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THE HARD ROCK MINING BILL: HOUSE BILL 243

Harrison Fagg

The time:	Summer of 1970
The place:	Mount Wood Plateau, Montana
Elevation:	9,500 to nearly 11,000 feet
The event:	A family backpack

The Hard Rock Mining Reclamation Act had a unique beginning. We were setting out on a family backpack in the summer of 1970. We parked our car at an abandoned mine and began walking up what had been a scenic trail the year before. Instead of a trail, we found a bulldozed road. We were puzzled, but since the road followed the old trail route we continued several miles upward to the Mount Wood Plateau—one of the most beautiful expanses in the Beartooth Mountains. Mount Wood Plateau is an immense alpine meadow, about 9,500 feet in elevation, reaching out as far as you can see. At the beginning of the Plateau is an area about one mile in length and width called the Golf Course. The Plateau itself runs past the Golf Course upwards another five miles ending at Mt. Wood and Mt. Hague—both mountains over 12,000 feet high—a very special place.

As I moved into the opening, it was apparent that something was wrong. The Golf Course was unrecognizable. The meadow grass had been destroyed by bulldozed tracts. Earth had been scooped up into piles. Oil spills littered the site. Once a place of beauty, the area was now a deserted disaster. Mineral exploration. Hit and run. And no sign of any type of reclamation.

In the midst of the desolation was a small chopped-down fir tree, probably less than two feet tall, dwarfed by the climate, but at least 10–15 years old. It had been standing all by itself in the midst of this huge clearing until someone chopped it off at its base with one blow of an axe and left it where it fell—something so unnecessary. We photographed it in passing. I had no idea at the time that this forlorn tree would become a focal point in the passage of hard rock mining legislation.

What we had seen was utter destruction. A scene of horrendous overkill caused by mineral exploration. Shocked into silence, we turned around to head home. On the way back, I wondered non-stop what could be done to bring an end to this kind of reckless activity.

True, beneath the surface was potentially a treasure of minerals—chrome, platinum, palladium, gold and possibly others—but these minerals were hundreds of feet below the surface. The question lingered; couldn't this exploration be done in a better way?

The scene reminded me of so many other sites of mining devastation I had seen in Montana—Lake Abundance where small streams of yellow water ran out of abandoned mining claims; mining destruction in the Cook City area; rusted out mining equipment at Daisy Pass; un-reclaimed dumps and tailings south of Helena—all these images came to mind.

We obviously had a problem. My question was, how could we bring an end to this kind of damage?

The time:	The start of the 1971 Legislature
The place:	Helena, Montana
The event:	Designing the Bill

Where to start my mission? The most logical jumping-off point was the Montana Fish and Game Department, the state agency most involved in environmental issues. In our discussions these professionals saw the need, but after researching the subject they could find nothing in existing state law that gave them the tools to address the problem. The Montana Legislative Council, the bill-writing department for the Legislature, was next. These employees could not find any other state that had specifically addressed the impacts of hard rock mining and designed appropriate controls. Then we contacted the State Land Board, but these officials also felt they were without authority to act. They needed a statute they could enforce. All parties were sympathetic, all could see the need, but answers were few, and the problem wasn't going away.

A path to rectify the problem was necessary. Some suggested a study. This wasn't acceptable to me. The problem was immediate and would grow. We sent our request back to Fish and Game, and to Don Aldrich of the Montana Wildlife Association. Together we all brainstormed for a solution. Our best answer was to start outlining a meaningful bill. We needed a regulatory scheme that would address the environmental disruption caused by unregulated mining, yet one that didn't stop all mining development.

Our next idea was to seek some outside expertise. But who? We eventually focused on two experts—an environmental attorney with the U.S. Department of Interior, and a nationally recognized mining attorney recommended by the National Mining Association. These individuals were contacted by the Fish and Game Department and both agreed to come to Montana. We had a short meeting as soon as they arrived. In this meeting the parameters were set—creating a bill that neither side really liked, but one that got the job done. We wanted a compromise—a bill that was

fair for the miners and fair for the land and future generations. Our formidable task was to write Montana's first hard rock mining and reclamation standards.

I took both of these men to my office in the Capitol and told them, "This is your office. Don't come out until you have a bill draft."

It took about a week. I got a call, picked up their draft and took it to the Montana Legislative Council for final preparation. The result was House Bill 243 (HB 243).¹ Finding co-sponsors was easy. Twenty-seven Democrats and Republicans signed the Bill. As I had envisioned, it was totally bipartisan. Many felt the issues of hard rock mining needed answers. The chopped-down stunted fir tree was the symbol. Hard rock mining legislation now joined the ranks of a lot of needed legislation addressing natural resource protection awaiting deliberation in the 1971 Legislature.

Although 23 pages long, the final bill draft was relatively simple. It divided the mining process into exploration, mining, and reclamation. It outlined the steps for permitting each phase and the nature of the reclamation that was needed during and after each phase. It would be enforced through reclamation bonds that would only be used in the case of non-performance. It was broad enough to cover existing, as well as, proposed mining. For a number of reasons, it could not cover reclamation of past mining sites such as those at Cook City and the Stillwater.

The title of the Bill states:

Bill for an act entitled: An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and related activities; providing for the reclamation of explored, developed and mined land; providing for the administration and enforcement of said act by the water resource board; and providing for an appeal procedure.²

A Senate amendment provided that the Land Board would be the enforcing agent.

1. Hard Rock Mining Reclamation Act, H.B. 243, 42d Leg. (1971).
2. *Id.*

The time:	February 11, 1971
The place:	The Montana State Legislature
The event:	Introduction of the Bill

The next step was the introduction of HB 243 with its 27 bipartisan sponsors. Dorothy Bradley, of Bozeman, served as the second sponsor on the Bill. Dorothy was a Democrat and I was a Republican, proceeding with our plan.

HB 243 had strong support, but also some very strong resistance. Support came from affected communities, forward-thinking Montana citizens and environmental groups. Opposition included the Montana Chamber of Commerce, the Montana Taxpayers Association, and a number of very conservative organizations. The Taxpayers Association argued that such statutory limitations would cut back all mining and Montana would lose some of its tax base.

As expected, the mining industry led by the Anaconda Company strongly opposed HB 243—in spite of the fact that a professional from their industry had helped write it.

The first line of resistance came from the small miners in Montana. Helena, which started as a mining town itself, is located at the center of hundreds of small mines. Most of these small miners came to Helena to fight the bill. They were vocal and persistent, but polite. Each day as I entered the Capitol, 15 to 20 of them would surround me and follow me throughout the day. They seemed to take turns coming and going, but there was always a group of them. They made their point. They should not have been included in HB 243. The small miners were not the main problem and reclamation costs required by the bill would have been an unfair burden.

The question of small mines was sent back to the Fish and Game Department and Jim Pozewitz suggested creating a small miner exemption. But what would that involve? Jim said, “Let’s ask the small miners.” They came up with an exemption based on a quantity of dirt that could be disturbed in a year. If their mining operations disturbed less than 100 tons of dirt per year, they would not be covered by the regulations.

Fair enough. The small miners were exempted. The swarms of resistance diminished. Their gratitude was more than evident.³ They were a great group. They had a legitimate problem, they let us know about it,

3. After the bill passed, they invited my wife and me to tour some of their mines and treated us to lunch.

and together we resolved it. The amendment process took time, but the exemption was placed in the bill during Senate hearings.

It was widely believed that the Anaconda Company was the force behind the small miners. But after their exclusion, the corporate leaders continued to work relentlessly in their attempt to kill the bill.

After its introduction, HB 243 was assigned to the House Natural Resources Committee, and a date was set for its first public hearing. Expecting large participation, it was held in the Highway Auditorium. The hearing was filled with intense emotions on both sides. The Anaconda Company packed the room with some 200 very vocal opponents. In anticipation, the proponents showed a film by “Fitz” Fitzgerald, a retired businessman and environmental film producer from Billings, documenting some of the worst aspects of unregulated mining across Montana. The opponents booed and yelled throughout the 30 minute production and one Anaconda spokesman summarized it as “a propaganda film and presentation.” After listening to both the pros and cons the committee members reacted favorably and passed HB 243 with a little discussion and a lot of praise.

The big date for second reading in the House Committee of the Whole, the critical vote, was February 11, 1971. HB 243 passed easily and passed third reading as well. This was the ‘70s! The Montana House was full of progressive thinking legislators.

As the bill continued on its path to the Senate, the only real opposition continued to be the Anaconda Company. The lead lobbyist, Lloyd Crippen, took the issue personally. After House passage of HB 243, he made a point of telling both me and George Darrow, my republican seatmate and a strong supporter of the legislation, “I was here before you got here, and I will be here after you are gone!” We responded that this sounded a lot like a threat. He replied, “Take it any way you want to.”

The time:	February 1971
The place:	The Montana Legislature
The event:	The Montana Senate considers the Bill

The Senate has always been an entirely different group of lawmakers than the House. Even in 1971, and regardless of political party, the members tended to be more cautious and less open to new ideas. The Senate also included some Senators who were close friends of Lloyd Crippen and declared they would see that the bill was defeated in the Senate. They believed that it wasn’t needed, that it was too costly to industry and that it would stop mining in Montana. We knew we were facing some real challenges.

While HB 243 was in the Senate, some interesting things happened:

- The reception of the bill in the Senate was quite negative. It was assigned to the Senate Natural Resources Committee, which was generally adverse to all environmental legislation. For a period of time, the survival of the bill was in serious doubt. Several members of the committee openly declared that it was “dead on arrival.”
- Gordon McGowan who had successfully chaired an interim committee on strip mining believed interim studies were the only way to go. He said, “We may need this hard rock bill, but first we need an interim study. No bill as complex as this can be successfully written during a single legislative session.” The Senators liked studies and were receptive to his idea. It took a great deal of effort to put his idea to rest.
- I had a late evening call from a past Montana Governor and good friend telling me, in no uncertain terms, to pull the bill. It was not needed and not good for Montana. He backed off a little when I told him that an expert from the Mining Association had been involved in drafting the bill from the onset. It was apparent he had not been given all the information.
- As time went on, sentiments about the bill began to shift. A strong and sophisticated lobbying effort, led by Phil and Robin Tawney, was underway. Others joined in.
- A booklet of photographs taken of the Stillwater exploration was assembled and passed around. There is nothing like real pictures of devastation to influence decisionmakers.
- Citizens from across the entire state became involved, calling their senators, writing and visiting them in Helena, and urging support for the bill. Hundreds of personal contacts were made—another effective way to influence decision makers.
- While all contacts were helpful, there is no doubt that the most important was from Mary Donohue, a Stillwater County Commissioner who lived and ranched above Nye, near the heart of the Stillwater Mining complex. In essence, she moved her friend and fellow rancher, Senator Bill McKay, from “undecided” to “supporter” of the bill by simply saying, “Bill, we need this one.” Senator McKay not only voted for the bill but

carried it in the Senate. His popularity was a key to its passage.

- HB 243 continued on its bipartisan path. Although more generally urban than rural, progressive Senators from both parties supported it.
- While in the Senate there were numerous efforts to table the bill indefinitely—a popular tool used to kill legislation more unobtrusively. But watchdog supporters put out their alerts and we were able to avert the problem.
- In a last and desperate move, the Anaconda Company tried to kill the bill by putting pressure on the Butte senators to lead the way. While this group didn't particularly support the bill they made no real effort to stop its passage. As one of them told me, "Don't worry, we are all for making Montana a better place. The Anaconda Company hasn't done Butte a lot of favors."
- That small, stunted, chopped-down fir tree became a symbol. Its photograph, shown countless times, caused even the strongest opponent to wonder if things had perhaps gone too far.

And so it went—lots of conversation, lots of lobbying, lots of effort, and then the Senate voted.

HB 243 narrowly passed second reading in the Senate. Senator Bill McKay carried the bill. Without his support it would have failed. A few industry-driven amendments were added and by the time it proceeded to third reading it had picked up support. However, the amendments were not accepted by the House, so the bill was assigned to a conference committee. The conference committee stripped the amendments, but when its report went back to the House, one last ditch effort was made to kill it. The Anaconda Company distributed a number of technical questions about the bill in an effort to prove it was not well thought through. This attempt failed. The conference committee report was approved, and the bill passed.

The final hoop for the bill was Governor Forrest Anderson. He was very receptive and with his signature the bill became law.

But the effort to kill it, or at least modify it into oblivion, didn't stop. Administrative rules and regulations fleshing out critical details needed to be written and approved. A public meeting was scheduled to review and approve the administrative proposal of the Department of State Lands. Shortly before the end of the 30-day notice, I received a call. There could be a problem. I was summoned to Helena.

Sure enough, Anaconda Company spokesmen, along with 100 other participants, were present when the regulations were presented. Rules proposed as regulatory guidelines for the bill were challenged and debated. Action from Ted Schwinden, Commissioner of the Department of State Lands, and his staff who would be administering the new law, saved the day. The regulations were approved.

HB 243 had passed its last challenge. It was now officially state law with regulations to guide it—really, quite a milepost in Montana history!

The time:	The Present
The place:	Montana
The event:	The bill, now a law, in action

An idea that started in an alpine setting around a small tree that was unnecessarily chopped down is law! It is now in its 45th year of operation. It is a law designed to protect our environment yet allows mining—the outcome of a belief that said the two can and should work together.

It is now in the state statutes as 82-4-301 to 390.⁴ The title says it all:

An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and related activities; providing for the reclamation of explored, developed, and mind land; providing for the administration and enforcement of said act; and providing for an appeal procedure; and providing for an effective date.

There have been attempts to change it. Minor changes have occurred. Many proposals for major changes have failed. Each failure strengthens the fact that the bill was fair and designed to reach the middle ground. To evaluate this, we have to look at the issue from two perspectives. The effect of the Act on the mining industry and second, its effect on Montana's environment.

FIRST, HAS THE HARD ROCK MINING BILL
BEEN A DETRIMENT TO MINING IN MONTANA?

4. MONT. CODE ANN. §§ 82-4-301 to 390 (2019).

No doubt it has had an effect. Mining went from basically unregulated to regulated. The industry now has two standards, not only mining, but also mining that shows respect for the environment—being a good neighbor and protecting the area that is disrupted.

The Act has changed Montana’s approach to mining. The law allows for development, but not destructive development. It encourages interaction among mining interests, government representatives, and the citizens living in an effected area.

But, simply put, has the law and its direction caused hardship or caused excessive cost to the industry? Apparently not. A recent article in the Billings Gazette, written by a mining official in October 2018, stated, “Montana and our regulators have worked here over the past 30 years in mine regulation protecting our land and water . . . mining is still an important part of Montana’s economy contributing \$2.7 billion per year, providing 12,300 high paying jobs and over \$200 million in state revenues supporting services all Montanan’s enjoy.”⁵

Clearly, the Hard Rock Mining Act and the administrative regulations have not been a huge burden to the industry!

SECOND, HAS THE HARD ROCK MINING LAW BEEN HELPFUL TO THE MONTANA ENVIRONMENT?

A huge yes here. Environmental disruption during and after exploration is now regulated. Devastation as we found on the Mount Wood Plateau has been stopped. But careful exploration has not stopped. Exploration follows permitting. After a careful, thorough plan has been developed, mining takes place. Reclamation follows after each step.

Perhaps the best example of mining under the Act is the Stillwater Mine located in Montana’s Stillwater valley near Nye, Montana—the area where this story started. The mine is in full production and hundreds of people are employed. Regulation has not stopped mining activity. The mine is producing tons of platinum and palladium annually, but reclamation follows development—a huge difference from the past.

Mine personnel not only work with the State of Montana mining officials, but also voluntarily meet regularly with the Stillwater Association, a local volunteer environmental group. They want to assure that their efforts are satisfactory to the locals who live here—a far cry from the reckless exploration that previously destroyed a good section of alpine beauty in this same area by another mining company.

5. Ray Sheldon, *Montana Doesn’t Need More Mining Rules*, Billings Gazette (Oct. 17, 2018).

The closest neighbor, less than three miles away, is the largest wilderness area in the United States, the Absaroka Beartooth Wilderness Area. The Wilderness Area's most popular entrance is on the road that literally goes through the mine. Thousands go to the Wilderness Area annually and enjoy its glory. While probably not pleased with the mine, they are aware of the efforts to make the impacts as unobtrusive as possible.

CONCLUSION

The man who "chopped down that small tree" on the Mt. Wood Plateau made a big contribution to the passage of the bill. Exploration overkill resulted in meaningful legislation.

After its passage, the Billings Gazette wrote an editorial about HB 243 entitled, "Copper Collar Broken."⁶ The massive mining lobby failed. The Anaconda Company and its power over Montana business and environment was forever changed. The company contributed greatly to Montana's growth, but overreached. Its voluntary move out of Montana opened the door for others. Mining in Montana is strong today. Successors to the company in the mining industry have all been successful. Mining has not diminished but grown. It has been a win-win.

The Hard Rock Mining Act and other legislative efforts have proved to all that both our natural resources and Montana business and industry can co-exist. Each has come to respect the other. Montana is better off for this effort. Montana is also better off for the legislative work done in the period between 1971 and 1975.

This effort was one of many.

6. *Copper Collar Broken*, BILLINGS GAZETTE, Mar. 3, 1971.