

Chapter One

Early History of Mining in Arizona Acquisition of Mineral Rights 1539-1866

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Introduction

Arizona provides an unusual historical case study of its mineral development through mineral laws. The first Spanish explorers did not necessarily come to the portion of this country that came to be known as Arizona out of a love of adventure but were driven by a promise made by the mineral laws that one could keep at least a portion of any mineral riches that might be found. As time progressed, however, the legal foundation of laws were frequently unclear or non-existent and laws enacted by ad hoc self-governing groups often premised their enforceability on as little as local consensus.

The activities taken in compliance with the 1536-1550 ordinances of Viceroy Mendoza, the regal codes of 1584 and 1783, gold rush mining district regulations, and the 1864 Arizona territorial mining code are an important source of information about early mining activities because in many instances the only lasting tracks left by the early miners are markings on the ground or public records made in compliance with these laws.

The Spanish Dominion

The Codes of Viceroy Mendoza

The story of mineral exploration in Arizona begins with the odyssey of castaway Alvar Nuñez, known to history as Cabeza de Vaca, who, along with a Moroccan slave known as Estebanico and two others, were marooned when the expedition of Panfilo de Narvaez was destroyed by weather and hostile Indians as the group was attempting to establish a Spanish colonial foothold in Florida in 1528. Cabeza de Vaca and his companions endured an eight-year journey of hardship and captivity during which time they followed the Rio Bravo del Norte (now called the Rio Grande) perhaps into present-day New Mexico, then crossed northern Mexico to the outposts of New Spain near Mocorito, on Mexico's west coast in early 1536.

Nuñez told many stories of strange lands and of several instances where metals and precious gems were being used by the Indians. More significantly, he claimed that Cibola, the legendary seven cities of gold, lay to the north in what is now Arizona. This story was repeated to the Viceroy of New Spain, Don Antonio de Mendoza, in Mexico City on July 23, 1536. Viceroy Mendoza was a practical man and played the story down while attempting

to get members of the party to retrace their steps on his behalf. When all refused, Mendoza bought Estebanico and sent Marcos de Niza, a Franciscan friar, to Arizona to investigate the story.

In March of 1539, Niza, Estebanico and a small party of support personnel traveled north through the Santa Cruz Valley to the Gila River and then continued through *Apacheria* to the land of the Hopi in northern Arizona. There, Estebanico was killed by Indians and Niza aborted his mission. For reasons known only to Niza, he reported sighting the seven cities of gold in Hopi land. Thus, based on Niza's report, and a second inconclusive report from Melchior Diaz and Juan de Zaldivar, Viceroy Mendoza authorized an expedition to be undertaken by Francisco Vasquez de Coronado. The expedition left Compostela, the capital of New Galicia, on February 23, 1540.

This authorization by Viceroy Mendoza was critical because inherent within this license was the right to keep the riches that might be found during the expedition subject only to the return of one-fifth of the find to the crown. Coronado was seeking hoarded treasures but the possibility of finding and claiming mineral deposits must have also been on his mind. The Spanish mining law of the day was based on decrees of Alfonso XI in 1385 and Juan I in 1387 proclaiming that all minerals belonged to the crown and could be worked only by a special license which specified that profits would be split two-thirds to the crown and one-third to the miner. In 1504, the right to operate mines was extended to all Spaniards in the New World, provided that their claims were registered and that one-fifth of production was paid to the crown. It was not until 1532, however, before rather vague local implementing regulations were issued by the governing council of New Spain, the *Audencia* of Mexico City. These regulations were superseded by Viceroy Mendoza's own regulations in 1536. Viceroy Mendoza also issued a supplement to these regulations in 1539 related to the registration and exploitation process, and thus, the timing of Coronado's departure may have been influenced by the mining laws.

The existence of a mining law notwithstanding, Cibola turned out to be a pitiful group of mud huts and the only mineral values that Coronado could show on his return after more than two years of travel were some copper ornaments from the chief of the Witchitas and an abundance

of turquoise jewelry used by the Zuñi along the upper reaches of the Rio Bravo.

In 1548, Philip II issued the *Ordenanzas del Nuevo Cuaderno* that for the first time clearly applied the laws of Spain to its New World colonies and gave the viceroys authority to issue implementing ordinances as required by local circumstances. Based on this authorization, the first comprehensive mining ordinance for the New World was issued by Viceroy Mendoza on January 14, 1550. This law contained 49 separate provisions and was apparently Viceroy Mendoza's attempt to codify the existing royal pronouncements as he understood them in the framework of a practical mining code for use in New Spain. The essential process was as follows: The discoverer of a mineral deposit was permitted a single claim of 80 varas (a vara is approximately 32 inches) along the strike, or length on the surface, of the vein and 40 varas across the vein. All claims registered after the original discovery were restricted to a smaller claim of 60 varas along the vein and 30 varas across. Each miner was prohibited from having more than two mines within 1,000 varas of the original discovery except by purchase. The original locator had 15 days within which to register his find, the failure of which resulted in the loss of the right to the larger claim. In the case of conflicting claims, the first to register the claim became the owner and where the requests for registration were simultaneous, the claimants were required to draw lots.

After the registration process was complete, the claim holders were required to sink a shaft of three estados (or approximately 18 $\frac{3}{4}$ feet) within three months, and the claim boundaries were required to be marked with stakes of one-half vara in height together with posting of a notice on the claim. The failure to erect these monuments carried a fine of ten pesos (a peso at the time contained approximately three-quarters of an ounce of silver).

Other articles specified the work requirements to maintain the claim and required reports to the viceroy to permit him to monitor the level of mining activity. If a mine was not worked for one year, it was subject to forfeiture under a procedure of "denouncement" of an abandoned mine. Essentially, the petition of denouncement had to be read after mass in the largest church in the vicinity of the mine for four successive Sundays. The petitioner was then required to deepen the discovery shaft an additional three estados within the next three months. The absent owner could however, still appear during the three-month period and reclaim his mine. One suspects that denouncement may have been a risky process. Other provisions of the code included the requirements for working by companies, labor laws, licensing requirements for mining operations and a prohibition against public officials owning any mine or participating as a member of a company owning mines within his jurisdiction.

While the royal prerogatives dealt with general principals recognizing the general rights of the miners and specified the amount of royalty, it was the specifics of Viceroy Mendoza's ordinances that formed the basis of the practical operation of the mining laws of New Spain. However, where conflicts existed, Viceroy Mendoza's code, as late as 1577, was determinative in lawsuits in New Spain in spite of the fact that Doña Juana, as a regent in

the name of Philip II in 1559, and Philip II himself in 1563, had issued specific regulations.

It was this state of legal uncertainty that was faced by the next Arizona prospector, Antonio de Espejo. Espejo's rights were further in doubt because all entries into the northern regions of New Spain could only be made with the express permission of the king. Espejo, however, took advantage of a distress call from Friar Agustin Rodriguez, the leader of a franciscan *entrada* into New Mexico in 1581 in search of converts (and silver if they were lucky). Espejo was undoubtedly influenced by reports of soldiers on the Rodriguez expedition of the discovery of mine prospects containing rich silver. In March of 1583, Espejo commenced a rescue mission on doubtful legal authority. Espejo quickly determined that Friar Rodriguez and his companions had been killed, and turned his attention west to the central mountains of Arizona. On May 8, 1583, some writers believe Espejo may have found the rich deposits of Jerome, but most believe he was considerably to the west. In Espejo's own report he stated that "with my own hands I extracted ore from them, said by those who know to contain much silver." Espejo did not attempt to make any official claim to these deposits for himself (probably because of questions raised upon his return regarding the authorization of the trip), but in a petition to the viceroy and the king subsequent to his return, he indicated that some sort of priority was being requested. In spite of the presence or absence of any official claim, however, Espejo's find does not appear to have been worked by the Spaniards, probably the result of the distance to any real civilization, the fact that it was in hostile Indian territory and that substantial mines had been recently discovered in Zacatecas and Durango.

The 1584 Regal Ordinances

When Philip II, on August 22, 1584, promulgated the first comprehensive mining code applicable throughout the Spanish Empire, he wanted to stimulate the Spanish economy and thus wanted a practical law that would be accepted by the miners. Not surprisingly then, it was Viceroy Mendoza's ordinances that formed the basis of the new code. The code contained a remarkably broad grant of rights that granted to the discoverer the right to work mines as their own "possession and property . . . observing, both in regard to what they have to pay us [this is the royal 'we'] by way of duty, and all other respects, the regulations and arrangements, ordered by this edict . . ." This right was characterized as a "direct and beneficial grant of property; and is to be regarded as a qualified gift."

Under these ordinances a miner had 20 days within which to register a mineral find with a local mining justice or in his absence the local *alcalde*. The size of the first (or discovery) claim was 160 varas by 80 varas and could be situated either along or across the vein. The discoverer was not limited in the number of claims he could stake on the same lode, but any claimants after the first discovery were limited to two claims of 120 by 60 varas, each of which had to have three claims between them.

Claims were perfected through the sinking of a shaft or "trial pit" to a depth of three estados which had to be sunk within three months of the original date of registration.

Very clear work obligations were imposed by these ordinances and required the owners of a claim to keep four people working on a mine at all times. If the work was not performed for a four-month continuous period, the mine would be forfeited and in order to maintain rights the owner would be required to file a new registration. After such a default the mine also became subject to "denunciation" by third parties.

The royalty rate, although frequently referred to as the *quinto* or "kings fifth," was, in the case of silver, based on a sliding scale depending on the recovery rate from the ore per *quintal* (101.45 pounds) of ore mined, e.g., 12 ounces or less, 10%; 12 to 32 ounces, 20%; 32 to 48 ounces, 25%; and more than 48 ounces, 50%. Separate provisions required a royalty of $\frac{1}{30}$ th for copper, $\frac{1}{10}$ th for antimony and one-half for gold. The royalty varied considerably by administrative practice in subsequent years and normally ranged from one-eighth to one-half.

Nowhere in the new ordinances did diligence play such an important part as in the rights of the miner to pursue a vein underground outside of the boundaries of the claim as marked on the surface. Thus, these ordinances constituted the first application in the New World of right to pursue a mineral vein outside the side boundaries of an individual claim, the so-called "extralateral" right. The ordinances stated that if the vein was continuous, the miner could pursue it at depth outside his surface boundaries and was permitted to raise ore from the mine until the owner of the adjacent claim could extend his works to meet the operations. At this point, the first operator was required to withdraw but was not required to return any of the minerals mined. Thus, although the grant of the extralateral pursuit was not a grant of the ownership of the vein itself, it was a defeasible right that could only be stopped by the actual mining activity of the adjoining owner. Not surprisingly, this provision led to disputes.

It was under the auspices of these ordinances that the next prospecting expedition came into Arizona. The expedition was ordered by Juan de Oñate, then the new governor of New Mexico. Oñate had been awarded the contract for the conquest and settlement of the pueblo country and established the first seat of government at San Juan, near the present site of Santa Fe, New Mexico on August 18, 1598. Oñate knew mining well as he was the son of a wealthy miner, and in November of that year, made a mineral exploration swing to the west into Arizona in search of Espejo's silver discovery. As a part of this effort Oñate commissioned Capt. Marcos Farfan de los Godos to take eight men and relocate the mines. Farfan traveled from the Hopi land of northern Arizona through the Chino Valley and along the mountain ranges and valleys of west central Arizona. At a site that may have been somewhere along, either the Big Sandy River or the Bill Williams Fork, Farfan's men located from 66 to 72 mining claims and returned to Santa Fe with rich specimens of silver ore. These claims were located in four separate groups one of which was near an old shaft developed by the Indians for paint and seemed to correlate with Espejo's story. There is no evidence that Farfan's mines were ever worked or even that the required acts of location were followed. Since Farfan returned to San

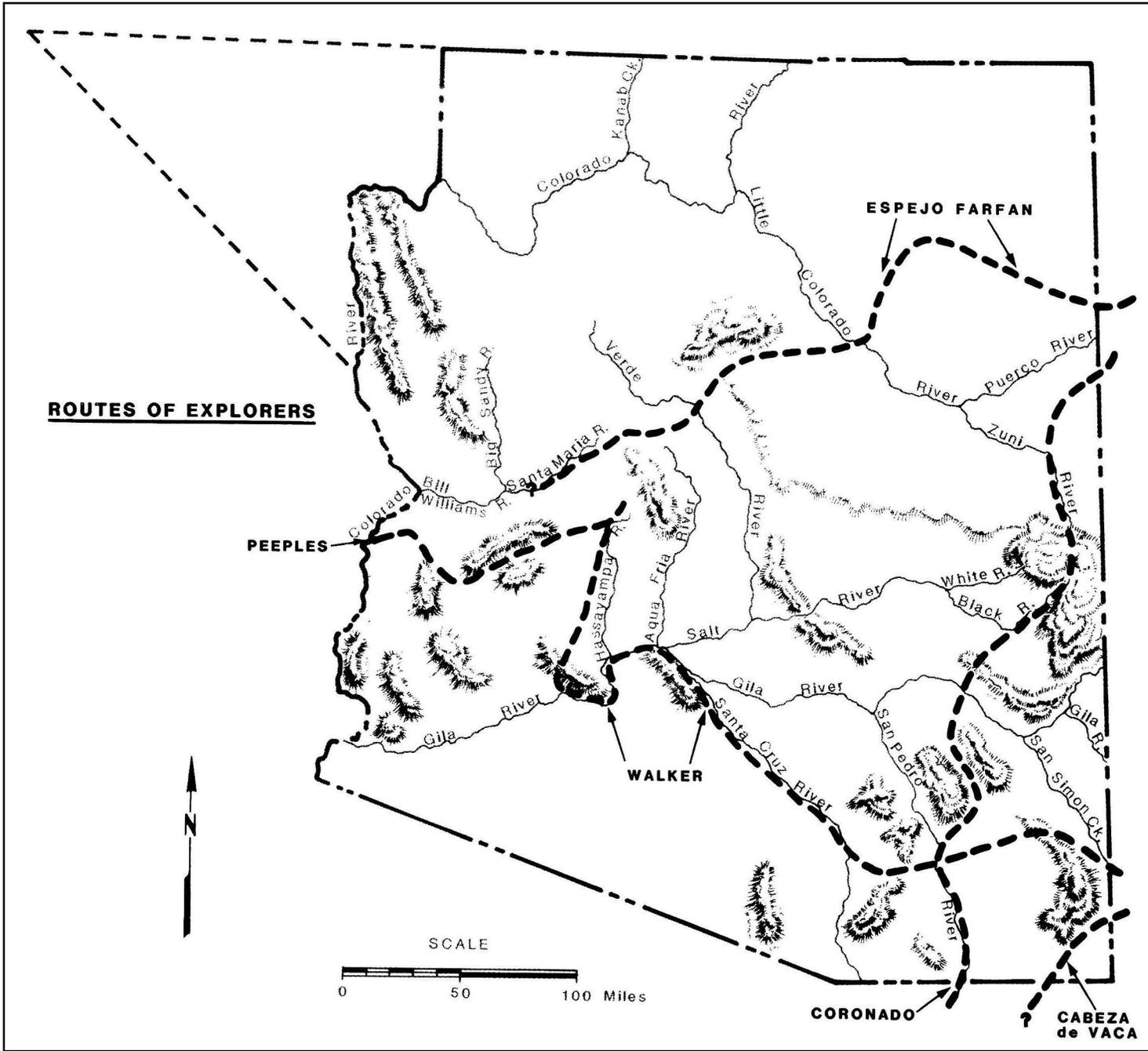
Juan in December, it seems improbable that even one or two, much less 60, 18-foot shafts could have been dug.

During the two centuries under the 1584 Ordinances, Arizona was in an administratively territorial status called *Pimeria Alta* and loosely attached to either the State of New Mexico through Santa Fe or Sonora through Parral or Arispe. Whoever had jurisdiction over the area of Arizona, however, the truth of the matter was that mining activity during the period of the 1584 Ordinances was probably minor. This is suggested by the complete lack of documentation evidencing the registration of mines or the registration and shipment of ores from any mines within the area as would have been required under, the 1584 Ordinances. Father Eusebio Kino, Southern Arizona's most prominent explorer and observer from 1687 until his death in 1711, noted in his writings that there were a number of mines along the Santa Cruz Valley and it was thus possible that some Southern Arizona ores were finding their way into the unregistered black market for silver. This seems unlikely, however, as the level of activity that would have been necessary to make such an operation profitable would have most certainly been detected. One mineral discovery, however, would leave a lasting impression.

In 1736, Antonio Siraumea, a Yaqui miner, discovered a deposit of native silver a short distance southwest from the present Nogales, Sonora, at a site variously known as "Arizonac," "Arissona" or "Aruzema." The discovery came to be known as the *planchas de plata* (planks of silver) creating a rush of miners into the area and providing the probable source of the name of the state. The size of the find varied (according to whose report is to be believed) but ranged from 300 to 3,600 pounds. The crown immediately looked into the possibility of declaring this particular find an exceptionally rich mine that should be considered royal property. Capt. Juan Batista de Anza was dispatched to make an official inspection. These efforts to exercise official control over the deposit finally resulted in an order of the viceroy in 1741 closing the area and the eventual legal determination that the deposit was a curiosity and thus not covered by the ordinances. There were, however, no other circumstances where a similar position was taken and a legal treatment of the *planchas de plata* taken by the viceroy was specifically overruled in the 1783 code. This "change" of the law was probably a recognition of the impossibility of enforcement, as in case of the *planchas de plata*, even after the authorities seized the deposit and with no official working, the deposit nonetheless disappeared within a very short time with the ores undoubtedly fed into a thriving black market for contraband silver bypassing the royalty collectors.

The 1783 Regal Ordinances

During the latter part of the 18th century, it became obvious that changes were required in the mining laws of New Spain. The most difficult problem that faced Mexican jurists concerned the identification of the applicable legal authority to work the mines. The 1584 Ordinances provided the basic source but this law had application throughout the Spanish Empire and the law of the Indies had directed that the 1584 Ordinances would be observed



Routes of the Mineral Explorers. Routes of the mineral exploration entradas beginning with Alvar Nuñez and ending with the Peoples Party. Illustration by Rick R. DuPont.

only in those countries where it was not at variance with the municipal laws of each province. The laws applied in the Spanish colonies were issued in the form of *cedulas*, *decretos*, *resoluciones*, *ordenamientos*, *reglamentos*, *autos acordados*, and *pragmatics* each of which had different weight under different circumstances. It was thus not surprising that authorities had considerable difficulty determining what law to follow. In 1680, the famous *Recopilacion de Leyes de los Reinos de las Indias* was published in an attempt to provide a digest for the laws in force in the Indies. However, in the case of the mining law, neither the 1584 Ordinances nor the local ordinances were included in the digest. Francisco Xavier de Gamboa, a Mexican jurist finally charted the path of the various mining laws in his *Commentarios a las Ordenanzas de Minas* published in 1761. Charles III agreed with Gamboa's views and specifically permitted the publication of the work. Principally as a result of Gamboa's commentaries, Charles III promulgated a new code of mining ordinances applicable only to New Spain on May 26, 1783.

The location procedures established by the 1783 Ordinances were not dramatically different from the 1584 Ordinances although the provisions were refined significantly. This law survived the Mexican Revolution that began in 1810, and would remain the mining law of Mexico until repealed with the passage of a mining code by the Mexican Republic in 1884. It was thus the law of the land at the time the Mexican States of California, New Mexico, Texas, Northern Sonora and the northern territorial claims were carved out of Mexico and added to the United States by the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase in 1853.

The new code provided an elaborate system of organization in a tribunal of miners who were elected at a convention with each mining town being represented by delegations of locally elected deputies. The allocation of representatives was based on the size of mining operations within the various districts. It was the duty of the tribunal, through the Royal Tribunal General, to provide the communication between the miners and the king by way of an annual report to the viceroy. In addition to the annual report, the tribunal could also bring matters to the attention of the viceroy at any other time when it was deemed necessary.

The officials within this organizational structure, beginning with the various territorial deputations, were vested with the power to decide all matters concerning the management of the mines, including matters arising out of discovery, denunciation, rights of property drainage, desertion or destruction of pillars. The law specifically directed that all disputes would be handled summarily "without any of the usual delays and written declarations, or petitions of lawyers . . ." This clear expression of aversions to lawyers went back to 1520 when Hernando Cortez, with royal permission had prohibited "attorneys and men learned in the law" from setting foot in New Spain on the ground that experience had shown that they would be sure by their evil practices to disturb the peace of the community.

The basic grant to the miners was stated as follows:

Without separating them from my royal patrimony, I grant

them to my subjects in property and possession, in such manner that they may sell, exchange, or in any other manner, dispose of all their property in them upon the terms of which they themselves possess it . . .

The grant was subject to two conditions; first, that royalty be paid and second, that the operations would be conducted in accordance with the provisions of the ordinances. Any default was considered a forfeiture and the mine was then subject to a further grant to any person who denounced it.

In addition to gold and silver, the law applied to all precious stones, copper, lead, tin, quicksilver, antimony, zinc, bismuth, rock salt and other fossils. The application to mercury was a substantial extension from earlier law as mercury had been very tightly controlled as a means of controlling black market activities because mercury was essential in the amalgamation process for the extraction of gold and silver.

The registration process required the locator to first present a statement to the territorial deputation, then post a notice on the door of the local church. Within the following 90 days the locator had to sink a shaft one and one-half varas in diameter and ten varas deep. When the vein was thus ascertained, one of the district deputies was required to visit the site accompanied by specified official witnesses to determine the physical nature of the vein. At the time of the inspection, the claim was measured and its boundaries marked by the locator. If no objections were raised during the 90-day period for the digging of the shaft, the locator's registration was complete.

One of the more interesting changes in the ordinances related to extralateral rights. The new code drastically limited the earlier rights of possession of the vein outside the surface boundaries. It was recognized, however, that certain rewards should be granted to the first discoverer of an "inclined" vein, and this was principally done by permitting the granting of wider claims based on the declination of the vein as measured in the shaft. If the vein was perpendicular, the surface width of the claim was 100 varas but if the vein was inclined, the surface was measured according to a formula that allowed the locator a width of up to 200 varas where the declination of the vein was 45 degrees or more from perpendicular. Further, as a hold-over from prior practices, the miner was permitted to work a vein at depth outside the boundaries of the claim only if prior notice was given to the adjoining owner and profits were divided equally until such time as the adjoining owner could provide his own access, at which time the adjoining miner was required to withdraw. The failure to comply with the notice and sharing provisions would result in trespass damages of twice the value of the ores taken.

The law went on to provide elaborate mechanisms for working of the mines including safety, flooding and mine drainage, provisions regarding joint operations of mines and the disposition of disputes, labor laws (including, for example, prohibitions against paying miners in merchandise, a requirement to pay extra wages for working in hard ground, protection from excessive garnishment of wages, and even protection from some forms of imprisonment), environmental protection, infrastructure, processing and

marketing of ore, financing of mining operations, accreditation of mining officials and mining education.

The mining activities in Arizona under the 1783 Code were sporadic to say the least. There were several reasons for this. The priesthood, the only permanent residents of the area other than Indians, was prohibited from registering and working mines and Arizona was still a long way from supply lines of Mexico where other richer silver deposits continued to be much more accessible. There was a period, however, between 1790 until approximately 1820, when a relative calm in the never-ending guerrilla war between would-be colonists and the Apache permitted a foot-hold in southern Arizona by Mexican settlers. It is doubtful, however, that mining activities during this period included anything beyond the narrow region adjacent to the Santa Cruz Valley.

There were, however, some specific references to mining during this time. The mineral deposits at Ajo were supposedly discovered in 1750 by prospectors from the missions. When the site was visited by trapper Tom Childs in 1836, he reported the existence of a 60-foot shaft, suggesting that the initial 10-vara location requirement had been satisfied, and the shaft deepened as a result of a subsequent denouncement. Prospectors from the missions supposedly also conducted mining activities at Quijotoa and Arivaca or Arivaca in the 1770s, and one account refers to workings at Quijotoa, Cababi and Calabasas where a few individuals eked out an existence mining gold as late as 1828. Possible independent confirmation of mining at Arivaca exists with a listing of 20 mines in a deed by which the ranch at Arivaca was conveyed to American entrepreneurs in 1856.

The Dominion of the United States of America The "Spanish" Laws

During the war between the United States and Mexico the territory of Arizona fell under United States dominion with the capture of Santa Fe by the United States Army of the West led by Gen. Steven Watts Kearny. On September 22, 1846, a code of laws was issued by General Kearny's military government that adopted the common law of England but with the proviso that all prior laws "not repugnant to or inconsistent with the constitution of the United States and the laws thereof or the statute laws in force for the time being, shall be the rule of action and decision of this territory."

Such a provision proved scant guidance for the miners because without an express provision adopting the mining laws of Mexico, there was no real assurance that the Mexican mining laws were not repugnant to the laws of the United States. In an effort to clarify the situation, the legislative assembly of New Mexico Territory, during its first session, memorialized the Congress of the United States on July 7, 1851, to pass laws "that the laws of Mexico on the subject of mines and mining be declared and perpetuated." No such action was forthcoming from the United States Congress and the miners, therefore, did pretty much as they pleased.

In the western part of New Mexico Territory, even then called Arizona, the search for the *planchas de plata* continued. Tom Childs, after his initial trip to Ajo, introduced

his copper discovery to Peter R. Brady who in turn obtained the interest of George Bartlett, the first boundary commissioner, who perpetuated the story in his 1854 boundary survey report. Brady, it should be noted, returned to Ajo in 1854 and organized the Arizona Mining and Trading Company, the first American enterprise in Arizona engaged in mining. Brady reported that 17 mining locations were made in 1855 after it was determined on what side of the border the mine was situated.

Finally, in 1854-55, Charles D. Poston, who would eventually become known as the "father of Arizona" because of his efforts to sever Arizona from New Mexico Territory and admit the area as a separate state, along with Herman Ehrenberg, a German mining engineer, came upon the scene in search of the *planchas de plata*. While Poston may have been pursuing a rather nebulous mineral occurrence, the public records clearly show that he was concerned about the legalities of what he might find and believed that absent any clear legislative action by the United States the laws of Mexico were applicable. Thus, since no public official, or anything even close to an *alcalde* existed in southern Arizona he arranged to have himself appointed as the assistant clerk of Doña Ana County. This appointment was good enough for him to consider himself as such an officer and he acted accordingly as a combination recorder and justice of the peace for Southern Arizona.

Poston and his party never did find the *planchas de plata* but did find silver in the Santa Rita and Cerro Colorado Mountains. The first mining claims located by Poston and his associates (recited as Frederick Brunckow, Charles Schuchard, Herman Ehrenberg, Theodore Moohrmann, George W. Fuller, Samuel N. Heintzelman, Edgar Conkling and William Wrightson) were the Salero, Heintzelman and Arenia mines on February 1, 1857. The shafts on the claims were recited in their notices to have been dug to 30 feet (adopting the 10 vara requirement with the exception of the Salero mine which recited a shaft of 80 feet) and recorded in books maintained by Poston in his "official" capacity as being located "under the laws of Mexico or of the United States" to cover all bases. Poston apparently never considered the proscription under the Spanish laws of ownership by public officials.

In addition to the claims staked by Poston and his associates, eight other claims are shown in the public records of New Mexico Territory as being located in Southern Arizona from the time of the Gadsden Purchase until 1862. Two of these claims were 18 miles south of Fort Buchanan (possibly the mine eventually acquired by Sylvester Mowry), one near Dragoon, one 30 to 40 miles east of Sacaton Station (possibly near Ray) and four "10 leagues (the Spanish *legua* was $\frac{1}{25}$ th of a degree of latitude or about 2.6 miles, but a days journey on horseback was considered to be seven leagues) from Avivaca toward Papago country."

The lack of clear opinion as to the applicability of either the laws of Mexico or the United States in the location of mining claims was also evident from the public records of Doña Ana County, which included that portion of the lands acquired from Mexico under the Treaty of Mesilla (which we know as the Gadsden Treaty), where the miners

attempted to cover all bases. The typical mining claim recorded during 1852 through 1863 recited that it was being staked:

... according to the Mexican mining law which we believe to be in full force in this territory but should it at any time appear that said laws are not in force, then in that case we would wish to hold the same under the preemption laws of the United States.

The "Mining District" Regulations

While Poston and his associates looked to the organization of a new government to act as a transition from the pre-existing laws of Spain and Mexico to those of the United States, an entirely different form of law was put into place in those areas where "civilization" had not yet touched. These laws were the "mining district regulations" that were adopted by groups of individual miners beginning in California and Nevada who, in the absence of any legal authority in the frenzy of the early gold rushes, enacted self-governing regulations within geographic "mining districts." These regulations or bylaws were memorialized in the form of mining district regulations and represented a compilation of traditions, customs and practices of the miners that flooded the western goldfields from the United States and the world over, including principally England, Germany, Mexico and Chile. As such, they represented the accumulated customs and practices of the miners of Derbyshire and the High Peak district in England, Saxony in Germany and the ordinances of New Spain and Peru. Each separate mining district usually constituted the extent of a single mineralized area and each had its own set of regulations. Considering the number of such districts, the regulations were remarkably uniform.

In general terms, the mining districts were organized and managed as follows: After a public notice to miners within the area, a meeting was held to establish the name of the district, to fix its boundaries and to elect a president and recorder. The regulations would initially decree that each miner was allowed only a single claim, but the discoverer was allowed a double claim in recognition of his find. The regulations frequently addressed the issue of capacity of individuals to hold claims within the district and frequently restricted ownership to citizens of the United States (or those who intended to be citizens) but also frequently attempted to exclude those of Mexican and Chinese ancestry. The regulations then described the mechanics for acquiring title specifying the dimensions of the claim, requirements to post notice, mark boundaries, and record a notice of the location with the district's recorder. The regulations also required that the land be developed through the performance of some sort of work or the maintenance of tools on the property. Finally, provisions were usually made for the settlement of disputes which almost universally required the submission of disputes to a meeting of miners within the district who would collectively act as a jury with the president of the district presiding as the judge. This procedure must have been both awkward and created a circus-like atmosphere. For example, in the Walker Mining District of Yavapai County, on March 6, 1864, a jury, after hearing 11 witnesses, returned a verdict of 18 to 11 in favor of the defendants.

The first areas within Arizona that were made subject to the mining district rules were the La Paz and Castle Dome placer deposits of Yuma County. Work in the area began under Col. Jacob Snively, the former secretary to Sam Houston, in 1858. Most of the miners in the area were returning from disappointments with the playing out of the goldfields in California's mother lode and brought with them the practices of the area. The first written regulations, however, were not adopted until October 6, and December 8, 1862, when the La Paz and Castle Dome Mining Districts were officially organized. This delay can probably be attributed to the fact that the early activities were related to attempts at placer mining, where only the place of working was protected, and the later attempts concerned the development of lode or "hard rock" mineral deposits that required both more ground and more security because of the higher development costs.

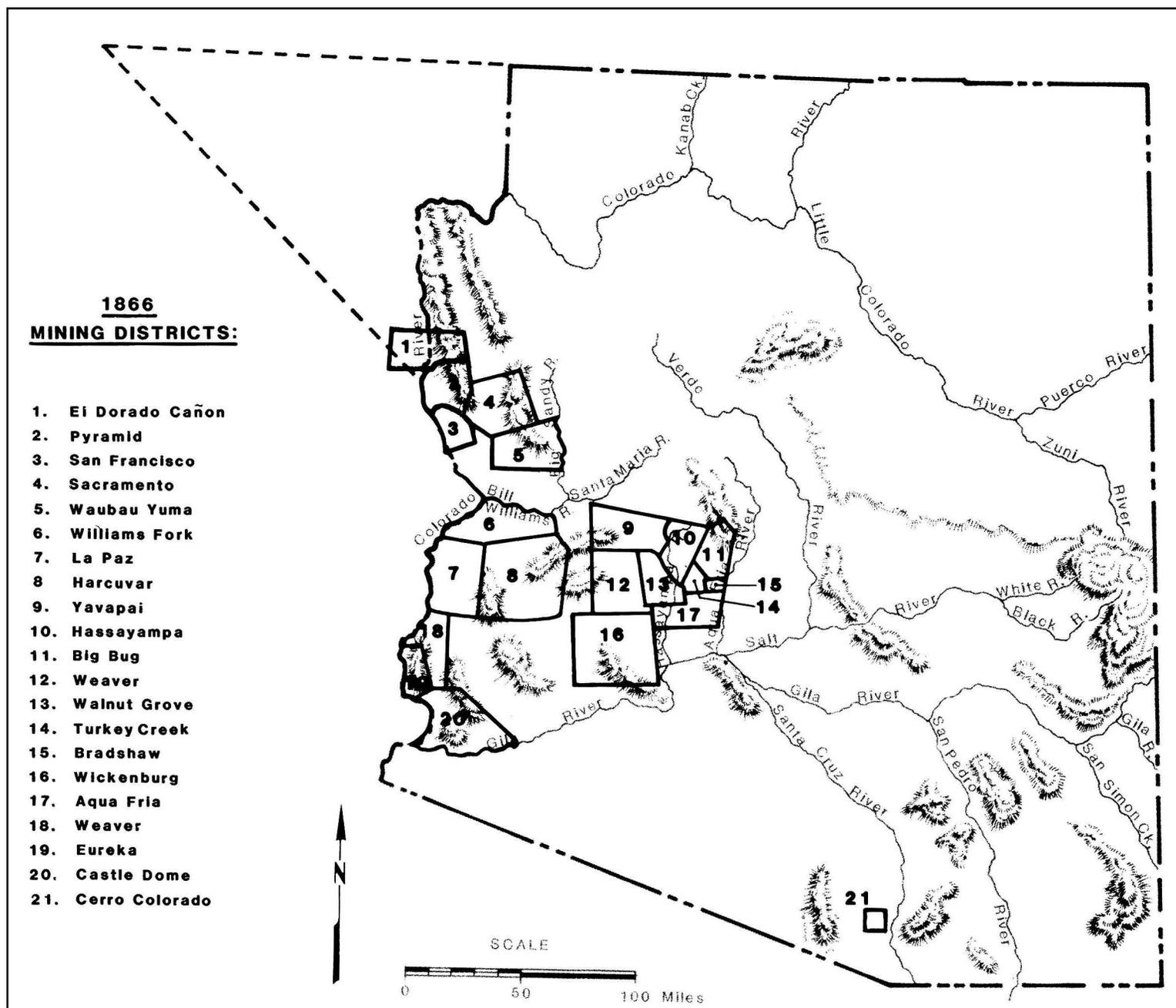
It is possible that this organization was also premised on the fact that the New Mexico Territorial Legislature in 1862, legitimized past practices by a statute specifying that:

The location and transfer of mining claims heretofore made, shall be established and provided, in contest, before the courts, by local rules, regulation, or customs of the miners in the several mining districts of the territory in which such locations the transfers were made.

The public records suggest that it was Herman Ehrenberg who was responsible for the organization of the La Paz and Castle Dome Mining Districts and, given his long association with Charles Poston and Poston's concern with legalities, this statute may have provided the required legal basis.

With regard to the content of the regulations, according to the La Paz District regulations, mining claims were limited to 200 feet in length along the vein per individual (most claims were made by groups who aggregated their rights to create claim of approximately 1,600 feet) and if a claim was not worked or recorded for 20 days, it was subject to forfeiture. No width was specified, thus no question could exist as to the right to follow the lateral extent of the vein because apparently only a single claim width could be placed along any vein.

The tightest legal control within any Arizona mining district was found in the rules of the Walker prospecting expedition of 1862-63. This paramilitary organization, commanded by mountain man and trapper Joseph Reddick Walker, Jr., started in Colorado and provisioned itself in New Mexico before coming into Arizona by way of the Santa Rita copper mines in southwestern New Mexico and through Apache Pass where they single-handedly set back peaceful Indian relations for years by the capture, torture and eventual murder of Mangas Coloradas, the chief of the Mimbrenos Apaches. The party eventually proceeded westerly along the Gila River to near Gila Bend, where they turned north across the desert to the Hassayampa River near Wickenburg, then continued north along the Hassayampa into the Prescott area. It was there that the Pioneer District was established on May 10, 1863, and several other districts followed. The district laws of the Pioneer and associated districts followed the tradi-



Mining Districts in 1866. The Mining Districts were self-governing units of miners that predated the Territorial government. The boundaries of the organized districts are shown as they existed in 1866. *Illustration by Rick R. DuPont.*

tional format but with additional provisions designed to perpetuate the ownership of the "initial pioneers" by excluding others until the "first comers" had selected the best ground. Further, anyone of Mexican descent was also excluded. This exclusion caused trouble, however, and within six months after the decree was passed a second decree appointed a committee to decide "who are and who are not Mexicans."

The Cerro Colorado District in southern Pima County, by contrast, while also generally based on the traditional format, and probably influenced by Poston's views, placed significant powers in the hands of the recorder. The district regulations published on April 23, 1864, required the recorder to have office hours only between 12 noon and 1 p.m., five days a week and allowed him to charge \$1.00 for the recording of any instrument. One Dollar was also charged for anyone who wished to examine the records.

Pauline Weaver, one of the old trappers turned prospector, was also a very active organizer of a number of new mining districts in his position of scout and guide for the exploration party organized by A. H. Peeples who began on the Colorado River in 1863 then traveled upstream on the Bill William's Fork and the Santa Maria River into the Prescott area. Henry Wickenburg was chasing this party at the time of his discovery of the Vulture Mine and he thereafter organized the Wickenburg District.

The original "official" records of the mining districts were contained in a book held by the recorder which, in many cases, have been unfortunately lost. As a result of this, for example, little is known about the original location documents for the Moss mine near Hardyville located in 1862-3 and the Planet mine on the Bill Williams Fork located in 1864.

The mining district regulations for the approximately 25 organized districts that existed in 1864 typically limited claims to from 200 to 400 feet along the vein (300 feet was used most frequently and in one district placer claims were limited to a length of 150 feet) and usually 150 feet on each side (although the Cerro Colorado permitted 300 feet). Only two districts imposed specific work requirements as a part of the location process with Cerro Colorado following the Spanish tradition requiring a shaft of 30 feet while Turkey Creek required only 10 feet. The performance of work on the claim was also a universal requirement to maintain possessory right and the regulations typically required three days work during each 90-day period. The Bradshaw District had the most involved set of claims with the possibility of different claims for lodes, placers, surface or washing, and millsites. Each miner was normally limited to one claim except that the original discoverer was frequently recognized by permitting a larger or additional claim.

The laws frequently also recognized extralateral rights except that such a grant was noticeably absent from the regulations of the Cerro Colorado District and the Turkey Creek District near Prescott, which mentioned the right of the locator to follow all of the "dips, angles and variations" of the vein but only within the lateral extent of the claim.

Arizona Territory's "Ordinanzas de Minería"

The initial "rule" of the individual mining districts was short lived as the Territory of Arizona was officially established with the arrival of the appointed territorial officials in December, 1863. One of the first orders of official business was to convene a state legislature and enact a legal code. Judge William Howell, an associate justice of the territorial Supreme Court, was given the task of preparing the code which was eventually presented to the legislature for action on October 4, 1864. The code proposed by Judge Howell included a very extensive mining code that would apply uniformly throughout the territory.

The proposed mining code bore a remarkable resemblance to the 1783 *ordenanzas de minería* of New Spain. This can probably be attributed to the fact that Judge Howell's judicial district included Pima County and Judge Howell had spent most of the spring and summer in Tucson working in office space provided by Coles Bashford, who was undoubtedly familiar with the practices in the Cerro Colorado Mining District and Poston's historical usage of the practices of the *ordenanzas*. It is also known that Poston's company files included a copy of *Gambo's Commentarios*.

Inasmuch as the proposed mining code would supersede most of the power of the mining districts, it brought immediate and vehement opposition from the miners around the Prescott area. Given the way the camps were run around Prescott, this attitude was predictable. It was apparently Judge Howell's view, however, that the business climate in the southern part of the state in the Cerro Colorado District was much more stable because of the lack of Indian hostilities in the area and therefore patterned his proposals after the laws that would be most acceptable in that area.

In the end the arguments in favor of Judge Howell's mining code carried the day, and the entire code was passed by the first legislative assembly on November 3, 1864. The first part of the mining code contained general administrative provisions and vested the probate judge of each judicial district with jurisdiction over mines and set up a record system. The mining claim itself, or *pertenencia*, using the Mexican terminology, was defined as being 200 yards square including the vein. The notice had to be posted at the opening of the vein and filed with the recorder within three months. The discoverer was also required to take up an additional adjoining claim which was to be the property of the territory of Arizona and to be held for the benefit of the common schools. The failure to make such a claim would result in the forfeiture of the claim and the discovery. Mining claims were perfected by the claimant's sinking at least one shaft to a depth of 30 feet or to running a tunnel of 50 feet in length into the main body of the vein during the first year after location. After the work was completed the recorder was required to visit the site to examine the work and make a record and certificate of the result of the examination. Upon completion of the certification process, the mining code permitted the claimant to petition the probate court for a confirmation title which was given after public notice

of the application. Two years were then allowed for the claimant to develop a mine and procure machinery to work the claim. After expiration of this term, the claimants were obligated to hold actual possession of the mine which was defined as meaning 30 days work per year.

Where a claimant did not work his mine in compliance with the provisions of the mining code, it was subject to relocation by third parties. This act of relocation required the relocater, after the initial registration, to give the former owner notice and permit three months within which the former owner could remove anything of value from the claim. After this period, any improvements remaining on the property became the undisputed property of the new claimant without compensation to the former owner.

The tradition of the individual miner was not ignored by the mining code, as it contemplated the continuation of the mining districts and appointed the clerks of the probate court as recorders for the respective districts. Mechanics were also established for the creation of new districts as well as a procedure for litigation (which included the right of the probate judge to appoint a commission of experts to make reports to the judge where such was determined to be necessary).

Despite the objections of the miners around Prescott, the mining community generally applauded Judge Howell's effort. The Mining and Scientific Press published in San Francisco was enthusiastic and noted that the square claims would "keep down the luxurious crop of litigation which the mode of location usually adopted in [California and Nevada] has engendered." The article concluded that a uniform law was preferable to the "multifarious and generally ill-digested local laws in California and Nevada."

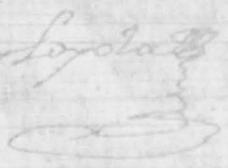
Judge Howell's mining code never really had an opportunity to benefit from years of trial and legislative amendment because of a basic legal flaw. This flaw was that the territory of Arizona and the miners by their district regulations could not legally determine the ultimate right of ownership of minerals in the public lands of the United States. This was within the sole purview of the United States Congress. As a result of preoccupation with a political philosophy of manifest destiny and the conflicts leading to the civil war, the Congress had chosen not to interfere with the self-governing efforts of the western miners by the enactment of any legislation. This void was filled, however, with the enactment of the first federal mining law on July 14, 1866. When news of this new federal law was published in the Arizona Miner in Prescott on September 26, 1866, the call immediately went out, undoubtedly fueled by miners around Prescott, for a repeal of Arizona's *ordenanzas de mineria*. In a quick answer, the Arizona legislature approved a new mining law on November 5, 1866. The new law had only seven articles and brought back the general authority of the old mining districts to enact their own rules so long as they were not inconsistent with the very general provisions of the new federal law.

The new solid basis provided by the federal mining law allowed Arizona's mines to come to full flower, and Arizona provided another example of T. A. Rickard's axiom that "civilization follows the flag, but the flag follows the pick."

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 Remito al m. de Juntos tres Exam-
 plares de las Reales Ordenanzas
 para la Direccion, Regimen, y Gobierno,
 del Cuerpo de la Mineria, a fin
 de que dispongan tengan el debido
 cumplimiento en el distrito de esta
 Governacion en el concepto de q. por el
 Subdual Gral de estas Ptes han
 dirigido los Ejemplares correspon-
 dientes alas Diputaciones de esta Real

 los Jue. al m. n. ant.
 A uspe 24 de Enero de 1788.
 Jacobo Ugarte y Loyola

 Dn. Don Fernando de la Concha

Transmittal of the Royal Mining Ordinances in 1788. Letter dated January 24, 1788, from Jacobo Ugarte y Loyola of Arispe transmitting the royal ordinances on mining to Don Fernando de la Concha in Santa Fe. Courtesy New Mexico Records Center and Archives, Santa Fe.



Charles D. Poston. Poston, the "father of Arizona" and the self-styled "Alcalde de Tubac" was the insitigator of much of the mining law practices in Southern Arizona during the period of 1854-1864. *Courtesy Arizona Historical Society/Tucson.*

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EDITORS

J. MICHAEL CANTY
MICHAEL N. GREELEY

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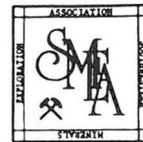


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