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Mining Law 2018

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USA

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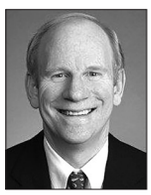

Daniel P. Whitmore

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The US legal system consists of many levels of codified and uncodified federal, state, and local laws. The Government's regulatory authority at each level may originate from constitutions, statutes, administrative regulations or ordinances, and judicial common law. The US Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting state and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, state, and local statutes and administrative regulations.

1.2 Which Government body/ies administer the mining industry?

Federal and state governments have developed comprehensive mining regulatory schemes. Although the US is a common law nation, practising US mining law often resembles practising mining law in civil law countries because the regulatory schemes are set out in detailed codifications. See, e.g., 43 C.F.R. §§ 3000.0-5-3936.40 (US Bureau of Land Management ("**BLM**") minerals management regulations). However, these mining law codifications are subject to precedential interpretation by courts pursuant to common law principles (and in some situations by quasi-judicial administrative bodies). US mining law may originate from federal, state, and local laws, including constitutions, statutes, administrative regulations or ordinances, and judicial and administrative body common law.

Determining which level of Government has jurisdiction over mining activities largely depends on surface and mineral ownership. A substantial amount of mining in the United States occurs on federal lands where the federal Government owns both the surface and mineral estates. On these lands, federal law primarily governs mineral ownership, operations, and environmental compliance, with state and local Governments having concurrent or independent authority over certain aspects of land mining projects (e.g. permitting, water rights and access authorisations).

If the resource occurs on private land, estate ownership is a matter of state contract and real property law, but operations and environmental compliance are still regulated by applicable federal and state laws. Estate ownership on state-owned land is regulated by state law, and operations and environmental compliance are regulated by applicable federal and state laws, and in some cases local zoning ordinances.

1.3 Describe any other sources of law affecting the mining industry.

The General Mining Law of 1872 ("**GML**"), 30 U.S.C. §§ 21-54, 611-615, as amended, is the principal law governing locatable minerals on federal lands. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. Locatable minerals include non-metallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals including gold, silver, lead, copper, zinc, and nickel. Locating these mineral deposits entitles the locator to certain possessory interests:

a. unpatented mining claims, which provide the locator an exclusive possessory interest in surface and subsurface lands and the right to develop the minerals; and

b. patented mining claims, which pass full fee title from the federal Government to the locator, converting the property to private land. However, a mining patent moratorium has been in place since 1994 and no new patents are being issued.

Other minerals on federal lands are "leasable" and are governed under separate statutes and regulations.

The Federal Land Policy and Management Act of 1976, ("**FLPMA**"), 43 U.S.C. §§ 1701-1787, governs federal land use, including access to, and exercise of, GML rights on lands administered by the BLM and the US Forest Service ("**USFS**"). FLPMA recognises 'the Nation's need for domestic sources of minerals', 43 U.S.C. § 1701(a)(12), and provides that FLPMA shall not impair GML rights, including, but not limited to, rights of ingress and egress. 43 U.S.C. § 1732(b). However, FLPMA also provides that mining authorisations must not 'result in unnecessary or undue degradation of public lands'. 43 C.F.R. § 3809.411(d)(3)(iii); see also 43 U.S.C. § 1732(b). BLM and USFS have promulgated extensive FLPMA mining regulations. See, e.g., 36 C.F.R. §§ 228.1-228.116, 43 C.F.R. §§ 3000.0-5-3936.40. The National Environmental Policy Act ("**NEPA**"), 42 U.S.C. §§ 4321-4370m-12, requires federal agencies to prepare an environmental impact statement ("**EIS**") for all major federal actions significantly affecting the quality of the human environment. Mining operations on federal lands or with a federal nexus generally will involve an EIS or a less intensive environmental assessment ("**EA**") examining environmental impacts. The NEPA process involves consideration of other substantive environmental statutes.

The US Securities and Exchange Commission ("**SEC**") regulates mineral resources and reserves reporting by entities subject to SEC

filing and reporting requirements. The SEC's reporting classification system is based on the SEC's 1992 'Industry Guide 7', which provides for a declaration only of proven and probable reserves. In 2016, the SEC proposed new rules for its reporting classification system. If adopted, the new rules would require additional disclosures for mining companies, including exploration results, mineral resources, and mineral reserves and would bring the SEC disclosure requirements more in line with the disclosure standards of Canada's National Instrument 43-101 and the Committee for Mineral Reserves International Reporting Standards.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

As discussed in the response to question 1.3, the GML is the principal law governing locatable minerals on federal lands. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. The process for developing locatable mineral rights on federal lands under the GML involves:

a. discovery of a 'valuable mineral deposit', which under federal law means that a prudent person would be justified in developing the deposit with a reasonable prospect of developing a successful mine, and that the claims can be mined and marketed at a profit;

b. locating mining claims by posting notice and marking claim boundaries;

c. recording mining claims by filing a location certificate with the proper BLM state office within 90 days of the location date and recording pursuant to county requirements;

d. maintaining the claim through assessment work or paying an annual maintenance fee; and

e. additional requirements for mineral patents (as mentioned above, there is a moratorium on patents).

Reconnaissance on federal lands with leasable minerals generally requires the issuance of an exploration permit or lease.

Although the GML and Mineral Lands Leasing Act require mine claimants, permittees and lessees to be US citizens, a 'citizen' can include a US-incorporated entity that is wholly owned by non-US entities or corporations. There generally are no restrictions on foreign acquisition of these types of US mining rights through parent-subsidiary corporate structures.

2.2 What rights are required to conduct exploration?

Depending on the stage and extent of exploration work and the amount of ground that is disturbed, additional permits and licences required to conduct mining activities may include:

a. a mine plan of operations;

b. a reclamation plan and permits;

c. air quality permits;

d. water pollution permits (pollutant discharge elimination system discharge permit, storm water pollution prevention plan, spill prevention control and countermeasure plan);

e. dam safety permits;

f. artificial pond permits;

g. hazardous waste materials storage and transfer permits;

h. well drilling permits;

i. road use and access authorisations, right-of-way authorisations; and

j. water rights.

2.3 What rights are required to conduct mining?

Please see the response to questions 2.1 and 2.2.

2.4 Are different procedures applicable to different minerals and on different types of land?

The GML governs locatable minerals which include non-metallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals including gold, silver, lead, copper, zinc, and nickel.

The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-287, as amended, establishes a prospecting permit and leasing system for all deposits of coal, phosphate, sodium, potassium, oil, gas, oil shale, and gilsonite on lands owned by the United States, including national forests. In addition, sulphur deposits found on public lands in Louisiana and New Mexico are leasable, as are geothermal steam and associated geothermal resources, uranium, and hardrock mineral resources. These same deposits found in some acquired federal lands, including acquired forest lands, are leasable under a similar statute.

The Materials Disposal Act of 1947, 30 U.S.C. §§ 601-615, as amended, provides for the disposal of common minerals found on federal lands, including, but not limited to, cinders, clay, gravel, pumice, sand or stone, or other materials used for agriculture, animal husbandry, building, abrasion, construction, landscaping and similar uses. These minerals may be sold through competitive bids, non-competitive bids in certain circumstances or through free use by Government entities and non-profit entities.

Minerals on state-owned land are made available under the individual state's statutory and regulatory scheme.

2.5 Are different procedures applicable to natural oil and gas?

The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-287, as amended, provides US citizens the opportunity to obtain a prospecting permit or lease for coal, gas, gilsonite, oil, oil shale, phosphate, potassium, and sodium deposits on federal lands. The process for obtaining a permit or lease involves filing an application with the federal agency office with jurisdiction over the affected land. Depending on the type of permit or lease applied for, applicants may be required to:

a. pay rental payments;

b. file an exploration plan;

c. pay royalty payments based on production; or

d. furnish a bond covering closure and reclamation costs.

These permits and leases are often subject to conditions and stipulations directed at protecting resource values.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Only US citizens or companies can hold locatable and leasable minerals on federal lands, but foreign companies may form US subsidiaries to secure such rights. States do not generally restrict the ownership of mineral leases based on the type of entity.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

US mining laws generally do not restrict or limit foreign investment. Although the GML and Mineral Lands Leasing Act require mine claimants, permittees and lessees to be US citizens, a 'citizen' can include a US-incorporated entity that is wholly owned by non-US entities or corporations. There are generally no restrictions on foreign acquisition of these types of US mining rights through parent-subsidiary corporate structures. The Mineral Lands Leasing Act, Mineral Leasing Act for Acquired Lands and Reorganization Plan No. 3, require that the holder of a mineral lease or prospecting permit must be a citizen of the United States. 30 U.S.C. § 181, 352; 43 C.F.R. § 3502.10(a). Corporations organised under the laws of the United States or any state or territory of the US may qualify to hold leases or prospecting permits. While foreign persons are permitted to be shareholders, the citizenship of the shareholders is significant. The country of citizenship of each shareholder must be a country that does not deny similar or like privileges to U.S. citizens. 30 U.S.C. § 181 (Such countries are referred to as 'non-reciprocal countries'). Disclosure of foreign ownership is not required unless it meets the 10% threshold. 43 C.F.R. § 3502.30(b). Therefore, even foreign stockholders from non-reciprocal countries may own less than 10%.

Foreign investments are subject to US national security laws. The Committee on Foreign Investment in the US, for example, is an inter-agency committee chaired by the Secretary of the Treasury that has authority to review foreign investments to protect national security and make recommendations to the President to block the same. 50 U.S.C. § 4565. The President may exercise this authority if the President finds that the foreign interest might take action impairing national security and other provisions of the law do not provide the President with appropriate authority to act to protect national security. 50 U.S.C. § 4565(d)(4).

Foreign employees are governed by general US immigration laws and are required to obtain a work visa or other authorisation. A limited number of visas are available for skilled workers, professionals and non-skilled workers, but these workers must be performing work for which qualified US workers are not available. 8 U.S.C. § 1153(b)(3)(C).

3.3 Are there any change of control restrictions applicable?

The GML does not contain change of control restrictions.

3.4 Are there requirements for ownership by indigenous persons or entities?

The GML does not contain requirements for ownership by indigenous persons or entities. See the response to question 9.1.

3.5 Does the State have free carry rights or options to acquire shareholdings?

There are no carry rights or shareholding options under federal law, although production royalties are usually required on leasable minerals.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are no specific provisions relating to processing, refining or beneficiating mined minerals in US law except for general environmental laws.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are no restrictions or limitations on the sale, import, or export of extracted or processed minerals, unless deemed a national security risk by the US Department of Homeland Security or State Department. Limitations on the export of crude oil from the US have recently been relaxed.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

No, except that the transferee must be qualified to hold the interest. See the response to question 3.2.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes, locatable and leasable minerals on federal lands can be used as security, subject to the underlying mineral ownership rights of the Government. Leasehold rights in state and privately owned minerals can also be used as security, subject to any restrictions in the lease.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Under the GML, reconnaissance activities which do not cause surface disturbance can generally be conducted on any lands open for mining, and exploration and mining can occur after locating an unpatented mining claim. Unpatented mining claims provide the locator exclusive possessory surface and mineral interests. Ownership of state-land minerals is controlled by state law and varies by state. State laws generally are similar to federal laws in that title remains with the state until the minerals are severed pursuant to statutory procedures.

However, land ownership in the US can be severed into surface and subsurface estates, creating a split estate where the surface and mineral rights can be held by different parties. The ability to sever the unified estate depends on land ownership.

Federal land mineral interests are regulated by federal law and title cannot be generally transferred to private citizens until the minerals have been severed. Under the GML, locatable mineral claims may be patented, transferring the title to the locator, but there has been a patent moratorium in place since 1994.

Severance of private land estates is governed by state law, and generally, private citizens are free to split their surface and mineral estates. Once the mineral estate is severed and enters the private market, the title to the minerals can be bought, sold, leased or rented as a matter of contract and real property law, subject to reservations in the severance document and applicable laws. The federal Government, particularly in the western US, may have reserved the mineral estate to itself when it transferred ownership of the surface lands to private citizens or state Governments, which could affect the surface owners' ability to alienate the minerals.

In some areas, it is common to have different minerals leased to different parties.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, such rights may be held in undivided shares and this is a common practice.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Generally, the holder of a mining claim or lease for a primary mineral is entitled to extract from a claim/lease those 'associated minerals' or secondary minerals which may be economically recovered along with the primary mineral(s).

Particular leasable minerals and minerals on state or privately owned land are made available depending on the terms of the lease.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Generally, the holder of a mining claim or lease may exercise rights over residue deposits on the land concerned. However, certain residue deposits may be subject to ownership by another party and may not be contemplated by a mining lease.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes. There are special federal and state rules relating to offshore exploration and mining, depending on whether exploration and mining are taking place in state-owned or federal waters. Generally, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, *et seq*., provides the US Bureau of Ocean Energy Management ("**BOEM**") and related agencies with the authority to manage minerals on the US outer continental shelf. Minerals may be offered for lease by the BOEM in accordance with federal regulations at 30 C.F.R. Parts 580–582.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

See the responses to questions 1.3, 2.1 and 6.1. FLPMA governs federal land use, including access to, and exercise of, GML rights on lands administered by the BLM and the USFS. FLPMA recognises 'the Nation's need for domestic sources of minerals', and provides that FLPMA shall not impair GML rights, including, but not limited to, rights of ingress and egress. However, FLPMA also provides that mining authorisations must not 'result in unnecessary or undue degradation of public lands'. BLM and USFS have promulgated extensive FLPMA mining regulations.

Not all federal lands are open to mineral entry, including national parks, national monuments, most Reclamation Act project areas, military reservations, wilderness areas, and wild and scenic river corridors.

Upon making a discovery of valuable minerals, the locator of a federal mining claim receives the 'exclusive right of possession and enjoyment' of all 'veins, lodes, and ledges throughout their entire depth' which have apexes within the mining claim. The locator also receives the exclusive right to possess all surface areas within the claim for mining purposes, but the United States retains the right to manage the surface of the property for other purposes. A locator's possessory rights are considered vested property rights in real property with full attributes and benefits of ownership exercisable against third parties, and these rights may be sold, transferred and mortgaged.

In most states, the owner of the mineral estate on private land has the right to use so much of the surface as is reasonably necessary to exploit the mineral estate, but such rights are usually qualified and limited in various ways.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Federal mining laws do not require community engagement or corporate responsibility. Those projects that require NEPA review, however, will be subject to public notice and comment requirements and the review will involve consideration of the project's cultural, societal and economic impacts. State laws may impose a 'public interest' standard for projects requiring state approval. For example, mining operations that require state water rights may need to show that the use of the water is in the 'public interest', which may include consideration of wildlife, fisheries and aquatic habitat values.

The law governing split estates generally requires both the mineral estate owner and the surface estate owner to proceed with 'due regard' for the other, and to 'accommodate' the use of the other. The holder of mining rights is entitled to use as much of the surface and subsurface as is 'reasonably necessary' to exploit its interest in the minerals, but this entitlement must be balanced against the surface owner's right to use his property. Federal and state legislation has granted additional protections to surface owners.

7.3 What rights of expropriation exist?

There is little risk of expropriation of mining operations by Government seizure or political unrest. Rights may only be expropriated following due process and payment of due compensation to the holder.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

NEPA is the principal environmental law implicated by mining on federal lands. NEPA requires federal agencies to take a 'hard look' at the environmental consequences of its projects before action is taken. An agency must prepare an EIS for all major federal actions significantly affecting the quality of the human environment. An agency may first prepare an EA to determine whether the effects are significant. If the effects are significant, the agency must prepare the more comprehensive EIS. If the effects are insignificant, the agency generally will issue a finding of no significant impact, ending the process. NEPA does not dictate a substantive outcome, however, the analysis generally requires consideration of other substantive environmental statutes and regulations, including the Clean Air Act, 42 U.S.C. §§ 7401-7671q, the Clean Water Act, 33 U.S.C. §§ 1251-1388, and the Endangered Species Act, 16 U.S.C. §§ 1531-1544. NEPA is administered by the federal agency making the decision that may significantly affect the environment.

Mining projects on federal lands, or that otherwise have a federal nexus, will likely have to go through some level of NEPA environmental review. State laws may also require environmental analysis. Where analysis is required by different agencies, it may be possible to pursue an agreement among the agencies to allow the operator to produce one comprehensive environmental review document that all agencies can rely on.

There is no statutory deadline for federal agencies to complete their NEPA review. Small mine project reviews may take in excess of a year to complete. Larger project reviews likely will take longer. Third parties may sue the federal agency completing the review to ensure that the agency considered all relevant factors and had a rational basis for the decisions made based on the facts found. Prosecuting the litigation would extend the project approval time, and if the agency loses, additional time would be required for the agency to redo its flawed NEPA analysis. In some instances where mines were proposed in especially sensitive areas, it has taken decades to obtain approval.

The Clean Air Act regulates air emissions from stationary and mobile sources. The Clean Air Act is administered by the Environmental Protection Agency and states with delegated authority. The Clean Water Act regulates pollutant discharges into the 'waters of the US, including the territorial seas'. 33 U.S.C. § 1311(a). The Clean Water Act is administered by the Environmental Protection Agency, US Army Corps of Engineers, and states with delegated authority. The Endangered Species Act requires federal agencies to ensure their actions are not likely to jeopardise the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat and prohibits the unauthorised taking of such species. The US Fish and Wildlife Service and National Marine Fisheries Service administer the Endangered Species Act.

On January 11, 2017, the US Environmental Protection Agency ("**EPA**") issued a proposed rule establishing financial responsibility requirements for the hardrock mining industry to address environmental liabilities. However, the fiscal year 2018 budget for the EPA prohibits the use of funds to implement this rule.

State laws may also include closure and reclamation requirements, including, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects often can address both federal and state requirements through a single closure and reclamation plan and financial guarantee.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

FLPMA requires BLM and USFS to prevent 'unnecessary or undue degradation' of public lands. 43 U.S.C. § 1732(b). Casual use hardrock mining operations on BLM lands that will result in no, or negligible, surface disturbance do not require any reclamation planning. Notice-level exploration operations requiring less than five acres of surface disturbance must meet BLM reclamation standards and provide financial guarantees that the reclamation will occur. 43 C.F.R. §§ 3809.320, 3809.500(b). Plan-level operations require a plan of operations that includes a detailed reclamation plan. 43 C.F.R. §§ 3809.11, 3809.401. BLM reclamation standards include saving topsoil for reshaping disturbed areas, erosion and water control measures, toxic materials measures, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat. 43 C.F.R. § 3809.420. Mining in BLM wilderness study areas additionally requires surface disturbances be 'reclaimed to the point of being substantially unnoticeable in the area as a whole'. 43 C.F.R. § 3802.0-5(d).

Mining activities on National Forest lands must be conducted 'so as to minimise adverse environmental impacts on National Forest System surface resources'. 36 C.F.R. § 228.1. Operators must take measures that will 'prevent or control on-site and off-site damage to the environment and forest surface resources', including erosion control, water run-off control, toxic materials control, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat. 36 C.F.R. § 228.8(g). State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects can often address both federal and state requirements through a single closure and reclamation plan and financial guarantee.

Federal and state laws generally require financial guarantees prior to commencing operations to cover closure and reclamation costs. These reclamation bonds ensure that the regulatory authorities will have sufficient funds to reclaim the mine site if the permittee fails to complete the reclamation plan approved in the permit.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

See the response to question 8.2.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Individual counties and municipalities may impose certain zoning

requirements on lands subject to their jurisdiction; however, zoning requirements are less likely to apply where mining operations are located away from residential areas.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The US contains numerous reservations comprised of federal lands set aside by treaty or an administrative directive for specific Native American tribes or Alaska Natives. Tribal reservation titles are generally held by the US in trust for the tribes, and the US Bureau of Indian Affairs administers the reservations. Alaska Native lands are owned and administered by Alaska Native corporations. Mineral development within the tribal reservations and Alaska Native lands requires negotiation with the appropriate administrator.

Tribal cultural interests are considered through NEPA and two specific laws. The National Historic Preservation Act ("**NHPA**"), 54 U.S.C. § 300101, *et seq*., requires an analysis that includes social and cultural impacts, and may require tribal consultation. Section 106 of NHPA requires federal agencies to inventorise historic properties on federal lands and lands subject to federal permitting, and to consult with interested parties and the State Historic Preservation Office. 54 U.S.C. § 306108. The Native Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013, imposes procedural requirements that apply to inadvertent discovery and intentional excavation of tribal graves and cultural items on federal or tribal lands. Locatable minerals found on American Indian reservations are subject to lease only. Under the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108, tribes may enter private negotiations with mineral developers for the exploration and extraction, subject to the Interior Secretary's approval.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Federal Mine Safety and Health Act, 30 U.S.C. § 801-966, requires the Mine Safety and Health Administration ("**MSHA**") to inspect all mines each year to ensure safe and healthy work environments. 30 U.S.C. § 813. MSHA is prohibited from giving advance notice of an inspection, and may enter mine property without a warrant. 30 U.S.C. § 813. MSHA regulations set out detailed safety and health standards for preventing hazardous and unhealthy conditions, including measures addressing fire prevention, air quality, explosives, aerial tramways, electricity use, personal protection, illumination and others. *See*, e.g. 30 C.F.R. Part 56 (safety and health standards for surface metal and non¬metal mines). MSHA regulations also establish requirements for: testing; evaluating and approving mining products; miner and rescue team training programmes; and notification of accidents, injuries, and illnesses at the mine. 30 C.F.R. §§ 5.10-36.50, 46.1-49.60, 50.10.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

See the response to question 10.1.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. Both the BLM and individual counties maintain records concerning title to surface and mineral interests in federal lands. State agencies typically maintain records for state-owned minerals. Documents affecting a title to private minerals are typically recorded in the county records of the county in which the lands are located.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes. Appeals may be made to administrative tribunals and to the judicial system.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The US Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting state and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, state, and local statutes and administrative regulations.

12.2 Are there any State investment treaties which are applicable?

Many international treaties of general application apply to mining industry investment by foreign persons into the United States, but none specifically address investment in the mining industry or trading in various minerals. See the response to question 14.2.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are no federal taxes specific to minerals extraction. General federal, state, county and municipal taxes apply to mining companies, including income taxes, payroll taxes, sales taxes, property taxes and use taxes.

Federal tax laws generally do not distinguish between domestic and foreign mining operators. However, if a non-US citizen acquires real property, the buyer must deposit 10% of the sale's price in cash with the US Internal Revenue Service as insurance against the seller's income tax liability. The cash requirement can be problematic for a cash-strapped buyer that may have purchased the mine property with stock.

There are no federal tax advantages or incentives specific to mining. There are no federal duties on minerals extraction.

Taxation schemes in individual states vary widely.

Locatable minerals claimants must pay an annual maintenance fee of $155 per claim *in lieu* of performing assessment work required pursuant to GML and FLPMA. 43 C.F.R. §§ 3834.11(a), 3830.21. Failure to perform assessment work or pay a maintenance fee will open the claim to relocation by a rival claimant as if no location had been made. 43 C.F.R. § 3836.15. Certain waivers and deferments apply.

Leasable minerals permittees and lessees must pay annual rent based on acreage. The rental rates differ by mineral and some rates increase over time. 43 C.F.R. § 3504.15. Prospecting permits automatically terminate if rent is not paid on time; the BLM will notify late lessees that they have 30 days to pay. 43 C.F.R. § 3504.17.

13.2 Are there royalties payable to the State over and above any taxes?

There are generally no royalties levied on the extraction of federally owned locatable minerals. Production royalties are generally required on fuel minerals and other minerals governed by the Mineral Leasing Act. Many states charge royalties on mineral operations on state-owned lands and taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. These functional royalties can differ depending on land ownership and the minerals extracted.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

As noted above, state and local governments having concurrent or independent authority over certain aspects of mining projects (e.g. permitting, water rights and access authorisations). Ownership of state-owned land and minerals is controlled by state law and varies by state. State laws generally are similar to federal laws in that a title remains with the state until the minerals are severed pursuant to statutory procedures.

State and local laws may impose a 'public interest' standard for projects requiring state approval. State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Many state laws require financial guarantees prior to commencing operations to cover closure and reclamation costs. In addition, some states charge royalties on mineral operations on state-owned lands and impose taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

The North American Free Trade Agreement ("**NAFTA**") among the US, Canada and Mexico, in Chapter 11, requires equal treatment between the NAFTA country's own citizens and those from another NAFTA country, and requires that the NAFTA country protect those investors and their investments. Among the most important protections are the broad prohibitions on 'expropriation' of the investor's rights, including a prohibition on the NAFTA country implementing measures 'tantamount to expropriation' except in accordance with approved criteria, and requiring payment of compensation resulting from losses incurred by the investor. In August 2017, trade representatives from the US, Mexico and Canada conducted the first round of talks to renegotiate certain elements of NAFTA. Rules of origin issues and NAFTA's dispute resolution mechanism are some of the key issues facing the negotiators.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Under the GML, rights in unpatented mining claims can be abandoned by non-payment of annual maintenance fees. Minerals leased under federal law (energy minerals such as coal), minerals owned by states, and minerals owned by private entities can only be abandoned in accordance with the terms of the lease or other grant from the mineral owner to the holder of the right to develop the minerals.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Under the GML, there is no obligation to relinquish an exploration or mining right after a certain period of time. The terms of federal mineral leases, state mineral leases or private leases may contain such provisions.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes. Under the GML, unpatented mining claims may be cancelled for failure to pay annual maintenance fees, or, in some instances, the federal government can challenge the validity of unpatented mining claims for failure to make a valid discovery of a valuable mineral. The terms of federal, state and private leases often contain default provisions allowing cancellation upon failure to comply with conditions of the lease.

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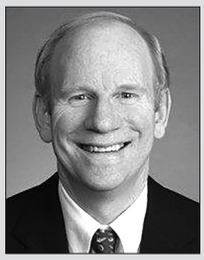

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