

# High Country News

June 4, 1990

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A Paper for People who Care about the West

Three dollars

## *The 1872 Mining Law*



*The stake in  
the West's heart*



2-High Country News — June 4, 1990

## Dear friends,



## HIGH COUNTRY NEWS

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## Population boom

Congratulations to Barbara and Todd Guenther of South Pass City, Wyo., on the birth of Larkin, an eight-pound girl. She has boomed the town's population by 12 percent, from its original nine to 10.

If you live within 100 miles or so of Paonia, Colo., or will be near here on Saturday, June 23, please plan on attending the pot luck the *HCN* staff and board will host in the Paonia Park at 6:30 p.m. as part of the summer board meeting. *HCN* will furnish the beverages.

Those living in the paper's "neighborhood" — Grand Junction to Aspen to Gunnison to Montrose to Ouray to Telluride — will also receive an invitation. Readers coming from afar may want to combine the pot luck with hiking or mountain biking. Thanks to the drought, the snow is off the high country early this year, and Kebler Pass between Paonia and Crested Butte has been open for weeks. In normal years, the 32-mile-long dirt road does not clear until mid June.

Also as a result of the light winter, most trails in the nearby West Elk Wilderness will be open by late June, and 11,000-foot Mt. Lamborn, just south of 5,600-foot Paonia, should be an easy stroll if you have a four-wheel-drive vehicle to get close to it. For further information on the pot luck or other details, call *HCN*'s development director, Linda Bacigalupi, at 303/527-4898.

## Into the world

It is graduation time in Paonia — 39 seniors were sent off into the world May 25 with the help of a commencement address by Patricia Nelson Limerick, a leader of the New Western Historians, the author of *Legacy of Conquest* and *Desert Passages: Encounters with the American Desert*.

Earlier, the Paonia senior class floated the Westwater section of the Colorado River, thanks to subscriber Steve Arrow-smith's Humpback Chub River Tours, based in Dolores, Colo., and Moab, Utah.

There is a connection to *High Country News* in this choice of speaker and raft company. *HCN*'s former janitor, David Marston, is senior class president and valedictorian. David will be attending Trinity University at San Antonio, Texas, a school so small a 165-pound back can dream of playing varsity.

The private Colorado Rocky Mountain School in nearby (60 miles) Carbon-dale — will have two *HCN* graduates. Paolo Bacigalupi, son of development director Linda Bacigalupi, will go from CRMS to Oberlin College. The other CRMS graduate is Aaron Heideman, whose mother, Judy, was *HCN*'s typesetter during the paper's first years in Paonia. He will attend Colorado College.

The CRMS graduation will take place Saturday, June 9, at 10 a.m. As of this writing, the students had not yet released the names of the speakers. CRMS, which emphasizes outdoor education, was recently named Colorado Conservation School of the Year by the Colorado Department of Education.

Jason Nicholoff is another *HCN*-related graduate. His mother, Gretchen, teaches English at Mesa College in Grand Junction, Colo., and works a day or two a week at *HCN* in circulation. Jason is graduating from Hotchkiss High School a town 10 miles down the road from Paonia. He will also attend Oberlin College.

Although the four graduates have ended up at three different high schools,

they toddled into their educational experience together in the mid-1970s at the Lamborn Valley School (known as the Hippie school to locals) in Paonia. There they received a version of Steiner education, including an introduction to Eurythmy — a form of dance meant to integrate mind and body. Although this valley's Flower Child days have faded, the Lamborn Valley School survives.

## Visitors

Mary-Delle and Raymond Gunn stopped by on their way from Indiana to Flagstaff, Ariz., where Mary-Delle will join the new Cooperative Park Studies Unit at Northern Arizona University. Ray is with the Indiana Dunes National Lakeshore. They are long-time readers, who save back issues of *HCN* for reference. They took along a bundle of *HCNs* to pass out to friends, and left us the names of National Park Service employees in Washington, D.C., to sample.

Bill Vodall of Fort Collins, Colo., came by Saturday, May 5, and left us a note: "I'm glad to see that nobody is slaving away inside on a beautiful Saturday like this." Bob Hubbard of Kanab, Utah, an organizer of the Alliance Against Incinerators, visited the office May 15. His alliance has joined with a Paiute group to fight an incinerator the Kaibab-Paiute Reservation Tribal Council has approved for the reservation. Hubbard said he came to *HCN* via his daughter, a Forest Service employee in Salt Lake City.

Subscriber Ron Vick came close to visiting us, we gather from a note he sent in with his renewal notice, but was intercepted by a business with a similar name. He told us in a note mailed in with a renewal notice: "The 'High Country Graphics' sign on the office window must be pretty good camouflage. It leads me to believe they deal harshly with heretics around Paonia. Keep up the good work and we won't tell them you're there."

## Suggestions

Also in the mail, Peter Massik of San Francisco, Calif., took the time to send in his survey with a list of excellent suggestions, all meant to reduce our impact on the environment: Use recycled paper (we are trying) and mail *HCN* out of Glenwood Springs, where it is printed, instead of hauling it 70 miles back to Paonia.

Mari Nakada wrote to change her

address from Fort Collins to Colorado Springs, and to suggest that we report on the Forest Service's water rights litigation case in Water Division I in Colorado, which she says is an important case.

Janet Loy of Cornville, Ariz., read about *HCN* in *Rolling Stone* and decided to subscribe. She writes that her Verde Valle in central Arizona is experiencing rapid growth that bodes ill for the area. Christopher Duaille of Chicago also read the *Rolling Stone* May 17 issue, and decided to send a gift subscription to his parents. His father, Jacob, was recently recognized by the *Chicago Sun-Times* as one of the top 10 environmentalists in Chicago because of 20 years of work on the Illinois Pollution Control Board.

At one time, the survival of the West's environment depended on Congress and the federal courts. Those arenas remain important, but our theory is that future gains will come on the ground, thanks to local groups. The wonderful thing about theories — especially when you cover one million square miles — is that they are easy to illustrate anecdotally. Perfect proof came from Debra Patla of Victor, Idaho, who sent us a tabloid published as an insert to the weekly newspaper in Driggs, Idaho. "We thought you might enjoy it as an artifact of grass-roots environmentalism. Our Earth Day committee was a group of previously unconnected folks who came together, created some Earth Day events, and quietly disbanded."

She also enclosed copies of *The Voice*, a newsletter published by Citizens for Teton Valley (just over Teton Pass from Jackson, Wyo.), organized to oppose a land swap that would create a large ski area in the Teton Valley. The group has apparently succeeded in forcing the Forest Service to do an environmental impact statement, and is now digging in to make it a good EIS. Debra Patla wrote in her letter: "Our group is beginning to understand the endurance this kind of adventure requires!" The Citizens for Teton Valley are at P.O. Box 585, Driggs, ID 83422.

Cheryl Wolfer of Nederland, Colo., wrote to say: "All right, I give up! I've read about your paper so many times in the last few months that I have to read it." Steve Schouten of Fort Collins and Pat McCarthy of Burlington, Vt., sent us the names of people who might be interested in subscribing.

—Ed Marston for the staff

## HOTLINE

## Grand Canyon bill introduced

Rep. George Miller, D-Calif., has introduced a bill that would force the Interior Department and Bureau of Reclamation to stabilize water flows through the Grand Canyon. When Glen Canyon Dam operators react to power demands by altering water releases, the Colorado River fluctuates drastically. One result is the loss of half the canyon's beaches within the past 25 years (*HCN*, 5/7/90). Miller's bill would reduce abrupt changes in water flows within 90 days of its passage. Rep. Morris Udall, D-Ariz., announced his support of the bill, but other Arizona congressmen oppose it on the grounds that it would impede an ongoing environmental impact study. Udall says he hopes for quick passage of the bill with safeguards present to allow completion of the study by July 1991. Interior Secretary Manuel Lujan said he opposes

the bill and that "he should be the one who decides how the flows are handled," reports the *Arizona Republic*. Recently, Lujan refused to allow officials of the U.S. Fish and Wildlife Service and the National Park Service to testify at a congressional hearing about river flows through the canyon.

## Air Force thinks again

The Air Force's controversial plan to expand its Saylor Creek bombing range in Idaho may be put on hold. A May 12 *Washington Post* story says the Air Force will review the current need for its F-4 jet fighters and may retire the entire fleet. That decision would eliminate the need for the Saylor expansion since it requires the transfer of 94 F-4 jets from California to Idaho's Mountain Home Air Force Base. On May 18, the Pentagon extended the comment period on an environmental impact statement for the Saylor expansion to Sept. 15, and also announced a 1990 freeze on all construction at the Mountain Home base.



## WESTERN ROUNDUP

### Spotted owl issue divides the Northwest

Environmentalists and loggers alike had trouble reading George Bush's lips when he spoke in Portland, Ore., May 21, about the Northwest forests.

"I reject those who would ignore the economic consequences of the spotted owl decision," said Bush. Thunderous applause followed from those attending the Republican fundraiser at the Portland Hilton. Then he added, "I also reject those who do not recognize their obligation to protect our delicate ecosystems." This observation was greeted with a silence as still as that of an extinct species.

Although the president's public speech shed little light on the future of the northwest forests, his private talk with Oregon Rep. Denny Smith led to the announcement of a White House meeting with timber industry officials. The meeting was to come "sometime before" the U.S. Fish and Wildlife Service's expected June 23 decision on whether to list the spotted owl as a threatened species.

The \$1000-a-plate breakfast of hash browns and limp asparagus tips pulled in more than \$800,000 — by far the biggest political fundraiser in the state's history — for Oregon gubernatorial candidate Dave Frohnmaier. Frohnmaier, Oregon's Attorney General, has a head start in the race against Democrat Barbara Roberts, who entered late, after a surprise decision by Gov. Neil Goldschmidt not to seek re-election.

In the audience of mostly men were many timber company representatives, including 10 seats purchased by the political action committee of Eugene-based Bohemia Lumber Co. To enter the Hilton, however, the well-heeled listeners had to run a gauntlet of some 300 jeering protestors, some of whom were throwing eggs and spitting.

Demonstrators burned American flags, ignited smoke bombs, chanted "Let's buy a governor" and held signs protesting U.S. policy in Central America and the logging of old growth. Several people were knocked to the ground in



scuffles with police, and 25 were arrested in the four-hour confrontation.

Speculation over the spotted owl was fueled when Interior Secretary Manuel Lujan told a Boston audience that the owl would be "declared endangered." But a spokesman for the Interior Department quickly retracted the statement, explaining that Lujan was "speaking theoretically." U.S. Fish and Wildlife Service spokesman Dave Klinger also asserted that no decision had yet been made.

In related developments:

- Oregon Gov. Goldschmidt sent a letter to U.S. Forest Service Chief F. Dale Robertson, urging him to delay adoption of new forest management plans in western Oregon until the spotted owl issue is settled. The Forest Service has been directed by Congress to adopt an owl protection plan by Sept. 30, using the recommendations of the recent Jack Ward Thomas report. That report suggested setting aside three million acres of commercial timberland. A USFS assessment predicts 28,000 lost jobs in the Northwest over the next 10 years if

those recommendations are implemented.

- A telephone poll by the *Oregonian* newspaper found the state's residents divided on the spotted owl issue. Forty-six percent of the 600 people polled agreed with the statement "Forest jobs must be protected, even if it means the loss of spotted owl habitat," while 48 percent disagreed.

- Dan Evans, former U.S. senator from Washington, told a Seattle newspaper that the state's private forests are being "seriously overcut." A rapid turnover in forest ownership, high timber prices and what Washington Land Commissioner Brian Boyle called a "short-term profit mentality," are behind the cutting. Boyle said 80,000 acres of forests will be lost to urbanization in the Seattle-Tacoma area in this decade. Many big timber companies, such as Scott Paper and St. Regis, have sold their forest holdings, while Plum Creek, which has more old growth than any other private landowner in the state, is planning to log it.

- A federal judge in Seattle halted the first timber sale challenged in court under provisions of last year's congressional old growth legislation. U.S. District Judge William Dwyer stopped the Cowboy timber sale in Oregon's Umpqua National Forest because of its "fragmenting effect on ecologically significant old growth." He said the Forest Service must prove there are no alternate, non-fragmenting timber sales nearby.

- Four people were arrested after locking themselves by the neck to logging equipment at the Lookout Sentinel timber sale in Oregon's Willamette National Forest. After a watchman pointed a rifle at the four and said, "you're all dead now," Lane County sheriffs called for a grinder to cut through the bicycle locks, a process that took several hours. The protestors were part of a two-week-old Earth First! forest occupation.

—Jim Stiak

## HOTLINE

### Burros slaughtered in Arizona

In a remote part of northwestern Arizona, 51 wild burros were found shot to death during April. The burros, all shot in the head, were part of a group of 150 scheduled for adoption under a BLM program. "The shooting was indiscriminate," says Karen Sussman, president of the International Society for the Protection of Mustangs and Burros. "They shot mares about to give birth, young foals, adult burros, all of them," she told AP. The society has established a \$15,000 reward for the arrest and conviction of person or persons responsible. Anna Maria Adamo, a Bureau of Land Management spokeswoman, says eight federal investigators have been brought in to work on the case with state fish and game authorities and the local sheriff's department. The society can be reached at PO Box 13802, Scottsdale, AZ 85267. Information about the killings can be called in to a "Silent Witness" hotline, which ensures that all callers remain anonymous. Call 602/753-0753 or 602/757-3161.

## BARBS

Hey, Mr. Lujan, it's called EVOLUTION.

After suggesting that Congress should weaken the endangered species act to allow the construction of giant telescopes on prime red squirrel habitat in Arizona, Interior Secretary Manuel Lujan told the *Denver Post*, "Do we have to save every subspecies? Nobody's told me the difference between a red squirrel, a black one or a brown one."

Montana — an affordable place to bring the whole family for the apocalypse.

Sixteen classified ads in the May edition of the Church Universal Triumphant's newspaper advertised bomb shelters "at a great low cost" and for "best offer." The shelters were built by the church after spiritual leader Elizabeth Clare Prophet predicted imminent nuclear war.

### Politicians in the Northwest hustle to save timber jobs

WASHINGTON, D.C. — Now that saving the northern spotted owl has become a national issue, Northwest members of Congress are trying to make survival of timber-dependent communities one, too.

At a Senate hearing May 23 — exactly one month before the Fish and Wildlife Service is expected to declare the old-growth forest denizen endangered — that message came through loud and clear from one of the region's two most powerful members, Sen. Mark Hatfield, R-Ore.

The second, more prominent kingpin is Speaker of the House Tom Foley, D-Wash. Foley is forced to play a low-key but still influential role to avoid appearing to abuse his power for parochial interests.

"We're talking about a national, social impact," Hatfield told U.S. Fish and Wildlife Service Director John Turner, naming higher building materials costs, and therefore, homelessness, as one such effect. "So it's something bigger than just my constituents."

But the real problem for the Oregon and Washington delegations is painfully regional: how to deal with the feared

loss of 25,000 jobs over the next 10 years at a time when there is strong support for environmental laws in Congress. Additional jobs would be lost in northern California, but most of that state's delegation has not been active on the issue.

The two Northwest delegations have basically agreed on banning the export of unprocessed logs cut on federal and state lands, and slightly differing legislation has passed both houses. That could provide an extra 600 million board-feet a year for domestic sawmills, offsetting the expected loss of about two billion due to the owl and new national forest plans next year.

Members have proposed other measures such as worker retraining, economic development assistance and the remote chance of some kind of exemption for the owl from the "god committee" of high administration officials that can be convened under the endangered species law after an animal is listed.

But the crux of the matter is how much federal land to set aside for the owl. There the delegations face their biggest stumbling block: a report by a group of government scientists appoint-

ed by the agencies and headed by Forest Service biologist Jack Ward Thomas.

Last year, the timber industry and its supporters in Congress attacked environmentalists for trying to shut down sawmills. The Thomas team in early April took the heat off conservationists by confirming the bird is imperiled and recommending drastic reductions in old-growth logging.

At the May 23 hearing of the Senate Public Lands, National Parks and Forests Subcommittee, chaired by Sen. Dale Bumpers, D-Ark., Thomas defended his group's efforts against attempts to discredit it by Sens. Jim McClure, R-Idaho, and Malcolm Wallop, R-Wyo. But federal wildlife director John Turner, a former Wyoming legislator, later called the report a "credible plan [that] represents good science." Thomas said the proposed network of habitat conservation areas averaging 20 pairs of owls each and 48 percent old growth was a compromise with economic realities.

Still, the 8.4 million-acre set-aside including national parks and wilderness areas, stunned Northwest representatives, even though last year they ordered the agencies to consider the team's con-

clusions in their new owl protection plans.

Now the delegation, BLM and Forest Service are looking for ways to reduce the loss of old-growth logging by modifying the habitat conservation areas. Forest Service Chief Dale Robertson said his agency would consult with Thomas and Congress on any changes. The big question will be whether they can pass muster with the Fish and Wildlife Service and the agencies' scientists, the environmental lobbyist said.

Hatfield, who is the former chairman and most senior Republican member of the Appropriations Committee, and other Northwest members — notably Reps. Norm Dicks, D-Wash., and Les AuCoin, D-Ore. — are prepared to pass an appropriations bill rider to try to bolster the timber supply. The bill would also try to prevent environmental lawsuits from resuming after the current one-year legislation expires. Permanent legislation to settle the issue is not expected this session.

—Larry Swisher



# A tenacious law may lose its grip

—by Steve Hinchman

**T**he fight over mining in the West may turn out to be one of the bloodiest environmental battles of the 20th century.

The struggle is a classic confrontation between environmental quality and private gain, a perfect metaphor for the larger environmental dilemma facing society. But so far the nation seems incapable of coming to grips with the issue.

Like the conflicts over timber, public range and water, mining pits those who would conserve the environment, and keep the public land public, against those who see economic progress and individual freedom as dependent on easy access to public land.

However, unlike the other natural resource battles, there is no dialogue, no movement and few signs of reform in mining. Instead, the conflict grows more painful, divisive and intractable each year.

In part that is due to the high stakes: Immense profits can be made by mining the West's public lands. But with present mining practices, that wealth can only be extracted at equally immense cost to the West's air, water and natural beauty — damage that dwarfs most other extractive industries and may, in human terms, last forever.

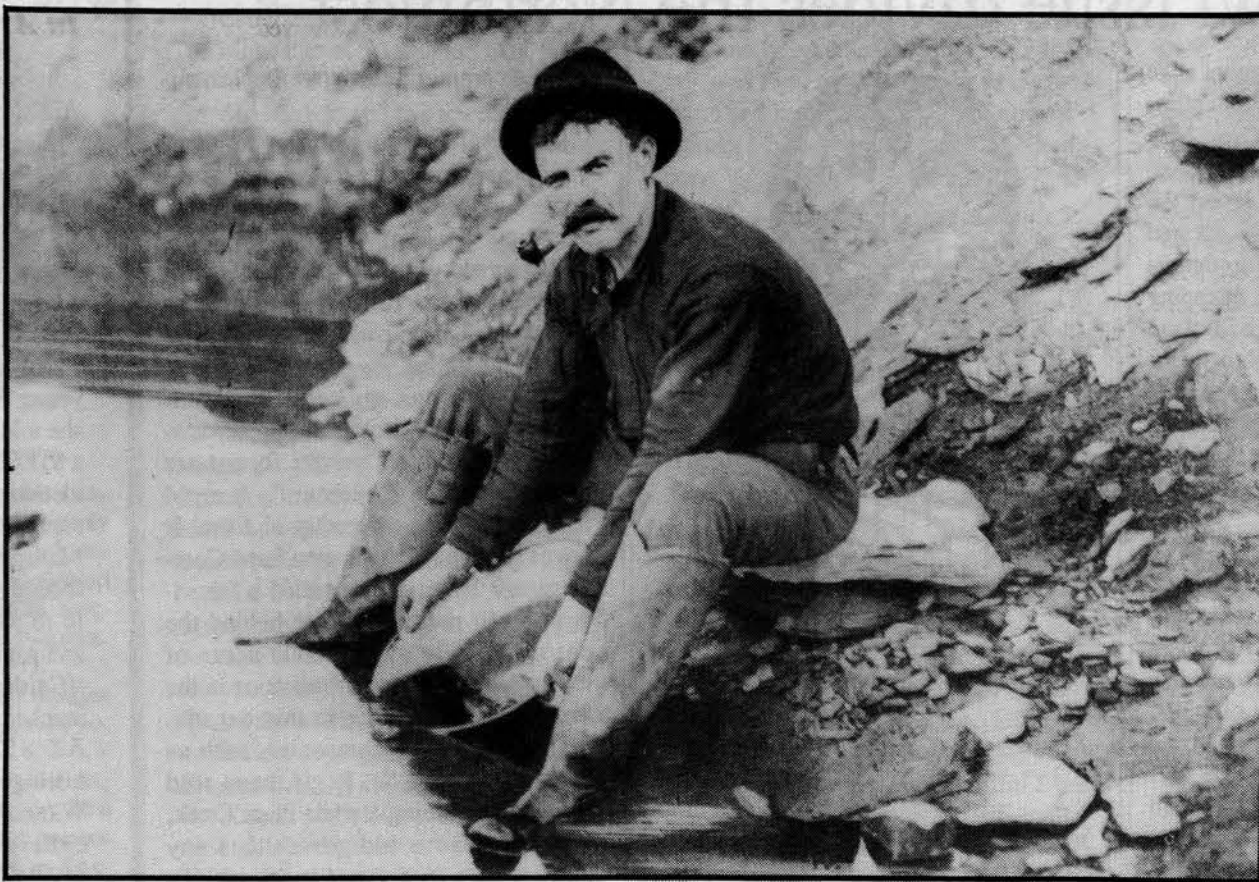
The situation is also exacerbated by the structure of the mining industry. Unlike ranching or water development, few mining corporation executives or lawyers live in the rural West. While mine workers do, they are for the most part transient, following their paychecks from town to town. That leaves no one on the ground to carry on a dialogue or respond to the changing values and needs of local communities.

But the major, and more pertinent, reason for the impasse lies with the General Mining Law of 1872. The 118-year-old act is the only one of the original 19th-century land disposal laws still on the books. Its principles are very different from those of today's multiple resource laws, and the strong political support the law has makes it a formidable barrier to both gradual reform and radical change.

The 1872 Mining Law, as it is more commonly known, governs the exploration, mining and patenting of mineral deposits on public land. It is a giveaway law — the miner's equivalent of the Homestead Act. Under its aegis, thousands of acres of federal land and billions of dollars in mineral wealth have been and continue to be transferred from public to private hands.

The mining law also has no environmental regulations, reclamation or bonding requirements. A century of unrestricted mining under the law has saddled the West with a lethal legacy of toxic waste dumps, Superfund sites, fouled rivers, poisoned aquifers, trashed mountainsides and an uncounted number of abandoned mines and tailings piles.

But the critical feature of the 1872 Mining Law is its land tenure privileges. The act grants a vested property right to



Most miners never made a dime during previous booms

mining claims on public land, effectively also granting mining primacy over environmental concerns or other uses of that land. More than any other natural resource law, the mining law gives industry a free hand to develop public land while tying the hands of federal agencies, citizens and other users who want to protect it.

It is an extraordinarily powerful law and has become a legal fortress for the domestic mining industry. As pressures mount the industry has not initiated reforms or entered dialogue: It has only maneuvered to protect the law at all costs. Safe within that citadel, the industry seems impervious to the new winds now blowing through the West.

The mining industry is backed by tradition. It was the miner who first brought modern civilization to the frontier and, buoyed by the law, the mining industry has enjoyed more than a century of political dominance.

The environmental community — a newcomer to the West — hates the mining law. Environmental activists have come up against the law many times, but seldom won. Finding few legal handholds to limit mining, or break the mining law's ability to resist changes, environmental groups have instead concentrated on more winnable battles, such as those over dam building or clear-cutting.

The federal agencies say they are powerless to counter the mining law's mandate. But bureaucrats, who have traditionally been tender toward mining, have seldom tested the law. As a result, their ability to mitigate the impacts of mining is yet unknown.

For this muddle of reasons, the environmental revolution that has transformed most of our natural resource policies in the last 20 years has hardly touched mining. The industry still operates according to the ideas and philosophies of 100 years ago.

## New gold boom

**I**f the bust in mining had continued, the mining law would probably have stood untouched for another 100 years. But the growing boom may crack

open the gates of the citadel.

Although few realize it, the nation is now deep into the largest gold rush in our history. The boom is fueled by the high price of gold and new technologies that allow mining companies to move entire mountains in search of tiny specks of invisible gold. Moreover, the improvements in gold mining have spilled over to less precious metals, starting a mild resurgence in copper, platinum, palladium and others.

Combined, those changes have triggered a rush of new mining claims — hundreds of thousands of applications from both speculators and legitimate miners — and a score of new proposals for open pit mines, mills and heap leach operations. The scale of potential profits and environmental disturbances from this boom may make the entire last century of mining look tiny in comparison.

The boom has brought new national attention to the question of mining the West, with the debate centered on the mining law. But attention does not mean change. As the stories in this special issue of *High Country News* show, positions have stayed fixed.

The environmental community, led by Phil Hocker, founder of the Mineral Policy Center in Washington, D.C., wants a complete overhaul of the mining law. It argues that the law is a relic from the era of "The Great Barbecue," when Manifest Destiny was the closest thing the nation had to a land ethic.

Stewart Udall, former Secretary of the Interior and chair of the Mineral Policy Center board, says the law "permits more damage to our environment, more desecration of public lands, than any other law this nation has ever enacted."

Their attempts to push reforms through Congress, however, have run into a brick wall erected by the American Mining Congress. Calling environmentalists "zealots" who would destroy the free enterprise system, industry argues that the mining law is critical to continued domestic minerals production and a healthy national economy.

Hearings before Congress have turned into stalemates, and reform bills haven't made it out of committees dominated by Western delegates. In today's special interest Congress at least, the

power of the mining industry seems unbreakable.

Stymied in Washington, the effort to reform the mining law has moved West. While the new gold rush worries many who are concerned for the impact to the environment, it is beginning to have a positive effect on the grass-roots and local politics.

The rash of mining proposals has spawned new pressure from small towns, ranchers and environmentalists alike to put some controls on mining. More and more local groups are becoming well versed in the details of the mining law and challenging industry plans.

That reaction has precipitated an unexpected response from the Bureau of Land Management, which handles all mining

claims for the federal government. For the first time ever the agency has begun to tighten its administration of the mining law. In the last two years the BLM has increased its funding of regulation and enforcement by 40 percent, begun regular inspections of both mining and reclamation, and is now writing a national cyanide management policy. Those changes, combined with light fees on mining claims and patent applications introduced this year, have already cut out a substantial portion of past abuses of the 1872 Mining Law.

The quick reaction to the BLM's moderate reforms reveals the most hopeful solution to the quagmire: Simply enforcing the regulations that now exist would make mining much more manageable. It had seemed as if the 1872 Mining Law has to be destroyed because the BLM doesn't enforce the law or apply the national environmental laws. If that were to change it might be a new ballgame.

There is another avenue for reform that has been threatened but not tested: a suit by environmental groups challenging the power of the 1872 Mining Law to overrule the National Environmental Policy Act and other national environmental laws. Such a case could determine if the mining law really is impregnable or just the mining industry's Maginot Line.

But the most comprehensive and powerful changes can only come from within the mining industry itself. Scattered sparsely across the West are a handful of responsible mining companies, which operate clean mines with advanced reclamation techniques and often urge other companies to do the same.

Perhaps that could happen. Instead of paying a royalty for taking mineral wealth off of public lands, the industry could clean up the mess its predecessors left: to pay for its old sins with its new prosperity.

However, for that, or any other peaceful solution, the industry must open the gates, come down out of its fortress and once again become part of the Western community.



# A primer on the mining law

**D**evelopment of a mine under the 1872 Mining Law is radically different from development of any other public resource.

Unlike timber, coal, or oil and gas, hard-rock mineral deposits are frequently small, dispersed and both costly and difficult to find. As a result, the 1872 Mining Law established the principle that the miner should reap the profits of discovery, while the nation benefits from private exploration and development of minerals on the public lands.

Those goals are accomplished through three rules unique to mining.

First, the mining law gives miners free and open access to all public lands not expressly withdrawn from mining.

Second, the law grants a miner or mining company the right of self-initiation: carte blanche to explore and develop minerals on public lands without having to buy permits or even notify federal officials. Third, and most important, the law gives the miner security — a vested property right — for the duration of mining, or allows the miner to obtain title to both the surface and mineral estates for \$2.50 or \$5 an acre, depending on the claim. No royalties are charged against the mines.

Originally the 1872 Mining Law — which merely codified practices already established in the West's rough and tumble mining camps — opened the entire West, nearly one billion acres, to exploration for all valuable minerals. Today 400 million acres remain open and the law covers just the hard-rock minerals: gold, silver, uranium, copper, molybdenum, iron, aluminum and the gem stones.

Most prospectors typically stake out a likely area, and then begin serious exploration. Even before a discovery is made the prospector's exclusive right to any minerals in the marked area is protected by the age-old miner's custom of first in time, first in right.

However, that only protects the prospector against other prospectors or claim jumpers. Upon the moment of discovery of gold or another valuable mineral, the miner's prerogative is instantly and almost magically transformed into a vested property right good against the federal government and all others.

While the land is still federally owned, the mining law gives the claim holder absolute control over the mineral rights as well as "the exclusive right of possession and enjoyment of all the surface included within the lines of their locations."

Everything hinges on a valid discovery. But, despite its pivotal role, discovery is for the most part an anonymous event. It usually happens in the field or in a computer lab testing assay results. No federal official need be present and the claimant need not prove discovery, unless it is contested by a rival miner.

Once the claim is recorded with the county and the Bureau of Land Management, the claimant may use the property to build a house, cut timber, graze cattle or divert water, so long as those uses are "incident to mining."

To maintain this extraordinary property right, the miner must complete \$100 worth of assessment work a year. In 1872, that was a formidable sum — about two months labor in the mining camps — and meant most claims were worked. Today it is equivalent to about two hours of work on an exploration drill rig or a two-day family outing and is widely considered one of the most anachronistic elements of the law.

Until recently, assessment work was seldom even monitored. With passage of the Federal Land Policy and Management Act in 1976, claimants must file a notarized affidavit swearing they did the work, plus a \$5-per-claim administrative fee initiated this year. The BLM records the paperwork, but does not check to see if the work was done.

"There are 1.2 million mining claims out there and there are only 10,000 BLM employees," explains Rick Deery, a geologist with the BLM's division of mining law and saleable minerals in Washington, D.C.

Deery says the beauty of the 1872 Mining Law is that it is a "self-policing" law. The point of the assessment requirement, he says, is not federal regulation, but self-regulation within the industry. Under the mining law, if the assessment work is not done interested miners may contest and pick up inactive claims, thus keeping potential mineral deposits in circulation.

The federal government generally

does not get directly involved until a claimant begins mining or files to patent, or take ownership of, his or her claims. In the case of mining an unpatented claim, the BLM must approve a reclamation and mining operation plan and enforce federal environmental laws.

To patent, or acquire a deed, a miner must have spent \$500 to improve the claim and must prove a valid discovery. This is where discovery is tested, with the patent being approved if "a person of ordinary prudence would be justified in the further expenditure of [their] labor and means, with reasonable success, in developing a mine."

The deposit must be profitable under "current market conditions," but the claimant need not mine or ever take the ore to market. He or she must only prove that it could be mined at a profit. The fee for patenting is \$5 per acre for lode claims and \$2.50 per acre for placer claims.

No one knows how many mining claims have been filed under the 1872 law. The Department of Interior did not keep records until 1976. Then FLPMA required claimants to register all unpatented claims with the BLM within three years and each year thereafter register the annual assessment work, or lose the claims.

Since 1976, about 2.5 million claims have been recorded with the BLM, but 1 million of those have been cancelled because of failure to record the annual assessment work.

Deery says over the last 10 years the number of claims has held stable between 1.2 million and 1.5 million. While the agency receives an average of 140,000 new claims a year, it usually drops the same number. For example, he says, claims on gold deposits in the Great Basin are growing while existing uranium claims in Wyoming and Utah are being abandoned.

Deery expects that because of new administrative fees established in Fiscal Year 1990 — an initial recordation fee of \$10 per claim and an annual assessment fee of \$5 per claim — the number of claims will drop by 20 percent. The shift, he says, will mostly price speculators out of business but will not affect real miners.

The Department of Interior has kept records of patents issued: 3.2 million acres, the bulk of those before 1935. Since then patenting has gotten tougher. Only 3,938 patents have been issued since 1976, or about 400 per year.

Deery says today 50 percent of all patent applications fail. Most are dropped when applicants realize their chances are slim, but the BLM has rejected 802 claims in 93 patent applications in the last 10 years.

New administrative fees — \$250 for the first claim and \$50 for each additional claim will — may further reduce the number of patents issued each year.

— Steve Hinchman



## TABLE OF CONTENTS

- 4/ *A tenacious law may lose its grip*, by Steve Hinchman
- 5/ *A primer on the mining law*, by Steve Hinchman
- 6/ *A new gold rush hits the West*, by Jeff Marti
- 7/ *Birds fall prey to a King Midas technology*, by Tom Knudson
- 8/ *They'd hope to lead quiet lives*, by Jeff Marti
- 9/ *States learn from Nevada*, by Jeff Marti
- 10/ *The West: land of the free (ride)*, by Tom Knudson
- 11/ *A clash between two kinds of wealth*, by Todd Wilkinson
- 12/ *His marble claims are in a wilderness*, by Mark Harvey
- 14/ *Claims provoke gritty fight in Oregon*, by Tom Ribe
- 15/ *San Luis chooses Christ over gold*, by Steve Hinchman
- 16/ *Retirement town takes on a copper mine*, by Florence Williams
- 18/ *Stone-washed jeans threaten a wild river*, by Gingy Anderson
- 19/ *Questa was awakened by its mining bust*, by Steve Hinchman
- 21/ *Must Questa remain a company town*, by Steve Hinchman
- 22/ *Mine boss also reclaims the land*, by Mark Harvey
- 23/ *Mining industry battles a bill to protect the California desert*, by Mark Harvey
- 24/ *Can this law ever be reformed?* by Andrew Melnykovich
- 26/ *Barbaric mining practices can be civilized*, by Bruce Farling

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Miners at the Suffolk mine in the San Juan Mountains, Colorado

Colorado Historical Society



6-High Country News — June 4, 1990



Battle Mountain Gold Company

Workers preparing shot holes at Battle Mountain Gold Company's Fortitude mine in Nevada

## A new gold rush hits the West

by Jeff Marti

**T**he Owyhee Uplands of eastern Oregon is the last place you would expect to hear complaints of claustrophobia. This tough, arid landscape is one of the most remote parts of the West.

But claustrophobia is what you'll hear about if you go there with Gary Brown.

"I feel like I'm being encircled," he says. "It's like there are walls closing in on me."

In recent years, mining companies and prospectors have poured onto Bureau of Land Management land here searching for gold. Brown lives in Ontario, Ore., a town of 9,700 by the Snake River on the Idaho border. He and his wife, Carolyn, are leaders of Concerned Citizens for Responsible Mining, a small group opposed to a future of open-pit gold mines in eastern Oregon.

One Saturday, Gary stands on top of Shellrock Butte, where both ASARCO and Atlas Precious Metals have drilled for ore samples. He points toward other area landmarks under exploration: Double Mountain, Freezeout Ridge, Dry Creek Buttes, Quartz Mountain, Grassy Mountain, Three Fingers Rock, and Hope Butte.

Each time Brown ventures out here, he says, it seems he discovers new tire tracks made by miners. Where intensive drilling has occurred, fresh roads zigzag up sagebrush-covered slopes on their way to drill pads.

"It's awful," Brown says. "They're just tearing it up."

And on the bumpy backroads of Malheur County, Brown encounters a lot more traffic these days — men driving

Broncos and Blazers, wearing khaki and carrying rock hammers.

More ubiquitous are the thousands of white, waist-high PVC pipes scattered across the terrain. The pipes, normally used for plumbing, have been put to use as mining claim markers.

Last year, 10,000 new mining claims were staked in eastern Oregon, bringing the total to 40,000. At seven per claim, more than a quarter-million PVC markers penetrate the high desert, most of them on lands managed by the BLM's Vale District.

All over the West these days, mining companies are searching for gold, and

finding it. America is in the midst of a gold boom that dwarfs the output of its frontier gold rushes.

But the ethic that spurs today's gold rush is the same one which spurred those more than a century ago — the ethic of first in time, first in right. During the 1800s, pick-and-shovel miners, in the absence of government oversight, practiced a custom among themselves that the first man to locate a mineral deposit on the public domain received the right to possess and extract it.

That custom was written into the 1872 Mining Law, which continues to guide hardrock mineral development on

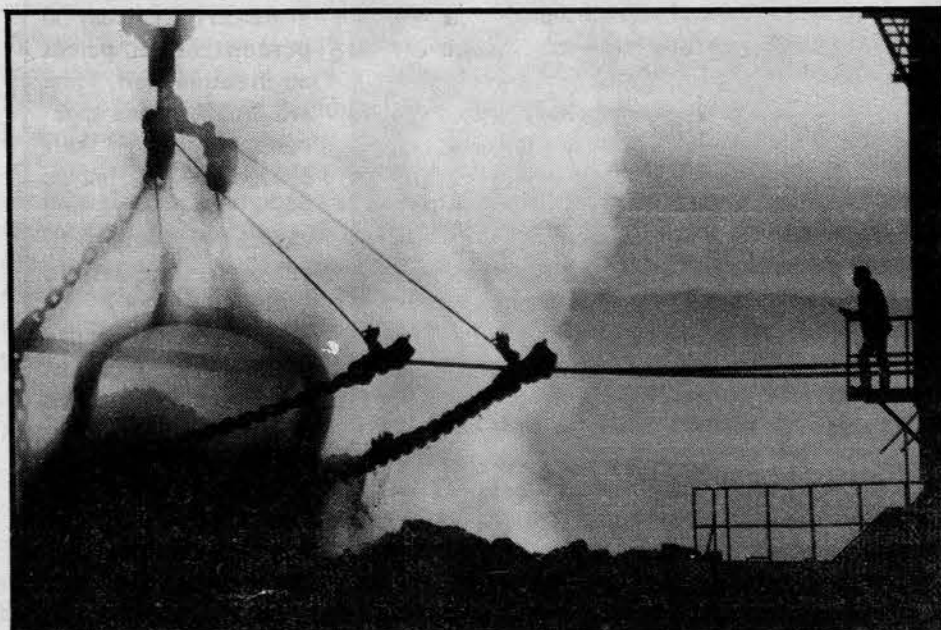
the public lands. The law also embodies a frontier mentality that regards hardrock mining as the best use of the land. A miner who discovers a deposit has a right to extract the minerals regardless of the land's other values.

The new American gold rush is after a different kind of deposit than the veins, nuggets and flakes which tantalized the imagination of the forty-niners. These days the hunt is for low-grade ore bodies with microscopic gold.

To get the micron-sized metal, companies must strip-mine the land because the gold is disseminated throughout large ore bodies. As much as 100 tons of earth must be gouged out for every ounce of gold produced.

Huge pits are being dug in virtually every western state. Since no state requires that they be filled back in when the company walks away, the pits will remain.

*"Nowhere has the boom altered the landscape more than in Nevada."*



Dragline at work at an Idaho open-pit gold mine

### Boom targets Nevada

**N**owhere has the boom altered the landscape more than in Nevada, where there are more than 60 large open-pit gold mines. Many of them are hundreds of feet deep and thousands of feet across.

Coupled with the free-access provisions of the mining law, the gold boom is a juggernaut that has simply rolled over the state's landscape in the last few years.

Throughout basin and range country, a reckless proliferation of gold mines has turned hills into pits, open land into major industrial facilities, and cowtowns into company towns.

Elko, Nev., with 14 mines nearby,

Bryan Peterson



doubled in population in less than 10 years, from 8,000 to more than 16,000. Small communities such as Battle

Mountain, Eureka and Winnemucca have experienced sudden growth as well. "It's been good for the business-

men," says Joan Shangle, the Eureka County clerk and treasurer, "but it makes hardship on the county."

High Country News — June 4, 1990-7

The small town of Battle Mountain issued 307 new building permits in 1989, up from 58 in 1982. All of them, except one, were for mobile homes, says Heather Smith, an assistant to the Lander County commissioners.

The county didn't bother to require curbs or driveways. "The new people are here for the mining," Smith says. "When the gold's gone, they'll probably leave and take their homes with them."

Meanwhile, "The schools are bursting at the seams," Smith says. "We'll probably have to build another one within the next three years."

If the boom has a focal point, it is the Carlin Trend, a wide swath of microscopic gold in the north-central part of the state. The 40-mile-long geologic province is home to some of the richest gold deposits and largest mine pits in North America.

To fly over it, says Glen Miller, a Sierra Club activist and a biochemistry professor at the University of Nevada at Reno, is "to see destruction which is truly heroic in nature, to see what man and machines can do on the ground. You can fly for miles and miles and see nothing but mines."

Last year more than 5 million ounces of gold were taken out of the state. If Nevada was a country, it would be the world's third largest gold producer, though far behind the Soviet Union and South Africa.

Largely because of Nevada, the United States has seen its slice of the global gold pie increase from 2.5 percent in 1980 to more than 10 percent today. South Africa's slice is getting smaller as mines are forced to tunnel deeper and costs rise higher.

According to The Gold Institute in Washington, D.C., the United States mined 6.6 million ounces of gold in 1988 and is expected to produce 10.1 million ounces by 1992, an increase of 900 percent from 1980.

"As of 1989, the United States has become self-sufficient for its gold," says John Dobra, an economist at the University of Nevada in Reno. "We are now a net exporter of gold."

Behind Nevada, California stands next in line, with more than 10 open pit gold mines. Montana, New Mexico, South Dakota, Colorado and Washington also have existing operations.

Claim-staking on public lands has gone wild in Idaho, where there are already five open-pit gold mines. Seven more are in the works.

The boom is fueled by high gold prices — often exceeding \$400 per ounce these days — which have made possible the widespread application of cyanide heap-leaching technology. Developed in the late 1960s by U.S. Bureau of Mine researchers, the technology has helped transform uneconomic, vague zones of mineralization into enticing deposits.

In Nevada, new mines using the technology are coming on line at an average of five to eight each year, says Russ Fields, executive director of the state department of minerals. Companies spray a cyanide solution, often using farm sprinklers, on large heaps of low-grade ore that is blasted, dug and hauled from the open pits. As the solution trickles downward, it leaches out the invisible gold particles. Then it's collected, processed some more, and eventually concentrated into big bars of gold.

According to the *Engineering and Mining Journal*, three-quarters of all U.S. gold mines are producing gold for less than \$220 an ounce. Some companies are said to be doing it for less than \$150 an ounce, paying off their initial

(Continued on page 8)

## Birds fall prey to a King Midas technology



Stuart Wong/The Idaho Statesman

A cyanide solution containing gold flakes is collected in ponds — part of the heap-leaching process.

by Tom Knudson

**B**ATTLE MOUNTAIN, Nev. — High over Nevada, a flock of shorebirds leans into the wind, drawn like a magnet to the marsh-like tailings pond at the McCoy Cove gold mine.

But unfortunately, the pond is no desert oasis.

More than 600 shorebirds perished in the McCoy pond last year — victims of a modern-day environmental calamity sweeping through mining country.

The pond, and many others like it across the West, are contaminated with cyanide, a powerful poison known to most Americans for its grim role in the Jonestown mass deaths and the Tylenol poisonings.

But cyanide also happens to be the lifeblood of the modern gold mining industry. Without cyanide, in fact, there would be no record-setting gold rush in the West today.

Miners long have known of cyanide's peculiar powers — mixed with ore, it separates out metals — but only in recent years has the technology been developed to put cyanide to work on the low-grade ore, a process that is driving today's gold boom.

The process, known as heap-leaching, has a kind of magic to it. Huge mounds of ordinary looking rock, containing only a few hundredths of an ounce of gold per ton (less than a dental filling's worth) are sprayed with a weak solution of sodium cyanide, eventually yielding sparkling bars of gold.

But there is another side to this modern-day alchemy, one that does not glitter.

Cyanide-based gold mining has left a trail of dead birds and poisoned water across a wide swath of the West. And although many mines are doing a better job of controlling cyanide these days, everything from red-tail hawks to rattlesnakes and great-horned owls to sandhill cranes continue to perish in the ponds.

"I was told a year ago that cyanide and bird kills wasn't going to be a problem again," said Glenn Miller, a professor of biochemistry at the University of Nevada at Reno.

"Well, it wasn't taken care of. How many more times can we be expected to

trust the industry?"

The problem was in the news again recently when Kennecott Corp. pleaded guilty in Reno to violating federal law in connection with the deaths of more than 1,400 migratory birds in 1988 in a cyanide-tainted tailings pond at its Alligator Ridge gold mine. The case, involving a \$40,000 fine and a \$50,000 restitution payment, marked the first time in Nevada that a gold mining company has been prosecuted for killing birds.

Miners say that while birds have died, the industry's record is improving.

"All of us have spent thousands and thousands of dollars on this issue," said Jim Arnold, superintendent of the Chimney Creek gold mine in north-central Nevada. "It's a hot issue and we do feel like we are solving the problem."

Wildlife mortalities, however, are but one problem swirling around this newfangled mining. At numerous mines, cyanide also has leaked into groundwater, where it does not break down as quickly as on the surface. And questions remain about what to do with the mountains of tailings and waste rock, which pose the threat of heavy metal pollution.

"You're talking about a large amount of material that has been extracted from deep within the earth," Miller said. "It hasn't stood the test of geological weathering."

"It's not just the cyanide, but the things that are leached out with it, things like arsenic and mercury. That is something I think is going to come back to haunt us in future years," Miller said.

Today, no one knows how many animals have died, in part because state and federal game agencies can't keep up with the problem. And in Nevada, where a voluntary reporting system is in place, some mines apparently play by their own rules.

"We continue to get reports that mines are killing significant numbers of birds and not telling anybody about it," said Sam Jojola, a special agent for the U.S. Fish and Wildlife Service in Reno. "They're just burying them and telling their employees to keep quiet."

Mining industry figures in Nevada show that over the past four years, more than 6,700 birds and animals have died in the cyanide ponds, including such majestic species as tundra swans, snowy egrets and mountain bluebirds. But Jojola said the actual death toll could be five

to 10 times higher.

"It's a situation that requires constant monitoring," Jojola said. "There are so many mines and so little manpower to keep track of them."

Dead wildlife or not, cyanide-based mining is booming across the West. E.I. du Pont de Nemours & Co. of Delaware — a major cyanide manufacturer — reported last year that cyanide consumption in North America jumped 51 percent in one year — from 142 million pounds in 1988 to 215 million in 1989. Gold mining gobbled up 80 percent of that.

But while the use of cyanide has skyrocketed, the ability to protect birds and wildlife has lagged.

"Ten years ago, the industry had a reasonable excuse for not anticipating the impacts of cyanide," said Philip Hocker, president of the Mineral Policy Center, a group working to reform the 1872 Mining Law.

"But they don't have that excuse anymore. And are we seeing no avian mortalities from cyanide because they've gone in and fixed the problem? That is not the case."

"I can't argue that some companies have acted faster than others," said Arnold. "But I don't know of anyone who is taking animals and burying them and saying 'Let's not report them.' That's a felony and we just don't do that."

While some companies have had problems, others have compiled excellent records.

At the Newmont Gold Co.'s cluster of mines near Carlin, Nev., fewer than 15 birds died last year, state figures show. Newmont — North America's largest gold producer — also donated \$125,000 to The Nature Conservancy to help preserve a nearby wetland in 1988.

"I think the situation is changing for the better," said Jojola. "But the problem is not under control — I can assure you that."

When a new mill went into production last June at the Echo Bay Gold Co.'s McCoy mine, officials were confident they would not have a problem with bird mortalities. After all, the tailings area was designed to prevent the buildup of water — a magnet for waterfowl.

"But we had a little more water than we expected," said Meade Stirland, Echo Bay's manager of environmental affairs. "You always run into problems during startup. Plus, it coincided with a storm."

So instead of a dry tailings impoundment, Echo Bay found itself faced with a giant mud flat — just the kind of thing shorebirds love. Hundreds landed — and hundreds died.

The mine made several attempts to detoxify the mud flat, with limited success. Three months and \$2.5 million later, Echo Bay found a chemical neutralization plan that worked.

"I don't think we've lost a bird out there since the last week in September," Stirland said.

Encouraged by Stirland, state and industry officials scheduled a workshop for March 28 and 29 on cyanide and wildlife.

"Why should every new mine have to learn the same lessons we learned the hard way — at the expense of wildlife?" he said. "That's not right — it shouldn't be that way."



## Gold boom...

(Continued from page 7)

capital costs in a few months.

In spite of the massive increases in production, gold prices have managed to stay high. "The unique thing about gold is that virtually every bit of gold that has ever been produced is still around," Dobra says.

Recent production of gold, as much as it is, represents only a tiny fraction of the total supply worldwide (more than three billion ounces). Thus, it has little impact on gold prices, says Dobra.

Geologists have fanned outward from Nevada across the West, searching for other places with invisible gold. In eastern Oregon, geologists have found such places.

"There's a general rule of thumb," says Mark Ferns, a geologist for the Ore-

gon Department of Geology and Mineral Industries. "You drive out to the countryside, look for the high points, and then go stake them."

Those high points often hide old hot springs systems that deposited gold in its disseminated, microscopic form. A clustering of these old epithermal systems are found in the Owyhee Uplands, a stark, twisted badlands region encircling the Owyhee Reservoir.

According to Ferns, "There is a

potential for as much gold to occur in a 15-mile radius of the Owyhee Reservoir as has been produced in the previous history of the state." To date, Oregon has mined about six million ounces, hardly any of it recently.

But about 10 companies have found prospects here. Among them: Atlas Precious Metals, ASARCO, American Copper and Nickel, Battle Mountain Exploration, Chevron Resources, Manville, Placer Dome and the Western Mining Corporation, an Australian firm.

Furthest along is Atlas Precious Metals. In January the Denver company announced plans for a large open-pit gold mine on the northern flank of Grassy Mountain, 25 miles southwest of Vale, Ore. Atlas is preparing a feasibility study and revising its plan of operations.

According to company officials, Atlas' deposit contains an estimated 800,000 ounces of gold, worth about \$300 million at today's prices, and about 800,000 ounces of silver, worth about \$4 million. The mine will employ from 190 to 200 people and stay open eight years.

Eight years will be long enough to dig a huge pit 1,000 feet deep and 2,200 feet across. Before Atlas can begin mining, however, it must take part in a full environmental impact statement required by the Bureau of Land Management.

Estimates for future mines range from one mine to a half-dozen mines to more than a dozen mines. The first one may be months away, or a year or more away. Not even the BLM knows.

Because hard-rock minerals development is privately initiated, BLM plays a largely reactionary role, striving, with varying degrees of success, to ensure that mining activities do not unnecessarily degrade its land. At the Vale District headquarters, employees have been running administrative windsprints to keep up with the dozens of exploration notices that have hit the front desk in the last year.

"This is a boom," says District Manager Bill Calkins. "We don't get to time them when we want them. They just happen. We've been playing catch-up from the start."

"It's really a problem because it comes on so quickly, you don't have time to respond," says Ralph Heft, an area manager whose area is the target of most of the exploration activity.

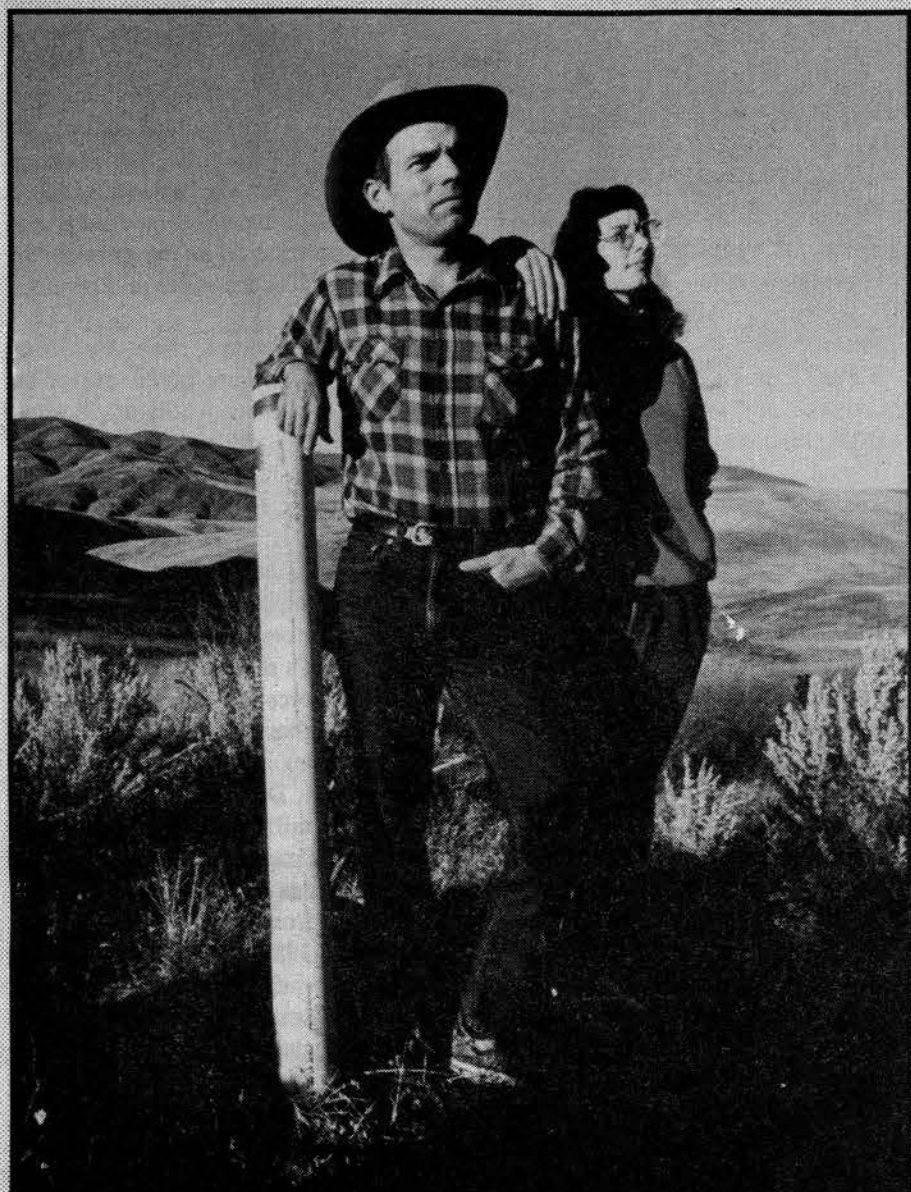
The real problem, though, is that hardrock mining has yet to conform to modern planning principles. In the words of BLM employees, it is a "non-discretionary action." When a miner discovers gold, the land is instantly re-zoned for mineral extraction. Previous land-users, whether they be ranchers, hikers or antelope, must make way.

According to John Hopkins, "It has created an impossible situation." Hopkins, who chairs the Sierra Club's Public Lands Committee, says, "We need to reform the mining law so that agencies have discretion over whether a mine operates on a particular spot."

Another reformer is Phil Hocker, president of the Mineral Policy Institute in Washington, D.C. He says the BLM must be given the capability to look at an application for mining "and then approve, modify or deny that mining permit with due consideration. All we're asking for is what already exists for timber and grazing."

The Sierra Club's Glen Miller in Reno says, "Mining is an appropriate use of the public lands, but it should be on an equal footing with the other values of public lands. When a company wants to carve the face off a mountain, it's a policy question that needs to be asked. Should they be allowed to do that?"

## They'd hoped to lead quiet lives



Gary and Carolyn Brown

**G**ary and Carolyn Brown are newcomers to the world of environmental politics.

Gary, 40, works as a quality control manager at a food-processing plant a few miles across the state border in Payette, Idaho.

Carolyn, 38, is a homemaker and a reluctant crusader. "We've always wanted to lead quiet lives," she says. "Mining has changed all that."

When mining claim markers started appearing in their favorite hiking areas a few years ago, the Browns waited for a major environmental group to step in and save the day. Nothing happened.

"It was really a hard decision a year ago, November. We made the decision then, we'll do what we can," Carolyn says. "We figured, what's the worst thing that can happen if we go public? Well, people won't like us."

Now mining consumes their lives and they are the state's most visible and outspoken opponents. The Browns have spent an entire lifetime exploring Owyhee country. "We love the area. We love the country. We don't want to see it torn up," says Gary. "My worst fear is that we have a mini-Carlin belt," referring to the mining strip in Nevada.

They also fear the painful economic contortions that may result from a sudden influx and outflux of workers as mines open and close.

"The average mine stays open for seven years," Gary says. "One or two mines we can handle, but five mines, six mines, a dozen mines? Just Atlas is not our concern. The concern is the multitude of them together."

"If we get five mines out here that hire 100 and 150 people apiece, that means 500 to 1,000 more people. Then you'll have the bust."

"The crime rate is going to go up. You're going to have unemployment that goes right off the sheet. You're going to have all these tax levies. Because you know, when times are good, people vote in taxes. They say, 'yeah, we'll put this new thing in and we'll put that new thing in.' Then you're into a 10-year levy, the mines close, and you've only got half of it paid. What are you going to do?"

"Us old-timers that are here and want to stay here for the rest of our life are going to get stuck with it," Gary says. "What's going to happen in six to 10 years is you're going to have empty buildings."

Not everyone agrees with the Browns. Malheur County is an economi-

cally depressed area, says ZaDean Auyer, the county economic development coordinator. Her office is in Vale, a small farm and ranch town of 1,600, where there already are plenty of empty buildings.

"We would definitely welcome mining," Auyer says.

She dismisses boom and bust fears. "Sure, mining is boom and bust," she says. "But so is agriculture. We already have boom and bust every year" because of seasonal agricultural work, she says.

"We have a good land-use plan, so we won't have a Rock Springs, Wyo., with trailer parks springing up all over," she adds. "Every acre of Oregon is zoned. There will be growth, but it will be in an orderly manner."

ZaDean Auyer's husband, Jerry Auyer, publisher of the weekly *Malheur Enterprise*, is a leader of an Atlas booster group in Vale.

His booster group is competing with another Atlas booster group from Nyssa, another farm and ranch town a dozen miles away, to be the jumping-off point for Atlas's major access route to the proposed mine.

Gene Stunz, a Nyssa attorney and a leader of Nyssa Boosters for Atlas, says, "We're a group of local people who feel this is a chance to help our economy. People here are overwhelmingly in favor of mining coming in."

Gary Brown disputes that. "The truth is, it's more like 90 percent are misinformed and don't know anything about mining at all."

"Deeply, I believe, when the word gets out on how this is going to affect the lives of your basic county resident, people are going to be upset. Your businessmen, that's different. They're in it for the bucks," he says.

The Browns are little surprised that the chamber of commerce crowd is in favor of mining. What surprises them is that the ranching community, a historically powerful bunch in Malheur County, has remained silent on the issue.

"The mining will probably hurt the ranchers more than anyone. If they only knew what was happening to the ranchers down in Nevada with their contaminated springs."

Gary shakes his head. "But they'll side with the miners before they side with environmentalists. Environmentalist is not a nice word here."

The president of the Malheur County Cattlemen's Association, Bob Skinner Jr., says ranchers do have their worries — mostly about water quality and quantity.

"But I hate to stand in mining's way," he says. "They're a resource industry just like us. We need that sort of thing just like we need grazing."

— Jeff Marti



In Nevada, mining companies have been allowed to do that many times over, and with little opposition. In Oregon, the gold boom may not proceed so freely. Rather than wait for reform of the mining law, Oregon environmentalists are looking at what can be done at the state level.

"The Mining Law of 1872, for all its faults, does not pre-empt the state from using its regulatory authority," says Andy Kerr, director of conservation of the Oregon Natural Resources Council. "We can prevent or ban these things."

At a March meeting in Bend, representatives from Oregon's major environmental groups gathered for the first time to discuss strategies for responding to the gold threat. What Kerr they up with was a proposal for a statewide "Oregon Responsible Mining Initiative of 1992."

The initiative would ask Oregon voters to decide whether to ban cyanide heap-leach mining in the state. Additionally, it would establish a facility-

siting process to classify areas in the state for mining suitability. The initiative would also ban oil and gas drilling in state waters off Oregon's coast.

Clearly, it would be an ambitious undertaking. But Kerr says, "Oregon has been blessed so far as being rather poorly mineralized, so we don't have a large mineral industry and the built-in constituency."

But it may be too late for any initiative to prevent at least several mines from starting up in the state. The boom moves quickly. Companies can move their prospects into full operation in a few months while legislation regarding cyanide heap-leach mining, if successful, is at least a year or away. The Oregon Legislature meets only once every two years.

And conservationists, like the Vale BLMers, have been caught off balance by the boom. At the Bend meeting, they were still sorting out the issues. Differing answers were given to someone's

question, "Do we want to stop the mining or do we want it done right?"

What everyone agreed on is that the state needs time. The group requested the BLM to stop any mines from going forward until a statewide or regional EIS is prepared on the impacts of gold mining.

But Calkins, the Vale district manager, says that idea doesn't make sense. "We don't know yet how many mines there are going to be," he says. "I don't see any advantage in speculative futurism."

A representative for Western Environmental Defenders, a nonprofit group of Oregon environmental attorneys, disagrees. "We're not asking [BLM] to speculate unreasonably. There's a difference between speculation and reasonably anticipating," says attorney Rick Parrish.

Parrish says the environmental community will demand that cumulative impacts be investigated in the Grassy Mountain project EIS.

A big battle is also likely to be fought in Congress over the fate of several eastern Oregon wilderness study areas that contain rich mineral potential.

Now wild and roadless, the Dry Creek Buttes wilderness study area on the west side of the Owyhee Reservoir could support two or more open pit mines if Congress does not designate it wilderness. Chevron, Manville, ASARCO and Atlas have prospects there.

So does Canada's huge Noranda Corporation. Thanks to a controversial Interior Department Board of Land Appeals ruling, the timber and mining firm was allowed to blade a temporary access route into the 52,000-acre area last fall and conduct exploratory drilling at several different sites.

Larry Johnson, the geologist who oversaw Noranda's efforts, wouldn't divulge what was found. But he did say, "I found more gold than I expected, and I was expecting a lot."

## States learn from Nevada

**T**he Oregon Bureau of Land Management may be unwilling for now to do a cumulative impact analysis, but its requirement of an EIS for the Atlas mine is good news for environmentalists. It means the boom may proceed slower in Oregon than in Nevada.

For the dozens of open-pit, cyanide heap-leach mines already operating in Nevada, the BLM required only environmental assessments. Both are look-before-you-leap types of analyses spawned by the National Environmental Policy Act.

But EISs have much stronger requirements for public scrutiny. Environmentalists cherish those added opportunities because they tend to translate into stricter provisions for environmental protection and reclamation.

In theory, the BLM could enjoy the opportunity to aggressively wield NEPA as well. It adds a powerful weapon for controlling hard-rock mining to a limited arsenal. In practice, however, the Bureau has been either gun shy or unwilling to slow down mining and has displayed more affection for the mining law than for NEPA.

Only now is the first EIS being prepared on a Nevada gold mine, a major expansion of the Barrick Goldstrike mine northwest of Elko in the Carlin Trend.

At 3,000 feet in width, the mine is already what Sierra Club mining activist Glen Miller calls a "colossus." But the company wants to make it wider, up to 7,500 feet, and deeper, from 600 to as low as 1,700 feet. Deep down lie nearly 18 million ounces of gold.

On its way down, the company will dig through 800 feet of overburden and at least four water tables, removing over 1.1 billion tons of rock. The mammoth pit will permanently alter the area's hydrology by creating a cone of depression which will draw water from the surrounding aquifers, says Miller.

Decades from now, he says, "It's going to be the largest man-made lake in Nevada." Because of the high sulfate content of the ores, it is likely to be a dead, acidified lake.

So, on the Goldstrike mine, at least, Nevada's BLM office has acknowledged the impacts are likely to be significant.

The reasoning for Nevada BLM's total preference for EAs so far, says environmental protection specialist Ed

Tilzey, is that "there have been no significant impacts." He says that to have significant impacts you must have significant settings.

A BLM rule in place since 1983 says an EIS is "normally" required when a "non-fuel surface mine" disturbs more than 640 acres. Miller says the majority of Nevada's open-pit gold mines exceed that threshold.

BLM Vale District manager Calkins says that rule is the major reason the Oregon office has required an EIS for the proposed Atlas mine. Altogether, the pit, facilities and roads would disturb almost 1,600 acres.

Tilzey says, however, that exceptions are allowed if the impacts are not significant.

Miller disagrees that the mining impacts have been insignificant.

"It's absurd," says Miller. "These mines are the size of meteorite craters. The pits will be around for thousands of years."

Hocker says, "I know of no other activity on this scale on the public lands where EISs are not done."

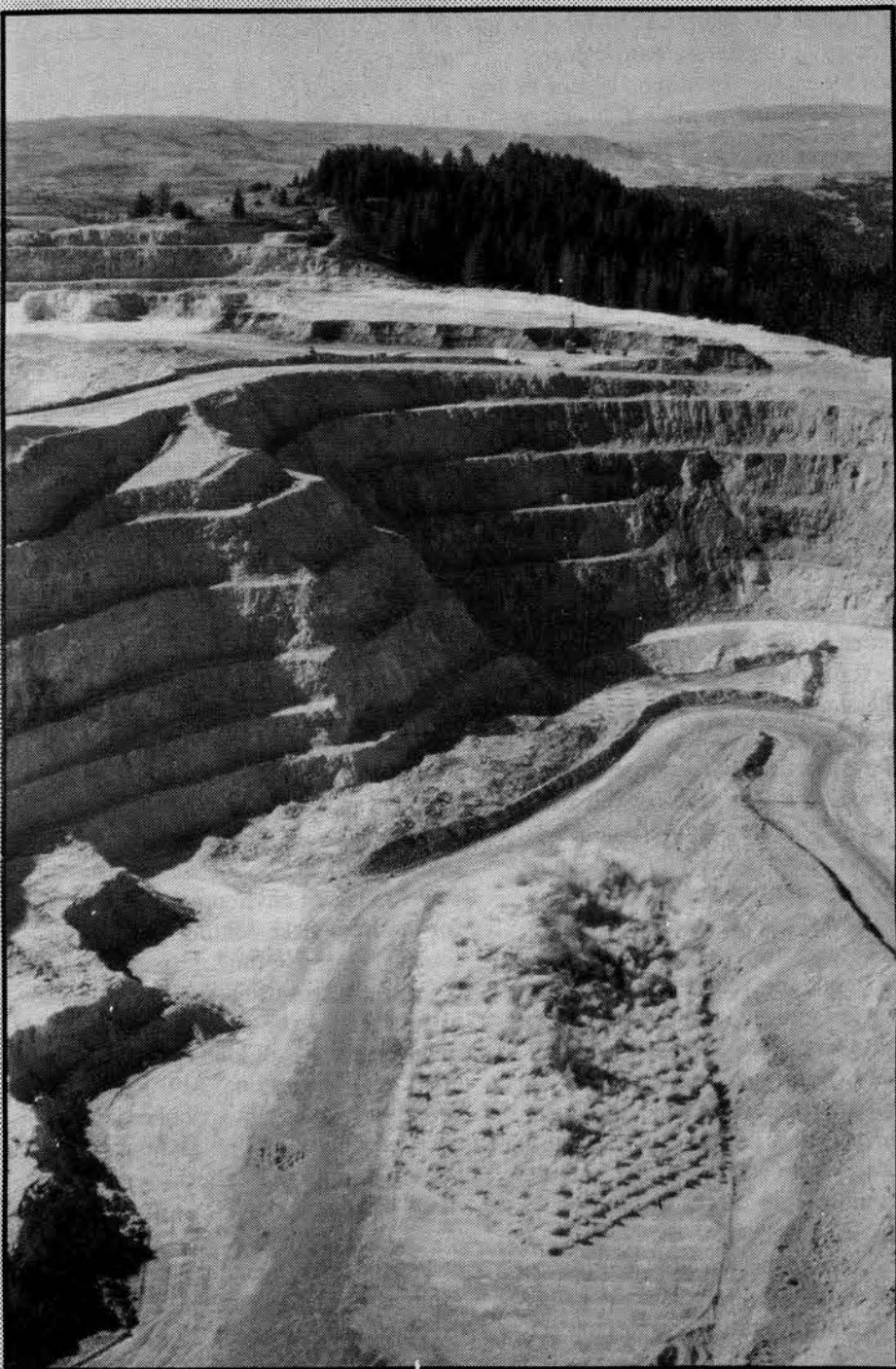
One reason for BLM's unwillingness to view the impacts as significant, says Miller, is that the EAs are prepared by firms paid by the mining companies.

"The process is a little incestuous," he says. "If I write an EA which triggers an EIS, I'm not going to get any more business."

Of the two states with the most gold mining, Nevada and California, the BLM office in California "has been taking the more responsible, conservative approach," says David Williams, the BLM's chief of planning. "Nevada has relied on EAs. California has relied primarily on EISs." The decision whether to prepare an EIS or an EA is made by the BLM state director, Williams adds.

One explanation for the differing approaches between the two states is that BLM is prone to view significant impacts in terms of significant constituencies. Many of the mines for which California has required EISs are located in the California Desert Conservation Area, the East Mojave National Scenic Area, or near national parks and monuments.

There, people are far more likely to question the impacts and have done so, says Nobby Reidy, a field representative for The Wilderness Society in California. Without public pressure, Reidy says, the bureau will opt for "the least burden-



Blasting at an Idaho gold mine

some route."

And in Oregon, with a political makeup like California's, Calkins says the Atlas proposal is "highly visible to Malheur County and the citizens of Oregon. We want to really do it up right."

Miller says he is all for EISs, but is critical of BLM for "basing its decisions on the political winds rather than genuine environmental information. If the public doesn't bitch and moan, BLM won't do an EIS."

Defenders of the EAs say they are just as detailed and comprehensive as EISs and inches thick.

But Phil Hocker says that's a delusion. "If it's just as good as an EIS, why

not just put a different front page on it and call it an EIS? A fat EA is not the same thing as an EIS," Hocker says. An EA is usually written in one draft and is sent out to a lesser number of people for comment. An EIS has two drafts, is more widely publicized and the BLM is required to hold public hearings and grant longer comment periods.

The 640-acre EIS trigger is currently under consideration for re-adoption, Williams says. For environmentalists, the threshold should not just be preserved, but lowered.

— Jeff Marti



10-High Country News — June 4, 1990

# The West: land of the free (ride)

by Tom Knudson

**R**OUND MOUNTAIN, Nev. — For the right to mine gold in Canada's Northwest Territories, the Echo Bay Mining Co. pays the Canadian government a royalty of up to \$2 million a year.

But here in central Nevada — where it operates one of North America's largest gold mines — the Canadian-owned company pays not a dime in royalties to the United States.

Echo Bay is not unique.

Unknown to most Americans, the United States does not charge a royalty for hard-rock minerals on public land — a privilege rooted in the frontier spirit of the General Mining Law of 1872, which sought to lure settlers westward with the promise of free access to the nation's mineral wealth.

But today, as the biggest, richest gold mining boom in U.S. history sweeps across the West, that 19th-century policy is costing the nation dearly. Nevada alone has 75 million ounces of gold in the ground, worth \$30 billion at today's prices. Most of it is on public land and all of it free from federal royalties.

What is more, millions of ounces of American gold are being mined by foreign companies. Sixteen of the top 25 gold mines in the United States are owned in whole or in part by Canadian, British and Australian companies, according to federal and industry data.

Much of that gold is being bought by Japanese investors. Industry sources said Japanese and Taiwanese investment in gold has jumped dramatically in the late 1980s.

No one knows precisely how much the United States loses by not charging a royalty for hard-rock minerals. But based on official estimates of mineral reserves, the figure easily runs into the billions.

"Over the next five years, more than \$10 billion worth of gold that you and I own is going to pass into private hands in the state of Nevada alone," said Philip Hocker, president of the Mineral Policy Center, a Washington-based group working to reform the 1872 Mining Law. "And I think the public has a right to expect a fair return for that."

For years, the issue has languished in a kind of bureaucratic backwater — not well-known even to those who oversee federal land policy. But today the subject has been thrust into the political and economic spotlight by Sen. Dale Bumpers, D-Ark.

Concerned about what he calls a free lunch for mining companies and a drain on the federal treasury, Bumpers has introduced legislation that would set an 8 percent royalty on hard-rock minerals — such as gold, silver and copper — mined on U.S. soil.

"Times have changed since that great westward migration, yet the 1872 Mining Law remains," Bumpers said. "I believe the law must be changed."

But the bill faces fierce opposition from miners. A royalty, they say, would stifle gold production. And besides, they add, mining companies already pay millions of dollars in federal, state and county taxes.

"It's an added cost," said Llee Chapman, accounting manager for Gold Fields Mining Corp., a British-owned gold mining company in north-central Nevada. "We're like any businessman. You try not to absorb an added cost, if

you can help it."

But others say the hard-rock mining industry, which routinely pays royalty and rental fees on private and state property, is asking for special treatment.

"If you give a kid candy every day, pretty soon he starts to think he has to have candy to live," Hocker said. "The hard-rock mining industry has been living off a public candy handout for 118 years."

At its Black Thunder mine in north-east Wyoming, the Atlantic Richfield Co. mines about 30 million tons of coal a year from federal land. Unlike gold, coal carries a federal royalty of 12.5 percent.

At Black Thunder, the nation's largest coal mine, the figures add up fast. Last year, Black Thunder coal brought the U.S. Treasury roughly \$82,000 a day — about \$30 million for the year.

At its Chimney Creek mine, Gold Fields extracts about 200,000 ounces of gold a year — worth about \$80 million — from a 65-square-mile parcel of public land. The federal royalty on that gold: zero.

The pace of the modern-day gold boom is phenomenal. Since 1984, domestic production of gold has more than quadrupled, going from 2.1 million ounces to 8.6 million ounces in 1989, according to industry and government figures.

Despite such riches, no one has pinpointed how much gold is coming from public land.

"We've been asked that before," said Bob Stewart, a spokesman for the U.S. Bureau of Land Management in Nevada. "We've never put the figures together. But Nevada is 87 percent federal. What we've always said is that 80 to 90 percent of the gold being mined today was discovered on public land."

To royalty proponents, such figures represent a potential gold mine for the federal treasury.

But the mining industry sees things differently. The lack of a federal royalty "is just another in a whole range of incentives to the business community that benefits the public at large," said Ray Krauss, an environmental manager for the Homestake Mining Co. in California.

"You've got tax benefits, depletion allowances, write-off opportunities, import quotas — all kinds of things that affect your bottom line. And look at the subsidies we give our agricultural industry. Certainly the mining industry has never asked for agricultural-type subsidies," Krauss said.

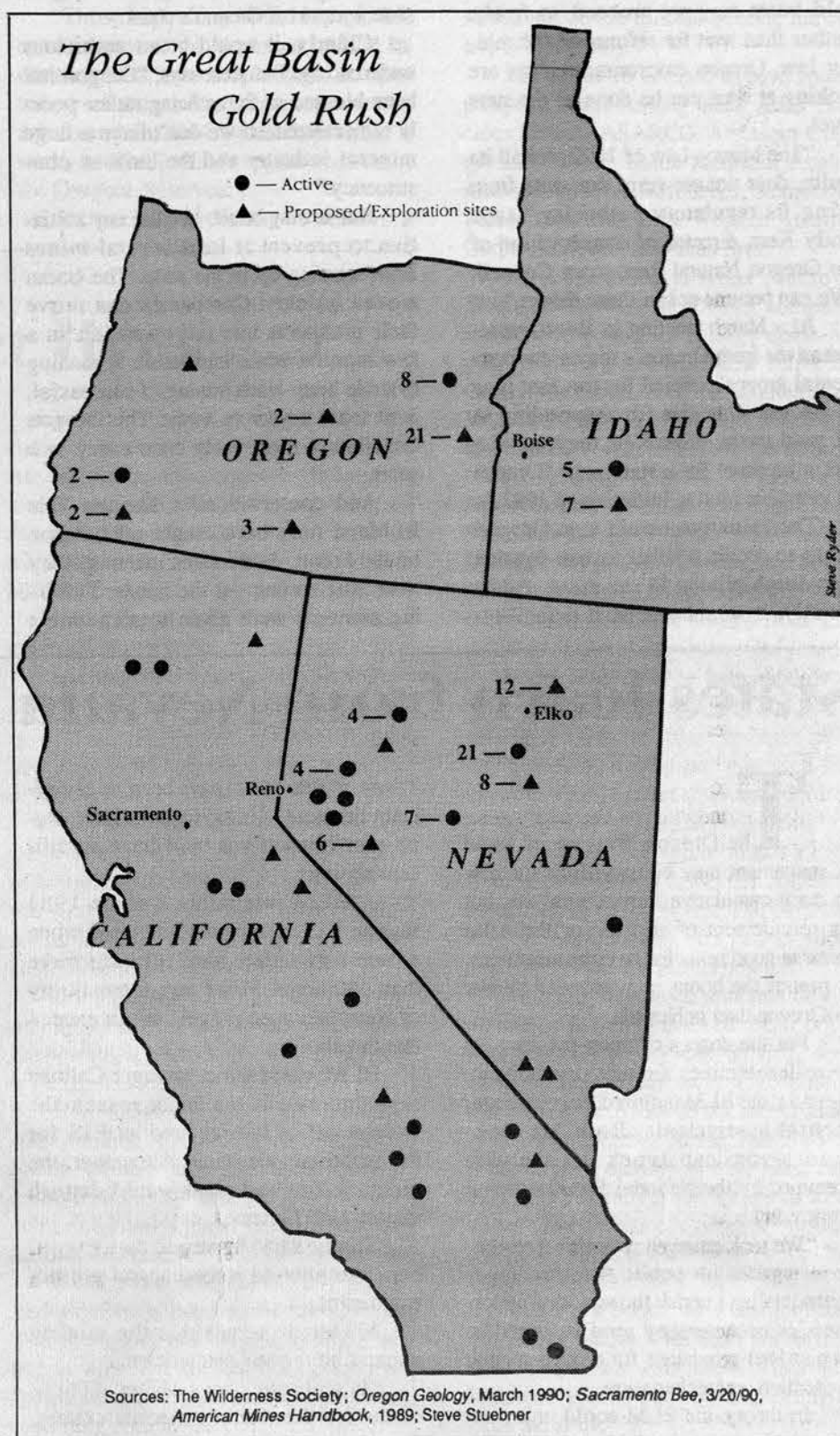
To Stewart Udall, former Secretary of Interior under Presidents Kennedy and Johnson, the debate casts a long, historical shadow. Look at the 1930s, he said, when the passage of the Taylor Grazing Act — which established grazing fees on public land — drew the wrath of Western cattlemen.

"They thought it was outrageous," Udall said. "They said things like, 'We never had to do this before. Why are you imposing this burden on us? We're providing economic development for the country.'"

"But after a stern battle, that principle was established. But not so with the mining law."

"We're not against government and we're not against taxation," said Chapman of Gold Fields' Chimney Creek mine. "We just feel there is enough risk in the business already and that the current system works."

He ticked off a list of taxes Gold



Fields paid in 1988: \$2.8 million to Nevada for a "net proceeds" tax (a new state tax based on the value of gold produced, minus expenses), \$450,000 to Humboldt County for property taxes and \$710,000 in sales taxes.

"Once you put a mine into production and start to make money, you pay the same taxes everybody else does," Chapman said.

To which Hocker of the Mineral Policy Center replied: "Yes, but that is true of every other enterprise in this country. My heart really bleeds for them that they have to pay federal income taxes. So do I. They are basically still arguing for special treatment."

Although mining companies bitterly oppose royalties on federal land, they routinely pay them on private holdings. A recent mining industry study, for example, found that 34 of 43 gold mines in Nevada pay royalties to individuals and small companies. The average royalty was 4.2 percent of the value of production.

"It doesn't make any sense," Hocker said. "If a mining company walks up and finds a valuable ore deposit on your land, they expect to sit down and negotiate a payment. But if they find that same ore deposit on public land, they expect to get it for free."

In fact, mining's rock-hard resistance to a federal royalty could be crumbling. David Delcour, vice president of Amex Mineral Resources Co., suggested at last year's Senate hearing that a feder-

al royalty might be acceptable, but he balked at Bumpers' proposed figure of 8 percent of gross income.

"Possibly we can come up with one," said Delcour, chairman of the Public Lands Committee of the American Mining Congress. "You ought to pursue it on the basis of some type of net (income) and it ought to be somehow representative of the types of royalties available in the private sector."

Another issue that has drawn the concern of state officials and even miners is the shape of the U.S. gold industry — now heavy with Canadian and British money.

"These are public lands and they do belong to the people of the U.S.," said Doug Kari, a Los Angeles-based attorney involved in mining issues. "I believe these big Canadian firms ought to be paying something back to the U.S. Treasury. Certainly, they are exploiting value out of our land."

A spokesman for Echo Bay, the Canadian gold mining company that pays royalties in Canada but not in the United States, was reluctant to respond to questions.

"Echo Bay does not favor a change in the mining law," the spokesman said. Asked to elaborate, the spokesman would only repeat his original statement: "Echo Bay does not favor a change in the mining law."



# A clash between two kinds of wealth

by Todd Wilkinson

**T**he mining law of 1872 was enacted the same year that Congress made Yellowstone a national park. Today, those two acts may be heading for a nasty clash.

Environmentalists are demanding that the law be reformed to spare pristine areas from the ravages of mining machinery. To them, it seems a cruel paradox that the same prehistoric forces that shaped the famous mountain ranges of the greater Yellowstone area — the Tetons, Gallatins, Beartooths and Absarokas — also left behind rich deposits of gold, copper, platinum and palladium.

Of the 13 million acres of public land in the Yellowstone region of Wyoming and Montana, almost half are open to mining. Even in designated wilderness areas, a few grandfathered claims remain in the forested hillsides.

But the toll of such mines, both active and abandoned, on the ecosystem has been felt. In May 1989, the Environmental Protection Agency used Superfund money to clean up a mineral tailings pond located just three miles from the border of Yellowstone National Park. It was the first time the federal agency had intervened on behalf of a wildland with no immediate threat to public health or human safety.

At that site near Cooke City, Mont., heavy metals had leached into Soda Butte Creek, imperiling water quality downstream and habitat for trout, bald eagles and grizzly bears.

"We took emergency action because there was a high potential for a catastrophic release of mineral tailings into the creek," says Mike Holmes, an EPA Superfund site coordinator based in Denver. "This site had us especially worried because lying downstream was something of worldwide environmental importance — the crown jewel of our national parks."

Not all hard-rock mining sites in the greater Yellowstone present so obvious a threat to nature. Yet conservation groups say the mine emergency at Cooke City confirms what they have been arguing for years: The mining law ignores basic environmental protection.

Under the 1872 law, companies have the right to mine for hard-rock ores in pristine areas yet are subject to little or no environmental scrutiny, according to Phil Hocker, president of the Mineral Policy Center based in Washington, D.C. He contends that some sites should be excluded from development forever.

Mining officials, however, say they have a legal right to mine and extract minerals where they find them.

In the Gallatin and Custer national forests of Montana and the Shoshone National Forest of northwest Wyoming, there are a lot of minerals to be found. So far, there are around 12,000 active mining claims along with 1,400 abandoned sites.

"Hard-rock mining is definitely something that's on a roll north of Yellowstone Park," says Don Bachman of the Greater Yellowstone Coalition, a conservation group.

"I don't know how many exploration proposals we are going to see this summer, but it has us worried. I'd say at least

six will be filed that have the potential for erupting into major developments in the northern half of this ecosystem. Each one could be substantial and harmful to the environment," he says.

A recent report compiled by the Forest Service regional office in Missoula predicts "accelerated development" on national forest lands adjacent to Yellowstone Park during the 1990s, according to Bill Timko, district ranger in the Gallatin National Forest.

"We're going to be seeing bigger companies coming back to old mining districts looking for gold," he says. "It will be just like 100 years ago only with better technology to remove bigger amounts of land for less ore," says Timko.

Sentiment in many rural communities affected by the mines is split between those who want the short-term assurance of employment and residents who value the undisturbed environment and the presence of wildlife.

Between a proposed gold mining venture in the New World Mining District near Cooke City, and two separate proposals for platinum and palladium mining in the Stillwater Geologic Complex, more than 1,200 jobs could be created during the next six years.

But Richard Parks of the Northern Plains Resource Council says the legacy of pits and shafts will remain in the landscape long after mountains have been moved and paychecks cashed.

He cites the 10,000 abandoned, unreclaimed sites left over from decades of mining. Those remnants pose dangers to surface and ground water, wildlife values and public safety, argues Parks.

"The 1872 law that permits hard-rock mining to proliferate unchecked is a

Don Bachman/Greater Yellowstone Coalition



The New World mining site two miles north of Yellowstone Park

\$108 million worth of gold. In an attempt to mitigate concerns over cyanide use, the American Copper and Nickel Company agreed to accommodate a pair of nesting bald eagles at the mine site and address concerns about water quality.

American Mining and Milling plans a gold mine on the Clark's Fork River in

Mont., and on the Caribou National Forest near the marshlands of the Grays Lake National Wildlife Refuge in Idaho.

But conservationists say the proposal most threatening to a fragile environment is in the New World Mining District, north of Cooke City in a region of the Beartooth Mountains near the headwaters of four streams.

Targeted for development by Crown Butte Mines Inc. and the Noranda Minerals Corporation, New World lies two miles north of Yellowstone Park, near Cooke City.

The site contains an untapped gold ore deposit at least 1,800 feet long, 300-400 feet wide and 80 feet thick. When the mine goes into full-scale production next year, 120 people will be employed, nearly doubling the winter resident population of Cooke City.

Noranda officials say their proposed operation would help the environment. Because earlier mines at New World disturbed the soil and vegetation, the company will help restore the ecosystem, they say. Noranda is required by the state of Montana to post a reclamation bond for mitigating damage once mining is completed, says Bob Havis, senior environmental engineer for Noranda in Denver.

"We're not saying reclamation is not going to be difficult," Havis says. "It will be difficult but we think it's achievable. We can perform much better than what anybody in the past has done up there. During the past 100 years, companies have just gone in there, torn it up and left it abandoned. We think we can help the situation."

Noranda's plan calls for removing almost three million tons of ore over an eight-year period beginning in 1992. Studies prepared by an environmental consultant show that up to 200 tons of gold ore each day would be processed using liquid cyanide in contained pits near the site.

(Continued on page 12)

*"Hard-rock mining is definitely on a roll north of Yellowstone Park."*

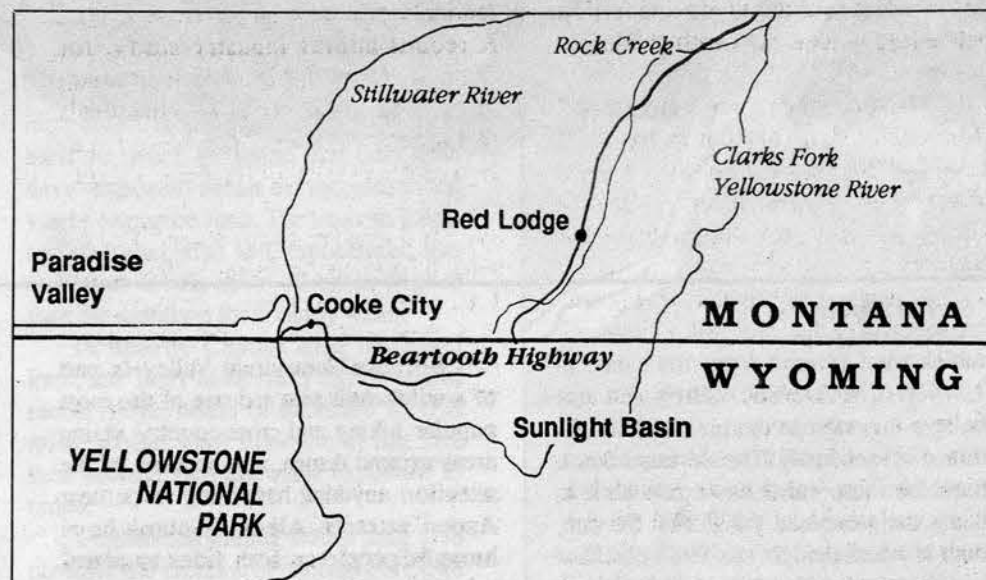
dead albatross hanging around the neck of our most sacred wildlands," he says.

Among the dozen proposals that have surfaced in the greater Yellowstone region over the past two years, most involve extracting gold through cyanide-leaching.

The projects include the \$32 million Mineral Hill gold mine at Jardine, just two miles from Yellowstone's north entrance. It opened in 1989, employing about 100 people to extract an estimated

the picturesque Sunlight Basin near Clark, Wyo. The site is near the North Absaroka Wilderness on the Shoshone National Forest. Conservationists say development there is not consistent with protecting grizzly bear habitat in the Clark's Fork River area.

Gold-mining proposals are also pending for the Absaroka Mountains along the secluded East Boulder River, in Paradise Valley north of Yellowstone, along the Madison River near Ennis,





12-High Country News — June 4, 1990

## Yellowstone . . .

(Continued from page 11)

Company officials also estimate that approximately eight million tons of waste would be generated by the time open pits and mine shafts are exhausted.

Conservationists believe there is potential for groundwater contamination since water from the nearby creeks will be used in the operation and containing ponds are unreliable.

"New World is not going to be a classically big operation in the same vein of Nevada open pits, but it is beyond the scale of anything acceptable in the Yellowstone area," says Bachman. He questions the company's ability to restore the area.

"The big environmental question is: Can that area be reclaimed to re-establish a viable habitat? My response is not before the next Ice Age. You could pave it and paint it green to look nice or put astroturf over the gutted hillsides, but to establish a diverse plant and animal community, not to mention restoration of the topographical features, is impossible."

To date, Bachman says, there are no known examples in greater Yellowstone where large hard-rock mines and the pristine environment have existed compatibly. For that reason, mining should

be excluded from federal lands unless their full reclamation is assured, he says.

But mining officials say such guarantees are impossible to make. In the mountainous, high-altitude terrain of greater Yellowstone, thorough reclamation is difficult.

Because of the sensitive environment, conservationists are lobbying Congress to give public land managers broader discretion in determining where mining is appropriate and where it is not. They point to the Bridger-Teton National Forest, where managers have the authority to exclude the timber industry from environmentally sensitive areas, or to at least apply restrictions, Hocker says. With the 1872 hard-rock law, none of those tools exist.

Although Forest Service managers are mandated under the National Environmental Policy Act to scrutinize hard-rock mining, the law applies only to surface disturbance. Furthermore, the 1872 Mining Law gives them no authority on lands which used to be part of the national forest but are today privately owned through the mine-patenting process.

"Some areas should simply be left alone," says Bachman. "With minerals such as gold, it's a matter of values. Is it worth producing more gold chains or should these mountains and wildlife homes be left as something even more priceless?" he asks.

## A glossary of mining terms

**Reclamation:** Conservationists say that reclamation, by general definition, means to restore lands that have been disturbed to original contours, and to a point where they will accommodate plant and animal species that lived in the area prior to any development. Special hard-rock taxes should be applied to mining companies and proceeds placed in a special fund for cleaning up abandoned sites similar to the way coal tax money is distributed.

Mining companies say that reclamation means converting the land back to original condition in a way that is possible within the bounds of technical and economic feasibility.

**Bonding:** Conservationists say companies should be required to post a cash bond that guarantees all disturbance will be resolved and that financial failure of the company would not preclude any effort to restore scenic values and wildlife. If bonds are posted for

reclamation slated 20 years later, money should be put into a fund to account for rising costs of reclamation due to inflation.

Mining companies say they should only post a bond that represents the actual area of ground disturbance and that prohibitively high bonds would prevent companies from developing mineral resources, a right that is guaranteed under the 1872 law.

**Sensitive areas:** Conservationists say that regions close to Yellowstone, around wilderness areas, along steep slopes and next to watersheds should be excluded from hard-rock activity if it is determined that mining poses unacceptable risks to scenic values, wildlife and water quality. Part of reform should include aggressive plans to buy out grandfathered claims in wilderness areas.

—Todd Wilkinson

"There is not a single example of past hard-rock mining on the scale being contemplated in greater Yellowstone

where the landscape is being restored to a viable habitat. That should tell you something." ■

## His marble claims are in a wilderness

by Mark Harvey

There is nothing Stefan Albouy would rather do than dig into the earth. According to his mother, he wanted to be a miner since he was knee-high to a pick axe.

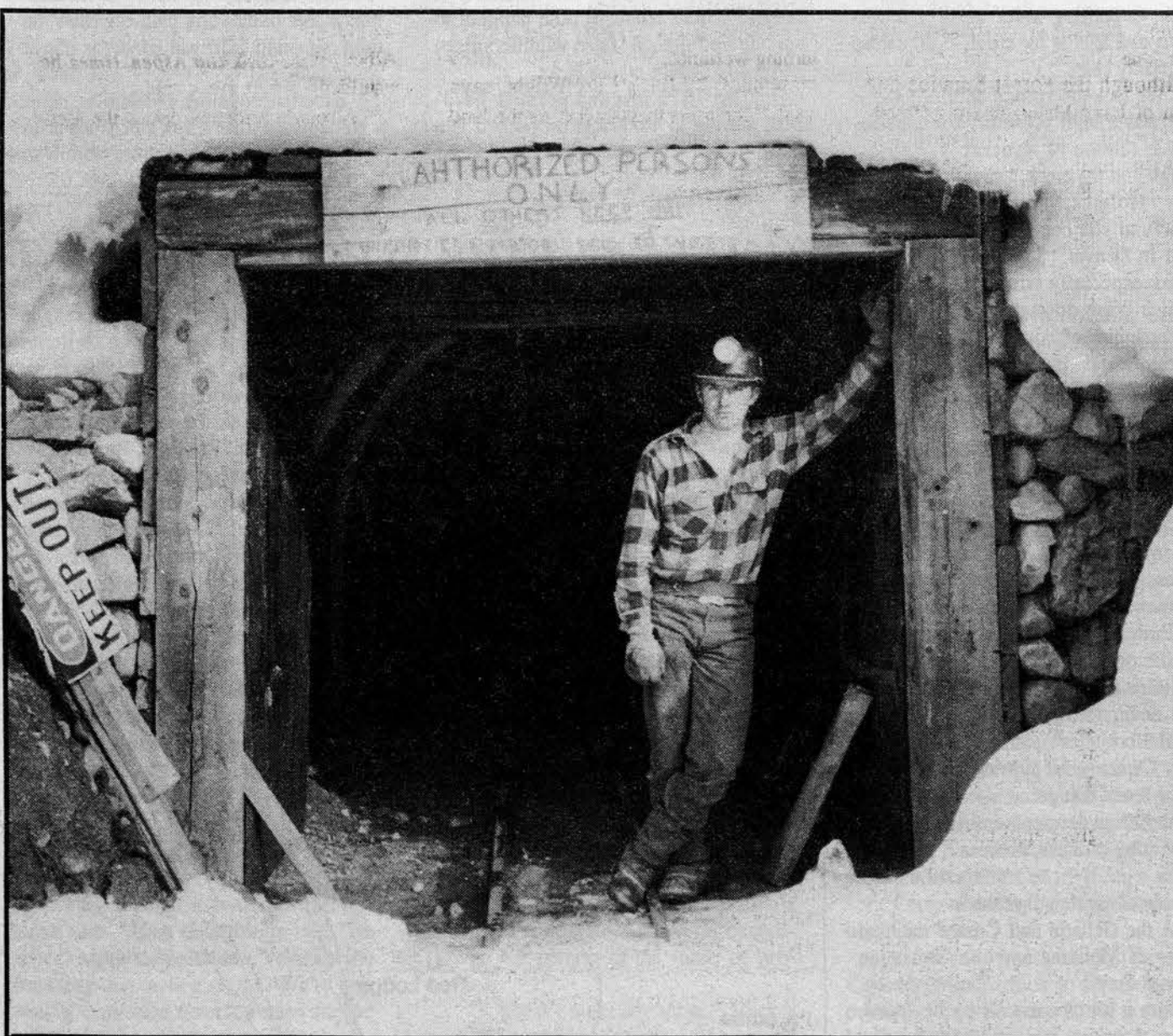
Albouy, 30, has found the perfect location to mine: the Conundrum Valley, only 10 miles from his home in Aspen, Colo. He also believes he has hit paydirt; the Conundrum Valley is said to be loaded with rare black marble, and Albouy owns three mining claims there.

But there are other, conflicting claims on the area. Conundrum Valley is part of the Maroon Bells-Snowmass Wilderness, one of the most popular and picturesque hiking areas in Colorado.

Nevertheless, this summer, he may jolt hikers with a quarrying operation. In spring 1989, Albouy was granted a Limited Impact permit to mine by the Colorado Mined Land Reclamation Division. The only thing stopping him now is permission from the Forest Service, which owns and regulates the surface, and Pitkin County, which has legal authority over the mine access road. Neither may be able to do much more than impose minor restrictions on Albouy's mining plan.

Albouy's mining claims — the Edith Placer, Vera Placer and California Placer — date back to patents issued in the 1890s under the then newly passed General Mining Law of 1872. Together they comprise 472 acres located on the west side of Mt. Hayden, and the claims predate wilderness designation by nearly a century.

The area was added to the Maroon Bells-Snowmass Wilderness in 1985, when the Colorado Trust for Public Land purchased the surface rights to the 472 acres for \$900,000. The deal stopped a proposed subdivision, but officials and the trust did not buy the mineral rights,



Stefan Albouy

which were severed from the estate in 1944 (HCN, 7/7/86). They did not believe minerals on the claims could be mined economically. The decision not to purchase those rights has come back to haunt the group and the Forest Service, both of which thought the 1985 purchase had removed an inholding that threatened wilderness.

Because Conundrum Valley is part of a wilderness area and one of the most popular hiking and cross-country skiing areas around Aspen, and because of the attention anything happening in or near Aspen attracts, Albouy's plans have brought people on both sides to attention. Knee-deep in the quandary are two U.S. senators, the Forest Service, Pitkin

County, the Colorado Mined Land Reclamation Division, the Army Corps of Engineers, the Sierra Club, the Wilderness Society, local environmental groups and, of course, Albouy.

While Albouy's case has many implications locally, thousands of mining claims, both patented and unpatented, exist throughout sensitive areas in

Frank Martin/Aspen Times





Frank Martin/Aspen Times

### Quarrying on a small scale: Albouy's crew loads a piece of marble

the West and they may prove to be as troublesome as Albouy's.

Many patents are in the West's most sacred lands. There are 767 patented claims and 1,463 unpatented claims in the national parks. The Park Service estimates that a quarter of the unpatented claims will eventually be patented. An unpatented claim only allows a miner to extract minerals. But unpatented claims can be converted into patented claims by proving that mining the land is economically viable, by investing at least \$500 toward developing the claim, and by then paying \$2.50 or \$5 per acre (depending on the claim) in processing costs.

Once a claim is patented, the claimant has full property rights to it.

Although the Forest Service and Bureau of Land Management officials do not know the specific number of mining claims in the West's wilderness areas, Anthony Ruckel, an attorney representing the Sierra Club Legal Defense Fund, estimates that 20 to 25 percent of all wilderness areas in the region have either patented claims (now inholdings) or potentially valid unpatented claims. The actual number of claims is even higher, he says, but many of them are speculative and have little likelihood of being developed or causing conflict.

These claims in sensitive areas may pose a nightmare for public land managers and recreation users in the future. Potential complications include mines in pristine areas such as Conundrum Valley, large polluting scars requiring costly reclamation, or — if the government is forced to buy claims to protect scenic and recreational assets — a financial drain on the public till.

But the battle over mining claims in wilderness and parks is not about money; it is about potential environmental damage.

In his original application to the Colorado Mined Land Reclamation Division for a mining permit, Albouy proposed widening the existing road from 10 feet to 15 feet; leveling a 60-foot loading bench (a flat area used for staging and loading marble); removing a stand of willows; and placing army trailers in the wilderness to house his crew and repair shop.

He proposed to mine as long as "market conditions justify operations," and estimated at least 40 to 50 years of marble reserves. His application said of the loading benches, "Obviously, as quarrying progresses, these dimensions will increase."

Environmentalists and many local

people argued that those impacts are unacceptable in a wilderness area, especially one so popular.

Attorney Ruckel said that even though Albouy was required to file a reclamation plan to get his permit from the Colorado Mined Land Reclamation Division, the mine would severely damage the area.

"You should understand that with a quarry, the area will be scarred for decades or forever." The Wilderness Society has asked for an environmental impact statement from the Forest Service because of the construction plans, the steep hillside and the possibility of disturbing wetlands.

Albouy's lawyer, Gary Wright, says the scarring of the Conundrum Valley mentioned by Ruckel is legally irrelevant. "The mere fact that it scars the land doesn't prohibit him from removing marble up there," he said.

Nevertheless, Albouy recently scaled down his plans. According to Loren Kroenke of the Aspen Ranger District, Albouy no longer plans to widen the road or build the loading benches; he will also avoid damage to wetlands.

### Century without constraints

For its first century or more, the 1872 Mining Law was unhindered by environmental considerations; Albouy's softening of his plans may be a recognition that the law no longer provides total license to the miner. However, the public lands provide much evidence of that past license.

The Park Service estimates that it would cost \$35 million to restore the 1,500-plus abandoned mine sites in the National Park system.

In Utah's Canyonlands National Park, abandoned uranium mines emit high levels of alpha-radiation. Two sites emit so much radiation that only two days' exposure equals the recommended yearly exposure limit. The water in Lathrop Canyon, also in Canyonlands, has radiation levels up to 70 times higher than the standard for drinking water.

In nearby Capitol Reef National Park, the Terry Mine emits high levels of radon. Nine hours of exposure to this mine would give someone at the site their annual safe allowable exposure to radon.

Unpatented mining claims may also obstruct the creation of national parks. In February 1986, the California Desert

Protection Act was introduced in the U.S. Senate. If enacted, it would set aside 1.5 million acres to establish Mojave National Park. But among the obstacles to the bill's passage are an estimated 10,000 unpatented mine and mill claims.

The legitimate use of the 1872 Mining Law — to encourage mining on the public lands — is already controversial. But the law is often abused. In Albouy's case, some have charged that he is more interested in using the mining law to extract money from the federal treasury than to extract marble from the ground.

Sen. Tim Wirth, D-Colo., told the Aspen Times last summer, "It's my own belief that the guy is looking to see how much he can hold up the federal government for."

Darrell Knuffke of The Wilderness Society says the government will "be paying ransom" if it is forced to buy Albouy's mineral rights.

Aspenite Ed Smart, who is contesting 50 percent ownership of the mine, says the Conundrum deposit is limestone, not marble, and is worthless. He says if he wins his case he will donate his share of the claim to the Forest Service. Smart told the Aspen Times he would do what he could to ensure Albouy doesn't "cheat" the government out of millions.

Albouy's attorney denies the accusations. "Nothing could be further from the truth. We've got nothing to hide, no hidden agenda." According to attorney Wright, Albouy only wants to be left alone to mine.

Wirth secured \$100,000 in federal money to appraise Albouy's mine. Two months ago, the Forest Service admits making a secret offer of \$130,600 to buy the mineral rights based on that appraisal.

While Albouy says he has no intention of selling the mineral rights, a letter from his attorney leaves the door open. In an April 1989 letter to White River

National Forest Supervisor Tom Hoots, Wright wrote, "My client continues to remain open to the concept of a sale for what he deems to be fair market value ..."

According to Knuffke, The Wilderness Society has already assessed the Conundrum mine and concluded that the mining operation would not be profitable, however much marble the claim contained.

The report cites a marble market monopolized by Italian companies and the need to build an expensive processing plant as economic constraints.

In his latest mining plan, Albouy, in turn, cites a "rapid rise in domestic marble demand" and depletion of dark marble in Vermont and Georgia, as well as shipping access to the West Coast as factors that make his mineral claims valuable.

### Land at bargain rates

Whatever Albouy's motives, there is no doubt the mining law has been abused in the past. According to a General Accounting Office report in March 1989, firms and individuals claim land under the guise of mining purposes, pay the government \$2.50 or \$5.00 per acre, and then sell the land at prices substantially above the patenting fee.

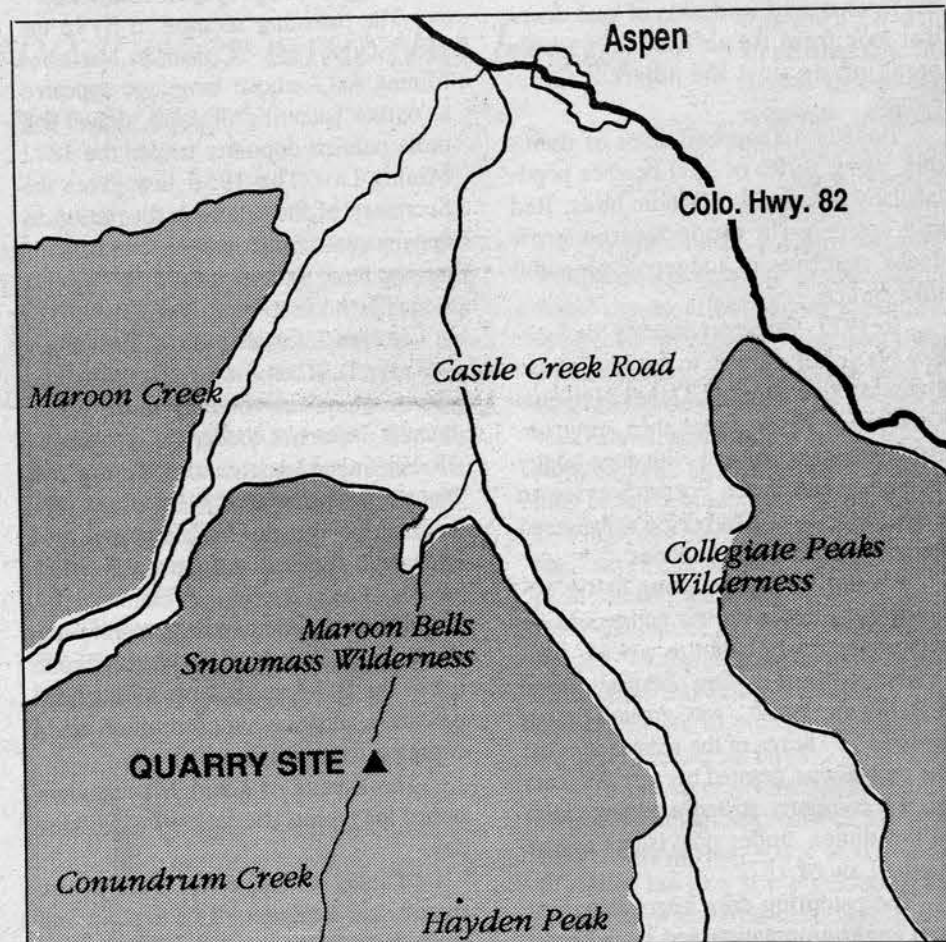
In 1983, 160 acres near the ski area at Keystone, Colo., were patented for \$400 as gold mining claims. Since then, according to Forest Service officials, no gold has been mined, and 44 acres of the claim are for sale at \$11,000 per acre.

In the Arapahoe National Forest near the Breckenridge, Colo., ski area, two patents were filed for 60 acres. If the patents are granted, the government will be paid \$201. One government official, noting the prices of adjacent property, speculated that the 60 acres are worth about \$12 million as building sites.

As a result of the many claims in wilderness areas and national parks, the purchase of mineral rights is likely to be too costly an option for either the federal agencies or private groups such as The Nature Conservancy.

With both "free market" and government-funded solutions impractical, the struggle is thrown into its traditional arena: the Congress, where miners and environmentalists have long struggled

(Continued on page 14)





## Conundrum . . .

(Continued from page 13)

over the 1872 Mining Law.

Mining advocates see no problem, environmental or otherwise, with the law. In the June 1989 *AMC Journal*, David Delcour, vice president of Amax Mineral Resource Company in Denver and chairman of the American Mining Congress Public Lands Committee, called the mining law "one of the most ingenious pieces of public policy ever formulated in the United States."

He cited its "flexibility and responsiveness." Delcour said the law "has accommodated pervasive environmental regulation and modern land use planning" as well as "a series of mineral booms and busts."

In the same issue, Graham Clark Jr., vice president of Newmont Mining Corporation in Denver, wrote, "The mining law strikes a uniquely workable balance between protecting the public need for environmental protection of public lands with the private mineral developer's need for access to such lands and security of title to minerals discovered there."

And David Ridinger, president of the Arizona Mining Association, said the mining law "has served the mining industry and the objectives of the nation well throughout the years."

According to some mining advocates, the problems related to mining are due to a lack of law and policy enforcement, and not to shortcomings in the 1872 law.

Amax spokesman Delcour said: "I think the federal agencies could be a lot bolder in moving against people who abuse the mining law."

Phil Hocker, president of the reform-minded Mineral Policy Center in Alexandria, Va., disagrees: "The 1872 Mining Law is a law with no brain. It has no consideration of environmental

impacts and there's virtually no requirement for cleaning up the mine."

Hocker suggests that the 1872 Mining Law should be changed so that the federal government can deny mining permits on federal land where mining would conflict with other uses. He also suggests a "cradle to grave" operating and reclamation plan and a fair return to the U.S. Treasury on mineral extractions.

At present, miners do not pay royalties on the minerals they mine, either before or after patenting.

Larger issues surrounding the mining law will be settled in the Congress. But the Albouy claims in the Conundrum Valley will likely be fought on the basis of local control.

Tim Whitsitt, an attorney for Pitkin County, believes the county commissioners have the final word as to how extensively Albouy can mine. Noting that the marble is in an agricultural-forestry zone, Whitsitt says that Albouy must apply for a special use permit if he wants to quarry. "The commissioners can decide on the ultimate use of the land," he said.

Also weighing in on the side of local controls is White River Forest Supervisor Tom Hoots. In a letter to the Colorado Mined Land Reclamation Division in June 1989, Hoots urged the division to reject Albouy's application, calling it too open-ended.

Some believe the Forest Service is going too far in its role as the surface rights holder. Sen. Bill Armstrong, R-Colo., in a July 1989 letter to Forest Service Chief F. Dale Robertson, argued that the Forest Service is out of line: "Despite well-settled law and current negotiations, Forest Supervisor Tom Hoots twice wrote the Colorado Mined Land Board in a month's time to object to the issuance of a mining permit to Mr. Albouy."

How should federal land agencies deal with mineral rights in sensitive areas?



Mark Harvey

A hiker near the quarry site in the Maroon Bells Snowmass Wilderness

The Wilderness Society's Knuffke suggests trading other public lands for mineral holdings that threaten wilderness areas. Should that fail, he suggests condemnation. But Knuffke also believes it is the Forest Service's duty to protect its surface rights on patented claims. He argues that the use of bulldozers in a wilderness does not comply with the "reasonable access" permitted a claimant. According to Knuffke, reasonable access in a wilderness area should be along the lines of a pick and shovel operation.

Knuffke's argument reflects a 1981 Ninth Circuit Court of Appeals decision (*U.S. v. Goldfield Deep Mines Co.*) in which the court ruled, "While the regulation of mining per se is not within the Forest Service jurisdiction, where mining activity disturbs national forest lands, Forest Service regulation is proper."

The most sweeping solution to the disputes is to change the law. Charles

Wilkinson, professor of law at the University of Colorado, expects "entrenched interests" to stall reform of the mining law. But he thinks Americans are changing their attitude toward the management of public resources, realizing the value of non-extractables such as wilderness, scenery and tourism.

Whatever happens at the national level, the battle in Aspen over Albouy's plans remains intense. As Ruckel puts it, "The Snowmass-Maroon Bells Wilderness is an absolutely critical wilderness area — a foundation area." But the quandary in the Conundrum Valley may be just a harbinger. If Ruckel and Hocker are right in their estimates of the number of mining claims on public lands, several other wilderness areas may become battlegrounds in what to many is an old war: the fight between mining interests and environmentalists over the mining law of 1872.

### The law in action

## Claims provoke gritty fight in Oregon

by Tom Ribe

**A**long almost 140 miles of Oregon's remote central coast, the ocean has thrown up a wild array of sand dunes that look from the air like brown waves breaking against the adjacent Coast Range.

Fourteen thousand acres of dunes shift along miles of sand beaches populated by thousands of shore birds. Red and white wild rhododendron grow under canopies of lodgepole pine and sitka spruce.

In 1972, Congress directed the Siuslaw National Forest to manage these dunes as the Oregon Dunes National Recreation Area. Since then, environmentalists have battled with dune-buggy enthusiasts and the Forest Service to protect wild areas harboring endangered species or wilderness qualities.

Recently, another long battle between environmentalists and would-be wilderness users came to a head. Last October, a sand-mining company based in Bellevue, Wash., was granted patent rights to 780 acres of the recreation area. The patent was granted because 30 years ago the company staked a mining claim on the dunes under provisions of the Mining Law of 1872.

The patenting drew angry responses from environmentalists and some Forest

Service officials. The area contains one of the last nesting grounds of the endangered snowy plover, whose numbers in the dunes have dwindled to less than 100. The patented land is also a research natural area and a proposed wilderness.

The patenting seemed to fly in the face of the 1955 "Common Varieties Mining Act," whose language appeared to outlaw patenting of sand, gravel and most pumice deposits under the 1872 Mining Law. The 1955 law gives the Secretary of the Interior discretion to deny patents for common materials if issuing those patents would be "against the public interest."

Oregon's fourth district Rep. Peter DeFazio, D, is convinced that the mining claims are indeed contrary to the public interest. In early October he brought the House Subcommittee on Mining and Natural Resources to Eugene, Ore., for a hearing on the sand claims and also ordered a General Accounting Office investigation of the mining claims.

Following the hearing, committee chairman Nick Rahall of West Virginia asked the BLM to hold up its intended patenting until the subcommittee could complete its investigation.

The Bureau of Land Management issued the patents the following working day.

"This is a violation of the public trust," said DeFazio. "It's a plain and simple continuation of the Watt/Hodel

(former secretaries of the Interior) public giveaways of the Reagan era. There's not a new day at the BLM. Kinder, gentler doesn't apply to protection of the public resources against claim jumpers."

The BLM claims that the sand is not a "common material." The agency says it is patentable under the 1872 Mining Law because it has a high silica content, making it valuable for glass manufacturing. Coosand Corporation argued that the patenting was long overdue, since they had first filed for the patent in 1981.

But Bob Warren, an aide to DeFazio, echoes the sentiment of others who attended the October subcommittee hearing. "The BLM was clearly advocating for the miners and not for the people of the United States."

Phil Hocker of the Washington, D.C.-based Mineral Policy Center says, "The real problem here is the 1872 Mining Law. The law permits no public interest test. The only way to deal with this sort of problem is to repeal the 1872 Mining Law."

Meanwhile, Coosand Corp. cannot yet take its buckets and shovels to its new land holding in the Oregon Dunes National Recreation Area. Douglas County has refused to issue Coosand needed permits to mine its new holding, citing zoning laws which prohibit mining in the coastal zone under Oregon's strict statewide land use planning laws.

"Even if Douglas County allowed

them to mine there, the miners would still be violating two statewide land use rules, and would have to appeal to various state boards," said Bob Warren. "Its chances of getting an exemption from the state are nil."

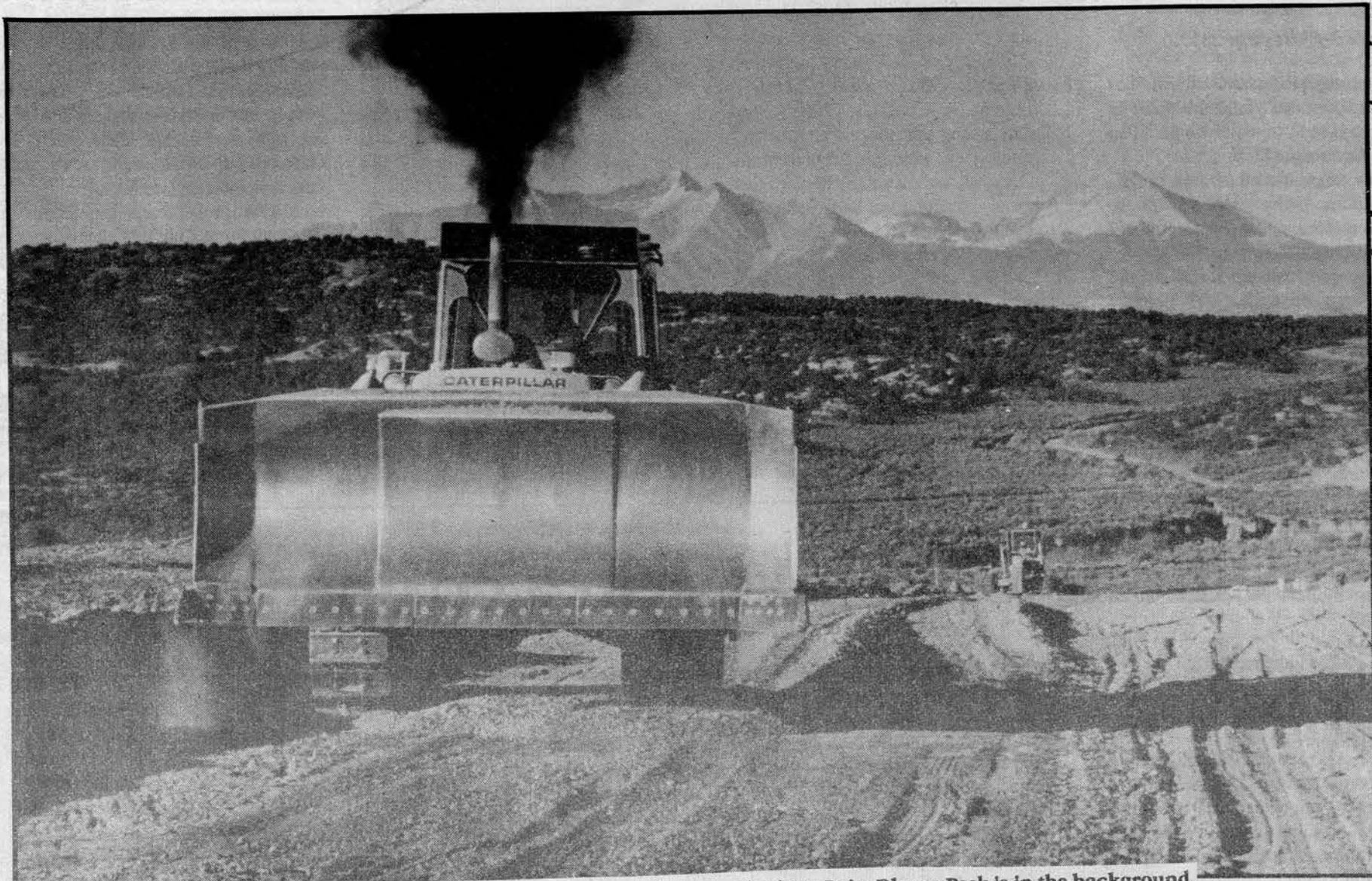
Coosand has placed the mining claim in an escrow account and has negotiated with the Forest Service to exchange its claim for one that could be mined without restriction.

Early last winter, the Siuslaw forest identified Forest Service and BLM lands near Coos Bay, Ore., which have the same quality of sand, are federally owned, and which enjoy none of the county land use restrictions impeding development on the original Umpqua Spit site. But as soon as these Coos County lands were shown to Coosand, the company filed 1872 mining claims on the potential exchange lands.

"Any possibility of a quick exchange of lands was destroyed by that move on their part," said Bob Warren.

Congressman DeFazio has vowed to thwart any land exchange or new patent, arguing that unminable lands can only be exchanged for other unminable lands. DeFazio maintains that the patent to the Oregon Dunes National Recreation Area lands should never have been issued because of the state and county laws prohibiting their exploitation.





Mary Kelley/Colorado Springs Gazette Telegraph

Caterpillar tractors from Battle Mountain Gold Company clear a roadway north of San Luis. Blanca Peak is in the background.

## San Luis chooses Christ over gold

by Steve Hinchman

If the story of Colorado's oldest town, San Luis, is not made into a book and then a movie, it will be for one reason: The plot is too unbelievable — too Hollywood.

Who, after all, would believe that an impoverished, isolated Hispanic community would reject the economic comfort of a large gold mine and instead place its faith in the drawing power of a religious shrine. And who would believe that this religious and economic revival would be led by a "Father Pat" — a priest who rode into town a few years ago and inspired the community to believe in itself, its past and its future.

Yet, that is exactly the case.

San Luis sits on Colorado's southern border, surrounded on three sides by the 13,000- and 14,000-foot peaks of the Sangre de Cristo range, and on the fourth by the vast and desolate San Luis Valley. At 8,000 feet, it is a place of austere beauty.

That austerity is also evident on main street. San Luis is the seat of Costilla County, which is marked by a steadily shrinking population base as well as the highest rate of unemployment and lowest per capita income in Colorado. The short business district is pock-marked with empty stores and boarded-up windows.

The people of San Luis and its outlying villages — *La Gente de la Tierra* — are mostly the mestizo descendants of the Spanish pioneers and the Indian tribes they conquered. Most are life-long residents, eking out a living from ranch-

ing and subsistence farming.

But for those who cling to San Luis, the attractions outweigh the hardships. San Luis' original Spanish culture, language and religion are intact, and remain the core of life here. Art, traditional crafts and the underground barter economy flourish, due to little interference or influence from the dominant Anglo society that conquered the area nearly 150 years ago.

But the geology that has kept San Luis cut off from the rest of Colorado and the world for so long may now make

cyanide-leach mine technology make all but the poorest ores profitable. Three years ago a Texas company based in Nevada, Battle Mountain Gold, bought the old El Plomo mine and is now preparing to dig up the gold.

A pair of open-pit mines along the Rito Seco and a cyanide vat-leach mill on a hill above would process 440,000 ounces of gold over 10 years, bring about 90 high-paying jobs to Costilla County and add over \$2.5 million to the county tax rolls, says Gary Dodson, Battle Mountain's project manager.

county commissioners and former San Luis Mayor Joe Espinoza are pushing the idea.

"The mine is our ace in the hole," says Espinoza, who, until he lost his seat in last month's elections, was one of Battle Mountain's leading backers. "That's going to be the start of San Luis; 90 people will work there. It's going to help the merchants."

But Espinoza and the county commissioners seem to be in the minority. Most San Luis merchants and community leaders have started asking critical questions about the mine and mill operation, which would straddle the Rito Seco three miles upstream of where it flows through town.

The newly formed Costilla

County Committee for Environmental Soundness is leading a sophisticated campaign to either move the mine or stop it from opening. Opponents worry about cyanide spills polluting both surface and ground-water, reductions in water flows, scars on the landscape, erosion, airborne tailings and the mess that may be left behind.

"Oh, the mine would be good for me," says Felix Romero, owner of the R & R Market, San Luis' ancient general store and one of the town's largest businesses, "but what I have to lose is far beyond the monetary gain that I might get. If they are to pollute the water and the land, what do we have?"

Up the street, Toni Manzaneres, owner of Toni's Cafe, echoes that sentiment: "They say the water won't be contaminated but they can't guarantee that. People have survived here before without money. [We] live on farms raising

(Continued on page 16)

*"If they are to pollute the water and the land, what do we have?"*

the town vulnerable to a new and powerful economic force.

The San Luis Valley is a rift zone: heat from deep within the earth's mantle is welling up, splitting the crust of the planet apart. That tectonic momentum long ago formed the volcanic San Juan Mountains to the west and is now pushing the Sangre de Cristo range towards the eastern sky. The heat and pressure have also forced heavily mineralized, scalding hot water through the cracks and faults in the mountains, lacing the hills around San Luis with an undeterminable amount of scattered, tiny flakes of "invisible gold."

Spanish miners working the El Plomo lead and silver mine on Rito Seco Creek just upstream of San Luis originally discovered the gold at the turn of the century. Because of low prices and the poor grade ore they left it alone. Now the price of gold is near \$400 an ounce and the new, highly efficient

The company has already invested \$18 million in mine exploration and design and has permits in hand from the Costilla County commissioners and the Colorado Mined Land Reclamation Division. No federal permits or oversight are needed because the mine, like all land in Costilla County, is private. All that legally holds back the county's first-ever heavy industry is state approval of Battle Mountain's water use transfer and ground-water pumping applications.

"We're into it so far we're going to see it through," says Dodson. "We're being bullish on the price of gold."

### Gold vs. Pollution

To some in San Luis, Battle Mountain Gold's proposal is a godsend. The company already has over 300 job applications from county residents. The



## San Luis . . .

(Continued from page 15)

our own vegetables and animals for food, but if we can't drink the water or irrigate anymore, how are we going to support our families?"

"This place has never been polluted," she adds. "Why would we want to pollute our air and water with mining? We're thinking past 10 years."

Those concerns are shared by the people who need the jobs. Bobby Romero, one of the county's many unemployed, says he's not against the mine, just its proximity to the town and its water source. "We're against the pollution and the poison and the acid," he says. "They're going to mine for eight years and then what's going to happen to

our kids? What's going to happen to our place?"

The resistance is a sign of the changes in attitude that have come to San Luis and Costilla County in the past four years. In 1980 the average per capita income in Costilla County was \$3,680, among the poorest in America. Unemployment averages 20 percent. In San Luis, 43 percent of the families live below the poverty level and most of the young people leave home soon after graduation in search of a job.

Those 1980 numbers haven't changed much, but the faith in community leadership and the future has. Most of the changes can be traced to the arrival of Father Pat Valdez, head of the Catholic Church's Sangre de Cristo parish headquartered in San Luis.

Father Pat, as his parishioners call him, is a native son of the San Luis Val-

ley from neighboring Conejos County, the second poorest county in the state. Father Pat, 41, is an activist priest in the old Hispanic tradition. His first project was repairing the ancient, crumbling adobe church in the center of town.

"I told them, 'It was your grandfathers who built this church in the first place and now you have to help repair it.'"

Father Pat asked each family for \$50, their prayers, their labor and, if a family couldn't help with the work, to feed those who could. Using the talent and energy of local volunteers and a matching grant from a Catholic foundation, Father Pat finished a number of church projects.

His leadership galvanized the community into assessing its future. Eighty-five percent of Costilla County is Catholic, and residents see little differ-

ence between their church and government when it comes to improving the community.

Out of the growing spirit of optimism, the Costilla County Economic Development Council Inc., was formed to support existing businesses and develop new small-scale, home-grown ventures to capitalize on the area's unique cultural and religious heritage.

The church and the Economic Development Council's efforts are slow and relatively small, but they are having impact. Projects include new parks, a community training center, a museum, a theater, murals, art galleries and a pair of bed-and-breakfast inns. There are also workshops to encourage local talent in woodworking, weaving, embroidery, furniture making, music and the performing arts.

But the centerpiece is the Shrine of

### The law in action

## Retirement town takes on a copper mine

by Florence Williams

**W**hen Phelps Dodge Corp. proposed unearthing 175 million tons of copper ore just eight miles outside of Prescott, Ariz., in the early 1980s, residents of the calm retirement town sprang into action.

A group called the Citizens for the Protection of the Prescott Area had a good handle for their battle ax: They argued that the company and the federal government had to write a full environmental impact study before a land exchange could take place. Phelps Dodge already owned the ore body, but needed 9,000 acres of adjacent federal land in Copper Basin for processing facilities.

Today, five years after a federal court ordered Phelps Dodge and the Forest Service to write an EIS, the company says the study has grown too expensive. It is now threatening to acquire the land through an alternative that does not require a full environmental study.

That alternative is a possibility under the mining law of 1872.

Known as the mill site provision, it allows an individual or company to apply for and receive full ownership of federal land adjacent to an active claim to build mining facilities.

The 1872 Mining Law has already helped the company get a good start on the operation. Since the early 1900s, Phelps Dodge has patented claims in Copper Basin, as well as in numerous areas throughout the Southwest. In its 147-year history, Phelps Dodge has used the mining law to become the nation's largest producer of copper, producing a billion pounds last year.

With copper technology and the market improving over recent years, the company predicts the low-grade ore in Copper Basin may soon be ripe for action. It plans to mine 175 million tons over a 16-year period. The ore is 0.5 percent copper, or 10 pounds per ton.

Although the mill site provision does not require a federal environmental study, using it to acquire land is still cumbersome. That is one reason the firm would rather go through with a formal land exchange. Phelps Dodge also feels that adding its private lands to the exchange would be a more popular route politically.

In return for the 9,000 federal acres it seeks, Phelps Dodge says it would

give the Forest Service three choice parcels of private inholdings on national forests, including habitat for the threatened Peregrine falcon and the endangered spike dace fish. The inholdings, complete with perennial streams, total 2,400 acres.

"The land exchange is best because the public will receive environmentally sensitive lands," says company spokesman Ralph Ladner. "We feel it's the proper thing to do."

But Ladner also says the company is getting fed up with the EIS required for the exchange. The estimated cost of the study has tripled in the last five years, from \$1 million to \$3 million, he says, because of citizen pressure to include more detail about impacts from the proposed operation.

"Did we enter an open-ended contract?" asks Ladner. "This is the most expensive EIS for a land exchange ever ... Some of the [citizens'] concerns are valid, but others are out of left field."

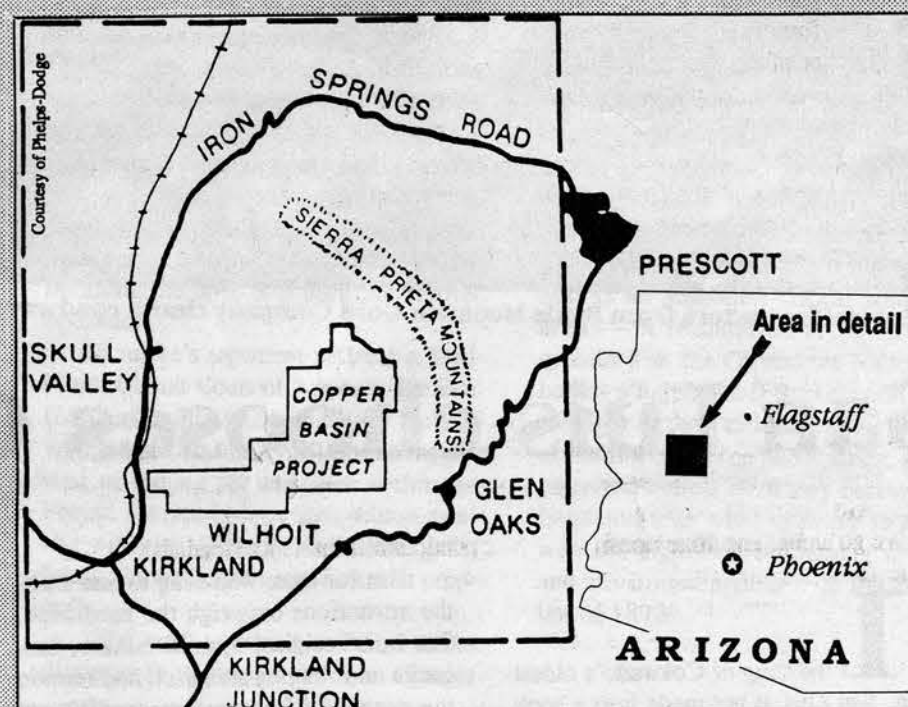
So far, Phelps Dodge has resisted using its 1872 mill site option. But Ladner says it becomes more attractive as costs keep rising for the EIS. In the meantime, the company is negotiating with the Forest Service and its independent contractor, S.B. Huston and Associates, to abbreviate the study and reduce its cost.

For a large corporation like Phelps Dodge, using the mill site procedure can be expensive and time-consuming. Each site is limited to five acres, and to acquire the large area it needs, the company would have to apply and pay fees for each site individually.

If Phelps Dodge received the land, it would be the largest mill site acquisition in Arizona history. Just processing the applications with the Forest Service and the BLM could take two to three years, says Alan Rabinoff, chief of the branch of mining law for the BLM in Phoenix.

Should Phelps Dodge choose to pursue its rights-to-ownership under the 1872 law, no EIS would be required, according to Jerry Haggard, a Phoenix-based natural resources attorney representing the corporation. Once that land reaches private hands, he says, its operations would only need permits from the necessary state and federal agencies, such as water, air and solid waste permits from the Department of Environmental Quality.

Rabinoff agrees. Although the Forest Service and BLM are responsible for issuing ownership patents, they have no



environmental regulatory control. Says Rabinoff, "We just look to see if they meet requirements of the (1872) law, and there are no environmental requirements in there ... the BLM has no authority to see that environmental concerns are addressed."

Some residents fear the mill site provision; they believe an EIS, with public input, is critical to the project. "We have to bird dog [the proposal] really closely," says activist Leslie Glustrom. "The EIS should show us the full costs of the operation ... and ensure the company is responsible for reclamation."

Activists also say Phelps Dodge's environmental record is poor. Three of the company's five smelters closed within the last five years due to non-compliance with the Clean Air Act. The company has received numerous citations from Arizona and New Mexico authorities for contaminating streams and groundwater with heavy metals near other open-pit copper mines.

In addition, New Mexico's Environmental Improvement Division recently filed suit against the company for operating its mine near Silver City without an approved water discharge plan. The suit also claims that company pipelines leaked sulfuric acid into groundwater aquifers in 1989.

Ladner says that problems won't occur at Copper Basin. The company will not build a smelter there, but will haul concentrated ore to another smelter by rail. He adds that new environmental laws in the state will prevent the kinds of

incidents that plagued operations in the past.

Even so, some Prescott residents worry that the Copper Basin mine would degrade the area's air and water, discourage tourism and hurt the retirement industry. The operation would process 30,000 tons of ore a day and consume 3,500 gallons of water a minute. In addition, they say, the open-pit mine, a mile wide, a mile-and-a-half long, and 1,000 feet deep, would scar the landscape.

"People don't tend to retire or take vacations in active mining communities," says Bob Folkman, a former mine company executive and now a member of the Citizens for the Protection of the Prescott Area.

He chose to retire to Prescott because of its pristine environment, college-town amenities, and an article in the *Wall Street Journal* proclaiming it one of America's 10 best retirement communities. Today, approximately half the town's residents are retired.

Prescott's medical community has also come out against the project, citing the area's reputation for attracting people with pulmonary disease.

In the scoping hearings for the land exchange's EIS, the citizens of Prescott made clear everything they want studied: air, water, noise, dust, traffic, economic gain, and so on.

But with the 1872 law lurking just off-stage, residents have no guarantee that their concerns will ever be addressed.



Sangre de Cristo, part of Father Pat's new concept of religious tourism, which blends the region's artistic talents with its heavily Catholic heritage. The shrine consists of a trail on the mesa above town with 15 stations of the cross commemorating the last hours of Jesus' life as he walked from Jerusalem to his death on Calvary. Each station is a near-life-size bronze statue mounted on a stone platform; all are the work of local sculptor Huberto Macstas.

The shrine is expected to draw 30,000 visitors a year, creating a market for the new art galleries and other businesses in town.

San Luis' plans have won the admiration of economic development specialists throughout the area and repeated grants from the state and private foundations. In 1989, the Economic Development Council of Colorado gave San Luis the "Outstanding Community Award." Colorado Gov. Roy Romer presented the award.

"San Luis is probably the most dramatic example that I know of a town that has taken a look at its assets and liabilities and gone after a new market with a desire to transform itself," says Randy Russell, director of the San Luis Valley Economic Development Council in Alamosa.

However, nobody planned for the old mine to come back. "The mining boom and bust type of existence," says Father Pat, "is not economic development. Economic development is long-range systematized types of business."

Worried about economic and social impacts to the schools, health services, traffic and housing, Charles Manzaneres, director of the Economic Development Council, says his agency's program "is slower growth, but it addresses the problems as we go along. The mine doesn't."

"The feeling is we can do our own economic development," he adds. "The days of being dependent on someone else are over."

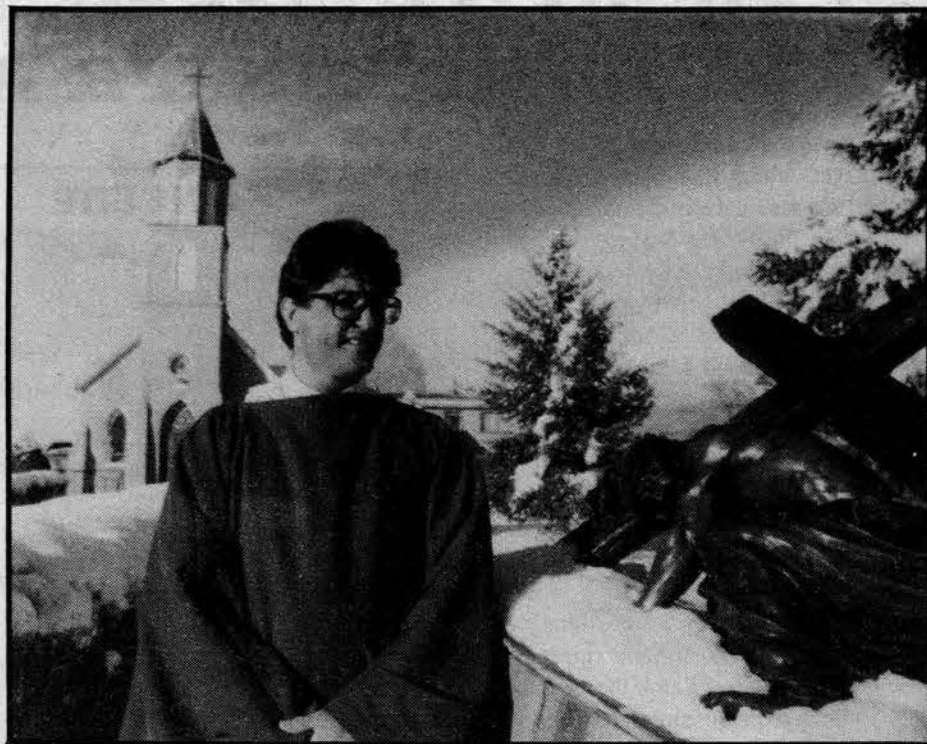
#### No such thing as a safe mine

**I**t is the threat of pollution that seems to worry people the most. Felix Romero, president of the Economic Development Council's elected board, says, "Our vision was to enhance the cultural and traditional things that have gone on here for 130 years, not to dilute or pollute them."

Joe Gallegos, a rancher in his mid-



Mine opponent Joe Gallegos



Father Pat Valdez

30s and president and founder of the Costilla County Committee for Environmental Soundness, angrily points out the mining disasters that surround San Luis: the Yak tunnel and California Gulch Superfund site in Leadville, Colo., to the north; Molycorp's massive open pits and tailings piles in San Luis's sister town, Questa, N.M., 40 miles to the south; a cyanide heap-leach gold mine at Summitville, Colo., to the west, across the San Luis Valley, that has been plagued by chronic cyanide leaks, a dead river and numerous shutdowns.

Memory also lingers in San Luis of the Earth Sciences Corp., a Golden, Colo., company that tried to mine the El Plomo gold in the early 1970s. The company built a cyanide heap-leach pad adjacent to the Rito Seco but a series of cyanide spills in 1974 killed fish in the creek and prompted the Environmental Protection Agency to shut it down.

The mountains of Colorado are filled with dead rivers and scars that may last forever, says Gallegos, who is the great-great-grandson of Don Dario Gallegos of Spain, leader of the party that founded San Luis in 1851. "You can't show me a safe mine," he challenges.

Gallegos and his group have organized letter-writing campaigns, prayer vigils and public protests, as well as an appeal of Battle Mountain Gold's permit from the state's Mined Land Reclamation Division. They are now coordinating protests against the project in Colorado water court.

San Luis' strong resistance caught Battle Mountain by surprise. The first inkling came at a March 1988 public meeting with the mayor, town council, county commissioners, school superintendent and concerned citizens. Dodson says, "We found out there were a lot of proud people here who liked their environment the way it was. We found out it was not a mining community."

Based on that and other meetings, Battle Mountain redesigned their operation. Instead of placing the mill next to the ore pits along the Rito Seco, Battle Mountain will build it on a saddle 500 feet above the creek. There, Dodson says, it will be "high and dry" with no springs or water around.

"If we [have a problem] we can just turn off the pump. It's not like we can have a flood come through and wash our material away," he says.

That also means that Battle Mountain must truck the ore from the pits two miles uphill to the mill, at a cost of \$3 million to \$4 million over the life of the mine, says Dodson.

Battle Mountain also shifted from an outdoor cyanide heap-leach mill to an

indoor cyanide vat leach, which, Dodson says, will keep all of the highly concentrated cyanide solution indoors under the mill roof. There cyanide will be poured over crushed ore, which leaches out the gold. The pregnant cyanide solution is processed to remove the gold and the cyanide is re-used.

The spent ore is piped out as slurry to a catchment basin on top of the saddle. The tailings dam — which will hold 12 million tons of ore — will be underlaid by a drainage system and single liner, which, Dodson says, should catch all leaks.

"The beauty of this design," he says, "is when that water is going out to the tailings it almost meets groundwater standards." The tailings solution is only 0.4 part per million parts of cyanide. That is so dilute, he says, "that ducks and geese could land in those ponds and be safe." Exposure to sunlight and to the acidic pH of the ore will cause the cyanide to decompose almost immediately, he says.

Battle Mountain has also put up a \$3.4 million bond and filed a reclamation plan with the state, and has promised to train and hire local residents to run the mine.

"I've been working these mines since 1964," says Dodson, "and this is the best planned, best-thought-out mine — from a technical, environmental and economic viewpoint — that I've ever had a hand in."

"It's safe," adds Rob Benson, Battle Mountain's mine geologist. "It's as safe as anybody can make it right now. We've been subjected to the most intense scrutiny of any mine in Colorado."

But in San Luis, three miles downstream of the mine site, people say there are still plenty of risks — risks they don't want to take.

"They have this wonderful straight face when they say nothing could happen," says Miguel Gomez, a high school English teacher and member of the Committee for Environmental Soundness. "They say, 'Trust us, we're one of the best mining firms around.' We say there is no such thing as safe mining. They take the riches out of the land and leave us the devastation."

Gomez challenged Espinoza for the mayor's seat in elections last month, arguing that the old mayor sold San Luis short by endorsing Battle Mountain Gold without taking a harder look at the project. Gomez beat Espinoza handily, but lost the election to another challenger by two votes.

For Gomez and just about everyone else, the primary concern is water. Even

if there are no cyanide spills, people in San Luis are worried that the mine will deplete flows in Rito Seco Creek or in the aquifers underlying town. The open pits will drop, at least partially, below the water table and will have to be pumped dry. Battle Mountain's studies show that the mine aquifer is not connected to the Rito Seco or the aquifers that supply the town and private wells. The company has filed for the water and plans to pipe it to its mill, supplemented with ground-water from a nearby ranch owned by Battle Mountain.

That has water users on the Rito Seco and below upset. "We're over-appropriated already," says Maclovio Martinez, the county assessor and president of the Costilla County Water Conservancy District. "The mine stresses the priority system. We don't know how we'll manage the water in the case of a spill."

San Luis has the oldest water right in Colorado and Martinez says while the rest of the country seems to allow pollution of its water supplies, San Luis will not. "Water might one day be far more valuable than gold," he says.

Another concern is the effect on the San Luis Vega, a 633-acre commons on the edge of town. The Vega is the largest commons in the nation and the only one in Colorado. Vega board members say they fear the mine may dry up ground-water flows that feed the Vega's wetlands and irrigation system.

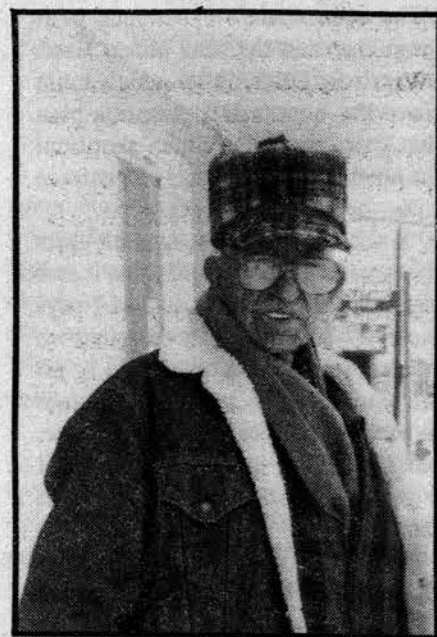
The water issue is the last one to be negotiated, and it may be the hardest to settle. Battle Mountain's water use transfer and groundwater application have been protested by nearly every downstream water user — the most protests the state has received on any one project. Water protests typically take several years to settle and can be very expensive. This promises to be one of the worst.

"We're already a year behind schedule," says Dodson. "We didn't realize it would take so long to get the water... We invested our money here first and we should have looked at the water."

#### Reclamation plan questioned

**I**f the mine gets the go-ahead on the water transfer, then San Luis' last measure of control over what happens is the reclamation plan required by the state. The Committee on Environmental Soundness has questioned Battle Mountain's reclamation plan, especially the bond, which will cover reclamation costs if the company closes the mine and skips town.

"We've fought tooth and nail to get  
(Continued on page 18)



Ex-mayor Joe Espinoza



**The law in action****Stone-washed jeans threaten a wild river**

by Gingy Anderson

**A**n ancient volcano in northern New Mexico's Jemez Mountains is witnessing its second eruption, this one political.

At its center is a developer who wants to strip-mine pumice, the remains of the first eruption, from the flanks of the volcano. His proposal has spawned a counter-proposal from a diverse and historically quarrelsome group of land users who have been united by their opposition to the proposed mine.

The Jemez Mountains lie 40 miles west of Santa Fe.

Many residents who once opposed formation of a national park in the Jemez Mountains have now joined forces with an Indian tribe and environmentalists. All support a 100,000-acre Jemez National Recreation Area that would bar mining. Gaining federal protection, however, is an uphill battle. Although pumice is traditionally used for construction and building materials, in recent years it has become sought after to make "stone-" and "acid-washed" fabrics. Since pumice is the stone, the look has triggered a pumice boom in the Jemez.

The central figure in the boom is Richard Cook, owner of the Copar Pumice Co. In 1988, Cook filed an application to begin mining on 33 acres near the East Fork of the Jemez River. The following February, Santa Fe National Forest officials ruled that the mine proposal would not significantly harm the environment and gave Copar the go-ahead to begin construction on its Las Conchas mine.

A coalition of environmental groups, including Save the Jemez, the Rio Grande chapter of the Sierra Club, Elk Mountain Action Group, Project Lighthawk and the East Fork Preservation Committee, appealed the decision. They said that the Forest Service had failed to consider the cumulative impacts of logging and other mining operations in the area. They also said mining pumice could harm threatened or endangered species, including the Jemez Mountain salamander and the Mexican

spotted owl, and could damage the East Fork River, which has been proposed for wild and scenic designation.

In July, the Forest Service rejected the appeal. A second appeal is pending in New Mexico civil court.

In the meantime, Cook, who has claimed 6,800 acres of mineral land in the Jemez, raised the stakes by submitting 23 patent applications on his mining claims. The 23 claims total 1,700 acres, including the 33-acre Las Conchas mine and 180 acres within the East Fork wild and scenic proposal. Under the 1872 Mining Law, patenting would require the Bureau of Land Management, which handles mineral rights on federal lands, to deed Cook the land for a \$2.50 per acre processing fee.

If the BLM approves the patents, Cook would get the 1,700 acres for \$4,250. Cook's application projects that the land will yield more than 12 million cubic yards of pumice worth \$300 million. Under the mining law, Cook won't have to pay royalties on most of the pumice he mines.

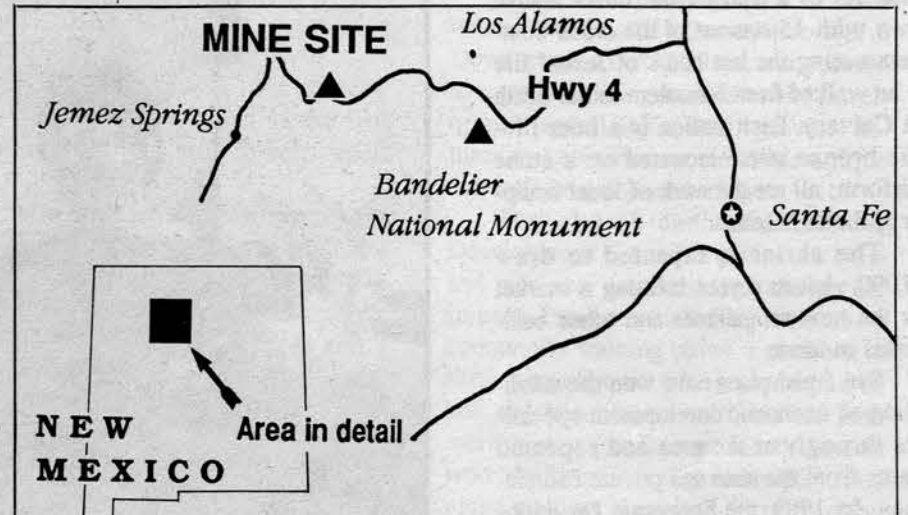
But Cook's mining claims may be worth far more than their pumice. Jemez valley real estate broker Ron Brown estimates that the land is worth \$12,000 to \$20,000 an acre as residential lots, and even more if it became a commercial development such as a ski area.

Cook's 23 claims are also in the heart of the Jemez's last remaining pristine old-growth forest and contain 17 million board-feet of valuable lumber, says Sam Hitt, a spokesperson for the environmental groups.

Bob Crostic, a land and recreation officer in the Jemez Ranger District, says the land has only 10.3 million board-feet. But he also estimates the timber is worth \$665,000.

"This is no different from someone robbing the federal treasury," says Hitt.

Patenting would allow Cook to bypass many of the regulations and obstacles that faced him on his Las Conchas mine application. The mining law gives a claim holder the choice between working under an operating plan that meets federal regulations, or trying to patent the claim. According to the Forest Service's Crostic, patenting is lengthy and expensive, and most claim



holders opt to leave the land in federal ownership and file an operating plan.

Crostic says environmentalists forced Cook to go the patent route. "It's easier to get a patent than to go through litigation," Crostic says. "I was surprised he didn't do it earlier."

Patenting was something Forest Service officials, who tried to permit the mine quickly, did not want to happen.

"I would hate for [patenting] to happen," Santa Fe National Forest Supervisor Maynard Rost said. "If this land were patented we would have no control over it and couldn't mitigate any of the effects mining would have on the area."

To mine a patented claim Cook would have to comply with federal air and water quality standards, says Rost, but the Forest Service could not require reforestation or reclamation.

Cook's plans for the land are unknown. He stopped granting interviews after a front page article in a February *Albuquerque Journal* put him in the spotlight as a landlord for the Forest Service.

The newspaper revealed that the agency pays Cook over \$200,000 annually to lease buildings he owns in the northern New Mexico towns of Taos, Raton and Española.

Environmentalists charged a conflict of interest.

Crostic calls the allegations "absolute lies. If I heard of that kind of blackmail I would be on the hotline to the FBI immediately."

Hitt insists that the Forest Service is scared to death of Cook: "They've told us time and time again not to ruffle his feathers."

Cook's plans, and his notoriety, have turned the local community against him. In 1984, Lou Steinmesal, publisher of the *Jemez Valley Voice*, headed a movement to block environmentalists' attempts to protect the area as a national park. Now she and other members of the mountain community want to keep the land out of Cook's hands, and have collected thousands of signatures on a petition supporting formation of a National Recreation Area in the Jemez.

"It's a lockup and takes away land that has always been ours," says Steinmesal. "We were labeled as environmentalist haters in 1984, but these people up here are more environmental than the people that work at it in an office... These mountains are our home and we're not going to let Cook take it away."

The Jemez Mountains' wooded mesas are also home to the Jemez Pueblo, a 2,500-member tribe that believes its ancestors have inhabited the area for 10,000 years. Some 30,000 reli-

gious and cultural sites cover the mountains and Cook's claims, 17 miles east of the Pueblo, contain many of those.

Pueblo attorney David Yepa says, "That mine would interfere with cultural and religious sites. It would ruin the environment completely and with it the spiritual feeling that the land reveals to the Indian people."

Lawyers for the Pueblo last year filed a formal protest of Cook's application and submitted a claim of their own, maintaining that the tribe still has aboriginal title to the land. But further action may mean the Pueblo will have to go to court, and that could be prohibitively expensive, says Yepa.

For now everyone is waiting for the federal agencies to set the timetable. Once the BLM, which ultimately decides on the patent issue, requests a mineral review the Forest Service will begin a field inspection to determine if each 10-acre section of the 1,700 acres is profitable to mine. That could take one to two years, says Crostic.

In the meantime, environmentalists and some local residents hope to circumvent Cook's claims and the 1872 Mining Law by designating 100,000 acres in the center of the Jemez a national recreation area. It would include the entire wild and scenic proposal, Cook's patent applications and would prohibit mining and patenting.

"We have to change the mining law, but that is a major national effort," says Rep. Bill Richardson, D-N.M., who wants to protect the Jemez. "In the short term a national recreation area is more effective."

Richardson says he will introduce a land protection bill to Congress within the year. "We need legislation to protect it because the mining law gives the Forest Service and the residents of the Jemez no say." ■

**San Luis . . .**

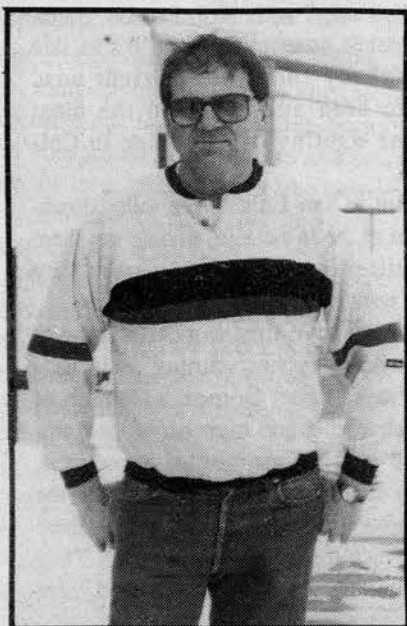
(Continued from page 17)

them to raise the bond," says Miguel Gomez. "If you take a look at what inflation was in the last decade, I don't think \$3 million will do the job."

The committee's experience with the regulators in the state Mined Land Reclamation Division — which must approve the bond and reclamation plan — has also made the group skeptical about how strictly the state will enforce the plan.

"It will work for a couple of years until someone up at the Mined Land Reclamation Division is satisfied," says Gomez. "Then they release them and we are stuck with the mess. There is no requirement of the law that the state must notify local residents of the release. It's an indication that they really don't care what the community thinks about reclamation."

"Eight years of prosperity isn't worth the price we'll pay for the rest of our lives for the destruction of the moun-



Steve Hinchman

Project manager Gary Dodson

tain," says Gomez. "Will we ever be respected by the generations to come if we keep leaving them these pockets of destruction that they will never be able to clean up, that they will never be able to enjoy?" ■





# Questa was awakened by its mining bust

by Steve Hinchman

Anyone can see that Questa, N.M., is a busted mining town. It has all the classic signs: shabby storefronts, chronically empty restaurants, abandoned trailer homes and a grimy, desultory feeling that permeates the dusty streets.

But it is the shattered landscape that hits the visitor the hardest. Two huge tailings piles from the Molybdenum Corp. of America's Questa mine sit on the edge of town, sending plumes of finely ground molybdenum ore across the village on windy days.

To the east the Sangre de Cristo Mountains are cut by deep gouges and scars from mining and exploration. One peak is truncated: its top has been hauled off.

Along the canyon road leading out of town the pines quickly give way to a moonscape of slag heaps and overburden from Molycorp's mine: a huge complex of underground shafts, open pits, conveyor belts and mill houses that have obliterated the mountainside above.

In the bottom of the canyon, the Red River — once a famous trout stream — flows an eerie blue, as clear and devoid of life as a lake of acid rain.

There is more, but it is out of sight: contaminated groundwater and poisoned wells; lead in the tailings dust, threatening health problems for students in the middle school one-half mile away; and fields of slow-growing alfalfa, the result of 20 years of irrigation with contaminated water.

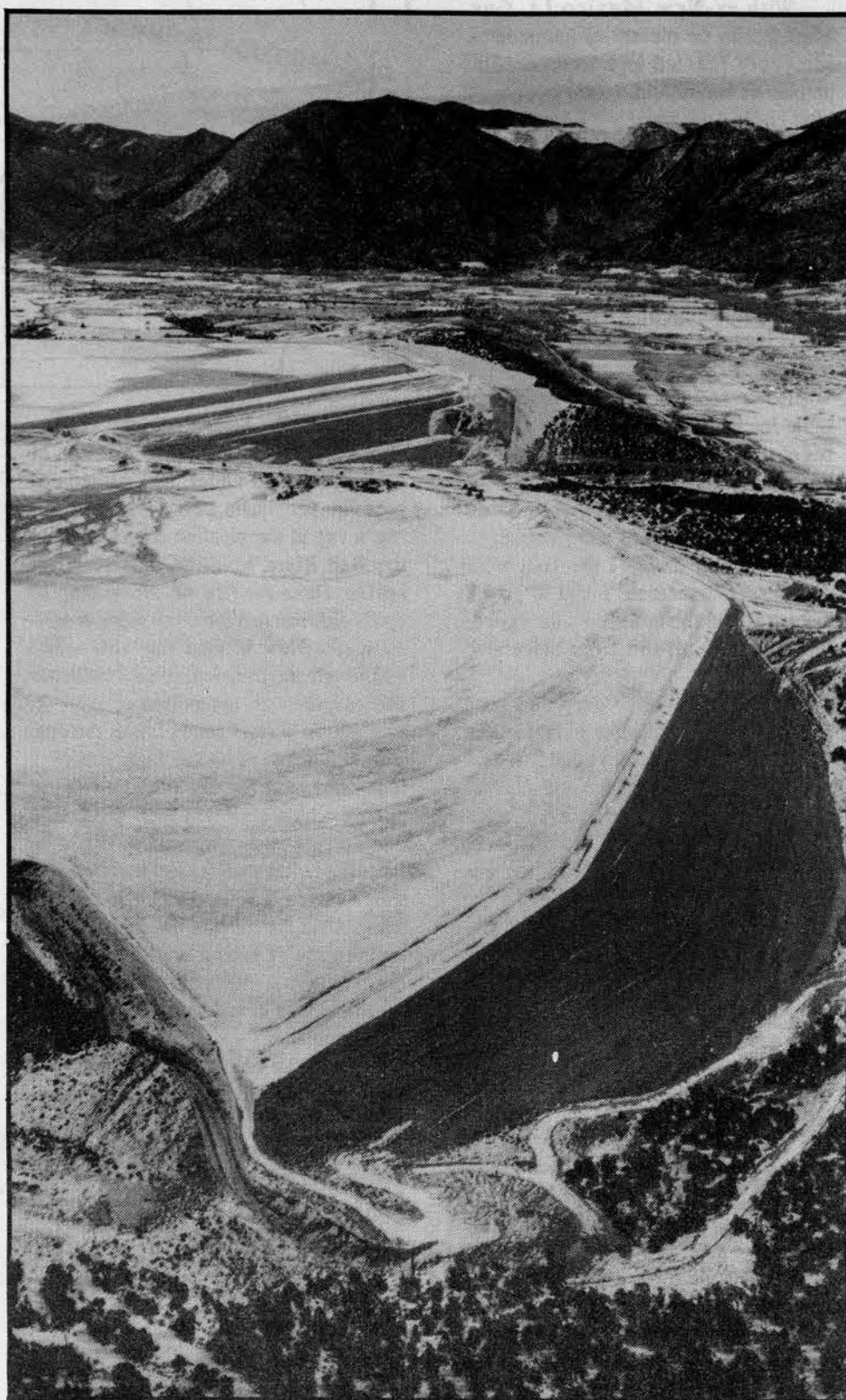
Even for the West, the environmental damage wreaked upon this northern New Mexico mining town is immense. But perhaps the more tragic and less known impact is the devastation the mine has visited upon Questa's traditional Hispanic community.

Questa was founded by Spanish settlers who moved north from Taos in the late 1700s. Almost all work was a communal effort. The people built their homes, churches and acequias, or ditches, by hand. They shared the high country as a public commons.

In Questa, unlike its sister city San Luis, 40 miles north in Colorado, those commons and the life they supported are gone. Marcus Rael, co-owner of Questa's hardware store and member of the village council for 10 years, says, "The U.S. government came and took all the land grants in our area and said we will take care of the land. So what do we get? We get corporate America, which comes in and says it is the land of many uses and we want the land. But only they can use it. The people can't even get access. All of a sudden there is no more water rights, no more firewood."

But there are jobs. Rael says people left the fields to work the mines. Many of the ditches deteriorated and the young men dropped out of school early to work with their fathers in the mines. Slowly the high wages ate away the town's cultural fabric.

"The men worked Sundays for double pay. The family group was broken up and we lost our traditional ways," he says. "Before people did not think of money. This country was built on a land grant. Everybody built the ditches, everybody built the houses. Now every-



© Mineral Policy Center/Project Lighthouse

Molycorp's tailings piles outside Questa, New Mexico

body is on their own... It will take us generations to turn it around."

Until recently, nobody objected much to the environmental or social problems. Questa's transformation from a small agricultural community living largely outside the cash economy to a company town was too thorough, the money too inviting. However, four years ago the mine shut down. Questa withdrew.

The withdrawal was painful, but the

hundreds of brown trout, big and healthy and full of food."

Stirred by those changes, people in Questa have slowly begun to voice concerns for health and the environment. Now there is talk about how to reclaim the mess.

The potential for renewal may be short lived. Molycorp, now owned by Unocal, has re-opened its mine. It is operating at half capacity and losing money because of the weak internation-

*"It's always lies, lies, lies . . . The 1872 Mining Law provides for violations of standards, but there is nothing being done."*

area has begun to show signs of recovery. The tailings spills stopped and Molycorp managed to reduce the dust. The middle section of the Red River near town is still dead, but the lower Red has made a tremendous comeback, says Van Beacham, owner of Los Rios Anglers in Taos and the fourth generation of his family to fish those waters.

"[In 1986] I counted 35 spawning beds in a half-mile stretch," he says. "This year there were 140 spawning beds in the same stretch ... hundreds and

al molybdenum market. But Unocal has indicated it will increase production if the Bureau of Land Management and the New Mexico Environmental Improvement Division approve a new tailings facility twice as large as its current tailings ponds.

The proposed site is on Guadalupe Mountain, a set of low-lying, forested hills that stand between Questa and the Rio Grande gorge. Guadalupe Mountain is managed by the BLM, but it has been used by local residents for hundreds of

years for grazing, firewood and groundwater.

The land gained a fourth use in 1981, when the Rio Grande was designated a Wild and Scenic River corridor and became Questa's first tourist attraction. The BLM turned the gorge into a river park and built a scenic loop road along the rim just below the mountain.

Two years after designation, in 1983, Molycorp claimed 1,200 acres on a saddle of Guadalupe Mountain for use as a new tailings dump. The company wants to build a dam on either side of the saddle and fill in the middle with an estimated 250 million tons of molybdenum tailings over the next 40 years.

Molycorp would take possession of the land for \$5 an acre under an 1872 Mining Law provision that allows holders of valid mining claims to file additional claims on non-mineral lands for milling and tailings operations.

Last winter, after completing a controversial environmental impact statement, the BLM approved the project, saying that under the 1872 Mining Law it had no discretion to deny Molycorp's application.

## Opponents gain strength

That decision enraged the small community of reformers in Questa, who say the new tailings ponds would burden the community with yet another set of environmental problems and kill whatever chances Questa has of building a new economy. Many would rather endure the current economic stagnation than suffer with the mine again.

"This mine has been here for 20 years and you show me signs of prosperity in this town," says Roberto Vigil, a woodcarver, furniture maker and leader of the Concerned Citizens of Questa, an activist group that opposes the Guadalupe tailings proposal. "In my opinion Molycorp takes away more in terms of health, water contamination and air pollution than it puts into the community."

Although 10 years old, the Concerned Citizens is a small group and for years was unpopular in Questa. Nowadays the group is gaining support over the tailings issue.

Juan Cisneros, who owns grazing permits on Guadalupe Mountain, says the BLM did not consider how the project would affect him and other nearby residents. In a letter protesting the project, Cisneros wrote: "I have had my permits up there for about 20

years. Now Molycorp decides they want what I have got and they are going to take it away from me without anything in return... It is not fair at all for them to take my livelihood away just like that ... Without those permits I am out in the cold."

Over 500 others, mostly residents of the little community of Cerro north of Questa, sent a petition to the BLM opposing Molycorp's plan because of potential health impacts. The staff of the

(Continued on page 20)



## Questa...

(Continued from page 19)

Questa Medical Clinic recommended that epidemiological studies be conducted before the project is permitted.

The issue has also drawn in state and national environmental groups and it is fast becoming a test case in the nationwide effort to abolish the 1872 Mining Law. Four lawsuits have or are being filed against the BLM. Those suits, filed by the Concerned Citizens of Questa, Wilford Rael of Questa, the Mineral Policy Center in Washington, D.C., and the Sierra Club Legal Defense Fund on behalf of several environmental groups, all charge that the BLM is using the 1872 Mining Law to ignore national environmental laws. In addition to trying to stop the expansion, the groups want the BLM to force MolyCorp to clean up its existing tailings piles and environmental problems.

If they succeed, it will be a first. In the past, it has been difficult, if not impossible, to get MolyCorp to clean up its wastes or to convince state and federal regulators to intervene.

### MolyCorp has a history

**T**he problems that have led to the present fight over the tailings expansion were visible from the start of the mine's modern existence. According to Roberto Vigil, MolyCorp has deceived the people of Questa about the tailings problem since July 4, 1968. That is the date the company held a public bar-

beque, dedicating the opening of its first tailings pond, which it called Turquoise Lake.

With ex-New Mexico Lt. Gov. Mack Easley as master of ceremonies, MolyCorp feasted the town on 300 pounds of beans and 1,000 pounds of beef cooked in fiery pits next to the lake. For the occasion, New Mexico Game and Fish stocked 2,000 pounds of trout and MolyCorp opened the tailings lake to public fishing.

"It's a great day for Questa," then-Mayor Marcelino Martinez told the *Taos News*, predicting Turquoise Lake would become one of New Mexico's most popular recreation areas.

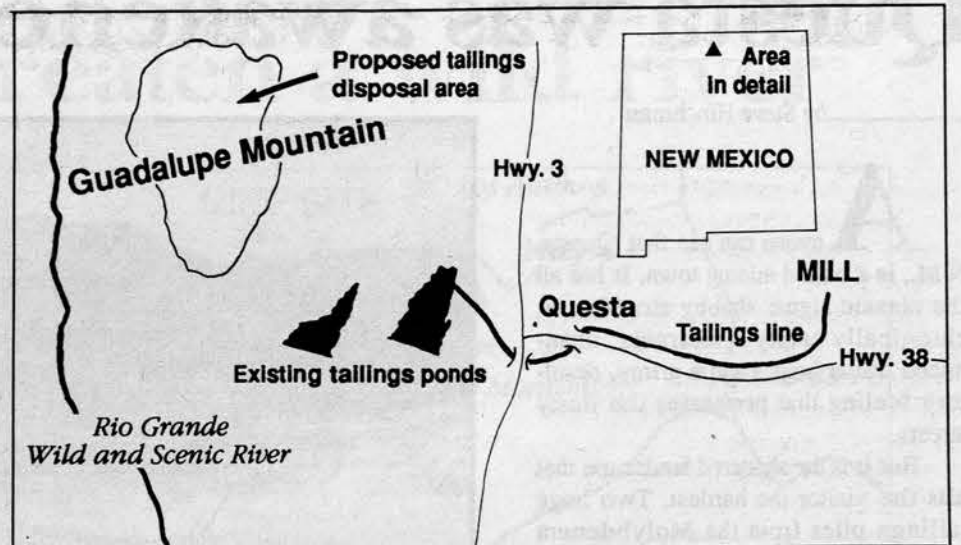
However, no one caught any fish. Little Joe Cisneros, who is now a member of the Concerned Citizens, but then, like most everyone else, worked for MolyCorp, says the company had turned on the tailings pipelines a day before.

"The next day all the fish were dead," says Cisneros. "I had to go out there at five in the morning with a pitchfork and bury all the trout before the party started."

At the time, MolyCorp and state biologists said the deaths were due to a temporary lack of oxygen. But fish never survived in the lake and it never became a recreation area. Today Turquoise Lake is a giant 250-acre mesa, filled in with over 50 million tons of molybdenum tailings.

"Everybody was excited about having a lake in our backyard [in 1968]," Vigil says. "I don't think a lot of people knew what tailings were. In fact, I don't think a lot of people today want to even accept that we were burned and it's a tailings waste dump."

Vigil says the Turquoise Lake fias-



co was just the beginning. The tailings slurry — a highly abrasive mixture of water and sand under 300 pounds of pressure per square inch — started eating away at the pipeline running along the Red River, resulting in a series of spills. Over the life of the mine, 30 spills that reached the river were reported to the New Mexico Environmental Improvement Division. Vigil estimates scores more went unreported.

As the tailings ponds filled, the dust problem began. It hit the high school, a half-mile away, the hardest. The yearly spring winds blew so much dust, says one veteran teacher who asked not to be identified, that students left footprints as they walked down the hall. In 1981, it was so bad that most of the student body walked out of school and marched up the canyon to MolyCorp's corporate headquarters complaining of eye and lung problems.

Even that brought little action. The New Mexico Environmental Improvement Division put an air-quality monitor at the high school, but seldom read it. When confronted by the Concerned Citizens of Questa, the EID admitted that it was the wrong type of meter, says Marcus Rael, a founding member of the group. He says there is still no air-quality monitoring.

"They have never done what they said they were going to do," he says of MolyCorp and the state and federal environmental agencies. "It's always lies, lies, lies ... The 1872 Mining Law provides for violations of standards, but there is nothing being done."

Not only are we battling the polluter," adds Vigil. "We are also battling the government as a whole, which has failed to represent us as they should."

Vigil says the BLM's decision to permit the Guadalupe Mountain tailings site is business as usual. Under the National Environmental Policy Act of 1969, federal agencies conducting an environmental analysis are required to compare the company's proposed action with a no action alternative and a number of other feasible alternatives.

The state office of the BLM refused to study anything but MolyCorp's own proposal. Officials said that under the 1872 Mining Law, "There is no provision for a discussion of alternatives." The agency approved the plan in December 1989.

The Concerned Citizens of Questa and the New Mexico Legal Services Foundation — along with the Sierra Club Legal Defense Fund, Amigos Bravos (a Taos County environmental group), National Audubon Society, the Sierra Club, and American Rivers — appealed the decision to the Department of Interior's Board of Land Appeals. Their case, to be heard this summer, is one of the first major appeals to challenge the 1872 Mining Law using the modern environmental laws. Many expect it to reach the U.S. Supreme

Court.

Robert Dreher, staff attorney with the Sierra Club Legal Defense Fund in Washington, D.C., says that what NEPA describes as the "heart of the EIS" — the description of alternatives — was just a paragraph.

"The BLM basically accepted the plan of operations handed to it by the mining company," Dreher says. "What it reveals is under the 1872 Mining Law, a mining company can look about and seize for private use any parcel of public lands not withdrawn from mining... We think that's wrong as a matter of law."

The environmentalists' appeal recently got a boost from the Council on Environmental Quality, an agency Congress set up within the executive office to interpret and administer NEPA. In a letter to Larry Woodard, director of the New Mexico BLM, Dinah Bear, CEQ's general counsel, wrote: "No legally justifiable rationale for failing to comply with NEPA's requirement to analyze alternatives has been presented."

Woodard, who says the BLM is the expert in dealing with the mining law, argues that MolyCorp's Guadalupe tailings claims are tantamount to a property right. "Because you are dealing with a property right that is very specific it does limit NEPA... If they can show a need for the tailings [facility] they have a right to that land."

### Is the law a smokescreen?

**I**nsiders in the agency say the legal talk is a smokescreen for a political decision. Richard Neimeyer, who was the BLM's Taos Resource Area manager in 1983 when the project was first proposed, says he and his field staff recommended a full scale study of alternatives. He says that was rejected by his superiors in the state office. The state office also rejected requests for extra money and staff to evaluate MolyCorp's need for the project and its impacts to groundwater, the Red River and air quality, he adds.

"MolyCorp knew, and we knew, there was no need for this site at the time," says Neimeyer, who is now a planner with the National Park Service in Santa Fe. "We felt they were making the request simply because they had a favorable political climate."

Neimeyer says little has changed. In 1986, when MolyCorp closed the mine, he recommended that the Guadalupe tailings proposal be dropped since the need was gone. That request was also refused.

"The only reason MolyCorp is open [now] is simply to demonstrate need for the new tailings pond," Neimeyer says. "They are losing money."

Taos author John Nichols, who has

(Continued on page 22)



The Rio Grande Gorge Wild and Scenic Park

© Mineral Policy Center/Project Lighthawk



# Must Questa remain a company town?

**A**lthough its roots go back to the Spanish conquest, modern-day Questa is the quintessential American company town.

Molycorp is its largest employer. At least one person in just about every family works or once worked at the mine — and most families' association goes back several generations.

Molycorp is also the town's major consumer, with an account in most every store. And the company built or donated the town's parks, sidewalks and streetlights. It has been that way for a long time.

Molybdenum was discovered in the steep Milagro (Red River) Canyon east of Questa just after the turn of the century. In 1923, the Molybdenum Corporation of America started mining the metal for use as steel strengthener in armored plate and automotive parts. Over the next two decades, as the technology advanced, the company expanded the mine, bought out the old Spanish agricultural water rights and built a new mill.

By the early 1960s, markets for molybdenum had increased dramatically. Molycorp converted its underground mines to a large open pit, expanding capacity to mine over 15,000 tons of molybdenite ore per day.

To treat the ore, the mill on the Red River was upgraded, but the tailings presented a special problem. The richest ore deposit contains just 0.3 percent molybdenum, and most of it is a poorer grade. That meant that after milling Molycorp had nearly 15,000 tons per day of crushed, powdered rock that had to be moved out of narrow Milagro Canyon to open land.

Molycorp bought two small canyons just west of Questa and dammed them, forming two artificial lakes, one of which was called Turquoise Lake. A 10-mile slurry pipeline was built from the mill along the Red River and through town to ship the tailings to the newly dammed canyons.

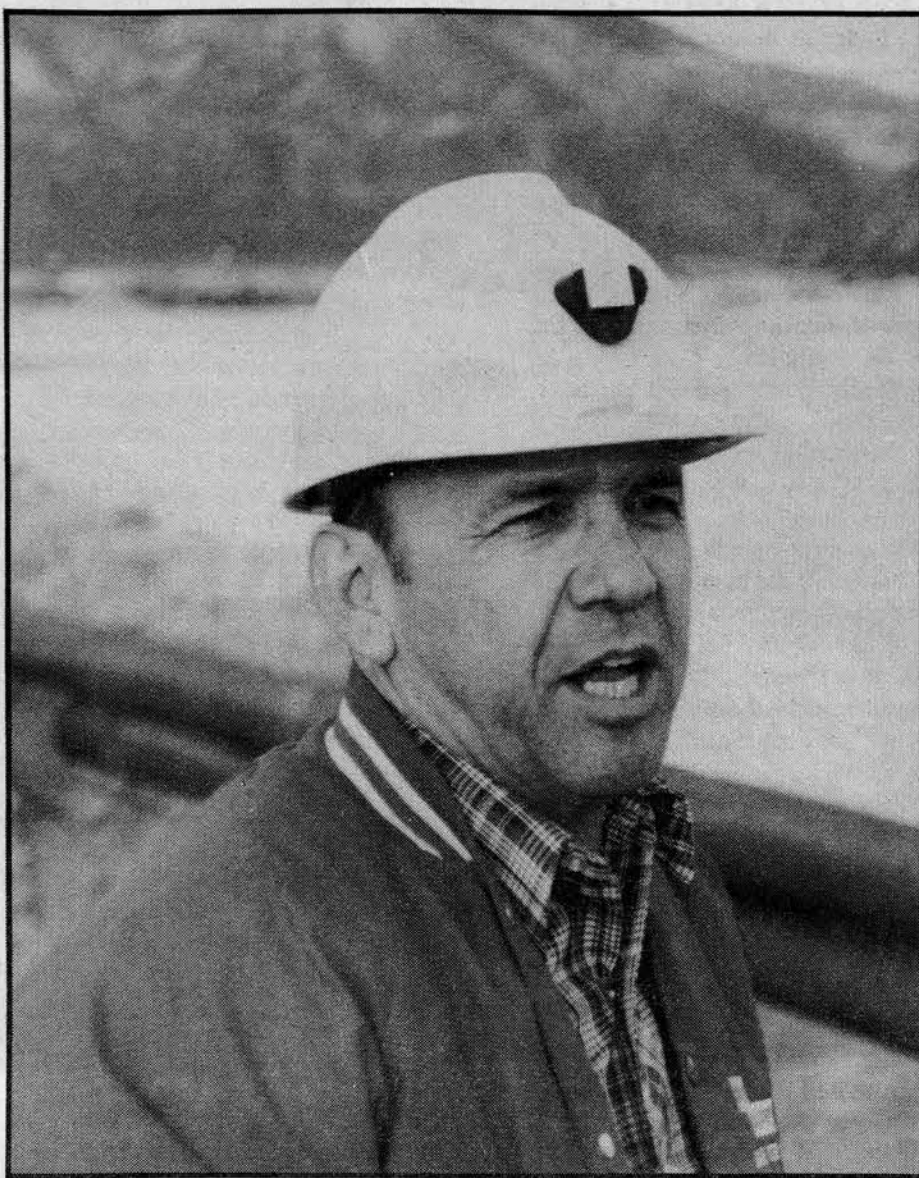
The open pit mine and mill operation ran for 20 years, until 1983, when Unocal, Molycorp's new owner, invested \$350 million to shift the mine back underground to a richer ore body. The move increased production to 20 million pounds of molybdenum a year.

All told, the modern mine ran at full bore for nearly three decades. With over 1,000 workers, Molycorp was the largest employer in northern New Mexico. When the mine shut down in 1986, after the international molybdenum market collapsed, it disrupted the entire regional economy and turned Questa into a near ghost town.

Although it has been four years, many of Molycorp's old employees have stayed in the area, hoping for the mine to reopen. Unocal and Molycorp officials say that is dependent on two things: the market and construction of a new tailings facility on nearby Guadalupe Mountain.

Leroy Apodaca, Molycorp's mine administrator, says there is less than 10 years' capacity in the current tailings ponds. To stay in business over the long term, Apodaca says, "There is no question we need another tailings facility."

Last year Molycorp circulated peti-



Leroy Apodaca, Molycorp's mine administrator

tions throughout northern New Mexico calling on the Bureau of Land Management to expedite the company's Guadalupe Mountain tailings proposal and clear the way for mine operations to resume. Over 4,000 people in the economically depressed region signed it.

Soon after, the mine reopened as promised, but at half-capacity with one-third of the workers, who are paid less than half their old wage. The price of

The Concerned Citizens of Questa and environmental groups say another boom is unlikely. Only environmental destruction is assured if the new tailings pond is built.

Questa environmentalist Roberto Vigil says the project would leave massive scars visible from both town and the nearby Rio Grande Wild and Scenic River park. The tailings pond would not be lined, and Vigil worries it could con-

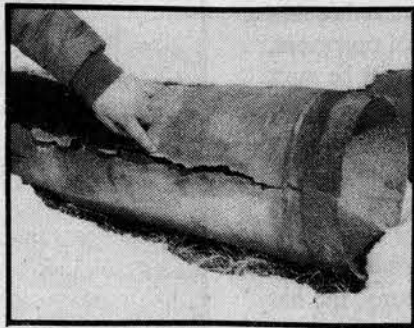
*"We need the damn jobs and it's not going to hurt the environment that much."*

molybdenum is still low: \$2.42 a pound, or about \$1 below Molycorp's break-even point.

"Right now we're losing money," says Apodaca. "But we figured if we didn't get back into the market soon, we wouldn't be able to get back."

The operation is so marginal, he adds, that "any increase in the cost of doing business would probably sink us."

Molycorp's plans have raised Questa's hopes. Robert Lafore, owner of the Wildcat's Den Drive-In, sits in his empty restaurant and says what many in town feel: "There's a chance they might shut it down again," he says. "But by opening the new tailings on Guadalupe Mountain they can have more employees and the mine can go full blast like before... I'd like to see Questa booming like it was before."



Broken tailings pipe

taminate the aquifer under Guadalupe Mountain. He is also concerned about the springs that feed the Red River and the Rio Grande, and drinking water supplies for the nearby town of Cerro. The

high dams would also provide a new source of wind-blown tailings, he says.

That kind of talk brings anger in downtown Questa, where a group of men sit in the Kiowa Lounge on a February midafternoon.

"We need the damn jobs and it's not going to hurt the environment that much. If there is any tourism out there it doesn't pay anything," says Bob Wilson, an ex-miner who is waiting to get called back to the mine.

Lawrence Ortiz, the bartender, explains, "Indirectly we all work for the

mine."

Molycorp's Apodaca says the corporation is a good neighbor, both to the economy and the environment.

"Moly tailings are non-toxic," he says. "The dust is just a nuisance," he adds, arguing that there is more lead in dust blowing off a dirt road than off Molycorp's tailings piles.

Molycorp has solved the dust problem anyway, he says, by applying surfactants. He also says the spills from the tailings pipelines are under control, thanks to a new \$11 million network of rubberized pipe.

As for the Guadalupe site, Apodaca points to studies commissioned by Molycorp that say the tailings pond would be self-sealing, and that any contaminants that did escape underground would be diluted by the massive volumes of water in the aquifer.

"There are no health hazards associated with this tailings dam," he says. "Absolutely not."

He also argues that the nation needs molybdenum. "Moly is absolutely necessary for a lot of things," he continues. "It's impossible to have stainless steel without molybdenum. To have moly you have to mine it and if you mine it you end up with properties like this... Is it worth it to the United States to stop mining and depend on another country for the products? We think we ought to be here. We think we're producing a valuable commodity not only to the shareholders, but also to the economy of the U.S. and certainly the local economy."

Whether or not Molycorp can proceed with the Guadalupe tailings project depends on several things. The BLM's approval of the land transfer under the 1872 Mining Law is currently being contested in court. Molycorp also must obtain a groundwater discharge permit from the New Mexico Environmental Improvement Division, and approval from the state engineer for the design of the project's two dams. Finally, the BLM must approve a tailings management and reclamation plan.

The permit from the state EID will be the most difficult to win. Stuart Castle, EID's groundwater bureau chief, says his staff has sent Molycorp's application back several times for more information and new studies. Castle says, "At this point I am in no position to think we have an approvable plan."

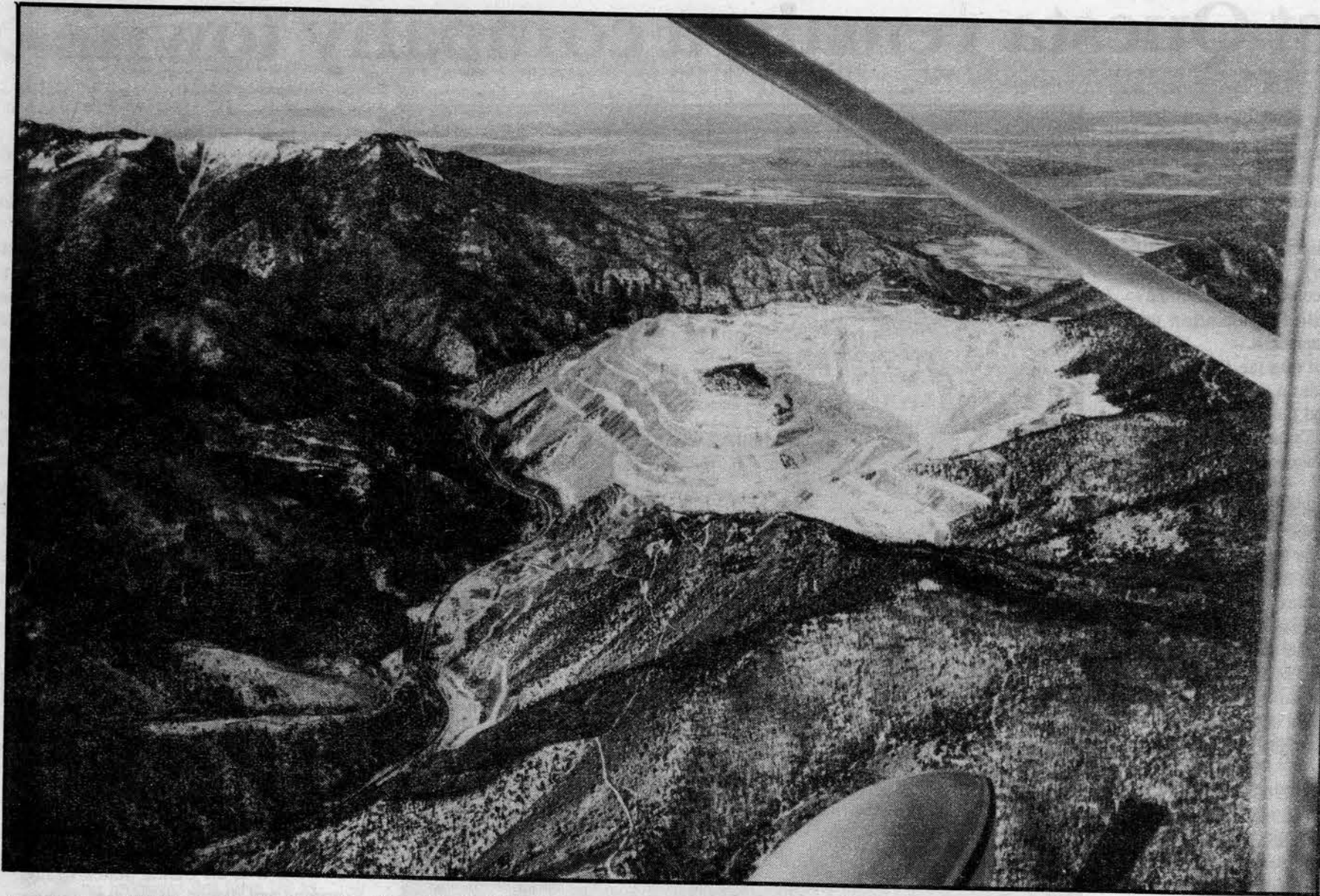
In the meantime, Molycorp's environmental problems are continuing. On Good Friday, April 13, just as an Earth Day press release lauding Unocal's century-old "commitment to the environment" was leaving the corporation's Los Angeles headquarters, an old tailings pipe broke near downtown Questa.

It spilled about 2,000 gallons of molybdenum tailings, filling a nearby irrigation ditch and fouling four or five acres of farmland, according to the *Taos News*. Leroy Rael, a local farmer, told the paper that the contamination means he won't be able to irrigate his fields this year.

A second spill April 30 contaminated another four acres of farmland in Questa, forcing Molycorp to shut its mill until it could replace another 3,700 feet of its tailings pipe.

— Steve Hinchman





Aerial view of Molycorp's Questa mine along the Red River

## Questa...

(Continued from page 20)

followed the conflict between Molycorp and the community for 20 years, says it is nothing short of a land grab. In a let-

ter to the BLM last year Nichols wrote: "Unocal is holding a gun to the heads of the poor in Taos (county) simply to gain its own corporate advantage. The company, the mine is up for sale... and access to new tailings capacity will enhance the selling price."

The process has left the Concerned

Citizens and others in Questa furious with the federal agencies, and even angrier about their implementation of the 1872 Mining Law.

"The 1872 Mining Law has to grow up with America," concludes Rael. "Before it was wide open. During the wars we needed the minerals and the

resources. But now it is all for profits and total neglect for the people, and the people are left holding the bag. You can't ever bring back the river. I think our government better take a good look at the Constitution."

# Mine boss also reclaims the land

by Mark Harvey

**C**OALDALE, Colo. — Early Saturday morning in late April, Ken Klco and six men wrestle bags of grass seed and bales of mulch from a pickup truck. They hump their loads to a bare hillside, pale and stripped of vegetation, and begin seeding and spreading the mulch. The land they work on looks ravaged — a landscaper's nightmare.

But these are not landscapers. They are miners out to reclaim land they've mined for gypsum. And if the area can be rejuvenated, Ken Klco, pronounced like grow, is the one to do it.

Klco has been the chief geologist and superintendent of the Domtar gypsum mine near Salida, Colo., since 1974. In 1987, the mine received the Colorado Governor's Award for "outstanding reclamation."

A youthful 39, with curly blond hair, dark glasses and black jeans, Klco looks more like a mountain biker than a mine superintendent. Only his work boots and vocabulary, laced with terms like Laramide orogeny, dip, slip and atropexes, give him away.

His offbeat looks are matched by a pioneering attitude toward mining and reclamation. In an industry whose legacy is scarred land and tainted waters, Klco predicts the miner of the future will have to know plants as well as he knows rocks.

New legislation and public pressure demand better reclamation than in the past, according to Klco. But improved reclamation is harder to achieve, because ever-diminishing mineral resources require mining techniques harder on the land than those used in the era of easily accessible mineral deposits.

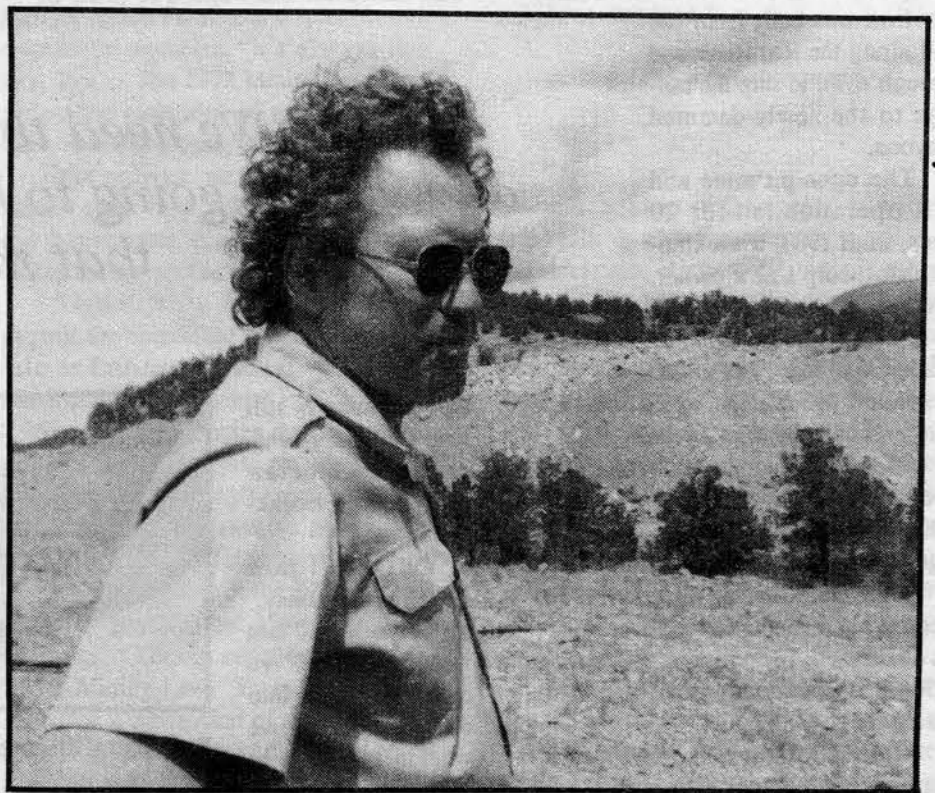
Consequently, miners of the future will need to integrate reclamation with mining, according to Klco. Companies that work at continuously rejuvenating the land even as they mine, rather than waiting until the very end of operations, when cash flow is weak, will be most profitable, he says.

On the surface of Domtar's 100-acre site, miners drill, blast and haul gypsum away. Some 170,000 tons of ore are mined each year, mostly for wall board. The mine has been owned since 1987 by Domtar, a Canadian company, but has operated continuously for over 70 years.

On a tour of the area, Klco seems more interested in reclamation than mining. "Look at that crown vetch," he says, pointing to a small green leafy plant. "It's amazing. It's almost a dominant species." Klco prizes crown vetch for its nitrogen-fixing properties.

He points to other plants struggling to grow on the reclaimed area. "That's Russian Thistle and believe it or not it's a good sign. It's the first stage of succession of native grasses."

Judging from sites planted earlier, Klco's methods work. Though you can tell the area was once mined, sections



Ken Klco: A miner who enjoys restoration

seeded in the early- and mid-1980s sprout grasses and shrubs. They look a lot better than the area we're walking over.

Reclaiming a gypsum mine isn't easy. The biggest obstacles are the animals that would most benefit from trees: deer.

Klco points to Ponderosa, juniper and spruce seedlings that deer have stripped of bark and branches. "Trying to

outfox deer is the worst problem," Klco says.

He first fenced them out with chicken wire, only to see branches tangle around the wire as they grew. Then he sprayed the seedlings with a non-toxic but very bitter agent. That failed, too.

"That stuff was so bitter that I kept washing my face all day after using it. But the very night we sprayed, the deer came in and ate every seedling."



Klco's latest method, stiff wire mesh surrounding the seedlings, appears to work. It keeps the deer out and doesn't tangle with the branches. In several years, the reclaimed site should benefit wildlife, he adds.

They will provide four times the forage of surrounding areas, which Klco says have been overgrazed.

"It's the responsibility of all mining companies to increase (wildlife) habitat faster than they destroy it."

Sudden downpours — up to a half inch of rain in 20 minutes — also forced Klco to improvise. In the past, these torrents repeatedly washed his grass seed off the hillside. Klco's solution: "rilling." With a bulldozer blade he cut shallow terraces, or "rills," along the contour of the slope, and the rills keep the seed in place during heavy showers.

Klco says he likes the challenge of reclamation. "There's something titillating to work in a process that hasn't been figured out yet," he says.

The Colorado Division of Mined Land Reclamation's Carl Mount praises Klco for "getting things to grow in conditions where normally people wouldn't even bother trying." Mount says Klco has virtually no top soil and little water to work with. The area gets an average of 10 inches precipitation per year. In fact, says Mount, Klco reclaims areas he's not legally required to.

Mined-land reclamation isn't done by companies to be good guys, however. New laws and new priorities have forced the issue. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA), passed in 1980, makes property owners liable for

cleanup of pollution on their land for as long as they own the property. If the land is sold, the liability is passed on to the new owner.

Equally important, good reclamation gives a mining company a good reputation with federal agencies that issue permits. Because some operations may require 30 or more permits, Klco says that relationship is crucial.

"A bad reputation guarantees resistance every millimeter of the way," he says. "If you're a schmuck from past projects, they'll hold your feet against the fire."

In the past few years, communities in the West have begun to weigh carefully aesthetic impacts of mining, he adds, citing the closure of the Queen's Canyon quarry near Colorado Springs. After residents there complained of the ugliness of

the limestone mine, Castle Concrete shut the operation. The firm's reclamation consultant, Mark Hefner, says that while part of the impetus to close the mine came from economic considerations, the public outcry also played heavily in the decision.

In spite of these new pressures, some companies still try to substitute public relations for reclamation. Klco says he has seen glossy brochures and slick slide shows announcing a firm's extensive rejuvenation of mined land, when in fact the company did little or poor reclamation. He says, "Nine out of 10 times it's all talk and no substance."

## The law in action

# Mining industry battles bill to protect the California desert

by Mark Harvey

**A** bitter fight over the future of southern California's desert features two traditional foes in the ring.

Conservationists backed by California Democrats Sen. Alan Cranston and Rep. Mel Levine want to protect nearly eight million acres in California's desert as a series of national parks and wilderness. They say the fragile land will be destroyed unless Congress passes a desert protection act.

But the mining industry, led by the American Mining Congress, says environmentalists are jumping claims that mining firms have had to the land for more than a century. Keith Knoblock, vice president of the AMC, says stopping the legislation is a "corollary" to preserving the 1872 Mining Law, which is at the top of the group's agenda.

The California desert protection bill, introduced by Cranston and Levine, proposes adding 1.3 million acres to Death Valley National Monument, adding 235,000 acres to Joshua Tree National Monument and upgrading the two monuments to national park status. It would establish a 1.5 million-acre national park in the Mojave desert and convert 4.5 million acres of BLM desert land to wilderness.

Mining advocates say the bill would close off valuable mineral reserves to further exploration. According to Margaret Allender of the California Mining Association, the area's gypsum, iron, limestone and other minerals are important for schools, houses and freeways. She calls the desert one of the richest mineral areas in the country and says, "The legislation is a total close-the-door-on-opportunity."

The desert land is already claimed anyway, Allender adds. According to BLM estimates, the site for the Mojave

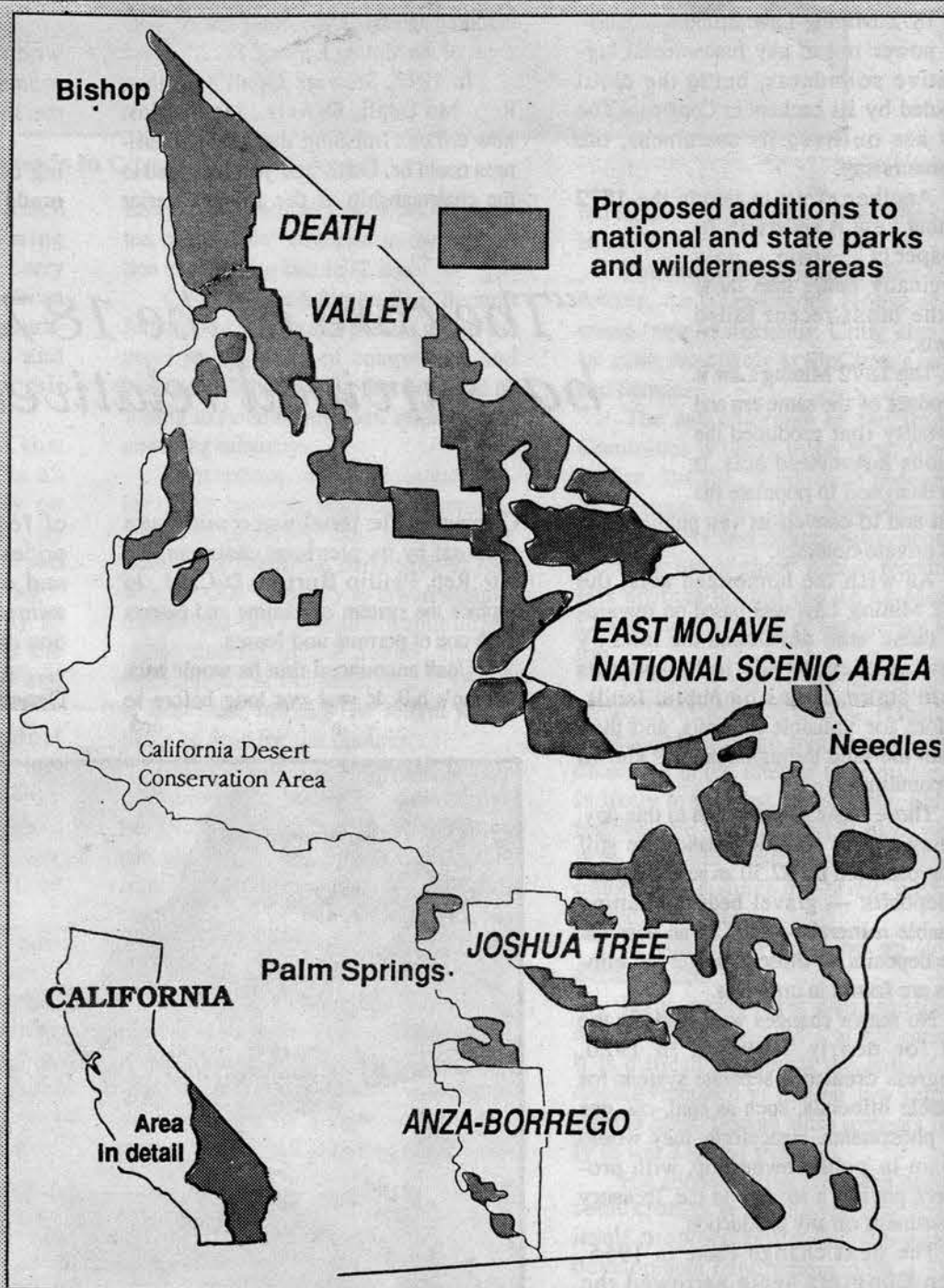
National Park has 10,000 unpatented mine and mill claims, and the 235,000 acres to be added to the Joshua Tree National Monument have 754 mining claims. In a 1989 internal memo, the Park Service recommended eliminating 50 percent of the Joshua Tree expansion to accommodate mining claims, most of which are related to silver or gold.

The presence of some 10,000 claims slated for addition to Death Valley National Monument may mean conservationists get less than the 1.25 million acres proposed in the bill. In the same internal memo, the Park Service recommended deleting a section between Last Chance Canyon and the Nevada state line because of the number of claims in the area.

But according to Cranston aide Kathy Lacey, development, including mining, has forced the withdrawal of only about 100,000 acres from the original proposal introduced in 1986.

Even as the bill sits in Congress, miners stake claims in the desert. Jim Dodson directs the California Desert Protection League, a consortium of several groups opposing the legislation. He says mining companies have been "making claims like mad to beat the protection act."

Nobby Reidy of The Wilderness Society says the mining industry is "ferociously" fighting the bill because they don't want any restrictions on their mining. But he believes restrictions are badly needed. He says the current status of the desert tortoise as a threatened species is evidence that today's management isn't working. "It's like a canary in a coal mine, saying we have a sick ecosystem."



Proponents of the bill say national park and wilderness designation will give land managers better tools to regulate mining and other impacts. Naomi Mezey, legislative aide to Sen. Cranston, says, "They (the mining industry) are not interested in preservation at all, as far as I can tell."

According to Allender, the mining industry already compromised with environmentalists in developing the current California Desert Plan. The plan designated 25 million acres of the California desert as a conservation area and has been in use since the early 1980s. New legislation "is a show of bad faith," she says.

Other opponents of the bill say the BLM manages the land well. The BLM's own Gary Hilliard says the agency can regulate the area to allow some mining while still protecting wildland values. Mining uses "a surprisingly small area," he says.

The Wilderness Society's Reidy disagrees. Mining sites may be small, he

says, but their impact extends well beyond claim boundaries through roads, blowing dust and groundwater contamination.

Supporters of the bill say withdrawing the area from mining will not drastically affect California's industry or the availability of minerals. The Desert Protective Council says that of the \$1.1 billion of nonfuel minerals produced in the California desert in 1986, most of the important producers — including a \$400 million per year borate mine and a rare earth minerals mine — have been excluded from the legislation.

Nevertheless, the mining industry seems determined to kill the bill. The fight has gone beyond economics, says American Mining Congress' Knoblock; it now has symbolic value. Knoblock says stopping the desert protection act is one of their highest priorities: "The act is a forerunner to what will go on in the rest of the state. It will set a precedent."



24-High Country News — June 4, 1990

# Can this law ever be reformed?

by Andrew Melnykovych

**W**ASHINGTON, D.C. — In the last 118 years, the U.S. Constitution has been amended 11 times. The 1872 Mining Law, in contrast, has undergone only four major revisions, all of which have left the central elements of the law essentially unchanged.

Supporters of the 1872 Mining Law contend that its immutability is a testament to the wisdom of its original authors. The law has worked well for more than a century, and will continue to do so, they say.

Those who call for an overhaul of the 1872 Mining Law attribute its staying power not to any fundamental legislative soundness, but to the clout wielded by its backers in Congress. The law has outlived its usefulness, the reformers say.

Another effort to reform the 1872 Mining Law is underway. Its prospects seem only marginally better than those of the most recent failed efforts.

The 1872 Mining Law is a product of the same era and mentality that produced the various homestead acts. It was designed to populate the West and to convert its vast public lands into private holdings.

As with the homestead acts, the 1872 Mining Law was based on rewarding those who developed the land by allowing them to buy it. Prospectors could stake claims on public lands, explore for valuable minerals, and then obtain the land through a process known as "patenting."

Those basic steps remain to this day. Mining claims on federal lands are still being patented for \$2.50 an acre for placer deposits — gravel beds containing valuable minerals — and \$5 an acre for lode deposits — those in which the minerals are found in ore veins.

No major changes were made in the law for nearly 50 years. In 1920, Congress created a separate system for leasable minerals, such as coal, oil, gas and phosphates. Henceforth, they would remain in public ownership, with producers paying a royalty to the Treasury Department on any production.

The next change came in 1955, when Congress again narrowed the scope of the mining law to exclude building materials such as sand, gravel and stone. As with the 1920 revision, the 1955 law "grandfathered" pre-existing claims for the newly excluded minerals.

In 1955, Congress, faced with rising use of public lands for a multiplicity of purposes, also attempted to insure that the 1872 law would benefit only miners. The revision prevented the use of claims for anything other than mining, and guaranteed the public access to claimed lands.

Finally, in 1976, as part of the Federal Land Policy and Management Act of 1976, mining was brought into the Bureau of Land Management's planning process. FLPMA also requires the recording of claims on an annual basis.

Over the years, other laws have changed the way the mining industry does business. National parks, wilderness areas and wildlife refuges have been put off-limits. Mines must comply with federal standards regarding air and water pollution, and the handling of some hazardous wastes.

But the core of the 1872 Mining Law has survived relatively unscathed. It is still possible to stake a claim for a hard-rock mineral such as gold, silver, copper or uranium, and to obtain the land for no more than \$5 an acre.

*He "felt the heat"*

**C**alls for a sweeping overhaul of the 1872 Mining Law have been raised for decades. In 1969, as he was ending eight years as Interior Secretary, Stewart Udall said he had "come to the conclusion that the most important piece of unfinished business on the nation's resource agenda is the complete replacement of the Mining Law of 1872."

In 1977, Stewart Udall's brother, Rep. Mo Udall, D-Ariz., learned just how difficult finishing that piece of business could be. Udall had just ascended to the chairmanship of the House Interior

Committee. The panel was considering a proposal by its previous chairman, the late Rep. Phillip Burton, D-Calif., to replace the system of claims and patents with one of permits and leases.

Udall announced that he would back Burton's bill. It was not long before he

was facing a recall campaign mounted by mining interests in his Tucson-area district. Saying that he had "felt the heat and seen the light," Udall announced that he would no longer support efforts to change the 1872 Mining Law.

Burton's bill died. Udall survived the recall attempt, and remains chairman of the House Interior Committee.

Ten years went by before Congress addressed the mining law again. Rep. Nick Joe Rahall, D-W.Va., chairman of the House mining subcommittee, held oversight hearings in 1987. The hearings produced demands for reform from environmentalists and calls for preservation of the status quo from the mining industry.

Little else happened until last year, when several factors began to create momentum for another effort to reform the 1872 law.

Continued publicity over the patenting of pre-1920 oil shale claims in Colorado focused new attention on the sale

of federal land at bargain-basement prices. The new gold rush in Nevada and other western states heightened awareness of the relative lack of regulation of the mining industry.

And a March 1989 report by the General Accounting Office, the investigative branch of Congress, indicated that the 1872 Mining Law was leading to the sale of federal land that had little mineral value. But the land was worth millions once developed for vacation homes or suburban subdivisions.

The renewed interest in mining law reform has produced two distinct legislative approaches. Sen. Dale Bumpers, D-Ark., a longtime critic of federal mineral policy is proposing a top-to-bottom overhaul of the 1872 Mining Law. Rahall has introduced a less ambitious reform bill.

Bumpers' bill would retain the system of filing claims, but would change nearly every subsequent step. The current system requiring \$100 worth of "development" work each year would be replaced by escalating development requirements or holding fees, as well as land rental fees.

Claimholders would have to file for a patent within 10 years or lose the claim. The patents would apply to hard-rock minerals only, and surface ownership would not transfer. Patents would revert to the government if no production occurs within 15 years or once production is completed.

An 8 percent royalty would be imposed on production, with states receiving half the income. New reclamation and bonding requirements would be imposed, and mining would have to mesh with federal land management plans.

Rahall's bill incorporates some key elements of the earlier Bumpers proposal. It does away with patenting of public lands, and sets escalating development requirements or holding fees over the initial 10-year term of a claim. Rahall also includes a rental fee.

But Rahall has rejected as impractical the idea of imposing a royalty on hard-rock mineral production. His environmental protection provisions are also less stringent than those proposed by Bumpers.

## Stronger medicine urged

**C**onservationists favor the Bumpers approach, though they would like to see it toughened. Phil Hocker, president of the Mineral Policy Center, is especially outspoken in his criticism of Rahall. Hocker founded the center with a central goal of getting rid of the 1872 Mining Law. Stewart Udall serves as the organization's chairman.

Hocker said Rahall's "own plan ... relative to Bumpers, seems to start in second place and pedal backwards as fast as he can."

Conservationists have four basic objectives in pressing for mining reform, Hocker said. They are to bring mining into the land use planning process, to give the public a fair return on development of its resources, to end patenting of federal lands, and to insure reclamation.

Both the Rahall and Bumpers bills pass the test on an end to patenting, Hocker said. And they are comparable in setting reclamation requirements that fall far short of "cradle-to-grave" mining plans required of the coal industry, he said.

"Both include some warm and furry language about planning, but neither one really bites the bullet on the 'd' word, which is discretion," Hocker said. "The federal agencies must have discretion to

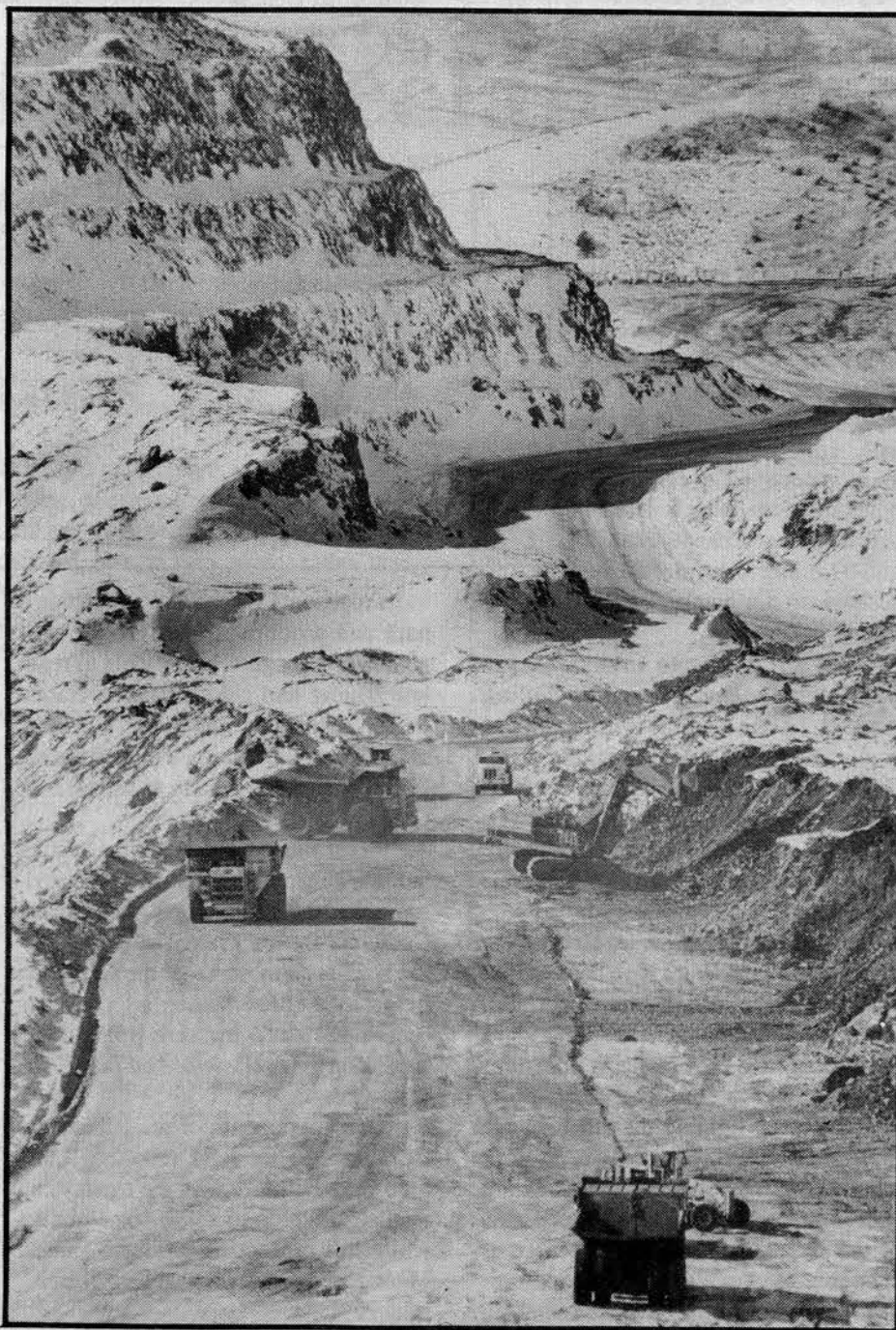
*"The core of the 1872 Mining Law has survived relatively unscathed."*

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Gold mine in Idaho

Stuart Wong/Idaho Statesman



approve, modify or deny" mining plans.

"The industry is afraid it will mean the end of metallic civilization if we give the agencies that power," he said. "That's probably [untrue] for the industry as a whole, but probably [is true] for some of the anti-social Neanderthals who populate the industry today. They'll be replaced by managers who know how to deal with local communities."

Hocker said Rahall's rental rates are "absurdly low," a sin "compounded by the total absence of royalties. Congress won't pass a bill that says if you find a valuable mineral, you get to take it away for free."

But Congress is unlikely to pass any mining reform law anytime soon, Hocker conceded. As with his efforts to change the federal oil and gas leasing system, Bumpers sees mining reform as an issue "where you have to persist in your own hard-nosed way for a long, long time," Hocker said.

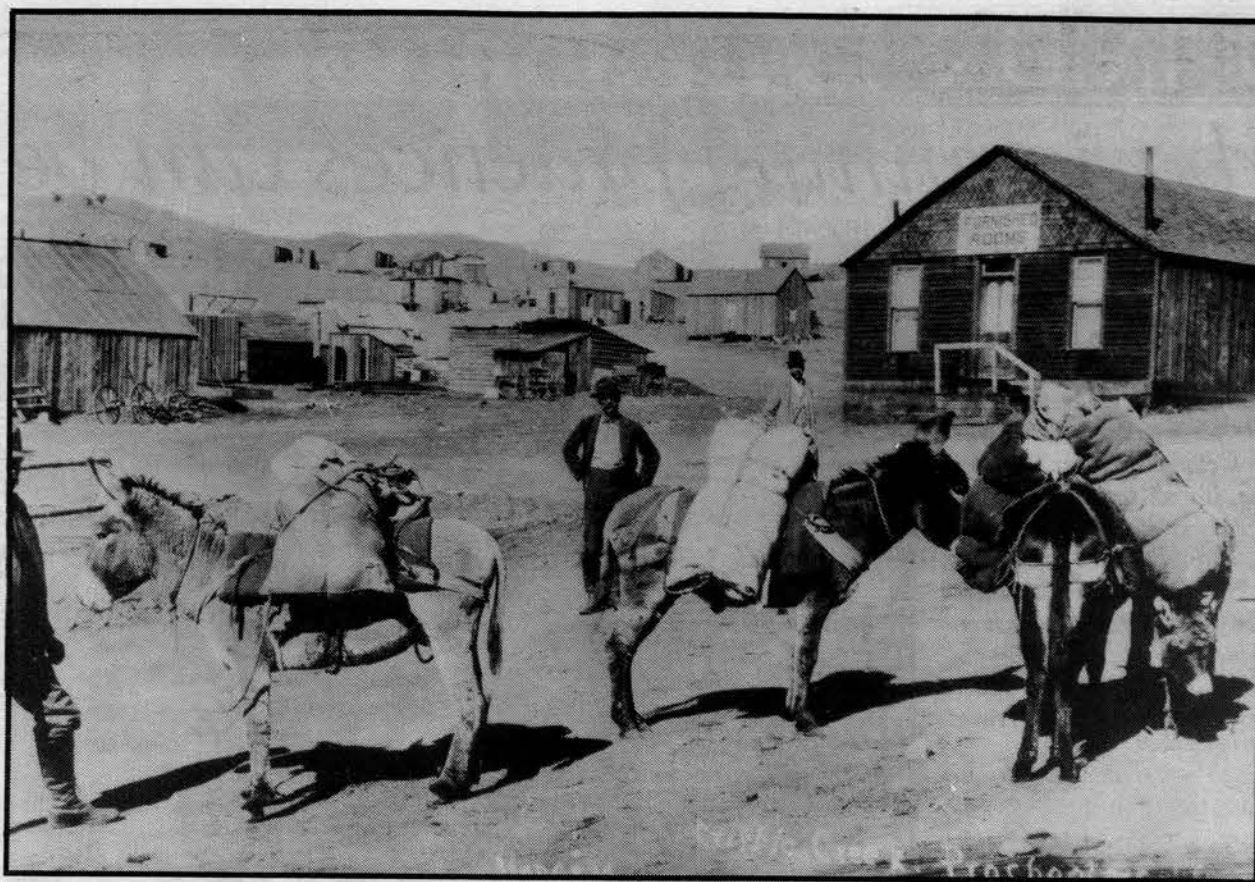
"Rahall started out in a very poor way," he said. "It raises the question as to whether Nick is going to continue to be a leader in this movement in the House."

Rahall's approach comes "dangerously close...to simply trying to legislate the headlines out of the mining law," Hocker said. "You get rid of patents...call it mining law reform, and walk away."

Even that would appear to be too much for the mining industry to accept. The American Mining Congress has mounted an all-out assault on any efforts to make even modest changes in the law, claiming that even minor revisions could harm the industry, while royalties would ruin it.

The June 1989 *AMC Journal* was headlined "Calm Before the Storm: Battle Lines Drawn Over 1872 Mining Law." The issue contained a point-by-point rebuttal of the GAO report and included anti-reform testimonials with headlines such as "The Best Damn Law Ever Written."

AMC Vice President Keith Knoblock writes in that issue that the industry views "efforts to open the mining law to amendment as politically dangerous. Because legislation is not created in a vacuum, the industry feels that once changes in the mining law are considered seriously, suggestions by the act's opponents will be considered as well. Because of this the industry has opposed solidly such moves."



Prospectors pack up their goods in Cripple Creek, Colorado

The same stonewalling approach has been taken by the 1872 Mining Law's defenders in Congress. Rep. Larry Craig of Idaho, the ranking Republican on Rahall's subcommittee, used remarkably similar reasoning when he and Rahall addressed the AMC earlier this year.

"It is important to recognize that once you open up a law, there is an opportunity for a feeding frenzy on Capitol Hill by some of those who, by their very nature, prefer not to see you on the public land doing anything," Craig said. "Remember, the ability to contain it and the ability to control the process largely spells out what the end product will be."

Emergence of the end product appears unlikely to occur in the immediate future. Bumpers himself has acknowledged that reforming the 1872 Mining Law could take as long or longer than the 10 years it took him to force through oil and gas leasing reform.

In the Senate, the major impediments will be, as in past years, conservative Western Republicans. Their leader, Sen. James McClure of Idaho, is retiring at the end of the year, but Sens. Malcolm Wallop of Wyoming and Pete Domenici of New Mexico, his possible successors as ranking Republican on the Senate

Energy and Natural Resources Committee, are equally steadfast in the opposition to changing the 1872 law.

Committee chairman Sen. Bennett Johnston of Louisiana prefers to run the panel on the basis of compromise and consensus. It is unlikely that he would be willing to force mining law reform on an unwilling minority.

Furthermore, with Democrats holding only a one-vote edge on the committee, it is possible that one or more Democrats could be convinced to join with the GOP minority to thwart assaults on the old law. Should Republicans regain control of the Senate, and the chairmanship of the panel pass to Wallop or Domenici, mining law reform would likely be dead for the duration.

The outlook for reform is a little more promising in the House. Although Mo Udall in 1977 "switched from being part of the solution to part of the problem," as Hocker puts it, Udall has announced that he will retire in 1993.

Rahall has announced that no action will be taken on his bill until 1991, when a new Congress convenes. But mining reform may prove to be the least of Rahall's worries in the 102nd Congress. West Virginia is likely to lose a seat in the next round of congressional redistricting, and Rahall may find himself pit-

ted against a fellow incumbent Democrat in 1992.

Assuming Rahall returns after Udall retires, the prospects for House action could improve markedly. Craig also will be gone, most likely to McClure's seat in the Senate.

The new chairman of the Interior Committee is likely to be Rep. George Miller, D-Calif., a political protege of Phil Burton. Miller is an outspoken critic of irrigators and others who prosper from the use of cheap public resources. His attitude toward the 1872 Mining Law is much like that of his mentor Burton.

Miller is likely to press for a stronger measure than the one Rahall has produced. Given the tradition of strong chairmen in the Interior Committee, he is likely to get what he asks for. Should the measure reach the full House, where both rural-area Westerners and Republicans are a distinct minority, passage would seem likely.

It would then again be up to the Senate to act.

With meaningful congressional action unlikely until 1993, at the earliest, it is difficult to forecast the role of the executive branch in mining law reform. At this point, George Bush appears likely to win a second term.

His administration has been open to some changes in the mining law, having itself proposed replacing the annual development requirement with a \$100 holding fee, an idea that Rahall dismissed as dead on arrival. But Interior Secretary Manuel Lujan, whose understanding of the mining law has been called into question as the result of several embarrassing comments he has made about it, has not endorsed any major changes.

Should the rumored replacement of Lujan by McClure occur next year, it is likely that the Bush administration would take a strong position against even tinkering with the 1872 Mining Law.

It is not clear that a Democratic administration would improve the prospects for change. The last failed effort came early in Jimmy Carter's term, with the Democrats in firm command of Congress.

It may well be that we will see another amendment or two to the Constitution before there is any change in the remarkably resilient 1872 Mining Law.



Abandoned mine site in Colorado

Denver Public Library Western History Department

Christopher McLeod



# OPINION

## Barbaric mining practices can be civilized

by Bruce Farling

*Whoever has never been out for gold doesn't know what's really going on at the spot. I know for a fact it's easier to leave a gambling table when you're winning than to leave a rich claim after you've made your good cut. It's all spread out before you like the treasures of that Arabian mug Aladdin. It's all yours for the taking. No, sir, you can't leave it not even with a wire in your fist that your old mother back home is dying all alone.*

— from *The Treasure of the Sierra Madre* by B. Traven

**T**hey're back. Hard-rock miners are again combing the mountains and deserts of the West for fortunes. And though somewhat more orderly and clean-shaven than their lemming-like predecessors of the gold rushes, they are ripping out valuable ores much the way they did in old Butte, Leadville, the Sierra foothills and Idaho's Coeur d'Alene — by digging big holes and not filling them back in.

Aided by new equipment and technologies such as cyanide heap-leaching, which allows miners to extract minuscule amounts of gold from low-grade ores, today's mining companies, big and small, still threaten surface and ground water and leave unreclaimed messes.

This hard-rock mining revival has alarmed environmentalists, many of whom are concentrating on a single fix to rid the West of damaging mining. The quick fix is prodding Congress to reform the nation's decrepit 1872 Mining Law.

Unfortunately, reform of the federal mining law is probably years away and won't affect today's mining claims, mines and exploration projects. In fact, complete reform may prove as elusive as the treasures of the Lost Dutchman mine. The mining lobby has defeated all previous attempts by environmentalists for needed reform, and it's ready for another scrap. But there is another way to protect water, wildlife and air from mining: by ensuring that environmental laws now on the books are applied to mines. In many cases they are not.

The Forest Service and Bureau of Land Management in the last 15 years have assumed regulation of surface disturbances from mining on federal lands. They can require operating plans and reclamation bonds. They can analyze potential impacts of a mine in environmental studies. They can alter mining plans.

But if you look at their files, you'll find that many mining operations, especially the small ones, have little environmental documentation or are inspected only infrequently. You'll find many operations are under-bonded or not bonded, which encourages miners to rip and run. Because both agencies allocate little money to mining regulation, and because the public is often not told about mining that occurs in remote areas, miners continue to beat up streams and forests.

Environmentalists should insist that agencies tell the public about all mining activities, not just the big, highly publicized ones, and that all mine proposals be closely scrutinized.

Although the 1872 Mining Law says you can mine it if you find it, it doesn't say clean water laws can be violated. But they frequently are. The reason: Regulatory agencies are often too understaffed to help develop good mine plans or to inspect mines. Or they



Old mining debris outside Yellowstone National Park

don't care.

In recent years, 20 of the 30 known cyanide heap-leach mines in Montana had significant spills. Ground and surface water contamination might have been prevented with better pre-mining scrutiny and more regular inspections.

A recent study of placer operations on a Montana national forest found that many operators violated

*"There is no reason the public has to accept one more acre of unreclaimed mess on federal lands, or for that matter, on state and private tracts."*

state and federal stream protection laws. The major reason there were spills and violations is that agencies were not watching the miners.

The public should demand that state and federal agencies give a higher priority to mining regulation. Lawmakers should be told to tighten state regulations and fund mine monitoring so that agencies have the field people necessary to do the job. Both suggestions are easier to accomplish than changing the 1872 law.

There is no reason the public has to accept one more acre of unreclaimed mess on federal lands, or for that matter, on state and private tracts. But each year new open pits, waste piles and trashed streams are added to the more than 424,000-acre backlog of unreclaimed federal lands in the West. The Forest Service and BLM can mandate high-quality reclamation that replicates pre-mining conditions or those found

on nearby undisturbed lands. But that seldom happens. Some states have good reclamation regulations. Idaho's, for example, could theoretically prevent a mine from being approved even on federal lands if the miner can't demonstrate beforehand he can successfully reclaim. Reclamation can be as good as the public wants it to be, the 1872 Mining Law notwithstanding.

Reclamation will also be more successful if a mine has to post a bond equivalent to reclamation costs. But right now, many state and federal bonds are inadequate because they are based on reclamation standards that don't do the job, or on unrealistically low cost-estimates or sympathy towards mines with skinny wallets.

Reclamation bonding would help weed out under-capitalized operators, whose corner-cutting often results in severe environmental damage. Bonding requirements can be strengthened in many states and we don't need the 1872 Mining Law to do it.

Mining could be more environmentally responsible if the public urged agencies to better apply current legal tools. It will occur if the public demands that the environmental costs of mining be handed back to the miners. Superfund sites at Butte, Mont., Anaconda, Mont., Leadville, Colo., and Kellogg, Idaho, as well as thousands of acres of devastated public lands and hundreds of miles of trashed western streams are ample evidence that the public has for too long absorbed the mining industry's costs.

Does the 1872 Mining Law have to be reformed? Most definitely. Provisions allowing public minerals to be given away for free, or public land to be deeded to a miner for no more than \$5 an acre should be eliminated. Requirements that miners do some development on a claim each year should also be changed because they are difficult to enforce and encourage unnecessary environmental damage. These changes are possible, and industry might not fight them too vigorously. However, miners will continue to be rabid defenders of the 1872 law's guarantee that miners can independently

prospect and locate claims. And as long as there is one ounce of silver or gold left on public land, those who challenge mining's primacy over other uses of federal land will be treated like, well, claimjumpers.

Miners want to look for the minerals themselves and they won't accept another way to do it, such as we do with timber on public lands when agencies do the "discovering." They might be right. The self-discovery system may be best. However, the public and its agencies must be able to decide through planning whether mining in some places

should be secondary to other resources such as recreation, wildlife or timber management. The elimination of mining's supremacy on public lands should be the number one priority of mining law reform. But the industry won't let it occur without a war. It wants to mine wherever it finds minerals. Which is why real mining law reform won't happen easily and why environmentalists concerned with today's mining problems should focus on improving the tools in today's toolbox.

Bruce Farling is a writer and deputy director of the Clark Fork Coalition in Missoula, Montana.



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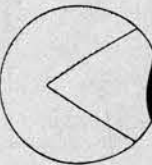
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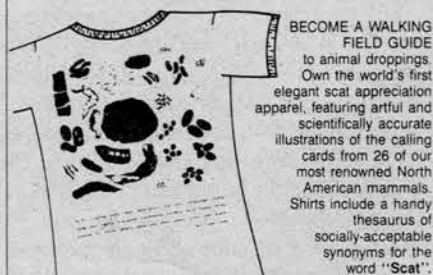
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28-High Country News — June 4, 1990

# BULLETIN BOARD

## AN ENVIRONMENTAL DIRECTORY

The first edition of the Colorado Environmental Directory is hot off the press. Assembled by the environmental health committee of the Colorado Environmental Coalition, the 28-page guide lists citizen groups and coalitions, public agencies and an index describing the focus of each group. Issues range from air pollution, hazardous waste and pesticides to wilderness, timber, wildlife and historical and cultural concerns. The directory, which also lists addresses, key people, number of paid staff and purpose of each group, sells for \$5 from the Colorado Environmental Coalition, 777 Grant St., Suite 606, Denver, CO 80203.



## LAND-PROTECTION PARTNERSHIP

Two of the country's most powerful land managers, The Nature Conservancy and the Bureau of Land Management, have agreed to work together to protect the environment. Nature Conservancy president John Sawhill and BLM director Cy Jamison signed a memorandum of understanding in March to identify and defend threatened lands and species. Sawhill says he hopes the relationship "will save the West's imperiled plants and animals." TNC and the BLM have already begun their first joint venture, the purchase of part of the Ryan Ranch in Colorado to provide public access to the Powderhorn Wilderness Study Area and Lake Fork of the Gunnison River. The BLM manages more than 270 million acres, mostly in the West, and TNC, with some 550,000 members, manages more than five million acres in all 50 states and abroad.



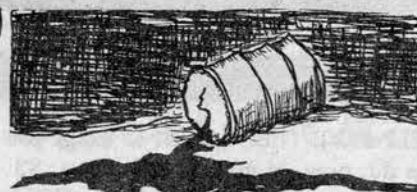
## ALPINE WILDFLOWERS

The myriad of plant life found on the windswept slopes above timberline is outlined in a new wildflower guide, *Alpine Wildflowers of the Rocky Mountains*, by Joseph E. Duft and Robert K. Moseley. Detailing mountain flowers from the Canadian Rockies to northern New Mexico, the guide contains botanically accurate descriptions of 300 flowering plants, timberline trees and ferns. Each plant is followed by photographs of flowers, organized by color. Joseph Duft was a forester with the Bureau of Land Management for 25 years; Robert Moseley has been a plant ecologist with the Idaho Department of Fish and Game, the Forest Service, the University of Idaho and The Nature Conservancy.

Mountain Press Publishing Company, 2016 Strand Ave., Missoula, MT 59806. Paper \$9.95. 206 pages, color photographs, bibliography.

## DIGRESSIONS ON WATER

Some experts on the intricacies of Western water use will be at the University of Colorado in Boulder June 6-8 to lead conference sessions on the changing demands for the West's water. The conference, "Moving the West's Water to New Uses: Winners and Losers," includes Lawrence J. MacDonnell, director of the University of Colorado Law School's Natural Resources Law Center; Robert Wigington, an attorney with The Nature Conservancy; Peter J. Kirsch, an attorney with Cutler and Stanfield; and Mark Squillace, a professor at the University of Wyoming College of Law. For more information, call coordinator Kathy Taylor at 303/492-1288.

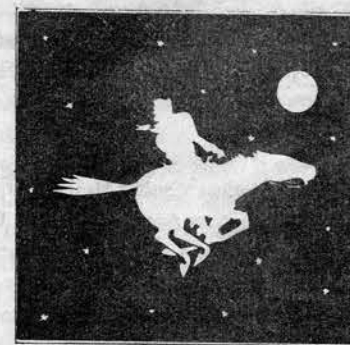


## WE ARE THE POLLUTERS

The Exxon Valdez oil spill in Alaska last spring pales in comparison to the amount of pollution caused by the federal government. That is the conclusion of the National Governors' Association and the National Association of Attorneys General Task Force in a joint report on federal facilities. Each year, the report says, the Pentagon generates 750,000 tons of hazardous waste — more than the combined output of the five largest U.S. chemical companies. The Department of Energy lists 3,700 contaminated sites needing attention, including the Idaho National Engineering Laboratory, and the military reports 8,130 active "problem sites" as well as 7,118 former sites that are expected to undergo further investigation. Called *From Crisis to Commitment: Environmental Clean-up and Compliance at Federal Facilities*, the 22-page report was presented to congressional leaders in February by Idaho Gov. Cecil Andrus and Washington state Attorney General Ken Eikenberry. The Environmental Protection Agency came under attack in the report for not having "muscle" with other federal agencies. The Justice Department won't allow it to fine or sue them, the report says. Andrus said President Bush could change the policy with a telephone call: "If you make a mess, you clean it up. We're saying that goes for the federal government as well as private citizens." For a copy of the report, call Gov. Cecil Andrus' office at 208/334-2100.

## 100 YEARS OF DEGRADATION

As Wyoming celebrates its 100th birthday this year, two environmental groups have concluded that the state's hazardous waste legacy is nothing to brag about. In *100 Years of Degradation: The Toxic Trail*, a four-page brochure published jointly by the Powder River Basin Resource Council and the Wyoming Pollution Posse, the costs of decades of corporate damage are added up. Companies have left behind 554 leaking underground storage tanks, 110 sites contaminated by hazardous wastes and three sites designated for cleanup under the EPA's Superfund. Wyoming's citizens must demand more from corporations and local and state governments in defending the state's natural resources, the two groups conclude. The Pollution Posse is a citizens' watch-dog group; the Powder River Basin Resource Council is a grass-roots organization that promotes better stewardship of Wyoming's natural resources. For more information, write to the Powder River Basin Resource Council, PO Box 1178, Douglas, WY 82633.



## WANTED: FREEDOM RIDERS

Borrowing from the civil rights movement, Earth First! is calling for freedom riders to descend upon northern California to help save the remaining redwood forests from logging. Proclaiming the event a "Mississippi Summer in the California Redwoods," organizers are asking university students, retirees and environmental activists to participate. Individuals will help blockade logging roads, climb giant redwoods and peacefully picket logging corporations. Everyone will be required to take a non-violent training class and adhere to peaceful confrontation. The summer-long event is targeted at timber corporations and not individual loggers, organizers say. Participants should bring clothes to suit weather in the 45-100 degree range, hiking boots, sleeping bags, money for food, a tent if available, a canteen, day pack, dark clothes and a non-violent attitude. For more information, contact Earth First!, Redwood Summer, PO Box 34, Garberville, CA 95440.

## ROADS GET THE MONEY

Although the U.S. Forest Service says it adheres to multiple-use precepts in managing the public's land, the National Trails Coalition says trails haven't gotten a fair shake for years. A stark example of bias against trails can be found in the agency's 1991 fiscal year budget, says the coalition. The Forest Service proposes to spend \$272 million for new roads and maintenance but only \$39 million for trail maintenance and construction. To remedy the imbalance, the coalition of national groups, including the American Hiking Society, National Audubon Society, the National Wildlife Federation, Sierra Club and The Wilderness Society, has published an alternative budget for the Forest Service. Called *Funding the Future*, the 16-page proposal recommends spending more money for trail maintenance and reconstruction as well as for fish and wildlife management, recreation management wilderness management and research, and Park Service trail programs. The coalition says only 17 percent of the Forest Service budget is allocated towards these areas while 70 percent is slated for commodity production. For a copy of the proposal, write Jay Watson, The Wilderness Society, 1400 Eye St. NW, Washington, DC 20005, or call 202/842-3400.

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