

language to clarify areas that we agree seemed ambiguous.

*Section 3832.22 How Much Land May I Include in My Mining Claim?*

One comment stated that a lode claim may only extend the exposed length of the lode or vein claimed, or 1,500 feet, whichever comes first. If the exposed vein is 1,000 feet long, and you have reason to believe, from the geology, that the vein or lode is 1,500 feet or longer, you may take up the entire 1,500 allowed by law. The comment urged that this section be amended to provide that lode claims may extend to 1,500 feet along the course of the vein, lode, or ledge only if the lode, vein, or ledge also extends that far. The comment said that there is no guaranteed right to possession of the statutorily defined maximum size lode claim without proof of valuable mineralization underlying the entire length of the claim, and that to the extent the land covered by the claim does not also contain valuable minerals or lie within 300 feet on either side of a vein or lode, the Mining Law grants no rights to make use of those lands for any purpose. The question is whether the statutory language "along the vein or lode" means that the center line of the claim must track the vein or lode precisely, and if the lode stops the claim must also stop. We have found no case law that supports this interpretation. The common definition of "along" is "in a line parallel with the length or direction of." We have not adopted the comment in the final rule.

Several comments stated that this section, in providing that the claim is limited to 300 feet on either side of the middle of a vein, lode, or ledge, follows an obsolete 1879 regulation that has since been modified by Solicitor's Opinions and court decisions. The comments said that there is no requirement in the Mining Law that a claim be laid along the course of the vein. The Mining Law at 30 U.S.C. 23 limits the claim to "three hundred feet on each side of the middle of the vein at the surface." The comment is correct. However, to protect your extralateral rights, you should lay out your claim along the course of the lode, vein, or ledge. We have amended this provision in the final rule to make this clear.

*Section 3832.30 Mill Sites*

During the comment period, we received 49 comments addressing the series of mill site sections beginning with section 3832.30. Since the comment period closed, the Secretary and the Solicitor have continued to receive correspondence regarding these sections, including from Congress.

The General Mining Law allows miners to locate and patent nonmineral lands in association with mining claims. However, under the 5-acre mill site provision, 30 U.S.C. 42, no location of these nonmineral lands, called mill sites, may exceed 5 acres.

In 1997, former Solicitor John Leshy issued an opinion entitled "Limitations on Patenting Millsites under the Mining Law of 1872," M-36988 ("1997 Opinion"). The opinion stated that under the 5-acre mill site provision of the Mining Law, an applicant may patent only up to 5 mill site acres per mining claim. In addition, the opinion stated that BLM should not "approve plans of operations which rely on a greater number of mill sites than the number of associated claims being developed unless the use of additional lands is obtained through other means." As a consequence, the proposed rule that BLM published in 1999 sought to limit the amount of mill site acreage claimants could locate per mining claim, in a manner that also sought to prevent claimants from subdividing their mining claims to obtain the rights to more mill sites.

Deputy Solicitor Roderick E. Walston has reviewed the Mining Law, its legislative history, pertinent case law, and the Department's prior written guidance and prevalent practice regarding the 5-acre mill site provision. On October 7, 2003, Deputy Solicitor Walston issued an opinion entitled "Mill Site Location and Patenting under the 1872 Mining Law," M-37010. ("2003 Opinion"). In the 2003 Opinion, the Deputy Solicitor determined that:

- Before the 1997 Opinion, Interior's prevalent practice and interpretation was to view the 5-acre mill site provision as limiting the size of individual mill sites, not the number of mill sites per mining claim.
- Interior consistently followed this practice and interpretation for at least 50 years immediately preceding the 1997 Opinion under the pre-existing regulations.
- The 1997 Opinion significantly departed from this 50-year practice and interpretation.
- Interior's pre-1997 practice and interpretation was consistent with Supreme Court precedent interpreting the statutory size limitations for lode and placer claims.
- Interior's pre-1997 practice and interpretation was consistent with Congress's goal in the Mining Law to promote mineral development on the public lands.
- Another clause of the mill site provision effectively limits the mill sites a claimant may locate and patent to the

number used or occupied for mining or milling purposes.

Congress twice prohibited by law the Department from applying the 1997 Opinion. The conference report for the first law stated that the 1997 Opinion was "particularly troubling because both the Bureau of Land Management and the Forest Service have been approving patents with more than one 5-acre millsite per patent based on procedures outlined in their operations manuals." H.R. Conf. Rep. No. 106-143, at 90 (1999).

Therefore, instead of changing the Department's past prevalent practice and interpretation of the mill site provision, BLM has decided to withdraw the proposed amendment to the mill site regulations and continue its prevailing practice and interpretation that the Department followed for a half century before the 1997 Opinion. That practice and interpretation, as described by the 2003 Opinion, is set forth in section 3832.32. This action does not change BLM's practice regarding mill site locations. Before former Solicitor Leshy issued his 1997 mill site opinion, BLM viewed the 5-acre mill site provision as a limit on the size of individual mill sites, not a limit on the allowable mill site acreage per mining claim. Deputy Solicitor Walston describes BLM's consistently-held written guidance in this way:

For nearly a half century, the BLM's written guidance has reflected the view that the mill site provision does not categorically limit the number of mill sites that may be located and patented for each mining claim. The BLM Manual, adopted in 1954, sets forth three requirements for mill sites to qualify for patenting: (1) the lands must be nonmineral in character, (2) the mill site cannot be contiguous to a vein or lode, and (3) "[t]he mill site does not include an area exceeding 5 acres." BLM Manual, ch. 3.3.2 (Apr. 20, 1954). The 1954 BLM Manual contained no restriction on the number of mill sites that may be located for a mining claim. Additionally, the BLM in 1954 issued a document entitled "Mining Locations, Entries and Patents," which stated, on page 28, that "[i]t has been held that more than one mill site may be embraced in an application for a patent, provided each such tracts [sic] keep within the restriction of 5 acres of non-mineral land and that each is needed and used for mill site purposes." Similarly, a BLM Manual issued in 1958 stated, "More than one millsite may be located, provided each tract is of no more than 5 acres of nonmineral land and that each is needed and used for millsite purposes." Id. ch. 5.2.15 B. (Nov. 19, 1958). Thus, the BLM guidance and accompanying documents made clear that the Mining Law imposes no categorical restrictions on the number of mill sites that may be located and patented for each mining claim.