

OPEN LETTER TO THE SOUTHEAST FEDERATION OF MINERALOGICAL SOCIETIES

One of the activities of the Southeast Federation of Mineralogical Societies (SFMS) is maintaining and protecting the rights of rockhounds to collect on public lands. This is a valuable service, and we very much need an organization like this in order to safeguard our rights against those who would restrict them. The website of the SFMS contains much information germane to this issue.

The success of a special interest group like the SFMS depends upon persuading lawmakers who are not rockhounds to see things our way. Since these lawmakers are not rockhounds, and since rockhounds make up less than 1% of the electorate, lawmakers do not have a direct or obvious interest in seeing things our way. Therefore, it is absolutely essential that the SFMS and other organizations that represent rockhounds' interests make their case a reasonable one and avoid rhetoric which appears to be unreasonable or opposed to the public good. The most valuable asset one can have in politics is a good reputation; once lost, it is almost impossible to recover.

I'm writing this letter because I feel the SFMS may be skating close to the edge; they may be close to damaging our cause more than helping it, in some of their writings. The particular article I have in mind is available on the SFMS website at www.amfed.org/sfms/blm-5_hours.html. The article was written by Chris Simcox and was originally published in the February 19, 2004 issue of the Tombstone Tumbleweed. It is entitled "BLM Officer Detains Family 5 Hours for Picking Up Rocks."

The article discusses the experience of some local rockhounds in Arizona, including 4 adults and 3 children. They visited the San Pedro Riparian National Conservation Area to look at Indian pictographs. A BLM officer noticed that their car contained Indian books, a shovel, and a screen, so he discreetly watched them. When the group returned to the car, the BLM searched their effects, and then ticketed 3 adults for illegally removing archeological resources. The entire searching process took 5 hours and was done in the parking lot.

OK. It is obvious that these people had an unpleasant experience. I've been a rockhound for 30 years, and I'm quite familiar with the land access issues that rockhounds must deal with. My car has been searched three times at the Canadian border. I know what it's like to be arrested. On one level I can empathize with these folks.

On the other hand, let us pretend for a minute that I'm not a rockhound but rather a legislator or a congressman, perhaps with legal training. The first question I'm going to

ask is: Did these folks actually remove resources? Are they guilty? Funny thing—the article doesn't exactly say. On one hand, it clearly says that the adults were charged with illegally removing archeological resources. It also quotes one of them saying, "There were no signs . . . to alert people they were committing a serious crime." That could be construed as a tacit admission of guilt. On the other hand, the article's title says they were detained merely for "picking up rocks"; and the article ends with the ominous warning, "activities as innocent as a child picking up pretty rocks can get you in big trouble."

So, were these people illegally removing archeological resources, or were they just picking up rocks? This is an important point, because the SFMS cannot expect support from anyone on this matter if the parties were actually breaking the law. However, in the article the people involved do not deny removing archeological resources, nor do they claim that the law is unjust. No lawmaker or government staffer reading that article will fail to notice that. If the rockhounds did not actually remove archeological resources, they and the article's author should have said so straight out.

The article makes a big point about the cruelty of the BLM in detaining this family for 5 hours in a parking lot. Well, it is overbearing behavior if the rockhounds did not actually break the law; but if they did break the law, a 5-hour detention is not that bad. I knew three different guys in grad school who spent a whole night in jail, with real criminals, and then were not charged with anything. In fact, if this family was actually guilty of illegally removing archeological resources, BLM officers may have done them a kindness, probably out of consideration for the children, by not taking them to jail.

Again, I am not against the objectives of the SFMS. We rockhounds very much need organizations like this to represent our interests to the public and to the government. However, it is important that our organizations do not throw away their good names.

My advice to the SFMS and other rockhound rights advocates is this: When writing or disseminating an article alleging government mistreatment of rockhounds, decide for yourselves whether you believe the "victims" obeyed the law, or whether they broke it. If you believe they obeyed the law, say it clearly in the article. On the other hand, if you believe they may have disobeyed the law, then either take the position that the law itself is unjust, or do not use the incident to illustrate government misconduct.

Walt Kubilius, Aiken GMFS

REPORT ON STATUS OF STATE DIRECTOR POSITIONS FROM ANN MONROE 2nd VP

I am sure you noticed in the September issue of the Lodestar that Beryl Ferguson has assumed the position of Director for the state of Florida.

Now, we need to welcome Anita Westlake who has been elected by the clubs of Georgia to be their Georgia State Director and Mike Streeter who has been elected by the clubs in North Carolina to be their North Carolina State Director.

Please welcome these new members to the SFMS Executive Board.

Ann Monroe, SFMS Second Vice President

LOUD & CLEAR

October 1, 2004

This must be my last "Loud & Clear" column. I must resign as Chair of the Conservation and Legislation Committee. That my law practice (Patents and Trademarks) continues to grow is good news. The bad news is that the passing years have reduced the amount of energy I am able to bring to my work. If and when I retire, I would love to return to the fray.

Since I started writing "Loud & Clear" more than 10 years ago, we have lost hundreds of collecting sites due to incorporation into newly designated wilderness areas and national monuments, the latter being established in the final hours of the last administration by Presidential Decree invoking the somewhat dubious authority of the Antiquities Act. Further, those collecting sites which remain theoretically "open" became progressively more difficult to access by reason of an aggressive policy of road closure adopted by the last administration. The trend has definitely been toward exclusion of the public in general, and rockhounds in particular, from public lands. However, I now see several promising developments. Consider the following macro trends.

Macro Trend #1 - The Judiciary - Use and Abuse of the Judiciary to Change Land Use Policy

While most Americans may believe that major policy changes should be effected through the legislative process, environmental groups have shown great adeptness in furthering their objectives through use of the judiciary. However, we now see some encouraging signs that our Judicial Branch of government is moving toward limiting the ability of such groups to further their agendas through use of the judiciary.

Much of the impetus toward management of public lands in a manner restricting human use and access derives from litigation brought against the federal land use agencies by activist environmental groups with seemingly limitless budgets. The Assistant Attorney General for the Justice Department's Environmental and Natural Resources Division stated this past Summer that there were 7100 active environmental lawsuits then being litigated at that time in the United States. However, help is on the way.

This past Summer the United States Supreme Court unanimously (9-0) dealt a severe setback to use of the judiciary by environmental groups in pursuit of their agenda. In *Norton, Secretary of the Interior et al v. Southern Utah Wilderness Alliance et al*, the U.S. Supreme Court rejected all three claims of the Southern Utah Wilderness Alliance against the U.S. Department of Interior acting through the Bureau of Land Management.

Plaintiff's first claim charged the Department of Interior with violation of the Wilderness Act. The Utah lands in question in this case have been designated as wilderness study areas pursuant to the statutory mandate that lands having "wilderness characteristics" be identified and inventoried. However, once so identified a wilderness study area (WSA) remains in limbo until if and when Congress enacts legislation establishing wilderness status. The statute commands that such lands, while in this limbo, shall be managed "in a manner so as not to impair the suitability of such areas for preservation as wilderness," the so-called "anti-impairment requirement". Unfortunately, such a WDA can remain as such indefinitely even if the Secretary of the Interior determines that the land is not in fact suitable for wilderness designation.

The Plaintiffs alleged that the anti-impairment requirement of the Wilderness Act mandated total exclusion of off-road vehicle use as impairing "the suitability of such areas for preservation as wilderness." The Plaintiff's claim was denied, the court holding that the non-impairment requirement of the Wilderness Act is an objective but that the Act leaves the BLM "a great deal of discretion in deciding how to achieve" (that objective). The court noted that the provision "only agency action that can be compelled under the APA is action legally required" is designed "to protect agencies from undue judicial interference with their lawful discretion and to avoid judicial entanglement in abstract policy." In view of the discretion allowed the BLM in such matters, the Court found that total exclusion of ORV use cannot be judicially mandated.

The second claim asserted by the Plaintiffs was to the effect that the BLM had not complied with its own land use plan. The Court denied this claim also finding that "a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at least in the usual case) prescribe them." "A statement by the BLM about what it plans to do, at some point [in the future]... cannot be plucked out of context and made the basis for a suit under Section 706(1) [of the Administrative Procedure Act, "APA"]."

Plaintiff's third claim was to the effect that the National Environmental Policy Act (NEPA) required the BLM to prepare a supplemental environmental impact statement given evidence of increased ORV use. However, the court found that such a supplemental statement is required only in circumstances where major federal agency action is ongoing. The Court held that there was no requirement for a supplemental environmental impact statement in that adoption of the plan is an action completed when the land use plan is approved.

Summarizing, the Court's decision in *Norton, Secretary of the Interior et al v. Southern Utah Wilderness Alliance et al*, severely curtails the ability of private entities to compel land use decisions in furtherance of their objectives. While the extent of ORV use may be the subject of legitimate debate, the Court's decision goes well beyond that issue and curtails, in general, access to the judiciary as a route around the more democratic legislative process and rule-making process of the executive branch - a welcome development, at least in the view of this writer.

Macro Trend #2- The Executive Branch

Roadless Management rules adopted late in the Clinton Administration ran roughshod over the interests of local governments and the statutory right of public access via preexisting roads, the so-called RS2477 roads. A case in point involved a federal initiative to close a road through the Shawnee National Forest in Southern Illinois. Probably the same road I once traveled, through a forest fire, en route to the Southern Illinois fluorite district. I received a telephone call from an Illinois state attorney inquiring about RS2477 rights and how the county and state might rely upon same in order to prevent closure of the road or roads in question. One concern was that the proposed closure would make it exceedingly difficult to travel from one end of the county to the other.

November 2004

The Southeast Federation of Mineralogical Societies, Inc.

However, help is on the way. By an Executive Order issued August 26, 2004, President Bush ordered Federal Agencies to adopt a more cooperative (less confrontational) approach in implementing laws relating to the environment and natural resources, "with an emphasis on appropriate inclusion of local participation in federal decision making."

H.R. 2416 (S546) - Paleontological Resources Preservation Act

The U.S. House of Representatives website shows no movement of this legislation subsequent to referral to several subcommittees on June 19, 2003. Accordingly, the legislation can be expected to die in committee at the end of this current Congress.

It has been hard work, but enjoyable.
George Loud
Chair, AFMS Conservation and

National Rockhound & Lapidary Hall of Fame Winners for 2004

The following persons are National Rockhound and Lapidary Hall of Fame Winners for 2004:

Minerals:

George Robinson, Curator of the world famous A.E. Seaman Museum in Houghton, Michigan. Robinson is a geologist with a degree from Queens University, Ontario, Canada. He is a Research Associate of the New York State Museum. Robison has over 80 publications to his credit including the best seller, *Minerals*, and is Associate Editor for three professional journals.

Lapidary:

Henry Hunt. A creative lapidary, Hunt was one of the first to use small carvings of transparent gems for jewelry. He shared his new techniques with others in his book, *Lapidary Carving for Creative Jewelry*.

Fossil:

Frank Daniels, an amateur paleobotanist, has amassed a world class collection of some of the finest specimens of petrified wood in existence. An accomplished lapidary, his vivid complete rounds are highly polished. He has written two books, *Petrified Wood; The World of Fossilized Wood, Cones, Ferns and Cycads* and a revised expanded second edition.

Education:

Diane Dare (current SFMS Bulletin Contest Committee Chairman and 2004 Mayo Foundation President-editor). A prolific writer on mineral, fossil, gem and lapidary subjects, Diane has helped many dozen bulletin editors. She is a past president of AFMS and is the author of a junior activities manual. Her varied interest have led to her being involved with rules, paleontology and publications.

Deceased:

Harold and Mary Lou Sparks. This couple founded the William Holland School of Lapidary Arts in Young Harris, Georgia. The school was founded in 1983 and they ran it until their deaths. Open every year from late April through October, the school is open to anyone interested in lapidary, offering classes in cabochans, carvings, intarsia, chain making, beading, faceting, channel jewelry, enameling, stained glass, wirework and silver and gold smithing. Costs are nominal.

The National Rockhound and Lapidary Hall of Fame honors those who have made significant contributions to the arts and/or sciences affiliated with our hobby or have shown great talent and originality that they have shared with others. Every year new inductees are elected for each of the six categories: Mineral, Lapidary, Jewelry, Fossils, Education and Deceased.

Please see the October, 2004 A.F.M.S. Newsletter at www.amfed.org.

adapted from the A.F.M.S. Newsletter (10/04)

All American Club Award

From Alan Hukill

The All American Club Award competition is just around the corner, and I hope that everyone is preparing to submit an entry to the program. It constitutes a very good history of your club and lets you see where your club is relative to where you wish your club to be.

Entry forms for 2005 are page 9 of this issue [A.F.M.S. Newsletter (11/04)- SFMS editor]. As evidenced in the forms, the judging of the contest concentrates on six (6) areas of interest. These areas give the judges a picture of what your club is doing within itself, as well as without. Specific activities are listed in the various sections, and should be reported in the appropriate section of the notebook that will constitute your entry. It is in your interest to do so. Judges should be able to examine your entry and see in a clear manner what your club has been up to over the last year. All too often clubs indicate on the entry form a particular activity, but fail to provide evidence in their report for same. Copies of your newsletter, highlighted with magic marker, do not lend themselves to judging. I won't belabor the fact, but use common sense when filling out these reports. More information is better than less...to a point.

This report is to cover the calendar year 2004. Entries are to be submitted to your regional All American Chair. See your own regional federation newsletter for the deadline date set by your region.

from A.F.M.S. Newsletter (11/04)

[Ed.-Contact David Tuttle (see page 19 of this issue of Lodestar) for SFMS deadline for the All American Award submittals. Entry forms can be found at www.amfed.org in the November 2004 newsletter..]

Keeping Public Lands Public

Learning to Identify Manganese Ore and Manganese Facts

by Rhena A. V. South,
Junior Member, Memphis Archeological and Geological Society (MAGS), Memphis, TN

Psilomelane is a manganese ore. It is used all over the world. Saturday, I went to rock sale at Mrs. Melba Cole's. I never saw so many rocks from everywhere. Mrs. Cole told my Mom that this ore was collected in New Mexico. We were told that it would tumble up very pretty by Ms. Ida Jean Jordan. I am learning about how to identify rocks and tumbling. This is something that I am working on for my rockhound badge. Our family has never tried to tumble anything before. We have purchased a rock tumbler, but have not used it yet. Mr. W.C. McDaniel gave my Dad instructions on how to use the grit.

I decided to see what I could learn about manganese ore from New Mexico. I learned that the color could be black, bluish black to steel gray. Our rocks were black. Other minerals are sometimes found with psilomelane. They are barite, hematite, quartz, and pyrolusite. I have seen barite, hematite and quartz before. When there are layers of pyrolusite mixed with psilomelane there will be alternating bands of silver. We don't know if the ore we got from Mrs. Cole will have bands. That is one of the things we can check after the rocks are tumbled.

Manganese has been used for a long time. In the Stone Age, man used manganese as a way to color their paint for the cave drawings. In ancient Greece, manganese was mixed with iron ore to make swords. The Egyptians and Roman used manganese to make pink, purple or black glass. It can take out iron out of green glass. There is a type of old time glass, called Vaseline Glass. If manganese was added when it was being made, the glass would be lime green, peach or orange under a black light. It gives the amethyst the purple color.

Manganese is used in soda cans, cosmetics, food, steel, electronics, batteries and foil paper. I was surprised. I never heard of it before and it is everywhere in my house. I learned everybody needs a little to be healthy, but too much can make you sick. I learned about mitochondria in school. Mitochondria need manganese to take protein through the body.

When I was looking at this little black rock, I did not know how important it was. I know one thing, I am just calling it manganese ore. The other name is too long and hard. There is more to learning about rocks, then I thought.

(Mrs. Melba Cole is a longtime member of MAGS, W.C. McDaniel is the 2004 President of MAGS, and Ida Jean Jordan is the 2004 Youth Director for MAGS.)

Dear fellow rock hunter recreationists:

Today I stumbled upon a valuable document that can help all of us fight for the use of public lands to continue our hobby. We can take a page out of the other side's book to assist our efforts to participate in the resource management decisions of the BLM and the US Forest Service that may unjustly restrict our rights and abilities to collect rocks, fossils and minerals.

Actually, this is 7.3 megabytes of pages from the Wilderness Society "book" titled "A Conservationist's Guide to BLM Planning and Decision-Making Using FLPMA and NEPA to Protect Public Lands."

<http://www.wilderness.org/Library/Documents/upload/BLM-Citizen-s-Guide-full-report.pdf>

Just as the wilderness advocates can use knowledge about federal agency decision-making and processes to lock us out of public lands, rockhounds can take the same knowledge to present opposing information and perspectives. Each of us can become informed about what's being planned in areas of collecting that are our favorites. Personal visits to ranger stations, field trips with the geologists or recreation planners are valuable to make ourselves know and our interests heard. Participating in the planning processes also gives us "standing" to protest or appeal decisions that are made against our hobby in spite of our previous inputs.

Rockhounds don't have the multi-million dollar budgets of the eco-scare organizations but we can use our existing club and federation contacts to lobby agency managers and legislators. If we could team with like-minded groups that would amplify our voices.

A personal pitch of mine is for us to keep other political agendas separate from our interest in either promoting responsible collecting opportunities or opposing unreasonable restrictions. Some of the other groups that support access to public lands have tended to attach unrelated philosophies and themes, such as right to bear arms, and property rights, for examples, to their messages. These themes may be important in themselves but they distract from our main interest and shift discussion from facts to opinions and emotional response.

Last item: A plug for the Barstow BLM office website pages on rockhunting in the Barstow, CA area.

<http://www.ca.blm.gov/barstow/rock.html>

This is an excellent summary of collecting rules and some descriptions of local collecting sites. I haven't confirmed it, but I suspect Harold Johnson, Recreation Chief of the Barstow BLM office is to thank for the good work.

This was sent to me by an officer in the BLM. I think his advice is good and if anyone wants to protect their rock collecting privileges, this would be one good way to start. The other and best way is to get off our duffs and do something. First download and print out and digest the 7.3 megabytes of material listed below. If you can't digest it and make a decision, get some help. There are at least a couple of lawyers in our group and although they are up to their ears in work, they will talk to you. If you print this out, you will have the e-mails of at least a couple of them. They are your peers, so don't hesitate to talk to them. It is time to do something or as the saying goes, "get off the pot"! I am purposefully omitting the name of the BLM officer who sent this to me, so he doesn't have to answer questions of "WHY?" from superiors.

By-the-way, American Lands Access Association is trying to make a come back after a long time of relatively little activity. I do not know how long I will be able to send messages as I was diagnosed several months ago with 4th stage (the final stage) of lung cancer. As much as possible I will furnish pertinent information and hope ALAA will get off rock bottom and rise again.

*from an email from Robert Cranston
dated 10/25/04*