Taking on the Industry in the Courts
thanks to Roger Flynn

by Amy Hadden Marsh

Perhaps you have wondered how Great Basin Resource Watch with its small budget can take on the mining industry in federal courts. The answer is: Roger Flynn and the organization he founded, Western Mining Action Project (WMAP), to help communities impacted by mining, such as the Western Shoshone at Mt. Tenabo shown above. By charter, WMAP can only represent public-interest nonprofit organizations and native tribes. Thus, we act as a team, where GBRW has standing due to its membership and technical analysis for Roger to prepare the legal case. Because of Roger and WMAP, your donations to GBRW can be leveraged to accomplish far more than each dollar alone would provide. Eternal thanks to Roger and WMAP! - John Hadder

In September, much of Roger Flynn’s town of Lyons, Colorado was washed away during one of the worst floods in the state’s history. Record rains dumped up to 17 inches of water in two days across Colorado’s Front Range. Rivers and creeks swelled. Roads vanished and houses were swept away. The St. Vrain River, which flows through the heart of Lyons, changed course during the flood, taking out municipal bridges and the town’s infrastructure.

But, for Flynn, director of the Western Mining Action Project (WMAP) and mining and natural resources law professor at the University of Colorado at Boulder, the show must go on. Now a part of what he calls the “Lyons Diaspora,” Flynn and his family are renting a place in Boulder until they can...
On November 1, 2013 the BLM released the “Nevada and Northeastern California Greater Sage-Grouse Draft Land Use Plan Amendments and Draft Environmental Impact Statement” which evaluates impacts and proposes a plan to manage public lands for sage-grouse protection. Both mining operations and explorations significantly impact habitat for sage-grouse and other sensitive species. In evaluating the impacts of a mine or exploration it is not sufficient to view the impacts in a limited radius around the proposed operation as has been the practice to date. Each single-location loss of habitat for sage-grouse can no longer be evaluated in isolation because the perilous situation of this iconic bird demands no total loss of habitat, rather a net gain in habitat area.

The sage-grouse situation illustrates the shortcomings of the cumulative impact analysis that is implemented by federal agencies. Each mineral exploration often encompasses a fairly small area, so taken on its face, most explorations are seen as a small impact. However, if we step back and look at what has been happening to the North Pequops range, which according to the federal government has “wilderness characteristics,” we see a collectively large impact to the range with the potential of a complete loss due to mining. The Bald mountain operation discussed on page 4 illustrates the problem of gradual encroachment impact as well. Here, as is often the case with mines, the initial evaluation of cumulative impacts by an agency fails to foresee the future sprawl of the mining exploration and operations.

We need to press land management agencies to assess foreseeable expansion of projects. Even explorations become projects of regional significance since they inherently include the potential for expansive mining and further explorations.

TO MY LADY FRIENDS

Our old friend and board member Launce Rake wrote a piece in the October 31, 2013 Las Vegas City Life about the recent loss of three amazing women that have been very important to our work and conservation in general in Nevada. Here is a summary of what Launce wrote:

We have suffered a series of losses recently in Nevada. In October, three women who were smart, brave and caring left us. Elyssa Rosen, who as a founder of Great Basin Mine Watch helped build awareness of what the modern mining industry is doing to our state, died in a diving accident half way around the world. Peggy Pierce, a tireless state assemblywoman, Sierra Club and labor leader, died of breast cancer. Jo Anne Garrett, (a GBRW donor) who helped stop the federal government from shoving the MX Missile down our throat and formed the moral and ethical backbone of resistance to the Southern Nevadan plan to suck eastern Nevada dry, died near her home just outside the Great Basin National Park.

It is perhaps just a tragic coincidence that all three of these committed people were women, and were conservationists, and had deep and lasting ties to Nevada. They could have been anyone. But the fact that these women stood up, stood strong, and spoke truth to powerful institutions dominated by men, suggests something fundamental about who we are.

The three, connected via the loose network of organizations working for related goals, really were a huge part of our collective conscience in this state. This trio put the interests of our families and our natural heritage above the demands for profit. I cannot imagine the state of this state without them.

Thank you, Launce. We mourn the loss of these leaders, our friends, with you. – ed.
return home. “I’m working from a computer on the kitchen table,” he said.

Flynn came West from the New York City area in 1988 and received his J.D. from the University of Colorado Law School in 1991. He said he didn’t know much about the 1872 Mining Law, which governs hard-rock mining on Federal lands, when he started practicing law. But, during his first case, he saw that a mining company was trying to prove that the Mining Law was exempt from Federal environmental laws, which raised big questions for him. Recognizing that mining can have devastating impacts on water, wildlife, and clean air standards, Flynn jumped right in.

He founded the non-profit WMAP – the nation’s sole environmental law center devoted to hard-rock mining and its environmental impacts in 1993 after working on then-Colorado Governor Roy Romer’s task force to clean up the Summitville Mine superfund site. WMAP was a way for Flynn to raise funds to support his work, which brings him toe-to-toe with some of the world’s largest mining corporations as well as the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). “People thought taking on the mining industry was a hopeless cause,” he explained. “But it sounded like a challenge to me.”

WMAP focuses on hard-rock mining litigation because Flynn said that’s the way he can be most effective. “You really have to know what you’re doing to take on the mining industry,” he said.

Flynn has represented citizen groups and Native American tribes across the West fighting some of the region’s most controversial mining projects, including the Mt. Emmons molybdenum mine near Crested Butte, Colorado, the proposed Rock Creek copper and silver mine in northwest Montana, the proposed Mt. Hope molybdenum mine near Eureka, NV, and the Cortez Hills gold mine on Mt. Tenabo in central Nevada. He was also a lead negotiator for the Colorado environmental community for the passage of the Colorado Mining Reform Act of 1993.

He said working with people who are most affected by large mining operations is what motivates him. “I like being able to help people who are facing such long odds,” he said.

Flynn attributes his tenacity to his grandparents, who were born and raised in the western counties of Ireland and came to the U.S. just before World War I. He said his grandparents’ struggle was against the British Empire for a free Ireland. “I grew up sticking up for the underdog,” he added.

Flynn also has a deep affection for the western landscape. He says the 1872 Mining Law is outdated, a holdover from a time when the Federal government opened up the West to white settlers and gave land away for free. “The 1800s were a different era of the United States,” he added. “[Resource extraction] was viewed as the most important use of the land but that’s not the case anymore.”

Most activities on Federal lands, such as ski resorts, oil and gas development, and livestock grazing, require permits. Not so with hard-rock mining claims. “It’s the only Federal law where you can go out and make your own claim,” he explained. “It does not require a permit to file a [mining] claim.” Flynn said because of provisions of the 1872 Mining Law, the BLM and the USFS tend to rubber-stamp approvals. “They think they have to,” he added.

But the 1872 Mining Law is just the tip of the legal iceberg when dealing with the Federal government and big mining interests. Flynn is no stranger to federal environmental and land management policy. His article “Daybreak on the Land: the Coming of Age of the Federal Land Management Act of 1976” was published in the Vermont Law Journal in 2005. He’s published other work in journals around the country. “The mines are so big that they implicate many different laws such as the Endangered Species Act, the Clean Water Act, and Native American protection laws,” he explained.

Flynn believes that the mining industry presents a rose-colored view of a very destructive operation and that local communities are often in favor of the short-term economic impacts. “You have to marshal the facts in order to show the inconsistencies of the Federal agencies and the industry,” he said.

Despite decades of victories and a no-compromise reputation, Flynn doesn’t have time to worry about what critics think. Nor is he interested in resting on his laurels. With characteristic perseverance, Flynn helps run a non-profit, community foundation, which has raised $500,000 to help his neighbors and other Front Range flood victims recoup losses from the September storms. “For me, it comes down to helping people and the land,” he said.
**Bald Mountain Mine - Still Expanding**

Barrick Gold Corp’s sprawling Bald Mountain/Mooney Basin Mine is looking to expand further. The mine lies just south of the Ruby Marsh basin. Under the current expansion plan the large open pit will come very close to if not into the water table. Increasing groundwater pumping is expected. The mine and adjoining explorations may jeopardize a major mule deer migration route. The figure here is a Google Earth captured image showing Bald Mountain in the foreground. The arrows show mule deer migration routes that pass through the western-most edge and directly across the mine property. Also shown in the figure is the Ruby Marsh Wildlife Refuge (black outline) and the Ruby Range Wilderness (white outline).

The Bald Mountain Mine is a good example of impact by incremental expansion. GBRW sees this mine as example of ineffective early environmental analysis, which did not account for the significant future footprint of the mine. Including the planned-for expansion, this mine will be a major regional impact. We are expecting the draft Environmental Impact Statement for the expansion to be released for comment this winter. We will keep you posted on possible actions.

**Mt Hope Update**

Since the approval of the Plan of Operations for this potential molybdenum mine near Eureka by the BLM in November 2012, Eureka Moly had prepared much of the surface where the open pit is planned. The preparation consisted primarily of scraping the surface, thereby removing all plant matter. However, operations at Mt Hope were effectively shut down in June 2013. Eureka Moly LLC lacked sufficient financing to continue the project. Their attorneys have stated to GBRW and the court that their financial situation is expected persist to March of 2014.

GBRW expected to be in court on September 3, 2013 to argue on the preliminary injunction. The injunction was needed to prevent serious impacts to the land, water, and community in the time it would take the court to hear our case challenging the project. However, we agreed to withdraw our motion, since the effect of the injunction was achieved; mining impacts have been halted, at least for the time being, by the financial situation of Eureka Moly. If Eureka Moly plans to restart operations they are required by the court to submit a 60 day notification to GBRW that would allow us to refile the preliminary injunction.

The Mount Hope project’s financial collapse apparently began when the central financier for Mt. Hope, Chinese billionaire Liu Han, who was instrumental in guaranteeing a Term Loan for the project dropped out of sight. According to Bloomberg News:

*After dodging a hitman’s bullets in 1997, which led to the execution of a rival tycoon and two of his relatives almost a decade later, Liu, 47, finds himself ensnared in more killings. This time, his own brother is the suspect, and the Sichuan Hanlong Group founder is being held by police for helping him evade capture over a 2009 triple murder, state media reported. – March 28, 2013*

Eureka Moly has not to date been able to secure other financing. Reasons may include dipping molybdenum prices and our lawsuit.

To clarify, our case against the mine was not dropped, only the Preliminary Injunction was dismissed “without prejudice.” What this means is that there has been no preliminary decision on the merits of our case, only that there is no need for the injunctive action. The lawsuit raises important issues, especially regarding both qualitative and quantitative water protection. All briefing will be completed by the end of February 2014 and oral arguments at some point in the future.
NEW GIBELLINI MINE COULD CLASH WITH RANCHING

On June 14, 2013 GBRW submitted Scoping Comments (issues to be addressed in the Environmental Impact Statement) to the Bureau of Land Management on the proposed Gibellini Vanadium Mine. The site is 27 miles south of Eureka, and would be Nevada’s first vanadium mine. Vanadium is already used to harden steel and make special metal alloys; however, the proponents, American Vanadium US, Inc.(AV), are most interested in marketing the vanadium for high-tech chemical batteries. Vanadium batteries have shown promise as an efficient and high density energy storage to be used in conjunction with intermittent energy sources such as wind and solar.

Beginning in the 90’s there has been increasing demand for new green-tech materials, including vanadium, lithium and rare earth metals to name a few. The Prius automobile battery is the largest user of rare earth minerals in the world. Nevada, explored extensively for over century for minerals, will likely experience an increase in exploration and development for metals with new uses such as vanadium. The Gibellini deposit is a good example of existing historic mine site (manganese–nickel ) reemerging as important new mining area.

GBRW has identified a number of concerns with this mine, some of which were detailed in our scoping comments to the BLM. Currently, there is no mining in the valley where this mine would be located – devoid of artificial light save the small ranch at the north end of the valley. The mine will significantly affect the character of the region. In addition, AV is planning to use a first of its kind method for extracting vanadium, a sulfuric acid heap leach process. This method is commonly used for copper extraction, which has often resulted in contamination of groundwater. Sulfuric acid leach methods were used at the abandoned Anaconda mine site, now a Superfund site. Long-term containment of the acid-laced heap leach drain-down fluids after mining operations have ceased is likely to be difficult and is definitely critical to protection of groundwater.

The mine will impact grazing lands. John Frasier, who runs about 400 cattle in the valley (Fishcreek South) near to the proposed mine operations told GBRW when we visited there, “this is excellent winter range country.” He pointed out vibrant stands of white and bud sage as well as Mormon tea, shad scale, and 15 miles of rice grass. Frasier further remarked about the quietude of the valley and lack of artificial lights saying, “there are not many valleys like this” and “[it’s the] last of the real west.” According to Frasier his ranch is worth approximately a million dollars, but he said would be “lucky to get $400,000” once the mine goes in.

Mining company personnel have discussed Frasier’s concerns with him, and have indicated they are willing to change the mine plan to accommodate his suggestions. Just as with other less damaged areas of public lands one must question the ability of mining operations, which are inherently destructive, to coexist with other uses and users of the land. Will this be another unique western landscape lost to the extractive industry, and if so, what is the tradeoff worth?

GBRW will be monitoring the progress of the mine proposal and examining the EIS, which is due out in 2014 or 2015. We’ll keep our membership and the public posted on developments and alert those interested to any actions they may take, such as commenting on the EIS.

NEWS ON THE ANACONDA COPPER MINE CLEANUP

The Anaconda Mine near Yerington was abandoned by its operators in 1978, leaving a complicated mix of contaminated groundwater and other toxic problems. Some combination of the Environmental Protection Agency (EPA) using Superfund emergency funds, Atlantic Richfield (ARC), responsible in part after purchasing a portion of the site, as well as the Nevada Division of Environmental Protection (NDEP), have been monitoring, testing and partially cleaning up at the site since the 1980’s.

The biggest problem remaining is that the groundwater beneath the site is contaminated with heavy metals, radiological compounds and other contaminants. The contamination has been moving north and apparently impacting residential wells outside the site boundary. Approximately 73 homes north of the site receive bottled water from ARC because their wells have been found to have uranium levels near or exceeding the federal standard for drinking water.

The August 2013 EPA Fact Sheet for the site stated unequivocally that elevated contamination levels associated with the site have gone as far north as Sunset Hills, that the contamination extends vertically from the shallow zone to the deep zone, and that “metals and radiological compounds released from the site have added to levels which occur naturally in groundwater in the area.” Peggy Pauly, activist with Yerington Community Action Group (YCAG), said “...this is the first time it has been definitively stated that the site has impacted wells and that it was stated for the first time in print that “the alternatives for protection of human health...will probably include the

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INTERNATIONAL MINING NEWS

THE MINING SECTOR IN ZIMBABWE

by Takwana Phillip Muyengwa

Zimbabwe is a country in the southern part of Africa and shares boundaries with South Africa, Zambia, Botswana and Mozambique. Zimbabwe is endowed with vast mineral resources such as gold, diamonds, and platinum, among other minerals.

Despite having all these mineral resources and wealth, Zimbabwe is still underdeveloped; revenues from mineral resources have failed to uplift poor people from the shackles of poverty, failed to promote local economic development and give hope to the communities adjacent to mining areas. Communities remain crippled by abject poverty, human rights abuses, degraded environment, diseases, corruption, government ineffectiveness, poor service delivery, and infrastructural deficit, among other challenges.

The legislative framework that guides and regulates mining and mineral resources in Zimbabwe is inadequate and is implemented with inadequate and piecemeal approaches. The framework is plagued by profound environmental protection gaps, vague requirements and weak standards throughout the whole mining value chain. The bottom line is that only those with strong political and economic muscles are benefitting from natural resources in Zimbabwe; some powerful politicians have shares in the mining companies, thereby setting up confusing and conflicting roles for them as investors and policy-makers/regulators.

There is a constitutional right to public information in Zimbabwe. Nevertheless, citizens are kept in the dark on issues of mining. Since information about mining contracts and resource... Continued on page 8

MINING CONNECTS GUATEMALA AND NEVADA

by Susan Juettten

Although there are other commonalities, no doubt, mining projects, executives and companies doing business in the two regions are the ties that brought Guatemalan activist Alvaro Sandoval Palencia from the group La Puya to Nevada for a storytelling event - a Cantastoria - in front of the Nevada Museum of Art (NMA) in Reno on June 26.

Through musical street theater (including a scroll telling the story on a background of Guatemalan textile), participants from the Comstock Residents’ Association, Progressive Leadership Alliance of Nevada (PLAN) and Great Basin Resource Watch told “A Tale of Two Communities,” to highlight connections between the imposition of destructive mining in both places.

The event coincided with the shareholders’ meeting at the NMA of Comstock Mining Incorporated (CMI), who are mining in the Virginia City National Historic Landmark, including Silver City, Gold Hill and Dayton, against the wishes of most residents. Daniel W. Kappes serves on the Board of Directors of CMI and his firm, Kappes, Cassidy & Associates is proposing to mine in Guatemala through its subsidiary Exmingua. Since 2010 indigenous communities including San Jose del Golfo and San Pedro Ayampuc have denounced the imposition of the mine without community consent or input. They learned about the impending project through a news article. The mine will affect thousands of families, the air, flora, fauna and their scarce water supply.

Said Palencia “We [at La Puya] are not against progress. We are simply questioning the price that we have to pay for this development. We’re fighting for our rights, which are not respected either by the multinational companies or by the Guatemalan Government.”

The peaceful La Puya blockade was met with riot police in 50 trucks in 2012 and the many men, women and children... Continued on page 8
Pit Lake Bill at the State Legislature

by John Hadder

Two years ago GBRW embarked on a campaign for meaningful reclamation of pit lakes in Nevada. Pit lakes are bodies of water that remain after mining companies dig pits reaching below the water table to get at the metals in the ground. These lakes are a long-term if not permanent legacy of large-scale open pit mining.

GBRW presented the need for pit lake reclamation to the Legislative Mining Oversight and Accountability Commission (MOAC) in 2012 and then to the Nevada Legislature during the 2013 session, where it became Assembly Bill 346, sponsored by Assemblyman David Bobzien.

Eventually, pit lakes in northern Nevada will hold almost 1.5 million acre-feet of water. We argued that under current law this water is wasted, since the mining companies are not required to reclaim pit lakes. Initially we drafted language to amend the current Nevada Revised Statutes (NRS) to require a “beneficial use” of the water for at least recreational use. However, our legislative sponsor and others were concerned that the bill would get mired down in water rights issues. So, the beneficial use clause was removed. The bill still directed the Nevada Department of Environmental Protection (NDEP) to require pit lake reclamation to allow for public recreational access to these lakes when feasible. With the direct tie to water use severed, the state’s ability to require pit lake reclamation was weakened, since now in the bill reclamation would depend on landowners and land managers, including the federal government (most mines in Nevada are at least in part on federal land.).

The bill was weakened further due to effective lobbying by the mining industry to exempt any pit lake less than 200 acres from the reclamation requirement. Again, we reluctantly agreed to this change believing that this concession was needed for the bill to pass. AB346 with these changes passed in the Nevada Assembly.

Things darkened for our bill in the Senate. In negotiations that GBRW was not party to the bill was changed again to address concerns around private property. AB346 then passed in the Senate as well, and the relevant NRS’s have been revised. Initially, NDEP, in writing regulations in coherence with the new NRS language had interpreted the language added in the Senate process to mean that any party who owns land that abuts a pit lake can effectively move to veto pit lake reclamation by not agreeing to allow lake access to his/her portion of the pit lake. According to Kyle Davis, who is the legislative Director of the Nevada Conservation League and our principal lobbyist at the Legislature, the new language was to pertain only to pit lakes entirely surrounded by one landowner.

We were able get the draft regulatory language changed to our interpretation. Now, the regulations will go before the Nevada State Environmental Commission in February, 2014, where the mining industry may challenge it. If so, we will need your help, so watch for an action alert on this near the end of January.

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By Susan Juetten

Comstock Mining’s request, if granted by the Commission, world allow pit mining within Silver City town limits. Some homes are as close as 250 feet from the mine site. The proposed pit and the open pit CMI is already mining immediately to the north are both within the Virginia City Historic District, which is over 14,000 acres of Nevada history. The Historic District includes Virginia City, Gold Hill and Silver City.

At the meeting, CMI CEO Corrado deGasparis claimed specific plans for the use of the property in question hadn’t yet been determined, though in their application they specify possible mining uses.

Comstock Residents Association’s presentation included a video during the four hour comment period. It included comments from Silver City residents, John Singlaub of Ascent Environmental and long-time local land manager spoke about land use issues, and Steve Johnson, a land appraiser, talked about negative impacts of property values.

Please support the Comstock by sending a letter to the Lyon County Commissioners and/or attend and provide comment at the meeting to be held at 9:00 AM January 2, 2014

Lyons County Board of Commissioners
27 South Main Street
Yerington NV 89447
To contact by internet:

Sources: www.comstockmining.org and Keith Trout, Reno Gazette Journal
revenues are not available to the citizens, opacity fuels corruption, prevents accountability and deprives the public of a voice and participation in basic decisions on mining issues. Communities are not engaged in the process chain associated with mining from the Environmental Impact Assessments (EIAs) activities to revenue utilisation.

It’s painful that these communities are the major receptors of all the negative impacts associated with mineral extraction yet these are the communities that are denied the fundamental rights and basic freedoms that democracy promises, the right to know and freedom of participation, as well as economic benefits.

Takwana Phillip Muyengwa is the third international intern to serve at Great Basin Resource Watch in three years. He is from Mutoko, Zimbabwe, where his native language is Shona and where he is associated with NGOs including “Youth Initiatives for Community Development Trust.” We asked Phillip if Zimbabwe is a democracy and he answered: “Yes, but for now the democratic space is very narrow; the people do not effectively participate in decisions that have a bearing in their livelihoods. Most people are apathetic and lack the knowledge of their rights and responsibilities as citizen. I am now active in development initiatives due to my exposure with several human rights groups and organisations.” Phillip is 26 years old and likes to play soccer and golf. We wish Phillip the best of success in Zimbabwe and we will be staying in touch.

Guatemala continued from page 6

involved have received threats and intimidation. In June of 2012 activist Yolanda Oqueli was shot in the back while leaving the blockade. 11 residents were killed and 7 injured in the village of San Jose Nacahuil. Finally, President Otto Molina met with representatives of La Puya. As a result, the president agreed to a new independent environmental impact analysis for the proposed mine. In October 2013, in a groundbreaking case, two former employees of the mine were sentenced to two years in prison for threats and coercion against independent journalists reporting on this situation.

In solidarity with the Guatemalan communities, PLAN also held an action in Reno in December 2012. The Cantastoria in June was the brainchild of PLAN Director Bob Fulkerson.

“Indigenous peoples are among the groups most severely affected by the extractive, agro-industrial and energy sectors,” said Pavel Sulyandziga, Chair of the UN Working Group on … Human Rights and Transnational Corporations. We at GBRW agree, having worked closely with Western Shoshone tribes in Nevada on issues of sacred lands and water threatened by the extractive industries since GBRW’s inception in 1995.

Sources: Steve Funk, ghrc-usa.org (Guatemalan Human Rights Commission) and http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13914&LangID=E.

Elyssa Rosen Vision Fund

It was Elyssa’s vision that the extractive industries needed to be held accountable by citizens and communities, which led to the formation of Great Basin Mine Watch. No other organization focuses on scientific analysis of the workings of the extractive industries in the Great Basin and connects these to broader concerns in the region.

GBRW is considering establishing a sustainability fund in Elyssa’s name to ensure that the work and vision of our founders continues.