of the Site has been restricted, and institutional controls will remain in effect (e.g., restricted access to the Site). A long-term groundwater monitoring program has been implemented at the Site. In addition, the Site will continue to be subject to periodic five-year reviews to ensure that the remedy remains protective of human health and the environment.

E. Other Activities at the Facility

The NPL site was defined as the potliner waste pile area and any contamination associated with the potliner waste (e.g., cyanide and fluoride-contaminated soil and groundwater). However, some other areas of the facility were contaminated and have been addressed, separately from the NPL site, pursuant to the Model Toxics Control Act (MTCA) or the State Dangerous Waste Law. These areas include: (1) A landfill area containing TCE contamination; (2) a lagoon area containing PCBs; (3) PCB and PAH soil contamination in the Rod Mill building; (4) PCB and TPH-contamination in a parking lot. cont; (5) TPH and cyanide in a barge bludge lagoon; and (6) as a RCRA closure, tank sludge from the VANEXCO anodizing plant. More information on these activities can be found in the comprehensive Site file. See the next section for the location of the site file and deletion docket.

F. Public Participation

Community input has been sought by Ecology throughout the cleanup process for the Site. Community relations activities have included public meetings prior to signing the Consent Decree, several public notices in local newspapers, and routine publication of progress fact sheets. A copy of the Deletion Docket can be reviewed by the public at the Fort Vancouver Regional Library or the EPA Region 10 Records Center. The Deletion Docket includes this document, the CAP, the Project Completion Report, Consent Decree, and the PCOR. Comprehensive Site files are available for review at Fort Vancouver Regional Library, and the Washington Department of Ecology. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other persons have implemented all appropriate response actions required''. EPA, with the concurrence of Ecology, has determined that this criteria for deletion has been met. EPA and Ecology believe that no significant threat to human health or the environment remains because pathways of concern for exposure to contaminants no longer exist. Groundwater data show that MCLs are not exceeded at the point where groundwater from the Site enters the Columbia River and there are no drinking water wells within the area of groundwater contamination nor will any be allowed in the future. Because of the limited extent of the contaminated plume, the completed source removal, the placement of institutional controls, the technical infeasibility and lack of effectiveness of a more aggressive groundwater remedial action, and the lack of impact on the Columbia River, EPA and Ecology believe that natural attenuation over time will reduce the level of cyanide and fluoride concentrations in the groundwater under the Site. Groundwater monitoring will continue until there are no exceedances of MCLs. If new information comes available that indicates that there is a significant threat to human health or the environment then EPA or Ecology can require or conduct additional remedial action, if appropriate. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: August 6, 1996.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 96–20589 Filed 8–14–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3860

[WO 320 1990 01 24 1A]

Patenting Information: Petition for Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Petition for rulemaking; request for comments.

SUMMARY: The Bureau of Land Management (BLM) of the United States Department of the Interior (DOI) seeks comments concerning the rule changes proposed in a petition submitted by twelve private organizations. The petition requests BLM to amend its regulations to require disclosure of the information used by BLM to determine the validity of mining claims and the eligibility of mill site claims for patenting under the 1872 Mining Law. Comments will assist the Director of BLM in deciding whether to grant or deny the petition.

DATES: BLM will accept written comments on the petition until October 15, 1996.

ADDRESSES: Commenters may *hand-deliver* comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., N.W., Washington, D.C.; *mail* comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, N.W., Washington, D.C. 20240; or *transmit* comments *electronically* via the Internet to WOComment@WO0033wp.wo.blm.gov. Please include ''Attn: Roger Haskins, Mineral Patent Petition'' in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the person identified under

FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (202) 452–0355.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Substance of Petition
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the suggested change should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. If BLM receives your comments after the close of the comment period (see **DATES**) or if your comments are delivered to an address other than those listed (see **ADDRESSES**), BLM may not necessarily consider them or include them in the Administrative Record for the petition.

Availability of Copies

Copies of the entire petition are available for inspection, and interested persons may obtain them by contacting the person identified under

FOR FURTHER INFORMATION CONTACT.

Public Hearing

BLM will not hold a public hearing on the proposed revision, but BLM personnel will be available to meet with the public during business hours, 9 a.m. to 4 p.m., during the comment period. In order to arrange such a meeting, contact the person identified under

FOR FURTHER INFORMATION CONTACT.

II. Background and Substance of Petition

The DOI received a letter dated May 29, 1996, from James S. Lyon, Vice President for Policy of the Mineral Policy Center, transmitting a petition for rulemaking (MPC petition). The petition was submitted jointly by the Mineral Policy Center, American Rivers, Boulder-White Clouds Council, Citizens for the Preservation of Powers Gulch and Pinto Creek, Greater Yellowstone Coalition, Montana Environmental Information Center, National Wildlife Federation, Northern Plains Resource Council, the Sierra Club, Taxpayers for Common Sense, Western Mining Action Project, the Western Organization of Resource Councils and Western Mining Action Project. The petitioners request that BLM amend its regulations at 43 CFR part 3860 to establish ''Patenting Disclosure Regulations'' that would require the disclosure to the public of all information used by BLM to determine the validity of mining claims and the eligibility of mill site claims for patenting under the 1872 Mining Law (30 U.S.C. 22 et seq). The petitioners also request that BLM's regulations be amended to provide for a transition period during which companies that have previously submitted information that they wish to remain confidential could withdraw their patent application to avoid the disclosure of the information. BLM has appended the substantive portion of the petition to the end of this notice.

Under section 553 of the Administrative Procedure Act, 5 U.S.C. 553(e), any person may petition an agency to initiate a proceeding for the issuance, amendment, or repeal of a rule. Under the applicable regulations for rulemaking petitions, 43 CFR 14.2, the petitioner is required to provide rule text. Although the MPC petition does not include rule text, BLM has decided to consider the petition. Under 43 CFR 14.4, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition because BLM has determined that public comment may aid in consideration of the petition.

In particular, BLM seeks comments regarding: (1) how the requested rulemaking may affect the process of considering and acting on applications for patent under the 1872 Mining Law; (2) how the type of information identified for disclosure in the petition will be used by the public; (3) how such disclosure would impact patent applicants; (4) whether the information to be disclosed should include documents that reflect DOI's deliberation over a patent application before a decision has been made; and (5) what impact this rulemaking might have on pending patent applications.

At the close of the comment period, BLM will make a decision whether to grant or deny the petition. If the petition is granted, BLM will begin rulemaking proceedings in which it would again seek public comment regarding proposed, specific rule text. Following receipt and analysis of public comment, BLM would publish a final rule. If BLM decides to deny the petition, it would publish a notice explaining that decision and take no further rulemaking action pursuant to the petition. By publishing this notice, BLM does not necessarily endorse the petition for rulemaking. The petition does not necessarily reflect the position or views of BLM or DOI.

III. Procedural Matters

Executive Order 12866 and Regulatory Flexibility Act

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step prior to the initiation of the rulemaking process. If BLM decides to grant the petition, it will begin a rulemaking process. At this stage, neither a regulatory flexibility analysis nor a regulatory impact analysis under Executive Order 12291 are required.

National Environmental Policy Act

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(a)(C), is needed.

Action Plan for Processing Pending Patent Applications

BLM is publishing this notice at the initiative of the petitioners. This action is separate and apart from DOI's action plan for processing 90 percent of the mineral patent applications grandfathered from the patent funding moratorium within five years as required by section 322 of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996, Pub. L. 104–134, 142 Cong. Rec. H 3896 (daily ed. April 25, 1996).

Dated: August 8, 1996.

Maitland Sharpe,

Acting Director, Bureau of Land Management.

Appendix

The text of the petition dated May 29, 1996, from the Mineral Policy Center and others is printed below. Copies of the entire petition, including exhibits, are available for inspection and may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

Petition for Rulemaking Before The Honorable Bruce Babbitt, Secretary of the Interior

United States Department of the Interior, Washington, DC.

Submitted by

Mineral Policy Center, American Rivers, Boulder-White Clouds Council, Citizens for the Preservation of Pinto Creek and Powers Gulch, Greater Yellowstone Coalition, Montana Environmental Information Center, National Wildlife Federation, Northern Plains Resource Council, Sierra Club, Taxpayers for Common Sense, Western Mining Action Project, and Western Organization of Resource Councils

For the adoption of Federal regulations to require disclosure of all information used to establish the validity of mining claims and eligibility of mill site claims for which mineral patent applications have been submitted under the 1872 Mining Law.

29 May 1996

Introduction

Mineral Policy Center and the above organizations, pursuant to 5 U.S.C. 553(e) and 43 CFR 14, petition the Secretary of Interior (''the Secretary'') to issue regulations that require the disclosure to the public of all information used by the Bureau of Land Management (BLM) to establish the validity of mining claims and the eligibility of mill site claims for patenting under the 1872 Mining Law, 30 U.S.C. 22 *et seq.* This disclosure will include, but not be limited to, the information listed in section II(A) below. The Secretary should establish rules that make public disclosure of this information a pre-requisite to further processing of any mineral patent applications.

These regulations (''the Patenting Disclosure Regulations'') serve the public's compelling interest in knowing the factual basis upon which the Department of Interior disposes of billions of dollars worth of public mineral resources under the 1872 Mining Law.

The adoption of the Patenting Disclosure Regulations will not be unfair or inequitable to parties that have already applied for mineral patents. The Patenting Disclosure Regulations will provide for a transition period which will allow patent applicants to come into compliance with the Regulations' public disclosure requirements. Because the Patenting Disclosure Regulations will not prevent mining, and will not prevent the patenting of mining and mill site claims under the 1872 Mining Law, applicants win not suffer compensable harm.

I. Petitioning Organizations

This petition is submitted on behalf of Mineral Policy Center and eleven other organizations (''the petitioners''). These organizations conduct research on and advocate more environmentally and fiscally

responsible management of public resources by the federal government. A description of each petitioner, its membership, and focus of work follows:

Mineral Policy Center is a Washington-based non-profit organization which conducts research on and advocates more environmentally and fiscally responsible hardrock mining policies in the United States and worldwide. The Center has approximately 2,500 members, and is based in Washington, D.C., with field offices in Colorado and Montana.

American Rivers is a non-profit organization devoted to the protection and restoration of American rivers and watersheds. American Rivers is actively involved in campaigns to protect rivers from pollution caused by past, current, and proposed mining operations. The organization has over 15,000 members in the United States.

Boulder-White Clouds Council is a non-profit organization which advocates environmental protection of the Upper Salmon River country of Central Idaho.

Citizens for the Preservation of Powers Gulch and Pinto Creek is a non-profit organization of citizens formed to protect the Tonto National Forest (Arizona) from the impacts of a copper mine presently proposed by Cambior, a Canadian corporation. Many of its members live adjacent to the proposed mine.

Greater Yellowstone Coalition (GYC) is a regional conservation group whose mission is to assure ecosystem health throughout the 18-million acre Greater Yellowstone Ecosystem. Comprised of 120 member groups, GYC currently has more than 7,000 individual members who regularly participate in recreational, scientific, and natural history activities on public lands including those lands administered by the BLM, U.S. Forest Service, and National Park Service.

The Montana Environmental Information Center (MEIC) is a nonprofit organization founded in 1973 with members throughout the United States and the State of Montana. The MEIC is dedicated to preserving and enhancing the natural resources and natural environment of Montana. In this objective, the MEIC gathers and disseminates information in order to inform its members and the general public about their rights and obligations under state and federal environmental law. The MEIC is also dedicated to assuring that state and federal officials comply with and fully uphold the laws of the United States which are designed to protect and enhance the environment.

National Wildlife Federation (NWF) is the nation's largest conservation organization. Founded in 1936, the NWF works to educate, inspire, and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources, and to protect the Earth's environment in order to achieve a peaceful, equitable, and sustainable future.

Northern Plains Resource Council (NPRC) is a non-profit grassroots organization that is devoted to the protection of water and air quality, as well as the promotion of sustainable family farming and ranching. Based in Montana, the NPRC's 2,500 members consist of farmers, ranchers, and town dwellers.

The Sierra Club is a national, non-profit, environmental organization with more than 500,000 members. The Sierra Club advocates the protection of natural resources and wildlife on public lands.

Taxpayers for Common Sense is a non-profit, non-partisan, and independent organization dedicated to cutting wasteful government spending, subsidies, and tax breaks through research and citizen education. Based in Washington, D.C., Taxpayers for Common Sense supports a balanced budget and common sense tax reform.

The Western Organization of Resource Councils (WORC) is a six-state federation of community groups in Colorado, Idaho, Montana, North and South Dakota, and Wyoming. The WORC, a non-profit organization, has over 6,000 members and fifty local chapters in the six-state region. The WORC's main priorities for regional issues include the impact of hardrock mining on the environment and Western communities, sustainable family farm agriculture, and energy and natural resources development.

Western Mining Action Project is a non-profit environmental organization which provides legal representation to citizens on mining issues, including patenting issues.

The petitioners submit this petition in furtherance of the public interest. Many of petitioners' members live, work, and recreate near federal lands impacted by hardrock mining.

II. Description of Patenting Disclosure Regulations

The petitioners petition the Secretary to adopt regulations (''Patenting Disclosure Regulations'') that will require public disclosure of all information used by the BLM to establish the validity of mining claims and eligibility of mill site claims for which mineral patent applications have been submitted under the 1872 Mining Law. Some of this information is factual information submitted by patent applicants; other information consists of the data and analysis of public land agencies. The Secretary should make further processing of any mineral patent applications contingent upon the disclosure of this information. In the interest of equity to current patent applicants, the Patenting Disclosure Regulations should provide for a transition period during which patent applicants may, if they prefer, withdraw their applications and thus avoid public disclosure of this information.

A. Types of Information Required To Be Disclosed by the Patenting Disclosure Regulations

The petitioners seek the disclosure of all information that forms the basis of the BLM and Forest Service validity examinations, which determine whether or not a patent applicant has ''discovered'' a ''valuable mineral deposit'' on the applicant's mining claims. This determination is pivotal in the BLM's ultimate decision whether to grant or deny a mineral patent.

Specifically, the Patenting Disclosure Regulations should require the disclosure of the following types of information:

- The size and value of mineral reserves;
- The methods and costs of ore extraction, beneficiation, and transportation;
- Costs and methods of reclamation and environmental remediation;
- Marketing and labor contracts;
- Economic feasibility studies; and
- Analyses and data generated by the federal government which bear on the validity of mining claims under patent application.

The above enumerated information bears on the issue of whether a mining claim (lode or placer) contains a valuable mineral deposit. However, the Patenting Disclosure Regulations should also require the disclosure of information used to establish the eligibility of mill site claims. The eligibility of mill site claims depends on criteria different from those used to establish the validity of mining claims (lode and placer claims). For example, in contrast with mining claims, mill site claims must be ''nonmineral'', ''non-contiguous'' to lode and placer claims, and used for ''mining or milling purposes''. See 20 U.S.C. 42. Therefore, petitioners seek disclosure of all information used by public land agencies to determine whether applicants for mill site patents have satisfied the criteria above, and all other necessary eligibility criteria.

The Patenting Disclosure Regulations should require the disclosure of information that mining companies submit to the BLM as part of patent applications and mineral examinations. In the past, the Department of the Interior has typically withheld this information from the public on the grounds that the information constitutes trade secrets or confidential business information. The Department has cited the Trade Secrets Act, 18 U.S.C. § 1905, and Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552, as grounds for withholding this type of information.

The Patenting Disclosure Regulations should also require disclosure by the federal government of the government's own data and analyses which bear on whether a patent applicant has made a ''valuable'' mineral ''discovery''. The Department of the Interior has cited Exemption 5 of the Freedom of Information Act (FOIA) as justification for withholding some of this information.

The attached exhibit, Exhibit A (EX–A), documents an example of lead petitioner Mineral Policy Center's many unsuccessful attempts to obtain from BLM officials the type of information enumerated above. The EX–A contains excerpts from the mineral report prepared for Barrick Gold Corp.'s mineral patent applications for its Goldstrike gold mine in Nevada. (Barrick Gold obtained the patents worth approximately $10 billion in May 1994.) Mineral Policy Center requested the company's mineral report in February 1994; three months later, the BLM released a heavily censored copy to the Center. As EX–A shows, the BLM excised key geological and financial information from the report which established the basis for the validity of Barrick's mining claims.

The EX–A illustrates the BLM's refusal to disclose to the public the information upon

which the BLM bases its decision whether or not to issue mineral patents. The BLM's closed-door policy has created the urgent need for the Secretary of the Interior to adopt Patenting Disclosure Regulations.

B. Transition Procedures

In order to give companies an opportunity to make an informed choice regarding means of compliance with these regulations, the Patenting Disclosure Regulations should establish a reasonable period of time during which applicants would have the option to withdraw their patent applications. During this period, companies that have previously submitted information that they wish to maintain confidential could withdraw their patent applications and avoid the required disclosure of this information.

However, upon expiration of the warning period, the information enumerated above would be subject to full public disclosure.

In particular, the Secretary should establish:

• A date upon which the Patenting Disclosure Regulations take effect;

• A date after which current patent applicants can withdraw their applications and thus avoid public disclosure of information required to be disclosed by the Patenting Disclosure Regulations;

• A date after which the BLM will make the information specified in section II(A) above available to the public; and

• A provision that the BLM will make its patenting decisions based exclusively on information that is publicly available.

III. Justification for the Adoption of the Patenting Disclosure Regulations

The General Mining Law of 1872 has allowed the sale of at least $247 billion of publicly-owned mineral resources for nominal sums, according to Mineral Policy Center estimates. In an era of fiscal frugality, the Mining Law is fiscally irresponsible. Using a limited set of factual tests, federal land managers determine if a mining concern has ''discovered'' a ''valuable'' mineral deposit. Once this determination has been made, a company can ''patent''—obtain fee title—to land for a minute fraction of its real value.

Also, by allowing the non-discretionary disposal of lands to mining operations, patenting decisions have aided the destruction of unique environmental resources on millions of acres of public land.

These fiscally and environmentally reckless policies have been largely shielded from public scrutiny. For example, up to the present, the Department of the Interior has blocked from public access the factual foundation supporting a determination whether or not a ''valuable'' mineral deposit has been ''discovered''. Without access to this vital information, the public has been unable to evaluate the merits of patenting decisions which dispose of billions of dollars of the public's mineral wealth without a fair return to the public.

The petitioners recognize that Congress' failure to reform the 1872 Mining Law compels the BLM to continue processing grandfathered patent applications. However, Congress' failure does not compel the BLM to carry out the mineral patenting process in secrecy.

By requiring public land agencies to make patent applications, mineral reports, and other essential patenting information available to the public, the Patenting Disclosure Regulations will allow the American public to meaningfully challenge and evaluate BLM patenting evaluations.

Public disclosure of mineral patenting information will provide other benefits, such as contributing to a more informed and balanced evaluation of the ''value'' of mineral deposits on publicly owned lands. Also, it will promote needed commentary on the benefits and costs of mining on public lands. This will include discussion of contemporary concerns like the necessary costs of environmental controls and reclamation at mining operations. The Department of Interior has acknowledged that these environmental costs must be taken into account in determining the validity of mining claims. U.S. v. Kosanke Sand Corp., 80 I.D. 538, 546 (1973).

IV. Legal Authority for the Patenting Disclosure Regulations

The Secretary has the legal authority, pursuant to the 1872 Mining Law and the Federal Land Policy Management Act (FLPMA), to adopt the Patenting Disclosure Regulations. In fact, the FLPMA obligates the Secretary to adopt the Patenting Disclosure Regulations.

A. The Secretary's Authority To Adopt the Patenting Disclosure Regulations Under the 1872 Mining Law

The 1872 Mining Law establishes broad authority for the Secretary to adopt the Patenting Disclosure Regulations. The Mining Law's Section 22 authorizes the exploration and purchase of public land containing mineral deposits ''under regulations prescribed by law.'' See 30 U.S.C. § 22. While legislative history on this section is scant, the statute's plain language reveals the intention of its owners to furnish the Law's administrator a broad and flexible grant of authority to promulgate appropriate regulations. In fact, Section 22 has been relied upon as authority for many BLM regulations under the Mining Law. These regulations include those on locating mining claims (43 CFR Part 3830) and applying for mineral patents (43 CFR Part 3860). Section 22 has also been relied upon as authority for the BLM's regulations on surface management of mining operations. See 43 CFR § 3809.0–3 (a). Providing for public access to the contents of mineral patent applications and reports is clearly within the ambit of this legislative authority.

B. The Secretary's Authority to Adopt the Patenting Disclosure Regulations Under the Federal Land Policy Management Act

The Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq., provides an additional source of authority for the Patenting Disclosure Regulations. The FLPMA directs the Secretary of the Interior, ''by regulation or otherwise'', to ''take any action necessary to prevent unnecessary or undue degradation'' of public lands. The FLPMA expressly applies this directive to the 1872 Mining Law activities. See 43 U.S.C. § 1732(b). Public challenge and scrutiny of mineral patent applications and examinations—which the Regulations will promote reasonably serve this statutory objective. This is especially relevant when maintaining strong Federal land management regulation of mining operations is ''necessary to prevent unnecessary or undue degradation'' of Federal lands. Many of the petitioners strongly believe that patent issuance undercuts Federal control of mining operations, because patent issuance results in the regulation of mining operations passing from Federal to largely state control. Moreover, effective public scrutiny of the patenting process can prevent the improper disposal of Federal lands. Improper disposal in and of itself constitutes ''unnecessary or undue degradation.''

Under a policy of full disclosure, the public, for example, may challenge a patent applicant's mineral report as seriously understating long-term environmental costs of a mining operation and the operation's impact on environmental resources. If these previously unidentified environmental costs result in the patent applicant's failing the ''discovery test'', the applicant's, mining claims will not be valid and a patent will not be issued.

C. The FLPMA Obligates the Secretary to Adopt the Patenting Disclosure Regulations

The FLPMA, in fact, obligates the Secretary to adopt these Patenting Disclosure Regulations. FLPMA states that the Secretary ''*shall*, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.'' 43 U.S.C. § 1732(b) (emphasis added). Because these disclosure regulations are necessary to prevent ''unnecessary or undue degradation'', as described above, the Secretary must adopt them.

V. Rebuttal to Legal Objections Which May Be Raised Against the Patenting Disclosure Regulations

The Department of the Interior has raised a number of legal objections to public disclosure of the information sought by the petitioners. None of these arguments has merit.

A. The Trade Secrets Act

The Department of the Interior has cited the Trade Secrets Act, 18 U.S.C. § 1905, as justification for barring public disclosure of any trade secrets or confidential business information sought by this petition. Although the Trade Secrets Act does prohibit release of this of information by government employees, the bar does not apply if the disclosure is ''authorized by law.''

Chrysler v. Brown is the principal case which establishes the standards that disclosure regulations must meet in order for them to be ''authorized by law'' under the Trade Secrets Act. 99 S.Ct. 1705 (1979). In Chrysler, a Federal contractor challenged the Department of Labor's Office of Federal Contract Compliance Programs regulations which provided for public disclosure of information the contractor was I required to submit to the government on its affirmative action programs. The contractor asserted that

this information was confidential business information under the Trade Secrets Act and that its release to the public was not authorized'' by law under the Act. The Supreme Court found in favor of the contractor, holding that these regulations were not ''authorized'' by any statute.

The Chrysler court's decision established three standards that disclosure regulations must satisfy in order to be ''authorized by law'' under the Trade Secrets Act. First, the regulations must be the product of a congressional grant of legislative authority, such that there is a 'nexus' between the disclosure regulations and Congress's legislative authority; second, the regulations must be ''substantive'' or ''legislative'' such that they affect individual rights and obligations; and third, the regulations must have been promulgated in accordance with the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. § 553. Chrysler, 99 S.Ct. at 1717–1719.

The Patenting Disclosure Regulations are ''authorized by law'' under all the Chrysler standards. Most significantly, Section 22 of the Mining Law's broad grant of regulatory authority establishes a ''nexus'' between the Patenting Disclosure Regulations and the requisite delegation of legislative authority by Congress. Unlike the regulations held not to be ''authorized by law'' in Chrysler, the regulations proposed here do not spring from a mere ''housekeeping'' statute, concerned only with the daily internal workings of an executive department. Chrysler at 1722. Rather, Section 22 provides authority for the Secretary of the Interior to adopt broad and substantive regulations on a wide range of issues as long as they are not inconsistent with other laws.

The Federal Land Policy Management Act (see above) similarly satisfies the Chrysler nexus test. The FLPMA requires the Secretary of the Interior to ''take *any* action necessary to prevent unnecessary or undue degradation'' of public lands. 43 U.S.C. § 1732 (emphasis added). This broad statutory directive contemplates the Patenting Disclosure Regulations here, because it expresses Congress's intent to give the Secretary wide latitude to adopt regulations that support the objective of preventing ''unnecessary or undue degradation'' on public lands.

Further, the Patenting Disclosure Regulations would meet the two remaining Chrysler standards. First, these Patenting Disclosure Regulations are clearly ''substantive'', affecting the individual rights and obligations'' of mineral patent applicants. Chrysler at 1718. Finally, the Patenting Disclosure Regulations would conform to the formal notice and comment rulemaking procedures required for substantive rules under the Administrative Procedure Act, 5 U.S.C. § 553(b). Id. at 1724. In sum, under the Chrysler standards, the 1872 Mining Law's Section 22 and FLPMA invest the Patenting Disclosure Regulations with the necessary ''authority'' to exempt them from 'ne Trade Secret Act's bar against the government's disclosure of confidential commercial information.

B. Freedom of Information Act (FOIA) Exemptions

The Department of the Interior has cited exemptions to mandatory disclosure requirements under the Freedom of Information Act, 5 U.S.C. § 552, as barriers to the disclosure of much of the information sought by the petitioners. Exemption 4 of FOIA exempts from mandatory disclosure trade secrets and confidential commercial or financial information. 5 U.S.C. § (b)(4). Exemption 5 of FOIA protects ''deliberative'' and pre-decisional'' information generated by the government from mandatory disclosure. 5 U.S.C. § (b)(5).

The Department of the Interior has cited FOIA Exemption 4 to withhold from the public the same type of information whose release is barred by the Trade Secrets Act (see above). BLM, Instruction Memorandum No. 95–85, pp. 2–4 (9 March 1995).

The Department of the Interior has also characterized certain types of information related to patent applications and mineral reports as ''predecisional'' and thus properly protected by FOIA Exemption 5. Instruction Memorandum, *supra,* p. 3. Under a broad reading of Exemption 5, any mineral report not yet approved for patent issuance could be considered ''pre-decisional'', and therefore protected from mandatory disclosure.

However, the FOIA Exemptions 4 and 5 would not prevent the release by Federal land agencies of ''confidential'' commercial information or ''predecisional'' material related to patenting. That is because the FOIA does not *bar* the release of any information by the Federal Government. Instead, the FOIA only permits government officials, at their discretion, to withhold certain types of information from the public.

Since the Patenting Disclosure Regulations would have the authority of law, as demonstrated above, the government would be required to release material in patent applications and mineral reports that the government has previously withheld as ''confidential'' commercial information or ''Pre-decisional'' material. Thus, the Secretary's adoption of the Patenting Disclosure Regulations would remove any withholding discretion that Government officials may possess under FOIA Exemptions 4 and 5.

The Department of the Interior's invoking of Exemption 5, to withhold ''pre-decisional'' information related to patenting issuance, is less than convincing, since the main purpose of the FOIA Exemption 5 is to ''safeguard the policy-making process.'' A Citizen's Guide On Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records, H.R. Rep. No. 199, 100th Cong., lst Sess. 13. To the contrary, in other contexts, the Department has asserted that patent issuances are merely ''ministerial acts'', which involve a minimum of policymaking and discretion. State of S.D. v. Andrus, 614 F.2d 1190 (1980); United States v. Kosanke Sand Corp., 80 I.D. 538 (1973). The Department cannot have it both ways. Because the information petitioners seek to have disclosed is the basis for a process which the Department itself has described as ''ministerial'' or ''non-discretionary'', the Department should not assert FOIA Exemption 5 as grounds for keeping it confidential.

VI. Equitable Impact of Patenting Disclosure Regulations on 1872 Mining Law Patent Applicants

Current and potential 1872 Mining Law patent applicants may contend that the Patenting Disclosure Regulations, if adopted, would cause them compensable harm, because the Regulations would effectively prevent them from patenting. Applicants may argue, for example, that requiring public disclosure of information that the applicants wish to be held confidential would make applicants so reluctant to patent, that patenting would be impossible.

However, these proposed regulations would not cause these patent applicants a compensable harm, because they would not remove applicants' right to patent—Under the regulations, holders of mining claims can still patent - but only subject to the condition of clearer disclosure requirements.

In addition, the holder of unpatented mining claims who opts not to patent can still mine and enjoy financial benefits from his claim. Therefore, the claimholder's ''right of use, enjoyment, and disposition in his unpatented mining claims remains undiminished.'' Freese v. United States, 639 F.2d 754, 758 (Ct. Cl. 1981). Because the proposed regulations would not deprive claimholders of any valid, pre-existing rights in their property, they would suffer no compensable harm. Id. at 758.

Furthermore, the Patenting Disclosure Regulations' transition procedures, described above, mitigate any possible inequities that pending patent applicants may suffer as a result of the Regulations' adoption. The Patenting Disclosure Regulations would not mandate immediate disclosure of information that patent applicants have submitted to public land agencies in the reasonable expectation that it would be held confidential. Instead of subjecting patent applicants to the possible hardships of immediate disclosure, the Patenting Disclosure Regulations would establish a reasonable transition period that would be fair to all applicants. The transition period will give applicants the time to conform to, or opt out of, the new public disclosure regime that the Regulations would establish. The transition period will give patent applicants who do not wish to have their patenting information disclosed the opportunity to withdraw their applications, and thus avoid disclosure of valuable commercial information that could benefit the applicants' market competitors.

VII. The Urgent Need for Patenting Disclosure Regulations

The current moratorium on processing and issuing mining patents, in effect since 1 October 1994, does not diminish the urgent need for improved patenting disclosure regulations. The current moratorium contains a generous grandfather provision which allows the continued processing of approximately 360 patent applications. Without the adoption of Patenting Disclosure Regulations, these patents will likely continue to be issued in secrecy and without effective public scrutiny.

Furthermore, the current patenting moratorium is only temporary. The moratorium will expire on 30 September 1996. If the moratorium is not renewed, 235 frozen patents can be processed and issued, and new patenting applications can be filed. Unless current law is changed, billions of more dollars in mineral wealth will slip away from the public without proper accountability.

The BLM's continued liquidation-price sales of mineral-rich public lands to grandfathered applicants demonstrates the compelling need for Patenting Disclosure Regulations. Since 1994, the Department of the Interior has signed over title to public lands containing over $15.3 billion in minerals to mining companies for the price of only $16,015. The Department issued two patents only last month. The more egregious of the two was the BLM's 30 April sale of 373 acres of public land in Humboldt County, Nevada, to Gold Fields Mining Corporation. Gold Fields paid only $1,865 for a gold deposit worth over $1 billion.

Meanwhile, the BLM persists in conducting the patenting process in secrecy and without public scrutiny. Over the past few years, BLM officials have repeatedly refused to disclose to lead petitioner Mineral Policy Center, in response to requests for information, facts which are needed for an informed evaluation of the patenting process. Most recently, for example, at 10 am (EST) on 28 May 1996, Roger Haskins, Geologist, Solid Minerals Group of the BLM Headquarters in Washington, D.C., refused to disclose to Mineral Policy Center the information enumerated in section II(A) above in connection with Cambior Inc.'s patent applications for its Carlota Copper Project near Globe, Arizona. Haskins informed Mineral Policy Center that this information was either being held confidential in deference to the wishes of the patent applicant or was pre-decisional in nature, and that therefore the BLM could not release the information to the public. Telephone communication between Roger Haskins, BLM, and Carlos Da Rosa, Mineral Policy Center (10 am (EST), 28 May 1996).

In sum, Patenting Disclosure Regulations are necessary to provide for effective public scrutiny of a process that is presently undermining fiscal soundness and the rational environmental management of America's public lands.

VII. Conclusion

The Department of the Interior has disposed of approximately one-quarter trillion dollars of publicly-held mineral resources for nominal sums under the 1872 Mining Law's mineral patenting provisions. The results have been both fiscally and environmentally irresponsible.

The petitioners recognize that the Department of the Interior is still required to process grandfathered 1872 Mining Law patent applications. However, the law does not require that the patenting process be conducted in secrecy.

The public is entitled to full access to the information upon which the Department of the Interior bases its decision to dispose of the public's riches under this policy. Therefore, the petitioners respectfully urge the speedy granting of this petition. Thank you for your consideration.

Respectfully submitted by:

/s/Philip M. Hocker,

Mineral Policy Center.

/s/Rebecca R. Wodder,

American Rivers.

/s/Lynne Stone,

Boulder-White Clouds Council.

/s/Michael Clark,

Greater Yellowstone Coalition.

/s/Cathy Carlson,

National Wildlife Federation.

/s/Kathryn Hohmann,

Sierra Club.

/s/Roger Flynn,

Western Mining Action Project.

/s/Deborah Ham,

Citizens for the preservation of powers Gulch and Pinto Creek.

/s/James D. Jensen,

Montana Environmental Information Center.

/s/Julia Page,

Northern Plains Resource Council.

/s/Jill Lancelot,

Taxpayers for Common Sense.

/s/Pat Sweeney,

Western Organization of Resource Councils.

[FR Doc. 96–20824 Filed 8–14–96; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–36; RM–8766]

Radio Broadcasting Services; Franklin and White Castle, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, by this document dismisses the petition for rule making filed by South Louisiana Broadcasters, proposing the allotment of Channel 295C3 to Franklin, Louisiana. *See* 61 10976, March 18, 1996. The counterproposal filed by Bob Holbrook requesting the allotment of Channel 295C3 to White Castle, Louisiana, is also dismissed. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–36, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–20708 Filed 8–14–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–67; RM–8774]

Radio Broadcasting Services; Starkville, MS, and Ethelsville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, by this document dismisses the petition for rule making filed by Charisma Broadcasting Company, proposing the substitution of Channel 222A for Channel 221A, the reallotment of Channel 222A from Starkville, Mississippi, to Ethelsville, Alabama, and the modification of Station WMSU(FM)'s authorization to specify Ethelsville as its community of license. *See* 61 FR 15443, April 8, 1996. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–67, adopted July 12, 1996, and released July 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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