

Original

REPORT ON
MINERAL RIGHTS
in
Township 5 North, Range 28 East,
Section 16, NW1/4 of SW1/4, SW1/4 of NW1/4
Section 17, S1/2 of NE1/4, N1/2 of SE1/4
(approximately 240 acres)
Aurora Mining District, Mineral County, Nevada,
commonly known as "Hilton Meadowlands".

Revised after conversation with Roger W Jeppson, Mining Lawyer

by
Norm J Dircks, Consulting geologist.
January 10, 1991

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1. Summary of salient points

This report was commissioned by James Burt, Manager of The Aurora Partnership mine, and by H Neville Rhoden, of Minerex Resources Inc., who both provided data and described the difficulty that needed resolving concerning the:

- validity of lode claims in the former Juniata millsite; and
- ownership of mineral rights in the surrounding Lots;

within the area commonly known as "Hilton meadowlands". Both are thanked for their assistance.

First disclaimer: the author is not a lawyer, and cannot be held responsible for legal opinions, but has endeavoured to trace the ownership of mineral rights to the best of his ability.

Second disclaimer: the author has not surveyed the lots or claims, but has relied on the accuracy of older surveys & maps of lots, and on a claim plat compiled by Siskon in 1981 using a newly-flown aerial survey with restituted photos and all available information from official sources. It is the most accurate plat available. However the exact location of Discovery Monuments (D.M.s) close to the perimeter of other claims or lots cannot be judged accurately without survey, and in some cases may be schematic, casting some doubt on validity.

Legal points concerning mineral rights in private lands purchased from the State were discussed with Roger W Jeppson, of Woodburn Wedge & Jeppson. His verbal opinions, without detailed study of this case other than his long experience, are noted separately.

The Juniata millsite was staked in 1872, but lapsed between 1884-91. In Jeppson's opinion, that part of the millsite lying in Section 16 - Lots 3 & 4 - was always invalid, since the land and mineral rights in Section 16 then belonged to the State, not open for staking. Lot 3, with the spring, together with Lot 2, had been sold by the State to Thomas Potter in 1878; Lot 4 was not selected by the State in 1883, and reverted to the U.S. The millsite in Section 17 remained under Federal jurisdiction, open to staking.

The Lucky Mary lode claim (1941) preceded the Juniata placer by 1 year, but may have had its D.M. just within Lot 7 according to the best-drawn plats, now lost under the haulage roads according to A.P.'s surveyors. If so, then the claim was always invalid; if not, then it takes precedence over the Juniata placer. Marcia 47 (1981) overstaked Lucky Mary, having its D.M. outside the lots, but is valid only if the Lucky Mary is invalid. All 3 pertain to Siskon, so the point is academic.

The Juniata Placer (1942) substantially coincides with the millsite, and has prior use of the surface for mining. In Jeppson's opinion, a placer can exclude over-staking by a lode claim unless the latter's owner, by trespassing, can demonstrate a discovery. If a placer owner discovers a lode, then it can invalidate a super-imposed lode claim that lacks a real discovery.

Valid lode claims in land covered by the former millsite, from west to east, starting from the Silver Lining group, are:

- Marcia 47 (west fraction), unless it can be proved that the Lucky Mary had its D.M. within the millsite area, not in Lot 7;
- Frisco Belle (north fraction) - its D.M. is outside the lots;
- Gemini 1 - its D.M. is within the millsite area;
- Lucky Star (north fraction), if its D.M. is outside Lot 5;
- Marcia 44 (tiny triangle), if its D.M. is not inside Gemini 1;
- Marcia 45 if its D.M. is outside Gemini 1.

These all belong to Siskon Corp., leased to Aurora Consolidated Gold Mines (Nevada Goldfields). Assessment work has been filed without interruption, except for Lucky Star.

Lucky Star claim (1931), which also covers part of the millsite, seems to have had a 4-year interruption in filing Proof of Labour (1933-36). Jeppson feels that its validity cannot be challenged on these grounds, since no claim was overstaked during the interval.

Marcia 46 (1981), at the eastern end of the millsite, may be invalid since its D.M. was staked inside an earlier claim, Marcia 11, that also had its D.M. in the millsite, but which has since lapsed.

Barron and Marilyn Hilton own Lots 1, 2, 3, 5, 6, 7 & 12. The 1963 legislation confirmed that owners of lands originally bought from the State do possess mineral rights, and that the mechanism established in that law whereby owners could obtain a title deed to minerals by paying a fee of \$0.15 /acre was solely to avoid legal action - the State would not sue the owner after conceding rights, nor anyone else when the rights can be taken by the owner for only \$0.15 /acre. No actions have been tried in Nevada. Jeppson believes that no action is required for the land owner to begin mining.

The Hiltons pay County land-use taxes on their Lots at the grazing rate. If their lots were leased for mining, then taxes at the mining rate would have to be paid for the previous 7 years.

Sub-dividing lots can be time consuming - from months to 1 year.

2. Chronology and ownership of lots and claims:

Sources: A - State Archives; L - State Lands, both in Carson City;
 B - B.L.M., Reno; H - Recorder's office, Hawthorne.
 Abbreviations: Srvy - Survey/map; Scn - Section; recd - recorded;
 D.M. - Discovery monument for lode claim.

<u>Date</u>	<u>Source/ Volume/Page</u>	<u>Event</u>
<u>Pre-Mineral County, 1864-1911</u>		
Oct 31 1864		Statehood for Nevada. The U.S. granted all Sections 16 & 36 to Nevada as State land to provide patrimony for education. Mineral rights were included (Supreme Court interpretation, Jeppson).
Aug 1 1867	L/Srvy 37	First patented claim in Aurora district (not in area of interest).
1872		Mining Law passed by Congress, controlling staking on federal land.
Aug 7 1872	L/Map 44B	Juniata millsite staked according to Federal law; valid in Scn 17, but not Scn 16 which was State land (Jeppson).
Jun/Jul 1878	L/Map 44	Area subdivided into lots: Scn 16, Lots 1-4; 3 & 4 follow shape of millsite; Scn 17, Lots 5, 6, 7 & 12, surrounding millsite; Lots 17-20 covered millsite.
Dec 21 1878	A/1257 H/5/85	State of Nevada sold Scn 16, SW1/4 of NW1/4, to Thomas Potter (40 acres, Patent No. 1257); no mention of mineral rights or Lots 2 & 3 (Recd in Hawthorne Sep 18 1918).
Jun 16 1880		Act of Congress granted Nevada 2 million acres to be selected by the State, in place of unsold parts of all Scns 16 & 36, which reverted to the U.S. Ownership of <u>ungranted</u> mineral rights passed to the State.
Sep 28 1883	L/	Nevada selected those parts of: Scn 16, NW1/4 of SW1/4 or Lot 1 (by name) Scn 17, S1/2 of NE1/4 or Lots 7 & 12 (by name) N1/2 of SE1/4 or Lots 5 & 6 (by name) Lot 4 was not included in the selection. Lots 2 & 3 had been sold to Potter.
Mar 3 1887	Chptr 103	State of Nevada disclaimed interest to mines in selected lands (ie. prior claims), and required that sales of State lands should include a provision that reserved (ie. respected) those (prior) rights.
1884/91		Juniata millsite lapsed or was cancelled.
Jan 2 1892	Srvy 73-75	East Humboldt, Curry No 2 & Mida claims were patented together (No. 22217) by the Silver Lining Mining Co. Curry No 2 validly impinges into the former millsite.
Sep 6 1895	L/12236 A/10/239	State of Nevada sold Scn 17, Lot 6 (36 acres) to John Flannery, with provision reserving mineral rights. Patent No. 5376, Feb 25 1905.
Oct 24 1896	L/12715 A/10/240	State of Nevada sold Scn 17, Lot 7 (50.13 acres) to John Flannery, with provision reserving mineral rights. Patent No. 5377, Feb 25 1905.
Nov 10 1899	L/13764 A/10/241	State of Nevada sold Scn 17, Lot 12 (4.87 acres) to John Flannery, with provision reserving mineral rights. Patent No. 5378, Feb 25 1905.

<u>Date</u>	<u>Source/ Volume/Page</u>	<u>Event</u>
Dec 18 1899	L/13811	State of Nevada sold Sctn 16, Lot 1 (35.63 acres) to John Flannery, with provision reserving mineral rights. Patent No. 5379, Feb 25 1905.
Oct 2 1900	A/10/242 L/14/221	State of Nevada sold Sctn 17, Lot 5 (39.60 acres) to John Flannery, with provision reserving mineral rights. Patent No. 5380, Feb 25 1905
Jun 30 1904	H/4/327	John Flannery sold Lots 1, 5, 6, 7 & 12 to George S Green (recd Jul 4 1904); Lot 4 was nominally included, since Flannery sold Sctn 16, NW1/4 of SW1/4, which comprises Lots 1 & 4, but there is no evidence to show he had bought it !
Nov 6 1909 Feb 9 1910)	H/1/2-3 H/1/1	George S Green sold Lots 1, 5, 6, 7 & 12 to George A Green and to LAL Green et al (recd Mar 1911), with no mention of Lot 4 or mineral rights.
1910-17	unknown	LAL Green acquired Lots 2 & 3, formerly held by Thomas Potter; how is not known.

Lots 1, 2, 5, 6, 7 & 12 (1911-90)

Mar 28 1917	H/1/569	LAL Green et al sold Lots 1, 2, 3, 5, 6, 7 & 12 to Ira Fallon (recd Apr 26 1917).
Jun 26 1919	H/5/275	Ira & Kate Fallon sold Lots 1, 2, 3, 5, 6, 7 & 12 to Allied Land and Livestock (recd Jul 24 1919).
Feb 23 1922	H/6/80-1	Allied Land and Livestock sold Lots 1, 2, 3, 5, 6, 7 & 12 to Ira & Kate Fallon (recd Mar 15 1922).
Jan 27 1932	H/7/572	Ira & Kate Fallon sold Lots 1, 2, 3, 5, 6, 7 & 12 to First National Bank of Reno (recd Jan 28 1932).
Jul 15 1939	H/9/408-9	First National Bank sold Lots 1, 2, 5, 6, 7 & 12 to California Lands Inc. (recd Nov 14 1939), but kept Lot 3 which contains the spring until 1981.
Jul 31 1939	H/9/410-1	California Lands Inc. sold Lots 1, 2, 5, 6, 7 & 12 to Max C Fleischman (recd Nov 14 1939).
Dec 15 1945	H/12/529	Max C Fleischman sold Lots 1, 2, 5, 6, 7 & 12 to John V Mueller (recd Mar 30 1946).
Jun 1 1946	H/14/189	John C Mueller sold Lots 1, 2, 5, 6, 7 & 12 to HJ Crummer (recd Aug 26 1949).
Jan 15 1949	H/14/191	HJ Crummer sold Lots 1, 2, 5, 6, 7 & 12 to William D Holmes (recd Aug 26 1949).
Sep 21 1949	H/14/213-4	Mary K Holmes released rights on Lots 1, 2, 5, 6, 7 & 12 to William D Holmes (recd Sep 30 1949).
Sep 26 1949	H/14/214-6	William D Holmes sold Lots 1, 2, 5, 6, 7 & 12 to Clayton E Gunn (recd Sep 30 1949).
Sep 1 1950	H/14/408-10	Clayton E Gunn sold Lots 1, 2, 5, 6, 7 & 12 to Clifton & Eileen Pierce (recd Nov 1 1950).
Nov 1 1950	H/14/442	Clifton & Eileen Pierce sold Lots 1, 2, 5, 6, 7 & 12 to George & Bernice Larson (recd Dec 20 1950).
Dec 3 1951	H/15/284-5	George & Bernice Larson sold Lots 1, 2, 5, 6, 7 & 12 to George & Joe Mendiburu and Oscar Rudnick (recd Apr 21 1952).

<u>Date</u>	<u>Source/ Volume/Page</u>	<u>Event</u>
Apr 28 1958	H/19/184-5	George & Joe Mendiburu and Oscar Rudnick quitclaimed Lots 1, 2, 5, 6, 7 & 12 to Joe Mendiburu (recd Aug 4 1958).
Oct 16 1961	H/20/384-8	Joe & Jeanne Mendiburu sold Lots 1, 2, 5, 6, 7 & 12 to Albert Stanwood Murphy.
Mar 31 1965	H/22/230-4	Stanwood A Murphy (estate of AS Murphy) sold Lots 1, 2, 5, 6, 7 & 12 to Flying-M-Ranch.
Jul 1 1969	H/19/665-7	Flying-M-Ranch sold Lots 1, 2, 5, 6, 7 & 12 to Barron & Marilyn J Hilton (recd Jul 21 1969).
Jul 16 1984	H/102/102-4	Barron & Marilyn J Hilton leased the SW corner of Lot 5, Sctn 17, to Siskon Corp. for waste & tailings disposal (recd Mar 20 1985), in exchange for releasing Lot 3.

Lots 3 & 4

1910-17	Unknown	LAL Green acquired Lots 2 & 3 that had been granted to Thomas Potter by the State.
1917-32	As above	LAL Green to Ira Fallon, to Allied Land, to Ira & Kate Fallon, to First National Bank.
Sep 18 1981	H/19/622	First Interstate Bank (successor to First National Bank) sold Lot 3, with water rights, to Siskon Corp (recd Oct 2 1981).
Nov 13 1984	H/100/744	Siskon Corp. released & quitclaimed Lot 3 to Barron & Marilyn J Hilton, excepting water rights (Permit # 12519 and Certificate #4801, dated Nov 30, 1948) derived from the Juniata Spring.
1885-1990		Apart from the sale by Flannery to GS Green of Sctn 16, NW1/4 of SW1/4 - part of which was not his - Lot 4 never had an owner, was not selected by the State in 1883, and remains Federal land like Lots 17-20.

Claims 1911-90

Jan 11 1918		Juniata Extension and Rambler (Srvy # 4286) claims were patented together (Patent no. 613890), excluding triangular areas that impinged on Lots 5 & 6 of Sctn 17.
Jul 1 1930	H/8/533	Frisco Belle unpatented claim staked, recorded Jul 4 1930 (NMC # 55804); valid where it impinged the former millsite.
Jun 8 1931	H/	Lucky Star unpatented claim staked, recorded Sep 2 1931 (NMC # 55816); its D.M. was located near the border of Lot 5, but seemed validly staked, impinging on the former millsite.
Oct 13 1941	H/12/65-66	Lucky Mary unpatented claim staked, recorded Nov 21 1941 (NMC # 55814); its D.M. appears to be located in Lot 7; if so, it was not validly staked.
Jun 3 1942	H/12/171-2	Juniata Placer claim staked, recorded Aug 30 1942 (NMC # 55812); it substantially follows the former millsite.
May 29 1944	H/12/355-6	Gemini 1 & 2 unpatented claims staked, recorded Aug 2 1944 (NMC #s 55805-6); Gemini 1 has its D.M. in the former millsite, and was validly staked; Gemini 2 has its D.M. outside all Lots, and was validly staked.

<u>Date</u>	<u>Source/ Volume/Page</u>	<u>Event</u>
Jul 22 1944	H/12/358-9	Gemini 3 unpatented claim staked, recorded Aug 2 1944 (NMC # 55807); it has its D.M. outside all Lots, and was validly staked.
May 16 1981	H/75/843-6	Marcia 44-47 unpatented claims staked, recorded Jun 12 1981 (NMC #s 200564-7).

Marcia 44 & 45 have D.M.s on the border of Gemini 1, and may be valid if accurate survey shows their D.M.s to be in former millsite and not in Gemini 1.

Marcia 46 has its D.M. in the former millsite, but was preceded by Marcia 11 which also had its D.M. in the millsite, and may not be valid.

Marcia 47 overstaked the Lucky Mary claim, but with its D.M. outside all Lots, and was validly staked only if the Lucky Mary was invalid.

There is no evidence that Marcia #s 44-47 lapsed and were restaked. Although Marcia 44-46 were staked on the Juniata Placer without permission, they were quitclaimed soon after to Siskon.

Jeppson believes that a placer claim has as much right as a lode claim, unless the lode staker can prove a lode discovery, having trespassed on the placer; if the placer owner finds a lode, he can dispossess an overlying lode claim that has no real discovery.

3. Legal decision re Mineral Rights in land bought from the State.

Mar 3 1887	Chr 103	State of Nevada disclaimed interest to mines in selected lands, and required that sales of State lands should include a provision reserving mineral rights.
1963	321.331	State of Nevada - admitting confusion re mineral rights in former State lands - confirms mineral title to persons who had received land patents or deeds before or since Mar 3 1887, subject to payment of fees, etc.
	321.332	State of Nevada consents to actions for judgement to determine the State's rights to minerals by persons holding lands purchased before or since Mar 3 1887 ... notice of action by certified mail ... etc.
	321.333	State of Nevada declares that any such landowner, bringing an action, shall have an option for 1 year from judgement to purchase all the State's mineral interest at a price of \$0.15 /acre ... and the State shall deliver a deed conveying the State's interest to the owner.

Although the sales by the State of Nevada to Thomas Flannery in 1895/99 expressly reserved mineral rights, legal opinion (Jeppson, quoting the 1963 Acts) is that this phrase was intended to refer only to then existing mines and claims, and that land bought from the State in fact included the mineral rights.

Jeppson, recalling his senior partner in 1962 who helped write the 1963 legislation, indicated that:

- land owners have, and have always had, the mineral rights;
- the 1963 law was passed only to clear up a doubtful situation;
- the State is the only one who could sue an owner for mining his land, but has already conceded all rights in the 1963 Act.
- the fee of \$0.15 /acre was given to avoid any future legal action;
- who would sue when an owner could obtain rights at \$0.15 /acre ?
- no requests for mineral title deeds have been made in Nevada.

Flannery's Patent on Lot 7 and the above extracts of legislation are appended.

The conclusion is that the Hiltons do in fact possess all mineral rights on their land, and can mine it without applying for the rights.

4. County taxes on use of land

Taxes are levied on actual use of land at different rates, the lowest being for grazing. The Hiltons pay grazing taxes on all their lots (1, 2, 3, 5, 6, 7 & 12). Records indicate that taxes are paid to date, and that no incumbrances or liens exist against the lots.

If land is converted from grazing to mining, then taxes are at a higher rate and back paid for 7 years.

Year	<u>Frisco Belle</u>		<u>Lucky Star</u>		<u>Lucky Mary</u>		<u>Juniata Pl</u>		<u>Gemini 1-3</u>		<u>Marcia 44-47</u>	
	<u>Vol/pg</u>	<u>Mh/dy</u>	<u>Vol/pg</u>	<u>Mh/d</u>	<u>Vol/pg</u>	<u>Mh/dy</u>	<u>Vol/pg</u>	<u>Mh/d</u>	<u>Vol/pg</u>	<u>Mh/dy</u>	<u>Vol/pg</u>	<u>Mh/dy</u>
1970	23/374	P 8/24	<----- Contiguous group filing ----->									
1971	28/856	P 9/13	<----- idem ----->									
1972	31/238	P 7/18	<----- idem ----->									
1973	35/559	P 7/03	<----- idem ----->									
1974	40/849	P 8/21	<----- idem ----->									
1975	44/959	P 9/03	<----- idem ----->									
1976	49/135	P 7/08	<----- idem ----->									
1977	55/449	P 8/25	<----- idem ----->									
1978	58/655	P 8/21	<----- idem ----->									
1979	63/159	P 7/26	<----- idem ----->									
1980	70/297	P 9/02	<----- idem ----->									
1981	77/363	P 8/13	<----- idem ----->								75/843	6/12
1982	85/316	P 6/23	<----- idem ----->									
1983	91/749	P 8/12	<----- idem ----->									
1984	96/522	P 5/23	<----- idem ----->									
1985	102/806	P 5/16	<----- idem ----->									
1986	108/172	P 6/06	<----- idem ----->									
1987	116/830	P 9/10	<----- idem ----->									
1988	126/833	P 10/26	<----- idem ----->									
1989	133/225	P 9/25	<----- idem ----->									
1990	137/905	P 7/19	<----- idem ----->									

Filings at the B.L.M. in Reno for the group have been complete:

<u>Year</u>	<u>Mh/dy</u>	<u>Year</u>	<u>Mh/dy</u>	<u>Year</u>	<u>Mh/dy</u>	<u>Year</u>	<u>Mh/dy</u>
1979	8/06	1982	7/12	1985	5/29	1988	11/18
1980	9/01	1983	9/14	1986	6/24	1989	10/13
1981	10/08	1984	6/19	1987	9/22	1990	8/01

No filing could be found for Lucky Star for 1933-36, after diligent inquiry at the Recorder's office, though records are complete for other claims.

Jeppson's opinion is that a brief lapse in filing Assessment Work with the County in the 1930's was not sufficient to cause invalidation if another claim was not staked over it in the meantime, and filings could be restarted. By brief, he means up to 5 years, but not 20. Since 1978 however, filings with the County and B.L.M. have been obligatory, and any lapse will invalidate the claim. By this criteria, the Lucky Star is valid, and still covers part of the old millsite.

THE STATE OF NEVADA

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, John Flannery

of Esmeralda

County Nevada

has deposited with the Register of the State Land Office at Carson City the State Treasurer's receipt, whereby it appears that full payment has been made by the said John Flannery according to the provisions of an Act of the Legislature, approved March 12, 1885, entitled "An Act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," and the Acts amendatory thereof and supplementary thereto. For the Lot Seven (7) of the North East quarter of Section Seven, teen (17) Township Five (5) North, Range Twentyeight (28) East.

Mount Diablo base and meridian, containing Fifty and 13/100 acres, according to the official plat of the survey of the Public Lands, as made by the United States Surveyor-General for the District of Nevada; which said tract has been purchased by the said John Flannery

Wherefore, know ye, That the State of Nevada, in consideration of the premises, and in conformity with the Act of the Legislature in such cases made and provided, has given and granted, and by these presents does give and grant, unto the said John Flannery and to his heirs, the said tract above described,

To Have and to Hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature, thereunto belonging, unto the said John Flannery and to his heirs and assigns forever; provided, that all mines of gold, silver, copper, lead, cinnabar and other valuable minerals that may exist in said tract, are hereby expressly reserved.



By the Governor.

In Testimony Whereof, I, John Sparks

Governor of the State of Nevada, have caused these Letters to be made Patent, and the Great Seal of the State to be hereunto affixed. Given under my hand at Carson City, the Twentyfifth day of February 1905

John Sparks

Governor.

W.G. Douglass

Secretary of State.

E.D. Kelley

Land Register.

Recorded

Feb 27., 1905

321.330 Record of issued patents. The secretary of state and the state land registrar shall each keep a record of patents issued.

[Part 16:85:1885; A 1889, 123; 1939, 157; 1931 NCL § 5527]—(NRS A 1975, 99)

**CONFIRMATION OF TITLE IN PURCHASERS OF STATE
LANDS AFTER MARCH 3, 1887**

321.331 Persons receiving patent or deed from state since 1887 confirmed in fee simple title to lands and minerals; royalties. Every person, corporation or association, his, her or its heirs, assigns or lawful successors, who has heretofore received since March 3, 1887, or shall hereafter receive or be entitled to receive any patent or deed from the State of Nevada granting to him, her or it any lands of the State of Nevada shall, subject to the royalty provision contained in NRS 321.300, be confirmed in the fee simple title to the lands described in such patent or deed, and all of the minerals therein, including all gas, coal, oil and oil shales which may exist therein, but any such patentee, or his, her or its successors in interest, holding such fee simple title shall pay to the State of Nevada for the fund which was the original beneficiary of such lands the royalty provided by NRS 321.300.

(Added to NRS by 1963, 98)

Nevada Revised Statutes

—ANNOTATIONS—

Reviser's Note.

Ch. 92, Stats. 1963, the source of NRS 321.331-321.334, contains a preamble not included in NRS, which reads as follows:

"WHEREAS, The legislature of the State of Nevada by chapter 103, Statutes of Nevada 1887, as amended by Chapter 35, Statutes of Nevada 1897, disclaimed any interest in mineral lands selected by the State of Nevada prior to or after March 3, 1887, on account of any grant from the United States and provided further by such act that every contract, patent or deed made by the state after March 3, 1887, should contain a provision expressly reserving all mines of gold, silver, copper, cinnabar and other valuable minerals that might exist in such lands, and further provided that all persons desiring to acquire titles to mines upon lands which had been selected by the state should obtain such title from the United States under the laws of the Congress, notwithstanding such selection by the State of Nevada; and

WHEREAS, Such portions of chapter 103, Statutes of Nevada 1887, as amended by chapter 35, Statutes of Nevada 1897, as above set

forth, were incorporated in Nevada Revised Statutes in 1957 as NRS 516.020; and

WHEREAS, By chapter 103, Statutes of Nevada 1887, the State of Nevada made the declaration that the several grants made by the United States to the State of Nevada reserved the mineral lands; and the sales of such lands made by the state were made subject to such reservation and such declaration was incorrect; and

WHEREAS, The state by chapter 103, Statutes of Nevada 1887, further provided that any citizen of the United States or person having declared his intention to become a citizen of the United States might enter upon any mineral lands in this state notwithstanding the state's selection, and explore for gold, silver, copper, lead, cinnabar and other valuable minerals and upon the discovery of such valuable mineral might work and mine the same in pursuance of the local rules and regulations of miners and the laws of the United States; and thereafter such person might condemn for the uses and purposes of mining in like manner as private property was by law condemned and

taken for public use the improvements made on lands purchased from the state by other persons; and

WHEREAS, Such provisions of chapter 103, Statutes of Nevada 1887, were in 1957 incorporated in Nevada Revised Statutes as NRS 516.010; and

WHEREAS, By chapter 172, Statutes of Nevada 1921, the legislature of the State of Nevada provided] that every person, corporation or association, his or its heirs, assigns or lawful successors who has a subsisting contract with the State of Nevada for the purchase of any lands of the State of Nevada, or who might thereafter contract with the State of Nevada for the purchase of any of its public lands, and every patentee of lands purchased from the State of Nevada should, subject to the royalty provided in such act, be deemed and held to have the right to the exclusive possession of the lands described in such contract, including all gas, coal, oil and oil shales that might exist in such lands, and that every person, corporation or association, his or its heirs, assigns or lawful successors, who had theretofore received, or should thereafter receive or be entitled to receive, any patent or deed from the State of Nevada granting to him or it any such lands should, subject to the royalty provisions contained in the act, be deemed to have the fee simple title to the lands described in such patent or deed, including all gas, coal, oil and oil shales which might exist therein, provided any such contract holder or patentee should pay to the State of Nevada for the fund which was the original beneficiary of such lands a royalty of 5 percent of the net proceeds of all gas, coal or oil mined or extracted therefrom; and

WHEREAS, The Department of the Interior of the United States has in its decisions ruled that the disclaimer made by the State of Nevada under chapter 103, Statutes of Nevada 1887, had revested no title in the United States to any minerals contained in such lands, and that no title to such lands or any minerals therein could be received from the United States by reason of chapter 103, Statutes of Nevada 1887; and

WHEREAS, The attorney general of the State of Nevada had in opinions rendered by his office prior to the year 1962 held that the State of Nevada held no title to any of the minerals received in grants from the United States subsequent to the enactment of chapter 103, Statutes of Nevada 1887, and that no title could be received from the state therefor; and

WHEREAS, The United States by Public Law 87-340 in the 87th Congress, S-2272, October 3, 1961, disclaimed any interest in lands which it might have acquired by virtue of chapter 103, Statutes of Nevada 1887, or by any revisions or reenactment thereof, which act was approved October 3, 1961; and

WHEREAS, By the statutes and decisions hereinbefore mentioned a confusion has arisen as to the extent of mineral rights possessed by the holder of a patent from the State of Nevada, or his, her or its successors in interest, subsequent to March 3, 1887; and

WHEREAS, It is the view of the legislature of the State of Nevada that NRS 321.300 did intend to vest in all patentees, their heirs, successors and assigns the fee simple title to all minerals in such lands theretofore conveyed or thereafter conveyed by the State of Nevada, subject only to the royalty provisions contained in NRS 321.300; and

WHEREAS, It is the view of the legislature of the State of Nevada that it is to the best interests of the State of Nevada and its inhabitants that the intention of chapter 172, Statutes of Nevada 1921, be carried out, and that the confusion as to titles to minerals in public lands sold by the State of Nevada be settled, and that the titles of the patentees, their heirs, successors and assigns be confirmed, and that any such person, corporation or association, his, her or its heirs, assigns or lawful successors be authorized to bring a declaratory judgment action against the State of Nevada to determine the state's interest in such minerals, and that if it be determined that the State of Nevada has any interest therein, other than the royalty interest set forth in NRS 321.300, such party be granted an option to purchase such interest."

321.332 ~~Consent of state to action for declaratory judgment to determine state's rights to minerals; service of process on attorney general; notice to owner.~~

1. Every person, corporation or association, his, her or its heirs, assigns or lawful successors referred to in NRS 321.331, who is entitled to any lands that may have been purchased by him, her or it, or his, her or its predecessors in interest, from the State of Nevada subsequent to March 3, 1887, or who has a separate estate in the minerals, including any gas, coal, oil and oil shales existing in such land, arising from a conveyance or reservation of mineral rights by such an immediate or remote grantee of the state, may bring an action in the district court of this state in and for any county where such lands or any part thereof are situate to determine by declaratory judgment of such court whether or not the State of Nevada has any rights to any minerals therein, including any oil, gas, coal and oil shales and, if possible, the extent thereof, and the State of Nevada hereby consents to the bringing of any such action or actions.

2. Service of process on the State of Nevada in any such action may be secured by serving a copy of the complaint, together with a copy of the summons, on the attorney general of the State of Nevada.

3. If an action is brought pursuant to this section by the holder of a separate mineral estate, he shall give notice of the bringing of the action by registered or certified mail to every record owner of the fee in any lands which are the subject of the action, but is not required to join any such owner as a party to the action. The notice shall be given on or within 5 days after the date of filing the complaint, shall identify the land of the owner which is affected, and shall state the case number and court in which the action is brought.

(Added to NRS by 1963, 98; A 1975, 613)

—ANNOTATIONS—

Nevada Cases.

Reservation of valuable minerals "which may exist in said tract" reserved only mines existing at time patents were issued. In action brought under NRS 321.332 to determine whether state had any mineral rights in properties acquired in state patent containing reservation of valuable minerals "which may exist in said tract," language of reservation was construed as reserving only mines existing at time patents were issued, leaving to

patentee sole rights to minerals which might be discovered thereafter. Attempt by state in 1921 to convey to patentee rights to minerals discovered after issuance of patent, subject to state-imposed royalty payments, was ineffectual because state had no rights to convey and no power to require payment of royalties by patentee. *State v. Ellison Ranching Co.*, 93 Nev. 575, 571 P.2d 394 (1977), cited, *The 25 Corp. v. Eisenman Chem. Co.*, 101 Nev. 664, at 668, 709 P.2d 164 (1985)

321.333 ~~Plaintiff's option to purchase state's interest in minerals.~~

1. If in any such action authorized by NRS 321.332 it is determined that the State of Nevada has any interest in any minerals in any such lands, save and except the royalty interest provided for in NRS 321.300, then any such person, corporation or association, his, her or its heirs, assigns or lawful

321.335 CONTROL AND SALE OF STATE LANDS

successors, bringing any such action as plaintiff in such action, shall have the option for 1 year from the entry of final judgment in such action to purchase from the State of Nevada all of the interest of the State of Nevada in the minerals in such lands, save and except the royalty interest authorized by NRS 321.300, at a price of 15 cents for each acre of land involved in such action.

2. If such option is exercised, payment for such mineral interest shall be made to the state land registrar in cash within the period of such option, and the state land registrar is authorized and directed upon the payment of any such option price to deliver to the purchaser a deed from the State of Nevada to such purchaser, conveying all of the state's interest in the minerals in the lands involved in such action, save and except the royalty interest of the state provided for in NRS 321.300.

(Added to NRS by 1963, 98; A 1975, 99)

SALES AFTER APRIL 1, 1957

321.335 Procedure.

1. Except as provided in NRS 321.125, 321.450 and 321.510, after April 1, 1957, all sales of any lands to which the State of Nevada or any department, agency or institution thereof has title, except the department of transportation and agricultural associations organized pursuant to chapter 547 of NRS, including lands subject to contracts of sale that have been forfeited, are governed by the provisions of this section.

2. Whenever the state land registrar deems it to be in the best interests of the State of Nevada that any lands owned by the state and not used or set apart for public purposes be sold, he may, with the approval of the state board of examiners and the interim finance committee, cause those lands to be sold at public auction or upon sealed bids, for cash or pursuant to contract of sale, at a price not less than their appraised value plus the costs of appraisal and publication of notice of sale.

3. Before offering any land for sale, the state land registrar shall cause it to be appraised by a competent appraiser.

4. After receipt of the report of the appraiser, the state land registrar shall cause a notice of sale to be published once a week for 4 consecutive weeks in a newspaper of general circulation published in the county where the land to be sold is situated, and in such other newspapers as he deems appropriate. If there is no newspaper published in the county where the land to be sold is situated the notice must be so published in some newspaper published in this state having a general circulation in the county where the land is situated.

5. The notice must contain:

- (a) A description of the land to be sold;
- (b) A statement of the terms of sale;

TERRITORY OF NEVADA

1861

CARSON
COUNTY
(UTAH
TERRITORY)

HUMBOLDT
COUNTY
(UTAH
TERRITORY)

ADDITION TO THE TERRITORY OF NEVADA

FROM UTAH TERRITORY, JULY 14, 1862

ADDITION TO THE STATE OF NEVADA

FROM UTAH TERRITORY, MAY 5, 1866

ADDITION TO THE
STATE OF NEVADA

FROM ARIZONA
TERRITORY,
JANUARY 18,
1867

O ... 1861-1867

MAP O

1861-67 - Territory of Nevada formed in 1861 from Carson and Humboldt counties of Utah Territory. In 1862 Nevada Territory enlarged by extension eastward one degree into Utah Territory. Enlarged Territory, and State as created in 1864, coextensive in size. Additional extension eastward one degree into Utah Territory in 1866 by State of Nevada. Extension south into Arizona Territory to the Colorado River by State of Nevada in 1867. Nevada Territory existed in two different sizes; Nevada as a state in three different sizes.

which represented the nucleus of Nevada underwent vast modifications between 1854-61 by means of various enlargements, attachments, modifications, and reestablishments. The entire period from 1854 (Carson County created) to 1867 (last addition to the State of Nevada) presents a complex problem in the geopolitical history of Nevada.

SEAT OF GOVERNMENT

The original territorial capital of Utah was Fillmore City in Millard County. During the time Carson County was attached to Millard County, prior to its organization in 1855, Fillmore City also served as the county seat of Carson County. This location was about 150 miles south of Great Salt Lake City and about 500 miles east of the populated part of Carson County. So far as Carson County was concerned the situation was not improved any when, in 1856, the capital was moved to Great Salt Lake City, Utah Territory, although Genoa had been designated county seat the year before.

The Utah Territorial Assembly designated Carson City the county seat of Carson County in place of Genoa, effective on what proved to be 1 day prior to the formation of the Territory of Nevada. The Nevada Territorial government selected the same location for the capital of the Territory of Nevada in 1861, and Carson City was designated the capital for the State of Nevada in 1864 by the State Constitution. Carson City has thus served as Nevada's capital continuously since 1861.

SHORT FORM OF LEASE

THIS AGREEMENT, made effective as of the 15th day of July, 1987, by and between SANDRA MILTON and MARILYN JUNE MILTON, husband and wife, hereinafter called "Lessors" and AURORA PARTNERSHIP, an unincorporated partnership of KIMBERLY RESOURCES (US) INC. and PACIFIC NORTHERN RESOURCES USA, INC., bodies corporate, AURORA PARTNERSHIP being hereinafter called the "Lessee".

In consideration of the premises and other valuable consideration, Lessors hereby demise, lease and let to the Lessee that portion of Lot 12, Lot 7 and Lot 2, Section 17, Township 3 North, Range 30 East, N. 10th, Meridian, Mineral County, Nevada, that is dotted on two sides and outlined in yellow and that is also outlined in green on Schedule "A" attached hereto.

This short form of lease is for a term of five (5) years renewable for an additional period of five (5) years and is for the purpose of granting the Lessee the right to construct, maintain and use a road on the portion highlighted in yellow on Schedule "A" and for parking vehicles on the portion of the leased premises outlined in green on Schedule "A", and is upon the terms and conditions set forth in an unrecorded lease dated July 15, 1987 ("Lease") between the parties hereto.

It is understood that this short form of lease is entered into only to evidence the existence of the Lease and neither adds to, changes or subtracts from any of the provisions of the said Lease, but is for the purpose (if either party hereto so desires) of recording evidence of the existence of said Lease.

IN WITNESS WHEREOF, the Lessor has hereunto set their hands, and the Lessee has caused its name to be subscribed by its proper officer, effective the day and year first hereinabove set out.

Sandra Milton
SANDRA MILTON

Marilyn June Milton
MARILYN JUNE MILTON

AURORA PARTNERSHIP
per *Robert H. Jones*

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STATE OF California
COUNTY OF Los Angeles

On this 15th day of July, 1987, before me, a Notary Public, within and for said County and State, personally appeared SANDRA MILTON and MARILYN JUNE MILTON, husband and wife, to me known to be the persons described in and who executed the same as their own act and deed.



Robert H. Jones
EXHIBIT C

