

APPENDIX 1

**COMMITTEE FOR THE ELIMINATION
OF RACIAL DISCRIMINATION**
Sixty- eighth session
Geneva, 20 February – 10 March 2006

EARLY WARNING AND URGENT ACTION PROCEDURE

DECISION 1 (68)

UNITED STATES OF AMERICA

UNEDITED VERSION

A. Introduction

1. At its 67th session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

2. Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its 68th session.

3. Responding to the Committee's letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the matter.

4. The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its 68th session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure.

B. Concerns

5. The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

6. The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002).

7. The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources, and expresses particular concern about:

- a) Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.
- b) Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end.
- c) The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;
- d) The conduct and / or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

- e) The reported intimidation and harassment of Western Shoshone people by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which gravely disturb the enjoyment of their ancestral lands.
- f) The difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

C. Recommendations

8. The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

9. The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

10. The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

- a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;
- b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;
- c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

11. In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.

APPENDIX 2



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA
K1A 0A6

38th Parliament, 1st Session

The Standing Committee on Foreign Affairs and International Trade has the honour to present its

FOURTEENTH REPORT

In accordance with its mandate under Standing Order 108(1), your committee established a subcommittee and assigned it the responsibility to inquire into matters relating to the promotion of respect for international human rights and the achievement of sustainable human development goals.

The Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade submitted its Third Report to the Committee

Your committee adopted the report, which reads as follows:

INTRODUCTION

Over the past several years, the Subcommittee on Human Rights and International Development has heard evidence related to the activities of Canadian mining and other resource companies in developing countries, including Colombia, Sudan and the Democratic Republic of the Congo. Most recently, it has held hearings on the activities of the Canadian mining company TVI Pacific Inc. in the Philippines, as well as on the broader issue of corporate social responsibility with respect to the activities of Canadian mining companies in developing countries.

These hearings have underlined the fact that mining activities in some developing countries have had adverse effects on local communities, especially where regulations governing the mining sector and its impact on the economic and social wellbeing of employees and local residents, as well as on the environment, are weak or non-existent, or where they are not enforced. To address problems related to corporate activities in developing countries, a number of organizations have developed and implemented voluntary norms for corporate social responsibility, including the United Nations Global Compact and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, both of which are supported by the Government of Canada.

In light of its most recent hearings, the Subcommittee on Human Rights and International Development agrees to report the following:

I. ENSURING SOCIALLY AND ENVIRONMENTALLY RESPONSIBLE CONDUCT BY CANADIAN COMPANIES

The Subcommittee:

- o Acknowledges that the Government of Canada has a stated commitment to corporate social responsibility standards and international human rights norms, as shown in its commitment to the OECD Guidelines for Multinational Enterprises and its efforts to promote the guidelines; and acknowledges its commitment to strengthen the capacity of the Canadian Trade Commissioner Service in the area of corporate social responsibility, and to build governance capacity in this area in developing countries;
- o Acknowledges that the government encourages and expects Canadian companies to observe the OECD Guidelines in their operations abroad;
- o Recognizes that some Canadian mining companies endorse internationally agreed-upon corporate social responsibility standards, but also that smaller companies in particular often lack the resources, knowledge or incentives to adequately address issues arising from the social, cultural, political, or environmental context in which they seek to operate in developing countries; and
- o Concerned that Canada does not yet have laws to ensure that the activities of Canadian mining companies in developing countries conform to human rights standards, including the rights of workers and of indigenous peoples.

The Subcommittee believes that more must be done to ensure that Canadian companies have the necessary knowledge, support and incentives to conduct their activities in a socially and environmentally responsible manner and in conformity with international human rights standards. In this context, particular attention should be paid to the rights of indigenous peoples as currently specified in the United Nations Draft Declaration on the Rights of Indigenous Peoples.

The Subcommittee therefore calls on the Government of Canada to:

- 1. Put in place a process involving relevant industry associations, non-governmental organizations and experts, which will lead to the strengthening of existing programs and policies in this area and, where necessary, to the establishment of new ones.**

In particular, the Subcommittee urges the government to:

- 2. Put in place stronger incentives to encourage Canadian mining companies to conduct their activities outside of Canada in a socially and environmentally responsible manner and in conformity with international human rights standards. Measures in this area must include making Canadian government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments;**
- 3. Strengthen or develop new mechanisms for monitoring the activities of Canadian mining companies in developing countries and for dealing with complaints alleging socially and environmentally irresponsible conduct and human rights violations. Specifically, the government must clarify, formalize and strengthen the rules and the mandate of the Canadian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, and increase the resources available to the NCP to enable it to respond to complaints**

promptly, to undertake proper investigations, and to recommend appropriate measures against companies found to be acting in violation of the OECD Guidelines. The government shall develop specific rules for companies operating in conflict zones;

4. Establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies;

5. Increase and improve services offered to Canadian mining companies operating in developing countries to ensure they:

- a. are aware of their obligations under Canadian and international law and the law of the country where they operate, as well as international corporate social responsibility norms and human rights standards;
- b. are aware of the local political, social and cultural context in which they intend to operate; and
- c. have the capacity to conduct their activities in a socially and environmentally responsible manner, in particular by developing and promoting a specific toolkit to help Canadian companies evaluate the social, environmental and human rights impacts of their operations.

6. Make the building of governance capacity in the area of corporate social responsibility a priority in its efforts to promote good governance and private sector development in developing countries, as outlined in the April 2005 International Policy Statement;

7. Work with like-minded countries to strengthen the OECD Guidelines for Multinational Enterprises, first, by clearly defining the responsibilities of multinational enterprises with regard to human rights, second, by making compliance with international human rights standards obligatory, and third, by working towards establishing common rules of evidence;

8. Work with like-minded countries to integrate and mainstream international human rights standards in the work of international financial institutions (IFIs) such as the World Bank and the International Monetary Fund – as outlined, for example, in the final report of the Extractive Industries Review (December 2003) – to ensure that projects and investments funded by IFIs conform to international human rights standards.

II. THE ACTIVITIES OF THE CANADIAN MINING COMPANY TVI PACIFIC INC. IN THE PHILIPPINES

The Subcommittee has held hearings on the activities of the mining company TVI Pacific Inc. in the Philippines, specifically the company's Canatuan mining project in Mindanao. During the course of these hearings, the Subcommittee heard from several witnesses – including Canadian experts and NGO representatives, as well as two representatives of some members of the Subanon community in Mindanao – and also received written communications from community organizations and individuals, who raised serious concerns about:

- o the environmental, social and political impact of the project;

- o the impact of the project on indigenous rights and the human rights of the people living in the area;
- o TVI Pacific's use of military-trained-and-controlled forces, which has allegedly led to a militarization of the region and related human rights abuses; and
- o the support TVI has received from the Canadian government.

The Subcommittee also heard testimony challenging these views from representatives of TVI Pacific Inc. and representatives of the Siocon Subano Association, a representative body of some members of the indigenous Subanen people in the area, who argued that the benefits of TVI Pacific's activities at Canatuan have included:

- o the signing of a Memorandum of Agreement (MOA) with some members of the Canatuan Subanon community, under which TVI pays a royalty to the community, provides health care, education and training for sustainable agriculture and livestock rearing;
- o the clean-up of illegal mining waste and tailings;
- o the generation of full-time jobs; and
- o significant contributions to the national, regional and local tax base.

The Subcommittee is deeply concerned about the possible impact of the activities of TVI Pacific Inc., a Canadian mining company, on the indigenous rights and the human rights of people in the area, and recommends that the Government of Canada:

9. Conduct an investigation of any impact of TVI Pacific's Canatuan mining project in Mindanao on the indigenous rights and the human rights of people in the area and on the environment, and table a report on this investigation in Parliament within 90 days;

10. Ensure that it does not promote TVI Pacific Inc. pending the outcome of this investigation.

III. REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Standing Committee on Foreign Affairs and International Trade requests a comprehensive government response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 12, 17, 18, 19, 20 and 21 of the Subcommittee on Human Rights and International Development and no. 50 of the Standing Committee on Foreign Affairs and International Trade, which includes this report)) is tabled.

Respectfully submitted,

Bernard Patry, M.P.
Chair

Appendix A List of Witnesses

<i>Organizations and Individuals</i>	<i>Date</i>	<i>Meeting</i>
Forcese, Craig Law Professor University of Ottawa	23/03/2005	12
Galos, Godofredo	23/03/2005	12
International Centre for Human Rights and Democratic Development Diana Bronson Coordinator Program on Globalisation and Human Rights	23/03/2005	12
Mato, Onsino	23/03/2005	12
Mining Watch Canada Catherine Coumans Research Coordinator and Asia Pacific Program	23/03/2005	12
Department of International Trade Christine Côté Acting Director Investment Trade Policy Division (EBI)	11/05/2005	17
Department of International Trade Vivien Escott Deputy Director Trade Southeast Asia Division	11/05/2005	17
Department of International Trade Vernon MacKay Senior Trade Policy Analyst Investment Trade Policy Division (EBI)	11/05/2005	17
Department of International Trade Carl Pilon Trade Commissioner	11/05/2005	17
Department of International Trade Ken Sunquist Assistant Deputy Minister International Business and Chief Trade Commissioner	11/05/2005	17
Department of Natural Resources Lise-Aurore Lapalme Senior Policy Advisor Economic, Financial and Social Analysis Branch	11/05/2005	17

<i>Organizations and Individuals</i>	<i>Date</i>	<i>Meeting</i>
Department of Natural Resources Michel Miron Senior Policy Advisor Industry Analysis and Business Development Branch	11/05/2005	17
Department of Natural Resources Gary Nash Assistant Deputy Minister Minerals and Metals Sector	11/05/2005	17
Department of Natural Resources Louis Perron Senior Policy Advisor Programs Branch	11/05/2005	17
Bernardo, Pablo	18/05/2005	18
Patoh, Benifacio	18/05/2005	18
TVI Pacific Inc Clifford James President and CEO	18/05/2005	18
Drohan, Madelaine	01/06/2005	19
Forcese, Craig Law Professor University of Ottawa	01/06/2005	19
Rights and Democracy Diana Bronson Coordinator Globalisation and Human Rights	01/06/2005	19

APPENDIX B

List of Submissions

Meeting 12 – March 23, 2005

- Anoy, Jose "Boy"
- Corpuz, Victoria Tauli
- Coumans, Catherine
- Davi, Ofelia "Inday"
- Galos, Godofredo C.
- Manguiran, José
- Siocon Peace and Development Advocates Alliance League

Meeting 17 – May 11, 2005

- Foreign Affairs Canada - Canadian Trade Commissioner Service
- International Trade Canada – Trade Commissioner Service
- Organisation for Economic Co-operation and Development

Meeting 18 – May 18, 2005

- DIOPIM Committee on Mining Issues
- Kairos: Canadian Ecumenical Justice Initiatives
- Kingking Mines Inc.
- Mennonite Central Committee Canada
- National Commission on Indigenous Peoples
- National Council of Churches in the Philippines

APPENDIX 3

ELKO DAILY FREE PRESS

THURSDAY FEBRUARY 23, 2006 Last modified: Friday, January 27, 2006 3:57 PM PST

Blast opens new era at Cortez

By **ADELLA HARDING** - Staff Writer

CRESCENT VALLEY - A blast rumbled through the old F Canyon Pit Thursday morning, signaling the beginning of a new era at Cortez Gold Mines.

The explosion loosened rock and dirt at two portals so Small Mine Development can begin drifting at Cortez's first underground exploration project.

"This enters us into a whole new era, after 35 years of open pit mining," said Cortez General Manager Gary Halverson.

"We're really excited about this," said Jody Micheletti as she watched the blast from a viewing point above the portals. She is contracts manager at Cortez and has been working on the project more than six months.

Cortez is developing the underground exploration project in conjunction with its planned Cortez Hills surface mine, and the underground project could become a mine later.

"We're at the point now where we can start advancing the underground drift toward the ore body," Halverson said.

The blast marked a major turning point for Cortez, which also has a new joint venture partner and operator, Barrick Gold Corp. Kennecott Minerals owns 40 percent of Cortez, and Barrick owns 60 percent now that it has acquired Placer Dome Inc.

Halverson said Cortez chose the mined-out F Canyon Pit as the best location to set up the infrastructure for the project.

The old pit, roughly eight miles from the Pipeline mill, was mined out in the early 1990s.

The underground drifting will turn to the east and head toward the Cortez Hills gold deposit, said Lou Myers, project superintendent for SMD, which has contracted with Cortez to develop the project.

"We like building mines," he said.

The west portal is for exploration drifting and the other portal is for future production, if Cortez decides to turn the project into a gold mine, and the two drifts will be 72 feet apart.



Small Mine Development sets off the first blast at the new Cortez Gold Mines underground exploration project Thursday, marking the beginning of a new era. SMD blasted two portals at the same time. The one on the right will be the exploration portal, and the other will be the mining portal, should Cortez decide to turn the exploration project into a mine later. (Adella Harding/Elko Daily Free Press)

Al Oliver, the project superintendent for Barrick, said he expects a mine that will be long-term, and the current work is simply phase I of a planned five-phase project.

"It's a very good project for the whole area," he said.

Gordon Sobering, the senior underground mine engineer for Barrick, said there will be a little more than 7,000 feet of exploration decline and another 6,000 feet of a mining decline, if Cortez gets the OK to do both.

Myers said SMD has 21 people at the Cortez underground project, and Micheletti said her team has eight Barrick people who are working on the underground project.

They also are planning for nine miles of pipeline for dewatering at the underground project, and for an overhead power line to the site. Myers said the project is above the water table, but there will be dewatering for the open pit.

Myers said his team expects to drift about 15 feet a day, and SMD can go faster if it can do both drifts simultaneously.

Before the blast, SMD and a subcontractor removed 140,000 cubic yards of material to prepare the site. The dirt was used as backfill in the old pit.

U.S. Bureau of Land Management issued a permit for Cortez to get started and is working on a record of decision after completing an environmental assessment of the project.

"It should be completed in the next month," Halverson said.

BLM also is working on an environmental impact statement for Cortez Hills, which will be the surface operation to mine the Cortez Hills and Pediment gold deposits.

Halverson also commented on the Barrick-Placer merger, reporting Barrick sent people to the mine Monday morning to welcome Cortez.

"There is a great opportunity to gain synergies," he said.

At the same time, employees naturally are apprehensive, but the mining industry is "always evolving," Halverson said. "Barrick has a 100-day integration plan."

He also said that from a mining perspective, it's business as usual at Cortez Gold Mines operations in Crescent Valley. "It's safety first and protection of the environment and making sure we are focused on the job."

-- CLOSE WINDOW --

APPENDIX 4

**PHOTOS DEPICTING DESTRUCTION OF WESTERN SHOSHONE TERRITORY AND
BLOCKAGE OF ACCESS ROAD TO HORSE CANYON**



Photo 1: Open pit mine in Shoshone territory, photographed in 2005 (Western Shoshone Defense Project).



Photo 2 and 3: Access road to Horse Canyon, spiritual area for Western Shoshone, demolished on the day of Shoshone medicinal gathering by the Cortez Joint Venture/Cortez Gold Mines (Barrick, formally Placer Dome, and Kennecott) photographed in November 2005 (Western Shoshone Defense Project- Carolyn Fuqua).



Photo 4: Van carrying Western Shoshone group Blocked from traditional gathering site near Horse Canyon, photographed in November 2005 (Western Shoshone Defense Project- Carolyn Fuqua).



Photo 5: Gold mining drill rig on access road to Horse Canyon, spiritual area for Western Shoshone, photographed in October 2005 (Western Shoshone Defense Project).

APPENDIX 5

December 30, 2005

The Cost of Gold | Water Worries

Drier, Tainted Nevada May Be Legacy of Gold Rush

By [KIRK JOHNSON](#)

ELKO, Nev. - Just outside the chasm of North America's biggest open-pit gold mine there is an immense oasis in the middle of the [Nevada](#) desert. It is an idyllic and isolated spot where migratory birds often alight for a stopover. But hardly anything is natural about it.

This is water pumped from the ground by Barrick Gold of Toronto to keep its vast Goldstrike mine from flooding, as the gold company, the world's third largest, carves a canyon 1,600 feet below the level of northern Nevada's aquifer.

Nearly 10 million gallons a day draining away in the driest state in the nation - and the fastest growing one, propelled by the demographic rocket of Las Vegas - is just one of the many strange byproducts of Nevada's tangled love affair with gold.

An extensive review of government documents and court records, and scores of interviews with scientists and present and former mine industry workers and regulators, show that an absence of federal guidelines, of the sort that are commonplace for coal or oil, allowed gold wide latitude to operate here in the rural fastness of the desert, perhaps more than any other American industry.

The costs - to Nevada, its neighbors and even to the rest of the country - are only now coming into focus as diminishing ores foreshadow gold mining's eventual demise and a more urbanized West begins to express concerns over water shortages and mining's other legacies.

Barrick says the effects of its pumping will last at most a few decades. But government scientists estimate it could take 200 years or more to replenish the groundwater that it and neighboring mine companies have removed, with little public attention or debate, as they meet soaring consumer demand for jewelry and gold's price tops \$500 an ounce.

Goldstrike, meantime, may have only 10 years left, Barrick says, and most of the state's 20 or so other major mines are not expected to last much longer. When they are gone, the vast pits they leave behind

will create a deficit in the aquifer equivalent to 20 to 25 years of the total flow of Nevada's longest river, the Humboldt, according to state figures tallied by independent scientists. That is three times as much water as New York City stores in its entire upstate reservoir system. "When they stop pumping, what you're going to hear is a huge sucking sound," said Robert Glennon, a law professor at the University of Arizona who has written on water issues in the West. "The impact on the Humboldt River will be catastrophic."

That is not all. Nevada's gold mines will bequeath more toxic mercury waste in their mountainous rock piles than any other industry, about 86 percent of the nation's total in 2003, according to the most recent figures from the Environmental Protection Agency. They already generate more than 3 percent of the airborne mercury pollution, the agency says, equivalent to 25 or more average coal-fired power plants.

At the same time, as of May, according to state figures, about \$200 million in cleanup costs were simple promises to pay from the corporate miners of a notoriously boom-and-bust industry. Along with the modern superscale mining methods that were largely devised here beginning in the 1980's, such trade-offs have helped make Nevada the third-largest gold producer in the world, behind South Africa and Australia.

But mining experts, legal scholars and historians say that prosperity was also built on the basis of a law drafted in the age of the horse and buggy - the General Mining Law of 1872 - which declares mining the best use of public land, gives miners access to that land for bargain-basement prices, and makes no mention of a cleanup.

Mining industry officials vigorously defend the statute and say that the absence of federal guidelines - far from making things less strict - gave rise to an even tighter regulatory framework because other laws filled the breach, from endangered species protection to air and water rules.

"We just can't see a way to write a mining law that would appropriately regulate all of these different things and work any better," said Carol Raulston, a spokeswoman for the National Mining Association, the industry's trade group.

But here in Nevada, where four-fifths of the nation's gold is produced, the vacuum of antiquated law has been gold's defining feature and the handmaiden to its rise, current and former regulators say, allowing for special treatment of a favorite-son industry on a landscape of bleak extremes that few big environmental groups have risen to defend.

"If you look at the gold industry today, most of it is Nevada, and Nevada is mostly not prized by environmentalists," said John D. Leshy, who was the top lawyer for the Department of the Interior in the Clinton administration. "Nevada is being written off as a sacrifice area for gold."

In an ever-more urban West, the day of reckoning is fast approaching, people like Mr. Leshy say. The new West, embodied by postindustrial Las Vegas, will inherit the landscape that gold leaves behind.

The glittering, energy-guzzling city is already probing north to satisfy its water needs, with a \$2 billion pipeline that will be the biggest groundwater project in American history if approved and built over the next 15 years.

Water experts say the scientific studies for the plan are only now likely to reveal just how Nevada's aquifer system really works, and how it was affected by the mines.

But, they warn, the 383 billion gallons of water pumped so far from the Goldstrike mine alone - enough to fill one of the midsize Finger Lakes of upstate New York - may have already imposed its stamp on the region's future.

Mercury's Taint Tied to Mines

Michael DuBois, an analyst with the Idaho State Department of Environmental Quality, was assigned this year to figure out why the Salmon Falls Creek Reservoir, on the Nevada border, had mercury levels 10 times higher than any body of water ever tested in the state.

The more Mr. DuBois and other scientists looked, the more they became convinced that airborne mercury, which has been linked to impaired neurological development in fetuses, infants and children, was coming north from Nevada's gold mines. "There are things crossing state lines here that don't know anything about political boundaries," he said this summer on a visit to the reservoir, where prominent warning signs had been posted about consumption of fish.

In November, under pressure from Idaho, Nevada said it would begin regulating mercury from the mines, which had been operating under a voluntary system since 2001. "We were moving in this direction anyway, but we ramped it up," said Colleen Cripps, a deputy administrator at the Nevada Division of Environmental Protection.

But how the huge mercury output from the mines was missed or barely regulated for so long is just as big an issue for neighboring states that may have to live with the consequences for many years to come.

Mercury persists in the environment, as it accumulates in the tissues of fish and birds that pick it up from water sources. Nobody knows just how much has come from the mines over time because the Environmental Protection Agency did not even require it to be reported until 1998.

Before then, simple reassurances were regulation enough. In a 1997 agency report on mercury, gold was left off the list as a source because, the report's authors said, an "industry representative" had told them mercury was not a problem.

State officials insist that the voluntary efforts worked, and that the four companies taking part in the plan, including Barrick, cut emissions by 82 percent. But gaps in Nevada's patchwork regulation

persisted.

In 2001, Barrick built a \$330 million "roaster," which heats ore for gold extraction and in the process also frees other metals, like mercury. But because it built the machine on private land, no state or federal law required an analysis of the environmental impact.

The roaster was subsequently identified by the E.P.A. as a main mercury source. The mine, the agency says, now accounts for about 1 percent of the nation's total airborne mercury output.

Barrick's vice president for the environment, Richie D. Haddock, said that the location of the roaster was driven by proximity to the pit, and by the fact that the land beneath contained no valuable ore. The roaster, he added, was also built with the most modern technology. There was no effort to avoid scrutiny, he said.

But no scrutiny was the effect, and such regulatory gaps have become part of doing business, numerous legal scholars and present and former regulators say.

"The fact that the 1872 mining law had no environmental provisions was significant, because it means that those rules had to emerge from other places," said James McElfish, a senior lawyer at the Environmental Law Institute, a nonpartisan research group in Washington that advocates sustainable development and environmental protection. "The upshot of this is that it's a process of experimentation and diffuse authority and no one is really leading the way."

Industry officials, while acknowledging that gold mines have emitted significant levels of mercury, say that where the mercury actually came to earth is a much harder question. What has been found in places like Salmon Falls Creek, they say, could just as easily have come from a coal-burning plant in China, or a natural source.

But local regulators like Mr. DuBois and Michael L. Abbott, an advisory scientist at the Idaho National Laboratory, part of the Department of Energy, are not convinced. After studying the wind patterns and deposition rates this summer and fall near Salmon Falls Creek, Mr. Abbott said he believed that mercury from Nevada's gold mines was still coming north.

"Where do they think it's going to go," Mr. Abbott said, "outer space?"

Uncertain Prospects for Water

Large-scale open-pit mining takes a lot of water, millions of gallons, mostly to dilute the cyanide that miners use to soak their ore and separate its microscopic bits of gold. Even so, mines like Goldstrike pump out so much water that company officials say they can use only a relatively small amount - less than 10 percent of what is displaced.

About half the rest goes into settling ponds where it is expected to sink back into the aquifer, company records show. About one quarter is used for irrigation. About 6 percent is sent to "sand dune drainage/evaporation."

The rest has engorged the Humboldt River since the 1980's. Though Barrick has not discharged any of its water to the river since 1999, other mines remain in full pump and drain mode.

That pumping could change both the quantity and quality of the groundwater, and even the shape of the aquifer, said Glenn Miller, a professor of environmental science at the University of Nevada, Reno. "I think it may never be quite the same hydrologic system," he said. "There is simply no data to suggest that these changes aren't going to be permanent."

Officials at Barrick strongly disagree. Mr. Haddock, the environmental vice president, said in a written response that geological faults would confine the effects of de-watering near the mine.

Barrick, he said, has tried to make Goldstrike a model for its mines around the world. "A great deal of Barrick's culture developed at Goldstrike," he wrote, "and we try to export that culture throughout the company," which is set to take over Placer Dome and become the No. 1 gold miner.

Permanent impacts are not supposed to happen under a strict interpretation of the state water law, said Professor Glennon at the University of Arizona.

An exception was made for gold. In the 1980's as mine pumping surged, the state decided that modern mining, however different in its scale and scope, was still just a "temporary" use of water, as it had been in the days of the prospector and his mule.

"The policy, if there was a policy, is that Nevada has always been a mining state, and as long as we could keep the impact within reason, it should be allowed," said Peter G. Morros, who made many of those decisions as the state engineer - Nevada's top water resource officer - from 1981 to 1990.

But the real story of gold's impact on Nevada's waters will emerge only in coming decades when the pumps are turned off, scientists say. That is when the 40-odd pits - from monsters like Goldstrike's Betze-Post to smaller mines like Newmont's Lone Tree - will start to fill with water that the mine companies no longer displace.

The lakes will store an estimated 500 billion gallons or more, according to estimates by Dr. Miller at the University of Nevada and other scientists. The Betze-Post, the center of Barrick's operations, is expected to become the largest artificial lake located wholly in the state, holding about 114 billion gallons - or more than 100 times the size of the Central Park reservoir in New York.

The result will be, if not the biggest water storage project in the West, then certainly the strangest. Some of the lakes are expected to be poisonous, laced with arsenic and selenium. Others may have metal and

acid concentrations toxic to fish but safe for humans. Some will be relatively benign.

Mining companies say the water quality in the aquifer will dictate the outcome, not mining.

One thing is certain: in the hot desert sun, the water will constantly evaporate. And for every gallon of evaporation, the lakes will draw another gallon from the aquifer beneath them. Most will take decades, if not centuries, to fill. They will be like huge desert sponges, sucking from the aquifer eternally.

The Betze-Post pit, which Barrick expects to lose 74,000 gallons of water every hour to evaporation, will have good water quality, said Mr. Haddock, the environmental vice president, because of the aquifer's purity and the high volume of limestone that will act as a buffering agent.

Other scientists say it is not that simple.

The mine pits will fill with water that filters through surrounding rock, much of it disturbed by mining and thus potentially prone to acid generation. Rock with sulfide in it, once it contacts air and water, produces sulfuric acid.

"After the pits fill, after complete recovery, there is a possibility that water could be affected by acid drainage," said Russell W. Plume, a hydrologist at the United States Geological Survey, a federal government research agency.

In the meantime, Nevada law is already trying to come to grips with the postmine landscape. One pit mine, called Sleeper, which was operated until 1996 by a company called Amax Gold and is now closed, is already filling with water and losing about 257 million gallons a year to evaporation.

That lost water has to be accounted for somewhere in the state's water ledgers, said Hugh Ricci, the state engineer. The same will hold true for every other pit lake.

In Sleeper's case, because Nevada rules require water allocations for beneficial uses only, Mr. Ricci's predecessor came up with a novel legal interpretation. He declared that the pit lake would be used for recreation, and that its evaporation would therefore be a "recreational use."

Millions of People, Inches of Rain

By 2020, Las Vegas, the go-go city of the sands, is expected to have three million people living in an area that gets perhaps four inches of rain a year.

Some ecologists and water experts have argued for years that big desert cities, whether Phoenix or Las Vegas, will one day face their comeuppance as water becomes too costly or scarce, and that all the region's cities will one day need to tap the West's rural water. But the stakes for Nevada, planners and legal scholars say, could be even higher because of what happened under gold's regime. Then the

consequences of the water no one wanted may come back.

"There will a redivision of water from rural to urban use," said Hal Rothman, a professor of history at the University of Nevada, Las Vegas. "The question is not whether that's going to happen - it's the terms under which it's going to happen."

By then, the mines around Elko are likely to be played out. The Las Vegas pipeline, assuming it is built, will be drawing the first of up to 58 billion gallons a year - enough for 20 percent of the city's projected population.

Those two pincer trends - urbanization from one side, mine closure from the other - raise the greatest uncertainties for tiny Elko, a town of just 16,000, that may be the nation's last gold boomtown.

"If the basin is drained, then this becomes like the Owens Valley in California," said Warren Russell, an Elko County Commissioner. The Owens Valley, near Death Valley National Park, was drained in the 1930's - the incident made famous by the movie "Chinatown" - as Los Angeles locked in water resources.

For now, Las Vegas water officials say they have no designs on any water farther north than their pipeline, which will end 100 miles or so south of Elko. But everyone cautions that a return of the drought that gripped the region in recent years - or a victory in court by the Western Shoshone Indians, who claim vast tracts of Nevada that they say were stolen in the 1800's - could change every calculation.

The general manager of the Las Vegas-based Southern Nevada Water Authority, Patricia Mulroy, said in an interview that her motto was never to say never - to rule out tapping the waters of northern Nevada would be folly.

The state and the region should be looking at mine country now, she said, and thinking about storage and prevention of evaporation. "We need a viable place to store that water," she said. "Having said that, we're not talking to any mining company."

Mr. Ricci, the state engineer, said water transfers from mine country would require a new application, like the one Las Vegas is going through now, but none have been filed.

Many mine companies, meanwhile, have followed Barrick's lead in buying ranch lands across the state - most of which have water rights that could one day be sold, though a spokesman for Barrick said the company had no intention of going into the water business from the 110,000 acres it currently owns.

But Dean A. Rhoads, a rancher and state senator who lives near the Goldstrike mine, has been watching closely. He counts at least 20 ranches - some of them tens of thousands of acres - that have gone into mining company hands.

Water pipelines, legal experts say, can be laid across private land in Nevada without the fuss of an

environmental impact statement, just like Barrick's ore-roaster.

"Water, and what happens next in these rural areas, is the most crucial issue that I've faced in 25 years in the legislature," said Mr. Rhoads, a Republican. "A lot of my neighbors are shaking in their boots."

- [Copyright 2006The New York Times Company](#)
 - [Home](#)
 - [Privacy Policy](#)
 - [Search](#)
 - [Corrections](#)
 - [XML](#)
 - [Help](#)
 - [Contact Us](#)
 - [Work for Us](#)
 - [Site Map](#)
 - [Back to Top](#)

APPENDIX 6

Nicole U. Rinke, Nevada Bar No. 7884
WESTERN MINING ACTION PROJECT
505 S. Arlington Ave., Suite 110
Reno, NV 89509
Phone (775) 337-2977
Fax (775) 337-2980

Roger Flynn
Jeffrey C. Parsons
WESTERN MINING ACTION PROJECT
Mail Delivery: P.O. Box 349
Courier/Personal Delivery: 412 High Street
Lyons, CO 80540
(303) 823-5738
Fax (303) 823-5732

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TE-MOAK TRIBE OF WESTERN SHOSHONE)
OF NEVADA; WESTERN SHOSHONE)
DEFENSE PROJECT; and GREAT)
BASIN MINE WATCH)

Plaintiffs,)

vs.)

UNITED STATES DEPARTMENT OF THE)
INTERIOR; UNITED STATES BUREAU OF)
LAND MANAGEMENT; GAIL G. GIVENS,)
Assistant Field Manager Battle Mountain)
Field Office; CLINTON R. OKE, Assistant)
Field Manager, Elko Field Office; and ROBERT)
V. ABBEY, State Director)

Defendants,)

CORTEZ GOLD MINES)

Defendant-Intervenor.)

Case No:
CV-N-05-0279-LRH-VPC

DECLARATION
OF CARRIE DANN

I, Carrie Dann, make this declaration based upon my personal knowledge and belief and
state:

1. I am a traditional Western Shoshone indigenous person residing in Crescent Valley, Nevada in the vicinity of Mt. Tenabo and Horse Canyon. My address is P.O. Box 211308, Crescent Valley, Nevada. I am a grandmother and great grandmother and competent to testify.
2. I am the founding member and acting director of the Western Shoshone Defense Project (WSDP) appellants in this case. The WSDP was created in 1991 under the direction of the Western Shoshone National Council, a traditional government of the Western Shoshone people. Its mission is to protect and preserve Western Shoshone rights and homelands for present and future generations based upon cultural and spiritual traditions. The WSDP operates with the guidance of the Western Shoshone National Council, whose members represent various Western Shoshone communities and organizations; and a Community Advisory Board with members from six Western Shoshone communities.
3. The WSDP and its members, including myself, have concrete and significant interests in the lands subject to the United States Department of the Interior and its Bureau of Land Management (BLM)'s issuance of the Horse Canyon/Cortez Unified Exploration Project Amendment (HC/CUEP Amendment) Finding of No Significant impact (FONSI), Environmental Assessment (EA), Decision Record (DR) and Plan of Operations (PoO) Approval, Environmental Assessment No. NV063-EA04-61; Plan of Operations No. NVN 066621 issued by BLM Battle Mountain Field Office Assistant Field Manager Gail G. Givens and the Elko Assistant Field Manager Clinton R. Oke on October 22 and 25, 2004, respectively; and State Director

Robert V. Abbey's April 4, 2005 Decision (Abbey's decision) affirming as modified the underlying challenged BLM decisions.

4. The HC/CUEP Amendment DR authorizes Cortez to directly disturb 200 acres within the larger 30,548 acre HC/CUEP area. The HC/CUEP area is located entirely within the territory of the Western Shoshone Nation, recognized in the 1863 Treaty of Ruby Valley. The area includes Mt. Tenabo, the pediment area below the summit, and Horse Canyon, all of which – along with the surrounding areas – remain spiritually and culturally significant to the Western Shoshone people, including myself and other members of the WSDP; and this area includes properties recently recognized by BLM as eligible for listing on the National Register of Historic Places as Properties of Cultural and Religious Importance (PCRI). The area was also identified recently by the United Nations Committee on the Elimination of Racial Discrimination and particular concern was expressed by this United Nations Committee with regard to mining activities and their threat to Western Shoshone spiritual and cultural uses. (Decision 1 (68), attached as Exhibit 1).
5. Western Shoshone peoples, including myself and other members of the WSDP, have traditionally, and continue to, use the Project site and adjacent lands for hunting, gathering, religious, cultural, and other traditional uses. We also use these lands to share knowledge about traditional Shoshone practices between elders and with Western Shoshone youth and to build unity among the Western Shoshone peoples. These lands bring us together and allow us to solidify our relationships with the land and with one another. In addition we use the lands for camping, communicating and interacting with the natural world, gathering

plants and roots, and performing religious ceremonies. These uses will be negatively affected by any further mining activities.

6. In fact, in this last gathering season, on several occasions, we gathered most of our traditional staple food – the pine nut from this area. We also coordinated a field trip for Western Shoshone elders and youth to the area last fall and gathered food and medicinal plants according to our tradition. These uses will be adversely affected, if not outright prohibited by the HC/CUEP.
7. We are already seeing impacts of the renewed mining activities on our ability to conduct these traditional activities without fear of harassment or intimidation. In October of last year, I was with a small group of people who went to the area of Horse Canyon on the public road to gather pine nuts. We were stopped by a drill rig in the road and then asked who we were, where we were going and what our purpose in being there was. We were told by the driller that Cortez now owned the road and that they were instructed to stop anyone coming into the area and find out who they were, what they were doing and where they were going. It was very intimidating. Just a few weeks later, we were taking a group of Western Shoshone elders and youth to the area for medicine and food gathering. Several days prior to the gathering day, our staff person, Julie Fishel, called Cortez and informed them of the incident with the driller and requested that there be no problems when the elder and youth group came out. When we began going down the road to Mt. Tenabo (again, a public road) we were stopped by Cortez' machinery which had completely torn up the county road – there were no warning signs, no detour and both lanes had been dug up. It wasn't until after we demanded a path be cleared that the equipment

smoothed out the dirt and we drove on – in fear however of damage to our vehicle given the torn up condition of the road.

8. There are several cold water springs located in this area. These springs have traditionally provided our people and other life with clean drinking water. According to our religious beliefs, water is one of the most sacred things - essential to all life. The previous mining in the area already poses a threat to the purity of these water sources. Additional exploration or other mining activities further threaten and could potentially destroy the use of these springs.
9. This area is home to several Western Shoshone creation stories, including the handing down of the original instructions for how human beings were supposed to conduct their life. Also, this area is where the seasons of the year were named – in the time before people were here. The entire area is very important to us as Western Shoshone people – to us it is like our church, our mosque.
10. This area is also a known spiritual area where much fasting and vision questing has taken place. There are caves, cliffs and other areas within the Project Area that are spiritual and according to our religion, must be respected and not disturbed.
11. According to Western Shoshone knowledge, there are also spiritual people who live in this area. They are there for their own lives, but also serve as spiritual helpers when we are in need of them. According to our beliefs, the spiritual people who live there are afraid now because of the mining activities that have already occurred and are occurring now. According to our teachings, areas like this one must be maintained in peace and solitude with little to no disruption by unnatural noises or other human activities. Without this quietness and peace,

our spiritual helpers cannot live in their own ways and continue to give us the understanding of how we should live our life.

12. Previous mining activities have already disturbed the solitude of the area and reinforce the need to stop any further activities from occurring. This disruption hinders and may ultimately destroy the ability for our people to use this area as a spiritual place.

13. BLM sent me a letter on July 28, 2004. The letter indicted that CGM had submitted a request to increase its exploration activities in the HC/CUEP area and that BLM intended to prepare an EA analyzing the impacts of the increased exploration. The BLM released its Environmental Assessment/Finding of No Significant Impact for the project in September, 2004. The EA did not include any detailed locations for the proposed exploration or a detailed look at the environmental and cultural resource impacts that would be associated with the project. The WSDP submitted comments regarding the EA on October 5, 2004, specifically requesting that BLM provide additional information regarding the details and location of the exploration. Without the information, WSDP indicated that it would not be able to comment on the precise cultural resource impacts of the project. BLM responded that additional information regarding the location of the exploration was not available. BLM's refusal to provide the requested information, along with BLM's overall failure to adequately consult with myself and other recognized Native American representatives, severely harms my, and the WSDP's, procedural and substantive rights under the National Historic Preservation Act (NHPA), National Environmental Policy Act (NEPA) and Federal Land Policy and Management Act (FLPMA).

14. Without providing the additional requested information, the BLM released its EA/DR on October 25, 2004. The EA/DR does not identify or provide any detailed information regarding the location, extent, or nature of the approved disturbances within the larger HC/CUEP area. Without that information the WSDP, nor BLM, could gauge to what extent the approved exploration would affect cultural, religious, historic and spiritual resources in the area. Members of the WSDP and myself were, therefore, harmed by BLM's failure to fully define and identify the project's impacts prior to approving the exploration.
15. The WSDP and myself were likewise harmed by BLM's failure to include us in its Programmatic Agreement, which it specifically entered into with CGM to outline its plan for managing cultural resources within the project area. The WSDP was not invited to participate in either the 1992 or 2004 Programmatic Agreement. The WSDP and myself, as explained, are concerned about the project's impact on the valuable cultural, spiritual and religious resources in the area and is, therefore, harmed by BLM's failure to include the WSDP in the programmatic agreements.
16. Not only do we not know where they will be conducting activities, but the approval allows the permittee to access the area, construct and operate within the area, including construction and use of heavy machinery, roads, drill pads and drill rigs. These activities will negatively interfere with my ability, and the ability of other members of the WSDP, to continue our uses of the lands in the Project area. Specifically, these activities will cause adverse noise, land, air, water and visual impacts and will generally decrease the solitude in the area. These activities will also adversely affect the wildlife in the area, and my

ability to use the area for native customs, and collecting food and medicinal plants.

17. As a traditional people, the Western Shoshone believe we were placed here on this land as caretakers. Our teachings tell us that we, as a people, and I, as an individual, are responsible for the health and well-being and preservation of our lands. If this area is further disturbed and mining allowed to move forward, I will be failing my duty to the land and to the future generations.
18. As I have done throughout my life, I, and other members of WSDP, intend on pursuing the above-mentioned uses on the Project lands in the future.
19. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information and belief.

Executed this _____ day of _____, 2006 at _____, Nevada.

/s/

Carrie Dann