

High Country News

February 29, 1988

Vol. 20 No. 4

A Paper for People who Care about the West

One Dollar

Oil, gas leasing reform:

Somewhat more than half a loaf

by Andrew Melnykovich

WASHINGTON, D.C. -- At first glance, Amos Draw and Mosquito Creek Canyon have little in common.

Amos Draw is dry and nearly treeless, much like the vast and nearly treeless Powder River Basin of Wyoming that surrounds it. Mosquito Creek Canyon, lush and rich in wildlife, nestles in the mountains of northwest Wyoming, only a few miles from Jackson Hole and the Grand Tetons.

But Amos Draw and Mosquito Creek share one critical characteristic. They are symbols of what has gone wrong in the way the federal government leases the public's lands for oil and gas exploration. Recent efforts to correct those problems have produced a confusing and often contradictory welter of legislation and court decisions that have left central issues far from resolved.

Amos Draw is perhaps the most notorious boondoggle in the history of the federal lease

lottery. The leases were sold for a few dollars per acre to purchasers selected through a random drawing. Many of the lucky winners immediately resold the leases for tens or hundreds of thousands of dollars.

It seems that everybody except the Bureau of Land Management, which conducted the lease lottery, knew there was oil at Amos Draw. After all, the nearest producing wells were only a few miles away. But because the BLM decided that Amos Draw did not qualify as a hot-enough prospect, the leases were sold by lottery, rather than through competitive bidding. The U.S. Treasury lost millions of dollars in potential income.

That fiasco and similar cases prompted calls for an overhaul of the leasing system. Late last year, nearly 10 years after first considering the issue, Congress finally scrapped the lease lottery and replaced it with a system based entirely on competitive bidding.

But Congress' leasing "re-

form" package did not address what happened at Mosquito Creek Canyon. When it issued a lease for drilling rights in Mosquito Creek Canyon, the BLM did not look ahead to what the effects of drilling might be on other resources in the canyon -- the wildlife, the scenery, the water in Mosquito Creek. Nor did the BLM consider what might happen to the canyon if Anschutz Co., which holds the lease, struck oil there.

Instead, the agency treated the lease as simply a paper transaction having no intrinsic environmental consequences. Absent wilderness status or other legal barriers, the BLM's presumption has always been in favor of leasing.

Further steps in petroleum development -- exploration, initial drilling, full-field development -- are treated by the BLM as simply "stages" in a process, to be analyzed at each step. Potential conflicts are dealt with through "stipulations" that spell out, in general terms, what restrictions might be necessary to protect other resources.

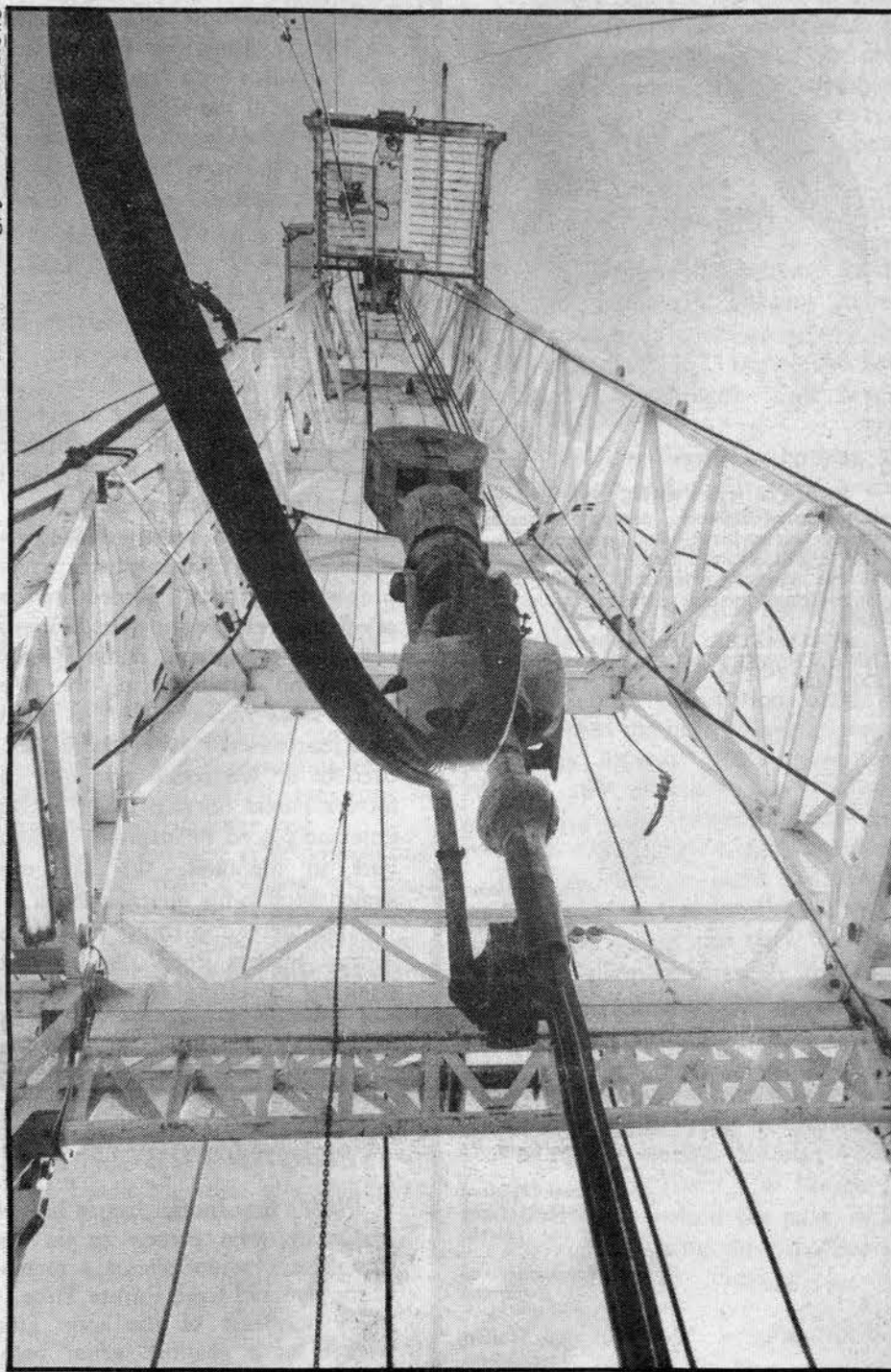
In practice, leasing leads inexorably to exploratory drilling and, if enough oil or gas is discovered, development of a wellfield. Blocking any step of the process is nearly impossible. The BLM gives out leases almost automatically, and then the administrative and judicial systems treat those leases as a property right and are extremely reluctant to interfere with it.

That proved true at Mosquito Creek. Although local conservationists opposed allowing Anschutz to stay out of the canyon, they were powerless to block the drilling. But Mosquito Creek Canyon is no Amos Draw, and Anschutz drilled its dry hole, reclaimed the well site and went home.

Places such as Mosquito Creek Canyon should never have been leased in the first place, conservationists believe. They contain wildlife, scenery, recreational opportunities or other resources that are

(Continued on page 10)

Anna Dooling, Jackson Hole News



Granite Creek well in Wyoming

Dear friends,



HIGH COUNTRY NEWS (ISSN 0191/5657) is published biweekly, except for one issue during July and one issue during January, by the High Country News Foundation, 124 Grand Avenue, Paonia, Colorado 81428. Second-class postage paid at Paonia, Colorado.

POSTMASTER: Send address changes to HIGH COUNTRY NEWS, Box 1090, Paonia, CO 81428.

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Subscriptions are \$20 per year for individuals, \$28 per year for institutions. Single copies \$1.00 plus \$1.25 postage and handling.

Magical issue

The Feb. 15, 1988, *High Country News* was magical: it transmuted elements and moved a small community across a state line.

The transmutation took place in a Hotline on the catalytic converters in woodstoves. We turned the platinum in such devices into plutonium. Eugene D. Lorig of Eagle, Colo., who deplores the fact that "the destruction of the Glen Canyon Dam was only Ed Abbey fiction," wrote to tell us that what is needed is a homemade nuclear device, "Now, if you would just send me the name and address of the supplier of the plutonium-coated pipe..."

We got a different reaction from Denver residents Tim and Sue Brater, who are miffed that not only do they have to breathe the brown cloud, but worry that if someone's woodstove blows up, they'll also be covered with plutonium dust.

In our other piece of magic, a Roundup titled "Grizzly sanctuary is proposed near park" placed the town of West Yellowstone in Wyoming rather than Montana. Allen Messick, editor and publisher of the *West Yellowstone News*, called to say he sees that mistake everywhere and is tired of it. We recall the time that former Forest Service Chief R. Max Peterson placed Yellowstone National Park in Montana. We are more sympathetic to his mistake today.

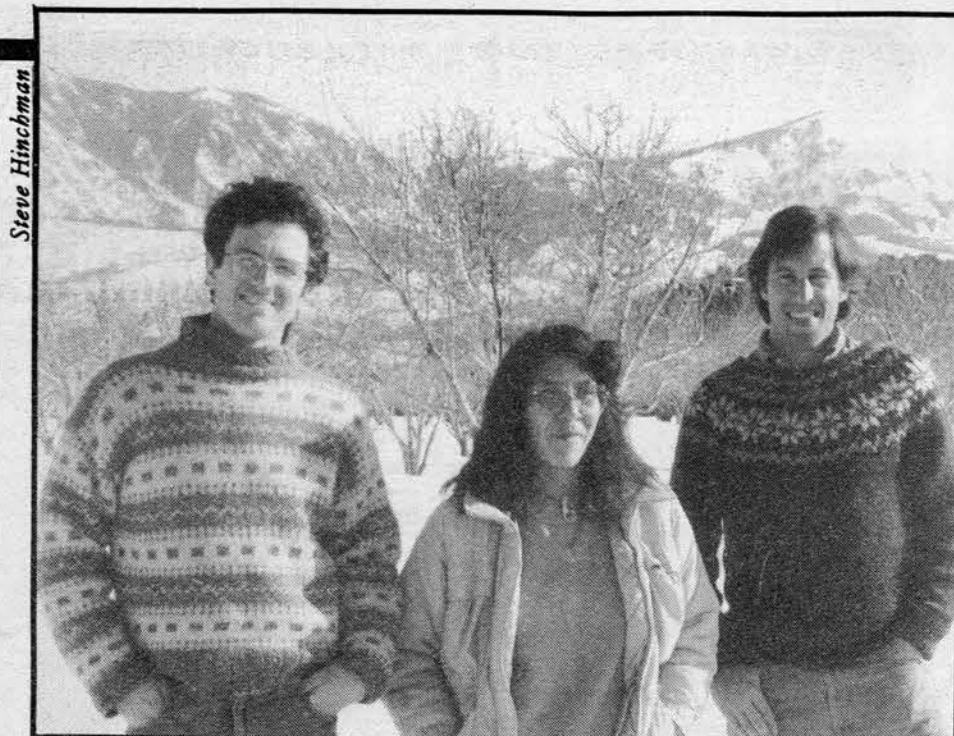
The interesting thing about *HCN* is how readers keep the paper on track by correcting factual mistakes and, through letters to the editor, push on us when they feel we have strayed on the broader issues. It is much appreciated.

New interns

HCN's first Indian intern is Linda McCauley, who comes to us from Reno, Nev., where she is a member of the Pyramid Lake Paiute Tribe, 30 miles northeast of the city. Linda worked as a graphic artist before helping edit the *Native Nevadan*, the state's Indian newspaper. She graduated from the Institute of American Indian Arts in Santa Fe, N.M., and also attended California State University in Sacramento. In Paonia, she says she welcomes the chance to concentrate on writing. In general, Linda says, "Anglo papers fail to report the other side of Indian issues." The environment and Indians, she adds, go hand in hand.

After selling hockey equipment in a sporting goods store above New York City's Pennsylvania Station, new intern Gus Wilmerding says working in Paonia is a welcome change. He grew up on Long Island but learned about the West through many visits. The summer of 1985, for example, was spent painting houses in Aspen, Colo., where he also learned enough about kayaking to break his nose. He attended Colby College in Waterville, Maine, as an American Studies major, is still an avid hockey and lacrosse player, and occasionally drives over McClure Pass to play in Aspen's hockey league. He says the experience of working for a canoe camp in northern Ontario for five years was a major reason he wanted to learn more about the environment.

Our third intern, Michael Crawford, claims to have been in Paonia before, years ago, and to have stayed two hours. But when he was here the paper wasn't. Says Crawford,



New interns Michael Crawford, Linda McCauley and Gus Wilmerding

"When leaving I never said to myself that someday I'd go back there and learn about Western issues, writing and rewriting." Since then he's been to Paris and London and Rome and Madrid, lived in New York, graduated from a big city college and gotten married. However, "Nothing I ever did prepared me for Paonia," he said enigmatically.

HCN 101

For the next few months, *HCN* has 103 additional readers, thanks to University of Colorado at Boulder Professor Spense Havlick, who has enrolled his Environmental Impact Assessment, Urban Landscapes in Peril, and Resource Management for Planners and Architects courses in what we call *HCN 101*. Welcome, and may some of you decide to stay for the continuing trip.

Hard sell

HCN's hometown of Paonia is well off the beaten track. In the mid 1970s, an out-of-county license plate was a rare sight from the end of hunting season in November to late spring. The town is a bit better travelled now, but visitors are still

rare at this time of the year. So it is not surprising that Janet Grand and John Barker, in Paonia for lunch while on their way to the ski town of Telluride, found themselves engaged in conversation by staffer Steve Hinchman, and then taken off for a tour of *HCN's* offices. The Boulder, Colorado, residents left with sample copies under their arms, Steve says, and a promise to subscribe.

A tough beat

Finally, a sad note. A month ago we discussed staffer Donna Gregory's adventures with her wandering dog and the Paonia justice system. A week or so later, Donna decided she couldn't afford another fine, and had the dog put to sleep.

HCN writes about all sorts of emotional and controversial regional and national issues. But our few lines about the dog and Paonia's police force brought us more heat than anything we've written about the Forest Service or Interior Department. The small town weekly newspaper is the toughest journalism there is, and we are relieved to be one step removed from it.

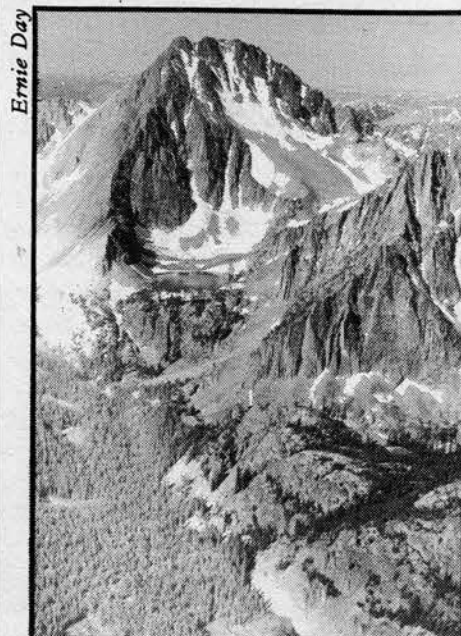
--the staff

HOTLINE

Idaho SOS

Idaho environmentalists are calling on the rest of the nation's greens to help sink what they say could be the most disastrous wilderness bill in conservation history. Out of a total 9.3 million roadless acres in Idaho, the McClure-Andrus wilderness bill calls for designation of 1.4 million acres as wilderness and proposes eight special management plans covering 600,000 acres (*HCN*, 2/1/88). The Idaho Conservation League, which has proposed its own 4 million acre wilderness bill, says McClure's acreage is too small for his proposal to even be called a wilderness bill, and has attacked the plan for denying federal reserved water rights for Idaho wilderness. But the real danger for Idaho and for the rest of the nation, says Mary Kelly, executive director of the Boise-based conservation league, is the eight precedent-setting special management plans. They dictate how the Forest Service must manage non-wilderness lands as a trade-off for areas proposed for wilderness, she says. An example is the plan for the Bonner's Ferry ranger district in the Kaniksu National Forest in the Idaho Panhandle. The plan would

require the Forest Service to cut 40.5 million board feet of timber annually -- 3.5 mmbf of which must come from grizzly bear habitat -- as compensation to the timber industry for designation of the 20,000-acre Long Canyon area as wilderness. Kelly warns that the bill is a thinly disguised attempt from McClure to subvert the Forest Service's planning process.



Castle Peak in the White Clouds in Idaho

WESTERN ROUNDUP



Demonstrators at Yellowstone National Park

Yellowstone shoots for a winter season

Motorized winter recreation in Yellowstone National Park will receive a big boost if Congress approves a Feb. 6 budget request from Park Superintendent Robert Barbee. But Barbee faces opposition from environmentalists who say more snowmobiles threaten wildlife in the park.

Barbee presented his "wish list" of at least \$16.5 million -- over 20 times the park's current winter expenditures of \$814,100 -- to Sen. J. Bennett Johnston, D-La. He chairs the Senate Committee on Energy and Natural Resources that oversees the National Park Service. Johnston and committee members Sen. James McClure, R-Idaho, and Sen. Malcolm Wallop, R-Wyo., joined Assistant Secretary of the Interior William P. Horn and Barbee for a two-day tour of park facilities this month.

As the dignitaries arrived at Mammoth Hot Springs Hotel in icy weather, they were greeted by a dozen protestors from the environmental group, Earth First!.

Group members wore bear costumes, chanted "Leave the park alone" and carried signs reading "Yellowstone is a sanctuary, not a playground." Although Park Service rangers and security personnel from the park's concessionaire, TW Recreational Services, tried to keep protestors and politicians separate, Sen. Johnston talked briefly with one woman dressed in a bear suit. "We always try to pay attention to people who have a point of view," he said later.

Barbee's \$16.5 million proposal includes construction of a new snow lodge at Old Faithful (\$4.8 million), new employee housing (\$2 million), upgrading the Old Faithful Visitor Center (\$500,000), three warming huts (\$450,000), seven social and exercise centers (\$770,000), snowmobile staging area at Mammoth (\$750,000) and snowmobile and vehicle storage (\$720,000). Park Service plans also include \$2.05 million to purchase snowmobiles, snow machines, and snowmobile suits.

The Park Service also indicated it may propose \$3 million in improvements for Canyon Village to meet the needs of over-snow travellers.

Earth First! member Phil Knight of Bozeman, Mont., said he disapproved of Yellowstone Park's increased snowmobile emphasis. "Snowmobiles harass wildlife and shatter the pristine silence of the Yellowstone winter," Knight said. "Winter is the time when wildlife is most vulnerable to harassment. It takes incredible amounts of energy just to survive the harsh climate."

He said his group supports a moratorium on further development in the Yellowstone ecosystem and a ban on all winter motorized use, other than on the existing road to Cooke City.

"The critters have rights," said Bozeman protester Rick Meis. "They have a right to winter in seclusion."

"The idea of eliminating people from Yellowstone is unrealistic," Superintendent Barbee said in a Feb. 7 interview. "It isn't going to happen." The Park Service must walk a fine line between public use and resource protection, he added. Some environmentalists "make the

assumption that we are some sort of sinister outfit ready to do in the resource, when the truth is we are committed to the protection of Yellowstone," Barbee said.

Barbee bristled at demonstrators' suggestion that doubling the park entrance fee from \$5 to \$10 for the 1988 summer season is an attempt by the Park Service to raise matching funds for TW Recreational Services' commercial expansion in Yellowstone National Park. (Besides park concessions, TW Services operates Hardee's and Denny's fast-food restaurants, Quincy Steak Houses, and American Medical Services retirement homes.)

"The idea that we have a sweetheart deal with the concessionaire is a lot of baloney," he said. "We have a sound business-like relationship."

Several of the protestors said they were former TW Recreational Services employees who witnessed firsthand as development in Yellowstone occurred at the expense of wilder-

ness and wildlife. Dave Grant of Salem, Mass., said he quit working in Yellowstone because he found the park administration's focus was on commercial development.

"There are already too many facilities and now they want to build more," Grant said. "Yellowstone is becoming too commercial. They want to make it look like Disneyland."

Barbee replied that his proposed improvements would not lead to too many people in the park. "We don't see any expansion to any significant degree," he said, "but we do want to do what we're doing in a better way."

Park Ranger John Donaldson cited safety for the park's new visitors as another reason for increased funding. "I can't believe how costs have gone up since I first got here in 1976," Donaldson said, referring to search and rescue operations.

"We just finished combing the entire north end of the park, looking for one person. His snowmobile went over a cornice and his machine fell on top of him. It's the second time he's broken his back snowmobiling down here."

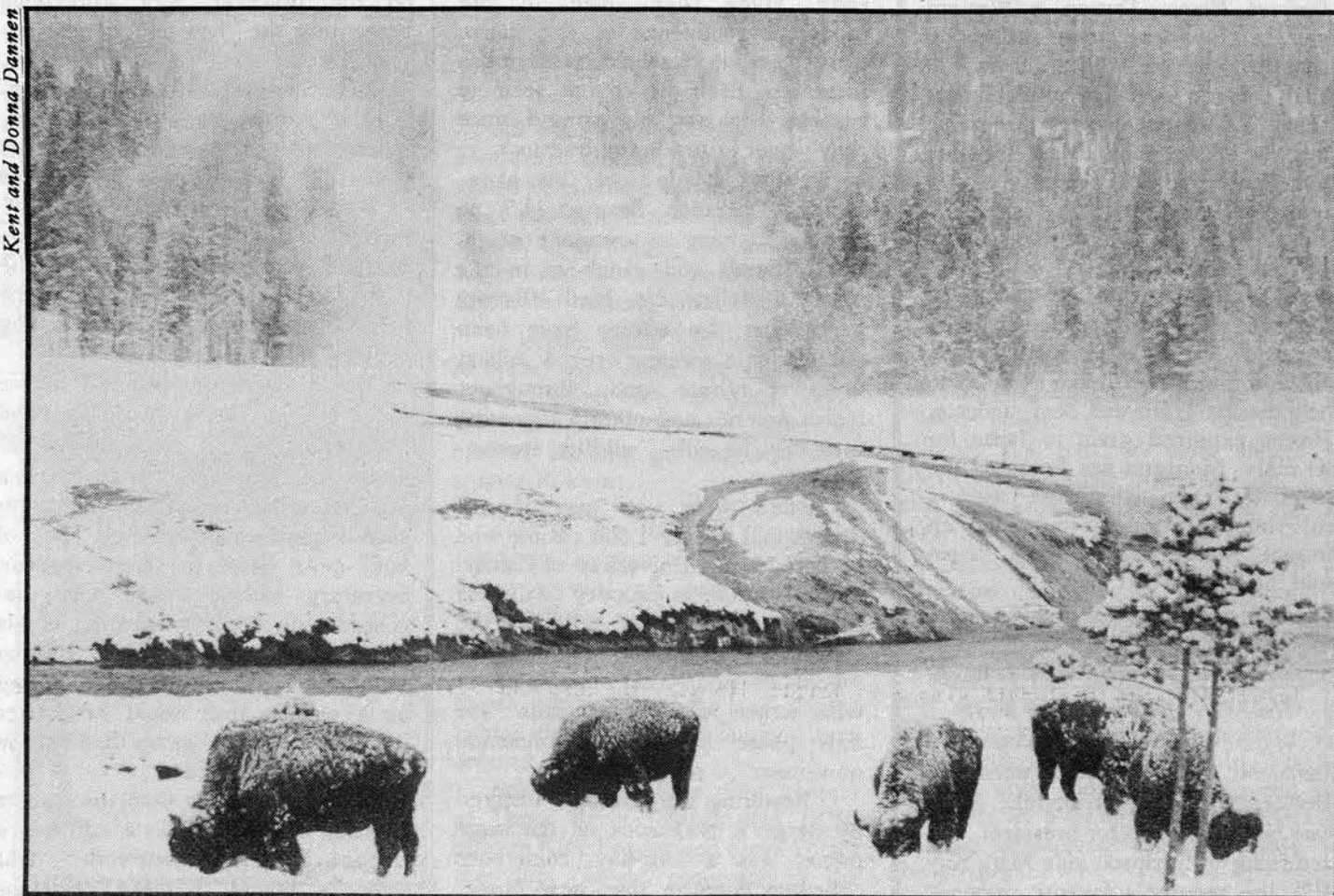
Safety was also mentioned in a Park Service publication which accompanied the new winter recreation funding request: "Unless groomed daily, the heavily-used over-snow travel routes become extremely rough with choppy moguls capable of throwing drivers and passengers from snowmobiles and causing severe injuries. At the very least, the rough routes are certainly uncomfortable and detract from a positive park experience."

According to park records, winter use in Yellowstone began in 1949 with 35 people flying in airplanes to the park's interior. By the 1986-87 winter season (Dec. 1 to March 31), over 100,000 visited the park, including 45,025 driving snowmobiles and another 9,573 riding in snow coaches.

--Paul Richards

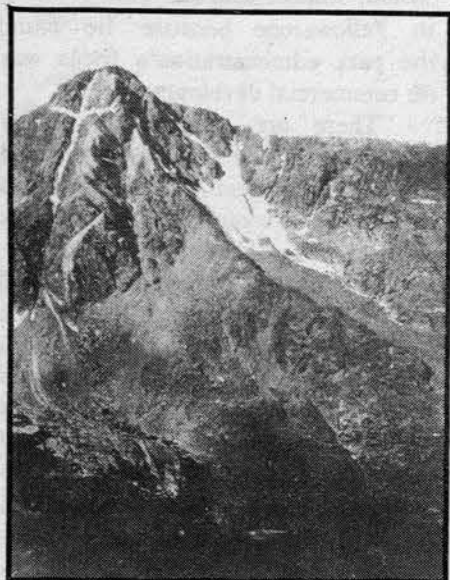
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The writer is a Montana-based freelancer who specializes in Western politics and resource issues.



Bison in Yellowstone National Park

HOTLINE



Mt. Holy Cross in Holy Cross Wilderness, 1876 print by Henry Jackson.

County dams project

County commissioners in Eagle County, Colo., voted unanimously recently to deny permits to the Homestake II water diversion project. The decision marks the first time a county has used a state-wide land-use law to control a water project. The \$91 million project would dam four streams in the Holy Cross Wilderness near Vail and divert 21,000 acre-feet a year through tunnels to the Front Range cities of Colorado Springs and Aurora. Commissioners said the cities failed to prove that wetlands would not be seriously damaged by the diversion. Expert witnesses from environmental groups and the Vail Valley water districts said the wetlands would dry up, and that the cities' plan to protect them would not work. The cities already receive 28,000 acre-feet a year from Homestake I. Colorado Springs attorney Tad Foster told the *Grand Junction Daily Sentinel* that the decision was "political" and that the cities would appeal it.

The West looks west

Japan may be looking to Utah to boost not only beef imports but also to start importing 400-pound calves and the alfalfa to feed them. Japan already buys \$6 million worth of beef products from Utah, and one of the state's leading cattlemen hopes sales blossom to \$100 million, reports the *Deseret News*. During a Western tour, a Japanese trade delegation recently met with the leaders of Utah's cattle and agriculture industries. Kuniharu Morita, executive director of the Japan Meat Distribution Center, said his country is very interested in fattening calves on Japanese farms and feedlots. With little farmland, Japan would also need to import hay, he added. In Montana, the state recently agreed to spend \$317,000 to open a trade office in downtown Tokyo this May to help market grain and beef products. Having exported grain to Japan for 20 years, Montana has "reached the point in trade where we need a full-time presence to make an impact," state official Mark Bisom told the *Great Falls Tribune*.

BARBS

The Mario Cuomo of the West?

Wyoming Sen. Alan Simpson, a Democrat, was flattered when the Democratic mayor of Buffalo, N.Y., said he should run for president. But according to Simpson aide Mary Kay Hill, the senator's favorite response is he "sniffs but doesn't inhale."

Ranchers again keep lid on grazing fees

With the force of a 1,200-pound cow plunging into a desert creekbed, the livestock industry crushed environmentalists in the latest fray over federal grazing fees.

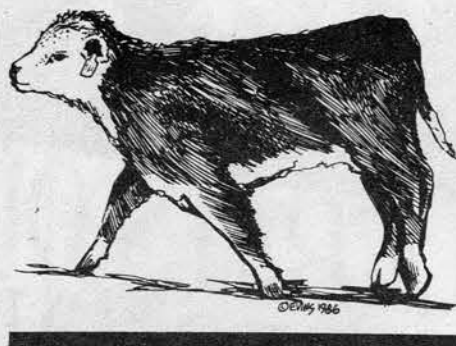
On March 1, the fee will rise 19 cents per animal-unit-month, from the present \$1.35 to \$1.54. But an attempt to obtain a broader reform in the way the fee is set was crushed after ranchers flooded the Department of Interior with letters. Reformers had hoped to make grazing fees on federal lands comparable to that charged on private land.

According to an Interior spokesman, 80 percent of the letters received by Interior asked that the present fee structure be retained.

"Eighty percent?" asked Johanna Wald, spokeswoman for the Natural Resources Defense Council in San Francisco. "Boy, they've really got their troops in order."

With no action expected on federal legislation aimed at increasing the grazing fee, Wald said environmentalists will have to rein in overgrazing through the budget process and by continuing to fight stocking levels set by the Bureau of Land Management and Forest Service.

Randy Morris, a Mountain Home, Idaho, dentist and long-time range



critic, said overgrazing can be fought on other grounds, and that continuing the fee formula might be a blessing in disguise.

Morris said he feared that a higher grazing fee would result in more range damage due to "improvements" -- new water pipelines and the like -- that the BLM would then be able to afford.

In a 41-page report, Interior spelled out why it supported a subsidized grazing program, with fees generating only 57 percent of administrative costs.

"Range improvements are capital investments that improve wildlife habitat, watersheds and riparian areas, as well as livestock forage," the report said. Because the BLM's capital investments in stock watering ponds and the like help more than livestock, the report said, it wasn't

fair to charge ranches the full cost of improvements.

The department said the 1978 Public Rangelands Improvement Act still guided its policy, which requires that the grazing fee reflect annual changes in the cost of production in order to prevent economic disruption and harm to the Western livestock industry.

But Rep. Mike Synar, D-Okla., a long-time opponent of low grazing fees, wants a very different system. In the past, he has sponsored legislation that would set the grazing fee on public land at the same price as on private land. Synar aide Kathy Sedden said she expects him to push the proposal again.

The Interior report said the BLM and Forest Service could do a better job protecting rangelands if Congress would fund projects already approved. For example, Congress has yet to dole out \$360 million approved for general range improvement in 1978.

Critic Randy Morris said many range improvement projects become livestock improvements, and too few address the real environmental problems of degraded riparian areas, depleted perennial grasses, erosion, and water pollution.

--Stephen Stuebner

Restoration, not mitigation, conferees say

In the mid 1960s, Dayton Hyde decided to try something different. The third generation southern Oregon rancher took livestock off a quarter of his land and invited back the wildlife. He dug a lake and stocked it with minnows shipped from Minnesota. He reintroduced native bunch grass and let it spread like the weed it's long been considered.

Within a few years, Hyde and his family were once again hearing the call of the loon and the squawk of the goose. From 200,000 acres of neighboring national forest land came elk and deer, eagles dotted the sky and blackbirds feasted on the grasshoppers that once plagued the ranch. Frosts have decreased on his land, Hyde says, due to the moderating influence of the native eco-system, and his beef tonnage has increased. Even the coyote seem to respect their new playground since they've yet to attack any livestock.

In 1968, Hyde took his show, called "Operation Stronghold," on the road, trying to convince neighbors, friends and ranchers in the West to follow his lead. Twenty years later, his efforts have been successful in turning over 5 million acres of private land, throughout North America and other continents, into what he calls "wildlife spectaculars."

Hyde's story was just one of dozens told to over 1,000 people who gathered at the University of California at Berkeley in January to discuss the reintroduction of wildlife, the cleansing of rivers, the reforestation of mountains and other examples of what writer John Berger calls "the new phase in the environmental movement" -- restoration.

"Restoring the Earth," inspired by Berger's 1985 book of the same name, was a four-day conference called to energize that new phase. Not content to fight rear-guard

defensive battles against polluters and despoilers, the assembled multitude was looking to the future by turning back the clock.

"Restoration is the acid test of ecology," said Bill Jordan, who's continued Aldo Leopold's pioneering work of the 1930s, using fire to restore Wisconsin prairies. "It's what ecology is all about."

In Berger's attempt to "mobilize the broadest possible coalition," the lion sat down with the lamb, as tree-huggers met with corporate spokespeople and government workers. Although many of the speakers repeated the familiar gloomy litany of dangers facing the planet, the mood of the conference was guardedly optimistic, and the emphasis was on the practical, with workshops presenting the "how-tos" of restoration.

Alan Savory presented his controversial range management plan, Arizona's Imprinting Foundation displayed its plow-like devices designed to reverse desertification, and U.S. Fish and Wildlife Service biologists detailed their reintroduction of the Red Wolf in North Carolina, with the help of radioactive scat as a tracking device.

David Wingate inspired those gathered in the redwood-paneled auditorium with a story of his 27 years of working to restore a pre-Columbian eco-system on Non-such Island, an uninhabited slice of land near Bermuda. Even Interior Secretary Donald Hodel was discussed with cautious warmth, as his proposal to restore Hetch Hetchy Valley in Yosemite was characterized as a project that would be better done by a citizens' group than by the Department of Interior.

A representative from the Lakota Indians of South Dakota offered a deeper historical framework. "Our tribe is bound to make decisions based on the seventh generation,"

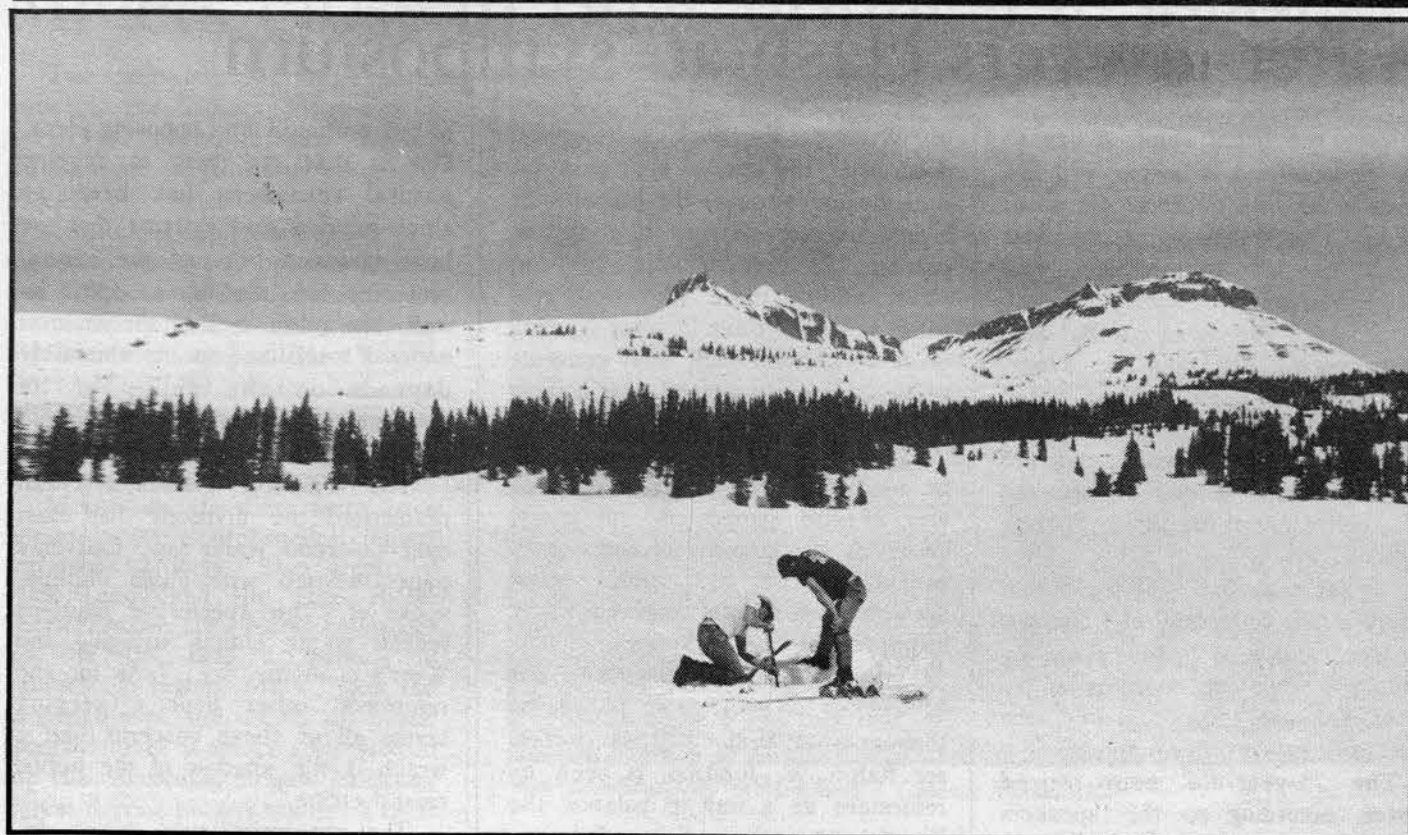


he said. "How will your decisions affect the seventh generation?" He also provided a counter point to the presentation by Roger Nelson of BHP-Utah Minerals International, who said that his firm had "a lot of money" to mend the scars of their ongoing mining operations. "The earth is our mother," said the Lakota. "We can't take a kidney or a lung from her and expect her to survive."

Such diversity of viewpoint was at the heart of many of the doubts expressed about restoration. Some participants warned of using it as an excuse for more environmental damage, a "technical fix" used as mitigation. A representative from Chevron found herself in a testy exchange with several questioners from the audience. She was asked to consider that compliance with the law is not synonymous with environmental restoration.

Some wounds, it was pointed out, can take lifetimes to heal: Old growth forests require centuries to grow, and many toxic substances as long to dissipate. Even a successful restoration can only imitate the original conditions. As one speaker put it, "the restoration process can only approximate what once was."

--Jim Stiak



Fisheries biologist Jim Herrig, left, and volunteer Parker Newby work at Little Molas Lake north of Durango, Colorado

Trying to save trout from suffocation

The 25-pound pack on Parker Newby's back is filled with flasks, burettes, sulfamic acid, phenylarsine oxide, manganous sulfate, and alkaline iodide-azide.

But the most essential piece of equipment is on his feet -- his skis. Newby, an excellent skier, often battles whipping wind and freezing temperatures to cut a 3 1/2-mile trail through knee-deep snow to measure oxygen concentrations in high mountain lakes of western Colorado.

Scientists use the samples to discover, first, which lakes are subject to periodic winterkill of trout and, second, which lakes would benefit from a habitat improvement project.

The Colorado Division of Wildlife won't waste money stocking trout in lakes that suffer periodic winterkill, a term describing mass suffocation of fish in an ice-locked lake. On the San Juan National Forest, some 40 of the 127 lakes have characteristics that make them subject to periodic winterkill.

"It doesn't do us any good if we have 12-inch fish in a productive lake in October and they're dead in January," says forest biologist Jim Herrig.

Newby's midwinter data collection is a job with few comforts. "One of the hardest parts is working in water with your hands when it's cold and the wind's blowing and the chemicals are frozen," says Newby, an English major at Fort Lewis College in Durango. Then the samples freeze, the water expands, the flask explodes. "And you have to start all over," he says. But he can't leave. To retreat would upset scientific data that has been gathered weekly from December to May for five years.

Oxygen samples are collected at Little Molas Lake, sitting at 10,095 feet above sea level on Molas Pass near Silverton, and at 9,340-foot-high Scout Lake in the same region. By monitoring the oxygen concentrations in lakes within this elevation range, scientists can predict the severity of winterkill across the high country, Herrig said.

Trout need oxygen levels of at least 3 to 5 parts per million to survive. Oxygen levels may plunge as low as zero ppm in a frozen lake.

A good year for skiing is a bad

year for trout. Years of testing show deep snows and early winters are critical factors in the rate of oxygen depletion and subsequent winterkill. Tests also find two other factors contributing to low oxygen levels in high-country lakes: limited streamflows and abundant aquatic plant life.

Here's how lakes can winterkill: The lakes' surfaces freeze in early winter. It's as if a lid is screwed on tight over the lake. Then comes the "curtain" in the form of heavy, continuous snow, sometimes up to 120 inches. Blocking the sun prevents photosynthesis, the complex process by which plants, including the ones in the water, produce oxygen.

These factors, combined with limited flows from feeder streams, mean lakes can't replenish their life-giving oxygen levels. Moreover, the decay of moss and other aquatic plants robs the water of precious oxygen.

Scientist Herrig has experimented with ways to maintain oxygen in the frozen lakes so trout will survive

until spring. Stump Lake and Jacob's Ladder Lake had histories of winterkills. Herrig's plan called for increasing oxygen-rich streamflows into the two lakes. Stump Canyon Creek was diverted through Stump Lake in 1981. Brook trout were planted and survived that winter. But the spring runoff deposited a wide path of sand and silt, called an "alluvial fan," at the lake's inlet. The inlet's water slowed to a trickle, the lake's oxygen level fell, and the brookies suffocated.

So, in summer, workers dug a trench through the alluvial fan. The oxygenated water reached the lake and the fish survived the following winter.

A similar project at Jacob's Ladder, where inflowing water was minimal, also saved trout by increasing turbulence and thereby adding oxygen to the water. That winter, maximum oxygen in the middle of the lake dropped to 2.9 ppm. But the trout survived and the experiment was deemed a success.

--Dave Curtain

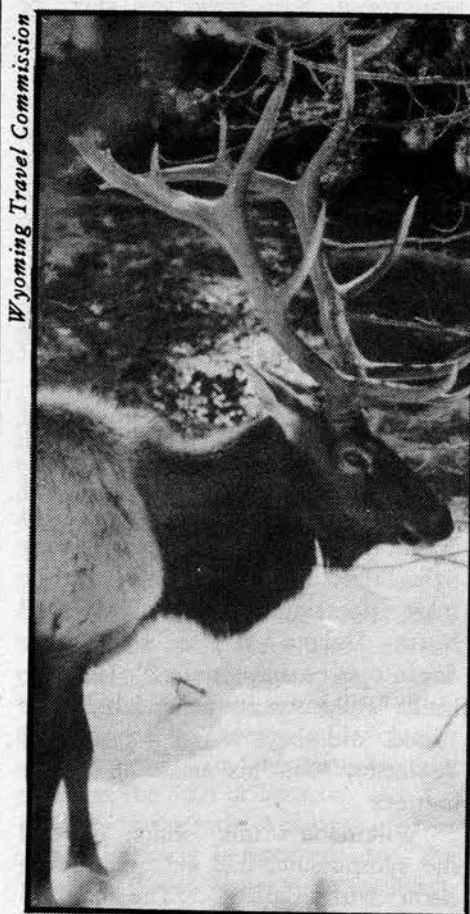
HOTLINE



Bison and friend

Tough competition

A plan to control bison in Jackson Hole, Wyo., suggests killing half the troublesome herd of 100. The U.S. Fish and Wildlife Service and Wyoming Game and Fish Department say bison must be kept away from the National Elk Refuge. Bison migrate to the refuge and compete with elk for food. When confronted on the feedline, they have gored several elk. An alternative explored in the plan is trapping and transporting the bison, but facilities to trap the huge, unruly animals would take a year to build, the agencies said. Another alternative, transporting the bison from Teton County to one of three federally managed bison ranges, poses legal problems, says the management plan and environmental assessment. Bison may carry brucellosis, a disease causing sudden abortions in cows. Bison are considered livestock under Wyoming law, and diseased livestock cannot be transported over county lines. Other alternatives are fencing bison permanently in Teton National Park, public hunting, or replacing the herd with one that won't migrate to the refuge. Public comment on the draft can be sent until March 14 to Bruce Smith, National Elk Refuge, PO Box C, 675 East Broadway, Jackson, WY, 83001. (307/733-9212).



Bull elk

'Party hunting' leads to hangover

An elk hunt on Johnny Moore Mountain in northern Colorado ended in carnage last October as 21 dead elk were strewn over a square mile of open ridge. Five weeks later eight hunters were fined a total of \$6,302 for hunting violations.

It began when six men hunting on state land drove 200 elk out of heavy timber onto an open, sage-covered ridge. Waiting were 21 hunters in two groups, who fired around 70 shots.

Told of the fusillade, investigating State Division of Wildlife officers found several elk hanging in the woods. They were untagged, field-dressed and skinned. Hunters at the scene, and later at Three Rivers Ranch, which leased the land, denied killing illegal elk. The hunters' tags seemed in order.

But two days later, four hunters at Three Rivers Ranch told DOW officers Kirk Snyder and Steve Porter that they would cooperate in the investigation. With the new informa-

tion the rangers were able to issue five tickets. That left five illegal elk unaccounted for and no one charged. But for lack of hard evidence, DOW officers stopped actively pursuing the case.

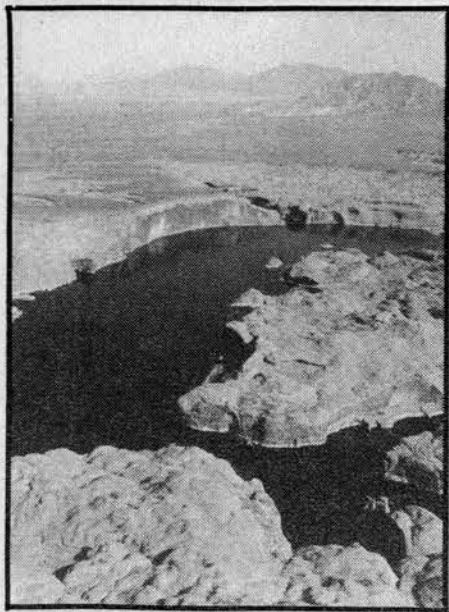
In the following weeks the story was picked up by the Denver print and TV media, acting on a tip. Once out, the story upset the local people. "Most people up here like the wildlife. It's part of what makes North Park a good place to live," said Kirk Snyder, who lives in the area.

There were more tips, and in December Snyder and Porter confronted James Baller, manager of Three Rivers Ranch. With Baller's cooperation, the last tickets of the case were issued. All of the eight fined hunters are Colorado residents.

What is called "party hunting" is in the open now, said Snyder. "Hunters as a group have to start policing themselves, or they'll lose the privilege."

--Michael Crawford

HOTLINE



Lake Powell

Glen Canyon trysts

Visitors to national parks in the Rocky Mountain West have increased every year, and 1987 was no exception. The National Park Service says more than 28 million people visited parks, historic sites, national recreation areas and national monuments in Colorado, Wyoming, Montana, Utah and the Dakotas for a 7 percent increase over 1986. The smaller, less famous parklands account for much of that increase. Bryce Canyon National Park in Utah cleared a million visitors for the first time ever, a 21 percent increase. Other areas with record numbers of visitors were Zion and Capitol Reef national parks in Utah, Mesa Verde National Park and Colorado National Monument in Colorado, and the Bighorn Canyon National Recreation Area in Wyoming. Of the big parks, the Yellowstone and Rocky Mountain parks have always drawn the most visitors in the region, both attracting 2.6 million last year. But beating them both in popularity for the first time was the Glen Canyon National Recreation Area in Utah and Arizona. Lake Powell, which stretches for 186 miles, recorded 2.8 million visitors. That figure can be misleading, cautions Park Service staffer Ben Moffett, as local people are included in a recreational area count. Overall, he says, the trend leads to one conclusion: "Americans are having a love affair with their national parks."

Referendum on incineration

The fate of a toxic waste incinerator proposed for Cisco, Utah, has been taken out of the hands of county commissioners and will be put on the ballot in the next election. Last month, Grand County, Utah, commissioners unanimously approved zoning changes to pave the way for Co West Inc. to build a toxic waste incinerator in Cisco (HCN, 2/15/88). Opponents have since gathered nearly twice the required number of signatures to force a referendum that will give county voters a chance to reject a clause in the new heavy industry zoning rules that allows incineration of toxic wastes. Citizen groups in Grand County are also circulating petitions for a second referendum that will prevent county commissioners from passing any other zoning laws allowing either the incineration or storage of hazardous and toxic wastes in Grand County, except for wastes produced as a byproduct of local industry.

Water lawyers clash at symposium

Have you heard about a day so cold someone saw a lawyer with his hands in his own pockets? Or about the two mothers bragging on their sons? "My son, the doctor," said one, "is so smart he's found a cure for cancer." The other mother was not impressed. "My son, the lawyer, is so smart he figured out how to bill two clients for the same work."

Such jokes are endemic; they are the way society shows respect for and resentment of the power lawyers wield.

On Saturday, Jan. 16, the School of Law at the University of Colorado, Boulder, answered those jokes by holding a day-long symposium to honor Raphael "Ray" Moses, the dean of Colorado water lawyers.

The 75-year-old semi-retired Moses, according to the speakers and audience that gathered to honor him, is the opposite of the lawyers in the jokes. Moses, they said, wins through reason and compromise rather than intimidation; he sees himself as a problem-solver rather than a litigator; he found time during his career to serve both a profitable array of clients and to teach courses at CU, serve on numerous committees and perform other acts of public service.

Rather than identify totally with those who hired him, Moses took general positions which, in one case, was used by the opposition against him and his client in court. "That," said Moses later, "is why attorneys shouldn't write articles."

Most of the speakers honored him for the spirit of reasonableness he brought to water law. The spirit was most evident in the fact that those who would reform Colorado and Western water law, and those who think the system's only problem is those who would reform it, came together to honor Moses.

For the most part, the speakers adopted Moses' reasonableness and his wide-ranging interest in the law. The papers presented covered the U.S.-Mexico agreement on salinity, groundwater, water as a commodity, federal reserved water rights, and other topics.

But the passions surrounding Western water law are too strongly felt to remain submerged for an entire day. Water attorney John Carlson, in his prepared text on federal reserved water rights, warned against "rigid adherence to dogma" and "charging forth with bayonets fixed into a decade or more of divisive struggle."

In his talk, Carlson departed from the text to compare Colorado's water fight to Arthur Koestler's *The Yogi and the Commissar*. In that story, Koestler portrayed the tension between those who are intensely ideological, such as a Khomeini, and those who would improve the world by issuing bureaucratic orders, such as a Forest Service.

Against those extremes Carlson posited Ray Moses and H.L. Menck, as defenders of freedom, as thinkers who believe people should be able to use the free market system to do what they want "even if they're damn fools." Carlson said the free market system elevates the collective wisdom of people above the plans and orders bureaucrats would impose, and embeds that wisdom in private property rights.

Delivered in a style reminiscent

of William F. Buckley, Carlson described the prior appropriation doctrine for water as the bulwark of a free market system. Prior appropriation, or first in time, first in right, allows those who first put water to use to claim it. Later comers must be content with what remains in the stream. In general, the system works to drain streams of all water.

The enemies of a legal doctrine he equated with a free society were also at the symposium, he made clear, in the persons of those who would impose the public trust doctrine and federal reserved water rights on the existing system.

The public trust doctrine, the subject of a symposium paper by University of Washington law professor Ralph W. Johnson, is seen by reformers as a way to balance the West's approach to water. Johnson said, "The prior appropriation system is flawed: from inception, it has failed to protect public rights to clean water, recreation, fish and wildlife, and environmental quality." The public trust doctrine, by injecting the broader public interest into water law, "may provide a means of constraining prior appropriators."



Raphael "Ray" Moses

Reserved water rights are rights courts have ruled came with federally-created Indian reservations, national parks, oil shale reserves and wilderness. Such rights are seen as another tool for constraining the drive to drain or foul streams.

In his talk, Carlson described reserved water rights as a "legal myth -- it makes the virgin birth look far from abstract." In addition to being bad law, he said, the federal government is so large and powerful that its presence in water matters in the form of reserved rights could damage or paralyze the present system.

Carlson threw barbs at an earlier speaker -- University of Colorado law professor Charles Wilkinson -- for mentioning, with approval, that North Dakota courts were among those that had adopted the public trust doctrine. Carlson described North Dakota as "a state that doesn't even have water." He also hit at Wilkinson for using labels like "good old boys" and "Lords of Yesterday" in his talks on water matters.

Wilkinson's talk, which opened the symposium, had anticipated the clash with Carlson. "The contentiousness over the public trust (doctrine) is rooted in the collision

of two profound and opposing ideas. One is that the rush to develop natural resources has been so single-minded and extreme that we have wounded not just the natural resources but the human spirit as well. The other is that the maintenance of a civilized society ultimately depends on the ability of its government to guarantee and uphold the worth of private property."

The Carlson-Wilkinson clash dramatized the divisions that exist over Colorado water law. Carlson's paper, written with Paula Phillips, spoke of "the specter of limitless federal water claims wringing the West's economy dry..." As for the reformers' other hope: "Creeping across all of these concerns like a wraith is the shadow of the public trust doctrine."

The opposition saw things differently. CU law professor David Getches urged the water interests to bend to the new forces abroad in the land. Getches said the majority no longer accepts the dewatering or polluting of streams. The public trust doctrine, he said, is a way the public can impose its will on water users through the courts. But, Getches said, it would be better if water interests did not force the issue into the courts, and instead settled the dispute through compromise in the state legislature.

Carlson spoke of the specter of a taking of private property, but Getches and other speakers on the reform side did not see that happening. Efficiency, orderly use, planning and other steps, they said, could improve things for everyone. Land use controls, Getches said, generally enhance the value of land. Improved water quality, keeping water in streams, and other steps could do the same for water.

Carlson spoke of compromise, but did not seem convinced that the federal camel could be kept out of the private property tent. He was pleased, he said, that the McCarran Amendment had forced federal water claims into state court, where they could be integrated into state water rights. But the federal government was so powerful, he feared, that it might paralyze the workings of the present free market system.

Carlson also did not like the origins of the push for change. He characterized the pressure for reserved rights as occurring when "elements of a society become dissatisfied with past choices. 'One attacks. That's what happened with reserved rights, and they have won. In Colorado, it's a useful tool for those who can't command a national mandate for their position.'"

Getches was less apocalyptic. He expressed confidence that the tide was running with the reformers, and that the only question was whether the water users would be reasonable, and negotiate, or resist and cause the change to come all in a rush, when the doctrine of prior appropriation finally gave way.

--Ed Marston

Water and the American West: A Symposium in Honor of Raphael J. Moses, is available in paperback for \$16 (\$16.92 in Colorado) from: Natural Resources Law Center, Campus Box 401, Boulder, CO 80309.

Miners close in on a Montana wilderness

Two proposals for large silver mines in the Cabinet Mountains of northwest Montana are moving through the labyrinthine permitting process.

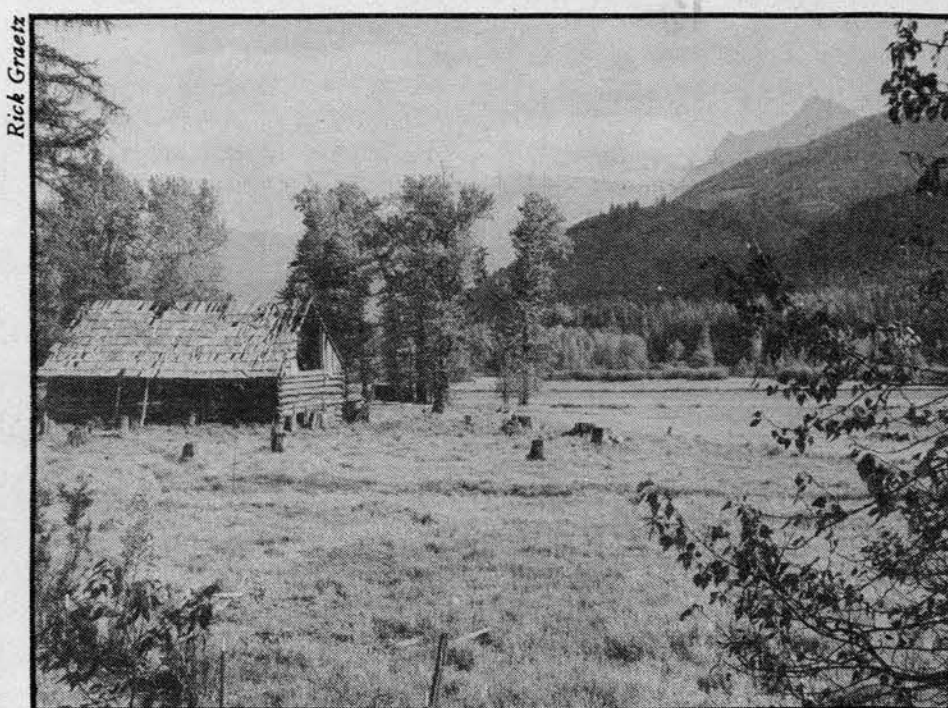
ASARCO's application for a permit to construct and operate a mine and mill beneath the Cabinet Mountain's Wilderness is under review by the Montana Dept. of State Lands. Since May, the state has sent ASARCO's application back three times for revision, mainly because of inadequate water protection.

Meanwhile, the first steps have begun in the environmental impact statement process. The Dept. of State Lands and the U.S. Forest Service, which are project co-leaders for the EIS, held a meeting in January in Noxon, Mont., near the proposed mine site, to let the public identify issues it wants addressed in the EIS. According to Ron Erickson, Forest Service project leader, a draft EIS could be out in eight months.

Tunneling under the wilderness from the Rock Creek drainage, ASARCO proposes to mine 10,000 tons of ore a day. The 30-year mine will employ 350 people and produce an estimated annual payroll of \$10.5 million. The project is touted as the largest silver mine in North America.

Among the issues of concern brought up at the Noxon meeting are the mine's effects on water quality in the Clark Fork River, which is less than a quarter-mile from ASARCO's proposed tailings pond. An embankment around the tailings would eventually cover 376 acres and top out at 250 feet. Other issues of concern are the mine's effects on the Cabinets' small population of grizzly bears, big game such as deer and elk, mountain goats and mountain sheep, wilderness quality, recreational access, air quality (from diesel fumes and dust), noise, cultural resources and the effect on local communities.

Area residents at the Noxon meeting said they were concerned about employment guarantees, competitive wages and health and safety. The labor issues may have been sparked by the recent wage cuts and



An old homestead in Montana's Cabinet Mountains

union organizing at ASARCO's Troy silver mine, located 17 miles north of Rock Creek. Workers there have said the company has a lax safety attitude.

U.S. Borax is also moving to develop its claims in the Cabinets. The company submitted in January an application to the Dept. of State Lands for collecting baseline data to be used in its permit application. The baseline information will be part of the company's mining permit, whenever it is issued by the state. The information will also be important as a basis for resources to be reviewed in an EIS.

U.S. Borax has claims in the same general vicinity as ASARCO, and is also considering locating its mine in Rock Creek. However, according to its recent application, it appears to be favoring development on the east side of the wilderness, in Ramsey or Libby Creeks. The mine and tailings pond would then be in the Kootenai River drainage. U.S. Borax plans an operation similar in scale to ASARCO's.

If both companies follow through with their plans, which could be five to 15 years from completion, they will combine with ASARCO's Troy

mine in squeezing the Cabinet Mountains Wilderness from three sides. The 94,000-acre area is largely comprised of fragile, sub-alpine terrain and is popular with northwest Montana residents.

Neither the Forest Service nor state have studied potential cumulative effects on the wilderness and surrounding area from the massive development. The Kootenai Forest, where the proposals are located, did not examine the cumulative effects issue in its forest plan. Conservationists say that means the agency may have to drastically adjust its plan at some point to account for the mine development.

Though the mine proposals got started in 1979, when ASARCO began exploration inside the wilderness, they have received little attention by conservationists outside the region. Recently, however, the proposals have drawn the attention of regional papers. Some local conservationists, who view mining in the Cabinets as having national implications, hope that more attention will draw the eye of national conservation groups.

--Bruce Farling

HOTLINE

Utah looks (way) back

The last *Allosaurus* to romp through Utah may have vanished 145 million years ago, but the upright 35-foot-long meat-eater is not forgotten. Hoping to boost tourism, state Sen. Omar Bunnell has proposed a bill to designate *Allosaurus* as "state fossil." The state Senate just passed the bill and there seems little opposition in the House or anywhere else. *Allosaurus* was so common in Utah that bones of more than 50 fossilized skeletons have been sent to museums around the world. *Allosaurus* was also fierce, preying even on *Brontosaurus*, which was 10 times its size. The oldest member of the Senate, Omar Bunnell said he was chosen to introduce the bill because "I'm closest to the age of the dinosaurs of anyone here."

Hanford reactor shut

Saying there is no need for the plutonium it can produce, the Energy Department has decided that its N Reactor at Hanford, Wash., will remain shut. The closure means 2600 workers will lose their jobs in the next year, ultimately affecting some 13,800 jobs in the state, reports AP. The aging nuclear reactor has been closed since January 1987 for \$70 million of safety improvements, although critics warned that the plant would cost many millions more to become safe. Energy Secretary John Herrington said his decision was based on a secret Defense Department review of the nation's future need for plutonium, a key element in nuclear weapons.

BARBS

Without firing a shot.

According to an opinion poll, British Prime Minister Margaret Thatcher would have won the New Hampshire primary, had she been on the ballot.

The Arkansas is bumper to bumper with rafts, kayaks

CANON CITY, Colo. -- An ambitious plan to transform recreation patterns on the Arkansas River may prove to be a pilot for managing other Western rivers that are being "loved to death."

On some summer weekends, stretches of the Arkansas look like an L.A. freeway, with rafts playing the role of cars.

The Arkansas originates near the mining town of Leadville, Colo., and flows south and east into Kansas. For about 10 miles below Leadville, the Arkansas is heavily polluted by drainage from abandoned mines containing copper, cadmium, zinc and other metals.

Nevertheless, between Leadville and Canon City, some 130 river-miles away, the canyon-choked river attracts tens of thousands of fishermen, rafters and kayakers. Leaving the mountains at the Royal Gorge -- itself a major tourist attraction -- the Arkansas flows another 45 miles into Pueblo Reservoir, Colorado's most-visited manmade lake.

Commercial and individual rafting and kayaking alone are considered so important to local economies that the

town of Salida, working with the Colorado Division of Wildlife, recently completed a \$102,000 boat chute to let boaters float into its downtown historic district, instead of being stopped upstream by a diversion dam serving a state fish hatchery.

Now the Colorado Division of Parks and Outdoor Recreation, which licenses commercial rafters, proposes making an intermittent state park along the river by taking over some public land now administered by the Bureau of Land Management.

The BLM, which has created some put-in and take-out spots for boaters with basic sanitary facilities and campsites, says it is incapable of managing the growing recreational water traffic. The state says that title to some BLM land, primarily these campgrounds, would eventually be transferred to the state and come under the park fee and permit program. An agreement signed in January calls for the state parks department to develop a recreation management plan that would take effect at the start of 1989.

The proposed Arkansas River State Park is supported by the Western River Guides Association,

according to its executive director, Jerry Mallett. But landowners along the river and some fishermen have a more cautious response.

"I'm afraid this whole thing could end up oriented to the commercial rafters," said Ed Valdez, owner of Performance Angler, a flyfishing shop in Canon City.

Leo Gomochak of Tour Unlimited says the atmosphere during the rafting season is close to a "Coney Island" now with no control by anyone. Minimum streamflows are the most necessary item, though: If you don't have the resource then there won't be anything for anyone."

According to Jerry Mallett, the Arkansas' problems today could well be the problems of tomorrow on the Dolores, the Snake, the Green and other Rocky Mountain rivers with high recreational use. Getting all recreational management under one agency is the first step, he said.

Just this month, the BLM put a lid on commercial rafting on the Dolores, saying it would not accept any new permit applications until a new management plan is completed.

During a series of hearings in December and November 1987, the

state parks agency ran into the most opposition to the proposal in Howard, a small community between Salida and Canon City, where homeowners along the river feared more water traffic would lead to more littering and trespass problems.

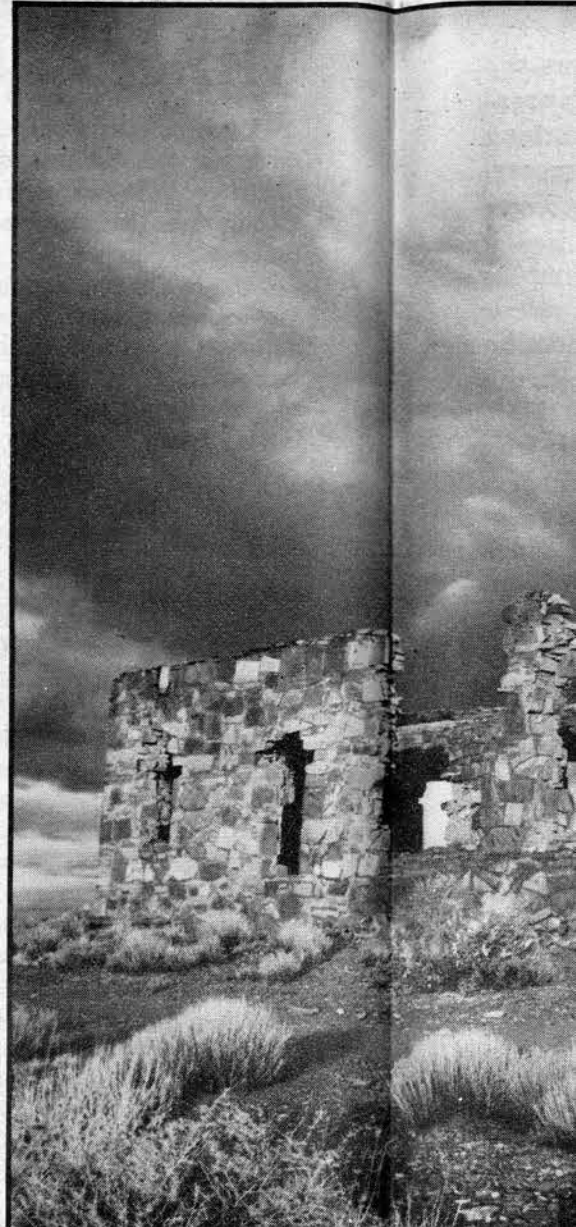
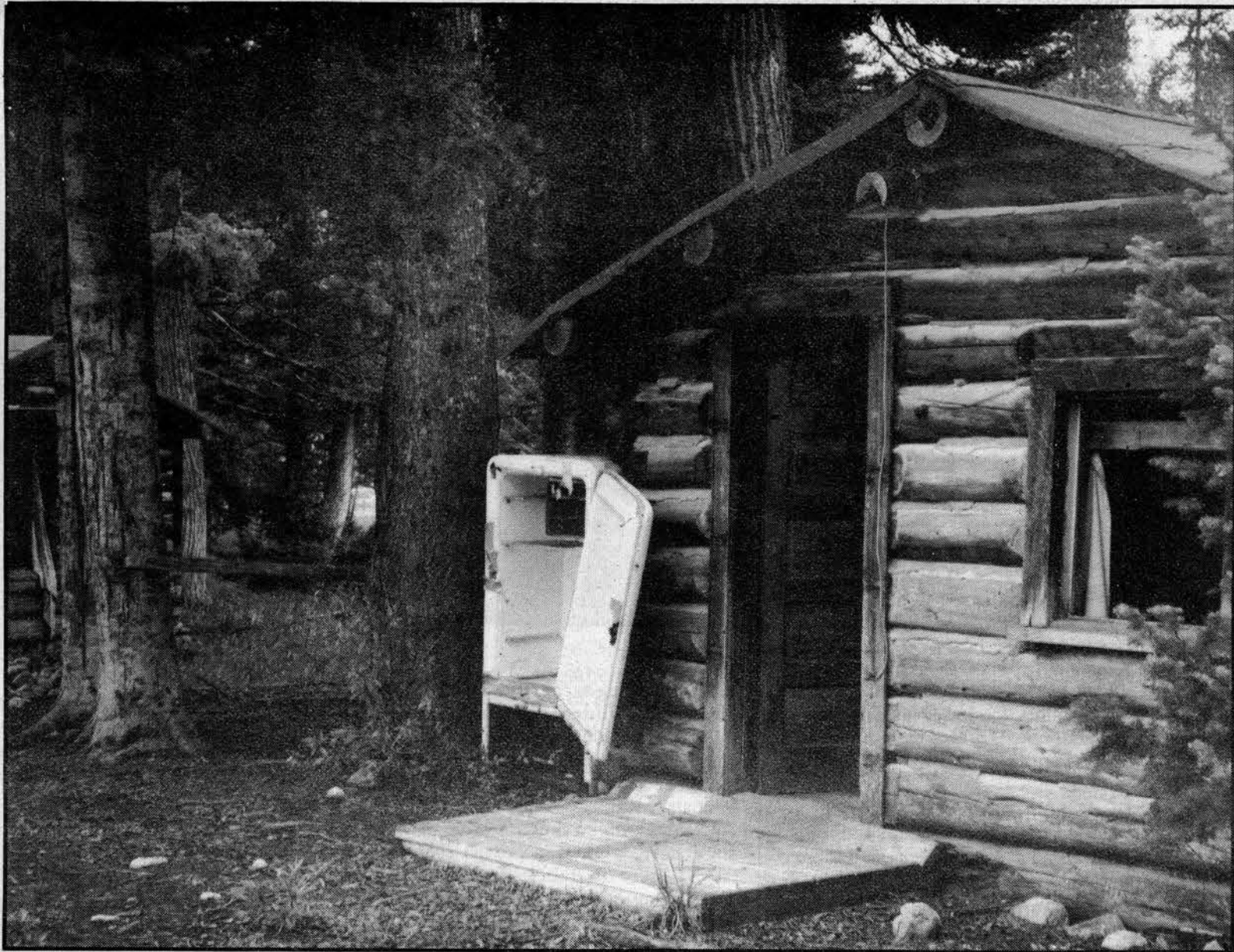
The agency said river traffic is increasing anyway, and that improving public camping and toilet facilities would reduce intrusions on private property.

Both rafters and fishermen were concerned that diversions from the river could lower water levels, making the summer rafting season shorter and in winter possibly harming fish populations. The growing cities of Aurora and Colorado Springs pump water up out of the drainage above the town of Buena Vista, moving it through pipelines and other streams to their reservoirs.

The Division of Wildlife and the Colorado Water Conservation Board are likely to file for water rights for minimum streamflows, but their filing in early 1988 will be junior to older water rights owned by the cities.

--Chas S. Clifton

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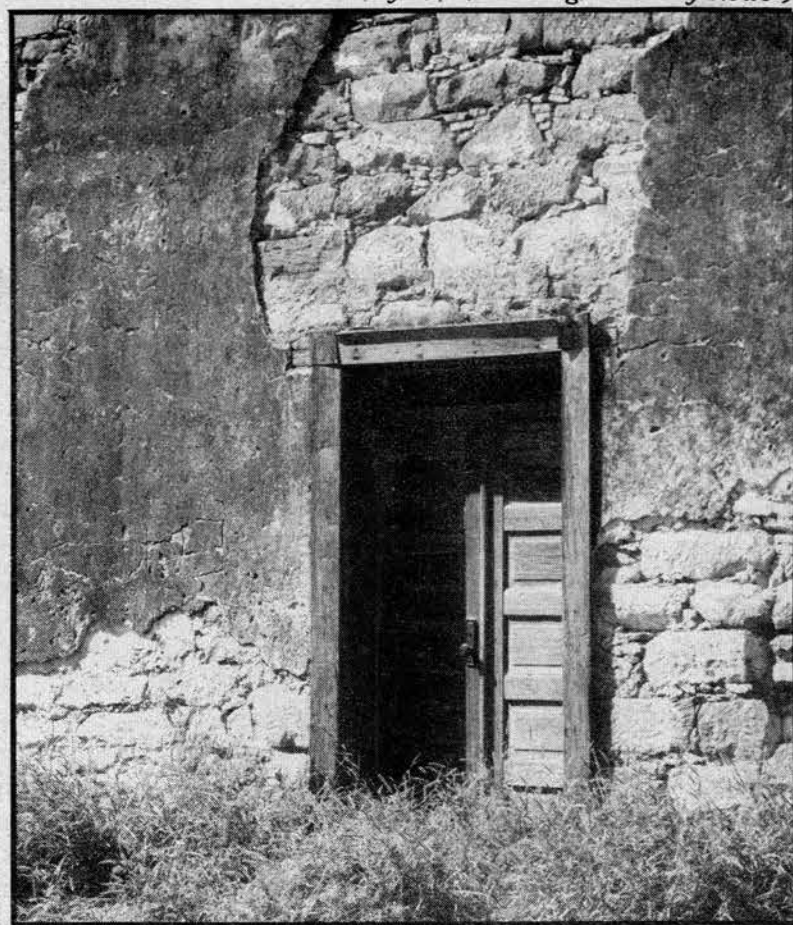
Rural Manscap



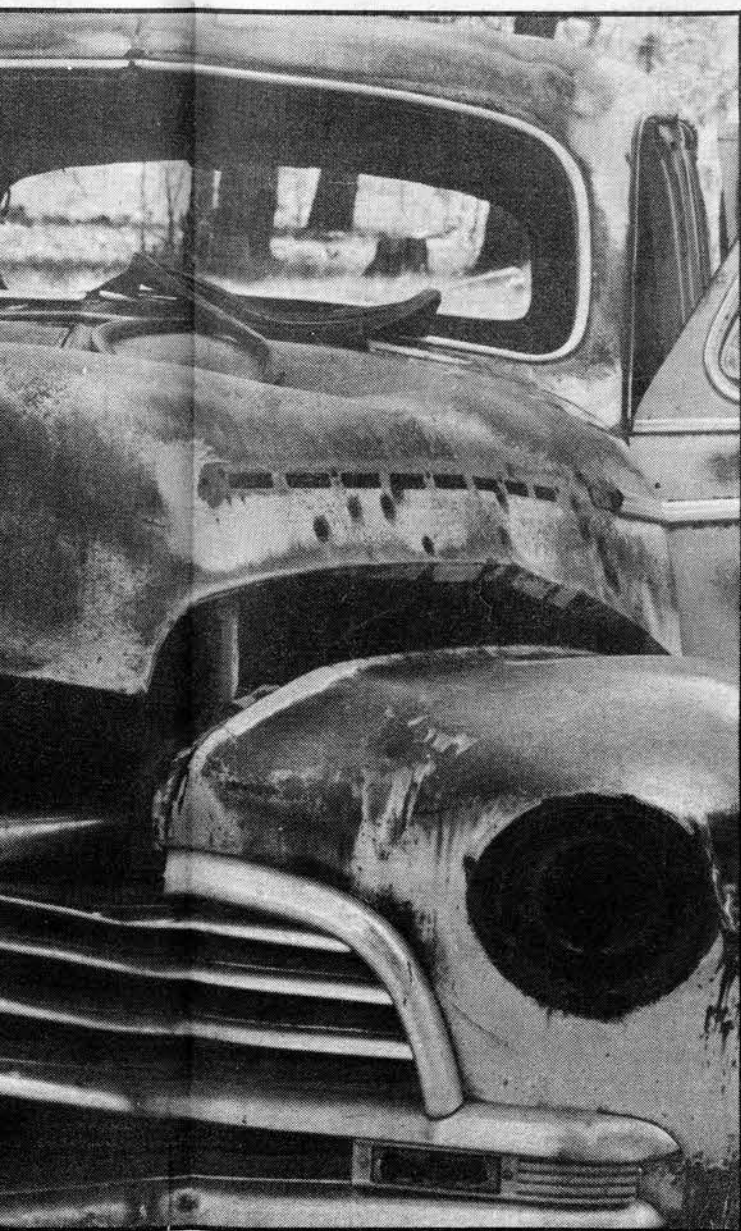
Dale Schicketanz, a long-time contributor to *High Country News*, lives on the edge of the Colorado Plateau in Show Low, Arizona. For the last three years he has been photographing abandoned buildings, cars and other artifacts in the rural West. The photos here are a sampling from that project.

Clockwise, from above: Atlantic City, Wyoming; White Grass Ranch, Grand Teton National Park, Wyoming; Ruin near Meteor Crater, Arizona; Doorway, San Ygnacio, Texas; Shingles, Texas; Atlantic City, Wyoming; Chevy detail; and Head-on Chevy.

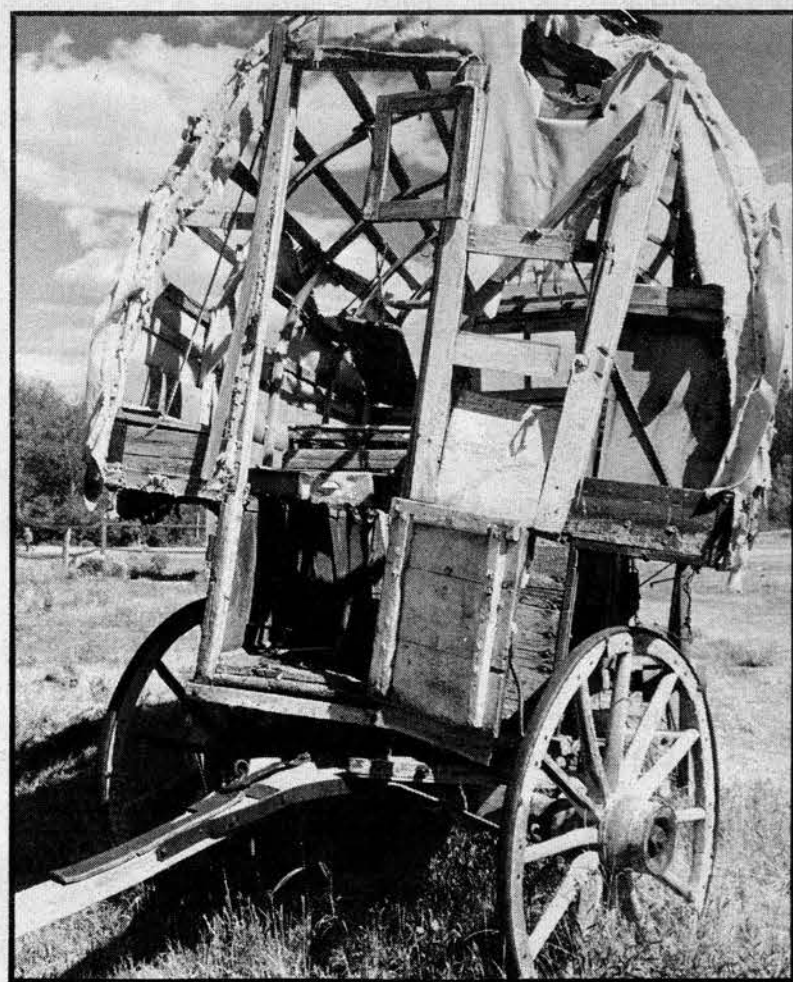
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*Photographs by
Dale
Schicketanz*



Reform...

(Continued from page 1)

incompatible with oil and gas development. An "up-front" analysis of potential resource conflicts should occur prior to leasing, conservationists say. Such analysis would allow informed decisions to be made prior to the irrevocable commitment -- the creation of the property right -- that leasing represents.

Over the objections of the petroleum industry and the Reagan administration, conservationists were able to convince the House to include a requirement for pre-leasing analysis in its version of leasing reform legislation. The administration and the industry argued that existing laws offer adequate environmental protection. That view won out in the Senate, where Sen. Dale Bumpers, D-Ark., had been trying for 10 years to scrap the lottery.

As the price of cooperation from the petroleum industry's allies -- including Sens. Malcolm Wallop, R-Wyo., James McClure, R-Idaho, and John Melcher, D-Mont., Bumpers agreed to block efforts to impose pre-leasing analysis.

In hectic negotiations between the House and Senate conferees during the waning days of last year's session, the oil industry prevailed. Leasing reform emerged with only minor improvements in the environmental rules. In particular, lawmakers formalized the Forest Service's right to block leasing of its land -- a move that will strengthen its hand in dealing with the BLM, which actually issues leases. In addition, companies that fail to reclaim well sites will be barred from obtaining new leases. There will be greater public disclosure of BLM decisions governing leasing and development.

Finally, in a classic maneuver designed to give the appearance

of addressing an issue rather than avoiding it, Congress ordered a study of the environmental impacts of oil and gas leasing and promised to hold hearings on the topic.

Congress' efforts disappointed those who had pressed for sweeping changes in the leasing system. The Sierra Club's Brooks Yeager, while saying that the few minor changes represented improvements, conceded that the petroleum industry had carried the day.

But Karl Gawell of the National Wildlife Federation, who with Yeager had lobbied hard for the House version of leasing reform, took the time-honored Washington approach of an after-the-fact lowering of expectations. Even if it left unresolved the question of how to determine where to allow leasing, the reform bill was as good as could be expected under the circumstances, he said.

Less than a month later, the circumstances change. The U.S. Circuit Court of Appeals for the Ninth Circuit, sitting in Portland, answered the question Congress had ducked. In a case appealed from the U.S. District Court, the circuit court ruled that the BLM could not sell oil and gas leases without a thorough analysis of the potential effects of developing the leases. The case, known as Connor vs. Burford, involved leases in Montana's Flathead and Gallatin national forests. The District Court ruled that the BLM, the Forest Service and the U.S. Fish and Wildlife Service had violated the National Environmental Policy Act and the Endangered Species Act by issuing the leases.

The leases had been issued on the premise that simply selling the development rights would not affect the environment. The District Court rejected that reasoning, saying a complete analysis of the cumulative effects

of full-scale development, including the potential impact on endangered species, is required. Without such an analysis, "a piecemeal invasion of the forests would occur, followed by the realization of a significant and irreversible impact," the District Court ruled.

In upholding the District Court's reasoning, the appeals panel wrote a decision that reads like a summary of the conservationist argument.

Leasing is "an irretrievable commitment of resources requiring the preparation of an EIS (environmental impact statement)," the appeals court says. "We are unpersuaded ... that the mitigation measures reduce the effects of even oil and gas exploration, development and production activities to environmental insignificance," it says. Although petroleum development is subject to regulation, the judges "seriously question ... whether the ability to subject such highly intrusive activities can reduce their effects to insignificance."

The circuit court rejected the oil industry and Reagan administration argument that it is impossible to predict environmental impacts until specific development plans are made, making an EIS impossible to prepare.

"The government's inability to fully ascertain the precise extent of the effects of mineral leasing in a national forest is not, however, a justification for failing to estimate what those effects might be before irrevocably committing to the activity," the judges say. A similar principle applies if endangered species exist in the area being considered for leasing, the court ruled. The U.S. Fish and Wildlife Service did no more than "pay lip service" to that principle, the judges say.

The only exception the circuit court allowed is in the issuance of non-surface occupancy (NSO)

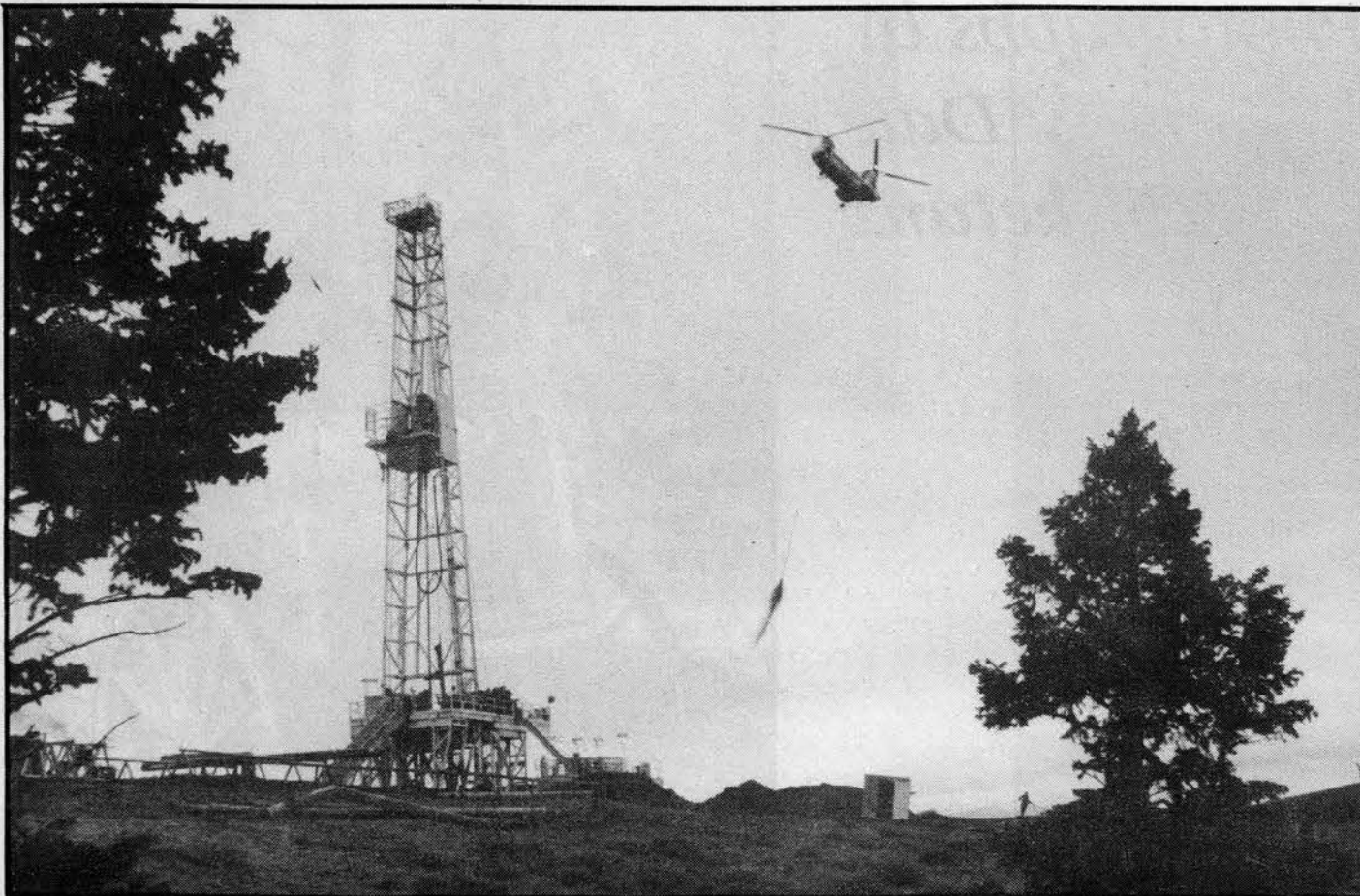
leases. An NSO lease grants the right to develop a mineral resource, but forbids disturbing the land surface in the process. Because an NSO lease protects other resources, it can be issued without an environmental impact analysis, the circuit court ruled. But the NSO restriction cannot be lifted without going through the EIS process, it said.

In Connor vs. Burford, the Ninth Circuit Court gave conservationists everything Congress had refused them. National Wildlife Federation lawyer Tom France, who argued the case, said the decision plugs every major hole in the leasing laws. But Connor vs. Burford does not settle the issue. The petroleum industry, backed by the conservative Mountain States Legal Foundation, wants the Reagan administration to appeal the case to the U.S. Supreme Court. A decision on whether to appeal is still some months away.

Furthermore, Connor vs. Burford is in effect only in the Ninth Circuit, which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The judges of the Tenth Circuit Court of Appeals, covering Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming, earlier reached an almost exactly opposite conclusion.

The Tenth Circuit case was brought by the Park County Resource Council of Cody, Wyo. The group was seeking to block Marathon Oil from drilling a well along the North Fork of the Shoshone River. Although Marathon's lease was issued following only cursory review, the drilling permit was the subject of a detailed EIS that allowed the company access to the well site only by helicopter, and imposed strict reclamation requirements.

After failing to block drilling in the U.S. District Court for Wyoming, the Park County Resource Council, acting against the advice of major conservation



Carl Bechhold, Denver Post

Marathon Oil, left, ferried equipment by helicopter to its oil well in Wyoming's Shoshone National Forest in 1985. The Forest Service required Marathon to minimize damage to surrounding forest lands.

Above right is an example of the excesses of the recent past. Chevron drilled in Wyoming's Painter Reservoir in 1974, recalls Dick Randall of Defenders of Wildlife, and pushed a lot of dirt into the water. Randall says a Chevron official told him the "mess was caused by some demented cat-skinner."

groups, appealed to the Tenth Circuit Court. By the time the appeal was heard, the Marathon well had proved to be a very expensive dry hole. Rather than ruling the quixotic appeal a moot point, or deciding the case on one of several possible narrow issues, the Tenth Circuit Court took the opportunity to broadly uphold the BLM's right to issue leases without an EIS. The Tenth Circuit Court agreed that the leases are merely a paper transaction.

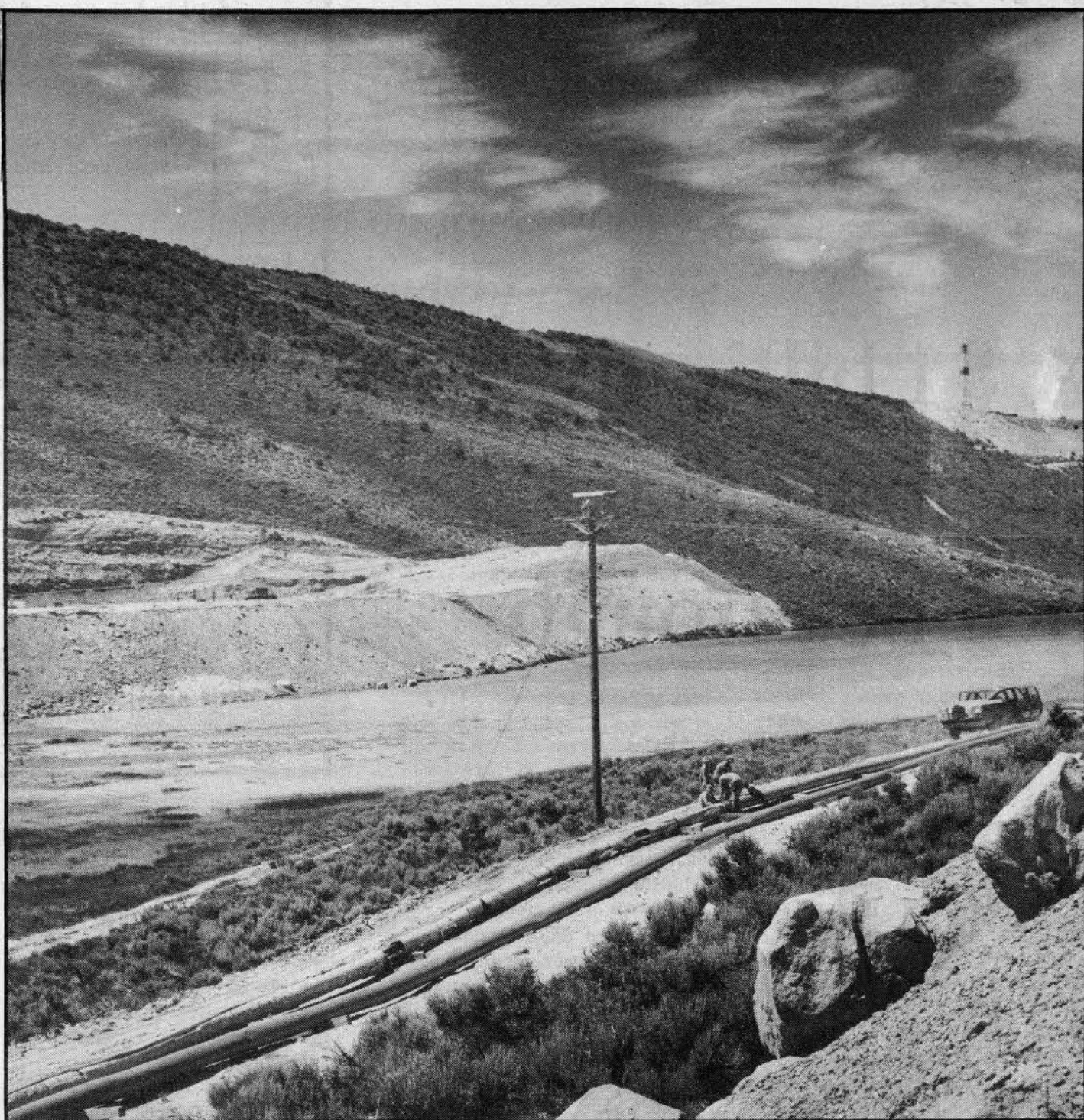
Only the Supreme Court, by adjudication, or Congress, by legislation, can resolve the conflicts between the two circuit court decisions. If the issue ends up in the Supreme Court, a resolution is at least two years away. If the burden falls on Congress, it is likely to take far longer.

Meanwhile, our supplies of oil and wild places will continue to diminish, making it ever more difficult to balance our need for both.

□

Andrew Melnykovich is Washington, D.C.-based correspondent for the *Casper Star-Tribune*. This article was paid for by the High Country News Research Fund.

Dick Randall, Defenders of Wildlife



LETTERS

Ravaged...

(Continued from page 16)

3. While tree-ring studies indicate that the region is now in a very slow natural drying trend, plant communities such as prevailed a century ago, which we know about from historical accounts, do not naturally change more rapidly without a lot of help from overgrazing, chaining and other simple-minded "range management" activities.

All this provides an answer to another puzzle I had encountered during my 12-year study of the Macomb expedition. The faint jeep trail that I had long used to reach a

certain expedition campsite was easily traveled in 1975. Today, where the trail crosses a canyon traveled by Macomb and earlier users of the Old Spanish Trail, a five-foot ditch now makes the jeep trail impassable.

The ditch didn't exist 12 years ago. But the canyon is heavily grazed and its soil is badly churned by the hooves of hundreds of cattle, especially during the wet months of late winter and early spring. The soils in this broad, elevated canyon resisted for a long time but are now being destroyed like so many others, turning it, too, into a miniature Grand Canyon.

My conclusion? The evidence is overwhelming. In southeastern Utah's high-desert pinion-juniper canyon country, any grazing is over-grazing, and the stock-raising

industry and supporting BLM policies and regulations are "guilty as charged." Livestock grazing here has devastated the region's natural eco-

systems, and there is no end in sight.

F.A. Barnes
Moab, Utah

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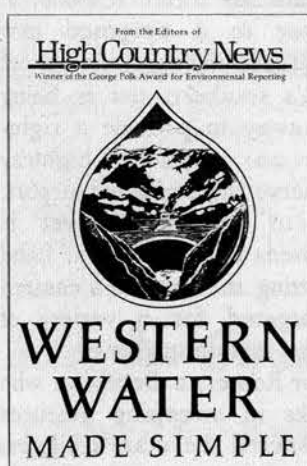
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12-High Country News -- February 29, 1988

At Colorado's poisoned arsenal

A \$1 billion cleanup may not be enough

by Lou Chapman

Using words like "historic" and "commitment," the U.S. government and Shell Oil Co. laid out an agreement Feb. 1 they hope will end four years of litigation and lead to the cleanup of the highly polluted Rocky Mountain Arsenal, northeast of Denver, Colo.

With a price tag of at least \$700 million and probably more than \$1 billion, the arsenal cleanup is expected to be the most expensive yet under Superfund, the nation's program to identify and clean up old hazardous-waste sites.

But state officials say that may not be enough. Set just north of Stapleton Airport, less than two miles from where the television cameras were whirring to record the formal press conference about the arsenal's fate, the 27-square mile chunk of Platte Valley basin land was used for decades as a chemical weapons and pesticides manufacturing plant. It is considered one of the most polluted pieces of land in America.

Starting in 1942, the Army made nerve gas, mustard gas and other chemical weapons at the arsenal. Later, it was used as a motor pool and training ground for Army reserve units.

From 1952 to 1982, Shell Chemical Co. made pesticides and insecticides at the arsenal -- Shell calls them "crop protection chemicals" or "agricultural chemicals" -- and the Army and Shell shared many waste dumps and outlets at the arsenal over the several decades they each did business there.

One 93-acre pond at the arsenal, for example, was merely lined with asphalt -- long since cracked and leaking -- to hold a witches' brew of toxic liquids and sludge. About 1 million gallons remain in the so-called "Basin F." Toxins linked to the arsenal have meanwhile poisoned groundwater outside the arsenal. Some found their way into the aquifer tapped by a nearby water district that has 30,000 customers.

The arsenal is partly surrounded by blue-collar communities and farmland. Creeks run across the land, and

bald eagles, deer and ferruginous hawks live there despite the toxins and despite decades when ducks died routinely on and near Basin F and other pieces of the arsenal.

The United States sued Shell in 1983 to get the oil company to pay its share of cleanup costs at the arsenal.

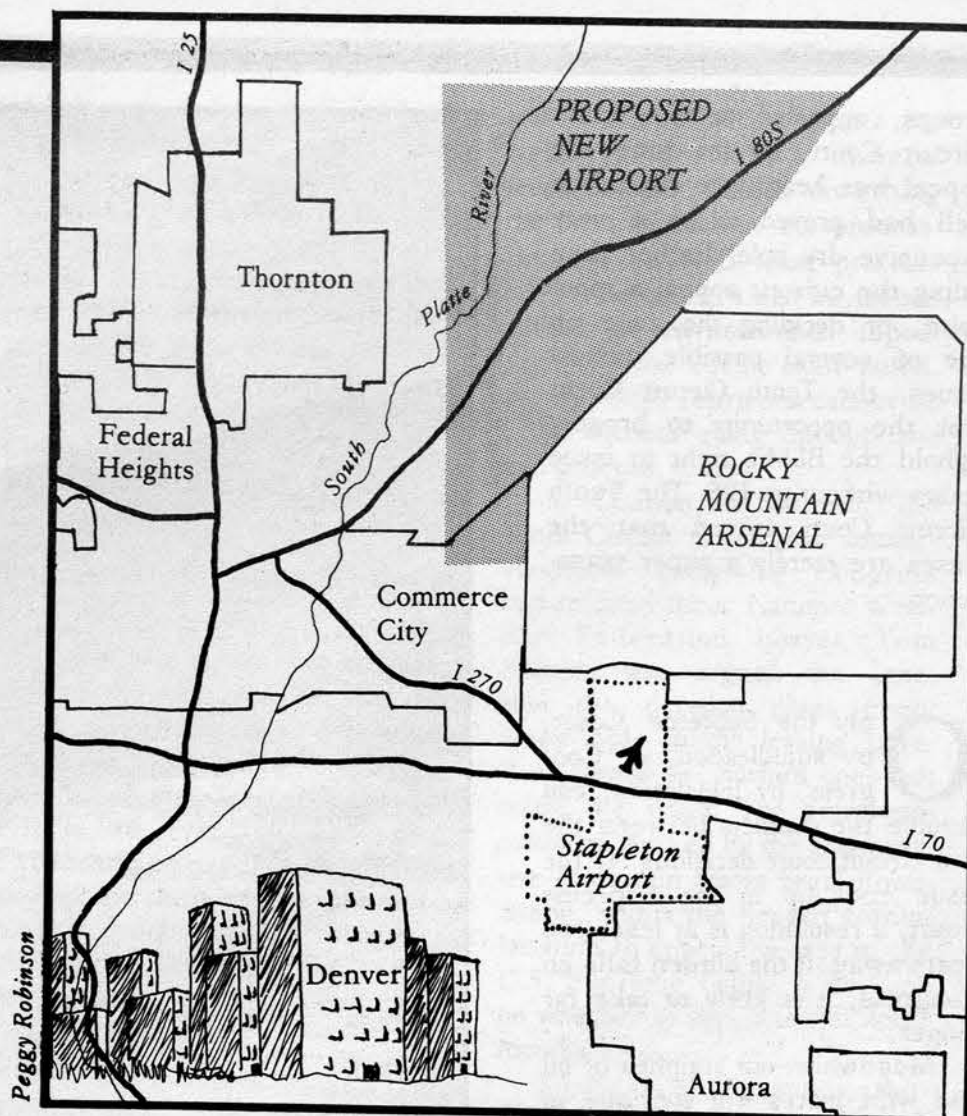
The same year, Colorado had sued the Army and Shell to clean up their mess at the arsenal and repay the state for the loss of natural resources. The state later filed a related suit against the federal government to try to get part of the cleanup conducted under environmental laws the state says are stricter and require more immediate attention than does Superfund. Those cases are pending in federal court in Denver.

The arsenal is a notorious piece of real estate for other reasons. It lies so close to a proposed new international airport that a piece of the arsenal's southern tier is being negotiated away to provide a right-of-way for an interstate highway needed to serve the proposed airport. The southern corner, however, is home to dozens of bald eagles. Land almost abutting the arsenal's eastern edge is targeted for a variety of development, including homes.

Gov. Roy Romer, a Democrat who often speaks in sweeping gestures and is considered the state's biggest and busiest booster, said recently that the arsenal should become a "Central Park of the West," a lovely piece of open space that will spread west from the entrance of a new airport.

Whether that ever will happen is highly questionable. The government and Shell are quick to point out that no final cleanup methods have been selected for the arsenal. A Shell spokesman made a special trip to Denver newspapers to stress that point after the agreement was announced. There is also no firm agreement on cleanup costs.

That makes nearby residents and state officials uneasy. Critics of the Army and Shell point to one of the precedent-setting sections of the nearly 275-page agreement, a sliding scale for paying for the cleanup. Shell and the Army will split the first \$500 million; Shell will pay 35



percent of the second \$200 million and 20 percent of any cleanup costs after that.

"Obviously, they both have an interest in doing it as cheaply as they can and still say they got the job done," said Beth Gallegos, who lives near the arsenal and spearheaded public demands that state and federal authorities recognize the danger of the arsenal.

Simply put, the arsenal has the potential of becoming one of the most expensive and largest hazardous waste dumps in the country, if on-site disposal of debris and waste is the final alternative. There is

enough hazardous soil and debris at the arsenal to fill Denver's McNichols Sports Arena. And, since the state was not a legal party at the negotiating table for the deal between the United States and Shell, its role in the cleanup process is questionable.

To ship the stuff to a dump licensed to take hazardous waste could cost \$5 billion, the state has said.

Lou Chapman writes about the environment for the Denver Post.

Superfund lawyers are kept on an extremely tight leash

In 1983, one of Colorado's assistant attorneys general walked into the office of colleague Howard Kenison to ask if he knew anything about something called the Comprehensive Environmental Response, Compensation and Liability Act.

"I said no," Kenison said. "And he said, 'Well you better learn, because we just filed seven suits under it.'"

Commonly known as Superfund, CERCLA is the nation's largest program for investigating and cleaning up old hazardous waste sites. A sweeping law, Superfund gave states a brief window in the early 1980s in which to sue alleged polluters for damaging natural resources. It also allowed states to sue polluters over the way the environmental mess they left behind themselves was cleaned up.

Colorado filed more Superfund suits than any other state when the law was passed. They were against heavy-hitting companies like Union Carbide Corp., Shell Oil Co. and Gulf & Western. All but one polluted site resulted from mining or smelting.

Now the survival of the legal unit which files and fights these cases is in question. Its budget has been steadily whittled away, and its ability

to put up a good fight in court or at the negotiating table is in question.

It is possible that the attorney general's Superfund Unit -- whose abilities were questioned even before the final round of cuts -- may be on the ropes.

"We definitely have problems there," said Democratic Gov. Roy Romer, who fought budget cuts to the Superfund litigation unit last year. "I am worried that we don't have the money to do what we have to do. I am worried about having adequate investigations."

Almost half of the \$12 million the state Legislature has doled out to the Superfund unit -- headed since late 1984 by Kenison -- was given in its first fiscal year, in early 1985. The unit's budget has been cut each year since. It received its smallest amount this fiscal year -- \$1.78 million -- after Republican legislators took the ax to the entire attorney general's budget. Attorney General Duane Woodard, then a Republican, later joined the Democratic party and still serves as attorney general.

In the last couple of months, four attorneys have left the unit, and Kenison leaves March 18.

"I'm burned out," Kenison said. "I've given the attorney general's

office nine years." Kenison also said, "The budget didn't make it any easier to stay."

Kenison said that the standard budget has crippled the unit, which must put nearly all of its resources now into a mammoth battle against the U.S. Army and Shell Oil Co. for cleanup of the Rocky Mountain Arsenal northeast of Denver. "We're on hold," Kenison said. "We can't proceed until we get more money."

But some problems with the Superfund cases began long before last year's budget cuts. Of the seven cases, only one has been completely settled, calling for both the cleanup of contaminated water and land and repayment to the state for damage to natural resources.

Another case reached a similar settlement recently, but it was highly criticized by the EPA and is still open in court. Only one case went to trial, and a decision from the federal judge is pending. A fourth case was given to the EPA to sue for cleanup of the pollution, but the state has failed to settle its claims for damages to natural resources.

The Rocky Mountain Arsenal, a precedent-setting case, is being handled at the highest levels of the Army, the Environmental Protection Agency, the U.S. Department of Justice and the state.

Here are the polluters and summaries of those cases:

•Union Carbide Corp. and a subsidiary, for polluting Uravan, a small abandoned town near Grand Junction. A settlement was reached last spring, providing for a \$40 million cleanup, a total of \$2.75 million in cash payments to the state over six years, and the transfer of 200 acres and certain water rights to the state.

•Cotter Corp., for pollution at a uranium mine south of Canon City. A settlement was reached in December after two years of negotiations, providing for a \$15 million cleanup and \$4.4 million to eventually be paid to the state. In a 39-page commentary filed with the state Department of Health, the EPA criticized the Cotter cleanup plan. Parts of it are "technically and legally inadequate," and, because the state failed to provide adequate assessment of health dangers at the site, the plan's credibility was "seriously undercut," the EPA said. The attorney general's office says it stands by the Cotter agreement, saying the EPA did not fully study the cleanup plan. "They had the same complaints about the Uravan settlement," Kenison said. "And we worked them out."

•Idarado Mining Co., for pollution at mines between Ouray and Telluride. The state and the company went to trial last April after agreeing on Idarado's responsibility for contamination, but failing to agree on a cleanup plan. It was the first such trial in the country, and the court has not issued a decision.

•ASARCO, for pollution at the California Gulch and Yak Tunnel, which flow to the Arkansas River near Leadville. The state "sold" prosecution of the cleanup part of the case to the EPA in exchange for \$1.3 million to the state. The natural resources damages case is pending with no court date set.

•Gulf & Western, for pollution at the Eagle Mine above Minturn. Site investigations are complete, a cleanup plan has been suggested, and

Only about \$3.1 million of the \$9 million won by the state has been paid so far.

The rest depends on the polluters holding up their ends of the deals.

negotiations continue, with Gulf & Western paying the state's share of fees for consultants.

•ASARCO, for pollution at its zinc smelter in Globeville, a low-income neighborhood north of downtown Denver. A cleanup plan and payments to the state are being negotiated, and ASARCO has paid the state \$650,000 to help the state oversee investigations of contamination and as a partial penalty.

•The U.S. government and Shell Oil, for pollution by the Army and Shell Chemical Co. at the Rocky Mountain Arsenal, one of the largest hazardous-waste cleanup litigations

in the nation. Earlier this month, Shell and the government announced a potential \$1 billion settlement between them to pay for cleanup at the arsenal and to get it done by the year 2000. That settlement, however, does not affect the state's suit.

Some critics say the state is more interested in settling the cases than in protecting the public health, or has settled the cases only to receive enough money in penalties to be able to negotiate the next case. Kenison denies both charges. "Each one is settled on its own merits," he said.

Kennison is proudest of the nearly \$9 million his legal unit has

won in penalties and legal costs, and he has tried to convince legislators to let the Superfund unit operate its own revolving account, rather than sending most of the awards to the state's general revenue coffers.

Actually, the state hasn't seen that much Superfund revenue. Only about \$3.1 million of the \$9 million won by the state has been paid so far. The rest is due over the next several years, and depends on the polluters holding up their ends of the deals.

--Lou Chapman

ACCESS

NEAT STUFF

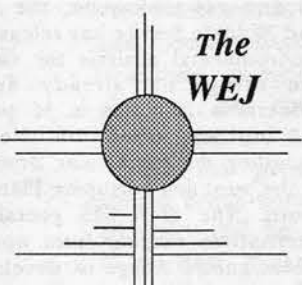
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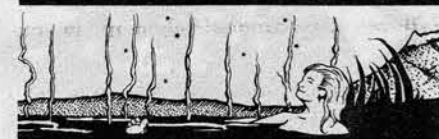
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Serena Supplee

14-High Country News -- February 29, 1988

BULLETIN BOARD

SMALL, FIERCELY LOCAL

A new wire service for the alternative press began this fall. Called AlterNet, the Washington D.C.-based non-profit service is a project of the Institute for Alternative Journalism and serves the "small, fiercely local media committed to probing coverage of public issues." It offers local stories culled from alternative papers, stories commissioned by AlterNet and joint reporting projects, in which AlterNet works with local editors and reporters on issues facing several communities at once. Joint projects will focus on how communities tackle the problems they face, from radioactive waste disposal to acid rain. Reports are accessible 24 hours a day via a computer and modem, with mail service for those not on line. Contact Alan Green, Editorial Director, AlterNet, 2025 Eye St. NW, Suite 1104, Washington, D.C., 20006 (202/887-0022).

PESTICIDE NEWSLETTER

Last year, Angela Medbery and Elizabeth Otto, a Colorado Environmental Coalition employee and Sierra Club board member respectively, created the Colorado Pesticide Network News, an eight-page newsletter printed every two months with help from the Sierra Club. The newsletter focuses on the negative effects pesticides can have on humans and the environment, and each issue features book reviews and brief articles. Editor Medbery describes the non-profit organization behind the newsletter as, "a loosely organized network with a desire to communicate about pesticides." The newsletter's mailing list includes over 400 individuals and every environmental group in the state. A \$5 donation is recommended for a subscription. The Colorado Pesticide Network can be reached c/o CEC, 777 Grant Street, #606, Denver, CO 80203.



OUR COMMON FUTURE

Working to solve local environmental problems in a global context was emphasized at a conference called "Globescope Idaho," held last fall in Sun Valley. Three hundred attended workshops and also heard Global Tomorrow Coalition director Donald Lesh talk about *Our Common Future*, the report of the World Commission on Environment and Development. Tapes of Globescope Idaho can be purchased from Sounds True, 1825 Pearl St., Boulder, CO 80302 (303/449-6229). For further information about this and future Globescopes, contact the Global Tomorrow Coalition, 1325 G St. N.W., Suite 915, Washington, D.C. (202/628-4016) or the Global Environment Project Institute, POB 1111, Ketchum, ID 83340 (208/726-4030). *Our Common Future* is also the topic of a special world agriculture report in the Jan. 1988 newsletter of the Nebraska-based Center for Rural Affairs. The World Commission report is an "excellent introduction" to the linked problems of poverty and environmental degradation, says the center. Other topics in the newsletter include Third World debt and rural development, and what the center calls Reagan's "diplomatic adventure" with food exports. Six nations comprising half the world's population all increased food production faster than their populations grew last year, the center says, and contrary to the Reagan view, "much of the world isn't in the market for U.S. food." The newsletter is available from CRA, PO Box 405, Walthill, NE 68067.



FREE SKIING

The Spring Gulch Trail System in western Colorado's Crystal River and lower Roaring Fork valleys offers 8.7 miles of groomed trails for cross country skiers. The skiing is free, thanks to the Mount Sopris Nordic Council, a non-profit group run by community enthusiasts. A \$15 contribution entitles a person or family to membership in the nordic council and one vote in the election of the board of directors. Always open to the public, the Spring Gulch Trail System is seven miles west of Carbondale on County Road 108. A brochure and more information are available from the Mount Sopris Nordic Council, Inc., P.O. Box 246, Carbondale, CO 81623.

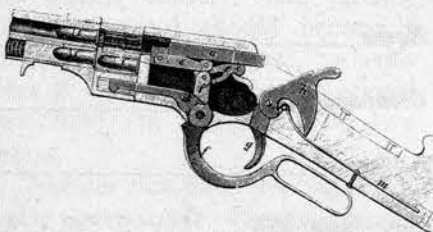
TROUBLESOME POWER PLANT

A Chernobyl-type meltdown at Colorado's Fort St. Vrain helium-cooled nuclear power plant is unlikely because helium does not react easily with nuclear fuel. So concludes a report by the General Accounting Office, the investigative arm of Congress, called *Nuclear Safety: Reactor Design, Management and Emergency Preparedness at Fort St. Vrain*. Because Fort St. Vrain uses helium to cool its reactor instead of water, compliance with federal regulations designed for water-cooled reactors is unnecessary, says the utility's management. The plant has produced power for only 38 months since it opened in 1979, and low morale has led to a steep decline in performance, reports the GAO. In a May 1986 federal assessment, the plant was ranked "minimally satisfactory" in six of 11 assessed areas, including emergency preparedness, and the contingency plan drawn up by the company to protect plant personnel and the public during an accidental release of radioactive material. Management is "committed to improvement" says the report, but as of April 1987, emergency preparedness was still minimally satisfactory. The report is available from the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877 (202/275-6241).

COLORADO SKI COUNTRY

Denver Post reporter Charlie Meyers takes a broad look at Colorado's skiing, from its inception at a mining camp near Crested Butte in 1883, to the current billion-dollar-a-year industry. He focuses on 14 of the state's 35 resorts and touches on issues such as the push for resort expansion in the face of a declining number of skiers. *Colorado Ski Country* is the fourth in a Colorado Geographic Series, and like most in the genre is dominated by lush color photos by excellent photographers.

Falcon Press Publishing Co., Inc., 14 N 24th, Box 279, Billings, MT 59103 (406/245-0550). Hardback \$24.95, Paper \$14.95. 104 pages. 111 color photos and illustrations.



WAR GAMES IN UTAH

Nearly 17,000 soldiers from the Army, Air Force and National Guard will converge on selected areas within 3,200 square miles of Utah's west desert June 12-25. Soldiers will set up, supply and fire heavy artillery on land controlled by the military, state and Bureau of Land Management. The BLM has prepared a draft environmental assessment on the war exercises, and the deadline for comment is March 6. For a copy of the draft and to send comments, write Howard Hedrick, area manager, Pony Express Resource Area, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119 (801/524-5348).

LESSONS FROM BHOPAL

David Weir's book, *The Bhopal Syndrome: Pesticides, Environment and Health*, places the world's worst industrial accident at Bhopal, India, in the context of a globalized food production system. He says the system is organized for the benefit of a well-fed few; that food from abroad is grown with the help of pesticides that are from America but forbidden here; and that Third World governments often lack the clout to rein in giant corporations. Weir, a reporter and writer for the Center for Investigative Reporting, predicts more Bhopals are waiting to erupt.

Sierra Club Orders, 730 Polk Street, San Francisco, CA 94109. Cloth, \$17.95 and \$3 postage. 224 pages.

BORDER ECOLOGY

In the 1890s the U.S. government erected and photographed 258 monuments along the Mexican-U.S. border between El Paso, Texas, and the Colorado River at the Arizona-California state line. Ninety years later, retired biology professor and former Forest Service employee Robert R. Humphrey had a splendid idea: to return to each monument site, photograph it and look at vegetation changes over time. Though the photographs and text in his book, *90 Years and 535 Miles: Vegetation Changes Along the Mexican Border*, are somewhat drier than that original idea, some of his conclusions are of interest: Chihuahuan Desert areas along the eastern part of the border, for example, have less grass and more scrub than 90 years ago, due to a combination of long-term grazing pressures and increased aridity.

University of New Mexico Press, Albuquerque, NM 87131. Hardcover: \$29.95. 448 pages.



RURAL JUSTICE FOR ALL

Key issues facing agriculture will be addressed at the National Farmers Union convention March 6-9 at the Hilton Hotel in Albuquerque, N.M. This year's convention, "Rural Justice for All," is sponsored by the Denver-based Rocky Mountain Farmers Union. Speakers include Art Simon, director of Bread for the World, and Glenn Flaten, president of the International Federation of Agriculture Producers. The convention will also elect a new president to replace Cy Carpenter, who is retiring. For more information contact Nancy Jorgensen, Director of Communications, Rocky Mountain Farmers Union, Box 39628, Denver, CO 80239 (303/371-9090).

ARCTIC REFUGE EIS

While Congress debates the opening of 1.5 million acres of coastal plain in the Arctic National Wildlife Refuge to oil and gas exploration, the U.S. Fish and Wildlife Service has released a draft environmental analysis for the rest of the refuge not already designated wilderness. At issue is 56 percent, or 9.7 million acres, of the refuge, including the spectacular Brooks Range to the west and Porcupine Plateau to the south. The draft EIS contains seven alternatives ranging from opening the undesignated refuge to development to declaring it wilderness. The service has chosen the "no action" alternative, which would leave the area under minimal management and open to oil and gas development where that was "compatible with refuge purposes." This position is supported by 12 of 162 respondents to the preliminary study done last February. In contrast, the alternative calling for wilderness designation for the entire refuge was preferred by 109 of the respondents. Copies of the EIS are available from the U.S. Fish and Wildlife Service, Region 7, 1011 East Tudor Road, Anchorage AK 99503, or contact William Knauer at 907/786-3399. The deadline for public response is Feb. 22.

PROTECTING INSTREAM FLOW

The University of Colorado School of Law hosts a symposium March 30-April 1 called "Instream Flow Protection in the Western United States: A Practical Symposium." It will look at what can be done to protect instream flow and at conflicting demands placed on water, from recreation to power production. Guest speakers include John R. Hill, Jr., U.S. Department of Justice, Denver; Lori Potter, managing attorney, Sierra Club Legal Defense Fund, Denver; Professor Charles F. Wilkinson, University of Colorado School of Law, Boulder; as well as consultants to Indian tribes. The conference will take place at the Natural Resource Law Center at the Fleming Law Building in Boulder, Colo. Registration is \$145 before March 18 and \$170 afterwards. Write to Natural Resources Law Center, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309 (303/492-1288).

CLEAN WATER

Clean water and its relationship to social and economic health is the focus of an April 25-26 conference in Kalispell, Mont. The Flathead Basin Commission will host 39 speakers ranging from Gil Lusk, superintendent of Glacier National Park, Dr. Jack Stanford, director of the Flathead Lake Biological Station, George Turman, member of the Northeast Power Planning Council and Sen. Max Baucus, D-Mont. The conference will look at current water conditions in the Flathead Basin and explore the effectiveness of government regulations protecting surface water and groundwater. There will also be case studies on how water quality conflicts are being resolved in the West, and the group will examine the economic future of the basin by looking at the region's changing resource base. Registration is \$26, including two luncheons, or \$12 without food. Contact Craig Hess, Public Education Coordinator, Flathead Basin Commission, 723-5th Avenue East, Kalispell, MT 59901 (406/752-0081).

BACKCOUNTRY BIKING

In *A Mountain guide to Colorado, Bicycling the Backcountry*, William L. Stoehr tells us biking is a booming sport in Colorado. But when bikers meet up with backpackers there can be conflicts. This book details 30 trips that mountain bikers can take on backcountry roads, jeep trails and mining roads that don't conflict with hikers but are still in spectacular high country. He gives route descriptions, topographical maps, difficulty ratings, route statistics and good fishing tips.

Pruett Publishing Co., 3235 Prairie Ave., Boulder CO 80301 (303/449-4919). Paper: \$8.95, 152 pages. Illustrated with black and white photographs, maps.



AUDUBON WILDLIFE

The 697 page 1987 Audubon Wildlife Report, the third to be published by the Washington, D.C.-based group, is a comprehensive reference guide for anyone interested in conservation and the role of public agencies. Each edition analyzes a specific government agency, and this year it's the Bureau of Land Management's turn. Edited by Roger L. Di Silvestro, the book concludes with 15 species accounts by expert biologists.

Academic Press Inc., Harcourt Brace Jovanovich, Publishers, Attn: Marketing Department, 6277 Sea Harbor Drive, Orlando, FL 32821. Hardcover \$39.95, illustrated with black and white photos, charts and graphs, 697 pages.

GUEST OPINION

Dick Randall, Defenders of Wildlife



This welter of roads served Wyoming's Big Piney-La Barge oil field in 1978

Oil and gas exploration:

First you lease, and then you worry

by Phil Hocker

WASHINGTON, D.C. -- "The House will recede to the Senate position." As I heard those words Dec. 16, I did a sad, simultaneous translation: Lease first and plan later policies will continue to rule oil and gas on federal lands in the West.

Oil and gas leasing is a big deal. At last count, 93 million federal acres were under lease -- about 14 percent of the public domain. Looking just at national forest land, 18 million acres, or about a tenth of the total, are leased, and the figure was almost twice that in the energy-boom peak years. Road-building for oil exploration has scarred dozens of would-be candidates for wilderness around the West, and where exploration has been successful, industrialization has swiftly followed.

It's a Catch-22 situation. When leases are issued, the government says: Don't worry, it's just a lease. When an oil company comes forward with a drilling proposal in a sensitive area, the feds say: Oh, this is bad, but shucks, they've got a lease and we really can't stop them.

Leases are issued casually, and the public participation process is erratic and usually cursory. For example, the Shoshone National Forest in Wyoming brushed aside criticisms of its forest plan's leasing section by saying the plan made no leasing decisions. But on the very day the plan went into effect, six dozen leases were recommended for issuance with no public discussion. The basis cited for the recommendations? You guessed it: the forest plan.

On New Mexico's Santa Fe National Forest, 250,000 acres were under lease recently. All the leasing was based on a single paragraph in its forest plan.

The process for leasing federally-owned oil and gas resources has been challenged for over a decade. Two problems plagued it. First, casual

leasing of vast tracts with no consideration of impacts should the leases be developed. And second, the awarding of leases through a public lottery rather than through competitive bidding. The lottery has been subject to repeated abuse and fraud.

Legislation brought to December's House-Senate conference by the House would have addressed both the planning and the economic problems. But intense pressure from the oil industry blocked the planning provisions from making it into law.

The planning requirements would have required that federal land-management plans specify which lands would be leased, and with what conditions on the leases. Other resources would also have had to be considered. It is silly to designate a national forest area roadless, and then invite roads by leasing the land for oil and gas. Coordination of leasing with other land-use objectives, as well as public notification of lease planning, are the goals of pre-lease planning. That's what did not make it into law.

But the provisions that did get enacted should bring some improvement. In the future, all leases will be offered by competitive bidding. In the past, most areas were offered through a lottery for a low dollar per acre per year rental.

Lottery winners, usually individuals, often resold their rights for much higher sums to the real exploration companies. Leasing on national forests will now be subject to approval by the Agriculture Department. In the past, the Secretary of the Interior, through the BLM, made the legally-binding decisions on when and where leases would be issued. The Forest Service in the Agriculture Department could comment and advise, but it was clear that the BLM was really in charge. Because Interior was running the leasing show, the Forest Service has never had formal regulations to instruct its staff on managing the millions of acres under lease. Now, comprehensive regulations are being

written, reflecting the agency's new responsibility.

But though the improvements will help, pre-lease planning, the House provision that was dropped, is still needed. Once an oil company holds a lease, it has a right to explore for and extract the leased mineral. That right may be conditioned or limited, but it is still effectively pre-eminent. Applications for permission to drill are virtually never denied (none has been denied out of over 200 applications in the Yellowstone region). If a drill site has been proposed in a sensitive area, it may be moved around within the lease area to reduce its impacts. But if the entire leased area is sensitive -- say an elk calving area or grizzly habitat -- leases will still be issued. Wildlife gets the leftovers.

Sen. Dale Bumpers, D-Ark., who opened the leasing reform issue 10 years ago, led the December conference proceedings and proved a shrewd diplomat and negotiator. The House position, which included strong competitive bidding and pre-lease planning provisions, was presented by Nick Rahall, D-W.Va., and George Miller, D-Calif. But they were undercut by fellow House conferees Dick Cheney, R-Wyo., and Ron Marlenee, R-Mont., and opposed by several senators, including Jeff Bingaman, D-N.M., and John Melcher, D-Mont.

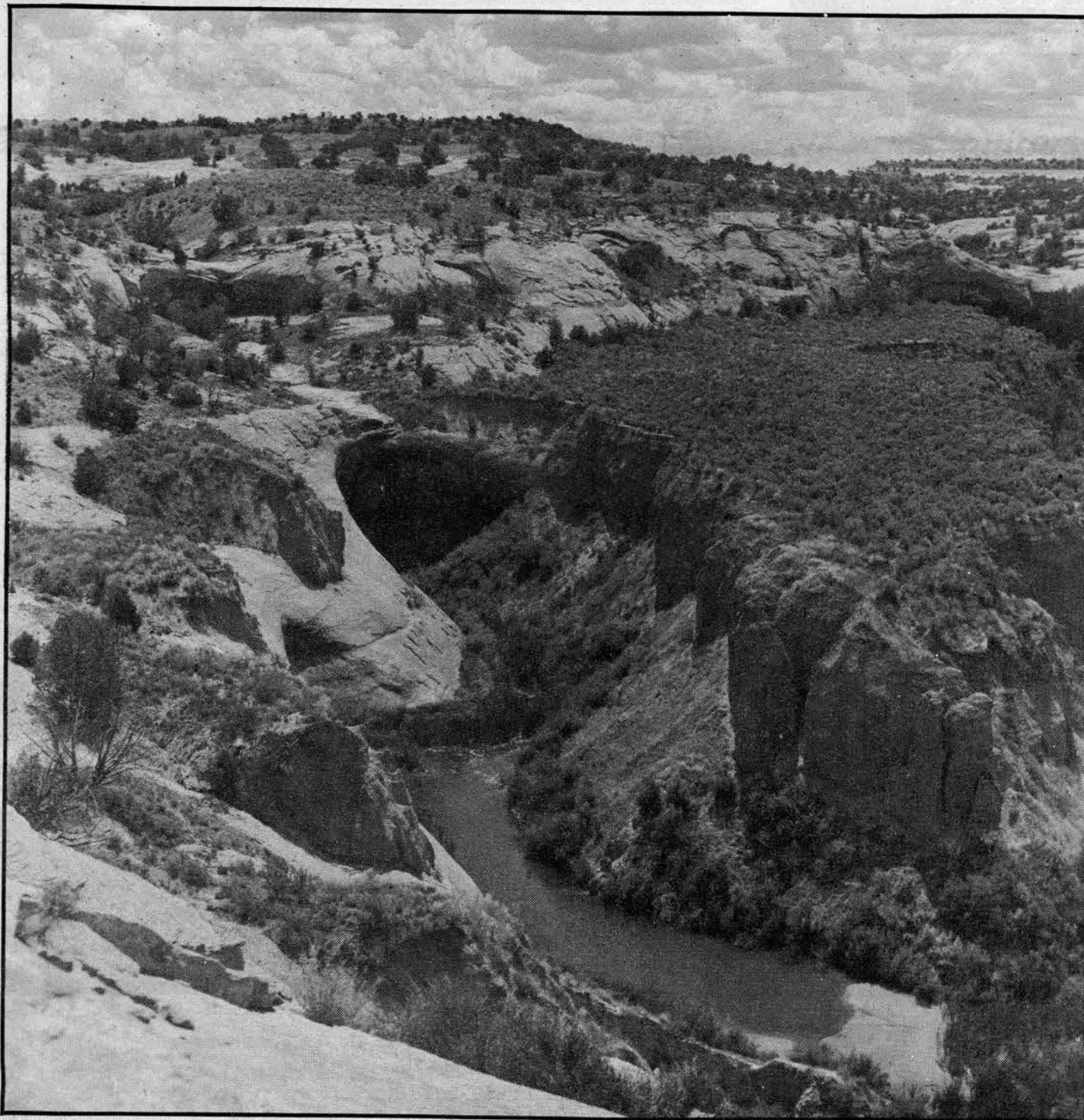
The hardest anti-environment position -- as usual -- was taken by Sen. Malcolm Wallop, R-Wyo. Earlier, Wyoming Gov. Mike Sullivan, D, publicly sided with Wallop and Cheney against pre-lease planning. Several conference members who are normally strong supporters of environmental provisions, including Sens. Howard Metzenbaum, D-Ohio, and Tim Wirth, D-Colo., did not exert themselves on behalf of pre-lease planning.

So many little acts, statements, gestures of dominance or submission filled those meetings

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LETTERS



This photo by F.A. Barnes shows the probable location of Ojo Verde.

"Note the severe alluvium cutting since 1881, when a ranch was established nearby," he writes.

A RAVAGED LAND

Dear HCN,

While researching a book I am writing -- my 13th about Utah's canyon country -- I encountered curious facts that will contribute some solid information to the controversy over the long-range effects of cattle-grazing on high-desert range-lands.

The primary goal of my research was to establish the exact route on the ground of the 1859 Macomb expedition within Utah and, incidentally, the route within the same area of the "Old Spanish Trail," which Macomb traveled for part of the Utah segment of his explorations.

Once I had firmly fixed the Macomb route on the land itself, a complex task which took 12 years of intermittent effort, this is what I noticed:

The expedition of some 30 men and an unspecified number of horses and mules traveled a route that would today be physically impossible for the animals, and extremely difficult even for men on foot.

The reason was deep, sheer-walled cuts in the alluvium (water-deposited soils) that once almost filled several rock-walled canyons that the expedition crossed in 1859. The cuts varied in depth from 10 to as much as 70 feet.

Reports made by one expedition member noted that "... the bottom of the canyon is covered with the greenest and most luxuriant grass." Nothing grows there now except stunted salt bush and other arid-land shrubs.

The obvious question I faced was: How could the expedition have crossed these canyons? The suggested answer was that the alluvium in these presently impassable canyons

was not cut in 1859 as it is now. But how could this be proven beyond reasonable doubt?

I soon found the answer farther down one of the canyons in the forlorn remains of pioneer ranch buildings and fences. Of the four log structures, one was so undermined by the alluvium-cutting that it had completely collapsed. The corners of two other structures were deeply undercut.

Only one, built under a rock overhang, still stood on a solid base. Further, nearby fence lines had been undercut and left straddling 50-foot-deep gaps in the alluvium, and there was very little of the original soil remaining near the ranch. All the manmade structures were perched on a terrace of soil along one rock wall of the canyon, on the brink of a deep chasm.

Since no pioneer rancher in his right mind would have constructed

buildings and fences in such positions, or have bothered to homestead such a miniature Grand Canyon in the first place, it was apparent that the alluvium-cutting occurred later.

It was also obvious that if I could positively date the undercut ranch, I could establish that most, if not all, of the area's severe alluvium-cutting had taken place since that date.

Well, it only took a little literature research to discover the time when the first cattle ranchers moved into southeastern Utah, in the Dry Valley area north of the Abajo Mountains.

Thus, beyond doubt, the resulting pattern of persistent overgrazing of the region had been the major, if not only, factor in the severe alluvium-cutting visible in so many of southeastern Utah's canyons.

Further examination of the cuts revealed more curious facts. About six feet below the surface in one area quite near the undercut ranch, there was a two-foot layer of sediments that contained thousands of freshwater snail shells. About 10 feet below that, there was an eight-to-10 foot layer of peat so compact and tough that it had slowed the erosion of the sandy soil. Yet it was so porous it held enough transient water to support a thriving community of river-willows just above it.

I have yet to get a professional botanist to the site, but the sequence and thickness of these various deposits, indicating two particularly wet periods of time, seem to correspond with the known paleoclimate of the region -- periods of fluctuating cooler, wetter climate that produced glaciation on the higher mountains and plateaus of Utah, and corresponding periods of alluviation known to accompany such periods.

These facts lead to several conclusions:

1. The soil levels indicated by alluvium remnants in thousands of canyons in southeastern Utah represent what the canyons looked like barely a century ago. All the cutting and soil removal has taken place since the relatively recent pioneer occupation of the region.

2. One century of domestic livestock grazing in southeastern Utah has largely destroyed 4,000 years worth of natural soil-building alluviation in the region. Further, it has completely destroyed Ojo Verde, a lush spring that was set among grassy meadows and named "Green Eye" by early Spanish explorers. And it has ravaged the historic route of the 1859 Macomb expedition, the first Americans to enter and describe the spectacular canyon country heartland that is now Canyonlands National Park.

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First...

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that my mind drifted away sometimes to John Craighead's wonderful slide show of grizzly bear social behavior at fishing holes in Alaska. A raised paw, a growl, a bluff charge, a whimper, a move which looks like a retreat but leaves the retreat standing on higher ground ... all these maneuvers emerged in the conference. Legislation at this level is a very personal art, so much so that at times it is easy to lose track of the effect it will have on a distant and vulnerable landscape.

In the midst of the feinting, growling and

chuffing, the planning provisions of the bill were dropped. The case is not totally closed. The General Accounting Office and National Academy of Sciences are directed by the new law to prepare a study of planning for oil and gas leasing under existing federal law. The Senate has agreed to hold a hearing on the planning question in the upcoming session. Conservationists have, in effect, been offered a chance to prove the need for additional legislation.

Whether the offer is significant or a consolation prize for losing the House bill matters little now. Unplanned leasing is a significant land-use problem in the West, and

this is a chance to show that. The conservation community must take advantage of this opportunity to show the impacts of drilling on wildlife and wild lands.

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Phil Hocker, until recently a Jackson, Wyo., resident, now lives outside of Washington, D.C. He chairs the Sierra Club's Leasing Reform Campaign Committee and is in the process of founding the Mineral Policy Center to study oil leasing and hardrock mining. His address is: 20 West Chapman St., Alexandria, VA 22301.