



THE NORTON MINING RULE

On Thursday, October 25th, Secretary of Interior Gale Norton announced that the Bureau of Land Management would revoke the strong 3809 environmental mining rule first published in November 2000, and replace it with much weaker regulations. On Tuesday, October 30th, 2001, the BLM published the new, weak rule in the Federal Register. In doing so, Secretary Norton ignored 97% of public comments, turning her back on Western communities and the environment.

The new 2001 rule follows through on Norton's March announcement of BLM's intent to revoke the strong 2000 rule and replace it with its outdated predecessor, written in 1980. Although the 2001 rule retains some elements of the 2000 rule, its practical ability to protect the environment is minimal. Although the 2000 rule contained many improvements over its predecessor, particularly important were establishment of (1) the regulatory right to deny irresponsible mines, (2) meaningful environmental performance standards, and (3) adequate reclamation bonds. The Norton rule removes the ability to deny mines, guts almost all environmental performance standards, but keeps bonding standards (with a caveat).

Following is a snapshot analysis of the new 3809 mining rule. Key environmental protections within the strong 2000 rule are classified as eliminated, substantially weakened, weakened, or unchanged within the new Norton rule.

AUTHORITY TO DENY MINES

Regulatory authority to deny irresponsible mine proposals -- ELIMINATED.

The environmental heart of the 2000 mining rule was the provision that directed land managers to deny any mine proposal that would cause "substantial irreparable harm" to environmental, cultural or scientific resources that could not be "effectively mitigated."

The Norton rule deletes that provision, meaning that once again, federal land managers do not have the regulatory authority to deny a hardrock mine proposal, no matter how damaging.

ENVIRONMENTAL PERFORMANCE STANDARDS

Acid mine drainage, cyanide, and other toxic controls -- WEAKENED

The 2000 rule required operators to handle "potentially acid forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation." It emphasized pollution prevention over pollution containment, generally and specifically.

The Norton rule does keep almost all of these toxic controls. However, it does not require that waste rock, tailings, and leach pads be located in a position to prevent ground and surface water pollution, as the 2000 rule required.

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For example, it's much easier to prevent toxic water pollution if the toxic waste dump isn't located in a river valley. The new Norton rule makes no such requirement. 3809.420(b)(11) through 3809.420(b)(12).

Fish, wildlife, plant habitat protection -- SUBSTANTIALLY WEAKENED

The 2000 rule required operators to minimize disturbance to ALL fish, wildlife and plant habitat.

The Norton rule requires that mine operators "prevent adverse impacts to threatened or endangered species." The Endangered Species Act requires that already, whether the Norton rule mentions it or not. All other fish, wildlife and plants are essentially unprotected. Habitat rehabilitation is required without defining rehabilitated habitat. 3809.420(b)(7)

Reclamation standards – SUBSTANTIALLY WEAKENED

The 2000 rule required mine reclamation to restore the environment, and described what that restored environment should look like.

The Norton rule sets NO meaningful standard for cleaning up a mine site. The rule simply states that "measures" should be taken to do certain things such as "control erosion" without specifying what "controlled erosion" entails. Additionally, mine operators are free to leave any part of the site totally unreclaimed if it's "necessary to preserve evidence of mineralization" -- presumably so the mine operator could return to the site to resume mining if mineral prices should rise. 3809.420(b)(3)

Revegetation requirements – SUBSTANTIALLY WEAKENED

The 2000 rule required mine operators to restore a self-sustaining plant community similar in density and biodiversity to pre-mining conditions.

The Norton rule contains no revegetation performance standard. It does say revegetation should occur without describing what a revegetated mine site should consist of, perhaps most importantly without requiring that the revegetated site be similar to pre-mining conditions.

Road building standards -- WEAKENED.

To minimize new road construction, the 2000 rule required mining operators to use existing roads where possible.

The 2001 rule makes no such requirement, it leaves the issue to the land manager. 3809.420(b)(1)

Surface and groundwater protection -- ELIMINATED

The 2000 rule protected surface and groundwater resources in several ways: it required operators to prevent pollution where possible, and to minimize pollution where prevention was impossible but the pollution didn't cause substantial irreparable harm. Perhaps most important, the rule specifically mentioned groundwater (quality and quantity). This is important because other federal statutes, such as the Clean Water Act, do not protect groundwater.

The Norton rule completely removes all mining specific surface and groundwater protection. It simply reaffirms that mining operators must comply with applicable federal and state water quality standards -- which they are already required to do. 3809.420(b)(5)

Wetlands and riparian protection -- ELIMINATED

The 2000 rule directed mining operators to avoid operating in wetlands and riparian areas, and where unavoidable, to restore the areas to an ecologically functioning condition (which it described in detail).

The Norton rule simply deletes wetland and riparian protection with no substitute.

TAXPAYER PROTECTION

Bonding standards—UNCHANGED, with a caveat

The 2000 rule required adequate reclamation bonds for all mining operations, plan and notice, with some loopholes.

The Norton rule retains all bonding language from the 2000 rule. However, the amount of a reclamation bond is determined by the strength of the reclamation standard. If a mine operator isn't required to adequately reclaim a mine site, the bond required to inadequately reclaim the site will be considerably lower than if the operator were required to fully reclaim the site. So, although bonds will be fully funded under the Norton rule, the criteria for setting the bond amount, the reclamation standard, has been gutted. Therefore fully funded Norton bonds will likely be inadequate to fully reclaim mine sites -- leaving open the possibility that taxpayers may still pay for mine cleanups.

CORPORATE ACCOUNTABILITY

Corporate liability standards -- WEAKENED

The 2000 rule established joint and several liability for operations on mining claims. It also broadly defined a "mining operator." Combined, the rule pierced the corporate veil that mining companies create by forming shell corporations for individual mine operations. In a nutshell, it ensured that anyone who stood to financially benefit from mining a claim could be held directly responsible for environmental damages associated with mining that claim.

The Norton rule eliminates joint and several liability, and narrowly defines "mining operator." Holding accountable irresponsible corporate actors under the Norton rule will be a considerably more litigious, lengthy, and chancy process.

Civil penalties for bad actors -- ELIMINATED

The 2000 rule established fines for violations.

The Norton rule deletes civil penalties, claiming that the statute (Federal Land Policy and Management Act) underlying the rule doesn't authorize them.