USA: Mining Laws and Regulations 2021

ICLG - Mining Laws and Regulations - USA covers common issues in mining laws and regulations – including the acquisition of rights, ownership requirements and restrictions, processing, transfer and encumbrance, environmental aspects, native title and land rights – in 15 jurisdictions.

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Chapter Content

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Contributor

Karol Kahalle

Holland & Ha

HOLLAND&HAR

Holland & Hart LLP

Other USA Chapters

1. Relevant Authorities and Legislation

1.1 What regulates mining law?

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

generally subject to multiple layers of concurrent federal, state, and local statutes and administrative regulations. Increasingly, the executive branch of the federal Government has made use of Presidential Executive Orders to impact mining policy and procedure.

1.2 Which Government body/ies administer the mining industry?

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

Determining which level of Government has jurisdiction over mining activities largely depends on surface and mineral ownership. A substantial amount of mining in the US occurs on federal lands where the federal Government owns both the surface and mineral estates. Federal law primarily governs mineral ownership, operations, and environmental compliance, with state and local Governments having concurrent or independent authority over certain aspects of federal land mining projects (e.g. permitting, water rights and access authorisations). If the resource occurs on private land, estate ownership is a matter of state contract law, but operations and environmental compliance are still regulated by applicable federal and state laws. Estate ownership on state-owned land is regulated by state law, and operations and environmental compliance are regulated by applicable federal and state laws, and in some cases local zoning ordinances.

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

The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701–1787, governs federal land use, including access to, and exercise of, mining rights on lands administered by the BLM and the US Forest Service (USFS). FLPMA recognises 'the Nation's need for domestic sources of minerals', 43 U.S.C. § 1701(a)(12), and provides that FLPMA shall not impair GML rights, including, but not limited to, rights of ingress and egress. 43 U.S.C. § 1732(b). However, FLPMA also provides that mining authorisations must not 'result in unnecessary or undue degradation of public lands'. 43 C.F.R. § 3809.411(d)(3)(iii); see also 43 U.S.C. § 1732(b). BLM and USFS have promulgated extensive FLPMA mining regulations. See, e.g., 36 C.F.R. §§ 228.1–228.116, 43 C.F.R. §§ 3000.0-5-3936.40. The National

Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370m-12, requires federal agencies to prepare an environmental impact statement (EIS) for all major federal actions significantly affecting the quality of the human environment. Mining operations on federal lands or with a federal nexus generally will involve an EIS or a less intensive environmental assessment (EA) examining environmental impacts. The NEPA process involves consideration of other substantive environmental statutes. Other Government statutes affect mining with regard to the following: solid and hazardous material disposal and transportation; reclamation; clean water and air; toxic substances; historic and cultural preservation; and endangered species.

The US Securities and Exchange Commission (SEC) regulates mineral resources and reserves reporting by entities subject to SEC filing and reporting requirements. The SEC's reporting classification system is based on the SEC's 1992 Industry Guide 7, which provides for declaration only of proven and probable reserves. On October 31, 2018, the SEC adopted amendments to modernise the property disclosure requirements for mining registrants which more closely align with current industry and global regulatory practices and standards, including the Committee for Reserves International Reporting Standards. Under the new rules, Guide 7 has been replaced with a new subpart of Regulation S-K which, among other new requirements aimed at protecting investors, requires mining registrants to disclose both

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K which, among other new requirements aimed at protecting investors, requires mining registrants to disclose both mineral resources and mineral reserves and to support all disclosures with a technical report prepared by qualified persons with mining expertise. The SEC adopted a two-year transition period with the initial compliance year beginning on or after January 1, 2021, but registrants may voluntarily comply immediately.

2. Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

The United States Congress is intensifying efforts to increase domestic mining and processing of strategic minerals. The American Critical Minerals Exploration and Innovation Act now moving through Congress would allocate more than $2 billion over a 10-year period to research and development of strategic minerals. The proposed legislation also aims to streamline the mine permit review process.

The legislation comes on the heels of several efforts during the Trump administration to focus on strategic minerals. Pursuant to Executive Order 13817, President Trump outlined a federal policy to reduce the country's dependency on the importation of minerals considered critical to the security and prosperity of the United States. He directed the Secretary of the Interior, in coordination with the Department of Defense and other executive branch agencies, to identify such critical minerals based on the following criteria: '(i) a non-fuel mineral or mineral material essential to the economic and national security of the United States, (ii) the supply chain of which is vulnerable to disruption, and (iii) that serves an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security.' On May 18, 2018, the Department of the Interior published the final list of critical minerals which includes uranium. Final List of Critical Minerals 2018, 83 Fed. Reg. 23,295 (May 18, 2018).

The Executive Order further directed implementation of the critical mineral policy to: (a) identify new sources of critical minerals; (b) increase activity at all levels of the supply chain, including exploration, mining, concentration, separation, alloying, recycling, and reprocessing of critical minerals; (c) ensure that miners and producers have electronic access to the most advanced topographic, geologic, and geophysical data within the U.S. territory to the extent permitted by law; and (d) streamline leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

Several US-based strategic minerals companies are poised to develop uranium, lithium, rare earths and other strategic mineral projects.

3. Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

In order to conduct reconnaissance, miners must demonstrate that they hold a right to access the minerals. Such rights may be based on fee ownership, lease or contracting of privately owned minerals, or through locations, leases, or contracts of federal and/or state-owned mineral. Where the surface and minerals have been severed, surface access rights may need to be demonstrated as well.

Depending on the proposed level of mining activity, permits and licences required to conduct mining activities may

include:

a. mine plan of operations;
b. reclamation plan, bonding and permits;
c. air quality permits;
d. water pollution permits (pollutant discharge elimination system discharge permit, storm water pollution prevention plan, spill prevention control and countermeasure plan);
e. dam safety permits;
f. artificial pond permits;
g. hazardous waste materials storage and transfer permits;
h. well drilling permits;
i. road use and access authorisations, right-of-way authorisations; and
j. water rights.

3.2 What rights are required to conduct exploration?

See the response to question 3.1.

3.3 What rights are required to conduct mining?

See the response to question 3.1.

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

The General Mining Law of 1872 (GML), 30 U.S.C. §§ 21–54, 611–615, as amended, is the principal law governing locatable minerals on federal lands. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. Locatable minerals include non-metallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals including gold, silver, lead, copper, zinc, and nickel. Locating these mineral deposits entitles the locator to certain possessory interests: unpatented mining claims, which provide the locator an exclusive possessory interest in surface and subsurface lands and the right to develop the minerals; and patented mining claims, which pass title from the federal Government to the locator, converting the property to private land. However, a mining patent moratorium has been in place since 1994 and no new patents are being issued. The GML affords US citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. The process for developing locatable mineral rights on federal lands involves:

a. discovery of a 'valuable mineral deposit', which under federal law means that a prudent person would be justified in developing the deposit with a reasonable prospect of developing a successful mine, and that the claims can be mined and marketed at a profit;
b. physically locating mining claims by posting notice and marking claim boundaries;
c. recording mining claims by filing a location certificate with the proper BLM state office within 90 days of the location date and recording pursuant to county requirements;
d. maintaining the claim through assessment work, paying an annual maintenance fee, and filing of affidavits; and
e. additional requirements for mineral patents (as mentioned above, there is a moratorium on patents).

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

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

Acquired lands are those obtained by the federal Government from private owners through purchase, condemnation, or gift, or by exchange. These lands are not subject to location. However, the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351–360, authorises the leasing of coal, phosphate, oil and gas, oil shale, sodium, potassium, and sulphur found in acquired lands. Leasing is also allowed for those minerals that would be considered locatable if found on the public domain, as well as geothermal resources.

Areas designated as national parks, national monuments, most Reclamation Act project areas, military reservations, wilderness areas, and wild and scenic river corridors are generally not open to mining locations and leases. Project proponents should research mineral access when considering exploration activities on federal lands.

Prospecting and mining are prohibited after an area is incorporated into the National Park System; rights acquired prior to an area's inclusion into the system may remain valid if properly located and maintained, but will be subject to control of the National Park Service which regulates use of privately owned reserved and other mineral interests on lands within the boundaries of the National Park System in addition to controlling surface and subsurface uses of both patented and unpatented claims.

National Recreation Areas are generally closed to mineral locations and leasing surface coal mining operations are prohibited in these areas.

States have the authority to lease, sell, exchange, or otherwise manage state-owned mineral lands pursuant to constitutional or statutory provisions, and as regulated by state boards or officers, through either a single agency or a combination of agencies. Leasing is the most common method of obtaining mining rights on state mineral land. A few states provide for both mining claims and permits, while others allow prospecting rights under mineral leases. Some require neither. The purpose is to generally allow the applicant to obtain an exclusive right to explore untested or undeveloped ground while giving the state some control over mineral activities. Once minerals of value are located and described, the applicant typically obtains a preferred right to a mineral lease. In some instances, competitive bidding is

required.

Rights to privately-owned minerals may be obtained through purchase, lease or contract.

3.5 Are different procedures applicable to natural oil and gas?

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

1. make rental payments;
2. file an exploration plan;
3. make royalty payments based on production; or

k. make royalty payments based on production; or
l. furnish a bond covering closure and reclamation costs.

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

States have separate statutory and regulatory requirements for oil and gas leasing.

Oil and gas mineral rights may be held privately and rights to such interest are typically available by purchase or lease.

4. Foreign Ownership and Indigenous Ownership Requirements and Restrictions

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

The GML and Mineral Lands Leasing Act require that mine claimants, permittees and lessees be US citizens. A 'citizen' can include a US-incorporated entity, incorporated in any state in the US.

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

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

While the GML does not specifically mention corporate eligibility, the requirement of proof of citizenship refers to a corporation organised under the laws of the United States or any state or territory thereof and an association of persons unincorporated. These requirements have generally been interpreted to mean that for a corporation, it is the jurisdiction of formation that determines its citizenship, but for unincorporated associations such as partnerships and limited liability companies the entity is disregarded, and the association's members need to satisfy the citizenship requirement. The interest in mining claims by a person or entity not qualified by citizenship is voidable by the United States, rather than void, and such defects may be corrected by conveying the interest to a qualified holder.

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

Foreign employees are governed by general US immigration laws and are required to obtain a work visa or other

authorisation. A limited number of visas are available for skilled workers, professionals and non-skilled workers, but these workers must be performing work for which qualified US workers are not available. 8 U.S.C. § 1153(b)(3)(C).

4.3 Are there any change of control restrictions applicable?

The GML does not contain change of control restrictions. Mineral leases and contracts may contain change of control restrictions by their terms. A change of control in the holder of a lease, licence or permit may require federal and state agency approval depending on the type of right involved.

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

See the response to question 10.1.

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

There are no carry rights or shareholding options under US law.

5. Processing, Refining, Beneficiation and Export

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

There are no specific provisions relating to processing or beneficiating mined minerals in US law except for general environmental laws and applicable permitting requirements.

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

There are no restrictions or limitations on the sale, import, or export of extracted or processed minerals, unless such minerals are deemed a national security risk by the US Department of Homeland Security or State Department. For example, projects involving the export of particular minerals, such as uranium or rare earth elements, can be subject to greater scrutiny when foreign companies are involved.

6. Transfer and Encumbrance

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

The transferee must be qualified to hold the interest. See the responses to questions 4.1 and 4.2.

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

Yes, subject to the underlying mineral ownership rights of the Government or private mineral interest owner.

7. Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and

Mining of Mixed Minerals

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

Privately held mineral rights and the rights to conduct reconnaissance, exploration and mining on such rights may be subdivided among numerous parties. Rights to conduct such operations on federal and state mineral interests are governed by the instruments conveying such rights and may or may not permit subdivision.

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

Yes, such rights may be held in undivided shares.

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

Generally, the holder of a mining claim or lease for a primary mineral is entitled to extract from a claim/lease those 'associated minerals' or secondary minerals which may be economically recovered along with the primary mineral(s), unless the Government or private mineral interest owner has expressly reserved such minerals to itself.

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

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

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

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

8. Rights to Use Surface of Land

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

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

Holders of federal and state mineral leases and contracts may obtain surface access rights under the terms of the instrument, but in some instances additional access rights may have to be obtained through rights-of-way regulations.

Split-estate lands are lands where the ownership of the surface estate and mineral estate have been severed. In such instances, surface rights may have been granted to private parties, with the minerals reserved to the United States. Even where surface and mineral interests are in private ownership, these interests may be held by different parties. When surface rights and mineral rights are owned by different parties, the mineral rights owner (or lessee or locator) has the legal right to use as much of the surface as is reasonably necessary to mineral development. However, the mineral estate owner must show due regard for the interest of the surface estate owner. In such cases, the mineral rights holder must comply with notice requirements and other state and federal requirements that protect the surface owner, including submission of an adequate bond for reclamation.

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

Those projects that require NEPA review will be subject to public notice and comment requirements and the review will involve consideration of the project's cultural, societal and economic impacts. State and local permitting processes also may require applicants to secure public input. State laws may impose a 'public interest' standard for projects requiring state approval. For example, mining operations that require state water rights may need to show that the use of the water is in the 'public interest', which may include consideration of wildlife, fisheries and aquatic habitat values.

As discussed in question 8.1, the law governing split estates requires both the mineral estate owner and the surface estate owner to proceed with 'due regard' for the other, and to 'accommodate' the use of the other. The mineral rights owner is generally entitled to use as much of the surface and subsurface as is 'reasonably necessary' to exploit its interest in the minerals, but this entitlement must be balanced against the surface owner's right to use his property. Federal and state legislation has granted additional protections to surface owners, which may include notice and consent requirements, bonding for reclamation, and the payment of damages for surface destruction.

8.3 What rights of expropriation exist?

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

9. Environmental

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

NEPA is the principal environmental law implicated by mining on federal lands. NEPA requires federal agencies to take a 'hard look' at the environmental consequences of its projects before action is taken. An agency must prepare an EIS for all major federal actions significantly affecting the quality of the human environment. An agency may first prepare an EA to determine whether the effects are significant. If the effects are significant, the agency must prepare the more comprehensive EIS. If the effects are insignificant, the agency generally will issue a finding of no significant impact, ending the process. NEPA does not dictate a substantive outcome; however, the analysis generally requires consideration of other substantive environmental statutes and regulations, such as those identified in the response to question 1.3 above. NEPA is administered by the federal agency making the decision that may significantly affect the

environment.

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

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

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

Additional environmental statutes that may impact mining are identified in the response to question 1.3 above. States also have a wide range of environmental laws that govern permitting and reclamation on mining projects.

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

A variety of federal and state laws govern the storage of tailings and other waste products on mining operations and for the closure of mines. In general, a mine plan must provide a detailed description of how the mine operations will comply with such requirements.

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

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

Mining activities on National Forest lands must be conducted 'so as to minimise adverse environmental impacts on National Forest System surface resources'. 36 C.F.R. § 228.1. Operators must take measures that will 'prevent or control on-site and off-site damage to the environment and forest surface resources', including erosion control, water run-off control, toxic materials control, reshaping and re-vegetation where reasonably practicable, and rehabilitation of

run-off control, toxic materials control, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat. 36 C.F.R. § 228.8(g). State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects can often address both federal and state requirements through a single closure and reclamation plan and financial guarantee.

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

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

Individual counties and municipalities may impose certain zoning requirements on lands subject to their jurisdiction, including prohibitions on mining in certain areas and designations of specific areas for mining.

10. Native Title and Land Rights

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

The US contains numerous 'reservations' comprised of federal lands set aside by treaty, Congressional Act or administrative directive for specific Native American tribes or Alaska natives. Tribal reservation title generally is held by the US in trust for the tribes, and the US Bureau of Indian Affairs administers the reservations. Alaska native lands are owned and administered by Alaska native corporations. Mineral development within the tribal reservations and Alaska native lands requires negotiation with the appropriate administrator, leases with tribes for tribally-owned mineral rights and tribal consent for access rights. Tribes also may acquire land in fee by purchase as any private party. Reservations may contain inholdings of private or Government-owned surface and mineral interests. Therefore, title to a particular parcel of lands within reservation boundaries is important to understanding the complex jurisdictional issues that may impact mining.

Tribal cultural interests are considered through NEPA and two specific laws. The National Historic Preservation Act (NHPA), 54 U.S.C. § 300101, *et seq.*, requires an analysis that includes social and cultural impacts, and may require tribal consultation. Section 106 of NHPA requires federal agencies to inventorise historic properties on federal lands and lands subject to federal permitting, and to consult with interested parties and the State Historic Preservation Office. 54 U.S.C. § 306108. The Native Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013, imposes procedural requirements that apply to inadvertent discovery and intentional excavation of tribal graves and cultural items on federal or tribal lands. Locatable minerals found on American Indian reservations are subject to lease only. Under the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108, tribes may enter private negotiations with mineral developers for exploration and extraction, subject to the Interior Secretary's approval. Tribes also may assert off-reservation rights for fishing and hunting if such rights have been granted by treaty or otherwise, and such rights may impact mining even where operations are not on tribally-owned lands.

11. Health and Safety

11.1 What legislation governs health and safety in mining?

The Federal Mine Safety and Health Act, 30 U.S.C. § 801–966, requires the Mine Safety and Health Administration (MSHA) to inspect all mines each year to ensure safe and healthy work environments. 30 U.S.C. § 813. MSHA is prohibited from giving advance notice of an inspection, and may enter mine property without a warrant. 30 U.S.C. § 813. MSHA regulations set out detailed safety and health standards for preventing hazardous and unhealthy conditions, including measures addressing fire prevention, air quality, explosives, aerial tramways, electricity use, personal protection, illumination and others. See, e.g., 30 C.F.R. §§ 56.1–56.20014 (safety and health standards for surface metal and non-metal mines). MSHA regulations also establish requirements for: testing, evaluating, and approving mining products; miner and rescue team training programmes; and notification of accidents, injuries, and illnesses at the mine. 30 C.F.R. §§ 5.10–36.50, 46.1–49.60, 50.10.

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

Yes. Owners, employers, managers and employees all have obligations under the laws described in question 11.1.

11.3 Are there any unique requirements affecting the mining industry in light of the coronavirus (COVID-19) pandemic?

Mining has been deemed one of 16 critical infrastructure sectors identified by the US Department of Homeland Security's Cybersecurity and Infrastructure Agency, citing the mining industry's role in critical manufacturing and the production of medical equipment. As such, mining operations have not been required to shut down operations in light of state and local closure requirements. However, MSHA has issued a directive indicating that it will abide by the President's Coronavirus Guidelines for Americans which are based on the Center for Disease Control Interim Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019. Additional state and local requirements may impact mining operations. Because MSHA does not have jurisdiction to enforce or implement state and local Governments' emergency orders, mining companies are required to consult with such Governments to ensure compliance with workplace requirements.

On June 4, 2020, President Trump issued Executive Order 13927, 'Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities', 85 Fed. Reg. 35165, which authorises federal agencies to invoke their emergency authorities to expedite transportation, defence and other infrastructure project approvals that would otherwise be subject to lengthy environmental review. The mining industry is likely to benefit from expedited permitting of infrastructure projects. However, environmental groups have indicated they will challenge projects approved pursuant to the order.

12. Administrative Aspects

12.1 Is there a central titles registration office?

No. Land and mineral title records are kept in the Government office having jurisdiction over the mining rights (e.g., the BLM) and in the real property records of each county in which the property is located. All relevant sources must be consulted to determine title.

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

Yes. Appeals may be made to administrative tribunals having jurisdiction over a particular agency's order or decision

and ultimately to the judicial system.

13. Constitutional Law

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

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

13.2 Are there any State investment treaties which are applicable?

Many international treaties of general application apply to mining industry investment by foreign persons into the United States, but none specifically address investment in the mining industry or trading in various minerals. See the response to question 15.2.

14. Taxes and Royalties

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

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

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

There are no federal tax advantages or incentives specific to mining.

There are no federal duties on minerals extraction.

Locatable minerals claimants must pay an annual maintenance fee of $165 per claim *in lieu* of performing assessment work required pursuant to the GML and FLPMA. 43 C.F.R. §§ 3834.11(a), 3830.21. Failure to perform assessment work or pay a maintenance fee will open the claim to relocation by a rival claimant as if no location had been made. 43 C.F.R. § 3836.15. Certain waivers and deferments apply.

Leasable minerals permittees and lessees must pay annual rent based on acreage. The rental rates differ by mineral and some rates increase over time. 43 C.F.R. § 3504.15. Prospecting permits automatically terminate if rent is not paid on time; the BLM will notify late lessees that they have 30 days to pay. 43 C.F.R. § 3504.17. State laws may also include closure and reclamation requirements, including water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects can often address both federal and state requirements through a single closure and reclamation plan and financial guarantee. Local Governments may require that transfer taxes be paid upon the recording of a conveyance of mining properties.

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

There are generally no royalties levied on the extraction of federally owned locatable minerals under the GLO. However, mineral leases generally carry royalty obligations. Many states, however, charge royalties on mineral operations on state-owned lands and taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. These functional royalties can differ depending on land ownership and the minerals extracted.

15. Regional and Local Rules and Laws

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

As noted above, state and local Governments have concurrent or independent authority over certain aspects of mining projects (e.g. permitting, water rights and access authorisations). Ownership of state-owned land and minerals is controlled by state law and varies by state. State laws generally are similar to federal laws in that title remains with the state until the minerals are severed pursuant to statutory procedures. State and local laws may impose a 'public interest' standard for projects requiring state approval. State laws also include permitting requirements and closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Local permits may be required for certain operations, e.g., truck haulage. Many state laws require financial guarantees prior to commencing operations to cover closure and reclamation costs. In addition, some states charge royalties on mineral operations on state-owned lands and impose taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. Local zoning laws may prohibit or limit mining in certain areas.

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

The North American Free Trade Agreement (NAFTA) among the US, Canada and Mexico, in Chapter 11, required equal treatment between the NAFTA country's own citizens and those from another NAFTA country, and required that the NAFTA country protect those investors and their investments. Among the most important protections were the broad prohibitions on 'expropriation' of the investor's rights, including a prohibition on the NAFTA country implementing measures 'tantamount to expropriation' except in accordance with approved criteria, and requiring payment of compensation resulting from losses incurred by the investor. In November 2018, the three countries executed a new agreement, called the United States–Mexico–Canada Agreement (USMCA), to replace NAFTA. The USMCA entered into force in July 2020, and includes more enforceable labour and environmental standards, intellectual property protections and a new chapter on the digital economy.

16. Cancellation, Abandonment and Relinquishment

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

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

reclamation and closure requirements.

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

Under the GML, there is no obligation to relinquish an exploration or mining right after a certain period of time. The terms of federal mineral leases, state mineral leases or private leases generally set the term limits of mining rights, but may permit rights to continue past an initial or extended term as long as minerals are continuing to be produced and sold.

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

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