



NEWS SUMMARY

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SACRAMENTO BEE

9/12/94

'Shelf life' key to Delta pact

Species protection law threatens future water supplies' certainty

By Jim Mayer
Bee Staff Writer

Months of intense negotiations are yielding an agreement to protect the troubled Sacramento-San Joaquin River Delta.

But in a dilemma tainted with irony, the solution to one of California's most vexing environmental problems is running into a large obstacle: a tough national environmental law, the Endangered Species Act.

Farm and urban water officials say they accept that they will have to divert less fresh water from the Delta in order to protect fish and wildlife dependent on the maze of sloughs, islands and marshes.

But in exchange, they want environmental officials to promise that water supplies will not be reduced again any time soon in the name of a new endangered animal. They have come to call that certainty "shelf life."

Wildlife officials say they are looking for a way to get around the impasse. But Joel Medlin, field super-

DISCOVERY

visor for the U.S. Fish and Wildlife Service, said they are reluctant to guarantee what they can't be sure of — that the new water quality standards will rejuvenate all declining aquatic species.

Wildlife officials say the law requires them to protect all species, and if the EPA's standards are inadequate, they may not have a choice but to enact additional restrictions.

For years, while southern cities and farms pumped increasingly more fresh water, biologists lamented the expansive estuary's decline and the inadequacy of environmental laws. Not until winter-run chinook salmon was declared threatened in 1989, and Delta smelt in 1993, were the federal and state systems of dams and canals forced to reduce pumping.

"Ignoring the needs of the Delta has brought us to this crisis, and thus the listing of species," said John

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PHOTOCOPY
PRESERVATION

Delta: Environmental act called 'Achilles' heel'

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Amadeo, executive director of the Bay-Delta Oversight Council, charged with crafting a long-term solution to the problem.

"Now the Achilles' heel is the Endangered Species Act. You need to achieve measures that provide for the species while providing shelf life for the standards."

The State Water Resources Control Board set out in 1987 to set tougher water quality standards for the Delta, but each effort was politically undermined by water utilities that wanted to take more water.

The U.S. Environmental Protection Agency in December proposed its own Delta standards, which would let more fresh water flow through the Delta to San Francisco Bay and make less available for diversion.

The strategy is to push young fish away from the giant pumps and to recreate the brackish conditions near Suisun Marsh that biologists say is needed for a healthy food chain.

The EPA is scheduled to approve a revised version of that

plan this December.

The revisions are intended to reduce the water costs by one-third, without reducing the environmental protections. Under the latest plan, and in the driest of years, the new rules would require 1.1 million acre-feet — about one-fifth the water pumped south by the Central Valley Project and State Water Project.

This month, the California Urban Water Agencies endorsed major portions of the EPA plan.

Earlier this summer, the Bay Area Economic Forum urged Gov. Pete Wilson to support water quality standards that would end the dispute, restore water supply predictability and allow water sales that could help meet growing urban needs.

The signers included the chief executive officers from BankAmerica Corp., Wells Fargo Bank, the Federal Reserve Bank, Pacific Gas and Electric Co., TransAmerica Corp., and Southern California Edison Corp.

"We are getting closer," said EPA Bay-Delta chief Patrick Wright. "It has been such a difficult and contentious issue for so long, I hate to be too confident.

But the elements of an agreement are there."

Wright said the largest remaining issue is the water suppliers' fear that the EPA plan won't be the environment's last need.

David Schuster, a consultant for San Joaquin Valley irrigation districts, said most farm water officials realize they will lose water and there is no profit in stalling a resolution.

"It is not in our interest to stay in the position we are in," Schuster said. "Our guys want stability for the short term. So we can plan and we can maybe survive, depending on how much it rains."

Federal and state agencies have been pushing a strategy — known as habitat conservation planning — wherein land is set aside for protecting species in exchange for permission to develop otherwise protected habitat.

But biologists are unconvinced that such a plan can be worked out for aquatic habitats — especially in California, where the only constant is change. Seasonal and annual fluctuations in river flows, and the biological responses in thousands of species, are too complex to anticipate every condition.

Jay Ziegler, an aide to Interior Secretary Bruce Babbitt, said water suppliers will get what they pay for. The better the protections they agree to, the less chance more water will be needed to rescue another endangered species.

"It's like an insurance policy," Ziegler said. "The policy can only cover what we know about now. And the more comprehensive the coverage, the lower the risk."

Even environmentalists are trying to figure out how to give their longtime opponents the certainty they seek.

John Krautkraemer, an attorney with the Environmental Defense Fund, said one such plan would be to use money from an environmental restoration fund to buy any additional water needed for the Delta.

But he also is confident the years of research that have gone into the EPA proposals will produce the intended results — more salmon, bass and smelt.

"If you put this in place, the ESA problems are going to get less serious over time," Krautkraemer said. "I really am convinced of that."

Hopis, Navajos at odds over water pipeline plan

By Eun-Kyung Kim
The Associated Press

KYKOTSMOVI — Gilbert Naseyowma has spent much of the summer hauling hundreds of gallons of water to farmers and ranchers in the Moenkopi Village, where the town arroyo remains bone dry.

"The water used to run like curtains," said Naseyowma, a 60-year-old Hopi and former sheepherder. "It ran up to your knees and it ran all year."

Today the Moenkopi Wash runs only during the winter, he said.

Underground springs that once fueled the wash have dried up, severing a lifeline to farmers and cattle on the Hopi Reservation.

"Sheepherding used to be easy because it was easy to water the animals," Naseyowma said. "Now everything is all dried up."

The Hopi contend many of their washes and springs are being sucked dry by a nearby coal mine in Black Mesa. They say the mine, run by Peabody Western Coal Co., is depleting the tribe's only source of drinking water, an underground aquifer that also supplies water to the Navajos.

Hopi Chairman Ferrell Secakuku said water shapes nearly every part of his tribe's culture. It especially nurtures the Hopi religion, he said.

"Water is the bloodline to our heart, that's how sacred it is," Secakuku said. "The depletion of our water supply is just killing our religion. It's desecrating it."

Interior Secretary Bruce Babbitt recently announced that the federal government would help pay for a pipeline from Lake Powell to the Hopi Reservation. The pipeline would end pumping from the aquifer, pending a settlement that would be reached by all parties and an act of Congress.

Lake Powell, on the Arizona-Utah border, was created by the Glen Canyon Dam on the Colorado River. Babbitt's proposal indicates that the lake's pipeline will be part of an overall settlement resolving tribal claims to water from the Little Colorado River, which is regulated by an intricate network of laws and court rulings.

Babbitt appointed Los Angeles-based attorney Owen Olpin to head the negotiations. Olpin is expected to call for an initial meeting between the tribes, Peabody and the federal government in mid-September.

The Hopi have lobbied for an alternative water source for slurring coal for years. To them, the pipeline is ideal.

But the Navajos are outraged by the proposed settlement, claiming that the Hopi failed to consult

them about any negotiations. In a recently drawn up resolution, the Navajos described the settlement as "another disastrous Navajo-Hopi joint use arrangement," one that fails to address religious freedom or land issues tied up in the water claims.

Secakuku claims the Navajos are "holding the Hopi hostage" by using water claims to settle a century-old land dispute.

"I don't want this to be another dragged out situation," said Secakuku, who believes a settlement can be hammered out within seven months. "Water is something both of the tribes need. Without it, both cultures are at risk."

Under a lease signed 24 years ago, Peabody pumps about 1 billion gallons of water a year to mix with pulverized coal. The mixture, called slurry, is carried from the mine through a 275-mile-long pipeline to the Mohave Generating Station near Laughlin, Nev.

Both the Hopi and Navajo rely heavily on revenues from the mine, which spreads over both reservations. Peabody pays \$33 million in coal and \$3.4 million in water royalties to both tribes each year. Royalties make up more than 85 percent of its tribal budget, Secakuku said.

Peabody denies pumping operations hurt Hopi water supplies.

GANAHL & TAYLOR THE INSIDERS

PARK TRANSFER: Big-name
pols will turn out when the Pre-
sidio is official-
ly handed over
to local agen-
cies.

Beginning
the week of
Sept. 24, feder-
al names on
hand in prepa-
ration for the
Oct. 1 transi-
tion include
Vice President
Al Gore, Secretary of the Interior
Bruce Babbitt,
Secretary of
Transporta-
tion **Ron Brown**
and Environ-
mental Protec-
tion Agency
Administrator
Carol Browner.

On the big
day itself, Na-
tional Parks
Director **Roger
Kennedy** will unfurl the banner
of the Department of the Interi-
or.



Al Gore



Bruce Babbitt

PHOTOCOPY
PRESERVATION

Sullivan submits 'Wyoming model' to Babbitt

CHEYENNE — Gov. Mike Sullivan Friday asked Interior Secretary Bruce Babbitt to consider using a preliminary "Wyoming model" for rangeland reform as a pilot project for federal lands in the state "if not across the West."

Sullivan, in a letter to Babbitt, called the Interior Depart-

ment's Rangeland Reform '94 proposal "unworkable, unacceptable and unnecessary for Wyoming."

The governor he has asked his steering committee to continue working on the Wyoming model for 90 days to finish considering public comments and finalize the draft proposal.

THE NEW YORK TIMES, TUESDAY, SEPTEMBER 13, 1994

Steep Hurdles for Rescue

By WILLIAM K. STEVENS

TAKING an ecosystem-wide approach to the management of Yellowstone, as many conservation biologists argue is the only effective approach, might require some over-arching political authority, given the near-impossibility of forging an alliance among the ecosystem's welter of political and administrative jurisdictions. But opponents appear to have killed off, at least for now, any attempt to impose such an arrangement.

As recently as four years ago, greater Yellowstone was being touted as a first-class laboratory for ecosystem management. But in the Bush Administration, highly organized defenders of extractive industries and private property succeeding in killing a "vision document" for the ecosystem's future that had been drafted by Federal agencies. Opponents attacked the document as part of an environmentalist plot to "lock up" land against development and exploitation, and their conservative allies in Washington prevailed.

Although the concept of an ecosystem-wide approach to conservation has been generally promoted by Interior Secretary Bruce Babbitt, the Clinton Administration is not about to try to foster the approach in Yellowstone by trying to impose an

ecosystem-wide management plan devised in Washington. "That kills it," said George Frampton, the Assistant Secretary of the Interior for fish, wildlife and parks.

Rather, he said, the Administration's approach will be to emphasize the state, local and private role as being critical and decisive in land-use issues, while offering Federal help where possible and appropriate. Since local people have to live with the results, he said, "you have to push decision-making down to the local level."

Local communities have indeed begun to rein in development, historically a heretical idea in these conservative parts. Three of the region's fastest-growing counties — those containing Bozeman, Jackson and Cody, the economies of which depend on the new wealth of recreation and population growth — are taking steps to control the spread of subdivisions. The Cody area has declared a moratorium on development until it decides what to do. Jackson, with perhaps the most advanced effort, has adopted a county-wide land use plan that offers incentives for building outside ecologically sensitive areas and encourages "cluster developments," high-density subdivisions that would leave sufficient open space to accommodate wildlife.

PHOTOCOPY
PRESERVATION

Latest Threat to Yellowstone: Admirers Are Loving It to Death

By WILLIAM K. STEVENS

A HIKER to the top of Mount Washburn in the heart of Yellowstone National Park may find it hard to believe that the wild land stretching out before him could ever be in serious jeopardy, so eternal does the spectacle seem.

From 10,243 feet, where marmots scurry about above the timberline, distant slopes garbed in evergreen forests alternate with the gold-beige velvet of grassy inclines and alpine meadows. Deep gorges, cascading cataracts and broad rivers cut through a sweeping vista punctuated by blue lakes and bright green mountain marshes. Close up, Yellowstone's incomparable geysers spout and its hot pools bubble, and the land abounds with the elk, bear, moose, deer, antelope, bison and bighorn sheep that have earned it the nickname "America's Serengeti."

The magnificent, world-famous landscape still ranks as the most nearly intact of big American ecosystems outside Alaska. But scientists and conservationists say that even Yellowstone's ecosystem is under increasingly serious threat from human pressure — much of it, they say, exerted by the region's more committed admirers.

The park itself is merely the protected core of a vast, seamless ecosystem seven times as large. As big as West Virginia, it includes not only the jagged ranges of the Gallatin, Beartooth, Absaroka and Teton Mountains, along with the national forests that carpet their slopes, but also public and private lands that lie beyond them.

"Everything in view is part of the greater Yellowstone ecosystem," Jim McKown, the park ranger who lives in his observation post at the top of Mount Washburn, says as he gazes into the distance. It is on private lands far from here, out on the ecosystem's ramparts, that the latest threat to its integrity has appeared. There, scientists and environmentalists say, a private real estate boom fueled by the desire of people to live close to Yellowstone's natural charms is eroding those charms and punching deep salients into the wild.

People "are literally loving the place to death," says Dr. Patrick Jobes, a sociologist at Montana State University in Bozeman, on the northern fringe of the ecosystem, who has joined with ecologists to study interrelationships among the region's people, economy and environment.

Some ecologists fear that unless it is controlled, a proliferation of subdivisions on private land will disrupt rhythms on which the ecosystem's biological health depends. Among the features believed to be at particular risk are these:

- ¶ River-valley habitats, which contain some of the ecosystem's richest assortments of plant and animal species.

- ¶ The purity of some of the region's cold, clear rivers and streams.

- ¶ Migration routes traveled by elk and other big ungulates as they move from the high country to lower elevations when winter approaches — not to mention the winter habitat itself, much of which is on private land.

- ¶ Habitat of the threatened grizzly bear, the creeping loss of which is already forcing the scarce bears into no-win conflict with

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PHOTOCOPY
PRESERVATION

Park Service Plan to Decentralize Cleaves a Canyon of Disagreement

By Stephen Barr

Washington Post Staff Writer

The National Park Service—the custodian of Yellowstone, the Everglades and the Washington Monument—is poised to undertake a multimillion-dollar reorganization that will downsize the Washington headquarters and give new power to park superintendents.

The draft plan has divided the Park Service and created morale problems at regional and Washington offices facing staff cutbacks. Longtime employees contend the reorganization will cost significantly more than currently projected, will put parks at increased risk to environmental dangers and will weaken accountability. Supporters of the plan, however, say it will force the Park Service into dealing with environmental questions outside park boundaries and put more staff in the parks.

The disagreements inside the Park Service reflect, in varying degrees, the debates underway in virtually all government departments as federal officials deal with how to implement the Clinton administration's decision to shrink the federal work force by 12 percent over the next five years. For the Park Service, whose historical sites and parks attract about 273 million visits each year, the proposed reorganization would transform traditions and practices that have remained mostly unchanged since 1934.

George T. Frampton Jr., the Interior Department's assistant secretary for fish and wildlife and parks, in describing the plan's effect, said it would bring not just generational change but a "century change" to the Park Service.

Vice President Gore's "reinventing government" initiative provided the framework for the proposed Park Service changes. In keeping with Gore's directives, the Park Service will flatten its Washington headquarters structure, cut back its regional offices and try to shift personnel from mostly invisible desk jobs into the parks or into positions that directly support park rangers.

The Park Service has tried to blend Gore's desire to reduce bureaucratic layers with past and current park efforts aimed at protecting the nation's treasured geographic and cultural sites.

In Frampton's view, the proposed reorganization will help shift the Park Service away from its traditional command-and-control management structure toward an approach built on peer groups, consensus and the development of partnerships with landowners, local and state governments and other groups outside park boundaries.

At the Everglades, for example, almost all the decisions about the quality of water in the park are made by farmers and state and local authorities. Frampton thinks the Park Service must become more agile in developing strategies to protect the parks from environmental threats that originate beyond park boundaries but affect park land.

But the plan's critics include several Park Service employees who, speaking on condition they not be identified, contend that the downsizing effort will actually create a less unified system that will create new power centers. At the same time, the critics argue that stripped-down management ranks will not be able to stay on top of developments in 366 separate park system sites.

According to draft documents on the proposed reorganization, the Park Service, which has about 19,000 "full-time equivalent" employees, would shed about 1,300 of them over 2½ years. The Washington office, which now numbers about 1,100 employees, would be cut to 200 workers, according to the draft plan.

But Frampton suggested that the personnel cutback would not be as dramatic as envisioned in the proposal. He said current projections showed the Park Service cutting 700 jobs, with the Washington office losing about 350 positions.

Determining how many people will lose work hinges in part on how many more employees sign up for "buyouts" and whether the Park Service is granted a fiscal 1996 budget increase that allows extra hires, Frampton said. As of Labor Day, 423 employees had opted for buyouts.

Regardless of how the personnel numbers play out, Frampton said they are in keeping with the administration's government-wide goal to decrease management structure substantially.

"What's happened over time is that you ended up with a lot of people in the Washington office who basically review and check off decisions made at the regional offices. And the regional offices had two or three levels who would check off decisions made by superintendents," Frampton said.

Those layers that existed only for double-checking and passing on decisions can be significantly reduced, Frampton said.

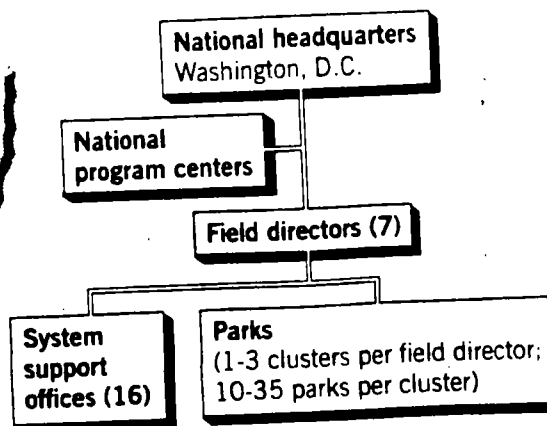
To accomplish that goal, the draft plan would pare back from 10 to seven the number of Park Service regional offices and consolidate or reduce staffing at national program centers that provide specialized expertise, such as historical interpretation.

The regional offices would be replaced with seven field directors who would have a staff about one-tenth their current size. The bulk of the regional employees

PHOTOCOPY
PRESERVATION

A NEW PARK SERVICE?

The National Park Service is looking at a new organizational structure as a result of Vice President Al Gore's National Performance Review. The NPS created a reorganization committee to study the vice president's report. It has created a structure of 16 clusters with 10 to 35 units apiece. Superintendents would report to one of seven field directors. The headquarters in Washington would also be significantly smaller, leaving only policy and leadership functions.



SOURCE: The National Park Service: "Operation Future"

THE WASHINGTON POST

would shift to 16 system support offices set up closer to the parks but outside the chain of command. The remaining employees would take jobs in the parks.

The parks, in turn, would organize into "clusters," with 10 to 35 parks in each one. Park superintendents in each cluster would meet to figure out ways to stretch limited funding and to share approaches to environmental or other policy issues.

In response to questions during an interview, Frampton acknowledged that the plan—put together by a committee of rangers and managers—would expand park superintendents' authority and, to succeed, requires improved leadership skills.

"It demands somebody other than a manager simply accustomed to taking orders and translating them into other orders," Frampton said. "If we're going to manage to protect park resources in the future, then they're going to have to be up to it."

The plan's critics argue that it is folly to expect park superintendents ever to agree on budget priorities, and some contend that the new 16 support offices will end up as fiefdoms asserting their independence from the parks. Other critics, noting that some offices will stay in the same geographical location but get a new label, contend the reorganization will not do any more to solve policy problems than the current structure does.

In a letter to the Park Service, Paul C. Pritchard, president of the National Parks and Conservation Association, outlined a number of concerns about the proposed reorganization.

"We fear," Pritchard wrote, "that the proposed restructuring will lead to myriad parks and park clusters making inconsistent policy interpretations, with each one developing its own responses to local problems regardless of the implications for the whole park system and federal policy. In our view, it is the unity of the national

park system that so significantly helps protect the individual parks."

Without a strong Washington staff, Pritchard said, park superintendents may have trouble withstanding local economic pressures or congressional interference.

"Superintendents need organizational integrity to support efforts to protect the resources. With the highly weakened Washington and regional structure, who will provide that sort of 'cover'?"

Frampton, who has met with a wide range of employees about the reorganization, said he had his own list of "tough questions" that need answers. They range from Pritchard's concerns about whether a small Washington staff can maintain discipline over a nationwide organization to whether park superintendents will content themselves with providing visitor services and duck tough decisions about environmental protection. There are also valid concerns about whether the Park Service can retrain and encourage managers to make a redesigned park system work, Frampton said.

"There are some significant risks to this reorganization. I think anytime you really try to look ahead 10 or 15 years and make changes to update an organization to your vision of what the future problems are going to be, it's risky," he said.

"Any kind of reorganization commits you to expending resources: money, time, energy, senior management effort. And the reason I've tried to be involved in this personally, I want to make sure I feel comfortable the expenditure of those resources is worth a candle."

To keep the reorganization moving, the Park Service convened an Incident Management Team to recommend an implementation program.

Incident teams usually handle crises, such as hurricanes, fires or lost children. Their virtue is streamlined decision making and the ability to throw resources at a problem.

In this case, the "Operation Future" team provided a list of 131 steps needed to accomplish the reorganization.

To allay employee fears and explain the plan, the Park Service also has dispatched about 30 staff members to visit workplaces around the nation.

Frampton, meanwhile, has been looking at ways to modify the plan. He may add another associate director in Washington to make sure science and environmental issues have a highly placed advocate. He also wants to shore up the professional staff that handles concessions for the Park Service and preserve fiscal accountability so that Congress retains confidence in Park Service spending.

The plan will cost between \$30 million and \$40 million over the next two years as the Park Service moves people and rents new offices, he said. The projected costs will require the reprogramming of budget money, which will require the consent of congressional appropriations committees.

Frampton said the Park Service was still trying to calculate what long-term savings would be.

"Any reorganization will be contingent upon congressional approval," Frampton said.

Congressional aides on panels that oversee Park Service operations said members would have no comment until a plan is sent to Capitol Hill.

SEATTLE POST INT. 9/5/94

Park Service seeks partial closure of N. Cascades road

By Joel Connolly
P-I National Correspondent

The Park Service wants to sharply cut back one of only two roads taking visitors into the North Cascades National Park.

In a 494-page report released without fanfare last month, park officials announced plans to close the upper seven miles of the Stehekin River road, which provides access to hiking trails and scenic vistas from the isolated resort community of Stehekin at the head of Lake Chelan.

The closure would have far-reaching consequences for visitors seeking to experience one of the most remote, spectacular mountain areas in the national park system.

If the closure goes through, visitors to

the Stehekin Valley wouldn't be able to take day hikes to such alpine destinations as the meadows and mine ruins at Horseshoe Basin. Stehekin-bound visitors would no longer be able to hike across Cascade Pass in one day to catch a shuttle bus down the valley. Backpackers would find overnight trips to other destinations extended to three or four days.

The two units of the North Cascades National Park are almost entirely wilderness. Only two dirt roads enter the park: the Stehekin River road and the Cascade River road out of Marble Mountain. The North Cascades Highway runs between segments of the national park, although the highway goes through the Ross Lake National

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PHOTOCOPY
PRESERVATION

Park: Expert criticizes closure plan

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Recreation Area

Partial closure of the Stehekin Valley road also would restrict access by valley residents, possibly reigniting long-simmering controversy between local landowners and the National Park Service.

The proposed road cutoff has drawn criticism from a Mount Vernon physician who fought to create North Cascades National Park in the 1930s and wrote the Sierra Club's popular guidebook to trails in the park.

"It's a historical road that was there long, long before the park. It does not significantly impact the wilderness, and closing it will lessen the pleasure of many park users," said Fred Darvill.

The park plans to ask Congress to designate the upper seven miles of road as a wilderness and make a trail out of it.

The proposal isn't final. The Park Service plans three public hearings: at the Seattle Center at 7 p.m. Oct. 3, in Chelan Oct. 5 and in Stehekin Oct. 7.

William Paleck, North Cascades National Park superintendent, acknowledged that the road closure will mean changes in how visitors use the valley.

"Cascade Pass and Horseshoe Basin are going to be longer hikes," he said. "They are hikes still available to the public. People are going to take more time to go into these areas, that's true."

Paleck said permanent closure of the road "is in the best long-term interests of management of the area."

The Park Service said the road closure will save money, reduce the need for sand and gravel, and improve habitat for such endangered species as the grizzly bear. It has been 30 years since the last confirmed grizzly sighting in the area; in 1964, four years before the park was created, a bear was shot about 13 miles away in

Fisher Creek

In addition to closing seven miles of road, the Park Service wants to ban private cars above High Bridge, which marks the park boundary.

"Stehekin residents would be unable to access trailheads or fishing holes behind High Bridge by personal car; for many of us, loss of that ability will diminish our pleasure of owning property at Stehekin," Darvill wrote to Paleck.

The proposed road closure is backed by the North Cascades Conservation Council, an environmental group that has fought to restrict development in the Stehekin Valley.

"It re-establishes wilderness in the heart of the North Cascades," said the council's Kevin Herrick. "We've had an awful lot of our forested land roaded. To re-establish trail is a beautiful thing."

The Park Service has long operated under one of America's most ambiguous mandates. It is directed to provide for public enjoyment but also to preserve parklands for enjoyment by future generations.

In the 1930s, conservation groups used recreation as a main argument in building public support that persuaded Congress in 1938 to create the North Cascades National Park and two adjoining national recreation areas.

The Sierra Club made a movie called "The Wilderness Alps of Stehekin" showing the club's then-executive director, David Brower, on a camping trip with his sons at Park Creek Pass. The 6,100-foot pass is an isolated alpine area, flanked by three 9,000-foot peaks.

Nowadays, under Park Service rules, it is illegal and impossible to repeat the experience shown in the Sierra Club's film.

Park managers have banned hikers and horsemen from camping in and around Park Creek

Pass. The nearest designated campsites are three miles below the pass. Under the road-closure plan, the hike to Park Creek Pass would be extended from eight to 12 miles.

Herrick argued that wilderness values justify the longer hike. If visitors don't like it, he suggested, they should find easier hikes outside the park.

"Look at the broader picture," Herrick said. "Since 1938 there have been a lot more roads added to the North Cascades. The number of accessible alpine areas has increased rather than decreased."

The North Cascades National Park has gained a reputation as a preservationist bastion in the tug of war over park uses. The park's prickly bureaucracy has often seemed to court controversy.

The 674,000-acre park and recreation area complex is tightly regulated. Backcountry camping is allowed only by permit and in designated sites. Stehekin residents have encountered resistance in efforts to provide visitor services.

In 1962, the owner of the Honey Bear Bakery was ticketed for illegally selling cinnamon rolls to visitors coming off a Lake Chelan passenger boat.

Karl Gaskill, the bakery owner, has since moved his business to Seattle but remains a landowner in the valley. He is strongly critical of the proposed road closure, saying it would cut off such experiences as the easy, popular Horseshoe Basin hike.

"It's a very enjoyable family outing," Gaskill said. By contrast, he added, hiking the path of the old road would be "neither so scenic nor pleasurable."

Darvill, who has explored the valley for 40 years, said the road-turned-trail would provide summer visitors with a hot, buggy and thoroughly unattractive hike.

could stall budget

Interior bill asks for \$7.5 billion

By NADIA WHITE

Star-Tribune Washington bureau

WASHINGTON — The Interior Department budget bill could be in for a rough ride this fall as House-Senate conference committee members work to stay on top of highly charged issues such as a moratorium on mining patents and funding for Rangeland Reform '94.

Such political roadblocks have delayed the bill in the past.

INTERIOR: Committee will schedule meetings next week

Continued from A1

Last year, Sen. Malcolm Wallop, R-Wyo., helped lead a filibuster to turn back range reform initiatives. He succeeded by frustrating efforts to pass the entire Interior budget until a legislative rider that would have implemented the program was struck from the appropriations bill.

Budget watchers say they don't expect debate over this year's money bill to be as heated as they were last year, but, they say, there are hot spots in the text.

"Not a lot is different between the House and Senate. But even though mining and grazing are not very big" in terms of dollar amounts, "they may come up because both are controversial," said Interior spokeswoman Stephanie Hanna.

The House and Senate have each passed their own versions of a funding bill for Interior. Both bills would fund most programs at levels sought by the administration. The next step is for House and Senate members of a conference committee to meet to work out the differences between those two proposals.

Controversy may arise in that committee, or later, when the final bill is introduced on the floor of each house.

The administration has asked Congress for \$7.449 billion to fund Interior's various agencies for fiscal year 1995, which starts Oct. 1. That request is 1 percent — \$79 million — less than was budgeted for fiscal year 1994.

The House bill calls for a total of \$7.4 billion for the Department. That allowance recommends a roughly 1.75 percent budget cut — \$132 million less than was budgeted for fiscal year 1994.

The Senate bill seeks deeper overall cuts than the House, asking for a total of \$7.372 billion. That request is 2.1 percent — \$156 million — less than the FY94 budget.

Grazing funding reduced

Money is included in the bud-

get bill to pay start-up costs for Interior Secretary Bruce Babbitt's Range Reform '94, a package of proposals intended to overhaul range-management policy. However, both the House and Senate call for a significant reduction in the amount of money set aside for that program.

Both the House and Senate look to cut \$6.5 million from the Range Reform implementation budget. Both versions cite start-up delays, caused by extension in the public comment period on Range Reform '94 as the reason for the cut.

That leaves \$8 million to pay for Range Reform changes. That money is earmarked in the budgets for the U.S. Fish and Wildlife Service, the soil, water and air management account, wild horse and burro program, and the range management account, according to Bureau of Land Management spokesman Ted Meleznick.

Mining row likely

The House version of the Interior budget calls for a moratorium on issuance of mining patents. The moratorium would halt the progress of patent applications that have not been given first-stage approval by Bureau of Land Management.

The Senate bill does not include a moratorium, a distinction that sets the stage for a fight. The difference must be resolved in conference, but could surface again when the conference bill is voted on by the full

Senate, where amendments may be offered.

Beverly Reese of the mining reform advocacy group Mineral Policy Center said the potential exists for very heated debate.

"If it comes out of conference with it in, will they filibuster? I don't know. It depends on what Messrs. Wallop, Craig and Murkowski decided to do," she said, referring to Republican senators from Wyoming, Idaho and Alaska who have fought mining reform.

If an amendment is offered that would include the moratorium in the Senate bill it would probably come from Sen. Dale Bumpers, D-Ark.

For years Bumpers has been trying to have a moratorium enacted while the 1872 hard rock mining law is overhauled. Such amendments offered by Bumpers were defeated in 1990, '91 and '92.

But Carl Gaywell of the Wilderness Society said in the past the idea of a moratorium has been used to put a spotlight on the idea of mining reform.

Now, with mining reform included in a bill that is in a conference committee of its own, that spotlight may not be necessary, Gaywell said, and so mining may not engender a battle.

The conference committee will work to schedule meetings early next week or the week after.

PHOTOCOPY
PRESERVATION

Dams To Be Fixed, Senator Says

JOURNAL STAFF REPORT

Legislation to repair unsafe dams on American Indian lands, including seven in New Mexico, has been signed into law by President Clinton, says U.S. Sen. Jeff Bingaman.

Two of the hazardous dams are in Sandoval County and a third is in Valencia County.

Bingaman, D-N.M., said in a recent news release that the Indian Dams Safety Act authorizes an immediate inventory of dams on pueblos and reservations, and directs the secretary of the interior to repair those dams identified as a threat to human safety and property.

"This action will address the dangerous situation that has developed through the neglect of these dams," Bingaman said. "There are seven dams in New Mexico classified as presenting 'high' or 'significant' hazards and I believe the act can avert a potential tragedy."

Bingaman said that in addition to the threat of the dams breaking, failure to repair the dams has increased both the cost of maintaining them and the cost of repair.

A 1989 report by the U.S. Bureau of Indian Affairs found that seven of the 22 dams located in New Mexico pose potential hazards to their communities. The act calls for an immediate inventory of all dams

Indian claims negotiators plan next round Sept. 22

Western Shoshone representatives and a federal team are planning to meet in Salt Lake City Sept. 22 to continue negotiating a claims issue involving millions of dollars and millions of acres.

"Progress is being made. We're in the informal stage," said Cynthia Pinto, the Bureau of Land Management's field liaison with the Western Shoshone.

She said she is meeting informally with tribal councils and Western Shoshone leaders to "identify issues to be brought to the table" at the September meeting. This will be the second round of the most recent negotiations.

The first round was held in Salt Lake June 28. Earlier, the negotiators met in Washington, D.C., to the ground work.

Western Shoshone team members are trying to negotiate land, hunting, fishing, pinenut gathering, grazing and cultural and spiritual issues before considering disbursement of \$86 million, said Kim Townsend, a team member from Duckwater Indian Reservation.

The federal team seems more interested in distributing the money, however, she said.

The Western Shoshone are disputing an Indian Claims Commission ruling over the Ruby Valley Treaty of 1863, which they say never gave away land covering much of central and northern Nevada.

The commission awarded a \$26 million settlement in 1977 for 24 million acres, but the Western Shoshone never accepted the money, which has been held in the U.S. Treasury since

then and has grown to the roughly \$86 million.

The Western Shoshone negotiating team said in a statement that "the signing of the Ruby Valley Treaty of 1863 played a major role in the course of history. The treaty permitted passage through the Western Shoshone territory; an agreement of 'Peace and Friendship.'"

The statement goes on to say that the Indians allowed many people to pass through their territory without harm but in return, "our wildlife was slaughtered, our land and water was left destroyed or contaminated and desecration and genocide of our people, culture and way of life" prevailed.

The Western Shoshone team added they are negotiating with the U.S. government to seek a "fair and equitable agreement as a Western Shoshone nation."

Pinto, who works out of the state BLM office in Reno, said she was appointed after the June meeting to be the state coordinator for the negotiations.

The talks in Salt Lake and Washington followed Interior Secretary Bruce Babbitt's appointment of John Duffy as his chief counsel to lead talks with the Western Shoshone. Babbitt took the action during a meeting with the Indians in Denver last January.

Battle Mountain Band Council Chairman Paul Snooks predicted it would be next year before negotiators from both sides are ready to propose a bill to Congress to settle the claims issue.

"First, we've got to iron out a lot of stuff. It will take a lot of meetings," he said.

Elwood Mose of Lee, who attended the negotiation session in June as an observer, said the federal team and Western Shoshone team appeared to be "more or less spinning their wheels" at that meeting.

The federal team did, however, reject the Western Shoshone team's call for a moratorium on all leasing, sales and mining on federal land in the territory claimed by the Indians, according to the minutes.

The team said the moratorium request was too broad and would need

to be narrowed, a summary of the minutes states.

Duffy also informed the Indians that environmental concerns over nuclear waste dumping, contamination of air and water and hazardous wastes were not part of negotiations but should be taken up with the Department of Energy.

Mose, who has been following the claims issue for some time, said he is "still interested in the money side," the distribution of the claims money. However, he said he is willing to consider the government's plan that 20 percent of the money go to land development and economic development.

"One of the sticking points is that a lot of tribal people don't want to give up 20 percent. They think Congress should appropriate economic development funds on top of reimbursement," Mose said.

Once the federal government disburses the money, "it can say we've paid for the land," said Western Shoshone National Council Chairman Raymond Yowell of Lee.

He also said current negotiations "are a sham" because any negotiations should be with the national council rather than the current team.

Yowell said the council has informed President Clinton, Babbitt and congressional representatives that the national council is the original entity for negotiating Indian issues with the federal government.

The council represents the Ely, Yomba and Timbisha Tribes as well as other Western Shoshone entities such as the Dann Band, he said. But the Te-Moak and Duckwater Tribes have dropped out of the national council.

Meanwhile, a news team from CNN was in the area earlier this month to talk with Western Shoshone, including activists Carrie and Mary Dann of Crescent Valley, and with ranchers and Elko BLM officials.

"They talked to us about Indian land disputes, mostly focusing on the Dannels," said Terry Dailey of the Elko BLM office.

Dailey said the CNN news team indicated they were shooting a series on Western land claims issues.

Oregon, federal officials clash over salmon

■ The state accuses the National Marine Fisheries Service of taking arbitrary control of Columbia fish runs

By BILL MONROE

of The Oregonian staff

Oregon Department of Fish and Wildlife officials and the federal government are at loggerheads over two chinook salmon.

Oregon bitterly accused the National Marine Fisheries Service of arbitrarily taking control of the Columbia River's salmon runs and abandoning co-management of the system with the states of Oregon and Washington.

The Fisheries Service said late Friday it still will not allow a popular and traditional recreational chinook fishery to take place in the Columbia because it would kill two endangered Snake River fall chinook.

And Oregon's top fish and wildlife official warned that the state may take the federal government to court over the issue if it occurs in 1995.

Tribal Indian fishermen recently won a court negotiated commercial fishing season that will kill an estimated 52 of the endangered fish. More than 100 others will die on

"The cooperative compact between the states, tribes and federal fisheries agencies may no longer be operational," said Rudolph Rosen, director of the Oregon Department of Fish and Wildlife. "If that is true, we've reached a sad state of affairs in the Pacific Northwest."

There are an estimated 800 Snake chinook mixed with a total Columbia fall chinook run of 200,000 entering the river, Martin said. Only about 300 are predicted to reach their spawning grounds.

Under the Endangered Species Act, the Fisheries Service is required to issue a no jeopardy ruling before allowing any fishery or activity that will result in the death of any of the species.

"They won't even return our calls," Martin said of the Fisheries Service after two weeks of complaints from sport anglers about not being able to keep the large chinook. "I'm fried. In 25 years of dealing with these issues, I've never seen this lack of respect. I cannot understand why they don't respect the non-Indian recreational fisherman."

A slightly calmer Rosen said he and his staff are drafting a letter to the Fisheries Service that first will be reviewed by the Fish and Wildlife Commission and then Gov. Barbara Roberts.

... we have much

of the two chinook.

"We're at a point where ... anything in excess (of the treaty fishery) is not acceptable," he said. "There's no room for any additional loss. We don't think the biology is there."

Robinson said his staff has been in discussions with Oregon fish managers but still would not allow the fishery.

It is possible, Robinson said, that William Stelle, the recently appointed regional director for the agency, had not returned Martin's calls in the past week.

"There have been a lot of meetings," Robinson said.

Stelle was in a meeting, according to his secretary, and did not return telephone messages.

Rosen said the state won't go to court this year to force the issue of a recreational fishery but entertained the idea in 1985.

"There aren't that many fish left to fight over this year," he said.

Domenici enters land dispute

BY ANDREW STINY
JOURNAL CORRESPONDENT

TAOS — U.S. Sen. Pete Domenici, R-N.M., met with both Taos Pueblo leaders and a property owners association Thursday in an attempt to get discussions moving on the pueblo's claim to 80 acres north of Taos near NM 150 and NM 522.

Domenici told 50 to 60 people at a meeting of the Taos Land Rights Association that he would try and set up a meeting between pueblo leaders and property owners in the area.

"That would be great," said Philip Bareiss, association president. Domenici said he had met with pueblo leaders for two hours earlier in the day.

The title to land in the area was thrown into doubt after a 1991 letter was written to area title companies by a pueblo attorney saying the pueblo intended to assert an "aboriginal claim" to 120 acres near the blinking light (a Taos landmark).

No legal claim has yet been filed over the disputed land. The pueblo reportedly has already purchased 40 acres of land in the area from the federal Resolution Trust Corporation, leaving 80 acres in dispute. No offers from the public were accepted for the 40 acres, which was purchased by the pueblo for \$40,000, according to the land rights association.

Taos title company agents have said title insurance underwriters will not write new policies or will require no-indemnity clauses in the disputed area. Land in the area is unlikely to be sold, bought or refinanced until the dispute is resolved because lenders require title insur-

ance.

Property owners at the meeting asked Domenici to do what he could to get the Indians to file a claim and move things along. "Right now we are fighting phantoms," said Realtor Charles Lonsdale.

Domenici agreed to write a letter asking the Justice Department to promptly look into the pueblo's claims, according to Bareiss. The pueblo's claim reportedly is being reviewed by the Bureau of Indian Affairs, Office of Field Solicitors in Santa Fe. That office said Friday that Rob Eaton was in charge of the review and that he was away from the office until Tuesday.

No one from the pueblo could be reached for comment Friday, but before Thursday's meeting with Domenici, Richard Archuleta of the Warchief's Office, said the pueblo had not yet been able to meet with the landowners group.

"We hope we can defuse this whole crazy situation," Archuleta said. "We have a whole slew of concerns we would like to have Domenici listen in on."

"We are not trying to be land hoarders as we have been accused of," Archuleta said. "We need to preserve what little we have left."

Archuleta said the tribe was seeking "understanding and clarity. We certainly don't want to build any bad feelings amongst our neighbors."

Bareiss echoed those sentiments in comments at the meeting. "Those of us who own land here, we still want to be neighbors, we want to be good neighbors with the pueblo."

"We don't know what is wrong with our title," Bareiss told the landowners. "There is not enough money in the world to fight this."

Domenici told the landowners group that water rights claims and claims by the pueblo to certain streets and alleys in Taos were being negotiated. "I'm confident that one of the issues I'm being bombarded with is being negotiated," Domenici said.

"I'm getting informed," about the land dispute Domenici said. "There appears to be a certain amount of confusion to say the least." Domenici told the group that they should get the nature of the pueblo's claim and see what the issues are and that he would help.

There appeared to be a tone of frustration in some of the property owners' questions to the senator.

"What are the Indians after?" asked Richard Wallach, noting they (the pueblo) were not going to physically get back Taos streets and alleys. "Somebody saw an opportunity to get a bunch of money."

"Frequently they don't feel like you or I do," Domenici said.

"You're talking to poor landowners here," Bob Edwards told Domenici, noting the pueblo had access to numerous government lawyers. "Is there any way to level the playing field," Edwards said. "The Indian coffers are full."

"It's just the law of the land ... the United States of America is trustee for the Indians," said Domenici.

Sunday, September 11, 1994

Casper Star-Tribune

BLM tags Chevron for \$16 million in back royalties

By HUGH JACKSON
Star-Tribune staff writer

CASPER — Chevron USA Ltd. had to pay millions in federal mineral royalties on gas and oil produced from the company's leases in southwestern Wyoming from 1983 to 1986, a recent report by the Bureau of Land Management says.

Chevron vigorously denies the claim.

The company further suggests the new report represents simply a bid by the state BLM office for a share of millions the company paid the Department of Interior last spring in settlement of a variety of outstanding disputes.

And Chevron has protested BLM's action as a violation of that settlement, said Chevron Public Affairs Manager Walt Maguire.

Routinely, half of federal mineral royalties are returned to the state where the mineral is produced to fund schools, highways and other services and programs.

The BLM report values the total lost mineral royalties, plus interest, from

Company disputes claim

Chevron's federal leases in the Whitney Canyon and Carter Creek fields north of Evanston at \$16 million. Wyoming's share of that amount would be \$8 million.

When Chevron allowed oil and gas from beneath the company's federal leases to be

drained off by Amoco wells on adjacent properties, Chevron made sure to protect its own economic interests through cooperative agreements that paid Chevron the value of its share of the resource, the BLM report says.

"No similar provisions protected the federal royalties," said the report prepared by the BLM's reservoir management team.

Chevron's public affairs manager disputed the BLM's version. The company contested the amount of lost royalties — as well as a statement in a BLM release

Please see BLM, A12

BLM blasts Chevron for neglecting public interest

By HUGH JACKSON
Star-Tribune staff writer

CASPER — A recently-released Bureau of Land Management report repeatedly accuses Chevron USA of knowingly profiting from the sale of federal minerals without paying any federal mineral royalties.

Chevron vigorously disputes that claim, and asserts that it would never know-

ly allow federal minerals to be drained from beneath federal leases under Chevron's ownership without paying federal royalties.

Between 1983 and 1986, 23 billion cubic feet of gas and 471,000 barrels of petroleum condensate were drained from beneath federal lands where Chevron held the mineral rights, according to a report by the BLM's reservoir management team released last month.

The petroleum products were produced by wells operated by Amoco Production Co. on Union Pacific land adjacent to Chevron's federal leases in the Whitney Canyon and Carter Creek fields north of Evanston.

As the mineral lessee, Chevron is responsible for protecting the resource from drainage, the BLM report said.

But through a series of cooperative

Please see CHARGES, A12

PHOTOCOPY
PRESERVATION

Continued from A1
week which asserted Chevron had "conceded that drainage had occurred in the amount specified" by the agency.

Chevron has acknowledged only that there was the potential for some drainage from beneath the federal leases, and that the amount involved is much less than the volume identified by the BLM, said Maguire in Chevron's Salt Lake City office.

By Chevron's estimates, the back royalty amount, if the drainage occurred, would total about \$400,000, not the \$16 million asserted by the BLM, Maguire said.

"Chevron would absolutely dispute any allegations that we were trying to shirk our responsibilities for paying a fair amount of royalties under these drainage cases," Maguire said.

Big settlement paid in April

Further, Chevron has already covered the compensatory royalties on the Carter Creek/Whitney Canyon field as part of a \$50 million "global settlement agreement" between the company and the U.S. Department of Interior.

The Whitney Canyon/Carter

Creek drainage case is only one of several royalty and related cases nationwide that were settled in that global agreement.

"We can haggle over fine details in a number of different areas, most likely," Maguire said.

"But the fact is... we've paid it," Maguire said.

Maguire suggested that the BLM's \$16 million back royalty estimate represents not so much a dispute between BLM and Chevron, but between BLM and the federal Minerals Management Service "and how our global settlement is then divided up."

Interior spokeswoman Stephanie Hanna confirmed that the Whitney Canyon/Carter Creek drainage case was covered under the global settlement.

The Minerals Management Service within the Department of Interior determines final royalty payments, and the \$160 million paid by Chevron under the global settlement agreement in April has yet to be allocated, said Interior Department spokeswoman Stephanie Hanna.

The BLM's recommendation to allocate \$16 million of the \$160 million settlement for the Whitney Canyon/Carter Creek case will be sent to division offices in Denver for analysis, and

the MMS-Royalty Management Program can make its own estimate of compensatory royalties due, Hanna said.

Deborah Tschudy with the MMS Denver office said that the BLM report is still under review.

Once the royalty management program makes its estimate, Chevron is given the opportunity to review that estimate, and can contest it, Hanna said.

Hanna said that "ultimately, with Chevron's assistance," the MMS will determine the amount of back royalties due from the Whitney Canyon/Carter Creek case, and send that estimate to the Interior Department's Office of the Solicitor.

That office can accept the MMS estimate, or come up with its own estimate of royalties due, "and half of that amount will be paid to the state of Wyoming," she said.

Wyoming has in the past filed legal briefs in federal royalty disputes between federal agencies and energy companies, said Dennis Curran, a spokesman in the governor's office.

Curran said such action would only come after the MMS had determined the valuation, and then only after extensive review by the state Department of Audit.

CHARGES

Continued from A1
agreements with Amoco and other operators who had a financial interest in the field's production. Chevron protected only its own interests in the drainage situation, the report said.

Under the agreements, Chevron received compensation for Amoco's production - even though there were no federal royalties paid on that production.

"The circumstances of this case clearly demonstrate that Chevron and the other operators

acted as prudent operators only to the extent of pursuing the maximum recovery of reserves with a minimum number of wells. The federal royalty interests were neglected," the reservoir management team's report said.

"Chevron, therefore, was compensated for the production drained from its federal leases; no similar provisions protected the federal royalties," the BLM report said.

"Clearly, the lessees and operators acted to protect their own interests but neglected the public interests," the team's report said.

"Existing documents provide concrete evidence that the operators were aware of drainage potential prior to any production from either field," the report said.

And the team's report also concluded that Chevron could have economically protected the drainage by producing from its own wells on the federal leases.

But the wells brought on line to produce only after the completion of the Carter Creek Gas plant owned by Chevron and the

Whitney Canyon Gas plant owned by Amoco, the BLM said.

Walt Maguire, Chevron's public affairs manager, said "We would not knowingly drain from a reservoir and not pay royalties. Chevron just doesn't operate in that manner."

If drainage occurred - and

Chevron is not prepared to admit that it did - then it was in amounts much less than those claimed by the BLM, he said.

Chevron would have paid royalties when the drainage was brought to the company's attention, Maguire said.

"In no case would we knowingly not pay royalties on production," Maguire said. "It's just unacceptable. It would be a prac-

'Clearly, the lessees and operators acted to protect their own interests but neglected the public interests.'

BUREAU OF LAND
MANAGEMENT REPORT

tice that we would refuse to follow.

"Do those things take place sometimes, unknown to the operators such as Chevron? I believe they could, and I think we would recognize that," he said.

"That's why you have audits," by the BLM and the federal Minerals Management Service, Maguire said.

But in this instance, Chevron disputes the BLM's claim that the mineral royalties were worth \$16 million, and places the amount at about \$400,000, he said.

Meanwhile, the Wyoming Oil and Gas Conservation Commission is scheduled next week to conduct a hearing on yet another Amoco well within a Union Pacific section in the Whitney Canyon/Carter Creek field.

Chevron is protesting that well on the grounds that it could violate Chevron's rights by draining minerals from adjacent federal leases.

The BLM, too, is protecting the Amoco well, because "we don't want to see this start up again," said Bob Chase in the BLM's Casper office.

PHOTOCOPY
PRESERVATION

Endangered Property Rights

Clinton Administration officials are puzzling over the President's recent dive in popularity; his approval ratings have fallen 15 points in the past eight months. One reason not likely to ever come into focus around this White House is that Mr. Clinton's regulatory policies are alienating large numbers of constituency groups. Whether it's small-business owners, gun collectors, anti-HUD protesters or people who drive to work in urban areas, this administration has picked fights with a whole lot of folks. But perhaps the most angry of all are property owners who feel they are being unfairly deprived of the use of their land.

Last month, coordinated rallies were held in three states to protest overzealous enforcement of the Endangered Species Act. In California, a Taiwanese immigrant farmer faces a year in prison and \$300,000 in fines for killing five kangaroo rats while tilling his land. Residents of Idaho's Bruneau Valley are fighting the listing of a pinhead-size snail that differs from other snails only in that it has a larger-than-normal sexual organ.

The most vociferous demonstration was in Austin, the Texas state capital. More than 3,000 marchers protested plans by the U.S. Fish and Wildlife Service to declare 800,000 acres in a 33-county area as "critical habitat" for a migratory songbird called the golden-cheeked warbler.

Many farmers whose roots in the area go back 120 years say they will be prevented from doing anything that could be viewed as "harassment" of the warbler, including building new fences. Dorothy Deas of the Fish and Wildlife Service says the agency's enforcement is "reasonable and prudent." However, she acknowledges that "harassment" would include chasing away a warbler that took up residence on the front porch of a farmhouse.

A group called Take Back Texas is fighting back and has support from many state officials. Democratic Attorney General Dan Morales says he will sue the Interior Department if they lock in the 33 counties as warbler habitat. "The Endangered

ing. Fish and Wildlife officials agreed, but first took 765 acres as a habitat for the golden-cheeked warbler and cave bugs. In exchange for allowing development on the remaining 339 acres, the feds demanded the landowners "mitigate" the harm they would cause by buying 873 acres for additional Fish and Wildlife habitat. So the agency's idea of "reasonable and prudent" regulation includes forcing a landowner to hand over 1,638 acres of land to the government before he can develop the 339 acres he has left. This sounds like a form of bureaucratic extortion.

Secretary Babbitt's office has a two-pronged defense of his policies. On the one hand, it insists he supports property rights. But it also lashes out at property owners whenever they try to defend those rights. Last week, his assistant Kevin Sweeney argued that the efforts of Interior's Texas critics, "with no acknowledgment of the greater needs of the community," could deny "two centuries of law and tradition" on land use limits. "If this group has its way, those limits will be gone, and we'll pay a huge price: porn shops can be built across the street from churches, and liquor stores can be put in next to junior high schools," he claimed. Mr. Sweeney's statements weren't some off-the-cuff remark. They came in an op-ed he sent to the Austin American-Statesman.

The truth is that the Texas landowners only want to restore a reasonable balance in the regulation of their property. Tex Lazar, a former U.S. Justice Department official who is running for lieutenant governor of Texas, supports the landowners' cause. He wants to let independent economists assess how much landowners should be compensated if government takes or locks up their land.

Last month, Texas Senator Phil Gramm introduced a bill to clarify takings policies. He would require compensation when the government's actions reduce property values by at least 25% or \$10,000. Payments and legal fees for property owners who win their court cases would come out of the budget of the agency that issued the regulations. Exceptions would include

The Wilderness Act: Work Continues After 30 Years

THIRTY years ago this month Lyndon Johnson signed the Wilderness Act, a measure unique in the history of conservation law.

At a time when the United States was growing rapidly in population and economic development, especially throughout the resource-rich American West, the notion that there should be places, as the act states, "where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain" demonstrated extraordinary vision.

The act initially set aside 9 million acres where roads, motorized equipment, dams, permanent structures, logging, and other development were forbidden. Southern swamps, Alaskan tundra, mountains, and high deserts were selected from federal forests, national parks, and wildlife refuges for wilderness designation.

Over the years, Congress has expanded official wilderness tenfold to some 96 million acres in 602 units. With final passage of the California Desert Protection Act (whose details are being worked out in the US House and Senate), the figure will pass 100 million acres.

It took eight years and more than 60 versions of the bill before the Wilderness Act passed both houses of Congress with near-unanimity. Critics said "locking up" natural resources would hurt regional and local economies.

The controversy over jobs versus preservation has intensified since then. But while the numbers seem huge, the wilderness system today includes only 15 percent of all federal lands and covers just 4 percent of the US land mass — more than half is in Alaska. The US Forest Service spends just 1 percent of its annual budget on managing wilderness areas — far, far less than it does helping the timber industry.

The idea and experience of wilderness touches the spiritual as well as the aesthetic. Such writers as Henry David Thoreau, John Muir, Aldo Leopold, and (more recently) Wallace Stegner and Gary Snyder have explored landscape that is as much ethical as natural.

"Something will have gone out of us as a people if we ever let the remaining wilderness be destroyed," Stegner wrote, "if we permit the last virgin forests to be turned into comic books ... ; if we drive the few remaining members of the wild species into zoos or to extinction; if we pollute the last clear air and dirty the last clean streams, and push our paved roads through the last silence..."

Much has been done under the Wilderness Act, but much remains. Besides final passage of the 6.3 million-acre California Desert Protection Act, major wilderness bills for Idaho and Montana have languished for years. The coastal plain of the Arctic National Wildlife Refuge deserves wilderness protection, as do such places as the Steens Mountains in southeast Oregon.

The Bureau of Land Management, an Interior Department agency that oversees 250 million acres in the West, needs to press ahead with its planning for wilderness protection. Wilderness now accounts for less than 1 percent of all BLM land, most of which is open to mining, grazing, and logging.

The federal Land and Water Conservation fund (created the year after the Wilderness Act) lacks adequate resources to acquire "inholdings," or privately-owned parcels within wilderness. Stricter enforcement is needed to prevent commercial outfitters from setting up semi-permanent camps in wilderness areas.

The private conservation group, the Wilderness Society, points out that preserving wilderness areas is more than setting aside pristine areas for mankind's enjoyment. It helps to clean water and air. It provides habitat for many species, some of them (like grizzly bears) endangered, and thereby maintains biological diversity. It acts as a "living laboratory" for scientific research.

Natural resources typically are things extracted for human use. But as the 1964 legislation made clear, wilderness itself is "an enduring resource."

ENVIRONMENT

By
Brad Knickerbocker

Southern swamps, Alaskan tundra, mountains, and deserts were selected from federal forests, parks, and wildlife refuges for wilderness designation.

PHOTOCOPY
PRESERVATION

Commercialism, Crowds National Park Turnoff

By Alfred Borcover

CHICAGO TRIBUNE

What a dilemma!

Tourism, which contributed \$397 billion to the U.S. economy last year, generated \$52 billion in federal, state and local taxes, and provided some 6 million jobs, is creating messes in the process.

Some of the mess is the result of sheer commercial overdevelopment as seen everywhere from Miami Beach to Waikiki in Honolulu, not to mention around the world. More often than not, taste and thoughtfulness got lost in the shuffle to cater to mass tourism — millions of Americans pursuing one of their most treasured pastimes, a vacation.

With man-made attractions, the feeling by the owners is the more people the merrier. Let's make money.

But for natural attractions such as national parks, wildlife and scenic areas, the more aren't the merrier. While the national parks were set aside by Congress to preserve the wilderness for generations to come, masses of tourists play havoc with their fragile environments. It's often not the case of people not caring, but the case of people not thinking.

Vacationers, often in search of special wilderness experiences, find themselves cheek-by-jowl with people seeking the same thing. While these people might be out in the wild, the experience is akin to mass tourism. There is a difference between rubbing elbows at Disney World and rubbing elbows at the Grand Canyon.

A recent article in Newsweek described the dilemma: "When rafters, anglers, kayakers and jet-boaters all seek to use the same river, someone must apportion it among them. God-given wilderness will be rationed out, a campsite at a time, by a burgeoning bureaucracy. It will still be possible to see a grizzly bear in the wild; you'll just have to stand in line to do it."

A photo in Newsweek shows 28 fishermen, seemingly within feet of each other, casting for salmon in an Alaska river. "During the run of king salmon on Alaska's Kenai River, 'if you have four feet between two fishermen, there's room for two more,' says Anchorage resident Steven Nelson, who describes this as 'combat fishing.'"

While the Grand Canyon is vast, the

COMMENTARY

road along the South Rim is not. "During the summer, 6,400 cars daily can face two-mile waits at the entrance. And there are only 1,600 parking places."

Another beef aired in the Newsweek article is the questionable practice of climbers drilling fixed anchors into the faces of rocky formations and mountains in Joshua Tree National Monument and Yosemite National Park in California.

During a visit to Joshua Tree several years ago, climbers, from beginners to veterans, were scaling every protrusion. And when climbers use power drills and hammers to set metal anchors, the action scars the rock. While it's fascinating to watch these would-be spidersmen and women, that's not why tourists go to Joshua Tree, a natural wonder.

Recently, the House voted to elevate Joshua Tree, east of Palm Springs, to national park status and to extend its boundaries to protect more California desert. Whether the natural elements of the park can be better protected is another matter.

In his book, "Regreening the National Parks," Michael Frome, a veteran park observer and critic, writes:

"While a park in principle is a different kind of place, it's difficult for it to survive in a healthy condition within an unhealthy environment. As long as the park is sustained with self-respect, there should be hope for the environment around it. But the spark must come from the people in charge."

Instead of putting the emphasis on nature, Frome notes, the emphasis is on supermarkets, superhighways, airplanes and helicopters sightseeing overhead, snowmobiling and park rangers being more like police officers.

"Park visitors expect comfort, convenience and short-order wilderness served like fast food," Frome opines.

Iconoclast/naturalist/writer Edward Abbey, who died several years ago, went to the extreme in airing his park views in "Desert Solitaire":

MORE: See NATIONAL on PAGE I-14

National Parks Turn Crowded, Commercial

CONTINUED FROM PAGE I-16

"No more cars in national parks. Let the people walk. Or ride horses, bicycles, mules, wild pigs — anything — but keep the automobiles and motorcycles and all their motorized relatives out."

These days, attendance at some parks is down while at others it's up. The reasons? Crime, natural disasters and weather certainly play a role. So does the fickleness of vacationers. Also add irritation and disappointment. Travelers often get turned off by the crass commercialism near popular national parks and put off by crowds.

Families with school-age children have little choice but to vacation during the summer when places get jammed. During a visit to Acadia National Park in Maine in early June, my wife and I virtually had the park to ourselves. So timing is important.

The delicate question is: At what point do commercialism and crowds cause vacationers to say "enough is enough?"

The last time I saw Door County, Wis., for example, several tacky attractions marred the landscape as I entered the lovely peninsula. My feeling was, "enough is enough." So did the owner of a very fine art gallery. She observed that new commercialism attracted less affluent visitors who seemed to be more interested in miniature golf than art or nature.

When city, county and state governments, as well as the feds, eye the tax dollars that come with tourism development, they lick their chops. When these entities don't apply controls, they stand the chance of killing the goose that laid the golden tourism egg.

PNM Ignored bid for Ute land: group

► Conservation group failed to come up with plan to buy the land, a PNM official says

BY ANDREW STINY
JOURNAL CORRESPONDENT

TOPICS — A national conservation group of New Mexico ignored its efforts to purchase and preserve a 14,000-acre ranch near Ute Mountain in northern New Mexico even though the group could have been competitive with the price paid by a Texas developer.

The Conservation Fund could have come close to the \$550,000 that Texas developer Ray Smith paid PNM last year for the sprawling Top of The World Farm near Costilla, according to Bill deBuys, New Mexico representative for the fund.

But a PNM official said Thursday that deBuys and the fund failed to come up with a plan to buy the land after lengthy negotiations.

Chicago-area buyers have signed a binding contract with Smith to buy the ranch along the Rio Grande near the New Mexico-Colorado border for \$2.8 million, according to documents provided by Los Lunas real estate agent Mike Oberg.

The unidentified Chicago investors propose to develop two golf courses, a 160-room hotel, 500 condominiums, 470 homes, 100 40-acre ranches and 40,000 square feet of commercial space, the documents say.

However, at the time PNM sold the land to Smith it had no attached water rights, the PNM official said.

"Our interest was well known (to PNM)," deBuys said Thursday by phone from Santa Fe, speaking for the Arlington, Va.-based conservation group. "They (PNM) did not have the courtesy to contact us and certainly didn't do justice to their shareholders to maximize value in the sale they did complete."

"In 1992 we had extensive discussions with PNM about buying the property to preserve it with the goal

of subsequently donating it to the Bureau of Land Management," deBuys said.

The Nature Conservancy, another national conservation group with a Santa Fe office, also had discussions with PNM about acquiring the Ute Mountain parcel in a land exchange, according to deBuys.

"Once (PNM) decided to put Ute Mountain on the market it didn't consult with us," he said. Witschger, then president of the PNM subsidiary that sold the Ute Mountain ranch to Smith and still a PNM executive, said he had several meetings with deBuys over the land. But after much discussion, he said, deBuys said his board would not agree to the purchase.

Witschger also said the sale was no secret, as some conservationists claimed at the time.

"This property was on the market for a considerable length of time," Witschger said. "I gave these folks quite a bit of opportunity to buy the land."

PNM received inquiries from developers in Germany. One group on the East Coast proposed using Ute Mountain as a firing range to test weapons for the U.S. Army.

PNM thought the use would be "inappropriate," Witschger said.

Others also considered using the land for residential development, but backed out after further investigation.

Witschger said the land is of poor quality.

"A rancher once told us that a cow would walk off more weight than he would put on trying to find grass," he said.

Before selling the land, PNM created a one-quarter-mile wide "scenic easement" along the Rio Grande, which borders the tract. Witschger said no development can ever occur along the easement.

The U.S. Bureau of Land Management also had discussions with PNM about buying Ute Mountain.

"We identified it as a very, very high priority for acquisition," said Mike Ford, district manager for the Albuquerque BLM District.

"Ute Mountain is the single most prominent point in the area" and is adjacent to the Rio Grande Wild and Scenic River area (near Questa),

managed by the BLM, Ford said. Ute Mountain fit in with BLM priorities for protecting area wildlife, watershed and the views of the area, he said.

"We had a gentleman's agreement ... that we would try and make this (sale) happen," Ford said. "It did shock us when they sold to Mr. Smith." Ford said Smith paid more than the BLM was willing to pay, but not a lot more.

Mountain property to the BLM. Ute bumped up the price by \$2 million, according to Ford. "If you don't pay our price we are going to subdivide it," Ford said Smith told him.

Smith could not be reached at his home in Luling, Texas, for comment Thursday afternoon and evening.

The land involved in the current controversy was the last, and largest, of four Ute Mountain tracts that PNM sold. The utility no longer owns any property in the Ute Mountain area.

Smaller pieces of PNM's Ute Mountain holdings, including the headquarters of the Top of the World Farm, were sold in 1989.

Two tracts totaling 2,733 acres were sold to Questa ranchers who owned adjacent property. Witschger said they have replanted the land for pasture.

PNM sold a third tract of more than 3,000 acres, which included the farm and all associated water rights, to a southern Colorado farmer. At the time, PNM was criticized for what appeared to be a low sale price.

Witschger said PNM never intended to be in the land-development business.

It bought Ute Mountain with the intention of trading that land with the BLM for property near the Navajo Nation. PNM had planned to build a coal-fired power plant, called the Dineh Plant, which would provide electricity it would sell on the open market.

But after 10 years of negotiations with the BLM, Witschger said the land swap failed. PNM realized that the cost of the necessary environmental surveys of birds, flora and fauna, and archaeological sites would have cost \$1½ million to \$2 million — far in excess of the value of the land.

OLD BASE, new battleground

Navajos, Zunis, government all staking a claim on Fort Wingate

Story by
**Leslie
Linthicum**
■
Photos by
**Richard
Pipes**
Of the
Journal

FORT WINGATE — Fort Wingate Army Depot sits like a sprawling ghost town under the red rocks along I-40 east of Gallup. The ammunition that fueled American fighting forces from World War I to the Persian Gulf War is all gone today, and 20 bison and four government caretakers are about all that roam the 22,000-acre base.

But the peace and quiet is beguiling. A herd of government agencies and private citizens is angling for control of the property, which the Department of Defense decommissioned last year.

The Army wants to use part of it to fire cruise missiles toward White Sands Missile Range; the city of Gallup wants the federal government to put a hospital or offices there; and, in some apparently pie-in-the-sky requests, a Gallup man wants to put nuclear waste in the old munitions bunkers, nearby seminarians believe it would be a good place for contemplation, and a man in Colorado thinks it would make one fine cattle ranch.

Meanwhile, Zuni Pueblo claims 6,000 acres as its ancestral homeland, and the Navajo Nation says the whole thing is theirs.

The federal government has closed dozens of bases since the Base Closure and Realignment Act was passed in 1988 to cut the defense budget. But none has been more tangled than Fort Wingate.

Malcolm Walden, the Army's point

"It's been interesting," Walden says. At the heart of the fight over the depot is history, and how a series of actions taken in the past 1,000 or more years should affect the disposition of property today.

The Fort Wingate land is not within the boundaries of either the Navajo or Zuni reservations. But according to both tribes, the Wingate land was part of their ancestral home. Some 350 Navajo ruins have been uncovered on the property, along with more modern hogans.

To support their claim that the land was theirs, Navajos point to a decision

MORE: See INDIANS on PAGE C2

*"It's not a
land issue.
It's not an
ownership
issue. It's
an issue of
providing
jobs for the
economic
benefit of
this area."*

Gallup Mayor
**George
Galanis**

*"Their
premise is
tribes
can't do
economic
develop-
ment."*

James Berg
of the Navajo
Nation

PHOTOCOPY
PRESERVATION

Indians, Citizens, Military

Haggle Over Fort Wingate

CONTINUED FROM PAGE C1

by the U.S. Indian Claims Commission to include the Fort Wingate acreage in compensation for ancestral land in the 1980s.

"This land in question is Navajo land, make no mistake about it," tribal President Peterson Zah said last month.

But dozens of ruins traceable to the Zuni Pueblo's ancestors, the Anasazi, have also been found on the land, which has served for centuries as hunting and grazing land for Zunis. The Zunis want 6,000 acres in the southwestern portion of the base where members of the Zuni medicine society, the Bear Clan, make religious pilgrimages.

The Zunis have more of a claim than Navajos to the land, according to tribal councilman Edison Wato Sr.

"Navajos were nomads," Wato says. "Zunis were farmers. We stayed put."

When the Army decided to establish a munitions depot around the old Fort Fauntleroy cavalry post in 1912, it withdrew the land from public domain, transferring it from the Department of Interior to the Department of Defense.

Now that the Army is finished with it, the Department of Interior, through a letter from Interior Secretary Bruce Babbitt, has asked for it back.

In his letter, Babbitt says his department would like to use a portion of the land for natural resource management and the rest for economic development initiatives by the Navajo and Zuni tribes.

The tribes would not own the land, but it would be held in trust like the rest of reservation lands.

James Berg, industrial development specialist with the Navajo Nation division of economic development, who has researched the history of Fort Wingate and helped draw up tribal government's economic development plan for the acreage, calls the issue "pretty clear cut" in the Navajos favor.

But Steve Foreman, an assistant to Gallup Mayor George Galanis who has been active in the negotiations, says Zah's claims are politically motivated as he faces re-election this November.

The Navajos have made great strides in propagating a line of propaganda that claims the area as aboriginal land," Foreman says. "If you buy their argument, half of North America is theirs."

Zuni Gov. Robert Lewis has written to Babbitt outlining the Zunis' claim, and the tribe is waiting for some agreement in Washington before going any further with its development plans.

"The Army's saying one thing, the Department of Interior is saying another. The Navajos are claiming the whole thing," Wato says. "It's a Mexican standoff, I guess."

The mayor's position is that disposition of the land should be determined through the defense department's base closing procedures, which would put decisions on using the land in the lap of the local reuse committee.

A good portion of the base — 13,600 acres — would remain under control of the military under one option proposed by the Army. White Sands Missile Range is one of several candidates for a test area of surface-to-surface missiles. If White Sands is chosen as the landing site, Fort Wingate and the Green River Launch Complex in Utah would serve as launch sites. A decision on the site should be made by the end of the year, clearing the way for plans for the rest of the land, Walden says.

Only after the Army and local entities got their opportunity to use the land would private requests be considered, and it is unlikely the process would get that far, according to Walden.

Galanis contends he doesn't care who owns the land, only that it be developed in a way that will provide good jobs for one of the state's poorest counties.

"If you gave me the keys to it today, I wouldn't want them," Galanis says. "It's not a land issue. It's not an ownership issue. It's an issue of providing jobs for the economic benefit of this area."

Galanis charges that the Navajo Nation has no plans to develop the property, that it merely wants to increase the boundaries of its reservation.

Zah aide Duane Beyal calls Galanis' charges "a lot of foaming at the mouth." And Berg discounts the mayor's opposition to Navajo control of the land as a slap at Indian economic ventures.

"Their premise is tribes can't do economic development," says Berg.

Navajo officials have a 66-page development plan for the property that includes designs for low-risk, short-term incarceration, a 1,000-acre industrial park, a retail sales and services zone that could include anything from an outlet mall to a hotel, an Indian veterans' cemetery and nearly 8,000 acres of open space. The proposal would provide 1,520 jobs, according to Berg.

The Zunis have plans for an alcohol treatment facility or a vocational school.

Galanis would like to see a hospital for veterans or an Indian Health Service hospital on the land. And he would like to persuade the Bureau of Indian Affairs to move its headquarters from Washington, D.C., to Indian Country.

While the wrangling goes on, both the Navajo tribe and the city of Gallup hint at the possibility of a lawsuit if the issue is not settled to their satisfaction.

"Right now it's just come down to sheer political muscle," says mayoral aide Foreman. "If we have to play hardball, we'll certainly do it."

PHOTOCOPY
PRESERVATION

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The solution lies in cooperation . . .

BY JAKE PICKLE

Special to the American-Statesman

The proposal to designate parts of 33 Texas counties as "critical habitat" for the golden-cheeked warbler has stirred up a great deal of controversy in recent weeks. The sad part is that facts have been obscured by political rhetoric coming from both sides of the issue. I think it's high time we cut through the rhetoric and get to the facts.

The critical habitat designation is not part of some federal government plot to take away the rights of private property owners. The designation process is a requirement of the Endangered Species Act, and each of us is required to obey the law. If there are changes in the law that could be made to aid landowners in meeting the act's requirements, then I say we ought to consider those changes. There need not be an adversarial relationship between the needs of landowners and endangered species protection. No one wants to see endangered species harmed, and no one wants to see private property owners denied use of their land. There can and should be a balance, and our job right now should be searching for ways to achieve it.

Let's look past the politics of this issue and get to the heart of the matter. First, there are landowners who have been hurt by the implementation of the Endangered Species Act. But that should not be a justification for abandoning the act. Instead, it should force us to redouble our efforts to find an equitable solution to this difficult problem.

It should be understood that if you have no plans to develop your property,

more than likely you won't be affected by the critical habitat designation. If you do plan to develop your land, and think that you might have endangered species on your property, consult with the U.S. Fish & Wildlife Service. This is an important first step in complying with the law. It should also be noted that there are all sorts of actions and improvements you can make on your land that are in compliance with the law. These include building barns and fences, and cutting regrowth cedar. If you have a question, consult with the Fish & Wildlife Service. Staff members will be able to tell you whether your plans are in conflict with the law. They ought to act quickly and responsibly.

The real question ought to be, how can the government see that the requirements of the Endangered Species Act are met while accommodating the needs of landowners? I see a couple of mechanisms that have merit and could go a long way toward reducing the regulatory burdens that landowners face. One way was the Balcones Canyonlands Conservation Plan. While that initiative failed at the ballot box, I believe that our effort to address this problem on a countywide basis was a good approach. I am aware that some people were not happy with the BCCP, but I think the commitment shown by all sides in attempting to resolve this problem was commendable and encouraging.

The BCCP sought to establish a regional conservation plan — to address this problem on a countrywide level, rather than one piece of property at a time. In my view, the possibility that parts of 33 Texas counties could be designated as critical habitat illustrates

more than anything else the need to have this issue addressed at a regional or, if possible, a statewide level.

Perhaps the concept that has the most promise is one that has been developed in Texas. The "Partners in Wildlife" program offers the opportunity for rural landowners to receive technical assistance from Fish & Wildlife people on how to manage their land under the act and continue normal ranching practices whenever possible. By increasing the current funding levels for this program, landowners can learn to comply with the law and work cooperatively with the federal government.

The federal government can also help by requiring federal agencies to cooperate and communicate more effectively. One possibility would be to encourage stronger coordination between the Fish & Wildlife Service and the Agricultural Extension Service.

The point is, there are solutions to be found if we can all get past the finger-pointing and name-calling and work together. The spotted owl crisis in the Northwestern United States is a perfect example of what can happen when the two sides of an issue won't listen to each other and refuse to meet in the middle. In my mind, it's high time that partisanship and political wrangling fall by the wayside and that both sides work together to find an answer. I have pledged my support for a solution that achieves environmental protection without sacrificing the rights of landowners, and I will continue to work until such a solution is found.

Pickle, D-Austin, serves in the U.S. House of Representatives.

... provided all sides negotiate in good faith

By LAMAR SMITH

Special to the American-Statesman

Thanks to some astute reporting by the media, just about everyone in Texas is now aware of previously secret U.S. Fish & Wildlife Service plans to set aside parts of 33 Texas counties as "protected habitat" of the golden-cheeked warbler.

Similar environmental restrictions have stifled development and lowered property values in Travis County, frustrating landowners and leading to a virtual riot of litigation.

In the wake of the public outcry that followed the critical habitat disclosure, agency officials have tried to mollify frightened and angry landowners. Unfortunately, in doing so they have resorted to a certain level of disingenuousness about what the Fish & Wildlife Service is and what it does.

I believe the agency has launched a campaign of misinformation in order to buy time for its assault against private property rights. Fortunately, it's not having much luck.

Fish & Wildlife District Director Sam Hamilton told a crowd of property owners gathered in Llano in late July that their property was not the primary target of proposed restrictions.

His boss, Interior Secretary Bruce Babbitt, has written that "the old LBJ Hill Country" is "the most desirable place" for the migratory bird to nest.

Hamilton also insisted at the Llano meeting that the Austin-San Antonio corridor will bear most of the proposed restrictions. But that claim is clearly refuted by the Fish & Wildlife Service's pamphlet on the warbler.

That brochure — printed long before the agency had any intention of going

Farmers and ranchers know an assault on their private property rights when they smell one.

public with its plans — clearly identifies no fewer than eight regions covering 20.5 million acres of Central Texas.

Confronted with his own publication, Hamilton admitted that eight "recovery zones" will be needed to carry out the Fish & Wildlife Service's critical habitat plan.

The hundreds of farmers and ranchers at the meeting made it clear they weren't fooled.

They know a land grab when they see one, and they know an assault on their Fifth Amendment private property rights when they smell one.

These are real people who, generation after generation, have proved they are the best stewards of their land. They deserve better. They deserve full and honest answers from their government about the golden-cheeked warbler, what the government intends to do, and how it will affect them.

What they might get instead are long waiting lists for permits to develop their land. If they're lucky enough to get them at all.

Howard Burris, who inherited 60 acres of wooded hillside outside Austin,

lost the land and \$7 million he had invested when the bank foreclosed on the property after a two-year wait for a Fish & Wildlife permit exhausted Burris' cash flow.

With an annual budget of \$1.2 billion and a staff of 7,300, the Fish & Wildlife Service ought to be able to process applications fairly quickly. Instead, like its parent the Interior Department, the agency puts most of its energy into expanding its authority. "We add over a hundred species every year," boasts Robert Ruesink, the deputy director for endangered species.

A recent U.S. Court of Appeals decision found that the Interior Department had over-reached the statutory authority it was granted under the 1973 Endangered Species Act. Rather than preventing direct harm to species listed as "endangered," the Fish & Wildlife Service has shifted to prohibiting modification of even potential habitat.

That means, in the words of *Forbes* magazine, "that landowners may be criminals if they cut down a tree deemed to be important habitat even though no bird has ever been sighted there."

Last month I collected the signatures of more than 60 members of Congress on a letter to Secretary Babbitt urging him to stop appealing the court's decision and start abiding by it.

Meanwhile, Hamilton and his staff should continue to meet with Texas private property owners. But they should drop their campaign of misinformation. We Texans have always negotiated in good faith and don't appreciate being treated otherwise.

Smith, R-San Antonio, serves in the U.S. House of Representatives.

HONEY LAKE

Petition for probe by jury gets boost

By Faith Bromner
GAZETTE JOURNAL

A citizens' petition for a grand jury investigation into Washoe County's Honey Lake Valley water importation project got a big boost Thursday.

Washoe District Judge Steven Kosach ordered all the parties named in the complaint to set a date for a hearing to determine whether allegations that public officials behaved improperly on the project hold water.

The petitioners' attorney, Ken McKenna, was pleased. The petition was filed last week by Sparks Councilman Ernest Walker, Ken Hopkins and Guy Felton.

"This is the beginning of a real opportunity for the citizens of Washoe County to unravel this very complicated project and find some answers as to how something this big, incorporating a huge amount of taxpayers' money, was kept going by so few people," McKenna said.

County Commissioner Larry Beck, who is named in the complaint, said the petition is full of half-truths and misinformation.

"To summon a grand jury based upon such inadequate and false information would be a violation of due process and turn the political system into a criminal allegation free-for-all," Beck said in an affidavit filed with the court.

Under state law, a district judge can order a grand jury investigation if at least three taxpayers submit "reasonable" evidence that a public officer has misappropriated public money or property, committed fraud against the county or state or violated the public trust.

The three men allege numerous improprieties took place in the way state water law was applied to the project and the way \$5.3 million in tax money was spent on it. It names county commissioners Dianne Cornwall, Larry Beck and Gene McDowell; the district attorney's office; the Nevada Division of Water Resources; and two former state employees: Brian Randall and Tim Holt.

It also alleges that county commissioners accepted gifts from project promoter Franklyn Jeans and that the district attorney failed to represent the taxpayers' interests when the contracts between Jeans and the county were drawn up by a private attorney.

Honey Lake

From page 1B
missioners Dianne Cornwall, Larry Beck and Gene McDowell; the district attorney's office; the Nevada Division of Water Resources; and two former state employees: Brian Randall and Tim Holt.

It also alleges that county commissioners accepted gifts from project promoter Franklyn Jeans and that the district attorney failed to represent the taxpayers' interests when the contracts between Jeans and the county were drawn up by a private attorney.

In her affidavit, Commissioner Cornwall said the district attorney's civil division represented the county in the contract negotiations. The only gifts she received from Jeans were small ones, such as a bubble bath, given to her children at two Christmas parties she attended at his house.

"The claims ... of impropriety against myself are wild accusations not supported by evidence of any kind much less reasonable evidence as referenced in (state law)," Cornwall said. "The allegations are false, misleading and possibly libelous."

Many of the allegations have already appeared in two previous civil lawsuits filed by disgruntled Honey Lake Valley landowners who claimed they were cheated out of their water rights by Jeans.

The first one was dismissed in November 1993 because the plaintiffs failed to show they were damaged during the statute of limitations. Last June, the judge dismissed county and state officials from the second lawsuit because under state law they cannot be sued for discretionary acts.

The merits of the allegations have never been fully examined by a judge or a grand jury, McKenna said. And a grand jury doesn't necessarily have to look for criminal wrongdoing when it investigates the project, McKenna said.

"We could very well end up with a statement that says these are the things you should not do in the future, this is not the way good government works," McKenna said. "Maybe the one thing that will come out of this is a reform of the way the government allocates water to private entities."

The water importation project began in 1988 when the county took out an option to purchase 13,000 acre-feet of groundwater rights in the Honey Lake Valley from Jeans and his partners for \$33 million. The county subsequently put Jeans in charge of planning and getting permits for the pipeline project in exchange for 10 percent of the hookups.

Interior Secretary Bruce Babbitt put the project on hold last spring until the county can resolve environmental concerns raised by the Pyramid Lake Paiute Tribe and the Sierra Army Depot.

PHOTOCOPY PRESERVATION

The stockmen's steer committee needs guidelines

Editor:

Reading the names of the steering committee on the Wyoming range reform is like reading a Who's Who list of the Stockmen's Association.

The Wyoming plan for rangeland reform needs many changes before it could even be considered a plan for range reform. To get a workable plan must first have a committee that is balanced with all interests.

When you have a committee made up of livestock interests and their public supporters, you do not have a fair committee.

I have never seen or heard of a public lands consensus decision process producing the best possible decision for the land, or the long term public interest, when any party at the table has a financial interest in the outcome.

There is a fundamental ethical flaw in consensus decision-making. The concept that persons with a direct financial interest in a decision must be excluded from the decision process is basic to our system of ethics.

This ethic seems to have been in the formalized consensus decision program proposed by the Wyoming range plan. In effect, the land managers abdicated the decision responsibility to the committee, which is a majority of livestock supporters.

The following items much be addressed before any type of Wyoming range reform plan should even be considered by the U.S. Department of Interior.

1. The BLM land managers must first set minimum standards and guidelines, adequate to protect or restore the land health, which cannot be exceeded even if the committee so recommends.

Citizen representatives rarely have the training or temperament to face the heat generated when they stick by an unpopular stand which has angered the ranchers and the ranchers supporters.

Citizens must be empowered at the grassroots level to enforce agency-established standards and guidelines. This is nothing more than a checks and balance, which is essential to democracy.

2. We need to inventory the range for the total number of AUMs and then set a limit for livestock, wildlife, and a percentage for seed production to maintain the range.

In the plan now proposed, there are no numbers set for wildlife, just generalities. In the Wyoming plan, they want to change the AUMs for sheep because they were set up using old data. Well, we need to redistribute all the AUMs based on new data and we must guarantee wildlife their share.

The plan now counts antelope as an AUM, but calves and lambs are free — this is not a fair plan.

3. We will need to provide more forage enclosures on winter and summer ranges to better monitor and measure forage use.

4. I would like to see the plan written in plain English with no generalities so that everything is clear and enforceable. We need to make sure that this plan does not become another bureaucracy that nobody understands, so that the livestock industry can maintain their status quo.

We need to have true multiple use, rather than using all the resources and manpower to protect an industry that is nothing more than a subsidy to a minority of the population.

DALE GILLESPIE
Rock Springs

Mike knows range of cooperation needed

Editor:

Rep. Craig Thomas' months-long campaign to distinguish his "philosophies" from those of Gov. Sullivan's is certain to fail. While Thomas can craft a platitude targeted to the lowest common denominator, he has never espoused a coherent philosophy on any of the issues of the day.

A philosophy is fashioned from wisdom and judgment used in search of truths found only by examining issues through inquiry and rational reasoning. This is a talent common to the Wyoming voter, but for Thomas, it is a talent not yet to be found within the four corners of his political persona.

A case in point is Thomas' position on rangeland reform. Reform is an issue because of a federal law enacted

in 1977 mandating the adoption of regulations necessary to improve management of publicly owned lands within the jurisdiction of the BLM.

Thomas' leadership style has been to posture as the naysayer or spoiler rather than to search for consensus. His repeated characterization of rangeland reform as a "war on the West" denigrates the entire debate by injecting fear and stridency.

Rather than being a philosophy, his characterization polarizes at a time when he should enlighten us and draw us together. If in his mind, he is at "war" over rangeland reform, then clearly he has no concern for the views of many of the Wyoming citizens he would "represent." By dismissing the merits of opinions other than his own, he has ingratiated himself to a single faction while denying legitimacy to a significant mainstream voice.

A responsible and refreshing contrast can be found in the leadership style of Gov. Sullivan who understands the merits of the arguments advanced by all sides of the rangeland reform debate. To provide a vehicle of expression for the multiplicity of voices and concerns, the governor convened a panel last spring comprised of representatives from several groups having an interest in land-use, and later, he obtained an extension of the comment period from Secretary Babbitt.

While the panel is weighted toward the ranching community, all members have, nevertheless, worked constructively and in concert to develop cohesive and broad-based policies.

Members should be commended for their diligence and effort in untangling many of the details needed to implement a sound policy of reform for the state of Wyoming. As would be expected, the report recently submitted by the panel to the Department of Interior has been well-received.

Mike Sullivan has again demonstrated effective leadership on a tough issue. He has shown us the value of having a Democratic pipeline to the Department of Interior, and most importantly, he has given us a civics lesson by showing that rangeland reform can be a "win-win" for all Wyomingites. Let's banish hot-button rhetoric from the political dialogue by voting our ballots, hearts and minds for Sen. Sullivan this November.

GEORGE L. ARNOLD
Evanston

PHOTOCOPY
PRESERVATION

Kempthorne: Act endangers people

Says species regulations make economies suffer

By Kevin Keating
Staff writer

BONNERS FERRY, Idaho — The usual stomping grounds for loggers, hunters, hikers and even huckleberry pickers are becoming scarce in Boundary County.

It's the fault of federal regulations and out-of-touch lawmakers, U.S. Sen. Dirk Kempthorne told a group of about 50 residents here Wednesday.

"This community is on the front lines dealing with the Endangered Species Act, timber appeals and wilderness designations," said Kempthorne, R-Idaho.

"You have grizzly bear habitat, the caribou, bull trout and now you have to add the

Kootenai River white sturgeon to the list," he said, noting the ancient fish made the endangered list Tuesday.

"But one species we shouldn't forget about in Boundary County is its people."

Minus a tie, Kempthorne held his mini-town meeting at the popular blue collar Chic-N-Chop restaurant. He even posed out front by the reader board, where he received second billing to the day's sandwich: "Turkey Melt, Dirk Kempthorne."

The senator has been making the rounds of Idaho communities to lay out his plan for revamping the Endangered Species Act.

He is on a committee to rewrite the law and wants to hold a senate committee hearing on the act in Boundary County next year.

Kempthorne said he's not opposed to the Endangered Species Act. He wants listing to be based entirely on science, then force regulators to decide how much saving an

endangered species will cost.

That is something that is not done now, he said.



Kempthorne

He also wants to compensate communities that suffer economically from federal regulations. He encouraged counties to take court action to fight federal mandates.

"I'm not here because I'm running for anything. I've got four more years," he said.

"But when we shut down use of federal assets it's like a (military) base closure in other communities. Right now we are putting entire communities at risk and there should be some financial assistance."

That was a painfully obvious observation to

most Boundary County residents. They have complained for years about increased closures of federal land that have stymied their economy and lifestyle.

"What's frustrating is we have no control," said Bonners Ferry City Council President Darrell Kerby. "It's devastation taking place a thousand miles away."

Kerby noted the county, city and Kootenai Indian Tribe spent a lot of money and worked for years on a plan to save the sturgeon without listing it.

That work went unnoticed when the fish was listed and the community was not even notified, he said.

Kerby praised Kempthorne for his knowledge of the county's problems and offers for help. He called the senator a "voice in the (Washington, D.C.) wilderness."

"We are not anti-environment here," Kerby said. "We just want our resources to be well-managed."

Sierra Club to fight feds' wolf plan

Associated Press

CHEYENNE, Wyo. — Federal plans to put Canadian gray wolves in central Idaho will be challenged by the Sierra Club Legal Defense Fund, the group announced Wednesday.

Defense Fund attorney Doug Honnold, in a telephone news conference, said his group has filed a notice with the Interior Department of its intention to challenge the U.S. Fish and Wildlife Service's plans because they do not adequately protect existing wolves in Idaho.

"We have challenged the misguided reintroduction proposal," he said. "The full protection of the Endangered Species Act is still the best bet to protect wolves."

At issue are Fish and Wildlife Service plans to plant Canadian wolves in central Idaho and Yellow-

stone National Park in an effort to restore populations of the predators in both areas.

In both areas, the wolves would be considered "experimental, nonessential" populations, which means they could be killed if they left certain areas and killed livestock.

But Honnold and others taking part in the news conference said wolves already exist in central Idaho, so the designation would take away any protection those wolves now enjoy under the Endangered Species Act, which prohibits their killing.

Honnold and Linn Kincannon of the Idaho Conservation League said enough gray wolves have been seen in Idaho to lead the Fish and Wildlife Service to predict that reproducing wolf packs will be found in the state within five years.

"Wolf reintroduction would be a mistake at this time, particularly (under) a plan that denies Endangered Species Act protection to wolves that are already there," Kincannon said. "The reintroduction plan has been touted as a good compromise between opposing factions. Maybe this is an equitable compromise for humans, but the loser here is the wolf."

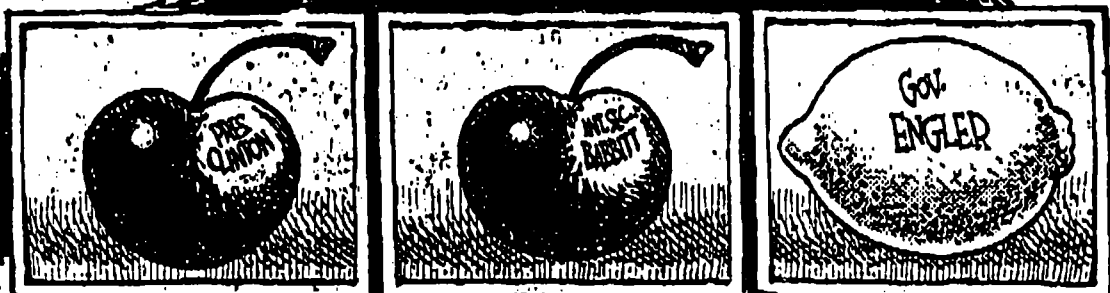
The American Farm Bureau has announced it will also file litigation to block the reintroduction plans in both Idaho and Yellowstone, largely because of the impact of the wolves on nearby agricultural operations.

But those attending the news conference said their action would not address the Yellowstone plans because no breeding wolf packs have been proven to exist in the park.

DETROIT FREE PRESS 9/11/94

Bill Day Detroit Free Press

BARBARA ROSE COLLINS
GAMBLES AT THE
SLOTS:



PHOTOCOPY
PRESERVATION

Why the need to control water flow?

Allan Milledge is a Coral Gables lawyer, member and former chairman of the South Florida Water Management District's governing board. He also serves as chairman of the Northwest Dade County Lakebelt Committee, and on Gov. Lawton Chiles's Land Use and Water Planning Task Force.

RODEOS are a regular Saturday night feature at the River Ranch resort, on the Kissimmee River. The arena was full of large puddles one rainy Saturday night this summer, and as show time approached, the cowboys grabbed shovels and dug deep grooves from puddle to puddle and on beyond the fence.

This small drainage project was an instinctual, metaphoric enactment of Florida's history. The late Timer Powers, the great lord of Indian-town, first called my attention to this. He had a small ranch, and his woods and pastures were full of rills and small ridges, which he said were the remnants of ditches connecting every small depression. They had been dug by cowboys over the past 100 years, when they had nothing better to do.

That impulse to channel, to dam, and to divert water is very nearly a universal human inclination. It is an attempt to control our surroundings. In South Florida, where nearly every acre of land is drained by canals, where Lake Okeechobee is confined by high dikes, and where the Everglades is reduced to half its original size by levees and its flow of water dictated by pumps, we see this human failing everywhere.

My desk is thick with proposals to

control the flow of water — for buffer strips, for flow ways, for curtain walls, for seepage barriers, for lake belts, for water supply preserves. All in the name of preserving or restoring the environment, or protecting or enhancing the water supply.

My own hands aren't clean in this regard; in January 1992 I suggested in a speech to the Everglades Coalition that a flow way along the eastern side of the water conservation areas and Everglades National Park might protect the Everglades, enhance urban water supplies, and provide more water to Florida Bay. I, too, cannot resist the urge to connect puddles.

Everglades needs major surgery

Because changes must be made to save the Everglades and to cope with the influx of millions more human residents, thoughtful work is being done by many groups, public and private: the U.S. Army Corps of Engineers, which is restudying the Everglades system; a federal "interagency task force" established by Interior Secretary Bruce Babbitt; the South Florida Water Management District, including its water supply committees, lake belt committee, and South Dade watershed committee; the Commission for a Sustainable South Florida, established by Gov. Lawton Chiles; the Everglades Coalition, the National Audubon Society's Everglades Campaign, and the Florida Bay Initiative; industry, farm, and mining organizations.

It is all necessary and all a little frightening. Are we smart enough now? Are we able to get it right this time? Do we confine our choices unnecessarily by the mistakes and visions of the past?

This is the time to confront the failing Everglades system and to perform major surgery on it. Let us pray that our intellect, our will, and our wallets are sufficient to the task. As the man from La Mancha said to his companion, Sancho Panza, "The dogs may bark and bite, but we advance." *Avanzamos.*



**ALLAN
MILLEDGE**

White sturgeon added to endangered list

By Carol Bradley
Gannett News Service

WASHINGTON — The U.S. Fish and Wildlife Service added the Kootenai River white sturgeon to the list of endangered species Tuesday, saying the Bonneville Power Administration's voluntary effort to rescue the fish isn't enough to do the trick.

Several factors may have contributed to the sturgeon's plight, Fish and Wildlife officials said. But the main culprit is the Libby Dam in northwestern Montana. The dam is blocking the flow of water needed to save the fish, FWS officials said.

Empowered by the Endangered Species Act, the Fish and Wildlife Service conceivably could require the BPA to release however much water it determines is needed to save the sturgeon.

Home turf for the Kootenai River white sturgeon is confined to a 168-mile stretch of the river that winds from the corner of Montana through the Idaho panhandle and into British Columbia.

The population of the fish has dropped from roughly 1,194 in

1982 to 785 in 1993, by one estimate. And more and more of those fish are getting too old to reproduce, FWS said. There is no evidence that any eggs spawned in 1993 survived past the larval stage, FWS said.

To help spawning, the BPA voluntarily released enough water this summer and last from the Libby Reservoir to achieve a flow velocity of 20 cubic feet per second, BPA spokeswoman Dulcy Mahar said.

The early thinking, Mahar said, was that in order for sturgeon spawning to occur, the river needed to flow at a velocity of 35 cubic feet per second. That's the rate the river was flowing until the Libby Dam was built in 1974 to generate power and stop floods.

BPA lowered the rate to 20 cfs after agency scientists found that sturgeon could spawn under those conditions as well, Mahar said.

But FWS folks say the 20 cfs rate isn't good enough — that it would produce "only 57 percent of the water needed to maximize sturgeon spawning and maintain suitable larval rearing habitats." Besides, BPA could abandon the

idea the minute water was needed to irrigate fields or for other uses.

Kate Poole, an attorney for the Idaho Conservation League, one of three groups that requested protection for the sturgeon, agreed.

"BPA and the Corps of Engineers have been reluctant to increase the releases during this time, and have not really been cooperating with Fish and Wildlife," she said.

Rep. Larry Larocco, D-Idaho, said he was disappointed and frustrated about the listing.

"I am a bit angry because we've known for years that this is a river flow problem and yet the agencies involved acted as if the telephone had never been invented," he said.

UNKNOWN DATE & PAPER

Beef winners

Pictured above on the left is Gooding County Farm Bureau secretary Patty Hooper with Sharon Dudley of Wendell who won a 1/2 locker beef and Vonja Jackson of Hagerman, winner of the Brahma heifer calf which were given away at the conclusion of the Gooding County Fair. Farm Bureau conducted the contest to raise funds to pay legal fees incurred in the lawsuit against the U.S. Fish and Wildlife Service over the listing of the Hagerman snail as an endangered species. Farm Bureau feels the listing of these snails as an endangered species is a very serious threat to the future of the irrigators water rights and consequently the economy of Magic Valley.

PHOTOCOPY
PRESERVATION

DOE to keep Cheney 'hole' open

Silbernagel
Daily Sentinel

A U.S. Department of Energy official presented a plan Thursday to keep a portion of C Reservoir open for up to 20 years to accept uranium mill tailings from around the valley.

As part of that plan, however, the Energy Department would ask Mesa County to accept tailings from around the state, and a small amount from out of state, for disposal in

"What it really says is, 'We have a problem that's not going to go away. We ought to solve it,'" said Al Chernoff, Uranium Mill Tailings Remedial Action program manager for the U.S. Department of Energy. "We have a hole at Cheney. Why not use that to solve the problem?"

Chernoff was in town Thursday to celebrate the closing of the Climax mill uranium tailings

site. He met Thursday afternoon with state and local officials to talk about his plan.

This summer, city officials worried that if Cheney was closed now that the Climax project is completed, there would be no place to take tailings found around the community, such as when utility lines are repaired or replaced.

Local entities could spend millions of dollars storing tailings or shipping them to other locations if there was no place close by to take them.

"I think it's real promising," said Grand Junction Public Works Director Jim Shanks of Chernoff's proposal. "The framework is good. Hopefully we can work out the details and come up with a workable plan."

Mesa County Commissioner Jim Spehar said it would require a change in the county's conditional use permit to allow tailings from other communities into the Cheney disposal site.

"We haven't discussed it as a board and it's

got to be a board decision," he said. "But I'm open to discussion on it, because we're talking about a relatively minor amount."

Chernoff has said there would be a cell left open that would be able to take approximately 460,000 cubic yards of tailings, and asked that 15,000 cubic yards of that be available for out-of-state tailings. That would help convince Energy Department officials in Washington that keeping the cell open benefits the whole UMTRA program, not just Grand Junction, he said.

Spehar said the commissioners will have to gauge public reaction to the proposal, and whether it's a fair trade to allow a small amount of out-of-state tailings, to ensure part of Cheney is left open for local tailings over the next few decades.

"I think it's a reasonable starting place," he said. "The Department of Energy has come

See Cheney, page 8A

From Page One

quite a ways on this. Now it remains to work out the details. I think it's in the best interest of the community to have that site available."

In addition to the county permit, Chernoff said approval for the plan would be required from both the Nuclear Regulatory Commission and the Environmental Protection Agency. He said he has begun talks with both agencies on the plan.

He also said no additional funds would be required from Congress or the Legislature to keep that portion of Cheney open, and it wouldn't take money away from other tailings projects that have yet to be completed.

"None of it's impossible," he said. "We're all going to come out winners and the DOE won't have walked away from its responsibility to solve a problem."

Send Utah Coal by Rail

If Interior Secretary Bruce Babbitt is seeking a way to end the use of about 1 billion gallons of water a year for carrying pulverized coal from the Black Mesa mine to the Mohave Generating plant at Laughlin, Nev., there may be preferable alternatives to the idea of piping the water from Lake Powell. Western water should be considered scarce, whatever the source.

It would seem to make sense for the Santa Fe Railway to haul the Black Mesa coal to their main line at Flagstaff and from there to the Needles and Laughlin. A further rail extension to Page could pick up coal from the proposed Andalex Smoky Hollow mine in the Kaiparowits coal field.

If movement of the Andalex coal over the Grand Canyon is prohibitive because of cost and safety problems, the transport should be totally by rail by Union Pacific to their main line at Moapa.

Something is amiss in an economic analysis that proposes to ship Andalex coal to the West Coast by using trucks for more than 190 miles over Utah highways in preference to the use of rail. In making a cost comparison, the omitted items of expense are the investments in new roads and in highway repair costs to be paid for by Utah taxpayers.

High Utah personal property taxes are a big factor working against the use of rail, but a Utah legislative Property Tax Task Force can study the prospects for reform here. As in Utah, the proposal has been made in Arizona for a two-rate property tax to encourage productive enterprise, but as in Utah, without success. With a specific project like this one, there may be a strong reason, in both states, for getting serious about correcting the upside-down property tax that handicaps productive enterprise and richly rewards land speculation in every state.

EARL A. HANSON
Cedar City

Denver Post

Saturday, September 10, 1994

WESTERN EMPIRE

SAN LUIS VALLEY

ALAMOSA

■ WATER BATTLE APPEAL

— American Water Development Inc. has filed an appeal with the U.S. Supreme Court over its failed bid to win access to billions of gallons of water beneath the San Luis Valley.

In a document filed last week, the firm asked the high court to determine whether Colorado courts had improperly rejected its claim to the groundwater.

AWDI also asked the justices to review the awarding of fees and court costs in the long-running legal dispute.

On May 9, the Colorado Supreme Court upheld a decision by Water Court Judge Robert Ogburn, which denied AWDI's claim in late 1991.

Ogburn also ordered AWDI to pay \$2.7 million in costs and fees incurred by those who fought the claim.

The Colorado high court on June 6 denied AWDI's request for a rehearing.

PHOTOCOPY
PRESERVATION

INSIDE THE BELLEWAY

By John McTear

Certain pattern

High-level Clinton appointee Thomas Fry III remains on unpaid administrative leave from his Interior Department post until his recent indictment on federal charges of bank fraud, bribery and money laundering is resolved, we were told yesterday.

And that could be some time.

Mr. Fry, who worked on the Clinton presidential campaign out of Little Rock, was appointed in July 1993 to be director of the Minerals Management Service, overseeing about 2,000 Interior employees.

Interior spokeswoman Stephanie Hanna said yesterday that neither the White House nor Interior Secretary Bruce Babbitt has had any official comment on last month's indictment of Mr. Fry, which followed an August 1992 FBI raid of Oxford Funding, a Texas financing firm.

Mr. Fry and nine other Texas banking officials were indicted on charges of conspiring to hide from federal regulators the shaky condition of two Houston banks — Memorial Bank and Village Green National Bank.

The officials allegedly arranged through Oxford Funding \$7 million in sham purchases at a discount rate, reportedly real estate loans purchased from the Resolution Trust Corp. The loans were then resold for profit to the two now-defunct banks.

On Aug. 17, Mr. Fry was arraigned and pleaded not guilty to the charges, Assistant U.S. Attorney Julia Hyman said in a telephone interview yesterday from Houston. He and the other officials are free on unsecured bonds of between \$15,000 and \$30,000, she said.

"Realitywise, I don't know when this case will go to trial," the prosecutor said. "It's presently scheduled for October 3, but motions to continue have been filed, and my suspicion is it will take a while before this goes to court."

On Aug. 29, friends of Mr. Fry's gathered at Mick's Restaurant on 19th Street NW to kick off a legal defense fund for the embattled Interior official. In the meantime, Interior Deputy Director Cynthia Quarterman is heading the bureau in Mr. Fry's absence.

PHOTOCOPY
PRESERVATION

Fairy shrimp likely to be listed

By MIKE MCCARTHY

At least four species of fairy shrimp were expected last week to slide through the last hoop to federal protection as endangered or threatened species.

It's an idea that scares many of Sacramento's developers, aggregate miners and farmers.

Mollie Beattie, director of the U.S. Fish and Wildlife Service, has recommended that three shrimp species be listed as endangered and one as threatened, according to Fish and Wildlife sources.



Fairy shrimp

The recommendation was to be reviewed for final approval by Interior Secretary Bruce Babbitt, Beattie's superior. Babbitt's approval, which is the final step before the listing appears on the federal register, was expected last week or this week, according to knowledgeable sources.

The tiny crustaceans, typically less than an inch long, are seen by some businesses as a huge threat. They inhabit the seasonal wetlands that dot much of the Central Valley and that surround the Sacramento Metropolitan area. (Please see *Sacra-Region*, Page 10.)

The wetlands — vernal pools — are found on land that might be used for real

estate development, as well as on potential aggregate mining sites and on marginal sections of rangeland.

The pools themselves are already protected under federal wetlands legislation and developers are already required to conserve or replace them.

But if the shrimp are listed, developers believe, development in the countryside would become even more problematical.

"This listing will probably affect a greater variety of industries than any other listing to date in California," said George Kammerer, a local lawyer who represents landowners.

It's not just that builders won't be able to touch nearly a pool containing the shrimp. When and if the feds do allow the pools to be built over, developers fear that mitigation for damaging the pools and the shrimp could be very extensive, as could the extra time needed to secure federal approvals.

Faced with a major new constraint, the private sector commissioned studies of its own, which concluded the shrimp are not as endangered as the federal government has determined.

A study undertaken by Roseville's Sugnet & Associates found the shrimp living in 40 percent of the more than 3,000 pools the firm studied between Fresno and Tehama counties.

The study said that the shrimp are very opportunistic for an endangered species. They were found in tire ruts, drainage ditches and other unlikely habitats.

"I think the true population and distribution of at least two of the species have been tremendously underestimated by Fish and Wildlife," Kammerer said.

Abundance is not always relevant, said David Klinger, a spokesman for Fish and Wildlife. "Listing of species is not just a numbers game," he said. "Numbers are

Shrimp-wrought havoc overstated, feds say

Continued from page 2

not as important as trends in the health of a species. And the trend in wetlands in California is continued degradation, filling and damage."

By some estimates, half of the vernal pools in the Central Valley have already been destroyed.

And some federal observers believe the industry is overly concerned. "It's not going to have as great an impact on the development community as opponents of the listing have claimed, because it will just be slightly different monitoring requirements," said Paul Jones, a scientist with the Environmental Protection Agency, which reviews certain develop-

ment proposals.

The presence of shrimp will be a serious problem only for businesses in those fairly infrequent situations when the species would be damaged, Jones said. At the agencies involved are working out standardized approach to mitigation that should simplify the process.

The decision on the listing was expected to hinge on whether existing law adequately protects the shrimp's habitat.

"Our data indicates there is still a significant amount of vernal pool destruction going on from development that not regulated or doesn't have the necessary permits," Jones said.

PHOTOCOPY
PRESERVATION

Wolf reports often coyote look-alikes

Reintroduction plan
would halt if breeding
population were found

Associated Press

YELLOWSTONE NATIONAL PARK — More than 160 people reported seeing a wolf in Yellowstone National Park last year, according to park figures.

But a Yellowstone biologist said in each case in which physical evidence was present — 33 of the reports — it turned out the park visitors saw coyotes, not wolves.

"What we're getting, where we've been able to get physical evidence, is primarily visitors reporting large coyotes along the road," said Wayne Brewster, deputy director of the Yellowstone Center for Resources.

Figures on the number of wolf sightings last year were obtained by the *Jackson Hole Guide* newspaper through a Freedom of Information Act request. There were nearly three times as many reports filed in 1993 as in 1992, when 60 were filed. In 1991, 24 reports of wolf sightings in Yellowstone were submitted.

Last year, the majority of the people reported seeing what they thought was a lone wolf. Brewster said there have been 40 reports this year.

The biologist said there have been only two confirmed sightings in or near Yellowstone. One occurred in 1992 when a hunter shot a wolf south of the park. He said he thought it was a coyote.

That same year, a wildlife filmmaker shot footage of an animal thought to be a wolf in the park's Hayden Valley. Brewster said there is no evidence of a wolf pack in Yellowstone.

The Interior Department has approved plans by the U.S. Fish & Wildlife Service to return gray wolves to Yellowstone and central Idaho. Plans call for releasing 15 Canadian wolves in the park and 15 in Idaho later this year.

However, those plans would be halted if a breeding population of wolves were found in the areas. The existence of wolves in the Yellowstone area has been debated. Some say wolves are migrating from Montana, and others argue wolves never were entirely wiped out despite an aggressive extermination effort earlier this century.

Although there have been reports of wolf sightings, federal biologists and some conservation groups say a few lone wolves don't constitute a breeding population.

Brewster attributed the increased wolf sightings to stepped-up efforts to educate park rangers about reporting rare wildlife and to the media attention surrounding plans to return wolves to Yellowstone. "I saw the same thing happen in Glacier (National Park)," he said, adding that he worked on a similar program in the northern Montana park. "It happens with any public survey that you initiate, or start."

PHOTOCOPY
PRESERVATION

Hearing on Lowry lawsuit postponed

By Renate Robey
Denver Post Staff Writer

A court hearing on a lawsuit that could dictate the immediate fate of Lowry Air Force Base has been postponed, but a federal judge may rule without a hearing.

The base is scheduled to close Sept. 30.

Two homeowner groups and a citizen filed suit last month alleging the U.S. Air Force violated federal laws by issuing a final Environmental Impact Statement before completing studies of environmental contamination at the base.

The suit seeks a preliminary injunction to delay redevelopment at the base until environmental issues are addressed and a new or amended environmental im-

But a federal judge may issue a ruling anyway

pact statement is issued.

A hearing on the injunction was scheduled for next Monday but was canceled after several groups intervened in the case and filed numerous additional legal documents for review by the court. The lawyers in the case said they did not plan to present testimony at the hearing, and asked Judge Daniel Sparr to rule based on the legal briefs. Sparr set a new hearing date for Sept. 22, but said he may rule before that date.

This week, the cities of Denver and Au-

ra and the Colorado Coalition for the Homeless asked to become defendants in the lawsuit, saying they wanted to protect their interests in seeing the base developed.

If the injunction is granted, local officials say more than half of Lowry would remain idle, causing the buildings to deteriorate and developers to lose interest in the site. A delay could also torpedo an agreement in the thorniest issue in the Lowry debate — homeless housing. A federal law allows some base housing to be given to the homeless but a pending agreement would reduce that housing on base and disperse some homeless units around the metro area.

The Sacramento Bee Final • Saturday, September 3, 1994

S.F. CHRON. 9/9/94

CAMPAIGN WATCH

Candidates Back Farmers In Rat Protest

Any politician looking for easy applause line in the Central Valley these days only has to take a driving at the Endangered Species Act, which is Public Enemy No. 1 in the farm community.

It was only a week or so ago that hundreds of farmers and their tractors clogged the streets of downtown Fresno, protesting the planned prosecution of a farmer who killed some endangered rats while tilling his field.

That protest was not lost on either Democratic Senator Dianne Feinstein or her Republican opponent, Representative Michael Huffington. Both lawmakers quickly fired off press releases saying that the Endangered Species Act was too tough on rat-killing farmers.

When Huffington spent three days in the valley last week, he got an earful from residents upset about what they saw as government interference in their lives. There wasn't an awful lot of sympathy for the creatures protected by the act.

"The federal government already owns 50 percent of the dirt in this state," a local cafe owner told Huffington. "My opinion is that if the critters can't live on 50 percent of the land, the land owned by the government, then God is calling them home."

— John Willard

PHOTOCOPY
PRESERVATION

Protection sought for Valley shrimp

The U.S. Fish and Wildlife Service has recommended Endangered Species Act protection for four tiny shrimp that live in Central Valley vernal pools, and the decision is now being considered by the Interior Department.

"I would say it is not a done deal," wildlife service spokesman David Klinger said Friday. "It has been forwarded to the department for review."

Wildlife service director Mollie Beattie has decided to add three species to the list: the conservancy, tadpole and longhorn shrimp. A fourth, vernal pool fairy shrimp, would be listed as a threatened species. A proposal for listing the California ladder-tailed shrimp has been withdrawn.

A coalition of developers, ranchers, utilities and mining interests, along with most of the Central Valley's congressional representatives, opposed the protections, arguing that the shrimp are not in jeopardy and the protections would have significant economic consequences.

Toads spark bureaucratic battle

Federal solution to declining boreal population will make the problem worse, state says

By Seanlon

News Staff Writer

Whatever is killing the boreal toads of Colorado also could block grazing, timber, mining and water permits in every river drainage in the state.

The toads could become the spotted owls of Colorado, the species that stops every development in its tracks.

If they're listed as an endangered species by the U.S. Fish and Wildlife Service this month, every project that is on federal land or that uses federal money would be subject to a lengthy review, state wildlife officials say.

But the Boulder environmentalist who vows to sue if the toad isn't listed on the federal endangered list said he wants to save amphibians, not stop development.

"We don't see any major impacts to any proposed developments," said Jasper Carlton, head of the Biodiversity Legal Foundation. The toads live high in the mountains, where there are few dams, where streams flow naturally and where few cows graze.

No one knows why the once-plentiful toads are disappearing from their natural alpine habitats at elevations between 8,000 feet and 10,000.

A recent state Division of Wildlife survey found toads in just four of 23 sites where they were expected. Only one adult toad was found near the Lakewood pipeline, the water system that Boulder officials say they must expand.

A few were found near the Henderson AMAX mine and near Empire and Berthoud Pass. But none was found in the Middle St. Vrain River, at St. Mary's Glacier, Left Hand Reservoir, Grand Mesa or most other places studied.

Ironically, the place where the most toads — six adults — were found is a mining site near Berthoud Pass, where tailings had turned the water alkaline.

That leads some biologists to speculate that it's not mining or grazing or recreation that's



Photo courtesy Colorado Division of Wildlife

The tiny boreal toad is disappearing from its Colorado habitat, and no one knows why. A recent survey found toads in just four of 23 sites where they were expected to be.

PHOTOCOPY
PRESERVATION

Toad deaths could be tied to the greenhouse effect

TOADS from 88A

critical to save a species, we need all the resources we can muster. The state doesn't have the resources. It can't save the toad by producing them in hatcheries."

■ U.S. Fish and Wildlife officials would be happy to have the state take the lead in protecting the toads. But they believe environmentalists will win the lawsuit, so they are inclined to put the toads on the endangered list.

Colorado wildlife biologists have until Sept. 20 to change federal minds.

Division of Wildlife biologist Eddie Kochman says a state plan, which offers more flexibility, is the best way to return the toads to health and to fill the gap in the food chain.

State biologists have begun breeding the toads in a Fort Collins hatchery, with an eye toward returning them to the wild within a year.

"Most of the boreal toads' habitat hasn't been altered," Kochman said Wednesday.

Indeed, the toads have disappeared from riparian sites that have never been mined, grazed or developed.

The state could argue that factors beyond its control are leading to the demise.

Dozens of Colorado cities soon will need to renew their federal permits that allow them to divert water from Forest Service land to the homes of their residents. If the toad gets on the federal Endangered Species list, all those permits are in jeopardy, Kochman said.

The Endangered Species Act incorporates the right intentions but "has become so cumbersome and burdensome that we lose the spirit of trying to recover the species" in a flood of bureaucratic paperwork, Kochman said.

Since the Endangered Species Act was enacted in 1973, millions of dollars have been spent but only a handful of species have been

taken off the endangered list.

Because an endangered listing is identified with protracted lawsuits, cooperation of water users, land owners and mining companies becomes less likely, said Division of Wildlife spokesman Todd Malmbsbury. "Big government and lawyers are not going to save endangered species," Malmbsbury said.

The consequences of a federal endangered listing aren't as gloomy as the state paints, says Larry Shanks, division chief for endangered species for Fish and Wildlife.

If no one knows why the toads are disappearing, a miner or a rancher isn't going to be denied a permit on speculative worry, he said. "If he's not dumping acid in the stream . . . we're going to have to look at it with some reality."

Many Colorado cities use natural streams to convey water. If the toads are on the endangered species list, biologists would look at whether they historically were in the watershed and whether it would be possible to re-establish them there. But the biggest question might be: Will a water permit affect whether the toads make a comeback? In many cases the answer will be no, Shanks said. "Why can't you have water systems and toads, too?"

High-altitude amphibians are disappearing all over the world, Shanks said, division chief for endangered species for Fish and Wildlife.

One theory is that the greenhouse effect and ozone depletion are causing stronger ultraviolet rays to reach the surface, perhaps penetrating the protective mucus surrounding the toads' eggs and damaging genes in embryos.

"It may be air quality," Shanks said. So far, tests have revealed no problems in the water in southern Rocky Mountain boreal toad habitat. Shanks wonders whether stronger UV light is changing the light spectrum that gets into streams, raising the temperature two or three degrees.

PHOTOCOPY
PRESERVATION

NAMES OF WOLF SIGHTERS

In 1986 when Jim Urbigkit was taking a journalism course, he and his wife Cat looked into rumors that wolves lived in the mountains above their hometown in Pinedale, Wyo., and have been wolf advocates ever since. The wolves that historically had inhabited this Yellowstone National Park area were considered extinct, but the Urbigkits believe that they have heard a wolf howl and have seen wolf tracks and scat.

Many others have reported seeing wolves in the area, although coyotes and dogs are often mistaken for wolves. A hunter shot and killed a wolf believing it was a coyote.

Cat Urbigkit twice sued the Interior Department to force location and protection of area wolves under the Endangered Species Act, but the court delayed ruling while the agency studied introducing new wolves to the

area. Urbigkit said agency rules under the act bar reintroduction of wolves where they already exist.

In January 1993 she filed an FOI Act request with the Fish and Wildlife Service for wolf sighting records from 1990 to 1992 near Yellowstone. Citing the privacy exemption, it denied the names, addresses and telephone numbers of the sighters.

Initially it also denied instructions to "minimize" reports of wolves to the news media, citing the internal memorandum exemption (Exemption 5), but it disclosed them after U.S. Attorney General Janet Reno in October ordered agencies not to withhold information unless release would cause harm.

Urbigkit sued for the withheld information in August 1993 in federal District Court in Cheyenne. She said she needed to talk with others to assess the extent of the wolves' presence and for help in challenging the agency's plan to introduce new wolves.

In the *Ray* case, Supreme Court justices found that the government had conducted exhaustive interviews, which it had disclosed, removing any need for *Ray* to locate and interview returnees. In contrast, the public could learn little

about the sightings from the Fish and Wildlife Service's own records, Urbigkit said.

Three local journalists told the court that the public has a strong interest in Fish and Wildlife decisions to protect or reintroduce wolves.

Urbigkit said privacy interests were modest: Wolf observers voluntarily filled out the reports which carried no personal information other than names, addresses and telephone numbers. Implying that the service was more interested in concealing the



The Urbigkits with their dog.

information than in protecting privacy. Urbigkit also provided memoranda of records and meeting closings calling for confidential treatment of the wolf issues, and noted that other natural resource agen-

cies — even other Fish and Wildlife Service offices — had released full observation reports on wolves, whooping cranes, spotted owls, and other endangered species.

After she sued, the government contacted the wolf sighters, asking if they objected to release of their addresses. It gave Urbigkit names and addresses of 83 who did not object, but continued withholding those of 45 who objected and 42 it could not find.

But the government argued that the observers had a privacy interest in not being contacted by Urbigkit and in controlling the dissemination of personal information about themselves. The Interior Department's "inadvertent" release of the information in the past did not lessen the privacy interests of these individuals, it said.

Arguing that names and addresses tell nothing about government, the government said that no public interest could be served unless Urbigkit first made a derivative use of the information by contacting the individuals.

In May, the court found the privacy interests of the wolf sighters only slight. They had given their reports voluntarily and they would incur no

retaliatory action, embarrassment or mistreatment if that were known.

The court rejected the government's "blatant assertion" of a "non-existent" public interest. Disclosure will bring the endangered species activities of the Fish and Wildlife Service into public scrutiny, and may contribute to public understanding of the agency's operations and activities, the court said. (*Urbigkit v. Department of Interior*)

PHOTOCOPY
PRESERVATION

Plan to restore salmon falls short, court says

By BOB EGELKO

The Associated Press

SAN FRANCISCO A four-state council's plan for restoring Columbia River salmon runs is too deferential to industry concerns and falls short of required fish and wildlife restoration goals, a federal appeals court said Friday.

The 9th U.S. Circuit Court of Appeals said in part that the plan fails to explain its rejection of increased river flows recommended by fishery managers.

The court ordered the Northwest Power Planning Council to reconsider its 1992 "Strategy for Salmon" and follow a federal law that orders the council to make fish and wildlife restoration a primary goal, with economic concerns secondary.

"The council's approach seems largely to have been from the premise that only small steps are possible, in light of entrenched river user claims of economic hardship," said Judge Thomas Tang in the 30 decision.

"Rather than asserting its role as a regional leader, the council has assumed the role of a consensus-builder, sometimes sacrificing the (Northwest Power) Act's fish and wildlife goals for ... the lowest common denominator acceptable to power interests and (industrial power users)."

A group of aluminum and other metal companies, the Direct Service Industries, which buy electricity from the Bonneville Power Administration, also appealed the council's plan, saying it was too demanding. But the court rejected the group's argument that the council should have been required to justify the economic costs of each protective measure.

In the 1980 federal law that created the council, "Congress expected increased costs and lost profits to the hydropower system to the extent the system was responsible for damaging fish and wildlife in the region," Tang said.

The council, composed of two representatives each from Idaho, Montana, Oregon and Washington, is required by law to make plans to protect the basin's fish and wildlife from the effects of hydroelectric power development. The court said 80 percent of the annual loss of salmon and steelhead in the basin was due to dams.

SACRAMENTO BEE

SUNDAY, SEPT. 11, 1994

LETTERS

Endangered Species Act

In a continuing attempt to belittle the Endangered Species Act by ridicule, Oroville consultant William Hazeltine advances his "modest proposal" to declare the Amish as an endangered species ("A petition to designate Amish as endangered," Op-Ed, Aug. 29).

I find it offensive in the extreme that someone would use the Amish as a tool to mock an environmental law with which he has long-standing disagreement, however erroneous his assumptions may be. That The Bee, in its continuing effort to trash the Endangered Species Act, would devote such a generous amount of precious editorial space to such mischief is doubly disheartening.

Once again, we must devote taxpayer-financed time and effort into responding to frivolous attacks on the Endangered Species Act - taking energy away from the real job of conserving the vestiges of California's natural resources for future generations whose voices never seem to find an outlet on the editorial pages of The Bee.

David Klinger
Assistant Regional Director
Public Affairs
Fish and Wildlife Service
Portland, Ore.

PHOTOCOPY
PRESERVATION

WASHINGTON POST 9/9/94

Deadlocked Exxon Jury Ordered Back

ANCHORAGE—After declaring they were at an impasse, jurors in the federal trial over Exxon Valdez oil spill damages were ordered back to work yesterday by a judge, attorneys said.

Brian O'Neill, chief trial attorney for the thousands of plaintiffs suing Exxon over the nation's worst oil tanker spill, said the jury sent a note Tuesday notifying the judge of its failure to reach a decision.

The 11-member jury was considering what punitive fine, if any, Exxon should pay for the 11 million-gallon spill. The deliberations come in the third phase of the summer-long federal trial in which thousands of fishermen, Alaska Natives and property owners—as well as municipalities and Native-owned corporations—have asked for \$5 billion to \$20 billion in punitive fines against the oil giant.

Exxon, saying that even without a punitive fine its total spill costs could mount to \$2.8 billion, argues that it has been punished enough for the 1989 disaster.

Landowner speaks up in favor of restrictions

Dear Editor,

Emotional issues with two or more sides are a daily part of our lives these days. The dialog between opposing sides often is tainted with misconceptions and lies to the point that the righteousness of each side is merely strengthened. Unfortunately this is the way policy is formulated in this country. And, as we all know it is not always the majority point of view that becomes policy. "The squeaky wheel gets the grease."

Well, the wheel has been squeaking a lot lately over the property rights issue. The noise has arisen to a

point that I must speak out as a Hill Country land owner in favor of any land use restrictions that will maintain the quality of the unique, fragile landscape west of the Balcones fault.

I feel that most residents of the Hill Country that don't depend on the land for income (i.e., ranchers, realtors, land developers) are here because of the unique environment and look forward to its perpetuation.

Please do not print my name because some of the people on the other side of this issue scare the hell out of me.

Name withheld by request.

Rocky Mountain News Fri., Sept. 9, 1994

Indians to inspect proposed lab site

Associated Press

BOULDER — Representatives of 14 American Indian tribes will meet next month to study the possibility their ancestors built a medicine wheel on a site proposed to house a federal laboratory.

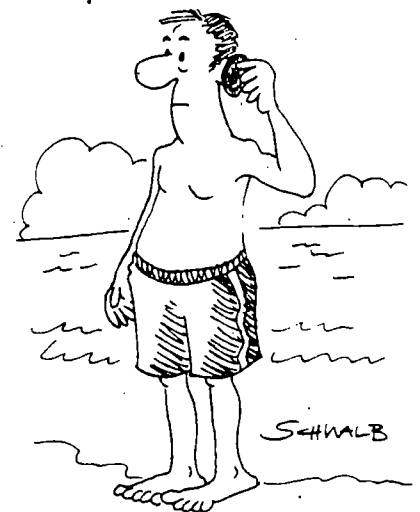
The deliberations of the tribes are part of an environmental impact statement on the proposed

federal buildings and how they would affect the site.

The impact statement also will look at overall land use on the site, the impact of present and future building plans, the number of people and cars the projects will bring, and their effects on air quality and traffic volume.

The final EIS won't be ready before April.

THE WALL STREET JOURNAL



"To hear the ocean, press 5... for sea-gulls, press 6... for"

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