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REPORT OF THE
NATIONAL PETROLEUM COUNCIL'S COMMITTEE
ON
FEDERAL LANDS OIL AND GAS POLICY

DECEMBER 3, 1953

CHAIRMAN OF THE COMMITTEE: A. C. Mattei

HEADQUARTERS OFFICE

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December 2, 1953

Mr. Walter S. Hallanan
Chairman, National Petroleum Council
1625 K Street, N. W.
Washington 6, D. C.

Dear Mr. Hallanan:

Pursuant to the request made to you by Secretary of the Interior Douglas McKay under date of September 25, 1953, on September 29, 1953 the National Petroleum Council authorized the appointment of the Committee on Federal Lands Oil and Gas Policy, with the undersigned as Chairman, to study and report on the problem of conflicts between the United States mining laws and the Mineral Leasing Act.

The Subcommittee, which I in turn appointed to consider this problem, has made its report under date of November 16, 1953. The report of the Subcommittee was today approved and adopted as the recommendation of the Committee on Federal Lands Oil and Gas Policy, and is herewith submitted for consideration by the National Petroleum Council.

Very truly yours,

/S/ A. C. Mattei

A. C. Mattei, Chairman
Committee on Federal Lands
Oil and Gas Policy

COMMITTEE ON FEDERAL LANDS OIL AND GAS POLICY

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NATIONAL PETROLEUM COUNCIL
REPORT OF SUBCOMMITTEE
OF THE COMMITTEE ON FEDERAL LANDS OIL
AND GAS POLICY WITH RESPECT TO CONFLICTS
BETWEEN THE UNITED STATES MINING LAWS
AND THE MINERAL LEASING ACT

Los Angeles, California
November 16, 1953

MR. A. C. MATTEI, CHAIRMAN
National Petroleum Council Committee
on Federal Lands Oil and Gas Policy
215 Market Street
San Francisco 5, California

Dear Mr. Mattei:

By your letter of October 8, 1953 you appointed the undersigned a subcommittee to study and report on the problem of conflicts between the United States mining laws and the Mineral Leasing Act, pursuant to the request made by Secretary of the Interior Douglas McKay to Mr. Walter S. Hallanan, Chairman of the National Petroleum Council, under date of September 25, 1953. Your subcommittee has endeavored to give careful study to this matter, and submits the following report:

I. Scope of the Present Report.

In his letter of September 25, 1953 to Mr. Hallanan, Secretary McKay has requested such advice and recommendations as the National Petroleum Council deems appropriate for reconciling the best interests of the oil and gas industry and the mining industry, and the United States. Accordingly, your subcommittee has confined its affirmative recommendations to those conflicts between the mining laws and the Mineral

Leasing Act which fall within this field. We have not extended our recommendations to the revision and improvement of the mining laws as such, a subject which has been given considerable study by Congress.

II. The Laws Involved.

For the purposes of this report, the laws under consideration are:

> The United States mining laws--the Act of May 10, 1872 as amended (30 U.S.C.A. Secs. 22, et seq.) under which metalliferous and other mineral deposits and the public lands containing them may be located, possessed, worked and owned by the locator;
>
> The Mineral Leasing Act--the Act of February 25, 1920 as amended (30 U.S.C.A. Secs. 181, et seq.), under which public lands containing deposits of oil and gas, oil shale, coal, phosphate, sodium and potassium may be held under lease, or in some cases under prospecting permit, for a specified term, for the purpose of exploring for, discovering and producing such deposits.

(To avoid unnecessary repetition, for illustrative purposes reference to the minerals covered by the Mineral Leasing Act will generally be confined to oil and gas, except where the context requires otherwise.)

III. The General Problem.

In certain very definite respects the mining laws in their operation and application obstruct the development of the public lands for oil and gas and the other non-metallic minerals enumerated in the Mineral Leasing Act. Likewise,

the Mineral Leasing Act operates to obstruct development of metalliferous and other minerals under the mining laws.

The problem, therefore, is to appropriately amend and reconcile those features of the two systems of laws which create this situation, so as to permit the fullest practicable development of the mineral resources of the public lands under both systems.

One legislative step in this direction was recently taken by the 83rd Congress, which came to the aid of the mining industry as to its side of the problem by enacting S. 1397 (Public Law 250), approved August 12, 1953. This legislation was prompted by the predicament of a number of mining claimants seeking to develop uranium and other fissionable source materials, who found their claims to be invalid by reason of having been located on lands which were subject to government oil and gas leases or applications, or were known to be valuable for oil and gas. The act provides a procedure by which such claims, if located during the period August 1, 1939 through December 31, 1952, may be validated, the government, however, reserving all rights in the oil and gas and other Mineral Leasing Act minerals, so that the lands may also be leased for their development under the Mineral Leasing Act.

The situation which led to this 1953 legislation furnished a concrete example of the collision which occurs between the

mining laws and the Mineral Leasing Act where both seek to reach the same land (on this occasion obstructing mineral development under the mining laws), and demonstrated the need for permitting multiple mineral development of the public lands under both the Mineral Leasing Act and the mining laws. The need for multiple development has been demonstrated on many occasions when the collision between the two systems has obstructed oil and gas development under the Mineral Leasing Act.

The underlying reason for the collision between the two systems is, of course, that the Mineral Leasing Act did not, as intended by its Section 37, entirely remove oil and gas and the other specified non-metallic minerals from the future operation of the mining laws and place them exclusively under the leasing system. This resulted from the failure to implement the new leasing system by similarly amending the mining laws to expressly exclude and reserve oil and gas, etc. from future mining claims and their ensuing patents. Had this been done, the uranium mining industry would not have been confronted with the problem which led to the adoption of Public Law 250, nor would mining claims located after the passage of the Mineral Leasing Act have presented any title problem to the oil industry.

The Mineral Leasing Act only partially cut off oil and gas from future acquisition under the mining laws, i.e., to the extent that mining locations could not be validly made by

virtue of the discovery of oil or gas, nor on lands then subject to an oil and gas lease or application, or known to be valuable for oil or gas. With these exceptions, a mining claimant still gets full, royalty-free title to the oil and gas as a part of his eventual outright ownership of the land.

IV. How the Mining Laws Operate to Obstruct Oil and Gas Development.

A. Unpatented Mining Claims.

Mining claims which have gone to patent create no unusual problem, since the full ownership of the land and minerals, including the oil and gas, has passed to the mining claimant. We are here primarily concerned with still unpatented mining claims, whether located before or since the adoption of the 1920 Mineral Leasing Act. For present purposes no distinction is necessary as between lode or vein claims and placer claims, since both preclude the issuance of an oil and gas lease on the land.

The following are some of the particulars in which unpatented mining claims obstruct oil and gas development of the public lands or, for that matter, any mineral or other development or utilization of the lands by anyone other than the mining claimant himself:

1. Their Unlimited Duration and Ease of Perpetuation.

Upon recording his location notice, supported by discovery of a valuable mineral deposit--which

may consist of no more than rock, gravel, sand, clay, pumice or similar substances--the mining claimant becomes entitled to immediate and exclusive possession of the land, with the exclusive right to obtain outright title to the land (subject to certain qualifications not here involved) by patent from the government. The claimant and his heirs and successors may maintain these rights indefinitely, since there is no obligation to ever apply for a patent and no rights are lost by failing to do so.

To maintain these exclusive rights and keep all others from legally using the land, the claimant need not actually occupy and work the land, beyond performing labor or making "improvements" in the modest amount of $100 each year, an obligation which Congress has excused in 14 of the years during the 1932-1950 period. Furthermore, the claimant loses no rights by failing to do this annual work beyond exposing his claim to a new location by some other locator, should this happen before the claimant resumes work on the claim.

The claimant is required by law to record an affidavit of his annual labor or improvements,

but he loses no rights in his claim by failing to do so. If he has recorded his affidavit (whether or not the work was actually or fully performed), anyone asserting nonperformance of the work must prove that it was not done.

2. Their Substantial Immunity from Forfeiture or Termination.

The government cannot forfeit or terminate a mining claim for failure to do the annual labor or improvement work, unless this question comes into issue when the claimant applies to the government for a patent.

In general, the only grounds on which the government can act to cancel a mining claim are for lack of the initial discovery prerequisite to the location of the claim, fraud or other defect, or that the claimant has abandoned the claim. Ordinarily, however, unless these issues are raised by a third party, such as an adverse mining claimant, they do not come before the government until, if ever, the claimant or then owner of the claim applies for a patent.

If the mining claim is an old one (and many of them date back prior to 1900), the difficulties in the way of an adverse claimant furnishing con-

vincing proof of nondiscovery are obvious. Equal, if not greater, difficulties are present in any attempt to prove that the claim was abandoned. This is primarily a question of whether the claimant intended to abandon it, and the evidence of the intention must be clear. The Secretary of the Interior has ruled: "Lapse of time, absence from the ground, or failure to work it for any definite period, unaccompanied by other circumstances, are not evidence of abandonment."

3. The Difficulty of Determining Their Existence, Location, Extent and Validity.

The mining claim comes into being and can be perpetuated as an unpatented claim (for however many years) without any participation or knowledge on the part of the Federal government, since the claimant is required to record his location notice and annual work or improvement affidavits only in the office of the County Recorder or Mining District under State laws. He is under no obligation, nor is there any procedure set up, to notify the Federal government of the location, existence or status of the mining claim unless and until he applies to the Interior Department for a patent. Thus, the Interior Department, having no record of outstanding unpatented

mining claims, may, and sometimes does, issue oil and gas leases which turn out to be invalid because the land was subject to an unpatented mining claim which did not appear on the Department's records.

A prospective oil and gas operator will, of course, examine the local County records for indications of outstanding mining claims on the land. However, many difficulties are found to be present here. Irregularities and informality in entering and indexing, and even in maintaining the instruments in an accessible public place, may result in an outstanding mining claim escaping detection. Furthermore, a mining location may be made by reference to natural objects or permanent monuments, which seldom permits identification of the land with respect to the public lands surveys, so that precise location and extent of the claim is often difficult, if not impossible, to determine.

Even when the local records disclose the existence and adequately show the location of the mining claim, they will disclose nothing from which the present validity of the claim may be determined. At the most they will contain statements that the initial discovery was made and that the annual labor or im-

provement work was done. To endeavor to determine the facts, the prospective oil and gas operator must conduct an extensive and costly inspection of the land itself, often necessitating geological investigation, and locate and make inquiries of any persons who might have knowledge of the facts. If the claim is old, all visible evidence of work may well have been obliterated, so that the absence of visible evidence cannot in itself be relied upon as establishing that the claim was not validly located or has not been properly maintained. Furthermore, it may be impossible to locate the parties who might have knowledge of the facts, and frequently they will have been long deceased.

If all investigations indicate that the mining claim might still be valid, the heirs or other present owner of the claim will have to be located, if possible, and dealt with, i.e., "bought out," and at nuisance value prices, even though the land is unused. If the investigations indicate that the claim may be reasonably demonstrated to be invalid, a calculated risk must be taken as between "buying out" the claim if the present owner can be located, or, on the other hand, disregarding the claim in reliance upon being able to defeat it should it ever be asserted.

4. Their Interference with Lease Blocking and Unitization.

An area of public lands interspersed with mining claims presents a practical obstacle to blocking out a sufficiently large acreage to justify drilling, since, instead of dealing with just one landowner--the United States--the operator would also have to deal with each of the mining claimants and, again, at nuisance value prices, even though the claimants were making no use of the land. The presence of mining claims in the area would present a similar obstacle to its unitization.

These features of the mining laws and the burden, expense, delay, title uncertainties and title risks which unpatented and inactive mining claims impose upon the oil industry, the extreme difficulty and often impossibility of ascertaining the existence and status of such claims, and the lack of adequate procedures for eliminating them, if invalid, so that the land can be made available for oil and gas or other development under the Mineral Leasing Act, all operate to unnecessarily withhold the public lands from development of their oil and gas resources.

B. How the Mineral Leasing Act Operates to Obstruct Mineral Development Under the Mining Laws.

The restrictive effect of the Mineral Leasing Act on the location of claims under the mining laws can be briefly stated. Since the passage of the Mineral Leasing Act, a mining location cannot be validly made:

> By virtue of discovery of oil or gas or other Mineral Leasing Act mineral;
>
> On lands then subject to an oil and gas lease or application, or known to be valuable for oil or gas.

As noted above, Public Law 250, approved August 12, 1953, permits this difficulty to be overcome as to otherwise valid mining claims located during the period August 1, 1939 through December 31, 1952. The situation which led to this legislation was the location of mining claims on lands which the locator did not know were subject to an oil and gas lease or application, or classified as valuable for oil and gas, although examination of the records of the Bureau of Land Management would have disclosed this.

V. Recommendations.

The conditions described in this report could be remedied by the following legislative action:

1. Amend the mining laws to expressly exclude from all mining claims hereafter located and their ensuing patents, and reserve to the United States, the oil and

gas and other Mineral Leasing Act Minerals, together with adequate rights to use the land for all operations contemplated by the Mineral Leasing Act.

2. Amend the Mineral Leasing Act to provide that mining locations may hereafter be made and pursued to patent under the mining laws for any mineral now subject to location under those laws, with adequate rights to use the land for mining purposes, notwithstanding that at the time of location the lands are subject to an oil and gas lease or application, or are known to be valuable for oil or gas, subject, however, to the exclusion and reservation to the United States of all Mineral Leasing Act minerals and rights to use of the land as suggested under 1 above.

3. Implement the foregoing legislation by providing for the multiple use and development of the same tract of public land by lessees and permittees under the Mineral Leasing Act and by mining claimants and patentees under the mining laws, under appropriate regulations promulgated by the Secretary of the Interior.

4. Provide adequate and expeditious procedures under which the owner of any unpatented mining claim on land which is not being occupied and diligently worked for the development of valuable mineral deposits, may be required to establish the validity of his claim, failing which the oil and gas deposits in

the land will be wholly free of any rights or interest under or by virtue of the mining claim and shall be disposable solely pursuant to the Mineral Leasing Act, including any lease heretofore or hereafter issued pursuant to that Act.

In the opinion of your subcommittee, legislation in the fields suggested would adequately reconcile the conflicting scope and operation of the mining laws and the Mineral Leasing Act for the purposes of the oil and gas industry and the mining industry, and in the best interests of the United States, and would result in increased development of the oil and gas resources of the public lands without infringing any of the proper benefits now accorded the mining industry by the mining laws or retarding development of mineral resources under those laws.

Respectfully submitted,

SUBCOMMITTEE ON CONFLICTS BETWEEN THE UNITED STATES MINING LAWS AND THE MINERAL LEASING ACT

/S/ Robert T. Patton
Robert T. Patton, Chairman

/S/ L. L. Aitken, Jr.
L. L. Aitken, Jr.

/S/ J. M. Jessen
J. M. Jessen

/S/ Clarence E. Hinkle
Clarence E. Hinkle

/S/ Kent S. Whitford
for Wilbur W. Heard

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D.C.

September 25, 1953

My dear Mr. Hallanan:

There has developed within recent years a fundamental conflict between the general mining laws of the United States and the Mineral Leasing Act of February 25, 1920, as amended, which covers the leasing of oil, gas, coal, sodium, potash and phosphate underlying Federal lands.

Serious conflicts arise from the location of mineral claims filed under the mining laws by persons seeking to develop uranium and other fissionable materials in areas subject to oil and gas leases or applications therefor or known to be valuable for oil or gas, and from the issuance of oil and gas leases covering land included in unpatented mining claims.

The Department of the Interior has been seeking a reasonable solution to this problem.

The 83rd Congress, after holding extensive hearings during its first session, at which representatives of both mining and oil and gas interests testified, passed stop-gap legislation (Public Law 250) with the intent to investigate further in the expectation of passing permanent legislation at the next session. A sound and reasonable solution of the problem is a matter of consequence to the oil and gas industry in its operation in public land areas. It likewise is a matter of consequence to the mining industry. Inasmuch as two of the basic natural resource industries are involved, it becomes a matter of national interest.

We therefore request the National Petroleum Council promptly to make a study of this problem and to furnish such advice and make such recommendations to the Secretary of the Interior as the Council deems appropriate for reconciling the best interests of the oil and gas industries, the mining industry, and the United States.

Sincerely yours,

(Sgd.) Douglas McKay

Secretary of the Interior

Mr. Walter S. Hallanan
Chairman, National Petroleum Council
1625 K Street, N. W.
Washington, D. C.

Copy to: Mr. Walter S. Hallanan
Benedum-Trees Bldg., Pittsburgh, Penn.