



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

## MEMORANDUM

SEP 28 2001

To: Nina Hatfield  
Acting Director  
Bureau of Land Management

From: J. Steven Griles  
Acting Assistant Secretary for Land and Minerals Management

Subject: Mill Sites, Patents, and Plans of Operations

As you are aware, the previous Solicitor issued an opinion on November 7, 1997, entitled Limitations on Patenting Millsites under the Mining Law of 1872, M-36988 (Mill Site Opinion). Secretary Babbitt co-signed the opinion on November 12, 1997. The opinion states that "the Department should reject those portions of millsite patent applications that exceed" more than five acres per placer or lode claim and "should not approve plans of operations which rely on a greater number of millsites than the number of associated claims being developed unless the use of additional lands is obtained through other means." M-36988 at 2. Secretary Babbitt sent a letter to Senator Harry Reid stating that the Department of the Interior did not intend to apply a mill site limitation to "mining operations being conducted under approved plans of operations." It is not clear whether he was referring to plans approved as of the date of the Mill Site Opinion or as of the date of the letter, June 22, 1999.

In the Department's fiscal year 2000 Appropriations Act, Congress prohibited application of the Mill Site Opinion, for fiscal years 2000 and 2001, to patent applications grandfathered from the patent funding moratorium and plans of operations that were submitted before November 7, 1997, or that BLM Approved before November 29, 1999. Pub. L. No. 106-113, § 337. BLM's most recent implementation of this legislation is Instruction Memorandum No. 2001-174 (July 13, 2001).

Effective October 1, 2001, the legislative limitation on applying the mill site limitation to grandfathered patent applications and to plans of operations which were submitted before November 7, 1997, or which were approved before November 29, 1999, will expire. However, there is no indication that Congress has altered its view on this issue. Moreover, it would be unfair and arbitrary to change the Department's administrative application of the Mill Site Opinion at this time.

Therefore, I am instructing the Bureau of Land Management to refrain from applying the Mill Site Opinion to grandfathered patent applications and to plans of operations which were submitted before November 7, 1997, or which were approved before November 29, 1999,

Acting Director, BLM

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consistent with the policy described in the July 13, 2001, Instruction Memorandum. In addition, by copy of this memorandum, I am asking the Solicitor to review the Mill Site Opinion,. In the meantime, do not construe this memorandum as approval of the legal conclusions in the Mill site Opinion.

cc: Solicitor