



#### 4. MINING: Colo.'s high court hears cyanide mining case (09/11/2008)

**Eryn Gable, special to *Land Letter***

The Colorado Supreme Court on Tuesday became the setting for the battle over whether counties can ban cyanide heap leach gold mining.

The case pits Summit County, home to the ski mecca of Breckenridge, against the Colorado Mining Association and the Colorado Mined Land Reclamation Board.

At issue is Summit County's ban on open-pit cyanide heap leach gold mining, a controversial process that involves spraying cyanide, which bonds easily with gold, onto large heaps of ore to separate out the precious metal. As the cyanide trickles down through the ore, it bonds with small bits of gold that are later extracted as the solution is funneled into a holding pond.

The ban, which was adopted by Summit County in 2004 as part of a comprehensive set of mining regulations, has been the subject of litigation since its enactment.

Jeff Parsons, senior attorney with the Western Mining Action Project, said he hopes the Colorado Supreme Court follows decades of solid precedence and affirms counties' local control in the case.

"This is a precedent-setting case," Parsons said. "This case will likely determine the extent of local government land-use authority over mining operations in the state."

Parsons said the Colorado Mining Association's appeal threatens to strip local control over all types of mining operations, regardless of the risk to public health or water quality. "An adverse decision in this case could strip local government of authority over all mining in the state."

Four other counties -- Conejos, Costilla, Gilpin and Gunnison -- also have bans on cyanide mining. One cyanide heap leach mine is currently operating in the state.

This is not the first time the Colorado Supreme Court has considered whether counties have the authority to regulate energy development within their borders.

In 2006, Gunnison County went to court to fend off a challenge from the energy industry and the Colorado Oil and Gas Conservation Commission over rules that required local drilling permits. An appeals court upheld Gunnison County's rules on water quality, soil erosion, wildlife, vegetation and livestock, but struck down portions that set financial and record-keeping requirements for industry. The Supreme Court let the lower court ruling stand.

##### County authority at issue

In both the Summit and Gunnison county cases, the key legal question is whether state laws and regulations pre-empt counties from taking action.

An appellate court **ruled** last year that Summit County's rules did not conflict with the state's Mining Land Reclamation Act, noting that the law even states that operators are subject to local zoning and land-use stipulations.

The Colorado Mining Association's appeal argues that allowing Summit County's rules to stand would allow counties to stop virtually any mineral development within their borders without any justification. The mining association asserts that would violate state law, which provides uniform standards for the regulation of mining operations ([Land Letter](#), June 21, 2007).

Stuart Sanderson, president of the Colorado Mining Association, said Summit County's ban is an effort to squelch mining in the state. "What the county seeks to do is rewrite state law with a pre-emptive ban on modern mining," he said.

Sanderson said allowing Summit County's ban to stand would destroy mining in the state, balkanize the regulation of mining and reduce environmental protections by undermining state laws. The ban goes far beyond the land-use and zoning authorities typically entrusted to counties, Sanderson said. "It's an open-ended assault on state law."

But supporters of Summit County's ban note that local government should play a big part in granting or denying mining operations in the area because they are most familiar with local demographics and issues.

"The best government is local government," said Gary Lindstrom, who was a Summit County commissioner at the time of the open-pit cyanide ban. "The further government gets away from the people, the less effective government is."

##### A toxic legacy

Concerns about cyanide mining date back to the 1993 Summitville Mine disaster, which polluted 17 miles of the Alamosa River and resulted in a Superfund designation for the mine.

Conejos County Commissioner John Sandoval noted that downstream communities are still living with the legacy of environmental damage caused by the Summitville mine. "It has done so much harm to our local ecosystem, our wild rivers, the reservoirs in the area."

Despite the millions of dollars that have been spent to clean up water contamination from the mine, Sandoval said it still has not been entirely repaired. "All that water that is coming down from [the mine] is being used to irrigate the valley floor," he said, questioning the safety

of crops grown with that water.

Mining officials maintain that modern technology and best management practices ensure the Summitville disaster will not be repeated elsewhere, but critics say cyanide-leaching is inherently dangerous to the environment and communities surrounding a mine that uses the process.

The Supreme Court is expected to make a decision on Summit County's cyanide mining ban in a few months.

If the Colorado Supreme Court decides against Summit County, state Rep. Randy Fischer (D) said he would be happy to sponsor legislation promoting local control over mining, though he noted that he believes such authority already exists in current statutes. "I do believe legislative action would be an appropriate step to take if the court ruled adverse to Summit County in this case," he said.

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