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Op-Ed | CEA Foundation Weighs in on Rise Gold's Vested Rights Petition

CEA Foundation Weighs in on Rise Gold's Vested Rights Petition Claiming 'Right to Mine' After 67-Year Closure Called Absurd

by **Community Environmental Advocates Foundation**

November 2, 2023

Grass Valley, CA—Nevada County Supervisors will soon consider whether or not to approve an eleventh-hour petition to grant “vested rights” to Rise Grass Valley, a subsidiary of Rise Gold. The Canadian-headquartered junior mining company is aiming to reopen a gold mine that shut down 67 years ago. To inform their decision, local opposition leader CEA Foundation has provided a review and analysis of the petition.

Following the regulatory changes initiated by Nevada County in 1954, mining projects were required to obtain a Use Permit. As an existing and continuing operation in 1954, the Idaho-Maryland Mine was probably exempt from the requirement at that time.

Under both state case law and County code, a property owner may acquire a vested right to continue a use that existed at the time zoning regulations changed. But the right to continue is not permanent, and the burden of proof is on the applicant to establish the vested rights.

According to the CEA Foundation review, the Rise Grass Valley Vested Rights Petition ignores clear mandates in the County’s Land Use and Development Code which hold that any vested right to mine expires once a nonconforming use is discontinued for one year.

The mine shut down in 1956. Assets were liquidated shortly thereafter. The mine was then allowed to re-flood. All mining had ceased by 1957 and the mine has not operated since. Once the mine was abandoned, vested rights to continue mining were presumably lost.

“The notion that Rise could retain a legal right to resume mining that was abandoned over sixty years ago is absurd,” said CEA Foundation President Ralph Silberstein. “Petitioning for vested rights so late in the appr

process is an act of desperation, apparently in response to the County Planning Commission's unanimous recommendations to deny the project."

Rise's Petition, however, provides a narrative of continuing operations covering the period from 1956 to the present. To achieve this, evidence such as an owner being "...convinced the Mine would be operational again...", a third party running a sawmill on adjacent lands, and salvaging old surface tailings to be sold as aggregate, are used to build a story about continuous operations at the Idaho-Maryland Mine.

But the CEA Foundation review came to a different conclusion: that the story doesn't hold up either legally or historically. An owner's "intent" to resume mining doesn't qualify for vested rights. And while sawmills and aggregate operations did happen from time to time, both activities are distinct from the core business of gold mining that would be required to qualify for vested rights.

In the Petition, Rise relies heavily on selected passages of the 1996 Hansen Brothers case, which awarded vested rights to an aggregate processing operation. However, the Hansen ruling was made under very different and more restrictive conditions. While Hansen Brothers did pause one type of quarrying for a period of time, they kept the business operational and never abandoned their plant, equipment, or utilities. In addition, rights were awarded specific to a single work product that produced an ongoing revenue stream – river and hillside rock combined to sell for aggregate.

"If anything, a careful reading of the Hansen case further diminishes Rise's claim of vested rights", said Silberstein. CEA Foundation's review concludes that almost all of the Rise Petition misses the main point – that there is ample evidence the mine was abandoned after 1956, and any vested rights were lost within a year. For example:

- There has been no recurrence of gold mining at the Idaho-Maryland Mine since it shut down.
- The EPA has determined it is an abandoned mine.
- Ben Mossman, recent CEO of Rise Gold, stated "...it has been closed since 1956."

Nevada County Supervisors will consider Rise's Vested Rights Petition in a public hearing at 9:00 AM on Wednesday, December 13 in the Board chambers, 950 Maidu Ave., Nevada City; with a second day added Thursday, December 14, if necessary to accommodate public testimony. Members of the public are encouraged to attend. Public comment will be restricted to historical testimony related to the Petition.

If the Board denies the Petition, the County will resume processing Rise's application to open the Idaho-Maryland Mine and schedule a public hearing before the Board of Supervisors early in 2024 for the final vote on the Environmental Impact Report and Use Permit.

ACEA Foundation review of the historical aspects of the Petition can be found at <https://bit.ly/CEA-Historical-Analysis-Rise-VR>. For more information about the potential re-opening of the Idaho-Maryland Mine visit: www.MineWatchNC.org.

Community Environmental Advocates Foundation (CEA Foundation) performs research, education, and advocacy to promote responsible land use and environmental protection policies in Nevada County. www.cea-nc.org. CEA Foundation is the leader of MineWatch, a campaign that brings together a coalition of nonprofit organizations, residents, and businesses opposed to the mine. www.MineWatchNC.org.

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