



**MITCHELL  
CHADWICK**

# **Idaho-Maryland Mine Vested Right Petition**

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**Submitted to:**

County of Nevada  
Planning Department  
950 Maidu Avenue, Suite 170  
P.O. Box 599002  
Nevada City, CA 95959  
Tel: (530) 265-1222

**Prepared by:**

G. Braiden Chadwick  
Ryan W. Thomason  
Mitchell Chadwick LLP  
3001 Lava Ridge Court, Suite 120  
Roseville, CA 95661  
Tel: (916) 462-8888  
bchadwick@mitchellchadwick.com  
rthomason@mitchellchadwick.com

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## I. INTRODUCTION

Rise Grass Valley, Inc. (“Rise” or “Applicant”) owns the Idaho-Maryland Mine, consisting of 175 acres of surface land and a 2,560-acre mineral estate (the “Vested Mine Property”), in Nevada County (“County”). Before the Vested Mine Property was consolidated into its current configuration in 1941, it existed as multiple historical mines and operations referred to in this Petition as the “Mine Property” or the “Mine.”

Since the Mine was first established in 1851, it has played a vital role in the very foundation of the County, its growth inextricably linked with the County’s rich heritage of cultural and technological innovation. Since 1851, the historic Mine Property has at all times been either actively mined, or held in reserve and intended to be mined again in the future. As demonstrated in this Petition, mining operations on the Vested Mine Property are a vested use, protected under the California and federal Constitutions, and a use permit is not required for mining operations to continue.

The threshold for proving a vested right exists on the Vested Mine Property is low. It requires only that Rise illustrate that the vested right *is more likely than not* to exist. For the vested right to be recognized by the County, Rise need only demonstrate two facts: (1) mine operations were being conducted both before and immediately after the County first required a permit to mine in 1954; and (2) the Vested Mine Property was intended to be used for mining purposes. Upon meeting this burden, affirming a vested right is mandatory; meaning that if Rise provides enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right.

This Petition and its exhibits are replete with historical evidence that mining was conducted at the Vested Mine Property prior to, during, and after 1954, when the County first required a use permit. By adopting an ordinance requiring a permit to mine, the County automatically vested (or grandfathered) all nonconforming uses at that time. Once vested, this right to mine endures unless it is abandoned, which has not occurred here. Abandonment only occurs if two conditions are met: (1) there is evidence of a property owner’s actual intent to abandon the vested mining right; and (2) an overt act (or failure to act) demonstrating such intent. The California Supreme Court has held that a vested mining right is not abandoned merely because the mine has been inactive for periods of time, and the Court has found that cessation of use alone does not constitute abandonment of a mine. The evidence set out in this Petition establishes the owners evidenced their intent to retain the vested right to mine by continuously recording mineral reservations, entering into leases, and making plans for resuming mining in the future, even when mining operations were suspended. There is no evidence that any owner of the Vested Mine Property actually intended to abandon the vested mining right or took an overt act demonstrating that intent (let alone both). As such, it is not possible to conclude that the vested right to mine the Vested Mine Property has been abandoned.

The vested mining right encompasses the mineral estate and extends to the entire surface area of the Vested Mine Property. While the subsurface of the Mine Property was primarily used for mining ore, the entire surface area of the Vested Mine Property has always been used to support the subsurface mining operations. The evidence shows that the surface was filled with buildings, headframes, hoists, mine tailings, stockpiles, storage, crushers and screens, processing plants, haul roads, and even two sawmills producing lumber for the Mine.

Finally, and as discussed below, the County recognized that mining operations on the Mine Property are a legal nonconforming use in 1980 (i.e., a vested right). Thus, whether mining may take place on the Vested Mine Property as a vested right is not at all in question. With this Petition, Rise is simply asking the County to recognize and affirm its vested right to conduct mine operations on the entirety of the Vested Mine Property, and the evidence supporting such a recognition is indisputable.

### **A. Historical Overview**<sup>1</sup>

In evaluating the Vested Mine Property's vested right, it is important to understand the historic context underpinning its growth and development. In that regard, we first note that the Mine is a consolidation of a number of mines that have been described by the following names over the last 172 years: the larger Eureka, Idaho, Maryland, and Brunswick mines, and the Union Hill mine which includes the nearby Lucky, Cambridge, and Frankfort/Gold Blossom/Oxford mines, as well as the smaller Gold Point, Black Hawk, South Idaho, and Mitchell Ranch. In addition, various agricultural patents and mineral rights, including the Loma Rica, Hooper, and Ismert ranches, were also explored and integrated into the Mine. The last major property purchases affiliating land with the Mine were the mineral rights of California Lands Inc. / California Mountain Fruit Company, incorporated into the Mine as of April 1940, and the land owned by Lawrence and Vivian Mazzanti in July of 1941. Thus, by 1941 all of these mines and properties had become consolidated into a single mining operation known as the Idaho-Maryland-Brunswick Mine.<sup>2</sup>

Prior to the County officially acknowledging the Vested Mine Property's right to continue mining operations as a legal non-conforming use – i.e., a vested right, with the issuance of Use Permit U79-41 in 1980, – the Mine was subject to the whims of market forces. Over its lifetime, the Mine experienced multiple market-induced cycles of closure and flooding followed by reopening and dewatering. As is the case with all long-term mines, periodic interludes of idleness are appropriate and, as observed by the California Supreme Court in the *Hansen Bros.*<sup>3</sup> decision, a normal part of a mine's life. Throughout the Mine's history, the forces of government mandates, world wars, and the financial markets have periodically stopped operations, causing

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<sup>1</sup> Citations for each fact stated in this introductory section are provided in Part III, Factual Background, *infra*.

<sup>2</sup> A figure depicting each mine and property comprising the Mine Property is attached hereto as Exhibit 1.

<sup>3</sup> 12 Cal. 4th 533 (1996).

the mine to flood; but as the Factual Background notes, each stoppage was always followed by dewatering the Mine and reinitiating mining operations—sometimes years later.

### **1. Discovery and Consolidation: the First Era of Significant Mining, 1851-1919.**

The first mention of mining activity within the vicinity of the Vested Mine Property is in 1851, when the Eureka and Union Hill claims were located. Significant operations at the Eureka Mine commenced in 1863, and by 1867, the Eureka Mine was reported to be one of the richest gold mines in the world. The operation of the adjacent Idaho Mine, located on the same vein as the Eureka Mine, was in full swing by 1868, soon becoming the most profitable and deepest gold mine in the world at that time, and earning a reputation as the most famous mine in the state. In 1893, the Idaho Mine was sold to the Maryland Gold Quartz Mining Co. who owned the lands adjacent to the Idaho Mine. Due to a major fire in 1894 and dwindling capital, the Idaho-Maryland Mine was closed in 1901 and allowed to fill with water. Over the next 25 years, exploration and minor production continued at the various mines of the Mine Property including the Idaho-Maryland, Brunswick, and Union Hill mines.

### **2. Discovery and Second Era of Significant Mining, 1920-1942.**

In the 1920's and 1940's, the mines that now make up the Idaho-Maryland Mine saw steady expansion, as well as equipment upgrades and property improvements as technology and finances allowed. This included a major discovery in 1927 at the Idaho-Maryland Mine, the consolidation of the Brunswick Mine into common ownership with the Idaho Maryland Mine, and further consolidation of various properties including Loma Rica, Hooper, Ismert, and Mitchell ranches. In 1938, the Idaho-Maryland Mine was reported to be the largest gold producer in California, annually producing 115,001 ounces of good from the mining and processing of 331,406 tons of gold ore and netting a profit of \$1,193,446. It reached its peak annual production in 1939, producing 410,411 tons of ore. In 1942, the Idaho-Maryland Mine was shut down by the War Production Board's issuance of Limitation Order L-208, which mandated the closure of all major gold mines.

### **3. Post War Production, 1943-1953.**

The Bretton Woods system of monetary management was a multilateral agreement between 44 countries that met in Bretton Woods, New Hampshire in 1944 with the goal of creating a financial system to facilitate foreign exchange, prevent devaluation of currencies and promote international economic growth.<sup>4</sup> In addition to creating the International Monetary Fund and the World Bank, Bretton Woods pegged the value of the United States dollar to the value of gold, and in turn, other currencies were pegged to the value of the dollar. Bretton Woods explicitly mandated that the dollar was convertible to gold bullion for foreign governments and central banks at the mandated gold price imposed by the U.S. Government of \$35 per troy ounce of fine

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<sup>4</sup> <https://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>.

gold.<sup>5</sup> While this is an oversimplification of the Bretton Woods system, it is nonetheless important because the static price of gold, coupled with wartime conditions, prevented the Mine from operating and returning to full operation. Following reopening and resumption of production in 1944, labor shortages and the price of gold forced the mine to operate below capacity. This led to a greater focus on implementing technological improvements and cost-saving measures, including the construction of two sawmills for the purpose of supplying timber needed for the Mine. Several other exploration discoveries were made during this period despite the reduced operations.

#### **4. Mine Production at the Date of Vesting, 1954.**

The County's first comprehensive zoning ordinance became effective on October 10, 1954. The zoning ordinance imposed, for the first time, a use permit requirement for mining and quarrying activities in the County. Notwithstanding the County's new zoning ordinance, mining at the Idaho-Maryland Mine continued on at least 14 different portions of the Vested Mine Property, which by then included both the Brunswick Industrial and Centennial Industrial sites under the ownership of Idaho Maryland Mines Corporation (formerly called the Idaho Maryland Mines Company and the Idaho-Maryland Consolidated Mines).

#### **5. Cessation of Gold Mining Activities and Sale of the Mine, 1956-1963.**

Due to lack of financing, increased operating costs, and the depressed price of gold, gold mining at the Vested Mine Property entered into a period of dormancy in 1956. Thereafter, the Board of Directors at the Idaho Maryland Mines Corporation sold off various surface properties, including the Centennial Industrial site, in an effort to keep the company operating, while expressly reserving the mineral estate to preserve the ability to continue gold mining operations once economic conditions became more favorable. However, the company was forced to file for bankruptcy in 1962 and sold the Mine at auction to William and Marian Ghidotti.

#### **6. Resurgence of Mining Operations at the Mine Property, 1964-1980.**

William and Marian Ghidotti were mine owners, gold investors and pillars of the Nevada County community, who purchased the Mine as an investment. In addition, they purchased various surface properties previously part of the Vested Mine Property, including the Centennial Industrial Site, for the purpose of facilitating future gold mining operations.

In the 1960's and 1970's, the Mine Property saw a resurgence of activity. For a four-month period in 1964 or 1965, and from 1967 through the 1980's, a rock crusher was continuously operating on the Centennial Industrial Site, and both mine rock waste and mill sand was mined from the site continuously. In 1979, the North Star Rock Products Corporation, under contract with the Mine Property owner, Marian Ghidotti, applied for a use permit for a proposed rock

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<sup>5</sup> <https://www.federalreservehistory.org/essays/bretton-woods-created>.

crushing, screening plant, and retail gravel sales operation. As discussed above, Use Permit U79-41 was granted the following year, and at that time, the County confirmed the Mine's operation as an "existing, non-conforming use," otherwise known as a vested right. In the Planning Commission hearing for this use permit, the County stated that "Mrs. Ghidotti who owns the property intends to put it to some use other than a horse ranch in the future, because it is zoned industrial, and there has been some consideration of re-opening the mine because of the price of gold."

#### **7. BET Group Inherits the Mine Property from Marian Ghidotti, 1981-1986.**

Marian Ghidotti passed away on May 12, 1980, leaving the Mine Property to Mary Bouma, Erica Erickson, and William Toms (collectively, the "BET Group). Marian Ghidotti left the Mine Property to these individuals because of her belief that they had the wherewithal and skillset to facilitate the development of the Mine Property back into production. The second and final account and settlement of the Marian Ghidotti estate was completed in August of 1983. The BET Group continued the mining use of the Centennial Industrial site and adjacent Morehouse property with revisions of Use Permit U79-41 in 1985 and 1986.

#### **8. Recent Efforts to Reopen and Resume Gold Mining Operations at the Mine, 1987 – Present.**

The BET Group subdivided and sold some of the surface lands associated with the Mine but reserved mineral rights and sufficient surface lands to allow the re-opening of the Mine. In addition, the BET Group began negotiations with several gold mining companies in late 1986, which culminated in multiple mining leases and option-purchase agreements for the Mine. From 1988 to 2013, the companies engaged in exploratory activities at the Mine with the intent of resuming gold mining operations. One of those mining companies, Emperor Gold (later known as Emgold Mining Corporation), began the permitting process with the County to dewater and explore the Mine in 2003 with the goal of resuming mining operations. In 1995, the County approved the Final Environmental Impact Report for dewatering and exploration, and in 1996 granted a use permit empowering Emgold to conduct dewatering and underground exploration activities.

In the period from 2002 to 2013, Emgold made a significant effort to reopen the Mine which included an application for a use permit for underground mining operations and the production of gold and ceramic tile products. The City of Grass Valley conducted an environmental review pursuant to the California Environmental Quality Act from 2005 to 2008. Emgold subsequently withdrew its application and allowed its lease and purchase agreement for the Mine Property to expire in 2013. The BET Group then listed and marketed the Vested Mine Property for sale as a mining property.



Finally, in 2017, Rise acquired the Vested Mine Property, conducted a significant exploration drilling program, and, as supported by this vested right petition, is in the process of resuming mining operations at the Idaho-Maryland Mine.

## II. PROPERTY AND APPLICANT INFORMATION

### A. Property Location

The Vested Mine Property is located on approximately 175 acres of surface land and a 2,560-acre reserved mineral estate. Both the surface and the mineral estate are owned by Rise. The Vested Mining Property is located in unincorporated western Nevada County, and consists of two surface components, as well as the underground mineral estate. Exhibit 2 depicts the Vested Mine Property's regional location and its proximity to nearby roads and towns. The vested right encompasses both the surface and mineral areas under a single mining operation, as discussed below.

The property description for the Vested Mine Property is as follows:<sup>6</sup>

- The 119-acre Brunswick Industrial site includes existing surface mine components including a concrete silo, mine shaft, settling pond and sawmill site. The Brunswick site is located southwest of the intersection of East Bennett and Brunswick Roads, and is comprised of Assessor's Parcel Numbers (APNs): 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, and 009-630-039.
- The 56.41-acre Centennial Industrial site, including the historic tailings deposit, is located southwest of the intersection of Idaho Maryland Road and Centennial Drive, and is comprised of APNs: 009-550-032, 009-550-037, 009-550-038, 009-550-039, 009-550-040, and 009-560-036.
- The approximately 2,560-acre reserved mineral estate boundary owned by the Applicant is located within Sections 23, 25, 26, and 36 of Township 16 North, Range 8 East, and Sections 19, 29, 30, 31 of Township 16 North, Range 9 East, and Section 6 of Township 16 North, Range 9 East of the Grass Valley U.S. Geological Survey 7.5-minute quadrangle, Mount Diablo Base and Meridian. Latitude 39.223975, longitude -121.038131 (WGS).

Rise seeks recognition of its vested right to mine on approximately 175 acres of surface land comprised of the following APNs: 006-441-003, -004, -005, -034; 009-630-037, -039; 009-550-032, -037, -038, -039, -040; and 009-560-036, and the 2,560-acre mineral estate.

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<sup>6</sup> Note, this property description is for the entire Vested Mine Property.

**B. Applicant Information**

**Applicant:** Rise Grass Valley, Inc.  
333 Crown Point Circle, Suite 215  
Grass Valley, CA 95945  
Contact: Benjamin Mossman  
ceo@risegoldcorp.com

**Applicant's Agent:** Mitchell Chadwick LLP  
3001 Lava Ridge Court, Suite 120  
Roseville, CA 95661  
Tel: (916) 462-8888  
Contact: G. Braiden Chadwick  
bchadwick@mitchellchadwick.com

**III. FACTUAL BACKGROUND**

The following is a chronological list of the facts relevant to the vested right determination. An analysis of the facts in context of the applicable legal standards follows further below. Referenced historical documents, such as newspaper articles, maps, and other relevant documents are included in Section VII, *infra*, as exhibits, and books are included in Section VIII, *infra*, as appendices.

**1851:** The Union Hill claim, which will later comprise a portion of the Mine Property, is located in 1851, and a white quartz vein containing gold is worked with an arrastra until 1854.<sup>7</sup>

The Eureka mining claim is located on February 7, 1851, and an outcrop of low-grade gold quartz is worked in intervals until it becomes a part of the Idaho-Maryland Mine in 1919.<sup>8</sup>

**1858:** At the Eureka Mine, a total of 5,000 tons of quartz is mined within 30 feet of the surface and is sold for less than \$10 per ton.<sup>9</sup>

**1859:** At the Brunswick Mine, construction of a tunnel is started, running a distance of 512 feet to a vein struck 112 feet from the surface.<sup>10</sup> Even prior to this, the ledge was worked superficially, yielding ore valued between \$13 and \$36 per ton.<sup>11</sup>

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<sup>7</sup> Macboyle [Appendix A] 166.

<sup>8</sup> Bean [Appendix B] 220; Clark [Appendix C] 1.

<sup>9</sup> Lindgren [Appendix D] 230.

<sup>10</sup> Bean 221.

<sup>11</sup> *Ibid.*

**1862:** The Frankfort mining claim, a claim south of the Union Hill Mine which eventually becomes a part of the Idaho-Maryland Mine Property, is located.<sup>12</sup>

**1863:** At the Eureka Mine, a vertical shaft is sunk to a depth of 100 feet to mine ore averaging \$28 per ton.<sup>13</sup>

The Idaho mining claim is recorded on May 9, 1863, though it had been discovered before this date.<sup>14</sup> The Idaho Mine site will eventually become a part of the Idaho-Maryland Mine.<sup>15</sup>

**1864:** A 20-stamp mill is constructed at the Eureka Mine site.<sup>16</sup> A “stamp” is a machine that crushes rock to obtain gold ore.<sup>17</sup> Each stamp weighs 850 pounds and drops 60 times per minute from 10 inches.<sup>18</sup> The mill employed 4 rock breakers, 4 feeders of stamps, 4 blanket washers, 2 engineers, and 1 amalgamator.<sup>19</sup>

**1865:** The Eureka Mine is sold to the Eureka Company for \$400,000, and the workforce grows to 120 men.<sup>20</sup> 11,460 tons of ore is milled with a yield of \$50 per ton in this year alone.<sup>21</sup> The 300-foot level of the Eureka Mine is opened for exploration in this year.<sup>22</sup>

Work at the Idaho Mine continues, and an exploration shaft is sunk to a depth of 120 feet.<sup>23</sup>

In addition, the Maryland Mine is located by Samuel Dorsey.<sup>24</sup>

A mill and hoisting works are erected at the Union Hill Mine.<sup>25</sup> At the adjacent Lucky Mine, a 15-stamp mill<sup>26</sup> and a shaft 400 feet on the incline are constructed.<sup>27</sup> Also, at the adjacent Cambridge Mine, a 10-stamp mill and a shaft 200 feet deep are constructed.<sup>28</sup>

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<sup>12</sup> Bean 223.

<sup>13</sup> Macboyle 123; Clark 2.

<sup>14</sup> Clark 13.

<sup>15</sup> See *ibid.*

<sup>16</sup> Clark 5.

<sup>17</sup> Clark xix.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Clark 2.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Clark 14.

<sup>24</sup> Clark 51.

<sup>25</sup> Lindgren 231.

<sup>26</sup> A stamp mill is “[a] mill in which the ore is pulverized to 30-40 mesh by means of heavy stamps.” (Clark xix.)

<sup>27</sup> Lindgren 231.

<sup>28</sup> Lindgren 231.

**1866:** Grass Valley Consolidated Mining Company purchases the Brunswick Mine site in January, and constructs an inclined shaft (currently the Old Brunswick Shaft) starting at the summit of the hill approximately 500 feet northwest of the end of the tunnel that was previously driven.<sup>29</sup> The shaft reaches a depth of 186 feet before encountering a vein and groundwater.<sup>30</sup> The drain tunnel is rehabilitated and drifting commences on the vein from the tunnel southeast for 400 feet and northwest connecting to the incline shaft.<sup>31</sup>

Construction of a four-compartment shaft commenced at the Eureka Mine site.<sup>32</sup> This four-compartment shaft was located 170 feet west of the original shaft.<sup>33</sup>

**1867:** Development and discovery continue at the small-scale mines that will eventually make up the Mine Property. The Eureka mill is expanded to 30 stamps, each weighing 700 pounds and dropping 68 times per minute from ten inches, and the site is reported to be the richest gold mine in the world.<sup>34</sup> A ledge with significant gold values is discovered at the Idaho Mine following the deepening of the exploration shaft to 300 feet.<sup>35</sup>

At the Brunswick Mine site, a 10-stamp mill and extensive hoisting and pumping machinery are constructed, and work begins to sink the shaft to a depth 150 feet below the current level.<sup>36</sup>

At the Union Hill Mine site, two tunnels at depths of 70 and 200 feet reach the Gold Blossom-Oxford-Frankfort vein, which yields rock averaging \$14 per ton.<sup>37</sup> The adjacent Lucky Mine and Cambridge Mine are worked from 1865 to 1867.<sup>38</sup> At the Oxford Mine, which runs parallel to the Cambridge Mine, a tunnel was completed into the hill for lode.<sup>39</sup>

**1868:** A stamp mill is constructed at the Idaho Mine.<sup>40</sup>

At the Eureka Mine, underground operations continue and new ground was opened by drifts driven east and west on the 300- and 400-foot levels.<sup>41</sup> From October 1, 1865, to September 31, 1868, 33,319 tons of ore is milled with a

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<sup>29</sup> Bean 221.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Clark 2.

<sup>33</sup> *Ibid.*

<sup>34</sup> Clark 5; Bean 204.

<sup>35</sup> Clark 16.

<sup>36</sup> Bean 221.

<sup>37</sup> Bean 223.

<sup>38</sup> Lindgren 231.

<sup>39</sup> Bean 223.

<sup>40</sup> Clark 14.

<sup>41</sup> Clark 6.

return of \$1,558,701.<sup>42</sup>

**1870:** The Eureka Mine (later consolidated with other mines to operate as the Mine) reaches its maximum production, with excavation at the 300-, 400-, and 500-foot levels.<sup>43</sup> The mill runs 24 hours per day.<sup>44</sup> A total of 20,562 tons of ore is milled, yielding \$31.75 per ton.<sup>45</sup>

The Idaho Mine employs 101 persons, and the vertical shaft stretches past 600 feet.<sup>46</sup>

*The San Francisco Examiner* reports that 51 loads of rock were mined at the Grass Valley Consolidated Mine, better known as the O'Connor Mine, in a single day that yielded \$7,000 (in 1870 dollar value), causing astonishment and excitement within the town of Grass Valley.<sup>47</sup> The 51 loads were crushed in an effort to re-establish the Mine that had become idle.<sup>48</sup> *The San Francisco Examiner* reports that “[t]he success of the O'Connor Mine has started several companies to work on old locations.”<sup>49</sup> The O'Connor Mine is an earlier name for the Brunswick Mine.<sup>50</sup>

At the Union Hill Mine site, mining is discontinued for 30 years, from 1870 to 1900 with the mine flooded.

**1873:** Ore production drops significantly at the Eureka Mine due to a lack of discovered ore.<sup>51</sup> Conversely, the Idaho Mine is the leading quartz mine and one of the most productive gold mines in California.<sup>52</sup> A new headframe is constructed and the mill is increased from 15 to 35 stamps.<sup>53</sup>

**1876:** Timber is integral to mining operations, and John C. Coleman and Edward Coleman successfully lobby for the construction of a narrow-gauge railroad in large part to facilitate mining operations, specifically to:

*transport large quantities of wood to operate the steam boilers at the mine. The hoists, compressors, pumps, crusher and the mill all relied on steam power. Close to 35 cords of wood were burned daily to keep the mine*

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<sup>42</sup> *Ibid.*

<sup>43</sup> Clark 8.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Clark 16.

<sup>47</sup> *The San Francisco Examiner* (Jan. 27, 1870) [Exhibit 3].

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Bean 221.

<sup>51</sup> Clark 11.

<sup>52</sup> Clark 20.

<sup>53</sup> *Ibid.*

*operating.*<sup>54</sup>

The imported timber is bought from “stands of timber in the Chicago Park and Peardale areas” and are hauled to the Idaho and Empire Mines, among others.<sup>55</sup>

- 1877:** Operations are suspended at the Eureka Mine and the mine is closed due to lack of successful exploration.<sup>56</sup>
- 1878:** At the Idaho Mine, mill production increases to 135 tons per day, and is increased by an additional 15 stamps, bringing the total to 50 stamps.<sup>57</sup>
- 1879:** The Idaho Mine remains the richest and most famous mine in California.<sup>58</sup> Its surface plant and equipment are ranked among the best across the entire mining industry.<sup>59</sup>
- 1880:** A tunnel is constructed at the Maryland Mine, running a distance of 675 feet to the vein and drifts for short distances on the vein.<sup>60</sup> A shaft is sunk to a depth of 350 feet.<sup>61</sup> The extensive mining operations at this time are depicted in Exhibit 4.<sup>62</sup>
- 1886:** The shaft at the Idaho Mine has reached a depth of 2,790 feet on the incline with a vertical depth of 1,790 feet from the surface.<sup>63</sup>
- 1888:** The Brunswick Mine shaft is reported to have exceeded 300 feet below the surface, which was the deepest levels worked by the mine’s predecessors.<sup>64</sup> Drifting is planned to occur at this level. In addition, a ledge with a width between 2 ½ and 3 feet with good quality ore is discovered, which “are better than any previous developments have shown.”<sup>65</sup> As of February 24, 1888, there are 14 men employed; however, these employees “will be augmented [the following week] when stoping<sup>66</sup> will be in order.”<sup>67</sup>
- Historical topographical maps dated 1888 depict the Idaho Mine and the Crown Point Mine, as well as a railway in the vicinity of the Mine.<sup>68</sup>

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<sup>54</sup> Clark 20-21.

<sup>55</sup> Clark 21.

<sup>56</sup> Clark 11.

<sup>57</sup> Clark 26.

<sup>58</sup> Clark 28.

<sup>59</sup> *Ibid.*

<sup>60</sup> Clark 51.

<sup>61</sup> *Ibid.*

<sup>62</sup> Lithograph of Idaho Quartz Mine (1880) [Exhibit 4].

<sup>63</sup> Clark 40.

<sup>64</sup> *The San Francisco Chronicle* (Feb. 24, 1888) [Exhibit 5].

<sup>65</sup> *Ibid.*

<sup>66</sup> Stoping is the “underground excavation along a vein from which ore is being, or has been, extracted ....” (Clark xix.)

<sup>67</sup> *Ibid.*

<sup>68</sup> See Historical Topographical Map (1888) [Exhibit 6].

**1890:** *The San Francisco Call* reports a newly discovered ledge of ore, as well as the discovery of a separate ledge, and provides:

*Last night in the famous Idaho mine a new ledge of free milling ore was struck below the 1700-foot level. The rock will mill from \$80 to \$100 a ton. The find of last night is not of a similar one to the deep find of a few months ago which so excited mining circles. The strike last night was made in sinking the main shaft.<sup>69</sup>*

**1891:** A historical topographical map dated 1891 depicts the Idaho Mine, as well as a railway in the vicinity of the Mine.<sup>70</sup>

**1892:** *The Record Union* reports the Idaho Mine is the deepest gold mine in the world and the greatest gold producer on the continent.<sup>71</sup> *The Record Union* reports:

*From the best obtainable data it is estimated that the quartz mines of Grass Valley have produced over \$100,000,000 in gold bullion. This is sufficient to indicate the value and permanence of the quartz lodes of the district and its mining prospects for the future.<sup>72</sup>*

By this year, mining has reached the border of the adjoining Maryland Mine, and all ore possibilities have been exhausted by the end of the year.<sup>73</sup> By this date, 200 men are employed to work the Idaho Mine, and the associated Idaho mill has 40 stamps, 16 concentrators, “and the finest water power in the country, having a pressure of over 500 feet.”<sup>74</sup>

A historical topographical map dated 1892 depicts the Idaho Mine and the Empire Mine, as well as a railway in the vicinity of the Mine.<sup>75</sup>

**1893:** Maryland Gold Quartz Mining Co. purchases the Idaho Mine for \$85,000.<sup>76</sup> Mining continues at the then-partially consolidated Idaho-Maryland Mine, with a workforce of over 200 persons.<sup>77</sup>

The South Idaho Mine shaft, which is located 1,500 feet south of, and on the same mineral belt as the Idaho-Maryland Mine, is reported to have reached a depth of 128 feet, with a ledge two feet in width containing “free gold in

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<sup>69</sup> *The San Francisco Call* (Sept. 11, 1890) [Exhibit 7].

<sup>70</sup> See Historical Topographical Map (1891) [Exhibit 8].

<sup>71</sup> *The Record Union* (Feb. 10, 1892) [Exhibit 9].

<sup>72</sup> *Ibid.*

<sup>73</sup> Clark 45, 48.

<sup>74</sup> *Ibid.*

<sup>75</sup> See Historical Topographical Map (1892) [Exhibit 10].

<sup>76</sup> Clark 52.

<sup>77</sup> *Ibid.*

good quantities.”<sup>78</sup> In addition, it is discovered that the adjacent Idaho-Maryland Mine drains all subsurface water, and the company will be able to mine to 700 feet without encountering water thus saving the operator thousands of dollars.<sup>79</sup> *The San Francisco Call* reports of the South Idaho Mine:

*Considerable quartz is extracted every week and if the company had a mill on the ground enough could be extracted to more than pay all expenses.*<sup>80</sup>

The South Idaho Mine employs 9 men and sinking is occurring at the site on a consistent basis.<sup>81</sup>

**1894:** Mining continues on the main Eureka-Idaho-Maryland ore shoot; however, the ore shoot extends only approximately 200 feet into the Maryland Mine. Due to the narrowing of the vein after leaving the ore shoot, mining becomes unprofitable.<sup>82</sup> However, the Dorsey vein is soon thereafter discovered in the footwall of the main vein, containing “very strong” quartz and a “fairly good grade of ore.”<sup>83</sup> At this point, the mine features a headframe, hoisting equipment, dry building, and blacksmith shop.<sup>84</sup>

*The San Francisco Chronicle* reports that “very rich ore” filled with “pure quartz gold” from a depth of 100 feet from the South Idaho shaft is displayed in the streets.<sup>85</sup> *The San Francisco Chronicle* further reports that the gold “was of that nature which would command attention among miners even though no gold was visible to the eye.”<sup>86</sup>

A historical topographical map dated 1894 depicts the Idaho Mine and the Crown Point Mine, as well as a railway in the vicinity of the Mine.<sup>87</sup>

**1895:** At the Idaho-Maryland Mine, raising and stoping continues at the Dorsey vein.<sup>88</sup>

A historical topographical map dated 1895 depicts the Idaho Mine and the Crown Point Mine, as well as a railway in the vicinity of the Mine.<sup>89</sup>

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<sup>78</sup> *The San Francisco Call* (Oct. 5, 1893) [Exhibit 11].

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> Clark 60.

<sup>83</sup> *Ibid.*

<sup>84</sup> Clark 56, 58, 59; Looking East to the Idaho-Maryland Mine, Photograph by Victor L. Dorsey (ca. 1894) [Exhibit 12].

<sup>85</sup> *The San Francisco Chronicle* (Aug. 25, 1894) [Exhibit 13].

<sup>86</sup> *Ibid.*

<sup>87</sup> See Historical Topographical Map (1894) [Exhibit 14].

<sup>88</sup> Clark 60.

<sup>89</sup> See Historical Topographical Map (1895) [Exhibit 15].



**1896:** The South Idaho Mine is sold to parties in Buffalo, New York.<sup>90</sup> It is reported that the South Idaho Mine has a 20-foot vein developed in a 100-foot shaft.<sup>91</sup>

In addition, a “good rich body of ore” is struck in a cross cut 50 feet from the shaft on the 900-foot level of the Brunswick claim.<sup>92</sup> It is reported that this ledge “is looking exceptionally good in the Brunswick at that depth, 900 feet.”<sup>93</sup>

**1899:** Due to planned improvements that will “prevent the hoisting of ore,” 25 men are laid off at the Brunswick Mine site leaving a dozen employed.<sup>94</sup> The outlook at the Brunswick Mine is reported to be “very promising.”<sup>95</sup> By this year, operations are suspended at the Union Hill Mine due to a reported inability to handle the large volume of water in the shaft, and the mine is allowed to flood.<sup>96</sup> At closure, the total production of the Mine is approximately 12,000 ounces of gold yielding \$250,000.<sup>97</sup>

**1900:** By May 1900, large-scale dewatering of the Union Hill Mine commences,<sup>98</sup> with the pump “running day and night” at a rate of 480 gallons per minute.<sup>99</sup> A new double hoist and a gallows frame, measuring 86 feet tall that is entirely covered by a 100-foot tall building, are installed.<sup>100</sup> As of February 1900, the Union Hill Mine has been opened up to the 380-foot level and employs “quite a number of men ... on the surface.”<sup>101</sup> The *Daily Morning Union* reports that the quartz encountered at the bottom of the shaft is “exceptionally good,” and predicts “the mine will in time materially increase the mineral output of Nevada County.”<sup>102</sup>

Extensive improvements are made at the Brunswick Mine site, including installation of a new headframe and a new Cornish pump at the Brunswick shaft; and large foundations are poured to support the machinery.<sup>103</sup> The Old Brunswick shaft is enlarged from 2 to 3 compartments, and segments of the

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<sup>90</sup> *The San Francisco Chronicle* (Sept. 12, 1896) [Exhibit 16].

<sup>91</sup> *Ibid.*

<sup>92</sup> *The San Francisco Chronicle* (Dec. 14, 1896) [Exhibit 17].

<sup>93</sup> *Ibid.*

<sup>94</sup> *Daily Morning Union* (Nov. 23, 1899) [Exhibit 18].

<sup>95</sup> *Ibid.*

<sup>96</sup> *Daily Morning Union* (Feb. 20, 1900) [Exhibit 19]; *Daily Morning Union* (May 30, 1900) [Exhibit 20].

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Daily Morning Union* (Feb. 20, 1900) [Exhibit 19].

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Daily Morning Union* (May 30, 1900) [Exhibit 20].

<sup>103</sup> *Daily Morning Union* (Mar. 20, 1900) [Exhibit 21]; Photographs of Idaho Maryland Mine (ca. 1900) [Exhibits 22-25]; *Daily Morning Union* (Mar. 27, 1900) [Exhibit 26].

shaft are straightened.<sup>104</sup> The mill has been enlarged to 20 stamps.<sup>105</sup> Approximately 60 men are employed at the Brunswick Mine at this time.<sup>106</sup>

These improvements and workforce are commensurate with a substantial increase in mining operations. In fact, a *Daily Morning Union* article entitled, “*Brunswick Mine to Have the Biggest One in the County*,” provides:

*The work being done at the Brunswick is of a substantial, permanent nature and is amply justified by the good showing made. The Brunswick in a short time will no doubt be one of the best mines in the district.*<sup>107</sup>

Exhibits 22 through 25 contain historic photographs depicting the Idaho-Maryland Mine in circa 1900. While these photographs only depict the surface mining operations, they clearly demonstrate the magnitude of the mining operation at this time.

During the production period from 1900 to 1919 at the Union Hill Mine, mining is discontinued several times.

**1901:** The Mine is allowed to flood multiple times, sometimes for years, before being dewatered to allow mining to resume. For example, at the Eureka-Idaho-Maryland Mine, cessation of mining and flooding of the mine for durations of up to 5 years occurs twice in its history of operations in 1901 and again 1914. The Idaho-Maryland Mine is closed and allowed to flood after four years of declining production due to a lack of financing.<sup>108</sup>

**1902:** *The Daily Morning Union* reports the South Idaho Mine will be reopened within 30 days and “with no time will be lost in starting up” by “a company with sufficient means to develop the property to the uttermost.”<sup>109</sup> Its previous closure is reported to be attributable to the fact that “[i]ts owners, like many others, were men of insufficient means to carry on development work ....”<sup>110</sup>

In an article published by the *Daily Morning Union and the Herald* entitled, “*Ore Body Open[s] Up in 1,250 Level of Brunswick Mine*,” it is reported that 20 persons are employed at the Brunswick site, and an increase of 50 is expected for a total of 75 employees.<sup>111</sup> After 10 months of drifting, a vein is encountered on the 1,250-foot level, and yields ore averaging \$17 per ton.<sup>112</sup>

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<sup>104</sup> *Daily Morning Union* (Mar. 27, 1900) [Exhibit 26].

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> *Daily Morning Union* (Mar. 20, 1900) [Exhibit 21].

<sup>108</sup> Clark 64.

<sup>109</sup> *Daily Morning Union* (Sept. 3, 1902) [Exhibit 27].

<sup>110</sup> *Ibid.*

<sup>111</sup> *Daily Morning Union and the Herald* (Dec. 10, 1902) [Exhibit 28].

<sup>112</sup> *Ibid.*

**1903:** *The Evening Bee* reports the discovery of a rich specimen of ore at the No. 1 level of the South Idaho Mine.<sup>113</sup>

**1904:** Deep mining at the Union Hill Mine is suspended due to the cessation of pumping and resulting water buildup of water within the mine.<sup>114</sup> However, mining operations continue at the surface, with the construction of a tunnel from a nearby ravine to a vein which runs parallel to the old Union Hill vein.<sup>115</sup> It's reported that "[c]onsiderable work has been done on it and in many places the results have been gratifying."<sup>116</sup>

*The Evening Sentinel* announces the Idaho-Maryland Mine will be reopened by a Boston-based company after a four-year shutdown due to declining production.<sup>117</sup> It's reported that "[i]n years past, [the Idaho-Maryland Mine] produced many millions ...."<sup>118</sup>

**1905:** A six-foot ledge is struck at the Brunswick Mine site, which yields \$18 per ton, and is believed to be a continuation of the famous Idaho-Maryland ledge that:

*made millionaires out of John and Edward Coleman and enriched many others, being undoubtedly the greatest seam of gold-bearing ore ever discovered in the county.*<sup>119</sup>

The reported output of the Mine ranges from \$6,000 to \$20,000, and 300 to 1,000 ounces of gold per month.<sup>120</sup>

**1906:** The Idaho-Maryland Development Co. offers stock to finance shaft sinking at the Idaho-Maryland Mine from the current 1,000-foot level to the 2,100-foot level.<sup>121</sup> The Mine is advertised as "the Banner in the Banner County of the Banner Gold State" and consists of:

*217 acres of iron-clad, Government-patented, richest mineral land in the State.*<sup>122</sup>

At this time, Loring B. Doe, "a prominent capitalist of San Francisco," acquires the Union Hill Mine.<sup>123</sup>

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<sup>113</sup> *The Evening Bee* (Jun. 4, 1903) [Exhibit 29].

<sup>114</sup> *The San Francisco Call* (Feb. 27, 1904) [Exhibit 30].

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *The Evening Sentinel* (Aug. 12, 1904) [Exhibit 31].

<sup>118</sup> *Ibid.*

<sup>119</sup> *The Evening Bee* (Nov. 21, 1905) [Exhibit 32].

<sup>120</sup> *Ibid.*

<sup>121</sup> *The Los Angeles Times* (Mar. 5, 1906) [Exhibit 33].

<sup>122</sup> *Ibid.*

<sup>123</sup> *The San Francisco Call* (Jan. 10, 1910) [Exhibit 34].

**1908:** The Lily Gold Mining Company, whose president, C.H. Mallen, is superintendent of the Brunswick Mine site and “one of the best mining operators in the state,” purchases the Mitchell Ranch property, which will later become a part of the Mine Property.<sup>124</sup> The company announces plans to “go right ahead with the work of developing the property and a shaft will be sunk.”<sup>125</sup> *The Morning Union* reports that there are three gold-bearing veins on the Mine Property, which “many miners ... believe ... is a continuation of the Idaho-Maryland ....”<sup>126</sup>

Elsewhere, high grade milling ore is reported on the 500-foot level of the Idaho-Maryland Mine, and “every day sees more of it blasted out.”<sup>127</sup> The 10-stamp mill “is kept running continuously,” and the chute is now 100-feet long.<sup>128</sup> A 50-pound chunk valued as high as \$200,000 per ton is discovered in May 1908.<sup>129</sup>

Meanwhile, the Brunswick Mine is closed and allowed to flood due to the high cost in processing the ore, giving “every indication [] to a long siege of idleness.”<sup>130</sup>

**1909:** Construction of the New Brunswick shaft at the Brunswick Mine is announced.<sup>131</sup> It is anticipated that the new shaft will:

*save a vast amount of time and extra labor in handling ore, greatly reduce the cost of mining and milling and, of equal significance, will be in virgin ground with a very large acreage.*<sup>132</sup>

Work begins on sinking the new 1,200-foot vertical, three-compartment shaft, which will be located a considerable distance east of the present surface works.<sup>133</sup> Meanwhile, the pumps at the old shaft will be operated to keep the property clear of water.<sup>134</sup> By now, the Brunswick Mine site is “equipped with one of the most complete surface plants in the state.”<sup>135</sup>

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<sup>124</sup> *The Morning Union* (Jan. 21, 1908) [Exhibit 35].

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Daily Morning Union* (Feb. 1, 1908) [Exhibit 36].

<sup>128</sup> *Ibid.*; Photograph of Interior of a Mine Stamp Mill (ca. 1900) [Exhibit 24]; Photograph of Interior of Stamp Mill (ca. 1900) [Exhibit 22].

<sup>129</sup> *The Los Angeles Times* (May 9, 1908) [Exhibit 37].

<sup>130</sup> *The Morning Union* (Feb. 10, 1909) [Exhibit 38].

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*; *The Los Angeles Times* (Aug. 8, 1909) [Exhibit 39].

<sup>134</sup> *The Los Angeles Times* (Aug. 8, 1909) [Exhibit 39].

<sup>135</sup> *The Morning Union* (Feb. 10, 1909) [Exhibit 38].

Construction of a winze from the new 500 east drift to the 600-foot level is completed at the Idaho-Maryland Mine and a large orebody is reported.<sup>136</sup> *The Morning Union* reports:

*Men in a position to know are unanimous in their belief that this ore body will continue and maintain its values as far as man can go...<sup>137</sup>*

During this year, roads often used to service the Union Hill Mine are being repaired and a bridge crossing Wolf Creek is being constructed.<sup>138</sup> A map depicting the infrastructure associated with the Union Hill Mine, as well as the Lucky, Cambridge, and Morning Dew Mines, is attached hereto as Exhibit 41.

**1910:** A new ledge, known as the Greek ledge, is intersected on the 600-foot level of the Union Hill Mine, with a chute varying between 16 and 22 inches and the ore value ranging from \$16 to \$20 per ton.<sup>139</sup> This new ledge is predicted to “add greatly to the output of Grass Valley and afford employment for a large number of men.”<sup>140</sup>

Arthur H. Hoge, president of the Montana Mine in Willow Valley, secures a three-year bond on the Mitchell Ranch property with no cash payment required, the “owners being entirely willing to have the mine prove itself.”<sup>141</sup> The Mitchell Ranch property consists of 160 acres of patented mining claims, 80 acres of which are owned in fee while the other 80 acres consist of mineral rights.<sup>142</sup> *The Morning Union* reports the shaft has been sunk to a depth of approximately 40 feet on a gold quartz vein two to three feet wide, and the Lily Gold Mining Company plans to deepen the shaft to 300 feet.<sup>143</sup>

In addition, new power lines are constructed for the purpose of providing power to the Brunswick Mine.<sup>144</sup> Further, a recently constructed shaft at the Brunswick Mine is reported to have reached a depth of 450 feet, but its operation is suspended due to “a sudden inflow of water which the pumps are unable to handle.”<sup>145</sup> This new shaft is intended to be sunk a distance of at least 1,250 feet vertically “to cut the rich ore chute operated in the old incline with its long drifts.”<sup>146</sup>

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<sup>136</sup> *The Morning Union* (Mar. 11, 1909) [Exhibit 40].

<sup>137</sup> *Ibid.*

<sup>138</sup> *The Morning Union* (Nov. 6, 1909) [Exhibit 42].

<sup>139</sup> *The San Francisco Call* (Jan. 10, 1910) [Exhibit 34].

<sup>140</sup> *Ibid.*

<sup>141</sup> *The Morning Union* (Jan. 22, 1910) [Exhibit 43].

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> *The Sacramento Bee* (Apr. 16, 1910) [Exhibit 44].

<sup>145</sup> *The Sacramento Bee* (Sept. 14, 1910) [Exhibit 45].

<sup>146</sup> *The Sacramento Bee* (Apr. 16, 1910) [Exhibit 44].

**1911:** *The Morning Union* reports that the Union Hill Mine workings are full of water due to heavy storms and loss of power to the mine.<sup>147</sup> Despite the temporary setback, work is in progress to double the site’s mill capacity from 10 to 20 stamps.<sup>148</sup> The shaft is reported to have reached a depth of 600 feet, and is anticipated to “be sunk to an indefinite depth [with] crosscuts ... driven at every hundred feet to tap the veins.”<sup>149</sup> A significant amount of money has been invested into the Union Hill Mine, and after improvements have been constructed, the Mine “will rank as one of the best equipped properties in this section.”<sup>150</sup>

The old shaft at the Brunswick Mine is dewatered after two years of idleness for the purpose of making the new shaft usable, with pumping being conducted at a rate of 200 gallons of water per minute and an estimated completion time of two months.<sup>151</sup> The new shaft is at a depth of 450 feet.<sup>152</sup>

**1912:** A large new pump capable of pumping 800 to 1,000 gallons per minute is installed on the 1,250-foot level of the Brunswick Mine.<sup>153</sup> When the new shaft reaches a depth of 1,200 feet, the pump will be lowered to that level.<sup>154</sup>

President Doe of the Union Hill Company expresses optimism about the future of the Union Hill Mine after a crosscut on the 600-foot level intersects the Greek and Lucky veins.<sup>155</sup> Notably, the Lucky vein has liberal quantities of tungsten ore, which is “a rare and valuable metal that is not often associated with gold ore,” at a value of 10 percent.<sup>156</sup> By comparison, experts have stated that the discovery would be valuable if the tungsten was only valued at 2 percent.<sup>157</sup> It’s predicted that the new discovery will “keep the present 20-stamp mill going for several years.”<sup>158</sup> Further, the Mine is considered “one of the biggest mines in California, and will be the means of adding greatly to the working force of the district and also to its output.”<sup>159</sup>

In addition, the construction of the new bridge and roadway near the Union Hill Mine is “progressing rapidly.”<sup>160</sup>

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<sup>147</sup> *The Morning Union* (Feb. 1, 1911) [Exhibit 46]; *The San Francisco Call* (Apr. 16, 1911) [Exhibit 47].

<sup>148</sup> *The Morning Union* (Feb. 1, 1911) [Exhibit 46]; *The San Francisco Call* (Apr. 16, 1911) [Exhibit 47].

<sup>149</sup> *The Morning Union* (Feb. 1, 1911) [Exhibit 46]; see also *The San Francisco Call* (Apr. 16, 1911) [Exhibit 47].

<sup>150</sup> *The Morning Union* (Feb. 1, 1911) [Exhibit 46]; see also *The San Francisco Call* (Apr. 16, 1911) [Exhibit 47].

<sup>151</sup> *The Morning Union* (May 11, 1911) [Exhibit 48].

<sup>152</sup> *Ibid.*

<sup>153</sup> *The Morning Union* (Jan. 5, 1912) [Exhibit 49].

<sup>154</sup> *Ibid.*

<sup>155</sup> *The Salt Lake Mining Review* (Mar. 15, 1912) [Exhibit 50].

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *The Morning Union* (July 31, 1912) [Exhibit 51].

Efforts are commenced to re-open the Gold Point Mine, which is “an extension of the Brunswick on the west side,” after the Mine closed for several years due to the mill burning down.<sup>161</sup> These efforts include erecting hoisting works, and the purchase of a steam plant, boiler, and engine, which will be used until the shaft reaches a depth of 1,000 feet, at which time an electric plant will be used.<sup>162</sup> The Mine is now at a depth of 248 feet and “[g]ood ore has been encountered ....”<sup>163</sup>

**1913:** A large new compressor with a capacity of compressing air at 1,500 cubic feet per minute is installed at the Brunswick Mine.<sup>164</sup> The Mine currently employs “[a] large number of men ....”<sup>165</sup>

Mining operations at the Union Hill Mine have stopped.<sup>166</sup>

**1914:** Operations are suspended at the Idaho-Maryland Mine while waiting for additional financing.<sup>167</sup>

The Union Hill Mine is purchased by a new owner and is expected to resume operations.<sup>168</sup> The surface plant is considered in excellent condition, so the shaft will be sunk “to a great depth” as the new owners focus their efforts on subsurface operations.<sup>169</sup> The Union Hill Mine is recognized as “one of the best equipped mines in [the] county.”<sup>170</sup>

**1915:** To date, the Union Hill Mine has produced \$2,000,000.<sup>171</sup> Since September 1914, the main working shaft has been sunk more than 200 feet and a station has been established at the 800-foot level.<sup>172</sup> It’s reported that “some splendid ore” is discovered at 710 feet.<sup>173</sup> *The Morning Union* opines that “it seems ... perfectly obvious that this is to be the next big producing, dividend paying, profit making mine of the district.”<sup>174</sup>

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<sup>161</sup> *The Morning Union* (Sept. 12, 1912) [Exhibit 52].

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> *The Morning Union* (June 21, 1913) [Exhibit 53].

<sup>165</sup> *Ibid.*

<sup>166</sup> *The Morning Union* (Aug. 29, 1914) [Exhibit 54].

<sup>167</sup> *The Sacramento Bee* (Jan. 7, 1914) [Exhibit 55].

<sup>168</sup> *The Morning Union* (Aug. 29, 1914) [Exhibit 54].

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> *The Morning Union* (Jan. 20, 1915) [Exhibit 56].

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

Plans to reopen and conduct extensive exploratory work at the South Idaho and Gold Point Mines are announced by the new owner of both mines.<sup>175</sup> Development plans include “develop[ing] ... the South Idaho and Gold Point ledges which have only been worked to a superficial depth but which show better indications of developing pay-shoots than did the Eureka and Idaho mines at the same stage of development.”<sup>176</sup>

To date, the Eureka and Idaho-Maryland Mines have a recorded production of over \$19,000,000, with \$7,500,000 paid in dividends.<sup>177</sup>

**1915 – 1920:** The profitability of gold mining begins to fall. The price of gold in 1915 is equivalent to approximately \$600 per ounce in current 2023 dollars.<sup>178</sup> By 1920, it will have fallen by fifty percent in terms of current 2023 dollars.<sup>179</sup>

**1916:** *The Morning Union* reports plans to resume operations at the South Idaho Mine after a period of idleness, with the installation of new machinery, the sinking of the mine shaft, and the planned construction of new buildings.<sup>180</sup>

The Union Hill Mine Company advertises stock sales for financing mining at the Union Hill Mine, and states its intention to sink the shaft to the 1,000-foot level.<sup>181</sup> The Mine is “splendidly equipped,” with a hoist, 20-drill compressor, pumps capable of handling 700 gallons of water per minute, power drills of various types, and machine and blacksmith shops.<sup>182</sup> The Mine also features an office, mine office, and superintendent’s residence.<sup>183</sup> In addition, the advertisement states that an ore shoot was opened at the 800-foot level, which produced approximately \$50,000.<sup>184</sup>

In Spring 1916, the Union Hill Mine is sold.<sup>185</sup> The new general manager of the Union Hill Mine also holds a bond on the South Idaho Mine.<sup>186</sup>

*The Sacramento Bee* reports that the 40-stamp mill at the Brunswick Mine is crushing 8,800 tons per month, and the installation of new equipment last year reduced total operating costs from \$8.45 to \$6.78 per ton.<sup>187</sup> In addition, preparations are made to sink the shaft an additional 200 feet to give the

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<sup>175</sup> *The Morning Union* (July 20, 1915) [Exhibit 57].

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

<sup>178</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>179</sup> *Ibid.*

<sup>180</sup> *The Morning Union* (Feb. 29, 1916) [Exhibit 59].

<sup>181</sup> *The San Francisco Examiner* (Mar. 12, 1916) [Exhibit 60].

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *The Sacramento Bee* (Apr. 26, 1916) [Exhibit 61].

<sup>186</sup> *Ibid.*

<sup>187</sup> *The Sacramento Bee* (Mar. 22, 1916) [Exhibit 62].



workings a vertical depth of 1,300 feet.<sup>188</sup>

**1918:** The Gold Point Company, which also controls the Gold Point Mine, the South Idaho Mine, and other mines in the area, assumes control of the Union Hill Mine.<sup>189</sup> The shaft at the Union Hill Mine has been deepened to 1,250 feet.<sup>190</sup> It is the only mine in Nevada County producing tungsten commercially and is being shipped to steel manufacturers.<sup>191</sup>

The Buckley Wells Group purchases the Idaho-Maryland Mine for \$250,000, and plans to reopen, with “a staff of engineers and geologists... to come here about January 1<sup>st</sup> to decide the policy of operations.”<sup>192</sup>

**1919:** Gold Point Consolidated Mines Inc., of which Buckley Wells is President, consolidates the Eureka, Idaho-Maryland, Union Hill, South Idaho, and Gold Point Mines, as well as other adjacent properties, into the Idaho-Maryland Mine.<sup>193</sup> By now, the Brunswick Mine has also been incorporated into the Idaho-Maryland Mine, as well.<sup>194</sup> It is reported that the lode is “to be reached at the earliest practicable time through an entirely new vertical shaft.”<sup>195</sup> After acquiring a controlling interest in the consolidated properties, Metals Exploration Co. advances the funds necessary to equip, reopen, develop, and bring the consolidated mining properties to a self-supporting basis under the Idaho Maryland Mine Company.<sup>196</sup>

The Union Hill Mine is closed due to a worker strike and allowed to flood.<sup>197</sup> The headframe, hoist, various buildings including the office, and mill equipment are dismantled and moved to the Idaho shaft on the Mine Property.<sup>198</sup> The Mine remains inactive and flooded for a period of 37 years until a decision is made in 1956 to dewater the Union Hill shaft and upper workings.

*The Sacramento Bee* reports the 1,000-foot shaft at the Idaho-Maryland Mine has been dewatered to the 400-foot level and the old surface plant is being demolished.<sup>199</sup> The headframe from the Union Hill Mine is erected, and

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<sup>188</sup> *Ibid.*

<sup>189</sup> *The Sacramento Bee* (Aug. 7, 1918) [Exhibit 63].

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

<sup>192</sup> *The Sacramento Bee* (Dec. 25, 1918) [Exhibit 64].

<sup>193</sup> *The Morning Union* (Feb. 2, 1919) [Exhibit 65]; see also Clark 1.

<sup>194</sup> Contaminant Assessment of the Bouma-Erickson-Toms Property, Vector Engineering Inc., 6 (Nov. 1993) [Exhibit 66].

<sup>195</sup> *Ibid.*

<sup>196</sup> Clark 73, 74.

<sup>197</sup> Clark 76.

<sup>198</sup> Idaho Maryland Mines Company, Annual Report (1919) [Exhibit 67].

<sup>199</sup> *The Sacramento Bee* (Mar. 26, 1919) [Exhibit 72].

sections of the mine shaft timbers are replaced.<sup>200</sup> Exhibits 68 through 71 depict the construction of the headframe at the Union Hill Mine.

**1920:** The real price of gold is depressed, reaching a bottom equivalent to approximately \$300 per ounce in current 2023 dollars.<sup>201</sup>

A 100-ton per day surface plant and a tailings impoundment dam with a capacity of 1,400,000 cubic yards of tailings are constructed at the Idaho-Maryland Mine.<sup>202</sup> As of December 31<sup>st</sup>, 5,825 cubic yards of tailings had been placed on the dam, “creating a pond adequate for several months storage.”<sup>203</sup> By the end of the year, a 20-stamp mill is commissioned with a capacity of between 2,500 to 3,000 tons per month, and a significant amount of underground rehabilitation had been completed.<sup>204</sup> Exhibits 70 and 71 depict the Mine operation and headframe at that time.<sup>205</sup>

**1921:** The Idaho-Maryland Mine is dewatered to the 2,300-foot level, and significant underground rehabilitation and new exploration tunneling is completed.<sup>206</sup>

The commissioned sawmill is constructed to provide lumber for the mining operation, which is able to produce lumber for \$20.00 to \$25.000 per thousand feet, while “the same lumber cannot be bought from the lumber companies for less than \$60.00 a thousand.”<sup>207</sup>

**1922:** The Idaho Maryland Mines Company announces plans to deepen the vertical shaft from 1,000 feet to 2,400 feet.<sup>208</sup> Further significant amounts of underground rehabilitation and exploration tunneling are completed.<sup>209</sup> At the sawmill, 126,482 board feet of lumber is cut for use in the mining operation.<sup>210</sup> The 1922 annual report regarding the Idaho-Maryland Mine provides:

*There is a substantial stand of pine on the property and it is the intention to supply our lumber needs as much as possible from this source.*<sup>211</sup>

John Fulton, the manager of the Idaho-Maryland Mine, states that he is

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<sup>200</sup> Idaho Maryland Mines Company, Annual Report (1919) [Exhibit 67].

<sup>201</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC [Exhibit 58].

<sup>202</sup> Idaho Maryland Mines Company, Annual Report (1920) [Exhibit 73].

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> Photograph of Idaho-Maryland Headframe (ca. 1920) [Exhibit 70]; Photograph of Idaho-Maryland Mine, Grass Valley, Cal. (ca. 1920) [Exhibit 71].

<sup>206</sup> Idaho Maryland Mines Company, Annual Report (1921) [Exhibit 74].

<sup>207</sup> See *Ibid.*

<sup>208</sup> *The Sacramento Bee* (Feb. 22, 1922) [Exhibit 75].

<sup>209</sup> Idaho Maryland Mines Company, Annual Report (1922) [Exhibit 76].

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

confident “the property will be on a self-sustaining basis before the end of 1923.”<sup>212</sup>

*The Sacramento Bee* reports the reopening of the Brunswick Mine after a period of suspension “due to war conditions.”<sup>213</sup> Over the year, 7,431 tons of ore are milled.<sup>214</sup> A new steel hoist is installed and bailing skips with a capacity of 1,000 gallons a piece are used to dewater the Idaho-Maryland Mine.<sup>215</sup>

**1923:** A 2-foot-wide ledge of quartz “rich in sulphurets” is cut, and an additional 258-foot tunnel constructed by a small crew is reported to be in progress at the Mitchell Ranch site.<sup>216</sup>

The 20-stamp mill at the Brunswick Mine is operating for 16 hours per day, with an increase to 24 hours expected soon.<sup>217</sup>

A significant amount of exploration tunneling, stoping, and exploration core drilling is completed at the Idaho-Maryland Mine.<sup>218</sup> However, “ore showings in sight and new veins discovered did not respond as there was good reason to believe they would.”<sup>219</sup>

**1924:** Further significant amounts of exploration tunneling, stoping, and exploration core drilling are completed at the Idaho-Maryland Mine.<sup>220</sup>

**1925:** Mining operations are curtailed and development is suspended at the Idaho-Maryland Mine, but pumping and upkeep of the Mine continue.<sup>221</sup> Idaho-Maryland Consolidated Mines, Inc. acquires the Mine Property from Metals Exploration Company, which includes the Union Hill Mine and the Eureka-Idaho-Maryland Mine.<sup>222</sup>

**1926:** *The Morning Union* reports that 50 persons are employed at the Mine, and the mill will be put into operation in March, with an increase in capacity anticipated “as soon as new veins are developed.”<sup>223</sup> Idaho-Maryland Consolidated Mines, Inc. officially takes possession of the Idaho-Maryland Mine in January 1926.

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<sup>212</sup> *Ibid.*

<sup>213</sup> *The Sacramento Bee* (Aug. 16, 1922) [Exhibit 77].

<sup>214</sup> Milling Analysis (1922) [Exhibit 78].

<sup>215</sup> *Ibid.*; *The Sacramento Bee* (Nov. 29, 1922) [Exhibit 79].

<sup>216</sup> *The Morning Union* (June 14, 1923) [Exhibit 80].

<sup>217</sup> *The Sacramento Bee* (July 13, 1923) [Exhibit 81].

<sup>218</sup> Idaho Maryland Mines Company, Annual Report (1923) [Exhibit 82].

<sup>219</sup> *Ibid.*

<sup>220</sup> Idaho Maryland Mines Company, Annual Report (1924) [Exhibit 83].

<sup>221</sup> *The Sacramento Bee* (Apr. 22, 1925) [Exhibit 84].

<sup>222</sup> *The Sacramento Bee* (Oct. 27, 1925) [Exhibit 85].

<sup>223</sup> *The Morning Union* (Feb. 26, 1926) [Exhibit 86].

The Brunswick site is closed and a controlling interest is purchased by the Idaho-Maryland Mines Co. Ltd. at public auction on June 30, 1926.<sup>224</sup>

Mining at the Brunswick Mine ceases multiple times throughout its history and the mine is closed and allowed to food from 1926 through 1933.

- 1927:** A virgin ledge of great strength is discovered in the footwall area of the Eureka-Idaho-Maryland lode and termed the Dorsey footwall vein.<sup>225</sup>
- 1928:** Idaho Maryland Consolidated Mines, Inc. is focused on exploring the Dorsey footwall vein, which over the year is developed for 700 feet of the 1,900-foot level, and two raises 180 feet in length are driven.<sup>226</sup>
- 1929:** A four-foot-wide vein is cut on the 170- and 200-foot levels of the Mitchell Ranch Mine.<sup>227</sup> *The Morning Union* reports a solid streak of free gold quartz approximately one inch in width is discovered at the 200-foot level.<sup>228</sup>
- Mine expansion is limited at the Idaho-Maryland due to a lack of financing.<sup>229</sup> The Mine operator focuses on developing the Dorsey footwall vein, also called the No. 1900 vein<sup>230</sup> The development of the Dorsey vein on the 1,500-foot level west of the main shaft yields the discovery of the Morehouse vein.<sup>231</sup> In total, 17,241 tons of ore were milled during the year with a recovery of 7,500 ounces of gold.<sup>232</sup>
- 1930:** A two-foot-wide vein is reported with values of \$500 to \$1,000 per ton, and additional tunneling is in progress at the Mitchell Ranch Mine.<sup>233</sup> Further sinking of the shaft an additional 100 feet and drifting is anticipated.<sup>234</sup>
- Newspapers report the development of a large orebody – an extension of the Dorsey footwall vein – and a doubling of milling capacity, with a goal to increase capacity to 4,500 tons per month at the Idaho-Maryland Mine.<sup>235</sup> In December, plans are reported to truck 100 tons of ore per day to the Brunswick mill, increasing processing to 150 tons per day.<sup>236</sup> During the year, 19,452 tons of ore were treated at the 20-stamp mill, yielding 11,660

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<sup>224</sup> *The Sacramento Bee* (Apr. 13, 1926) [Exhibit 87]; Oakland Tribune (Aug. 20, 1933) [Exhibit 88].

<sup>225</sup> *The Morning Union* (Jan. 20, 1928) [Exhibit 89].

<sup>226</sup> Clark 109.

<sup>227</sup> *The Morning Union* (Mar. 29, 1929) [Exhibit 90]; *The Morning Union* (Sept. 22, 1929) [Exhibit 91].

<sup>228</sup> *The Morning Union* (Sept. 22, 1929) [Exhibit 91].

<sup>229</sup> Clark 109.

<sup>230</sup> *Ibid.*

<sup>231</sup> *The Sacramento Bee* (Apr. 30, 1929) [Exhibit 92]; Clark 113.

<sup>232</sup> Clark 114.

<sup>233</sup> *The Morning Union* (Jan. 12, 1930) [Exhibit 93].

<sup>234</sup> *Ibid.*

<sup>235</sup> *The Sacramento Bee* (July 11, 1930) [Exhibit 94]; *Nevada State Journal* (Oct. 13, 1930) [Exhibit 95].

<sup>236</sup> *Nevada State Journal* (Dec. 1, 1930) [Exhibit 96].

ounces of gold<sup>237</sup> with Idaho Maryland Consolidated Mines, Inc., the owner of the Mine, netting a profit of \$17,935.72.<sup>238</sup> Exhibit 98 depicts mining operations and employees during this era. By the 1930's, the operation utilized electric locomotives to transport ore.<sup>239</sup>

The profitability of gold mining begins to climb significantly due to the Great Depression. The price of gold is equivalent to approximately \$365 per ounce in current 2023 dollars.<sup>240</sup>

**1931:** At the Idaho-Maryland Mine, holdings are reported at over 1,200 acres, and production is reported at over \$25,000,000 to date.<sup>241</sup> Milling capacity reaches 175 tons per day, and there is a flotation process implemented – whereby ore is crushed by stamps, concentrated, and then floated – and a ball mill is installed to cut down of gold lost during milling.<sup>242</sup> During the year, 54,375 tons of ore were milled, with Idaho Maryland Consolidated Mines, Inc. netting a profit of \$342,029.60.<sup>243</sup> By this year, the Idaho-Maryland Mine boasts the following:

*300 H.P. electric hoist, two 250 H.P. electric compressors, 20 stamp mill, saw mill, machine, blacksmith, carpenter and electric shops. Underground equipment includes a 300 H.P. electric station pump, two 130 H.P. centrifugal pumps, 200 H.P. hoist, transformers, several electric locomotives for underground haulage, and other up-to-date equipment for efficient mining.*<sup>244</sup>

In addition, the Brunswick Mine is now equipped with:

*a relatively new plant including 300 H.P. electric hoist capable of hoisting from a depth of 4000 feet, 250 H.P. Ingersoll Rand electric compressor, 20 stamp mill, machine, blacksmith and carpenter shops.*<sup>245</sup>

Idaho Maryland Consolidated Mines, Inc. purchases the Mitchell Ranch Mine.<sup>246</sup>

**1932:** The Old Brunswick hoist, mine office, and compressor room are destroyed in

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<sup>237</sup> This amount is calculated by converting dollars of reported annual revenue into ounces of gold using the price of gold at the time, which was \$20.67. (See Idaho Maryland Consolidated Mines, Inc., Annual Report (1930) [Exhibit 97].)

<sup>238</sup> Idaho Maryland Consolidated Mines, Inc., Annual Report (1930) [Exhibit 97].

<sup>239</sup> See Photograph of Mining Operations (ca. 1930) [Exhibit 98].

<sup>240</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>241</sup> Nevada State Journal (Feb. 23, 1931) [Exhibit 99].

<sup>242</sup> Ibid.; The Sacramento Bee (Sept. 29, 1931) [Exhibit 100]; The Morning Union (Oct. 30, 1931) [Exhibit 101].

<sup>243</sup> Idaho Maryland Consolidated Mines, Inc., Annual Report (1931) [Exhibit 102].

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> The Morning Union (Apr. 28, 1934) [Exhibit 103].

a fire.<sup>247</sup>

Improvements are made to the Mine Property, including construction of a new 105-foot steel headframe at the Idaho-Maryland shaft (depicted in Exhibits 107 and 108), relocation of machine shops and outbuildings to make room for the headframe,<sup>248</sup> and the addition of concentrating tables to the Brunswick mill to replace amalgamating machines.<sup>249</sup> Idaho Maryland Consolidated Mines, Inc. buys the Loma Rica Ranch, contemplating the future development of the mineral resources.<sup>250</sup> During this year, Idaho Maryland Consolidated Mines Inc. nets a profit of \$383,000.<sup>251</sup>

**1933:** Development of the Mitchell Crosscut – a long exploration crosscut from the 1,000-foot level of the Idaho-Maryland Mine to the Mitchell Ranch site – commences.<sup>252</sup>

To prepare for the reopening of the Brunswick site, hoists and pumping machines are installed,<sup>253</sup> and Idaho Maryland Consolidated Mines, Inc. announces plans to sink the New Brunswick shaft from 900 feet deep to 5,000 feet deep.<sup>254</sup>

*The Los Angeles Times* reports production of the Idaho-Maryland Mine at close to 200 tons per day, with a monthly output of approximately \$100,000.<sup>255</sup>

**1934:** A new cyanide leaching and 300-ton per day flotation plant is constructed, with provisions made for increasing the capacity to 600 tons.<sup>256</sup> It is reported that ore bins for the mill are “supplied by trucks which will roll over a strong runway, taking off of the brow of the hill, to the east of the milling plant to the bin hoppers.”<sup>257</sup> Earth boring of the Roundhole shaft begins at the northwest intersection of the roads known as Brunswick and Whispering Pines.<sup>258</sup>

Development of the Mitchell Crosscut continues during this time.<sup>259</sup>

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<sup>247</sup> *The Morning Union* (May 28, 1932) [Exhibit 104].

<sup>248</sup> *The Morning Union* (Aug. 28, 1932) [Exhibit 105]; *The Sacramento Bee* (Oct. 11, 1932) [Exhibit 106].

<sup>249</sup> *The Sacramento Bee* (Sept. 6, 1932) [Exhibit 109].

<sup>250</sup> *The Morning Union* (Feb. 13, 1932) [Exhibit 110].

<sup>251</sup> Idaho Maryland Consolidated Mine, Inc., Annual Report (1932) [Exhibit 111].

<sup>252</sup> Report on Exploratory Work (Mar. 12, 1934) [Exhibit 112].

<sup>253</sup> *The Oakland Tribune* (Aug. 19, 1933) [Exhibit 88]; *The Sacramento Bee* (Aug. 29, 1933) [Exhibit 113].

<sup>254</sup> *The Oakland Tribune* (Aug. 19, 1933) [Exhibit 88].

<sup>255</sup> *The Los Angeles Times* (Nov. 13, 1933) [Exhibit 114].

<sup>256</sup> *The Sacramento Bee* (Apr. 17, 1934) [Exhibit 115].

<sup>257</sup> *The Morning Union* (Nov. 16, 1934) [Exhibit 116].

<sup>258</sup> *The Morning Union* (Jun. 15, 1934) [Exhibit 117].

<sup>259</sup> *The Morning Union* (Apr. 28, 1934) [Exhibit 103].

*The San Francisco Examiner* reports the discovery of good grade ore at the Brunswick site.<sup>260</sup> Also, improvements are made to the roadways from Grass Valley to the Brunswick Mine which allows “much greater travel than heretofore with the reopening on a large scale of the Brunswick properties.”<sup>261</sup>

In January, President Theodore Roosevelt devalues the dollar and increases the nominal price of gold from \$20.67 to \$35.00 per ounce.<sup>262</sup> The profitability of gold mining reaches a peak with the price of gold equivalent to \$800 per ounce in current 2023 dollars.<sup>263</sup>

**1935:** The Idaho Maryland Mines Company and Idaho Maryland Consolidated Mines Inc. are consolidated as the Idaho Maryland Mines Corporation.<sup>264</sup>

A new engineering office is built adjoining the main office building which includes a concrete vault to protect mine maps.<sup>265</sup> New service garages and employee parking garages are also constructed.<sup>266</sup> Exhibit 120 depicts the headframe, blacksmith shop, and overhead tram to the mill at this time.<sup>267</sup>

The processing plant at the Brunswick site is expanded with six new flotation cells, a new compressor with twice the horsepower is installed, and a compressor house is constructed.<sup>268</sup>

**1936:** *The Sacramento Bee* reports three mills are running at 860 tons per day, including 400 tons per day at the Brunswick mill.<sup>269</sup> At the New Brunswick site, 600 tons of ore per day is mined, with approximately 150 tons being trucked daily to the Idaho-Maryland mill for treatment.<sup>270</sup> By now, the Mine is one of California’s leading gold producers, with net profits before depletion of \$1,168,228.92.<sup>271</sup> The Roundhole shaft is completed at 1,125 feet deep with stations on three levels, and provides a second exit, better ventilation, and enhanced movement of mine supplies and miners.<sup>272</sup> A 350-ton cyanide plant is constructed for the treatment of tailings.<sup>273</sup>

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<sup>260</sup> *The San Francisco Examiner* (July 2, 1934) [Exhibit 118].

<sup>261</sup> *The Morning Union* (Mar. 21, 1934) [Exhibit 119].

<sup>262</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>263</sup> *Ibid.*

<sup>264</sup> Logan [Appendix E] 403.

<sup>265</sup> Clark 144.

<sup>266</sup> *Ibid.*

<sup>267</sup> Photograph of Idaho Maryland Wood Headframe, Blacksmith Shop, and Overhead Tram to Mill (ca. 1930) [Exhibit 120].

<sup>268</sup> *The Sacramento Bee* (Aug. 6, 1935) [Exhibit 121].

<sup>269</sup> *The Sacramento Bee* (Jan. 21, 1936) [Exhibit 122].

<sup>270</sup> *Stockton Daily Evening Record* (Apr. 11, 1936) [Exhibit 123].

<sup>271</sup> *The Oakland Tribune* (Jun. 7, 1936) [Exhibit 124].

<sup>272</sup> Clark 149, 151.

<sup>273</sup> *Stockton Daily Evening Record* (Apr. 11, 1936) [Exhibit 123].

**1937:** The Old Brunswick Mine is closed due to excessive theft of high grading by employees<sup>274</sup> and the increased wage scale for miners which increased operating costs by approximately \$50 per day,<sup>275</sup> but the New Brunswick Mine continues production.<sup>276</sup>

By now, the Idaho-Maryland Mine features a headframe,<sup>277</sup> engineering room, main office and other offices,<sup>278</sup> dry building,<sup>279</sup> stamp mill,<sup>280</sup> carpenter shop, cyanide plant, pole storage,<sup>281</sup> crushing plant, truck garages,<sup>282</sup> and at least 1 skip.<sup>283</sup> Exhibit 132 depicts the pipelines running from the mill and cyanide plant for the transport of tailings to the tailings pond.<sup>284</sup>

Total operating revenue from gold production at the Mine Property is \$3,997,107.05, or 104,203 ounces of gold equivalent,<sup>285</sup> with a net income of \$1,124,804.65. Dividends declared total \$1,057,383.90.<sup>286</sup>

**1938:** The Idaho Maryland Mining Corporation is reported to be the largest gold producer in California.<sup>287</sup> The mining operations at the Mine are depicted in Exhibit 137.<sup>288</sup> During the year, 331,406 tons of ore is produced<sup>289</sup> – 113,259 tons from the Idaho shaft and 218,147 from the Brunswick shaft.<sup>290</sup> Total annual operating revenue from gold production is \$4,510,844.44, or 128,881 ounces of gold equivalent,<sup>291</sup> with a net income of \$1,193,446.<sup>292</sup> Dividends declared total \$975,257.70.<sup>293</sup> Exhibit 139 depicts the surface plant.

In addition, 25,394 feet of diamond drilling is completed and 32,817 of new tunnels are driven,<sup>294</sup> including the commencement of developing the 1100-

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<sup>274</sup> *Appeal Democrat* (Apr. 17, 1937) [Exhibit 125].

<sup>275</sup> *The Sacramento Bee* (Jun. 29, 1937) [Exhibit 126].

<sup>276</sup> *Ibid.*

<sup>277</sup> Photograph of Idaho Maryland Looking North Towards Headframe (1937) [Exhibit 127].

<sup>278</sup> Photograph Looking West Towards Centennial Site from Idaho Maryland Site (1937) [Exhibit 128].

<sup>279</sup> Photograph of Idaho Maryland from Rear of Plant Area (1937) [Exhibit 129].

<sup>280</sup> Photograph Looking East Towards Mill from Centennial Site (1937) [Exhibit 130]; Photograph of Idaho Maryland Rear of Stamp Mill (1937) [Exhibit 131].

<sup>281</sup> Photograph of Idaho Maryland Carpenter Shop, Pole Storage, Mill, and Cyanide Plant (1937) [Exhibit 132].

<sup>282</sup> Photograph of Crushing Plant with Truck Garages in Background (1937) [Exhibit 133].

<sup>283</sup> Photograph of Miners in Skip (1937) [Exhibit 134].

<sup>284</sup> Photograph Looking East Towards Mill from Centennial Site (1937) [Exhibit 130].

<sup>285</sup> This amount is calculated by converting dollars of reported annual revenue into ounces of gold using the price of gold at the time, which was \$35. (See IMM Audited Financial Reports from 1938-1948 [Exhibit 135].); Clark 159.

<sup>286</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>287</sup> *Appeal Democrat* (Apr. 22, 1939) [Exhibit 136].

<sup>288</sup> Aerial Photograph of Idaho-Maryland Mine (1938) [Exhibit 137].

<sup>289</sup> *The San Francisco Examiner* (Mar. 21, 1939) [Exhibit 138].

<sup>290</sup> Clark 170.

<sup>291</sup> This amount is calculated by converting dollars of reported annual revenue into ounces of gold using the price of gold at the time, which was \$35. (See IMM Audited Financial Reports from 1938-1948 [Exhibit 135].)

<sup>292</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>293</sup> *Ibid.*

<sup>294</sup> Clark 170



8XC Crosscut – a long exploration crosscut from the 1,100-foot level of the Brunswick Mine to the Loma Rica Mine.<sup>295</sup> The project to connect the Idaho-Maryland and Brunswick Mines with an 8,000-foot tunnel also commences for the purpose of linking the Idaho Mine 2,000-foot level with the Brunswick Mine 2,300-foot level.<sup>296</sup>

**1939:** The Mine is reported to be the *largest gold producer in California* and the second largest in the United States.<sup>297</sup> The Stockton Daily Evening Record reports the Idaho-Maryland Mine employs 510 persons, and the New Brunswick Mine employs 316.<sup>298</sup> Production from both mines reaches a total of 1,250 tons per day on a 30-day basis.<sup>299</sup> Total annual operating revenue from gold production is \$4,080,856.17, or 115,001 ounces of gold equivalent,<sup>300</sup> with a net income of \$955,171.50.<sup>301</sup>

In addition, 42,356 feet of new tunnels are driven and 29,255 feet of diamond drilling are completed.<sup>302</sup> 410,411 tons of ore is produced – 119,612 from the Idaho shaft and 290,800 from the Brunswick shaft.<sup>303</sup> This represents the Mine’s peak historical production.

**1940:** The total ore mined from the Mine is 406,707 tons, with an average recovery of \$11.19 per ton of ore.<sup>304</sup> On January 3, 1940, the Idaho-Maryland and Brunswick Mines are connected underground at 2,300-foot level.<sup>305</sup> The Mines now employs over 900 men.<sup>306</sup>

Production is reported to be 1,000 tons per day just at the Brunswick site.<sup>307</sup> Construction of a new 145-foot headframe, two new electric hoists to facilitate deeper operations, and a compressor building are planned at the New Brunswick shaft, which is being sunk from 2,350 feet to 4,000 feet.<sup>308</sup> Other improvements are made, including the construction of a holist room made of steel, the enlargement of a two-story dry building to accommodate 400 miners with ample showers and lavatories, and additional heating, boiler, and office spaces.<sup>309</sup> Two new compressors are installed, and a new crushing plant is constructed, featuring a belt conveyor to feed the ore to the plant and

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<sup>295</sup> Geologic Summary of Mine Development (Aug. 1938) [Exhibit 140].

<sup>296</sup> Clark 166.

<sup>297</sup> *The Sacramento Bee* (Apr. 16, 1940) [Exhibit 141]; Clark 175-176.

<sup>298</sup> *Stockton Evening Record* (May 26, 1939) [Exhibit 142].

<sup>299</sup> *Nevada State Journal* (Nov. 20, 1939) [Exhibit 143].

<sup>300</sup> Clark 175.

<sup>301</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>302</sup> Clark 172.

<sup>303</sup> *Ibid.*

<sup>304</sup> Clark 184.

<sup>305</sup> Clark 178.

<sup>306</sup> *The Sacramento Bee* (Sept. 24, 1940) [Exhibit 144].

<sup>307</sup> *The Sacramento Bee* (Oct. 22, 1940) [Exhibit 145].

<sup>308</sup> *The Sacramento Bee* (May 28, 1940) [Exhibit 146]; *The Los Angeles Times* (Sept. 16, 1940) [Exhibit 147].

<sup>309</sup> Clark 177-178.

a water spray and dust collection system for dust control.<sup>310</sup>

Idaho Maryland Mines Corporation purchases the mineral rights of the California Mountain Fruit Company, owned by California Land Inc., in April of 1940.<sup>311</sup>

**1941:** *The Los Angeles Times* reports excellent ore is under development at the Mine.<sup>312</sup> Total annual operating revenue from gold production is \$4,038,829.05, with a net income of \$1,008,315.48.<sup>313</sup> Total dividends declared are \$1,074,020.80.<sup>314</sup>

Due to World War II, there is a loss of manpower at the Mine.<sup>315</sup> Nevertheless, the combined mines mill 263,769 tons of ore and the Idaho Maryland Mines Corporation remains the largest gold producer in California and the second largest in the United States.<sup>316</sup>

Construction of the New Brunswick headframe is completed, and the wooden guides inside the shaft are replaced to accommodate the increased hoisting speed of 1,250 feet per minute.<sup>317</sup> Development of exploration tunnel 1100-8XCC is halted after a total of 2,350 feet of tunneling, but additional tunneling of up to one mile is contemplated to be constructed in the future.<sup>318</sup>

Idaho Maryland Mines Corporation purchases land and mineral rights from Lawrence and Vivian Mazzanti in July 1941, thereby fully consolidating the Vested Mine Property.<sup>319</sup>

**1942:** Following the attack on Pearl Harbor, the exodus of mineral and key personal increased dramatically.<sup>320</sup> Government restrictions on the purchase of pipe, rail, drill steel, explosives, and mining equipment have a great impact on the gold mining industry.<sup>321</sup> On October 8, 1942, the War Production Board issues Limitation Order L-208, which closes all major gold mines, requiring such mines to cease breaking rock on October 15<sup>th</sup> and stop the milling of previously broken rock within 60 days.<sup>322</sup>

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<sup>310</sup> *Ibid.*

<sup>311</sup> Deed from California Lands Inc. to Idaho Maryland Mines Corporation (Apr. 25, 1940) [Exhibit 148].

<sup>312</sup> *The Los Angeles Times* (Oct. 6, 1941) [Exhibit 149].

<sup>313</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>314</sup> *Ibid.*

<sup>315</sup> Clark 191-192.

<sup>316</sup> *Ibid.*

<sup>317</sup> Clark 190-191.

<sup>318</sup> Geologic Summary of Mine Development (Apr. 1941) [Exhibit 150].

<sup>319</sup> Deed of Reconveyance (Jul. 29, 1941) [Exhibit 151].

<sup>320</sup> Clark 193.

<sup>321</sup> *Ibid.*

<sup>322</sup> *Ibid.*

The Mine Property produces 144,639 tons of ore, yielding a net income of \$147,975. Dividends are suspended in February.<sup>323</sup>

The Idaho Maryland Mines Corporation is now equipped to mine to a vertical 5,000-foot level and the New Brunswick shaft has reached a depth of 3,400 feet.<sup>324</sup> The lowest development level is 2,300 feet and current operations are above the 1,600-foot level.<sup>325</sup> The capacity of the New Brunswick headframe, crusher plant, hoist, and compressor building is reported to be 2,000 tons of ore per day from depths as low as 5,000 feet.<sup>326</sup> The large 90-foot-tall concrete silo is constructed, and the mill's interior is completely rebuilt with equipment rearranged to correspond with the flowsheet.<sup>327</sup>

**1943:** The Idaho-Maryland-Brunswick Mine is operating on care and maintenance with no production, with a workforce of 50 persons.<sup>328</sup> No gold is produced over the entire year, and the company reports a net loss of \$341,027.56.<sup>329</sup> The Idaho Maryland Mines Corporation reports total current assets of \$396,004.56 with current liabilities of \$32,994.60.<sup>330</sup>

**1944:** The Idaho-Maryland-Brunswick Mine is granted permission to reopen by the War Production Board.<sup>331</sup> The Idaho Maryland Mines Corporation reports losses of \$127,270.<sup>332</sup>

**1945:** The Idaho Maryland Mines Corporation reports that a shortage of miners and cave-ins in the Mine are preventing return to full-scale operations.<sup>333</sup> It also announces that 3 new and important veins discovered in 1942 by diamond core drilling will be developed and mined “when conditions become favorable.”<sup>334</sup> A small sawmill is constructed in the fall, located south of the Idaho-Maryland mill, near east Bennett Road.<sup>335</sup> The existing sawmill located near the Idaho-Maryland shaft is converted into a carpenter shop.<sup>336</sup>

**1946:** Combined capacity of the Brunswick and Idaho-Maryland mills has been increased from 1,200 to 1,500 tons per day, milling approximately 230 tons

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<sup>323</sup> Clark 194.

<sup>324</sup> *The San Francisco Examiner* (Mar. 21, 1942) [Exhibit 152].

<sup>325</sup> *Ibid.*; *Reno Gazette Journal* (Apr. 18, 1942) [Exhibit 153].

<sup>326</sup> *The Sacramento Bee* (May 11, 1943) [Exhibit 154].

<sup>327</sup> Clark 192-193.

<sup>328</sup> *The Sacramento Bee* (July 6, 1943) [Exhibit 155].

<sup>329</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>330</sup> *Ibid.*

<sup>331</sup> *Santa Cruz Sentinel* (Mar. 23, 1944) [Exhibit 156].

<sup>332</sup> *The San Francisco Examiner* (Mar. 27, 1945) [Exhibit 157].

<sup>333</sup> *The Los Angeles Times* (Apr. 16, 1945) [Exhibit 158]; Letter from Idaho Maryland Mines Corporation to Frank Kincaid c/o United States Mine (Nov. 9, 1946) [Exhibit 159].

<sup>334</sup> *Ibid.*

<sup>335</sup> Clark 209.

<sup>336</sup> Topographic Map of the Idaho Mine Area (ca. 1950) [Exhibit 160].

of ore daily and employing 220 men.<sup>337</sup> The Idaho-Maryland sawmill is upgraded to a capacity of 40,000 board feet per shift.<sup>338</sup> The Brunswick sawmill is also constructed and in operation “to cut timber for the mine.”<sup>339</sup> Also at the Brunswick Mine, a mine backfill system is designed and installed to fill mined-out stopes underground with mill tailings from the surface.<sup>340</sup>

The real price of gold begins to fall from approximately \$600 per ounce in current 2023 dollars due to inflation.<sup>341</sup>

**1947:** *The San Francisco Examiner* reports that 450 men are employed at the Mine and that capacity of the Brunswick mill is being increased by approximately 50 percent.<sup>342</sup> Total annual operating revenue from gold production at the Mine is \$1,720,268.87.<sup>343</sup> Despite reporting losses of \$144,648.69,<sup>344</sup> the Mine is the leading producer of quartz gold in California.<sup>345</sup>

**1948:** A new vein 20-feet-wide located on the 2,700-foot level is discovered through diamond drilling.<sup>346</sup> 200 tons of ore is run through the mill from this newly discovered vein averages \$10 per ton.<sup>347</sup>

Total annual operating revenue from gold production at the Mine is \$1,687,484.37.<sup>348</sup> The Idaho Maryland Mines Corporation reports a net loss of \$243,307.40 and a working capital of \$8,216.71.<sup>349</sup> The real price of gold has fallen to approximately \$450 per ounce in current 2023 dollars.<sup>350</sup> The sawmill continues to run and cuts 12,201,546 feet of lumber.<sup>351</sup>

**1949:** Despite reporting losses of \$75,520, the Idaho Maryland Mines Corporation remains the second largest lode gold producer in the United States.<sup>352</sup> A pressing need to reduce costs results in a reduction in company personnel and the leasing out of a large portion of the Brunswick Mine.<sup>353</sup> Pursuant to the lease agreement, the Idaho Maryland Mines Corporation provided the tools, timber, hoisting, and milling, and the leaseholders furnished their own labor,

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<sup>337</sup> *The Los Angeles Times* (Apr. 15, 1946) [Exhibit 161].

<sup>338</sup> Clark 216.

<sup>339</sup> Idaho Maryland Mines Corp. Letter (Nov. 4, 1946) [Exhibit 162]; Idaho Maryland Mines Corp. Letter (Nov. 9, 1946) [Exhibit 159].

<sup>340</sup> Clark 213-214.

<sup>341</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>342</sup> *The San Francisco Examiner* (Apr. 24, 1947) [Exhibit 163].

<sup>343</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>344</sup> *Ibid.*

<sup>345</sup> *The Los Angeles Times* (Jan. 12, 1948) [Exhibit 164].

<sup>346</sup> *The San Francisco Examiner* (Nov. 17, 1948) [Exhibit 165].

<sup>347</sup> *Ibid.*

<sup>348</sup> IMM Audited Financial Reports from 1938-1948 [Exhibit 135].

<sup>349</sup> *Ibid.*

<sup>350</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>351</sup> *The San Francisco Examiner* (Mar. 30, 1948) [Exhibit 166]; *The Press Democrat* (Apr. 16, 1948) [Exhibit 167].

<sup>352</sup> *The Los Angeles Times* (May 15, 1950) [Exhibit 168].

<sup>353</sup> Clark 222.

insurance, and explosives.<sup>354</sup> The leaseholders recovered one-half of the value of the gold produced in their leased area of the Mine.<sup>355</sup> Major areas of production, including at the 2,700-foot level, were retained and mined by the Idaho Maryland Mines Corporation's employees.<sup>356</sup>

The Idaho-Maryland sawmill, which produces 40,000 board feet per day and was constructed to provide lumber to subsurface mining operations for the Mine, is leased to Orris Donohaugh, and the New Brunswick sawmill, which produces 10,000 board feet per day, is leased to Mario and Lawrence Personeni.<sup>357</sup>

- 1950:** *The Los Angeles Times* reports milling of approximately 600 tons of ore daily with a workforce of 364 men at the Mine.<sup>358</sup> Exploration of the 2,700-foot level orebody is accelerating.<sup>359</sup> A new steel headframe and ore bins are erected at the Old Brunswick shaft to replace the old wooden headframe.<sup>360</sup>
- 1951:** 6 veins in the 2,700-foot level of the Mine are being explored which contain specimen gold,<sup>361</sup> and Idaho Maryland Mines Corporation management states these orebodies ensure 15 to 20 years of productive operations.<sup>362</sup> The Idaho Maryland Mines Corporation reports annual profits of \$26,000.<sup>363</sup> At this point, management's policy is to mine ore of a higher value and leave the lower grade ore, theorizing that, if the price of gold increases or if American gold is released to a free market, the corporation would be in a position to return to and mine the lower grade ore.<sup>364</sup>
- 1952:** Despite reporting annual losses of \$59,000, the Mine remains California's largest lode gold producer.<sup>365</sup> By September, all leases in the two mines are discontinued due to costs becoming too high to continue the lease program.<sup>366</sup> Exhibits 173 and 174 depict the Mine Property and many of the mines that collectively comprise the present day Mine.<sup>367</sup>
- 1953:** *The Sacramento Bee* reports a diamond drill core from the 1,450-foot level of the Brunswick Mine as a significant new discovery.<sup>368</sup> 120 miners are laid

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<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.*

<sup>356</sup> *Ibid.*

<sup>357</sup> *Id.* at 224.

<sup>358</sup> *The Los Angeles Times* (May 15, 1950) [Exhibit 168].

<sup>359</sup> *The Los Angeles Times* (July 10, 1950) [Exhibit 169].

<sup>360</sup> Clark 224.

<sup>361</sup> *The Los Angeles Times* (May 21, 1951) [Exhibit 170].

<sup>362</sup> *The Los Angeles Times* (Sept. 24, 1951) [Exhibit 171].

<sup>363</sup> *The Los Angeles Times* (Mar. 16, 1953) [Exhibit 172].

<sup>364</sup> Clark 233.

<sup>365</sup> *The Los Angeles Times* (Mar. 16, 1953) [Exhibit 172].

<sup>366</sup> Clark 235.

<sup>367</sup> Property Map for Title Insurance, Idaho Maryland Mines Corporation (1952) [Exhibit 173]; Map of Idaho-Maryland Mine Property [Exhibit 174].

<sup>368</sup> *The Sacramento Bee* (Jun. 20, 1953) [Exhibit 175].

off at the end of the year due to the “low price of gold, making operations unprofitable.”<sup>369</sup> Granville Borden, Vice President and Director of Idaho Maryland Mines Corporation, testifies in front of Congress, and provides a proposal for the relief of domestic gold miners.<sup>370</sup>

**1954:**

During the year, 88,632 tons of ore was produced from the New Brunswick shaft and milled at the Brunswick mill,<sup>371</sup> and Idaho Maryland Mines Corporation reports losses of \$471,372.<sup>372</sup> Active mining occurs in at least 14 areas throughout the Mine,<sup>373</sup> and new discoveries of scheelite containing tungsten are made.<sup>374</sup> Bullion from the Mine is shipped to the American Smelting and Refining Co. in Selby.<sup>375</sup>

Several surface properties are sold, with reservation of mineral rights, as well as reservation of rights necessary to facilitate mining operations, including roadways and maintenance.<sup>376</sup> For example, the deed from Idaho Maryland Mines Corporation to John J. Looser, dated July 22<sup>nd</sup>, contains the following reservations:

*all the mineral, metal matter and rock contained under said premises, with the right to extract at any time hereafter all the mineral, metal matter and rock contained under said property, from any depth up to and within 75 feet of the surface of said property, without disturbing the surface thereof.*

...

*all necessary or convenient rights of way for roads, pipe lines, or other easements necessary or convenient for working said Independence Quartz Mine, Patented, and in consideration of said right to so follow the Independence Quartz Ledge and said rights of way.*<sup>377</sup>

On September 10, 1954, the Nevada County Board of Supervisors adopts Ordinance No. 196, the Nevada County Zoning Enabling Ordinance, which requires, for the first time, a Use Permit for the “commercial excavation of natural materials within a distance of 1,000 feet from any public street, road,

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<sup>369</sup> *The Sacramento Bee* (Nov. 19, 1953) [Exhibit 176].

<sup>370</sup> Testimony and Letter from Idaho Maryland Mines Corporation to Congress (Apr. 30, 1953) [Exhibit 177].

<sup>371</sup> Clark 242.

<sup>372</sup> *Oroville Mercury* (July 7, 1955) [Exhibit 178].

<sup>373</sup> Mine Development Reports, Idaho Maryland Mines Corp. (Sept. 1954) [Exhibit 179].

<sup>374</sup> *The Sacramento Bee* (Feb. 10, 1954) [Exhibit 180].

<sup>375</sup> Clark 242.

<sup>376</sup> Deed from Idaho Maryland Mines Corporation to Dean and Gladys Perkins (Jan. 1954) [Exhibit 181]; Deed from Idaho Maryland Mines Corporation to Looser (July 1954) [Exhibit 182]; Deed from Idaho Maryland Mines Corporation to Jones (Oct. 1954) [Exhibit 183]; Deed from Idaho Maryland Mines Corporation to Nevada County Horsemen, Inc. (Oct. 1954) [Exhibit 184].

<sup>377</sup> Deed from Idaho Maryland Mines Corporation to John J. Looser (July 1954) [Exhibit 182].

or highway.”<sup>378</sup> This ordinance becomes effective October 10, 1954.<sup>379</sup>

**1955:**

In January, the Idaho Maryland Mines Corporation prepares to sink a winze on the 3,280-foot level of the Mine, where several sample sacks of high-grade gold had been gathered while driving the No. 25 drift.<sup>380</sup> An area of the Mine was enlarged to set the hoist, and 40 feet of rope-raise run above the level.<sup>381</sup> A first shipment of 200 tons of tungsten ore is shipped to Lovelick, Nevada for treatment, as depicted in Exhibits 187 and 188.<sup>382</sup> Ore and waste bins were completed, and the actual sinking operations were about to begin when the operation was stopped due to the company’s critical cash position.<sup>383</sup> The *Oroville Mercury* reports that due to lack of financing, there can be no assurance that sinking operations will continue.<sup>384</sup>

In February, 48 employees are terminated and by May, development of the Mine is suspended with the exception of tungsten exploration.<sup>385</sup> Mining operations turn to stoping whatever high-grade quartz is available.<sup>386</sup> Several more surface properties are sold, again with reservations of mineral rights.<sup>387</sup> For example, the grant from Idaho Maryland Mines Corporation to the County of Nevada dated October 24<sup>th</sup>, reserves the following:

*the right to mine for extract and take minerals from beneath the surface of, and the subsurface of that portion of the property lying more than 50 feet beneath the surface thereof.*<sup>388</sup>

The profitability of gold mining has fallen to the equivalent gold price of approximately \$400 per ounce in current 2023 dollars.<sup>389</sup> Only 28,905 tons of ore are mined, down from 88,892 tons the previous year.<sup>390</sup>

**1956:**

Tungsten exploration and mining continues in at least 6 work sites,<sup>391</sup> while gold mining ceases due to the static price of gold.<sup>392</sup> Idaho Maryland Mines

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<sup>378</sup> Nevada County Ordinance No. 196 (1954) [Exhibit 185].

<sup>379</sup> *Ibid.*

<sup>380</sup> Clark 242.

<sup>381</sup> *Ibid.*

<sup>382</sup> *The San Francisco Examiner* (Aug. 18, 1955) [Exhibit 186].

<sup>383</sup> *Ibid.*

<sup>384</sup> *Oroville Mercury* (July 7, 1955) [Exhibit 178].

<sup>385</sup> Clark 242-243.

<sup>386</sup> *Ibid.*

<sup>387</sup> Deed from Idaho Maryland Mines Corporation to George Maurer (July 1955) [Exhibit 189]; Deed from Idaho Maryland Mines Corporation to Walter and Ida Canon (July 1955) [Exhibit 190]; Deed from Idaho Maryland Mines Corporation to Walter Cannon Jr. (July 1955) [Exhibit 191]; Deed from Idaho Maryland Mines Corporation to Roy and Pauline Dodge (July 1955) [Exhibit 192]; Deed from Idaho Maryland Mines Corporation to Oliver and Pearl Stewart (Oct. 1955) [Exhibit 193]; Deed from Idaho Maryland Mines Corporation to County of Nevada (Oct. 1955) [Exhibit 194].

<sup>388</sup> Deed from Idaho Maryland Mines Corporation to County of Nevada (Oct. 1955) [Exhibit 194].

<sup>389</sup> Gold Prices Adjusted for Inflation – 100 Year Historical Chart, Macrotrends LLC (2023) [Exhibit 58].

<sup>390</sup> Idaho Maryland Mines Corporation Annual Report (1954) [Exhibit 195]; Idaho Maryland Mines Corporation Annual Report (1955) [Exhibit 196].

Corporation resolves to dewater the Union Hill shaft and upper workings to eliminate the possibility of flooding in and to facilitate future mining and exploration of the Brunswick Mine.<sup>393</sup> To this end, the Union Hill shaft is retimbered and electrical power is installed.<sup>394</sup> However, the dewatering is halted when it becomes apparent that it will require a greater outlay of money.<sup>395</sup> To acquire this money, Idaho Maryland Mines Corporation applies for a \$122,000 grant from the Defense Mineral Administration but is denied.<sup>396</sup>

Due to lack of financing, the Board of Directors of the Idaho Maryland Mines Corporation orders on September 25<sup>th</sup> the cessation of nearly all tungsten production, the unoccupancy of the Idaho shaft, and that the mines be allowed to flood to the 1,450-foot level of the Mine.<sup>397</sup> The raise on the 1,100-foot level was to be continued.<sup>398</sup>

As a part of the retrenchment program commenced in response to rising costs of labor and materials and the static price of gold, the Idaho Maryland Mines Corporation sells the Idaho-Maryland surface plant, including the mill, cyanide plant, headframe, hoists, compressors, and several buildings, to the Oro Lumber Company, headed by Gladys Perkins, Robert Graham, and Ed Brunning.<sup>399</sup> The Idaho Maryland Mines Corporation also sells several surface properties, including the Brunswick sawmill site, to Milton and Ina Balmain, but again reserves the mineral estate.<sup>400</sup>

**1957:** News outlets report on the epidemic of gold mine closures in California, brought on by “[i]ncreased costs of labor, steel, blasting powder and lumber used for shoring” following World War II.<sup>401</sup> *The Los Angeles Times* reports:

*Prior to World War II, there were 1600 gold mines in California. By 1953, 98% of the State’s output was coming from 10 mines, and today these mines are closing one by one.*

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<sup>391</sup> Mine Development Reports, Idaho Maryland Mines Corp. (Jan. 1956) [Exhibit 197]; Mine Development Reports, Idaho Maryland Mines Corp. (Feb. 1956) [Exhibit 198].

<sup>392</sup> Clark 246.

<sup>393</sup> *Ibid.*

<sup>394</sup> *Ibid.*

<sup>395</sup> *Ibid.*

<sup>396</sup> *Ibid.*

<sup>397</sup> Clark 248.

<sup>398</sup> *Ibid.*

<sup>399</sup> *The Sacramento Bee* (Oct. 22, 1956) [Exhibit 199]; Clark 248.

<sup>400</sup> Deed from Idaho Maryland Mines Corporation to John and Donna Grimes (Apr. 1956) [Exhibit 200]; Deed from Idaho Maryland Mines Corporation to Carl and Gwen Richardson (Jun. 1956) [Exhibit 201]; Survey Drawing by T.H. McGuire & Son (Aug. 27, 1956) [Exhibit 202]; Deed from Idaho Maryland Mines to Vivian and Francis Normille (Aug. 1956) [Exhibit 203]; Survey Drawing by T.H. McGuire & Son (Oct. 30, 1956) [Exhibit 204]; Chain of Title Report, Environmental Data Resources (2023) [Exhibit 205]; Deed from Idaho Maryland Mines Corporation to Milton and Ina Balmain (Dec. 1956) [Exhibit 206]; Survey Drawing by T.H. McGuire & Son (Nov. 9, 1956) [Exhibit 207]; Deed from Idaho Maryland Mines Corporation to Michael and Elizabeth Hammill (Dec. 1956) [Exhibit 208].

<sup>401</sup> *Nevada State Journal* (July 7, 1957) [Exhibit 209].



*The miners, faced with rising costs, can no longer economically afford to extract gold from the earth at the rate of \$35 an ounce established by the government in 1934.*<sup>402</sup>

When questioned, mine officials stated they “believe a sizeable increase in the price of gold is the only answer [to the closure of mines].”<sup>403</sup>

In October, the Idaho Maryland Mines Corporation sells a 56.004-acre portion of the Property located south-east of the Idaho-Maryland tailings pond but reserves mineral rights below 100-feet and a roadway right of way for the purpose of moving men and equipment to the sand flume, a ditch and a tailings dam into which the contents of the ditch flow.<sup>404</sup> The locations of the sand flume and ditch indicates that the Idaho-Maryland Mines Corporation planned to transfer tailings from the Brunswick mill to the Idaho-Maryland tailings pond along the route of the former narrow-gauge railroad.<sup>405</sup> Several other properties are sold but always with a reservation of the mineral estate and the continuing right to explore and develop the Mine in the future.<sup>406</sup> For example, the deed from Idaho Maryland Mines Corporation to Sierra Nevada Memorial Hospital contains the following reservations:

*RESERVING TO IDAHO MARYLAND MINES CORPORATION and its successors and assigns all minerals, gas, oil, and mineral deposits of every kind and nature contained in and under the above-described real property, together with all necessary and convenient rights to explore for, develop, produce, extract and take the same....*<sup>407</sup>

- 1958:** The County grants a use permit (U58-15) authorizing operation of the Brunswick sawmill to Summit Valley Pine Mill, Inc.<sup>408</sup> The permit has no conditions and does not expire.<sup>409</sup>
- 1959:** On March 13<sup>th</sup>, the Corporation’s Board of Directors decides to transfer the surface (to a depth of 250 feet) of a portion of the Mine Property, while **reserving appropriate mill site areas**, to settle \$200,000 of debt.<sup>410</sup> On June

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<sup>402</sup> *Ibid.*

<sup>403</sup> *Ibid.*

<sup>404</sup> Survey for Idaho-Maryland Mines Corp by T.H. McGuire & Son (Jan. 1957) [Exhibit 210]; Deed between Idaho Maryland Mines Corporation, Gladys Perkins, and Edwin and Wenona Bruning (Oct. 1957) [Exhibit 211].

<sup>405</sup> See Deed between Idaho Maryland Mines Corporation, Gladys Perkins, and Edwin and Wenona Bruning (Oct. 1957) [Exhibit 211].

<sup>406</sup> Deed from Idaho Maryland Mines Corporation to John and Mary Gwin (Aug. 1957) [Exhibit 212]; Grant Deed from Idaho Maryland Mines Corporation to Sierra Nevada Memorial Hospital (Dec. 1957) [Exhibit 213]; Quitclaim Deed from Idaho Maryland Mines Corporation to Sierra Nevada Memorial Hospital (Dec. 1957) [Exhibit 214].

<sup>407</sup> Grant Deed from Idaho Maryland Mines Corporation to Sierra Nevada Memorial Hospital (Dec. 1957) [Exhibit 213].

<sup>408</sup> Use Permit U58-15 (Jun. 12, 1958) [Exhibit 215].

<sup>409</sup> *Ibid.*

<sup>410</sup> Board Minutes of Idaho Maryland Industries Inc. (Mar. 13, 1959) [Exhibit 216].

2<sup>nd</sup>, the sales agreement is modified to promptly sell certain parcels of land for \$89,000, convey the balance of the surface to a depth of 200 feet, excluding 65 acres to be retained by the Idaho Maryland Mines Corporation, in satisfaction of the balance of the principle of the \$200,000 note in favor of Oliver Investment Company and Frederick W. Richmond.<sup>411</sup>

On August 3<sup>rd</sup>, Idaho Maryland Mines Corporation transfers the land to the Oliver Investment Company who then immediately transfers it to Sum-Gold Corporation Inc.,<sup>412</sup> but reserves the “mineral rights and 70 acres around three mine shafts.”<sup>413</sup> The reserved area covers the New Brunswick shaft, the Old Brunswick shaft, the Union Hill shaft, and the Brunswick mill site.<sup>414</sup> The agreement reserves the mineral and mining rights as follows:

*EXCEPTING AND RESERVING TO IDAHO MARYLAND MINES CORPORATION and its successors and assigns all minerals, gas, oil, an mineral deposits of every kind and nature located in and under such real property, provided, however, that wherever the surface is granted hereunder, then excepting and reserving only minerals, gas, oil and mineral deposits below a depth of 200 feet beneath such surface; together with all necessary and convenient rights to explore for, develop, produce, extract, and take the same, subject to the express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without consent of the owner of such surface of said land.*<sup>415</sup>

**1960:** Idaho Maryland Mines Corporation changes its name to Idaho Maryland Industries Inc.<sup>416</sup>

**1961:** In hopes of resuming gold extraction and processing operations, H.G. Robinson, a member of the Board of Directors at Idaho Maryland Industries Inc., writes a letter to Congressman Ed Edmondson outlining a plan to “subsidize or establish incentive funding arrangements for the costs of development work” of gold as an alternative to increasing the price of gold that had been set by the federal government in 1934.<sup>417</sup>

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<sup>411</sup> Board Minutes of Idaho Maryland Industries Inc. (June 2, 1959) [Exhibit 217].

<sup>412</sup> Deed from Idaho Maryland Mines Corporation to Oliver Investment Company (Aug. 3, 1959) [Exhibit 218].

<sup>413</sup> *The Sacramento Bee* (Aug. 14, 1959) [Exhibit 219].

<sup>414</sup> Survey for Idaho-Maryland Mines Corp by T.H. McGuire & Son (Aug. 1959) [Exhibit 220].

<sup>415</sup> Deed from Idaho Maryland Mines Corporation to Oliver Investment Company (Aug. 3, 1959), emphasis added [Exhibit 218].

<sup>416</sup> *Valley Times* (Sept. 13, 1960) [Exhibit 221].

<sup>417</sup> Letter from H.G. Robinson to Ed Edmonson (Dec. 19, 1961) [Exhibit 222].

- 1962:** Idaho Maryland Industries Inc. files for bankruptcy due to the “rapid acceleration of defense work” and the resulting inability to “make deliveries on schedule.”<sup>418</sup>
- 1963:** On April 17<sup>th</sup>, Idaho Maryland Industries Inc. auctions the Idaho-Maryland Mine Property, comprised of 2,630 acres of mineral rights and 78.531 acres of surface rights<sup>419</sup> (later known as “BET Acres”), to mine owner and gold investor William Ghidotti and his wife Marian Ghidotti, who purchased the property as an investment.<sup>420</sup> An avid gold investor, William Ghidotti would later purchase a gold collection from the Sierra Mother Lode gold mines.<sup>421</sup> The Mine Property is held jointly by William and Marian Ghidotti.<sup>422</sup>
- 1964:** William and Marian Ghidotti purchase additional surface property previously part of the fully-assembled Mine Property, which includes the historical tailings storage area (now referred to as the Centennial Site) from Sum-Gold Corporation Inc.<sup>423</sup>
- A rock crusher with associated mining operations begins operating on the Vested Mine Property in 1964 and continues until 1965, for 4 months.<sup>424</sup> In 1965 William and Marian Ghidotti sell 200,000 tons of crushed rock left over from past mining operations.<sup>425</sup> With guidance from a former miner at the Mine, the watchman posted to guard the rock finds “several pieces of quartz shot full of gold,” which the former miners had hidden away in or around 1956 once they learned of the Mine’s imminent closure.<sup>426</sup> William keeps the gold “to show to prospective buyers, if and when he decided to sell the mineral rights.”<sup>427</sup>
- 1967 – 1979:** From 1967 through 1979, a rock crusher operates and “both mine rock wastes and mill sand has continuously been removed in small amounts” from the Mine Property.<sup>428</sup>
- 1968:** *The Stockton Daily Evening Record* reports a predicted rise in the price of gold, and reports:

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<sup>418</sup> *Arizona Daily Star* (Feb. 8, 1962) [Exhibit 223].

<sup>419</sup> *The Oakland Tribune* (Apr. 11, 1963) [Exhibit 224].

<sup>420</sup> Deed from Idaho Maryland Industries Inc. to William and Marian Ghidotti (Jun. 1963) [Exhibit 225]; *The Sacramento Bee* (Apr. 26, 1963) [Exhibit 226]; Declaration of Lee Johnson [Exhibit 227].

<sup>421</sup> *The Oakland Tribune* (June 13, 1965) [Exhibit 228]; *The Modesto Bee* (Apr. 11, 1963) [Exhibit 224]; *The Placer Herald* (Jun. 18, 1965) [Exhibit 229]; Declaration of Lee Johnson [Exhibit 227].

<sup>422</sup> Deed from Idaho Maryland Industries Inc. to William and Marian Ghidotti (Jun. 1963) [Exhibit 225].

<sup>423</sup> Deed from Sum-Gold Corporation Inc. to William and Marian Ghidotti (Oct. 1964) [Exhibit 230]; Declaration of Lee Johnson [Exhibit 227].

<sup>424</sup> Letter from Marian Ghidotti to County Planning Department (Nov. 15, 1979) [Exhibit 231].

<sup>425</sup> Calhoun [Appendix F] 352.

<sup>426</sup> *Id.* at 353-354.

<sup>427</sup> *Id.* at 354.

<sup>428</sup> Letter from Marian Ghidotti to Nevada County Planning Department (Oct. 12, 1979) [Exhibit 232].

*To all intents and purposes gold mining in the U.S. has been dead for a quarter century – shut down by presidential order in 1942 which syphoned off men and materials to other needed wartime industries.<sup>429</sup>*

In the meantime, California mines are in “no rush to reopen” due to the deflated price of gold, as well as the extensive labor and refurbishing costs required to reopen a gold mine.<sup>430</sup>

**1969:** Marian Ghidotti becomes the sole owner of the Mine Property owned by William when William Ghidotti passes away.<sup>431</sup> At his death, William Ghidotti also owned the Ancho-Erie Mine Property, as well as stock in several mining companies including Newmont and Homestake Mining.<sup>432</sup>

Separately, Marian Ghidotti acquires several mining claims which she subsequently sells throughout the 1970’s.<sup>433</sup>

**1960’s – 1970’s:** By the 1970’s, environmental policy groups have a firm foothold in California, and news outlets report the difficulty in reopening gold mines in Nevada and Placer Counties because of this, even though the price of gold is now rising.<sup>434</sup> This “anti-mining sentiment” creates barriers to reopening idle mines, like the Idaho-Maryland Mine.<sup>435</sup> On August 15, 1971, the United States terminates convertibility of the U.S. dollar to gold, effectively bringing the Bretton Woods system to an end and allowing the price of gold to increase.

**1975:** An 84-ounce chunk of pale gold on quartz from the Idaho-Maryland Mine is a prime item on display at the State Fair Gem and Mineral Show.<sup>436</sup>

**1976:** Marian Ghidotti purchases additional surface lands from Newmont Mining in or around 1976, which are contiguous to the Centennial Industrial Site, for the purpose of facilitating future mining operations on the Mine Property.<sup>437</sup> The Brunswick sawmill produces the lumber needed to construct a piping system for recycling wastewater from the wastewater pond to the log deck,

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<sup>429</sup> *The Stockton Daily Evening Record* (Mar. 18, 1968) [Exhibit 233].

<sup>430</sup> *The Sacramento Bee* (Mar. 24, 1968) [Exhibit 234].

<sup>431</sup> Estate of William R. Ghidotti (Mar. 1974) [Exhibit 235]; Exhibit 227.

<sup>432</sup> Exhibit 235.

<sup>433</sup> Deed from Marian Ghidotti to Aubrey and Gerald Wall (Mar. 1972) [Exhibit 236]; Deed from Marian Ghidotti to Helen and John Rohrer (Jun. 1973) [Exhibit 237]; Deed from Marian Ghidotti to Lee Buttle, Douglas and Karen Hawkins, et al. (Jan. 1975) [Exhibit 238]; Deed from Marian Ghidotti to June Peat (Sept. 1975) [Exhibit 239]; Deed from Marian Ghidotti to Roy and Vernell Hammock (July 1977) [Exhibit 240]; Quitclaim Deed from Marian Ghidotti to James Vendley and Oscar Pfanner (May 1979) [Exhibit 241]; Grant Deed from Marian Ghidotti to James Vendley and Oscar Pfanner (May 1979) [Exhibit 242].

<sup>434</sup> *The Napa Valley Register* (Sept. 5, 1979) [Exhibit 243]; see *The Sacramento Bee* (May 13, 1983) [Exhibit 244]; *The Sacramento Bee* (Mar. 14, 1984) [Exhibit 245].

<sup>435</sup> See *The Sacramento Bee* (Jun. 5, 1987) [Exhibit 246].

<sup>436</sup> *The Sacramento Bee* (Aug. 21, 1975) [Exhibit 247].

<sup>437</sup> Estate of Marian Ghidotti (Aug. 1983) [Exhibit 248]; Declaration of Lee Johnson [Exhibit 227].

and the water which is used is pumped from the Brunswick Mine.<sup>438</sup>

**1977:** Marian Ghidotti insures the Mine Property as a mining asset because she believed it contained a large amount of unextracted gold and would someday generate significant income when mining resumed.<sup>439</sup>

**1979:** In 1979, Marian Ghidotti enters into a licensing agreement with North Star Rock Products Corporation regarding the Centennial Industrial Site.<sup>440</sup> In turn, North Star Rock Products Corporation applies for use permit (U79-41) for a proposed “rock crushing and gravel retail sales operation,”<sup>441</sup> which includes mining rock and sand, a crusher and screening plant.<sup>442</sup> Pursuant to the use permit, approximately 400,000 to 500,000 tons of existing rock and 10,000 tons of mill sand from historic mining will be removed.<sup>443</sup>

**1980:** The County grants Use Permit U79-41 authorizing the harvesting, crushing, screening, and sale of existing mine rock and tailings at the Centennial Industrial site.<sup>444</sup> The County’s Staff Report states that the waste rock and tailings were previously deposited onto the site as part of the mining operations of the Mine, and that such rock and tailings had been crushed on the site by a rock crusher in 1964 or 1965. Notably, **the County recognizes mining operations at the Property as an existing nonconforming use – i.e., a vested right.**<sup>445</sup>

In the County’s Staff Report regarding Use Permit U79-41, the County acknowledges that Marian Ghidotti is considering “re-opening the mine because of the price of gold.”<sup>446</sup>

Marian Ghidotti passes away and leaves the Mine Property to the BET Group because she believed the group would be capable of resurrecting the Mine due to their collective expertise as land use/title professionals and accountants.<sup>447</sup> Marian also knew that each of these individuals wished for the Mine to resume operations, and believed they could make this happen using their professional skills and training.<sup>448</sup>

During Marian’s ownership of the Mine, she acquired thousands of maps, documents detailing gold discoveries and locations, exploratory mining, and

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<sup>438</sup> Letter from S.J. Houck to William B. Baldwin (Aug. 24, 1976) [Exhibit 249].

<sup>439</sup> Declaration of Lee Johnson [Exhibit 227].

<sup>440</sup> License Agreement Between Marian Ghidotti and North Star Rock Products Corporation (Sept. 14, 1979) [Exhibit 250].

<sup>441</sup> Use Permit Application (1979) [Exhibit 251].

<sup>442</sup> Nevada County Planning Commission Staff Report (Feb. 20, 1980) [Exhibit 252].

<sup>443</sup> Nevada County Planning Commission Staff Report (Feb. 20, 1980) [Exhibit 252].

<sup>444</sup> Exhibit 252; Agreement Between the City of Grass Valley and North Star Rock Products Incorporated (Nov. 24, 1992) [Exhibit 253].

<sup>445</sup> Nevada County Planning Commission Staff Report (Feb. 20, 1980) [Exhibit 252].

<sup>446</sup> Minutes of Meeting of Board of Supervisors (Feb. 28, 1980) [Exhibit 254].

<sup>447</sup> Estate of Marian Ghidotti (Aug. 1983) [Exhibit 248].

<sup>448</sup> *Ibid.*

other documents related to the Mine.<sup>449</sup> During Marian’s and William’s ownership of the Mine, neither believed the Mine Property would be used for anything other than mining in the future, and were convinced the Mine would be operational again.<sup>450</sup> In fact, they thought they could potentially reopen the Mine themselves.<sup>451</sup> Despite the fact that Marian owned and grazed cattle, she never allowed the cattle to graze on the Mine Property because she considered mining to be the only appropriate use of the Mine Property.<sup>452</sup>

**1983:** Marian Ghidotti’s estate is settled in 1983 — three years after her death.<sup>453</sup>

**1984:** In the 1980’s, an anti-mine sentiment from County residents creates obstacles to the resumption of mining activities in mines like the Idaho-Maryland Mine. In 1984, Brian Jamison, president of the Nevada City Chamber of Commerce, states that “Nevada County was born and raised a miner” after the County Planning Commission votes down a move to kill a proposed gold mine on San Juan Ridge after the mining project was attacked by local environmental policy groups claiming it would cause pollution.<sup>454</sup> The project manager for that mining project states: “If it’s going to open at all, it’s going to take a change in the political conditions in the county.”<sup>455</sup> Political opposition ultimately causes the project to be abandoned.<sup>456</sup>

By November of 1985, County voters pass Measure C, which precluded the County Board of Supervisors from approving gold mining projects in Banner Mountain.<sup>457</sup> Then in 1987, following “[a] growing number of showdowns between residents and gold mine and gravel operators,” the County passes a new mineral management plan “to identify and protect mineral resources for current utilization and for future generations in a manner that does not create land-use conflicts.”<sup>458</sup>

**1985:** North Star Rock Company Inc. is granted Use Permit U85-025 to amend Use Permit U79-41, allowing the relocation of the crushing plant and allow the importation of crushable materials from off-site.<sup>459</sup>

**1986:** By May, most of the tailings have been re-mined, processed and removed from the Centennial site, and were most likely reused for the production of

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<sup>449</sup> Exhibit 227.

<sup>450</sup> *Ibid.*

<sup>451</sup> *Ibid.*

<sup>452</sup> *Ibid.*

<sup>453</sup> *Ibid.*; Estate of Marian Ghidotti (Aug. 1983) [Exhibit 248].

<sup>454</sup> *The Sacramento Bee* (Aug. 2, 1984) [Exhibit 255].

<sup>455</sup> *The Sacramento Bee* (Sept. 12, 1984) [Exhibit 256].

<sup>456</sup> *The Sacramento Bee* (Oct. 7, 1984) [Exhibit 257].

<sup>457</sup> *The Sacramento Bee* (Nov. 7, 1985) [Exhibit 258].

<sup>458</sup> *The Sacramento Bee* (Jun. 5, 1987) [Exhibit 246].

<sup>459</sup> Land Use Application (Mar. 28, 1985) [Exhibit 259]; Notice of Conditional Approval Use Permit Application (1985) [Exhibit 260].

aggregate.<sup>460</sup> In December, Nevada County issues Use Permit U86-45 to North Star Rock Products Inc.<sup>461</sup> Use Permit U86-45 amends Use Permits U79-41 and U85-25 for aggregate excavation and relocation of the processing plant for rock crushing and recycling of asphalt and concrete.<sup>462</sup>

In that same month, the BET Group enters into negotiations with Ross Guenther to sell the Mine Property for development purposes.<sup>463</sup>

**1987:** In January, the Final Map for the BET Acres subdivision is approved, which divides a portion of the surface of the Mine Property into 8 parcels, but explicitly reserves the mineral estate and the right to mine in the future.<sup>464</sup>

In September, 4 samples from the historic mine tailings are taken by Ross Guenther and provided to Erika Erickson.<sup>465</sup> The gold from these samples is valued at approximately \$39.15 per ton.<sup>466</sup>

**1988:** The BET Group sells Lots 3 and 8 of BET Acres, reserving the following:

*the mineral, metal matter, and rock lying below 200 feet of the surface, with the right to extract and remove said mineral, metal matter and rock from any depth up to 200 feet of the surface of said premises, without disturbing the surface thereof.*<sup>467</sup>

The BET Group options the Mine Property to Mother Lode Gold Mines, which announces that it expects the Mine to be in production within 5 years.<sup>468</sup> The BET Group and Mother Lode Gold Mines execute a mining lease and option to purchase the Mine, and Mother Lode Gold Mines assigns the lease to a subsidiary, Northern Mines Inc.<sup>469</sup>

In addition, 14,500 tons of gold-bearing tailings from the Centennial Industrial site are sold this year.<sup>470</sup>

From August 1988 through April 1989, the BET Group leases 5.28 acres of the tailings disposal area to Argo Associates, who excavates 7756.2 tons of tailings materials and ships them to Homestake Mining Company.<sup>471</sup> In turn, Homestake Mining Company runs the tailings through the process mill to

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<sup>460</sup> Geotechnical Investigation, Anderson Geotechnical Consultants Inc. (May 12, 1986) [Exhibit 261].

<sup>461</sup> Agreement Between the City of Grass Valley and North Star Rock Products Incorporated (Nov. 24, 1992) [Exhibit 253].

<sup>462</sup> *Ibid.*

<sup>463</sup> Status Report of the Idaho-Maryland-Brunswick Property (Jan. 23, 1989) [Exhibit 262]; See Geotechnical Investigation, Anderson Geotechnical Consultants Inc. (May 12, 1986) [Exhibit 261].

<sup>464</sup> Final Map No. 85-7 for BET Acres (Jan. 1987) [Exhibit 263].

<sup>465</sup> Letter from Ross Guenther to Erica Erickson (Sept. 29, 1987) [Exhibit 264].

<sup>466</sup> *Ibid.*

<sup>467</sup> Deed from Mary Bouma, Erica Erickson, and William Toms to Bohemia, Inc. (Mar. 1988) [Exhibit 265]; Deed from Mary Bouma, Erica Erickson, and William Toms to Rexforde and Frieda Clark (Dec. 1988) [Exhibit 266].

<sup>468</sup> *The San Francisco Examiner* (May 13, 1988) [Exhibit 267].

<sup>469</sup> Status Report of the Idaho-Maryland-Brunswick Property (Jan. 23, 1989) [Exhibit 262].

<sup>470</sup> *The Napa Valley Register* (Aug. 4, 1988) [Exhibit 268].

<sup>471</sup> Exhibit 66.

extract gold.<sup>472</sup>

**1989:** Mother Lode Gold Mines reports its belief that the Mine still contains approximately 1 million ounces of gold.<sup>473</sup>

The BET Group sells Lots 1, 4, and 5 of BET Acres, with a reservation of mineral rights that provides as follows:

*EXCEPTING AND RESERVING THEREFROM all the mineral, metal matter, and rock lying below 200 feet of the surface, with the right to extract and remove said mineral, metal matter and rock from any depth up to 200 feet of the surface of said premises without disturbing the surface thereof.*

*TOGETHER WITH AND RESERVING THEREFROM, as applicable thereto, easements and rights-of-way for ingress, egress, and utilities...*<sup>474</sup>

The BET Group during its ownership inherited the thousands of documents acquired by Marian Ghidotti regarding the Mine. As of 1989, Erica Erickson stores in her basement approximately 1500 maps of the Mine Property.<sup>475</sup> Exhibit 274 depicts the Mine Property around this time.<sup>476</sup> The group records a Notice of Intent to Preserve Interest in all mineral rights and interests in minerals.<sup>477</sup>

**1991:** After Mother Lode Gold Mines relinquishes and returns the Mine Property to the BET Group in January, Consolidated Del Norte Ventures leases the Mine in March.<sup>478</sup> The company hopes to reopen the Mine, and opines that it currently contains about 2.5 million ounces of gold.<sup>479</sup>

**1992:** In June, North Star Rock Products Incorporated applies for a use permit to extend the existing rock harvesting operation at the Centennial site by 10 years and expand it to the west and south using the County's form titled "Application for Exploration and/or Mining Permit".<sup>480</sup> The County grants Use Permit U92-037 in December, thus guaranteeing the continuation of

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<sup>472</sup> *Ibid.*

<sup>473</sup> *The Tribune* (Nov. 13, 1989) [Exhibit 269].

<sup>474</sup> Deed from Mary Bouma, Erica Erickson, and William Toms to Dale and Shelly Cope (Mar. 1989) [Exhibit 270]; Deed from Mary Bouma, Erica Erickson, and William Toms to Patricia Cope and Mary Wilson (Apr. 1989) [Exhibit 271]; Deed from Mary Bouma, Erica Erickson, and William Toms to Buddy and Velda Newman (Jun. 1989) [Exhibit 272]; Deed from Mary Bouma, Erica Erickson, and William Toms to David and Kelly Russo (July 1989) [Exhibit 273].

<sup>475</sup> Status Report of Idaho-Maryland-Brunswick Property (1989) [Exhibit 262].

<sup>476</sup> Aerial Photograph of Brunswick Industrial Site (Feb. 19, 1997) [Exhibit 274].

<sup>477</sup> Notice of Intent to Preserve Interest by Mary Bouma, Erica Erickson & William Toms (Dec. 8, 1989) [Exhibit 275].

<sup>478</sup> *The Sacramento Bee* (Mar. 4, 1991) [Exhibit 276].

<sup>479</sup> *Ibid.*

<sup>480</sup> Application for Exploration and/or Mining Permit (Jun. 22, 1992) [Exhibit 277].



mining activities at the Mine Property.<sup>481</sup>

**1993:** In February, Consolidated Del Norte relinquishes its lease on the Mine Property and in August, a mining lease and option to purchase agreement is executed with Emperor Gold Corporation.<sup>482</sup> Emperor Gold Corporation begins the “permitting process to rehabilitate the New Brunswick 3,460-foot shaft, dewater the mine to the 3,280-foot level, and commence exploratory drilling in promising areas from the 2,000-foot level and below.”<sup>483</sup>

In March, the BET Group sells the Morehouse Quartz Mine, reserving the mineral rights as follows:

*EXCEPTING AND RESERVING THEREFROM all the mineral, metal matter and rock lying below 200 feet of the surface, with the right to extract and remove said mineral, metal matter and rock from any depth up to 200 feet of the surface of said premises without disturbing the surface thereof.*<sup>484</sup>

Nevada County rezones the sawmill property, including BET Acres Lot 8, to M1-SP to allow for “service maintenance and repair, manufacturing and processing, warehousing and distribution facilities... office, professional and conference facilities.”<sup>485</sup> According to the Staff Report, “the County does not intend to restrict the site to a mill use.”<sup>486</sup> At a County Board of Supervisors meeting, a representative of Sierra Pacific explains the company’s intent to use the site for industrial purposes.<sup>487</sup>

The BET Group begins receiving substantial amounts of annual royalty and option payments for the Mine.<sup>488</sup> The payments continue until 2012.<sup>489</sup>

**1994:** Emperor Gold holds an option to purchase the Vested Mine and announces potential gold mineralization of up to 3 million ounces of gold within the Vested Mine Property.<sup>490</sup> The company provides a “new six-page brochure and information pack” to “potential investors.”<sup>491</sup> The mining lease and option dated October 1994 includes an option to purchase the Vested Mine

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<sup>481</sup> Notice of Conditional Approval Use Permit Application (Dec. 14, 1992) [Exhibit 278].

<sup>482</sup> Guenther, Ross. Historical Notes on the Idaho-Maryland Mine (July 31, 1994) [Exhibit 279].

<sup>483</sup> *Ibid.*

<sup>484</sup> Deed from Mary Bouma, Erica Erickson, and William Toms to North Star Rock Products Corporation, Inc. (Mar. 1993) [Exhibit 280].

<sup>485</sup> Ordinance No. 1853 (1994) [Exhibit 281].

<sup>486</sup> County of Nevada Board of Supervisors Meeting Minutes (Dec. 14, 1993) [Exhibit 282]; See Ordinance No. 1853 (1994) [Exhibit 281].

<sup>487</sup> County of Nevada Board of Supervisors Meeting Minutes (Dec. 14, 1993) [Exhibit 282].

<sup>488</sup> Exhibit 227, Attachment 1. All financial information contained in the Declaration of Lee Johnson has been redacted for privacy purposes.

<sup>489</sup> *Ibid.*

<sup>490</sup> *National Post* (Oct. 22, 1994) [Exhibit 283].

<sup>491</sup> *Ibid.*

Property for \$8,000,000.<sup>492</sup>

Emperor Gold enters into a lease agreement with an option to purchase the sawmill property, which was effective March 10, 1994.<sup>493</sup>

- 1995:** To facilitate exploration of the Mine, Emperor Gold obtains an option to purchase the Brunswick mill site.<sup>494</sup>
- In October, the County approves the Final Environmental Impact Report on the proposed dewatering of the Mine.<sup>495</sup>
- 1996:** Nevada County approves Use Permit U94-017 for dewatering and underground exploration of the Idaho-Maryland Mine.<sup>496</sup> To this end, Emperor Gold conducts extensive grading activities.
- 1997:** Emperor Gold prepares evaluations and engineering studies for the purpose of bringing the mine into a 30-year production life with a 1,500 ton per day operation.<sup>497</sup> It also conducts collar inspection and tests at the shaft. The company changes its name to Emgold Mining Corporation.<sup>498</sup>
- During this year, the BET Group receives royalty and option payments.<sup>499</sup>
- 1998:** *The Sacramento Bee* reports Jack Clark, former underground superintendent at the Idaho-Maryland Mine at the Mine's closing in 1956, states, "There's a lot of gold underground. Probably as much underground as they mined."<sup>500</sup>
- 1999:** Emgold Mining Corporation's lease with an option to purchase the sawmill property from Sierra Pacific expires on December 31, 1999.<sup>501</sup>
- 2001:** The County grants an extension of Use Permit U94-017, which permits the dewatering of the Mine, to January 25, 2003.<sup>502</sup>
- 2002:** Emgold Mining Corporation renegotiates its mining lease and option to purchase agreement with the BET Group to now provide for an option to purchase the Vested Mine Property for \$4,35,000 with an expiration date of

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<sup>492</sup> Emgold Mining Corporation Consolidated Financial Statements (Dec. 31, 1999 and 1998) [Exhibit 284].

<sup>493</sup> Lease and Option to Purchase Agreement between Sierra Pacific Industries and Emperor Gold (U.S.) Corp. (Mar. 1994) [Exhibit 285].

<sup>494</sup> *Northern Miner* (Dec. 11, 1995) [Exhibit 286].

<sup>495</sup> *Ibid.*

<sup>496</sup> *Northern Miner* (Feb. 5, 1996) [Exhibit 287].

<sup>497</sup> *The Sacramento Bee* (Dec. 28, 1997) [Exhibit 288].

<sup>498</sup> Emgold Press Release (July 2, 1997) [Exhibit 289].

<sup>499</sup> Exhibit 227, Attachment 1. The payment amounts received have been redacted for privacy purposes.

<sup>500</sup> *The Sacramento Bee* (Jun. 18, 1998) [Exhibit 290].

<sup>501</sup> Exhibit 286.

<sup>502</sup> Letter from Nevada County Planning Commission to Scott A. Galatti (Mar. 28, 2001) [Exhibit 291].

May 31, 2007.<sup>503</sup>

- 2003:** Emgold Mining Corporation conducts exploration surface drilling,<sup>504</sup> and the Old Bohemia Mill is torn down.<sup>505</sup>  
Use Permit U94-017 allowing dewatering expires on January 25<sup>th</sup>.<sup>506</sup>
- 2004:** Emgold Mining Corporation conducts further exploration surface drilling<sup>507</sup> and applies for a conditional use permit from the City of Grass Valley to dewater the existing Mine workings and construct an access ramp for underground exploration and possible future staged mine production.<sup>508</sup>
- 2005** Beginning in December 2005, the City of Grass Valley conducts an environmental review of Emgold Mining Corporation’s conditional use permit application pursuant to the California Environmental Quality Act.<sup>509</sup>
- 2008:** In October 2008, the City of Grass Valley releases a Draft Environmental Impact Report for the Idaho-Maryland Project, which allows for mining operations to resume at the Mine.<sup>510</sup> However, the application is subsequently withdrawn.
- 2012:** 2012 is the last year the BET Group receives royalty or option payments for the Vested Mine Property.<sup>511</sup>
- 2013:** Emgold Mining Corporation’s lease and purchase agreement for the Vested Mine Property is allowed to expire.<sup>512</sup> Over the next few years, the Mine Property is advertised for sale as a “historic California gold mine.”<sup>513</sup> The BET Group stores drill core from Emgold’s exploration program in two large storage units.<sup>514</sup>
- 2017:** Rise Resources Inc. purchases the Vested Mine Property from the BET

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<sup>503</sup> Emgold Press Release (Jun. 5, 2002) [Exhibit 292]; Emgold Financial Statements for Year Ended Dec. 31, 2002 [Exhibit 293].

<sup>504</sup> Emgold Press Release (Jun. 17, 2004) [Exhibit 294].

<sup>505</sup> *The Union* (Apr. 4, 2003) [Exhibit 295].

<sup>506</sup> Exhibit 291.

<sup>507</sup> Emgold Press Release (July 21, 2004) [Exhibit 296].

<sup>508</sup> Emgold Press Release (Dec. 14, 2004) [Exhibit 297].

<sup>509</sup> See Emgold Press Release (Apr. 20, 2006) [Exhibit 298]; Emgold Press Release (Feb. 1, 2007) [Exhibit 299]; Emgold Press Release (Mar. 1, 2007) [Exhibit 300]; Emgold Press Release (Jun. 25, 2007) [Exhibit 301]; Emgold Press Release (Jan. 7, 2008) [Exhibit 302]; Emgold Press Release (Sept. 21, 2008) [Exhibit 303]; Emgold Press Release (Nov. 3, 2008) [Exhibit 304]; Emgold Press Release (Feb. 23, 2009) [Exhibit 305].

<sup>510</sup> Emgold Press Release (Nov. 3, 2008) [Exhibit 304].

<sup>511</sup> Exhibit 227.

<sup>512</sup> Emgold Financial Statements for Year Ended Dec. 31, 2012 [Exhibit 306].

<sup>513</sup> Historic California Gold Mine for Sale, MineListings.com – Mines for Sale (2015) (available at: <https://web.archive.org/web/20150117000302/https://minelistings.com/mines-for-sale/historic-idaho-maryland-gold-mine-for-sale/>) [Exhibit 307]; Exhibit 227.

<sup>514</sup> Exhibit 227.

Group for \$2,000,000 for the purpose of resuming mining and processing operations thereon.<sup>515</sup> Shortly thereafter, Rise Resources Inc. commences exploration drilling from the surface<sup>516</sup> and changes its name to Rise Gold Corp.<sup>517</sup>

- 2018:** Rise Gold Corp. continues extensive exploration drilling from the surface of the Vested Mine Property which “continues to be successful,”<sup>518</sup> and purchases the sawmill property from Sierra Pacific Industries for \$1,900,000 to facilitate “the exploration and future development of the Idaho-Maryland Gold Project.”<sup>519</sup>
- 2019:** After completing its exploration drilling program,<sup>520</sup> Rise Grass Valley Inc. applies to the County of Nevada for a use permit to re-open the Idaho-Maryland Mine, and is fully financed to complete the permitting process.<sup>521</sup>
- 2022:** The County of Nevada releases a favorable Draft Environmental Impact Report for the Idaho-Maryland Mine Project in December 2021,<sup>522</sup> and a Final Environmental Impact Report in December 2022.<sup>523</sup>
- 2023:** On May 11, 2023, the Nevada County Planning Commission recommends denial of the Idaho-Maryland Mine Project following a public hearing.<sup>524</sup>

#### IV. CONTROLLING LEGAL PRINCIPLES

##### A. Controlling Legal Principles

A vested mining right is a type of legal nonconforming use, and is a property right protected by the United States and California Constitutions. The right includes the ability to engage in mining activities notwithstanding changes in land-use regulations that might otherwise restrict or even prohibit that use. Vested property rights have been formally recognized in American law since the origin of zoning ordinances in the early twentieth century.<sup>525</sup>

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<sup>515</sup> Rise Resources Press Release (Jan. 25, 2017) [Exhibit 308].

<sup>516</sup> Rise Gold Corp. Press Release (Oct. 23, 2017) [Exhibit 309].

<sup>517</sup> Rise Gold Corp. Press Release (Apr. 7, 2017) [Exhibit 310].

<sup>518</sup> Rise Gold Corp. Press Release (Dec. 13, 2018) [Exhibit 311].

<sup>519</sup> Rise Gold Corp. Press Release (May 23, 2018) [Exhibit 312].

<sup>520</sup> Rise Gold Corp. Press Release (Jun. 28, 2019) [Exhibit 313].

<sup>521</sup> Rise Gold Corp. Press Release (Nov. 21, 2019) [Exhibit 314].

<sup>522</sup> Rise Gold Corp. Press Release (Jan. 4, 2022) [Exhibit 315].

<sup>523</sup> Rise Gold Corp. Press Release (Dec. 16, 2022) [Exhibit 316].

<sup>524</sup> Rise Gold Corp. Press Release (May 12, 2023) [Exhibit 317].

<sup>525</sup> See, e.g., *Village of Terrace Park v. Errett* (1926) 12 F.2d 239; *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 307; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558-559; *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686; *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651 [“Edmonds”]; *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121.

A vested mining right comes into being when a mining operation was begun before local zoning ordinances first required a permit to conduct the mining activity and continues after that requirement goes into effect. As stated by the California Supreme Court: “The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.”<sup>526</sup>

In recognition of this property right, the legislature exempted vested mining operations from the use permit requirements outlined in the Surface Mining and Reclamation Act (“SMARA”):<sup>527</sup>

*No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.*<sup>528</sup>

A vested right does not require the applicant prove that continuous mining activities have occurred from the vesting date to present. This is a common misapplication of the law provided in SMARA and runs counter to the precedent stated by the California Supreme Court in *Hansen Brothers*, discussed below. In fact, the applicant has no burden to prove mining operations have continued at all after the vesting date.

All environmental laws applicable to any other mining operation—whether for reclamation or the protection of water, air, species, and vegetation—apply to a vested mine, even though the requirement to obtain a use permit does not. Thus, for clarity, a determination of a vested mining right does not exempt the operator from SMARA’s requirement that the surface mining operation have and maintain an approved reclamation plan subject to the California Environmental Quality Act (CEQA) or financial assurances for planned reclamation.<sup>529</sup>

State law, pursuant to the Surface Mining and Reclamation Act, requires the County to hold a procedural public hearing to confirm vested mining rights.<sup>530</sup> A public hearing regarding vested

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<sup>526</sup> *Hansen Bros. Enterprises v. Nevada County* (1996) 12 Cal.4th 533, 552 [“*Hansen Brothers*”], citing *Edmonds, supra*, 40 Cal.2d at 651.

<sup>527</sup> Codified at Pub. Resources Code, § 2710 *et seq.*

<sup>528</sup> Pub. Resources Code § 2776; see also 59 Ops.Cal.Atty.Gen. 641, 644 (1977).

<sup>529</sup> See Pub. Res. Code § 2770, subds. (a), (b).

<sup>530</sup> See *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 625-626.

mining rights is a unique task because the Board of Supervisors is not being asked to make a discretionary land use decision. Rather, the Board of Supervisors' job is to review the facts presented. If the facts presented support the existence of the vested right by a preponderance of the evidence, then the Board of Supervisors must confirm the right. Under the preponderance of evidence standard, the burden of proof is met when the party with the burden, in this case, the Applicant, demonstrates to the fact finder that there is greater than a 50% chance the claim is true – in other words, it is more likely than not that a vested right has been established.<sup>531</sup>

The Board of Supervisors' role is thus like that of a panel of judges. It objectively examines the facts, and the facts then confirm and establish, by a preponderance of the evidence, the existence of the vested mining right itself. In that sense, a vested right is a mandatory action, and not a discretionary decision as with consideration of a use permit or a variance. Recognition of a vested right is required where the petitioner establishes that a mine was operating at the time local zoning ordinances first required a use permit for the mining activity.<sup>532</sup> In this sense, a vested right is unique from other types of land-use determinations.

A vested mining right determination is also unique in that standard nonconforming uses are generally limited in their ability to expand and change, but special constitutional rules have been developed for vested mining rights. These special rules came into being because a vested mining use, unlike other nonconforming uses, which usually operate uninterrupted within an existing structure or boundary, anticipate breaks in activity and extension into areas of the property that were not being used at the time a zone change caused the use to be nonconforming. Vested mining rights are, therefore, treated differently than other nonconforming uses. The California Supreme Court's 1996 decision in *Hansen Brothers* defined these special rules in terms of geographic scope, volumetric scope, and operational scope. Today, the *Hansen Brothers* decision remains the leading case in California and nationally on vested mining rights. The legal principles articulated by *Hansen Brothers*, as relevant here, are as follows:

### 1. Vesting Date

The “vesting date” is the date when the local land use regulations first required a use permit for mining operations. As stated by the court in *Hansen Brothers*, “[a] legal nonconforming use is one that existed lawfully before a zoning restriction became effective and that is not in conformity with the ordinance when it continues thereafter. The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use.”<sup>533</sup>

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<sup>531</sup> See *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1205; *People v. Rodriguez* (2021) 60 Cal.App.5th 995, 1003.

<sup>532</sup> See *Edwards, supra*, at 652-53 [distinguishing discretionary actions such as extension of a nonconforming use under specified guidelines and granting a variance].

<sup>533</sup> *Hansen Brothers, supra*, 12 Cal.4th at p. 540, fn. 1.

## 2. Scope of Vested Rights

The scope of a vested right includes its geographic scope, its operational scope, and its volumetric scope.

### a. *Geographic Scope*

As expressed by the California Supreme Court in the *Hansen Brothers* case, a vested mining operation may expand into portions of a tract of land that was not being mined on the vesting date if the record shows an “objective manifestation” of the operator’s intent to devote the entire area to the operation.<sup>534</sup> This is known as the “diminishing asset” doctrine.

The *Hansen Brothers* court’s adoption of the “diminishing asset” doctrine built on prior case law which had recognized that “[a]n entire tract is generally regarded as within the exception of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning law.”<sup>535</sup>

American Jurisprudence explains the policy underlying the “diminishing asset” doctrine as follows:

*Application of the general rule that a nonconforming use may not be extended to land not so used prior to the enactment of a restrictive zoning ordinance may work a singular hardship where the use in question involves the removal of natural products from the earth. For example, quarries are particularly vulnerable because, by their very nature, they begin on one spot and spread to additional ground as the mineral reserve is exhausted. Such diminishing-asset enterprises "use" all of the land contained in a particular asset, and as a practical matter, such use must begin at one spot and continue from there to the boundary of the land. Courts, therefore, have respected the unique character of such diminishing-asset uses by permitting them to expand onto adjacent land.*<sup>536</sup>

The California Supreme Court’s decision is consistent with the majority of jurisdictions that also recognize the “diminishing asset” doctrine.<sup>537</sup>

“Objective manifestations” of intent can be shown by evidence of, among other things:

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<sup>534</sup> *Hansen Brothers*, *supra*, 12 Cal.4th at 555-556.

<sup>535</sup> *McCaslin v. City of Monterey Park* (1958) 163 Cal.App2d 339, 349; *Hansen Brothers*, *supra*, 12 Cal.4th at 556 [“The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed.”]

<sup>536</sup> 83 Am. Jur. 2d Zoning and Planning § 569 (2104).

<sup>537</sup> See e.g., *Seherr-Thoss v. Teton County Bd. of County Comm’rs* (WY 2014) 329 P.3d 936; *Ready Mix, USA, LLC v. Jefferson County* (TN 2012) 380 S.W.3d 52; *J.L. Stordahl & Sons, Inc. v. Clark County* (WA 2008) 180 P.3d 848; *Romero v. Bd. of County Comm’rs* (NM 2006) 149 P. 3d 945.

- The substantial nature of the initial use;<sup>538</sup>
- Material stockpiling, haul roads, and supporting mining infrastructure; and<sup>539</sup>
- Site preparation, known mineral reserves, exploratory drilling, and mineral surveys.<sup>540</sup>

### **b. Operational Scope**

The California Supreme Court has made clear that a legal nonconforming use includes the right to “engage in uses normally incidental and auxiliary to the nonconforming use.”<sup>541</sup> A vested mining right includes all aspects of a mining operation that were “integral parts” of the operation at the time the use became nonconforming (i.e., the date on which the local land use regulations first required a use permit for mining operations), which includes mining, crushing, processing, trucking and transporting, selling mined materials, and all other “uses normally incidental and auxiliary to the nonconforming use.”<sup>542</sup> In addition, equipment associated with vested land uses may be updated and modernized, provided that the fundamental use remains the same.<sup>543</sup>

### **c. Volumetric Scope**

Mineral production, by its nature, fluctuates based on market demand. The California Supreme Court recognized this in the *Hansen Brothers* case, and concluded that an increase in production, alone, is not an expansion of the nonconforming use.<sup>544</sup> Indeed, the very nature of mining and mineral sales is dependent on seasonal and fluctuating market demand.<sup>545</sup> To illustrate this concept, the *Hansen Brothers* Court provided the following analogy, which is applicable in the context of gold mining:

*By way of example, we assume that a grocery store operating as a lawful, nonconforming use in an area of increasing population would not be restricted to the same number of customers and volume of business conducted when the zoning ordinance was enacted. Neither an increase in the number of patrons or in the volume of goods sold would be considered*

<sup>538</sup> *Hansen Brothers, supra*, 12 Cal.4th at 557; *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278, 285-286; *Sturgis v. Winnebago County Board of Adjustment* (1987) 141 Wis.2d 149, 154.

<sup>539</sup> See *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah.2d 329, 336; *Town of W. Greenwich v. A. Cardi Realty Associates* (R.I. 2001) 786 A.2d 354, 364; *Bainter v. Village of Algonquin* (1996) 285 Ill.App.3d 745, 752-753.

<sup>540</sup> See *Moore v. Bridgewater Township* (1961) 69 N.J.Super. 1, 15-16; *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 485; *Bainter v. Village of Algonquin, supra*, 285 Ill.App.3d 745; *Town of West Greenwich v. A. Cardi Realty Associates, supra* 786 A.2d at 364; *Ready Mix, USA, LLC v. Jefferson County* (Tenn. 2012) 380 S.W.3d 52.

<sup>541</sup> *Hansen Brothers, supra*, at 565.

<sup>542</sup> *Hansen Brothers, supra*, 12 Cal.4th at 542, 565.

<sup>543</sup> See *Endara v. Culver City* (1956) 140 Cal.App.2d 33, 38; see also *City of Ukiah v. County of Mendocino* (1988) 196 Cal.App.3d 47; *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339.

<sup>544</sup> *Hansen Brothers, supra*, 12 Cal.4th at 573.

<sup>545</sup> *Id.* at 570, fn. 28.



*an enlargement or intensification of the use. And where increased population creates an increased demand for the aggregate used in road construction, an increase in production to meet that demand would not be construed as an enlargement or intensification of the use.*<sup>546</sup>

## **B. Abandonment Under the Law**

Vested mining rights, as with all property rights, are protected by the federal and State Constitutions and run with the land.<sup>547</sup> The U.S. and California Supreme Courts have explicitly held that “[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”<sup>548</sup> Thus, “[t]he pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known right.”<sup>549</sup> The party alleging abandonment or waiver of a constitutional right – not the holder of such a right – bears the burden of proving that such a right has in fact been abandoned or waived.<sup>550</sup> As such, the bar for proving that a constitutional right has been abandoned or waived is high, and “is disfavored in the law.”<sup>551</sup>

Because they are constitutionally-protected property rights, vested mining rights can only be abandoned where the party asserting abandonment provides clear and convincing evidence of the property owner’s actual intent to abandon the vested mining right, ***and*** an overt act, or failure to act, demonstrating such an intention.<sup>552</sup> Absent clear and convincing evidence of both prongs of the test, the case must be resolved in favor of the landowner and the vested right.<sup>553</sup>

Merely suspending extraction and sale of material or selling the mining property is insufficient to prove the abandonment of a vested mining right. Again, the very nature of mining and sale is dependent on seasonal and fluctuating market demand.<sup>554</sup> It has long been recognized that mining property rights are not abandoned by a lapse of time, physical absence from the mine, or failure to extract or sell materials, absent other circumstances. Indeed, it is well known that mines may not be actively worked for decades, and that they are frequently purchased and reserved for the express purpose of working them in the future when other mines are exhausted

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<sup>546</sup> *Id.* at 573.

<sup>547</sup> *Hansen Brothers, supra*, 12 Cal.4th at 540, fn.1 [stating, “The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use. Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land.”].

<sup>548</sup> *Brady v. U.S.* (1970) 397 U.S. 742, 748.

<sup>549</sup> *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1320.

<sup>550</sup> See *Group Property, Inc. v. Bruce* (1952) 113 Cal.App.2d 549, 559.

<sup>551</sup> *Calvert v. County of Yuba* (2007) 145 Cal.App.4th 613, 628.

<sup>552</sup> *Hansen Brothers, supra*, 12 Cal.4th at 564, 569; *Pickens v. Johnson* (1951) 107 Cal.App.2d 778, 787.

<sup>553</sup> *Hansen Brothers, supra*, 12 Cal.4th at 564.

<sup>554</sup> Courts have found that in non-mining cases, the duration of non-use may be a factor in determining whether a use has been abandoned by the property owner. (see e.g. *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 286; *Union Quarries, Inc. v. Board of County Com’rs of Johnson County* (1970) 206 Kan. 268, 273). However, the California Supreme Court found that suspension of mining activity alone does not constitute abandonment of the vested use. (*Hansen Brothers, supra*, 12 Cal.4th at 570, fn. 28.)

or market conditions change, which may not be for a long period of time.<sup>555</sup> This is consistent with longstanding and immutable common law legal principles, since at least the early 19th Century.<sup>556</sup>

In sum, acquiring mineral reserves, monitoring the market, and strategic preparation for active mineral extraction, whether or not mining operations are currently being conducted, are fundamental components of a mining operation.<sup>557</sup>

Moreover, courts have determined that applying for and/or acquiring a use permit does not abandon or otherwise extinguish a vested right.<sup>558</sup> In *Goat Hill Tavern*, a restaurant owner operated his restaurant as a legal nonconforming use for over 35 years. In 1989, he obtained a use permit, the renewal for which was later denied, giving rise to the court case. The court determined that the issuance of the use permit did not affect the vested right.<sup>559</sup>

We next analyze the specific facts of the Mine Property under these controlling legal principles.

## V. ANALYSIS

The facts surrounding the Vested Mine Property are indisputable. The facts establish conclusively that mining operations at the Vested Mine Property began prior to the date the County's ordinance first required a use permit for commercial excavation of natural materials within 1,000 feet from any public road, continued both during and after the adoption of the use permit requirement, and demonstrate an objective manifestation of intent to devote the entire Vested Mine Property to the mining operation.

### A. Vesting Date

As previously discussed, the “vesting date” is the date on which the local land use regulations first required a use permit for mining operations.<sup>560</sup>

Here, the County approved Ordinance No. 196 on September 10, 1954, which became effective thirty days thereafter on October 10, 1954. Ordinance No. 196 required, for the first time, that an operator of a “commercial excavation of natural materials within a distance of 1,000 feet from any public street, road, or highway” obtain a land use permit to operate.<sup>561</sup> Accordingly, October 10, 1954, represents the “vesting date” against which vested mining rights must be tested. As demonstrated above, the Vested Mine Property operated before, during, and after the adoption of

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<sup>555</sup> 2 Lindley on Mines (3d ed. 1914) Abandonment and Forfeiture, § 644, p. 1603.

<sup>556</sup> E.g., *Seaman v. Vawdrey*, 16 Vesey, Jr., 390. High Court of Chancery, 1810.

<sup>557</sup> See *ibid.*

<sup>558</sup> See *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529.

<sup>559</sup> *Ibid.*

<sup>560</sup> *Hansen Brothers, supra*, 12 Cal.4th at p. 540, fn. 1.

<sup>561</sup> Ordinance No. 196, § 7 (1954).

Ordinance No. 196, firmly vesting the mining use, and creating the vested right to mine the Vested Mine Property.

As of the vesting date, the Vested Mine Property was located within 1,000 feet of multiple county roads, including East Bennett Road, Idaho Maryland Road, and Brunswick Road, as depicted in Exhibits 318<sup>562</sup> and 319.<sup>563</sup>

### **B. Scope of Vested Right**

As discussed under the controlling legal principles, the scope of a vested mining right includes its geographic scope, its operational scope, and its volumetric scope.

With respect to the geographic scope, the “diminishing asset” doctrine permits a vested mining operation to expand across and below a tract of land even if it was not entirely disturbed or fully explored by mining operations on the vesting date if there were “objective manifestations” of the operator’s intent to devote the entire tract to the mining use as of the vesting date.<sup>564</sup> The existence of actual mining operations, including shafts, mineral reservations, and attendant surface work, is the best possible objective evidence of intent to mine a given parcel.<sup>565</sup>

With respect to the operational scope, a vested mining right includes the underground areas mined or contemplated to be mined in the future, as well as the right to “engage in uses normally incidental and auxiliary to the nonconforming use.”<sup>566</sup> SMARA defines surface mining operations as:

*[A]ll, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:*

- (a) Inplace distillation or retorting or leaching.*
- (b) The production and disposal of mining waste.*
- (c) Prospecting and exploratory activities.*<sup>567</sup>

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<sup>562</sup> Data from Road Commissioners Office, Nevada County (1955) [Exhibit 318].

<sup>563</sup> County Surveyor Map (June 22, 1955) [Exhibit 319].

<sup>564</sup> *Hansen Brothers, supra*, 12 Cal.4th at 555-556.

<sup>565</sup> *Id.* at 556.

<sup>566</sup> *Id.* at 565.

<sup>567</sup> Pub. Resources Code § 2735.

Under this principle, the mine in *Hansen Brothers* included all aspects of mining that were part of its mining business, including in-stream sand and gravel mining, hillside hardrock mining, as well as use of a rock crushing plant, sawmill, and structures necessary or incidental thereto.<sup>568</sup>

Lastly, with respect to the volumetric scope, increases in production to serve market demand are part of the vested right itself and do not represent an expansion of use: “[T]he general rule appears to be that an increase in business volume alone is not an expansion of a non-conforming use ....”<sup>569</sup> Indeed, the very nature of mining and sales is subject to market fluctuation.<sup>570</sup>

We analyze each component of the scope of the Vested Mine Property’s vested mining right in turn.

### 1. Geographic Scope

As discussed below, the entirety of the Vested Mine Property is vested. As articulated by the California Supreme Court in *Hansen Brothers*, the geographic scope of a vested right consists of the entire area intended by the operator to be devoted to mining.<sup>571</sup> Further, the geographic scope of a vested mining right is not static, but may instead expand into portions of a tract of land that was not actively mined on the vesting date if the record shows an “objective manifestation” of the operator’s intent to devote the entire area to the operation.<sup>572</sup> Objective manifestation of intent is demonstrated by: (1) the “substantial nature of the initial use;”<sup>573</sup> (2) material stockpiling, haul roads, and supporting mining infrastructure;<sup>574</sup> and (3) site preparation, known mineral reserves, exploratory drilling, and mineral surveys.<sup>575</sup> Here, there is substantial evidence to support a clear objective manifestation of intent applicable to both the surface and mineral estate.

The Vested Mine Property’s well-documented history establishes by a preponderance of the evidence that Rise and its predecessors exhibited the requisite objective manifestation of intent to mine the entirety of the Vested Mine Property both above ground and below ground. As discussed in greater detail below, the geographic scope of the vested area is comprised of both the surface and subsurface estate, all of which were under common ownership by 1941 and the surface was used for the primary purpose of supporting subsurface gold mining operations. The vested mining area of the Vested Mine Property includes two components: (1) the surface of the

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<sup>568</sup> *Hansen Brothers*, *supra*, 12 Cal.4th at 566.

<sup>569</sup> *Id.* at 573.

<sup>570</sup> *Id.* at 570, fn. 28.

<sup>571</sup> See *id.* at 555-556.

<sup>572</sup> *Ibid.*

<sup>573</sup> *Id.* at 557; *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278, 285-286; *Sturgis v. Winnebago County Board of Adjustment* (1987) 141 Wis.2d 149, 154.

<sup>574</sup> See *Gibbons*, *supra*, 19 Utah.2d at 336; *Town of W. Greenwich*, *supra*, 786 A.2d at 364; *Bainter v. Village of Algonquin*, *supra*, 285 Ill.App.3d at 752-753.

<sup>575</sup> *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 485; *Bainter v. Village of Algonquin*, *supra*, 285 Ill.App.3d 745; *Town of West Greenwich v. A. Cardi Realty Associates*, *supra* 786 A.2d at 364; *Ready Mix, USA, LLC v. Jefferson County* (2012) 380 S.W.3d 52.)

Vested Mine Property, which includes the Brunswick Industrial Site and the Centennial Industrial Site; and (2) and the subsurface of the Vested Mine Property, which consists of established mine tunnels and the untapped mineral estate into which mining will expand as mining progresses in the future.

Since mining first commenced on the Mine Property, the operators' manifestations of intent to continue mining the Mine Property have never wavered, from inception to the present date. This storied history of the expansive underground workings of one the largest gold mining operations in California, establishes without question that the mineral rights of the Vested Mine Property were vested as of 1954. Rise now holds the property assembled in 1941 encompassed within this vested rights petition. Therefore, as a matter of law, Rise is entitled to engage in mining operations throughout the whole of the Vested Mine Property pursuant to the California Supreme Court's holding in *Hanson Brothers*, as mineral rights that have been vested necessarily encompass, "without limitation or restriction" the entirety of the Vested Mine Property due to the nature of mining as an extractive enterprise under the diminishing assets doctrine.<sup>576</sup>

Consistent with the principles articulated by the California Supreme Court, evidence of Rise and its predecessors' objective manifestations of intent to mine the entirety of the Vested Mine Property include actual mining activity, the historic mining use, material hauling and stockpiling, access and haul roads, exploratory roads, underground workings and supporting infrastructure, site preparation, and the known understanding of mineral reserves. Each are discussed in further detail below.

*a. The Subsurface Mine Workings and the Entire Mineral Estate of the Vested Mine Property are Vested.*

The quality and value of the Vested Mine Property and surrounding area's mineral reserves was commonly known and objectively demonstrated well before the vesting date. Mining operations at the Vested Mine Property commenced in the mid-1800's at multiple small-scale mines,<sup>577</sup> which were eventually expanded and consolidated into a single mining operation now referred to as the Idaho Maryland Mine. Since mining operations first commenced in 1851 at the Union Hill Mine, located on a portion of the Vested Mine Property now referred to as the Brunswick Industrial Site, the subsurface of the Vested Mine Property has been mined via tunneling in an effort to locate valuable gold veins. This subsurface tunnelling within the Mine Property was conducted at multiple mines located on the Vested Mine Property, and continued after all of these mines were consolidated into the Vested Mine Property.

Once the Vested Mine Property became fully consolidated,<sup>578</sup> the property owners evidenced their intent to mine the entire mineral estate by conducting aggressive and extensive exploration

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<sup>576</sup> See *Hansen Brothers, supra*, 12 Cal.4th at 556.

<sup>577</sup> See Map of Gold Blossom Mine (1925) [Exhibit 320]; See also Map of Brunswick Mine (1925) [Exhibit 321]; Map of Idaho Maryland Mine No. 2 Shaft Surface (1936) [Exhibit 322]; Exhibits 6, 8, 10, 14, 15, 41.

<sup>578</sup> See Map of Brunswick Industrial Site (1947) [Exhibit 323]; Map of Centennial Industrial Site (1947) [Exhibit 324]; Topographical Map of Brunswick Industrial Site (1949) [Exhibit 325]; Topographical Map of Centennial Industrial Site (1949)

into the unexplored areas of Mitchell Ranch and Loma Rica. This included development of the Mitchell Crosscut from 1933 to 1935, which was driven from the Brunswick Mine north into the Mitchell Ranch mineral rights area.<sup>579</sup> The 1100-8 Crosscut was another significant development which was driven from the Brunswick Mine north-east into the Loma Rica mineral rights area from 1938 to 1941.<sup>580</sup>

Also in furtherance of this intent, surface exploration core drilling was conducted in areas remote from the central mining operations. For example, surface exploration was conducted and re-opening commenced of two tunnels on the eastern part of the Mine Property: the Hooper and the Yellow Rose tunnels, both of which had been closed “for some time.”<sup>581</sup>

The California Supreme Court contemplated that all areas actively mined within a vested mine property (i.e., existing tunnels) are unquestionably vested.<sup>582</sup> However, the extent of the subsurface vested area is not limited to just those areas that have been or are currently being mined, but also extend to those areas that can be reasonably expected to be mined as a natural and expected progression of mining. Given that this is a subsurface mine that is intended to expand outward and downward in search of valuable gold veins, the scope of the subsurface vested right also encompasses the entirety of the mineral estate owned by Rise, and any mineral reservations, which were also owned by Rise’s predecessors at the 1954 vesting date, as it is anticipated that these areas will be mined in the future.

*b. The Entire Surface of the Vested Mine Property is Vested as it has Been and will Again be Used for Mining Purposes.*

Like the subsurface estate, the surface of the Vested Mine Property is vested as there was a clear manifestation of intent to utilize the entirety of the surface to support subsurface gold mining operations. As articulated in *Hansen Brothers*, a manifestation of intent can be demonstrated by, among other things, the substantial nature of the initial use;<sup>583</sup> material stockpiling, haul roads, and supporting mining infrastructure;<sup>584</sup> and site preparation, known mineral reserves,

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[**Exhibit 326**]; Topographical Map of Centennial Industrial Site (1950) [**Exhibit 327**]; Property Map of Idaho Maryland Mines Corp. (ca. 1950) [**Exhibit 328**]; Topographical Map of Idaho Mine Area (1950) [**Exhibit 329**]; Aerial Map of Brunswick Industrial Site (1952) [**Exhibit 330**]; Aerial Map of Centennial Industrial Site (1952) [**Exhibit 331**].

<sup>579</sup> Exhibit 112; Mine Development Report (Apr. 1936) [**Exhibit 332**]; Overview of Vested Area Showing Underground Mine and Exploration, Rise Grass Valley Inc. (2023) [**Exhibit 333**].

<sup>580</sup> Exhibits 140, 150, 333.

<sup>581</sup> Geologic Summary of Mine Development (Sept. 1941) [**Exhibit 334**]; Exhibit 333; See Letter from Idaho Maryland Mines Corporation to E.L. Oliver (May 24, 1950) [**Exhibit 335**]; Letter from Idaho Maryland Mines to Carlton D. Hulin (Aug. 5, 1949) [**Exhibit 336**].

<sup>582</sup> See *Hansen Brothers*, *supra*, 12 Cal.4th at 552.

<sup>583</sup> *Hansen Brothers*, *supra*, 12 Cal.4th at 557; *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278, 285-286; *Sturgis v. Winnebago County Board of Adjustment* (1987) 141 Wis.2d 149, 154.

<sup>584</sup> See *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah.2d 329, 336; *Town of W. Greenwich v. A. Cardi Realty Associates* (R.I. 2001) 786 A.2d 354, 364; *Bainter v. Village of Algonquin* (1996) 285 Ill.App.3d 745, 752-753.

exploratory drilling, and mineral surveys.<sup>585</sup> As noted above, the Vested Mine Property's surface consisted of two separate sites: the Brunswick Industrial Site and the Centennial Industrial Site. There are clear manifestations of intent to continue the use of both sites to support subsurface mining operations at the vesting date.

With regard to the Brunswick Industrial Site, objective manifestations of intent are demonstrated by the substantial nature of the initial use, i.e., the past operators' actual or intended use of the site. This factor is clearly met, as entrances to the underground tunnels and workings, buildings, workers corridors, power lines, heavy equipment, offices, and processing infrastructure were all located on the Brunswick Industrial Site, directly supporting underground operations.<sup>586</sup>

Additional evidence supports the objective manifestation of intent, including the use of the Brunswick Industrial Site for material stockpiling, haul roads, and supporting mining infrastructure. This is illustrated by the northern portion of the Brunswick Industrial Site's instrumental role in mining operations as the location of the historic sawmill, and surrounding forested areas, which provided a key source of timber and location for timber processing necessary to fuel mining operations. In fact, the construction of railroad tracks built in part for the purpose of transporting large quantities of wood to operate the steam boilers at the Idaho Maryland Mine ran through this portion of the Vested Mine Property.<sup>587</sup>

Aerial photographs beginning in 1938 clearly depict a gradual increase in mining operations at the Brunswick Industrial Site, consistent with expected expansions of vested mining operations.<sup>588</sup> By 1947, an extensive network of roads and various buildings had been constructed on the Vested Mine Property for the purpose of supporting mining operations.<sup>589</sup> New roads and clearings are visible on the southernmost portion of the Brunswick Industrial Site, physically indicating an intent to use this entire property to the extent of its current border at least as of 1952.<sup>590</sup> Even after the suspension of gold extraction in 1956 due to the static low price of gold,<sup>591</sup> mining operations are still visible at the Brunswick Industrial Site, including tree clearing to fuel the Brunswick sawmill.<sup>592</sup> As mentioned above, the sawmill was originally

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<sup>585</sup> See *Moore v. Bridgewater Township* (1961) 69 N.J.Super. 1, 15-16; *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 485; *Bainter v. Village of Algonquin*, *supra*, 285 Ill.App.3d 745; *Town of West Greenwich v. A. Cardi Realty Associates*, *supra* 786 A.2d at 364; *Ready Mix, USA, LLC v. Jefferson County* (2012) 380 S.W.3d 52.

<sup>586</sup> Exhibit 44, 52-53, 60.

<sup>587</sup> Clark at pp. 20-21.

<sup>588</sup> Aerial Photograph of Idaho-Maryland Mine (1938).

<sup>589</sup> Clark 172, 177-178, 190-193, 216; Exhibits 145, 146, 147, 152, 153, 154, 159, 161, 162, 334; Geologic Summary of Mine Development (Nov. 1941) [Exhibit 337]; See Letter from Idaho Maryland Mines Corporation to William Oliver (Aug. 22, 1949) [Exhibit 338].

<sup>590</sup> Exhibit 330.

<sup>591</sup> Exhibit 58.

<sup>592</sup> Exhibits 181, 182, 183, 184; See Aerial Map of Brunswick Industrial Site (1973) [Exhibit 339]; Topographical Map of Centennial Industrial Site (1973) [Exhibit 340]; Topographical Map of Brunswick Industrial Site (1973) [Exhibit 341]; Overview of Vested Area (1976) [Exhibit 342]; Map of Centennial Industrial Site (1978) [Exhibit 343]; Aerial Map of Centennial Industrial Site (1984) [Exhibit 344]; Aerial Map of Brunswick Industrial Site (1984) [Exhibit 345]; Map of Brunswick Industrial Site (1987) [Exhibit 346]; Topographical Map of Centennial Industrial Site (1995) [Exhibit 347]; Topographical Map of Brunswick Industrial Site (1995) [Exhibit 348]; Topographical Map of Centennial Industrial Site (1998)

constructed for the exclusive use and benefit of mining operations, and continued to operate during the 1960's and 1970's pursuant to Use Permits U58-15, U64-30, and U64-31.<sup>593</sup> Finally, exploratory trenching, tunnels, drilling and mineral surveys were conducted on the Brunswick Industrial Site continuously throughout the last century through to the present.<sup>594</sup>

The Centennial Industrial Site, also clearly meets the three elements of objective manifestations of intent discussed above, that is: (1) the "substantial nature of the initial use,"<sup>595</sup> (2) material stockpiling, haul roads, and supporting mining infrastructure;<sup>596</sup> and (3) site preparation, known mineral reserves, exploratory drilling, and mineral surveys.<sup>597</sup> Not only was the Idaho Mine shaft located on the south eastern area of the Centennial Industrial Site, but the Centennial Industrial Site was also directly utilized to support underground mining operations, primarily for the purpose of storing mine tailings and waste from the Brunswick Industrial Site.<sup>598</sup> The Centennial Industrial Site's "substantial nature of the initial use" is therefore indisputable, as mine tailings and storage areas were integral and necessary to mining operations. This use is also intertwined with the second and third prongs required to indicate a showing of objective manifestation of intent, as storage of mine tailings definitionally qualifies as both "material stockpiling" and "site preparation" and provides support to other mining infrastructure. Without a tailings storage and waste area, mining operations cannot take place.

Turning to the present, mine-related activities and disturbance areas are still evident on the Vested Mine Property, at both the Brunswick and Centennial Industrial sites, with visible areas of disturbance. Taken together, these facts support a finding of vested mining right across the entire 175 surface-acre and 2,560 subsurface-acre Vested Mine Property.

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[**Exhibit 349**]; Aerial Map of Centennial Industrial Site (1998) [**Exhibit 350**]; Aerial Map of Brunswick Industrial Site (1998) [**Exhibit 351**]; Historical Topographical Map of Brunswick Industrial Site (1998, 2000) [**Exhibit 352**]; Aerial Map of Centennial Industrial Site (2006) [**Exhibit 353**]; Aerial Map of Brunswick Industrial Site (2006) [**Exhibit 354**]; Aerial Map of Brunswick Industrial Site (2009) [**Exhibit 355**]; Aerial Map of Centennial Industrial Site (2009) [**Exhibit 356**]; Aerial Map of Centennial Industrial Site (2012) [**Exhibit 357**]; Aerial Map of Brunswick Industrial Site (2012) [**Exhibit 358**]; Historical Topographical Map of Brunswick Industrial Site (2012) [**Exhibit 359**]; Historical Topographical Map of Centennial Industrial Site (2012) [**Exhibit 360**]; Historical Topographical Map of Centennial Site (2015) [**Exhibit 361**]; Aerial Map of Brunswick Industrial Site (2016) [**Exhibit 362**]; Aerial Map of Centennial Industrial Site (2016) [**Exhibit 363**]; Historical Topographical Map of Centennial Industrial Site (2018) [**Exhibit 364**]; Aerial Map of Centennial Industrial Site (2020) [**Exhibit 365**].

<sup>593</sup> Nevada County Board of Supervisors' Minutes (May 10, 2005) [**Exhibit 366**].

<sup>594</sup> Exhibits 57, 279, 286, 314; See Exhibits 298, 333; Emgold Press Release (Feb. 12, 2003) [**Exhibit 367**]; Emgold Press Release (Apr. 15, 2003) [**Exhibit 368**]; Emgold Press Release (Sept. 16, 2003) [**Exhibit 369**]; Emgold Press Release (Mar. 31, 2004) [**Exhibit 370**]; Emgold Press Release (Nov. 23, 2004) [**Exhibit 371**].

<sup>595</sup> *Hansen Brothers, supra*, 12 Cal.4th at 557; *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278, 285-286; *Sturgis v. Winnebago County Board of Adjustment* (1987) 141 Wis.2d 149, 154.

<sup>596</sup> See *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah.2d 329, 336; *Town of W. Greenwich v. A. Cardi Realty Associates* (R.I. 2001) 786 A.2d 354, 364; *Bainter v. Village of Algonquin* (1996) 285 Ill.App.3d 745, 752-753.)

<sup>597</sup> *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 485; *Bainter v. Village of Algonquin, supra*, 285 Ill.App.3d 745; *Town of West Greenwich v. A. Cardi Realty Associates, supra* 786 A.2d at 364; *Ready Mix, USA, LLC v. Jefferson County* (2012) 380 S.W.3d 52.)

<sup>598</sup> Exhibits 218, 230.



## 2. Operational Scope

As discussed above, a vested mining right includes the right to “engage in uses normally incidental and auxiliary to the nonconforming use.”<sup>599</sup> Under this principle, the mine operator is entitled to continue all aspects of mining operations that were historically part of the mining business, including quarrying and mining, processing, material sales, and the use of all structures necessary or incidental thereto.<sup>600</sup>

As outlined in Section III, *supra*, mining on the Vested Mine Property commenced in 1851. Equipment used at the Mine during the mid-to-late 1800’s consisted of an arrastra,<sup>601</sup> multiple ten-to-thirty stamp mills,<sup>602</sup> extensive hoisting and pumping equipment,<sup>603</sup> and headframes,<sup>604</sup> consistent with the technology and equipment used at that time. In 1879, the Mine Property had a surface plant<sup>605</sup> and equipment ranked among the best across the entire mining industry.<sup>606</sup> Beginning in the early 1900’s, mining equipment was gradually updated as more modern equipment and tools came into use.<sup>607</sup>

By the 1920’s, the various small-scale mines in the immediate area, with the exception of the Mitchell and Loma Rica Ranches, and the mineral estate acquired from California Lands Inc. / California Fruit Company, had been consolidated into what was known as the Idaho-Maryland Mine.<sup>608</sup> The Mine was equipped with a new surface plant and tailings impoundment dam with a capacity of 1,400,00 cubic yards of tailings,<sup>609</sup> new power lines,<sup>610</sup> 20-drill compressor, pumps able to handle 700 gallons of water per minute, power drills of various types, and machine and blacksmith shops.<sup>611</sup> It also featured various offices, including assaying and mine offices, and a superintendents’ quarters.<sup>612</sup> The stamp mill is reported to operate for 16 hours per day, with an increase to 24 hours “to be expected.”<sup>613</sup>

It is important to note that a mine’s operational scope is not limited only to the mining equipment noted above, but also includes uses ancillary to the mining operation, including the Mine Property’s sawmill. By 1921, the Mine had a sawmill, which was originally built to supply lumber to the mining operation and which came to be known as the Idaho-Maryland sawmill.<sup>614</sup>

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<sup>599</sup> *Hansen Brothers, supra*, 12 Cal.4th at 565.

<sup>600</sup> See *id.* at 566.

<sup>601</sup> Macboyle 166.

<sup>602</sup> Clark 5, 14, 20, 26; Lindgren 231

<sup>603</sup> Clark 56, 58, 59; Bean 221.

<sup>604</sup> Clark 20

<sup>605</sup> A surface plant usually consists of headframes, conveyors, mine buildings, loading bins, ore cars, stock piles, and elevated tracks.

<sup>606</sup> Clark 28; Exhibit 19.

<sup>607</sup> See Clark 76, 142, 144; also see Exhibit 60.

<sup>608</sup> Exhibits 65, 66.

<sup>609</sup> Exhibit 73.

<sup>610</sup> Exhibit 44.

<sup>611</sup> Exhibit 60.

<sup>612</sup> *Ibid.*

<sup>613</sup> Exhibit 81.

<sup>614</sup> Exhibit 74.

John Fulton, the manager of the Mine, stated that he was confident “the property will be on a self-sustaining basis before the end of 1923.”<sup>615</sup> Thus, the sawmill was, at the time of its construction, an auxiliary use of the Mine Property, with the purpose of facilitating the mining operation.

In the 1930’s, improvements and electrical equipment upgrades continued the modernization of the mine property and operation. For example, a new steel headframe was erected, a cyanide leaching and flotation plant for tailings treatment was constructed, with provisions made for increasing the capacity to 600 tons per day.<sup>616</sup> New service garages, employee parking garages, and a new engineering office with a concrete vault to protect mine maps were built.<sup>617</sup> It was even reported that ore bins for the mill were “supplied by trucks which will roll over a strong runway, taking off of the brow of the hill, to the east of the milling plant to the bin hoppers.”<sup>618</sup> By the late 1930’s, the Mine featured an overhead tram to the mill,<sup>619</sup> as well as a crushing plant and at least one skip.<sup>620</sup>

Significant improvements to Mine facilities were continually made throughout the 1940’s. A new 145-foot headframe, was installed with two new electric hoists facilitating deeper operations. A compressor building was constructed to house two new compressors, and a concrete silo was also built at this time.<sup>621</sup> Other improvements to on-site buildings were made, including construction of a hoist building made of steel, enlargement of the two-story dry building to accommodate 400 miners with showers and lavatories, greater heating and boiler space, and increased office space.<sup>622</sup> As of October 1942, onsite facilities included machine shops, electric shops, welding shops, a blacksmith shop, a carpenter shop, cyanidation plant and smelting plant, a sawmill and other mills, automotive shops, and all other necessary equipment to carry out mining and servicing of the underground workings and the extraction of gold from the orebodies.<sup>623</sup> The Mine also continued operating the cyanidation plant and sawmill. This decade also saw a new state-of-the-art crushing plant built, featuring a belt conveyor to feed the ore to the plant and a water spray and dust collection system for dust control.<sup>624</sup>

These important improvements significantly increased production at the Mine. For example, the new capacity of the completed New Brunswick headframe, crusher plant, hoist, and compressor building was reported to be 2,000 tons of ore daily from depths as low as 5,000 feet below surface.<sup>625</sup> The mining operation sold waste rock to third parties,<sup>626</sup> transported and stored

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<sup>615</sup> *Ibid.*

<sup>616</sup> Exhibit 115.

<sup>617</sup> Clark 144.

<sup>618</sup> Exhibit 116.

<sup>619</sup> Exhibit 120.

<sup>620</sup> Exhibits 132, 133, 134.

<sup>621</sup> Exhibits 146, 147; Clark 192-193.

<sup>622</sup> Clark 177-178.

<sup>623</sup> Batchelor, Thomas. Cases Decided in the United States Court of Claims, Feb. 1, 1956 to Apr. 30, 1956 (1956) [**Exhibit 372**]; See Fire Protection Map of Mine Surface Plant (1942) [**Exhibit 373**]; See Fire Protection Map of Idaho Surface Plant (1942) [**Exhibit 374**].

<sup>624</sup> *Ibid.*

<sup>625</sup> Exhibit 154.

explosives,<sup>627</sup> and trucked materials on public roads.<sup>628</sup> Mineral processing equipment included pan feeders, belt conveyors, screens, jaw crushers, gyratory crushers, ore bins, drum feeders, screw classifiers, ball mills, table concentrators, amalgamators, flotation cells, thickeners, and filter presses.<sup>629</sup> In the late 1940's and 1950's, further improvements to the Mine Property were less aggressive due to a lack of financing, falling revenues, and the stagnated price of gold caused in large part by World War II.<sup>630</sup>

In 1946, a second sawmill was constructed on the Vested Mine Property “to cut timber for the mine” and was known as the Brunswick sawmill.<sup>631</sup> Both sawmills operated throughout the 1940's, and were reported as cutting about 60,000 feet of pine lumber daily.<sup>632</sup> In the late 1940's, the Idaho Maryland Mines Corporation contemplated upgrading at least one of the sawmills with a burner and rubber liner.<sup>633</sup> By 1957, only one mill was referenced and reported in the corporate documents – the Brunswick sawmill – which underlying property was sold to and operated by various parties until Rise Gold Corporation purchased it in 2018 for \$1,900,000 to facilitate “the exploration and future development of the Idaho-Maryland Gold Project.”<sup>634</sup> This sawmill was originally built by the Idaho Maryland Mines Corporation to support mine operations, and is firmly a part of the vested right as an ancillary use.

Further, and as outlined by the *Hansen Brothers* decision, roadways are an integral part of a mining operations, and were utilized to transport mined materials from the Vested Mine Property to market, and to bring tools and supplies to the site. These roadways, internal and external to the Property, were easily observed in aerial photographs taken in the 1930's through the 1980's.<sup>635</sup> In the 1930's, the roads were improved assuming “much greater travel than heretofore with the

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<sup>626</sup> Letter from Idaho Maryland Mines Corporation to David Maltman (Jan. 9, 1950) [Exhibit 375]; See Letter from Idaho Maryland Mines Corporation to Nevada City Highway (Oct. 23, 1950) [Exhibit 376].

<sup>627</sup> Letter from Idaho Maryland Mines Corporation to Hercules Powder Company (Feb. 20, 1947) [Exhibit 377]; Letter from Idaho Maryland Mines Corporation to Hercules Powder Company (Jan. 31, 1949) [Exhibit 378].

<sup>628</sup> Letter from Neil O'Donnell to E.L. Oliver (Jul. 5, 1950) [Exhibit 379].

<sup>629</sup> Brunswick Mill Flowsheet (1954) [Exhibit 380].

<sup>630</sup> Clark 191-193, 246, 248; Exhibits 176, 178, 186, 209; see also Letter from Idaho Maryland Mines Corporation to James A. White (May 27, 1947) [Exhibit 381]; See also Letter from Idaho Maryland Mines to Robert E. Rust (May 1, 1950) [Exhibit 382]; Letter from Idaho Maryland Mines Corporation to U.S. Department of the Interior (June 26, 1950) [Exhibit 383]; Letter from Idaho Maryland Mines Corporation to William. Oliver (Aug. 9, 1950) [Exhibit 384]; Letter from Idaho Maryland Mines Corporation to Day Mines Inc. (Oct. 7, 1950) [Exhibit 385]; Inter-Office Correspondence, Idaho Maryland Mines Corporation (June 1, 1950) [Exhibit 429].

<sup>631</sup> Exhibits 159, 162, 380; See Letter from Idaho Maryland Mines Corporation to Grass Valley Lumber Company (Oct. 14, 1947) [Exhibit 386].

<sup>632</sup> Letter from Idaho Maryland Mines Corporation to Wood Products Company (Jan. 21, 1947) [Exhibit 387].

<sup>633</sup> Letter from Idaho Maryland Mines Corporation to Placerville Lumber Company (Feb. 28, 1947) [Exhibit 388]; See also Exhibit 379.

<sup>634</sup> Exhibit 312; See Letter from Idaho Maryland Mines Corporation to American Lumber and Treating Company (Jan. 16, 1950) [Exhibit 389]; Plan of Sawmill Area (1950) [Exhibit 390]; Letter from Idaho Maryland Mines Corporation to Bishop Concentrate and Cleaning Co. (Jan. 8, 1951) [Exhibit 391]; *The Press Tribune* (Nov. 22, 1991) [Exhibit 392]; Grant Deed from Sum-Gold Corporation Inc. to Yuba River Lumber Company (Apr. 1960) [Exhibit 424]; Letter from Idaho Maryland Mines Corporation to Fred Henderson (Dec. 17, 1948) [Exhibit 428].

<sup>635</sup> Exhibits 137, 323, 330; Aerial Photograph of Brunswick Site (1939) [Exhibit 393]; Aerial Photograph of Centennial Site (1939) [Exhibit 394]; Aerial Photograph of Brunswick Site (1962) [Exhibit 395]; Aerial Photograph of Centennial Industrial Site (1962) [Exhibit 396]; Aerial Photograph of Brunswick Site (1975) [Exhibit 397]; Aerial Photograph of Brunswick Site (1987) [Exhibit 398]; Aerial Photograph of Centennial Industrial Site (1947) [Exhibit 399]; Aerial Photograph of Centennial Industrial Site (1952) [Exhibit 400]; Aerial Photograph of Centennial Industrial Site (1957) [Exhibit 401]; Aerial Photograph of Centennial Industrial Site (1978) [Exhibit 402]; Aerial Photograph of Centennial Industrial Site (1984) [Exhibit 403].

reopening on a large scale of the Brunswick properties.”<sup>636</sup> The roads are used for mine access,<sup>637</sup> as well as the export and import of ore, aggregate materials,<sup>638</sup> and lumber.<sup>639</sup>

Collectively, these facts demonstrate that, at the time the mining right vested in 1954, mining uses at the Vested Mine Property consisted of those operations and equipment typically used in traditional gold mining operations, including mining and processing of gold, transportation and hauling of mined materials off-site, and all other equipment necessary for those uses, including a sawmill to provide lumber for use at the Vested Mine Property. Consistent with California court cases holding that equipment associated with vested land uses can be updated and modernized,<sup>640</sup> operators at the Mine have periodically updated and modernized mining equipment after mining operations first commenced on the Vested Mine Property, including upgrading the types of extraction equipment used and modernizing processing equipment and facilities, all of which was necessary to accommodate the amount of materials mined, processed, and sold from the Vested Mine Property.

### 3. Volumetric Scope

As previously discussed, increases in production to serve market demand are part of the vested right itself and do not constitute an expansion of use.<sup>641</sup> The very nature of mining and sales is subject to market fluctuation.<sup>642</sup>

Here, gold production at the Idaho-Maryland Mine increased and decreased dependent upon market fluctuation.<sup>643</sup> It reached peak production in 1939. During that year, the Mine completed 42,356 feet of new tunnels producing a significant volume of waste rock, and gleaned approximately 115,001 ounces of gold,<sup>644</sup> with a total annual production of 410,411 tons –

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<sup>636</sup> Exhibit 119.

<sup>637</sup> *Ibid.*

<sup>638</sup> Exhibits 3, 66, 186, 259, 260.

<sup>639</sup> Letter from Neil O’Donnell to E.L. Oliver (Oct. 31, 1949) [Exhibit 404]; Exhibit 386.

<sup>640</sup> See, e.g., *Endara v. Culver City* (1956) 140 Cal.App.2d 33, 38; *City of Ukiah v. County of Mendocino* (1988) 196 Cal.App.3d 47; *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339.

<sup>641</sup> *Hansen Brothers, supra*, 12 Cal.4th at 573.

<sup>642</sup> *Id.* at 570, fn. 28.

<sup>643</sup> See Exhibits 34, 332, 334, 337; Letter to Errol Macboyle Regarding Estimates for the Year 1936-1937 (Oct. 31, 1936) [Exhibit 405]; Report on Idaho Maryland Magnesium Process and Summary (Sept. 26, 1944) [Exhibit 406]; Report on Geology and Structure (Aug. 1948) [Exhibit 407]; *The Los Angeles Times* (Apr. 18, 1949) [Exhibit 408]; Letter from Idaho Maryland Mines to Edwin Oliver (Aug. 15, 1949) [Exhibit 409]; Idaho Maryland Mines Corporation Mill Report (1950) [Exhibit 410]; Letter from Idaho Maryland Mines Corporation to Ted Schwartz (Oct. 23, 1950) [Exhibit 376]; Idaho Maryland Mines Corporation Remarks on Mining Policy (May 1, 1950) [Exhibit 411]; Letter from Idaho Maryland Mines Corporation to E.L. Oliver (June 26, 1950) [Exhibit 412]; Letter from Idaho Maryland Mines Corporation to William Oliver (Aug. 9, 1950) [Exhibit 384]; Geology and Ore Occurrences of the Idaho-Maryland Mine (1951) [Exhibit 413]; Idaho Maryland Industries Inc. Board Minutes (Feb. 6, 1959) [Exhibit 414]; Idaho Maryland Mines Corporation Board Minutes (Dec. 10, 1959) [Exhibit 415]; Exhibits 67, 73-74, 82-83, 97, 111-112, 135, 140, 150, 179, 216-217.

<sup>644</sup> Clark 175.

119,612 from the Idaho shaft and 290,800 from the Brunswick shafts.<sup>645</sup> At the time, it was the largest producer of gold in California.<sup>646</sup>

As recognized by the California Supreme Court in *Hansen Brothers*, a vested mining operation has the right to increase production as a result of increased market demand.<sup>647</sup> With regard to the volumetric scope of a vested right, the Court in *Hansen Brothers* unequivocally determined that a natural and gradual increase in production at vested mine sites to serve market demand is not only expected, but is an integral part of a vested right and does not represent an expansion of the vested right as a matter of law.<sup>648</sup> To illustrate this concept, the Court analogized increases in patrons at a grocery store as the surrounding population increased, to increases in production at a vested mining site, and stated that an increase in the number of patrons or the volume of goods sold at the grocery store would not be an enlargement of a vested operation but is instead an expected result of increased population and market demand.<sup>649</sup> Stated more simply, a vested right is not static, but may increase production over time in response to increased market demands.

The Vested Mine Property's vested mining right allows for an expansion in production to serve the growing market demand. Consistent with the holding in *Hansen Brothers*, production at the Vested Mine Property is not limited to the production rate established in 1954 or before. Instead, it is *expected* that the estimated 410,411 tons of mined ore produced from the Mine in 1939 would instead naturally increase over time as a result of market demand.<sup>650</sup>

### **C. No Abandonment**

The issue of abandonment – specifically, whether the property owners legally waived their vested mining rights – is not a required element of a vested right analysis under *Hansen Brothers*. Nevertheless, this Petition addresses abandonment for the purpose of preempting any concerns that may be raised regarding this issue on the basis that large scale commercial materials sales were decreased or temporarily stopped during some periods of the Vested Mine Property's history. Importantly, while an operator must prove by a preponderance of the evidence (i.e. it is more likely than not) that a vested right exists, an opponent seeking to disprove the vested right must meet the heightened burden of clear and convincing evidence in order to successfully assert that a vested right does not exist.<sup>651</sup>

For the reasons discussed below, there is no evidence to support a finding that the Vested Mine Property's vested right has ever been abandoned. Importantly, the vested right was already confirmed in 1980 by the County itself. The County's issuance of Use Permit U79-41 explicitly

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<sup>645</sup> Clark 172.

<sup>646</sup> *Ibid.*

<sup>647</sup> *Hansen Brothers, supra*, 12 Cal.4th at 573.

<sup>648</sup> *Ibid.*

<sup>649</sup> *Ibid.*

<sup>650</sup> See *Hansen Brothers, supra*, 12 Cal.4th at 573.

<sup>651</sup> *Hansen Brothers, supra*, 12 Cal.4th at 569.

states that the grant of the permit was “an expansion of an existing, non-conforming use,” as “the property owner has indicated that mine rock has been sold and taken from the property continuously since the mine closed.”<sup>652</sup> The County Staff Report further notes that the County’s “‘M-1’ Light Industrial District in which the subject property is located, does not allow gravel harvest and processing as permitted or conditionally permitted uses.”<sup>653</sup> In other words, but for the “existing, non-conforming use,” that then existed on the Vested Mine Property, the permit could not have been issued. The County found that the legal, non-conforming mining use existed on the Vested Mine Property, and on that basis granted the permit.<sup>654</sup>

Drafting the Staff Report and providing an analysis of the project and relevant law at the time was an official duty carried out by County employees, and the adoption of the findings in the Staff Report, including the vested right, and the County commission granting the permit, must be presumed valid as required by California law.<sup>655</sup> **As such, the County has already approved and acknowledged the vested right to continue mining operations at the Mine Property as of 1980.**<sup>656</sup> Because a vested right cannot be broken down to encompass “less than the entire business operation,” the County vested the right to mine for the entire Vested Mine Property.<sup>657</sup> Therefore, any assertion of abandonment can only be entertained from 1980 to the present. Although the right was vested at the earlier date of 1954, we note that there is no historical evidence of an intent to abandon, nor an overt act to do so, using either vesting date. Arguments to the contrary do not rise to the burden of proof required to support such a claim.

Under *Hansen Brothers*, vested mining rights are only deemed waived upon the occurrence of two factors: (1) actual operator or property owner intent to abandon the mining use; and (2) an overt act, or failure to act to evidence the abandonment.<sup>658</sup> Both factors must be present, and both factors must be proven by clear and convincing evidence. In sum, an operator/property owner must not only understand and *intend* to permanently discontinue the mining use, but the operator/property owner must also take a clear and objective action to implement the

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<sup>652</sup> Use Permit U79-41 (1980).

<sup>653</sup> Nevada County Planning Commission Staff Report (Feb. 20, 1980).

<sup>654</sup> *Ibid.*

<sup>655</sup> It is presumed that official duty has been regularly performed. (Evid. Code § 664.) This statutory presumption of duty regularly performed “shifts the foundational, method-of-preparation burden[.] The [challenger] must show that the [official] failed in his duty to observe and correctly report the events described.” (*Snelgrove v. Department of Motor Vehicles* (1987) 194 Cal.App.3d 1364, 1375; *Pantages Theater Co. v. Lucas* (9th Cir. 1930) 42 F.2d 810, 812 [holding that a written waiver by IRS to postpone tax filing was presumed valid as “it is a rule of very general application that, where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act.”]; *Kennedy v. McInturff* (1933) 217 Cal. 509, 511–512 [holding that utility district Board of Directors were required to pay the agreed-upon commission to the broker of waterworks system bonds as “the presumption of official duty regularly performed would admit of no other conclusion.”]; *Preis v. American Indemnity Co.* (1990) 220 Cal.App.3d 752, 759 [providing that “[t]he statutory presumption an official duty has been regularly performed applies to official writings [...]. This presumption shifts the burden of proving the foundational issue of trustworthiness of the method of preparing the official writing to the party objecting to the admission of the official writing. (underline added).]

<sup>656</sup> Cal. Code Regs., tit. 14, § 3951, providing that (a “‘vested right’ is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter.”).

<sup>657</sup> See *Hansen Brothers*, *supra*, 12 Cal.4th at 566.

<sup>658</sup> *Id.* at 569.

abandonment.<sup>659</sup> The party claiming that a waiver or abandonment has occurred bears the burden of proving it by clear and convincing evidence.<sup>660</sup> Moreover, “doubtful cases will be decided against a waiver.”<sup>661</sup> To prevail on a claim of abandonment here, an opponent would need to prove that the Vested Mine Property owner, since the 1980 vesting date (or conversely 1954), had *actual intent* to abandon the Mine, and then took an overt act in furtherance of this intent. There is no evidence to support either proposition.

As observed by the California Supreme Court, it is undisputed that the very nature of mining often requires long periods of “inactivity.” A survey of vested mining rights cases across the United States revealed there is not a single reported case in which a vested mining right has been abandoned solely due to lack of onsite activity. Rather, instances where a vested mining right has been abandoned uniformly include facts that demonstrate actual intent combined with an overt act on the part of the landowner to forever disclaim such rights. For example, in a recent California case, the court held that a landowner abandoned his vested mining right by certifying to the government in an official document “that all mining had ceased, with no intent to resume, which was uniquely persuasive evidence of abandonment.”<sup>662</sup> Such actions have never been taken by Rise nor its predecessors.

The fact that the Vested Mine Property experienced both brief and extended interludes of inactivity where the Mine was allowed to flood also does not evidence abandonment. Rather, flooding and dewatering was part of the normal life cycle of the Mine, especially in the first 80 years of mining operations.

Applying these principles here, the record contains no basis for finding that the vested right established in 1954 has ever been abandoned, because there is no evidence of any actual intent, or an overt act, to abandon the Vested Mine Property’s established rights. As discussed above, the fact that the Vested Mine Property experienced both brief and extended interludes of inactivity where the Mine was allowed to flood does not evidence abandonment. Rather, flooding and dewatering was part of the normal life cycle of the Mine, especially in the first 80 years of mining operations. Additionally, the County itself confirmed the Vested Mine Property had a vested right in 1980 when it found the Centennial Industrial Site’s mining operation was a legal nonconforming use – i.e., a vested right, and based the issuance of a permit on the basis of that vested right. Use Permit U79-41 authorized mining, crushing, screening, and sale of existing mine rock, sand, and tailings, all of which are mining activities critical to the mining operations conducted on the Property, while characterizing the activities as “an existing, non-conforming use.”<sup>663</sup> This confirmation of a vested right was not limited to the Centennial Industrial Site. As explained in *Hansen Brothers* and discussed above, recognition of a vested right on a portion of

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<sup>659</sup> *Id.* at 566; see also *Pickens v. Johnson* (1951) 107 Cal.App.2d 778, 787.

<sup>660</sup> *Hansen Brothers, supra*, 12 Cal.4th at 565.

<sup>661</sup> *City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47, 56.

<sup>662</sup> *Hardesty v. State Mining & Geology Bd.* (2017) 11 Cal.App.5th 790, 814.

<sup>663</sup> Exhibits 252, 253.

the Mine Property necessarily extends to the entirety of the Vested Mine Property, and cannot be broken down to encompass less than the entire business operation.

*i. There was no actual intent or overt act taken to abandon the Mine Property from the vesting date in 1954.*

As outlined in Section IV, *supra*, there were active and expanding mining and processing operations at the Mine from 1851 through 1956. Throughout that period of time, the mining footprint at the Mine Property was substantial, earning a reputation as the largest gold producer in California, and among the largest on the continent.<sup>664</sup> Important to the inquiry here, Exhibits 194 through 198 clearly demonstrate that mining operations at the Vested Mine Property were conducted before, during, and after 1954, when Nevada County Ordinance No. 196 was codified. In 1954, active mining was occurring in at least 14 locations throughout the Mine,<sup>665</sup> and new discoveries of scheelite containing tungsten were made.<sup>666</sup> That year, 88,632 tons of ore was produced and milled.<sup>667</sup> Thus, the constitutional right to conduct mining operations vested the moment the County enacted Ordinance No. 196.

Beginning in 1954, the Idaho Maryland Mines Corporation sold several surface properties, while expressly reserving mineral and mining rights,<sup>668</sup> using the below language, or in some cases, substantially similar thereto:

*EXCEPTING AND RESERVING THEREFROM all the mineral, metal matter and rock contained under said premises, with the right to extract at any time hereafter all the mineral, metal matter and rock contained under said property, from any depth up to and within 75 feet of the surface of said property, without disturbing the surface thereof.*

...

*all necessary or convenient rights of way for roads, pipe lines, or other easements necessary or convenient for working said Independence Quartz Mine, Patented, and in consideration of said right to so follow the Independence Quartz Ledge and said rights of way.*<sup>669</sup>

The only plausible reason for requiring these exclusions in the deeds is that the company intended to resume underground mining operations at these properties in the future, including surface works to support such mining, either by itself or by leasing the right to do so, once economic conditions became more favorable.

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<sup>664</sup> Exhibits 9, 136, 141, 168; Clark 172.

<sup>665</sup> Exhibit 179.

<sup>666</sup> Exhibit 180.

<sup>667</sup> Clark 242.

<sup>668</sup> Exhibits 181, 182, 183, 184.

<sup>669</sup> Exhibit 182.



This is supported by the fact that in the two years following the vesting date, all actions of the company pointed to an expansion of mining activities. Idaho Maryland Mines Corporation conducted preparations to expand operations by sinking a winze on the 3,280-foot level of the Mine, where several sample sacks of high-grade gold had been gathered previously.<sup>670</sup> However, due to the company's critical cash position caused by a lack of financing, rising costs, and the government-imposed static price of gold, it was unable to continue gold mining operations.<sup>671</sup>

The real price of gold had been steadily declining after being fixed at \$35 per ounce by the federal government in 1934.<sup>672</sup> That fixed price combined with the rising extraction costs over the years caused an epidemic of mine closures in California.<sup>673</sup> The initial cause of the closures was a federal executive order issued during World War II.<sup>674</sup> Prior to that time, there had been "1,600 gold mines in California."<sup>675</sup> However, "[b]y 1953, 98% of the State's output was coming from 10 mines, and today [1957] those mines are closing one by one."<sup>676</sup>

Mine operators, faced with "[i]ncreased costs of labor, steel, blasting powder and lumber used for shoring" could no longer "economically afford to extract gold from the earth."<sup>677</sup> The Mine Property was no exception to this phenomenon. While the company attempted to gather the funds to facilitate future mining and exploration through the application of a grant from the Defense Mineral Administration, it was unsuccessful and the Mine was closed and allowed to flood in March of 1957.<sup>678</sup>

Over the next few years, Idaho Maryland Mines Corporation sold off various surface properties to obtain cash and stay in business, always with an express reservation of mineral rights,<sup>679</sup> including in 1959 a sale of the remaining ancillary surface property to Oliver Investment Company in settlement of a debt.<sup>680</sup> The sale excluded those surface properties which now make up a portion of the Vested Mine Property, containing the New Brunswick shaft, the Old Brunswick shaft, the Union Hill shaft, and the Brunswick mill site, illustrating an intent to preserve existing aboveground facilities to facilitate mining in the future.<sup>681</sup> Oliver Investment Company immediately transferred the surface property to Sum-Gold Corporation Inc. for development purposes.<sup>682</sup>

In 1962, Idaho Maryland Mines Corporation filed for bankruptcy and sold the Mine Property on April 17, 1963, at auction to mine owner and gold investor William Ghidotti, who purchased the

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<sup>670</sup> Exhibit 186; Clark 242.

<sup>671</sup> Clark 248; Exhibits 178; *The Los Angeles Times* (Jan. 7, 1957) [Exhibit 416];

<sup>672</sup> Exhibit 416.

<sup>673</sup> *Ibid.*

<sup>674</sup> *Ibid.*; See *The Sacramento Bee* (May 4, 1943) [Exhibit 417]; See also Letter from Idaho Maryland Mines Corporation to State Department of Finance (Dec. 27, 1946) [Exhibit 418].

<sup>675</sup> *Ibid.*

<sup>676</sup> *Ibid.*

<sup>677</sup> *Ibid.*

<sup>678</sup> *Auburn Journal* (Mar. 21, 1957) [Exhibit 419].

<sup>679</sup> Exhibits 200, 202, 204, 205, 206, 207, 210, 211.

<sup>680</sup> Exhibits 216, 217, 218.

<sup>681</sup> Exhibit 220.

<sup>682</sup> Exhibit 218.

Mine as an investment.<sup>683</sup> William Ghidotti also owned the Ancho-Erie Mine Property, as well as stock in several mining companies including gold mining companies Newmont and Homestake Mining.<sup>684</sup>

William Ghidotti, and after his death his wife Marian Ghidotti, purchased several additional surface properties contiguous to the Mine Property, which collectively comprise the Vested Mine Property, with the intent to facilitate future mining activities.<sup>685</sup> During the term of their ownership and beginning in 1964, mining activities, including crushing and the operation of a screening plant, were conducted on the Vested Mine Property, specifically the Centennial Industrial Site.<sup>686</sup> The County subsequently issued several permits authorizing these activities, which were conducted under a lease of the Vested Mine Property by North Star Rock Company Inc.<sup>687</sup> Importantly, one of those permits recognized the rock crushing activities as a vested right.<sup>688</sup> Marian Ghidotti clearly evidenced an intent to preserve – and not to abandon – the option to mine in the future when she insured the Mine as a mining asset in 1977.<sup>689</sup> Between this point and when the right was originally vested in 1954, there is no proof that any owner abandoned the right through subjective intent or objective action.

As discussed above, all of the landowners that have held the Vested Mine Property after 1954 have acted in a manner that is consistent with an intent to preserve all of the Vested Mine Property’s existing mineral and mining rights. This most recently includes multiple applications for permits consistent with the intent to reopen the Mine and resume mining activities. We note that the fact that Rise and its predecessors-in-interest have applied for and obtained various use permits and entitlements pertaining to reopening and/or operating the Mine, demonstrating a continued and consistent intent to mine the Mine Property.<sup>690</sup>

Taking together all of the facts s above, it is clear that no owner has acted in any way to prejudice – yet alone abandon – the vested right. To the contrary, the historic mining uses are still visible on the Vested Mine Property. Moreover, it is implausible that any interim owner would have acquired a large, existing mining operation without a specific awareness of its value and the need to preserve it for the possibility of resuming active production. Accordingly, no evidence exists on the part of any owner after the 1954 vesting date of an intent to waive the vested mining right, nor is there any evidence of an overt act or failure to act that implies such a waiver.

That large-scale excavation and gold processing halted in 1956 does not evidence an intent to abandon the right to engage in mining operations. The very nature of gold mining and mineral

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<sup>683</sup> Exhibit 226.

<sup>684</sup> Exhibit 235.

<sup>685</sup> Exhibits 218, 230, 236, 238, 239, 240, 241, 242, 396, 497.

<sup>686</sup> Exhibits 231, 232.

<sup>687</sup> Exhibits 251, 253, 259, 260.

<sup>688</sup> Exhibit 252.

<sup>689</sup> Exhibit 227.

<sup>690</sup> Obtaining permits, even when a vested right exists, does not provide evidence of abandonment. See *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529.

sale is dependent on seasonal and fluctuating market demand, and it is not uncommon that mines are not actively worked for extended periods of time.<sup>691</sup> As all authorities on the subject make clear, a fundamental component of any mining operation is monitoring market conditions, like those outlined above, and holding properties in reserve as inventory until extraction and production operations are financially sensible and can recommence.<sup>692</sup> As the record reflects, that is precisely what has occurred – due to market conditions which stagnated the price of gold, extraction and production operations were idled until the market conditions altered such that resuming such operations would be financially sensible – i.e., when the price of gold increased.

Near the time of the Mine becoming idle, Idaho Maryland Mines Corporation management expressed its belief that gold prices would increase in the future, and would thus justify reopening the Mine.<sup>693</sup> *The San Francisco Examiner* reported that “Idaho-Maryland Mines management is building for the future in the knowledge that sooner or later the price of gold will be increased....”<sup>694</sup> This was manifested 40 years later when gold mining companies resumed exploratory work and engaged in efforts to re-open the Mine to produce gold.

*ii. There is no intent or overt act taken to abandon the Mine Property from 1980 to the Present.*

In and after 1980, Rise’s predecessor-in-interest continued to mine, crush rock, operate a screening plant, and perform sales activities on the Mine Property pursuant to Use Permit U79-41 with work conducted under lease by North Star Rock Company Inc.<sup>695</sup> In 1985, the County granted Use Permit U85-025 amending Use Permit U79-41 to allow for the importation of crushable materials from off-site, as well as relocation of the crushing plant by approximately 300 feet.<sup>696</sup> In 1986, the County granted Use Permit U86-45 allowing the excavation of an onsite borrow pit and extending the period of mining and crushing by six years, until December 19, 1992, which was then extended to 2002.<sup>697</sup>

While North Star Rock Company Inc. was conducting mining operations pursuant to the use permits discussed above, the Vested Mine Property was passed down from Marian Ghidotti at her death to the BET Group, who took several actions necessary to support the continuation of mining operations at the Vested Mine Property. In 1987, the BET Group commissioned testing of four samples from the historic mine tailings, which assayed at approximately \$39.15 per

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<sup>691</sup> See *Hansen Brothers, supra*, 12 Cal.4th at 570, fn. 29; see also fn. 542, *infra*.

<sup>692</sup> See, e.g., 2 Lindley on Mines (3d ed. 1914) Abandonment and Forfeiture, § 644, p. 1603.

<sup>693</sup> Exhibits 418, 419, See Letter from Idaho Maryland Mines Corporation (Dec. 27, 1946) [Exhibit 418]; Letter from Idaho Maryland Mines Corporation to New York Daily Journal (Jan. 10, 1949) [Exhibit 420]; *Auburn Journal* (Mar. 21, 1957) [Exhibit 419]; *The Sacramento Bee* (Sept. 5, 1957) [Exhibit 421]; *The Los Angeles Times* (May 12, 1957) [Exhibit 422].

<sup>694</sup> Exhibit 163.

<sup>695</sup> Exhibits 253, 261.

<sup>696</sup> Exhibits 259, 260.

<sup>697</sup> Notice of Conditional Approval of U86-45 (Dec. 19, 1986) [Exhibit 423]; Agreement Between the City of Grass Valey and North Star Rock Products Incorporated (Nov. 24, 1992) [Exhibit 253].

ton.<sup>698</sup> Also, from August 1988 to April 1989, the BET Group leased 5.28 acres of the tailings disposal area to Argo Associates, which excavated 7,756.2 tons of tailings material during that time and shipped the material to Homestake Mining Company for gold extraction.<sup>699</sup>

Over the next few years, the BET Group sold ancillary portions the surface estate of various lots for development purposes, while always explicitly reserving mineral rights as follows:

*EXCEPTING AND RESERVING THEREFROM all the mineral, metal matter, and rock lying below 200 feet of the surface, with the right to extract and remove said mineral, metal matter and rock from any depth up to 200 feet of the surface of said premises without disturbing the surface thereof.*<sup>700</sup>

The reservation provides clear indication that the BET Group intended to preserve the option to resume subsurface mining. Moreover, beginning in 1988, the BET Group began leasing the Vested Mine Property to various gold mining companies in order to restart gold mining. In 1988, the BET Group executed a mining lease and option agreement with Mother Lode Gold Mines, who announced its plans to begin mining operations within five years, and conducted exploratory activities on the Vested Mine Property in furtherance of that goal.<sup>701</sup> Following the termination of the Mother Lode Gold Mines lease, the BET Group entered into a mining lease in 1991 with Consolidated Del Norte Ventures, which estimated the mine to contain approximately 2.5 million ounces of gold and announced its intent to reopen the Mine.<sup>702</sup>

In 1992, the County granted a use permit in favor of North Star Rock Products, Inc. extending the existing mining operation by ten years, expanding its geographic scope, and authorizing mining activities to continue on the Centennial portion of the Mine Property.<sup>703</sup> Soon afterward, the Morehouse property was sold to North Star Rock Company Inc.; however, the BET Group reserved mineral rights 200 feet below the surface.<sup>704</sup>

In 1993, Emperor Gold, one of several mining companies to have held a mining and operating lease for the Mine Property, began the permitting process to dewater the mine and commence underground exploratory drilling with the goal to resume gold mining activities.<sup>705</sup> The following year, Emperor Gold entered into a lease and option agreement to purchase the sawmill property located on the Brunswick Industrial Site “to facilitate exploration at the mine site.”<sup>706</sup>

In October of 1995, the County approved the Final Environmental Impact Report on the proposed dewatering and the following year approved Use Permit U94-017 for the dewatering

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<sup>698</sup> Exhibit 264.

<sup>699</sup> Exhibit 66.

<sup>700</sup> Exhibit 272.

<sup>701</sup> Exhibit 267.

<sup>702</sup> Exhibit 276.

<sup>703</sup> Exhibits 277, 278.

<sup>704</sup> Exhibit 280.

<sup>705</sup> Exhibit 279.

<sup>706</sup> Exhibit 286.

and underground exploration of the Vested Mine Property,<sup>707</sup> which prompted Emperor Gold to prepare evaluations and engineering studies for the purpose of bringing the Mine into a 30-year production life with a 1,500 ton-per-day operation.<sup>708</sup> Emgold conducted extensive grading activities at the Vested Mine Site at this time, as pictured in Exhibit 425. It also conducted collar inspection and tests at the shaft, as depicted in Exhibits 426 and 427. After renegotiating its mining lease and purchase option agreement in 2002,<sup>709</sup> from 2003 to 2004 Emgold, which changed its name from Emperor Gold to Emgold Mining Corporation in 1997, conducted exploratory drilling at the Mine.<sup>710</sup> In 2004, following the expiration of the extension granted for Use Permit U94-017, the company applied for a conditional use permit to dewater the existing mine workings and construct an access ramp for underground exploration and possible future staged mine production from the City of Grass Valley.<sup>711</sup> The City conducted environmental review of the application pursuant to CEQA from 2005 to 2008,<sup>712</sup> before Emgold withdrew its application and allowed its lease and purchase agreement for the Vested Mine Property to expire in 2013.<sup>713</sup>

In 2013, the BET Group marketed and sold the Vested Mine Property as a mine.<sup>714</sup> Rise Resources Inc. purchased the Vested Mine Property from the BET Group in 2017 for \$2,000,000 for the purpose of restarting mining and processing operations, and commenced exploration drilling the same year.<sup>715</sup> As Rise Grass Valley Inc., it applied to the County for a use permit to reopen the Vested Mine Property in 2019 and has been engaged in the permitting process since.<sup>716</sup>

The extensive history above makes clear that from either the 1980 vesting date, when the County confirmed the Vested Mine Property's vested right, or even the earlier 1954 vesting date, there has never been a period where the Vested Mine Property was not mined, or actions taken indicating plans for future mining. Certainly, there is no evidence of actual intent to abandon mining at the Vested Mine Property, nor an overt action taken to do so. Therefore, there is categorically no proof of abandonment. In fact, ample evidence, demonstrates continuous intent to expand and resume mining operations.

#### **D. Key Facts Establish a Vested Right to Mine**

The facts relating to the history and operation of the Vested Mine Property are both extensive and indisputable, and conclusively establish that the Vested Mine Property carries a

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<sup>707</sup> Exhibit 287.

<sup>708</sup> Exhibit 288.

<sup>709</sup> Exhibit 292.

<sup>710</sup> Exhibits 294, 296.

<sup>711</sup> Exhibit 297.

<sup>712</sup> See Exhibits 298, 299, 300, 301, 302, 303, 304, 305, 308.

<sup>713</sup> Exhibit 306.

<sup>714</sup> Exhibit 227.

<sup>715</sup> Exhibit 308.

<sup>716</sup> Exhibit 314.

vested right to mine. All relevant facts are detailed in Section III, Factual Background, *supra*, and can be generally summarized as follows:

- Mining operations commenced at the Mine Property in 1851 and active mining operations on the Vested Mine Property itself, including extraction and processing activities, are evident from the early 1900's, as evidenced by historical photographs and publications. These mining activities expanded and were generally continuous through 1956, with cycles of varied inactivity attributable to economic conditions. Since the 1930's, the Mine has been reported as among the, if not the, largest lode gold mines in California.
- From the late 1800's to 1956, the various Mine owners and operators made substantial investments to develop the Mine, including the purchase and improvement of surface mining equipment such as headframes and hoisting equipment, as well as storage buildings, offices, blacksmith shops, and accommodations for miners.
- The County adopted its first comprehensive zoning ordinance on September 10, 1954, effective on October 10, 1954, which, for the first time, required a use permit to conduct mining and quarrying activities at the Vested Mine Property. This date constitutes the "vesting date" for the purposes of this vested right application.
- On the date of vesting, the Mine Property was held under single ownership by the Idaho Maryland Mines Corporation, which at that point was conducting a large-scale, modern gold mining operation with active above- and below-ground mining operations. Its surface holdings included both the Centennial Industrial and Brunswick Industrial sites.
- Active gold material sales continued throughout the 1950's consistent with market demand. When active material sales were not ongoing, the Mine owners held the Vested Mine Property in reserve with the intent to resume gold mining activities once market conditions became more favorable and preserved the mineral rights and sufficient surface lands for surface use and access to the underground mine.
- As a result of a shortage in financing, active material sales were reduced, and the Mine was held in a state of suspension with intent to resume mining operations when possible until the resumption of mining, crushing and material sales activities in the 1960's and 1970's.
- In 1980, the County granted a use permit authorizing the continuance of mining activities and recognizing mining operations as a legal non-conforming use— specifically rock crushing, operation of a screening plant and on-site sales – on the Centennial Industrial Site, thereby confirming the Mine's vested right to operate. Because a vested right cannot

be confined to just one part of a mine, the entire Vested Mine Property was confirmed as a vested right by the County in 1980.<sup>717</sup>

- At no time in the years following the County’s adoption of the zoning ordinance in 1954, or following the County’s own recognition of the Mine as a legal nonconforming use in 1980, have any of the current or prior owners ever indicated an intent to relinquish the established mining rights nor taken any action that would in any way suggest that such important, Constitutionally-protected rights were being given up.
- Even ignoring the vested right recognized by the County in 1980, at no time in the years following the 1954 vesting date have any of the current or prior owners of the Vested Mine Property ever indicated the intent to abandon the established mining rights or take objective action indicating an intent to abandon the vested use.
- Present market conditions justify a resumption of extraction activities consistent with historic operations.

These facts demonstrate the existence of the vested right Rise is asking the Board of Supervisors to recognize.

## VI. CONCLUSION

The Applicant respectfully requests that the County, after reviewing the evidence submitted, including this Petition, attached exhibits, declarations and appendices, confirm the following:

1. That mining operations commenced at the Mine Property as early as 1851.
2. That pursuant to the *Hansen Brothers* decision, the range of mining operations included tunneling, underground mining, exploration core drilling, blasting, crushing, sorting, stockpiling, waste rock placement, screening, distribution, transportation, and sales of gold for commercial uses, buildings headframes, hoists, production plants, crushing plants, stamp mills, tailings impoundment dams, sawmills, silos, offices, assaying and engineering, dry storage, compressors, machine and engineering shops, service garages, parking garages, storage buildings, and power lines, along with equipment including conveyor belts, compressors, pumps, boilers, ore bins, power drills, arrastras, skips, locomotives, trams, and trucks and other vehicles, and uses incidental and auxiliary to mining operations.
3. That the scope and intensity of the mining operations expanded over time, including a peak production rate of 410,411 tons of ore per year, in response to market demand.

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<sup>717</sup> Use Permit U79-41 (1980); See *Hansen Brothers*, *supra*, at 574.

4. That the County first required a permit to conduct mining operations on October 10, 1954 (Ordinance No. 196) which represents the “vesting date.”
5. That as of the vesting date, the Idaho Maryland Mines Corporation had manifested its intent to conduct underground mining throughout its then-existing mine holdings, including the Vested Mine Property (which includes the entire 2,560-acre reserved subsurface estate), that surface mining operations at the Mine were occurring on at least 175 surface acres, that all 175 acres now comprising the Vested Mine Property were held under single ownership, and that owner at the time of vesting, a mining company, objectively intended to devote the entirety of the Vested Mine Property and 2,560 acres of mineral rights to support subsurface mining operations.
6. That the vested right has not been abandoned.
7. That the Vested Mine Property has a vested right to produce at least 410,411 tons of ore per year and a greater amount if justified by market conditions.