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Stormwater Regulations Extended for Timber Harvesting

by William Dickens

Stormwater from timber harvesting operations which passes through ditches and culverts should be regulated under the Clean Water Act’s National Pollution Discharge Elimination System (NPDES). Judge Marlyn Patel of the U.S. District Court for the Northern District of California ruled by summary judgment in October. The ruling effectively extends the reach of the water pollution regulations with which timber companies must comply. More importantly, if it withstands appellate review, it could prove to be a significant step toward reducing logging-generated sediment loads in western streams.

The ruling came as part of litigation concerning Pacific Lumber Company’s (PALCO) logging operations in California’s Bear Creek watershed. The creek drains forestlands just outside Humboldt Redwoods State Park, flowing northward into the Eel River. According to the Environmental Protection Information Center (EPIC), the plaintiff in the case, PALCO’s timber harvesting and road construction in the watershed more than tripled the annual sediment deposit in Bear Creek, from 8,000 to 27,000 tons. PALCO’s operations involved placing 156 culverts and constructing 5.5 miles of roadside ditches, which conveyed stormwater directly into stream-crossing culverts. The construction of additional roads and culverts were contemplated as part of future operations.

The Clean Water Act

Congress enacted the Clean Water Act (CWA) in 1972 in order to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” The CWA’s regulatory fulcrum is § 301. It states that “[e]xcept as in compliance” with the CWA’s regulatory programs, “the discharge of any pollutant by any person shall be unlawful.” The National Pollutant Discharge Elimination System constitutes the CWA’s chief regulatory program. Under the NPDES, dischargers must obtain permits in order to lawfully discharge pollutants. Either the federal government or (with federal approval) state governments may administer the NPDES.

Not all discharges, however, require NPDES permits. First, the CWA requires NPDES permits only for pollutant discharges from statutory “point sources.” Non-point sources, such as runoff from farm fields, are exempt. Second, the CWA recognizes only certain point sources as regulable point sources. A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel conduit [or] discrete fissure...from which pollutants are or may be discharged.” Third, the CWA exempts many statutory point source discharges from regulation. For instance, the CWA initially exempted stormwater point source discharges in general. In 1987, however, Congress amended the CWA in order to bring at least some point source stormwater discharges under regulation. Those discharges “associated with industrial activity” were embraced by the amendments, as were stormwater sewers of large municipalities, as well as other stormwater discharges that either the EPA or state environmental protection agencies determined violated water quality standards. The EPA, pursuant to its expanded mandate, promulgated stormwater regulations in two phases, in 1990 and in 1999. The first phase was limited in scope. The second phase, however, was to encompass all stormwater discharge sources that the EPA concluded should be regulated under the CWA.

The effect of the cumulative exemptions granted under the CWA, even after the second phase, is sig-
Reigning-in *Buckhannon*: Catalyst Theory Fee Recovery Survives Recent Circuit Court Decisions

by Dan Galpern

In a case government lawyers described as involving “the most important attorney’s fee issue currently before the federal courts,” the Supreme Court recently denied certiorari in *E.P.A. v. Sierra Club*. That denial left undisturbed a recent decision by the United States Court of Appeals for the District of Columbia Circuit, *Sierra Club v. Environmental Protection Agency*.

The D.C. Circuit upheld a district court’s award of attorney’s fees to plaintiffs who settled their Clean Air Act (CAA) suit against the EPA prior to court adjudication on the merits. The lower court found that by their litigation, plaintiffs succeeded in pressing the EPA to change course - as EPA agreed to cease granting recurrent extensions to states that failed to comply with Clean Air Act provisions governing stationary source permit programs. Thus, plaintiffs were eligible for fees on the basis of the “catalyst theory.”

On appeal to the D.C. Circuit, EPA claimed that the Supreme Court’s decision in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Res.*, foreclosed catalyst theory-based attorney fee recovery. But the D.C. Circuit rejected EPA’s arguments, finding that *Buckhannon* does not bar attorney’s fees where statutes, such as the Clean Air Act, confer on lower courts authority to make awards whenever appropriate.

**Buckhannon on Fees**

In *Buckhannon*, the Supreme Court held specifically that the “catalyst theory” was “not a permissible basis for the award of attorney’s fees” under the Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). The Court’s analysis began with an acknowledgment of both the so-called “American rule,” by which parties are presumed responsible to cover their own attorney’s fees, and the increasing number of fee-shifting provisions in federal law.

Provisions of the FHAA and ADA provisions at issue in *Buckhannon* provide for such fee-shifting, but restrict fee awards to “prevailing parties.” Prior to *Buckhannon*, every circuit court but one had interpreted “prevailing party” statutes to permit catalyst theory-based fee awards. Notwithstanding that near-consensus, the *Buckhannon* majority declared “prevailing party” to be a legal term of art that excludes parties whose objectives were achieved shy of a judgment or court order. What is required, according to the Court, is a change in the legal relationship between parties that is either compelled or overseen by the court. But a “voluntary” change in the defendant’s conduct, “although perhaps accomplishing what the plaintiff sought to achieve ... lacks the necessary judicial imprimatur on the change.” In this way, *Buckhannon* altered the central question in “prevailing party” attorney’s fee determinations from whether a party substantively achieved what it sought, to whether a court sufficiently directed or oversaw that change.

The danger of the *Buckhannon* rule is that after a citizen-plaintiff expends considerable time, effort, and resources - but prior to court adjudication on the merits - the adversary agency or corporation, perceiving the strength of the case against it, may choose simply to cut its losses, change its conduct as plaintiffs demand, and then move to terminate the litigation as moot. But with the catalyst theory unavailable, and with neither a judgment nor a consent decree in hand, plaintiff’s attorneys may be denied an avenue of recovery - even though their work vindicated important public rights. Plaintiffs and their attorneys therefore must strategically consider ways to cover the financial risk of being *Buckhannoned.* In the environmental arena, suits brought under the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA) are vulnerable, since these acts contain no attorney’s fee provisions; fee award claims following NEPA and APA suits therefore rely on the Equal Access to Justice Act (EAJA) - a “prevailing party” statute.

**Non-Prevailing Party Statutes**

A critical question for environmental plaintiffs is whether *Buckhannon’s* broad renunciation of catalyst theory attorney fee recovery extends to statutes that do not employ the same “prevailing party” term at issue in *Buckhannon*. Such statutes include the Clean Air Act, whose relevant provision grants discretion to a court to award litigation costs, including reasonable attorney’s fees, “whenever it determines that such award is appropriate.” Similarly, provisions in the Endangered Species

*SEE BUCKHANNON - P. 15*
The General Mining Law of 1872: Progress or Retreat?

by Sarah Peters

Environmental advocates have their work cut out for them in the current political climate, and the arena of hardrock mining reform is no exception. The General Mining Law of 1872, known as the Mining Law, governs the removal of hardrock minerals, including gold, silver, and precious gemstones, from publicly owned lands in the United States. It was adopted during the era of westward expansion, and essentially “gave” land to early explorers.

The Mining Law has changed little since its enactment and is in need of reform. First, it continues to allow present-day entities to patent public lands for $5 an acre, the same amount charged in 1872. Second, it allows the removal of minerals from public lands without requiring royalty payments. Finally, the limited environmental awareness of the Mining Law reflects anachronistic 19th century attitudes in its lack of protection for public lands.

Areas in Need of Reform

Patent Process. The patent process available through the Mining Law needs to be permanently removed, as opposed to the annual moratorium that has been renewed since 1995. When the patent moratorium is not in effect, the Mining Law gives anyone who obtains a patent on public lands a fee-simple property right in that land through the minerals deposited under it. This property right granted to individuals in the past has led to the privatization of federal lands and use for purposes other than mining activities. Mining patents are not necessary to mine land or to stake a new mining claim and do not add any additional security to the existing claim. Therefore, permanent removal of the opportunity to patent federal land would not end mining on federal lands, but would allow the federal government to maintain its property rights. Under other federal mining laws that govern resource extraction from public lands, the government maintains full ownership of the land and its minerals, and the mining companies pay royalties on the minerals they extract.

Royalty Payments. As a throwback to the time of its inception, the Mining Law still does not require royalty payments on mineral extraction. This absence of royalty payments has allowed entities, including multinational mining companies, to remove minerals from public lands without paying a dime to the federal government. The Mining Law requires only a $100 annual payment to maintain a patent. In contrast, coal, oil, and gas producers on public lands pay royalties on extraction ranging from 8.0-12.5%.

In 2000, the Bureau of Land Management (BLM) estimated that $982 million in minerals were mined from patented lands. With a royalty of just 8.0%, the BLM could have collected over $78 million in revenue in just one year. This revenue will only be realized if the Mining Law is updated to require royalties.

Environmental Impacts. The last and arguably the largest area in need of reform is the Mining Law’s lack of environmental safeguards. In October 2003, the Environmental Protection Agency (EPA) released hardrock mine statistics for 2001, which tell a story of massive pollutant production. In 2001 alone, hardrock mining resulted in the accumulation of 2.8 billion pounds of toxic waste, including 366 million pounds of arsenic, 355 million pounds of lead, and 4 million pounds of mercury. With no environmental regulations imposed upon the hardrock mining industry by the Mining Law, hardrock mining activities deposit pollutants directly into the soil without treatment. These toxic pollutants ultimately end up in surface and groundwater. According to the EPA, mining has polluted 40% of the headwaters of western watersheds.

The Mining Law also fails to force clean-up of abandoned mining sites. When mining companies have extracted all economically viable minerals from the land, there is frequently no enforcement of their “promises” to clean up the mining sites. The result is a discarded mess of toxic waste and upturned soil,
The Slow Death of the Roadless Rule

by Andrew J. Orahoske

Will the Roadless Area Conservation Rule be hopelessly muddled by bad faith litigation tactics and regulatory changes? The Bush Administration has been sued by the timber industry and several western states a total of nine times in five different federal district courts over the rule. Twice the Administration lost and then failed to appeal the decision, and twice environmental groups intervened to defend the rule. In the Ninth Circuit Court of Appeals, the environmental intervenors successfully defended the rule. A decision is pending in the Tenth Circuit. However, the State of Alaska challenged the rule and the Administration opted for a settlement that exempts all national forest land in Alaska and prevented environmental groups from intervening in the judicial proceedings. Thus, through legal wrangling and modifications, slowly and steadily the Administration is whittling away at the landmark rule.

Initial adoption of the Rule

Following two decades of debate and three years of federal rulemaking, the Roadless Area Conservation Rule was finally adopted by the U.S. Forest Service in January, 2001, during the final days of the Clinton Administration. More than 600 public meetings and 1.7 million public comments, 95% of which supported the maximum protection for roadless areas, contributed to the most extensive public involvement in the history of rulemaking in the United States. As adopted, the rule prohibits road construction and logging in 58.5 million acres of inventoried roadless areas, covering about 30% of the National Forest System. An inventoried roadless area is one that has been officially recognized by the U.S. Forest Service as roadless and exists outside lands currently designated as wilderness. This designation is not comprehensive but includes a majority of areas that are roadless in nature. In order to be considered for wilderness designation by Congress, among other prerequisites, an area must be roadless. Thus, the rule protects areas worthy of protection as wilderness for future consideration by Congress.

Immediately after taking office, the Bush Administration held up implementation of the rule pending an internal review. Meanwhile, opponents of the rule, including the timber industry and several western states, filed lawsuits to invalidate the rule. In May 2001, the Administration announced it would support the rule, but would make minor changes to address the concerns raised by the rule’s opponents.

A Pretense to Defense

Courts from the western states have attempted to block implementation of the Roadless Rule. In May, 2001, Judge Edward Lodge of the United States District Court for the District of Idaho issued a preliminary injunction blocking implementation of the rule in Idaho and stated that the decision would be applied nationwide. The Administration did not appeal the decision; however, several environmental intervenors appealed to the Ninth Circuit Court of Appeals. A three-judge panel reversed the district court’s injunction in December 2002, and reinstated the rule. The full Court of Appeals denied a request by the State of Idaho and Boise Cascade to reconsider its decision and reaffirmed the previous ruling.

A second attempt to block the rule’s implementation occurred in July, 2003. Judge Clarence Brimmer of the United States District Court for the District of Wyoming criticized the federal rulemaking process behind the rule and went so far as to say that the Roadless Rule violated the Wilderness Act. Again, the Administration did not appeal the decision and, once again, environmental intervenors filed an appeal to defend the rule. A decision by the Tenth Circuit Court of Appeals is expected sometime in 2004.

Judge Brimmer has been criticized for this decision. Two groups, the Community Rights Counsel, and Citizens for Responsibility and Ethics in Washington, have filed an ethics complaint citing a con-
Under the toxic tort system, plaintiff landowners sue polluters under traditional tort theories. Toxic tort law is an effective deterrent to potential polluters because punitive damages awarded under the toxic tort system tend to be much higher than fines imposed by government agencies. The tort system also tends to resolve cases more quickly than slow administrative resolutions. Also, juries under the tort system are not as susceptible to political influences and special interests, whereas changes in presidential administrations may severely handicap administrative agencies. However, a recent Supreme Court ruling may undermine the deterrent effect created by large punitive damage awards. In *State Farm v. Campbell*, the Court set guidepost ratios between compensatory and punitive damages, which drastically lower the amount of punitive damages that can be awarded. Without the threat of high punitive damage awards, the guidepost ratio may result in an economic justification for polluters to illegally dispose of pollution rather than obey government disposal regulations.

### State Farm v. Campbell

In *State Farm*, the Supreme Court held that a $145 million punitive damages award on a $1 million compensatory judgment violated the Due Process Clause of the Fourteenth Amendment of the US Constitution. The Court relied on a previous decision, *BMW of North America*, in which a $2 million punitive damage award was struck down because of the mere $4,000 compensatory judgment. In *BMW*, the Court instructed lower courts reviewing punitive awards to weigh three factors: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.”

In *State Farm*, the Court explained that the reprehensibility of the defendant’s conduct depends on whether “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, deceit, or mere accident.” The Court noted that the existence of just one of these criteria may not be enough to sustain a punitive damages award, and any such award issued where no criteria is met is suspect. While the Court found *State Farm’s* conduct was somewhat reprehensible, it did not justify the excessive punitive damages award. In addition, the Court rejected the award because it “bore no relation to the Campbell’s harm.”

While the Court declined to establish a bright-line ratio between compensatory and punitive damages, they provided guidance to lower courts that will likely lead to punitive damage awards rarely exceeding a double-digit ratio. The Court announced that “few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process.” Thus, no longer will the large punitive to compensatory ratio survive judicial scrutiny.

### The Economic Incentive to Pollute after State Farm

One of the policy goals of an effective toxic tort system is to make pollution unprofitable. In a successful toxic tort suit, a landowner can seek compensatory damages (typically an amount less than the fair market value of the land), and punitive damages (compensation in excess of actual damages awarded as a means to punish the offender). Without the threat of large punitive damages, it is easier for industries to justify illegal pollution disposal rather than comply with expensive environmental regulations.

### The Promotion of Environmental Racism

Perhaps the most unjust aspect of *State Farm* is the potential
The Pew Oceans Commission report, America’s Living Oceans: Charting a Course for Sea Change (2003), took a comprehensive look at the state of America’s oceans and made both far-reaching and specific policy recommendations for improving the nation’s stewardship. While also addressing many other topics ranging from fisheries to global warming, the Commission emphasized the threats posed by non-point source water pollution with the following facts:

* A recent National Academy of Sciences study estimates that the oil running off our streets and driveways and ultimately flowing into the oceans is equal to an Exxon Valdez oil spill - 10.9 million gallons - every eight months.
* The amount of nitrogen released into coastal waters along the Atlantic seaboard and the Gulf of Mexico from anthropogenic sources has increased fivefold since the preindustrial era, and may increase another 30 percent by 2030 if current practices continue.
* Two-thirds of our estuaries and bays are either moderately or severely degraded by eutrophication, a long-term increase in the supply of organic matter to an ecosystem, often caused by the introduction of excess nitrogen and resulting in reduced water clarity and oxygen depletion.
* More than 13,000 beaches were closed or under pollution advisories in 2001, an increase of 20 percent from the previous year.

The Clean Water Act (CWA) does not directly address many of the sources of this pollution. The CWA defines “point sources” as discernible, confined and discrete conveyances, such as pipes and ditches, and specifically exempts agricultural runoff. Sources not covered by the CWA definition make up non-point source pollution.

**Commission Recommendations**

The CWA has been instrumental in curbing point source pollution; however, it only partly addresses the problem of non-point source pollution. The Commission recommended a number of administrative and legislative changes to direct efforts towards curbing non-point source pollution. The recommendations include several amendments to the CWA, which seek to reduce the broad sources of non-point source pollution ranging from city stormwater to agricultural runoff.

For example, the Commission recommended ways to control agricultural runoff such as establishing quantity standards for nutrients, such as nitrogen, which are dangerous when overabundant. The Commission also recommended establishing standards for “best management practices” to control runoff similar to standards used to control point source pollution. Such standards might include planting winter cover crops, returning marginal farmland to wetlands and expanded floodplains, removing land vulnerable to high rates of erosion and nitrogen loss from production, constructing wetlands and vegetative buffers to intercept the drainage from farm fields, and reducing the application of nitrogen-based fertilizer to lawns and golf courses.

Also, the Commission made recommendations that cities and counties update zoning codes to reduce sprawl. Reducing the impervious surface area reduces the amount of water that drains directly into wa-
A Gardener’s Guide to Biopiracy

by JJ Haapala

In a few short years, genetically engineered (GE) crops of soybeans, cotton, and corn have flourished, progressing from small field trials to over forty million acres. Originally, the major difference between these and conventional crops was the inclusion of genes that conferred resistance to the popular herbicide Round-up. Round-up is renowned for its ability to kill anything green. By marketing plants resistant to Round-up, farmers can indiscriminately douse their fields with the herbicide, removing all other plants very efficiently without damage to the crop. Though seemingly a miracle for conventional farmers, the crops proved unpopular in some foreign markets, due in part to their inability to be distinguished from non-GE crops, as well as uncertainty as to their safety. The company that sold both the herbicides and the GE seed, Monsanto, became the target of anti-GE activists worldwide.

The lure of GE crops for agrichemical companies lay not only in improving the ease of crop growing, but from the intellectual property gained from their widespread use as well. While sexually propagated plant varieties had enjoyed intellectual property protection from the Plant Variety Protection Act (PVPA) since 1970, that protection was limited because of two exemptions in the PVPA. First, the PVPA provided the right of farmers to save seed. Second, the PVPA contained a research exemption allowing breeders to use any protected variety for breeding new varieties. Supreme Court decisions coinciding with the emergence of the technology eliminated the traditional bar against patenting natural phenomena, and the utility patent was extended to plant varieties thereby eliminating the exceptions of the PVPA and providing a strict liability enforcement regime for infringers.

In 1980, the Supreme Court eliminated the traditional bar against patenting natural phenomena in the seminal case Diamond v. Chakrabarty. A genetically engineered microorganism capable of consuming petroleum spills was deemed sufficiently meritorious to qualify as patentable subject matter. In 1985, the Patent Board of Appeals eliminated the requirement that plants be genetically engineered to qualify for a utility patent in Ex Parte Hibberd. And in 2000, the Supreme Court made Hibberd the law of the land in JEM v. Pioneer. Since that decision, patents have become the choice method, especially for commodity crops, for excluding others from using the variety and exacting licenses for their use. There are several good reasons to be concerned about granting patents for sexually propagated plants.

First, the utility patent does not have an exception for saving seeds or using a protected variety for further breeding and plant development like the PVPA. The PVPA reflects the international plant protection system, the Union for the Protection of Plant Varieties (UPOV), UPOV and other international agreements, such as the International Treaty for Plant Genetic Resources, maintain the farmer’s right to save seeds and the researcher’s right to use any modern protected variety to develop the next variety. New varieties containing some of the same parent stock will qualify as non-infringing and eligible for its own protection if it is distinct, uniform, and stable. The utility patent in contrast eliminates the farmer and researcher over $34 billion dollars in mergers and acquisitions in the seed and life science industries.

So, what’s the problem with patenting modified plants? The Constitution offers limited monopolies to inventors to encourage advancement in the arts and sciences. The JEM and Chakrabarty decisions eliminated the traditional bar against patenting products of nature. Prior to JEM, Plant Variety Protection Certificates and trade secrecy were the means for plant breeders to protect their innovations. Since 2000, utility patents have become the choice method, especially for commodity crops, for excluding others from using the variety and exacting licenses for their use. There are several good reasons to be concerned about granting patents for sexually propagated plants.

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Strip Mining the Siskiyous

by Jonathan C. Evans

In the rugged mountains of Southwest Oregon, Rough and Ready Creek winds through sparse stands of jeffrey pine and port orford cedar. The creek is home to several species of anadromous fish including steelhead trout, chinook salmon, and the threatened coho salmon. Lacking the sedimentation that turns other streams muddy, Rough and Ready Creek remains exceptionally clear throughout the Northwest’s frequent winter storms.

The headwaters of the creek originate on the edge of the Kalmiopsis Wilderness within the Siskiyou National Forest. The Rough and Ready watershed is one of the most botanically diverse areas within the lower forty-eight states, second only to Great Smoky Mountains National Park. The United States Forest Service has ranked the watershed of Rough and Ready creek first in Oregon in terms of botanical diversity. The watershed is home to such rare plants as the carnivorous pitcher plant (*Darlingtonia californica*) and the endangered cook’s lomatium (*Lomatium cookii*).

The unique plant community of the Rough and Ready watershed owes much of its rare diversity to the underlying substrate of reddish serpentine rock. The harsh serpentine soils occur in localized areas of Oregon and California and mostly favors the plants that evolved in the area. Invasive and introduced plants, on the other hand, cannot tolerate the harsh chemical and physical properties of serpentine soil. The localized habitat acts as an “island” for native plants because of their isolated and intermittent occurrence. These unique factors contributed to the 1993 proposed listing of the creek under the protection of the National System of Wild and Scenic Rivers.

Walt Freeman and Nicore Mining

At roughly the same time the area was proposed for Wild and Scenic River listing, Walter Freeman, through his company Nicore, filed mineral patent applications for 151 mineral claims covering over 4,360 acres of the Rough and Ready Creek watershed. Mineral patents allow the transfer of mineral rights on public lands to private individuals or companies. The Nicore mining operation proposed to develop a nickel-laterite strip mine within a Bureau of Land Management (BLM) Area of Critical Environmental Concern, a Forest Service Botanical Area and the South Kalmiopsis Roadless Area. Freeman filed the mining patents with the BLM in 1992. The BLM did not respond to Freeman’s proposal until 1994 when the agency refused to process the application. The denial of the mineral patents was prompted by the 1994 congressional moratorium on new mineral patents. The annual moratorium on new mineral patents has continued through the 2003 fiscal year. Freeman believes his claims are valid because they were made before the moratorium on lands open to discovery within the Siskiyou National Forest.

Freeman’s claim has been embroiled in controversy for the past fourteen years. When the Forest Service prepared an Environmental Impact Statement (EIS) on the mining plan it received “an overwhelming volume of public comments ask[ing] the Responsible Officials to deny the proposed Plan of Operations.... Of approximately 5,000 letters, fewer than one percent supported mining in the area.” Oregon legislators were also critical of the project. Sen. Ron Wyden (D), Rep. Peter Defazio (D), and several other state representatives wrote a letter to the former head of the Forest Service, Mike Dombeck, condemning the proposed operations. The letter encouraged the Department of Interior (DOI) to remove the area from mineral entry and to eliminate public funding from the costly environmental analysis of the project. These actions, if taken by the DOI, would effectively end new mining operations.

In January 2001, the DOI approved several administrative mineral withdrawals, which prohibit the transfer of
RS 2477 and the Disclaimer Rule

by Michael Gustafson

RS 2477, a part of the 1866 Mining Law, granted non-federal entities the ability to pursue “rights of way for the construction of highways over public lands, not reserved for public uses....” The Federal Land Policy Management Act (FLPMA), enacted in 1976, repealed RS 2477. The repeal of RS 2477 disallowed new rights-of-way claims while upholding unperfected claims made prior to the enactment of FLPMA and as long as the claimed route had been in continuous use prior to 1976. Since the enactment of FLPMA, perfecting RS 2477 claims for rights-of-way through federal lands have been limited and costly. However, the Bush Administration has recently introduced a regulation change known as the “Disclaimer Rule,” which will make it easier for state and local governments to perfect RS 2477 claims.

On January 6th, 2003, the Department of the Interior (DOI) finalized changes to the regulations governing how “disclaimers of interest” under FLPMA are issued. The new regulations allow the federal government to disclaim its interest in a particular piece of land if that interest creates a cloud of title over the land, thus allowing state and local governments to assert title to the land. The new regulations also make it easier for the federal government to grant rights-of-way to local governments by relaxing previous requirements imposed on the unperfected claims. The new regulations no longer require non-federal entities to file a right-of-way claim within twelve years of the time it knew, or should have known, of the government’s interest in the property. The new regulation also allows entities other than the current owner of the land to apply for a disclaimer of interest and does not require any evidence of title to the lands. These changes open many previously barred RS 2477 claims for consideration by the BLM, which may induce a surge of unperfected RS 2477 claims.

The U.S. Forest Service and environmental groups believe that many of the RS 2477 claims, if approved, will have a devastating impact on the environment of the affected public lands. For instance, after the regulation change was announced, government entities in many states, including Alaska, California, Colorado, Idaho, and Utah, asked the federal government to disclaim its interest in portions of public lands under RS 2477. If granted, these claims would allow non-government entities to construct roads through national parks, national monuments, national forests, wildlife refuges and other pristine lands.

In an effort to dispel the public concern over the rule change, the DOI is requiring states to enter into a “Memorandum of Understanding” (MOU) regarding the process by which disclaimers will be issued. Utah and the DOI entered into the first MOU in April, 2003. The Utah MOU requires public comment, and will not allow disclaimers in national parks, wilderness areas, and other protected areas. Other states, including Colorado, have voiced interest in entering into similar agreements.

Despite the DOI’s effort to curtail public concerns, the Disclaimer Rule is being opposed on many grounds. For instance, the opposition asserts that under the Game Range Amendments of 1976, the Secretary of the Interior cannot transfer decision-making authority from the US Fish and Wildlife Service (FWS) to the BLM to disclaim interest in public lands within the jurisdiction of the FWS. Support for this assertion can be found in FLPMA. When Congress enacted FLPMA it specifically stated that FLPMA should not be interpreted as amending or modifying the provisions of the Game Range Amendments, thereby prohibiting the BLM from making decisions regarding lands under FWS management.

Challengers also claim the new regulation violates §108 of the Department of Interior and Related Agencies Appropriation Act of 1997. Section 108 prohibits any final rule or regulation regarding the manage-
ment or validity of an RS 2477 right-of-way from taking effect unless expressly authorized by an act of Congress. In its response to comments regarding the rule, the DOI argued that its rule did not violate §108 because it is not a “final rule or regulation,” but rather an amendment to existing regulations pertaining to the DOI’s authority under FLPMA. The DOI further argued that a finding that the rule violates §108 would be contrary to well-founded rules of statutory construction because it would impliedly repeal §§ 310 and 315 of FLPMA. These issues will likely have to be resolved in court.

Congress is also concerned about the new regulations and has attempted to pass legislation limiting its effects. A rider was proposed to the DOI’s 2004 appropriations bill prohibiting the regulation from being used in regards to national monuments, national parks, wilderness areas, national wildlife refuges and wildlife preserves. To the surprise of many environmental groups, the final version of the bill did not contain these limitations.

The BLM has not yet acted on any request for disclaimers, and thus, the results of the regulation change have yet to be determined. The Disclaimer Rule has the potential to change public lands management for years to come, as well as change the landscape of many federal lands. For this reason, it is up to all of us who care about our public lands to voice our concerns about this regulation either through litigation, or to the DOI and our congressional representatives before it is too late to have any effect on the potential outcomes of the regulation.

BIOPIRACY FROM P. 8

Second, the utility patent is a strict liability regime. This means that there is no intent required for the patent infringer to be liable for infringement. Any infringement subjects the infringer to a potential injunction (crop seizure) and monetary penalties. Therefore, if pollen from a patented crop blows onto your fields, and you save and replant your seeds that contain any of the patented material, you are liable for infringement. It is exactly this scenario that has pitted Percy Schmeiser, a canola grower, against agribusiness giant Monsanto in Canada’s Supreme Court.

Third, patents grant protection not only to the finished variety, but also to its constituent pieces—its genes. Patent holders can therefore prevent the use not only of the patented variety, but also its parent stock and the sources of the patented genes. Therefore, if a gene from a non-protected variety is inserted into a variety that is patented, the gene from the source is also protected. This has caused the most consternation internationally from countries concerned that their traditional varieties will be used to develop genetically modified varieties. The result is that the centers of biological diversity are less inclined to share their genetic wealth with the U.S., and the basic building blocks for creating new varieties are now the property of the few.

Countries rich in genetic diversity traditionally depend on U.S. researchers and seed banks to store and secure their plant varieties and breed new crops. Patents threaten this symbiotic relationship, and with it, global food security and conservation of crucial genetic material.

Now instead of a free flow of plants between researchers and conservation banks, countries are withholding plant genetic material either to prevent patenting, or to secure lucrative royalty agreements. In the meantime, without adequate domestic seed banks, the genes are being lost.

Gardeners and farmers throughout the world working with traditional plant varieties can help combat these trends. By registering and marketing varieties in publications or on-line, varieties can become established as “prior art.” This is important because since one of the requirements of a patent is novelty, prior art defeats a patent claim. Growing a meaningful garden can include evaluating plants from our nation’s seed banks in order to share that information and the seeds from that plant. In lieu of U.S. patent law changing soon, this is one of the most important acts for a citizen to take against biopiracy.

These and other threats to genetic diversity and the legal implications faced by farmers will be explored this April 9th at the University of Oregon in “Malthus, Mendel, and Monsanto: Intellectual Property and the Law and Politics of the Global Food Supply.” Featuring Percy Schmeiser, the canola grower sued by Monsanto, the conference will address the agricultural, environmental, and intellectual property concerns connected to the protection of traditional knowledge and plant genetic resources.

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REFORM FROM P.4
which the public typically must pay to clean up.

Recent Reform Attempts
Administrative Regulations. In October 2001, the Department of the Interior (DOI) attempted to streamline the mining claim approval process by changing the regulations they had implemented in 2000. The 2001 regulations removed all agency authority to prevent mining activities that harm the environment by eliminating the “substantial irreparable harm” criterion from the definition of “unnecessary or undue degradation.” This reform effort did nothing to acknowledge the environmental impacts of hardrock mining through surface and groundwater contamination.

Judicial Attempts. Many environmental groups believed that the updated regulations actually worsened the impacts of hardrock mining on public lands. The Mineral Policy Center and several other groups filed suit, arguing that the new regulations were contrary to the BLM’s duties as delineated in the Federal Land Policy and Management Act (FLPMA). Mineral Policy Center v. Norton, decided in November 2003, reaffirmed most of the DOI’s 2001 mining reform regulations as not conflicting with FLPMA. However, the decision was still a win for environmental protection. In the 2001 regulations, the DOI declared that the BLM did not have the authority to prevent proposed mining activities that were “necessary to mining.” The court found that this interpretation of “unnecessary or undue degradation” was incorrect; instead stating that FLPMA allows the BLM to deny claims if the mining operations would contribute to the “undue or unnecessary degradation” of public lands.

The court also contradicted the DOI’s 2001 interpretations by finding that mining companies who do not have a valid mining claim established under the Mining Law are not exempted from paying royalties. The court determined that these companies should begin to pay the government fair market value for their mining activities. Finally, the court made clear that “the 2001 regulations prioritize the interests of miners over the public interest of persons such as the plaintiffs who seek to conserve and protect the public lands,” which “may well constitute unwise and unsustainable policy.” This decision indicates that other uses must be acknowledged by future DOI decisions, and is important in beginning the process of overturning the antiquated presumption that mining should continue to reign supreme on public lands.

Legislative Reform. A bill updating the Mining Law is currently before the U.S. Congress. The Mineral Exploration and Development Act of 2003 will not only provide for fiscal reform of the Mining Law, but also establish environmental safeguards and standards. The bill requires royalties of 8.0%, the permanent removal of allowing new patents, and a permanent annual fee for renewing the mining claim. All revenues from royalties and renewals would be earmarked for the Abandoned Mine Land Fund, which would be designated to assist in the clean-up of over 500,000 abandoned hardrock mines currently in the U.S. Environmental standards are also part of the bill, and would require adequate reclamation, protect fish and wildlife, safeguard surface and groundwater, restore landscapes, and, maybe most importantly, prevent proposed mines that would cause significant, permanent, and irreparable damage.

Conclusion
The battle to reform the General Mining Law of 1872 is far from over. Environmental groups refuse to retreat, and administrative, judicial, and legislative reforms are making progress...or are they?

ROADLESS RULE FROM P.5
lict of interest by the judge. The groups point to Judge Brimmer’s financial disclosures, which state that half of his reported net worth, nearly one million dollars, rests in large energy companies. These companies would benefit from the opening of roadless areas for oil and gas exploration. Federal conflict-of-interest law prohibits a judge from ruling in a case where the judge has any interest that could be substantially affected by the outcome of the proceeding.

The Sue and Settlement Tactic
In June 2003, the Administration announced a settlement in a lawsuit filed by the State of Alaska against the Roadless Rule. The state argued that the rule violated the Alaska National Interest Lands Conservation Act (ANILCA) by creating new land conservation units within Alaska’s two national forests, the Tongass and the Chugach. In the settlement, the Administration agreed to propose amending the rule to exempt both the Tongass and Chugach, effectively granting the State of Alaska the requested relief. Ordinarily, a settlement involves each party giving and taking, and a compromise that finds some middle ground. That compromise did not happen in Alaska.

Although the settlement stipulated the proposed exemption of
the Tongass and Chugach from the rule, the Administration was still bound by federal law to solicit public comment before making a final decision. Of the approximately 250,000 public comments received on the proposal to exempt the Tongass, 99% opposed the exemption. In spite of this overwhelming public opposition, the Administration exempted the Tongass and issued an advance notice to exempt the Chugach. This action effectively prevented the implementation of the Roadless Rule on the Tongass and provides a prelude to future decisions on the Chugach.

This type of sue-and-settle tactic limits environmental intervenor participation in judicial proceedings. While an environmental group can intervene and appeal a final decision of the court, they cannot participate in or prevent settlement proceedings between the original parties to the suit. Using this tactic, the Administration can immediately settle lawsuits challenging the rule, thereby eroding the rule under the guise of compromise.

In conclusion, although the Roadless Area Conservation Rule is the most popular conservation measure in history, to date garnering more than 2.5 million supporting public comments, it is suffering a slow death. The rule is still the law of the land in every state except Wyoming. One hundred seventy legislators in the U.S. House and Senate support bipartisan legislation that would codify the rule. Will the voice of the people be able to withstand the continuous barrage of litigation levied by the rule’s opponents in light of tacit support from the Administration?

**SISKIYOUS FROM P9**

mineral rights on public lands, for certain areas having significant environmental value. These withdrawals included portions of the Siskiyou Wild Rivers Area that encompasses Rough and Ready Creek. The current Administration has opposed the mineral withdrawals. In 2003, the BLM and the Forest Service allowed these mineral withdrawals to expire or become ineffectual through administrative inaction. Allowing the expiration of mineral withdrawals in the area is just one indicator of the current Administration’s emphasis on resource extraction instead of resource conservation.

**Federal Environmental Analysis**

If approved, the vast majority of Nicore’s mining operations would be conducted on public lands managed by the Forest Service. The Forest Service notified Freeman that he could not engage in mining through any mechanized means until a plan of operations had been approved. Nicore’s mining plan called for the removal of over 400,000 tons of ore. Approval of the plan would be delayed until an (EIS) had been prepared under the National Environmental Policy Act (NEPA). NEPA requires an EIS on any project receiving federal funding, or permits, which may have a detrimental effect on the environment. Freeman repeatedly appealed the decision to conduct an EIS on his project.

The Forest Service completed the EIS in 1999 and denied Freeman’s plan of operations as submitted. The Forest Service concluded, that “[a]ll information on the record about the value of the minerals within the proposed mine sites indicates that production costs far exceed potential revenue. The proponent has not provided credible evidence to refute this information.” Additionally, economic analysis by the United States Geological Survey for the EIS concluded that, “it is extremely unlikely that these deposits are economically viable.” However, the Forest Service did authorize the removal of a 5,000 ton sample via helicopter “in order to resolve the operational and economic uncertainties related to the project.” Several administrative appeals regarding the validity of the EIS and the economic viability of the claim were filed by both sides. All of the appeals were denied.

**Freeman’s Current Legal Claims**

Rather than contest the validity of the EIS directly, Freeman filed a complaint alleging a “taking” in the United States Court of Federal Claims in Washington, DC. The Fifth Amendment prohibits the government from taking private property for public use without fairly compensating the owner. Although the mineral claims have not been approved by the BLM, Freeman alleges he has a right to public land and minerals under the 1872 General Mining Law. Freeman’s takings action was filed January 22, 2001, the first day of the current Bush Administration. In the action Freeman alleges damages in the amount of $600 million dollars under four counts: taking of road access, taking of mineral claims, taking of ore and minerals, and taking of his right to a mineral patent.

Several non-profit environmental organizations have been involved in the lawsuit, including the Siskiyou Regional Education Project and the Mineral Policy Center. The organizations filed a motion to intervene in the case because of their concerns that the current administration would not adequately represent the public.

SEE SISKIYOUS - p.17
significant. Most sources of water pollution in the U.S. are exempt from regulation, at least for purposes of direct federal regulation. See Oregon Natural Desert Ass’n v. Dombeck.

CWA stormwater litigation now often turns on whether a particular type of source is to be considered a point source, and thus regulable, or a non-point source, and thus exempt.

Focus on the Definition of Silvicultural Point Source

Since the passage of the CWA, the EPA has periodically promulgated and revised regulations defining point sources in silvicultural operations. The current definition, found in 40 C.F.R. §122.27, was issued in 1999, but adheres closely to the definition promulgated in 1976 in that it addresses only silviculture’s more stereotypically industrial activities. Thus, included as regulable point sources, on the one hand, are “discernible, confined and discrete conveyances related to rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities and from which pollutants are discharged.” 40 C.F.R. §122.27(b)(1). Excluded as nonpoint sources, on the other hand, are such silvicultural activities as “harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.” Disturbingly, the definition stops short of encompassing most ostensible silvicultural point sources. What, for instance, about the myriad ditches and culverts through which natural runoff passes en route from harvested areas to nearby streams? Are such sources regulable, pursuant to the CWA’s definition of point source? Or are they nonregulable, pursuant to §122.27, because they derive from designated nonregulable silvicultural activities?

From Natural Stormwater Runoff to Silvicultural Point Source Discharge

The district court concluded they are regulable. The court reasoned that once natural runoff generated by silvicultural activities passes through discernible, confined and discrete conveyances, as a matter of law it must be considered a regulable point source discharge. That is, because statutory language takes precedence over regulatory language, §122.27’s definition of a silvicultural point source must be construed so as to supplement - not conflict with - the CWA’s general definition of a point source. This holds good even if it entails expanding the silvicultural point source category beyond the bounds expressly demarcated by §122.27. In sum, because the CWA’s permitting regime applies to all point sources not exempted by statute §122.27’s exemptions can apply only to silvicultural runoff that does not pass through statutory point sources.

Conclusion

Interestingly, the district court’s holding stopped short of declaring PALCO liable. This issue was argued subsequently, and the court’s ruling remains pending. Should the initial ruling in EPIC’s favor then withstand appeal, it would inaugurate a new era in the regulation of the timber industry. Because stormwater runoff from millions of acres of harvested timberlands would likely become regulable, timber operators would be compelled to modify their practices substantially lest sediment from those timberlands reach streams—an outcome that would afford Western streams and their inhabitants some much-needed relief.
BUCKHANNON FROM P.3

Act, Toxic Substances Control Act, Surface Mining Control and Reclamation Act, Energy Policy and Conservation Act, Outer Continental Shelf Lands Act, among other environmental statutes, grant discretion to award fees when in a court’s judgment an award is appropriate.

These “whenever ... appropriate” statutes appear to grant courts exceptionally broad discretion to award fees. In 1983, however, the Supreme Court narrowed that discretion, in Ruckelshaus v. Sierra Club, holding that a court may not award fees to a losing party, no matter how central that party may have been to the illumination of rules, standards, and issues involved in an exceptionally complex suit. Rather, according to the court, “absent some degree of success on the merits...it is not ‘appropriate’ for a federal court to award attorney’s fees under §307(f)” of the Clean Air Act.

As noted above, in Sierra Club v. Environmental Protection Agency the EPA challenged the district court’s catalyst theory-based award of attorney’s fees under the Clean Air Act. The EPA pointed to Ruckelshaus for support, noting that the Supreme Court had read into the “whenever ... appropriate” standard of §307(f) a “partially prevailing party” requirement. The EPA then urged the D.C. Circuit to extend the Buckhannon rule to fee recovery claims under this section. In this way the government was urging the D.C. Circuit to identify the Ruckelshaus court’s treatment of “whenever ... appropriate” language in the Clean Air Act with the Buckhannon court’s treatment of the term “prevailing party” in the ADA and FHAA. The problem with this argument is that Justice Rehnquist, in his majority opinion in the 1983 Ruckelshaus decision, clearly aimed to distinguish parties who achieved substantive success from those who did not, while in his 2001 majority opinion in Buckhannon, Rehnquist sought to distinguish the party whose victory is mandated or overseen by a court from the party whose victory is benefit of such judicial involvement. The analyses had different objectives that can not legitimately be equated.

Surprisingly, the government’s exceptionally attenuated bit of statutory legerdemain was not directly rejected by the D.C. Circuit. Instead, the court relied on the Supreme Court’s earlier acknowledgement in Ruckelshaus that in crafting §307(f) Congress intended to “authorize fee awards ... for suits that forced defendants to abandon illegal conduct, although without a formal court order.”

The D.C. Circuit stated that it was acting consistently with both the 10th and 11th Circuits, which previously had interpreted “whenever ... appropriate” language in the Endangered Species Act to support catalyst theory attorney’s fee recovery even in the post Buckhannon world. Noting that the Buckhannon decision “never so much as mentions Ruckelshaus,” the D.C. Circuit declared that it was bound to follow Ruckelshaus, “the case that directly controls,” on the question of catalyst theory attorney fee recovery under “whenever ... appropriate” statutes. In so doing, the court almost seemed to bait the Supreme Court into trying to reconcile its widely disparate treatment of the complex of issues here discussed, stating “whether Ruckelshaus ‘rests on reasons rejected’ by Buckhannon is a matter for the Supreme Court, not us.”

But the Supreme Court now has declined that challenge, with its denial of certiorari in the Sierra Club case. At least for the moment, then, the catalyst theory remains a viable basis for fee recovery under a number of important environmental statutes. In particular, the Buckhannon rule does not restrict courts from awarding fees for claims brought under “whenever ... appropriate” statutes.
terways unfiltered by the soil. Vegetative barriers may be useful for city runoff as well.

**Two Recent Cases**

How do the Commission’s recommendations compare to the current legal landscape? In *Hiebenthal v. Meduri Farms* a dehydration plant used its polluted wastewater to irrigate its own orchard, circumventing point source regulation. However, in *Pronsolino v. Nastri* the EPA successfully upheld restrictions on nonpoint sources made under the CWA “Total Maximum Daily Loads” (TMDL) program.

*Hiebenthal v. Meduri Farms*

As recently as last summer, Meduri Farms ran an orchard and a dehydration plant in Oregon. The dehydration plant produced wastewater, which Meduri Farms partially treated before using to irrigate its orchard. The Oregon Department of Environmental Quality (DEQ) has been levying fines trying to get Meduri to clean up its business since 1997.

Hiebenthal, one of the neighboring farmers of Meduri Farms, complained to the Oregon DEQ that soil and water samples conclusively showed contamination. Eventually, Hiebenthal filed a civil action under the CWA arguing that Meduri Farms’s discharge required a NPDES permit. The District Court of Oregon dismissed the action finding that the discharge was from agricultural use because it was used in irrigation, and thus was exempted from the point source regulations. Had the discharge come directly from the dehydration plant, Hiebenthal may have won the suit.

As of last summer the Oregon DEQ is still hounding Meduri Farms, most recently for holding tanks that overflow and leak contaminated water.

*Pronsolino v. Nastri and TMDLs*

The TMDL program allows the EPA to set limits on the amount of pollutants in waterways regardless of whether the pollutants come from point or non-point sources. The EPA imposed TMDLs on the Garcia River in California after the state failed to do so. The Garcia River is surrounded by agriculture and logging areas, but is not polluted by any point sources, as defined in the CWA. The river contained excessive sediment from the logged areas and farms and had had a sharp decline in fish populations, including salmon.

The Pronsolinos owned timberland in the Garcia River watershed. In 1998 they applied for a harvest permit. When they learned of the restrictions on the permit resulting from the TMDLs they sued the EPA, asserting that the EPA did not have the authority to impose TMDLs on waterways polluted only by nonpoint sources. The EPA argued that it did have the authority under the CWA. The district deferred to the EPA’s interpretation, granting summary judgment for defendants. The Ninth Circuit affirmed the decision, and in June of 2003, the Supreme Court denied certiorari.

**Conclusion**

The Pew Commission finds dire threat to our oceans, but the CWA already contains some methods for protecting against the threats. TMDLs can help protect against nonpoint source pollution in some cases. However, TMDLs only address patches of the overall exemptions made for non-point sources. Increased proscription and enforcement of TMDLs will help, but can only go so far.
effect it will have on poor communities on less valuable land. Polluters are often attracted to the backyards of the nation’s poor for a number of reasons. Poor communities often lack a strong political voice, a strong community organization, and the resources to bring legal action. Furthermore, the fair market value of the land tends to be low, which means lower compensatory damage awards. However, poor communities tend to be the most hostile to big companies, and local juries are often known for issuing extremely large punitive damage awards. The State Farm decision essentially stripped poor communities of punitive damage protection. Has the Supreme Court endorsed the notion that the nation’s poor are entitled to less environmental protection than the wealthy?

**The Future of Punitive Damages**

Hopefully, judges will recognize the uniqueness of toxic tort cases and continue to approve punitive damage awards that make pollution unprofitable, abandoning the Court’s ratio guidepost where it does not comport with justice. However, the Court’s decision will likely still influence polluters to center their operations in the backyards of the economically disadvantaged, and pressure plaintiff’s attorneys to take settlements more in line with the guidepost of State Farm. In it’s opinion, the Court writes that “these ratios are not binding, they are instructive.” Instructive indeed, and not just for the courts. Companies also receive instruction: pollute when the ratio makes it profitable, and focus your pollution on the poor.

**STATE FARM FROM P.6**

public’s interest in conservation and stewardship of the area. The court denied the organizations the right to intervene, and instead granted “friend of the court” status. As a friend of the court the organizations may file amicus curie briefs in support of their position, but can take little substantive action in the case.

The BLM administers all minerals underneath federally owned lands, including the National Forests. The BLM is the only agency that can determine claim validity or grant a patent under the Mining Law. Presently, Freeman’s case has been remanded to the BLM to analyze the economic validity of the mining claims. The BLM will use its own analysis as well as recommendations from the Forest Service to advise their decision. However, the BLM analysis is much more detailed than the economic analysis conducted by the Forest Service in the Nicore Final EIS. The economic analysis to be conducted by the BLM is a timely and expensive process for an understaffed agency. The total estimated cost of the mineral exam will be roughly $700,000, and the exam is to be completed by fall 2004. After the economic analysis of Freeman’s claim is completed the Court of Federal Claim will determine the validity of the claim.

Freeman’s federal court case hinges on the economic evaluation of the mining claim. In order to determine whether a mineral patent can be issued, the federal government employs the marketability test. To obtain a patent on a mining claim on federal land, there must be a showing that a reasonably prudent person could extract and market the claimed mineral at a profit, and that at the time of discovery, a large enough market for the mineral existed to attract the efforts of a reasonably prudent person. Freeman has refused to provide the information required by the federal agencies to assess the economic validity of the claim. In addition, Freeman has not identified any facility that would accept and process the ore he proposes to extract.

**SISKIYOUS FROM P. 13**

Walt Freeman’s mining claims elucidate the need to reform antiquated mining policy. All of Freeman’s mining claims were made under the 1872 General Mining Law. The Mining Law allows for the transfer of mineral claims to private citizens for the mining of valuable minerals on public land. Under the Mining Law, for every one of Nicore’s 151 mineral claims, the company would be able to purchase twenty acres of surface rights. Freeman could then purchase thousands of acres of public property for $2.50 to $5 dollars an acre. The public would be forced to cede property to destructive land uses by private citizens and then pay for the clean up. Until substantive efforts for reform are achieved, the public will be forced to pay for costly, exhaustive environmental reviews and court proceedings for unprofitable mining claims.

**An End to Claim Jumping on Federal Lands**

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The 22nd Annual Public Interest Environmental Law Conference

The 22nd Annual Public Interest Environmental Law Conference will take place March 4-7, 2004 at the law school (1515 Agate St.). The oldest and largest conference of its kind promises to live up to its reputation as the world’s premier gathering for environmental attorneys and activists. For more information, including keynoter biographies, panel and workshop schedules, housing, travel information, and registration forms, please see our website at: www.pielc.org

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