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ALICE CREEK—1970
MONTANA CONFRONTS THE COPPER GIANT

James D. Moore

In early 1970, a fortuitous discovery, and willingness to act by a custodian at the state capitol in Helena, resulted in the public exposure of secret negotiations between state officials and the Anaconda Mining Co. regarding an intended mining development of enormous proportions. The mining development was aimed at the headwaters of the Blackfoot River—the beautiful Montana river later made iconic by the Norman Maclean novel, *A River Runs Through It*.

To appreciate the magnitude of the environmental impact presented by the Anaconda Company's 1970 proposal, imagine Butte, with its arsenic-saturated soils, tailings and metal-laden waste, rarely functional settling ponds, and signature mining pit, where the "Richest Hill on Earth" once stood—now a crater over a mile wide, a mile deep, and filled with 50 billion gallons of acidic, metal-infused, totally toxic liquid—being placed near the little town of Lincoln, Montana, directly above one of the most pristine, unspoiled ecosystems in the continental United States.

To conceptualize the human impact of this proposal, imagine the little unincorporated fly-fishing, forest community of Lincoln, population 400, being transformed almost overnight into an ethnically charged boomtown of substantial population. Butte, the Company's model for such a mining development, had grown from a mining camp of a couple hundred miners in 1875 to a mining city of 25,000 people by 1890.

That was the picture that existed at the time of the 1970 events. That was the picture that existed in the mind of Tom Ulberg (now deceased) when, in a random moment, as an artist by trade and custodian for survival, he happened to notice publicly undisclosed plans on the desk of the Montana Land Commissioner, Ted Schwinden.

The documents related to a proposed purchase of an easement over roughly 680 acres of state school trust lands in the Alice Creek drainage, incidental to plans of the Anaconda Company to develop an open pit copper molybdenum mine in the mountains above Lincoln.

Tom Ulberg had not seen anything in the news about the proposal onto which he had stumbled. To his knowledge, nothing had been announced, despite the proposal's massive nature and projected location in the headwaters of the Blackfoot.

Tom, concerned about the track record of the mining industry in general, and the magnitude of the proposal in specific, copied the documents and took them to his friend, my brother, Tom Moore. Tom asked me what should be done.

By way of brief history, the mining industry in Montana had been originally prefaced by the discovery of gold by a French trapper named Francois Finlay at Gold Creek in about 1852. By 1858, prospectors and fortune-seekers had taken notice, and were not only taking gold from that area, but were looking beyond. By 1862, gold was found at Grasshopper Creek, near what became Bannock; and by 1864, gold was discovered at Last Chance Gulch and Confederate Gulch in what is now Helena.

Early mining in Montana was called placer mining. It focused on gathering superficial gold found along waterways and was not so much mining as the use of water and gravity to separate this surface gold from other rocks into which it had been carried by water.

Placer mining was the predominate mining technique in Montana until the late 1800s, when the early gold finds began to play out. Gold seekers started following the gold back to its source in the hills and mountains. This resulted in the discovery of veins of ore bearing gold and silver. By the turn of the century, placer mining gave way to underground lode mining for gold and silver, which in turn gave way to deep shaft mining, and ultimately open pit mining for copper, lead, zinc and other metals.

Early placer mining was relatively pollution-free. As early lode mining produced gold-rich ore, rudimentary mills were placed at or near mining sites to crush and hydrate the rock and separate the minerals from the waste. The refuse was deposited wherever space would accommodate, and the effluent was funneled directly back into adjacent waterways. There was a disruption of earth, but far-reaching pollution was minimal.

As demand for other metals such as silver, lead, zinc, and copper increased, and availability of high-grade ore decreased, techniques for separating the minerals from the rock were advanced by the mining industry. It was learned that when certain acids and chemical bonding agents, such as cyanide and arsenic, were added in the milling process, the agents would attach to the targeted minerals and assist in their separation from the waste rock.

Because these new milling methods resulted in chemically toxic, metal-laden waste waters, the effluent was discharged into settling ponds, where theoretically the toxic waste could be impounded. But as Montana learned, the settling ponds were prone to constant leakage and periodic spills, and the toxic liquids that remained after the miners left found their

way into the adjacent soils where they leached into waterways, and continue to do so to this day, 100 years later.

Historically, the Heddleston Mining District, the target of the Anaconda Company's 1970 open pit mine proposal, followed this pattern. It was located along the Continental Divide between Helena and Lincoln—a rugged, largely inaccessible area. While no placer mining had occurred, veins rich in gold and silver brought lode mining in the late 1800s.

A number of underground mines—the Mike Horse, the Paymaster, the Edith, the Anaconda, and Midnight—experienced sporadic activity thereafter. The discovery of minerals such as lead, silver and copper, for which markets had developed, resulted in new levels of activity, and rudimentary on-site mills were constructed.

By 1940, the Mike Horse Mining and Milling Company had acquired rights to existing operations in the area. Availing itself of advances in the technology of milling minerals, the first floatation mill was constructed, creating a 15-mile extension cord back to Marysville to power the operations.

In 1945, ASARCO purchased the Mike Horse holdings; and around 1955, facing declining profits in the metals market, closed the operations in the Heddleston District. What was left were waste piles, tailings from mining and milling activities, and settling ponds which continued to pollute the soils and waters long after the mining ceased.

Historically, the mining companies in Montana had been ruthless to the landscapes they encountered. While Helena once boasted more millionaires per capita than any place in the world, most of the money, like the minerals themselves, left Montana. What remained were the scars, the metal and chemically infused tailings, open shafts, open pits, ore piles, leaching ponds, and a legacy of dramatic pollution, corruption, and greed.

The mining industry's signature cesspool was located in Butte. As Montana's celebrated novelist Ivan Doig's colorful character from *Work Song*, Morrie Morgan, put it, "If America was a melting pot, Butte would be its boiling point." And as Doig related, the "iron-fisted mining companies" in Butte ran the state, buying newspapers, politicians, ruffians, and police to coerce their will against a bullied Montana population.

I had grown up in Helena, where neighborhoods had gradually displaced the tents, shacks, rock piles, shafts, and placer mine remains which constituted the original human landscape at the base of Mount Helena. Helena had become the capital city of Montana. But most of the politics of my childhood originated in Butte and Anaconda under the iron

fist of the Anaconda Company and its partner, the Montana Power Company. Ironically, the Montana Power Co. had been founded in 1912 by John Ryan, who was then the president of the Anaconda Mining Company. Those two political/economic entities dominated early Montana politics, and continued to do so for years.

By the early 1960s, when I became interested in Montana politics, I observed that the Montana legislature embraced a third contingent, the farmers and ranchers. Prior to the strip mining of coal, the agricultural contingent seemed unaffected by the mining industry and was largely interested in livestock and agricultural issues independent of the mining and power industries. They did, however, need a non-agricultural tax base and the occasional support of non-agricultural factions to help carry their issues. Therefore, in the manner of Motel 6, they tended to keep the light on for the mining and power industries and assumed those industries would reciprocate.

My political interests soon focused on the Montana political figures who were fighting the battles. As a 17-year-old, I was empowered by positive interactions with my elders, having beaten them head to head at their own game on the Green Meadow Golf Course. Governor Forrest Anderson lived across the alley, and Congressman Arnold Olson, as a classmate's dad, took me and friends to tour the prison. I respected adults but did not fear them. I actually wanted to run for Governor and believed I could have done so successfully at age 17, restrained only—and unfortunately, in my thinking—by the law.

By the time I entered law school in 1969, a new spirit had emerged in politics, both in Montana and across the country. In 1962 Rachel Carson wrote *Silent Spring*, alerting the world to the vulnerability of the environment to toxic waste and the uncontrolled application of pesticides and herbicides. Almost overnight, awareness of the need for a new environmental ethic and political responsibility was ignited.

It seemed that politics had taken a turn, an unspoken redefinition of our goals, to act instead of react, to elevate the bar above immediate financial gain and post-depression concerns, and instead to analyze and solve social, economic, political and environmental issues in a constructive and comprehensive, forward-looking manner that would serve not only us, but our children and our children's children.

While I was not old enough to run for governor on that platform in the early 1960s, I was old enough to want to be a part of making that happen in Montana by the early 1970s. I was inspired by the idea of slaying old dragons and opening the doors to meaningful change. Although I

did not fully recognize the breadth and vitality of the new energy in Montana, I continued to study Montana politics as I studied the law.

On a January weekend at home from law school, my brother Tom approached me regarding his friend Tom's discovery. My brother asked if I had heard anything about a Butte-style open pit mine being proposed by the Anaconda Company for the mountains above Lincoln in the headwaters of the Blackfoot River. I had not.

We were well acquainted with the area targeted by the proposal, about 50 miles northwest of Helena, having hiked up the Alice Creek drainage and explored the abandoned mine shafts. We did not, however, know the more recent history of the Heddleston area.

In the early 1960s, an Anaconda Company employee named Charles Goddard, who had previously been involved with the Mike Horse Mining and Milling Company, obtained approval from the Anaconda Company to perform field tests throughout the District, with a focus not on the gold, silver, lead, and zinc which had previously been extracted, but for copper and molybdenum which existed below the traditionally mined deposits.

Based upon Goddard's findings, the Company had quietly acquired and consolidated mining rights within the District during the 1960s and was exploring the development of an open pit mine of the magnitude it had "successfully" accomplished with the mile-deep Berkeley Pit.

Most of the details of the Anaconda Company's intentions for the Heddleston District were not known to the public in 1970. The Company's plans were later summarized by David Stiller in his 2000 book *Wounding the West: Montana, Mining, and the Environment*. The Company intended to mine 25,000 tons of copper and molybdenum ore per day in a Butte-styled operation requiring a workforce of 500–800 people to mill the same, then send the milled ore on a conveyor belt in a tunnel constructed beneath the Continental Divide 25 miles to Silver City or a location where it could be further processed or carried out by rail.

The Anaconda Company's plan called for the Blackfoot River to be diverted around mine facilities via a 4000-foot-long ditch, with waste dumps to fill the Paymaster and Meadow Creek drainages, and mill tailings to be held behind a large water-supply impoundment dam that would be constructed on Alice Creek.

The fly in the ointment was that the Anaconda Company needed to gain control of roughly 680 acres of Montana school trust land on lower Alice Creek in order to proceed with its plans. And, when the company moved quietly forward to purchase the easement from Company-friendly

politicians, the documents necessary to effectuate the acquisition, sitting on the desk of the Commissioner of State Lands, were noticed by someone not committed to either the Anaconda Company, nor the concealment of its activities.

From the perspective of Tom Ulberg, it appeared that the Anaconda Company was in the business of obtaining an easement from the state of Montana necessary to open a new and potentially devastating chapter in Montana mining. Since he was not aware of any news about the mining proposal, he assumed it was deliberately being handled secretly. It appeared that the Company had the necessary politicians onboard and had succeeded in staying below the radar. Tom's concerns appeared accurate.

In my opinion, we had only one course of action. That was to move the mining proposal from the invisible to the newspapers. The need was to create immediate public awareness—public concern about the potential impacts, anger at the secrecy, and demand to be heard.

Any hope of achieving success—changing the outcome or creating conditions to be imposed on the Company—required, at the least, the following:

- (1) The ability to make the matter public throughout Montana in a manner that would elicit an immediate and broad reaction.
- (2) The ability to direct the public reaction to influence those who had the power—the Land Board (the Land Board consisted of the Governor, the Secretary of State, the Attorney General, and the Superintendent of Public Instruction, while the Commissioner of State Lands was the ex-officio secretary).
- (3) The ability to use public opinion to lengthen the process, require disclosure of additional information, invite opinions from interested organizations and individuals, and most important, conduct public hearings.
- (4) The ability (a) to defeat the proposal (unlikely), (b) to create conditions that would protect the town of Lincoln and the Blackfoot River, (attainable, to some degree), and, (c) to update mining laws relative to the public's right to know, right to participate, and right to protect the environment (likely and important).

My assessment of the Land Board was that only Dolores Colburg, Superintendent of Public Instruction, might be favorably inclined to resist

the Anaconda Company's proposal. She was newer to politics and perhaps not yet subjected to the pressure of the Anaconda Company. In retrospect, I believe that the Company's Achilles Heel was its underestimation of Dolores Colburg's ability to influence the outcome.

I knew very little about Land Commissioner Ted Schwinden. He had been a farmer/rancher from Eastern Montana, past president of the Grain Growers Association, and a member of the Montana House of Representatives. I assumed that he would not oppose the bidding of the Anaconda Company as he had only recently been appointed by Forrest Anderson and appeared to be complicit in the concealment of the proposal.

While I have recently reconsidered my early opinions of Schwinden, I guessed then that he was either directly influenced by the Company or was between a rock and a hard place that rendered his support unlikely.

I had observed Secretary of State Frank Murray in other matters, and he struck me as an old school, Mayor Richard Daley, Chicago-type politician, who existed to protect the powers who ran the system. I expected Murray would glare with contempt at opponents of the Company and argue that Montana owed Anaconda and Montana Power a debt of gratitude for the prosperity they brought to our state. I was not disappointed.

I believed Attorney General Robert Woodahl had a unique potential to be supportive of our goals, although he was neither an environmentalist, nor appeared to have any passion for the land. I subsequently grew to respect and enjoy A.G. Woodahl when I interned with him. But in 1970, prior to meeting him, I speculated that he was intrigued with the notion of running for Governor. He was the only Republican on the Land Board, and it seemed probable that our issue would provide him an excellent opportunity to be regarded as a champion for the people.

Governor Anderson was a bit of a wild card. He seemed susceptible to old school politics. While the covert nature of the State's handling of the matter was undoubtedly promoted by the Anaconda Company, it could not have occurred without the Governor's acquiescence.

That said, Forrest Anderson was also a shrewd, gritty, tough politician, and while he was capable of making bad decisions, he was not prone to be led by his nose into manifestly dangerous or unpopular waters. His principal agenda was streamlining and reorganizing Montana government.

If the public reaction to our disclosure was dramatic, I could envision Forrest Anderson pausing to assess the situation, possibly moderating his position, and ordering a public hearing, if for no other reason than to appear open-minded.

As to disclosing the proposal to the public, we were again the recipients of fortuitous changes. The Anaconda Company, as part of the domination with which it had always controlled Montana, had owned and managed newspapers in Montana since the late 1800s. The Great Falls Tribune had been the sole independently owned major paper. In the late 1950s, the Anaconda Company made a decision to divest itself of its newspapers, and the Lee group purchased eight. Under the guidance of Lee journalist Don Anderson, a new professionalism and independence returned to Montana journalism. Ironically, this was during the very years the Anaconda Company was doing its feasibility studies regarding copper mining in the Heddleston District.

By 1970, thanks to the efforts of Lee Newspapers and a new core of bold and talented investigative journalists, the mining industry no longer controlled the news or public opinion. Perhaps for the first time in our history, Montana actually had the ability to hold big industry accountable.

In 1970, I had the opportunity to become acquainted with a number of Montana newsmen. My recollection is that after reviewing the matter with my brother, I contacted a reporter with the Lee State Bureau in Helena named Dan Foley. (There is some question here since I worked with several other outstanding newsmen, including Dale Burk with the Missoulian, and John Kuglin, with the Great Falls Tribune.)

I was recently able to locate Dan Foley at his current home in Cincinnati. While he did not recall the initial release, he recalled the petition drive I organized on Montana University campuses, and a guest editorial I wrote for the Independent Record following the March hearing.

In any case, my recollection was that I met with Dan Foley in Helena, that we reviewed the Anaconda easement materials given to me by my brother and Tom Ulberg, we discussed the magnitude and the implications of the Anaconda Company's proposal, and we considered the ramifications of the handling of the matter by the Land Board and the Company despite the potential for massive environmental degradation.

Dan's story broke on the front pages of many of Montana's major newspapers. The result was an immediate and strong reaction from a myriad of organizations and concerned individuals. This article was followed by many more in newspapers throughout Montana, detailing potential impacts to Lincoln and the entire ecosystem. The public reaction exceeded our expectations.

The uproar caught the attention of the Land Board Commissioner and, through his correspondence, that of all the Board members.

Commissioner Schwinden was the first to raise the possibility of appending conditions to any easement grant from the Board. He suggested making any grant revocable and conditioning it upon compliance by the Anaconda Company with state pollution laws.

As the political ball became hotter, other Montana agencies (the Fish and Game Department directed by Frank Dunkle, the Department of Health, directed by John Anderson, and the Water Resources Board, directed by Douglas Smith) became formally involved, as well as Montana's congressional delegation.

In the meantime, Montana journalists were making up for over 50 years of Anaconda Company-repressed news by providing a strong investigative force and voice to Montana concerns. The call to accountability had become real.

By early February, Commissioner Schwinden advised Board members that the public's expressed desire to participate in the next Board Meeting, scheduled for February 20th, could be beyond the ability of the Board to control. He recommended that the Board limit the scope of that meeting and defer any decisions on the easement pending receipt of recommendations from the Montana agencies.

It was decided that the Company would submit its proposal to the Board on March 2 and respond to questions from agency representatives. The suggestion of public participation was also advanced. It was a new day for Montana.

People were eager to participate. Literally, hundreds of letters poured into the Governor and Land Board opposing the easement, including political and fishing friends of the Governor. It seemed like I met with the whole world, including legislators, department professionals, conservationists, academic experts, and some very notable Montana leaders. Montanans from every walk came forward to offer a voice.

During the March 2 meeting, I specifically recall the comments of Secretary of State Frank Murray, glaring at those who opposed the immediate grant of an easement, and reading from a company-composed summary of the money it had spent in Montana during the previous year, primarily for wages and taxes. He introduced the summary as an exhibit and evidence of the Company's integrity and submitted a Dan Foley article about tax relief not granted to the Anaconda Company, apparently by an equally ungrateful Montana Department of Revenue. I also recall a defiant Governor Forrest Anderson calling the Lincoln residents opponents of progress.

While the Company boasted about having its own environmental department, journalist Dale Burke wrote that the Company came armed with its management team and lawyers, but no scientists or environmental professionals to explain the proposal or respond to the concerns of Board members and the public.

Ultimately, prudence prevailed. As we hoped, Attorney General Robert Woodahl moved that action on the easement be deferred, that the matter be submitted to the departments, and that a full public hearing be scheduled for April. Dolores Colburg seconded the motion, and it carried unanimously. Dale Burk called it a day in Montana history for the cause of conservation.

Between the initial news release in January and the April 8 hearing, a ground-swell of alarmed Montanans continued to come forward. The Anaconda Company responded by employing old school tactics to discourage opposition. One example—the president of Trout Unlimited, Jay Rooney, a knowledgeable spokesman for the environment, told me that he had been required to withdraw from activity when the Company put direct pressure on his employer, placing his job at risk. I subsequently learned that even my role—which had evolved into coordinating the flow of information and organizing testimony for the April 8th hearing—may have been protected by the Dean of the Law School. In the end, however, it was definitely a new day. In the face of a development that could occasion a thousand negative impacts, a thousand potential witnesses arose, offering their insights and suggestions of ways to reduce and eliminate the impacts.

As coordinator of the testimony, my role was to ensure that we had witnesses who would address each of the anticipated impacts, keep the comments concise, and encourage civility.

Our goal was to make the April 8 hearing a stark contrast to Anaconda's vague presentation on March 2—to present specific and constructive testimony from which good decisions could be made.

Anticipating a major battle, the hearing was moved to the Helena Civic Center to accommodate the unprecedented crowd.

On one side was Montana's notorious bad guy, the Anaconda Company, the powerful mining company that had always gotten its way. On the other side was a highly-charged and involved public, tired of being bought, bullied, and muzzled, and ready to demand that their elected officials listen to their concerns.

The hearing was covered by both state and national news media. In addition to the department recommendations and the hundreds of letters

that had been submitted, thirty-seven witnesses presented testimony. As we planned, the tenor of the proceedings was civil and polite, there was a minimum of duplication, and minimal ranting. The Governor and Secretary of State were largely silent, and the proponents and opponents alike conceded the existence of legitimate issues and concerns on both sides of the issue.

Ten witnesses spoke in favor of granting the ACM easement proposal. Virtually all of them framed their arguments in terms of vague economic benefits which the state would gain in the form of taxes or ancillary economic activity.

In what amounted to a recognition by the Company of the reality and seriousness of its opposition, Chet Huntley, Montana's celebrity national newsman, was presented as a proponent by the Company. His testimony was that the easement should be granted because the Company would be required to "post a bond insuring environmental non-degradation." The truth was that state law required no such bond, and the Land Board had neither sought nor received such a bond.

Twenty-seven witnesses presented testimony against granting the proposed easement, at least not without conditions, additional information, and preliminary studies. There was testimony that, despite the Company's assurances of following state law, it had not done so in the past.

Law professor Lester Rusoff testified that Montana law was totally insufficient to protect against environmental degradation.

Representative Dorothy Bradley challenged both the assumption that the development could contain its adverse effects, and the belief that the economic considerations alone could justify the negative impacts.

When Cecil Garland of Lincoln was confronted by local merchants who saw the development as an opportunity to make a quick buck, he reminded his Lincoln neighbors of their loss of quality of life due to an almost overnight tenfold increase in their population and a Berkley Pit located immediately upriver.

The most comprehensive warning against the illusion of economic benefit came from UM Economics Professor, Thomas M. Powers, who took the argument beyond the environmental impact to the human impact. The Company had projected a likely growth of Lincoln's population from 400 to about 4000 people. Powers testified that the creation of prospective jobs secondary to sudden economic developments of major magnitude typically result in an influx of 8-10 people for every position created. Not only would people come to fill those positions, but also to make easy money from the newly employed, legally and illegally, as had occurred in Butte. (Butte had grown from a few hundred to 25,000 between 1875 and

1890.) The Company's plan for helping the community was the provision of 300 prefab houses.

Who, if anyone, was preparing to meet the sudden growth that the Anaconda venture would impose upon Lincoln? Who was planning the neighborhoods, roads, schools, water, septic, garbage disposal, and infrastructure to physically accommodate a population growth from 400 to 4000, or more likely 10,000 to 20,000?

And who would underwrite the human mess left behind twenty or thirty years down the road when the Company allowed its new hole to fill with toxic waste while it went in search of new resources?

There was considerable testimony presented during the hearing about anticipated environmental impacts. Concern about impacts on the health of the workers in the mines and smelters was raised in a statement provided by Dr. Clancy Gordon (who later gave landmark testimony relating to the impact of the Anaconda Aluminum Plant on public health in Columbia Falls).

UM Geology Professor Arnold Silverman raised concerns about the porosity and permeability of the soils, and recommended testing to determine whether contamination and pollution from the proposed mining could be contained.

UM Zoology Professor George F. Weisel enumerated incidents of contaminated watersheds due to leaching and seepage of toxic waste from previous mining ventures.

The inadequacy of Montana's environmental laws was addressed by UM Law Professor Dr. Lester Rusoff and supported by Cindy Price on behalf of the League of Women Voters.

I concluded the testimony, forcing myself to bypass my screaming "Just Say No" position. Instead, I proposed that the Company and the State agree to turn this proposal into a model project under the supervision of a partnership of Company, state, university, and other expertise, charged with assessing the impacts in advance, applying the best technology and precautions, and ensuring post-mining restoration.

As Professor Tom Powers suggested, I advocated an inventory of anticipated human impacts, and urged the Company to guarantee a realistic contribution to address and fund the many community needs.

The April 8 public hearing was unprecedented in Montana history. There was no provision in the law mandating it. In fact, it happened in spite of deliberate attempts by industry and politicians to repress public awareness and participation.

There was no chaos, no raving. While opponents rejected the notion of progress for the sake of progress, they were civil and respectful.

The testimony was relevant, comprehensive, and constructive. It would stand as a role model for public hearings in the future.

It was followed by good news and sad news. On the sad news side, the Land Board, despite having almost unlimited discretion under the law, issued a much weaker and less imaginative decision than it might have. (The pre-1972 Mt Const., Art. XVII, section 1, required that the state receive at least “fair market value” for the property disposed of; and RCM 1947, section 81-103, requires the state to secure the largest “legitimate and reasonable advantage” with room to impose such conditions as would be “helpful to the well-being of the people of this state.”)

Two of the four voting members of the Board appeared aligned with the Anaconda Company before the battle even began. But for the disclosures of the liberated media, followed by an articulate public response, this matter could have been decided without any consideration of Montana’s best interests.

The Land Board granted the easement but appended eleven conditions. The first 4 Conditions required the Company to submit its plans to the Montana Water Pollution Control Council for approval before the commencement of operations. Those submissions were already required under RCM 1947, sections 69-4806 and 69-4807, and, as noted, the Company had “promised” to comply with state law during the hearing.

Condition #5 essentially required the Company to comply with Conditions #1–4. Condition #6 restated conditions #1–4 in yet another way, to wit, “(6) Anaconda agrees to obtain all necessary permits from the appropriate pollution control agencies.” In like manner, Condition #7 stated “Anaconda agrees to comply with all current air and water pollution control laws.” In short, the first 10 Conditions required nothing of the Anaconda Company that was not already required by law.

Condition #11 required the Company, at the termination of the easement, to reclaim all land “covered by the easement”—not all land despoiled by the Company’s operations or mining activities, as current laws require, but at least those portions upon which Montana had given an easement. Condition 11 nevertheless hinted at requiring something the law had not imposed in the past—a measure of accountability at the back-end, when the profit that drove the Company would no longer encourage responsibility.

The good news was that due to the enormous public reaction against allowing more of the Anaconda Company’s past mining and business practices in Montana, and a downturn in the metals market, the Anaconda Company withdrew its application and abandoned its open pit mining proposal.

Although I was merely a law student who may have been protected by a principled law school dean, I was able to write about the events a year later in an article entitled “Public Rights in Public Lands,” published in the Winter 1971 Montana Law Review.

In 1972, less than two years later, Montanans created a new Constitution which declared an unrivaled commitment to the protection of Montana’s land, air, waters, and resources.

While environmental laws have been enhanced immeasurably, the greed of developers and weak integrity of occasional public servants entrusted to protect the people, have not significantly changed. Threats will always be there.

I was fortunate to serve in the legislature in 1975, working with many of the people I came to know in 1970, perhaps the most visionary group of Montana lawmakers ever assembled.

The bottom line is that good people are the key—people who can make good decisions, be committed to transparency, who invite meaningful public participation, and who are able to place the interests of the public ahead of special interests and short-term gain.

Montana prevailed against the Anaconda Mining Company because it was armed with the next generation of leadership, a free press, and an empowered public. It was a great day for Montana.