MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Robert E. Warren; NV Mining Association
Theresa Rankin
Harvey Whittemore; United Mining Corporation
Robert B. Simpson; Comstock Historic District Commission
Aileen Jacobsin; Comstock Historic District Commission
Bryce Wilson; NV Association of Counties
Pete Zadra; NV Highway Patrol
Gary Wolff; NV Highway Patrol
Diane Gordon
Dorothy N. Colley
G. Harwood; Comstock Historic District Commission
Merton E. Crouch
Patty Crouch
Julie Oelsner; UNR Intern (Dini)
Joseph Dini; Assemblyman, District 38
Earl Haldeman; United Mining Corporation
John S. Miller; Houston International Miners Corporation
Pamela Crowell
S. Morrow; Nevada Appeal
Mimi Rodden; Division of Historic Preservation and Archaeology
Bob Perry
Guy Louis Rocha; NV State, County & Municipal Archives
Jack Warnecke; Carson River Basin Council of Governments
Joyce Hall; NV Division of Mineral Resources
James W. Hulse; NV Advisory Commission on Historic Preservation
Jim Joyce
John Schafer; Save the Comstock
Pete Knight; Nye County
Timothy Collins; United Mining Corporation
Katherine Collins; United Mining Corporation

L. A. Wawrenbrock; Planning Consultant
G. P. Etcheverry; NV League of Cities
M. Griffith; NV State Journal
C. A. Brown; citizen
Bonita Brown; Silver City
Thomas P. Erwin; Attorney, Reno
Dolores McBride; Storey County Planning Commission
Leonard T. Howard, Sr.; Resident of Virginia City, Attorney
Fred Davis; Greater Reno-Sparks Chamber of Commerce
Robert Sullivan; Carson River Basin Council of Governments
R. E. Berry; Storey County Commissioner
Sandra McCormick
Evelyn Seelinger
Homer Rodriguez
Peter Bandurraga; Nevada Historical Society

Chairman Stewart called the meeting to order at 8:00 a.m. and stated that the first order of business listed on the agenda was AB 112.

AB 112: Limits exercise of eminent domain to take land in historic districts for use in mining or related activities.

Chairman Stewart explained that eminent domain is the right to take people's property under a court proceeding and pay those people a fair market value pursuant to that court proceeding. He noted it was used in cases of acquiring rights of way for streets, utilities, etc. and this right has also been given to the mining companies in certain circumstances. This bill proposes to limit this activity in an historic district.

First to testify was Mr. Joseph Dini, Assemblyman for District 38, who was the introducer of the bill. Mr. Dini began by introducing Ms. Julie Oelsner, a UNR Intern who had helped him in this endeavor. Mr. Dini then read a prepared statement, which is attached as EXHIBIT A.

Following Mr. Dini's testimony, Mr. Price noted that there was a long list of those people who can exercise the power of eminent domain; he wondered why all of these were not added to the bill. Mr. Dini explained it was because mining was a unique part of the eminent domain statute.

Mr. Sader asked if there were any other historic districts in the State in which mining was active. Mr. Dini said the Comstock is the only historic district in the State of Nevada at this time, as far as he knew. He added that the Comstock historic

district is State sanctioned and State funded, in part, and that the Board includes people from outside the district. Mr. Sader then said, and Mr. Dini agreed, that the current application of AB 112 is limited to Virginia City at this time, although it could be statewide in the future.

In reply to Mr. Beyer, Mr. Dini said that any county can appoint an Historic Commission.

Mr. Dini then told Mr. Stewart that there are other states which have given mining companies the power to exercise eminent domain.

Next to testify on AB 112 was Ms. Julie Oelsner, UNR Intern assigned to Mr. Dini. Ms. Oelsner read the prepared statement which is attached as EXHIBIT B.

Mr. Robert Simpson, Chairman of the Comstock Historic District Commission, was next to testify.

Mr. Simpson said he felt it was ludicrous for a historic district to make a concerted effort to keep mining interests out of the district, since mining built the Comstock and made it what it is and also extends an economic base for a community which the district is trying to preserve. Mr. Simpson said AB 112, in its final form, should give historic districts a review process for whatever the mining interests need to do within a historic district, thus giving the district an opportunity to preserve the historic heritage, without cutting off the growth and development of the community.

Mr. Simpson said the job of the Commission becomes exceedingly difficult when operations are allowed to take place within the historic district against the will of the people who live there and who are involved in that preservation activity; thus the Commission would like to see this bill passed.

Mr. Simpson noted that passage of AB 112 would affect the activity of the Commission: it will expand the Commission's potential for litigation, necessitating a budget increase for access to legal help.

In reply to Mr. Stewart it was noted that the Commission currently receives legal representation through the Attorney General's Office via the Division of Natural Resources and Conservation.

Mr. Simpson told Mr. Beyer that the requirements for an area to be declared a historic district were: the boundaries of the district have to be established, the justification in terms of its historic significance has to be well established, and the district has to be created by county or city ordinance. Mr. Simpson did not know what kind of checks and balances existed to prevent abuse of this power to designate historic areas.

Mr. Simpson told Mr. Sader that the procedure envisioned should this bill be passed would be the same as that currently used for any other project which takes place within the district; i.e., an open hearing followed by a determination by the Commission based upon its mission to preserve the historical value of the area, as well as upon the value of the activity requiring the demolition or relocation.

Mr. Simpson explained to Mr. Stewart that the Commission does not condemn buildings, and that the Commission is attempting to define those structures requiring protection within the district by inventorying them and getting a judgment as to their authenticity; that the hearings conducted by the Commission do not concern this process, they involve applications by individuals who want to do work on historic buildings or who want to put new structures in the area; and that not all buildings within a district are involved, constraints being placed only on those structures determined to be authentic historic structures and upon those new buildings which would detract from the historic value of the area. Mr. Simpson went on to say that the Commission's guidelines are necessarily loosely constructed.

Mr. Sader then expressed concern that AB 112 sets no standard for the review of industry requests for power of eminent domain and he asked what guidelines would be used in evaluating such a request. Mr. Simpson said these guidelines are set down in the historic district legislation, and that he felt there were adequate safeguards established in the policy for the creation of a Commission. He added that the Commission's rules and regulations have to go through the same review that any Board's and Commission's do, and that they must satisfy the standards of the Administrative Procedures Act.

Mr. Sader then read from the general provisions of the Historic District Act (NRS 384.005), whose purpose is "promoting the educational, cultural, economic and general welfare of the public through the preservation, maintenance and protection of structures, sites and areas of historic interest and scenic beauty." He noted this is the guideline used by the Commission.

Next to testify on AB 112 was Ms. Mimi Rodden, the State Administrator to Historic Preservation and Archaeology, under the Department of Conservation and Natural Resources, and a committee member of the Comstock Historic District Commission.

Ms. Rodden outlined that the Comstock Historic District Commission is a National Landmark as well as a State District, and that it is currently the only historic district recognized by the State of Nevada.

Ms. Rodden noted that NRS 384 does not give the Commission the power of eminent domain. Ms. Rodden said the question here is whether the mining companies, in this district now and in potential

districts in the future, should go back to a very old mining law which has not been reviewed for several years.

Ms. Rodden was asked if AB 112 would have any effect on the MX missile project. She noted that if MX is deployed as proposed, there will be tremendous effects upon the historical areas concerned. One problem is the need to inventory the area, in order to know what is involved. Once this is done, determination of the historical value of these areas and/or structures is possible. To date, there has been insufficient manpower and money to permit inventory of the proposed MX missile deployment area, thus the full impact is unknown.

Ms. Rodden also pointed out that pit mining and the expedient means used to alter the surface for MX will do a tremendous amount of damage to a lot of area in a very short period of time.

Mr. Stewart wondered what type of protection is granted to an area which has been designated a National Landmark. Ms. Rodden said that, at the federal level, some monies are made available for specific studies and/or projects. Additionally, in the case of public, but not private, lands mining companies must go through certain review processes prior to disrupting the area in any way.

Mr. Beyer asked if Ms. Rodden's agency had any input into the public hearings held by counties to establish historic districts. She replied that her agency did have input in this area.

Mr. Beyer asked if the Commission was a recommending body only to the County Commission, or if it had final authority to deny or approve an application, for example, for a mining permit.

Ms. Rodden replied that presently the counties involved in the Comstock Historic District have agreed they will not issue a building permit for any alteration or erection of a building or demolition of a building until the Commission has reviewed and approved the project; i.e., the County Commission will not grant a permit until the Historic District Commission has approved the project.

Ms. Rodden then said she had a copy of the regulations, which include the appeal process, and a copy of the policy and would be happy to leave these for the Committee. The policy consists of NRS 383 and NRS 384; the regulations are attached as EXHIBIT C.

Ms. Rodden further explained that the first application goes to the Historic District Commission, the second application goes to the Planning Department within the County, and final approval is given by the County Commissioners, based upon the recommendation of the Planning Department. Both counties have agreed, however, that they will not issue a building permit, given the current law, until such time as the plans have been approved by the Historic Commission.

Ms. Theresa Rankin, who wished to testify in opposition to AB 112, was then allowed to testify, as she had another appointment to attend.

Ms. Rankin explained that she is an attorney in Carson City, and has served as Chairman of the Cultural Resources Committee to Establish a Historic District in Carson City, thus there may soon be another historic district in Nevada.

Ms. Rankin noted that while she favors limitation of the current eminent domain law, she does not believe AB 112, as currently written, to be fair.

Ms. Rankin pointed out that mining is part of Nevada's history, and is still a paramount interest in this State. NRS 384 includes enabling legislation for the establishment of historic districts and provides guidelines for this. Additionally, it allows the counties involved, through local ordinances, to establish a review board, review guidelines, and an appeals process. Ms. Rankin said she would prefer to see this police power meshed with the eminent domain law in such a way that the historic district would not have absolute veto in these matters, although it would have a great deal of control and/or input.

Ms. Rankin suggested another alternative would be to require the Historic District Commission to consider the mineral value that would be mined as well as the other public use of the land; thus the historic preservation value of the property would be considered in the concept of not just compensation but in terms of the best public use of this land.

In reply to Mr. Sader's question as to how Ms. Rankin would amend AB 112, she said first of all the term "historic district" needed to be defined to comply with the provisions of NRS 384; then modify the word consent, so that it is not an absolute veto; and then go to either the requirement of an environmental impact statement to be submitted to the District Commission, or require some consideration of alternatives, or require the applicant to meet with the District Commission in order to reach some sort of compromise, etc.

Mr. Beyer noted that he had no argument with the concept of preserving historical sites in the State, he is in favor of that. However, he wants to be sure that all the avenues are open to both the private citizen who wants to build an addition to his house and to the mining company. He said the appeals process concerned him; NRS 384.210 states "any person aggrieved by a determination of the commission may...appeal to the district court" and not to the County Commissioners elected by the people.

Ms. Rankin explained that each District can write its own rules or guidelines as to what procedures are used for appeal; this power is granted in NRS 384. Mr. Stewart added that the

section read by Mr. Beyer concerned the Comstock District, which involved two counties, and that this may be the reason for going to the District Court as opposed to the County Commission; it might be difficult to determine which County had jurisdiction.

Following a five minute break, the meeting continued at 9:05 a.m. with the testimony of Mr. Bob Perry, attorney at law.

Mr. Perry said he was in favor of AB 112, and noted he was the attorney who represented the Inmoors mentioned by Mr. Dini during his testimony. He added that any bill which restricts mining's power of eminent domain is a good bill and ought to be passed; in fact NRS 37.010 ought to be amended to completely eliminate the power of eminent domain for mining companies.

Mr. Perry said he felt the real question here is whether mining is a public use; is it more a public use than gaming, or tourism, or manufacturing, or transportation, none of which has the power of eminent domain?

He pointed out that 100 years ago, mining controlled the Legislature since it was the paramount interest of the State. It no longer is the paramount interest of the State; its relative importance in terms of the number of jobs, tax dollars, and benefits provided to the people of Nevada, when compared to other industries, is presently insignificant.

Mr. Perry also stated that, although the constitutionality of the statute was upheld in the 1930's, more recent cases have ruled that taking private property for a private use violates the constitution. Thus, the constitutionality is arguable today since mining is no longer a public use.

Mr. Perry then submitted EXHIBIT D for perusal by the Committee. He summarized that AB 112 creates another level of bureaucracy, and that this could present problems in the future. He went on to suggest that eminent domain be eliminated as a power for the mining companies on the basis that it is not proper for a private industry to be able to take someone's property--and there is no restriction on what they can take, a house or whatever, nor on the reason for taking it, as long as it has to do with mining. Mr. Perry explained, however, that in the absence of repeal of eminent domain for the mining companies, the current bill gives local people some control over mining's exercise of the power of eminent domain, and for this reason it should be passed.

In reply to Mr. Price Mr. Perry explained that any mining company has this right of eminent domain, and that possibly other companies also have this power if it involves mining activity.

Next to testify in favor of AB 112 was Ms. Diane Gordon, a former resident of Gold Hill. Ms. Gordon read the prepared statement which is attached as EXHIBIT E.

Ms. Dorothy Colley came forward next. She said she just wished to add that she was one of the victims of Houston Oil and Minerals; victimized by the noise, dust and the whole environmental pollution and had no recourse to anyone. She noted that the Historical District did everything they could to try to help, and listened to the complaints and pleadings of the people, but there was nothing but frustration.

Ms. Colley related her personal experience, and stated she believed AB 112 should be passed so that the total environment--not only the buildings and the people who live here and made the history of this area, but communities throughout the State of Nevada that have historical significance--can be preserved.

Ms. Colley added that her experience was an example of a private company coming in and having the power of eminent domain, and destroying an area that had significance not only for the State of Nevada, but for people all over the U.S. who would visit the area.

In reply to Mr. Stewart, it was explained that in most cases the mining companies own the mineral rights below the property; surface rights extend, in the State of Nevada, only six feet down. Some people who owned the mineral rights leased them to the mining companies, therefore the people who own the surface rights have no right, in effect, as a property owner; they are forced by the law of eminent domain to forfeit their property at the option of the mining company.

Ms. Colley told Mr. Price that the mining company verbally informed their attorney that if they did not sell out the company would come in and condemn the property. She noted that as private citizens, they had no recourse whatsoever. She therefore believed AB 112 should be passed in order to prevent this from happening ever again.

Merton Crouch, a resident of Silver City, was next to testify in favor of AB 112. Mr. Crouch pointed out that when eminent domain for mining companies was originally granted, the State of Nevada was supported by mining--tunnel mining. The old laws permitted the mining companies, who owned the mineral rights but not the surface rights, to mine without the interference of the property owner. The surface owner was protected from the mining companies by laws which stated that the mining companies were liable if their operations caved in the surface property. Thus there was mutual advantage and protection. However, with the addition of the power of eminent domain, the advantage shifted over to the mining companies, giving an unbelievable amount of power to a private group.

Mr. Crouch stated the Comstock exists today because of tunnel mining, and that we are now attempting to preserve an historic area which tunnel mining built. Unfortunately tunnel mining, except in certain instances, is no longer economical and has given way to open pit mining; this is a considerable difference from the operation which produced the Comstock area. It destroys the surface. Thus, an appeal process is needed, both for the citizen as well as the mining companies. This process does not currently exist for the private individual.

Finally, Mr. Crouch raised the possibility of a company claiming and open pit mining Gold Hill, or Virginia City, etc. by right of eminent domain and totally destroying the area, leaving nothing but a hole for future generations. He pointed out that this could happen if the price of gold continues to rise and make such an undertaking profitable enough.

Mr. Guy Rocha, Nevada State Archivist was next to testify. He cited a California Supreme Court case, Sutter County v. Nichols, which ruled "the production of sufficient gold to maintain the gold standard may be a matter of public importance, and it may be within the power of Congress to encourage it by appropriate legislation. It probably has the same power with regard to any other industry to increase the wealth of the nation. It cannot be admitted, however, that the mining of gold to be applied wholly to the private use of the miner is a public purpose, in behalf of which the power of eminent domain may be resorted to, or for which the private property of others may be taken, or its injury lawfully authorized." Mr. Rocha felt the entire question will stand or fall on whether or not mining is a paramount industry in Nevada.

Mr. Rocha then pointed out that not only the Comstock area is involved; mining is having a resurgence throughout the State and several of the communities involved are historic areas and have pending nominations to the National Register.

Next Mr. Rocha read the prepared statement which is attached as EXHIBIT F.

Mr. Peter Bandurraga, Director of the Nevada Historical Society, explained that his agency is charged by statute with the preservation and protection of the State's past. Because of this responsibility, the Society is interested in anything that can preserve the State's past and also enable the present and the future to enjoy it, to learn from it, and to benefit from it. The Society feels AB 112 aids in this process; it is a change which would include the representatives of the people of Nevada in decisions which are very important to them.

Mr. Bandurraga went on to agree that mining is a vital area of the State's economy; nevertheless, the Comstock and other areas like it also have great historical, cultural and entertainment values, both for the people of Nevada and for the many visitors

who come to this State every year. Furthermore, something like an historic district belongs to all the people, not simply to the mining companies, nor even to the people that live there; it is a part of all of our heritage.

One of the things Mr. Bandurraga learned when preparing his testimony was that Virginia City did slightly under $10 million a year gross business, all on gaming and tourism. He felt this indicates the relative values of, on the one hand, the newer industries of gaming and tourism and on the other hand, mining. He noted there is a conflict between these two groups, and that the people of Nevada should have more say in decisions affecting this conflict. He felt AB 112 provides a certain amount of that involvement.

Mr. Bandurraga proceded to point out that when the law of eminent domain was originally passed, it was challenged in the courts and in upholding that legality it was indicated that mining was a paramount industry. He stated it was arguable that since the 1930's tourism and gaming have become the paramount industries of Nevada.

Mr. Bandurraga stated that, since tunnel mining was the main method used in 1875, the Legislators were not thinking of pit mining when they passed the law of eminent domain.

EXHIBIT G is the written testimony of Mr. Jim Hulse, who had left.

Ms. Pamela Crowell, former Administrator of the Division of Historic Preservation and Archaeology and currently a member of the National Public Lands Advisory Council of the Department of the Interior, testified next.

Ms. Crowell noted there are several needs of mankind involved in this situation. One is the psychological need as specifically related to historic preservation. It involves cherishing things of the past and feeling that one belongs. Another is the material need, which cannot be entirely separate from the psychological need. This speaks to the welfare and to the style of living of man, which comes from goods and products produced from resources.

Ms. Crowell said she is concerned AB 112 contains no specific description or definition of what a historic district is. She pointed out that not only structures and areas are of value, there are also archaeological sites.

Regarding the issue of condemnation, Ms. Crowell stated that a review of the record shows approximately five condemnation actions have actually gone to court since the passage of the power of eminent domain for mining companies, yet mining has continued to grow. She said this demonstrated that the growth of mining has occurred in a logical and humane manner through negotiations between the mining company and the property owner.

Ms. Crowell went on to cite the Storey County ordinance as an example of an agreeable accord reached between the people and the mining companies, and stated this type of agreement could be reached time and time again.

According to Ms. Crowell, an emotional reaction to one unfortunate incident could cause severe harm in years to come to an important industry, both in terms of mineral resources and the all important energy resources.

Ms. Crowell suggested that, in lieu of AB 112, a statement be added to the enabling legislation contained in the first section of NRS 384 to the effect that mining companies be required to obtain permission from the County Historic District involved prior to any operations in an historic area.

In reply to an earlier question from Mr. Stewart, Ms. Crowell noted there are four types of eminent domain:

1) No eminent domain
California has no eminent domain for mining or related activities.

2) Eminent domain for rights of way to mining operations including roads, railroads, tunnels, flumes, pipelines, ditches, and the like
Oregon, Washington, Wyoming, Colorado, New Mexico (the New Mexico Supreme Court has apparently ruled this to be unconstitutional), and Hawaii (in Hawaii it must be originated or initiated by the State)

3) Eminent domain for rights of way and disposal of mine and mill wastes and tailings
Alaska, Arizona, Idaho, Montana, North Dakota, and South Dakota

4) Eminent domain for rights of way, disposal of mine wastes, sites for smelters and mills, and other related activities
Nevada and Utah

Next to testify was Mr. Bob Warren, who read the prepared statement which is attached as EXHIBIT H. Attached as EXHIBIT I is the state publication mentioned by Mr. Warren in his prepared statement.

In addition, Mr. Warren pointed out that there are several so-called private companies which have the power of eminent domain for public purposes. He further stated that if mining were not considered to be in the public interest in a particular case, the court would deny the exercising of eminent domain in that circumstance.

Mr. Warren noted that several witnesses have suggested the need for a review process rather than AB 112. He said this seemed to be a possible solution to the problem, and that if the bill is redrafted to include a careful and structured review of any effort by a mining company to exercise eminent domain (i.e., make the intention to exercise eminent domain of public record) via public hearings conducted by the County Commissioners (not the Historic District Commission, as they might not be equitable) wherein the mining company would have to justify why it is a public use, it would be sufficient to protect the historical and archaeological values of old mining camps.

In reply to Mr. Stewart's question regarding why other paramount interests, such as gaming, do not have the power of eminent domain, Mr. Warren said these interests can locate elsewhere; miners must mine where the ore is, they have no alternative.

Mr. Beyer clarified for the record that he belongs to the Nevada Mining Association as a civil engineer, then asked Mr. Warren if a mining company could exercise the power of eminent domain and mine right in the middle of Virginia City if it found mineral deposits there. Mr. Stewart expanded this question even further to wonder if the current law allows a mining company to ignore local ordinances in such instances. Mr. Warren was not certain, but believed the local ordinances preempt the power of eminent domain.

Next Mr. Beyer said earlier testimony told of problems in the Gold Hill area regarding the use of private property as a waste dump area; he wondered if this action had been approved by the County Commissioners under the guidelines stated. Mr. Warren said the action had not been approved by the Commission. He explained that there had been negotiations between the private party involved and the mining company, the negotiations broke down, the mining company started dumping and some of the rock fell onto the private property, the company recognized they must acquire the property, they exercised their power of eminent domain, and finally settled as the court stipulated for a sum.

During Mr. Warren's testimony it became apparent that the question of whether or not a County ordinance preempts a mining company's power of eminent domain needed to be answered, and that this would have to be checked into.

Chairman Stewart noted here that the Committee had to be in general session, therefore the hearing would have to be continued later in the day. He stated the Committee would reconvene at 1:00 p.m. in order to enable those who had not been heard during the morning's session to testify, and requested those witnesses to return then.

Chairman Stewart then stated the Committee would hear testimony on AB 33 by Mr. Knight, who had come up from Tonopah in order to testify.

AB 33: Extends jurisdiction of justices' courts over traffic citations.

Mr. Peter Knight, District Attorney for Nye County, stated he was present in order to answer questions which had arisen during the January 30 hearing on this bill, which he had not attended.

Mr. Knight stated AB 33 would have substantial adverse effect upon Nye County. He added he had spoken with each of the Justices of the Peace in Nye County, as well as with others, and it was agreed the County could possibly lose between $60,000 and $70,000 a year if this bill is enacted.

Mr. Knight added that he had been unable to determine what advantage AB 33 would confer on anyone. When Mr. Stewart explained the reasoning behing the bill, Mr. Knight said he felt the real reason for the bill was not the one stated but rather that it was "a rip-off" of Nye County. He pointed out that 99% of the bail posted is posted by mail, hence there is no inconvenience involved. Furthermore, this bill creates all kinds of problems for the Highway Patrol officer issuing the citation, from increased travel requirements in order to attend hearings, to determining where he has to go for the trial. It also raises the question of who is to prosecute the crime.

Mrs. Cafferata moved INDEFINITELY POSTPONE AB 33, seconded by Ms. Foley, and passed with only Mr. Banner dissenting.

At 10:50 a.m. Chairman Stewart recessed the Committee until 1:00 p.m.

AB 112: Limits exercise of eminent domain to take land in historic districts for use in mining or related activities.

First to testify during the afternoon session of this hearing was Mr. Thomas Erwin, an attorney from Reno who noted his firm represented several mining companies, including Houston Oil and Mineral.

Mr. Erwin stated that his firm learned through an informal poll they conducted themselves among attorneys currently practicing mining law that these attorneys have been involved in approximately one dozen eminent domain actions relating to mining. Five of these actions are being handled by Mr. Erwin's firm, and he noted that two of these do involve one mining company filing against another mining company.

Regarding the question of who determines a public use, Mr. Erwin said this was answered in a decision of the Nevada Supreme Court: Dayton Mining Company v. Seawell, reported in 11 Nev. 394.

Mr. Erwin stated AB 112 concerned him because it provides no standards for the determination of whether or not the consent of the Historic District has been reasonable or arbtrary and/or capricious. Furthermore, the proposed bill does not state how nor to whom an appeal should be directed.

Another point raised by Mr. Erwin is that AB 112 only amends one portion of NRS 37, and does not address the problem of how the District Court, which determines the value of the property and whether or not the use is necessary and a public use, shall consider the decisions of the historic district. Thus, if the bill is enacted as written, the question of what happens after a Historic District Commission acts, how the aggrieved party pursues their grievance, is left unanswered. Does the aggrieved party act, and then appeal to the District Court, or vice versa? Is a ruling by the Historic District Commission necessary precedent to the initiation or maintenance of a condemnation action? All of these questions should be addressed by the bill, and currently are not.

Mr. Erwin added that in his experience mining companies use eminent domain powers only as a last resort; thus, should a district rule against eminent domain in a specific case the mining company would almost definitely appeal this decision, adding to litigation costs of the County as well as the State, which must fund the appropriate judiciary.

Regarding the effects of AB 112 on mining, Mr. Erwin noted that many of the presently developed mining operations in Nevada are revivals of existing historic mining areas. This bill could impact on the exploration and development efforts of the mining companies by restricting these activities.

Mr. Erwin said this bill is also discriminatory in that it affects mining only. Other private industries; e.g., the railroad industry, cable TV, airports, petroleum and gas pipelines, water and sewer plant operators, etc., also have the power of eminent domain. These are not mentioned in AB 112.

Finally, Mr. Erwin noted that the U.S. Supreme Court has upheld the decision of the Utah condemnation statute which is almost identical to that of Nevada. He added that the Nevada Supreme Court, while ruling the condemnation rights as proper, also limits this power and states: "it can only be resorted to when the benefit which is to result to the public is of paramount importance compared with the individual loss or inconvenience, and then only after an ample and certain provision has been made for a just, full and adequate compensation to the citizen whose property is taken."

In reply to Mr. Stewart's statement that the private industries other than mining which have the power of eminent domain, with the possible exception of the railroad companies, all involve either public utilities or some kind of public sponsored agencies, Mr. Erwin replied it depended upon the definition of public. He noted the Sierra Pacific Power Company is a profit-seeking corporation. Mr. Stewart granted this fact, but noted that it is also subject to the rules and regulations of the Public Service Commission. Mr. Erwin pointed out that the main difference is that the benefit to the citizens is more direct in the case of of public utility; the benefits of having a strong mining industry are not so direct.

Mr. Stewart then asked if federal lands can be condemned by the mining companies. Mr. Erwin said federal regulations usually restrict the right of a private entity to acquire property interests or rights on the public lands; however, he believed it would be proper for a mining company to condemn unpatented mine claims, such as mill sites, tunnel rights, etc. Furthermore, if a claim is not valuable for mineral production itself, the company might acquire another unpatented mining claim which is subject to paramount title of the U.S. In other words, if an individual locates a mining claim, that person can hold it against all other private parties and individuals, but the paramount title, until the claim is taken to patent, resides in the U.S. This means it is an inceptive right which is always subject to some legislative or regulatory control by the U.S. government. Mr. Erwin went on to say that this is the only means he can see whereby a mining company might acquire some rights in what is public land, but it would be subject to an existing mining claim.

Next Mr. Stewart asked what would happen if a mine was located in a BLM area and the company had a need to locate a mill nearby, also on BLM land. Mr. Erwin said he would recommend the company file an unpatented mill site claim--on unappropriated public ground. This is a claim which is specifically limiting as to the use of the land for the construction of a mill facility.

Mr. Erwin went on to clarify that a mining company cannot condemn BLM land, but it can locate a mill site claim. If someone else already has a claim filed, then the two parties would attempt to negotiate an acquisition agreement. If these negotiations failed, and if there were not sufficient minerals in the area to support two mining operations, then the company might attempt to condemn what amounts to the first claim.

In reply to Mr. Sader's request for further clarification, Mr. Erwin said there are special provisions in the Federal Land Management and Policy Act which provide for the acquisition of rights of way for utilities, pipelines, roads, etc.

Mr. Sader wondered how many times an individual sold his land to a mining company, not because he wanted to, but because he

was aware of or had been threatened with the right of eminent domain and knew litigation would be useless. Mr. Erwin did not believe anyone could accurately answer that question.

Mr. Harvey Whittemore testified next, on behalf of the United Mining Corporation which is currently engaged in mining in the Comstock District.

Mr. Whittemore noted that the Nevada and Utah eminent domain statutes are almost identical, and that the constitutionality of the Utah law was upheld by the U.S. Supreme Court in a 1906 decision: Strickley v. Highland Boy Gold Mining Company (cite: 200 U.S. 527, 50 L.ed. 588, 26 Sup. Ct. Rep. 301). Mr. Whittemore read from the decision (see EXHIBIT J), noting that the constitutionality of the Utah statute had been established and that the Supreme Court, in discussing the mining statute, went on to hold that the 14th Amendment of the U.S. Constitution does not prevent a State from requiring such concessions on the part of private persons with respect to land that they might own.

Mr. Whittemore said the purpose of eminent domain is the right and power of the State to appropriate private property to a particular user for the purpose of promoting the general welfare; i.e., for the public good. In passing the law of eminent domain, the Nevada Legislature indicated that mining was an important purpose as well as an important benefit to Nevadans, and because of this importance the Legislature allowed that in certain situations the exercise of eminent domain would be appropriate.

Mr. Whittemore also made the following points:

1) Regarding whether or not mining is a paramount interest, in the Comstock District there are two active, ongoing mining operations, and these employ over half the work force in the Virginia City area.

2) The burden of proof that the land is necessary and that the activity is going to benefit the general public is on the mining company. If these two requirements are not met the property cannot be condemned.

3) Concerning the cost to the private citizen of litigation against a large company in cases of eminent domain, the Legislature can solve this problem by passing a bill which allows the recovery of attorney's fees if the court rules in favor of the individual.

Mr. Whittemore cited several other cases wherein the right of eminent domain of mining companies was upheld.

Mr. Whittemore summarized his testimony by noting that existing law currently allows a mining corporation to acquire private property through eminent domain, and that recent court decisions in other States have upheld this.

Mr. Whittemore pointed out that not all industries, aside from mining, which have the power of eminent domain are subject to Public Service Commission control. He cited lumber companies which, according to NRS 37.010 (5), could use tunnels and aqueducts for the purpose of transporting lumber and the pipelines for the beet sugar industry.

During a discussion with Mr. Sader, Mr. Whittemore explained that there is a two-step analysis involved in the condemnation of property by a mining company: a) is the condemnation proposal in the public interest and b) is the property absolutely necessary to the operation. It has already been decided by the Legislature and defined by statute that mining is in the public interest. The mining company need only show the property is going to be used in connection with mining. Mr. Whittemore went on to state that mining is still an important function within Nevada, that it has been here a long time, that there are a number of individuals who make their livelihood on it, and that it has been and is a part of Nevada's history.

Mr. Price and Mr. Whittemore discussed the necessity for some mechanism to allow negotiations between the mining company and the property owner and to encourage both parties to be reasonable. Both agreed this would be a worthwhile thing.

In further discussion Mr. Stewart noted that at present there is no counterweighing authority for the private citizen against the mining company's power of eminent domain. Mr. Malone added that there is nothing to assure the historical value of an area will not be destroyed, and that it is impossible to state a future mining company will not be unscrupulous in exercising eminent domain. Mr. Whittemore replied he felt AB 112 would give too much control to a Board whose interests are not necessarily reflective of the general public and which singles out one industry. He added that a requirement for review is different from one for consent, and the bill calls for consent.

Next to testify was Mr. Timothy Collins, President of the United Mining Corporation. He noted that this bill is basically designed to try to control the development of mines, in this case particularly in the Comstock area.

Mr. Collins noted there had been a hiatus in mining; the war actually stopped it in 1943. Following the war it was extremely difficult to get mining rolling again: inflation had taken its toll, it was difficult to get the cost of the minerals high enough to offset the cost of mining them, etc.

Mr. Collins pointed out that mining is not opposed to historic preservation, and that, in fact, mining companies have made substantial contributions towards the preservation of historical areas and/or sites.

Regarding control of mining, Mr. Collins stated that just because mining companies have the power of eminent domain it does not mean they cannot be controlled on some other plane. Counties have requirements for building permits, for arranging water hookups, for review by Planning Commissions, etc.

Mr. Collins explained that eminent domain was brought about in 1875 because, due to a lack of transportation back then, the towns were built over the mines. The mining companies, who originally owned the land, sold the surface rights to this land to the people for their towns, but the companies wanted to be able to recover the land should it prove necessary to the operation; hence, eminent domain.

Mr. Collins said he felt part of the problem today is that there has been a generation of people living near these old mining areas who never thought mining would start up again. When it did start up, one unfortunate incident caused a great deal of alarm. Hence, AB 112.

This bill should not be enacted in order to control mining companies; mining companies are already stringently controlled, according to Mr. Collins. Planned mining operations are currently reviewed by both the federal and the state government. Thus, review at the local level is superfluous.

The next witness was Mr. John Miller, the Public Affairs Manager for Houston International's Nevada projects. Mr. Miller listed some of the ways HIMCO contributes to the local economy on the Comstock: they employ 115 people, 1/3 of whom live in Storey County while others live in Reno; HIMCO paid $190,000 in property taxes last year; they are helping the Chamber of Commerce bring in tourism; and they have contributed to other projects.

Mr. Miller pointed out that HIMCO has stated publicly and in writing that they will not pursue eminent domain on the Comstock. He added that there are already controls within the County Commissions over mining: they can set the parameters of the pit, they can tell you when you can operate and when you can shut down, what hours you will keep, etc. Thus, AB 112 is not necessary.

The last witness was Mr. Larry Wawrenbrock, a resident of Silver City and a planning consultant. Mr. Wawrenbrock said he felt the basic question involved in this issue is whether the State of Nevada is willing to give the right to a private industry to exercise the power of eminent domain for private gain and profit. Furthermore, although mining may have been in the public interest back when the law was originally enacted, is it still of such a public good to warrant giving mining companies the absolute power to condemn private property for private profit.

Mr. Wawrenbrock stated he did not believe the bill as currently drafted is as good as it could be. He said he was concerned about the definition of a historic district, and that he did not feel a mining company should have the right of eminent domain either within or outside a historic district; private property rights are important everywhere, to all Nevadans. He also felt there were insufficient procedures for protection of both parties.

Additional points raised by Mr. Wawrenbrock were:

1) The mining industry does not have to threaten eminent domain, it is common knowledge they have it. Thus any negotiations for property are already weighted in the company's favor.

2) Many industries are closely controlled and are required to obtain permits prior to beginning operation; this is definitely not limited to the mining industry.

3) The power of eminent domain is not restricted to those areas where the ore is located--which supposedly makes mining unique from other industries; mill sites, aqueducts, etc. are also grounds for exercising eminent domain.

4) Regarding the determination of necessity, the criteria for necessity is based upon the mining company's profit motive, not on the private individual's necessity for a peaceful existence.

Chairman Stewart noted that time had run out for the hearing, and invited anyone who had not had a chance to testify to submit their arguments and/or information in writing. He promised these documents would be distributed to all members of the Committee. He then adjourned the meeting at 2:53 p.m.

Respectfully submitted,

Pamela B. Sleeper

Pamela B. Sleeper
Assembly Attache

NOTE: Some information submitted after the hearing is attached as EXHIBIT K.

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Monday, 23 February 1981

SUBJECT: AB 33: Extends jurisdiction of justices' courts over traffic citations.

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MOTION:

DO PASS ___ AMEND ___ INDEFINITELY POSTPONE XX

RECONSIDER ___

MOVED BY: MRS. CAFFERATA SECONDED BY: MS. FOLEY

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

| | MOTION | | AMEND | | AMEND | |
|---|---|---|---|---|---|---|
| VOTE: | YES | NO | YES | NO | YES | NO |
| Thompson | X | | | | | |
| Foley | X | | | | | |
| Beyer | X | | | | | |
| Price | X | | | | | |
| Sader | X | | | | | |
| Stewart | X | | | | | |
| Chaney | X | | | | | |
| Malone | X | | | | | |
| Cafferata | X | | | | | |
| Ham | X | | | | | |
| Banner | | X | | | | |
| TALLY: | 10 | 1 | | | | |

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

INDEFINITELY POSTPONED XX

ATTACHED TO MINUTES OF Monday, 23 February 1981

EXHIBIT A

# Nevada Legislature

## ASSEMBLY

JUDICIARY COMMITTEE
MONDAY FEBRUARY 23, 1981

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I COME BEFORE YOU TODAY TO DISCUSS ASSEMBLY BILL NO. 112, A BILL DEALING WITH THE EXERCISE OF EMINENT DOMAIN TO TAKE LAND IN HISTORIC DISTRICTS FOR USE IN MINING OR RELATED ACTIVITIES.

THE HISTORY OF AB 112 STARTED WHEN MINING BEGAN A RESURGENCE IN THE COMSTOCK AREA NAMELY THE GOLD HILL AND VIRGINIA CITY AREA.

IN 1865 WHEN THIS STATE WAS CREATED MINING WAS CONSIDERED THE GREATEST OF THE INDUSTRIAL PURSUITS IN THIS STATE. IN FACT JUSTICE HAWLEY WHEN HE WAS ON THE SUPREME COURT DESCRIBED THE MINING INDUSTRY AS "PARAMOUNT" IN NEVADA.

TODAY IN 1980 HISTORIC PRESERVATION INTERESTS AND THE MINING INDUSTRY FIND THEMSELVES PURSUING THEIR RESPECTIVE OBJECTIVES ON THE FAMOUS COMSTOCK LODE AND ALSO THROUGHOUT NEVADA.

IN 1961, THE SECRETARY OF INTERIOR DESIGNATED THE COMSTOCK A NATIONAL HISTORIC LANDMARK UNDER THE AUSPICES OF THE HISTORIC SITES ACT OF 1935, AND EIGHT YEARS LATER THE NEVADA LEGISLATURE PASSED THE VIRGINIA CITY HISTORIC DISTRICT ACT (384.010) WHICH ESTABLISHED AN HISTORIC COMMISSION TO CREATE AND ADMINISTER THE PROPOSED DISTRICT. SECTION 3 OF THE 1969 ACT JUSTIFIED SUCH REGULATION AS A LEGITIMATE EXERCISE OF POLICE POWER:

IT IS HEARBY DECLARED TO BE THE PUBLIC POLICY OF THE STATE OF NEVADA TO PROMOTE THE EDUCATIONAL, CULTURAL, ECONOMIC AND GENERAL WELFARE AND SAFETY OF THE PUBLIC THROUGH THE PRESERVATION AND PROTECTION OF STRUCTURES, SITES AND AREAS OF HISTORIC INTEREST

AND SCENIC BEAUTY, THROUGH THE MAINTENANCE OF SUCH LANDMARKS IN THE HISTORY OF ARCHITECTURE, AND THE HISTORY OF THE DISTRICT, STATE AND NATION, AND THROUGH THE DEVELOPMENT OF APPROPRIATE SETTINGS FOR SUCH STRUCTURES, SITES AND DISTRICT.

NO MAJOR CHALLENGE TO THE HISTORIC INTEGRITY OF THE COMSTOCK HAD BEEN POSED UNTIL SOME FIVE YEARS AGO WHEN MINING EXPERIENCED A REBIRTH IN GOLD CANYON AS A RESULT OF THE INCREASING MARKET VALUE OF SILVER AND GOLD. IN THE PAST YEARS A LUCRATIVE TOURIST INDUSTRY HAS EMERGED ON THE COMSTOCK WHICH TODAY SUPPORTS MANY RESIDENTS OF STOREY AND NORTHERN LYON COUNTIES. WITH THE COMING OF OPEN PIT OPERATIONS, A TOURIST BASED ECONOMY, ENHANCED AND PROTECTED TO SOME DEGREE BY HISTORIC LANDMARK AND DISTRICT STATUS FACED THE CHALLENGE OF OPEN PIT MINING.

IN THE 1979 SESSION WE AMENDED THE COMSTOCK HISTORIC ACT EXTENSIVELY AND WE SIGNIFICANTLY DELETED SECTION 18.5 WHICH PROVIDED FOR THE HISTORIC COMMISSION TO ISSUE A CERTIFICATE OF APPROPRIATENESS <u>WITHOUT A HEARING</u> TO THE OWNER OF ANY VALID MINING CLAIM UPON APPLICATION BY SUCH OWNER FOR THE REMOVAL OF ANY STRUCTURE IN THE HISTORIC DISTRICT. IT ALSO PROVIDED THAT IF A STRUCTURE INTERFERED WITH MINING IT COULD BE REMOVED AT THE EXPENSE OF THE OWNER TO A SITE APPROVED AND PROVIDED BY THE COMMISSION WITHIN THE DISTRICT. IF THE COMMISSION DID NOT PROVIDE A SITE THE STRUCTURE COULD HAVE BEEN DEMOLISHED UPON 5 DAYS WRITTEN NOTICE TO THE COMMISSION. THIS PROVISION WAS FLAGRANT AND THIS IS WHY WE REMOVED IT LAST SESSION.

AS YOU CAN SEE THERE IS LITTLE QUESTION THAT THE COMSTOCK HISTORIC DISTRICT AND MINING REPRESENT TWO CONFLICTING PUBLIC USES. THE POLICE POWERS ESTABLISHED TO PROTECT THE HISTORICAL AND ARCHITECTURAL INTEGRITY OF THE COMSTOCK ARE LIMITED IN THEIR APPLICATION TO THE MINING INDUSTRY. TODAY, THE BOTTOM LINE APPEARS TO BE THAT A MINING COMPANY CAN OPERATE ANYWHERE IN THE DISTRICT AS LONG AS IT JUSTLY COMPENSATES PROPERTY OWNERS WHOSE LAND HAS BEEN CONDEMNED. THE QUESTION AS TO WHETHER MINING IN 1980 IS STILL A "PARAMOUNT INDUSTRY" IN NEVADA IS ONLY NOW BEGINNING TO BE ASKED.

COURT ACTIONS BY CONCERNED COMSTOCK RESIDENTS AGAINST HOUSTON OIL AND MINERAL HAVE BROUGHT LITTLE SUCCESS. FOR EXAMPLE, DOROTHY AND FRED INMOOR OF GOLD HILL FILED SUIT AGAINST HOUSTON AFTER FOUR PARCELS OF LAND NEXT TO THE COMPANY'S OPEN PIT MINE WERE CONDEMNED ON OCTOBER 22, 1979 UNDER NEVADA'S MINING EMINENT DOMAIN LAW. DISTRICT COURT JUDGE MIKE GRIFFEN RULED THAT THE INMOOR'S POSITION ON KEEPING THEIR PROPERTY, WHICH THEY ARGUED WAS OF HISTORIC VALUE, WAS INTELLECTUALLY AND PERHAPS EVEN MORALLY APPEALING, "BUT THE EMINENT DOMAIN LAW WOULD NOT ALLOW HIM TO RULE IN THEIR FAVOR".

THE QUESTIONS THAT COULD COME BEFORE THE COURTS TODAY IN REGARDS NEVADA'S MINING EMINENT DOMAIN LAW ARE, WHAT DOCTRINE SHOULD APPLY TO CONDEMNATION GIVEN THE FACT THAT MINING HAS NO LONGER BEEN THE "PARAMOUNT" INDUSTRY IN THE STATE? SHOULD THE BODY OF MINING EMINENT DOMAIN CASE LAW BASED UPON THE LIBERAL DOCTRINE OF PUBLIC USE, BE UPHELD IF MINING HAS NOT PLAYED A MAJOR ROLE IN THE OVERALL ECONOMY OF THIS STATE THE PAST 20 YEARS?

# Nevada Legislature

## ASSEMBLY

WHILE FORCES THROUGHOUT THE STATE HAVE BEEN GATHERING TO CHALLENGE THE 1875 LAW AUTHORIZING MINING THE POWER OF EMINENT DOMAIN IN THE 1981 SESSION, THE STATE DEMOCRATIC PARTY PASSED A PLANK AT THEIR CONVENTION LAST YEAR CALLING FOR AN AMENDMENT TO THE EMINENT DOMAIN LAW WHICH WOULD PROTECT OFFICIALLY DESIGNATED HISTORIC PROPERTIES FROM CONDEMNATION.

NOW LET ME EXPLAIN THAT I AM NOT THE NUMBER ONE ENEMY OF THE MINING INDUSTRY, ALTHOUGH THEY MAY TELL YOU THAT TODAY. I FEEL VERY STRONGLY ABOUT MINING. I THINK PROBABLY IN THE LEGISLATURE IN THE LAST 16 YEARS I HAVE PROBABLY BEEN THE STRONGEST SUPPORTER THEY HAVE EVER HAD. HOWEVER, THE EVENTS AT THE COMSTOCK, AN AREA THAT I REPRESENT, AND WHAT I SAW THERE AND THE WAY THE PEOPLE WERE UPSET OVER THE THREAT OF CONDEMNATION AND ACTUAL CONDEMNATION, I FIND IT NECESSARY TO COME BEFORE YOU AND REQUEST THAT YOU PASS ASSEMBLY BILL 112 SO THAT THE HISTORIC INTEGRITY OF THE COMSTOCK AND ALL OUR HISTORICAL AREAS IN THE STATE OF NEVADA BE PRESERVED.

MECHANICALLY THE BILL PROVIDES THAT BEFORE ANY PERSON CAN EXERCISE THE RIGHT OF EMINENT DOMAIN HE MUST FIRST OBTAIN THE CONSENT OF THE HISTORIC COMMISSION, THE BOARD OF REVIEW OR OTHER BODY WHICH ADMINISTERS THE DISTRICT. THIS BILL IS STATE WIDE, IT DOES NOT JUST COVER THE COMSTOCK HISTORIC DISTRICT. AT THE LAST SESSION OF THE LEGISLATURE WE PASSED LEGISLATION WHEN WE AMENDED THE COMSTOCK ACT WHICH PROVIDED FOR ANY COUNTY UNDER CHAPTER 244 TO CREATE AN HISTORIC DISTRICT. SO ANY COUNTY COMMISSIONER'S GROUP CAN FORM ONE OF THESE IN ANY COUNTY,

AND AS MANY OF THEM AS THEY WANT IN A COUNTY. SO THIS BILL DOES EXPAND THE SCOPE TO STATEWIDE. IT PROVIDES A BUFFER BETWEEN THE MINING INTERESTS AND THE PEOPLE BEFORE THEY ARE THROWN TO THE MERCY OF THE COURTS UNDER EMINENT DOMAIN. THE MINING INTERESTS HAVE THE UPPER HAND IN NEVADA UNLESS THE 1875 LAW IS AMENDED TO RECOGNIZE THAT HISTORIC PRESERVATION IS ALSO A NECESSARY PUBLIC USE.

THE FATE OF THE COMSTOCK HANGS PRECARIOUSLY IN THE BALANCE. A THRIVING TOURIST INDUSTRY, AN INFINITELY RENEWABLE RESOURCE, COULD BE INALTERABLY DAMAGED IF THE HISTORIC AND ARCHITECTURAL INTEGRITY OF THE DISTRICT IS COMPROMISED MUCH FURTHER. IN THE END, THE CREDIBILITY OF HISTORIC PRESERVATION EFFORTS ON THE COMSTOCK OVER THE PAST NINETEEN YEARS MAY BE IN SERIOUS JEOPARDY.

JOE,

IN DAYTON MINING CO. V. SEAWELL, 11 NEV.394 (1876), THE COURT HELD ONLY THAT THE LEGISLATURE COULD GIVE THE POWER OF EMINENT DOMAIN TO MINING COMPANIES. THE OPINION DOES NOT SUGGEST THAT THE LEGISLATURE OUGHT TO GIVE IT; ON THE CONTRARY, THE COURT SAID IT DID NOT CONSIDER "THE WISDOM, POLICY, JUSTICE, OR EXPEDIENCY OF THE LAW." (PAGE 400)

WHAT THE LEGISLATURE COULD GIVE BUT WAS NOT REQUIRED TO GIVE, IT CAN TAKE AWAY OR LIMIT.

FRANK

**EXHIBIT B**

Mr. Chairman and Members of the Committee:

Virginia City, Gold Hill and other mining camps within the Comstock Historic District are valuable historic sites that must be preserved for the sake of all Nevadans today and in the future.

Virginia City is the home of the fabulous Comstock Lode, the greatest 19th century silver mining center in North America. Virginia City and Gold Hill prospered from the beginning of the 1859 boom until the last year of bonanza production in 1878.

The Comstock Lode was directly responsible for the creation of the Nevada Territory in 1861 and its rise to statehood three years later. It also helped finance the Civil War.

Comstock mining dominated the development of 19th century Nevada. The high early production after discoveries in 1859 encouraged intense prospecting for several hundred miles around and resulted in the discovery of such bonanzas as Aurora, Unionville and Austin. Much more can be said about the Comstock Lode, but this single lode was the principal reason for Nevada's population increase from less than a hundred in 1850 to over 75,000 in 1875.

One hundred twenty years ago mining was the paramount industry in Nevada and the driving force in our state's creation.

It is for precisely this reason that the Comstock Historic District must be protected from destructive mining interests in the area today.

Although still important, mining is no longer Nevada's paramount industry, but mining companies could still invoke the century-old eminent domain law. They could condemn land anywhere in the district if just compensation is paid to the owners.

Two distinct and conflicting interests are vying for control in this important area. The Comstock Historic District is an important and vital educational, cultural, historic as well as tourist attraction for Nevada. Like the pupfish, it is endangered. The area is one of a kind and would be lost forever if the mining industry was allowed to exercise eminent domain privileges in the area.

Gaming and tourism have replaced mining as Nevada's #1 industry. The mining industry should not still be granted the omnipotent power of eminent domain over any Nevada land.

If the Comstock Historic District cannot exercise control over the appropriated area, a unique and historical site could be lost to mining interests.

The taking by a State or by the Federal Government of places of unusual historical interest is a public use for which the power of eminent domain may be authorized.

In an 1896 Pennsylvania case, United States v. Gettysburg Electric Railway Company, the court held that Congress may provide for the condemnation of the site of an important battle so that the principle tactical positions of the troops engaged might be permanently marked.

The Sundry Civil Appropriation Act provided for the preservation of the Gettysburg battlefield and surrounding areas much like the Comstock Historical District is set up to preserve the integrity of the Comstock Lode.

In another case, Roe v. Kansas, 1928, the court upheld the state's statute, Chapter 26, Article 3 of the Kansas Revised Statutes.

"That the power of eminent domain shall extend to any tract or parcel in the state of Kansas, which possesses unusual historical interest. Such land may be taken for the use and benefit of the State by condemnation as herein provided."

The court went on to say that there is no basis for doubting the power of the state to condemn places of unusual historical interest for the use and benefit of the public.

The case was concerned with the right of the State of Kansas to appropriate the historical Shawnee Mission.

I cited these cases because they illustrate the protective right of eminent domain the courts extended to these historical areas.

AB 112 would extend an historic district's power to protect its historical interests, which would take precedence over the mining industry's right of eminent domain within that same area.

EXHIBIT C

# PROPOSED REGULATIONS

# PERTAINING TO

# THE

# COMSTOCK HISTORIC DISTRICT COMMISSION

Chapter 384 of the Nevada Revised Statutes, known as the Comstock Historic District Act, underwent extensive amendment in the sixtieth session of the State Legislature. The development and promulgation of regulations are in order so that citizens of the historic district may be aware as to how this Act will be implemented. Taken in conjunction with the Act, these regulations provide the citizen information on how their business before the Comstock Historic District Commission will be handled. Questions regarding the Act or these regulations should be directed to a member of the Commission or the Commission's Building Inspector.

TABLE OF CONTENTS

Section 1. Definitions

Unless the context otherwise requires, for the purposes of this regulation, the words and terms defined in NRS 384.030 have the meanings ascribed to them in that section.

Section 2. Historic District Boundaries

1. The boundaries of the historic district and the zones of sensitivity are hereby established as shown on the map adopted by the commission.

2. The map showing boundaries and zones of sensitivity is available for inspection during regular office hours at the office of the commission.

NOTE: The map adopted by the commission is reproduced on the inside of the front cover of this publication.

Section 3. Office of the Commission

1. No materials contained in the library of the commission may be removed from the office of the commmission except by a member or employee of the commission. The public may use the commission library during regular office hours.

2. All forms to which these regulations refer are available to the public at the office of the commission.

NOTE: The commission office is located in the old telephone exchange building on South "C" Street in Virginia City. The mailing address of the commission is P.O. Box 128, Virginia City, Nevada 89440. Regular office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays.

NOTE: Subsection 1 of NRS 384.070 requires that files relating to applications for certificates of appropriateness be open to inspection by the public.

Section 4. Certificates of appropriateness: Applications

1. An application for a certificate of appropriateness must be made in writing on a form provided by the commission.

2. The information required in an application may vary depending on the nature of the undertaking.

3. The application must be signed and submitted by the legal owner of the structure or site. The commission may request evidence verifying that the applicant is the legal owner.

NOTE: The conditions under which a certificiate of appropriateness must be applied for are contained in NRS 384.110. In short, anyone proposing to erect, reconstruct, alter, restore, move or demolish a "structure" within the historic district, must first apply for and be issued a certificate of appropriateness. "Structure" is defined in NRS 384.030 and includes, but is not limited to, buildings, signs, street furniture, and the such.

Section 5. Exceptions, repair and maintenance

1. A certificate of appropriateness is not required if restoration:

   a. Keeps the structure in a configuration, arrangement, composition and color comparable to its state before maintenance is begun.

   b. Returns the structure, or any of its various elements, that has been damaged to a good and sound condition. The repaired element or structure must appear the same as it did before it was damaged.

2. Maintenance and repair are appropriate elements of a restoration project. Erection, reconstruction or alteration projects, or any part thereof, are not considered maintenance or repair.

NOTE: Paragraph (a) of subsection 3 of NRS 384.110 provides that ordinary maintenance or repair does not require a certificate of appropriateness.

Section 6. Certificates of appropriateness: Hearings

1. A regular public hearing of the commission will be held on the third Monday of each month.

2. All complete applications received at the office of the commission on or before the first Monday of the month will be included on the agenda of that month's regular meeting. Incomplete applications will be returned to the applicant without action.

3. The applicant will be notified as to the time and place of the public meeting at which his application will be discussed. If the applicant waives his right to a public hearing, no notification shall be made.

4. The presence of the applicant at the public hearing is preferred. The applicant may designate a representative for the purpose of the application's review in public hearing. The representative must be designated at the time of application by filing a notice of intent to designate a representative, on a form provided by the commission, with the application.

NOTE: NRS 384.120 provides that unless the applicant waives his right to a hearing, each application for a certificate of appropriateness must be reviewed in a meeting open to the public, allowing for community and applicant participation in the application review process.

NOTE: NRS 384.120 requires that notice be given by mail at least 10 days before the date set for the hearing.

Section 7. Certificates of appropriateness: Determinations and issuance

1. The commission will determine after the public hearing whether or not it will issue a certificate of appropriateness.

2. If the applicant is not present or represented at the public hearing, the Commission will notify him of its determination and any comments or conditions relevant to the disposition of the application.

3. If the commission has denied the application, it will notify the applicant by mail of the reasons for the denial and any recommendations regarding the application.

4. Each certificate of appropriateness must have a specific term assigned. The commission will set an expiration date not later than 180 days after the day of the meeting at which the application was approved.

5. A certificate of appropriateness will be prepared for each application approved by the commission. The certificate of appropriateness is not complete and binding until the applicant and the chairman of the commission have signed it. Certificates will be available to the applicant at the office of the commission for signature for no more than 5 working days after the public hearing at which it was ordered prepared. The chairman of the commission shall sign the certificate of appropriateness no more than 5 working days after it is signed by the applicant.

NOTE: Factors to be considered by the commission in its review of an application are specified in NRS 384.140.

Section 7. (continued)

NOTE: Subsection 2 of NRS 384.130 states that an application may be approved for an otherwise inappropriate project in a case where substantial hardship exists.

NOTE: The commission may make a determination on an application whether or not the applicant or his representative, is present at the public hearing.

NOTE: NRS 384.210 sets forth the right of the applicant to appeal a decision of the commission in the district court. The procedure for filing an appeal is set forth in NRS 233B.130.

Section 8. Certificates of appropriateness: Amendment

1. Only those elements, or the time limit, included on the original certificate may be amended. New elements may not be incorporated into a certificate by amendment.

2. To request an amendment, the applicant must file an application for the amendment of a certificate of appropriateness on a form provided by the Commission.

3. All complete applications received at the office of the commission on or before the first Monday of the month will be included on the agenda of that month's regular meeting. Incomplete applications will be returned to the applicant without action.

4. An applicant for an amendment will be notified of the hearing on his application in the same manner as provided in this regulation for original applications.

Section 9. Public hearings: Waivers

1. An applicant who wishes to waive his right to a public hearing may submit a request with his application on a form provided by the Commission. The chairman of the commission shall review the request and, within 5 working days after the request was received, determine whether it is in the best interest of the historic district.

2. If the waiver is approved, the members of the commission will be given an opportunity to review the application. Responses must be tabulated by the secretary of the commission and presented to the chairman.

3. The chairman shall issue a certificate of appropriateness or notify the applicant that his application has been denied in the manner specified in section 7 of this regulation.

NOTE: NRS 384.120 allows a waiver of the need for an application to be heard before a public meeting of the commission.

Section 10. Orders to stop work.

1. Notice of an order to stop work shall be given by the posting of a form provided by the commission on or in the vicinity of the structure where the violation is occurring. The order must list the activities or conditions that are taking place which are in violation of the Comstock Historic District Act.

2. A copy of the order to stop work must be provided to the owner of record if the work is being done in the absence of a certificiate of appropriateness. When work is being done in violation of a valid certificate of appropriateness, a copy of the order must be provided to the person who applied for that certificate.

3. The date, time and place of the public hearing at which the order to stop work will be discussed must be included on the order.

NOTE: Subsection 2 of NRS 384.190 empowers the building inspector employed by the commission to order work stopped on those projects where work is being undertaken contrary to the provisions of the Comstock Historic District Act.

Section 11. Mobile homes and housetrailers.

1. A mobile home or housetrailer may not be placed or established unless the owner has obtained a certificate of appropriateness, and it will be considered as the erection of a new structure.

2. A housetrailer or mobile home may not be placed in a visible place within the historic district for more than 72 hours unless the place is within an approved mobile home park or an area designated on a trailer overlay.

3. A housetrailer or mobile home may not be stabilized, blocked up or connected to water or power facilities, whether permanently or temporarily within the historic district unless the place on which it is stablized, blocked or connected is included within an approved mobile home park or an area designated on a trailer overlay.

NOTE: Subsection 8 of NRS 384.100 sets forth the conditions under which a housetrailer as defined in NRS 489.150 or mobile home as defined in NRS 489.120 may be allowed within the historic district. The housetrailer or mobile home must be placed in a mobile home park or trailer overlay area approved by both the Commission and the appropriate county. The placement or establishment of individual housetrailers or mobile homes in other situations is prohibited by that section.

NOTE: The building inspector may, pursuant to NRS 384.190, issue an order to stop work to the owner of any mobile home or housetrailer who violates the provisions of these regulations.

**APPLICATION**

**FOR THE AMENDMENT OF A**

**CERTIFICATE OF APPROPRIATENESS**

Application is hereby made to the Comstock Historic District Commission for an amendment of a Certificate of Appropriateness issued to me, the original applicant, on _____ (date)

for work being undertaken in the community of _____

and located at _____.

By this application I request permission to amend the above referenced Certificate of Appropriateness in the following manner:

Name: _____ Date: _____

Address: _____

Signature: _____ Application received on:

By: _____ _____

Title: _____

## PUBLIC HEARING WAIVER REQUEST

Pursuant to provision contained in Chapter 384.120(1) of the Nevada Revised Statutes, I hereby request that my right of public hearing be waived for the attached application for a certificate of approval. I acknowledge that I have read the regulations of the Comstock Historic District Commission and further that I understand and agree to the procedures that shall be followed in the review of my application. My reason for requesting a waiver is as follows:

Name: _____ Date: _____

Address: _____

Signature: _____

/ / Approved

/ / Disapproved

Signature: _____
Chairman, Comstock Historic District Commission

## NOTICE OF INTENT TO
## DESIGNATE A REPRESENTATIVE

I hereby serve notice to the Comstock Historic District Commision that _____ may act as my designated representative at any and all public hearings at which the attached application for a Certificate of Appropriateness is heard and discussed. The designated representative's authority is limited to this single application and shall terminate upon the end date of the term assigned to the Certificate if approved. I further acknowledge that I shall abide by and be held to any provisions, conditions, or modifications to the attached application agreed to by my designated representatives.

Applicant Name: _____

Address: _____

Signature: _____

Designated Representative Name: _____

Address: _____

Signature: _____

Date: _____

 EXHIBIT D

*R-J Viewpoint*

# Eminent domain law should be repealed

(Editor's note: The following editorial is a reprint from the Reno Evening Gazette.)

The Nevada law giving mining companies the right of eminent domain should be repealed.

The law is outdated and prejudicial to the property rights of private individuals.

Under the law, a mining company can assume control of private land any time the company feels it needs the property for mining purposes. The company must offer a price for the land, and the owner may negotiate over the price. But the owner cannot keep the company off his property, even if he goes to district court.

That was made clear when Houston Oil and Mineral Co. took over the land of Fred and Dorothy Imoor. Houston Oil said it needed the land as a dumping ground for rocks and dirt from its Gold Hill mine. The Imoors sued to get their land back, and lost. The property is now covered with tons of fill from Houston's open pit gold and silver operation.

Carson District Judge Mike Griffin was obviously sympathetic with the Imoors, saying their position was "intellectually and perhaps morally appealing." But, said the judge, Houston Oil was within its legal rights because of the 100-year-old Nevada law granting mining firms the power of eminent domain.

Eminent domain usually is reserved for governments. However, the granting of eminent domain to non-governmental entitities has been upheld by the U.S. Supreme Court. The court ruled that there may be "exceptional times and places in which the crush of public welfare" makes it necessary to grant eminent domain to private interests.

But Bob Perry, attorney for the Imoors, was correct in arguing that today is not an "exceptional time," and that the law abuses the rights of people like the Imoors.

Eminent domain is a difficult matter even in the hands of public officials. Frequently the dispossessed owners face hardship. If they live on the land, they will be forced to move, despite years of financial and emotional investment in their property. The government must pay for the land, but it pays as little as it can get away with. And, especially in an inflationary economy, the dispossessed owners may have trouble finding something equally as good with the money they are given. This is particularly true of the elderly, who may not find a home they can afford that is in any way comparable to their old home.

Yet the public generally condones the use of eminent domain by government, because it involves such worthwhile projects as building new freeways, or, as in Reno, expanding the airport. We all use the roads, and most of us use the airport. The overriding public interest is clear.

But no such overriding public interest exists with mining. Frankly, we doubt that eminent domain was justified even 100 years ago. But mining was the state's major industry then. It had enormous power in the Legislature, and its welfare affected great numbers of people. It is easy to see why the law passed. In 1979, however, mining no longer is the state's major industry. The main beneficiary of the eminent domain law is not the public, but the mining company.

That is clearly wrong and contradictory to the thinking of the Supreme Court. The Nevada Legislature has an obligation to recognize this, and do away with a law that long ago should have followed the horse and buggy into memory.

cc: Richard Harris
Roseann deCristoforo

EXHIBIT E

Mr. Chairman and Members of the Committee:

Before I begin my statement, I would like to publicly thank Mr. Dini for bringing the matter of mining, historic areas, and eminent domain before the Legislative eyes. When the rape of Gold Hill was taking place there was much talk about "how awful", "we must do something about this", etc. and to my knowledge Mr. Dini is the only Legislator who brought this matter to your attention. I thank you, Mr. Dini.

The actions of Houston Oil and Mineral in the Gold Hill area necessitate a close look by the Legislature at the regulations that govern mining in the State of Nevada, the reality of good enforcement of those regulations, and the possibility of revisions or additions at the County level.

Houston's actions in Gold Hill were irresponsible, evidenced by poor planning and lack of communication in their own organization as well as in the community. Jim Santini said it: "Houston Oil and Minerals is an embarrassment to the mining industry".

I believe Houston is not the typical mining company. I believe for the most part mining companies and the individual miners do their homework--they research, they plan, they communicate and they appreciate the rights of all individuals involved.

However, because of a company like Houston, certain precautions need to be taken. I am not against mining; however, I am opposed to any mining company or miner who feel their rights to mine are greater than my right to enjoy my property and who feel they can destroy my quality of life.

Lyon County, concerned with the destruction of neighboring Gold Hill in Storey County, enacted County legislation which does not thwart the miner, it merely insists that the miner or mining company be accountable: present plans to the County Commission outlining scope, employment, economic impact, etc. I support this kind of legislation at the County level.

The idea of a County Historic District area was raised earlier, and I don't quarrel with that; but I feel that in every area of our State, if there is not a Commission, at County level there needs to be some jurisdiction in operation. I do support County Commissions because I feel they know their County--they know their historic areas, agricultural areas, and sensitive areas, be it the Carson River or whatever. However, on the other side of the coin, an individual should have some course of appeal when the County does not enforce its own ordinances: we filed a complaint three different times in Storey County, citing Storey County's own Ordinance #59, and no one did anything. County enforcement of special use permits should be, it seems to me, the logical way to go rather than a State agency. EPA for example--when we would call to

ask them to enforce their own permits that they had given Houston, we were told that they were rather shorthanded, they couldn't send anybody out to enforce. One reason we would call was the dust problem: Houston was to water the roads down every day. They never watered the roads down. When I did talk to Mr. Serdoz at EPA he said: "I am going to come out, but I made an appointment with Houston." I said: "Why did you make an appointment? Why don't you just drop in on him?" You've never seen so much water the day that Mr. Serdoz came out. The roads were really watered down.

I do know that mining made the Comstock; but mining did not destroy the Comstock. If you haven't seen Gold Hill, go take a look--it is a small community, and it is destroyed. And what about Houston's plan to move the road, buying out all the Community that was to be affected. How about those who didn't want to move, people who have lived there 50 years did not want to move. And now, Houston may pull out, maybe there is not going to be a road change. And possibly all of their purchased real estate--our real estate formerly--is going to go back on the market. We sold for fear of condemnation.

Which brings me to the issue of the right of mining to the power of eminent domain. I concur completely with Mr. Perry in terms of mining not having the right of eminent domain. It would seem to me that anyone who had the right to the power of eminent

domain must be very important to the State. I believe in the area of revenues to the State, gaming and prostitution bring in far more money than mining, yet they do not have the power of eminent domain. Why should mining have the power to take homes and property with no questions asked?

I was going to relate the Immoor situation, but Mr. Perry has taken care of that. That is why I am so fearful: when you have property appraised at $40,000, then a company can come in and trespass, reduce that appraisal value down to $3,400--I think that is unconscionable.

The right of eminent domain is very precious, and I believe belongs to very precious few. It should be something like the greatest good for the citizens of Nevada. I feel the Legislature should insist on and support meaningful County or Commission legislation, and I feel that the Legislature should eliminate the right to the power of eminent domain for mining in the State of Nevada.

EXHIBIT F

THE PROPOSED AMENDMENT TO CHAPTER 37, SECTION 1, OF THE NRS WOULD ALLOW FOR AN APPROPRIATE REVIEW PROCESS WHICH COULD INCLUDE EITHER A RESEARCH OR FIELD SURVEY, OR BOTH, OF THE IMPACTED AREA, AND UPON COMPLETION OF SAID SURVEY, A STATEMENT OF SIGNIFICANCE AND A FORMULA FOR MITIGATION COULD BE PROMULGATED.

THE INTENT OF THE BILL, AB 112, AS I UNDERSTAND IT IS NOT TO INDISCRIMINATELY PREVENT MINING IN HISTORIC DISTRICTS, BUT RATHER IT WOULD PROVIDE FOR AN ADEQUATE REVIEW MECHANISM IN WHICH PUBLIC OFFICIALS AND INTERESTED PARTIES WOULD HAVE THE OPPORTUNITY TO ASSESS THE EXTENT AND HISTORIC VALUE OF THE PROPERTY BEING DIRECTLY IMPACTED BY AN ON-GOING, OR PROPOSED, MINING OPERATION.

TO ALLOW A MINING COMPANY TO EXERCISE ITS RIGHT OF EMINENT DOMAIN UNDER EXISTING NEVADA LAW WITHOUT HAVING THE OPPORTUNITY TO ASSESS THE HISTORIC VALUE OF THE CONDEMNED PROPERTY IN AN HISTORIC DISTRICT DEFEATS THE WHOLE PROCESS AND PURPOSE OF HISTORIC PRESERVATION IN THE COUNTRY IN GENERAL, AND IN NEVADA IN PARTICULAR.

BOTH THE MINING INDUSTRY AND CONSERVATIONISTS NEED TO COMPROMISE ON THE ISSUE OF HISTORIC PRESERVATION. FUTURE NEVADANS, BE THEY NATIVES OR NEWCOMERS, SHOULD HAVE THE SAME OPPORTUNITY WE ALL HERE HAVE HAD TO DISCOVER, AND ENJOY, THE 19TH AND EARLY 20TH CENTURY MINING HERITAGE OF NEVADA.

AT THE SAME TIME, IT MUST BE REMEMBERED THAT MINING IS ONE OF THE FEW INDUSTRIES NATIVE TO NEVADA AND THE GREAT BASIN. TO REFUSE TO ACKNOWLEDGE ITS PRESENCE AND ITS NEEDS, EVEN IN HISTORIC DISTRICTS, IS TO DENY THE INDUSTRY THAT BROUGHT THIS TERRITORY INTO BEING, INTO THE UNION, AND NURTURED THE GROWTH AND PROSPERITY OF THE "SILVER STATE" FOR SO MANY YEARS.

I BELIEVE THE PASSING OF AB 112 BY THE NEVADA LEGISLATURE WOULD RECOGNIZE THAT THERE IS ROOM FOR COMPROMISE IN THIS HEATED CONTEST FOR NEVADA'S NON-RENEWABLE RESOURCES.

EXHIBIT G

TO MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE:

I HAVE ASKED MIMI RODDEN TO MAKE THESE REMARKS ON MY BEHALF IN THE EVENT THAT I AM UNABLE TO WAIT FOR MY REGULAR TURN TO TESTIFY.

MY NAME IS JIM HULSE. I AM A PROFESSOR OF HISTORY AT THE UNIVERSITY OF NEVADA - RENO AND A MEMBER OF THE ADVISORY BOARD ON HISTORIC PRESERVATION AND ARCHAEOLOGY. I SUPPORT THE PROVISIONS OF AB 112 FOR THE REASONS MR. DINI EXPRESSED, BUT I BELIEVE THE BILL DOES NOT GO FAR ENOUGH. THE LEGISLATURE SHOULD CONSIDER STRIKING ALL OF SECTION 6 AND REMOVE THE POWER OF EMINENT DOMAIN FROM MINING COMPANY OPERATIONS. AS I UNDERSTAND IT, THIS PROVISION IS MORE THAN A HUNDRED YEARS OLD. WE SHOULD QUESTION WHETHER MINING IS STILL THE PARAMOUNT INTEREST OF THIS STATE AND WHETHER THIS ONE INDUSTRY SHOULD HAVE THE AUGHORITY TO DESTROY ALL OTHER RESOURCES--HISTORIC, ARCHAEOLOGICAL, AND NATURAL--FOR THE SAKE OF EXPLOITING ORE BODIES FOR SHORT TERM PROFIT. WHAT ONE MINING COMPANY HAS ALREADY DONE AT GOLD HILL SHOULD SERVE AS A SHOCKING WARNING TO US, AND WE SHOULD NOT LEAVE IN THE LAW A BLANK CHECK INVITATION FOR OTHERS TO DO THE SAME IN OTHER AREAS OF HISTORIC IMPORTANCE.

JIM HULSE

/SIGNED/

FEBRUARY 23, 1981

EXHIBIT H

# TESTIMONY

Nevada Mining Association

Robert Warren, Exec. Secretary

**********

Assembly Bill 112

Mr. Chairman, members of the Assembly Committee on Judiciary. My name is Bob Warren. I am the executive secretary of the Nevada Mining Association, headquartered in Reno. The Nevada Mining Association represents some 50 of the largest mining corporations which have operations in Nevada. Also members of the association are some 600 smaller mine operators, exploration firms, prospectors, vendors of equipment, supplies and services, public land attorneys, and individuals interested in the preservation of a healthy mining industry in Nevada.

I have had the opportunity and the pleasure as an association director, first for the Nevada League of Cities, and for the past 3 1/2 years for the Nevada Mining Association, to participate in six sessions of the legislature. I have been impressed during certain hearings when legislators have turned away from those proposals for statewide legislation which were born of a single inflamatory incident and which could and should be addressed by a local level of government. Such legislation tends to be too narrowly based for statewide application. It is often punitive and inflicts an unnecessary burden upon a statewide segment of the population.

Such is the case with the bill before you today - Assembly Bill 112.

* * * * * * * * * * *

When residents of Virginia City, Gold Hill and Silver City learned that mining might be resumed on the famed Comstock, most were pleased. They welcomed the prospect of new employment and future tax revenues to help finance county government and needed public facilities.

Some other residents were angry and distrubed. The return of mining represented to them a disturbance of a preferred life style. These citizens, largely from Silver City, then took effective action to restrict - or halt if possible - all mining on the Comstock. The tenor of their concern was well expressed by one of these citizens during a meeting with mining representatives. She said: "You don't have to mine in Nevada; you can mine in California or some other state."

Ably lead by a professional planner, these Silver City residents successfully urged the Lyon County Board of Commissioners to enact an ordinance which now tightly controls all mining on the Lyon County section of Comstock and within other designated areas of the county.

This Lyon County ordinance, coupled with earlier controls placed upon mining by the commissioners in Storey County (and they can add more at will), now provides overwhelming control of mining within the Comstock Historic District. Other counties can enact similar controls if necessary.

This control is precisely Assemblyman Dini's objective: protection for the historical values and buildings on the Comstock. He did not intend or wish his bill to have a negative impact on mining throughout the state. He is aware of mining's importance to other rural counties. He wanted the bill's scope limited to the Comstock.

But the bill, as drafted, has a statewide impact.

Chief Legislative Counsel Frank Daykin says he cannot presume constitutionality if the bill were drafted to apply only to a single area within Nevada. So now the stage has been set for enactment of an overreaching piece of legislation whose scope has grown beyond the reason for its drafting.

* * * * * * * * * * *

Mr. Chairman, do Mr. Dini and his constituents really need AB 112 for protection of the Comstock? Not any more. He was asked to introduce the legislation during the peak of the emotional controversy over the resumption of mining on the Comstock and the decision by Houston International Minerals Corp. to use the right of eminent domain to acquire a piece of vacant land for storage of mine waste rock.

Since that date, Houston has publicly and in writing stated that it will not use eminent domain to obtain property on the Comstock. And Houston has donated $78,000 to a joint federal-community inventory to identify all historic values and buildings on the Comstock. The object of the inventory is protection of the historic structures and artifacts.

Additionally, Lyon County now has in place the mining ordinance. Houston and the Nevada Mining Association joined the Silver City residents in drafting the ordinance. And we supported it at the final county commission hearing.

What protection does the ordinance provide? Among numerous other provisions, it requires that before a permit to mine can be granted, the planning commission and the county commission must carefully consider adoption of controls by the mining company to protect the "scenic, historic, recreational, archaeological, and agricultural values of the applicant's property and those of the surrounding property owners..."

As I said, Houston and the Nevada Mining Association supported the ordinance. Does this sound like a mining industry that lacks concern for preservation of historical values?

* * * * * * * * * * *

Mr. Chairman, this committee should be aware that the mining industry across the breadth of Nevada complies with an array of local, state and federal laws and regulations to protect the air, the water, the wildlife, the plants, and all other environmental, historical and archaeological values. (May I enter for the committee's record a state publication entitled: State and Federal Permits Required in Nevada Before Mining and Milling Can Begin".) To this should be added the regulations imposed upon mining operations on federal lands, which include all of the above, plus a requirement for reclamation of the land and mine site.

* * * * * * * * * * *

Mr. Chairman, may I speak to the question: Why should a mining company be granted the right of eminent domain? (You will receive testimony from others to explain why the Nevada Legislature has granted

the right to the mining industry and 15 other private parties and firms so a single property owner or firm cannot block a project which is in the public interest. And you will receive testimony concerning a Nevada Supreme Court decision which guards against improper use of eminent domain.)

The following scenario illustrates why and when eminent domain can properly be used by a mining company. After the company has complied at great costs with all of the above-noted laws and regulations and has received permits from local, state and federal authorities to commence mining, the project can still be blocked by another major obstacle. The owner of a plot of land needed for the project may refuse to sell at any price - or he may wish to extort an unconscionable amount of money for the property.

This seldom happens, however. Most mining companies carefully acquire all of the land that is expected to be needed for the project - before the project is publicly announced. Should they later discover a need for additional property, they will routinely pay the owner a handsome bonus rather than resort to litigation. The public seldom hears of these negotiations - but only of those few that fail and lead to eminent domain.

As an example of the industry's usual effort to avoid litigation and eminent domain, I recall the incident when Kennecott Copper Corp. needed a piece of non-mineralized land so one of its pits near Ely could be expanded. The land was appraised by local appraisers for $5,000. Kennecott paid $100,000 to avoid use of eminent domain.

This legislative committee should not set the stage for blockage of a major mining project because of the loss of the right of eminent domain.

A major mining operation will usually employ form 150 to 400 persons for 10 to 70 years. It is important to the quality of life of the residents and the economy of the rural county in which it is located.

But if the members of future historical districts that will be created as many of Nevada's old mining camps are given the power by AB 112 to deny use of eminent domain, we can expect that in most cases the right will be denied. A right that cannot be exercised is not a right.

* * * * * * * * * * *

Mr. Chairman, the Judiciary Committee should be aware of the fact that the combination of mining and agriculture now provides the main economic base, the payrolls and jobs, the purchases of equipment and supplies, and the tax base for half of the counties in Nevada. And when the 20 new large mines come on stream during the first half of this decade - with capital expenditures in excess of $700 million - as many as 12 of our 17 counties will gain most of their economic vitality from the mining and agriculture industries.

Mining today is one of the few expanding elements of the Nevada economy. It should be encouraged and aided - not throttled by such overkill legislation as AB 112.

* * * * * * * * * * *

A final but important consideration, Mr. Chairman. AB 112 is supposed to provide protection for historical artifacts and buildings in Nevada. Its passage, however, will have the opposite effect.

Because of its potential for severe damage to the mining industry in our state, mining companies will be forced to oppose every proposal to set up future historic districts, if they are near or within former mining camps or towns. The reason: former mining camps and their environs are prime targets for production of remaining low grade ores or discovery of new mineral resources. If AB 112 is enacted, mining company personnel, prospectors, vendors of supplies and equipment, local businessmen and community leaders will be forced to put on the black hats and urge the county commissioners to oppose creation of new districts for historic protection.

To this time, the mining industry has been cooperative and is spending substantial sums of money to protect historical values. If AB 112 is enacted, the cause of historical preservation in Nevada will become one of the victims.

EXHIBIT I

**NEVADA BUREAU OF MINES AND GEOLOGY**
**Special Publication L-6**
**(revised to January 1980)**

# STATE AND FEDERAL PERMITS REQUIRED IN NEVADA BEFORE MINING OR MILLING CAN BEGIN

**does not include exploration, or mining/milling permits**

compiled by
**Paula Fieberling**
*Division of Mineral Resources*
*Nevada Department of Conservation and Natural Resources*

This is a list of State and Federal permits and actions required during development, planning, construction, and before operation of Nevada mines and mills. We hope it will help both individuals and companies through the complex, often confusing regulatory maze—please understand that inclusion on this list does not indicate approval of these regulations.

Remember that in addition to State and Federal permits, county and city permits also may be required. We have attempted to be complete as to State and Federal requirements—all agencies involved were consulted to verify permit costs, deadlines, etc.

This list will be revised periodically, but the user should be aware that there may be additional, new or revised regulations issued after this list was compiled. We welcome any corrections or additions, as well as any suggestions on how to improve this list. For more information about permitting, contact: Division of Mineral Resources, Nevada Department of Conservation and Natural Resources, 201 S. Fall St., Carson City, NV 89710; (702) 885-4368.

Joyce Hall
*Administrator*
*Division of Mineral Resources*

## STATE REQUIREMENTS

| | | |
|---|---|---|
| Type of permit | **AIR QUALITY PERMIT TO CONSTRUCT** | |
| Granting agency | Division of Environmental Protection | (702) 885-4670 |
| When required | Prior to construction | |
| Maximum time to obtain | 90 days | |
| Minimum time to obtain | 30 days | |
| Cost of permit | $10.00 | |
| Public Notice required | Yes | |
| Information required | Location of source; specifications and design of source; type and quantity of air emissions; basis of data; materials used in process; air contaminant control equipment; type of combustion unit; hourly fuel consumption operating schedule; process products; flow diagram; baseline data. | |
| Governing statute | Nevada Revised Statutes (NRS) Chapter 445 | |

| | | |
|---|---|---|
| Type of permit | **AIR QUALITY PERMIT TO OPERATE** | |
| Granting agency | Division of Environmental Protection | (702) 885-4670 |
| When required | Prior to permanent operation | |
| Maximum time to obtain | 6 months after start-up | |
| Minimum time to obtain | 30 days | |
| Cost of permit | $50.00 (five-year permit) | |
| Public Notice required | No | |
| Information required | Date of approval of Air Quality Permit to Construct; changes to previous application, if any; projected date of start-up; actual date of start-up; construction drawings. | |
| Governing statute | NRS Chapter 445 | |

## STATE REQUIREMENTS (continued)

| | | |
|---|---|---|
| Type of permit | **PERMIT TO APPROPRIATE SURFACE WATER** | |
| Granting agency | State Engineer | (702) 885-4380 |
| When required | Prior to construction | |
| Maximum time to obtain | 180 days | |
| Minimum time to obtain | 90 days | |
| Cost of permit | $35.00 (statutory filing fee) | |
| Public Notice required | Yes | |
| Information required | Function of reservoir and method of operation; origin of water for reservoir; outlet location; land ownership; drainage in which reservoir is located; method of dam construction; schedule; map of facility. | |
| Governing statute | NRS Chapter 533.325-533.435 | |

| | | |
|---|---|---|
| Type of permit | **PERMIT TO APPROPRIATE UNDERGROUND WATER** | |
| Granting agency | State Engineer | (702) 885-4380 |
| When required | Prior to construction | |
| Maximum time to obtain | 180 days | |
| Minimum time to obtain | 90 days | |
| Cost of permit | $35.00 (statutory filing fee) | |
| Public Notice required | Yes | |
| Information required | Use to which water will be applied; location of wells; depth; maximum quantity of water to be developed; point of use; land ownership; details of use; well commencement and completion forms; proof of beneficial use. | |
| Governing statute | NRS Chapter 533.325-533.435 | |

| | | |
|---|---|---|
| Type of permit | **PERMIT TO CONSTRUCT TAILINGS DAM** | |
| Granting agency | State Engineer | (702) 885-4380 |
| When required | Prior to construction | |
| Maximum time to obtain | 90 days | |
| Minimum time to obtain | 45 days | |
| Cost of permit | None | |
| Public Notice required | No | |
| Information required | Plans and specifications must be filed with application for any tailings dam which will be higher than 10 feet or impound more than 10 acre feet; supportive engineering study. | |
| Governing statute | NRS Chapter 535.010 | |

| | | |
|---|---|---|
| Type of permit | **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT** | |
| Granting agency | Division of Environmental Protection | (702) 885-4670 |
| When required | Prior to operation | |
| Maximum time to obtain | 120 days | |
| Minimum time to obtain | 60 days | |
| Cost of permit | $100.00 ($25.00 for each additional permit) | |
| Public Notice required | Yes | |
| Information required | Site plan; waters to which discharge will be released. | |
| Governing statute | NRS Chapter 445 | |

| | | |
|---|---|---|
| Type of permit | **PERMIT FOR SEWAGE PLANT FOR CAMP SITE** | |
| Granting agency | Division of Health | (702) 885-4750 |
| When required | Prior to construction | |
| Maximum time to obtain | 30 days | |
| Minimum time to obtain | 15 days | |
| Cost of permit | None | |
| Public Notice required | No | |
| Information required | Sewage and camp site plans. | |

Type of permit . . . . . **BUILDING PERMITS**
Granting agency . . . . . Local County Planning Commission
When required . . . . . Prior to construction
Maximum time to obtain . . . . 1 week
Minimum time to obtain. . . . . 1 day
Cost of permit . . . . . Varied. Consult local planning commission.
Information Required . . . . . Submit construction plans and details of location for any building structures, mill, etc. Must have prior approval for mine construction or labor camps from Nevada State Health Division.

*YOU MUST ALSO:*

Contact about. . . . . **ENDANGERING WILDLIFE**
Agency to contact . . . . . Department of Wildlife (702) 784-6214
When required . . . . . Prior to construction and operation
Required action . . . . . Ascertain whether or not the mining operation would endanger fish and game habitat, etc.

Contact about. . . . . **HISTORIC PRESERVATION**
Agency to contact . . . . . Division of Historic Preservation and Archaeology (DHPA) (702) 885-5138
When required . . . . . Prior to actual mining
Required action . . . . . Submit a legal description of the area to be disturbed so that DHPA can determine if it is within any particular state historic preservation area.

Contact about. . . . . **OPENING AND CLOSING MINES**
Agency to contact . . . . . State Inspector of Mines (702) 885-5243
When required . . . . . Before opening and upon closing mine operations.
Required action . . . . . Operators shall notify the inspector of mines; the notice must include the name and location of the mine(s), the name and address of the operator, the name of the person in charge of the operation, a statement of whether the operation will be continuous or intermittent, and upon closing, a statement of whether the closing is temporary or permanent.
Governing statute . . . . . NRS Chapter 512.160

## FEDERAL REQUIREMENTS

Type of permit . . . . . **NOTIFICATION OF COMMENCEMENT OF OPERATION**
Granting agency . . . . . Mine Safety & Health Administration (702) 784-5443
When required . . . . . Prior to start-up
Maximum time to obtain . . . . None
Minimum time to obtain. . . . . None
Cost of permit . . . . . None
Public Notice required . . . . . No
Information required . . . . . Location; estimated commencement date; safety training; dam specifications.

Type of permit . . . . . **PREVENTION OF SIGNIFICANT DETERIORATION**
Granting agency . . . . . Environmental Protection Agency (415) 556-3450
When required . . . . . Prior to construction
Maximum time to obtain . . . . 1 to 1½ years
Minimum time to obtain. . . . . 6 months
Cost of permit . . . . . None
Public Notice required . . . . . Yes
Information required . . . . . $SO_2$ and particulate emissions from project; projected maximum ground level $SO_2$ and particulate concentrations; baseline air quality and meteorology data (1 per year); emissions of hazardous pollutants; frequency of increment violations during baseline.

## FEDERAL REQUIREMENTS (continued)

| | | |
|---|---|---|
| Type of permit | **TEMPORARY USE** | |
| Granting agency | Bureau of Land Management (BLM) | (702) 784-5651 |
| When required | Prior to use | |
| Maximum time to obtain | 90 days | |
| Minimum time to obtain | 15 days | |
| Cost of permit | Varied. Consult district BLM office. | |
| Public Notice required | No | |
| Information required | Location of use area; proposed use; cost of use development; archaeological and historical clearances. | |

| | | |
|---|---|---|
| Type of permit | **RIGHT OF WAY FOR TRANSMISSION CORRIDOR** | |
| Granting agency | Bureau of Land Management | (702) 784-5651 |
| When required | Prior to construction | |
| Maximum time to obtain | Approximately 6 months | |
| Minimum time to obtain | Approximately 20 days | |
| Cost of permit | $50.00 per mile up to 5; 5 to 20 miles, $500.00 | |
| Public Notice required | Yes | |
| Information required | Corridor route; archaeological and historical clearances; methods of construction; notice of completion (within 90 days). | |

| | | |
|---|---|---|
| Type of permit | ROAD ACCESS (ROW) | |
| Granting agency | Bureau of Land Management | (702) 784-5651 |
| When required | Prior to construction | |
| Maximum time to obtain | Approximately 6 months | |
| Minimum time to obtain | Approximately 30 days | |
| Cost of permit | $50.00 per mile up to 5; 5 to 20 miles, $500.00 | |
| Public Notice required | Yes | |
| Information required | Corridor route; archaeological and historical clearances; methods of construction; notice of completion (within 90 days). | |

| | | |
|---|---|---|
| Type of permit | **PATENTING OF MINING CLAIMS** | |
| Granting agency | Bureau of Land Management | (702) 784-5651 |
| When required | Discovery of a valuable mineral deposit | |
| Maximum time to obtain | 2 years | |
| Minimum time to obtain | 15 months | |
| Cost of permit | $25.00 filing fee and proof that not less than $500.00 has been expended for development of each claim. Purchase Price: Lode Claim—$5.00 per acre; Placer Claim—$2.50 per acre. | |
| Public Notice required | Yes, posted on claim and in newspapers | |
| Information required | Mineral survey plat, two copies of field notes, two copies of survey, proof of posting on claim, evidence of title, proof of citizenship, proof of publication. | |

*YOU MUST ALSO:*

| | | |
|---|---|---|
| Contact about | PURCHASE, TRANSPORT, OR STORAGE OF EXPLOSIVES | |
| Agency to contact | Bureau of Alcohol, Tobacco and Firearms (BATF) | (702) 784-5251 |
| When required | Before purchasing explosives outside state of residence *and/or* transporting them interstate. | |
| Required action | Obtain permits (information concerning purchase, transport, and storage of explosives can be obtained from BATF). | |

| | | |
|---|---|---|
| Contact about | FLORA AND FAUNA | |
| Agency to contact | U.S. Forest Service (USFS) *or* Bureau of Land Management (BLM) | USFS (702) 784-5331<br>BLM (702) 784-5452 |
| When required | Before beginning operations | |
| Required action | Find out the types of flora and fauna which exist in the area of operation and which of those, if any, are on the endangered species list. | |

company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-33-13.

Compiler's Notes.

This section is identical to former section 104-64-13 (Code 1943) which was repealed by Laws 1951, ch. 58, § 3.

Collateral References.

Declaratory Judgment⇐291.

26 C.J.S. Declaratory Judgments § 117 et seq.

22 Am. Jur. 2d 942, Declaratory Judgments § 79.

# CHAPTER 34

## EMINENT DOMAIN - Utah Statutes



**78-34-1. Uses for which right may be exercised.**—Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) All public uses authorized by the government of the United States.

(2) Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.

(3) Public buildings and grounds for the use of any county, city or incorporated town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city or incorporated town, or for the draining of any county, city or incorporated town; the raising of the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; roads, streets and alleys; and all other public uses for the benefit of any county, city or incorporated town, or the inhabitants thereof.

(4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

(5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or

other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution.

(6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs; solar evaporation ponds and other facilities for the recovery of minerals in solution; also any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter.

(7) By-roads leading from highways to residences and farms.

(8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants.

(9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any public building belonging to the state, or of any college or university.

(10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat.

(11) Cemeteries and public parks.

(12) Pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar.

(13) Sites for mills, smelters or other works for the reduction of ores and necessary to the successful operation thereof, including the right to take lands for the discharge and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such works; provided, that the powers granted by this subdivision shall not be exercised in any county where the population exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least seventy-five per cent in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing between the condemner and the owner of land within said limit and providing for the operation of such mill, smelter or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter or other works for the reduction of ores.

History: L. 1951, ch. 58, § 1; C. 1943, ch. 193, § 1; 1969, ch. 258, § 1; 1973, ch. Supp., 104-34-1; L. 1957, ch. 174, § 1; 1963, 206, § 1.

...ed not, when the application was made in ...69 to the surveyor general of California, ...question the right to a survey. It did not ...pear that there had been no final order ... confirmation, nor has it at any time ...d any question of the right to that sur... and the Land Department ordered the ..., and only upon a doubt of the accuracy of ... It does not lie within the mouth ... third party to say that the government ... a right to appeal, could have insisted ... that right, and could have objected ... the first survey on the ground of a fail... to obtain a final order of confirmation. It is enough that the government recog... that it had abandoned its appeal, and ...willing that proceedings should be tak... to a survey and patent. Nor ... the proceedings so absolutely void that ... be said that no claim was pending. ... surveyor general was the official of the ..., placed in charge of surveys, ... was to determine whether ... not a nullity. Even between in... if one brings a suit in a Federal ... to quiet his title to a tract of land, ... obtains a decree in accordance with his ..., and on appeal this court sets aside ... decree and orders the suit to be dis... for lack of proper allegations in re... to diverse citizenship,—while it may ... that the proceedings are ineffectual to ...termine the title, yet, can it be said that ... suit was pending, no claim was made? ... the question in another aspect: Sup... no challenge of the first survey had ... made, and the Land Department, act... on that survey, had caused a patent ... issued,—could the government obtain ... decree setting it aside upon that showing ..., and without a disclosure of equities? ... *Williams* v. *United States*, 138 U. S. 514, ... L. ed. 1026, 11 Sup. Ct. Rep. 457, and ... *Iron Co.* v. *United States*, 165 ... 279, 41 L. ed. 754, 17 Sup. Ct. Rep. ..., something more than premature action ... certificate and patent was shown,—some... which presented an equity entitling ... United States to maintain its suit for ... tion.

... matter; at the time the map of ... location was filed and approved, ... first survey had been made and ap... by the surveyor general of Califor... and by that survey the lands in dis... were included within the Mexican ... The railroad company, therefore, ... title to its land grant with this fact ... on the records of the Land Depart... In an early case in this court (*Ken... P. R. Co.* v. *Dunmeyer*, 113 U. S. 629, 28 L. ed. 1122, 5 Sup. Ct. Rep. 566) in which the question of the relative rights of railroads to granted lands and individuals claiming rights to separate tracts within the place limits was presented, we said (p. 641, L. ed. p. 1126, Sup. Ct. Rep. p. 571):

"It is not conceivable that Congress intended to place these parties as contestants for the land, with the right in each to require proof from the other of complete performance of its obligation. Least of all is to be supposed that it was intended to raise up, in antagonism to all the actual settlers on the soil whom it had invited to its occupation, this great corporation, with an interest to defeat their claims, and to come between them and the government as to the performance of their obligations.

"The reasonable purpose of the government undoubtedly is that which is expressed; namely, while we are giving liberally to the railroad company, we do not give any lands we have already sold, or to which, according to our laws, we have permitted a pre... right to attach. No ..."

And this proposition has been repeatedly reaffirmed in later cases. *Hastings & D. R. Co.* v. *Whitney*, 132 U. S. 357, 33 L. ed. 363, 10 Sup. Ct. Rep. 112; *Sioux City & I. F. Town Lot & Land Co.* v. *Griffey*, 143 U. S. 32, 36 L. ed. 64, 12 Sup. Ct. Rep. 362; *Whitney* v. *Taylor*, 158 U. S. 85, 39 L. ed. 906, 15 Sup. Ct. Rep. 796.

One thing more; it appears from a stipulation of counsel that within the indemnity limits of the grant to the Southern Pacific Railroad there remain more than 50,000 acres of surveyed public lands for which there has been no selection or application to select by the company. So that there is no such equity in favor of the company as was suggested in the case of *United States* v. *Winona & St. P. R. Co.* 165 U. S. 463, 482, 41 L. ed. 789, 797, 17 Sup. Ct. Rep. 365.

*The decree of the Court of Appeals is affirmed.*

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JOHN STRICKLEY and Ellen Strickley, *Plffs. in Err.*,
v.
HIGHLAND BOY GOLD MINING COMPANY.

Eminent domain—public use.—The condemnation of a right of way across a placer mining claim for the aerial tramway line of a mining corporation cannot be said to be a taking of private property for private use, in defiance of U. S. Const., 14th Amend., if authorized by the construction given by the state courts to the provisions of state legislation for the exercise of the right of

eminent domain in behalf of certain uses declared to be public.*

[No. 172.]

*Argued and submitted January 25, 1906. Decided February 19, 1906.*

IN ERROR to the Supreme Court of the State of Utah to review a judgment which affirmed a judgment of the District Court of Salt Lake County, in that state, condemning a right of way across a placer mining claim for the aërial bucket line of a mining corporation. *Affirmed.*

See same case below, 28 Utah, 215, 78 Pac. 296.

The facts are stated in the opinion.

*Messrs.* Arthur Brown and *Frank Hoffman* for plaintiffs in error.

*Messrs.* George Sutherland, *Waldemar Van Cott*, and *E. M. Allison, Jr.*, for defendant in error.

Mr. Justice Holmes delivered the opinion of the court:

This is a proceeding begun by the defendant in error, a mining corporation, to condemn a right of way for [illegible] plaintiffs in error. [illegible] runs a line high up in Bingham canyon, in West mountain mining district, Salt Lake county, Utah, and is using the line or way to carry ores, etc., for itself and others from the mines, in suspended buckets, down to the railway station, 2 miles distant, and 1,200 feet below. Before building the way it made diligent inquiry, but could not discover the owner of the placer claim in question, Strickley standing by without objecting or making known his rights while the company put up its structure. The trial court found the facts and made an order of condemnation. This order recites that the mining company has paid into court the value of the right of way, as found, and costs, describes the right of way by metes and bounds, and specifies that the same is to be used for the erection of certain towers to support the cables of the line, with a right to drive along the way when necessary for repairs, the mining company to move the towers as often as reasonably required by the owners of the claim for using and working the said claim. The foregoing final order was affirmed by the supreme court of the state. 28 Utah, 215, 78 Pac. 296. The case then was brought here.

The plaintiffs in error set up in their answer to the condemnation proceedings that the right of way demanded is solely for private use, and that the taking of their land for that purpose is contrary to the 14th Amendment of the Constitution of the United States. The mining company, on the other hand, relies upon the statutes of Utah, which provide that "the right of eminent domain may be exercised in behalf of the following public uses: . . . (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to facilitate the milling, smelting, or other reduction of ores, or the working of mines." [Utah, Rev. Stat. 1898, § 3588.] In view of the decision of the state court we assume that the condemnation was authorized by the state laws, subject only to the question whether those laws, as construed, are inconsistent with the 14th Amendment. Some objections to this view were mentioned, but they are not open. If the statutes are constitutional as construed, we follow the construction of the state court. On the other hand, there is no ground for the suggestion that the claim by the plaintiffs in error of their rights under the 14th Amendment does not appear sufficiently on the record. The suggestion was not pressed.

The single question, then, is the constitutionality of the Utah statute, and the [illegible] with regard to them. [illegible] that the taking of the strip across the claim is necessary for the aërial line and is consistent with the use of all of the claim by the plaintiffs in error for mining, except to the extent of the temporary interference over a limited space by four towers, each about 7½ feet square and removable, as stated above.

The question, thus narrowed, is pretty nearly answered by the recent decision in *Clark* v. *Nash*, 198 U. S. 361, 49 L. ed. [illegible], 25 Sup. Ct. Rep. 676. That case established the constitutionality of the Utah statute, so far as it permitted the condemnation of land for the irrigation of other land belonging to a private person, in pursuance of the declared policy of the state. In discussing what constitutes a public use it recognized the inadequacy of use by the general public as a universal test. While emphasizing the great caution necessary to be shown, it proved that there might be exceptional times and places in which the very foundations of public welfare could be laid without requiring concessions from individuals to each other upon due compensation, which, under other circumstances, would be left wholly to voluntary action. In such unusual cases there is nothing in the 14th Amendment which prevents a state from requiring such concessions. If a state Constitution restricts the legislature within narrower bounds, that is a local affair, and must be left where the state court leaves it in a case like the one at bar.

*U. S. Note.—For cases in point, see vol. 35, Cent. Dig. Eminent Domain, §§ 12, 79.

In the opinion of the legislature and the supreme court of Utah the public welfare of that state demands that aërial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The Constitution of the United States does not require us to say that they are wrong. If, as seems to be assumed in the brief for the defendant in error, the finding that the plaintiff is a carrier for itself and others means that the line is dedicated to carrying for whatever portion of the public may desire to use it, the foundation of the argument on the other side disappears.

*Judgment affirmed.*

---

MARIAN J. LOONEY, Administratrix of the Estate of James F. Looney, Deceased, Plff. in Err.,

v.

[illegible] Railway & Electric Company.

1. **Street railways—negligence towards employee—contributory negligence.**—A street railway pitman, by unnecessarily touching the uninsulated parts in adjusting the leads connecting the motive power of a street car with the overhead current, relieves the company from liability for his death from the resulting shock, although the conductor of the car may have been negligent in permitting the trolley pole to come in contact with the trolley wire.

2. **Street railways—negligence towards employee—inference from lack of contributory negligence.**—The existence of defects in the insulation which would render a street railway company liable for the death of an employee occasioned by a shock received in adjusting the leads connecting the motive power of a car with the overhead current cannot be inferred from the presumption of the exercise of due care on the part of the person killed, although, in the absence of a leak in the insulation, no shock could have been received unless he had unnecessarily touched the uninsulated ends of the leads.

[No. 173.]

Argued December 14, 15, 1905. Decided February 19, 1906.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District, entered on a directed verdict in favor of the defendants in an action to recover damages for the alleged negligent killing of the plaintiff's intestate. *Affirmed.*

See same case below, 24 App. D. C. 510.

The facts are stated in the opinion.

[illegible] Note.—For cases in point, see vol. 21, [illegible] Digest, and Servant, §§ 745-747.

*Messrs.* **Maurice D. Rosenberg,** *Alexander Wolf,* and *Simon Lyon,* for plaintiff in error.

*Mr.* **J. J. Darlington** for defendants in error.

Mr. Justice McKenna delivered the opinion of the court:

Action brought by plaintiff as administratrix of the estate of James F. Looney, deceased against the defendants, for damages for the death of her intestate, alleged to have been caused by defendants. Judgment went against plaintiff in the supreme court of the District of Columbia, which was affirmed by the court of appeals.

After the plaintiff had rested her case the court directed the jury to return a verdict for the defendants. The correctness of this ruling is the question in the case.

The declaration consists of four counts. The first three allege the employment of the deceased by each of defendant companies respectively. In the fourth the allegation is [illegible]

Looney was employed as a "pitman" by the Washington & Great Falls Railroad Company (now the Washington Railway & Electric Company), and was, on the day of his death—July 28, 1901—in one of the "plow pits" located on the lines of the company, near its terminus at Thirty-sixth street and Prospect avenue northwest.

The Metropolitan Company's line connects at this point with that of the Great Falls line. The latter company uses the overhead system. By this system the power is conveyed to the car by means of a "trolley pole" attached to the top of the car and made to touch the trolley wire when used to propel the car. The Metropolitan Company uses the underground system by means of a "plow," so called, projecting through a slot in the tracks to an underground current. The two companies have a trackage arrangement, whereby the cars of the Metropolitan Company run over the line of the other company. The cars of the Metropolitan Company, therefore, are equipped not only with a "plow" and mechanism for the underground system, but with a trolley pole and mechanism for an overhead system. To attach these mechanisms to their respective systems it is necessary to make a car run over an excavation on the line of the Great Falls Company known as the "pit." The "pitman" is thus enabled to remove the "plow" from a car to be used on or from the Metropolitan line to the Great Falls line, and adjust or attach the wires or "leads" necessary for the operation of the car over the Great Falls line. While doing this Looney was killed, the plaintiff contends, through

EXHIBIT K

CONTAINS ALL EXHIBITS EXCEPT HEARING TRANSCRIPT

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

FRED and DOROTHY IMMOOR,
husband and wife,

Petitioners,

vs.

No. 12309

Filed 12-7-79

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF STOREY,

Respondent.

PETITION FOR WRIT OF CERTIORARI
OR, IN THE ALTERNATIVE,
FOR AN ALTERNATIVE OR PEREMPTORY WRIT OF PROHIBITION,
OR, IN THE ALTERNATIVE,
FOR AN ALTERNATIVE OR PEREMPTORY WRIT OF MANDATE

TO THE HONORABLE SUPREME COURT OF THE STATE OF NEVADA:

COME NOW, Petitioners, Fred and Dorothy Immoor, first being duly sworn, who depose and say:

(1) That they are the defendants in the case captioned: Houston Oil & Minerals Corp., Plaintiff v. Fred Immoor and Dorothy Immoor, husband and wife, Defendants, Action No. C-18205, In the First Judicial District Court of the State of Nevada, In and For the County of Storey, Michael R. Griffin, District Judge;

(2) That the plaintiff in the above action is a corporation engaged in mining activities involving the extraction of gold and silver ore in Storey County, Nevada;

(3) That the defendants in the above action, Fred and Dorothy Immoor, are the owners of certain real property in Storey County, Nevada, which is located near the site of Houston Oil's open pit mining operation;

(4) That on or about September 21, 1979 Houston Oil & Minerals Corporation filed an action against

Fred and Dorothy Immoor, a copy of the said Complaint attached hereto and marked Exhibit A, in which Houston alleged that it was engaged in certain mining activities which necessitated the taking of the Immoor's property through the exercise of the power of eminent domain, pursuant to N.R.S. 37.010, which declares mining to be a public use and the paramount interest of this state;

(5) That on or about September 21, 1979 Houston Oil & Minerals Corporation also filed a Motion for Order Permitting Immediate Occupancy Pending Entry of Judgment, pursuant to N.R.S. 37.100, a copy of which is marked Exhibit B and attached hereto, in which Houston sought to take immediate occupancy of the above-mentioned property owned by Fred and Dorothy Immoor;

(6) That on October 22, 1979 a hearing on Houston's Motion for Order Permitting Immediate Occupancy Pending Entry of Judgment was held in the First Judicial District Court of the State of Nevada, In and For the County of Storey, before the Honorable Michael R. Griffin;

(7) That on October 30, 1979 the petitioners were served with the Court's Order granting Houston immediate occupancy of the petitioners' property, (a copy of which is attached hereto and marked Exhibit C), pending a jury trial and final judgment on the issue of valuation, as well as various counterclaims seeking compensatory and punitive damages;

(8) That Houston Oil & Minerals Corporation is in the process of filling the Crown Point Ravine, where the petitioners' property is located, with approximately six million tons of waste material

from its open pit mining operation, and that therefore, petitioners have and are suffering irreparable harm;

(9) That the petitioners have no plain, speedy or adequate remedy in the ordinary course of law; that the remedy by appeal is neither speedy nor adequate in that an appeal does not lie from the order of Respondent granting Houston Oil & Minerals Corporation the right of immediate occupancy; and, that if the petitioners were required to wait until such time as they could appeal from the final judgment in action in the District Court, their land would be totally and completely covered by six million tons of earth and completely destroyed;

(10) That N.R.S. 37.010 and N.R.S. 37.100, insofar as they declare mining to be a public use and the paramount interest of the state, and permit mining interests to take private property through condemnation, and provide for immediate occupancy of said property, are unconstitutional in that they permit the taking of private property for a private use;

(11) That the legislative declaration that mining is a public use and the paramount interest of the state is contrary to presently existing facts and is not based upon any rational grounds and permits the taking of private property for private use.

WHEREFORE, the petitioners pray that they be granted relief as follows:

(1) That a Writ of Certiorari be issued out of this

Court to the Respondent Court commanding it to certify and return to this Court certain proceedings had before the Respondent as follows: All proceedings related to or connected with the Order of Respondent granting Houston Oil & Minerals Corporation an Order Permitting Immediate Occupancy Pending the Entry of Judgment and that, after hearing the said Order of the Respondent Court dated October 22, 1979 be declared null and void and set aside based upon the unconstitutionality of the statutes pursuant to which the Order was made; and that this Court enter its Order returning possession of the petitioners' property to the petitioners; or, in the alternative,

(2) That this Court issue a Writ of Prohibition commanding the Respondent to desist from entering any judgment in action No. C-18205, and that the Respondent be commanded to enter an Order vacating the previous Order granting immediate occupancy, and that the Respondent be required to show cause before this Court, at a time and place to be designated by the Court, why Respondent should not be permanently restrained from entering any judgment or decree permitting Houston Oil & Minerals Corporation from taking occupancy, possession or title to the petitionrs' property; or, in the alternative

(3) That this Court issue a Writ of Mandate directed to the Respondent, commanding him to vacate his Order permitting Houston Oil & Minerals Corporation to have immediate possession of the petitioners' property, and commanding him to enter an Order

returning the possession to the petitioners or, to show cause before this Court, at a specified time and place, why the Respondent has not done so; and

(4) For such further relief as the Court deems just and proper.

DATED this 5th day of December, 1979.

FRED IMMOOR, Petitioner

DOROTHY IMMOOR, Petitioner

ROBERT H. PERRY, ESQ.
412 North Division Street
Post Office Box 2410
Carson City, Nevada 89701

Attorney for Petitioners

NO. C-18205

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF STOREY.

-oOo-

HOUSTON OIL AND MINERALS CORP.,

Plaintiff,

vs.

FRED IMMOOR and DOROTHY IMMOOR, husband and wife,

Defendants.

FILED

SEP 21 1979

Marlene Anderson
STOREY COUNTY CLERK

BY _____ DEPUTY

# COMPLAINT

Plaintiff complains of Defendants and alleges:

I.

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Nevada, qualified to do business. and doing business in the State of Nevada. Plaintiff is engaged in the business of mining, milling and related activities in the State of Nevada.

II.

Plaintiff owns and/or controls mining properties situated in the following legal subdivisions, Storey County, Nevada, within the E1/2 Sec. 31, the W1/2 Sec. 32, T. 17 N., R.21 E., M.D.B.& M. and within the S1/2 Sec.6, T. 16N., R. 21 E., M.D.B.&M.

Plaintiff owns and/or controls the properties and facilities commonly known as the Houston Oil and Minerals Corp. mill, situated within the above described land, and is in the process of developing said mine and beneficiation facilities, for the purpose of placing them in full operation for the production of valuable minerals.

III.

This action is brought by Plaintiff, pursuant to the

HILL CASSAS deLIPKAU AND ERWIN
LAWYERS
POST OFFICE BOX 2790
RENO, NEVADA 89505

Exhibit "A"

authority granted it by paragraphs (a) (b) of subsection 6 of N.R.S. 37.010 to acquire a fee simple title to Lots 2 and 3 in Block 1, Range I, Gold Hill, Storey County, Nevada, upon which to dispose of and store its overburden or mine waste. Such activity is necessary for the mining purposes, milling facilities and all related mining activities, a vital public purpose. The public use to which Plaintiff intends to place the desired two lots is a higher and better use than that for which it is presently used.

IV.

Defendants are the record owners of all property sought to be acquired by this condemnation action.

V.

Annexed hereto as Exhibit "A" and hereby by reference incorporated is a map or plat, prepared by the drafting or engineering staff of Plaintiff corporation, which map delineates the two lots sought to be acquired herein. Said lots are officially described as follows:

Lots 2 and 3, Block 1, Range I. Gold Hill,
Storey County, Nevada.

VI.

Plaintiff, for the public use aforesaid, urgently requires the subject real property as an integral part of its successful operation of the mine, and therefore immediate possession is required. The value of the property to be taken by such acquisition, plus damages, as appraised by Plaintiff's appraiser, M. E. (EDDIE) STAFFORD, M.A.I. is $ 3,515.55 . A copy of the preliminary appraisal report entitled "Affidavit of M.E. (EDDIE) STAFFORD" is attached hereto as Exhibit "B". Pursuant to subsection 4 of N.R.S. 37.100, Plaintiff herewith deposits the sum of $ 3700.00 with the Clerk of the above-entitled Court.

VII.

Plaintiff is informed and believes that Defendants claim ownership to Lots 1 and 4, Block 1, Range I, Gold Hill, Storey County, Nevada. However Lots 1 and 4 are open public domain being owned by the United States. Said Lots 1 and 4 are therefore not a part of this action.

WHEREFORE, Plaintiff prays:

1. An order permitting immediate occupancy of the subject two lots, pending entry of judgment.

2. Judgment condemning the above-referenced two lots, as set forth in Exhibit "A".

3. Judgment assessing just compensation to be paid by Plaintiff by reason of the condemnation of said two parcels of real property.

4. Judgment directing, upon payment of said compensation as so fixed by the Court, entry of a final order of condemnation vesting fee simple ownership in Plaintiff to the subject real property in accordance with Exhibit "A".

5. Such other and further relief as the Court may deem just and proper in the premises.

HILL CASSAS de LIPKAU AND ERWIN
Suite 504, One East Liberty Street
P. O. Box 2790
Reno, Nevada 89505

By _____
Ross E. de Lipkau
Attorneys for Plaintiff

STATE OF NEVADA )
) SS.
COUNTY OF STOREY )

DONALD HOPKINS, being first duly sworn, deposes and says: That he is the General Manager or Plant Superintendent of the Comstock operation of HOUSTON OIL AND MINERALS CORP.; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as

to those matters he believes them to be true.

DONALD HOPKINS

SUBSCRIBED AND SWORN TO BEFORE ME

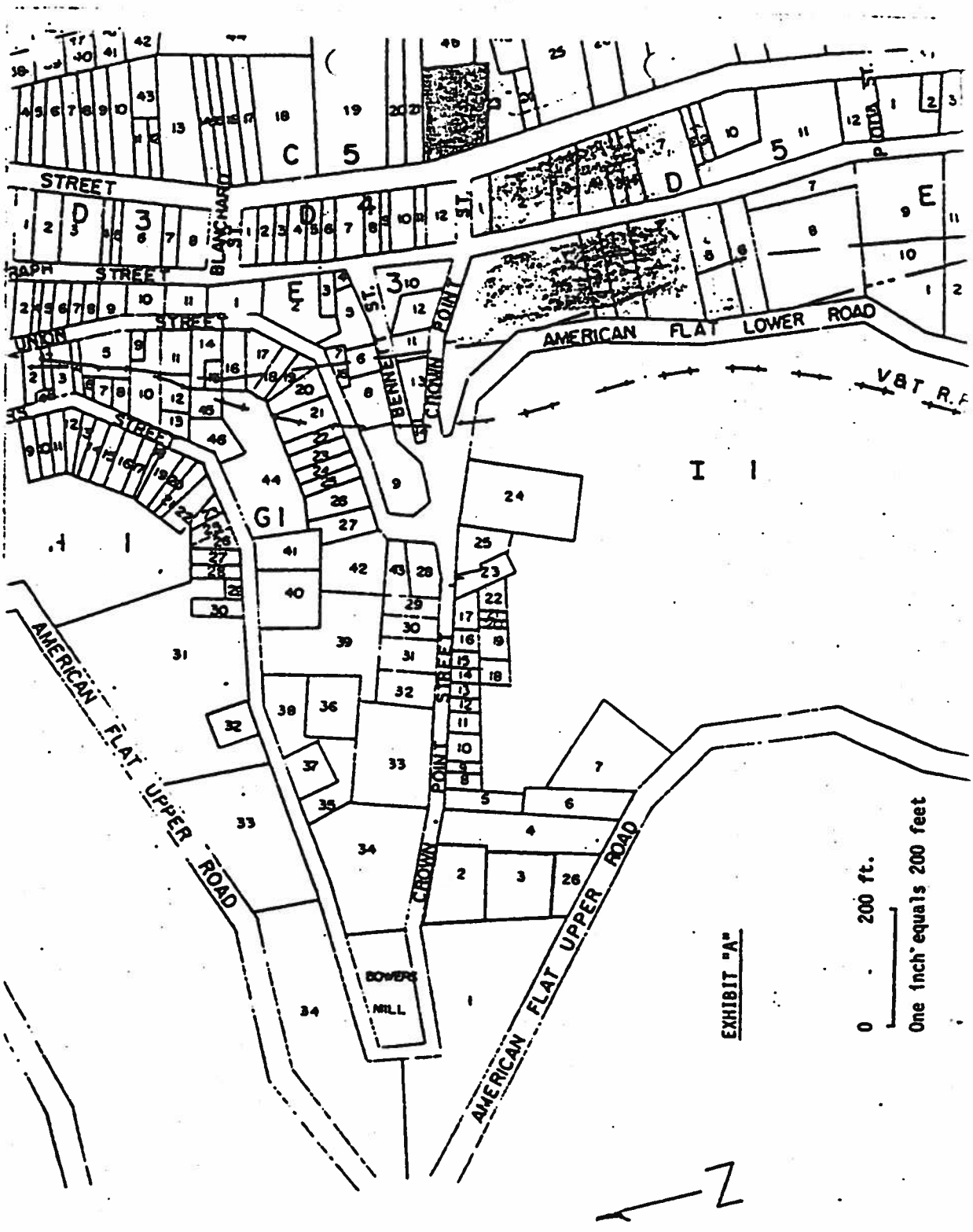
THIS 21st day of September, 1979.

NOTARY PUBLIC

ROSS E. de LIPKAU
Notary Public — State of Nevada
Washoe County
My Commission expires Sept. 15, 1982



HILL CASSAS de LIPKAU AND ERWIN
LAWYERS
POST OFFICE BOX 2790
RENO, NEVADA 89505


STREET
RAPH STREET
UNION STREET
BLANCHARD ST.
BENNE ST.
CROWN POINT ST.
AMERICAN FLAT LOWER ROAD
AMERICAN FLAT UPPER ROAD
CROWN POINT STREET
AMERICAN FLAT UPPER ROAD
BOWERS MILL
EXHIBIT "A"
0 200 ft.
One inch equals 200 feet
N

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF STOREY.

-oOo-

HOUSTON OIL AND MINERALS CORP.,

Plaintiff,

vs.

FRED IMMOOR and DOROTHY IMMOOR, husband and wife,

Defendants.

No. C-18205

FILED

SEP 21 1979

Miller Anderson
STOREY COUNTY CLERK
BY _____ DEPUTY

AFFIDAVIT OF M. E. (EDDIE) STAFFORD

STATE OF NEVADA )
: SS.
COUNTY OF WASHOE )

M. E. STAFFORD, being first duly sworn and upon oath, deposes and says:

1. That he has been a real estate appraiser in the State of Nevada from the spring of 1963 to present. Affiant is a member of the American Institute of Real Estate Appraisers (M.A.I.), and the Society of Senior Real Estate Appraisers (S.R.P.A.), as well as other appraisal societies. That the matters herein stated are based upon his personal knowledge and his professional opinions.

2. That affiant has been retained by Plaintiff in this action for the purpose of rendering an opinion of the value of the premises sought to be condemned. He personally made an on-site inspection of Lots 1, 2, 3 and 4 in Block 1, Range I, Gold Hill, Storey County, Nevada for the specific purpose of making this appraisal; but is now informed that Defendants own only Lots 2 and 3, in Block 1, Range I.

3. That affiant believes that the value of the real property sought to be acquired is $.15 per square foot. Since 23,437 square feet are sought to be condemned, the

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LAWYERS
POST OFFICE BOX 3790
RENO, NEVADA 89505

EXHIBIT "B"

total value is therefore $ 3,515.55.

4. Affiant is prepared to offer further documentation and testimony, if necessary, to support the statements herein.

FURTHER AFFIANT SAYETH NAUGHT.

M. E. Stafford

M. E. (EDDIE) STAFFORD

SUBSCRIBED and SWORN TO before me this 20th day of Sept, 1979.

Ross E. de Lipkau

NOTARY PUBLIC

ROSS E. de LIPKAU
Notary Public — State of Nevada
Washoe County
My Commission expires Sept. 15, 1982

NO. C-6705

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF STOREY.

-oOo-

HOUSTON OIL AND MINERALS CORP.,

Plaintiff,

vs.

FRED IMMOOR and DOROTHY IMMOOR, husband and wife,

Defendants.

FILED

SEP 21 1979

STOREY COUNTY CLERK

BY _____ DEPUTY

MOTION FOR ORDER PERMITTING

IMMEDIATE OCCUPANCY PENDING ENTRY OF JUDGMENT

COMES NOW Plaintiff, and, pursuant to N.R.S. 37.100, moves the Court for an Order Permitting Immediate Occupancy by Plaintiff of the premises to be condemned in the above-entitled action. For cause, Plaintiff alleges the same matters set forth in its verified Complaint filed in the above captioned action.

WHEREFORE, Plaintiff prays:

1. An Order for Immediate Occupancy of the premises described in Exhibit "A", hereto annexed and hereby by reference incorporated herein;

2. An Order setting hearing of this Motion for a day and time certain;

3. An Order directing service of notice of this Motion upon Defendants, pursuant to Subsection 1 of N.R.S. 37.100; and

4. Such other and further relief as the Court shall deem meet and just in the premises.

Dated: September 20, 1979.

HILL CASSAS de LIPKAU and ERWIN

By Ross E. de Lipkau
ROSS E. de LIPKAU, ESQ.

HILL CASSAS de LIPKAU AND ERWIN
LAWYERS
POST OFFICE BOX 3790
RENO, NEVADA 89505

Exhibit "B"

481

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF STOREY

* * *

HOUSTON OIL AND MINERALS CORP.,

Plaintiff, No. C-18205

v.

FRED IMMOOR and DOROTHY IMMOOR, husband and wife,

Defendants.

ORDER GRANTING IMMEDIATE ENTRY

Plaintiff, having filed herein on September 21, 1979, a Motion, pursuant to NRS 37.100, seeking an Order permitting it to occupy the premises sought to be condemned; and that said Motion having come on regularly for hearing this day, and evidence having been adduced; this Court, upon said evidence, and upon all pleadings, papers and proceedings heretofore had herein, makes the following:

FINDINGS OF FACT

1. Notice of said Motion was given according to law.

2. Plaintiff seeks to condemn the subject property for mining and related activities, within the meaning of NRS 37.010(6).

3. Plaintiff's appraisal of the subject property, submitted pursuant to NRS 37.100(4) is $3,515.55. That appraisal is disputed by Defendants.

4. Plaintiff has, on September 21, 1979, deposited with this Court the sum of $3700, as previously ordered by this Court.

Exhibit "C"

5. Plaintiff has a need and necessity to occupy the subject property for the purposes stated in Finding 2; and any damages inflicted upon Defendants by immediate entry and occupancy will be minimal.

If any of the foregoing findings is deemed to be Conclusions of Law, then this Court so concludes.

WHEREUPON, being fully informed in the law and the premises, the Court draws the following:

## CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter of this action and of the parties.

2. The use for which Plaintiff seeks to condemn the subject property is a public use.

3. Plaintiff has complied with the applicable law and is entitled to the relief hereinafter granted.

4. If any of the foregoing Conclusions of Law are deemed to be Findings of Fact, then this Court so finds.

NOW, THEREFORE, after due deliberation, and for good cause appearing,

IT IS ORDERED:

1. Plaintiff shall have immediate right of possession of the subject property, effective at 5:15 p.m., October 22, 1979. Plaintiff shall deposit with this Court the additional sum of $11,300, for a total sum of $15,000.

2. That said deposit shall be applied, so far as may be necessary, to any condemnation award that may be made herein and to the expenses of this proceeding, and the residue, if any, be paid to Plaintiff pursuant to NRS 37.100(4).

3. That Defendants be, and they hereby are, enjoined and restrained from hindering or interfering with the occupancy

of the subject property by Plaintiff and the doing of the work thereon required by said public use.

4. That Defendants, in their discretion, may apply to the Court for withdrawal of part or all of said deposit.

DONE IN OPEN COURT this 22 day of October, 1979.

Michael R. Griffin
DISTRICT JUDGE

Pursuant to NRCP 5(b), I certify that I am an employee of WELL CASSAS de LIPKAU and ERWIN, and that on this date I deposited for mailing at Reno, Nevada, a true copy of the attached document addressed to:

Robert Perry, Esq.
457 Court Street
Reno, Nevada 89501

DATED 10/30/79 Kathy Morris
SIGNED

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

FRED and DOROTHY IMMOOR,
husband and wife,

Petitioners,

vs.

No. _____

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF STOREY,

Respondent.

_____/

POINTS AND AUTHORITIES
IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI,
MANDAMUS AND/OR PROHIBITION

Petitioners, Fred and Dorothy Immoor, contend that Certiorari is appropriate since the District Court exceeded its jurisdiction by basing its Order on an unconstitutional statute. N.R.S. 34.020(2); that Mandamus should issue to compel the District Court to vacate its Order granting immediate possession of the petitioners' property to Houston Oil & Minerals Corporation, and to compel the Court to enter an Order returning the possession to the petitioners; that the District Court should be prohibited from entering any further Order or Judgment giving possession or title of the petitioners' property to Houston Oil & Minerals on the basis that any such Order is based on an unconstitutional statute and is therefore void; and because petitioners have no adequate remedy at law. N.R.S. 34.320. See, Milchem, Inc. v. Dist.Ct., 84 Nev. 541, 445 P.2d 148 (1968); State ex rel Sweikert v. Briare, 94 Nev. Adv. Op. 221 (1978).

## I. FACTS

The basic facts upon which the instant petition is based are generally recited in the Immoor's petition, which is incorporated herein by reference. A copy of the transcript of the hearing on the Motion for Immediate Occupancy is attached

hereto and incorporated by reference. All citations to the transcript will be in the form of page and line, e.g., (Tr., p. 1, l. 1-4).

The property which this oil company seeks to condemn is located in an area of tremendous significance to the cultural and historic heritage of the State of Nevada. The petitioners' property is situated immediately behind the old Gold Hill Hotel in historic Gold Canyon, near the center of the area known as the Crown Point Ravine, and very close to the site of the old Virginia & Truckee Railroad tressel. It is within the area designated by the Nevada Legislature as the Comstock Historic District. (Tr., p. 47, l. 15-26 and Chapter 384, N.R.S.). Defendants' Exhibit 2 in evidence is a photograph of the Crown Point Ravine taken in the late 1860's. Even a cursory glance at that photograph demonstrates the historical and cultural significance of the area which is now being destroyed by this oil company.

According to the testimony of the oil company's Comstock Manager, Don Hopkins, the oil company first deposited their waste material on the petitioners' land in the mid-summer of 1979. (Tr., p. 30, l. 8-16). At that time they did not own the petitioners' property and did not own it even at the time of the hearing on October 22, 1979. (Tr., p. 31, l. 15-24). Indeed, at the time that the oil company first went upon the petitioners' property, there was a small house located thereon and was clearly marked with no trespassing signs. (Tr., p. 30, l. 25-30, p. 31, l. 10-14). Mr. Hopkins further testified that as of the time of the hearing, there was some three and a half million tons of waste material in the Crown Point Ravine, a large part of which covered the petitioners' property. It was further his testimony that the oil company ultimately plans to put between five and a half and six million tons in the Crown Point Ravine. (Tr., p. 21, l. 19-30, p. 22, l. 1-10). The extent of the destruction is

illustrated by the following remark made by the Court at the October 22nd hearing:

> . . . If you can figure out a way that the property is going to be destroyed any more than by covering it with a million tons of dirt, I think I'd like to know it. I think the damage is going to be total. (Tr., p. 109, l. 22-25).

Thus, prior to bothering to file an action in condemnation, and prior to having any Order granting it possession of the petitioners' property, and without their permission, the oil company entered upon the petitioners' property and virtually destroyed it. Now, it is asking our Courts to put their seal of approval on their conduct.

## II. N.R.S. 37.010(6) PERMITS THE TAKING OF PRIVATE PROPERTY FOR A PRIVATE USE, AND THEREBY VIOLATES THE STATE AND FEDERAL CONSTITUTIONS

N.R.S. 37.010(6) provides in pertinent part:

> Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses; (6) Mining, smelting and related activities as follows:
>
> (a) Mining and related activities, which are recognized as the paramount interests of this state.

It is this declaration by the legislature which the petitioners now strenuously urge must be stricken as being patently contrary to the facts and circumstances as they exist in present day Nevada. Although that statute has been revised as lately as 1977, the law which gave mining the power of eminent domain and declared it to be the "paramount interest" of the state, has its roots in the nineteenth century.

In the case of Goldfield Consolidated v. O.S.A. Co., 38 Nev. 426 (1915), the Court cites §2456 Revised Laws as follows:

> . . . Mining for gold, silver, copper, lead, cinabar, and other valuable minerals, is the paramount interest of the state and is hereby delcared to be a public use. Id. at 436. (Emphasis added).

A statute dealing with mining which was approved March 1, 1875 provided in pertinent part:

> The production and reduction of ores are a vital necessity to the people of this state; are pursuits in which all are interested and from which all derive a benefit; so the mining, milling, smelting or other reduction of ores are hereby declared to be for the public use, and the right of eminent domain may be exercised therefor. (Stat. 1875, 111).

That the Courts have the power and the duty to scrutinize legislative declarations of public use is without question. In the early case of Dayton Mining Co. v. Seawell, 11 Nev. 394 (1876), the Court said:

> As we construe the provision of the constitution, there is a limit upon the exercise of legislative power which prohibits that body from enacting any law which takes the property of one citizen and gives it to another for a private use, and if the legislature has, in the passage of this act, gone beyond this limitation, it is the clear and positive duty of this Court to declare the act unconstitutional and void. Id. at 399.

As was pointed out in the case of Linggi v. Garavotti, 274 P.2d 942:

> Deference will be paid to the legislative judgment as expressed in enactment provisions for an appropriation of property, but it will not be conclusive. (Emphasis in the original). Accord, Dayton Gold and Silver Mining Co. v. Seawell, Supra, State ex rel Torreyson v. Gray, 21 Nev. 378, 32 Pac. 190 (1893); State ex rel Coffin v. Howell, 26 Nev. 93, 64 Pac. 466 (1901); and Urban Renewal Agency v. Iacometti, 79 Nev. 113, 378 P. 2d 456 (1963).

Therefore, the presumption that mining is a public use may be overcome by evidence to the contrary, and if the Court considers that the purpose for which the taking of property has been authorized has no real and substantial relation to the public use and benefit, it is its duty to declare the act authorizing the taking to be unconstitutional. Shoemaker v. U.S., 144 U.S. 282, 37 L.Ed. 170, 13 S.Ct. 361; Hairston v. Danville R.R. Co.,

208 U.S. 598, 52 L.Ed. 637, 28 S.Ct. 331; Dayton Gold and Silver Mining Co., Supra, State ex rel Morrell v. Sup.Ct., 33 Wash. 542, 74 Pac. 686; and Sutter County v. Nicols,152 Cal. 688, 93 Pac. 872 (1908).

In order to determine whether or not mining is now a public use and the "paramount interest of the state", it is appropriate to examine the reasoning of the various Courts which first reached such a conclusion.

An examination of those cases reveals that their reasoning was based solely upon considerations of the economic benefits which the State and its citizens derived from mining. It is clear from these early cases that those Courts felt that the very fabric of society would unravel if mining did not have broad and extraordinary privileges. The leading Nevada case on the issue is the Dayton Mining Co. v. Seawell case, Supra, which was decided in 1876. In upholding the legislature's declaration that mining was a public use, the Court observed:

> That the purposes mentioned in the act 'are of vital necessity to the people of this state' cannot be denied; that mining is the paramount interest of the state is not questioned; that anything which tends directly to encourage mineral developments and increase the mineral resources of the state is for the benefit of the public and calculated to advance the general welfare and prosperity of the people of this state, is a self-evident proposition. Id. at 402.

That Courts, in determining the validity of a legislative declaration of public use, should consider facts and circumstances existing at the time they are asked to review such a law, is demonstrated by the following language from the case of Gold field Consolidated v. O.S.A. Co., Supra, decided in 1915:

> Can there be any doubt as to the policy of the state toward the mining and milling industry of the state? And who can doubt the wisdom of this policy, when we stop to consider the prevailing conditions in the state? Id. at 436. (Emphasis added).

The answers to the Court's questions would be different in 1979 than they were when asked in 1915.

Until relatively recent times, mining was of such relative importance to revenue, employment and income in the State of Nevada as to justify the Courts in upholding such a legislative declaration. In Gallup Amer. Coal Co. v. Gallup Southwest Coal Co., 47 P.2d 414 (New Mexico 1935), the New Mexico Supreme Court was quick to sympathize with the dilemma which faced the young Nevada Supreme Court in ruling on the issue of the validity of the legislative declaration of mining as a public use. In Gallup the New Mexico Court noted:

> We appreciate the difficulty of the problem brought to the Supreme Court of Nevada, in 1876, in Dayton Mining Co. v. Seawell, Supra. Nevada would not have been populated, but for its precious metal resources. Public and private livelihood were almost solely dependent upon mining. The state's growth, its continued existence, depended or seemed to depend upon development of the industry. . .. Id. at 416.

Another early case which articulates the only rationale upon which the Courts may legitimately uphold a legislative declaration that mining is a public use is the case of Strickly v. Hiland Boy Gold Mining Co., 26 S.Ct. 301, 50 L.Ed. 581 (1915). In that case Justice Holmes, writing for the United States Supreme Court, felt that such law could be justified only under certain circumstances:

> In discussing what constitutes a public use, it recognized the inadequacy of use by the general public as a universal test. While emphasizing the great caution necessary to be shown, it proved that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring concessions from individuals to each other upon due compensation, which, under other circumstances, would be left wholly to voluntary consent. 50 L.Ed. at 583.

As pointed out in the Strickly case, Supra, it is only in exceptional times where the very foundations of public welfare are

based upon the mining industry where, as was pointed out in the Dayton Mining Co., case, Supra, that mining interests are of "vital necessity to the people of this state" and where mining is in fact the paramount interest of the state, that a statute which gives to a private party the extraordinary power of eminent domain can be sustained. The Courts must ". . . consider the prevailing conditions in the state." Goldfield Consolidated, Supra, at 436. Thus, the very case authority upon which mining would base its right to take the petitioners' property by eminent domain requires this Court to look at the prevailing conditions and circumstances as they exist now, not as they have existed historically.

The petitioners do not deny that the Nevada Supreme Court has sporadically addressed itself to the issue of the validity of the declaration that mining is a public use and the paramount interest of the state in the one hundred and three years since it decided Dayton Gold & Silver Mining Co., Supra. Those few cases uniformly have upheld such statutes. See, e.g. Schrader v. Dist. Ct., 58 Nev. 188, 73 P.2d 493 (1937); Standard Slag Co. v. Dist. Ct., 62 Nev. 113, 143 P.2d 467 (1943) and most recently, Milchem Inc. v. Dist.Ct., Supra, a 1968 case.

In all of these later cases, the Court goes no further in its analysis of the legislative declaration than to defer to the holdings and rationales of the ancient cases, which require the Court to " . . . consider the prevailing conditions in the State." In none of the later cases did the record contain any evidence similar to the testimony of Professor Cargill, which demonstrates the relatively insignificant contribution of mining in Nevada today. It is respectfully submitted that in the earlier cases, the mining industry received the benefit of some erroneous assumptions by the legislature which were adopted by the Court in the absence of any evidence to the contrary. Having the benefit

of Professor Cargill's expertise, the Court is now free to adopt a contrary view.

Just as the Court should not consider the former importance of mining in determining whether it is the paramount industry of the state, it should not speculate as to what role mining will or might play in the future. The test of the validity of the declaration is its validity at the time of its use in the instant case--October, 1979.

In order to aid the Court in determining the relative present day importance of mining in the State of Nevada, the petitioners presented testimony from Professor Thomas Cargill at the hearing on the Motion for Immediate Occupancy. His testimony, which is uncontradicted, is contained in the transcript at pages 56 through 74, and the Court is respectfully urged to read it in its entirety. Professor Cargill testified that he is a Professor of Economics at the University of Nevada, Reno. (Tr., p. 56, l. 16-17). He has published approximately thirty five papers in major journals in his profession as well as a textbook by Prentice Hall called Money, The Financial System and Monetary Policy. He has presented seminars to local and federal government agencies and has prepared an interim study for Don Mello of the Nevada State Legislature dealing with local government finance in the State of Nevada, which involved the creation of a forecasting model for gaming revenues. (Tr., p. 59, l. 30, p. 60 l. 1-30, p. 61 l. 1-4). In preparation for his testimony, he was:

> Asked to take a look at the statistical evidence to ascertain the relative role of mining in the Nevada economy. (Tr., p. 61, l. 25-27).

In doing so, he consulted statistical data published by the U.S. Department of Commerce, which is maintained at the Department of Business and Economic Research at the University of Nevada. (Tr., p. 62, l. 1-20).

In aid of his testimony, the petitioners offered, and the Court admitted, Defendants' Exhibits 6, 7 and 8, copies of which are attached hereto and marked Exhibits D, E, and F. These exhibits demonstrate the relative role of mining in Nevada at the present time as well as over the past twenty years. For example, Defendants' Exhibit 6 demonstrates the income generated from mining in the State of Nevada for each individual year from 1958 to 1978 expressed as a percentage of total income from all industry. The statistics show that total income from mining in 1958 represented only 3.29% of total income from other industry in the State of Nevada. Significantly, by 1978, that percentage had declined to 1.46%, or less than half the figure in 1958. (Tr., p. 66, l. 21-28). Defendants' Exhibit 7 showed the numbers of people employed in mining as a percentage of total employment in industry. In 1968 mining employed only 3.38% of the total work force in the State of Nevada, and in 1978, it had declined to 1.1%. (Tr., p. 67, l. 3-8).

Defendants' Exhibit 8 was based on data published by the Nevada Statistical Abstract and the Nevada Employment Security Department, and projected the numbers of jobs in certain industries in Nevada up to 1985. The figures forecasted that mining would employ about 1.3% in 1980 and it would decline to about 1% in 1985. (Tr., p. 67, l. 19-28). After reviewing these statistics, the Professor was asked the following question and gave the following answer:

> Q.: Now, based upon your research and the statistics that you have developed about which you have just testified, do you have an opinion as to whether or not the economic role of Nevada in mining has declined or increased in the last ten years?
>
> A.: Well, I think I could phrase that in the following One, the economic role of mining in Nevada is small on an absolute or relative basis. It represents a very, very small part of total economic activity.

> The statistics in these three tables indicate that mining is decreasing as a proportionate activity in the State. That is not so much because there is an absolute decrease in mining, it's just because other sectors are growing more rapidly. (Tr., p. 68, l. 5-17).

He was questioned further and responded as follows:

> Q.: Professor Cargill, do you have an opinion as to whether or not the relative economic role of mining will increase or decrease in the future in the State of Nevada?
>
> A.: In the State of Nevada, if it increases, it would be very small in relative terms.
>
> My own opinion is that it would probably decrease as a percent of total economic activity. . .. (Tr., p. 70, l. 1-7).

The witness went on to indiate, under questioning from the Court, that mining's contribution to the tax revenue of Storey County for fiscal 1977 and 1978 was less than 1%. (Tr., p. 73, l. 19-28).

The earlier cases upholding mining's right to take property by eminent domain clearly based their rationale upon the contribution of mining to individual income, employment, and revenue to the state. While mining's contribution to those areas was undoubtedly predominant at one point in time, historically, the testimony of Professor Cargill dramatically illustrates the relative insignificance of mining to the state, counties or individual citizens of present day Nevada. As Professor Cargill indicated, gaming represents approximately fifty percent of state revenue. (Tr., p. 61, l. 8-13). He also indicated that in 1976, while mining had 1.3% of total jobs, construction was 5.3%, service, which includes gaming, was 41.5%, and government was 16.7%; manufacturing was 4.6%, and transportation, communications and public utilities was 6.3%. Although the state and its citizens might suffer some minor consequence if mining were to leave Nevada entirely, it is doubtful that the economy of the state would collapse from the loss of a sector which makes less

than a one percent contribution in almost every area. Indeed, it would be absurd to assume that a loss of the power of condemnation would mean mining would leave. Instead, it would have to behave as do most industries in a free society. There is no more reason why mining should have such extraordinary authority over private property than does manufacturing or construction; and, there is a much more persuasive argument that such a large contributor to the economy as gaming, which is confined to "red-line" districts, should have it.

In light of the foregoing evidence, the statute granting mining the extraordinary power of eminent domain cannot stand. A California case dealing with a similar situation was the case of Sutter County v. Nicols, Supra. The applicable provisions of the California Code of Civil Procedure, Title 7, §1238, declare the following to be public uses:

> Roads, tunnels, ditches, flumes, pipes, aerial and surface tramways and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also an occupancy in common law by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

Notwithstanding the California statute, the Sutter Court held that:

> . . . The business of mining for the benefit of the mine owner is as much a private affair as that of the farm or factory, and the right of eminent domain cannot be invoked in aid of it. Id. at 874.

The Court went on to add:

> The production of sufficient gold to maintain the gold standard may be a matter of public importance. . . It cannot be admitted, however, that the mining of gold to be applied wholly to private use of the miner, to whatever extent it may increase the general output, is a public purpose in behalf of which the power of eminent domain may be resorted to, or for which the private property of others may be taken, or its injury lawfully authorized. Id. at 875.

In the case of Gallup Amer. Coal Co., Supra, the New Mexico Supreme Court overturned a statute which permitted the coal mining industry to take property by eminent domain. In doing so, the Court observed:

> Here we are concerned with coal mining. As an essential or paramount industry, in its importance to the existence and functioning of the state and to the livelihood of the people, it does not seem to us to belong in a class with metal mining as appraised in Dayton Mining Co. v. Seawell, Supra. . . We consider (it) coal mining rather in a class with the timber or lumber industry. . ..
>
> It follows that, insofar as the statute impliedly declares a public use in the business or industry of coal mining, it is violative of New Mexico Constitution, Article 2, Section 20. . . Id. at 416.

The reasoning applied by the Courts in the Sutter case, Supra and the Gallup case, Supra, is particularly relevant to the facts of the instant case , as follows: The only people who stand to profit in any way from the operations of this oil company are its non-resident officers, directors and stockholders and the relatively small number of people who may be employed by this particular company. On the other hand, not only the people of the State of Nevada, but also people of the entire country, will suffer from the destruction and desecration of an area of natural beauty and considerable historical and cultural significance. That the threat to the Comstock is real is illustrated by the testimony of Houston's Comstock Manager, Mr. Hopkins. He stated that Houston owns land patents and leases all over that area which they intend to mine. (Tr., p. 22, l. 20-30 and p. 23, l. 1-9). The facts of this case are a classic example of the evil that can occur when a private industry is granted the extraordinary power of eminent domain. The number of historic old homes, structures and other sites of significance, which can be destroyed by this oil company exercising its power of eminent domain, is limited only by the parameter of its own greed. That the state and its individual citizens

should be powerless in the face of such a threat by this oil company is intolerable. The Legislature does not again meet until 1981, and it is only this Court which can and should exercise its power to overturn this archaic, oppressive and unconstitutional law.[1]

In ruling on the oil company's Motion for Immediate Occupancy, the District Judge made the observation that the petitioners' position was appealing "intellectually, and perhaps even morally." (Tr., p. 105, l. 7-8). The petitioners respectfully submit that in these times, when the law and the legal profession are under such severe criticism from the public at large, Courts should carefully scrutinize any law that creates a situation where there is a significant difference between what is moral and what is legal. In addition, the oil company requested the District Judge to make a Finding of Fact that "the public interest will be best served by granting the plaintiff the Order sought." (Tr., p. 109, l. 25-26). In response to that request,

---

[1] This Court has not hesitated in the past to overrule its previous holdings, as well as statutes promulgated by the Legislature, when it became apparent that a change had taken place which undermined the reasoning behind the earlier holdings and statutes. A good recent example is the holding of this Court in the case of Orcutt v. Miller, 95 Nev. Adv. Op. 109 (1979). In that case, the Court overruled its previous holding in the case of Lockart v. McLean, 77 Nev. 210, 361 P.2d 670 (1961), which held that the standard of practice for physicians in Nevada was to be judged only by those practicing in the same locality. The earlier holding was apparently based upon characteristics then existing which were unique to Nevada and other sparsely populated areas. Significantly, N.R.S. 630.013 also provided that physicians were to be judged by the standards of the community in which they practices. Nevertheless, our Court was quick to realize that the basis for the rationale upholding the Locality Rule no longer existed in 1979. In doing so, it observed:

> In this age of ubiquitous national communication networks and increasing standardization of medical training the underpinnings of the Locality Rule are extremely doubtful. Orcutt v. Miller, Supra at p. 5 of the Nev. Adv. Op.

the District Court responded as follows:

> I don't think that I want to find that it is necessarily going to be in the public interest necessarily by Order. I think what I said is that by law, your client is entitled to enter the property.
>
> At this time, my opinion is that under the law they have established the right that they have to enter. I'm not going to say that that is necessarily the best public interest. (Tr., p. 109, l. 25-30, p. 110, l.1-3).

Respectfully submitted this 6th day of December, 1979.

ROBERT H. PERRY
412 North Division Street
Post Office Box 2410
Carson City, Nevada 89701

Robert H. Perry

Attorney for Petitioners

TABLE 1

Total Labor and Proprietors Income
and Labor and Proprietors Income From Mining
1958-1978
(Thousands of Dollars)

| Year | Total Labor & Proprietors Income | Labor & Proprietors Income from Mining | Mining as % of Total |
|---|---|---|---|
| 1958 | $584,321 | $19,219 | 3.29 |
| 1959 | 642,509 | 19,575 | 3.05 |
| 1960 | 698,515 | 23,048 | 3.30 |
| 1961 | 764,229 | 22,463 | 2.94 |
| 1962 | 934,867 | 22,468 | 2.40 |
| 1963 | 1,061,436 | 23,011 | 2.17 |
| 1964 | 1,142,243 | 25,684 | 2.25 |
| 1965 | 1,210,282 | 30,196 | 2.49 |
| 1966 | 1,282,304 | 32,926 | 2.57 |
| 1967 | 1,347,315 | 30,455 | 2.26 |
| 1968 | 1,539,668 | 31,767 | 2.06 |
| 1969 | 1,769,702 | 36,470 | 2.06 |
| 1970 | 1,942,046 | 39,427 | 2.03 |
| 1971 | 2,137,579 | 38,329 | 1.79 |
| 1972 | 2,359,611 | 36,203 | 1.53 |
| 1973 | 2,686,616 | 43,364 | 1.61 |
| 1974 | 2,883,958 | 53,359 | 1.85 |
| 1975 | 3,149,948 | 63,086 | 2.00 |
| 1976 | 3,591,308 | 54,175 | 1.51 |
| 1977 | 4,219,625 | 70,563 | 1.67 |
| 1978 | 5,128,705 | 74,937 | 1.46 |

Source: Regional Economic Information System, Bureau of Economic Analysis U.S. Department of Commerce, August, 1979. Obtained from Bureau of Business & Economic Research, University of Nevada, Reno.

EXHIBIT D

TABLE 2

Total Industrial and Mining Employment

Establishment Based

1960-1978

(In Thousands)

| Year | Total Industrial Employment | Mining Employment | Mining as a % of Total |
|---|---|---|---|
| 1960 | 103.4 | 3.5 | 3.38 |
| 1961 | 109.7 | 3.2 | 2.92 |
| 1962 | 126.8 | 3.0 | 2.37 |
| 1963 | 142.8 | 3.0 | 2.10 |
| 1964 | 149.4 | 3.1 | 2.07 |
| 1965 | 157.4 | 3.7 | 2.35 |
| 1966 | 162.1 | 4.0 | 2.47 |
| 1967 | 166.2 | 3.5 | 2.11 |
| 1968 | 177.3 | 3.5 | 1.97 |
| 1969 | 193.5 | 4.0 | 2.07 |
| 1970 | 203.0 | 4.1 | 2.02 |
| 1971 | 210.6 | 3.6 | 1.71 |
| 1972 | 223.4 | 3.5 | 1.57 |
| 1973 | 244.5 | 3.7 | 1.51 |
| 1974 | 255.9 | 4.2 | 1.64 |
| 1975 | 263.0 | 4.3 | 1.63 |
| 1976 | 279.7 | 3.5 | 1.25 |
| 1977 | 307.5 | 4.2 | 1.37 |
| 1978 | 344.2 | 3.8 | 1.10 |

Source: Nevada Statistical Abstract 1977, Governor's Office of Planning Coordination, p. 46. Recent employment figures obtained from Employment Security Department

EXHIBIT E

TABLE 3

Percentage Distribution of

Estimated and Projected Industrial Employment

Establishment Based

1976, 1980 and 1985

(In Thousands)

| Industry | Percentage Distribution 1976 | 1980 | 1985 |
|---|---|---|---|
| 1. Mining | 1.3 | 1.3 | 1.0 |
| 2. Construction | 5.3 | 5.6 | 5.4 |
| 3. Manufacturing | 4.6 | 5.0 | 5.1 |
| 4. Transportation, Communication & Public Utilities | 6.3 | 5.9 | 5.4 |
| 5. Total Trade | 20.2 | 21.6 | 24.1 |
| 6. Finance, Insurance, and Real Estate | 4.1 | 4.0 | 3.7 |
| 7. Total Services | 41.5 | 41.6 | 41.9 |
| 8. Total Government | 16.7 | 15.1 | 13.5 |
| TOTAL | 100.0 | 100.0 | 100.0 |

Source: Percentages based on projections prepared by Employment Security Department and published in Nevada Statistical Abstract, 1977, Governor's Office of Planning Coordination, p. 47. (Totals may not add as a result of rounding.)

EXHIBIT F