EXHIBIT 5
DATE 4.4.05
SB 276

## COMMENTS OF WYO-BEN, INC. CONCERNING ITS POSITION ON SB 276

Wyo-Ben , Inc. is a Montana Corporation with its principal offices in Billings. The company is owned by members of the Brown family together with certain key non-family employees. Most of the stockholders are Montana residents. Wyo-Ben has been engaged in the bentonite business for over fifty years. Wyo-Ben has 23 employees in Montana.

Wyo-Ben produces sodium bentonite clay from deposits that it either owns, leases by private or state lease, or holds through mining claims on public lands. These bentonite deposits are located primarily in Wyoming with a smaller amount in Montana. The Montana deposits are owned by Sage Creek Minerals, a partnership which has claims located both in Montana and Wyoming. A map of the Montana claims is attached. There are 22 of them and that is where Wyo-Ben is conducting its Montana operations. The deposits which Wyo-Ben leases in Montana are all in Carbon County and are located just north of the Wyoming border. Wyo-Ben has two operating processing plants that are located at Lovell and Greybull, Wyoming. The plant at Lovell is from 14.5 to 30 miles from the Montana bentonite deposits, while the Greybull plant is 30 miles further. Because of this distance disparity, it is not economic for Wyo-Ben to haul Montana bentonite to the Greybull plant. This means that the bentonite that Wyo-Ben mines in Montana can only be processed at the Lovell plant. There are no sales or market for sales of unprocessed bentonite at the mine site in Montana, i.e. the bentonite from the Montana deposits has to be hauled to Lovell, Wyoming where it is crushed, dried, milled and in some cases, bagged, in order for it to be a saleable product.

Wyo-Ben's Lovell plant is primarily dedicated to processing bulk milled bentonite, and most of the bulk milled output is sold for the purpose of pelletizing taconite iron ore, which is mined in North America in northern Minnesota, northern Michigan and the eastern Canadian Province of Quebec. The taconite market for bentonite is extremely competitive, and Wyo-Ben competes in that market with four other major sodium bentonite producers in the United States: 1. Bentonite Performance Minerals, formerly Baroid, a division of Halliburton Energy, 2. American Colloid Company, 3. M-I Drilling Fluids (owned by Smith International, Inc. and Schlumberger, Ltd), and 4. Black Hills Bentonite (owned principally by The Clorox Company). The best price that Wyo-Ben is currently able to negotiate for bulk milled sales to the taconite market is $22.50, and we believe that our competitors' taconite sales are likewise at or very close to that competitive price. Bentonite sales to the taconite market in the U.S. are totally price sensitive, and there is little, if any, seller loyalty. In other words, Wyo-Ben either meets the current competitive taconite market price, or it doesn't sell product. $22.50 per ton for taconite sales is less than Wyo-Ben's fully allocated cost for bulk milled product, and accordingly, the bentonite that Wyo-Ben mines in Montana and sells to the taconite market, representing about one-half of the total bentonite mined in Montana, is sold at a loss. The primary reason why Wyo-Ben can justify selling the taconite product for less than it's cost is that taconite grade production provides volume at the Lovell plant that supports fixed costs for the other products which the Lovell plant processes and sells for a profit.

Wyo-Ben will continue to produce taconite bentonite unless and until the losses from such sales exceed the benefits. Any increase in cost of producing taconite grade bentonite at the Lovell plant will not be paid out of profits from that product, since there are none, but will merely add to the net loss on its sale. As noted before, there is no opportunity to raise taconite grade prices to absorb the tax increase. The question, therefore, is how much more of a cost increase can Wyo-Ben withstand and still justify mining bentonite in Montana? The answer is not very much. We know very little about how the proposed tax increase would affect our competitors who also mine in Montana, but they are, or are a part of, "mega" corporations that we suspect would feel much less pain than Wyo-Ben. This inequity is magnified by the regressive manner in which the proposed bill rewards the big producer and places the larger burden on the little producer. The bill would impose a tax at the rate of $1.75 on the first 100,000 tons mined in each county each year. Successive reductions of the tax rate then apply for larger levels of production in excess of 100,000 tons, down to $1.00 per ton for production over 500,000 tons.

Wyo-Ben's Montana bentonite tonnages since it started mining in this state in the year 2000 have been: 18,124 tons in 2000; 17,363 tons in 2001; 4,587 tons in 2002; 16,190 in 2003; and 64,040 tons in 2004. These relatively small tonnage levels are due to the greater cost of hauling the more distant Montana deposits to the plant, and the need to "blend" or average the higher cost Montana product with its closer, and lower cost, Wyoming deposits. Production of the more expensive Montana bentonite is "blended" or averaged with the Company's lower cost and closer Wyoming bentonite to arrive at an acceptable average product cost. The total output of the Lovell plant last year was 165,000 tons. Under these circumstances, Wyo-Ben has no reasonable prospect of even approaching 100,000 tons per year production in Montana, and therefore will always pay the maximum rate under the bill.

If the proposed regressive tax is enacted and Wyo-Ben continues mining bentonite in the state of Montana, Wyo-Ben will pay a substantially greater tax per ton than Bentonite Performance Minerals and American Colloid, because the latter companies mine much greater tonnages in Montana. This will directly and adversely affect Wyo-Ben's ability to compete with these two large competitors for sale of the Montana product. The bill may accomplish its goal of raising money for the Counties but in the process, it will hurt an established Montana small business, and probably force it to stop mining in Montana.

The $1.75 per ton tax that Wyo-Ben would pay for its Montana production is based upon "gross yield, measured in tons before crushing and drying". The average moisture content of the raw Montana bentonite as hauled to the Lovell plant, and before being crushed or kiln dried, is 22.5%. The average moisture content of bulk milled bentonite, after crushing and drying is 7%. This represents an average of 15.5% shrinkage of bentonite weight from the point that it is taxed and the time it is sold. Accordingly, each ton of dried bulk milled Montana bentonite, when sold, will in effect bear a Montana production tax at a rate of $2.071 not $1.75. This anomaly adds to the incremental disadvantage that Wyo-Ben will suffer as compared to the two competitors who also mine Montana bentonite. Tax on production in excess of 500,000 tons would be $1.00 for them. Applying the same shrinkage factor of 15%% translates to an adjusted tax rate of $1.183 per tried ton for the competitors, versus $2.071 per dried ton for Wyo-Ben, which amounts to $.888 per ton difference, not the $.75 difference between the stated $1.75 and $1.00 tax rates.

Wyo-Ben initially assisted Sage Creek Minerals in the latter's appearances before the Tax Reform Interim Committee during which Sage Creek Minerals was seeking relief from an excessive tax on royalties received from Wyo-Ben's activities on Sage Creek's Montana claims. In 2002, Carbon County had taxed 100% of the Gross amount of the royalties at a rate of 38.9% based upon a 389.570 mill levy. Accordingly, Carbon County collected $3178.11 on property valued at $8158.00. Royalties are also subject to income taxes in Montana so the partners in Sage Creek Minerals also paid both Montana and federal income taxes on the gross amount of the royalties that Carbon County did not take.

The authority for Carbon County to collect this excessive property tax is contained in the following Montana statutes:

> Sec. 15-23-502 MCA provides that "every person engaged in mining, …from any…placer claim…precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named…minerals from each mine…during the (preceding) year…(T)he statement must show:…the names and addresses of…all persons owning or claiming any royalty interest in the mineral product of the mine…and the …amounts paid…as royalty to each of the persons during the period covered by the statement."
>
> Sec. 15-23-505 MCA says that the Department of Revenue shall assess and tax the royalties shown on the list furnished per 15-23-502, "…on the same basis as net proceeds of mines are taxed as provided by 15-6-131". Sec. 15-6-131 MCA states:
>
> (1) Class one property includes the annual net proceeds of all mines and mining claims, except coal and metal mines.
>
> (2) Class one property is taxed at 100% of its annual net proceeds after deducting expenses specified and allowed by 15-24-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or for limestone, as provided in 15-23-517 or for industrial garnets and associated byproducts, as provided in 15-23-518.

There are no expenses incurred by owners of claims that can be deducted so therefore the entire gross amount of royalties paid to Sage Creek Minerals is taxed at 100% of value by applying the mill levy to the royalty payment. The result was a tax rate of 39.5% for the year 2002. For successive years the result has been:

| Year | Mill Levy | Royalty Payment | Tax | Tax Rate |
|---|---|---|---|---|
| 2003 | 392.74 | 26,285.00 | 10,284.00 | 39.3% |
| 2004 | 392.74 (est.) | 109,673.00 | 43,100.00 | 39.3% |

When you add the approximate cost of a median incremental federal and state income tax the amount of the royalty the royalty owner retains is only 40 to 45 cents per dollar of royalty paid.

Sage Creek Minerals owns claims in Wyoming that are leased to Wyo-Ben. They are situated south of the Montana claims. Wyoming does not tax royalties received by Sage Creek Minerals from mining activities on their claims. Also there is no income tax in Wyoming. Thus it's logical for Sage Creek Minerals to urge Wyo-Ben to terminate mining activities in Montana and only mine the claims in Wyoming.

SB 276 does call for a change in the taxation of royalties paid to claim holders for bentonite mining activities. This appears on page 3 of the printed bill. Lines 5 through 8 in "New Section - Section 3" would apply a tax of 15% of the amount paid or apportioned in kind to the royalty owner. Wyo-Ben believes this tax treatment is fair and supports it as does Sage Creek Minerals, the owner of the affected claims.

As to the taxation of production, we note that in other mining activities there have been exemptions granted for small producers. We suggest that the first 50,000 tons of production of bentonite be exempt from the production tax in this bill. This exemption would have the effect of making the tax increments as currently laid out in the bill progressive rather than regressive as they are now. As shown in the accompanying graph it would also eliminate most of the tax discrepancy between small and large producers created by the current bill. Applying a tax rate of 50% of the bill's proposed tax rate for the first 100,000 tons (87.5 cents rather than $1.75/ton) to the first 50,000 tons, as shown in the accompanying graph, results in a less regressive tax structure than that proposed in the bill, but one that still disadvantages the small producers.

There are at least two other possible small producers of bentonite in Montana. One is in Valley County. It indicates a possible start up of production in the summer of 2006. The other is located on the north side of I-90 off the Fairmont/Gregson exit between Butte and Anaconda. The latter bentonite deposit was originally developed by the Beal Mountain Mine. The deposit is now owned by Kevin and Jane Johnson of Butte and is known as Montana Bentonite. Both producers say that the tax proposed by SB 276 would be confiscatory—both will produce less than 50,000 ton/year.

In summary Wyo-Ben:

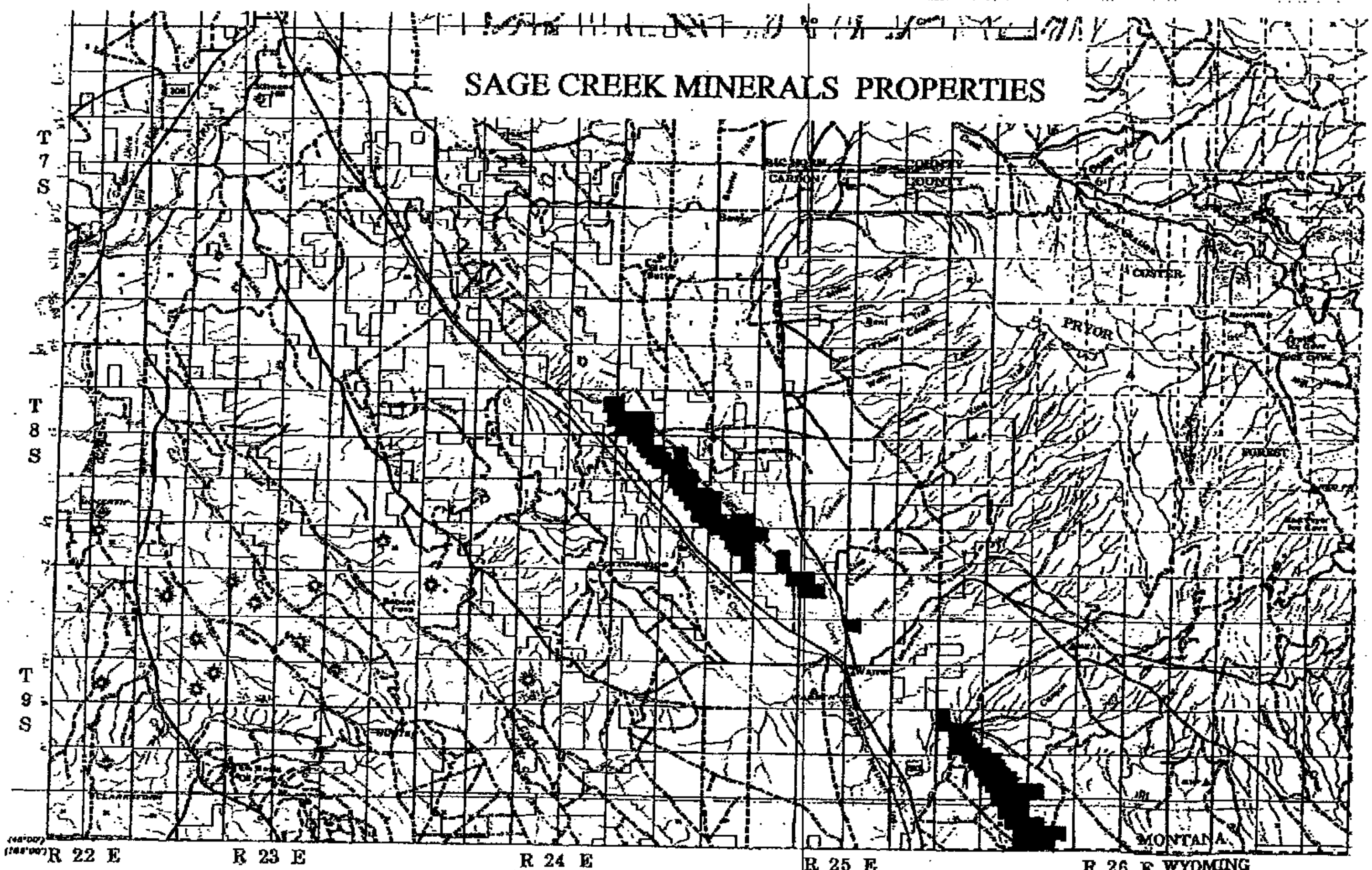
(a) Supports New Section – Section 3 on page 3 of the bill covering a new method of taxation and tax rate for royalties paid on the mining of bentonite.

(b) States that the new rates of tax applied on a per tonnage basis by SB 276 discriminates against small producers and stifles economic opportunity and growth. Wyo-Ben cannot support such tax rates.

(c) Would support the bill in its entirety if the bill exempted the first 50,000 tons of bentonite production from the tax and taxed royalties as now provided in the bill.

Respectfully Submitted,

Richard Brown
Vice-President Wyo-Ben, Inc.
1345 Discovery Drive
Billings, MT 59102



CARBON COUNTY, MONTANA

Billings Gazette

# BUSINESS

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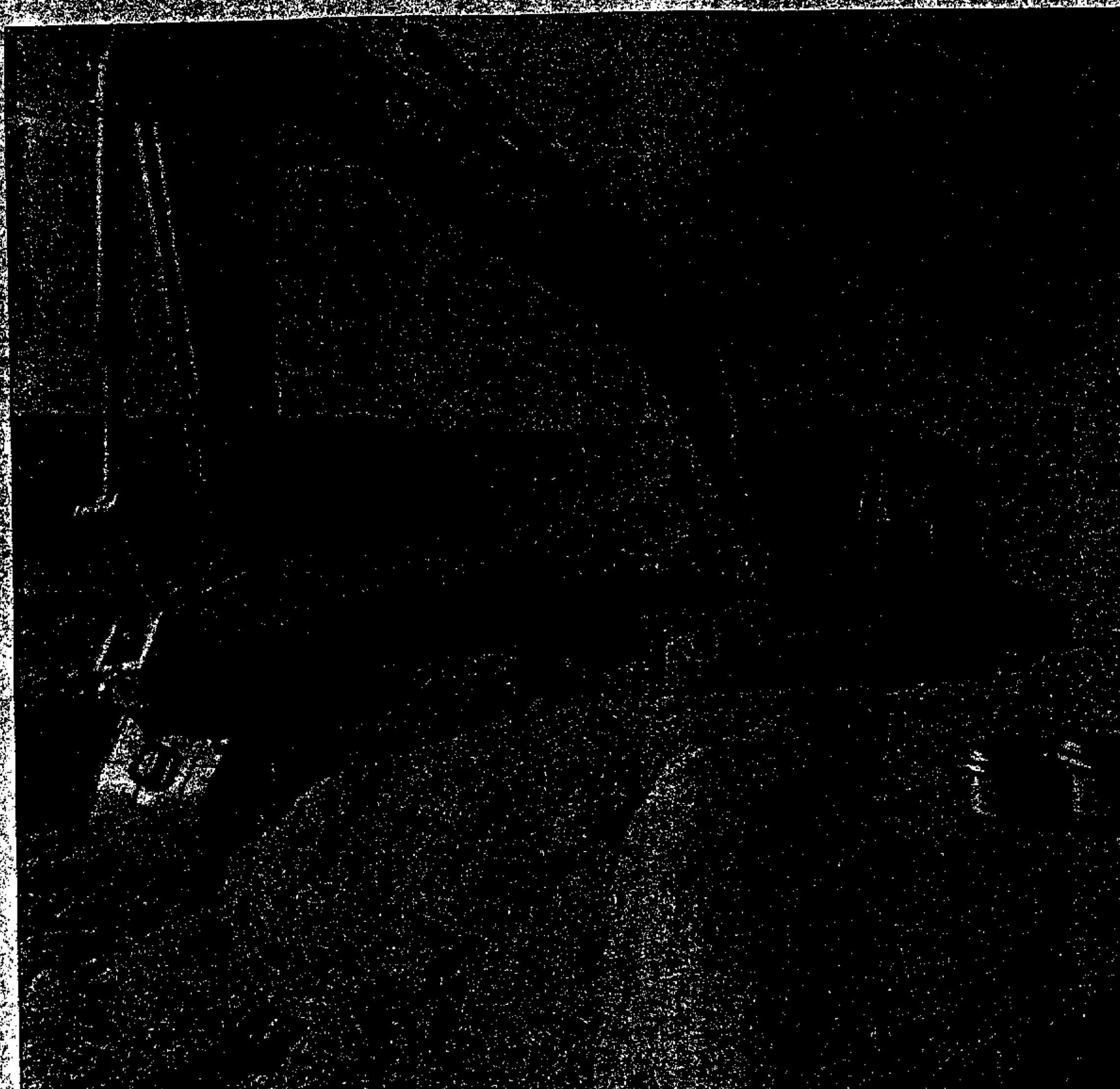

WALTER HINICK/Montana Standard

Kevin Johnson uses an excavator to mine calcium bentonite clay in a shallow pit near the Fairmont/Gregson exit off Interstate 90. Forming their own company Montana Bentonite in 2002, Johnson and his wife Jane have started marketing their bentonite under the name Derma Care Co. of Montana.

# Ancient

MONTANA STANDARD

WALTER HINICH/Montana Standard

**Kevin and Jane mix powdered bentonite with distilled water in their home-based lab in Butte. After the bentonite is mixed into a paste, it can be used as a facial cleanser or toner.**

BUTTE — Kevin and Jane Johnson of Butte have bought 40 acres of land holding at least a million cubic yards of a high-grade calcium bentonite, often called "the mineral of 1,000 uses."

It's a business endeavor that has been 65 million years in the making.

Located on the north side of Interstate 90 off the Fairmont/Gregson exit, the property is an unimpressive, shallow, white pit that stretches along land known locally as the Craddock Ranch.

"This is an industrial mineral," Johnson said of the bentonite, which was born through volcanic activity many millions of years ago. "It's a unique form."

The Johnsons call their company Montana Bentonite, and so far most of their customers are commercial excavation contractors who use the mineral as a liner for ponds, dams, ditches and roads.

The couple is also researching applications for the ceramics and brick industries, as a clarifying agent for oils and wines, and as a water purifier. And, they've set up a lab in their home where Jane is coming up with other high-end uses, like skin cleansers and toners.

When the bentonite is mixed with distilled water to form a paste, it can be applied as a cleaner or toner, where it pulls out impurities that cause acne and blemishes, she said. The Johnsons also say that bentonite is being used in some cases as "surgery without a knife," because it can pull infectious matter from subcutaneous tissues to the surface.

"This mine is going to be a hub, a nucleus, for these other industrial products," Kevin said.

## Volcanic leftovers

Just as volcanoes in the Yellowstone area were subject to long periods of eruptions, there was volcanic activity in Montana near Butte. Magma and ash from these eruptions settled into ponds where the water and pressure altered the sediments into the clay called bentonite.

The open-cut mine, which the Johnsons took over in 2002, was originally developed by Beal Mountain Mining, which used the mineral as a containment material to line its cyanide leach pads. The property wound up on the market with the bankruptcy of Pegasus Mining Co., which owned the Beal mine.

Beginning in 1988, Beal removed roughly 200,000 cubic yards of bentonite, leaving another 110,000 cubic yards exposed and much more underground.

Though owning a mine site is new to the Johnsons, owning a business and heavy mining equipment is not.

The Johnsons were managing partners of Highland Rose Contracting and Supply, LLC from 1995 to 2003. The Butte-based excavation business focused on abatement efforts for public and private clients.

Until Montana Bentonite turns a profit, Kevin maintains a job as a heavy-equipment operator at Golden Sunlight Mine in Whitehall, using the skills he had from owning Highland Rose.

In its final years, Highland Rose's owners saw how increased competition from equipment operators and a decreased need for their services was bringing an end to their business in Butte.

The Johnsons knew they had to make a change and were planning to move Highland Rose and their family to the Missoula area. But in March 2002, on one of several two-hour drives from Butte to Missoula, Kevin saw workers pounding a "for sale" sign into the ground at the edge of a 40-acre tract that included an open pit of white, chalklike dirt.

His interest grew as he drove.

"That's where we started to learn the process about this mineral property," he recalled.

The Johnsons researched calcium bentonite and its potential uses, spoke to mining experts at Montana Tech and made their first offer to buy the property. It was denied.

"To be successful, it had to be substantial," they learned of the bidding procedure, which took place via a courtroom trustee during the Pegasus bankruptcy proceedings.

"We did our homework first, before tendering our offer," Kevin said of their subsequent successful bid.

## X-raying ash

Personnel at Montana State University performed X-ray tests that confirmed the Butte mineral was calcium bentonite, which doesn't have the swelling characteristics of a sodium bentonite. Sodium bentonite is the product of another Montana corporation

Please see Bentonite, 5D

# Bentonite

Continued from 1D

[illegible] selling it since 1951. Wyo-Ben Inc. has been mining, processing and distributing sodium bentonite worldwide. Its corporate offices in Billings, though its processing facilities are located [illegible] of the Wyoming.

[illegible] the Johnsons were [illegible] their purchase, they knew [illegible] customer base would be [illegible] from Wyo-Ben [illegible] calcium bentonite's different [illegible]. But, even with no in-state competition, lenders were skeptical.

[illegible] couple admits that they stretched themselves pretty thin by using their own financial resources and no bank financing for the land purchase.

"Mining has a bad rap," Kevin said. Banks weren't eager to invest in a new mining venture after centuries of Butte's boom-and-bust and then clean-up-and-recover economy.

The couple also recognized that the company will need shareholders.

"We need investors. We want partners, though, not just other people's money," Kevin said. "It won't take much before this thing will start breaking even."

Until partnerships are ironed out, the couple will continue to strip and stockpile the topsoil at the mine, which will be used to reclaim the mined-out areas to DEQ standards.