

SPEECH TO COLORADO BAR ASSOCIATION  
MEETING, COLORADO SPRINGS, COLORADO  
OCTOBER 11, 1980

INTRODUCTION:

I AM VERY PLEASED TO BE ABLE TO PARTICIPATE IN THIS SECTION MEETING. IT HAS BEEN SEVERAL YEARS SINCE I SERVED ON THE SECTION COUNCIL. HOWEVER, I AM PLEASED TO SEE THAT THE MINERAL LAW SECTION REMAINS A VERY ACTIVE PART OF THE COLORADO BAR ASSOCIATION.

I HAVE BEEN ASKED BY THE PROGRAM COMMITTEE TO DESCRIBE THE CURRENT SITUATION WITH RESPECT TO MINING IN COLORADO AND TO DISCUSS SOME OF THE LEGAL PROBLEMS CONNECTED WITH THAT ACTIVITY. I WAS ASKED, PARTICULARLY, TO DISCUSS THE REGULATORY FRAMEWORK WITHIN WHICH MINING IS NOW CARRIED OUT; AND HOW THE CURRENT REGULATORY SCHEME WILL IMPACT RENEWED MINING ACTIVITY IN THE PRECIOUS METALS DISTRICTS OF THE STATE. I'VE ALSO BEEN ASKED TO COMMENT ON ANY LESSONS THAT WE MIGHT LEARN FROM THE MINING ACTIVITY IN OTHER NATIONS AND THE LEGAL REGIMES THAT HAVE BEEN DEVELOPED IN THOSE NATIONS TO ACCOMMODATE, AND EVEN ENCOURAGE MINING.

WITH RESPECT TO THE CURRENT SITUATION MOST OF COLORADO'S MINING INDUSTRY IS IN GOOD SHAPE. THE MARKET FOR MOLYBDENUM HAS SOFTENED TO SOME EXTENT IN THE PAST TWO OR THREE MONTHS REFLECTING THE U.S. RECESSION AND THE DROP IN U.S. SPECIALTY STEEL PRODUCTION, HOWEVER, MOLY PRODUCTION IS BEING MAINTAINED AT CAPACITY LEVEL, AND EXPLORATION FOR MOLY CONTINUES AT A HIGH LEVEL IN COLORADO. THERE IS PLENTY OF INTEREST IN COAL, DESPITE THE PROBLEM THE COAL PEOPLE ARE HAVING TRYING TO SECURE FEDERAL LEASES. OIL SHALE IS FOR REAL THIS TIME, PUSHED BY MAJOR OIL COMPANIES AND THE FEDERAL GOVERNMENT. URANIUM IS THE ONE GLOOMY AREA WHERE PRODUCTION IS BEING REDUCED AND EXPLORATION AND DEVELOPMENT EFFORTS ARE SLOWING.

THE BIG NEWS, OF COURSE, IS PRECIOUS METALS. MANY OBSERVERS NOW PREDICT A FLOOR-PRICE OF \$500 AN OUNCE FOR GOLD AND ABOUT \$15 AN OUNCE FOR SILVER, WITH PRICE PREDICTIONS GOING UP FROM THERE TO A \$1,000 GOLD PRICE, DEPENDING ON PEOPLE'S PRECEPTION OF INSTABILITY AROUND THE WORLD. I'M NOT MAKING ANY PREDICTIONS BECAUSE MY COMPANY PRODUCES BOTH GOLD AND SILVER, BUT I WILL SAY THAT MANY PEOPLE IN THE MINING INDUSTRY ARE USING THESE KINDS OF NUMBERS IN THEIR THINKING ABOUT THE FUTURE OF PRECIOUS METALS MINING.

AT THESE PRICES, MANY OF COLORADO'S HISTORIC GOLD AND SILVER DISTRICTS OFFER CONSIDERABLE ROMANCE, AND THE PROSPECT OF HIGHLY PROFITABLE MINING IN THE OLD CAMPS HAS STIRRED UP PLENTY OF ACTIVITY AROUND THE STATE.

THE DENVER POST RAN A SERIES OF SEVEN ARTICLES STARTING ON SUNDAY, AUGUST 24, 1980, ON THE BOOM IN PRECIOUS METALS. THESE ARTICLES WERE WELL DONE AND COVERED THE STATE VERY THOROUGHLY. IF YOU WANT A QUICK UPDATE ON SILVER AND GOLD ACTIVITY THOSE ARTICLES ARE A GOOD SOURCE.

OF COURSE, THE MOST PRECISE WAY TO CHECK ON THE LEVEL OF MINERAL ACTIVITY IS TO LOOK AT THE RECORDS OF THE COLORADO BUREAU OF MINES. THEY REPORT ALL NEW MINE OPENINGS AND CLOSINGS. I RECENTLY LOOKED AT THE RECORDS FROM THE FIRST OF THE YEAR TO DATE AND FOUND THAT THERE WERE 81 NEW BASE AND PRECIOUS METALS STARTS, WITH 16 IN CLEAR CREEK COUNTY, 9 IN GILPIN COUNTY, 5<sup>each</sup> IN BOULDER, OURAY, CHAFFEE, AND TELLER COUNTIES, AND THE REST IN SUMMIT, LA PLATA, DOLORES, LAKE, AND OTHER MINERAL BELT COUNTIES.

FOREST SERVICE RECORDS ALSO SHOW THAT MINERAL ACTIVITY IS UP IN THE WEST. THE FOLLOWING FIGURES ARE FOR ALL FOREST SERVICE LANDS, AND ALL LOCATABLE MINERALS, NOT JUST PRECIOUS METALS IN COLORADO. PLANS OF OPERATIONS HAVE GROWN IN NUMBER FROM 1,050 IN 1976 TO 1,560 IN 1980. THATS ROUGHLY A 50% INCREASE IN ACTIVITY.



IF PRECIOUS METALS PRICES HOLD FIRM INTO NEXT SUMMER, WE WILL SEE A DRAMATIC INCREASE IN EXPLORATION AND MINING DURING THE 1981 FIELD SEASON. I THINK MANY PEOPLE HAVE BEEN CONCERNED THAT THE BIG INCREASES IN PRICES LAST YEAR WERE A TEMPORARY PHENOMENON THAT WOULD QUICKLY FALL APART. THE HUNT SPECULATION CERTAINLY DIDN'T HELP INSPIRE CONFIDENCE. BUT THE CURRENT SOLID PRICING OF THE PRECIOUS METALS SEEMS TO BE PUTTING MANY FEARS TO REST.

BEFORE GETTING INTO THE LEGAL SIDE OF THE DISCUSSION, I  
WANT TO SAY A FEW WORDS ABOUT THE KIND OF PRECIOUS METALS  
ACTIVITY WE CAN EXPECT IN COLORADO.

WHILE WE MAY SEE SOME LARGE DISCOVERIES RIVALLING THOSE RECENTLY ANNOUNCED IN CALIFORNIA AND NEVADA, IT SEEMS MORE LIKELY THAT MOST OF THE NEW GOLD AND SILVER MINING IN COLORADO WILL BE OF VEIN-TYPE DEPOSITS OF THE TYPE THAT WERE MINED IN THE PAST AT CRIPPLE CREEK AND IN CLEAR CREEK, GILPIN AND BOULDER COUNTIES. THERE MAY ALSO BE SOME ORE LEFT IN REPLACEMENT TYPE DEPOSITS SUCH AS THOSE MINED AT LEADVILLE AND GILMAN.

IN MOST CASES MINERS WILL REOPEN OLD MINES, SAMPLE EXISTING VEIN MATERIAL, INCLUDING OLD STOPEFILL, AND EITHER DRILL OR DRIFT TO FIND ORE SHOOTS FURTHER ALONG A VEIN, OR TO FIND OTHER VEINS IN THE VICINITY. THERE ARE MANY PLACES AROUND THE STATE WHERE MINES WERE FORCED TO CLOSE BY RISING COST EVEN THOUGH THEY WERE STILL IN GOLD AND SILVER BEARING ROCK. AT THE OLD GOLD PRICES OF \$20.50/PRE 1933, AND \$35.00/POST 1933, .20 ROCK WAS NOT ORE. AT TODAY'S PRICES, IT MAY BE. MOST OF THIS KIND OF ACTIVITY WILL BE CONCENTRATED IN THE OLD MINING DISTRICTS. THE STATE HAS BEEN PRETTY THOROUGHLY LOOKED OVER FOR PRECIOUS METALS. (BUT RECITE CRIPPLE CREEK STORY).

IN ADDITION TO REOPENING OLD MINES, MINERS WILL CONCENTRATE A LOT OF EFFORT ON DUMPS. MANY OF THE OLD MINE DUMPS WERE WORKED DURING THE DEPRESSION YEARS OF THE 1930'S, BUT THERE ARE STILL SOME AROUND THAT MIGHT PAY. A TYPICAL DUMP OPERATION INVOLVES A SAMPLING EFFORT TO MAKE SURE THAT THE MATERIAL THROUGHOUT THE DUMP IS WORTH WORKING, FOLLOWED BY A SIMPLE LOAD AND HAUL OPERATION, USUALLY INVOLVING FRONT END LOADERS AND DUMP TRUCKS. SOMETIMES THE OPERATOR WILL SET UP A SCREENING PLANT WHICH REMOVES LARGE PIECES OF ROCK. OFTEN THE FINES IN THE DUMPS CARRY MOST OF THE PRECIOUS METALS. THE DUMP MATERIAL IS HAULED TO A MILL FOR CONCENTRATION.

WE CAN ALSO EXPECT TO SEE RENEWED INTEREST IN PLACER MINING. A LOT OF NEW SPORTING EQUIPMENT LENDS ITSELF TO PLACERING, AND MANY PEOPLE WILL FIND THAT PLAYING WITH PORTABLE GOLD DREDGES IS BOTH FUN AND PROFITABLE.

FINALLY, THERE ARE ALREADY SOME NEW MILLS GOING UP, AND I EXPECT THAT SEVERAL MORE WILL BE ANNOUNCED WITHIN THE NEXT YEAR. THESE WILL LIKELY BE SMALL OPERATIONS IN THE 50 TO 500 TON PER DAY RANGE.

BEFORE DISCUSSING THE REGULATORY FRAMEWORK, IN PARTICULAR THE ENVIRONMENTAL REGULATORY ARRANGEMENTS THAT FACE THE MINING INDUSTRY, I WOULD LIKE TO BRIEFLY SAY SOMETHING ABOUT THE IMPACT OF ALL THE NEW PRECIOUS METALS EXPLORATION AND DEVELOPMENT ACTIVITY ON SUBSTANTIVE MINING LAW.



WITH SO MUCH ATTENTION BEING FOCUSED UPON THE OLD MINING DISTRICTS IN BOULDER, CLEAR CREEK, GILPIN, PARK, LAKE, CHAFFEE, GUNNISON AND SAN JUAN COUNTIES, I THINK IT'S SAFE TO PREDICT THAT THERE WILL BE PLENTY OF OLD FASHIONED MINING LAW WORK FOR COLORADO LAWYERS. AS WORK PROGRESSES IT WILL BE NECESSARY TO STRAIGHTEN OUT THE CONFLICTING CLAIM PATTERNS THAT CHARACTERIZE SO MANY OF THE OLD DISTRICTS. WE OUGHT TO DO WELL, AND THE SURVEYORS WILL GET RICH.

MINERS OPENING UP VEIN-TYPE DEPOSITS IN THE OLD DISTRICTS WILL RUN INTO ACCESS PROBLEMS, PARTICULARLY WHEN ATTEMPTING TO DRIVE LONG CROSS-CUTTING TUNNELS TO GAIN ACCESS TO VEINS AT LOWER LEVELS, OR WHEN PUTTING IN NEW ROADS.

OF COURSE, THERE WILL ALSO BE MANY MINING AGREEMENTS TO PREPARE, AND I SUSPECT THAT THESE WILL BE THE MORE TRADITIONAL NET SMELTER RETURN TYPE AGREEMENTS. BUT WHEN WORKING IN THE OLD DISTRICTS, LAWYERS WILL BE CALLED UPON TO WORK OUT SIDE-LINE AGREEMENTS AND A VARIETY OF SPECIAL ARRANGEMENTS TO ACCOMMODATE A KIND OF MINING THAT HAS NOT TAKEN PLACE MUCH IN RECENT YEARS.

IT WOULD ALSO BE GOOD FOR COLORADO MINING LAWYERS TO BRUSH UP ON THE LAW OF THE APEX AND READ A FEW OF JUDGE HALLET'S OLD DECISIONS. IT SEEMS CLEAR THAT AS MINERS START TO EXPLOIT HIGH GRADE SHOOTS OF GOLD AND SILVER ORE, WHERE A MILLION DOLLARS CAN COME FROM A SMALL STOPE ON ONE CLAIM, THERE WILL BE RENEWED INTEREST IN EXTRALATERAL RIGHTS.

NOW LET'S TURN TO THE REGULATORY MAZE FACED BY COLORADO MINERS. FIRST, I THINK THE BIG MINING COMPANIES ARE BECOMING MORE ACCUSTOMED TO DEALING WITH COMPLICATED AND CUMBERSOME REGULATORY ARRANGEMENTS. WHILE THEY'RE NOT HAPPY ABOUT IT, THEY ARE ORGANIZING TO DO THE JOB AND THEY ARE TAKING DELAY INTO ACCOUNT IN THEIR PLANNING. MOST OF THE MAJOR CONFLICTS FACING THE LARGER FIRMS DEAL WITH ACCESS TO MINERALS ON PUBLIC LANDS, COUNTY AND LOCAL LAND USE PLANNING REGULATIONS, AND EFFORTS BY LOCAL GOVERNMENTS TO SECURE MITIGATION OF GROWTH RELATED IMPACTS.

MY COMPANY IS ACTIVELY EXPLORING FOR A VARIETY OF MINERALS IN COLORADO, AND HAVE BEEN SUCCESSFUL IN RECENT YEARS IN BRINGING IN THE HENDERSON MINE, AND FINDING ANOTHER LARGE MOLYBDENUM DEPOSIT AT MT. EMMONS IN GUNNISON COUNTY. WE HAVE EXPERIENCED SOME FRUSTRATIONS AND DELAYS IN OUR WORK BECAUSE OF REGULATORY REQUIREMENTS, BUT IN GENERAL WE HAVE BEEN ABLE TO SECURE PERMITS IN AN ORDERLY AND TIMELY WAY. WE WERE EVEN ABLE TO CONDUCT A MAJOR DRILLING EFFORT IN COLORADO WILDERNESS AREA WITHOUT LITIGATION OR UNPLEASANTNESS.

OUR STRATEGY HAS BEEN TO DO THE BEST ENVIRONMENTAL JOB WE KNOW HOW, AND TO BE VERY OPEN WITH ALL LEVELS OF GOVERNMENT AND WITH THE PUBLIC. WE HAVE A SIZABLE STAFF OF PROFESSIONALS FROM SUCH FIELDS AS ENGINEERING, WILDLIFE BIOLOGY, GEOGRAPHY, SOCIOLOGY, LAW, AND PUBLIC RELATIONS WHO WORK WITH OUR OPERATIONS TO PREPARE THE NECESSARY IMPACT STATEMENTS AND SECURE THE APPROVALS NECESSARY FOR OUR ACTIVITIES. IN MANY CASES WE HAVE WORKED WITH GOVERNMENT TO IMPLEMENT INNOVATIVE NEW APPROACHES TO REGULATION LIKE THE COLORADO JOINT REVIEW PROCESS. WE HAVE TRIED TO BE POSITIVE AND RECOGNIZE LEGITIMATE DEMANDS FOR GREATER ENVIRONMENTAL PROTECTION. BUT WHERE WE HAVE RUN INTO IMPLACABLE OPPOSITION BY NO-GROWTH ADVOCATES WHO ARE MERELY TRYING TO THROW UP LEGAL ROAD BLOCKS, WE HAVE NOT HESITATED TO TAKE OUR CASE TO THE PUBLIC AND TO LITIGATE WHEN NECESSARY.

OUR APPROACH HAS WORKED, BUT IT DOES COST A LOT OF MONEY TO UNDERTAKE EXTENSIVE MITIGATION MEASURES, AND TO MAKE SUCH AN EFFORT TO WORK WITH GOVERNMENT AND THE PUBLIC. IT ALSO TAKES A HIGH DEGREE OF SOPHISTICATION, PARTICULARLY IN TERMS OF THE LAW, TO BRING IN A PROJECT IN THIS WAY. COSTLY AND TIME CONSUMING - YES. BUT, WE HAVE LEARNED TO COPE WITH REGULATION.



BUT IT'S THE SMALL MINER WHO'S IN FOR A SHOCK. OLD TIMERS WHO MINED GOLD IN THE THIRTIES, AND TUNGSTEN AND URANIUM IN THE FIFTIES AND SIXTIES, REALLY CAN'T IMAGINE DEALING WITH ARMY CORPS OF ENGINEERS SECTION 404 PERMITS; NPDES PERMITS; MINED LAND RECLAMATION PERMITS; FOREST SERVICE PLANS OF OPERATIONS; ALCOHOL, TOBACCO AND FIREARMS REGULATIONS OF EXPLOSIVES; MSHA REGULATION OF HEALTH AND SAFETY AND THE REST OF THE MYRIAD OF REGULATIONS THAT NOW GOVERN THE MINING INDUSTRY. NEWCOMERS TO THE SMALL MINE GAME MAY BE BETTER PREPARED FOR LIFE IN A REGULATED INDUSTRY, BUT THEY TOO WILL BE OVERWHELMED BY A SYSTEM THAT HAS BECOME, AS THE MINERS WOULD TERM IT, "MUCK BOUND."

MANY LAWS AND REGULATIONS PROVIDE FOR EXCEPTIONAL TREATMENT OF SMALL MINING OPERATIONS, EXEMPTING THEM FROM RIGOROUS DEMANDS IF THEY HAVE LITTLE ENVIRONMENTAL IMPACT. AND ADMINISTRATORS GENERALLY MAKE A REAL EFFORT TO HELP SMALL OPERATORS GET THROUGH THE PAPER WORK. BUT THERE ARE SEVERAL LAWS ON THE BOOKS THAT APPLY TO ANYONE OPENING A MINE, AND ONLY A VERY CLEVER, WELL ORGANIZED OPERATOR WILL BE ABLE TO SECURE PERMITS IN A TIMELY WAY.

I EMPHASIZE TIMELY BECAUSE DELAY IS INTOLLERABLE FOR THE SMALL MINER. IN MANY PARTS OF THE STATE, MINERS CANNOT OPERATE IN THE HEAVY SNOW MONTHS. IF A MINER MUST WAIT FOR AN AGENCY TO MAKE A FIELD EXAMINATION, AND THEN WAIT ALL SUMMER FOR PERMISSION TO PROCEED, HE OR SHE LOSES A FULL YEAR. MOST SMALL OPERATIONS DON'T HAVE THE FINANCIAL STAYING POWER TO WAIT FOR MONTHS FOR CLEARANCES.

IN MANY CASES SMALL MINERS WILL FIND THE FRONT-END COSTS JUST TOO GREAT AND WILL HAVE TO FORGO THE WORK THEY WANTED TO DO. THIS WILL BE TRUE PARTICULARLY WHERE A MINER WANTS TO REOPEN OLD WORKINGS, PUMPING THEM OUT AND REENTERING THEM. ANALYTICAL WORK ON WATER IS EXPENSIVE, AS IS CONSTRUCTION OF WATER TREATMENT FACILITIES WHERE THEY ARE REQUIRED. AND THE ENGINEERING COSTS FOR AIR POLLUTION PERMITS FOR SMALL SCREENING PLANTS WILL BE SIGNIFICANT. THE ARCHEOLOGICAL SURVEY MAY ALSO SEEM A BIT MUCH.

ONE PARTICULAR PROBLEM THAT THE SMALL GOLD MINER WILL RUN INTO IN PLACES LIKE BOULDER COUNTY, WILL BE CONFLICTS WITH NUMEROUS RESIDENCES THAT HAVE BEEN BUILT ON PATENTED MINING CLAIMS IN PLACES LIKE GOLD HILL AND WARD. THE LAND-USE CONFLICTS INVOLVED WILL ULTIMATELY BE RESOLVED, AND IN MOST CASES MINING WILL BE ABLE TO PROCEED, BUT I SUSPECT THAT THESE CONFLICTS WILL PROVE EXPENSIVE AND TIME CONSUMING FOR SMALL MINERS. THE IRONY OF THE SITUATION IS CLEAR - RESIDENTS OF FUNKY OLD MINING TOWNS RESISTING REVIVAL OF THE KIND OF MINING THAT GAVE THE PLACE ITS CHARACTER. I WILL SAY MORE ABOUT THIS IN A FEW MINUTES.

TURNING NOW TO THE LAST PART OF MY TALK, I WANT TO SUGGEST THAT, AS COLORADO ENTERS A NEW MINING BOOM WE MIGHT BE ABLE TO PROFIT BY LOOKING BEYOND THE BORDER OF THE UNITED STATES TO SEE HOW SOME OTHER NATIONS ARE HANDLING MINERAL DEVELOPMENT. I THINK THERE ARE SOME LESSONS WE MIGHT LEARN IN TERMS OF BOTH LARGE AND SMALL SCALE MINING.

DURING THE PAST 10 YEARS OR SO, I HAVE HAD AN OPPORTUNITY TO WORK IN MANY COUNTRIES AROUND THE WORLD, WORKING ON MINERAL EXPLORATION AND DEVELOPMENT MATTERS, AS WELL AS ON ENVIRONMENTAL MATTERS AT OPERATING MINES, MILLS AND SMELTERS. IN THE TIME REMAINING I CAN ONLY COMMENT ON A FEW OF THE APPROACHES WE MIGHT WANT TO CONSIDER - BUT I HOPE THAT IT IS ENOUGH TO ENCOURAGE INTEREST IN COMPARATIVE LAW STUDIES.

I HAVE FOUND BRITAIN A PARTICULARLY INTERESTING PLACE TO WORK BECAUSE THEY HAVE AN ANCIENT MINING TRADITION, AND HAVE BEEN USING THEIR LAND FOR ALL SORTS OF PURPOSES FOR THOUSANDS OF YEARS. AFTER LEADING THE WORLD IN PRODUCTION OF METALS SUCH AS TIN AND COPPER IN THE EARLY PART OF THE 19TH CENTURY, THE BRITISH MINING INDUSTRY WENT INTO A SEVERE DECLINE AFTER MAJOR MINERAL DISCOVERIES WERE MADE IN THIS COUNTRY AND AUSTRALIA IN THE 1850'S AND 1860'S. THE BRITISH ARE JUST NOW IN THE MIDST OF A MINING REVIVAL WHICH TENDS TO BRING MINING AND THE ENVIRONMENT INTO CONFLICT. IT JUST SO HAPPENS THAT MANY OF THEIR MOST PROMISING MINERAL AREAS ARE IN NATIONAL PARKS AND BUILT UP AREAS WHERE ANY MINERAL ACTIVITY IS VERY NOTICEABLE.



THUS I THINK RECENT BRITISH DEVELOPMENTS ARE OF INTEREST AND USEFUL TO US. THEY HAVE HAD TO DEAL WITH DIVIDED AND CONFUSED MINERAL RIGHTS, AND INCREDIBLE LAND USE CONFLICTS. THEY RECOGNIZE THE IMPORTANCE OF MINERAL DEVELOPMENT TO THEIR NATION, BUT ARE FIERCELY DETERMINED TO PRESERVE AMENITIES. THEY ARE WORKING OUT SOLUTIONS TO MINE WORKING PROBLEMS, AND DOING IT UNDER A LEGAL SYSTEM THAT IS A PRECURSOR OF OURS.

ONE PARTICULARLY INTERESTING FEATURE OF BRITISH LAW DEALS WITH THE PROBLEM OF ASSEMBLING MINERAL RIGHTS FOR A PROJECT. THERE A MINER MAY DEVELOP A MINERAL DEPOSIT EVEN IF THE OWNER OF THE MINERAL RIGHTS REFUSES TO DEAL WITH THE MINER. UNDER THE "MINES (WORKING FACILITIES AND SUPPORT) ACT OF 1966," AS AMENDED IN 1974, ANY PERSON MAY APPLY TO THE GOVERNMENT FOR A RIGHT TO SEARCH FOR AND WORK MINERALS. FURTHER, ANYONE HAVING THE RIGHT TO SEARCH FOR AND WORK MINERALS MAY ALSO MAKE APPLICATION FOR ANY ANCILLARY RIGHTS WHICH MAY BE REQUIRED SO THAT THE MINERALS CAN BE "PROPERLY AND CONVENIENTLY" WORKED. SUCH ANCILLARY RIGHTS INCLUDE RIGHTS-OF-WAY AND A RIGHT TO WATER NECESSARY TO RECOVER THE MINERAL.

TO OBTAIN THE GRANT OF SUCH A RIGHT, THE PERSON MUST FIRST MAKE APPLICATION TO THE SECRETARY OF STATE FOR INDUSTRY. THE SECRETARY MUST REFER THE APPLICATION TO THE HIGH COURT UNLESS HE IS OF THE OPINION THAT THE APPLICANT HAS NOT MADE A PRIMA FACIE CASE. THE HIGH COURT MAY GRANT ANY OF THE RIGHTS REQUESTED, PROVIDED TWO REQUIREMENTS ARE FULFILLED. FIRST, IT MUST BE "EXPEDIENT IN THE NATIONAL INTEREST." SECOND, IT MUST NOT BE "REASONABLY PRACTICABLE TO OBTAIN THE RIGHT BY PRIVATE AGREEMENT" FROM THE PERSON AUTHORIZED TO GRANT THE RIGHT. WHILE SITUATIONS IN WHICH PRIVATE AGREEMENTS CANNOT BE MADE INCLUDE THOSE WHERE OWNERSHIP OF THE MINERAL RIGHT IS IN QUESTION OR THE OWNERS CANNOT BE FOUND, IT ALSO EXPRESSLY APPLIES TO SITUATIONS WHERE THE MINERAL OWNER "UNREASONABLY" REFUSES TO MAKE THE GRANT OR MAKE DEMANDS WHICH UNDER THE CIRCUMSTANCES ARE "UNREASONABLE." IN SHORT, IN SITUATIONS WHERE THE OWNER OF A MINERAL RIGHT REFUSES TO GRANT THAT RIGHT TO A MINER UNREASONABLY, THE MINER MAY UNDER THE LAW OBTAIN THAT RIGHT. THE HIGH COURT IN GRANTING ANY RIGHT MAY GRANT IT ON SUCH TERMS AND CONDITIONS THAT IT THINKS FIT, AND WILL DETERMINE THE AMOUNT AND NATURE OF COMPENSATION WHICH IT CONSIDERS FAIR AND REASONABLE. SUCH PROCEDURES ALLOW THE MINING OF INHOLDINGS AND ADJACENT MINERAL DEPOSITS WHERE THE MINERAL OWNERS REFUSE TO SELL OR LEASE THE MINERAL RIGHTS.

IN ADDITION TO GRANTING A RIGHT TO MINE IN THE FIRST INSTANCE, THE BRITISH MINES ACT ALSO ALLOWS THE HOLDER OF A MINERAL LEASE TO MODIFY ITS TERMS AND CONDITIONS. WHERE THE WORKING OF MINERALS IN THE "MOST EFFICIENT AND ECONOMICAL MANNER" IS IMPEDED BY ANY RESTRICTION, TERM, OR CONDITION INCLUDING EVEN STATUTORY RESTRICTIONS, IMPOSED THROUGH THE MINING LEASE, THE PERSON MAY WORK THE MINERALS FREE FROM SUCH RESTRICTIONS OR CONDITIONS OR MAY WORK THE MINERALS ON OTHER TERMS AND CONDITIONS. THUS THE MINES ACT NOT ONLY ALLOWS FOR DEVELOPMENT OF MINERALS IN THE NATIONAL INTEREST BUT ALSO ALLOWS ANY ONE HOLDING A RIGHT TO WORK A MINERAL TO WORK IT IN A EFFICIENT AND ECONOMICAL MANNER. WE MAY FIND THAT AN APPROACH LIKE THIS MAKES SENSE FOR COLORADO.

IN THE AREA OF LAND USE CONTROL, WHICH IS IMPORTANT TO BOTH SMALL AND LARGE MINE OPERATIONS, THE BRITISH TOWN AND COUNTRY PLANNING ACTS ARE OF PARTICULAR INTEREST, AND MAY PROVIDE US WITH A MODEL FOR HANDLING THE KINDS OF CONFLICT THAT WILL ARISE AS MINERS REOPEN MINES IN THE OLD DISTRICTS OF COLORADO. UNLIKE THE SYSTEM FOUND IN THE UNITED STATES, MINERAL DEVELOPMENT IN GREAT BRITAIN IS CONTROLLED BY A FLEXIBLE, EFFICIENT, ONE-STEP LAND USE PLANNING SYSTEM. THE BRITISH SYSTEM AFFORDS AN OPPORTUNITY FOR INDUSTRY, GOVERNMENT AND THE PUBLIC TO MAKE DECISIONS CONCERNING LAND USE BASED UPON A UNIFIED, DETAILED PRESENTATION OF FACTS. THE PROCESS BRINGS TOGETHER ALL INTERESTED PARTIES AT THE OUTSET THROUGH A PUBLIC INQUIRY PROCEDURE, ENCOURAGES EARLY DECISIONS ON THE ISSUES, AND BALANCES THE ECONOMIC NEEDS OF THE COUNTRY WITH ENVIRONMENTAL AND LOCAL CONCERNS. THOUGH THE PROCESS IS BY NO MEANS WITHOUT PROBLEMS OR CRITICS - THE PLANNING SYSTEM ORIGINALLY WAS DESIGNED TO CONTROL THE PROBLEMS ASSOCIATED WITH INCREASED INDUSTRIALIZATION AND URBANIZATION IN A LAND-POOR COUNTRY - A STUDY OF TOWN AND COUNTRY PLANNING IN GREAT BRITAIN MAY PROVIDE USEFUL IDEAS FOR LAND USE PLANNERS AND MINERAL DEVELOPERS IN THE UNITED STATES.

IN OCTOBER OF 1977, I TOOK A STUDY TEAM TO THE UNITED KINGDOM TO STUDY THE BRITISH LAND USE PLANNING SYSTEM, PARTICULARLY WITH REGARD TO MINERAL DEVELOPMENT. THE TEAM INCLUDED VIC VERITY, A DISTINGUISHED MINING LAWYER FROM TUCSON, DIANE REESE, WHO IS CLIMAX MOLYBDENUM'S STATE GOVERNMENTAL AFFAIRS DIRECTOR, LORD ZUCKERMAN, WHO HEADED A BRITISH MINING REVIEW COMMISSION, AND CONGRESSMAN WAYNE ASPINALL WHO HEADED UP THE UNITED STATES PUBLIC LAND LAW REVIEW COMMISSION. THE GROUP MET WITH MINING COMPANY OFFICIALS, LOCAL PLANNING OFFICIALS, AND ATTORNEYS AND CONSULTANTS EMPLOYED BY BOTH, AS WELL AS WITH CONSERVATIONISTS AND REPRESENTATIVES OF THE BRITISH DEPARTMENT OF THE ENVIRONMENT, VISITING CHINA CLAY AND METAL MINING SITES IN CORNWALL AND DEVON, SNOWDONIA NATIONAL PARK IN WALES, THE NORTH YORKSHIRE NATIONAL PARK, AND THE PEAK DISTRICT NATIONAL PARK, AND COAL SITES NEAR SHEFFIELD.

TIME DOES NOT PERMIT ME TO GO INTO THE DETAILS OF OUR STUDY FINDINGS, BUT I DO WANT TO SAY THAT WE WERE VERY IMPRESSED WITH THE APPROACH BRITISH PLANNERS ARE TAKING TO MINERAL DEVELOPMENT, AND CAME AWAY WITH THE FEELING THAT THERE IS MUCH ABOUT THEIR SYSTEM THAT WE MIGHT WISH TO INCORPORATE AS THE U.S. AND COLORADO STRUGGLE TOWARDS MORE WORKABLE LAND USE CONFLICT RESOLUTION MECHANISMS.

WHIT FIELD AND I WROTE A REPORT ON THE ENGLAND TRIP AND  
IT WAS PUBLISHED IN THE WYOMING LAND AND WATER LAW REVIEW,  
VOL. 14, No. 1, (1979). PERHAPS YOU WILL WANT TO TAKE A LOOK  
AT IT.



BEFORE LEAVING ENGLAND, HOWEVER, I WANT TO TALK ABOUT ONE CONCEPT THAT I LEARNED ABOUT THESE THAT MAY BE OF SOME HELP TO BOTH MINERS AND PLANNERS IN AREAS WHERE SMALL MINING MAY BE REACTIVATED - THE SITUATION THAT WILL OCCUR IN PLACES LIKE GOLD HILL, WARD AND BRECKENRIDGE.

IN SEVERAL OF THE AREAS WE VISITED IN ENGLAND MINING HAD BEEN A PART OF THE LOCAL WAY OF LIFE FOR CENTURIES. OLD LEAD MINE WORKING DOT THE HILLSIDES IN THE LAKE DISTRICT, AND THERE ARE OLD MINE BUILDINGS AT THE FOOT OF SNOWDEN, THE HIGHEST MOUNTAIN IN WALES. NEARBY THE QUAIN SLATE MINING TOWN OF LLYSDULAS IN A POPULAR TOURIST STOP. MINING IS CONSIDERED A PART OF THE TRADITION OF THE AREAS, AND AS SUCH IS VIEWED AS ANOTHER ASPECT OF THE AREA TO BE PRESERVED. PARK PLANNERS IN BOTH SNOWDONIA AND THE LAKE DISTRICT NATIONAL PARK EXPRESSED A DESIRE TO KEEP SOME SMALL MINES OPERATING, AND WERE JUSTIFYING PERMITS FOR REOPENING SMALL MINES SUCH AS THE CARROCK FELL TUNGSTEN MINE IN THE LAKES PARTLY ON THE BASIS OF PRESERVING MINING AS A TRADITIONAL OCCUPATION. PERHAPS WE CAN WORK AN ELEMENT OF THIS THINKING INTO THE APPROACH OF COUNTY PLANNERS IN OUR STATE - AND GET SOME SUPPORT FOR REINSTATEMENT OF OUR COLORFUL AND PRODUCTIVE MINING HERITAGE.