WORC
Western Organization of Resource Councils
110 Maryland Avenue, N.E., Room 307, Washington, D.C. 20002
(202)547-7040 FAX (202)543-0978
E-mail: dc@worc.org

Millsite Claims Under the 1872 Mining Law
Timeline

1872 Mining law enacted, stating: "[W]here nonmineral land ... is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode...; but no location ... shall exceed five acres." 30 U.S.C. Section 42(a).

1884 Secretary of the Interior rules in J.B. Hoggin, 2 L.D. 755, that more than one millsite may be patented with a lode claim, provided that the aggregate is not more than five acres.

1891 Acting Secretary of the Interior rules in Mint Lode and Mill Site, 12 L.D. 624, that the Mining Law "evidently intends to give each operator of a lode claim, a tract of land not exceeding five acres in extent, for the purpose of conducting mining or milling operations thereon, in connection with such lode."

1903 Acting Secretary of the Interior rules in Alaska Copper Co., 32 L.D. 128, that the "manifest purpose [of the millsite provision of the Mining Law] is to permit the proprietor of a lode mining claim to acquire a small tract of. . . land as directly auxiliary to the prosecution of active mining operations upon his lode claim, or for the erection of a quartz mill.... The area of such additional tract is by the terms of the statute restricted to five acres as obviously ample for either purpose."

1914 Curtis H. Lindley writes in the third edition of his oft-cited treatise *LindIeyon Mines*, Section 520, that a "lode proprietor may select more than one tract [for a milisite] if the aggregate does not exceed five acres."

1955 Denver mining attorney John W. Shireman writes in the *Proceedings of the Rocky Mountain Mineral Law Institute* that "Each lode claim is entitled to one mill site for use in connection therewith…" Shireman, "Mining Location Procedures," 1 *Rocky Mountain Mineral Law Institute* 307, 321 (1955).

1960 Congress amends the Mining Law to allow location of millsites in connection with placer claims. In its report on the bill, the Senate Interior Committee explained that it had modified the language of the bill "so as to impose a limit of one 5-acre millsite in any individual case preventing the location of a series of 5-acre millsites in cases where a single claim is jointly owned by several persons.... In essence, [the bill] merely grants to holders of placer claims the same rights to locate a 5-acre millsite as been the case since 1872 in respect to holders of lode claims. . ." S. Rep. No 904, 86th Congress., 1st Sess., at 2.

1960 The first edition of the *American Law of Mining* (which is written by attorneys for the mining industry) states: "A mill site may, if necessary for the claimant's mining or milling purposes, consist of more than one tract of land, provided that it does not exceed five acres in the aggregate." 1 *American Law of Mining Section* 5.35 (1960).

1970 The Public Land Law Review Commission by Twitty, Sievwright & Mills (a Phoenix, Arizona law firm that represents the mining industry) presents the following argument for mining law reform to the Public Land Law Review Commission:

When the mining laws were enacted in 1872, provision was made for the acquisition of five-acre mill sites to be used for mining or milling purposes. The typical mine then was a high-grade lode or vein deposit from which ore was removed by underground mining. The surface plant was usually relatively small, and the surface of the mining claims together with the incident mill sites adequately served the needs of the mines for plant facilities and waste disposal areas.

Today, the situation is frequently different. The high-grade underground mines have, for the most part, been mined out. Open pit rather than underground mining is, with increasing frequency, the most economical way to mine the low-grade deposits which now comprise a major portion of the reserves of many minerals. The mining industry now relies on mechanization, the handing of large tonnages of overburden and ores and the utilization of large surface plants in order to keep costs down so that these low-grade deposits may be mined and treated at a profit. Such mining operations require not only substantial areas for plant facilities, but much larger areas than formerly for the disposal of overburden and mill tailings. The surface area of mining claims and mill sites are no longer adequate for such purposes.

If a mineral deposit is partially or entirely surrounded by the public domain, the acquisition of adjacent nonmineral land from the United States for necessary facilities is now frequently extremely difficult because the laws do not provide a satisfactory way to make these acquisftions. Small areas may be acquired as mill sites, and in certain instances, if the lands meet the statutory requirement as isolated or disconnected tracts, larger acreages may be acquired at public auction. Mining companies planning large mining operations have been obliged to meet their needs for nonmineral lands by obtaining the necessary lands by other means.

Twitty, Sievwright & Mills, "Nonfuel Mineral Resources of the Public Lands; A Study Prepared for the Public Land Law Review Commission," (Dec. 1970), at vol. 3, pp. 1047-48.

The Twitty, Sievwright study also states: "Under the first clause of subsection (a) of [30 U.S.C. Section 42], each lode claimant is allowed, in addition to his lode claim, five acres of land to be used for mining or milling purposes." Id. at vol. 2, p. 323.

1974 The Interior Board of Land Appeals rules in United States v. Swanson, 14 IBLA 158, 174-74, that:

> [A millsite] claimant is entitled to receive only that amount of land needed for his mining and milling operations, and this amount can embrace a tract of less than five acres. The statute states that the location shall not "exceed five acres." ... The reference to five acres in the statute is clearly a ceiling measure, not an absolute, automatic grant.

1977 Salt Lake City mining attorneys Clayton J. Parr and Dale A. Kimball write:

> Theoretically, one five-acre millsite can be acquired for each valid mining claim.... [O]nly as much ground as is needed for a particular use can be appropriated under a single millsite or a connected group of millsites. Hence, if a concentrator is to be constructed to treat ores from a group of ten mining claims, for example, only as much ground as is needed for the concentrator may be obtained for that purpose. It is possible that a three acre millsite would be sufficient even though ten five acre millsites could be appropriated if that much ground was actually needed. On the other hand, if some 2,000 to 2,500 acres are needed for tailings ponds, dumps, and other mine-related uses, the five acres permitted for each valid lode claim would be insufficient.
>
> Parr & Kimball, "Acquisition of Non-Mineral Land for Mine Related Purposes," 23 *Rocky Mountain Mineral Law Institute* 595, 641-42 (1977).

1979 In April, 1979, in an analysis of federal mining law, the Congressional Office of Technology Assessment states:

> [l]t is highly doubtful that [millsites] could satisfy all the demands for surface space. There could be at most as many millsites as there are mining claims, and each millsite would be at most one-fourth the size of the typical 20-acre claim, so that millsites, in the aggregate, would be one-fourth the size of the ore body encompassed by the claims.
>
> Office of Technology Assessment, *Management of Fuel and Non fuel Minerals in Federal Land*, at 127 (April, 1979).

1987 In the revised second edition of *American Law of Mining*, Phoenix mining attorneys Jerry L. Haggard and Daniel L. Muchow write:

> The acquisition of federal lands or interests therein by means other than the locating of mining claims or mill sites is sometimes necessary to provide the additional ground needed for a planned mining operation. The restraints on the number and size of mill site claims can limit their usefulness as a land acquisition method.
>
> 4 *American Law of Mining*, Section 110.01 (2d ed. rev. 1987)

1997 Solicitor of the Department of Interior John D. Leshy issues opinion titled "Limitations on Patenting Millsites Under the Mining Law of 1872" which recommends that the Bureau of Land Management begin applying a limit of no more than one millsite claim for each mining claim immediately to pending plans of operation and patent applications.

1999 On March 25, the Departments of Interior and Agriculture vacate the Record of Decision and disapprove the plan of operations for Battle Mountain Gold's Crown Jewel Project in Washington State because the plan's 117 mill site claims exceed the Mining Law's millsite limit. The mine had 15 mining claims, four patented and eleven unpatented.

1999 In May, the United States Congress exempts the Crown Jewel Project from the millsite limit, and prohibited application of the millsite limit to pending patent applications and plans of operation for the rest of fiscal year 1999.

1999 On June 25, the Senate Appropriations Committee attached to the FY 2000 Interior Appropriations bill a rider that would expand the 1872 Mining Law by prohibiting the Departments of Interior and Agriculture from applying the millsite limit to any mine's patent application or plan of operations.

For more information, contact:
Sara Kendall, Western Organization of Resource Councils, 202-547-7040