CONSERVATION AND MINING: THE AMERICAN EXPERIENCE

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I propose to consider the mining laws and their administration in terms of federal lands and of course federal legislation. The reasons for this are:
(a) federal lands, comprising the greater part of all lands in the eleven western states, are the primary source of minerals and mineral exploration; and
(b) conservation, as a policy, has had it greatest battles and its greatest impact, in the field of federal legislation.
This qualification should be added to the above: minerals such as gold, silver, copper, lead and many others are extracted from lands which, because of their mineral potential, can be patented. More of this later.

Federal land policy may be divided into five periods, according to Clawson: 1 these would be the periods of "acquisition", "disposal", "reservation", "custodial management", and "intensive management".

Acquisition Starting with the Declaration of Independence (1776) and stretching into the immediate post-Civil War period, the great preoccupation of the infant country was to secure control of the continent. With Canada established to the north and itself expanding towards the Pacific, the major energies were directed westward. The seaboard states, former colonies like Virginia, New York, North Carolina, relinquished their claims to the hinterland adjacent to the Great Lakes and, in the Northwest Ordinance of 1787, provided for the eventual admission of states to be established out of that territory.. 2 There was a strong tide of history in all this. British forts stood at strategic points on the Great Lakes, which were in themselves vital links in the extremely lucrative fur trade. The colonists, though successful on the seaboard, could not dislodge the British from the interior and the forts were turned over as part of the peace settlement. Other states were carved out of existing colonies, or out of lands

ceded to the United States.

Major purchases followed: in 1803, the Louisiana Territory, approximately doubling the area of the United States, including a vast area, spreading from what is now the state of Louisiana westward and northward, a country inhabited by Indians, a land of forests, mountains and plains. Florida was purchased in 1819 from Spain. Texas, an independent nation in 1836, was annexed in 1845. The Treaty with Mexico in 1848 brought in the vast southwest territory, out of which California, Nevada, Utah, and parts of Arizona and New Mexico were created. In 1846 the Pacific Northwest (all of Oregon, Washington, and Idaho, plus part of Montana) was annexed after long negotiations, not always friendly, with Britain. Alaska, purchased in 1867, was the last major acquisition.

Clawson remarks, perhaps somewhat smugly, that "never in history has so much valuable territory been acquired for so little money and so little blood." 3 Certainly it was a bargain among bargains -- millions of acres of rich farm lands, mineral lands, Yellowstone Park (whose existence was then unknown to the white man) and mountains, rivers and scenery of the highest order.

Disposal. This period began almost as soon as the first of the lands had been acquired. Soldiers, including George Washington were rewarded with generous slices of the public domain. Sales of land under the early policy did not turn into the bonanza the government had anticipated. Laws proliferated during this period, but pressure slowly began to develop for a more orderly system, one geared more to the needs and aspirations of the "common man". Thus the Homestead Act in 1862 culminated the "free soil" movement by making it possible for the settler to "prove up" on 160 acres of land through his own efforts. For 50 or more years the Homestead act and others covering Desert Land, Timber Land and so on, provided the discontented man with an escape mechanism. He could head for the frontier and file on a piece of land at the local land office.

Disposal of minerals. Bearing in mind that the land in the great hinterland west of the Mississippi was originally all part of the public domain, one can appreciate that the federal law was the dominant feature. On the way to be-

coming states, areas went through periods organized as territories. Only recently, in fact, have the territories of Hawaii and Alaska been added to the Union. When a state was created, large blocks of federal land were granted to the state for various purposes, including schools, the University, teacher's training schools and others. Otherwise, the lands were open to homesteading.

Efforts to provide for leasing of mineral lands proved unsuccessful. In 1866, the first mining law was adopted under which title could be obtained to mineral-bearing land. In 1872 a more comprehensive act was passed, one that has been the basic mining law since that date. Claims were of two kinds: lode and placer; the former consisting of minerals embedded in rock - gold, silver, lead, tin, copper and others. Placer mining claims are those in which minerals appear in the sand or gravel on and beneath the surface. In both kinds of claim, 20 acres was the maximum size of a single claim, and, if minerals were produced, title could be acquired in due time. Thus a claim would be converted into fee land with the result that mineral production has tended to be in the main from private lands. One feature of the act (1872) has caused much difficulty. A person staking a claim could keep the claim alive by doing a minimum amount of work each year. This work was valued at $100 in 1872 and has remained at this amount since. Many dubious claims have been thus perpetuated indefinitely, the claimant enjoying in effect a piece of public land for the insignificant annual rental of one hundred dollars. What a neat way to acquire a site for a summer cabin in the mountains!

In 1920 the Mineral Leasing Act was passed and signed into law. Under this law the government was permitted to enter into leases for oil, gas, coal and other non-metallic minerals. The lease gave no rights to the surface except for the purpose of access. In fact, the lease was simply a permit to extract, and the government is compensated in the form of a royalty. On oil and gas leases, its amounts to $12\frac{1}{2}\%$ of total production.

Reservation. This might be called the era of conservation. California took the first step by setting aside the Yosemite area as a state preserve. The first significant federal move was the creation, by Congress, of Yellowstone National

Park in 1872. The backers of Yellowstone, which was remote and in fact inaccessible to the traveler, were probably motivited as much as anything by the value of the mineral springs and geysers and their desire that this area not be turned over for exploitation or even destruction. For years, it was administered by the Army which maintained a cavalry detachment in the park. But pressures for conservation were building up, spurred by the destruction of the forests in such places as Wisconsin and Minnesota and the consequent very real danger that our timber resources vast as they were, would be decimated completely by the free enterprisers so intent on getting theirs and getting out. Of more significance to mining was the policy of national forest reservation beginning in 1891. Conservation forces, which had started their agitation in the 1880's gradually increased in effectiveness. Helped by President Roosevelt and Gifford Pinchot, first head of the Forest Service, the national forests had, by 1909, attained the acreage which it essentially retains to the present, 160 million acres.

While national forest land is open to location of claims under the mining laws, there is a slow tend towards convertingsome of the more attractive and scenic portions of the national forests into the national park system. The difference is important: national park lands are not open to mineral location, so that as this expansion takes place there is a reduction pro tanto in the land available for mineral exploration.

Custodial Management. This period began soon after the beginning of reservation eras beginning. The date of 1905 seems appropriate since the Forest Service was established then. Over a period of years, procedures and legislation were adopted for the use of the timber, grazing, watershed, and recreation potential of the forests. Also, beginning with the Weeks Act in 1911, the federal government has acquired by purchase about 50 million acres of land, about half of which has been purchased for national forests.

The mineral leasing act applies to such lands, i.e. reacquired lands, but the mining laws do not apply. Finally, the unreserved "public domain", meaning federal lands open to homesteading, were reserved in 1934 under the Taylor Grazing Act. As the name suggests, the primary aspect of administration of these lands has been in the

field of grazing.

To compress a great deal of history into a fairly simple conclusion, the exploitative efforts in the late nineteenth and early twentieth centuries were met and opposed by a growing conservation pressure. Neither has been wholly successful, but one aspect of this competition is reflected in the fact that very large areas of federal lands remain undisposed of. They are national parks, national forests, national monuments, wildlife refugees, military reservations, including air training facilities, bombing ranges, ammunition depots, with everything else lumped into the Taylor Act lands, themselves divided into isolated tracts, generally leased to a single ranch-owner, or larger grazing districts which are used, for a small fee, by a number of ranchers. Thus a great resource is being preserved and maintained by the only authority capable of doing it on a national scale under a rational policy of wise use.

Intensive Management. Clawson picks the year 1950 as marking the transition between custodial and intensive management. He refers to the gradual changes that had been taking place, the realization that the federal government as landlord should make the best use of the lands compatible with their preservation. Indeed, in many instances, expendtitures were necessary to rehabilitate the land, especially where overuse had resulted in erosion. Certain lands destroyed by the dust bowl era in the 30's were reacquired and, by enlightened management brought back to productiveness.

Federal ownership is heaviest in the eleven western states, where approximately 54 percent of all land is federal. They range from Nevada, with 85% of its land in federal hands to Washington with 35%. Aside from these states, the only considerable area of federal land is South Dakota (18 percent). South Dakota has national forests, one national park, Mt. Rushmore National Monument, and the Indian reservations occupying the greater part of the central portion of the state. The two largest land-holding agencies are the Bureau of Land Management (Taylor Grazing and other lands) with 43% of all public lands, and the Forest Service with 41%. Defence has 6 percent and National Parks 3 percent.

Uses of Federal Land. Since federal lands are revenue-producing (oil and gas leasing, grazing fees, timber sales) and also extremely important for recreation and watershed protection, neither of which can be accurately reflected in dollar values, it is difficult, if not impossible, to arrive at anything but general ideas as to total value. But there are some tangible figures of interest. Clawson lumps together the revenues from public lands paid into the Bureau of Land Management in connection with sales and use of various types of land. These include the grazing lands, other public domain, acquired lands and submerged areas of the outer continental shelf.[4] As of 1965, the submerged areas produced three-fourths as much oil and gas the entire output from the public lands.

The dollar revenue collected by the Bureau of Land Management was, during the eight-year period 1957-64 inclusive somewhat over $2 billion, as compared to the gross receipts of one and a half billion realized during the period from 1785 to 1956. The 12½% royalty payments from the submerged lands contributed mightily to this total.

The National Wilderness Preservation Act of 1964

The growing strength of the conservation movement has been demonstrated in various ways. One has been the vigorous opposition to the invasion by government angencies, of national parks and national forests for the purpose of building dams to generate power, to improve navigation, control floods, provide irrigation water and so on. Threatened areas included, in addition to national parks, wilderness areas in national forest. These were designated portions of the forest, frequently at higher levels, deemed especially worthy because of their scenic and wilderness values. As such the forest service, by administrative orders, set them aside and prohibited, within their boundaries, all motorized transport, including aircraft. These were lands to be reached by the trail-rider on horse-back or carrying his back pack. Some of them had a potential for national park status, but the concepts are somewhat different. The national park is open to motor-cars. It has hotels and motels. The wilderness area has none of these, but it must be understood that the ideas of park and wilderness are mutually exclusive. Yellowstone National Park, the nation's first and perhaps the world's as well, has roads, trails, boat ramps, cottages, hotels, gift shops, and ser-

vice stations. It also has back country so wild, that, I am told, it has probably been visited by only a handful of white men.

Conservation forces, starting in 1956, proposed that a wilderness system be established so as to give greater protection and stability to these areas. Their efforts naturally produced opposition, with the mining groups possibly among the most articulate, visible and effective. In 1964, the bill was finally passed and signed by President Johnson. It established a national wilderness system, to become fully effective only on a delayed basis. Initially some 9.1 million acres in the national forests, previously classified as "wilderness" (over 100,000 acres) or as "wild" (less than 100,000 acres and more than 5,000) were covered by the system. In addition the Secretary of Agriculture was to review, within ten years of the date of the act, each area then designated as "primitive" in the national forests and make recommendations to the President and Congress as to its being officially included within the system. A similar review by the Secretary of the Interior is to be made with respect to the roadless areas within national parks and game refuges and to make recommendations to the President and Congress.

It is anticipated that the 34 existing primitive areas, if brought into the system, would add 5.5 million acres. Another 21 million acres could be gained from national parks and monuments, and a possible 21 million acres from wildlife refugees and game ranges. Together these would make a potential of 55 million acres in the entire system.

Though not within the original proposal by conservation groups, the Act continued the applicability of the mining and mineral leasing provisions to national forest wilderness areas. There is some solace in the provision that no mining patents shall issue within wilderness areas after December 31, 1983.

Conservation and mining are not necessarily concepts at war with each other. In the United States we have many existing testimonials to the wasteful practices of the nineteenth and early twentieth centuries. Strip-mining in the eastern coal-fields has left whole regions desolate. Poor, hilly land to begin with, the removal of the overburden has

almost permanently removed it from any possibility of use. Wisconsin and Minnesota have very little remaining of the great forests that covered them. But the big timber companies have moved to the Pacific Northwest and they are, on can honestly report, some of the best conservationists in the private sector.

Without professing to be an exper on mining, it is my strong impression that the biggest threats to the national forests come not from the valid, productive mining operations, but from the thousands of mineral "claims", staked out by those who, whatever their original intentions, see in the 1872 mining law a simple and effective means of getting a site for a sumer cabin. [5] The 1955 Act prohibited the use of unpatented mining claims for purposes other than mining. It also removes from their operation sand, gravel, and other building materials. But it does not apply to existing claims.

In 1955 the Chief Forester of the U.S. Forest Service estimated that not more than 15 percent of all unpatented mining claims would ever go to patent. This means that as to this 85 percent, the claimants were simply enjoying the use of government land for $100 per year, a peppercorn rental in the truest sense.

To really highlight this picture, consider this situation. A gentleman named Coleman filed claims under the "building stone" provisions of the mining laws and, asserting that he had complied with the requirements for expenditure of capital ($500 per claim) and other requirements and should receive a patent to 720 acres of land. The case, after an adverse decision by the Secretary of the Interior, reached the United States Supreme Court. The Court, reversing the Court of Appeals, found that the minerals in question, quartzite, did not qualify under the law as "valuable minerals." The Court noted, in passing, that the fact that Coleman's claims were in the San Fernardino National Forest, that he had built, at considerable cost, a home on the claims, and finally, that the location was within two hours time of Los Angeles, had some bearing on the question of his intention in seeking the patents. Certainly $500 capital expenditure per claim plus $5 per acre is somewhat of a bargain for title to national forest land. [6]

To summarise from the American experience, these matters seem to be important:
(a) in areas designated as of superior value for their natural quality, with the associated values of wildlife, streams, lakes, flora and scenery, mining exploration and mining activity are out of place and should be prohibited;
(b) where lands are reserved in a status less restrictive than that of national parks or wilderness, mining activity should be closely controlled to the end that claims are staked out and maintained for legitimate purposes and not for the ulterior one of providing a convenient place for a summer home or cabin;
(c) that mining claims should never be subject to patent, and that upon the cessation of mining operations, the land be restored, so far as possible, to a natural state. This last would require, for example, that were soil is removed for strip-mining, the land be restored by recovering with soil and planting with grass or trees as may be most in keeping with its original character.

I would particularly emphasise the first of these points - that in areas designated as national parks, including especially such areas as are designated as wilderness, there be a complete prohibition on mining exploration and survey work. This principle has been accepted in the United States but only with reluctance and after many struggles. One typical object has been the rain forest within Olympic National Park in the state of Washington. When timber prices rose in the 1950's pressure was exerted to open up this area to logging. Again the forces of conservation rallied. It has not been invaded, despite the fact that no doubt much merchantable timber has been kept off the market.

FOOTNOTES. -

1. Clawson and Held, The Federal Lands (1957)

2. Other parts of Minnesota were comprised of one edge of the Louisiana Purchase and a segment of the Red River Valley of the North.

3. P. 20.

4. This last is relatively new and represents revenues from the lease of lands beyond the three-mile limit. In 1953, an act of Congress opened up these submerged lands to mineral exploitation and production. Producing leases increased from 138 in 1956 to 399 in 1965. The run-away oil wells which have caused heavy pollution in the Santa Barbara Channel off Southern California are under federal lease.

5. 30 U.S. Code, sec. 612

6. United States v. Coleman, 390 U.S. 599 (1968)