et seq., C.R.S. 1973; and §30-11-102 (1)(f), C.R.S. 1973; and all amendatory acts thereof or supplemental thereto, and such other legislation and regulations as may apply, WITNESSETH, that:

WHEREAS, Garfield County (hereinafter referred to as the County) has adopted a County Master Plan, zoning, and other land use control regulations to guide development of all lands in the County, and

WHEREAS, Bureau of Land Management (hereinafter referred to as BLM) has developed management framework plans to guide management and development of public lands, and

WHEREAS, land use or development decisions by either party may become constraints on similar decisions by the other party, and

WHEREAS, both the County and BLM desire to coordinate their respective planning and decision processes in order to achieve maximum benefits from available resources, to reduce duplication of effort and to attain better overall coordination of land management throughout Garfield County,

NOW, THEREFORE, it is agreed that:

1. Each party will:

   A. Cooperate in land use decision-making, including consultation in land use decisions and in preparation of land use plans, including, for example, County master plans and BLM management framework plans, including any amendment to or revision of said plans.

   B. Inform each other as far in advance as possible of anticipated plans and proposed activities that might affect either party, but in no case shall such information be provided less

C. [illegible] agrees that it is essential to this agreement, including, but not limited to, agreements regarding zoning, subdivision of lands, road construction, maintenance and use, and rights-of way.

II. The Bureau of Land Management will:

A. Solicit County participation in developing plans, programs, and proposals for management of public lands and consider these views in the decision process. Participation will specifically include analysis of preliminary recommendations (Step 1, MFP) and conflicts, development of recommendations (Step 2, MFP) for adoption of the management framework plan, and all rights to receive notice of and to participate in such planning as are provided by §202(F) of the Federal Land and Policy Management Act of 1976 and regulations adopted pursuant thereto.

B. Provide the County an opportunity to (1) review and comment on applications submitted to BLM that would affect land use or development in Garfield County, and (2) to participate in development of the requisite environmental assessments (environmental statements and environmental analysis reports). Participation will specifically include analysis of land use impacts and analysis of alternatives. Those types of applications the County will review include, but are not limited to, those on Exhibit A, attached hereto.

C. Make available to the County all non-proprietary resource and land use information concerning land located in Garfield County in possession of BLM and all data from public land inventories maintained under §201(a), (b) of the Federal Land Policy Management Act of 1976 and all regulations adopted pursuant thereto.

D. [illegible] permits, leases and other [illegible] documents granting permission to occupy or use public lands a stipulation requiring all such licensees, permittees, and lessees to exercise the rights granted thereby in conformance to the following Garfield County Resolutions and Regulations and amendments thereto:

i) Subdivision Regulations of Garfield County, Colorado, as amended

ii) Building Code of Garfield County, Colorado, as amended

iii) Individual Sewage Disposal System Regulations of Garfield County, Colorado

E. Make personnel available to assist the County in complementary data-gathering and land use planning as is determined by the State Director to be practical within financial, legal, and personnel limitations.

F. To the Extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of BLM lands with the land use planning and management programs of the County. In implementing this section, the BLM shall assure that consideration is given to County land use plans that are germane in the development of land use plans for BLM lands, assist in resolving inconsistency between land use plans of BLM and the County, and provide for meaningful public involvement of County officials in land use decisions for public lands, including early public notice of proposed decisions which may have significant impact on County lands.

G. Assure that land use plans for public lands are consistent with County plans to the maximum extent possible under federal law and the purposes of the Federal Land Policy Management Act of 1976.

which County land use plans, laws, or regulations which are or may be in effect as of the date of the lease, grant, or other conveyance.

I. At least sixty (60) days prior to offering for sale or otherwise conveying public lands within the County, notify the Board of County Commissioners of such sale or conveyance in order to afford them an opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of lands prior to such conveyance. The BLM shall also promptly notify the Board of County Commissioners of the patent or other document of conveyance for such lands.

J. Cooperate with the County in the enforcement of the County regulations specified at §II.D. of this Memorandum of Understanding.

K. In the development and revision of BLM land use plans, provide for compliance with all state pollution laws and county regulations promulgated thereunder pursuant to state law regarding air, water, noise, or other pollution standards or implementation plans.

L. Cooperate with the County in mitigating the socio-economic impacts of land use activities on federal lands and with regard to federal mineral rights.

III. Garfield County will:

A. Solicit BLM participation in developing master plans and zoning, or revisions thereto, for lands in Garfield County. Participation will include review and comment on planning and zoning proposals and may include non-voting ex-officio membership on the County Planning Commission.

B. Provide BLM an opportunity to review and comment on proposals submitted to the County (including the Planning Commission) that involve land use or zoning that may

C. Make available to the Bureau [illegible] information in possession of the County.

D. Make County expertise or personnel available for complementary data-gathering, environmental studies, and land use planning as is determined by the County to be practical, recognizing financial and personnel constraints.

E. Unless agreed to the contrary, the County shall not rezone any land described in §II.1. above, after the notification and before the sale therein described.

IV. Timeliness:

Both parties recognize that time is of the essence in performance under this agreement; in some cases it may be critical. Where necessary, reasonable time limits may be set for participation by either party.

V. Nothing in this agreement will be construed as limiting or affecting in any way the authority or legal responsibility of the Board of County Commissioners or the State Director, or as binding either County or the Bureau of Land Management to perform beyond the respective authority of each, or as requiring either party to assume or expend any sum in excess of appropriations available.

VI. Amendments or supplements to this agreement may be proposed by either party and shall become effective upon written approval of both parties.

VII. This agreement shall become effective as soon as signed by the parties hereto and shall continue in force unless formally terminated by either party after thirty (30) days' notice in writing to the other of the intention to do so.

XVIII. Each and every provision of this Memorandum of Understanding is subject to the laws of the State of Colorado, Garfield County, and the laws of the United States, and the regulations of the Secretary of the Interior.

IN WITNESS THEREOF, the parties hereto have caused this document to be executed, the Board of County Commissioners of Garfield County, Colorado, and the State Director, Bureau of Land Management, Colorado, on this _____ day of _____, 1978.

11/6/78
/s/ District Manager — Date
Bureau of Land Management

The Board of County Commissioners of
Garfield County, Colorado

By _____ Oct 23, 1978
Chairman — Date

_____ 10/23/78
Commissioner — Date

_____ 10-23-78
Commissioner — Date

Approved:

_____ 11/9/78
State Director — Date
Bureau of Land Management

Page 8

Lincoln County will be afforded an opportunity to review and comment on the applications or proposals that may be filed with Bureau of Land Management, including, but not limited to the following types of activities:

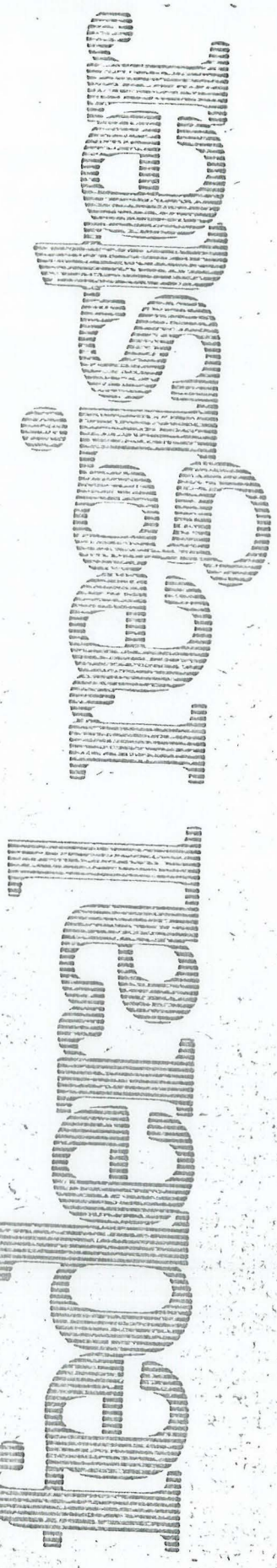
1. Rights-of-way for roads, power lines, pipelines, telephone lines, and other rights-of-way projects.
2. Land use planning information (resource inventories, management framework plans, etc).
3. Environmental assessments and statements.
4. Withdrawals and revocations.
5. Sale, exchange, lease or other conveyance of lands.
6. Oil, gas and mineral exploration, development and production.

The Bureau of Land Management will be afforded an opportunity to review and comment on the following types of applications or proposals that may be filed with Garfield County:

1. Subdivision or mobile home parks within one mile of Public lands or that may impact Public Lands.
2. Roads, power lines, pipelines, telephone lines, and similar rights-of-way.
3. Dams, diversions, ditches, and similar water development or conveyance facilities.
4. Solid waste disposal sites and sewage treatment sites within one mile of Public Lands or that may impact Public Lands.
5. Sand and gravel permits.
6. Any mineral developments on private lands.

EX. G

3800



Wednesday
November 26, 1980

Part II

Department of the Interior

Bureau of Land Management

Surface Management of Public Lands Under U.S. Mining Laws

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[Circular No. 2480]

Surface Management of Public Lands Under U.S. Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Federal Land Policy and Management Act of October 21, 1976, amended the mining laws by directing the Secretary of the Interior, by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the lands. This final rulemaking implements that requirement and among other things requires mining claimants to complete reasonable reclamation on Federal lands administered by the Bureau of Land Management during and upon termination of exploration and mining activities under the mining laws. This rulemaking pertains to locatable minerals such as gold, lead, silver, uranium, etc. It does not pertain to coal, oil, gas, phosphate or other leasable minerals or salable minerals such as sand and gravel.

EFFECTIVE DATE: January 1, 1981.

ADDRESS: Send suggestions or inquiries to: Director (520), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240

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SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on December 6, 1976, in the Federal Register (41 FR 53428). As a result of changes made in response to the more than 5,000 comments received on the initial publication, a second proposed rulemaking was published in the Federal Register on March 3, 1980 (45 FR 13959). A total comment period of 135 days was allowed in connection with the second proposed rulemaking, and public meetings were held in Denver, Colorado and Reno, Nevada. This public exposure resulted in more than 366 written comments. The written comments came from various sources, with 83 coming from companies with mining interests, 173 from individuals, 10 from environmental groups, 33 from mining groups and associations, 29 from State and local governments, 7 from attorneys acting in their own behalf, and 31 from Federal agencies. Also received were five petitions, with some 1,131 signatures, that commented on various aspects of the rulemaking. Public comments were also obtained at meetings with interest groups and an oversight hearing before the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs. All of the comments have been given careful consideration and the final rulemaking reflects many of the changes suggested by the comments.

The objective of the decisionmaking process on the final rulemaking was to enable the Bureau of Land Management to ensure that the Federal lands are protected from unnecessary and undue degradation and to ensure that reasonable reclamation will be completed on areas disturbed during the search for and extraction of mineral resources. Another objective was the obtaining of information that would allow the Bureau of Land Management to know where mining operations are occurring on Federal lands and some knowledge of the extent of those operations. The knowledge of where mining operations under the mining laws are being conducted and their extent will also be used in making long term planning decisions and multiple use trade offs for all resource values and to ensure that areas that, in fact, have potential for mineral values are not indiscretely precluded from mineral development.

The final rulemaking incorporates three distinct levels of limitations dependent upon the level of mining activity that the operator proposes to conduct on his/her area of operations. For example, at the lowest level of activity, prospectors or part-time miners who cause only negligible surface disturbance will not need to contact the Bureau of Land Management. Except when he/she is conducting mining operations on special category lands, an operator who exceeds this negligible surface disturbance, but keeps his/her disturbance to an area of five acres or less per year, will be required to file only a notice. Notices will not require approval or bonding.

Operators proposing mining operations causing surface disturbance to more than five acres in one year are required to file a plan of operations which sets out the details of those operations. It is our opinion that a large portion of the mining operations on Federal lands will fall under the first two categories and will proceed with minimal contact with the Bureau.

The goal of this final rulemaking is to afford adequate protection to Federal lands from unnecessary and undue degradation at the least possible burden to the mining industry and to the United States. It has been in this spirit that the Bureau has worked with all segments of the public in an effort to develop a rulemaking that will meet its goal. This effort of working with the public will continue in the future in an attempt to obtain the cooperation of the mining industry and the rest of the public in meeting the goals and objectives of the final rulemaking.

General Comments

General comments on the proposed rulemaking ranged from questioning the authority for issuing the proposed rulemaking to supporting the action and recommending that the rulemaking be strengthened. Many general comments objected to the issuance of a rulemaking that changed the way mining activity has been carried on for over a hundred years under the 1872 Mining Law. A large number of comments strongly objected to combining the regulations on "Exploration and Mining, Wilderness Review Program" (43 CFR 3802) with this rulemaking. The attempt to consolidate the two regulations was confusing to the public because of the difficulty in distinguishing between the requirements for lands not under wilderness review and those for lands under wilderness review. To eliminate this confusion, all references to lands under wilderness review have been deleted from this rulemaking. The interim final rulemaking, 43 CFR 3802, that covers mining on lands involved in the wilderness review program and was published in the Federal Register on March 3, 1980 (45 FR 13974), will continue in effect after this rulemaking becomes final. It will not be deleted, as was stated in the preamble to the proposed rulemaking.

Numerous comments questioned the ability of the Bureau of Land Management to respond within the times specified to the large number of plans of operations that would have been generated by the proposed rulemaking. This concern has been met in large measure by changes in the final rulemaking. The changes are discussed later in the preamble and will reduce significantly the number of plans of operations that will be filed.

Another general concern of the comments was the adverse impact of the rulemaking on the small operator. Many of the comments suggested that the proposed rulemaking would limit activities on the Federal lands by the smaller operators and would result in their being put out of business. The final rulemaking relieves the small operator of many of the requirements that were contained in the proposed rulemaking. This will be discussed in more detail later in the preamble.

Finally, many of the comments expressed the view that the final rulemaking for the Bureau of Land Management should be similar to the regulations on this subject published by the U.S. Forest Service. The final rulemaking follows as closely as possible the provisions of the existing U.S. Forest Service regulations, with the major difference being the threshold concept that has been included in the notice provision of this final rulemaking.

Several comments requested that the Bureau of Land Management study the "Institutional Approach" that was described on page 263 of the report "Surface Mining of Non-Coal Minerals" prepared by the National Academy of Sciences in 1979. That report suggests that strict regulatory mechanisms are not necessary to achieve an end result. The final rulemaking is an effort to reduce the regulatory burden for both the regulated public and those responsible for carrying out the rulemaking.

Before discussion of the specific comments, a summary of the significant revisions made in this final rulemaking may be helpful. Basically, the final rulemaking changes the threshold and will require the submittal of plans of operations on special category lands or if surface disturbance resulting from mining operations exceeds five acres. For operations disturbing five acres or less, a notice will be required of the operator. Operators submitting notices will not be subject to bonding nor will approval of the notice be required. Reasonable reclamation is required, as failure to reclaim may constitute unnecessary or undue degradation of the public lands.

The implementation of this final rulemaking will involve monitoring and a cooperative effort by the Bureau of Land Management, the mining industry and the public to ensure that there is no unnecessary or undue degradation of the Federal lands. Close cooperation between the Bureau and the mining industry will reduce the possibility of friction and create a working relationship that will lead to greater mutual understanding. If, at the end of two years, the Bureau determines that this final rulemaking is neither working nor meeting the Secretary's responsibility to prevent unnecessary or undue degradation of the public lands, the regulations will be reassessed and amended as necessary.

Specific Comments

Purpose—Nearly all of the comments made reference to the "impairment of wilderness suitability" phrase in the proposed rulemaking and the fact that it should not be used with respect to the public lands that do not have wilderness characteristics or are not within an area under wilderness review. All references to "impairment" have been deleted. This section has been rewritten to conform with the authority and responsibility set forth in section 302(b) of the Federal Land Policy and Management Act of 1976.

Objectives—Several comments suggested substituting the word "provide" for the word "allow," thus indicating that miners have a right and not a mere privilege to mineral entry on Federal lands. This suggested change has been made. Also, all references to "impairment" of wilderness values have been deleted. One comment expressed the view that the phrase "scenic and scientific" is not appropriate and exceeds the responsibility of the Secretary of the Interior under sections 302(b) and 603(c) of the Federal Land Policy and Management Act. Although this may be true as to those sections, this rulemaking also implements section 601(f) of the Act relating to the California Desert Conservation Area. Therefore, the wording has not been changed.

One comment was of the view that the Bureau of Land Management should have a team of knowledgeable persons traveling to every office to explain the rulemaking. One of the keys to the successful implementation of this rulemaking is consistent application and understanding of the rulemaking by the Bureau's field personnel. Every effort will be made to accomplish this end, including regional workshops for Bureau employees and the preparation of manual sections for field guidance.

Authority—Several comments indicated that the 1872 Mining Law should not be used as authority for the rulemaking. This authority will remain because it gives the Secretary of the Interior authority to issue regulations relating to activities authorized under the mining laws. Furthermore, since part of the authority the States have to regulate mining activity is delegated by Congress in the mining law, that delegated authority serves as one basis for possible State/Federal agreements for the uniform implementation of their respective surface protection regulations.

Additional authorities have been added to this section, some in response to suggestions in comments.

Section 9(a) of the Wild and Scenic Rivers Act has also been added because it authorizes the Secretary of the Interior to, among other things, promulgate regulations to "provide safeguards against pollution * * * and unnecessary impairment of the scenery within * * *" wild and scenic river areas.

Definitions—Several comments were confused over the use of the term "mining operations." In response to these comments, the term has been changed to "operations" in the final rulemaking rather than "mining operations" as it appeared in the proposed rulemaking, and the definition has been changed. As suggested in one comment, the definition of the term "operations" now includes assessment work.

The definition "mining claims" has been changed to include filings under the "mining laws" rather than the 1872 Mining Law specifically. The definition has been expanded to include those mining claims and mill sites in the California Desert Conservation Area which have been or will be patented subsequent to the the enactment of the Federal Land Policy and Management Act.

Reference to the "mining laws" rather than the 1872 Mining Law clears up the comment that placer mining claims are not covered under the 1872 Mining Law. One comment observed that the definition of the term "mining operations" was unclear as to "whether the operations take place on or off the claim" and indicated that no significant activities should take place off the mining claim unless authorized by some other law. This is not technically correct. One does not need a mining claim to prospect for or even mine on unappropriated Federal lands. The definition was designed to include those operations on a mining claim and uses incidental thereto on Federal lands, and does not inhibit "the miner's right to conduct initial prospecting prior to discovery" as one comment suggested, or prior to location.

Many comments addressed the definition of the term "reclamation" in the proposed rulemaking. In response to those comments, the term "reclamation" has been redefined to include the requirement to return disturbed lands to an appropriate contour and to revegetate with a diverse vegetative cover, if feasible and reasonable.

The term "unnecessary or undue degradation" has been redefined since a number of comments found the definition in the proposed rulemaking too confusing. Several comments said that the Federal Land Policy and Management Act does not require reclamation. An explanation of the Department of the Interior's position on that matter is found under bonding in this preamble.

Many comments made the point that the definition of the term "unnecessary

and undue degradation" goes beyond a reasonable interpretation of the law. One comment stated that it was a "familiar evasive tactic of making reference to non-meaningful standards." The definition has been revised in the final rulemaking to delete the parts that caused the objections. Reclamation requirements and the need to consider other resource values and uses of the Federal lands have been added. A clause to cover other statutory authority has also been added.

Several comments suggested that the definition of the term "environment" has little meaning for the purposes of the rulemaking. The final rulemaking eliminates the need to define the term "environment" and it has been deleted.

Because the term "Federal lands" appears several times in the rulemaking and its meaning is not clear, that term has been defined. This new definition should clarify the scope of the rulemaking. Further, the terms "road," "wilderness," "wilderness study area," "wilderness inventory," "impairment of suitability," "substantially unnoticeable" and "valid existing rights" have been deleted from the final rulemaking because they are no longer needed. They continue to be applicable to the regulations for lands under wilderness review (43 CFR Part 3802) implemented on April 2, 1980.

Several comments expressed fear that the authorized officer could be an unqualified person with little knowledge of mining and minerals problems and concerns. Some of the comments also made the point that the authorized officer could abuse his/her discretionary authority. The definition has not been changed. It is intended that the district manager will be the authorized officer for approval of plans of operations and any appeals. District managers have personnel on their staff who are knowledgeable of mining and mineral problems and their advice will be available to the district manager as part of the decisionmaking process. Guidance will be provided to the field that will ensure consistency and fairness in the implementation of the final rulemaking, thus reducing the possibility of abuse of discretionary authority. Any associated problems will be handled on a case-by-case basis. The final actions of the authorized officer are subject to the administrative review process provided in this rulemaking and 43 CFR Part 4.

A new term, "casual use," has been added to the definition section. This new term is needed to specify those activities that may be engaged in without any contact with the Bureau of Land Management. "Casual use" is part of the new threshold concept that has been included in the final rulemaking.

Policy—Several comments addressed the confusion caused by combining provisions of the "wilderness review" regulations with this rulemaking. Again, references to impairment have been removed. The section has been revised to clarify the position of the Department of the Interior in meeting its responsibilities under section 302(b) of the Federal Land Policy and Management Act.

Section 2 of the Mining and Minerals Policy Act of 1970 has been added because that section provides for, among other things, the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries and the reclamation of mined lands. Section 102(a)(12) of the Federal Land Policy and Management Act, which makes it a policy of the United States to implement the Mining and Minerals Policy of 1970, has been added.

Scope—Numerous comments suggested that it was improper for the Bureau of Land Management to regulate mining activities on lands patented under the stockraising homestead laws where the minerals are reserved to the United States. Mining operations on these lands are adequately covered by existing laws (43 U.S.C. 299 and 30 U.S.C. 54) and regulations (43 CFR Part 3814) and the deletion of this section removes them from this rulemaking.

One comment stated that the rulemaking should be clarified to apply to "spillover impacts" on Federal lands from mining operations on patented lands. "Spillover impacts," such as dust and water pollution, will be monitored in accordance with applicable Federal and State law. In addition, all "spillovers" will be monitored by the Bureau of Land Management to ensure that unnecessary or undue degradation is not occurring.

The scope section in the final rulemaking has been deleted because the definition of the term "Federal lands" now incudes all of the exclusions that were listed in the scope section of the proposed rulemaking. This deletion and change in the definition clarifies the final rulemaking by setting out in one section what lands are covered by the final rulemaking.

Plan of Operations—As a result of the numerous comments on this section, the level of activity requiring a plan of operations to be filed with the Bureau of Land Management has been changed. On lands other than special category lands, the new threshold allows mining activities, including access, to take place without filing a plan of operations if five acres of less of Federal lands are disturbed by those operations, subject to the requirement that the operator file a notice. The notice requires the operator to furnish sufficient information to allow the Bureau to get a good fix on the type of operations that will be occurring, and if necessary, make a determination as to whether unnecessary and undue degradation is occurring. The notice is not subject to approval nor is bonding required for the activities covered by the notice. Reclamation is required for all operations. The new five-acre threshold will allow most exploration activities and some extraction activities to take place without a plan of operations having to be filed and processed, provided that lands that are disturbed are reclaimed by the operator. Additionally, the prospector who causes only negligible damage to Federal lands will be covered under the "casual use" provision and will not be required to make any contact with the Bureau of Land Management.

Retained as part of the final rulemaking is the procedure for a plan of operations for those operations that cause surface disturbance in excess of five acres and for mining activities located on certain categories of Federal lands.

The plan of operations section of the proposed rulemaking drew several comments suggesting that the authorized officer should not be responsible for developing mitigating measures or reclamation plans for the mining industry. This section of the rulemaking was designed to assist the small operator who often lacks the technical resources to develop reclamation measures in the preparation of his/her plan of operations and to make it optional for the industry as a whole to submit reclamation measures. The section had been amended in the final rulemaking to require the operator to submit reclamation measures unless the operator can show that he/she does not have the resources to comply, in which case the authorized officer will assist the operator in preparing such measures.

Many of the comments expressed the view that the authorized officer was given too much time to approve a plan of operations and that unnecessary time delays would result that would be costly to the mining industry and might jeopardize exploration projects. Additional comments on this section of the proposed rulemaking discussed the mining industry's reluctance to commence operations if the authorized officer does not take action on a plan of operations in a timely manner. The comments indicated that it was too risky

to conduct an expensive exploration operation under an unapproved plan of operations which the Bureau of Land Management could subsequently reject. The final rulemaking has been changed to virtually eliminate these problems. The revised threshold will allow most exploration operations to commence without delay after the filing of a notice with the Bureau 15 days in advance of commencing operations. Unless the activities exceed the threshold or take place on special category lands, no approval or bonding is required. The approval process for a plan of operations, including the time sequence, remains unchanged in the final rulemaking. However, like the regulations of the U.S. Forest Service (36 CFR Part 252) where a plan of operations is required, the final rulemaking contains no provision allowing an operation to begin without the explicit approval of the plan.

Many comments suggested that the authorized officer has too much power and could be dictatorial. The changes in the final rulemaking should reduce this possibility significantly. In addition, the field offices will be monitored to ensure that the rulemaking is consistently applied and that fair and reasonable decisions are made to meet the Secretary of the Interior's responsibility under section 302(b) of the Federal Land Policy and Management Act and the Mining and Minerals Policy Act of 1970.

Several comments made the point that cultural and endangered species inventories and compliance with laws relating to these matters may be reason to stop or significantly delay a mining operation. Under the final rulemaking, these inventories will be required only when a plan of operations is submitted. Because of the new threshold level that is provided in the final rulemaking, this should cause delay in only a few instances. If there is an unavoidable conflict with an endangered species habitat, a plan could be rejected based not on section 302(b) of the Federal Land Policy and Management Act, but on section 7 of the Endangered Species Act. If, upon compliance with the National Historic Preservation Act, the cultural resources cannot be salvaged or damage to them mitigated, the plan must be approved. Essentially, as the comments suggested, these laws may slow the plan approval process; one law may stop a project while the other may only delay

The language of the final rulemaking has been clarified as to the party who has the responsibility to pay for cultural inventories and salvage. Further, the applicant is now given the option to proceed with the inventory or mitigation at his/her expense in order to expedite the approval process.

One comment alleged that the Bureau of Land Management lacked the authority to protect cultural resources under section 106 of the National Historic Preservation Act, stating that section 106 applies only where there is an expenditure of Federal funds or Federal licensing. The regulations implementing the National Historic Preservation Act define the phrase "Federal license" as those activities "carried out pursuant to a Federal lease, permit, license, certificate, approval, or other forms of entitlement or permission" (36 CFR 3800.2(c)(3)). Thus, the approval of a plan of operations, where required, constitutes a Federal undertaking within the purview of the licensing authority of section 106 and, where necessary, requires compliance with the procedures of the National Historic Preservation Act.

One comment stated that the Bureau of Land Management did not have to complete an environmental impact statement on a plan of operations since the Secretary of the Interior has no authority to disapprove any plan which does not result in unnecessary or undue degradation of the Federal lands. Hence, the Secretary's action in approving such a plan is not a discretionary act. The purpose of an environmental assessment or environmental impact statement is to inform the authorized officer of the environmental consequences of his/her actions. There may exist several alternative ways to achieve a particular result which are reasonable and prudent from a business standpoint. However, an environmental assessment or environmental impact statement may show the authorized officer that the first alternative would have significant detrimental environmental impacts not associated with the second alternative. Since both alternatives are reasonable and practical, it would either be necesssary to adopt the second, or the authorized officer would attach conditions to his approval of the plan of operations on implementation of the first alternative so that the detrimental impacts would not occur. Similar reasoning applies with respect to determining whether a proposal will cause unnecessary or undue degradation. Furthermore, the issue of whether an act is discretionary or non-discretionary does not preclude the Secretary from employing National Environmental Policy Act procedures in determining whether a proposed activity exceeds the statutory prohibition against unnecessary or undue degradation.

Several comments expressed concern for timely compliance with requirements of Federal and State laws such as assessment work, discovery work, staking of locations, etc. One comment suggested that a mining claim operator has an unrestricted right to conduct discovery and other activities in accordance with State laws. Although this may have been the fact at one time, it is no longer true. Section 302(b) of the Federal Land Policy and Management Act expressly amends the 1872 Mining Law to provide constraints on mining operations in order to prevent unnecessary or undue degradation. Since the mining laws are the source of a State's authority to regulate acquisition of Federal minerals and possessory rights on Federal lands, any amendment to the Federal mining laws requires an adjustment in laws and regulations flowing therefrom—whether they are State law or the custom of the local mining district. Section 302(b) of the Act does not eliminate the need to comply with State laws, nor does this final rulemaking preempt State law. However, activities done in compliance with State law must likewise satisfy the requirements of section 302(b) of the Act.

The final rulemaking contains a new section that provides guidance on the filing of a notice in connection with those mining activities that come within the new threshold established in the rulemaking. The new section sets out the conditions under which the notice is to be filed, the place where it is to be filed and the information that is required. Special emphasis is placed on the location and type of access route or routes that may be required. This emphasis reflects the importance of routes of access and the impacts they can have on the Federal lands. In many instances, the route of access has the potential to cause more unnecessary and undue degradation than those activities directly related to the mining operations.

The notice is to be filed 15 days prior to the commencement of any operations covered by the notice. This 15-day period will give the authorized officer and his/her staff an opportunity to evaluate the proposed operations to determine whether a particular location contains some special resource value that could be avoided by the operation. If special values are discovered, the authorized officer could bring that to the attention of the operator and discuss possible alternatives with the aim of avoiding resource use conflicts. This is

an area where cooperation between the Bureau of Land Management and the mining industry will lead to protection of Federal lands from those mining operations that might otherwise inadvertently cause damage to those lands. The location of a route of access is an example of the type of matters that might be discussed during the 15-day period. The authorized officer might have information as to special resource values in an area the route of access is to cross. If a slight change in the route of access would preserve the special value; the authorized officer and the mining operator could reach an agreement to make such a change.

Environmental Assessment—Many of the comments supported the need for environmental protection but were fearful that the strict environmental standards which apply to those lands under wilderness review would also apply to the lands not under wilderness review. As stated earlier, all reference to lands under wilderness review and to the regulations on Exploration and Mining, Wilderness Review Program (43 CFR Part 3802) has been deleted from the final rulemaking.

A number of comments expressed concern about the additional time granted for public involvement in a plan of operations and environmental assessment where substantial public interest exists. Since the threshold has been changed, so that a majority of operations can be carried out without an approved plan of operations, there will be a minimum of delay or interference in approval of plans of operations because of public involvement. Further, it is the Bureau of Land Management's intention to closely monitor the timeframes established in this final rulemaking for review of a plan of operations to assure that, wherever possible, delays beyond the 30-day review period are the exception rather than the rule. Indefinite delays beyond the 90-day approval period may occur when an environmental impact statement is required for a project or when compliance with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act is required.

A number of editorial changes have been made for clarification of the section in response to comments received.

Other Requirements for Environmental Protection—The deletion of all reference to lands under wilderness review in this section of the final rulemaking will alleviate many of the concerns expressed in the comments. Some comments made the point that all of the requirements set forth in this section were required by other laws and regulations and repeating them in this rulemaking was not necessary. Many of the provisions have been kept in the final rulemaking to emphasize that the operator's activities are subject to other applicable Federal and State laws. Serious conflicts are not expected to arise because other agencies are involved with different aspects of environmental protection.

Several comments correctly observed that mining operations in areas of critical environmental concern cannot be precluded because of potential irreparable damage. Section 302(b) of the Federal Land Policy and Management Act amended the 1872 Mining Law not to prevent irreparable damage, but to prevent unnecessary or undue degradation. Limitations placed on mine operators in the California Desert Conservation Area by 601(f) of the Act or in areas under wilderness review of section 603(c) are not applicable to areas of critical environmental concern. However, all activities within an area of critical environmental concern will require the submission and approval of a plan of operations.

One comment suggested that the Bureau of Land Management require harmony with visual resources. The Bureau agrees that this should be done, but only to the extent practicable. However, the provision covering visual resources has been deleted from this section of the final rulemaking because it is covered under the section relating to prevention of unnecessary or undue degradation.

Numerous comments were made on endangered species and cultural or paleontological resources. Discussion of how these resources are handled appears in the discussion of the section on plan approval set out above.

Several comments suggested developing guidelines for defining significant paleontological resources. The Bureau of Land Management is in the process of doing just that in another rulemaking that will be published in proposed form sometime in the next several months.

Another comment asked if the Bureau of Land Management would be adequately funded to investigate and salvage cultural resources. The Bureau will mitigate to the extent possible, but significantly increased funding for this program is not expected in the near future. Another comment suggested alternative wording for the time period in which the authorized officer is required to respond to a cultural or paleontological discovery made by an operator. As a result of this comment, the wording of the section has been changed.

The comment was made that there is no authority to protect survey monuments such as section corners whether they are rock or brass-cap. Existing law (18 U.S.C. 1858) provides a $250 fine for the destruction or removal of any U.S. Government survey monument. The Secretary of the Interior has incorporated this provision in the final rulemaking as part of the exercise of his authority to protect the lands.

Another comment expressed the view that the authorized officer should require the operator to maintain records on the quality and quantity of water. This does not fall within the authority expressly granted by the Federal Land Policy and Management Act, but if a problem exists, other Federal agencies will be responsible for monitoring and enforcement.

A comment was made that the rulemaking should not apply to areas disturbed before its effective date. The final rulemaking does not apply to those areas that were disturbed prior to the effective date of this final rulemaking unless operations continue or begin again in the same project area, a term defined in this rulemaking. In that event, the provisions of this rulemaking will apply.

Numerous comments suggested that this rulemaking should be consistent with the regulations of the U.S. Forest Service on this subject so as to bring "some kind of uniformity to government regulations." Numerous other comments indicated that the Forest Service regulations were unworkable and that many small operators shy away from Forest Service lands because of the need to comply with their regulations. An effort has been made to be as consistent as possible with the Forest Service regulations; however, a major difference is that the threshold level on Federal lands for operations, where a plan of operations is not required, has been raised in this final rulemaking to permit disturbance of up to five acres without the filing of a plan of operations. The Forest Service regulations do not incorporate the concept of a threshold level. Thus, most exploration activities may start by filing a notice with the Bureau of Land Management which will not require approval. It is estimated that there are two or three times the number of mining claims on Bureau administered lands than on lands under the jurisdiction of the U.S. Forest Service. Whether the Bureau has budget and staff or the capability to administer the rulemaking as it was proposed in March 1980 is questionable, but the Bureau should be able to administer the

program established by this final rulemaking. In addition, the rulemaking should not prove to be a great burden on the mining industry, yet it will allow the Secretary of the Interior to meet his/her responsibilities under the Federal Land Policy and Management Act.

Several comments suggested a threshold similar to the one that has been adopted in this final rulemaking. One comment suggested that the threshold level be set at 10 acres and that no plan of operations be required until that level had been reached, but also suggested that reclamation be required on all activities on the public lands. These concepts, with modifications, have been incorporated into the final rulemaking.

Many of the comments expressed views concerning valid existing rights, grandfathered rights and impairment as they pertain to lands under wilderness review. Since all references to lands under wilderness review and the associated terms have been deleted from this final rulemaking, the comments are no longer applicable. However, the regulations on Exploration and Mining, Wilderness Review Program that became effective on April 2, 1980, do incorporate these concepts and remain in effect.

One comment observed the dilemma of the assessment work requirement on lands under wilderness review by stating "[I]t would tend to cause some individuals to break one law (impairment rules) to meet the requirements of another (assessment work)." Because of the possibility of these conflicts, consideration is being given to requesting legislation that would grant the Secretary of the Interior some flexibility in granting deferrals and, further, in allowing suspension of annual assessment work.

Modification of plan—Numerous comments were made concerning the additional time delays that could be inherent in the modification of a plan of operations. Also, the need to be flexible in an exploration project to permit adjustment to meet specific geologic and topographic conditions was identified in some of the comments. Comments were of the opinion that it was unnecessary to modify a plan to cover such incidental changes. The language in this section of the final rulemaking has been changed to more accurately reflect the Bureau of Land Management's responsibilities under the unnecessary and undue degradation concept. Only significant modifications will now require an approval. The basic procedure remains unchanged. Because the threshold level has been revised to the five acre limit, fewer conflicts are expected to result from plan modifications.

Existing Operations—Most of the comments on this section of the proposed rulemaking dealt with activities associated with lands under wilderness review. Again, all references to activities on lands under wilderness review have been deleted from this final rulemaking. The section has been revised to accommodate a concern that the Bureau of Land Management was too strict in using such words as "immediately" instead of "reasonably." The intent is not to shut down existing operations or in any way take away rights granted under the mining laws. One comment pointed out that operations existing prior to October 21, 1976, may have valid existing rights under section 701(h) of the Federal Land Policy and Management Act and should not be regulated at all. The existence of a valid existing right or lack thereof, however, is immaterial to the exercise of the Secretary of the Interior's regulatory authority. This rulemaking does not extinguish any possessory rights that an individual may have under the mining laws. Those rights, however, are subject to the reasonable regulations mandated by the Federal Land Policy and Management Act.

Bond Requirements—Except for the plan approval section of the proposed rulemaking, this section drew the most comments. Perhaps it is the most controversial because of the difficulty by most operators, especially small operators, believe they will have in obtaining a bond. Several comments stated that the Conference Committee which was appointed to resolve differences between the Senate and House-passed versions of the bills that became the Federal Land Policy and Management Act "identified no basis for a definitive recommendation," on requirements for reclamation and bonding. The Senate version had a provision directing the Secretary of the Interior to require appropriate land reclamation as a condition of uses likely to entail significant disturbance to or alteration of the public lands. The conferees did not adopt this provision. One comment went on to state "of course, with no requirement for reclamation, there is no need for a performance bond." The policy reflected in this final rulemaking is that there is no mandatory bonding; rather, it is discretionary. With the new threshold level contained in the final rulemaking, most exploration and some extraction activities would not be bonded. If a proposed activity exceeds the threshold and requires a plan of operations, bonding is then discretionary with the authorized officer. Essentially, the Congress did not see the immediate need for mandatory bonding in all cases, but neither did Congress deny that option to the Secretary of the Interior. Rather, it left open the discretion to impose standards for bonding.

The problems of bonding, especially for the small operator, are recognized. As a result, guidance will be given the Bureau of Land Management's field offices that bonding will be imposed only when necessary to protect the public lands from unnecessary or undue degradation and when imposed, it will be handled in a fair manner. Other comments on this section concerned duplication of bonding when other regulatory agencies are involved. The intent is to avoid duplicative enforcement and bonding in the administration of the regulations. The Director of the Bureau stated to the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs during its oversight hearings that it would be the Bureau's policy not to require duplicate bonding when State bonding requirements provided adequate protection, and the final rulemaking so provides.

The wording of the bonding section has been revised in the final rulemaking to make it more understandable and to clarify the applicability of nationwide and statewide bonding.

As mentioned earlier, numerous comments stated that authority to require reclamation, like bonding, was taken out of the Federal Land Policy and Management Act by the Conference Committee and, therefore, should not be required by this rulemaking. Reclamation is an integral part of any effort to prevent unnecessary or undue degradation of the lands. Failure to require the reclamation of disturbed areas may lead to scars on the lands that may remain for years. Likewise, failure to revegetate the surface of the lands may cause increased erosion of watersheds and lead to siltation and pollution of streams and other water resources. The failure to use reasonable means to reclaim the lands and eliminate these disturbances may constitute unnecessary or undue degradation and, thus, constitute a direct violation of section 302(b) of the Federal Land Policy and Management Act. In addition, the Bureau of Land Management is also responsible for implementing the Mining and Minerals Policy Act which requires reclamation of mined areas.

Operations Within Bureau of Land Management Wilderness Areas—There was considerable confusion among

those who commented on this section of the proposed rulemaking as to whether "wilderness areas" meant the lands administered by the Bureau of Land Management that are under wilderness review or wilderness areas that have been officially designated by Congress as part of the National Wilderness Preservation System. In accordance with section 603(c) of the Federal Land Policy and Management Act, once an area is designated by Congress as part of the National Wilderness Preservation System, the provisions of the Wilderness Act of 1964 apply. That Act states that reasonable regulations to govern ingress and egress may be prescribed consistent with the use of the lands for mineral operations and "restoration as near as practicable of the surface." The Wilderness Act also provides that the mining laws shall apply to designated wilderness areas until midnight December 31, 1983. To avoid further confusion, this section has been deleted from the final rulemaking. However, the final rulemaking makes it clear that any mining operations, other than casual use, proposed for a designated wilderness area will require an approved plan of operations before operations can commence.

Applicability of State Law—Generally, the comments on this section were favorable because the language of the proposed rulemaking attempted to avoid duplication of effort, principally in areas of bonding and enforcement. Several comments expressed concern as to whether or not the States had jurisdiction on Federal lands, as defined in this rulemaking. It has been the view of the Department of the Interior that under section 3 of the 1872 Mining Law (30 U.S.C. 26), the States may assert jurisdiction over mining activities on Federal lands in connection with their own State laws. This may be done as long as the laws of the State are not in conflict or inconsistent with Federal law. The adoption and implementation of this final rulemaking is not intended to pre-empt the continued application and enforcement of State law and regulations governing the conduct of activities pursuant to the United States mining laws.

The language of this section has been changed to allow more flexibility for the Director, Bureau of Land Management, and the respective States in entering into working agreements concerning the administration of their respective laws and regulations.

One comment questioned whether the United States could allocate monies to States which have signed agreements to administer the Bureau of Land Management's regulations. This question is being studied in recognition of the fact that it is in the best interest of all concerned to avoid, to the extent possible, excessive burdens created by duplication of effort.

Noncompliance—Numerous comments stated that the 30 days provided in the proposed rulemaking for completing corrective action in cases of noncompliance is too short. In the light of these comments, this section has been changed to require that action to correct must be started within 30 days. Several comments said that the noncompliance section should include provisions for cease and desist orders and for fines. The Bureau of Land Management will cooperate with an operator to the extent possible in rectifying situations that are causing unnecessary or undue degradation. In extreme cases, where an operator will not cooperate, injunctive procedures can be initiated and a restraining order requested. Failure to comply with an injunction will make an operator subject to such penalty as a court may impose. An important provision added to this section is that all operations fall under the provisions of the noncompliance section whether the operations are (1) casual use, not requiring any notice, (2) below the threshold level, or (3) under plans of operations because in each case they must not cause unnecessary or undue degradation. One comment feared that there would be no "benchmark" for measuring noncompliance and that such determinations may be arbitrary and capricious. For all practical purposes, the "benchmark" will be whether there is unnecessary or undue degradation of Federal lands. All phases of the final rulemaking will be monitored to ensure that all operations are treated equitably.

Access—Comments on this section centered around concerns that the authorized officer had too much discretion in specifying when and where access would be allowed. In response to these comments, the threshold in the final rulemaking has been increased. The changes made in this final rulemaking should alleviate the concerns. The authorized officer's discretion, when a plan of operations is submitted, is limited to determining whether or not unnecessary or undue degradation will be caused. One comment said that ingress and egress are rights under the mining law and cannot be interfered with. Although basically true, section 302(b) of the Federal Land Policy and Management Act amended the mining law by requiring that all mining activities, including access, must be carried out in a manner that prevents unnecessary or undue degradation.

Another comment raised the issue of "non-exclusive" access and the fact that degradation may be caused by recreation vehicles, or perhaps a competitor. The word "non-exclusive" has been deleted from the section in the final rulemaking. However, case law has established that the public can use Federal lands, including the surface or unpatented mining claims, as long as their presence does not materially interfere with mining operations. On the question of degradation caused by recreation vehicles, section 302(b) of the Act applies to all users of Federal lands. Therefore, every user must take the necessary precautions to prevent unnecessary or undue degradation of Federal lands.

Another comment was concerned whether rights-of-way for access to mining claims would require approval under Title V of the Federal Land Policy and Management Act. Access for all purposes of ingress and egress to unpatented mining claims will not be regulated under the provisions of Title V. One comment suggested stronger controls over access including maintenance fees and use of existing roads. When non-exclusive access is involved, the Bureau of Land Management may not charge a fee for access. This relates back to the mineral laws themselves which state that Federal lands shall be "free and open." Use of existing access will be encouraged to the greatest extent possible. Failure to use existing access may result in building an unnecessary road and, thus, creating unnecessary or undue degradation. In accordance with the provisions of the final rulemaking, all roads constructed, whether under a notice or a plan of operations, are required to be reclaimed by the operators. In addition, the Bureau will work as closely as possible with operators to assist them in road location or other facets of their operations, with the overall goal of preventing unnecessary or undue degradation to Federal lands. Maximum interchange between Bureau field offices and the mining industry will be encouraged so that each will appreciate and understand the objectives of the other.

Multiple Use Conflicts—The comments on this section indicated that it was confusing. After careful study, it was determined that the section was not needed and it has been deleted from the final rulemaking.

Fire Prevention and Control—The comments on this section were of a general and supportive nature and suggested no change. Therefore, the

section remains unchanged in the final rulemaking.

Maintenance and Public Safety—Several comments suggested that the proposed rulemaking might conflict with regulations of the Mine Safety and Health Administration. After studying this possibility, it was decided that no conflict exists and this section of the final rulemaking is unchanged.

Inspection—The comments objected to this section of the proposed rulemaking on the basis that the inspection might come at an inconvenient time and interfere with operations. The section remains in the final rulemaking in order to put operators on notice that the authorized officer can inspect their operations to be certain that no activity causing unnecessary or undue degradation is taking place. Inspection will normally occur during regular business hours.

Notice of Suspension of Operations and Cessation of Operations—Numerous comments suggested that it is difficult for operators to determine, with certainty, when operations will cease due to fluctuations in price of the mineral in the marketplace. Therefore, they may want to maintain their equipment at the site. The section on notice of suspension of operations has been deleted from the final rulemaking because the recordation requirements imposed by section 314 of the Federal Land Policy and Management Act provide adequate coverage of the miner's intent to maintain the claim. The section on cessation of operations has been revised to allow more flexibility as to the removal of structures and equipment. One comment said that the Bureau of Land Management should require a "detailed outline of how the operation will be dismantled at the end of activities." Another comment asked "what happens if the operator fails to comply with this paragraph?" A detailed outline of "dismantling" is not necessary since failure to remove any structures and to reclaim the site may create unnecessary or undue degradation of Federal lands. The noncompliance section discusses the consequences of noncompliance.

Appeals—Numerous comments said that third parties should not be allowed to appeal a decision issued under this rulemaking. In accordance with those comments, the final rulemaking has been amended to provide one type of administrative review process for operators, but preserves the rights of affected parties under Part 4 of Title 43 of the Code of Federal Regulations through a paragraph that has been added to this section in the final rulemaking. One comment suggested that the final rulemaking conform to the U.S. Forest Service regulations concerning the time within which to file an appeal and "request for stay." This change has been made in the final rulemaking. An intermediate administrative review step has been added to the final rulemaking whereby an operator may appeal to the State Director. This new procedure is designed to resolve questions early in the administrative review process and thereby shorten it, if possible, before those questions become an issue on appeal.

Public Availability of Information—A large number of comments expressed a fear that the authorized officer may not be qualified to make a determination as to what information may or may not be confidential. This section of the final rulemaking has been amended to give the operator the right to designate which of the submitted information he or she regards as confidential, with any requests from the public for confidential material being made and handled under the provisions of the Freedom of Information Act procedures.

Special Provisions Relating to the California Desert Conservation Area—Several comments were received that suggested the promulgation of a separate rulemaking for the California Desert Conservation Area. The final rulemaking includes provisions that will afford the area adequate protection. Separate regulations are not warranted. The final rulemaking requires the filing of a plan of operations for any activity in the California Desert Conservation Area beyond that covered by casual use. The plan would be evaluated to ensure protection against "undue impairment" and against pollution of the streams and waters within the Area. A few comments made the point that it was not clear whether this final rulemaking supersedes the mining regulations now in effect for the King Range National Conservation Area. It does not. There have been no major changes in this section of the final rulemaking.

Editorial changes and corrections have been made as necessary.

The principal authors of this final rulemaking are Eugene Carlat and Robert M. Anderson of the Divison of Mineral Resources, assisted by Eleanor R. Schwartz, Chief, Office of Legislation and Regulatory Management, all of the Bureau of Land Management; and Kenneth Lee, Office of the Solicitor, Department of the Interior.

A regulatory analysis and final environmental impact statement were prepared in conjunction with this final rulemaking. Copies of these decision documents may be obtained from the Director (520), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, or by calling 202-343-8537. The final environmental impact statement is available at all State Offices of the Bureau of Land Management.

Under the authority of sections 2319 (30 U.S.C. 22) and 2478 (43 U.S.C. 1201) of the Revised Statutes and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is revised by adding a new Subpart 3809 as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

November 19, 1980.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

General

Subpart 3809—Surface Management

Sec.

General

Subpart 3809—Surface Management

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of federal lands which may result from

operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this part.

(b) "Casual Use" means activities ordinarily resulting in only negligible disturbance of the federal lands and resources. For example, activities are generally considered "casual use" if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed or limited to off-road vehicles as defined in subpart 8340 of this title.

(c) "Federal lands" means lands subject to the mining laws including, but not limited to, the certain "public lands" defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR Part 3802 regulations).

(d) "Mining claim" means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) "Mining laws" means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) "Operations" means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across federal lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct operations.

(h) "Person" means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) "Project area" means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) "Reclamation" means taking such reasonable measures as will prevent unnecessary or undue degradation of the federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) "Unnecessary or undue degradation" means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, and other such areas, that level of protection shall be met.

§ 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the federal lands and to provide for reasonable reclamation.

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use—negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of federal lands will not occur.

§ 3809.1-3 Notice—disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under § 3809.1-3(c)(3) of this section when the construction of access routes are involved.

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. 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 which 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;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1-3(d) of this section and that reasonable measures will be taken to prevent unnecessary or undue degradation of the federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) 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.

(2) 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) 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.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) 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.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3-2 of this Part.

§ 3809.1-4 Plan of operations—when required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1-3 of this Part.

(b) Any operation, except casual use, in the following designated areas:

(1) California Desert Conservation Area;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas withdrawn from operation of the mining laws in which valid existing rights are being exercised; and

(6) Areas designated as "closed" or "limited" to off-road vehicle use as defined in subpart 8340 of this title.

§ 3809.1-5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be

promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3609.1–3(d) of this Part. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

§ 3809.1–6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary and undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1–9 of this Part as it relates to bonding.

§ 3809.1–7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1–8 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a notice under § 3809.1–3 or a plan of operations under § 3809.1–4 of this Part may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1–3 of this Part for operations

where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1–4 of this Part. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

§ 3809.1–9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1–2) or that are conducted under a notice (§ 3809.1–3 of this Part).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this Part may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1–7 of this Part, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (See § 3809.6 of this Part).

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2–1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the envrionmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is "substantial public interest" in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan is § 3809.1–6(a) of this part, is required to consider public comments on the environmental assessment.

§ 3809.2–2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1–3) or a plan of operations (§ 3809.1–4 of this Part), shall be conducted to prevent unnecessary or undue degradation of the federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *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.*).

(b) *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.*).

(c) *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 neither be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *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.

(e) *Cultural and Paleontological Resources.* (1) 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.

(2) 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.

(3) 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.

(f) *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.

§ 3809.3 General provisions.

§ 3809.3-1 Applicability of State law.

(a) Nothing in this part shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on federal lands under the mining laws.

(b) After the publication date of these regulations the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

§ 3809.3-2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1-3 of this Part or a plan of operations under § 3809.1-4 of this Part will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this Part is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3-2(b)(1) above.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 of this Part on federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1-5 of this Part, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1-3 of this Part.

§ 3809.3-3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) 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.

§ 3809.3-4 Fire prevention and control.

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.

§ 3809.3-5 Maintenance and public safety.

During all operations, the operator shall maintain his 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.

§ 3809.3-6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3-7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in Part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

[FR Doc. 80-36497 Filed 11-25-80; 8:45 am]
BILLING CODE 4310-84-M

EX. H

Planning

ALLEN A. SCHAEFER
ATTORNEY AT LAW
3900 MORRISON ROAD
DENVER, COLORADO 80219

PHONE 934-1131

March 29, 1982

APR 6 1982
GARFIELD CO. PLANNER

Board of County Commissioners
Garfield County
Courthouse
Glenwood Springs, Colorado 81601

Re: Special Use Permit
Colorado Lien Company
Hearing April 5, 1982

As per the suggestion in the notice I received about the above matter, I am enclosing written objections to the application. I think that it is obvious to anyone that is familiar with the locality where the permit is requested, that the proposed operation with its noise, dust, traffic and landscape wounds and scars is objectionable to the point of being repulsive to those in the area.

Please consider the objections I have made, investigate the same and deny the application.

Very truly yours,

Allen A. Schaefer

Allen A. Schaefer

AAS/ko
Enclosure
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Scarrow, Glenwood Springs, Colorado, who owns a sizeable amount of property in the area of the application, is authorized to represent me at the hearing of this matter in my absence.

cc: Earl

Board of County Commissioners
Garfield County, Colorado
Courthouse
Glenwood Springs, Colorado 81601

Re: Special Use Permit
Colorado Lien Company
April 5, 1982 hearing

I received a notice of a public hearing on the application of the Colorado Lien Company for a special use permit to extract and mine limestone on properties bordering or near properties which I own. I own the properties described in "Exhibit A" attached hereto. You can readily see closeness of the proposed operation to the approximately 2600 acres.

I object to the issuance of the permit and express my views for such objection as suggested in the notice as follows:

1. I own sizeable properties next to or close to the property described in the application and such an operation will substantially affect my property and will devalue my property greatly as to present and future values.

2. My property, as well as other property in the area, has natural vegetation, is a natural habitat for game and wildlife, and is naturally beautiful. Game, wildlife and natural beauty are abundant. The proposed operation will interfere with and damage the same. No doubt it will upset, damage and destroy ecological and environmental qualities off my properties as well as other property in the area. Generally, the proposed operation will adversely affect the entire area and thereby harm and destroy. These things cannot be replaced or reinstated.

3. Such an operation certainly will pollute and damage the air and ground quality of the area including that of my property. This will in turn have an adverse effect on the present activities conducted in the area and on my property.

4. The traffic created by such an operation no doubt will have a very adverse effect on the surrounding properties. It will destroy, damage or alienate much of the character of the area. No doubt, it will destroy much of the value of a $100,000.00 lodge and activity on my properties.

5. The contemplated operation probably will affect the amount and quality of water available to the area.

6. An examination of the area north of Ft. Collins, Colorado where the applicant operates a similar facility will substantiate my objections, assertions and conclusions even though that area is not blessed with the kind of environment, beauty, terrain and conditions that exist in the requested permit area in Garfield County.

7. You are urged to give full and due consideration as to what will happen to the natural beauty, the wildlife and the life style of this area if the application is granted for this activity.

8. I respectfully request that this objection be considered, be made a part of the record and that the special use permit be denied the applicant.

This matter was considered in September, 1980 by you and I am informed a similar application was denied.

Respectfully submitted,

Allen A. Schaefer
15 Yarrow Street
Lakewood, Colorado 80226

See addendum

EXHIBIT A

The following property located in the County of Garfield, State of Colorado is titled in the name of Allen A. Schaefer:

In Section 8: NE¼ and S½

In Section 9: All

In Section 10: All

In Section 16: N½ and N½S½ and S½S½

In Section 17: N½

together with all springs, wells, ditches, water rights and BLM grazing rights appurtenant and belonging thereto, all in Township 4 South, Range 92 West, 6th P.M.

ADDENDUM

To further my objection to the issuance of the special use permit, which, in effect, is a rezoning or a change in zoning, I wish to state the following:

1. When I purchased the described property and improved the same I relied on the existing zoning regulations then in effect. As far as I have been able to ascertain there has been no material change in the character of the neighborhood or community that requires a change or rezoning to serve the public interest. I believe I had a legal right to so rely and have a right not to have the zoning change except to serve an urgent public need.

2. As I recall, the same matter was before the Board in September of 1980 and the special use permit was turned down by you. Since that time there has been no change in the neighborhood or community that would require a change in the zoning status of any part of the community or a change in the master plan.

Exhibit E

Vicinity map

Taken from USGS quadrangle map, Rifle Falls, Colo.

Exhibit E

Vicinity map

Taken from USGS quadrangle map, Rifle Falls, Colo.

Ex. 1

To the County Commissioners.

This is a letter of protest.

Just last Wednesday it came to our attention that Colorado Lien was trying again to clear the way for this "Quarry" here near the Rifle Fish Hatchery.

I wonder at the lack of notification & paid intention to the Public. Does this not seem that Something was trying to be slipped past the people of this area?

This is our home, and we do strongly object to the presence of the operations of the quarry. We were living here when the rock was obtained for use in facing the dam. It was far from a quiet and dust free operation. To know that a far larger scale of operation and for a longer duration of time is very upsetting.

Why does the countryside have to be sacrificed to someone who is making a profit. First Mobil Oil takes over Mixe Elk creek, And Colorien wishes to proceed with this "Quarry".

Where will people go for the peace and quiet so vital in this age of progress? There are few areas left to the public to use and enjoy. The Colorada River is being slowly turned into continuous gravel pits. Another area destroyed, to the money makers.

We who live here close to the proposed quarry live here for a number of reasons. The job is here. We enjoy the freedom of noise and pollution. The peace is marvelous. Why should we have to to stand by and watch it destroyed?

The safety factor of the road is another item to be considered. It is still as narrow and curved as it was 2 years ago. The traffic has increased meanwhile to an even larger number. Which one going to fast, or to slow will be the first fatality? We drive this road on a regular basis, and still wonder on which blind corner are we going to meet someone coming on the wrong side. People who are not as familiar with the road are trying to stay in the center away from the outside edge, or the inside Bank. Human nature will not change.

We understand the use of C.B.'s are still being proposed as some great panacea of trouble shooting. Well, that

is far from being a solution. We have a base station, and C.B.'s in the vehicles. The terrain renders them useless except in a very close distance. Such as a half mile. And in moving vehicles, that is to close. Also what about the travelers who do not have C.B.'s and are unaware of the trucks?

My Brother drives a truck, and he has very strong opinions about truck traffic on this road. The road is not built for trucks. We will only see accidents and a few fatalities.

Before any decision is made, please ride in a truck of the size proposed, and travel this road. It is a fast way to see for yourself.

Please don't permit this proposed quarry go through.

Mr & Mrs Wayne Jewell

EX. 5

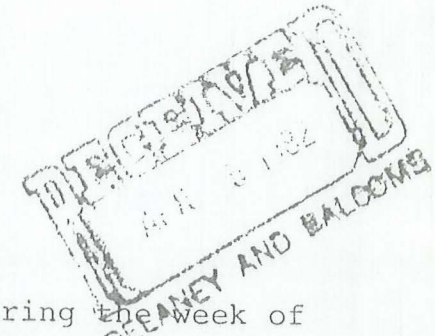
Colorado-Ute Electric Association, Inc.
P. O. Box 1149
Montrose, Colorado 81402

Telephone (303) 249-4501

TWX 910-929-6924

April 2, 1982

Mr. Paul Haerr
Colorado Lein Company
Box 1961
Fort Collins, Colorado 80522



Dear Mr. Haerr:

Pursuant to my telephone conversations during the week of March 29th, with your Mr. Brownhill, this letter states Colorado-Ute's position related to the limestone supply for Craig Station Units 1 and 2. You have our permission to provide this information to the Garfield County Commission at your hearing on Monday, April 5, 1982.

Colorado-Ute is preparing a bid request for limestone to be supplied for Craig Station Units 1 and 2. Our current contract expires this summer. The bids will be evaluated based on the quality of the limestone and the delivered price at Craig Station, Craig, Colorado.

Please contact me if you have any questions.

Very truly yours,

R L Barnard

Robert L. Barnard
Electrical Engineer

RLB:dn

cc: R. W. Bryant
D. W. Wagoner

BUREAU OF LAND MANAGEMENT

EXTRACTION PLAN

EXTRACTION PLAN
RIFLE QUARRY
COLORADO LIEN COMPANY

1. Description of location and area to be affected by operations:
Lot 7, Lot 8, SE¼ SW¼, Sect. 15, T4S, R92W, 6th P.M., Garfield County, Colorado.

2. Map and aerial photo - attached.

3. Brief description of surficial geology of the area and quantity and quality of the material to be removed. The area under proposal has been quarried several years ago to provide stone for the Rifle Gap Dam. The exposed face is 40 to 60 feet in height with a stockpile area of approximately one acre.
The limestone to be removed is in the resistant Leadville Limestone (Mississipian - Madison in age) forming a 160 foot bed with a westerly strike and a southerly dipping slope. The Leadville Limestone is a dark grey to black massive limestone, containing occassional discontinuous shale and sandy horizons, in addition to chert and quartzite streaks. The limestone is frequently dolomitized.
The potential markets in the area for this limestone include coal, SO_2 scrubbing and rock dust. Both of these markets require chemical grade limestone with a $CaCO_3$ value of 95% minimum and a SiO_2 value of 5% maximum. The expected market potential in the immediate future is approximately 100,000 ton per year. At a bed depth of 150 ft. this would require a total surface disturbance of 0.18 acres per year or projected over 100 years would be 18 acres. As it would be impractical to mine an area 150 ft. deep X 90 ft. X 92 ft, the major surface disturbance would occur in the first one-third of the mining operation due to the requirement to bench the deposit in 30 to 40 ft. benches to meet current safety requirements.

4. Method of Operation: The proposed quarring method would be open pit benches with 30 to 40 ft. benches progressing to the north. This would require the largest surface area to be disturbed in the first one-third of the operating period to develope the benches from the top.
Proposed equipment would include drilling equipment (truck or track mounted, portable crushing equipment (jaw crusher, cone crusher, impact crusher, feeders, screens and conveyors) loaders and trucks. For the tonnage required the plant would be operated three to four months per year and then be possibly moved to a different location the remainder of the year. The expected crushing would be done sometime between May and November of each year. No permanent plant is to be built on site. Possibly a small shop and garage to house the front end loader would be constructed to protect the equipment during the winter months.
Access to the operation would be from Colorado State highway 325 across a short section of Colorado State recreation land (approx. 250 ft.) adjoining the fish hatchery and into the deposit. The existing road would be used upon improvement to handle truck traffic.
Shippments from the quarry will be done 52 weeks per year, five days per week at an average of 384 ton per day. This will require approximately 16 truck loads per day, or over a 16 hour day, one truck per hour.

5. Estimate of the quantity of water to be used and pollutants which are expected to enter the water: The only water to be used will be for dust control on the crushing and screening operation. The estimated useage will be .0041# water/# limestone. This amount of water will be totally absorbed by the crushed limestone causing no runoff water. The total area disturbed will be crushed and broken limestone which will cause no erosion, sedimentation or pollution therefore impoundment and treatment of runoff water from workings will not be necessary. Attached is a report from the National Limestone Association concerning the beneficial aspects of limestone in streams and rivers. Basically the presence of limestone in otherwise hard rock environments is beneficial to water life and fish.

6. Description of preventive measures to be exercised concerning:
Fire - While fire is not a problem or concern in the actual quarry area, it is always possible that brush and timber fires can inadvertently start in the surrounding area. All operations will be conducted in such a manner as to reduce exposure to brush and timber fires. Maintenance of equipment will be done in designated areas free from combustible materials. All operations and activities will be done in areas free from brush and timber as much as possible.
Soil Erosion - As little to no soil is present and the rock base has already been established, the potential for soil erosion is very minimal. The site will be monitored for any possible erosion problems. If any is detected, that area will be stabilized by grading and vegetation.
Pollution of Ground and Surface Water - No pollution is expected to occurr because of the nature of the activity proposed. In the event pollution of ground and surface waters results, activity causing the potential pollution will cease and corrective measure taken.
Damage to Fish and Wildlife - As no pollution is expected, there should be no damage to fish. As the state fish hatchery is in close proximity, coordination with the state game and fish personnel will be undertaken to minimize any problems encountered due to the proposed activities. Wildlife habitat in the area should not be significantly harmed due to the limited area disturbed. The most significant interference will be the harrassment factor due to noise and general mining activity.
Hazards to Public Health and Safety - The two greatest hazards to public health and safety will be blasting and hauling. The blasting hazard will be reduced by careful control of the blast site. Warning signs will be posted along the perimeter of the blast area, the area will be checked prior to blasting for anyone who may have strayed into the area. The final moment of initiation of the blast will be controlled with radio communications to ensure that no one enters the area after blasting initiation steps have proceeded. By this method the actual blast can be stopped until the actual moment of initiation of the powder. Hauling with heavy trucks over the state highway can be a potential hazard. This will be controlled to reduce exposure by setting and enforcing weight limitation and speed limitation on the trucks. Trucks hauling at reasonable speeds and weights will cause no more of a potential hazard than the existing vehicular traffic.

7. Proposed Life of the Operation: The life of the operation could extend from 20 years to 3000 years depending on the market requirements. But reasonably, the life of the operation foreseen will be 50 to 75 years. Assuming 75 years operation, the quarry will proceed in a northerly direction benching from the top down. As one bench is abanded the highwall will be sloped to two to one or less and revegetation will be attempted with seeding pine trees. This will continue throughout the mining operation and be completed no later than five years upon termination on mining activities.

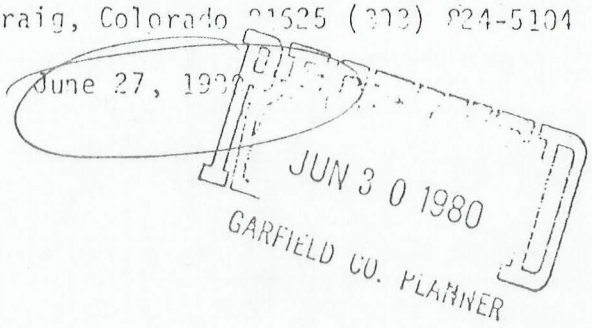
COLORADO STATE DEPARTMENT OF HIGHWAYS

DIVISION OF HIGHWAYS

EX. L

250 Ranney St., Craig, Colorado 81625 (303) 824-5104

June 27, 1980



Davis Farrar
Assistant County Planner
Garfield County
2014 Lake Roe
Glenwood Springs, Colo. 81601

Dear Davis,

I'm sorry I can't attend the meeting, but Dave Campbell said he would be there, and I will give you my comments as to the use of SH325.

As you know the surface of the road was not built to accomodate the type of use it will be getting when these trucks start hauling. As I stated, if you haul legal all the way, we cannot say anything. However I'm sure the roadway will show extreme stress, and we don't have time or money to bring it up to standard this year.

If the haul takes place, I hope you will bear with us until we can repair all the bad areas. I know when they hauled from the Quarry before, we had trouble keeping the road in good condition. This area of roadway is also narrow and has numerous curves, so the truck drivers would need to drive with care.

Thank you very much for the opportunity to comment, and if I could be of any further assistance, please contact me.

Very truly yours,

R. A. Prosence
District Engineer

by: John A. Kier
John A. Kier
Highway Maintenance Superintendent

JAK:gg

EXHIBIT F

Exhibit H

COLORADO STATE DEPARTMENT OF HIGHWAYS

DIVISION OF HIGHWAYS

EX. M

July 30, 1980

JUL 31 1980
GARFIELD CO. PLANNER

Mr. Davis S. Farrar
Assistant Planner
Garfield County Planning Dept.
2014 Blake Avenue
Glenwood Springs, CO 81601

Dear Mr. Farrar:

I am writing this in response to your July 16th letter to Jack Kier which requested answers to questions arising as a result of the possible reopening of the Colorado Lein quarry north of Rifle.

1. Present traffic volumes along the segment most effected by the proposed haul are in the range of 900 vehicles per day. We consider this a very low volume secondary road. Even though the road is narrow and is poorly aligned, its capacity for moving traffic is far in excess of present volumes. The road base is undoubtedly weak, and could be damaged extensively by repetitive heavy loads. However, any licensed vehicle carrying a load of legal size, is entitled to use of the highway.

2. We anticipate little change in present usage over the next five years.

3. We have no planned improvements of the highway in our five year construction plan. We plan to continue normal maintenance.

4. Yes, we can place additional warning signs should the haul from the quarry be initiated.

If we can offer additional information, please contact this office.

Very truly yours,

E. N. HAASE
CHIEF ENGINEER

BY R. A. Prosence
R. A. PROSENCE
DISTRICT ENGINEER

RAP:lmw
XC: Haase w/c
Kier w/c, file

EXHIBIT H

GARFIELD SCHOOL DISTRICT NO. RE-2

EX, N

RIFLE, COLORADO

Rifle High School
Matthew V. Chambers, Principal
625-1596

Ernest Davis, Assistant Principal
625-1596

Rifle Junior High School
Grant L. Fiedler, Principal
625-1776

Esma Lewis Elementary
Lawrence D. McBride, Principal
625-2438

Dariel Clark, Superintendent
625-1595

David R. Crabtree, Assistant Superintendent
625-1595

Lennard D. Eckhardt, Assistant Superintendent
625-2361
822 East Avenue
Rifle, Colorado

SILT, COLORADO

Silt Elementary School
Roy D. Moore, Principal
876-2363

NEW CASTLE, COLORADO

Riverside Junior High School
New Castle Elementary
George L. Hesse, Principal
984-2372

RECEIVED
SEP 15 1980
GARFIELD COUNTY COMM.

September 12, 1980

SEPISE ✓
KELLEY ✓
VASQUEZ ✓
FILE

Mr. Ray Baldwin
Garfield County Planner
2014 Blake Avenue
Glenwood Springs, Colorado 81601

Dear Mr. Baldwin:

The purpose of this letter is to acquaint you with the concern board members, administrators, and others have for the safety of students traveling by school bus on the highway to be traveled also by trucks operated by Colorado Lien and/or any other trucking firms that may seek authority to operate in this area. Highway 325 is narrow and winding. Visibility is limited in many stretches of the road and particularly so on corners where trees and brush grow thickly.

It is our understanding that Colorado Lien plans to haul limestone in 51 foot semis that when loaded will weigh 80 tons. Should a truck of this size collide with a school bus there would almost certainly be serious injury or loss of life.

Unless and until the road is widened and otherwise significantly improved it is our feeling the proposed Colorado Lien operation presents an unacceptable level of hazard to the youngsters who live in the area served by Colorado Highway 325.

Even with improved conditions we think it prudent to have appropriate authorities reduce speed limits even further than is now the case should a study indicate this to be advisable.

We recognize the need for the development of resources found in this part of Colorado but our position is that the development should take place only as reasonable safeguards exist to protect those living in the resource rich regions.

Sincerely,

Dariel Clark
Superintendent

cc: Garfield County Commissioners
State Highway Department
Board of Education

CITY of RIFLE

EX. O

MEMO TO: Garfield County Planning Commissioners

FROM: City of Rifle Planning Department

DATE: August 11, 1980

SUBJECT: Comments on Garfield County Planning Commission August 11, 1980 Agenda

COLORADO LIEN SPECIAL USE PERMIT:

Enclosed is a resolution passed by the City of Rifle Planning Commission on July 31, 1980, and adopted by the city council on August 6, 1980. The City of Rifle owns and operates Rifle Mountain Park which is located within two miles of the proposed quarry. The only access to this city park is via State Highway 325. While the city desires and supports the location of employment opportunities in this end of the county, there is a great deal of concern regarding the safety of the city residents wishing to use the park. Due to the number of sharp curves present on State Highway 325 (particularly that stretch running along side East Rifle Creek), and the increased population and recreational demands that Rifle is experiencing and anticipating in the near future, the City of Rifle recommends denial of this special use permit until such time as this road can be improved to eliminate these hazards.

SOUTHSIDE CENTER PUD ZONE CHANGE:

The proposed use falls within Rifle's comprehensive plan guidelines for development of the interstate interchange area. Municipal sewer service is available from the Rifle Village South Metropolitan District. Municipal water is available from the City of Rifle. The City of Rifle recommends acceptance of this proposal and asks that the following conditions be incorporated in that acceptance:

a) That Southside Center PUD obtain municipal sewer and water service from the above mentioned entities, and not duplicate existing delivery systems.

b) That in accordance with the City of Rifle's major street plan, that additional right-of-way be dedicated along the north side of County Road 346 to bring it up to sub-arterial status. This will require 40 feet north of the existing centerline, a portion of which already exists.

c) That access to the project off of County Road 346 be limited to the proposed public streets within the project, with right-of-way dedicated to allow for full channelization of intersections. The proposed private accesses will lead to a conjested situation on this highway particularly as this area urbanizes. This road will become heavily traveled in the future and safety is of paramount concern.

RESOLUTION

WHEREAS, the Colorado Lien Company of Ft. Collins, Colorado, has applied to the Garfield County Commissioners for a special use permit to mine high calcium limestone in Section 15, Tp. 4 S., R. 92 W., 6th Principal Meridian, Garfield County, Colorado, a location located approximately one-half mile West of the Rifle Falls Fish Hatchery, and

WHEREAS, said location is in the vicinity of the Rifle Mountain Park, owned by the City of Rifle, Colorado, and

WHEREAS, under the proposal submitted by said company to the County Commissioners, crushed stone will be hauled from said site by truck via State Highway 325 to various markets, and

WHEREAS, the frequency of said truck travel may be as great as two round-trips per hour and that said vehicles used will be large semi-tractor-trailers, and

WHEREAS, the Rifle Planning Commission finds that State Highway 325 is wholly inadequate to sustain this type of use, and that increased maintenance of said road necessitated by this type of use will impose an increased and unnecessary burden on taxpayers, and

WHEREAS, although the Rifle Planning Commission recognizes that said mining operation will benefit the County economically, the Commission believes that the excessive truck travel on State Highway 325 generated by said operation will impose an extreme and unnecessary danger to the citizens of Rifle and others using said highway,

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Rifle strongly opposes the granting of a special use permit to the Colorado Lien Company for a quarry at the above stated location, and further, urges the Garfield County Commissioners to deny said permit unless a road other than State Highway 325 is utilitized by the Colorado Lien Company for the hauling of the crushed stone from said site.

Passed, adopted and approved at a regular meeting of the Rifle Planning Commission held on July 31, 1980.

David M Nothnagle

Planning Commission Chairman

EX. P

United States Department of the Interior

IN REPLY REFER TO
3809
7-162

BUREAU OF LAND MANAGEMENT
Glenwood Springs Resource Area
P.O. Box 1009
Glenwood Springs, Colorado 81602

April 1, 1982

RECEIVED
APR 2 1982
GARFIELD CO. PLANNER

Ms. Terry Bowman
Garfield County Planning Department
2014 Blake Avenue
Glenwood Springs, CO. 81601

Dear Ms. Bowman:

This is in reference to the Colorado Lien Company application for a special use permit for a quarry operation.

The information contained in the special use permit application indicates the limestone is metallurgical grade and is therefore considered a locatable mineral. Consequently, the proposal is subject to the mining laws and 43 CFR 3809 regulations. Colorado Lien will be apprised of this requirement.

We have no other comments at this time. We appreciate the opportunity to review the proposal.

Sincerely,

James Wesley Abbott

Alfred W. Wright
FOR Area Manager