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The Mining Law: PLLRC Recommendations - What Happened to Them

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MINING

THE MINING LAW: PLLRC RECOMMENDATIONS—WHAT HAPPENED TO THEM?

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INTRODUCTION

We are aware that the report of the Public Land Law Review Commission (PLLRC)[1] is now almost seven years old. My discussion deals with only a small but very important part of that report contained in chapter seven. That short chapter covers all mineral resources, including leasable minerals, except those on the Outer Continental Shelf which are covered separately in the report.[2]

Most of you know my attitude toward the patent-location system established in the 1872 Mining Law.[3] If you do not, I refer you to the footnote, beginning on page 130 of the report, in which four members of the Commission joined.[4] At the outset it should

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[1] PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970) [hereinafter cited as PLLRC REPORT].

[2] *Id.* ch. 11. Throughout the report there are other references to minerals and mineral related problems in the management of the public lands. My discussion will not include the mineral leasing laws except by way of passing reference and comparison.

[3] Act of May 10, 1872, ch. 152, §§ 1-16, 17 Stat. 91 (codified at 30 U.S.C. §§ 21-54 (1970)) (commonly referred to as the General Mining Law).

[4] The footnote reads:

> Commissioners Clark, Goddard, Hoff, and Udall submit the following separate views: The Commission is unanimous in agreeing that existing mineral law should be modified. Many excellent changes are recommended in this report. However, it is our view that more fundamental changes are required. In particular, the dichotomous system that distinguishes "locatable" from "leaseable" minerals should not be continued.
>
> The recommended modifications preserve the location-patent approach devised more than 100 years ago. It served an earlier period but cannot, even as modified, provide an adequate legal framework for the future. Only minor surgery on the Law of 1872 is recommended in this report. In our view a general leasing system for all minerals except those which are made available by law for outright sale should be adopted. Such a system would:
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> 1. Continue to encourage orderly and needed resource exploration and development.
>
> 2. Insure better management and protection of all public land values and enhance human and environmental values.
>
> 3. Establish a fair and workable relationship between economic incentives and the public interest.

be emphasized that I have not changed my belief that a leasing system for all minerals is preferable. Eventually, I believe, such a system will take shape to everyone's advantage.

My discussion will divide the subject matter into three une-

Objections to the location-patent system are numerous, obvious and, in large measure, admitted by industry and government. Many wholesome *procedural* changes are recommended in this report. But these essential features of the early system are preserved:

1. Hard mineral explorers may go on the public lands and search for minerals except where particular lands are withdrawn or their use restricted.

2. Mineral developers may obtain fee title to the minerals and, if they desire, may purchase so much of the surface as may be needed for a mining operation.

In the past these developers have paid no direct charge to the United States for the removal of locatable minerals. The Commission has recommended that royalty payments be made.

A sound, workable mineral leasing system has been part of the law since 1920. It represented an arduous congressional effort extending over a generation and there is general agreement that the system has worked reasonably well. Leasing and permit systems are the law of many states which own public lands. This approach to the exploration and development of *all* minerals on the public lands of the United States should be adopted, except where minerals are sold outright.

As we understand it, those who oppose the idea have three basic objections: 1) under the present leasing system the Secretary of the Interior has uncontrolled discretion over what land will be made available for mineral development; 2) under the present leasing system the leasehold interest does not provide sufficient security interest for the raising of investment capital since developers are subject to ex post facto regulation; 3) under the present leasing system small developers are handicapped in the competitive bidding situations as the cash bonus offer is the only bidding tool available and small developers may suffer from a lack of capital.

We recognize the legitimacy of these objections and would propose these modifications to the present leasing system: 1) that the Congress list values the Secretary of the Interior will consider when deciding to lease available land and give a right of judicial review for abuse of discretion; 2) that leases be protected from ex post facto regulation of the mineral operation and that the life of the lease be equal with the productive life of the mineral deposit; 3) that in competitive bidding situations the Secretary of the Interior be authorized to consider the royalty offered as well as the cash bonus offered when awarding a lease.

These proposals may not convince vigorous advocates of the location-patent system of the merits of our position. However, to those who maintain that a leasing system for hardrock minerals is inherently incapable of providing sufficient incentive for the mineral development of our public lands, we suggest that quick reference be made to mineral development of Indian lands, where just such a system has worked well, and to the state leasing systems.

PLLRC REPORT 130.

qual parts: First, a review of the PLLRC recommendations regarding hard minerals and the patent-location system, for the purpose of judging any changes since the recommendations were made; second, a discussion of the specific legislative changes made in the Federal Land Policy and Management Act of 1976[5] and their relation to the General Mining Law; third, a short conclusion reemphasizing the desirability of implementing a general leasing system instead of making patchwork changes in an effort to continue the patent-location system. I feel free to do this for two reasons: (1) I have reexamined my position stated in the 1970 report and believe the need for a leasing system is greater than ever, and (2) the Secretary of the Interior has stated publicly that he wants to change the General Mining Law.

The real question is, change it to what? A general leasing system for all minerals, such as the states have, seems to be the most sensible answer.

Some of you may not have had time to read the pertinent statements and recommendations in chapter seven of the PLLRC Report, so I will quote a number of them, summarize others, and I will include some passages from the report in order to put them in context.

I. Hard Minerals and the Patent-Location System

"Public land mineral policy should encourage exploration, development, and production of minerals on the public lands."[6] No one can quarrel with that statement, although the figures and information following it are somewhat dated. One sentence in the text stands out and takes up the theme of my discussion: "Accurate data concerning production of the metallic and other minerals subject to claim location under the General Mining Law are not available since there are no Federal records segregating production among private, state, and Federal lands."[7] We all know that most of the metallic minerals produced in the United States except iron come from the Western States. We also know that this mild statement in the report relates to the fact that the

[5] Pub. L. No. 94-579, §§ 101-707, 90 Stat. 2743 (1976) (codified in scattered sections of 7, 16, 30, 40, 43 U.S.C.).

[6] PLLRC Report 121 (emphasis in original).

[7] *Id.* (footnote omitted).

Federal Government does not know how many mining claims there are, or where they are, or in what condition they are. But more on that when we get to the Federal Land Policy and Management Act of 1976.[8]

The PLLRC Report states that: *"Mineral exploration and development should have a preference over some or all other uses on much of our public lands."*[9] Some of the gloss on that statement which follows in the report may not be acceptable to everybody, but in general the statement is straightforward and unobjectionable.

Next we see the statement that: *"The Federal Government generally should rely on the private sector for mineral exploration, development, and production, by maintaining a continuing invitation to explore for and develop minerals on the public lands."*[10] The statement is current and accurate enough in 1977, although succeeding statements in the text relating to the need "to develop nationwide geological information"[11] are more relevant today than in 1970, as are the comments in the report on the impact of mining on the environment.[12]

These prefatory observations lead to the first numbered recommendation in the Mineral Resources Chapter, Recommendation 46: "Congress should continue to exclude some classes of public lands from future mineral development."[13] This obviously refers to present law and policy which exclude mining and leasing in National Parks, Monuments, and other specified areas. And following this recommendation we find a strong statement regarding the need for the Federal Government to provide "reliable information concerning . . . mineralization" in areas excluded from mining, and the report urges that surveys to determine mineralization be undertaken at federal expense "since private enterprise without assurance of development rights will not have the incentive to finance such surveys."[14] Some may doubt the accuracy of that statement, but it leads directly into Recommen-

[8] *See* text accompanying notes 53-76 *infra*.
[9] PLLRC REPORT 122 (emphasis in original).
[10] *Id.* (emphasis in original).
[11] *Id.*
[12] *Id.*
[13] *Id.* at 123.
[14] *Id.* at 123-24.

dation 47: "Existing Federal systems for exploration, development, and production of mineral resources on the public lands should be modified."[15]

In the first sentence of the text following the recommendation, the novice is introduced to the "three distinctly different existing policy systems providing for the exploration, development, and production on the public lands."[16] The first is, of course, the patent-location system in the Mining Law of 1872,[17] the focus of our inquiry here. The second is the leasing system established in 1920,[18] and the third is the outright sale or disposal system for particular minerals under legislation passed in the 1940's and 1950's.[19]

The report explains that the second and third systems are leasing or permit systems. The report exposes the confusion over which law or laws are applicable to these types of lands held by the United States and recommends uniformity in the law: *"We believe that Federal mineral legislation, if our recommendations are adopted, should be equally applicable to all federally owned land where the type of mineral activity involved is permitted by law."*[20] No one can disagree with that statement, and when we look at the Federal Land Policy and Management Act of 1976 we will see how pertinent that statement is.

The next several paragraphs of the report admit the abuses and deficiencies of the patent-location system, stating: "The 1872 law offers no means by which the Government can effectively control environmental impacts. Other deficiencies include the fact that claims long-since dormant remain as clouds-on-title, and land managers do not know where claims are located."[21] This is a matter taken up in the 1976 Act.

The report then anticipates the desire of some, including myself, for a change to a leasing system:

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[15] *Id.* at 124.

[16] *Id.*

[17] The General Mining Law, 30 U.S.C. §§ 21-54 (1970). *See* note 3 *supra*.

[18] Mineral Lands Leasing Act, ch. 85, §§ 1-38, 41 Stat. 437 (codified at 30 U.S.C. §§ 181-287 (1970)).

[19] Materials Act of 1947, ch. 406, 61 Stat. 681 (codified at 30 U.S.C. §§ 601-615 (1970)).

[20] PLLRC REPORT 124 (emphasis in original).

[21] *Id.*

> *For all of these reasons, some have advocated the replacement of the existing system by leasing, the only other system now in effect for the exploration, development, and production of major minerals.*
>
> In addition to the general deficiencies of the Mining Law, there are other weaknesses from the standpoint of the using industry in that there is (1) no certainty of tenure before meeting the qualifications for a discovery of a deposit, even though large expenditures are involved in exploration and development before the discovery can be proved; (2) no certainty at this time as to what constitutes a discovery; and (3) inadequate provision for the acquisition of land for related purposes such as locating a mill. *For these reasons, and because operators believe they must continue to obtain title to mineral deposits even if not the surface of the land, the industry generally prefers amending rather than replacing the 1872 Mining Law.*
>
> We see merit in both the positions—maintenance of the location-patent system and a leasing system—but believe that a system should be established that incorporates the desirable features of both.[22]

At this point the report takes on the tone of advocacy in favor of the patent-location system or a hybrid system that is not a hybrid but looks very much like the same old 1872 horse but with some new brass studs in his harness.

> The public interest requires that individuals be encouraged—not merely permitted—to look for minerals on the public lands. The traditional right to self-initiation of a claim to a deposit of valuable minerals must be preserved. This does not weaken or dilute our concern for protection of the environment or other public land values, because we believe that we have other means with which to safeguard the environment against major adverse impacts.
>
> Unless a public land area is closed to all mineral activity, *we believe that all public lands should be open without charge for nonexclusive exploration which does not require significant surface disturbance.* However, we also conclude that different conditions should prevail if the prospector desires an exclusive right or if heavy equipment is to be used that will result in significant disturbances of the surface.[23]

This takes us to Perfecting a Claim and Recommendation 48:

> Whether a prospector has done preliminary exploration work or not, he should, by giving written notice to the appropriate Federal land management agency, obtain an exclusive right to explore a claim of sufficient size to permit the use of advanced methods of exploration.

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[22] *Id.* at 124-25 (emphasis in original).

[23] *Id.* at 125-26 (emphasis in original).

> As a means of assuring exploration, reasonable rentals should be charged for such claims, but actual expenditures for exploration and development work should be credited against the rentals.
>
> Upon receipt of the notice of location, a permit should be issued to the claimholder, including measures specifically authorized by statute necessary to maintain the quality of the environment, together with the type of rehabilitation that is required.
>
> When the claimholder is satisfied that he has discovered a commercially mineable deposit, he should obtain firm development and production rights by entering into a contract with the United States to satisfy specified work or investment requirements over a reasonable period of time.
>
> When a claimholder begins to produce and market minerals, he should have the right to obtain a patent only to the mineral deposit, along with the right to utilize surface for production. He should have the option of acquiring title or lease to surface upon payment of market value.
>
> Patent fees should be increased and equitable royalties should be paid to the United States on all minerals produced and marketed whether before or after patent.[24]

The report goes on to state:

> As indicated above, the General Mining Law provides inadequate protection to the explorer until he has made a discovery of a valuable mineral deposit. Throughout his prediscovery prospecting effort, he is subject to adverse actions by Federal land managers allocating the land for other uses such as withdrawals from mineral entry for an adminstrative site. With regard to third parties, he is protected only to the extent that he can prove the area was in his actual possession, which may be difficult under prevailing legal concepts. This approach is inadequate for a typical exploration effort today because an area large enough to warrant the expenditures for modern technological methods will nearly always be much larger than that which can be held effectively in actual possession. As we have noted, Federal policy should invite mineral exploration in order to encourage future mineral discoveries.[25]

Basically, Recommendation 48 suggested five changes in the law: (1) Notice to Federal Government and exclusive exploratory rights and payments of rentals; (2) permits to explorer that include protection of the environment; (3) development and production rights after making a discovery; (4) when production assured a patent to the mineral deposit and use of the surface; and

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[24] *Id.* at 126.

[25] *Id.* (footnote omitted).

(5) an increase in patent fees and "equitable royalties" before and after patent. This recommendation and the supporting text contained the seeds of changes that have been introduced in Congress and in the BLM Organic Act of 1976 and to which we will return.

There was no disagreement in 1970, and there can be none now, over the following statement: *"Unlike the present Mining Law, claims should conform to public land subdivisions in all cases. In many cases, mining claim descriptions under existing law are totally inadequate to permit Federal agencies or other interested persons to find them on the ground."*[26] Nor was there disagreement over the recommendation *"that locators be required to give written notice of their claims to the appropriate Federal land agency within a reasonable time after location."*[27] Similarly, *"[t]o prevent speculation and assure diligent effort, an explorer should be required to pay rental, subject to offsetting credits for the actual performance work completed."*[28]

The report advocated specific terms for an exploration permit:

> *Congress should: (a) establish the maximum size of an individual exclusive exploration right and the aggregate acreage held by one person; (b) specify the period of time for which that exploration right is granted; and (c) establish performance requirements designed to assure diligent exploration as a condition of retaining or renewing the exploration right."*[29]

These terms seem to be entirely reasonable and practical, as is the suggestion that *"[t]here should not be any distinction between lode and placer claims, and no extralateral right to minerals outside of claim boundaries should be acquired."*[30] The same applies (as evidenced by the provisions of the 1976 Act) to the notice requirement: *"[P]eriodic written notice to Federal and county officials of compliance with performance obligations owed to the United States should be required as a condition to validity of each mining claim."*[31]

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[26] *Id.* (emphasis in original).

[27] *Id.* (emphasis in original). This requirement did not exist until the 1976 Act was passed.

[28] *Id.* (emphasis in original).

[29] *Id.* (emphasis in original).

[30] *Id.* at 127 (emphasis in original, footnote omitted).

[31] *Id.*

The report advocated protection of the environment and noted the lack of "adequate regulations defining the relative rights of the Federal Government and the locator" with respect to surface values on unpatented mining claims. The report doubted that such regulations could be enforced "since present law does not require written notice of claim locations to land management agencies."[32]

> In our view, this situation is not consistent with reasonable measures to protect surface values, or to maintain environmental quality in the vicinity of such claims. *Upon receipt of the required notice of location, a permit should be issued to the locator, subject to the administrative discretion exercised within strict limits of congressional guidelines, for the protection of surface values. While an administrator should have no discretion to withhold a permit, he should have the authority to vary these restrictions to meet local conditions. It is our view that protection of environmental values must cover all phases of mineral activity from exploration, through development and production, to reasonable postmining rehabilitation.* The conditions to be included in permits and other instruments later in the process, except as necessary to accommodate circumstances in a particular locality, should have been estalished through the formal rulemaking procedure we recommend in the chapter on Administrative Procedures.[33]

The concluding comments on the environment are remarkably up to date, as the drafters of the 1976 Act must have been aware.

> *Where mineral activities cause a disturbance of public land, Congress should require that the land be restored or rehabilitated after a determination of feasibility based on a careful balancing of the economic costs, the extent of the environmental impacts, and the availability of adequate technology for the type of restoration, rehabilitation, or reclamation proposed.* Rehabilitation does not necessarily mean restoration, but rather the maximum feasible effort to bring the land into harmony with the surrounding area.
>
> *Up to the time commercial production commences, exploration, development, and production plans should be reviewed by the land managing agency for consideration of environmental factors, but administrators should be required to approve or disapprove the plans within a reasonable time.*[34]

The report continues by proposing development and produc-

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[32] *Id.*

[33] *Id.* (emphasis in original).

[34] *Id.* (emphasis in original).

tion rights and takes notice of *United States v. Coleman*[35] by referring to the discovery and the prudent man test as the "legal test of current marketability at a profit"[36] which is a momentary return to an advocacy position over the correctness of that Supreme Court decision. The Commission goes on to say:

> To us it seems clear that Federal land agencies are poorly equipped to judge what is a prudent mineral investment, and this issue should be closed when the mineral explorer is prepared to commit himself by contract to expend substantial effort and funds in the development of a mineral property.[37]

The proposed development rights would do away with the discovery requirement, and these rights "should extend to the area necessary for production," and there is nothing wrong with that.

The report recommended that "to avoid windfalls and to prevent misuse of the mining laws for nonmineral purposes" patents should restrict surface-use rights to those uses "necessary for the extraction and processing of the minerals to which patent has been granted."[38] This limited use of the surface would include "settling ponds, mills, tailings, deposits, etc."[39] However, the report proposed that:

> *Mineral operators . . . should have the option of acquiring title or a lease to the needed land areas when they are willing to pay the market value of the surface rights.* We recognize that there may well be circumstances in which the required investment would be so large that business judgment would dictate the need for fee title. In some cases, a lease may be preferred for that purpose, particularly if it is only necessary to permit more extensive use of the land than is conferred by the mineral patent alone.
>
> *If the mineral patentee does not acquire title to the surface, the right to the mineral interest should terminate automatically at the end of a reasonable period after cessation of production.*[40]

The report points out that under the Mining Law of 1872 patents are obtained at nominal cost, and minerals may be extracted before and after patent without any payment at all. The report states that:

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[35] 390 U.S. 599 (1968).

[36] PLLRC REPORT 128.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.* (emphasis in original).

> [W]e consistently recommend that every user of the public lands should pay for his right or privilege . . . .
>
> We note that payment to the United States is now required for minerals obtained from the public lands under mineral leasing acts[41] and the Materials Act . . . .[42]
>
> The mining industry usually pays for hard rock minerals taken from private lands and non-Federal public lands either through a royalty or a lump sum payment . . . . *We believe that royalty should be collected on production both before and after patent.*[43]

The report goes on to express the need for increasing mineral patent fees (still $2.50 and $5.00 per acre) *"at least enough to cover administrative costs associated with issuance of patents."*[44]

The report recommends uniform federal requirements for locating claims in this language: *"Locators should not be required to comply with state laws relating to the location and maintenance of valid mining claims other than those provisions requiring recordation."*[45] At present, "[s]tate laws on this subject vary widely and many are obsolete or archaic in light of modern technology."[46] We will return to point out this deficiency in the 1976 Act.

The elimination of long-dormant mining claims received the close attention of the Commission. We were told that there were about 5.5 million such claims, due in part to the oil shale litigation which was pending and not fully resolved by the *Oil Shale Corp.*[47] decision, or by the regulations issued following that case and *United States v. Winegar,*[48] decided by the Interior Board of Land Appeals. However, the report recommended: *"Congress should establish a fair notice procedure (a) to clear the public lands of long-dormant mining claims, and (b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend."*[49] How much the 1976 Act has done in that direction will be examined in the next section of this discussion.

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[41] *See* note 18 *supra.*
[42] *See* note 19 *supra.*
[43] PLLRC REPORT 128.
[44] *Id.* at 129 (emphasis in original).
[45] *Id.* at 129-30.
[46] *Id.*
[47] Hickel v. Oil Shale Corp., 400 U.S. 48 (1970).
[48] 16 IBLA 112, 81 Interior Dec. 370 (1974).
[49] PLLRC REPORT 130.

Chapter seven of the PLLRC Report supports the establishment of a system that incorporates the desirable features of both the patent-location and leasing systems.[50] And yet, in the conclusion it is stated that "[t]he location-patent system we recommend will, in our opinion, correct the deficiencies and weaknesses of the existing Mining Law while, at the same time, continue to provide incentive for the exploration, development, and production of valuable minerals."[51] At that point, four of us, with all due respect and modesty, entered our differing views.[52] Although we believed that many of the measures recommended were and are sound and necessary, the result was the same location-patent system. It is obvious that while the report talks of combining features of a leasing system, it shows us the same old patent-location horse dressed up in new tack.

II. FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

It is obvious from this review that many of the recommended changes have not been made during the six or seven years since the PLLRC Report was submitted. Some legislative changes have been made, of course, and now important ones are contained in the Federal Land Policy and Management Act of 1976,[53] passed in the closing days of the last Congress. The Mining and Minerals Policy Act of 1970[54] did not get into the specifics of the Mining Law which interest this group.

The changes made by the 1976 Act relate mainly to the recording requirements for mining claims and the abandonment of such claims. Other changes, also important in the exploration for minerals on the public lands, are scattered through the new statute.

The 1976 statute is a compromise between S. 507, which would have streamlined federal authority and contained a provision requiring the patenting of mining claims within five years, and H.R. 13777 (and its amendments), which was more favorable to the grazing and mining interests. The statute as enacted fol-

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[50] *Id.* at 124-25.

[51] *Id.* at 130.

[52] *See* note 4 *supra.*

[53] Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified in scattered sections of 7, 16, 30, 40, 43 U.S.C.).

[54] Pub. L. No. 91-631, 84 Stat. 1876 (codified at 30 U.S.C. § 21a (1970)).

lows the House bill, and its amendments, more than the Senate version, although the Senators were able to strengthen some of the environmental provisions.

In general, the law provides more oversight authority for Congress and requires that the Director of the BLM be subject to Senate approval.[55] These and other features relate only indirectly to the mining law. For example, the retention policy advocated by the Commission is expressly adopted[56] unless disposal of public lands will be in the national interest. The public lands are to be managed in a manner that "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of [the Mining and Minerals Policy Act of 1970] . . . ."[57]

The Act redefines "public lands" to include interests of the United States "without regard to how the United States acquired ownership," except on the Outer Continental Shelf and in relation to Indian lands and some lands in Alaska.[58] This change was advocated by the PLLRC. The Act contains a power of disposal or sale,[59] which replaces the expired Sales Act of 1964,[60] and Title II of the Act mandates land use planning.

Withdrawals of public lands have always drawn the attention of the mining community. Henceforth, withdrawals will be restricted in size and accomplished through a review process with the approval or concurrence of Congress.[61] The conflict over congressional acquiescence and the implications of the Pickett Act[62] may be quieted somewhat by a section that repeals that doctrine along with a number of old statutes.[63] Reservations and conveyances of mineral and other interests are covered in section 209[64] which also permits sales of mineral interests under specified con-

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[55] 43 U.S.C.A. § 1731(a) (Supp. 1977).

[56] *Id.* § 1701(a)(1).

[57] *Id.* § 1701(a)(12).

[58] *Id.* § 1702(e).

[59] *Id.* § 1713.

[60] Act of September 19, 1964, Pub. L. No. 88-608, 78 Stat. 988 (codified at 43 U.S.C. §§ 1421-1427 (1970)).

[61] 43 U.S.C.A. § 1714 (Supp. 1977).

[62] Act of June 10, 1910, ch. 421, 36 Stat. 847 (codified at 16 U.S.C. § 471 and 43 U.S.C. §§ 141-143 (1970)).

[63] Pub. L. No. 94-579, § 704, 90 Stat. 2792 (1976).

[64] 43 U.S.C.A. § 1719 (Supp. 1977).

ditions to surface owners who will pay fair market value plus the administrative costs incurred.[65] Rights of ingress and egress are expressly preserved for mineral locators.[66]

There are other changes of peripheral significance, but the main thrust of change in the 1976 Act is found in section 314[67] which covers the recording requirements. The new law requires the filing of documents within three years from the date of the Act (Oct. 21, 1976) and annually before December 31st of each year thereafter. The Act requires the filing of "either a notice of intention to hold the mining claim . . . an affidavit assessment work performed thereon, on *(sic)* a detailed report provided by [30 U.S.C. §28-1]."[68] Copies of these documents must be filed "in the office of the Bureau designated by the Secretary . . . ."[69] Regulations adopted January 20, 1977, have designated the state office of the BLM for this purpose.[70] The legislation covers the filing requirements, and the regulations further clarify what shall be filed and where, including a map. These requirements will not "require the owner of a claim or site to employ a professional surveyor or engineer . . . ."[71] Claims within the National Park system are covered in section 3833.2-1. The regulations specify the form of a notice of intention to hold a claim, or group of claims, and claims for which patent applications are pending are excluded. Notice of the transfer of claims is required,[72] as is evidence of annual assessment work.[73]

One of the most important features of the new law is the declaration that

> [t]he failure to file such instruments . . . shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the

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[65] *Id.* § 1719(b)(2).

[66] *Id.* § 1732(b).

[67] *Id.* § 1744. Section 315 of the Act, 43 U.S.C.A. § 1745 (Supp. 1977), authorizes the Secretary to file disclaimers of interest in order to remove clouds on title to public lands.

[68] *Id.* § 1744(a)(1).

[69] *Id.* § 1744(a)(2).

[70] 43 C.F.R. § 3833.1-2 (1977).

[71] *Id.* § 3833.1-2(9).

[72] *Id.* § 3833.3.

[73] *Id.* § 3833.2-1.

> instrument is filed for record by or on behalf of some but not all of the owners of the mining claim . . . .[74]

This provision was not contained in the original House bill. The conference report on the bill states that "[t]he Senate bill (but not the House amendments) contained a provision for requiring application for patent within 10 years of recordation. The conferees did not adopt this provision."[75] It is worth noting that the original S. 507 section 104(b) read: "Any claim recorded pursuant to subsection (a) for which the claimant has not made application for patent within five years after the date of enactment of this Act or the date of location of a claim, whichever is later, shall be conclusively presumed to be abandoned and shall be void."

CONCLUSION

The recording requirements in the new law are a major step toward finding millions of mining claims of which perhaps less than one-sixth are active claims. This is the first step in a clean-up process. The regulations issued following the oil shale decision[77] are also aimed at cleaning up long-dormant claims and will help remove clouds on titles to public lands.[78]

Unfortunately, the clean-up efforts and the new 1976 law do little toward bringing about the substantive changes recommended by the majority of the PLLRC who favored keeping the patent-location system. For example: The new Act does not provide for exploration rights which would do away with reliance on *pedis possessio;* no law has been enacted covering development and production rights as recommended; nor is there a provision for royalties before and after patent as recommended by the Commission. The PLLRC recommended that patents should include only the mineral body; that has not been done. There is no uniform federal legislation for location work as was recommended. The distinction between lode and placer claims continues un-

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[74] 43 U.S.C.A. § 1744(c) (Supp. 1977).

[75] H. CONF. REP. No. 1724, 94th Cong., 2d Sess. 62, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 6233.

[76] S. 507, 94th Cong., 1st Sess. § 104(b) (1975).

[77] Hickel v. Oil Shale Corp., 400 U.S. 48 (1970).

[78] Later decisions will also aid this process. *See* Roberts v. Morton, 549 F.2d 158 (10th Cir. 1971); United States v. Winegar, 16 IBLA 112, 81 Interior Dec. 370 (1974).

changed along with the existence of extralateral rights which the PLLRC said should be abolished. These and other features remain in the Mining Law which I believe the mining industry would like to see removed or changed.

However, as I said at the beginning, a leasing system would take care of these matters very satisfactorily.[79] Support for my statement is found in the functioning of the Mineral Leasing Act which has been the law since 1920. The patent-location approach was a good and faithful old horse, but he does not run well with the new technology, and he ought to be retired.

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[79] *See Congressional Record,* H.R. 5831, 95th Cong., 1st Sess., 123 CONG. REC. 2778 (1977) (a bill introduced by Rep. Ruppe (Mich.) to modify the present location-patent system and also to require payment of a royalty to the U.S. on minerals produced). *See also Congressional Record,* H.R. 9292, 95th Cong., 1st Sess., 123 CONG. REC. 10124 (1977) (a bill introduced by Rep. Burton (Cal.) to substitute a leasing system for the present system).