



United States Department of the Interior

OFFICE OF THE SOLICITOR

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Memorandum

To: Secretary
Director, Bureau of Land Management

From: Solicitor

Subject: Rescission of 2001 Ancillary Use Opinion

In 2001, former Solicitor John Leshy issued an opinion, concurred in by former Secretary Bruce Babbitt, that addressed use of the surface of mining claims for purposes ancillary to mining. *Use of Mining Claims for Purposes Ancillary to Mineral Extraction*, M-37004 (Jan. 18, 2001) (hereinafter "2001 Ancillary Use Opinion"). The 2001 Ancillary Use Opinion relied heavily on the legal conclusions of an earlier opinion related to mill sites that has since been superseded. *Limitations on Patenting Millsites under the Mining Law of 1872*, M-36988 (Nov. 7, 1997), superseded by *Mill Site Location and Patenting under the 1872 Mining Law*, M-37010 (Oct. 7, 2003) (hereinafter "2003 Mill Site Opinion").

Because the need for the 2001 Ancillary Use Opinion has been displaced in large part by the 2003 Mill Site Opinion, both the Bureau of Land Management ("BLM") and the United States Forest Service ("Forest Service") have asked whether or to what degree the 2001 Ancillary Use Opinion continues to represent the Department's legal position. Memorandum from Director, BLM, to Solicitor (July 30, 2004) (on file with the Solicitor's Office); Letter from Dale N. Bosworth, Chief, Forest Service, to Kathleen Clarke, Director, BLM (July 9, 2004) (on file with the Solicitor's Office). I agree that the 2003 Mill Site Opinion calls into question the continued viability of the 2001 Ancillary Use Opinion. Therefore, I hereby rescind and withdraw the 2001 Ancillary Use Opinion in its entirety.


Sue Ellen Wooldridge
Solicitor

I concur in the rescission of the 2001 Ancillary Use Opinion:

Gale A. Norton
Secretary of the Interior

Nov. 17, 2005
Date