

Public Land & Resources Law Review

Volume 43 *To Make a Better Place*

Article 4

August 2020

Alice Creek

Dolores Colburg

Follow this and additional works at: <https://scholarworks.umt.edu/plrlr>

 Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Animal Law Commons](#), [Cultural Heritage Law Commons](#), [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Land Use Law Commons](#), [Law and Race Commons](#), [Natural Resources Law Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Science and Technology Law Commons](#), and the [Water Law Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

Colburg, Dolores (2020) "Alice Creek," *Public Land & Resources Law Review*. Vol. 43 , Article 4.
Available at: <https://scholarworks.umt.edu/plrlr/vol43/iss1/4>

This Article is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Public Land & Resources Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

ALICE CREEK

Dolores “Dodie” Colburg

“I really messed this up. Let’s get in there and get this over with.”

So Montana Governor Forrest Anderson muttered to State Land Commissioner Ted Schwinden as the two left the governor’s office and entered the adjacent reception room for a 10 a.m. meeting of the Montana Board of Land Commissioners on May 20, 1970. At least, these are the words that I recall Commissioner Schwinden telling me, to my surprise—many, many weeks later.

It had all started, at least for me, nearly four months earlier. I knew in January that the Anaconda Company (“Company”) wanted an easement on state school trust lands in the Blackfoot River drainage area. Apparently, the Company had in mind an open-pit copper/molybdenum mine and copper concentrator operation. Not much else was really known about what the Company intended but constructing a dam on Alice Creek to form a reservoir of fresh water seemed central to its mining plans. Thus, an easement for an entire section of trust land, one square mile that lay smack dab across Alice Creek, would be needed, as well as forty acres along the Blackfoot River.

Even before the Company’s request for an easement would come before the Land Board as an agenda item on February 20, environmental groups, as news reports revealed, were expressing their concerns about the Company’s venture. One leading citizen of Lincoln—Cecil Garland, articulate and outspoken—said that residents were worried “because they don’t know what the Anaconda Co. is going to do.”¹ He continued, “Assurances from some Anaconda Co. public relations man that everything is going to be all right are not sufficient.”²

In the same article, Garland talked about the risk of polluting the Blackfoot River and what the Land Board should demand of the Company before granting any easement, saying that “any plans for restoration . . . should be made public in detail by the Anaconda Co. This development could be a blight on the entire valley.”³

Some officials of the state Fish and Game and Health Departments, as well as Helena National Forest Supervisor Robert Morgan, also weighed in, saying they had preliminary discussions with the Company

1. John Kuglin, *Outdoor Groups Marshall Forces Against Lincoln Area Dam*, GREAT FALLS TRIBUNE, Feb. 6, 1970, at 7.

2. *Id.*

3. *Id.*

regarding its plans and had further questions. “They didn’t tell us how high the dam on Alice Creek would be,” Morgan said. “We asked.”⁴ Well.

We were a four-member Land Board in 1970, composed of Governor Anderson, Attorney General Robert Woodahl, Secretary of State Frank Murray, and myself, Superintendent of Public Instruction Dolores Colburg. Right after his story appeared on February 6, reporter John Kuglin caught up with me and Secretary of State Murray in the Capitol.

Murray said that he thought the easement “should be granted because it is extremely important and would be very good for the overall economy of the state.”⁵ The one concern he expressed was that the Land Board agenda for the upcoming February 20 meeting had come to the public’s attention. This, he said, “will invite protests at the Land Board meeting.”⁶ Really.

I told Kuglin that we “should be informed of the Anaconda Co.’s plans, including pollution treatment facilities, before the easement is granted.”⁷ I went on to say, “It is the obligation of the Land Board in all matters pertaining to state land to be as fully-informed as possible.”⁸

Kuglin’s article also revealed that an increased environmental awareness was growing in Montana, as well as across the nation. About this same time, that winter, my office would be sponsoring an educators’ workshop on environmental education in Lincoln. Talk about timing.

“We have begun mining operations in many communities since the company started, but Lincoln is one of the few communities where problems continue to crop up,” an Anaconda Company spokesman was quoted as saying in this same article.⁹

Hmmm. Could one of those problems be those Lincoln citizens asking pesky questions? And now, here was the Superintendent of Public Instruction requesting more information.

As it turns out, I would be out of state on February 20, so the board meeting was cancelled. It was in everyone’s interest that all four Land Board members be present for any discussion of the Company’s request. The Company was notified on February 19 that its easement request would be heard at 10 a.m. on March 2 at a special Land Board meeting, called by the Governor as chair of the Board.

4. *Id.*

5. John Kuglin, *State Land Board Members Differ: Should Anaconda Co. Be Granted Easement?*, GREAT FALLS TRIBUNE, Feb. 7, 1970, at 1.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

I was grateful for the nearly month-long period between the February 6 and 7 press accounts and the meeting set for March 2. I had more time to ponder the Company's request and to list possible questions to ask of Company spokespersons. Perhaps, too, I might walk down the hall from my office to Ted's to gain more information in advance of the March meeting.

During this period, I was also reading more and more press coverage about the Company's request and discovering more about other actors involved. One such actor was Mike Mansfield, our esteemed senior senator. In a letter from Washington, D.C., he urged the land board to give environmental protection "prime consideration in reviewing the Anaconda Company's request for an easement . . ." He had said earlier that the Company "promised to protect the environment in its mining operations."¹⁰

Could we expect the Company to keep its word about protecting the environment? One letter, written by Janet van Swearingen of Helena, cast doubt.¹¹ She noted that a news story mentioned a reservoir behind a contemplated dam on Alice Creek, as well as ". . . the northern extension of a mill tailings containment area. That last, I suppose, is what we English speaking people call a mine dump."¹²

She concluded her letter thus: "Perhaps the jobs and the tax receipts *will* be worth more than Alice Creek's recreational value. Perhaps the pollution *can* be minimized. But let's ask the Board not to be too trusting, to consider carefully before we all pay later."¹³

Then, in a February 28 article, I read that Senator Mansfield had said that

" . . . Anaconda officials assured us [in a meeting with the Montana Congressional delegation in Washington] that there would be no pollution, the water would be clean and the environment protected."¹⁴ No fewer than six of the Company's biggest bigwigs (with all of their names and positions listed in the news account) participated in that meeting. Whew.

That same Anaconda group then met with Governor Anderson, who was attending the National Conference of Governors in Washington, D.C. In the previous month, Company officials also had met in Helena with U.S. Forest Service people, the Montana Board of Health, the Fish

10. John Kamps, *Environmental Decision Wins Praise by Mike*, GREAT FALLS TRIBUNE, Feb. 14, 1970, at 4.

11. Janet van Swearingen, *Don't Be Too Trusting*, GREAT FALLS TRIBUNE, Feb. 27, 1970, at 6.

12. *Id.*

13. *Id.*

14. *Company Officers, Delegation Confer: Anaconda Co. Assures Solons on Pollution*, GREAT FALLS TRIBUNE, Feb. 28, 1970, at 18.

and Game Board, and the Water Pollution Board. All these moves were designed to grease the wheels for easy passage of the Company's easement request just days away. Or so it seemed to me.

The spacious governor's reception room was jam-packed with some hundred people when the 10 a.m. meeting of the Land Board got underway on March 2, 1970. In the group was a sizable contingent from Lincoln, including Cecil Garland, the well-regarded spokesperson for environmental concerns. And in this instance, he had continuing probing questions about the Company's mining plans east of Lincoln.

It was a lively and, at times, contentious session; indeed, it turned a bit ugly between the Governor and Attorney General Woodahl. In his comments, it was clear that Governor Anderson wanted the easements granted immediately, at the meeting. Secretary of State Murray, for his part, wanted his report of Company expenditures in the state through 1969 to be placed in the record, showing cumulative wages and state taxes over time.

The Company, used to getting its way, had two officials on hand for the meeting. With a certain air of entitlement, they spoke to the easement request, which had been made in a December 23, 1969, letter to Commissioner Schwinden from James A. Robischon, counsel for the Company, for the following tracts in Lewis and Clark County:

All of Section 16, Twp 15N, Rge 7W (640 acres), the tract that lay across Alice Creek, and for 40 acres in Section 4, Twp 14N, Rge 7W, adjacent to the Blackfoot River.¹⁵

Commissioner Schwinden then made a report to the Board outlining several discussions that had taken place with other state officials (Forest, Fish and Game, Health, Water Resources), and with some Company people in the two months since receiving Robischon's letter. A month earlier, on January 30, Commissioner Schwinden had called Robischon to tell him that any easement "would have to contain some restrictions." He also said, "it was likely that Land Board approval would be tentative subject to provisions to be worked out."

The stage was set for action after cessation of questions from the audience and Land Board members. Attorney General Woodahl leapt in with the following motion, seconded by me, and which passed unanimously:

15. Designated as Land Board item SP370-1.

[T]hat the Land Board defer action on the easement request of the Anaconda Company until a later date; request to be placed before the Board of Health, Fish and Game Department, and Water Resources Board for review and *public hearing* on the impact of the request and the possibility of pollution. When this has been done, these boards are to report back to the Land Board their findings and the Land Board will then consider the question of easement.

At the suggestion of Governor Anderson, Secretary of State Murray then made a motion, seconded by the Governor and unanimously passed, that the Board ask, “Senator Mansfield to engage the federal government in this same question and have them [sic] assist in every way possible.”

Attorney General Woodahl then moved that the Board of Health, the Fish and Game Department, and the Water Resources Board file written reports with our Board and with Commissioner Schwinden prior to an April Land Board meeting.

All of this was high drama, indeed, accompanied by a fair amount of tension. Three days later, the following headline, in the Helena Independent Record, grabbed my attention: “Woodahl Scores Again.”¹⁶

It seems Attorney General Woodahl had departed from an agreed-upon script. The Governor, in calls to Woodahl, Murray, and me from Washington, D.C., following his meeting there with Company people on February 28, realized there were not enough votes to grant an easement. It had been agreed that Commissioner Schwinden would prepare a recommendation that the easement be deferred. But before the Commissioner could speak, the Attorney General had stepped in. His motion was much the same as what Commissioner Schwinden would have recommended—except for the public hearings.

All along, I had supported putting off a decision on the Company’s easement request until more questions could be answered, especially about water pollution, and until the Company would openly disclose more completely its plans for its open-pit mining enterprise. Attorney General Woodahl’s motion was certainly okay with me; I had seconded it after all. I didn’t care a whit about the folderol between the Governor and the Attorney General as to who would hold sway. Big egos and statehouse

16. *Woodahl Scores Again*, HELENA INDEPENDENT RECORD, Mar. 5, 1970, at 4.

gamesmanship had been on full display, not to mention what seemed to have been behind-the-scenes maneuvers and machinations.

Fast forward to May 13, 1970, the next time that SP370-1 would be taken up by the Land Board. Public hearings had occurred in the 73 days since the last meeting, consistent with Attorney General Woodahl's approved motion. In April, the Department of Health, Fish and Game, and the Water Resources Board had reported their findings to Commissioner Schwinden, which now were before the Land Board. They included the following recommendations: protect surface and ground water; conduct a water quality and wildlife study; and review the easement periodically.

All of these were well and good; they certainly could help inform the development of meaningful conditions on which any easement might be granted.

Surprise, surprise. Governor Anderson then read a list of nine proposed easement conditions that had been submitted to him by the Anaconda Company—the previous afternoon. The list had been sent at the Governor's request, Jim Robischon said. Of course, neither Attorney General Woodahl nor I (Secretary of State Murray was at Mayo Clinic) had known about them. For his part, the Attorney General said he did not think it unreasonable to have more time to study them. I agreed and made a motion to allow more time for our review, and for the Commissioner to draft proposed easement restrictions to be submitted to Land Board members in advance of a special meeting set for 10 a.m. on May 20. Further, Commissioner Schwinden was directed to notify Fish and Game, Health, and Water Resources to have their representatives at this next meeting of the Land Board.

Somewhere during all of these happenings (perhaps in early March or more likely a few days before May 13), the Governor one evening called me at my home.

“Hi, Dodie. This is Forrest. What are you doing?”

“Nothing much,” I said.

“Well, why don't you come over to the Residence and have a drink?”

I said “okay” and that I would be along shortly.

I knew, of course, that this would not be merely a social occasion. Sure enough, when I arrived, I saw that Jim Robischon was there too. I cannot remember one bit of the ensuing conversation except that it was a low-key, essentially schmoozing effort to persuade me to vote in favor of the Company's request. About an hour later, I thanked the Governor for the Scotch, said my goodbyes, and left, with both of them realizing that

they had not won me over. Then and now it seemed to be a curious and miscalculated effort. The Governor should have known better.

There was plenty of press commentary about the May 13 Land Board meeting, the exchanges between Attorney General and the Governor, and what smacked of duplicity. In particular, *The Missoulian*, in a May 18 editorial, wrote about Anaconda's dumping its list of conditions on the eve of the meeting. "The [g]overnor should not go along with the [c]ompany's hanky-panky. He did so when he insisted that the Land Board accept the list of nine conditions without study and without analysis of them by interested public agencies and by private citizens."¹⁷ In its conclusion, the editorial stated that the Company ". . . will never get public trust by trying to pull fast tricks, which the last-minute submission of its conditions last week appeared to be. Woodahl and Colburg were right again. When will the [g]overnor learn? When, above all, will the Anaconda Co. learn?"¹⁸

On May 20, 1970, at what would turn out to be the last meeting of the Land Board to act on the Company's easement request, another good-sized group of citizens were present. Like the May 13 meeting, we were a three-member Land Board with Murray again being absent. All of the requested state agency representatives were in attendance and made important suggestions for changes to proposed easement conditions. Additionally, Dr. John S. Anderson, the Department of Health executive officer, noted that the Company had said nothing about what it would do to assist the Lincoln community. Though not proposing it as a condition, Dr. Anderson suggested that the Company might wish to declare its position since so much concern had been registered at the public hearings about impacts on Lincoln.

One by one, Commissioner Schwinden read aloud the proposed easement conditions, now numbering eleven. Built upon what the Company had submitted, they had been strengthened and made explicit. One new condition, number ten, read as follows:

Grantee [Anaconda Company] agrees that upon the termination of its operations or upon the termination of this easement it will reclaim the land covered by this condition to its most beneficial use. Grantee agrees that in the event it breaches the terms of this condition that Grantor [State of Montana] may bring an action for specific performance against the Grantee to force compliance.

17. *When Will They Learn?*, *MISSOULIAN*, May 18, 1970, at 4.

18. *Id.*

Commissioner Schwinden then recommended the easement be granted subject to the newly proposed conditions and on payment of \$127,792.34, an appraised price determined by the state forester. Attorney General Woodahl moved for acceptance of that recommendation, which I seconded. The vote was unanimous.

Following up on what Dr. Anderson had suggested regarding assistance to the Lincoln community, I was pleased to make the following motion, which passed unanimously:

that the Land Board through the Land Commissioner request the Anaconda Company to express, by letter of intent, its willingness to cooperate with the community of Lincoln, Montana and with other applicable local and state agencies in all phases of community growth and development in Lincoln and immediate environs. Further, the Anaconda Company be requested to express its willingness to communicate and cooperate with the Montana Department of Planning and Economic Development concerning all other present and contemplated Anaconda Company operations in Montana.

Our work was done. The Land Board would await the Company's response. Would it want an easement under the conditions imposed? The only Company official at the fifteen-minute board meeting, Jim Robischon, indicated that condition number ten, concerning reclamation, would require further study before an easement could be accepted by the Company. Coincidentally, within the hour, Company stockholders would be attending their seventy-fifth annual meeting in Anaconda, some eighty miles away. They would have something new to chew on that was not on their meeting agenda.

A little over two months passed. Then, on July 29, 1970, to the surprise of many across Montana, the Company quietly announced it was withdrawing its easement request. Was the sticky issue of reclamation the reason for the withdrawal? Or was it a re-assessment of the questionable profitability of its planned mining operation? The latter was the explanation offered by the Company.

Whatever the actual reason for the Company to withdraw its request, great sighs of relief must have occurred across the state and among environmentalists in the Lincoln community—especially Cecil Garland. Whether or not Governor Anderson “messed up,” Alice Creek and its

lovely landscape, along with the Blackfoot River, would be spared the ravages of open-pit copper mining and its aftermath.