



Spring 1981

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Recommended Citation

J. Stephen Dycus, *The Reserve Mining Controversy, Robert V. Bartlett*, 21 Nat. Resources J. 437 (1981).
Available at: <https://digitalrepository.unm.edu/nrj/vol21/iss2/20>

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THE RESERVE MINING CONTROVERSY

By ROBERT V. BARTLETT

Bloomington and London: Indiana University Press. 1980. Pp. 293. \$17.50.

This important new book might have been entitled, "Everything You Always Wanted to Know About the Reserve Mining Case, But Didn't Know Whom to Ask." In it Robert V. Bartlett portrays in elaborate, fully documented, but never tedious detail the people and events surrounding one of the largest and most complex environmental conflicts to date. If it is true, as lawyers are fond of saying, that hard cases make bad law, they may also make arresting, even entertaining, reading. *The Reserve Mining Controversy* is a faithful and insightful chronicle of the forces which brought the matter into the courts and which helped to shape its resolution. It does not undertake a thorough analysis of the difficult legal issues in the case; for that reason it should be read in conjunction with the major opinions of Judge Lord and Judge Bright.¹ Nevertheless, Bartlett has made a remarkable contribution to the environmental literature. And because he provides new insights into "the painful process by which value changes are accommodated in American society," (p. 6) he also has told us a great deal about ourselves.

Beginning with a brief geologic history of northern Minnesota, the book traces the development of the taconite ore processing industry, aided by advances in science and technology, and encouraged by a public policy which exalted industrial and economic expansion. In the late 1940s, Reserve Mining Company obtained permits to dump 67,000 short tons per day of solid waste into the pristine waters of Lake Superior. There were objections to this dumping from the beginning, principally on aesthetic grounds. However, it was not until much later that a widespread shift in public values, the emergence of an "environmental ethic," caused state officials to seek a revocation of those permits. This shift occurred, as the author demonstrates, even before it was possible to prove scientifically any substantial, perhaps irreversible, injury to the lake. When state efforts were unavailing, the convening of an enforcement conference under the Federal Water Pollution Control Act eventually precipitated an enormously complex lawsuit in the Federal District Court of Judge Miles Lord.

The exact extent of this shift in public values, toward requiring industry more nearly to internalize its costs—to pick up after itself—

1. See, e.g., *United States v. Reserve Mining Co.*, 380 F. Supp. 11 (D. Minn. 1974) (opinion of Lord, J.) and *Reserve Mining Co. v. Environmental Protection Agency*, 514 F.2d 492 (8th Cir. 1975) (opinion of Bright, J.).

was never revealed. In June 1973 the EPA and the State of Minnesota announced the presence of asbestos and asbetiform materials in the mining company's tailings, as well as in the air and drinking water of surrounding communities. Concern for public health thereafter eclipsed all other issues; no shift in values was required to explain the widely held view that such a threat ought to be abated. We are simply left to speculate whether Reserve Mining could have been gotten out of Lake Superior in the absence of such a threat. But even after abatement became inevitable, it took more than three years of further litigation to require Reserve's withdrawal from the lake and the deposit of its wastes on land.

Advances in science, the author points out, made possible the economic processing of taconite ore. Later, science demonstrated the carcinogenic and pathogenic qualities of asbestos. Science was not, however, able to describe clearly the likelihood of harm from exposure to the materials and under the conditions which existed in this case. Nor could science provide a generally acceptable formula for balancing the risk of harm against other important public values, such as jobs or the local economy, in determining when the dumping should be stopped and in selecting an on-land disposal site. In the end those decisions had to be made by people applying their own values about what was in the public interest.

Bartlett, a political scientist, complains that all of the important decisions in the conflict were made by lawyers and judges, but are better explained by political scientists than by legal scholars. Since "resort to courts of law is the predominant means of resolving conflicts in contemporary American society . . . we should not be surprised at its consequences" (p. 210). Yet he seems surprised that judges appear to act politically in resolving hard cases, for example, in "balancing the equities" (p. 161). In particular he complains that seemingly irreconcilable value questions, like profits versus public health, are left unanswered by a Court of Appeals which embraces judicially and politically higher values of compromise and settlement. Still it seems unfair, perhaps even unwise, to want our judges to be value-free, to expect them to provide neat scientific answers where science itself offers no clear guidance. The wonder is not that the judicial process was so cumbersome in this case; the wonder is that it worked at all. In any event, the author suggests no alternative process.

With these small criticisms, Bartlett's book is unique and valuable. It should be regarded as a primary resource in every well-rounded environmental library.

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