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NATIONAL ASSOCIATION Of MINING DISTRICTS "NAMD"

Multiple Use Lands, Symbiotic Relations and Conflict Resolutions

In 1969 Congress declared under the National Environmental Policy Act (NEPA) that: "*The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated* ***to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."***

The following year in 1970 Congress declared under the National Minerals Policy Act: "*The Congress declares that it is the continuing policy of the Federal Government in the national interest* ***to foster and encourage*** *private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities."*

Then under the 1976 Federal Land Management & Policy Act (FLPMA). The Congress declares that it is the policy of the United States that--

(1) *the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;*

(2) *the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;*

(3) *public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;…"*

I will stop right there and repeat the last sentence as it is rather important. "Public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act". 1976 marked a year in which land management started to get rather complicated namely for one reason. The BLM and the Forest Service failed to consider that "Mining Districts" already occupied the public lands and were previous designations of specific uses. Species habitat under the Endangered Species Act and the "areas of critical environmental concern" that FLPMA enables, have now overlaid on top of prime mineral reserves within Mining Districts. Is it any wonder we now have conflicts and clashes in our national priorities?

Mining Districts and the mineral claims they embrace are specific uses of the land. Congress gave us a solution to conflicts that may arise in the event of competing use of the lands in the 1955 Multiple – Surface Use Act. It was best said in the Shoemaker case (110 IBLA 39) in 1989 where the court said: "*Federal management must yield to mining as the dominant and primary use. The terms "endanger" and "materially interfere" used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there is no evidence that such action endangers the claimant's operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use. Like "other surface resources," the terms "endanger" and "materially interfere" are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state:*

This language, carefully developed, emphasizes the committee's insistence that this legislation not have the effect of modifying longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent lands, so long as and to the extent that these activities do not endanger or materially interfere with mining, or related operations or activities on the mining claim".
H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9.

The court went on to say:
*"The change made by the Surface Resources Act was to create in the United States explicit authority "to manage and dispose of the vegetative surface resources * * * and to manage other surface resources." 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, supra at 365-66, 92 I.D. at 216-17. Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b) (1982); see United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the "dominant and primary use," the mineral locator having a first and full right to use the surface and surface resources*."

So now that we have dispelled the notion that species habitat can dominate over a Mining District or mining claimant, does it mean that we should mine in a way that does not provide habitat? No. Webster's defines "symbiosis" as: "the intimate association of two dissimilar organisms from which each organism benefits". Remember that Congressional NEPA policy highlighted previously, where they said "…and maintain conditions under which man and nature can exist in productive harmony…" The automatic discrimination and exclusion of man from nature, like his access and use of the land, presupposes man as a destructive force

for change, absent a relative hard look at the natural forces of change. Setting aside lands for non-use does not encourage wise use symbiotic tenets, which man has traditionally formed in its co-existence with nature. In the simplest terms, there are many people in our society that in growing up were never taught to play well with others in the same sandbox. This concept of playing well with others is embodied in the lion's share of public land laws and its "multiple – use" principles. The 1964 Wilderness Act is the only law in the entire world that is not consistent with these multiple –use principles. The Wilderness Act presupposes man as a destructive force for change, regardless of any relative hard look at the natural forces of change.

Are wildlife species stakeholders to the degree they hold a Constitutional Bill of Rights within a Mining District or mining claim? Technically no, but the Endangered Species Act does provide some guidance on lands not previously occupied for special uses. It is not uncommon for mining activities to create diversity in species' habitat with land alterations, many of which are wildlife sanctuaries today. Agencies often deal with two competing objectives, exploitation vs. preservation. The balance can best be achieved by full participation by all stakeholders. Unfortunately, the Mining Districts are not presently being represented within the BLM or Forest Service, but that can change and can be done under present law through a memorandum of understanding (MOU) with the Bureau of Land Management (BLM) and further clarified through the current draft Minerals and Mining Advisory Council (MMAC) Bill, "the Minerals and Mining Regulatory Reform Act – A Clear Path Respecting Mining Rights". The Mining Districts can bring to the table customary conflict resolution through board arbitration to help solve problems and to provide the proper balance. An example of such could very well be incentive based mitigation that respects the symbiotic tenets man has traditionally formed in its co-existence with nature.