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MONTANA MINING

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TABLE OF CONTENTS

Introduction 3

Montana Stories 3

Other resources 3

Links 3

No New Mines 4

Montana Perspectives 7

Montana v Canada re Coal 10

Seven Up Pete 12

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INTRODUCTION

I confess to a fascination with Montana. Try driving the 550 miles of Interstate 90 across the state and you better have a fascination lest you go crazy in the vast spaces. Here are some pieces I have written on mining in Montana where there are as many perspectives as people (not too many of those actually) on mining and environment.

MONTANA STORIES

Clearly I am not the only one who enjoys Montana. Michele Murray in a masterful piece presents us with a story of fly fishing in the acidic waters of a Montana tailings impoundment – now that is Montana mining in its essence.

OTHER RESOURCES

In the InfoMine library there are over forty technical papers on Montana mining-related topics. They range from the Zortman and Landusky mine to the grand pit in Butte, both of which help define the nature of and attitude towards mining in Montana.

LINKS

The Montana Mining Association notes that there are 3,800 people in mining employment in the state at 254 mines, earning an average of $55,800 a year and prviding the state a total combined direct and indirect gain of nearly $2 billion.

For kid there is Montanakids.com and some mining-related games and bright text to while away a few idle minutes.

Or you can take a e-tour through the World Museum of Mining in Butte – but beware the site is one of those irritating places that you cannot leave without almost turning your computer off – so maybe on second thoughts avoid the site.

Finally Western Mining History has neat pictures on Montana mining towns.

NO NEW MINES

The idea started in Montana and now is spreading across the west: no new mining unless you can prove up front that you won't need perpetual water treatment when you shut down. The same folk who stopped mines that use cyanide in Montana are behind this new move.

The Water Environment Federation (WEF) reports that Senator John Andreason, Republican from Boise, Idaho is pushing a bill to ban the opening of new mines that require long-term water treatment. Andreason has an alternative bill that would require companies to post a bond to cover the costs if Idaho is left with a water problem at the end of mining. The Idaho Mining Association opposes an outright ban. The Senate Resources and Environment Committee approved "printing" both bills last week.

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Background from the WEF report:

A study of 183 mines in 14 states showed that in all of them company officials predicted they would comply with water quality regulations, but 76 percent violated water quality standards. The study was conducted by Kuipers and Associates of Butte, Mont. and Buka Environment of Boulder, Colo., for the environmental group Earthworks. The study undercut claims by mining companies that their new mines are clean.

In July 2006, Idaho Department of Environmental Quality officials criticized Atlanta Gold Corp. for substandard construction of lined ponds to treat arsenic leaking from the old mine. The Forest Service halted filling the second of the two settling ponds. The Forest Service holds only $11,000 in bonds from Atlanta Gold to cover the costs of perpetual treatment of the water. Atlanta Gold hopes open a mine on a tributary of the Boise River 60 miles upstream from Boise. Opponents warn that its operations could pollute the Boise River, a source of drinking water, irrigation and recreation. The company's environmental review is on hold as it attempts to raise more money.

In late 2005, the Montana Environmental Quality Council proposed this requirement for a mine reclamation plan:

The reclamation plan must conclusively demonstrate that, after .. [two years] … no treatment of surface or ground water for carcinogens or

toxins will be required to meet water quality standard at the point of discharge.

In early 2006 the Board of Environmental Review amended the language of the proposed rule change to lower the standard of proof that water treatment would not be required beyond two years from"conclusively demonstrate" to "demonstrate by clear and convincing evidence." This was considered to reduce the 100 percent guarantee to a 70 percent probability.

In a study of the economic impact of this regulations entitled *Economic Impacts of The Petition for Proposed Amendment of ARM 17.24.116 Pertaining to Hard Rock Mining Applications* requirements for Operating Permits issued in February 2006 is this conclusion:

> As a result of adopting the proposed rule as amended in January 2006, an estimated 50 to 90 percent of future metal mining economic output and 10 to 25 percent of future industrial mineral mining economic output in Montana would be prevented from developing…Overall, these two mining sectors comprise less than 1.5 percent of Montana's total economy in terms of jobs, wages, economic output and tax revenue. Therefore, the state economy as a whole would not be significantly affected by the proposed rule. However, mining's prominent history in Montana culture, its concentration in select counties, and the fact that mining jobs are high-paying would ensure that localized significant effects would occur.

Laura Skaer of the Northwest Mining Association kindly let me know that the proposal was tabled indefinitely when the Montana Department of Environmental Quality came out against it. She also told me that the bill in Idaho has been referred to a committee for further study, effectively killing it for this year.

MONTANA PERSPECTIVES

There are, however, many views of Montana as an economy unto itself. Jared Diamond's *Collapse* is to be found in nearly every bookstore and it paints a depressing picture of a state in the thrall of wealth colonialists. In a publication from the Property & Environment Research Center (PERC) Kendra Okonski, a native of Montana who now lives in England, doesn't accept Diamond's treatment of Montana. In her essay, "Montana: On the Verge of Collapse?" she argues that Diamond has misread Montana's history and misunderstands its environmental conditions and their causes. A sample of her evaluation of Diamond's book:

"Diamond advocates regulations as the solution to Montana's environmental problems. But with respect to the state's toxic wastes, a new, creative and decentralized approach is needed. Diamond's claims are not only wrong and intended to alarm the reader, they are counterproductive….if we are genuinely concerned about pollution emanating from old mines, we should look at the whole range of reasons why cleanup is not occurring, including the incentives (and Disincentives) created by regulations."

Here are some points about living in Montana sent me by a colleague from many years ago:

- As you will note in the PERC report Montana is a state relying almost entirely on handouts and very high tax rates. Actually some of the highest in the country. There are two classes: wealthy people who have moved in and the rest who work for them at minimum wage.
- Each major city in Montana has as its cornerstone of the economy the government including universities, airbases, government, prisons, research facilities, and so on. Only Billings has core retail and medical businesses as it is the biggest city within 500 miles.
- Farming and ranching provide little support to the economy or job market as is the case in Wyoming which is booming with tremendous budget surpluses.
- There are at least two dozen NGOs headquartered in Montana mostly in Bozeman, who have successfully attacked the resource industry and thereby stopped mining, oil, gas, and timber.
- The mining companies appear to have abandoned Montana and are not coming back. Case in point is the coal bed methane industry. Montanans have fought it tooth and nail and there are only a few dozen wells in place while in Wyoming there are over 15,000 wells in place.

Back to Jared Diamond. He says he is booed by environmentalists when he talks about business: “They call me a sell-out, say I’m corrupt and that I’ve taken the money and leapt into bed with big business.” The biologist, thinker and Pulitzer Prize-winning writer has aroused the ire of some sections of the green movement by co-operating with large companies – and insisting that business has a role to play in remedying environmental problems. Pollution, desertification and stress on water supplies, he believes, could

potentially cause the collapse of modern life, in much the same way that the overuse of resources and external environmental changes have caused the demise of earlier civilizations. But Prof Diamond sticks to his arguments – businesses play such a large role in modern life that it would be difficult to imagine progress on key environmental issues without the co-operation of the corporations.

Moreover, he says, an awareness of environmental issues in business thinking is a good discipline for managers, and can even save companies money. This is because taking into account environmental considerations – such as how to clean up pollution or minimize use of resources – requires managers to consider vital business issues such as waste and inefficiencies, and relationships with employees and consumers.

He says: "If you think about it, it makes sense. If you cut down on the amount of resources you need to bring into an area, that saves money. If you reduce the amount of waste you produce, that saves money. Using less energy saves money too. And if you make the water dirty, that could be a health problem for your employees. If you alienate the local community, and you are operating in a democracy, you may get thrown out or you may get people trying to disrupt your business."

I wonder if his next book will deal with Idaho.

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MONTANA V CANADA RE COAL

How would you decide in a dispute (fight, war) between the Montana and Canada? Now miners can express their opinion on an international struggle between the two nations over issues fundamental to the mining industry. The US State Department will take time off from Afghanistan and Iraq to address the fight between the US and Canada—or so the news report tells us.

At stake is a new coal mine in British Columbia that will send its runoff et al. down the river into Montana. This war reflects the fundamental differences between BC and Montana: The one is gung-ho for mining, the other is dead set against it. The one has weak environmental laws and review processes, the other is vicious. The one subsists on the sweat of the taxpayer, the other gets by nicely from money generally earned in other places. The one has little history of mining impact, the other owns the Berkeley Pit.

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The river potentially affected by the BC coal mine runs along the western edge of the Glacier National Park. Last time I was there the glaciers were melting fast and are predicted to be gone sooner rather than later. It is hard to believe more coal burning will affect the life of the glaciers, regardless of the Canadian federal government's promised new clean air policy, what the next US president does about global warming, or how many nuclear power plants Australia provides. Regardless of the outcome of these pie-in-the-sky perspectives, the dispute between Montana and BC boils down to some fundamental issues, viz:

- Are BC's environmental review procedures equivalent to those in Montana and if not why is the lesser not brought up to the standard of the better?
- Has a sovereign nation the right to send its "products" unbidden and uninvited across an international border into an unwilling neighbor's territory?
- Should a private company that seeks to develop an industry in one country also comply with the laws of adjacent countries that stand to be affected by the company's activities?
- Is the difference in attitude to mining in Montana and in BC reflective of sound fundamentals, or is this another clash of cultures, another clash of rich versus poor, of idealism versus reality?

I do not know the answer to these questions, although given time I would offer an opinion on each.

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SEVEN UP PETE

If you read the news releases this is the story you get: a Colorado mining company spends $70 million developing a Montana gold mine. The voters of Montana approve a law forbidding the use of cyanide in mining. Thus the mine cannot go ahead. And so the Colorado company sues the State for $500 million in damages. This case goes all the way to the Supreme Court. But the court declines to hear the issue, thereby confirming the Montana Court's decision to refuse the mine anything. Once again environmentalists and liberal courts foil noble miners.

Is the story as simple as this? I downloaded the petition to the Supreme Court from the Attorney General of Montana. Here are some interesting tidbits from his brief:

- In 1986 the State of Montana, through its Department of State Lands (DSL) entered into ten-year mineral leases with a predecessor company to the Colorado company that sued.

- In 1991 Seven Up Pete Venture (Venture) took over the mineral leases and undertook to compile an Environmental Impact Statement (EIS) and apply for a mine operating permit under the Montana Metal Mine Reclamation Act.
- In 1993, the Venture entered a Memorandum Of Understanding with DSL to prepare an EIS for a mine that would involve heap leaching to extract gold, silver, and other trace metals from ore.
- In July 1998, after the Venture failed to pay their consultants certain fees relating to preparation of the EIS, DEQ issued a stop-work order at the property.
- In November 1988, Montana voters approved Initiative 137, a statewide ban on open-pit mining for gold and silver using the

cyanide heap leaching process. Because the Venture had never obtained an operating permit for the McDonald project, it was subject to the prohibition.

- In December 1998, the Venture paid the consultants, but failed to fund a standing account balance for future work on the uncompleted EIS.
- In February 2000, the DNRC notified the Venture that the mineral leases had terminated of their own accord—ten years had passed.
- In April 2000, the Venture filed a complaint in the U.S. District Court for Montana alleging that Initiative 137 was an unconstitutional taking of property without compensation and was therefore in violation of the Fifth Amendment of the United States Constitution. They sued for a half-a-billion dollars worth of damages.

The District Court rejected the Venture claim, stating in effect that none of the contracts between the State of Montana and the Venture obligated the State to allow open-pit mining, to allow the use of cyanide, or to allow the Venture to be exempt from changing environmental laws. The court also concluded that Venture had lost nothing because in effect the leases had expired of their own accord, and Venture had no permit to mine on the property. The U.S. Supreme Court in effect concurs with the conclusions of the District Court.

This finding echoes the words of Justice Holmes who wrote in 1908: “one whose rights, such as they are, are subject to state restriction, cannot remove then from the power of the State by making a contract about them.” In brief a contract to do something illegal is no contract and is unenforceable.

Something more than all this must have happened. Maybe the 1996 award winning movie ***Mining Seven-Up Pete*** can tell us more. The film, which I have not seen is billed thus:

> MINING SEVEN-UP PETE is the story of the struggle to save the famed Blackfoot River in western Montana from what would be one of the largest cyanide heap-leach gold mines in North America. It documents the enduring but sad legacy of mining throughout the state of Montana—cyanide-laced groundwater, acid mine drainage, and the lost hope of a boom and bust economy. It speaks from the hearts and minds of real Montanans who are fighting to save their vanishing heritage.

They say that bad cases make bad law. Maybe this is one of those instances where the facts do not lead to clear-cut justice. Indeed some schools of American jurisprudence deny that there is such a thing as objective justice, saying that the personal perspective of the judge determines the outcome of the case. Don't forget the court that rejected the Venture's appeal is now headed by Justice Roberts and includes Alito, Scalia, and Thomas. Maybe as lawyers in private practice, their clients failed to pay their bills and this distant memory lingers? A ridiculous thought, I admit.

To balance this outcome, let me quote from Missoulian.com which quotes the Venture's man in charge:

> "We are disappointed but not surprised by this outcome," said James Hesketh, Canyon Resources president and chief executive. "While we feel

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that we have a strong case, competition for space on the Supreme Court's crowded docket is high." The company said in a statement it may go back to U.S. District Court in Montana, where a federal case on the merits of its arguments was put on hold earlier for procedural grounds. "No federal court has yet reviewed the merits of the venture's federal constitutional challenges," the company said. "Canyon Resources and the Seven-Up Pete Venture invested a lot of money in Montana, we complied with the requirements of the law and moved along in good faith, and then the law changed" Hesketh said. "To that end, there should be some compensation for that change and that's what we are really looking for." The mining venture estimates there is about 9 million ounces of gold and 20 million ounces of silver at to be mined at the Lincoln location, and more than half could be recovered by using cyanide.