

Course Syllabus: MINING AND ENERGY LAW

Fall 2007

Tuesdays and Thursdays 4:30-5:45
Room 206

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Office Hours by Appointment

All reading materials are available on the TWEN site (most as links to Westlaw cites or to PDFs, including portions of chapters of the unpublished Casebook, Mining Law by Professor Mark Squillace)

Reading Assignments:

Introduction

August 28: Historical Overview of Western Mineral Development (no reading assignment).

Hardrock Mining

August 30: Introduction to Hardrock Mining, Mineral Withdrawals: Mining Law (mining intro chapters 1&2 PDF), just skim the Midwest Oil decision but read the rest.

Sept. 4: No Class

Sept. 6: Types of Mining Claims: Andrus v. Charlestone Stone Products Co., 436 U.S. 604 (1978); Mining Law (Chapter 3 excerpts PDF); Mining Law of 1872, 30 U.S.C. §§ 21-43. (This link will take you to 30 USC 21 on Westlaw; Use the links to access sections 22-43 of the statute. Also, the TWEN site has a link to the Mining Law on the left side).

Sept. 11: Claim Location and Maintenance:
Coggins & Glicksman, Public Natural Resources Law, Chapter 25 (PUBNRL 25.8-25.13 and PUBNRL 25.21-25.23); U.S. v. Locke, 471 U.S. 84 (1985).

Please note: for all readings in the Coggins/Glicksman treatise, there is no need to read the detailed footnotes.

- Sept. 13: Discovery of Valuable Minerals: Discovery of Valuable Minerals: [Chrisman v. Miller, 197 U.S. 313 \(1905\)](#); [U.S. v. Coleman, 390 U.S. 599 \(1968\)](#); [Mining Law \(Pittsburgh Pacific decision PDF\)](#).
- Sept. 18: Millsite Claims: [Mining Law \(Chapter 3 excerpts on Millsites PDF\)](#); Memorandum "Limitations on Patenting Millsites Under the Mining Law of 1872," Nov. 7, 1997, (supplementary PDF); Memorandum "Mill Site Location and Patenting under the 1872 Mining Law," Oct. 7, 2003 (supplementary PDF).
- Sept. 20: Mining Claim Patents: [High Country Citizens' Alliance v. Clarke, 454 F.3d 1177 \(10th Cir. 2006\)](#).
- Common Varieties; Surface Resources Act: 30 U.S.C. §§ 611, 612; [U.S. v. McClarty, 408 F.2d 907 \(9th Cir. 1969\)](#); [U.S. v. Curtis-Nevada Mines, Inc., 611 F.2d 1277 \(9th Cir. 1980\)](#).
- Sept. 25: The Mining Law and Open Pit Mining: Flynn, "The 1872 Mining Law As An Impediment To Mineral Development On The Public Lands: A 19th Century Law Meets The Realities of Modern Mining," [34 Land and Water Law Review 301-308, 344-359 \(1999\)](#).
- Sept. 27: No Class
- Oct. 2: Regulation of Mining on BLM Lands: [Mineral Policy Center v. Norton, 292 F.Supp. 2d 30 \(D.D.C. 2003\)](#). (Only skim pp. 36-40 (Section II)).
- Oct. 4: Forest Service Mining Regulation: Flynn and Parsons, "The Right to Say No: Federal Authority Over Hardrock Mining on Public Lands," 16 J. Env'tl. Law & Litigation, 260-267 (2001); [Karuk Tribe of California v. Forest Service, 379 F.Supp.2d 1071 \(N.D. Cal. 2005\)](#)(focus on pp. 1076-1085 and 1092-1103).

NEPA and Mineral Development

- Oct. 9: NEPA Outline (supplementary PDF handout); [Great Basin Mine Watch v. Hankins, 456 F.3d 955 \(9th Cir. 2006\)](#), focus on NEPA sections.

Onshore Oil & Gas Development

- Oct. 11: Introduction to Oil & Gas Leasing: Pre-1987 Leasing, Coggins & Glicksman, [Public Natural Resources Law, Chapter 23 \(PUBNRL 23.1-23.6, 23.8-23.10\)](#). Only skim sections 23.3 to 6, 8 to 10.
- Oct. 16: Post-1987 Leasing: Coggins & Glicksman, [Public Natural Resources Law, Chapter 23 \(PUBNRL 23.11-23.18\)](#).

- Oct. 18: Leasing and Environmental Review: Coggins & Glicksman, [Public Natural Resources Law, Chapter 23 \(PUBNRL 23.7\)](#); Pennaco Energy v. U.S. Department of Interior, 377 F.3d 1147 (10th Cir. 2004); Wyoming Outdoor Council v. Bosworth, 284 F.Supp.2d 81 (D.D.C. 2003).
- Oct. 23: Coal Bed Methane Development: [Southern Ute Indian Tribe v. Amoco Production Co., 119 S.Ct. 1719 \(1999\)](#); McGee v. Caballo Coal Company, 69 P.3d 908 (Wyo. 2003).
- Oct. 25: Drilling Authorizations: [Mining Law \(Michael Gold decision PDF\)](#); Coggins & Glicksman, [Public Natural Resources Law, Chapter 23 \(PUBNRL 23.22-28\)](#), (Only skim sections 23:24 to 28); Colorado Habitat Stewardship Act of 2007, 2007 Colo. Legis. Serv. Ch. 312 (H.B. 07-1298)
- Oct. 30: Recent Developments in Energy Legislation: 2005 Energy Bill (supplementary PDFs on Statutory Excerpts of Energy Bill and BLM Directives, 6 in all).
- Other Non-Coal Leasing, and Multiple Mineral Development: [Mining Law \(pp. 228-230 PDF\)](#).

Coal Mining

- Nov. 1: Coal Mining: [Mining Law \(pp. 253-258 PDF\)](#); Environmental Regulation of Coal Mining, SMCRA: [Mining Law \(pp. 258-260 PDF\)](#).
- Nov. 6: SMCRA and State Regulation: [Mining Law \(pp. 265-269 PDF\)](#).

Split Estates and Access to Minerals

- Nov. 8: Watt v. Western Nuclear, Inc., 462 U.S. 36 (1983) (No need to read the dissent); Amoco Production Company v. Thunderhead Investments, Inc., 235 F.Supp.2d 1163 (D. Colo. 2002); Colorado Surface Owners Accommodation Act, HB 07-1252.

Regulatory Environment for Mineral Development

- Nov. 13: Clean Water Act and Mineral Development: Sierra Club v. El Paso Gold Mines, Inc. 421 F.3d 1133 (10th Cir. 2005); [Northern Plains Resource Council v. Fidelity Exploration and Development Co., 325 F.3d 1155 \(9th Cir. 2003\)](#);
- Nov. 15: Clean Water Act, cont'd: Great Basin Mine Watch v. Hankins, 456 F.3d 955 (9th Cir. 2006), (focus on Section III); Hells Canyon Preservation Council v. Haines, 2006 WL 2252554 (D. Or., Aug. 4, 2006).

- Nov. 27: State/Local Regulation of Mineral Development: [California Coastal Commission v. Granite Rock Company, 480 U.S. 572 \(1987\)](#); [South Dakota Mining Ass'n v. Lawrence County, 155 F. 3d 1005 \(8th Cir. 1998\)](#). [Oil-Dri Corporation v. Washoe County, CV02-02196 \(Nevada 2004\)](#) (supplementary handout).
- Nov. 29: Colorado Preemption Issues: [Town of Frederick v. North American Resources Company, 60 P.3d 758 \(Colo. App. 2002\)](#); [Colorado Mining Association v. Board of County Commissioners of Summit County, --- P.3d ----, 2007 WL 851745 \(Colo. App., 2007\)](#).
- Dec. 4: Takings: [Rith Energy, Inc. v. U.S., 247 F.3d 1355 \(Fed. Cir. 2001\)](#); [Reeves v. United States, 54 Fed. Cl. 652 \(2002\)](#).
- Dec. 6: Course Review.