

Blue Lead Mine Dazzles Planning Commission - "Vested Right to Mine" May Be Granted

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NEVADA CITY -- At last week's meeting of the Nevada County Planning Commission, the owner and his attorney for Blue Lead Mine LLC managed to have the "vested right to mine" on 3 parcels approved by commissioners, in spite of the recommendation of county staff. By a 5-0 vote, commissioners approved a motion of intent to grant the applicant's request, disregarding geography and legal arguments.

The original applicant Tucker White was represented by his father Robert White, Advanced Geologic President Charles Watson and attorney Braiden Chadwick.

Planning Commissioners are volunteers appointed by the Board of Supervisors. It is not unreasonable to assume a fair degree of confusion on their part, given the complexity of the issue and their lack of expertise.

A simple definition of "vested right to mine:" A mine operated before 1976 -- when the state's mining law, the Surface Mining and Reclamation Act (SMARA) became effective -- and has continued to operate to the present time.

Any vested mine does not need to apply for a mining permit to the county and no California Environmental Quality Act (CEQA) document for the mining operation itself is required. Another exemption concerns grading permits for roads, landing pads, staging areas, etc. Culverts and diversion ponds are also exempt from any oversight under the vested right to mine.

Blue Lead's attorney, Braiden Chadwick, scorned the recommendation by staff to deny the vested rights claim, saying that staff appeared to be "throwing our hands up in the air and run around screaming." He also stated that in the "late 50's and 60's, it was a fad of the time to enact zoning ordinances," referring to the county's 1954 zoning ordinance.

Chadwick also stated he had "no idea" if the owner is familiar with mining law and regulations. In answer to a question about the geography and history of the area, Chadwick stated that the Red Dog Mine, Red Dog Diggings and even the You Bet Mine were all in the "general" area of the property. This statement should have been questioned by the planning commissioners, but wasn't.

Robert White introduced Lowell Robinson, the owner of Robinson Enterprises, to the commissioners. Robinson stated that the Whites were good people who paid their bills on time and had hired his company to do some repair work on the property. Planning commissioners thanked him profusely for his insight. "We are not here to tear up the land, this mine is environmentally secure," White said in conclusion.

Chadwick claimed that every property owner, up to and including Blue Mine LLC, mined or had the intention to mine the property. "Proof" of "continuous operation" included in his presentation consisted of an undated picture of a truck and a statement of a former Alpha Hardware employee, as well as old documents from the Searls library. Even in this documentation, there is a gap between the 1980's and the present date.

According to Don Drysdale, Public Affairs Officer for the Office of Mine Reclamation, "any mine that had a two-year break in production without a valid reclamation plan and Interim Management Plan is deemed to have

been abandoned under SMARA and thus is ineligible for vested rights. Even if vested rights are granted, all other SMARA requirements apply, including annual reporting, a lead-agency approved reclamation plan, and an annual financial assurance. Failure to have either a complete reclamation plan or financial assurance is subject to a penalty of up to \$5,000 per day, and may also result in a cease-and-desist order."

No reclamation plan, or interim management plan was ever filed until September 2009, as the result of the county's SMARA violation notice.

The Planning Commission proceeded to a motion of intent, which passed by a 5-0 vote, to grant the vested right to mine. The matter will be taken up at the April 22 meeting for final adoption. Staff has to provide the commission with findings supporting the decision since commissioners chose to disregard the initial staff findings rejecting the vested rights claim.

Blue Lead Mine

The Blue Lead operation was originally owned by Golden Girl Mining Company, but the Whites spun off Blue Lead Mine LLC in September 2008. County staff describes the parcels as follows: "The 76.9-acre subject property is located at 18272 Red Dog Road, Nevada City, on three parcels identified as Assessor's Parcel Numbers 38-390-12, -20, and -21. The site is located at the lower end of Red Dog Road approximately 8 miles east of Grass Valley Valley/Nevada City, on the east side of Greenhorn Creek where Red Dog Road meets You Bet Road. The site is located near the historic communities of "You Bet," and "Red Dog," in the Red Dog Mining District in western Nevada County." A portion of the site was mined from the 1850's to early 1900's by hydraulic mining.

The three parcels were acquired in March 2007 and as early as October 2007, inquiries were made to the county by third parties about mining equipment being hauled over Red Dog Road and the installation of gates and signs on the property.

In January 2008, the applicant picked up a Use Permit application at the county.

April 2008: Site visits by agencies. BLM issued a Cease and Desist Notice on April 17, 2008. According to county staff's report:

The notice indicates that the applicant committed a knowing and willful trespass against the United States when he bladed access roads to his Blue Lead Mine across BLM-administered public lands without first getting authorization from BLM. His trespass actions also included building settling ponds on public land (in part), storing equipment, occupancy of camper trailers and the removal/burial of cadastral survey monuments. Tucker White has subsequently complied with the terms of the Notice, including the payment of \$18,006 in damages. However, BLM has noted that Mr. White appears to continue accessing his property using the road he widened/bladed on the adjacent BLM property, without an access easement.

According to BLM, no right of way has been given to Mr. White as of today.

June 2008: the Regional Water Quality Control Board issued a Notice of Violation of the Clean Water Act to Tucker White. The staff reports states:

On August 12, 2008, DFG sent Tucker White a report of the subject property that included photographs, plot maps, DFG tree impact analysis, and a water pollution laboratory report. The report was also copied to DFG enforcement staff and requested an analysis of the actions for possible enforcement and a chain of custody record. On August 23, 2009, DFG filed a formal complaint with the Nevada County District Attorney's™s

Office to review the evidence in this case, specifically with regard to violations of Fish and Game Code Section 1602(a)(1), Change Stream or Lake without Notification to DFG, and 5650(a)(6), Water Pollution from Sediment.

August 2008: Applicant turns in incomplete application; additional work observed

October 2008: Formal complaint, Code case opens

April 2009: County receives another complaint

May 2009: Applicant attempts to get exploration permit on adjoining BLM land without notifying the county

August 2009: County issues Notice of Violation of SMARA

August 2009: County issues Order to Comply with SMARA and sets hearing date

September 2009: Staff visits site, observes new violations

September 2009: Applicant submits revised Reclamation Plan & vested mining rights info.

A Small Family Operation?

The Whites are hardly strangers to committing violations. Operating as "Golden Girl Mine" in Plumas County in 2006, notices of violation were issued by the Regional Water Quality Control Board (RWQCB) - a Notice of Violation for illegal discharges of sediment to Lights Creek - and the Forest Service - Notice of Noncompliance with the Plan of Operations. The Office of Mine Reclamation (OMR) inspected this illegal mine on August 28, 2009, finding abandoned equipment, trash, and hazardous materials. According to OMR, this mine was abandoned with approximately two acres disturbed.

Tucker White was convicted in Lassen County Court of violating Fish and Game Code 1603, unauthorized alteration of a streambed, in January of 2001, according to the county staff report.