



Rise Grass Valley Vested Rights Petition



Last Grass Valley Gold Mine Shuts Down

On March 15, 1957 the last cage of men was hoisted from the Brunswick Mine of the Idaho Maryland Mines Corporation, caps were put on the shaft, and the main power switch was pulled. For the first time in over 100 years no gold is being produced in the Grass Valley district. Since World War II spiraling costs have exceeded contents of the ore to such an extent that it was not feasible to continue operations. The first workings of the present Idaho Maryland Mines Corporation started in this area in 1863. It has had its ups and downs since then hitting the peak of its production in the 30's when as many as 1000 men were employed. It has a record production in excess of \$70,000,000. The company plans to retain its mineral rights and strategic surface holdings and, if possible, to diversify the company's activities.



Idaho-Maryland Mine Vested Right Petition 1

Presentation Contents



1. Process and Procedural Context
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8. Conclusion

Part 1: Process and Procedural Context

Vested Right Hearing is Not a Discretionary Approval

- Different than land use approval such as a use permit – no policy considerations.
- Evidentiary hearing where evidence is weighed by an unbiased body against applicable legal standards.



Part 1: Process and Procedural Context

Two Primary Questions to be Answered:

1. Was mining taking place on the date that the County Ordinance required a permit for mining? (i.e., creation of a vested right)
 - Legal Standard: > 50% (preponderance of evidence)
 - Burden of Proof: Petitioner



Part 1: Process and Procedural Context

2. Was vested right “abandoned” by (1) an intention to abandon the right; and (2) an overt act, or failure to act, implying that they no longer claim any interest in the vested right.
- In other words: did owner have intention and take action/omission that completely forecloses any future mining.
 - Legal Standard: Clear and Convincing Evidence
 - Burden: County



Part 1: Process and Procedural Context

Common Misconceptions about Vested Rights:

- A determination of a vested mining right does **not** exempt the operator from SMARA. (See Pub. Res. Code § 2770, subds. (a), (b).)
- A vested right does not exempt the operator from CEQA, the Clean Water Act, Clean Air Act, Endangered Species Act, or any other applicable environmental law.
- Numerous other federal, state and County permits would be required before mining could commence.



Part 2: Key Concepts and Applicable Law

- ... nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V

- Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

Cal. Const. art. I, § 19



Key Concepts and Applicable Law

- Hansen Brothers (*Hansen Bros. Enterprises v. Nevada County* (1996) 12 Cal.4th 533.) [Bear Elbow Mine]
 - 2-Factor Abandonment Test
 - Diminishing Asset Doctrine
 - Un-mined areas of a mining property are also vested, under the diminishing assets doctrine. Areas of the property that were not mined before the vesting date are also vested.
 - Entire Business Operation
 - A vested mining right is comprised of the entire business operation and may not be broken down into individual parts and activities.
 - Mining and Market Demand
 - Cessation of use alone does not constitute abandonment. Mines may slow or cease operations for years or decades due to market forces. “Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.” (*Hansen* at. p. 569.)



Part 3: Property Overview

- 175 acres of surface land and 2,560 acres of mineral estate located in unincorporated western Nevada County.
 - 119-acre Brunswick Industrial site
 - 56-acre Centennial Industrial site
 - Rise owns all the mineral rights for the mine.
- Consolidated into current configuration in 1941.



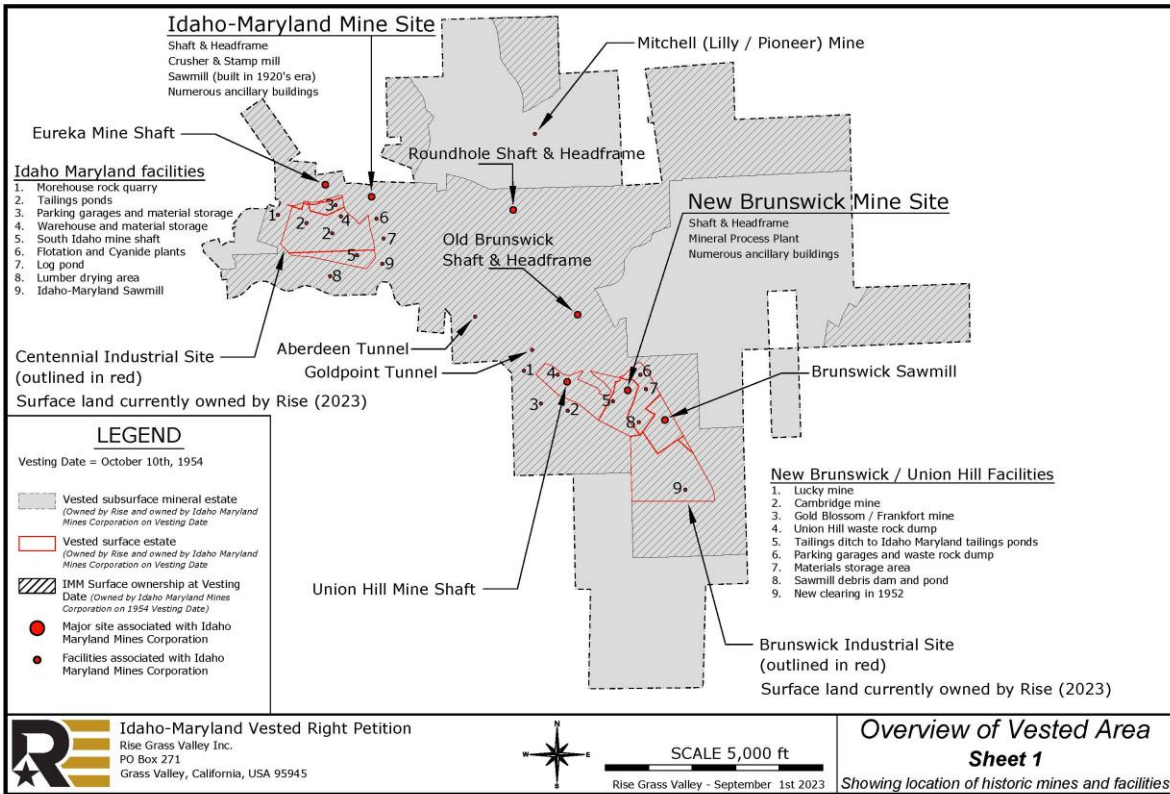
Property Overview

- **Consolidation of the Property:**

The Property is a consolidation of the following mines, properties, agricultural patents, and mineral rights:

- Eureka, Idaho, Maryland, Brunswick, Union Hill, Lucky, Cambridge, Frankfort/Gold Blossom/Oxford mines, Gold Point, Black Hawk, South Idaho, and Mitchell Ranch mines
- Loma Rica, Hooper, and Ismert ranches
- Properties purchased from California Lands Inc. / California Mountain Fruit Company, and Lawrence and Vivian Mazzanti

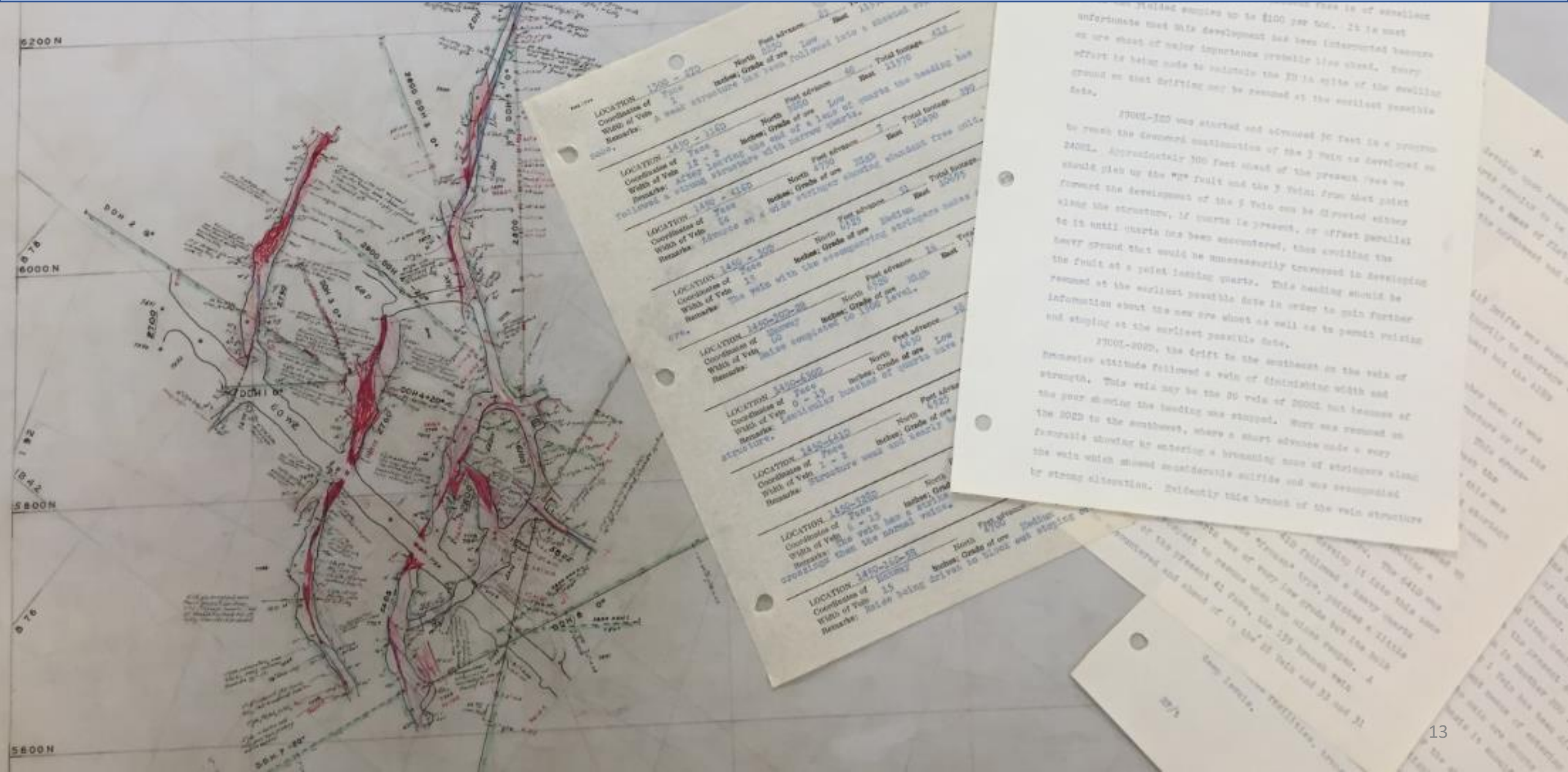
Idaho Maryland Mines Corporation purchased and consolidated the property in 1941.







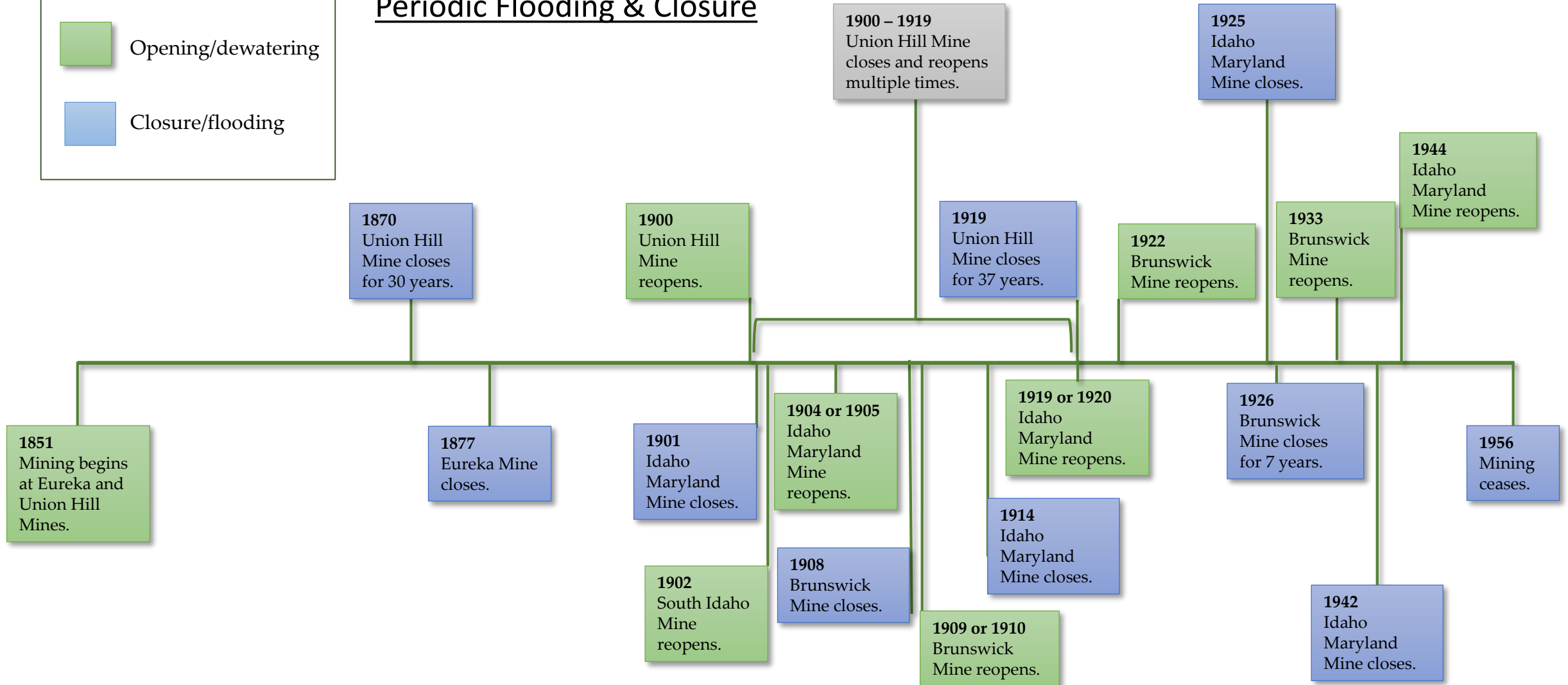
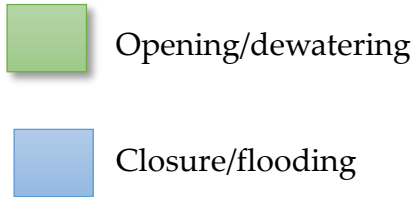
Part 4: Evidence of Mining and Vested Rights



Evidence of Mining and Vested Rights

Periodic Flooding & Closure

KEY



BRUNSWICK MINE SUSPENDS WORK

WATER FORCES MEN FROM WORK-
INGS ON PROPERTY.

(The Bee's Special Service.)

GRASS VALLEY (Nevada Co.), September 14.—The Brunswick Mine has been compelled to suspend operations at its new workings on account of a sudden inflow of water which the pumps are unable to handle. The new shaft has been sunk to a depth of 450 feet and is on a level with the bottom of the old workings, and it is thought the water is coming from the old shaft. The first indication of this was a week ago when a flow of water was encountered and pumps were installed which handled it.

Monday a greater flow was encountered and the management found it necessary to stop work and lay off the men. The company will endeavor to check the flow by pumping out the old works, but this plan will depend upon what arrangements can be made with the power company, for while there is plenty of water in the mine, there is a scarcity on the surface for power purposes. There is a possibility that the new shaft will be allowed to fill up until such time as the power company can furnish sufficient power to operate the larger pumps.

UNION HILL PUMPED FREE OF WATER AND LEDGE MATTER FIVE FEET IN THICKNESS EXPOSED.

The indications at the Union Hill mine are indeed favorable. Yesterday the work of pumping out the shaft was completed, and the people of Grass Valley will be pleased to know that Superintendent Creller found the conditions at the bottom of the shaft just as he and others who were familiar with the mine expected. The shaft is down to a depth of 333 feet and there is a drift running east eighteen feet and another going west sixty feet.

The quartz encountered is exceptionally good and gives additional

in the west drift is about three feet, and here the ore is also of a high grade.

The inability to handle the large volume of water in the shaft caused the shutting down of the Union Hill many years ago, but with modern machinery this difficulty has been eliminated. A new plunger pump will soon be put in operation, and this, with the one now in use, will enable the company to handle the water easily.

As is generally known, the output of the Union Hill up to the time it

Idaho-Maryland Mine

Again Being Operated.

GRASS VALLEY, Aug. 11.—The Idaho-Maryland mine started up at noon yesterday, the event being signalized by the blowing of whistles

Idaho-Maryland Mine Is Unwatered

GRASS VALLEY (Nevada Co.), March 26.—The 1,000-foot perpendicular shaft of the Idaho-Maryland Mine, recently taken over by the Bulkley Wells interests, has been unwatered. No drifts or tunnels lead from this shaft and the unwatering was not difficult.

At the bottom of this shaft immense drifts radiate, and further unwatering will be a heavy task. Whether or not this is to be done has not been announced.

The work of wrecking the old plant continues.

SOUTH IDAHO WILL REOPEN

San Francisco Company Behind
John E. Carter.

Company Will Incorporate Shortly—
Expects to Begin Operations in
About Thirty Days—Mine Situated
in Unusually Favorable Location.

WITHIN a short time the South Idaho mine will be reopened by Captain John E. Carter and a company with sufficient means to develop the property to the uttermost.

Mr. Carter has just returned from San Francisco, where he went to interest capitalists in the mine. He found them ready to listen to a good proposition and experienced no great amount of difficulty in placing nearly 40,000 shares of stock. It may be interesting to know that the name of Mayor E. E.

old Eureka, another of the old-time wealth producers. A shaft was sunk by the former owners to a depth of 150 feet, and a few short drifts run. A vein of very promising rock, a foot in width, was uncovered, giving a milling test of \$75 to the load. This vein parallels those of the Maryland and the Eureka, and with depth should increase in size.

It has always been maintained by miners of experience that the vein uncovered in the South Idaho furnishes every indication of becoming a first-class property, and development will no doubt confirm the belief.

It seems hardly possible that a mine in the embryo could be more favorably situated, but the question may be asked, why was work suspended on it, that being the case? Its owners, like many others, were men of insufficient means to carry on development work, and ever since it closed, much has been heard of what would come to light "if the South Idaho could be opened up."

Mr. Carter has worked hard to bring the desired end to pass, and developments will be watched with more than usual interest.

PERSONALS AND BREVITIES.

Mrs. Ed. Overmyer and 15
yesterday for Buckley, where
Mrs. Overmyer will join 1 and.

Evidence of Mining and Vested Rights Ordinance No. 196

- The County approved Ordinance No. 196 on September 10, 1954, which became effective thirty days thereafter on October 10, 1954.
- It required, for the first time, that an operator of a “commercial excavation of natural materials within a distance of 1,000 feet from any public street, road, or highway” obtain a land use permit to operate.
- Thus, October 10, 1954, represents the “vesting date.”

ORDINANCE NO. 196

AN ORDINANCE OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ADOPTING A ZONING PLAN, TO BE KNOWN AS THE NEVADA COUNTY ZONING ENABLING ORDINANCE, BEING THE LAND USE UNIT OF THE MASTER PLAN OF SAID COUNTY; SPECIFYING THE PURPOSES AND EFFECTS OF THE ADOPTION OF SAID PLAN WHEREBY VARIOUS DISTRICTS MAY BE ESTABLISHED IN SAID COUNTY; SPECIFYING THE PROCEDURE FOR THE AMENDMENT HEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ANY OF THE PROVISIONS HEREOF.

The Board of Supervisors of the County of Nevada, State of California do ordain as follows:

SECTION 1. ADOPTION OF ZONING PLAN

There is hereby adopted a zoning plan for the County of Nevada, State of California, said zoning plan being a districting plan as provided by law.

This ordinance shall be known as the "Nevada County Zoning Enabling Ordinance."

Section 2. Purpose of Adoption of Zoning Plan.

Said zoning plan is adopted to promote, protect, and secure the public health, safety, and general welfare, to provide the social and economic stability of agricultural, residential, commercial, and industrial areas, resulting in an orderly and beneficial development of the county and the areas therein.

Section 3. EFFECT AND NATURE OF ZONING PLAN.

To include all of the unincorporated area of the county of Nevada in an "A-1" district, within which district no restrictions are imposed, except as outlined in Section 7 of this ordinance.

Section 7. A-1 DISTRICT.

Within the A-1 District, any use not otherwise prohibited by law is permitted, except that for any of the uses listed below, a use permit is required:

Distillation of bones.
Junk yards.
Automobile wrecking establishments.
Dumping or other disposal of garbage, dead animals, and other refuse.
Manufacture of glue, gelatin, or other products from animal fats.
Stock yards and slaughter houses.
Foundry, forge, or metal fabricating plants.
Smelting of ores.
Saw mills.
Sale or storage of second-hand merchandise, unless entirely carried on within a building.
Commercial excavation of natural materials within a distance of 1,000 feet from any public street, road, or highway.
Storage of any inflammable fluid in a greater quantity than 2,000 gallons, if such storage is in a container the uppermost portion of which is at an elevation higher than four feet below the surface of the ground.



Section 7. A-1 DISTRICT.

Within the A-1 District, any use not otherwise prohibited by law is permitted, except that for any of the uses listed below, a use permit is required:

Distillation of bones.

Junk yards.

Automobile wrecking establishments.

Dumping or other disposal of garbage, dead animals, and other refuse.

Manufacture of glue, gelatin, or other products from animal fats.

Stock yards and slaughter houses.

Foundry, forge, or metal fabricating plants.

Smelting of ores.

Saw mills.

Sale or storage of second-hand merchandise, unless entirely carried on within a building.

Commercial excavation of natural materials within a distance of 1,000 feet from any public street, road, or highway.

Storage of any inflammable fluid in a greater quantity than 2,000 gallons, if such storage is in a container the uppermost portion of which is at an elevation higher than four feet below the surface of the ground.

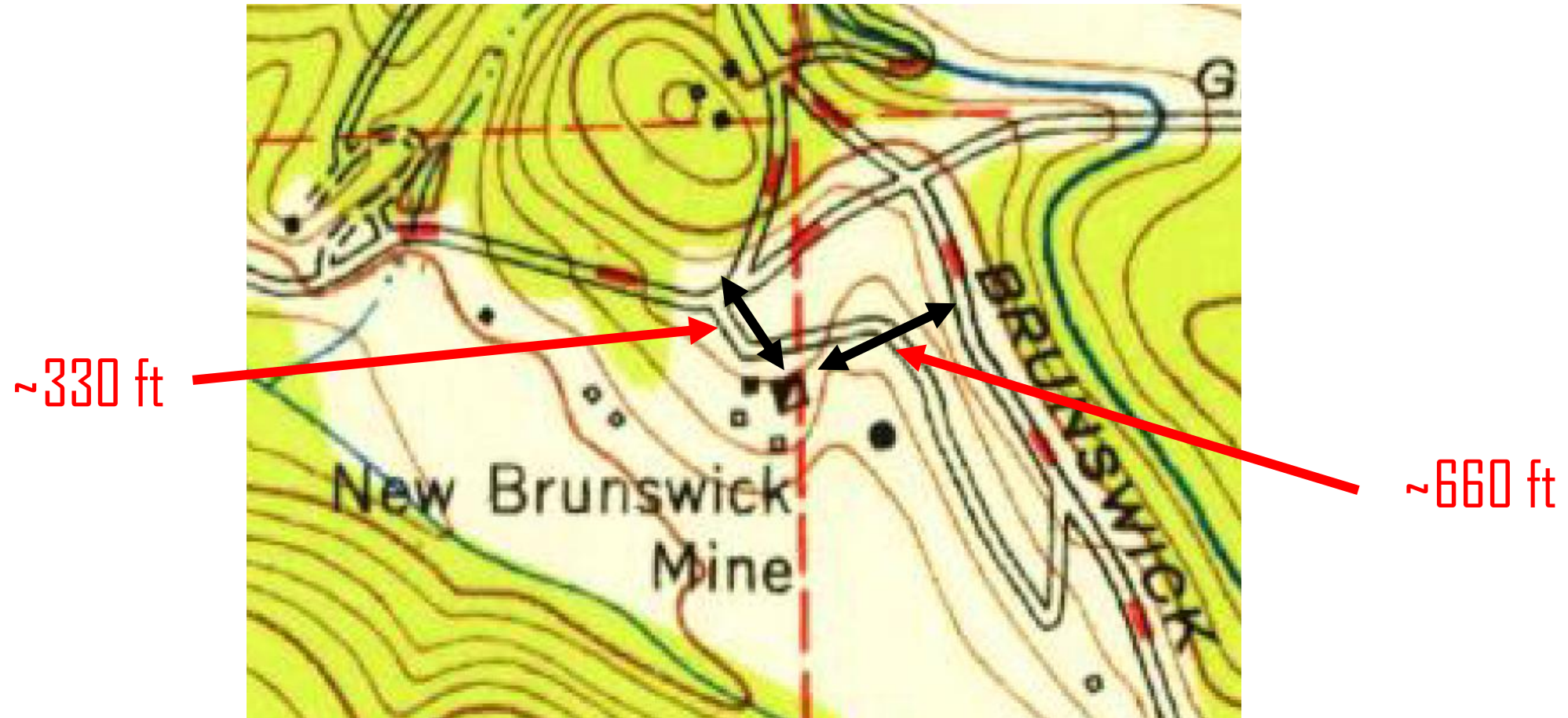
Evidence of Mining and Vested Rights Ordinance No. 196



Evidence of Mining and Vested Rights

Distance from Public Roads

Within a distance of 1000 ft

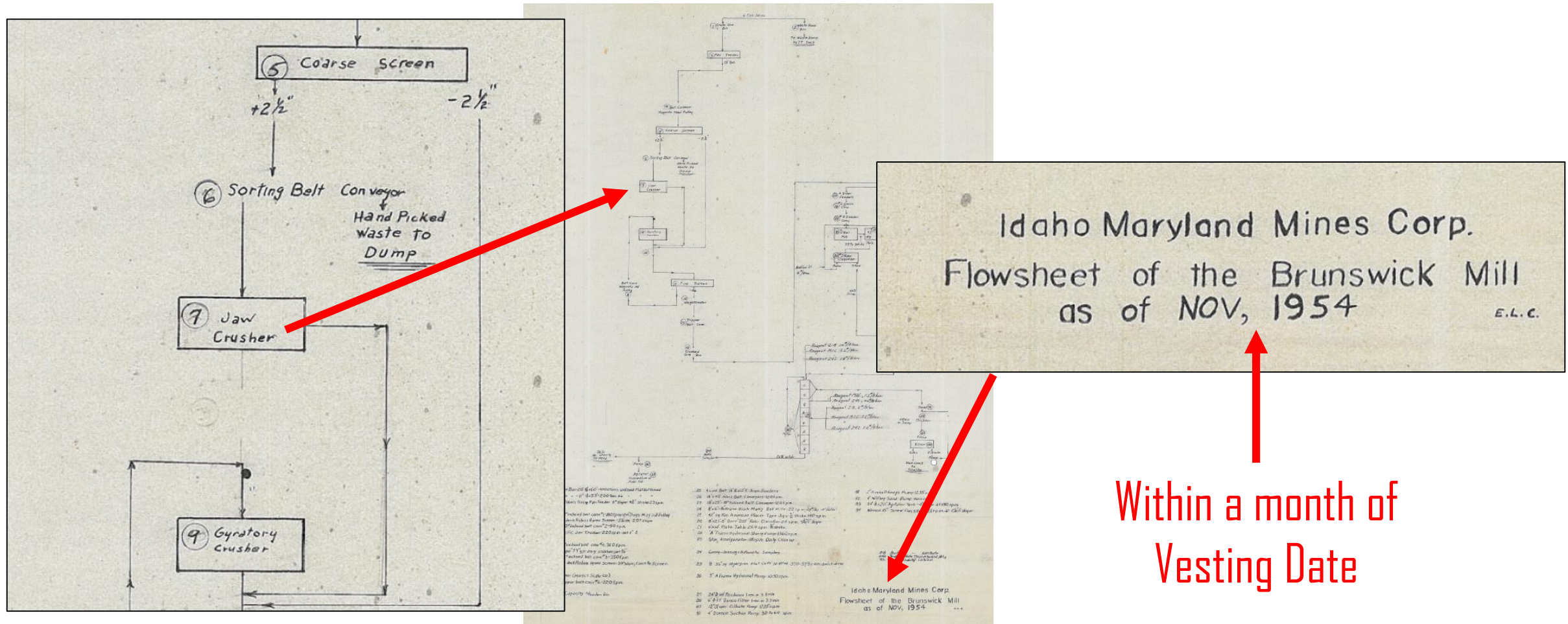


Milling Activity Near New Brunswick Shaft



Evidence of Mining and Vested Rights

New Brunswick Ore Mill



Within a month of
Vesting Date

Evidence of Mining and Vested Rights

Mine Development Reports

9 of 14 tunnels/raises in ore

October 1954

Form 194A

IDAHO MARYLAND MINES CORPORATION

Mine Development Report for OCTOBER, 1954

Brunswick UNIT

RECAPITULATION

Total advance of new development headings				639 linear feet.
Drifts	256 ft.		Crosscuts	353 ft.
Raises	30 ft.	Shafts	ft. Winzes	ft.
Total Sidings				linear feet.
Total additional rock excavation				4987 cubic feet.
Total recapture of old workings				linear feet.
Total diamond drilling				linear feet.

LOCATION 1100-45-53R Feet advance 20 Total footage 40

Coordinates of 5111 North 4065 East 10765

Width of Vein 10 inches; Grade of ore Fair

Remarks: Raise started to go through to 1000 sublevel.

LOCATION 1200-94G Feet advance 8 Total footage 8

Coordinates of Face North 5620 East 10985

Width of Vein 8 inches; Grade of ore Fair

Remarks: Crosscut started toward 31 vein

LOCATION 1300-18AD Feet advance 6 ^{803 mft} Total footage 176

Coordinates of Holed through North 6460 East 10670

Width of Vein 8 inches; Grade of ore Fair

Remarks: Holed through to old 18D, finished

LOCATION 1300-18XL Feet advance 57 Total footage 57

Coordinates of Face North 6375 East 10675

Width of Vein 8 inches; Grade of ore Fair

Remarks: Went into hanging wall of 18 vein to cut stringer zone. Stopped.

LOCATION 1300-22BD Feet advance 65 Total footage 65

Coordinates of Face North 5020 East 10325

Width of Vein 14 inches; Grade of ore Fair

Remarks: Approximately 14 inches of vein formation, well mineralized

LOCATION 1880-5XL Feet advance 81 Total footage 137

Coordinates of Hole through North 4940 East 10820

Width of Vein 8 inches; Grade of ore Fair

Remarks: Holed into old 4D, finished.

LOCATION 1300-22BD Feet advance 65 Total footage 65

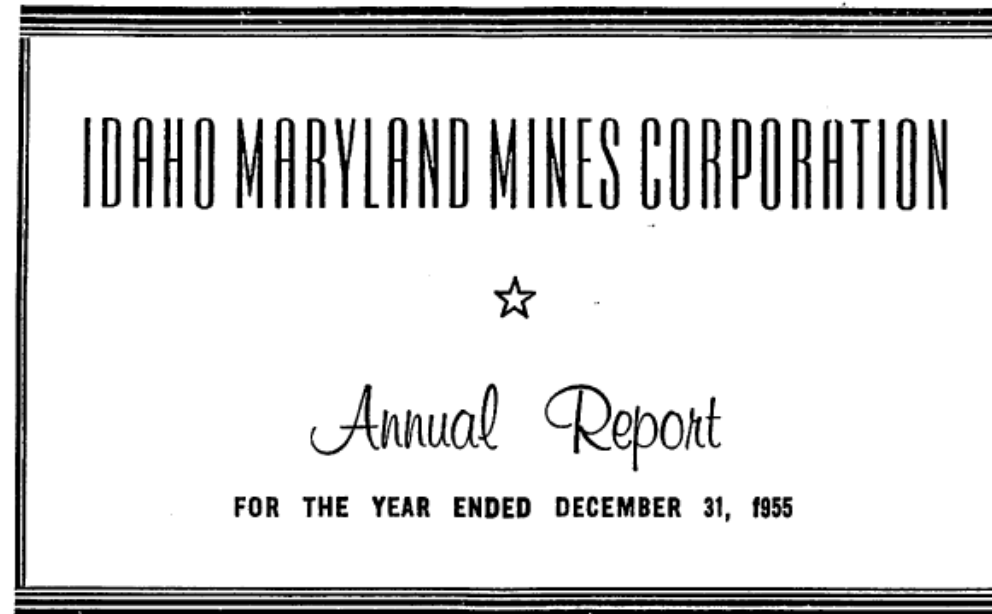
Coordinates of Face North 5020 East 10325

Width of Vein 14 inches; Grade of ore Fair

Remarks: Approximately 14 inches of vein formation, well mineralized

Evidence of Mining and Vested Rights

Gold Mining after Vesting Date



1955



Production of gold ore dropped from 88,892 tons in 1954 to 28,905 tons in 1955 and the grade of ore, which was down to the unprofitable average of \$6.64 per ton in 1954, continued downward to an average of \$6.32 per ton in 1955.

Mining and milling of gold ore was discontinued as of December 27, 1955, and all operations turned to the production of tungsten. Only a substantial increase in the price of gold would make it profitable to return to gold mining in the Grass Valley properties of the Corporation. At

COUNTY OF NEVADA
PLANNING DEPARTMENT

205 Willow Valley Road
Nevada City, California 95959
(916) 265-2461 ext. 260

February 20, 1980

TO: NEVADA COUNTY PLANNING COMMISSION

FROM: NEVADA COUNTY PLANNING DEPARTMENT

SUBJECT: Use Permit Application of North Star Rock Products Corporation for the expansion of an existing gravel harvest and processing operation and reclamation plan on the operation, located at the old Idaho Maryland Mine. U79-41.

FACTUAL DATA

The property involved in this application is a 110 acre parcel being leased by the applicant from Marion Chidotti, and it is a portion of the site formerly known as the Idaho Maryland Mine lying on the south side of Idaho Maryland Road, immediately east of the Hills Flat Interchange on the Golden Center Freeway, State Highway 20-49. The property is within the boundaries of an "M1" Light Industrial District, as is property to the south and east. Land to the north and west, inside the Grass Valley city limits, is zoned for industrial use. There is a small strip of residential uses on both sides of the street in the county, and those homes are zoned residential until such time as they are converted to industrial uses consistent with the city and county general plans for the area. The proposed county general plan revision also recommends the area for industrial use.

This use permit application involves only about 40 acres out of the 110 acres, and this 40 acres is covered with mill sand and rock left from the historic hard rock mining operation. The application and reclamation plan indicates that approximately 400,000 to 500,000 tons of rock (270,000 cubic yards) and 10,000 tons of mill sand will be removed from the site. It is intended that the site will then be restored to its original contours and reseeded where necessary to prevent erosion. The environmental information form, reclamation plan and ARC memo are attached for a complete understanding of the project which will also include a crusher and screening plant to process the waste rock and sand.

At its meeting of January 10, 1980, the Nevada County Advisory Review Committee conducted environmental review on the project. The attached ARC memo reflects the ARC recommendation that the Commission find that although this project could have a significant effect on the environment, there will not be a significant effect because of recommended mitigation measures to be attached to the project (see * in staff recommendations). Also attached is the erosion control plan which the ARC memo indicates must be submitted before the Planning Commission meeting.

It is noted that the provisions of the "M1" Light Industrial District in which the subject property is located do not allow gravel harvest...

-1-

Evidence of Mining and Vested Rights

Nevada County previously determined the right is vested

It is noted that the provisions of the "M1" Light Industrial District in which the subject property is located do not allow gravel harvest...

and processing as permitted or conditionally permitted uses. However, the property owner has indicated that mine rock has been sold and taken from the property continuously since the mine closed, and so this use permit application is for expansion of an existing, non-conforming use by the addition of a crusher and screening plant.



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Evidence of Mining and Vested Rights

Recap of Evidentiary Standard for Establishing Vested Rights

- The evidentiary standard to determine that a vested right exists is **preponderance of the evidence** – the applicant must demonstrate it is more likely than not (50%+) that a vested right has been established.
- If the Board of Supervisors determines that it is more likely than not that a vested right has been established, the Board **must** confirm the right.
- This determination is not a discretionary decision.
- Rise had provided ample evidence to meet the evidentiary standard that mining was taking place at and beyond the Vesting Date.



Evidence of Mining and Vested Rights

Next Step – Was the Vested Right Abandoned

Was vested right “abandoned” by (1) an intention to abandon the right; and (2) an overt act, or failure to act, implying that they no longer claim any interest in the vested right.

- In other words: did owner have intention and take action/omission that completely forecloses any future mining.
 - Legal Standard: Clear and Convincing Evidence
 - Burden: County



Part 5: Staff Report Errors

Summary (Slide 1 of 2)

- A. Unclear Conclusion on Vesting: Staff Report fails to make a clear conclusion, which confuses the analysis.
- B. Incorrect Legal Standard: Staff report effectively pushes burden to disprove abandonment on Applicant.
- C. Reliance on Distinguishable Precedent to Replace *Hansen Bros.* Abandonment Test.
- D. Substantial reliance on inapplicable legal treatise: Derek Cole's "Treatise:" California Surface Mining Law explicitly states that it does not apply to underground gold mines.



Part 5: Staff Report Errors

Summary (Slide 2 of 2)

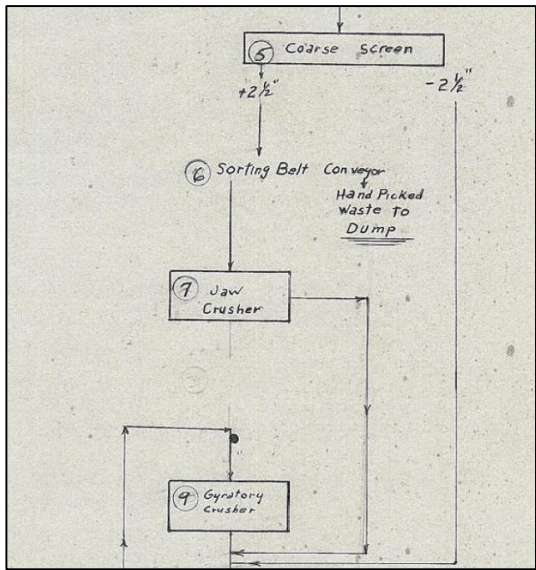
- E. Numerous Critical Factual Errors: For example, claims that minerals were not reserved on multiple properties – clearly wrong.
- F. Erroneous Legal Conclusions: County claims non-compliance with SMARA caused abandonment – clearly incorrect.
- G. Erroneous reference to use permit applications as evidence of intent, contrary to California law.
- H. Unreasonable discrediting of evidence and witnesses.
- I. Staff Report unquestioningly relies on experts with doubtful or no expertise on the provided statements and witness statements that lack credibility due to clear contradictory evidence.



Staff Report Errors:

A) Unclear Conclusion on Vesting and Abandonment

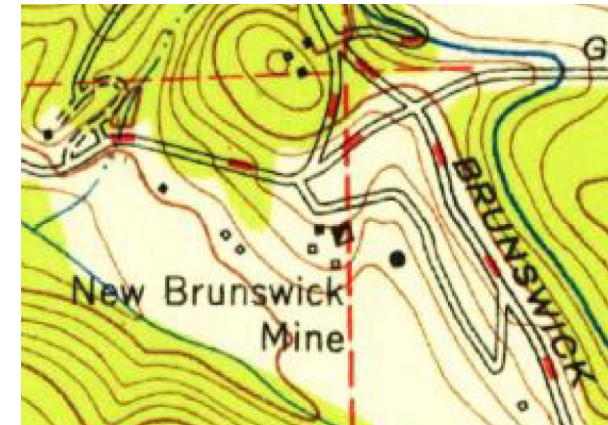
- The Staff Report fails to make a clear finding on whether a vested right existed. “However, the specifics of what activity was occurring in 1954 are unknown. The evidence provided by the Petitioner does not confirm that the activities regulated by Ordinance No. 196 actually occurring at the time the ordinance was passed, or if they occurred within one thousand (1000) feet of a public road.” (Staff Report p. 13.)



Production of gold ore dropped from 88,892 tons in 1954 to 28,905 tons in 1955 and the grade of ore, which was down to the unprofitable average of \$6.64 per ton in 1954, continued downward to an average of \$6.32 per ton in 1955.

Mining and milling of gold ore was discontinued as of December 27, 1955, and all operations turned to the production of tungsten. Only a substantial increase in the price of gold would make it profitable to return to gold mining in the Grass Valley properties of the Corporation. At

Idaho Maryland Mines Corp.
Flowsheet of the Brunswick Mill
as of NOV, 1954
E.L.C.



Staff Report Errors: B) Incorrect Legal Standard (1 of 2)

Incorrect Legal Standard: Staff report unlawfully shifts the burden to **disprove** abandonment on the Applicant.

- Burden of proving abandonment is on the County.
- The Staff Report affirmatively quotes Weideman v. Staheli: “the burden rests upon the party alleging abandonment to prove the same by satisfactory and competent evidence.” (Staff Report p. 26.)
- Staff Report admits burden, but the Staff Report’s actual analysis shifts the burden onto Rise.

Staff Report Errors: B) Incorrect Legal Standard (2 of 2)

- Staff Report: “**property owner must be able to identify evidence of their objective manifestations of intent to resume the nonconforming use throughout the period the nonconforming use was discontinued,**” Hansen Brothers “**require[s] that the intent to resume said activities be demonstrated throughout the period of cessation.**”
- “[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use.” (*Hansen Brothers*, p. 569.)
- Impact Staff Report’s Incorrect Rule: *The burden is on RISE to prove continuous intent to operate = The burden is on RISE to disprove abandonment continuously after the vesting date.*
- This test is an inversion of the abandonment test under Hansen Bros.



Staff Report Errors:

C) Reliance on Distinguishable Precedent

Reliance on Distinguishable Precedent to Replace Hansen Abandonment Standard:

- Staff Report combines *Hansen Bros.* test with First District Court of Appeals case (*Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348) regarding a bathhouse to replace *Hansen's* abandonment rule with a new rule requiring continuous disproof of abandonment by applicant.
- *Stokes* is not a Cal. Supreme Court Case, and does not involve surface or underground mining. It involved a bathhouse.
- The court in *Stokes* did not explicitly find that the right had ever vested.
- Property [a building] had been completely vacated and not used *for any purpose* for seven years, and owner voluntarily chose to close the business.
- The court in *Stokes* even distinguishes the facts in that case from *Hansen Bros.*: “[w]hile that rule [from *Hansen Bros.*] has clear application to the facts in that case, it does not assist him [*Stokes*] on the record before us.” (*Stokes*, at p. 1355.)



Staff Report Errors:

D) Reliance on Inapplicable Legal “Treatise”

- The Staff Report cites to, and relies heavily upon, Derek Cole’s book “California Surface Mining Law” for the analysis of abandonment of RISE’s vested right, spanning multiple pages of the Staff Report and influencing the entire abandonment analysis.
- “Cole’s treatise on California mining law again provides relevant guidance on this element of abandonment.” (Staff Report, p. 22.)
- The preface of the book according to the publisher’s website (Solano Press Books), includes the following statement:
 - *One final note—from the title, readers will understand that this book only covers regulation of surface mining. Underground gold mines were once commonplace in California, but few active underground operations are left today. Because such mines do not involve surface mining—the removal of materials from openings in the earth’s surface—and are not regulated by SMARA, they are not discussed in this book.*
- Also, the book states: “*But while that audience may be sizeable, the book is not a treatise.*” (https://cdn.shopify.com/s/files/1/2094/8333/files/ML_preface.pdf?15064190023776490786)



Staff Report Errors:

E) Numerous Critical Factual Errors

The Staff Report Includes Numerous Critical Factual Errors:

Staff Report's conclusions about vested rights cannot be relied upon due to misunderstanding of basic facts.

- Dozens of errors are identified in exhibit to Rise's letter transmitted on December 10, 2023, in response to 135-page County table in Staff Report.



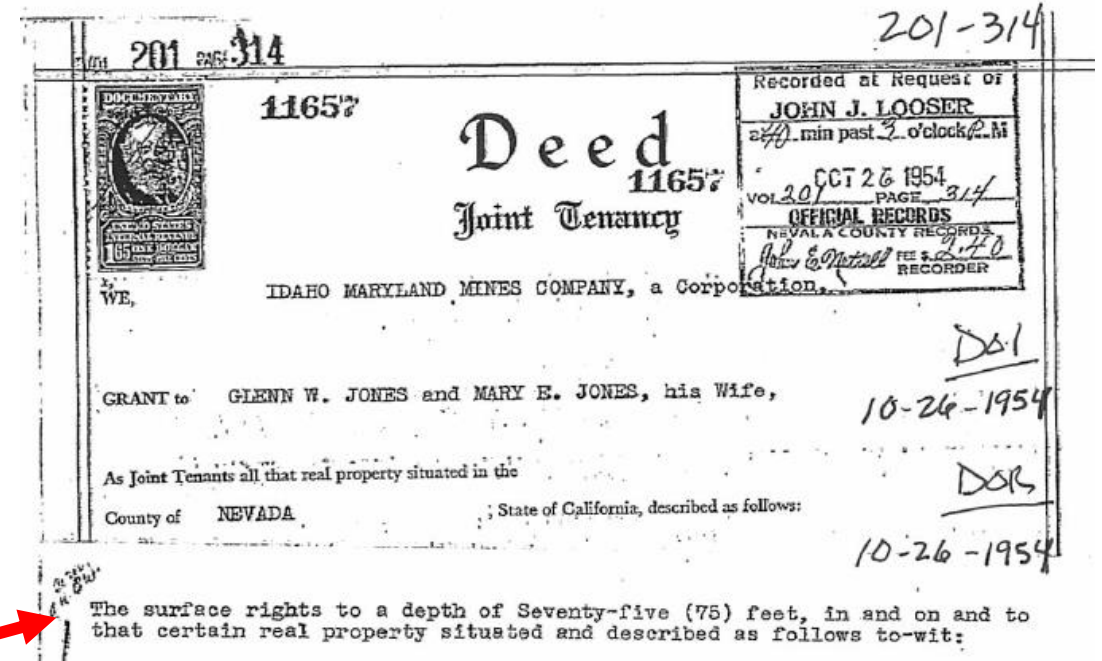
Staff Report Errors:

E) Numerous Critical Factual Errors (Example 1 of 3)

All Mineral Rights were Retained

Staff Report

It appears from the face of the Deed from Idaho Maryland Mines Corporation to Glen and Mary Jones (Oct. 1954) [Exhibit 183] that the Deed did NOT contain any “reservation of rights necessary to facilitate mining operations.”



The surface rights to a depth of Seventy-five (75) feet.

Staff Report Errors:

E) Numerous Critical Factual Errors (Example 2 of 3) 1960 Transfer did not involve Subject Property

1960 Sale of Minerals not related to Idaho-Maryland Mine

QUITCLAIM DEED

MINERAL RIGHTS

The Secretary stated that the Corporation holds certain mineral rights in Nevada County which are not contiguous to the bulk of its mineral rights in that area and that former President, Bert C. Austin, had expressed the opinion such mineral rights have no potential value to the Corporation. It was the recommendation of Mr. Austin that the Corporation relinquish these rights which would result in a saving of property tax. Following a

IDAHO MARYLAND MINES CORPORATION, a corporation organized under the laws of the State of Nevada, does hereby remise, release and quitclaim to SUM-GOLD CORPORATION, INC., a California corporation, all its minerals, gas, oil and mineral deposits of every kind and nature, including its minerals, gas, oil and mineral deposits in the name of Western Title Insurance and Guaranty Company, in the County of Nevada, State of California, which are not located in the following sections in said County: in Sections 23, 24, 25, 26, 35 and 36, Township 16 North, Range 8 East, M. D. B. & M.; in Sections 27, 28, 29, 30 and 31 in Township 16 North, Range 9 East, M. D. B. & M.; and in Section 6, Township 15 North, Range 9 East, M. D. B. & M.

which are not located

Staff Report Errors:

E) Numerous Critical Factual Errors (Example 3 of 3) Reclamation Plan Did Not Preclude Future Mining

County Staff Excluded Relevant Information

Staff Report

The Reclamation Plan prepared in 1979 required an “easy transition” to alternate uses and further states that that reclamation of the site, “will end surface mining and storage of the waste rock.” (Petition, Exhibit 251, Reclamation Plan, ¶ 23(a) and 29.)

Staff omits sentence
“Underground mining would be
unaffected....

29. Reclamation of this site will end surface mining and storage of the waste rock. Underground mining would be unaffected by the reclamation plan. Mining outside of the project would be unaffected by this reclamation plan.

Staff Report Errors:

E) Numerous Critical Factual Errors (summary)

1. Mineral rights were retained by language – Sale of “Surface rights to a depth of 75 feet.” Error in Resolution.
2. Sale of mineral rights in 1960 to Sum-Gold – Not related to Idaho-Maryland Mine.
3. Residential subdivision Sum-Gold Acres (~70 acres) – Not located on the Brunswick site. Error in Resolution.
4. County Staff excluded pages from the 1960 rezoning application by Yuba River Lumber. Yuba withdrew the application and any promises that they had made.
5. Excluded words from 1979 Reclamation Plan “Underground mining would be unaffected...mining outside of the project would be unaffected...”
6. Status of Non-conforming uses have been decided by the Planning Commission in Nevada County – Appealable to the Board of Supervisors. (See Hansen, Sha-Neva, Blue Lead)
7. The Planning Commission, in a public hearing, approved U79-41 as an “alteration of an existing non-conforming use.”
8. Marketing Title Act 1982 provided optional protection for severed mineral rights to preclude a quiet title action.
9. Brock marketed the property as a mine in 2004. Posted to minelisting.com.
10. Reclamation Plan – an amendment of plan related to U79-41 – Closed with financial assurances released in 2006. No interim management plan required.



Staff Report Errors:

F) Erroneous Legal Conclusions (slide 1 of 2)

The Staff Report claims that non-compliance with SMARA and related County and Local Ordinances is evidence of intent to abandon: **The cited provisions are clearly inapplicable, and the County even admits compliance with SMARA in the Memorandum.**

- SMARA only applies to surface mining operations of an underground mine (not underground components) that occurred after 1976 and are equal to or greater than 1,000 cubic yards or one acre of disturbance. (See Public Resources Code Sections 2714, 2735 and 2776.)



Staff Report Errors:

F) Erroneous Legal Conclusions (slide 2 of 2)

- **“In 2005, the Planning Department provided notice to the Department of Conservation’s Office of Mine Reclamation that reclamation was completed, and in 2006 the County of Nevada and the Department of Conservation released their interest on financial assurance for the operation.”** (Staff Report p. 8, relating to use permit and reclamation plan issued in 1979 and amended in 1985, 1986 and 1992.)



Staff Report Errors:

G) Use Permit Applications do not Extinguish Vested Rights (1 of 3)

- The Staff Report uses the landowners' application for a Use Permit in 1979 (issued in 1980) as evidence of abandonment as follows "If Petitioner is correct that the two activities [surface rock processing and gold mining] are inherently part of the same operation, then the use permit received in 1980 would not have been necessary if they possessed a vested right for those activities." (Staff Report, p. 43.)
- Use was considered an "expansion" of the existing non-conforming use.

It is noted that the provisions of the "M1" Light Industrial District in which the subject property is located do not allow gravel harvest...

and processing as permitted or conditionally permitted uses. However, the property owner has indicated that mine rock has been sold and taken from the property continuously since the mine closed, and so this use permit application is for expansion of an existing, non-conforming use by the addition of a crusher and screening plant.



Staff Report Errors:

G) Use Permit Applications do not Extinguish Vested Rights (2 of 3)

- Courts have determined that applying for and/or acquiring a use permit does not abandon or otherwise extinguish a vested right. (See *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529.) In *Goat Hill Tavern*, a restaurant owner operated his restaurant as a legal nonconforming use for over 35 years. In 1989, he obtained a use permit, the renewal for which was later denied, giving rise to the court case. The court determined that the issuance of the use permit did not affect the vested right.
- As a practical matters, landowners often do not understand the concept of vested rights and will apply for permits that are not needed. Likewise, it is uncommon for local jurisdiction to advise landowners that they do not need a permit.
- Emgold and other past operators had specific reasons to apply for use permits that did not constitute abandonment.



Staff Report Errors:

G) Use Permit Applications do not Extinguish Vested Rights (3 of 3)

- Other California counties approvals confirm that a use permit for mining activities does not preclude a finding of vested rights.
- In 2022, the Inyo County Board of Supervisors recognized a vested right for the Panamint Valley Limestone Quarry based on a vesting date of May 20, 1970, even though the applicant had applied for and received a use permit for a portion of the quarry in 1991.
- Similarly, in 2020, the Yuba County Planning Commission recognized a vested right for the Spring Valley Quarry based on a vesting date of April 13, 1971, even though the applicant had applied for and received multiple use permits for a portions of the quarry in after 1971.



Staff Report Errors:

H) Unreasonable Discrediting of Evidence and Witnesses

- The Staff Report includes the following critique of Lee Johnson's Declaration: *"As a historical source, a declaration such as Lee Johnson's (Exhibit 227) is problematic, particularly for the factual assertions made here. Both historical study and scientific research have revealed the unreliability (and even instability) of human memory."*
- Lee Johnson had personal knowledge of facts stated in his declaration, for example, relating to Marion Ghidotti's insurance of the property as a "mining asset," as stated in the declaration, Mr. Johnson was directly responsible for insuring the mine property for Marion Ghidotti in 1977 as an employee of Gold Cities Insurance Company.
- Even if Lee Johnson was not credible, this does not prove abandonment, rather the County must provide clear and convincing evidence of abandonment rather than simply discredit witnesses or evidence.



Staff Report Errors:

I) County Reliance on Questionable Experts and Witnesses (slide 1 of 2)

- Staff Report cites “Historian” as evidence that reservation of mineral rights in land that was sold, was mere speculation: “[t]he history of mineral development in the United States is marked by speculative practices to reserve ‘rights’ that may in the future be sold, and which may or may not be bona fide.”
- This is an absurd conclusion, and not within the Historian’s expertise. The mineral rights include the core asset of major gold mine. These are bona fide rights – and quite the opposite of speculative.
- Historian is not a mining economist.
- Burden is on the County to show abandonment – questions about the motives for mineral reservations is not clear and convincing evidence of abandonment.



Staff Report Errors:

I) County Reliance on Questionable Experts and Witnesses (slide 2 of 2)

"We are not selling a mine" – June 12, 2004

Historic California Gold Mine For Sale

Idaho Maryland Gold Mine


www.minelistings.com

January 17th 2015

The Wayback Machine - <https://web.archive.org/web/20150117000302/http://minelistings.com:80/mines-for-sale/historic-idaho-maryland-gold-mine-for-sale>

Historic California Gold Mine For Sale

Idaho Maryland Gold Mine



Project Details
Commodity: Gold
Location: California, USA
Term: For Sale
Price: \$2.75 Million

Summary:

- 145 +/- Acres which includes the site of the historic, underground Idaho Maryland Gold Mine. The land is configured in 18 Assessor parcels.
- 109 +/- Acres of the offering are contiguous with the City limits of Grass Valley.
- 2750+/- Acres of mineral rights mostly contiguous below 200' of surface.
- An extensive collection of core samples from the Idaho Maryland Mine is included.

Location and Access:
Located approximately 60 miles north east of Sacramento, California, USA, in the heart of California's Gold Country. Located at the edge of Grass Valley and a mile from CA State Highway 49, the parcels are accessed from Idaho-Maryland Rd, Centennial Dr, Brunswick Rd, and E. Bennett St.

Description:
Define the future or reclaim the past on these 145 acres configured in 18 Assessor parcels located in California's Gold Country. Approximately 109 acres of the offering are contiguous within Grass Valley City Limits and adjacent to industrial, business park and residential uses. Close to State Highway 49, bounded by city streets or major thoroughfares, the parcels have varying topography, meadows, gorgeous tree cover, outstanding southern exposure and Wolf Creek running through. This land is home to the historic, highly productive Idaho Maryland Gold Mine. The listing includes approximately 2750 acres of mineral rights plus an extensive collection of Idaho Maryland core samples. Previous efforts to re-open the mine produced a 43-101 Technical Reports evidencing strong gold reserves, a Draft EIR (2006), a Phase 1 Environmental (2007) and Assays, all available upon request.

Geology:
The Idaho-Maryland project is a structurally controlled, mesothermal gold deposit situated in the northern portion of the Sierra Nevada Foothills Gold Belt. This belt averages 50 miles in width and extends for 320 miles in a north-northwest orientation along the western slope of the Sierra Nevada range.

The rock units underlying the Idaho-Maryland mine property include early Jurassic meta-sediments of the Fiddle Creek Complex; early Jurassic meta-volcanics and interflow sediments of the Lake Combe Complex; middle Jurassic ophiolite assemblage of the Spring Hill Tectonic Mélange; later Jurassic Tectonic Mélange of the Weimar Fault Zone; and late Jurassic dioritic intrusives. The most important of these units for gold exploration is the Spring Hill Tectonic Mélange.

The varying styles of mineralization present at the Idaho-Maryland Project are typical of those commonly found in mesothermal lode gold deposits worldwide. At least four basic types of mineralization have been recognized to contain significant gold deposits. In order of importance, these include (1) gold-quartz veins, (2) mineralized black shale bodies, (3) mineralized diabasic slabs, and (4) altered, mineralized ultramafic schists. The veins consist primarily of quartz, which is milky white, massive to banded, sheared, and brecciated. Gold occurs as native gold, ranging from very fine grains within the quartz to leaves or sheets along fractures.

History:
The Idaho-Maryland Mine property is located in Grass Valley, California, in the historic "Northern Mines District" which is one of the most famous and productive mining districts in California. The principal mines in the area include the Empire, Idaho-Maryland, North Star, Pennsylvania and W.Y.O.D. mines.

The original claim on the Idaho-Maryland Mine Property was staked in 1861 and high-grade gold mineralization was discovered in 1863. The Idaho Maryland Mine operated from 1862 until it shut down in 1956 because of the fixed price of gold at \$35. USD per ounce and rising labor and supply costs. During its operation, the Idaho-Maryland Mine Property yielded 2.7 million ounces of gold.

The Idaho Maryland Mine was mined underground gold mine in California.

From 2002 to 2012, Idaho Maryland Mine sampling, testing, etc. at the Idaho Maryland Mine Environmental Impact Statement (EIS) regulatory process (ongoing, citing).

Additional Information:
Additional information and reports CA 95945. Information deemed reliable but not guaranteed, all representations are approximate, and individual verification is recommended.

Additional Information:

Additional information and reports available upon request. Listed for sale with Charles Brock, CA BRE Lic # 00328328, Coldwell Banker Grass Roots Realty, Grass Valley, CA 95945. Information deemed reliable but not guaranteed, all representations are approximate, and individual verification is recommended.

Part 6: No Abandonment

Legal Framework:

Waiver of a vested right requires:

- (1) an intention to abandon the right; and
- (2) an overt act, or failure to act, implying that they no longer claim any interest in the vested property right. (*Hansen Bros.* at 566.)
- Has the owner taken an action that forecloses the possibility of future mining?
- Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned. (*Hansen Bros.* at 569.)
- Making other uses of property does not equal abandonment, and exploration of other potential uses does not equal abandonment.



No Abandonment

Evidentiary Standard

- “A waiver of a constitutional right requires a knowing and intentional relinquishment of that right, and such a waiver is disfavored in the law.” (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, Fn. 8.)
- A High Burden - An opponent to a vested right must meet the heightened burden of clear and convincing evidence in order to successfully assert that a property right was abandoned. (*Pickens v. Johnson* (1951) 107 Cal.App.2d 778, 787; *Clarke v. Mallory* (1937) 22 Cal.App.2d 55, 64.)
- Doubtful cases should be decided against waiver. (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108.)



No Abandonment

Factual Summary - Owners Consistently Evidenced Intent to Maintain Rights

- Economic conditions caused mine owners to sell surplus property, including mining equipment and surface rights; however, the owners preserved mineral rights, easements and the core properties necessary to resume underground gold mining. These rights and properties are still intact.
- Subsequent owners and investors spent millions of dollars in investment to explore and develop minerals on the property.
- Mining activities continued intermittently on property including rock crushing, exploration, leases to mining companies, and multiple documented efforts to fully re-open the mine.
- Vested Rights run with the land to new owners. Transfer of property does not result in abandonment unless two-part Hanson abandonment test is satisfied. Speculation about new owners' intent is not clear and convincing evidence of abandonment.
- County provides no clear and convincing evidence of abandonment.



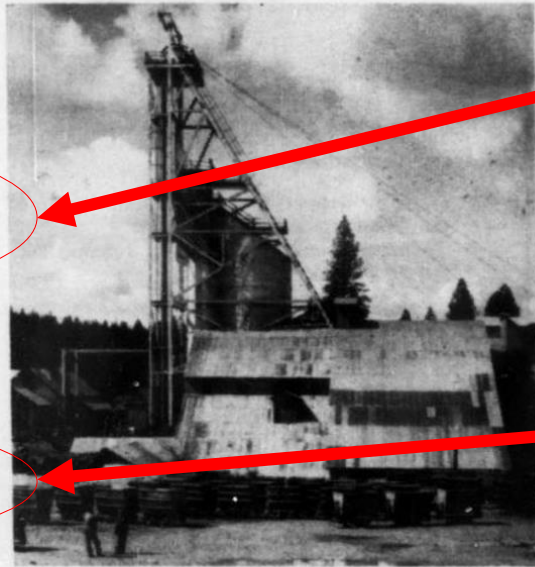
No Abandonment

Sale of Surface Land & Equipment



Last Grass Valley Gold Mine Shuts Down

On March 15, 1957 the last cage of men was hoisted from the Brunswick Mine of the Idaho Maryland Mines Corporation, caps were put on the shaft, and the main power switch was pulled. For the first time in over 100 years no gold is being produced in the Grass Valley district. Since World War II spiraling costs have exceeded contents of the ore to such an extent that it was not feasible to continue operations. The first workings of the present Idaho Maryland Mines Corporation started in this area in 1863. It has had its ups and downs since then hitting the peak of its production in the 30's when as many as 1000 men were employed. It has a record production in excess of \$70,000,000. The company plans to retain its mineral rights and strategic surface holdings and, if possible, to diversify the company's activities. Idaho Maryland along with several other gold mines has a claim against the government for damage sustained during the L208 shutdown order during World War II. The government has appealed the case to the Supreme Court and it is expected the case may be heard during the fall term. The picture above of the Brunswick headframe and mill building was taken on the last day of operation. Two small boys look over some of the equipment that was brought up from the now silent mine.



June 1957

“Since World War II spiraling costs have exceeded the content of the ore to such an extent that it was not feasible to continue operations.”

“The Company plans to retain its mineral rights and strategic surface holdings and, if possible, to diversify the company's activities.”

No Abandonment

Sale of Equipment and Lands in 1950s is not clear and convincing evidence of abandonment. (1 of 2)

Equipment auction in 1957 does not provide clear and convincing evidence of abandonment:

- Brunswick mine equipment, mineral processing plant, and related buildings and machinery were sold by auction on May 27th, 1957 due to the Company's dire financial condition.
- County Staff asserts that the sale of mining equipment and building in 1957 constitutes abandonment of the Vested Mining Right.
- The fundamental asset of a gold mining business is the mineral deposit, and the equipment was sold, while the mineral rights were preserved.



No Abandonment

Sale of Equipment and Lands in 1950s is not clear and convincing evidence of abandonment. (2 of 2)

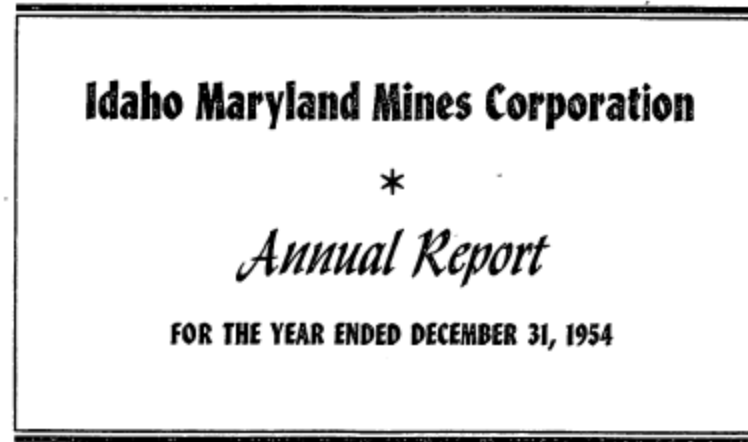
- What was sold and what was preserved demonstrates that the company was preserving the mineral rights for future use and does not demonstrate abandonment.
- The sale of equipment in the context of retaining mineral rights and various properties central to the mining operation does not meet the County's burden of clear and convincing evidence of abandonment.



Sale of Equipment & Buildings - 1956-1957

Necessary to preserve the mineral property

“Because of a shortage of cash, state and County real property taxes were not paid [and] ... [s]ome of the real property owned by the Corporation which is not necessary for mining purposes has been sold ...



Because of a shortage of cash, State and County real property taxes were not paid in December or April for the current fiscal year 1954-1955, and the Corporation's properties will be sold for nonpayment of taxes during June. The Corporation, however, has a five-year period within which to redeem the properties at the redemption prices provided by law which include interest and penalties for nonpayment of taxes. Some of the real property owned by the Corporation which is not necessary for mining purposes has been sold, and in addition, the Corporation has sold all of its standing timber in and about the mines at Grass Valley. Some

No Abandonment

Sale of Surplus Surface Properties Is Not Abandonment

- 1956-1959: Several surface properties are sold to obtain cash and stay in business.
Mineral rights are reserved as follows:

all the mineral, metal matter and rock contained under said premises, with the right to extract at any time hereafter all the mineral, metal matter and rock contained under said property, from any depth up to and within 75 feet of the surface of said property, without disturbing the surface thereof.

- In other instances, only the top 75' was granted in the deeds, which reserved everything below that depth.



No Abandonment

Sale of Surface Lands 1954-1959

Not Abandonment – Minerals & Sufficient Surface Land Retained

“..reserving appropriate
mill site areas...”

MINUTES OF
SPECIAL MEETING OF
BOARD OF DIRECTORS OF
IDAHO MARYLAND MINES CORPORATION

A Special Meeting of the Board of Directors of Idaho Maryland Mines Corporation was held at 9:30 A.M., on Friday, March 13, 1959, in the office of Martin J. Burke, 458 South Spring Street, Los Angeles, California.

RESOLVED: That on or shortly after March 23, 1959 the President and Assistant Secretary of the Corporation be and hereby are authorized in the name and on behalf of the Corporation to execute such agreements, deeds and other instruments as may be necessary or by them deemed advisable to effect the transfer to Frederick W. Richmond and Oliver Investment Company of the surface (to a depth of 250 feet) of the properties of the Corporation in Nevada County, the Corporation reserving appropriate mill site areas, such transfer to be in settlement of the \$200,000 principal amount of the debt of the Corporation to Richmond and Oliver Investment Company.

No Abandonment – BET Acres Subdivision

- 1986 – 1993: The BET Group subdivides and sells some of the surface lands associated with the Mine but reserves mineral rights and sufficient surface lands to allow the re-opening of the Mine.

SURVEYOR'S CERTIFICATE:
This Final Map for BET ACRES represents a survey which is true and complete as shown, made by me or under my direction in conformity with the requirements of the Subdivision Map Act and local ordinances in January 1987 and the monument are of a character and occupy the positions as shown and are sufficient to enable the survey to be retraced.
J.W. Benson
J.W. Benson L.S. 3224

COUNTY SURVEYOR'S CERTIFICATE:
This Final Map has been examined by me, and the subdivision shown is substantially the same as it appears on the Initiative Map and any approved alterations thereof and provisions of the Subdivision Map Act and local ordinances applicable at the time of the approval of the Initiative Map have been complied with and I am satisfied that the Final Map is substantially correct this 25 day of Feb, 1987.
Michael J. Parker
Michael J. Parker R.E. 18384

COUNTY RECORDER'S CERTIFICATE:
I, Bruce C. Bolinger, hereby certify that this Final Map certificate to State 85-7 was filed with this office, and that this plat map was accepted for record, and recorded in Book 7 of Subdivisions at Page 29 Document 1970478 on 25 day of February, 1987.
Doc # 87 04782
Fee: \$ 12.44
By: *Bolinger*
Bruce C. Bolinger
COUNTY

TAX COLLECTOR'S CERTIFICATE:
I, E. Christine Cobb, the official computing commissions for the County of Nevada, State of California, do hereby certify that according to the records of my office, there are no taxes for unpaid taxes or special assessments collected as taxes against the lands subdivided herein, except taxes or assessments not yet due and payable, but constituting a lien is none.
E. Christine Cobb
E. Christine Cobb
NEVADA COUNTY TAX COLLECTOR

BOARD OF SUPERVISOR'S CERTIFICATE:
This is to certify that the Board of Supervisors of the County of Nevada, State of California, by a motion adopted at a meeting held on the 23rd day of February, 1987, and approved for filing this map of the BET ACRES property consisting of 4 sheets, and anyone for public use is offered for reclamation above all provisions of the Subdivision Map Act and local ordinances have been complied with regarding deposits this 23rd day of February, 1987.
John J. Jones
John J. Jones
Chairman of the Board
Lucy Thompson
Lucy Thompson
Clerk of the Board

OWNER'S CERTIFICATE:
The undersigned, being the only persons representing any record title interest in the herein subdivided lands, do hereby consent to the preparation and recording of this Final Map and offer for dedication and do hereby dedicate to the County of Nevada the following:
ITEM 1: For any and all Public road and Utility purposes, those areas shown as East Bennett rd. Areas A, B and C, excepting therefrom minerals below 150' with the right to mine without disturbing the surface.
Mary Bouma
Mary Bouma
Erica Erickson
Erica Erickson
William Toms
William Toms

STATE OF CALIFORNIA)
COUNTY OF SS
On this 25 day of February, 1987
Before me, the undersigned a Notary Public, State of California, duly commissioned and sworn, personally appeared Mary Bouma, Erica Erickson and William Toms, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.
In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.
a Notary Public in and for said County & State
My Commission Expires 2001
EASEMENTS OF RECORD OF WHICH EXACT LOCATION CAN NOT BE DETERMINED
1. Idaho Maryland Mines to Tiernette, (now Welter) Pipeline Esmt. 224 OR 286
2. Retention to Central Gulf Electric Co. Overhead wires 100' below 150' & 50' below 150'
REFERENCE DEEDS:
D1. Bulewin, 85-14591
D2. Bohemia Inc., 504 OR 109
D3. Bohemia, 85-14591 & Toms 83-20536
D4. "The Chassey", 1074 OR 647
D5. Bohemia (Brunswick Timber) 286 OR 341 & 780 OR 284, 288.
REFERENCE MAPS:
R1. 3 Sub. 15, "Cordell Estates" Ingram, RCE 9827 1968
FINAL MAP
85-7
BET ACRES
Being portions of the S.E. 1/4 of Sec. 25, the N.E. 1/4 of Sec. 36, T.16N, R.9E, and the N.W. 1/4 of Sec. 31, T.16N, R.9E, M.D.B. & M.
In the unincorporated territory of
THE COUNTY OF NEVADA
January, 1987. Scale 1" = 100'
J.W. Benson & Assoc. Inc.

Sheet 1 of 4

OWNER'S CERTIFICATE:

The undersigned, being the only persons representing any record title interest in the herein subdivided lands, do hereby consent to the preparation and recording of this Final Map and offer for dedication and do hereby dedicate to the County of Nevada the following:

ITEM 1: For any and all Public road and Utility purposes, those areas shown as East Bennett rd. Areas A, B and C, excepting therefrom minerals below 150' with the right to mine without disturbing the surface

Mary Bouma
MARY BOUMA
Erica Erickson
ERICA ERICKSON
William Toms
WILLIAM TOMS

NOTES

1. Mine shafts may be located within the boundaries of this subdivision. All potential property owners should verify such locations prior to purchase.



Idaho-Maryland Mine Vested Right Petition 55

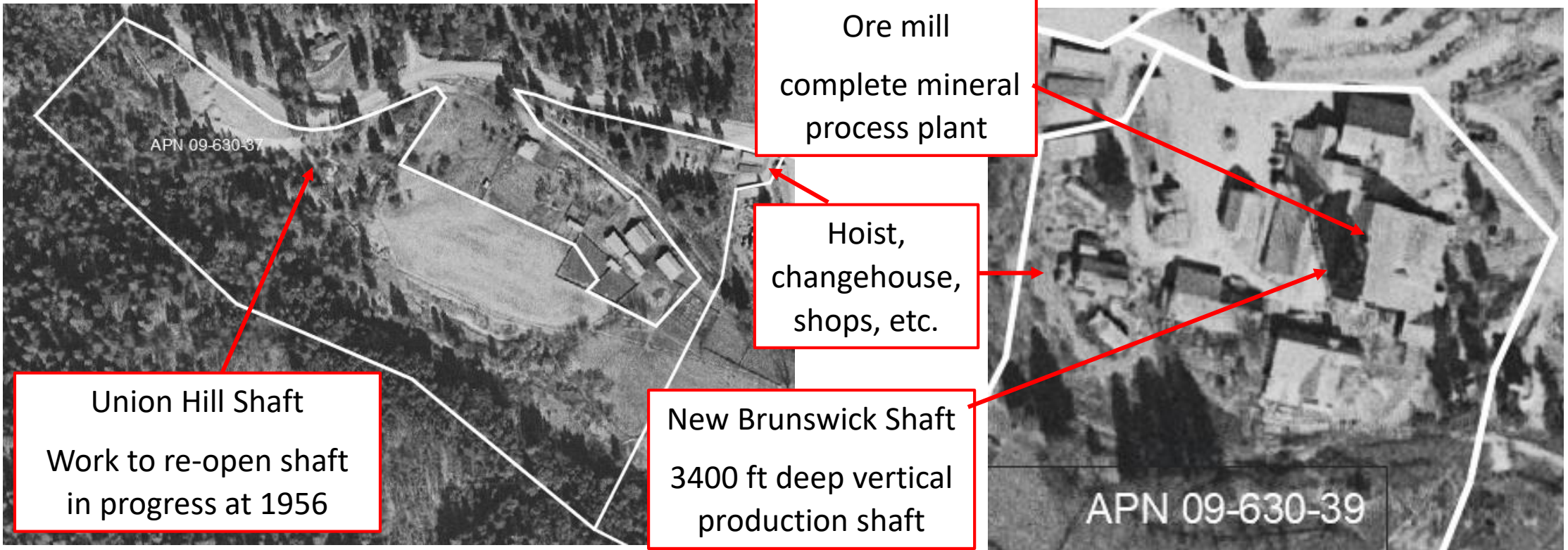
No Abandonment

Sale of Surface Land 1988-1989

Mineral Rights always retained
Bet Acres Lots 6 & 7 - Never Sold

Lot 6 - Union Hill Shaft

Lot 7 - New Brunswick site



No Abandonment

Sale of Surface Land 1988-1989

Retained minerals & surface land attracted significant leases

1988 Mining Lease

APPENDIX I - MINING LEASE AND OPTION TO PURCHASE

Idaho-Maryland-Brunswick Property

1. "Mining Lease and Option to Purchase" dated March 14, 1988, between Mother Lode Gold Mines Consolidated ("LESSEE") and Mary Bourna, Erica Erickson, and William Toms ("OWNERS").
2. "Memorandum of Agreement" between above parties on 6/21/88 and filed in Nevada Co., CA on 7/19/88 as document No. 88-18624.
3. "Assignment of Mining Lease and Option to Purchase" from "LESSEE" above to Northern Mines ("ASSIGNEE") was signed during 8/23/88 to 10/5/88, made effective April 1, 1987 (with original lease dated 3/14/87). Both 1987 dates should read "1988" and should be amended as such. Document was filed in Nevada Co., CA on _____ as Document No. _____.
4. Property consists of approximately 2750 Ac. of M/R with approx. 37 Ac of S/R east of Grass Valley in Nevada County, CA.
5. Term: Ten years
6. Minimum Royalties:

<u>Lease Year</u>	<u>Amount</u>
First	\$ 12,000.00
Second	\$ 24,000.00
Third and Fourth	\$ 50,000.00 per year
Fifth through Tenth	\$100,000.00 per year

7. Production Royalty

Gold not more than 0.3 opt
More than 0.3 opt, and less than 1.0 opt
More than 1.0 opt,

NSR
4%
6%
8%

8. Option to Purchase

Total Minimum \$5,925,000. Option payment \$148,000 per year (\$74,000 if not in production) commencing with the third year. All payments except for the initial \$36,000 minimum royalties apply against option price. Balance paid in 10 equal annual payments.

37 acres
surface land
(Lots 6 & 7)

Royalties from
4% - 8%

Option to
Purchase Price
\$5,925,000

Option to
Purchase Price
\$8,000,000

1993 Mining Lease

Idaho-Maryland property, California

(a) The Company holds a mining lease and an option, as amended, to purchase the Idaho-Maryland Mine, Grass Valley Mining District, California to October 17, 2004. The lease is payable as a royalty of between 4% and 8% of net smelter returns based on grade of ore mined with a minimum royalty of US\$100,000 per year payable monthly. The option price to purchase the mine is US\$8,000,000 net of option payments, minimum and production royalty payments. The option to purchase the mine is held for consideration of US\$75,000 per year, commencing August 18, 1995. All payments are subject to indexing based on the Consumer Price Index.

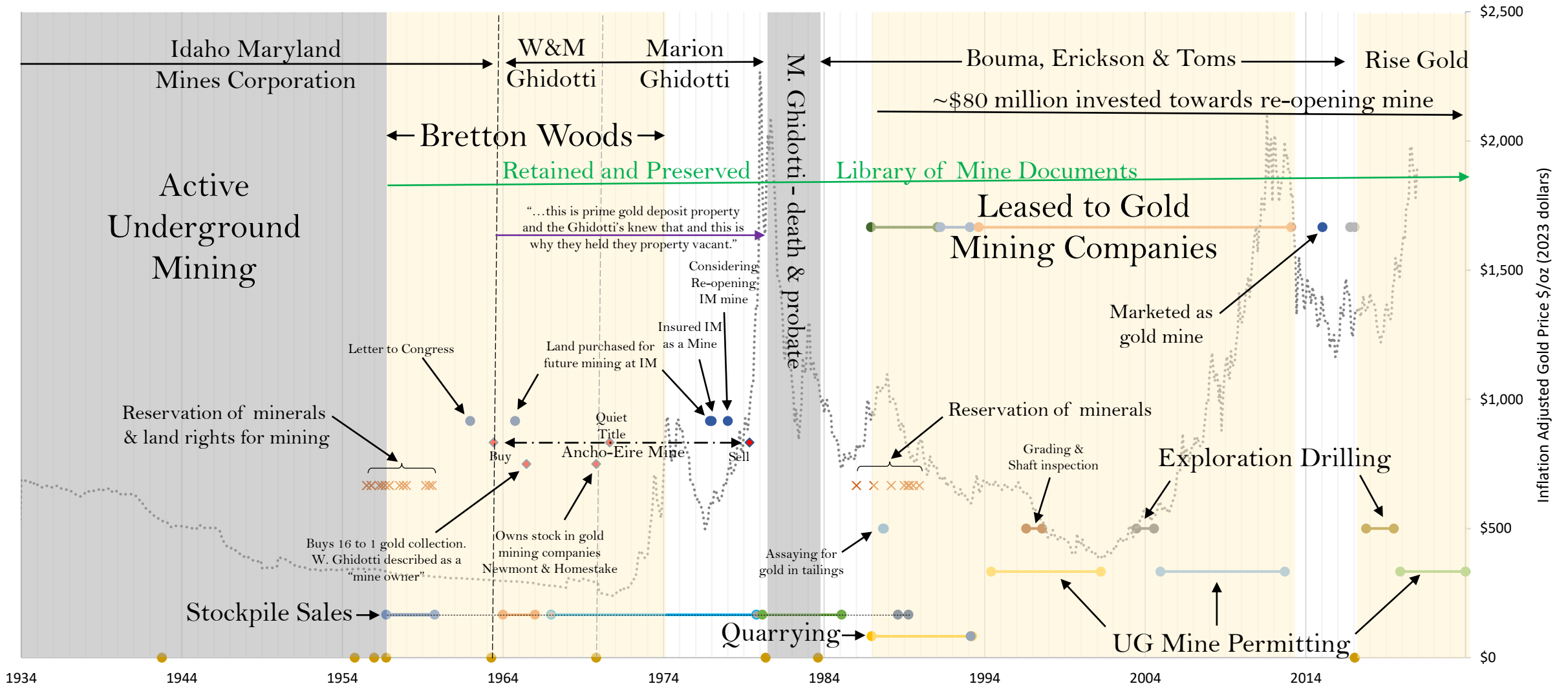
No Abandonment

Failure to properly analyze duration of cessation of use as a “factor” within context of efforts to preserve rights

- As stated in *Hansen*, “[m]ere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.” (*Hansen* at. p. 569.)
- The County does not analyze the duration of cessation as a factor, and rather, provides a conclusory statement with no analysis:
 - “Here, the nearly seventy (70)-year cessation of mining activities on the Subject Property demonstrates abandonment.”
- The County cites the general public policy of eliminating non-conforming uses that have ceased, but does provide sufficient analysis of this factor as applied to the elements of abandonment: (1) intent to abandon and; (2) overt action evidencing abandonment.
- The County’s staff report seems to equate long cessation duration with automatic abandonment, but that is not what the *Hansen* case says.
- The County’s description of the facts as a “(70)-year cessation” is also not accurate.



No Abandonment



No Abandonment

Failure to properly analyze duration of cessation of use as a “factor” within context of efforts to preserve rights

- Factors:
 - Global economic policies fixed the price of gold, making gold mining unprofitable until that policy was lifted in 1971.
 - All property owners since large-scale gold mining ceased have consistently preserved the core properties necessary to mine, including the severed mineral rights, the surface rights for key shaft access properties, the records and maps of the mine necessary to re-open the mine.
 - The property was allowed to flood and reopened numerous times over its history during economic cycles, and often equipment was sold and the operation was re-capitalized and re-equipped before starting again. This is consistent with the history of the mine.
 - Rock crushing was occurring right in the middle of that period, and other exploration activities (drilling and sampling), which are regulated aspects of “mining” under local, state and federal definitions were occurring at various times after 1957.



No Abandonment

Failure to properly analyze duration of cessation of use as a “factor” within context of efforts to preserve rights

- Factors (continued):
 - Millions of dollars have been invested into the property *after* 1957, to re-open the gold mine.
 - 2,560 acres of mineral rights (most severed). The severed mineral rights are a special category of property. The only possible use of severed mineral rights is to mine. Different than buildings or land that can be put to alternative uses when vested right is abandoned. Why would a person ever pay value for this type of property, which has a vested mining right attached, and then knowingly and intentionally relinquish that right?
 - Extremely unique character and high value of mineral rights asset must be considered. At several times, largest gold producing mine in the U.S. and/or State. References to causal actions or omissions as evidence of abandonment must be viewed in the context and dismissed.
 - These factors must be considered, in addition to length of cessation, when assessing whether there was: 1) intention to abandon; and, 2) overt actions evidencing abandonment.



Factors to Analyze Duration

Library of Mine Documents

- Kept in pristine condition
- Never donated to a library
- Never discarded

William Ghidotti was a gold investor

- Owned Ancho Erie Mine
- Owned stock in Newmont & Homestake
- Owned gold collection from 16 to one mine

...this is prime gold deposit property and the Ghidotti's knew that and this is why they held the property vacant."

-Marbelle Walker, adjacent property owner
Planning Commission hearing February 27, 1986

"Despite the fact that Marion Ghidotti owned and operated a cattle ranch and was the President of the Cattleman's association, she never allowed the cattle to graze the mine property because she considered mining as the only appropriate use for the property."

-Lee Johnson Declaration



Idaho-Maryland Mine Project

No Abandonment

Failure to properly consider character of property rights associated with underground gold mining operation.

- Failure to properly consider unique character of property rights and what would properly manifest abandonment in this different setting of an underground gold mining operation. *Hansen* case analyzes specific use characteristics of surface mining.
- The mine workings are of a monumental scale unlike a building, or even a surface mine. Surface mines may employ 25-50 workers, not hundreds or thousands. The Idaho-Maryland mine employed over 1,000 people before WW2 and over a near continuous period of almost a century completed over 70 miles of underground tunneling and mined and moved over 5 million tons of gold bearing rock to surface – equivalent to the Great Pyramid of Giza.
- County fails to consider the particular economic cycles, character of use, character of property right associated with underground gold mining, but even longer cycles apply for gold mining.
- Global trade shift from outsourcing industry and production to onshoring production in the U.S.
- Gold mining is part of this larger economic cycle.



No Abandonment Vested Right Confirmed in Other Counties

Recently Confirmed Vested Rights with Long Period of Cessation

Year	County	Project	Vesting date	Cessation Date	Mining Recommended	Years of Cessation
February-21-19	San Bernardino	Lone Pine Canyon	1951	1949	never	71
May-22-19	Merced	Kelsey Ranch	1945	1950	1994-2005	58
October-08-20	San Bernardino	Chubbuck	1951	1954	never	66

Abandonment Requires Clear & Convincing Evidence – Excerpt from San Bernardino County Staff Report

There is also no evidence that the vested mining right has been abandoned. As stated by the Court in *Hansen* "[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) an intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use [citation]. Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned [citation]" (Hansen Brothers, supra, 12 Cal.4th at 569.).

As stated by the *Hansen* court, "mere cessation of use does not of itself amount to abandonment." Indeed, historical cases, as well as common mining practice, confirm that holding a mineral reserve as inventory does not result in abandonment:



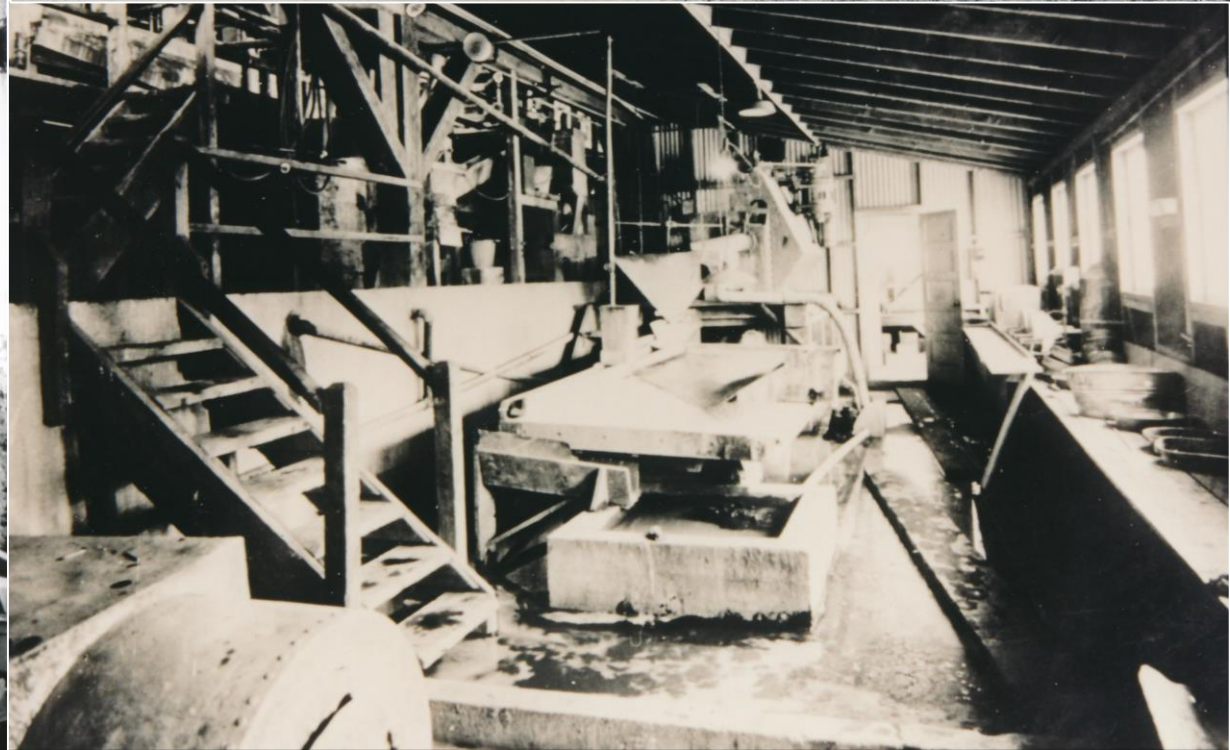
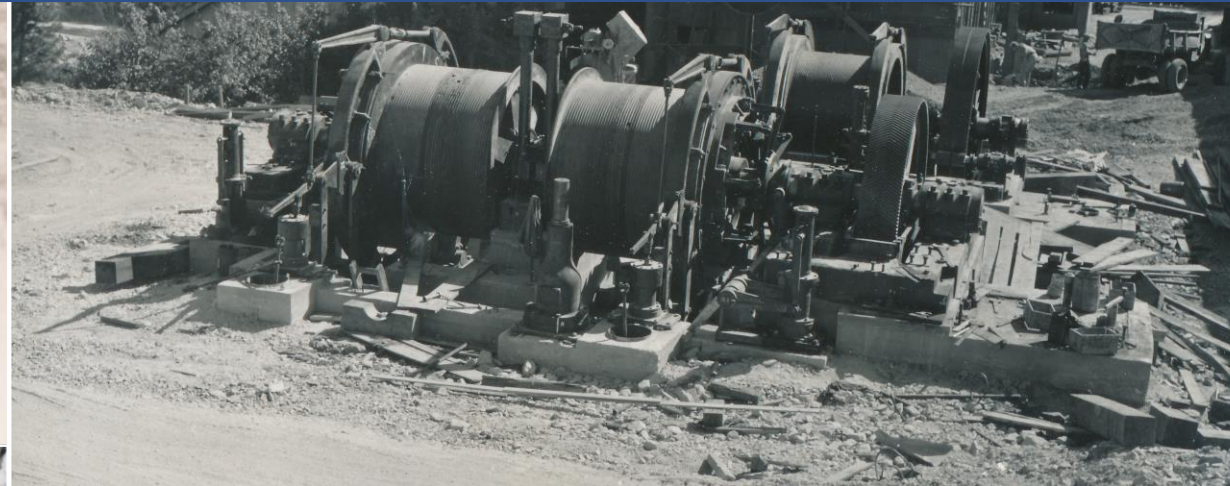
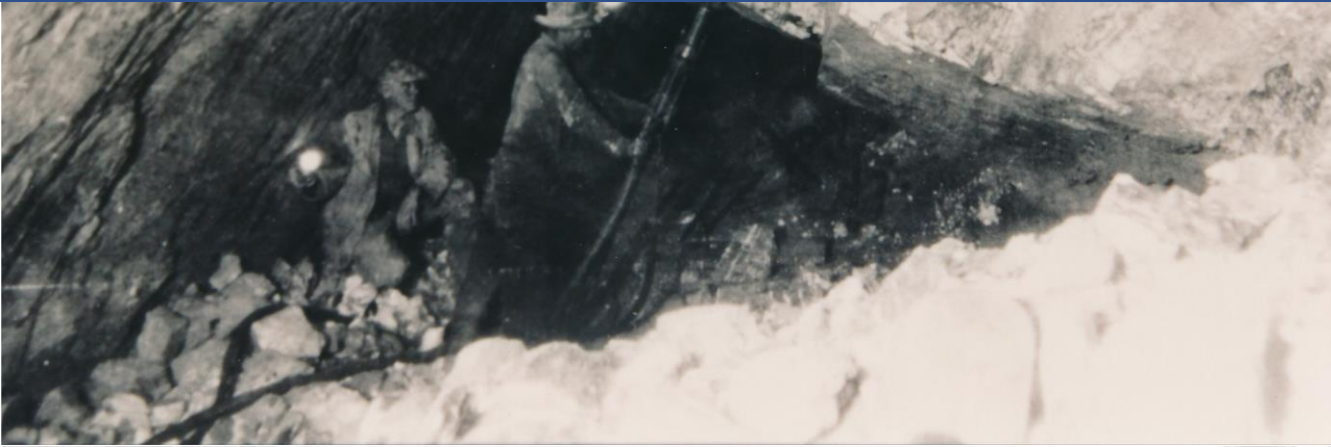
Idaho-Maryland Mine Project

No Abandonment (Summary)

- From the 1954 vesting date, there is no evidence of actual intent to abandon the right to mine at the Property. There is no evidence of any overt act taken to abandon the right.
- To the contrary, ample evidence demonstrates continuous intent to mine – though under Hansen the Petitioner has no duty to show such intent.
- The County has the burden to show clear and convincing evidence of abandonment. This burden has not been met.



Part 7: Scope of the Vested Right



Scope of the Vested Right

- What is the scope of the Vested Right?
- Standard nonconforming uses are generally limited in their ability to expand and change, but special constitutional rules have been developed for vested mining rights because mining is unique.
- A vested mining use, unlike other nonconforming uses, anticipate **breaks in activity** and **extension** into areas of the property that were not being used at the vesting date.
- *Hansen Brothers* defined these special rules in terms of:
 - Geographic scope
 - Operational scope
 - Volumetric scope



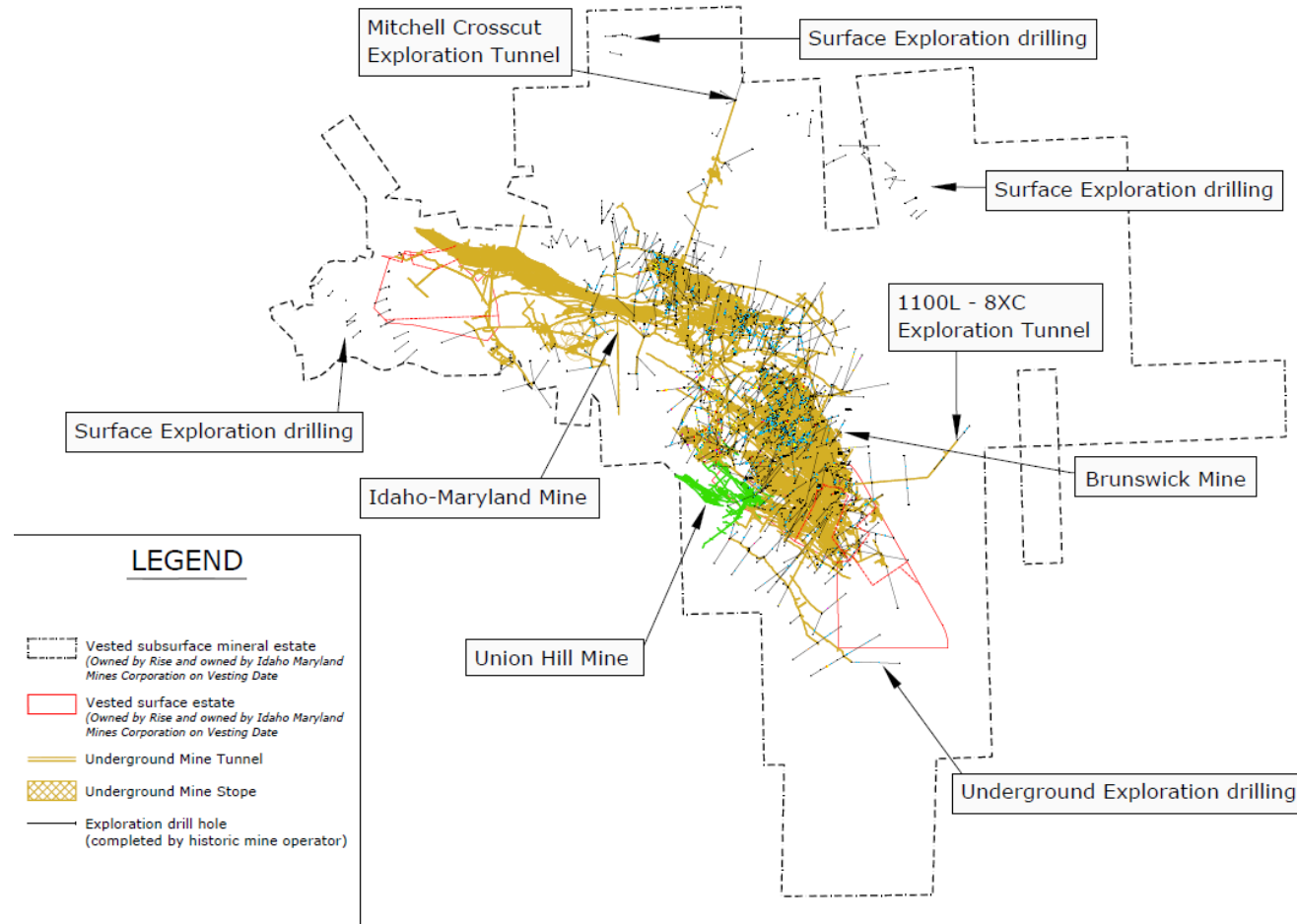
Scope of the Vested Right

Geographic Scope:

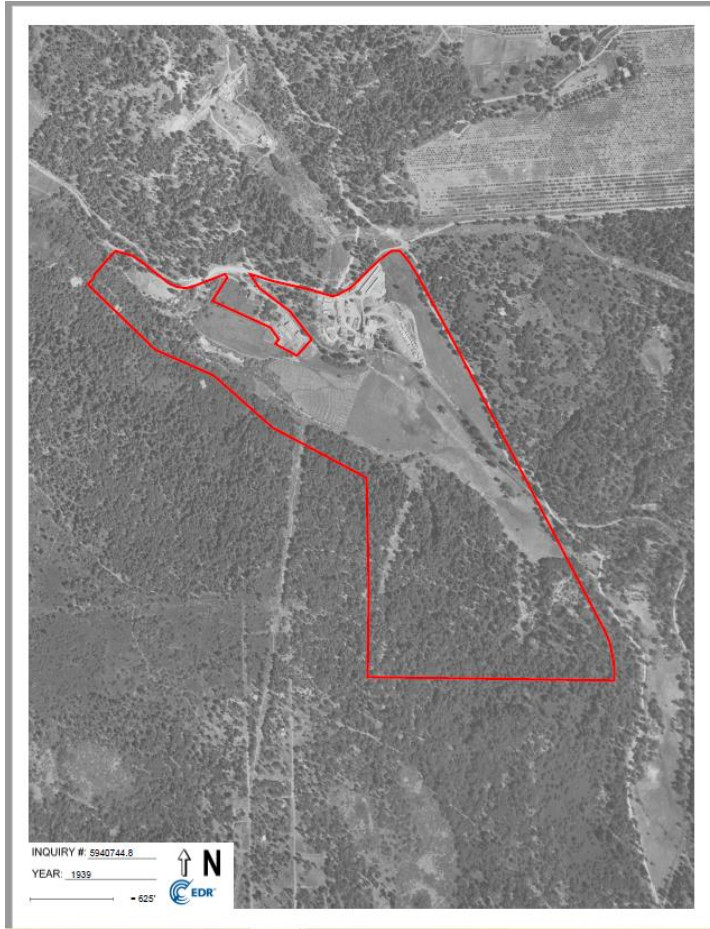
- **A vested mining operation may expand into portions of a tract of land that was not being mined on the vesting date** if the record shows an “objective manifestation” of the operator’s intent to devote the entire area to the operation. (*Hansen Brothers* at 555-556 [emphasis added].) This is known as the “diminishing asset” doctrine.
- “The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed.” (*Hansen Brothers* at 556.)

Property Overview

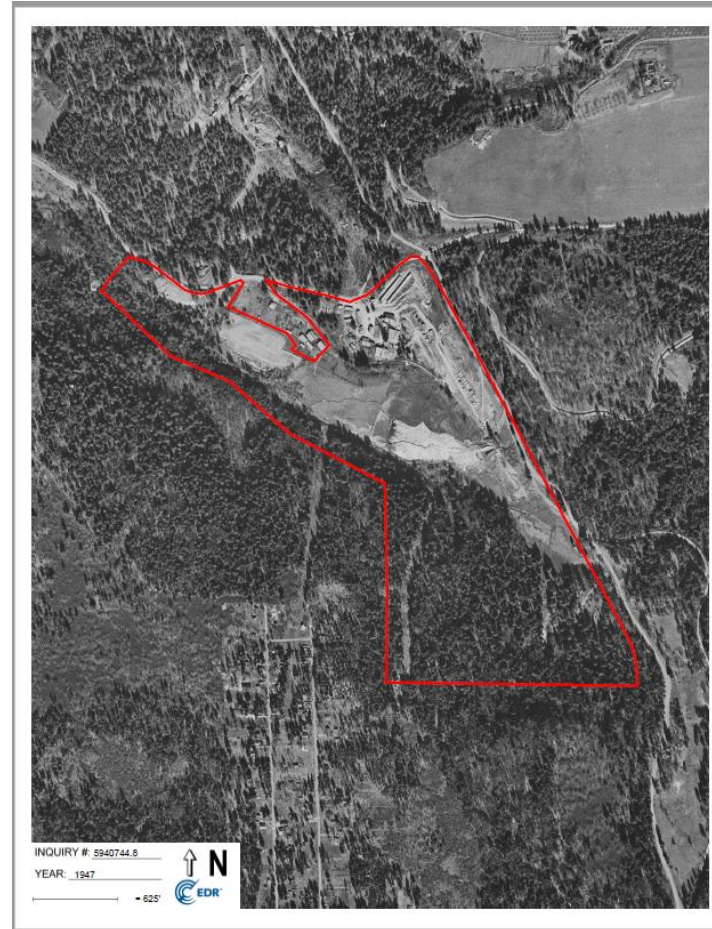
Mineral Rights Area



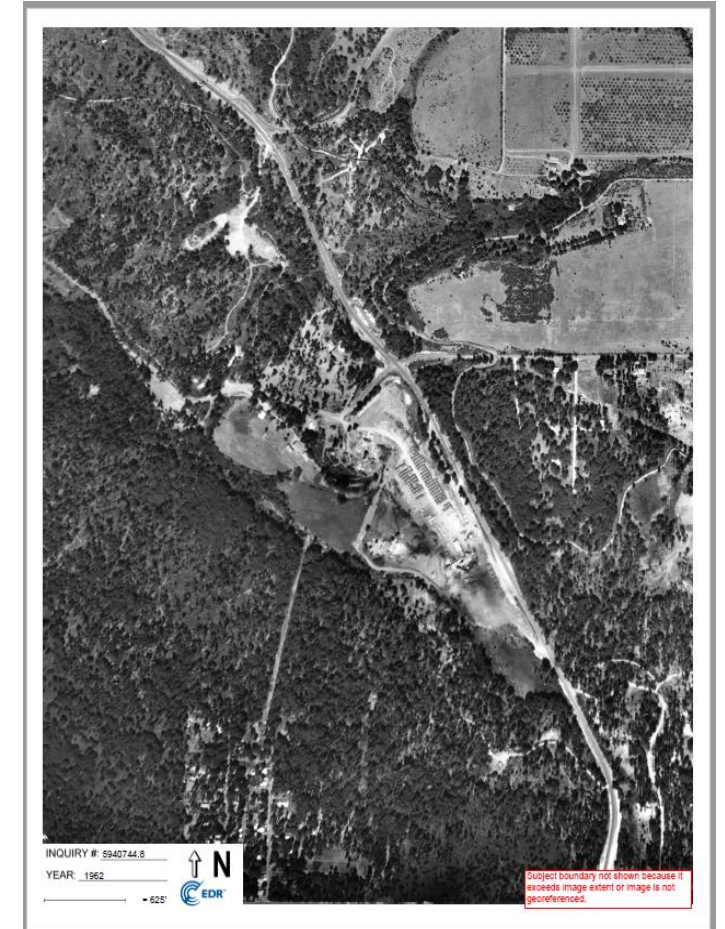
Scope of the Vested Right



1939



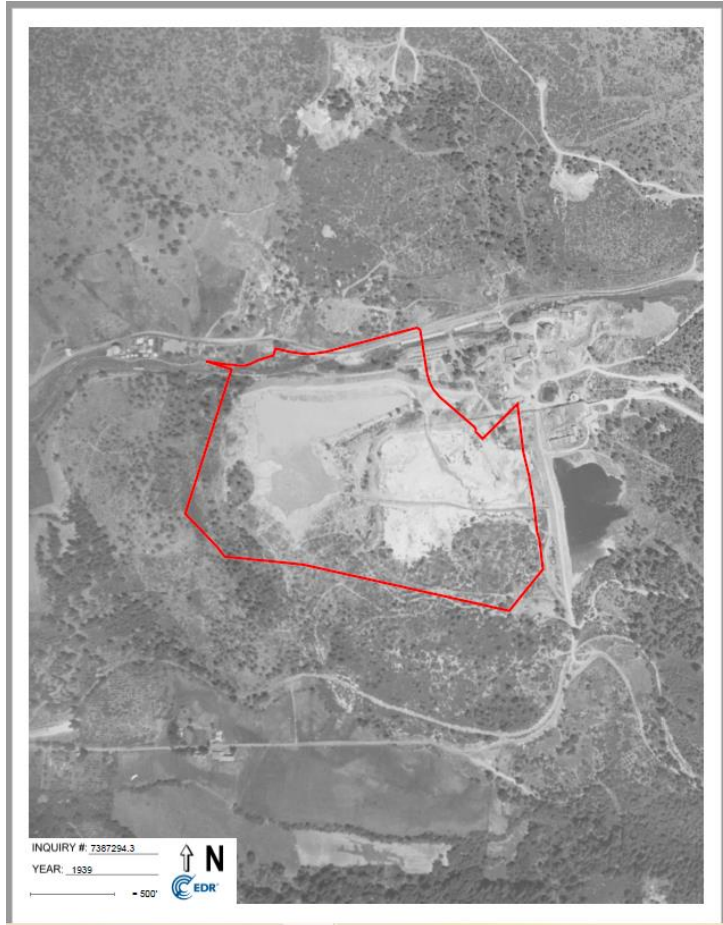
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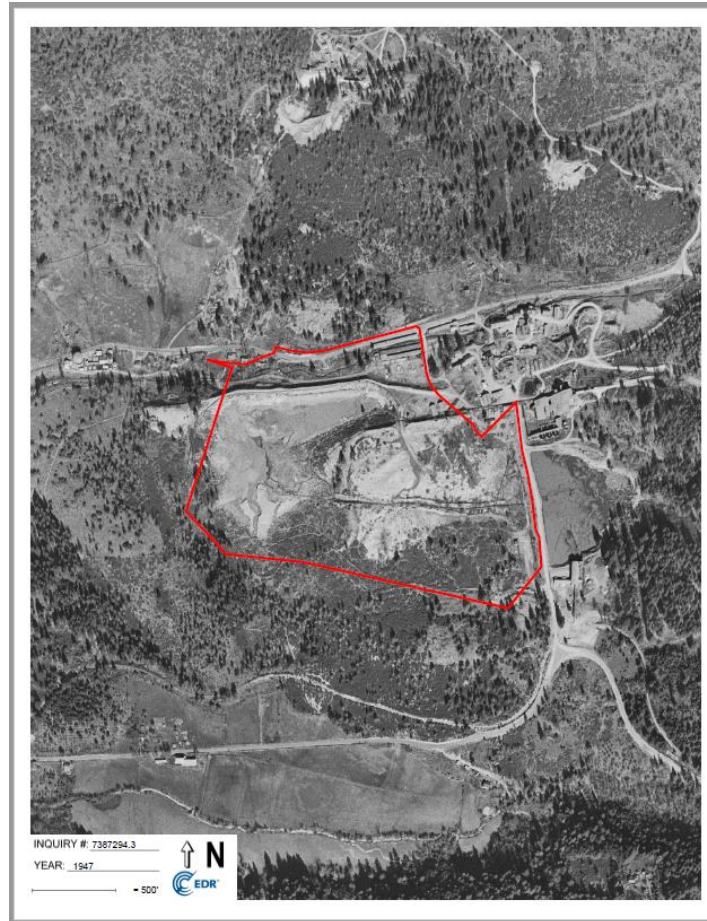
1962



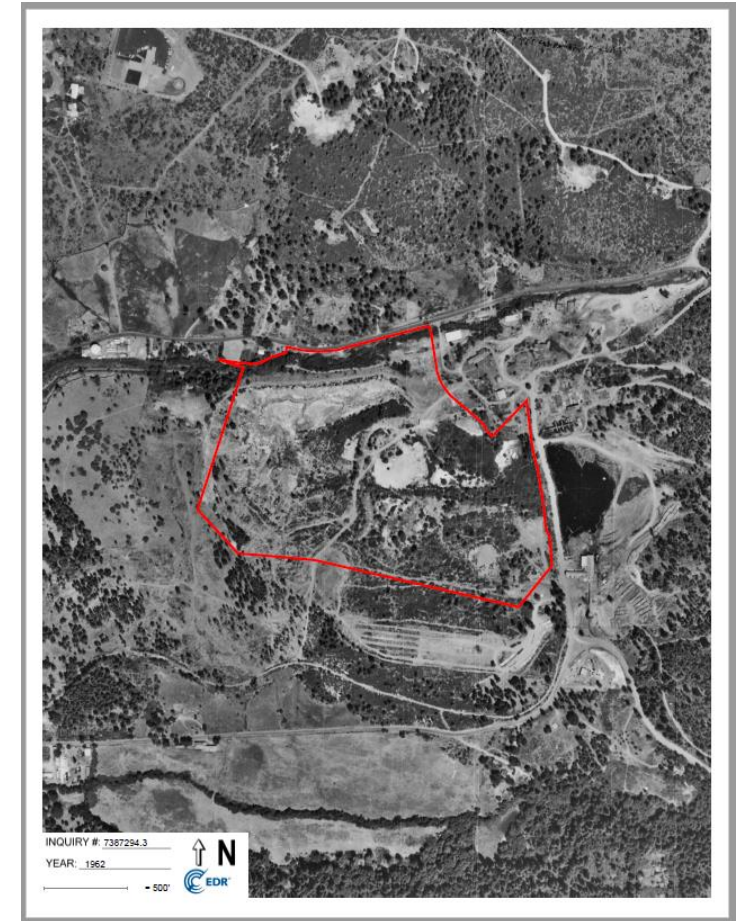
Scope of the Vested Right



1939



1947



1962

Scope of the Vested Right

Operational Scope

- A vested mining right includes all aspects of a mining operation that were “integral parts” of the operation at the vesting date.
(*Hansen Bros.* at 565.)



Scope of the Vested Right

Operational Scope

- At the 1954 vesting date, mining uses at the Property consisted of operations and equipment typically used in traditional gold mining operations and all other equipment necessary for those uses, including:
 - mining, tunneling, exploration core drilling, blasting, crushing, sorting, stockpiling, and waste rock placement;
 - roadways;
 - screening, distribution, transportation, and sales of gold for commercial uses;
 - buildings headframes, hoists, production plants, crushing plants, stamp mills, tailings impoundment dams, sawmills, silos, offices, assaying and engineering, dry storage, compressors, machine and engineering shops, service garages, parking garages, storage buildings, and power lines;
 - equipment including conveyor belts, compressors, pumps, boilers, ore bins, and power drills; and
 - arrastras, skips, locomotives, trams, and trucks and other vehicles.
- The vested right includes all of the above, and all other “uses normally incidental and auxiliary to the nonconforming use.” (*Hansen Bros.* at 565.)



Volumetric Scope (cont.)

- Production at the Property is not limited to the production rate established in 1954 or before.
- A vested mining right allows for an expansion in production to serve the growing market demand.
- 410,411 tons of mined ore was produced in 1939.
- The vested right includes the right to produce at least 410,411 tons of ore per year and a greater amount if justified by market conditions.

Part 8: Conclusion

Vested Right establishment is indisputable on Oct 10, 1954.

Preponderance standard has clearly been met by RISE.

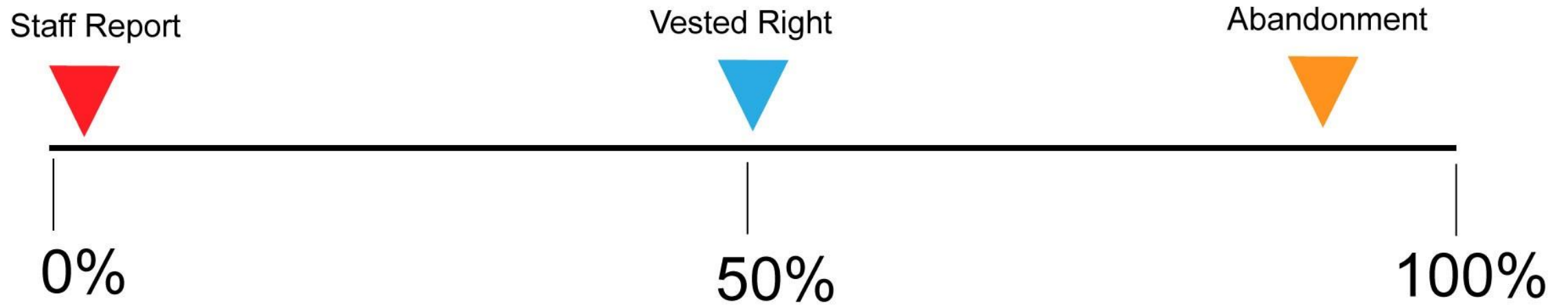
Staff report misunderstands facts, uses wrong legal standard, shifts burden onto Rise to disprove abandonment, and does not even make any clear conclusions.

County has only provided doubts about evidence, not clear and convincing evidence of abandonment.



Conclusion

Burden of Proof



Conclusion (1 of 2)

We request the Board of Supervisors confirm the following:

1. That mining operations commenced at the Property as early as 1851.
2. That pursuant to the *Hanson Brothers* decision, the range of mining operations included tunneling, underground mining, exploration core drilling, blasting, crushing, sorting, stockpiling, waste rock placement, screening, distribution, transportation, and sales of gold for commercial uses, buildings headframes, hoists, production plants, crushing plants, stamp mills, tailings impoundment dams, sawmills, silos, offices, assaying and engineering, dry storage, compressors, machine and engineering shops, service garages, parking garages, storage buildings, and power lines, along with equipment including conveyor belts, compressors, pumps, boilers, ore bins, power drills, arrastras, skips, locomotives, trams, and trucks and other vehicles, and uses incidental and auxiliary to mining operations.
3. That the scope and intensity of the mining operations expanded over time, including a peak production rate of 410,411 tons of ore per year, in response to market forces.



Conclusion (2 of 2)

4. That the County first required a permit to conduct mining operations at the Mine on October 10, 1954 (Ordinance No. 196) which represents the “vesting date.”
5. That as of the vesting date, the Idaho Maryland Mines Corporation had manifested its intent to conduct underground mining throughout its then-existing mine holdings, including the Property (which includes the entire 2,560-acre reserved subsurface estate), that surface mining operations at the IMM were occurring on at least 175 surface acres, that all 175 acres now comprising the Property were held under single ownership, and that owner at the time of vesting, a mining company, objectively intended to devote the entirety of the Property and 2,560 acres of mineral rights to support subsurface mining operations.
6. That the vested right has not been abandoned.
7. That the Property has a vested right to produce at least 410,411 tons of ore per year, based on historic production.



Thank you!



Recognition of Legal Non-Conforming Use

Staff Report Errors

Non-conforming use recognized by PC in a public hearing

Staff Proposed Resolution #7

The staff member comment in a 1980...staff report...is not a finding by the Board of Supervisors as to the legal status of a land use.

This permit is being processed as
an alteration of an
existing non-conforming use.

COUNTY OF NEVADA
PLANNING DEPARTMENT
205 Willow Valley Road
Nevada City, California 95959
(916) 265-2461 ext. 260

NOTICE OF CONDITIONAL APPROVAL
USE PERMIT APPLICATION

TO: North Star Rock Products Corporation
P. O. Box 908
Grass Valley, California 95945

Use Permit No. 1082
500(M1) U79-41
AP# 09-550-13, 14, 15 (M1)
AP# 09-560-02, 08 (RA)

You are hereby notified that the Nevada County Planning Commission, at a regular meeting held on February 28, 1980, after public hearing, did duly consider your application filed on October 12, 1979, under the terms of Nevada County Ordinance No. 500, for the surface mining reclamation plan and use permit of North Star Rock Products Corporation for an operation which will involve harvesting, crushing, screening, and sale of waste rock left from the Idaho-Maryland Mine lying on the south side of Idaho-Maryland Road approximately 500 feet east of that street's intersection with Railroad Avenue, east of the Grass Valley city limits. The subject property, which is being leased by the applicant from Mrs. Marion Ghidotti, is within the boundaries of an "M1" Light Industrial Zoning District. This permit is being processed as an alteration of an existing non-conforming use. A legal description is on file in the Planning Department, 10433 Willow Valley Road, Nevada City, California.

Sale of Surplus Equipment –
Gold Resource was Primary
Asset

Building & Equipment – Incidental to Use

At full production - Annual Revenue = \$4,154,000
In 1956 – Plant, Buildings & Equipment value = \$ 351,000

IDAHO MARYLAND MINES CORPORATION

(A Nevada Corporation)

Statement of Income and Profit and Loss Year Ended December 31, 1939

OPERATING REVENUES:

Bullion--less mint charges	\$4,153,597.00	
Custom ore and concentrates purchased--less treatment charges	72,740.83	
Total operating revenues		\$4,080,856.17

OPERATING EXPENSES:

Mining, hoisting and preliminary crushing	\$1,771,439.38	
Milling and ore treatment	266,881.55	
Shipping expense on bullion	9,603.89	
Taxes, insurance and royalties	295,552.94	
Administrative and general expenses	351,140.99	
Total operating expenses		2,694,618.75
Net income from operations--before depletion and depreciation		\$1,386,237.42



Idaho-Maryland Mine Project

BRUNSWICK MINE TO BE UNWATERED

**Pumping Out of Old Shaft
and Works Started
Yesterday.**

After lying idle and buried in the water in the shaft for the past two years the pumps in the old shaft of the Brunswick mine were started yesterday and the work of unwatering the shaft will be kept up until it is entirely free of water. When the old shaft was discarded and allowed to fill with water two years ago the Cornish plunger pumps were not taken up, or the electric pumps either, but the first two plungers were disconnected from the other two. Yesterday when the power was turned on to the pumps they worked together to perfection and the water was lowered thirty feet during the day. It is estimated that 200 gallons per minute is now being raised. When the shaft has been unwatered down to the 700-foot level the electric pumps stationed there will be started up if necessary. At the 1000 and 1200 levels other electric pumps are stationed, which can be used again when the shaft is unwatered.

Operations At Idaho-Maryland Mine Curtailed

**Grass Valley Looks For A
Change Of Ownership At
Noted Property**

GRASS VALLEY (Nevada Co.),
April 22.—A curtailment of operations took place at the Idaho-Maryland Mine early this week and it was reported that production and development will be largely suspended for a time. Pumping and upkeep of the mine are to continue, it was stated.

The Idaho Maryland, which, with the Eureka, adjacent, is one of the largest mines in the district, is now being pumped out of water. Mr. Crellier informed the reporter that the 180-foot level will undoubtedly be reached in about two weeks if everything runs well.

**The New Machinery Has Been
Placed in Position.**

**Work of "Forking" the Mine Will Be
Vigorously Pushed—A Description
of the New Plant.**

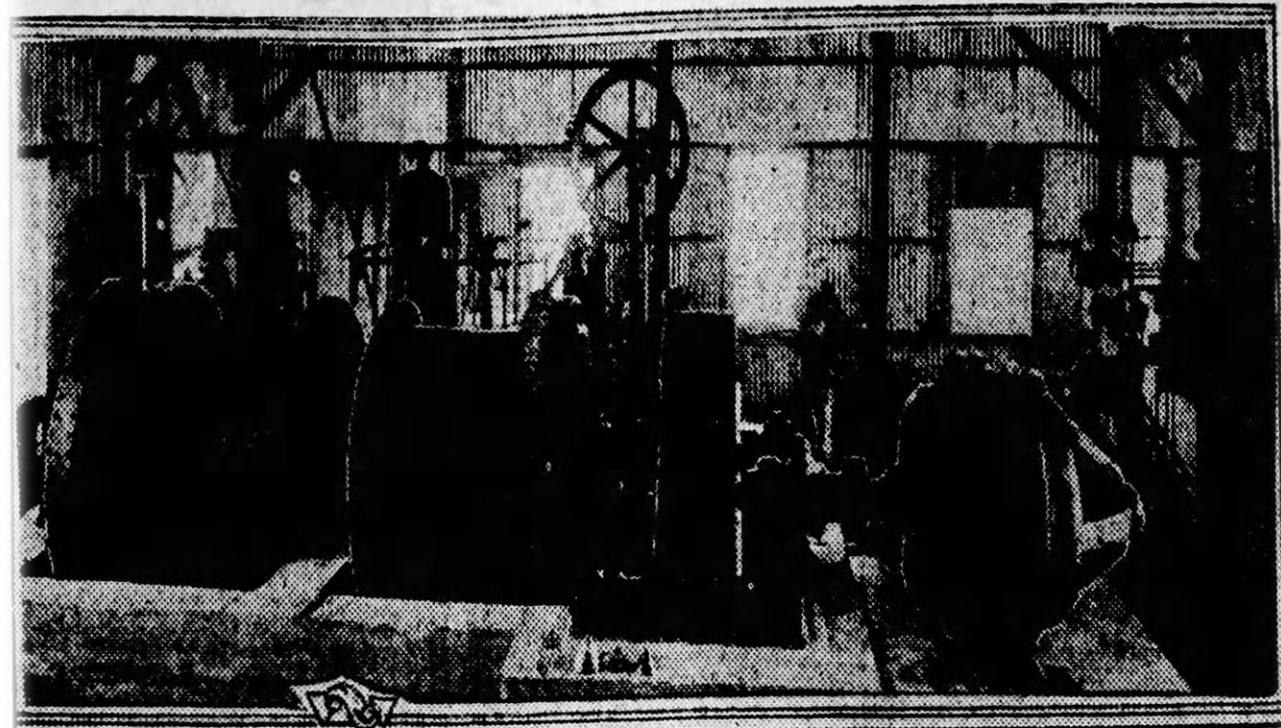
After a delay of several months on account of new machinery not arriving, the work of pumping out the Union Hill mine has recommenced on a large scale. A Union reporter visited the mine yesterday and was shown through the property by Superintendent E. C. Crellier.

The steam hoist which was used before the new machinery arrived, has been placed near the new hoist and will be used in case of accident to the large hoist. When the mine has been entirely pumped out a large steam pump, sixteen inches in size, with an eight-foot stroke, will be placed on the 380-foot level, and it is expected this will handle all the water that will be encountered below that level. Water is now being raised at the rate of 480 gallons a minute by the pump and tank.

The shaft consists of three compartments—one for the pump and two for hoisting purposes, the water tank being run in the middle compartment. Water power for the mine is

UNWATERING OF BRUNSWICK MINE UNDER WAY

MODERN hoist recently installed at the Brunswick Mine, near Grass Valley, in connection with the unwatering of the mine. Bailing skips of 1,000 gallons capacity operating in balance are being used.



GRASS VALLEY (Nevada Co.),
Nov. 29.—The work of unwatering the Brunswick Mine is progressing rapidly by use of the modern hoist recently installed. The water has been forced below the 400 level, but the progress will be slower as greater depth and larger drifts are encountered.

The unwatering is by means of bailing skips which operate in balance. Each has a capacity of 1,000 gallons.

The Brunswick company has in-

stalled electric power and a seventy-five horse power motor is in use. A small sub-station has been placed in service near the mine by the Pacific Gas and Electric Company.

P. C. Oscanyon, president of the Brunswick Consolidated Gold Mines Company in a late statement said:

"A definite plan of development and operation has been adopted and when the unwatering is completed it will be established with every assurance that the outcome will be satisfactory. The mill ore shoot, which was profitably exploited

above the 900 level, has never been tapped below that level, and it is proposed to extend the lower levels as speedily as possible in order to make this potential reserve of ore available. It is also the intention to sink the shaft deeper and open up new levels and prospecting work will be carried on in several levels in territory that gives promise of developing additional bodies."

Few delinquents are in connection with the serious matters which are being handled in finance the reopening.

Idaho-Maryland Mine Again Being Operated.

GRASS VALLEY, Aug. 11.—The Idaho-Maryland mine started up at noon yesterday, the event being signaled by the blowing of whistles and a jollification at the mine. The property was shut down four years ago. It is now being reopened by a Boston company. In years past it produced many millions, making millionaires of Edward and John Coleman of San Francisco. In former days it employed 250 men.

Grass Valley Mine Cuts Roll

GRASS VALLEY (Nevada Co.), July 6.—The Idaho-Maryland Mines Company is reducing its payroll listing from approximately 100 men to about 50 men.

The reason for reducing the crew is attributed to the fact the War Production Board has ruled against any proposal to permit sufficient extraction and milling of ore to pay maintenance costs.

300 Gold Mines Are Shut Down

WASHINGTON, Oct. 8—(AP)—The War Production board today ordered the shutdown of 200 to 300 of the nation's largest gold mines, in order to release manpower for work in copper and other vital war metal production.

SMARA and County Code

Staff Report Errors:

Erroneous Legal Conclusions - SMARA

- Only one area of the mine involved surface mining in excess of the threshold post-1976. Staff Report admits it was reclaimed. Reclaimed lands do not need an interim management plan, a reclamation plan or a financial assurance.
- County is SMARA lead agency on this – where are the NOV's if there was a violation of SMARA?
- SMARA only applies to “surface mining operations” and has no bearing on underground mining or related underground vested rights.
- Same analysis for County mining ordinance and reporting requirement.



Staff Report Errors:

SMGB Annual Reporting

- PRC § 2207 (annual reporting): “The owner or the operator of a mining operation within the state shall forward to the supervisor annually ... a report that identifies all of the following: [various production and reclamation plan related information]”
- (f) For purposes of this section, “mining operation” means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a “surface mining operation” as defined in Section 2735, **unless excepted by Section 2714.**”
- No County or State record of failure to file this. Where is NOV or letter from DOC?
- Staff Report: “The County is unaware of, and the Petitioner has failed to provide, any documents indicating this has occurred. This failure further demonstrates the lack of intent to mine.” – This is not the correct legal standard.



Staff Report Errors:

Erroneous Legal Conclusions – County Mining Ordinances

- Staff Report cites provisions in County Code requiring a reclamation plan and interim management plan that parallel SMARA requirements, as additional proof of violation and hence abandonment.
- The Vested Property is exempt under the County Code, which states: “Exemptions. This Section shall not apply to the following activities: ... (e) Such other mining operations categorically identified in Public Resource Code 2714 as excepted activities.” (Nevada County Land Use and Development Code, Sec. L-II 3.22(D)(4).)
- Similarly, where are NOVs for violation of County Code Surface Mining Requirements, if violations existed? County has burden of proof for abandonment.



Pre-Vesting Timeline

Evidence of Mining and Vested Rights

Early Period

- 1851: The first mining claims on the Mine Property, the Eureka and Union Hill claims, are located.
- 1864: Eureka Mine employs 120 workers, an exploration shaft is sunk at the Idaho Mine and the Maryland Mine is established.
- 1870: The Idaho Mine employs 101 workers and the shaft reached 600 feet. Production ramps up at the Brunswick mine. Union Hill Mine closes and is flooded for a period of 30 years, until 1900.
- 1877: The Eureka Mine closes due to lack of successful exploration.
- 1892: Idaho Mine is the richest and most famous mine in California, with 200 employees. The Record Union reports it as the deepest gold mine in the world and greatest gold producer on the continent.
- 1893: The Maryland Gold Quartz Mining Co. consolidates the Idaho and Maryland Mines into the Idaho-Maryland Mine.



Evidence of Mining and Vested Rights

Pre-WWII

- 1900: The Union Hill Mine is reopened after being closed and flooded for 30 years.
- 1901: The Idaho-Maryland Mine is closed and allowed to flood due to dwindling capital and a major fire.
- 1908: The Old Brunswick Mine is closed and allowed to flood due to the high cost of processing the ore.
- 1911: The old shaft at the Brunswick Mine is dewatered after two years of idleness to allow the new shaft to be used.
- 1914: Operations at the Idaho-Maryland Mine cease while waiting for additional financing.
- 1919: The Eureka, Idaho-Maryland, Union Hill South Idaho and Gold Point mines are consolidated by new owner under the Idaho Maryland Mine Company and reactivated. Union Hill closed due to labor strike and the headframe and equipment dismantled and moved to Idaho-Maryland Mine.
- 1930: Mining continues and profitability of gold mining increases due to the economics of the Great Depression.



Evidence of Mining and Vested Rights

End of Great Depression through Use Permit Requirement

- 1939: Idaho-Maryland Mine and New Brunswick Mine combine for 1,250 tons per day ore production with 115,000 oz. gold produced. The IMM reaches peak production, producing 410,411 tons of ore.
- 1942: Due to WWII, War Production Board issues Limitation L-208, which requires the mine to close. The capacity of the completed New Brunswick headframe, crusher plant, hoist, and compressor building is stated to be 2,000 tons ore daily from a depth of 5,000 ft.
- 1943: Idaho-Maryland Brunswick Mine is given permission to reopen.
- 1944: The Bretton Woods system fixes the price of gold at \$35 per ounce, as one of the foundational elements of a new global economic system.
- 1946: Ore production increases to 1,500 tons per day. Sawmill is milling 40,000 board feet per shift.
- 1954: Zoning Ordinance requiring Use Permit for “commercial excavation of natural materials within a distance of 1,000 feet from any public street, road or highway” on **October 10, 1954** (**Vesting Date**). During this year, 88,632 tons of ore was removed from the mine, and active mining occurs in at least 14 areas throughout the mine. (Exhibit 179.)



Ghidotti Timeline

No Abandonment – The Ghidottis

- 1963: Ghidottis acquired properties in auction from Idaho Maryland Industries.
- 1964 - 1976: The Ghidottis purchase several additional surface properties contiguous to the IMM, previously part of the Property, including the Centennial Industrial site.
- 1964 or 1965 - 1980's: The Ghidottis conduct an aggregate crushing and processing operation on the Property – i.e. mining operations.
- 1977: Marian Ghidotti insures the IMM as a mining asset.
- 1979: North Star Rock Products Corporation, in agreement with Marian Ghidotti, applies for a use permit for a proposed rock crushing, screening plant, and retail gravel sales operation (Use Permit U79-41).
- Clearly, the Ghidottis had no intention of abandoning the vested right. In fact, they planned to reopen the IMM when conditions were right.



BET Timeline

No Abandonment – The BET Group

Summary

- While North Star Rock Company Inc. was conducting mining operations at the Property, at Marian Ghidotti's death in 1980, the Mine was inherited by Mary Bouma, Erika Erickson, and William Toms (the "BET Group"). The Property was in probate for 3 years.
- The BET Group took several actions necessary to support the continuation of mining operations at the Property.
- 1987: The BET Group commissions testing of samples from the historic mine tailings, which assayed at approximately \$39.15 per ton. BET Acres subdivision is approved.
- 1988: It leases 5.28 acres of the tailings disposal area to Argo Associates, which excavated 7,756.2 tons of tailings material.
- Beginning in the mid-to-late 1980's, the BET Group begins leasing the Property to various gold mining companies in order to restart gold mining.



No Abandonment – The BET Group

Late 1980s through 2000s

- 1988: The BET Group executes a mining lease and option agreement with Mother Lode Gold Mines, which conducts exploratory activities.
- 1991: The BET Group executes a mining lease with Consolidated Del Norte Ventures, which announces its intent to reopen the Mine.
- 1993: Emperor Gold begins the permitting process to dewater the mine and commence underground exploratory drilling. The BET Group begins receiving substantial amounts of annual royalty and option payments for the Mine.
- 1995: The County approves the Final Environmental Impact Report on the proposed dewatering.
- 1996: The County grants Use Permit U94-017 to conduct dewatering and underground exploration activities. Emperor Gold begins preparing evaluations and engineering studies, and conducts extensive grading activities and shaft inspections.
- 2004: Emgold applies to the City of Grass Valley for a use permit to dewater the Mine and construct an access ramp for underground exploration and future mine production.
- 2005-2008: The City conducts an environmental review pursuant to the California Environmental Quality Act.
- 2013: Emgold allows its mining lease and purchase agreement to expire after withdrawing its application.



RISE Timeline

No Abandonment – Rise

- 2014: The BET Group lists the Property for sale as a mine.
- 2017: Rise purchases the Property for \$2,000,000 for the purpose of restarting mining and processing operations, and commenced exploration drilling the same year.
- 2019: Rise applies to the County for a use permit to reopen the Property and has been engaged in the permitting process since.
- September 2023: Rise submits this vested right petition.



Scope of Vested Right

Scope of the Vested Right

Geographic Scope (cont.):

American Jurisprudence explains the policy underlying the “diminishing asset” doctrine as follows:

*Application of the general rule that a nonconforming use may not be extended to land not so used prior to the enactment of a restrictive zoning ordinance may work a singular hardship where the use in question involves the removal of natural products from the earth. For example, quarries are particularly vulnerable because, **by their very nature, they begin on one spot and spread to additional ground as the mineral reserve is exhausted.** Such diminishing-asset enterprises "use" all of the land contained in a particular asset, and as a practical matter, such use must begin at one spot and continue from there to the boundary of the land. **Courts, therefore, have respected the unique character of such diminishing-asset uses by permitting them to expand onto adjacent land.***

83 Am. Jur. 2d Zoning and Planning § 569 (2023)



Scope of the Vested Right

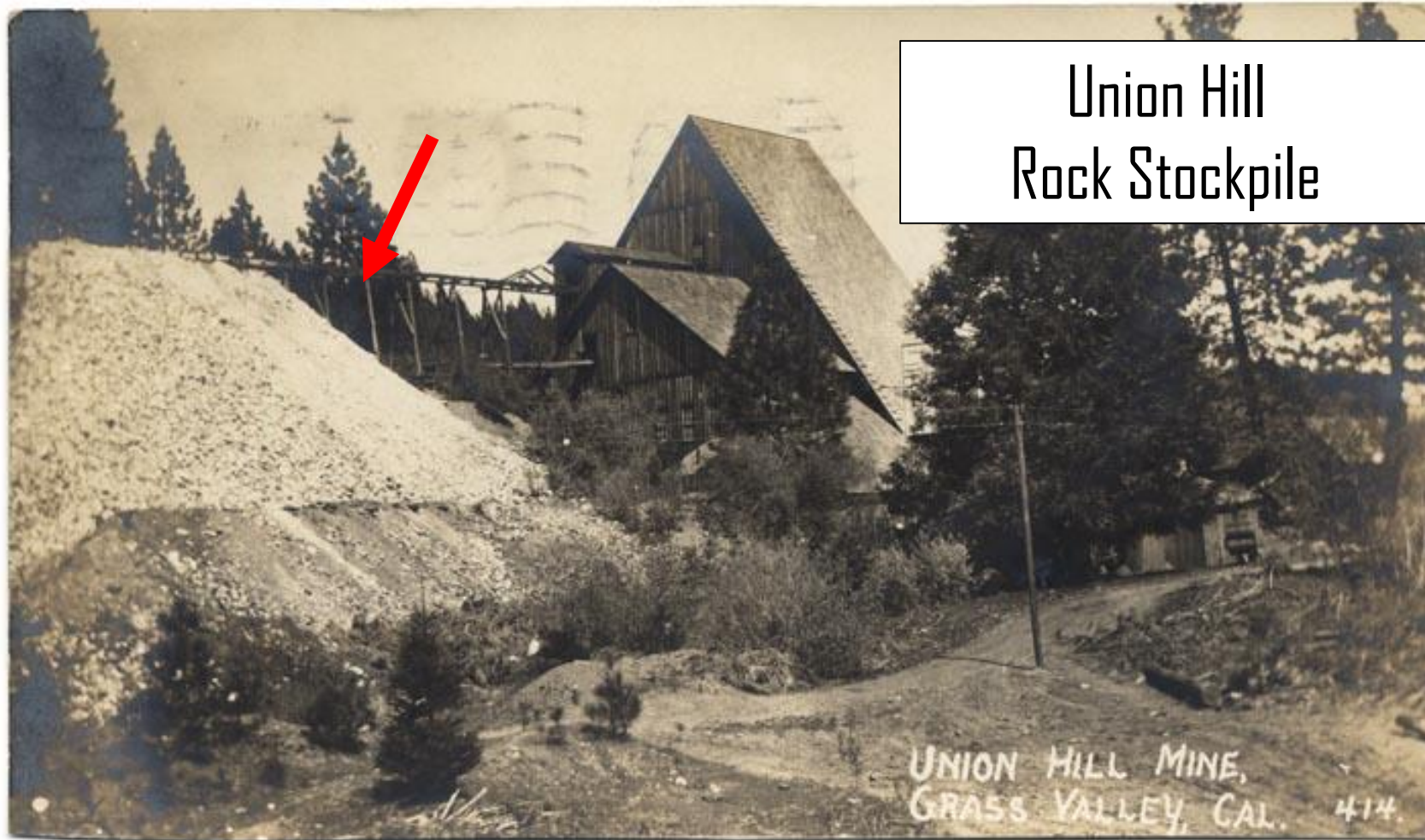
Geographic Scope (cont.):

- Rise and its predecessors exhibited the requisite objective manifestation of intent to mine the entirety of the Property, comprised of:
 - the surface of the Property (including the Brunswick Industrial Site and the Centennial Industrial Site); and
 - the subsurface of the Property (established mine tunnels and untapped mineral estate).
- The evidence:
 - actual mining activity, the historic mining use, and site preparation;
 - material hauling and stockpiling, access and haul roads, and exploratory roads;
 - underground workings and supporting infrastructure; and
 - the known understanding of mineral reserves.
- Given that this is a subsurface mine that is intended to expand outward and downward in search of valuable gold veins, the scope of the subsurface vested right encompasses the entirety of the mineral estate owned by Rise.



Scope of the Vested Right

Sale from stockpiles - aspect of Vested Business



Scope of the Vested Right

Sale from stockpiles - aspect of Vested Business

October 23, 1950

October 1950

Mr. Ted Schwartz, Contractor
Nevada City Highway
Grass Valley, California

Dear Mr. Schwartz:

This letter will confirm our verbal agreement relative to rock being removed from the Union Hill Dump by you for the manufacture of asphalt road covering.

Prices to be paid Idaho Maryland for materials and services are ten cents (10¢) per ton for the rock and ten cents (10¢) per ton for the use of our shovel.

We did not discuss a method of reporting the tonnage that you used of the rock and I suggest that you give us daily a statement of the rock removed from the dump. I understand that a State man weighs and checks all materials going on State Highways, and I also understand that all materials removed from the dump are not going on State Highways. I therefore suggest that you give us this daily statement but we in turn will retain the privilege of placing a man at your weighing station to check loads at any time.

If these terms are agreeable I wish you would sign the attached copy and return it to us.

Sincerely,
ORIGINAL SIGNED BY
NEIL O'DONNELL
Neil O'Donnell,
Executive Vice President,
IDAHO MARYLAND MINES CORPORATION.

This letter will confirm our verbal agreement relative to rock being removed from the Union Hill Dump by you for the manufacture of asphalt road covering.

use of our shovel.

Transferred and Re-acquired Properties

Finally, a lawful nonconforming use may not be extended to adjacent property acquired after the zoning change went into effect except to the extent that the transferors of the property themselves had a vested right to engage in that nonconforming use on the transferred property. (Hansen Bros. at pp. 557-558.)

"Commercial excavation of natural materials
within a distance of 1,000 feet
from any public street, road, or highway."

- Meaning = To dig and remove minerals = all mining related activities
- In 1959 – Planning Commission found a crusher and asphalt plant at the New Brunswick site to be within the meaning of Ordinance No. 196 as "commercial excavation of natural materials with 1000 feet of a public road"

"

Crusher & Hot Mix Plant at News Brunswick

Application of Huntington Brothers was presented for a Use Permit for a crusher and road-mix plant on the Brunswick Road at the New Brunswick Mine. This is the plant that supplied road-mix for the surfacing of the Brunswick Road last season. They expect to use the plant again in April to finish the job and possibly...

, February 10, 1959
U59-12

USE PERMIT

The Nevada County Planning Commission at a general meeting held February 9, 1959, at the Nevada County Courthouse, Nevada City, California, heard testimony and inspected records concerning the application of Huntington Bros., Cedar Ridge, for a use permit to operate a Portable Hot Mix Plant at the New Brunswick Mine, Section 31, Township 16 South, Range 9 East, M.D.B. & M.

Having determined that the operation of such a plant at the above location is ~~within~~ within the meaning of Nevada County Ordinance No. 196:

Crusher & Hot Mix Plant at News Brunswick

No other possible use category under Ordinance No. 196

1. Distillation of bones.
2. Junk yards.
3. Dumping or other disposal of garbage, dead animals, and other refuse.
4. Manufacturer of glue, gelatin, or other products from animal fat.
5. Stock yards and slaughterhouses.
6. Foundry, forge, or metal fabricating plants.
7. Smelting of ores.
8. Saw mills.
9. Sale or storage of second-hand merchandise, unless directly carried on within a building.
10. Commercial excavation of natural materials within a distance of 1,000 feet from any public street, road, or highway.
11. Storage of any inflammable fluid in greater quantity than 2,000 gallons, if such storage is in a container the uppermost portion of which is at an elevation higher than four feet below the surface of the ground.
12. Airports.
13. Construction, maintenance, or operation of any automobile court, automobile camp, auto trailer or camp, car camp, dwelling group, transient labor camp, or other type of camp where ten or more person or two or more families are housed within an area of one acre.
14. Amusement park, circus, carnival, open-air theater, race track, recreational center privately operated, or similar establishment involving a large assemblage of people and/or auto-mobiles.
15. Public Stables.
16. Cemeteries.
17. Billboards.



VESTING Union Hill & Brunswick Roads

Public Roads

Morning Union - Aug 1934

Oiling Operations Will Close Union Hill Road

Supervisor Frank Rowe has announced that oiling operations on the Union Hill or upper Colfax road from the end of East Bennett street to the turn at the O'Keefe ranch, will close that thoroughfare to traffic today. Motorists are advised to use the Colfax highway or the Maryland road. The road may be opened to travel tonight if oiling operations are completed. The second district road equipment has been busy for several days scarifying and grading the thoroughfare, preparatory to the oil coating.

Morning Union - March 1934

CWA PROJECTS TO COVER THREE COUNTY ROADS

Back Road From Hills Flat
to Town Talk Is Slated
for Improvement; Also
Brunswick Road

Two major road improvements were assured for this area with the approval by Captain Edward Macauley, Federal Civil Works Administrator, of the expenditure of \$3,660 on the projects. The appropriation made yesterday is to cover the improvement of the road between Hills Flat and Town Talk and the road between Grass Valley and the Brunswick mine.



Idaho-Maryland Mine Project

Surface Quarrying - aspect of Vested Business



Surface Quarrying Continued



Surface Quarrying Continued



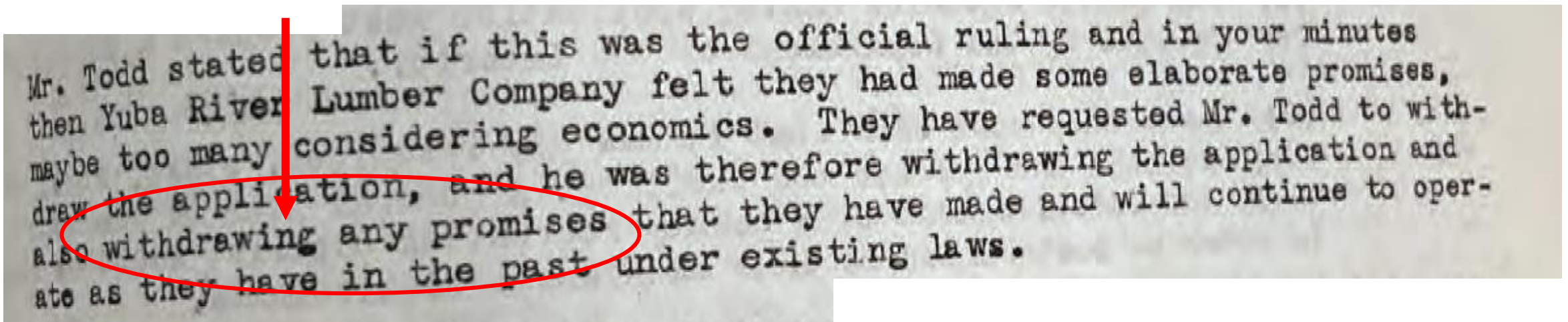
Staff Report Errors

E) Numerous Critical Factual Errors

County Staff

Yuba River Lumber Co. applied for a rezone to industrial for the lumber mill site they were operating on the Subject Properties. The company states that they are willing to record a restriction on their deed that only wood or lumber products would be allowed or file a declaration of restrictions on the property which would limit its industrial uses to only lumber.

Material Excluded from County Exhibits

A photograph of a typed document, likely a minutes or report. A red arrow points from the top left towards a red circle drawn around the phrase "also withdrawing any promises that they have made and will continue to operate as they have in the past under existing laws." The text is typed in a serif font and is slightly angled.

Mr. Todd stated that if this was the official ruling and in your minutes then Yuba River Lumber Company felt they had made some elaborate promises, maybe too many considering economics. They have requested Mr. Todd to withdraw the application, and he was therefore withdrawing the application and also withdrawing any promises that they have made and will continue to operate as they have in the past under existing laws.

Rezone by SPI

Done at same time as option/purchase to mining company
No effect or intent to exclude mining uses.

SECTION II:

This Ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and it shall become operative on the 17th day of February, 1994, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 18th day of January, 19 94, by the following vote of said Board:

Ayes: Supervisors Dave Tobiasen, Karen Knecht,
Jim Weir, Bill Schultz, R.W. Drake.
Noes: None.
Absent: None.
Abstain: None.

ATTEST;

CATHY R. THOMPSON

Clerk of the Board of Supervisors

By: Cathy R. Thompson

Karen Knecht
Chairman

STATE OF CALIFORNIA)
) SS.
COUNTY OF Shasta

On this 10th day of March in the year 1994, before me, a Notary Public in and for said state, personally appeared M. D. Emerson, who is V.P. of SIERRA PACIFIC INDUSTRIES, a California corporation, personally known (or proved) to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for purposes stated therein.



Jack G. Frost
NOTARY PUBLIC

PROVINCE OF BRITISH COLUMBIA)
) SS.
CITY OF VANCOUVER

On this 10th day of March in the year 1994, before me, a Notary Public in and for said state, personally appeared FRANK A. LANG, who is PRESIDENT of EMPEROR GOLD (U.S.) CORP., a Nevada corporation, personally known (or proved) to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for purposes stated therein.

Frank A. Lang
NOTARY PUBLIC

895310062114

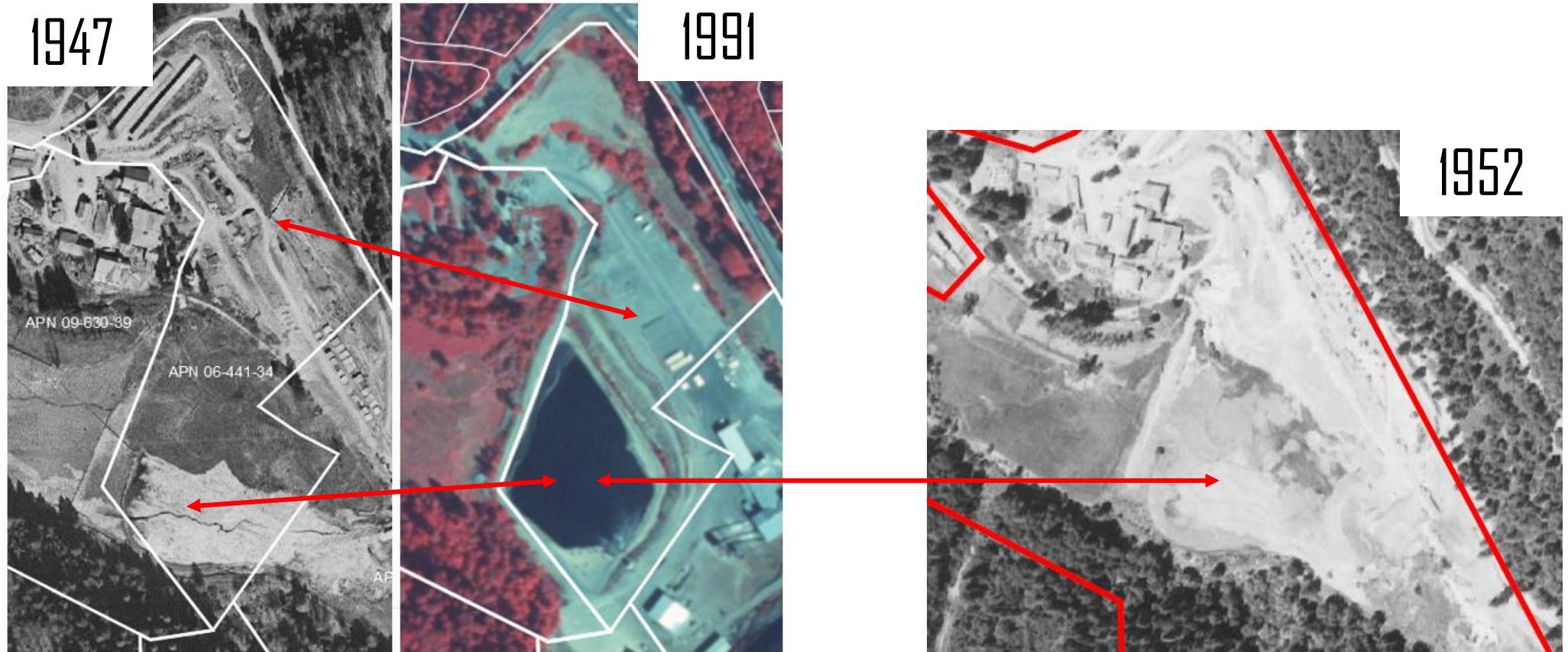


Idaho-Maryland Mine Project

Geographic Scope

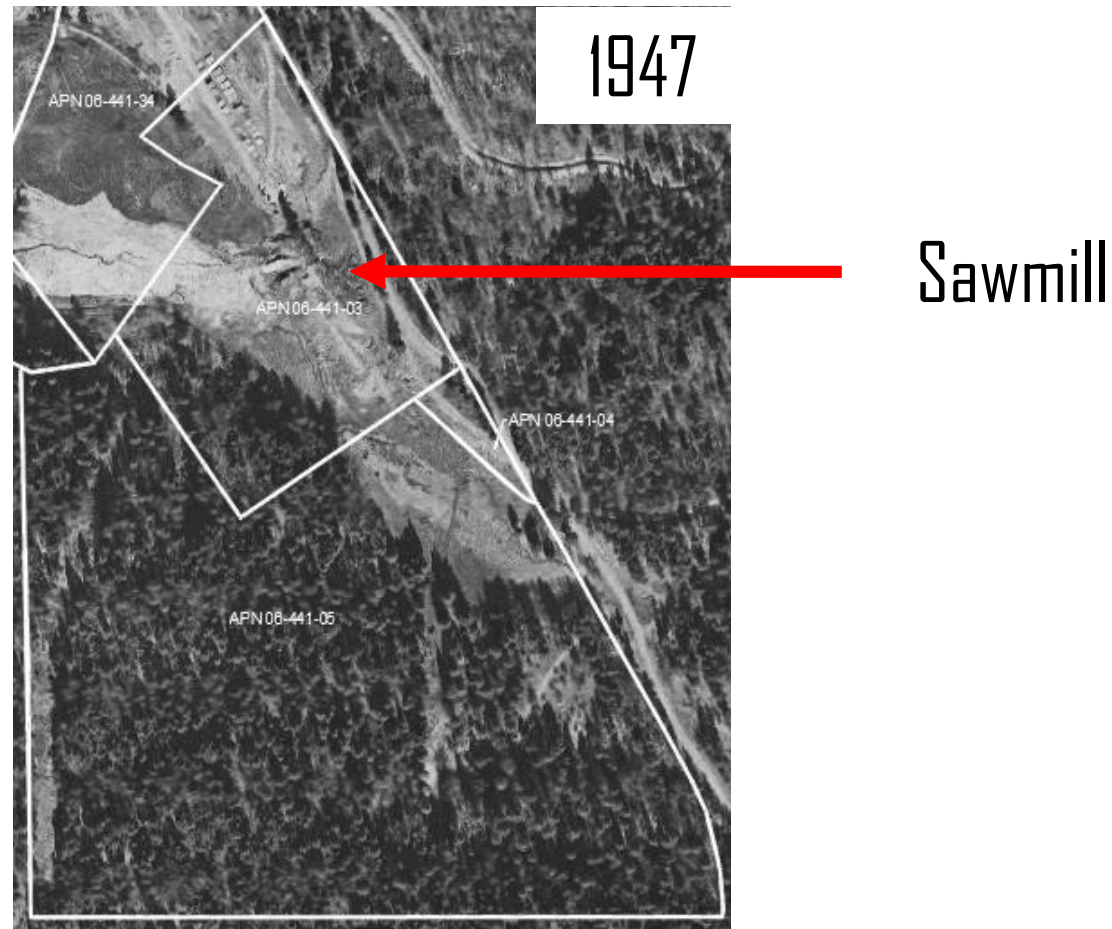
BET Lot 8 – Use unchanged since vesting

1947 & 1991 Air photos showing current boundary of Bet Acres Lot 8 - APN 006-441-034



Geographic Scope

Sawmill parcel – Use unchanged since vesting in 1954



Geographic Scope

Southern parcel – In partial use at vesting

