S. HRG. 111–116

MINING LAW REFORM

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

TO

RECEIVE TESTIMONY ON S. 796, HARDROCK MINING AND RECLAMATION ACT OF 2009 AND S. 140, ABANDONED MINE RECLAMATION ACT OF 2009

JULY 14, 2009

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CONTENTS

STATEMENTS

APPENDIXES

APPENDIX I

APPENDIX II

MINING LAW REFORM

TUESDAY, JULY 14, 2009

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m. in room SD–366, Dirksen Senate Office Building, Hon. Mark Udall presiding.

OPENING STATEMENT OF HON. MARK UDALL, U.S. SENATOR FROM COLORADO

Senator UDALL. Good morning. The Committee on Energy and Natural Resources will come to order. I'm pleased this morning that our committee is conducting a hearing on two bills that would reform the Mining Law of 1872.

S. 796 introduced by Senator Bingaman and S. 140 introduced by Senator Feinstein. This is a matter of great interest in my home State of Colorado. I'm a strong supporter of reform.

Unfortunately Senator Bingaman is unable to be here due to the health care markup being undertaken at the HELP Committee. I understand that the chairman has significant involvement in the subject matter being taken up by that committee this morning. Rather than postpone this important hearing, he asked that I chair these proceedings.

In addition, Senator Feinstein had planned on offering a statement here this morning. She too, has been called away on important Senate business, the confirmation hearing of Judge Sotomayor before the Judiciary Committee. Without objection her statement will be submitted for the record.

[The prepared statement of Senator Feinstein follows:]

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Chairman Bingaman, thank you for the opportunity to speak to the Committee about legislation that I've authored to establish a dedicated funding source to clean up abandoned hardrock mines.

I agree that reform of the General Mining Laws of 1872 is long overdue. I'd like to point out that this legislation is not intended to be a comprehensive mining reform bill. It is, however, an urgently needed piece of the puzzle.

The scope of the abandoned hardrock mine problem is enormous. There are as many as 500,000 abandoned Gold Rush-era mines strewn across the western states—47,000 alone are found in California.

These mines pose serious threats to public health and safety.

The legislation that I have introduced would: First, create an abandoned mine clean-up fund that would be funded by fees and royalties on the hardrock mining industry.

Unlike the coal industry, the metal mining industry does not pay to clean up its legacy of abandoned mines. So, the bill would create a new reclamation fee of 0.3 percent on the gross value of all hardrock mineral mining on Federal, State, tribal, local and private lands. This fee could raise approximately $50 million annually for cleanup.

The bill increases hardrock mining fees that are already in place. It increases the annual maintenance fee from $125 per claim to $300, the one-time location fee from $30 to $50, and the transfer fee from $10 to $100. The fee increases will fund administration of the program and any excess money will be deposited in the cleanup fund.

The legislation would also establish an 8 percent royalty on new mining operations located on Federal lands, and a 4 percent royalty for existing operations. The Congressional Budget Office estimates that these new royalties would generate $160 million over four years. All of this goes to mine cleanup.

Second, establish spending priorities for the cleanup fund based on the severity of risk to public health and safety and the impact on natural resources. This will ensure that the abandoned mines that pose the greatest risk will be addressed first.

Third, direct the Secretary of the Interior to create an inventory of abandoned mines on all Federal, State, tribal, local, and private land. Unless we have a clear picture of the scope of the problem, we can't fully address it.

I urge my colleagues in Congress to move swiftly to approve legislation to address abandoned mines—before more damage is done.

WHY WE NEED THE LEGISLATION

Many abandoned mines are located in popular recreation areas. As communities expand and off-road vehicles provide access to rural areas, the public's proximity to open shafts, rotting structures and deadly gasses is growing.

In the past two years, eight accidents at abandoned mine sites were reported in California. Throughout the United States, at least 37 deaths occurred between the years 1999-2007.

The Department of the Interior has published a list of recent deaths related to abandoned mines. The heartbreaking incidents ranging from the deaths of a 13-year old girl to a Vietnam Veteran are all the more devastating because they were preventable.

RECENT DEATHS AT ABANDONED MINES

- On May 17, 2008 in O'Neals, CA, three men aged 23, 25, and 26 died from carbon monoxide poisoning while attempting to reopen an abandoned Gold Rush-era mine. Their bodies were found just 20 feet inside the mine. * On January 20, 2008, a 19-year old man was fatally injured after falling into a 35-foot abandoned mine shaft outside of Tonto National Forest in Arizona.
- On September 3, 2007, a 13-year old girl was killed and her 10-year old sister seriously injured when their all-terrain vehicle fell 125 feet down an abandoned mine shaft in northwest Arizona.
- On May 3, 2007 a 63-year old man was killed when his Jeep rolled off a narrow trail into an abandoned mining pit in Virginia City, Nevada.

And still, too little is being done to clean up these dangerous Gold Rush-era mines.

This past April, my staff went and took pictures of some of the abandoned mines on Federal lands. As you can see, these sites present serious safety threats.

CHART #1: ABANDONED MINE SHAFT, MOJAVE NATIONAL PRESERVE

This is a photo* of Superintendant Schramm next to an abandoned mine in the Mojave National Preserve. Park officials estimate the mine is between 100 and 400 feet deep.

There are thousands of mine shafts like these all over our nation's public lands.

These deep shafts can be obscured by debris, brush, and rolling hills. The two girls in Arizona, who were riding off-road vehicles with their family, had no warning before they plunged into the 125 foot abandoned mine shaft.

At the bottom-right corner of the photo, a dirt road can be seen. This road is used by visitors to travel around the park and it brings them very close to the open shaft. Park staff reported that in March 2009 they saw a family camping near this shaft with two small boys playing near the opening.

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*Photos have been retained in committee files.

CHART #2: SKIDOO MINE, DEATH VALLEY NATIONAL PARK

Abandoned mines are often thought of as holes in the ground, but unstable structures—like the mill pictured here—are common hazards at these sites.

This is what's left of the Skidoo Mine structure in Death Valley. This mine was in operation between 1906 and 1917. During that time it produced 75,000 ounces of gold, worth more than $1.5 million at the time.

The mill sits atop a ridge overlooking the valley. It may appear safe, but the image is deceiving. Wire suspensions installed by park officials are anchoring it to the hill.

Sites like the Skidoo Mine are often the park's most popular destinations. People just do not understand the danger, and park officials struggle to keep visitors from exploring dilapidated ruins and shafts.

CHART #3: ABANDONED MINE SCREEN

Screens and other basic safety measures can prevent the most common form of death associated with abandoned mines—falling down an open mine shaft.

This photo shows an abandoned mine feature in Death Valley covered by a screen. This shaft is less than five feet from road and is believed to be between ten and 50 feet deep.

Signs and basic safety measures such as screens and fencing can help lower the risk of accidents. This screen costs about $1,100 and can be constructed locally.

INTERIOR DEPARTMENT'S INSPECTOR GENERAL REPORT

A July 2008 report from the Interior Department's Inspector General found that public health and safety has been compromised. It states that, "mines located primarily in the Western States of California, Arizona, and Nevada have dangerously dilapidated structures, serious environmental hazards, and gaping cavities—some capable of swallowing an entire vehicle." Further, program mismanagement and perennial funding shortfalls impede the cleanup.

Clearly, a consistent form of funding is badly needed to ensure that cleanup continues and that basic safety measures, such as installing signs and fencing, are undertaken—and that's why I've introduced this legislation.

CONCLUSION

The fact is that abandoned mines are public hazards and they need to be addressed.

I look forward to working with members of the Committee, the Department, and other interested parties to find a solution to this long outstanding public safety issue. Thank you.

Senator UDALL. Senator Bingaman has asked that I read his statement into the record. I will proceed to do that. Before I do so I want to say that I'm pleased to see 2 Coloradans here today.

First, of course, is Secretary Ken Salazar, who will offer the administration's position on the bills we're considering today. The Secretary has substantial expertise on the whole array of Western natural resource issues including mining. I know his testimony will be of great value to the committee.

Second, Cathy Carlson, who is here on behalf of Earthworks. Cathy has spent much time and energy on this important issue. I look forward to hearing from her today as well as from the other witnesses.

Now let me move to Senator Bingaman's statement.

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The committee is conducting a hearing today on 2 bills, S. 796 and S. 140 which will reform the antiquated Mining Law of 1872, a law that governs the mining of hard rock minerals such as gold, silver and copper from our Federal lands. When the Mining Law was enacted in 1872 in the aftermath of the California Gold Rush, Congress sought to encourage settlement of the West. Congress did this by offering free minerals and land to those who were willing to go West and mine.

In 1920 Congress enacted the Mineral Leasing Act and removed oil, gas and coal and certain other minerals from the operation of the Mining Law enacting a leasing system for those minerals. In addition, Congress required payment of per acre rentals and ad lorum royalties based on the value of production of the oil, gas and coal providing a return to the public for the production of publicly owned resources. However, as we all know, the Mining Law of 1872 continues to govern the disposition of hard rock minerals from Federal lands.

While Congress has stepped in and prevented the patenting of lands through annual appropriations or riders, the patenting provisions allow the transfer of mineralized Federal lands for $2.50 or $5.00 per acre that are still on the books. In addition, to this day under the Mining Law, billions of dollars of hard rock minerals can be mined from Federal lands without payment of a royalty. General land management and environmental laws apply, but there are no specific statutory provisions under the Mining Law setting surface management or environmental standards.

Efforts to comprehensively reform the Mining Law have been ongoing literally for decades. But results have thus far been elusive. There is a growing number of people saying that finally, this Congress may be the time to achieve this long awaited reform. I hope that the Energy Committee can consider and report Mining Law legislation this fall.

In introducing S. 796, my goal was to reform and modernize the law governing hard rock mining. But to do so in a manner that would allow our domestic mining industry to continue to provide jobs and produce minerals important to our Nation.

The bill would eliminate patenting; impose a royalty on the production of locatable minerals on Federal lands; make statutory and modify requirements relating to permits, financial assurances, operations and reclamation and inspection and monitoring; require a review of Federal lands to determine their availability for future location entry under the Mining Law of 1972; and establish an abandoned hard rock reclamation fee program to be funded by a royalty, a reclamation fee, a land use fee and excess claim maintenance and claim location fees.

S. 140, Senator Feinstein's bill, also addresses this important issue, rather of abandoned hard rock mine reclamation. This bill establishes an AML program funded by royalties and a new reclamation fee on hard rock mineral production. Abandoned hard rock mines pose serious public health and safety, environmental problems. While estimates vary, a recent survey of states indicated that there are as many as 500,000 abandoned hard rock mine sites nationwide with much of those in the West.

I look forward to working with Senator Feinstein on this important aspect of Mining Law reform.

We are very pleased to have Secretary Salazar with us here today. His testimony will be followed by an outstanding panel. We thank you all in advance for being with us to discuss this important topic.

Senator UDALL. So again, that was Senator Bingaman's statement for the record. Now it's my great privilege and honor to turn to a son of Colorado, an individual for whom I have a great respect. For all of us in Colorado, we're just so proud that a son of Colorado is leading one of the most important Cabinet agencies in the U.S. Government.

Interior Department Secretary Salazar, it's tremendous to see you here today. Thank you for taking time from your very, very busy schedule to be here to talk about this important topic. The floor is yours.

STATEMENT OF HON. KEN SALAZAR, SECRETARY, DEPARTMENT OF THE INTERIOR

Secretary SALAZAR. Thank you very much, Senator Udall. I see you as the chairman of this committee and will call you chairman, Senator. But as always from Colorado always have seen you as a brother. Very proud of the work you're doing on behalf of Colorado and the Nation on your participation on this great debate.

Appreciate the great leadership of Senator Bingaman as the chairman of the committee and Senator Murkowski. It's through their joint leadership that this committee continued its fine tradition of moving forward with what was truly bipartisan energy legislation. I look forward to working with this committee and with the U.S. Senate in the days and months ahead as we move forward to the passage of what will be comprehensive energy and climate change legislation.

It is a signature issue of our time. It is an issue which we—I am confident we'll act on. We'll have a package done here by the end of the year.

Let me, Mr. Chairman, speak now about the subject of this particular hearing. That's the 1872 Mining Law. The 1872 Mining Law from the point of view of the Department of Interior and the administration is a law that must be changed.

It is a law that has been on the books now for 137 years. Despite decade after decade of fights about how it is that we should reform the Mining Law all of those efforts have failed. Many a Senator and Congressman who has sat in these Committees has tried to make those changes. Yet getting across the finish line has proven to be very, very elusive.

We would hope that now in 2009, the time for change has finally arrived. That we can get the different stakeholders which include the environmental conservation community as well as the mining community to help us forge a way forward for a commonsensical reform of the 1872 Mining Law. It is important for us to do that.

First, because the mining industry in our Nation is part of the economic engine that creates thousands of jobs across this country and all of us are dependent on the minerals that we use whether it's the lighting in this room, the roof in this room, the cars that we drive. It's so much of everything that we touch every day is dependent on the minerals that come from the mining industry here.

Good morning, Senator Wyden.

Senator WYDEN. Good morning, Secretary.

Secretary SALAZAR. How are you, sir?

Second, it is also important for us to make sure that we are protecting the treasured landscapes of America. That's both with respect to new mining activities that occur on the public lands as well as dealing with the legacy of the abandoned mines which continue to be a scourge on water quality and other environmental issues across the West.

Let me say as I look forward to working with this committee on the reform of the 1872 Mining Law, there are four goals that I have in mind.

The first of those is to make sure that we are supporting mining on public lands. I will talk more about that.

Second of all, that we protect the environmental respect to new mining activities on mining on the public lands.

Third, that we restore the environmental legacy of our treasured landscapes by specifically addressing the abandoned mines that we have so many of in the West.

Fourth, that we develop a legal framework here to provide a fair return to the American taxpayer as we reform the 1872 Mining Law.

Those goals, those four goals support the vision of the Department of Interior to first, create jobs here in the United States through the balanced development of our natural resources on public lands.

Second of all, creating jobs here in America through the recreation and tourism that comes through the great use of our treasured landscapes all across this country.

Now with respect to some background on the issue, I think it's important for us to recognize what some of the key issues are at stake.

First of all, mining is an important part of the United States economy. We ought not to forget that. The gold industry alone produces about 66,000 jobs here in the United States. In Nevada alone the gold industry is the second. I think Nevada alone is the fourth largest producer of gold in the entire world. So it tells you the important economic contribution that they make.

The United States of America is the second largest producer of gold and copper. We know mining claims are still very much a part of the public domain. We have about 76,000 mining claims that are staked every year across the Bureau of Land Management lands. We have about 400,000 mining claims that are currently on the books that have been staked. So we know mining is important to the economy of this country.

The next thing we should also remind ourselves of is that the legacy of mining has not always been a good legacy for our society. Back in 1872 when the Mining Law was created it was clear that the policy objective at the time was we wanted to open up the West by giving away land and giving away minerals for companies to go and to settle and to develop that great Western landscape. Much has changed since 1872.

Much of that great Western landscape has in fact been developed. Population has grown. The same incentives that existed in—that needed to be in place in 1872 are no longer needed in today's population reality.

Nonetheless, the legacy of the mining tradition in the West has scarred the environment. When we look at places like Clear Creek County and Gilpin County in Colorado and so many places across the entire West, we know that we have an abandoned mine legacy that needs to dealt with. The BLM estimates alone, that we have about 18,000 abandoned mine sites just on Bureau of Land Management properties.

Yet, the efforts to try to clean up those abandoned mine sites have proven to be very costly and has proven to very elusive. So we need to address that reality of the legacy of mining in the West. According to our estimates, about 40 percent of the headwaters of the streams across the West still have some form of contamination, most of it coming from abandoned mine which are the orphan mines that exist in many of our Western States. So that issue is one that should be addressed with respect to our reform of the 1872 Mining Law.

I mean, throughout in four concepts that I think are very important with respect to reform of the law.

The first is patent reform. I believe that it is time for us to change the way in which the public lands are patented. Much of

the public debate and the acrimony over what's happening with the 1872 Mining Law is a strong perception that lands that are worth, in some cases, hundreds of thousands of dollars per acre are essentially being given away for $2.50 to $5.00 an acre.

That creates a distrust in what the Federal Government is doing with respect to the stewardship and ownership of the public lands that we have. So we need to stop the patenting in my view of mining claims across the West. But as we do that we also have to recognize that tenure and security of tenure is important.

Mining companies invest huge resources in their mining operations. They need to have the security of tenure to be able to not only permit, but also to finance those mining operations. So Senator Bingaman's bill is an effort to try to strike the balance between dealing with reform on the patenting of these public lands and at the same time providing security of tenure.

Second, we need to have reasonable royalties in my view. We have royalties now that are paid for, most of the minerals that we have in our public lands and yet somehow that has alluded us with respect to hard rock minerals. But if you look at what's happened in earlier or in later manifestations of the management of mining on our public lands, we know, for example in the Eastern part of the United States that royalties do apply to mines and minerals that are mined on acquired lands. But we know that with respect to pot ash and other minerals that we actually have royalties that are collected there.

So what we need to do is to find the right level of royalty. One that is not going to drive the mining industry out of the United States of America so that those jobs are taken elsewhere. But at the same time a level of royalty that assures that there is a fair return back to the taxpayer here in the United States. Senator Bingaman's bill attempts to provide a range of royalties that is something that should be explored. Hopefully that we can come to some agreement on what the right level of royalty should be.

Third, environmental protection. Environmental protection needs to be part of what we do with the reform of the 1872 Mining Law. Now some might say that we already have enough environmental protection when it comes to mining operations because you have the application of NEPA, the application of FLPMA, the application of the Clean Water Act, the application of the Clean Air Act. You have the application of the Endangered Species Act.

So if you're a mining operator you already say that with respect to new mines that are coming on board, they're already this plenary of environmental laws that ensure that the environment is going to be protected. On the other hand the reality tells us that that is not always the case. On the other hand when you look at the bankruptcies for example, the Asarco in the West, you find a legacy of mining operations that essentially have left environmental liabilities that essentially have been assumed by the American taxpayer. So we need to take a look at whether or not we have the appropriate environmental safeguards with respect to current mining operations.

Third, in the subset of environmental protection it's looking back at the open mine sites and abandoned mines. You know, for many of us who worked on issues like Good Samaritan. We know one of

the problems there is that there is no place where we can go to find the money to be able to clean up these abandoned mine sites and so they continue to tarnish the landscape of the West, the landscape of places like Alaska.

Yet there is no place where we can get the financing to be able to clean up these mine properties where nobody claims ownership of these properties. So it seems to me that it's appropriate to pursue the concepts of both Senator Bingaman and Senator Feinstein have advocated here. Which is that we have to create some kind of revenue stream to help us deal with the abandoned mine site reality of the West.

Second as part of that, we also should take a good, hard look at Good Samaritan legislation. We have tried that in the past here in the United States Congress. It has not gone to the point of conclusion. But there have been good discussion.

There are outstanding issues out there about who it is that should be entitled to Good Samaritan treatment, about what exactly that Good Samaritan liability protection should be, what laws should be covered. That's all part of what should be in the robust debate on an appropriate reform of the 1872 Mining Law.

Finally we need to try to get it done. Hopefully try to get it done even within this Congress. There are some who say this is not that important of an issue and that there are lots of other issues which should take center stage.

I fully agree that we need to move forward with addressing the energy and climate change challenge of these times. I predict that we will do that. I would hope that we're able to find a bipartisan way forward in getting that done.

I understand the importance of dealing with health care. I know both Senator Wyden, Senator Cantwell and others on the Finance Committee, Senator Barrasso, that have been spending a tremendous amount of time on that issue. Those are signature issues of our time.

But as we deal with those signature issues, it's also important for us to take care of business that has to get done because we have not been able to get it done for a very long time. I'm hopeful that the 1872 Mining Law reform will be one of those areas where we will be able to claim success in terms of the change that we have been able to bring here to America.

With that, Mr. Chairman, I'd be happy to take questions.

By the way, let me just add I have with me today Sylvia Baca, a native of New Mexico, who is the Deputy Assistant Secretary for Land Minerals and Management. Mike Pool, who is the Acting Director of the Bureau of Land Management and Mike will be joining me up here. So, Mike if you will come join me. Also Christopher Mansour and Sarah Bittleman, who many of you on the committee staff know who know the issues of this committee very well and who will be working with us as we move forward.

Let me finally say, I looked around at the staff behind you, Mr. Chairman. Both on the Democratic side and on the Republican side I see some great people who I very much enjoy working with. Thank you very much, Mr. Chairman.

[The prepared statement of Secretary Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, SECRETARY, DEPARTMENT OF THE INTERIOR

INTRODUCTION

Thank you, Chairman Bingaman, Senator Murkowski, and Members of the Committee. I am here today to discuss with you reform of the General Mining Law of 1872, a complex matter and one that engenders passionate views. Along with most of you, I have spent much time working on various aspects of such reform. I am committed to working with you to develop legislation that will accomplish the following: provide industry with the regulatory certainty needed to make the investments that produce mineral resources vital to our economy; provide a fair return to the public for mining activities that occur on public lands; protect the environment; and result in the cleanup of abandoned mines.

BALANCE—ENERGY DEVELOPMENT

Before I turn to Mining Law reform, I want to thank the Committee for its work in reporting bipartisan energy legislation. I look forward to working with the Members of the Committee in the days ahead to address the challenges of energy and climate change.

The last time I appeared before the Committee, I spoke about President Obama's agenda for energy development on the public lands and the Outer Continental Shelf. While we have a lot of work ahead of us on that front, we have made great strides at the Department under our existing authorities as key steps on a comprehensive energy plan for the Nation. We are balancing the responsible development of conventional energy sources, while protecting our treasured landscapes, wildlife, and cultural resources, with the accelerated development of clean energy from renewable domestic sources.

With regard to conventional resources, since January the Department has offered more than 2.3 million acres on our public lands for oil and gas development in 17 lease sales, with over 780,000 of those acres going under lease and attracting more than $60 million in bonus bids and fees. We have plans for another 20 sales in the next six months, onshore.

Concerning the Outer Continental Shelf, during the third week in March, I traveled to New Orleans with the Minerals Management Service to attend the Central Gulf of Mexico Oil and Gas Lease Sale 208, which attracted over $700 million in high bids, with 70 companies submitting 476 bids on 348 tracts comprising over 1.9 million acres offshore the States of Alabama, Louisiana, and Mississippi.

On the matter relating to oil shale, we will announce a second round of research, development, and demonstration leases in Colorado and Utah in the near future.

We continue working on a plan for the Outer Continental Shelf. I extended the public comment period on the Draft Proposed 5-year Plan produced by the previous Administration until September 21, 2009. At that time I also requested from Departmental scientists a report that detailed conventional and renewable offshore energy resources and identified where information gaps exist. I held regional meetings with interested stakeholders to review the findings of that report and gather input on where and how we should proceed with offshore energy development. I also crafted an agreement with Federal Energy Regulatory Commission Chairman Wellinghoff clarifying jurisdictional responsibilities for our respective agencies for leasing and licensing renewable energy projects on the OCS, which will help facilitate the development of wind, solar, wave, tidal and ocean current energy sources. Several weeks ago I announced the issuance of five exploratory leases for renewable energy production offshore of New Jersey and Delaware.

We are also moving rapidly to implement the President's renewable energy strategy onshore. During the last week in June the Senate Majority Leader Reid and I announced a plan to expedite development of solar energy projects on BLM lands in six western states. The two dozen Solar Energy Study Areas will be evaluated for their environmental and resource suitability for large-scale solar energy production, providing a more efficient process for permitting and siting, and could ultimately generate nearly 100,000 megawatts of solar electricity.

BALANCE—MINING REFORM

Balance is also an important concept as we discuss reform of the Mining Law of 1872. While the responsible development of our mineral resources is critical to both our economy and our environment, this statute has not been updated in 137 years. In those years, much has changed. As I previously noted, it is time to ensure a fair return to the public for mining activities that occur on public lands and to address the cleanup of abandoned mines. We must find an approach to modernize this law

and ensure that development occurs in a manner consistent with the needs of mining and the protection of the public, our public lands, and water resources. It is time to make reform of the Mining Law part of our agenda of responsible resource development.

Much has been said about the role the General Mining Law of 1872 played in settling the western United States, how it provided an opportunity for any citizen of the country to explore public domain lands for valuable minerals, to stake a claim if the mineral could be extracted at a profit, and to patent the claim. Numerous commodities are mined, under the authority of the General Mining Law, to provide the raw materials essential for the manufacturing and building industries. According to the BLM, the 5-year average for new mining claims staked annually under the law is approximately 76,000, with a current total number of claims at nearly 400,000. These claims generated almost $60 million in federal revenue—mostly from the fees collected by BLM—in fiscal year 2008.

Our domestic gold mining industry alone directly or indirectly creates more than 66,000 jobs and nearly $2 billion in earnings annually. The United States is the second largest producer of gold and copper in the world, and the leading producer of beryllium, gypsum, and molybdenum. In my view, our own security depends on maintaining a viable domestic mining industry. Metals and minerals are also needed to support development of renewable energy.

As the United States Senate undertakes reform of the 1872 Mining Law, patent reform, and the environmental consequences of modern mining practices must be addressed in meaningful and substantive ways. In addition, the American taxpayer should receive a fair return for the extraction of these valuable resources and should expect the federal government to develop a reliable process providing for the clean-up and restoration of lands where the responsible party is unable or unavailable to do so, including a Good Samaritan provision.

CONCLUSION

Thank you again, Mr. Chairman, for giving me the opportunity to present you the Administration's thoughts on this important topic. We look forward to working with the Committee and all interested parties as this process moves forward.

Senator UDALL. Thank you, Mr. Secretary. Yes, of course, your crack team is invited to sit at the table with you. Given the busy schedule the Senate is facing, and the fact that I've carved out all 2 hours to be here and that Senators Cantwell and Barrasso and Wyden have taken time to join us, I want to turn immediately to Senator Wyden and let him direct some questions to the Secretary.

Senator WYDEN. Thank you very much for your courtesy, Mr. Chairman. It's great to see the Secretary. Once again on the side of reform which certainly is needed.

In my view, after decades of taxpayer rip-offs and environmental destruction, it is long past time to reform the 1872 Mining Law. For years you've had some very large companies getting a sweetheart deal paying no royalties for the resources removed from Federal lands. That's not right. They ought to have to pay their fair share.

Now the legislation that we're reviewing today is especially important for other reasons as well. We're going to be looking, for example, at abandoned mine clean up. There are more than 140 of them in my State alone. Several of them are actually superfund sites that lack adequate funding for clean up.

So what I'd like to do, Mr. Secretary, is spend a few minutes talking with you about some of the key elements of reform and getting your thoughts.

First, I'd like to ask your thoughts about royalty reform as it relates to the mining area. The Bush administration's Department of the Interior, for example, testified that they would like to see a royalty system similar to the infamous program that was exposed by

the Interior Inspector General at Minerals Management. I think that would be a very significant policy error.

It's going to be important to get royalty payment reform right. Could you just spend a minute or two ticking off first, your thoughts about what the key elements of responsible royalty reform would consist of?

Secretary SALAZAR. Thank you very much, Senator Wyden. Thank you for your leadership on this issue and so many other issues. From my point of view royalty reform, first of all, has to be a royalty level, a royalty amount that will not drive mining out of business. At the same making sure that we're protecting the American taxpayer.

I know Senator Bingaman's bill has a range of, I believe of up to 5 percent. I don't know and we don't have a position yet on what exactly the royalty amount should be. But it should be a fair return to the American taxpayer.

It also should be the kind of royalty that is transparent. That is easily accountable for relative to the royalties that need to be collected. You know, part of what we are looking at with respect to an agency that you know so well, MMS, is how we do royalty reform to make sure that we have accountability with respect to the royalties that have to be paid. I think that the lessons that we're learning as we do the review of MMS might be very applicable to what kind of royalty mechanism is set up with respect to hard rock mineral mining.

Senator WYDEN. So you believe that as part of royalty reform there should be more openness and more transparency so that the public can actually see how these decisions are made. Because that was part of the badly flawed approach that was used at Minerals Management, the lack of openness was part of the reason we saw that program tarred by scandal.

Secretary SALAZAR. I agree with you, Senator Wyden. I think one of the things that we have to aim for is some simplicity as well. I mean one of the problems we've already seen with respect to MMS and the oil and gas royalty collection mechanism is that it is very difficult to understand and very cumbersome to actually make the collections that are accurate collections.

So we are looking at the proposals that we hope to bring before the Congress that will deal with royalty simplification in the oil and gas context. I think we'll those same lessons would apply here.

Senator WYDEN. One other quick question. I see the clock has run on me. What are your thoughts about dealing with abandoned mines?

One of the big issues with hard rock mining is when these huge operations in effect, don't clean up after themselves. Then there is huge taxpayer expense and big environmental hazards. Now BLM has had a problem with making sure, for example, that some of these large companies that have the financial wherewithal to pay for clean up, do it. The problem is that they're just shirking their responsibilities.

So what would be your thoughts on trying to make sure that in the future we don't have those same problems where people in effect mine, profit and run?

Secretary SALAZAR. Senator Wyden, I believe that the legislation which Senator Bingaman has introduced addresses that issue in part with the kinds of financial sureties that have to be provided for mining operations. So, it is accurate for you to conclude that there have been examples across the public domain where companies simply have not had the financial wherewithal to essentially complete the cleanup of mines once mining terminates. That's a very appropriated issue for this committee to consider as we deal with mining reform.

As I said earlier in my testimony the other part of it is how are we going to deal with the legacy of abandoned mines across the West including many of the mines that you indicated exist in the State of Oregon.

Senator WYDEN. I appreciate your views. I think you are going to put the Department, finally, after years of ducking this issue, you're going to put the Department on the reform side of the agenda. I think in each one of these examples, the kind of balance you're trying to strike is the way to go.

For example on that last point I made. When you have companies that do have the financial wherewithal, these, you know, huge companies, then we cannot let them walk away. If we're talking about the smaller, you know, concerns, again, you're going to have to try to strike a balance that's going to work both for the environment and local communities as well as the small companies.

I think you're prepared to strike that kind of balance. I look forward to working with you. Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Wyden. We've been joined by the Ranking Member, Senator Murkowski. I want to turn to her for an opening statement and then any questions she might have for Secretary Salazar.

Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. Welcome, Secretary. It's good to see you. I am looking forward to your visit to Alaska. We promise good weather and fine fishing and a real education in your brief time up there, but we are looking forward to it.

I have a longer opening statement that I would like to submit the full statement for the record.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

I want to thank Senator Bingaman for holding this hearing and the witnesses for testifying. We are here to receive testimony on two proposals to reform the 1872 Mining Law.

There is no question that the time has come to modernize this statute and I support the enactment of comprehensive reforms to the Mining Law.

These reforms must strike an appropriate balance between: protecting the environment; ensuring a fair return for the taxpayer; facilitating job growth; and maintaining a secure, domestic supply of minerals.

It is very important that in attempting to fix problems with the Mining Law itself, we do not create new ones. Upon reviewing the proposals before us today, I found myself asking not what problems they may create, but where to begin in listing those problems.

It is important that my colleagues and the public understand the provisions contained in these bills, and in particular S.796. I will focus on three of them.

First, Section 308 is simply called "State Law", which sounds harmless. But this section drastically undermines a decades-old decision by the U.S. Supreme Court governing state and federal management of public lands. It is unclear why this Committee should over-rule the highest court in the land, but as the debate moves forward a full explanation of this provision is necessary so that we may judge for ourselves whether or not it is warranted.

Second, Section 307 is called "Land Open to Location". Ironically, this section could subject every federal acre to what can only be described as a national referendum on the closure of those lands to mining. A mere three years are allowed to complete this review, and the section largely abandons the existing process for withdrawals. That withdrawal process is not broken and, under the auspices of 'fixing' it, we should not put huge, additional swaths of public land off-limits to domestic minerals production.

And finally, Sections 102, 201, 303 and 403 combine to increase fees on every mining claim by as much as $616. They also impose an additional government take of as much as 6 percent through a royalty and other fees on production.

Let me be clear: hardrock mines on federal land should pay a royalty, but there is too much at stake to go about imposing one in an arbitrary manner. The absence of an analysis on the impact that these new taxes and fees could have is made clear by the bill's reliance on a percentage range, rather than a definitive and justifiable rate.

The margin of error here is very thin, and the provisions I have listed are just a few of many that must be regarded with skepticism. The U.S. currently attracts a mere 8 percent of global mining investment, and both of these bills would likely reduce that amount further still.

Reforms to the Mining Law should be developed with equal attention paid to the importance of imposing a royalty and the necessity of maintaining a role for mining in our economic recovery. A decrease in investment will be accompanied by a decrease in job creation and the security provided by domestic production of minerals. Such an outcome must be avoided.

In these tough economic times, we should recognize that mining jobs pay well, require a high level of skill, and provide an excellent career path for those who pursue them. They are as important to our economy as any green job, and a failure of mining reform proposals to recognize that fact would be very problematic.

The policy changes proposed by these bills would have long-term implications for the United States. Minerals are the building blocks of infrastructure, technology, defense, and industry.

They are also essential to the new, clean energy technologies that this very Committee has sought to advance in an aggressive way. We import 100% of the quartz crystal for photovoltaic panels, 91% of the platinum for fuel cells, 100% of the indium for LED lighting technologies, and 100% of the rare earths for advanced batteries.

If we get mining reform wrong, we risk trading our reliance on foreign oil for a reliance on foreign minerals.

It is for these reasons that reforms must maintain the viability of domestic minerals production, and I am very concerned that the bills before us today may fail to accomplish that task.

Mining reform should be a priority for this Committee, and it is my hope that this hearing can serve as the beginning of an open and bipartisan debate on what represents a responsibly balanced set of reforms to the Mining Law.

Senator MURKOWSKI. Very briefly before I move to my questions, I think we would agree that it is well past time that we modernize the statute, the 1872 Mining Law. I support the enactment of comprehensive reforms to the Mining Law.

But I think we need to make sure that we're striking the right balance. We always know it is about the balance. But the balance between protecting the environment, insuring a fair return for our taxpayers, facilitating job growth and maintaining a secure, domestic supply of minerals. I think it's very important that as we try to achieve balances in these four areas in attempting to fix problems that we recognize exist within the Mining Law itself, that we

don't create any new ones, so working on those laws of unintended consequences.

I do want to make it clear that I believe hard rock mines on Federal lands should pay a royalty. But there's way too much at stake to go about imposing one in an arbitrary manner. I think we recognize that the margin of error that we have at play is pretty thin.

The United States currently attracts a mere 8 percent of global mining investment. The legislation that the committee is looking at today, I believe would likely reduce that amount even further. We've got to strike the right balance between imposing a royalty and maintaining a role for mining in our economic recovery.

When we look at mining jobs and the opportunities that they provide, good paying jobs requiring a high level of skill, an excellent career path for those that pursue them. We have an opportunity coming online in southeast Alaska with the final approval of the Kensington. That is going to be a couple hundred really good paying jobs in an area where it is greatly needed.

I have remained concerned that we're not keeping the eye on the ball when it comes to security. We look at energy security and the reliance that we have currently on foreign sources for our oil. I think that we risk trading that reliance on foreign oil for a reliance on foreign minerals.

We import 100 percent of the quartz crystal for photovoltaic panels, 91 percent of the platinum for fuel cells, 100 percent of the indium for LED lighting technologies, and 100 percent of the rare earths for advanced batteries.

These are things we want to encourage as we move toward this new generation of renewable energy sources. There are several factors to focus on when we look at Mining Law reform and how we achieve these balances, Mr. Secretary. I appreciate your focus on them and your efforts within the Department.

I want to follow up with some of the comments from Senator Wyden about the royalty rate. The royalty in S. 796, between 2 and 5 percent can vary among the different minerals. Your Department would be tasked with the rulemaking.

You have to imagine that it's going to take a considerably long time to complete the rulemaking. I am not going to task you to estimate how long that process might be. But I do want to ask that given the economic uncertainties that these royalties will provide for the economics of a mine and the current difficulties that we have presently with obtaining financing.

How do we expect that anyone would be willing to invest in a production of American minerals while this rulemaking is ongoing? Are we in a situation now because of what is happening through the Department, the rulemaking process, the credit markets, that we're just simply not going to see any investment in the industry? If so, does that concern you as it concerns me?

Secretary SALAZAR. Senator Murkowski, first of all I'm very much looking forward to seeing you in Alaska as well in August. I look forward to seeing the State with you and with Senator Begich when I'm there.

With respect to your question. There's a long time between now and getting a Mining Law passed and getting the regulations passed. But I would say two things with respect to the formal issue

that you really are driving that. That is providing economic security and certainty for mining activities to proceed.

Frankly, it seems to me that right now what is the most jeopardizing issue if I was in the mining industry is not knowing what's going to happen with respect to the 1872 Mining Law reform. It's 137 years later and we're still talking about what kind of change is going to be made. I think that that fact of uncertainty probably is more of a chilling factor than getting us to a point of certainty.

So if we get the Mining Law reform passed. It seems to me that with respect to royalties.

No. 1, it's going to be very important for industry to know what that royalty is so that then they can make their own financial decisions relative to any particular mining operation. Having a set royalty that is set will give them that kind of guidance.

No. 2, it's important for us to make sure that we also have a royalty collection mechanism that is simple and straight forward so that we don't get into some of the complexities that has caused problems in the oil and gas world. So our hope would be to develop a collection formula that is simple and that is transparent and that is understandable by industry and the affected public.

Senator MURKOWSKI. Let me ask you a question regarding the impact that a particular royalty may have on the domestic mining sector. This was asked last year. At that time the MMS said, and I quote, "MMS does not collect or have access to the data necessary to determine the amount of revenue that would be generated from a royalty. In addition, any such determination would be purely speculative at this point as the effect of a royalty on production quantities can't be ascertained with any certainty."

In response to another question about how a royalty would impact the United States as a global competitor. The MMS responded by saying the following quote, "The MMS does not maintain information on other Nation's take from hard rock mining operations."

So the question that I have for you, Mr. Secretary is whether or not the MMS is still unable to analyze the effect of a royalty and if they are, what should we here in Congress be doing to delegate that responsibility? Because I think this is one of those issues where we need to know how and whether or not we can actually analyze this data. Do you know if that's where we still are with MMS?

Secretary SALAZAR. Our Director for MMS will start on the job on Wednesday. So we will charge her with a lot of things including taking a look at this issue. There is a tremendous amount of information that has been developed around royalty collections in other countries as well as here. It seems to me that it would be very appropriate for the Department of the Interior and its agencies to be able to provide that information to you.

Senator MURKOWSKI. If you can put that on her list of to-do's I think it would be important to know that we do have that capability within the agency.

Secretary SALAZAR. I agree.

Senator MURKOWSKI. I appreciate it. Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Murkowski.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Secretary. It's good to have you here. Thank you for your leadership on this issue as you've just articulated it's long overdue. We hope this truly is the year that we get something done.

I want to go back to Senator Wyden's question if I could about financial assurances. Just to be clear, I wanted to make sure, does the administration support the language that's in the Bingaman bill on independent guaranteed reclamation bond to cover the cost of maintaining treatment in perpetuity?

Secretary SALAZAR. As the case with most legislation we will let the Senate work its will. But the concept however, is one that we support. That is that we need to make sure that when you have a mining operation that is set up you're going to have the financial capability, essentially, to take that mining operation from the responsibilities cradle to grave.

How exactly that ultimately is put together, we look forward to working with you and other Members of the Congress who have an interest in the issue.

Senator CANTWELL. So you agree with the principle? You're just saying you don't—the language is of less importance than the principle.

Secretary SALAZAR. The principle of the financial assurances of a company being able to do the reclamation that is required is something that is important to us.

Senator CANTWELL. Ok. Thank you. We obviously have had much difficulty because under current law it's not possible for land management agencies to balance the uses of public land when considering mining operations because mining is considered the highest and best use of public lands.

So do you support requiring new mines to not pose an undue or unnecessary degradation?

Secretary SALAZAR. You know under the——

Senator CANTWELL. We're trying to get at that language where right now agencies look at new mines and say, well the highest and best use of course is mining. So let's go ahead and do the permit when there obviously are environmental impacts.

Secretary SALAZAR. In the current law we have that authority at the Department of the Interior to make those decisions if a mining operation is going to create undue degradation to the environment we can turn down the mining permit application. So we have that authority under the law. It seems to me that as we look at mining reform that it's important for us to address all of the issues that are on the table, including that issue.

At the end of the day, we need to make sure that as we move forward with allowing our public lands to be mined, which I believe that we should, that we're making sure that there are also areas that are sensitive that we can in fact protect.

Senator CANTWELL. When has the Department of the Interior ever turned down a mine based on this? Do you know or Mr. Pool, do you know? When have we ever said that it would cause undue degradation?

Mr. POOL. I don't have an example off hand. But I just know that in recent years that the environmental compliance standards are very rigid as it relates to permitting either expiration or production

through a mine plan. So that authorization comes through all the environmental analyses associated with various laws and usually in many cases, the companies are able to achieve the standard. But that's only in recent years based on our new 38–1 regulations.

Senator CANTWELL. We need to address this issue because the 1872 Mining Law has been interpreted as the highest and best use of public lands in a recent Environmental Impact Statement. For a proposed Idaho gold mine the Forest Service emphasized that it does not have the authority to select the no action alternative. Recently in Arizona the Forest Service also determined that it cannot consider a no action alternative when it makes a decision on a proposed open pit copper mine despite the far reaching impacts of depositing mine waste.

So I just want to make sure that we address that in this underlying legislation. If you could look at that language and give us comment on that, we'd appreciate it.

Secretary SALAZAR. We would be happy to do that, Senator Cantwell. Let me just say that at the end of the day we're not going to allow mining operations to move forward on public lands if they're going to have the kind of degradation that has occurred in some instances. But at the same time we need to make sure that we are, from my point of view, supporting the appropriate mining on our public lands that does not cause the kind of environmental degradation that you're concerned about.

Senator CANTWELL. Thank you. I would just, if I could, Mr. Chairman, just thank the Secretary for nominating John Jarvis for the Director of National Parks. We very much appreciate that.

Secretary SALAZAR. Thank you very much. I think he will be a great leader for our National Park Service and help us move forward with a 21st century National Park System. The fact that he's from Washington, knows Washington well and Alaska, lots of places, he'll be a great friend of this committee.

Senator BARRASSO. Thank you very much, Mr. Chairman. Welcome back, Mr. Secretary. It's a privilege to have you back here with our committee. We miss you.

I wanted to ask a couple questions about the practicality of some of the things that are in S. 796 which mandates reevaluation of Federal lands for withdrawal of minerals. It would open up every single land management plan across the country as I read it. It would give the agencies new powers for mineral withdrawals and to me there's some serious consequences of this.

Now the bill states the entire process would be completed in 3 years. I just want to ask you a couple questions about the practicality of such a massive undertaking. Is it really possible in 3 years to do the sort of things that the bill is asked to do? On average how many years does it take to develop each resource management plan from start to finish?

Secretary SALAZAR. Senator Barrasso, first let me just say that we have not had our people on board yet, including our Assistant Secretary for Land and Minerals or a Director of the BLM. So these questions of substantive policy are ones that we will look at at the point when we get them on board. Hopefully that will happen soon.

You raise a legitimate question. That is can the language in this legislation be something that we can implement? I would be happy to take a further look at the issue and get back to you with a specific answer on it.

Senator BARRASSO. I'd appreciate it because I know in Wyoming there are folks that tell me this can take a decade to get through. Especially when they're dealing with, you know, appeals and litigation by activists to really work your way through any one of these. Then it takes resources away from you may have people doing otherwise.

I see Mr. Pool shaking his head yes. I mean, those are concerns. I don't know if you, Mr. Pool, if you want to address that as well?

Mr. POOL. Our language plans or resource management plans are very comprehensive, time consuming effort which addresses a range of various resource attributes including leasing, mining, etcetera. So, but in all these plans we try to achieve balance at it relates to good environmental compliance.

Senator BARRASSO. You know, the concerns are it takes resources away in terms of the resources that may be used to work on grazing permits or other things unrelated to mining. That's my concern, Mr. Secretary, in terms of how those things will all get played out. Because you do a thorough evaluation, it takes an extended period of time. You know, you have a limited amount of resources.

So I don't know if there are additional plans, if need, for the agency to pay for such a massive undertaking without short changing the management of our Federal lands?

Secretary SALAZAR. We just, in general, responded to that question, Senator Barrasso. So I think what I learned now on the Executive branch is that it's one thing to authorize a law. It's another thing to get it implemented faithfully on the ground.

So much of that is resource driven. So if we are going to move forward with a reform of the 1872 Mining Law, which we strongly support, which I believe there's bipartisan support to do a reform here. We also need to make sure that the resources come along with a new Mining Law that allows us to faithfully carry out the responsibilities assigned to the Department.

Senator BARRASSO. If we can make sure that the unintended consequences that we worry about in Wyoming, the impact on other areas that are under the Department that may not be specifically related to the Mining Laws. So thank you very much, Mr. Secretary. Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Barrasso.

Senator Shaheen.

Senator SHAHEEN. I have no questions, Mr. Chairman.

Senator UDALL. Senator Murkowski, do you have questions?

Senator MURKOWSKI. I have no further questions for the Secretary.

Senator UDALL. Mr. Secretary, if I might just before you return to all the other pressing missions that are before you. You mentioned water resources and the importance of protecting water resources. Would you comment more on how Senator Bingaman's proposed way forward or Senator Feinstein's bill or other measures such as the ones you've introduced here would protect water supplies and what we need to consider as we move forward?

Secretary SALAZAR. Thank you, Senator Udall. With respect to both existing mines, new mines and abandoned mines, I think that the issue of water quality is something which is in fact addressed in both pieces of legislation. In the case of Senator Feinstein's legislation the creation of a fund that would deal with abandoned mines that creates in the case of Senator Bingaman, he has language in there that would deal also with existing mining operations and the kinds of financial assurances that are needed in there to protect water quality.

There is a fact of life in the West and that is that we have mines that have continued to degrade the environment through the discharge of heavy metals and acid into many streams. You know, as I've said in my opening remarks estimates are that about 40 percent of the headwaters of streams in the West are in fact affected by historic or current mining operations. That impacts fisheries. It impacts other uses of water quality.

So I think it's important for us to have a good look at this issue as we move forward with the mining reform efforts. As you and I know from our native State of Colorado, when we look at the cool waters of Clear Creek, that at one point in time were touted as supporting Coors beer, relative to the water that was used for Coors beer. We know that Clear Creek comes off the headwaters of Clear Creek including the north fork of Clear Creek where we have thousands of abandoned mines. So that's why you have a company like Coors that would very much like to have Good Samaritan legislation so that they could participate with others, local governments and non-profits in trying to clean up these abandoned mine sites.

So there is a nexus between economic development and jobs and economic security for this country and the cleaning up of these mines. So I think that's why this subject, although it may not be the most important subject before the United States Senate today, very much is an important subject that I appreciate your time and attention.

Senator UDALL. Mr. Secretary, one final request. I presume we can also keep the record open for a number of days and submit questions to you and your team for replies.

But the analysis of the revenues that may be generated under these two proposals, have you undertaken an analysis of what sorts of revenue streams would be the result of putting this legislation in place?

Secretary SALAZAR. Not as of this point to my knowledge. But it would be something that we would want to work with the committee on. I have asked Bob Abbey, who had his hearing before this committee to put this issue as one of the important issue to deal with as he assumes the reins of the BLM. Assistant Secretary Wilma Lewis, likewise will be working on this issue.

I think this is the kind of issue where I hope we're able to transcend the polarization and the fighting that has taken place over the decades that has kept us from finally getting to a good reform of the 1872 Mining Law. I will pledge to this committee and its members that our team at the Department of the Interior will work with you to address the many questions that will arise including the question, Senator Udall, that you just raised. That is how much

revenue would be generated from both of those proposals or the questions that Senator Murkowski and others have also raised with respect to the legislation.

Senator UDALL. Before I turn to Senator Risch and then I think we'll be able to bring the second panel forward. I did want to know for the record that your comments about Coors are particularly relevant to me since Colorado is the No. 1 producer of beer on a State to State basis. It's an important industry in Colorado and it's important to all of us. So thank you for making that point.

Senator Risch.

STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR FROM IDAHO

Senator RISCH. Thank you, Mr. Chairman. Colorado may brew it, but Idaho grows the barley and the hops.

[Laughter.]

Senator RISCH. First of all let me briefly say thank you for your remarks, Mr. Secretary. I think all of us look forward to trying to resolve this knotty issue. Better people than us have tried and haven't been successful. But I hope with the aging of the issue we will become more inclined to find a middle ground to resolve this.

I think it's in everyone's best interest to get this resolved. As has been pointed out here previously in the hearing this morning, this has all got to do with the idea that we need to have in mind, No. 1, obviously national security interests because of the importance of some of the metals and other products that are mined. Obviously the reliance we have on foreign oil.

No. 2, the jobs that are involved here keeping in mind, of course, what all of us want, and that is keeping the environment such that people are not offended when a mining operation is over as they are now, with some of the mining operations that were done 100 years ago and some even abandoned 100 years ago. So thank you very much for your involvement in this. I think all of us look forward to resolving these issues.

Thank you, Mr. Chair.

Senator UDALL. Thank you, Senator Risch. Secretary Salazar, if you have any final comments, the committee is certainly eager to hear them. Otherwise we thank you for taking the time to come to the Hill today.

Secretary SALAZAR. I'll only close, Chairman Udall, with the following comment. That is that I do hope that we can get to a common sense solution to this issue.

That I think everyone wants to get to a reform that makes sense.

A reform that protects the environment.

A reform that protects the taxpayers of America.

A reform that does not send the mining industry fleeing overseas.

I think in all that what we need to do is to come up with a legislative framework that provides a certainty to all of the affected stakeholders. My own view is I've thought about the many members of the United States Senate and the United States House of Representatives who have worked on this issue for in some cases 30 years and have gotten nowhere. That this is a real opportunity

for this committee to lead and to fashion legislation that will provide us that kind of certainty.

Thank you very much.

Senator UDALL. Thanks again. Thank you, Secretary Salazar. As Secretary Salazar leaves, the next panel can come forward. We'll move right to the next panel's testimony.

Welcome. Good morning to this esteemed panel. We're looking forward to your testimony. I would note that we have until about 11:45 a.m. or 11:50 a.m.

So we want to move to hear your opening statements and then questions. Senator Risch will operate in the ranking member capacity. So without further ado and without long introductions, we'll start from my left to right. We'll start with Mr. Jim Butler, who is an attorney, Parsons Behle and Latimer and from Salt Lake City.

Mr. Butler, please.

STATEMENT OF JIM BUTLER, ATTORNEY, PARSONS BEHLE & LATIMER, SALT LAKE CITY, UT

Mr. BUTLER. Mr. Chairman, thank you for the opportunity to appear here today. I appreciate your willingness to develop the time to Mining Law issues. In particular I want to thank the committee staff for the time it has invested in preparing S. 796 for review and discussion.

I've submitted a statement for the record that includes detailed comments on both bills. But in the very short time that I have to address you directly, I want to talk exclusively about section 302 of S. 796 with establishes a single permitting requirement for mineral exploration. Exploration is important to the mining industry at all levels, large companies, small companies and individuals and for all minerals because without exploration mineral reserves cannot be replaced and production and employment cannot be maintained.

Section 302 requires that a permit be issued before any exploration activities regardless of size, scale or location can begin. Section 302 thus eliminates an expedited process for permitting small scale exploration that has functioned well for 30 years. To help you understand what these activities are I have included a collection of photographs with my testimony. These photos show the kinds of activities that occur under the expedited process and also how those exploration disturbance are reclaimed.

Let me describe the program that section 302 eliminates. BLM's current regulations include a separate permitting process for exploration where the total surface disturbance on public lands are five acres or less. In those cases the operator is authorized to file a notice. A notice is a document filed with the BLM which includes information regarding the operator, a description of the activities, a reclamation plan and a cost estimate for completing reclamation.

Upon receipt of the notice BLM reviews it to determine if it's complete and in accordance with the regulations. Typically that review is accomplished by circulating the notice among the resource specialists in the local BLM field office. After determining that the notice is complete the BLM has several options.

It can ask for more time. Says it needs more time for review. It can require modifications to the notice or to the activities to prevent unnecessary or undue degradation. It can say that further consultation is required regarding access routes or it can tell the operator that it needs to visit the site.

If BLM takes none of these actions, that is if BLM has no issues, no concerns and this is the key part of the process. If BLM doesn't act then the operator may proceed with the exploration once it has provided adequate financial assurance in accordance with BLM's bonding regulations. There are limits on where and what kinds of activities can be conducted under a notice. Notice level exploration is not an option in areas that are designated as closed to off road vehicles, areas of critical environmental concern or proposed or designated critical habitat for threatened or endangered species. Any location if the exploration proposes to remove more than 1,000 tons of materials than a plan of operations must be filed.

BLM also retains authority to require that the notice be modified if environmental problems occur. The notice program is consistent with the recommendations of the National Research Council Report, Hard Rock Mining on Public Lands which was commissioned by Congress in 1999. The report concluded that exploration disturbing less than five acres had little potential for environmental harm and did not need to be evaluated under the more detailed procedures applicable to mining plans.

The notice provisions have created environmental benefits because as operators seek to keep total disturbance under the five acre limit they have a strong incentive to use existing roads, minimize new surface disturbance and quickly reclaim disturbed acreage. Use of the notice is common. In Nevada, since 2005, BLM records indicate that notices have exceeded plans of operation and that plans for mining production and exploration plans beyond the five acre limit by approximately 10 to 1.

By eliminating the notice option S. 796 would have at least two important adverse consequences.

First, permitting exploration would take longer and cost more with no environmental benefit. The Forest Service doesn't have this procedure and permitting comparable activities on Forest Service lands takes 18 months to 2 years.

The second consequence is that BLM regulatory system and personnel would be overwhelmed by the additional paperwork. Loss of notice provisions would increase the work load on mining permits almost tenfold. In most offices BLM resources are already stretched thin, not just by mining but by all the responsibilities that Federal law places on the agency.

If the notice program is eliminated approval time for mining plans already measured in years would be further delay. Thank you very much.

[The prepared statement of Mr. Butler follows:]

PREPARED STATEMENT OF JIM BUTLER, ATTORNEY, PARSONS BEHLE & LATIMER, SALT LAKE CITY, UT

INTRODUCTION

Chairman Bingaman, members of the Committee, thank you very much for the opportunity to appear before you again to discuss the U.S. mining laws. By way of

introduction, I am an attorney with Parsons Behle & Latimer where I have worked since 1985. My firm has offices in Salt Lake City, Reno and Las Vegas. We have been providing legal services to the mining industry since 1882, when the two original partners-mining lawyers from Carson City-formed the firm in Salt Lake City.

My own legal career includes more than twenty years working for dozens of mining companies exploring or mining on federal lands. My clients have included some of the world's largest companies, junior mining companies as well as individuals and small prospecting ventures. I have served two years as Chair of the American Bar Association's Mining Committee and four years as a vice-chair of the Public Lands Committee. I am a member of the Board of Trustees for the Rocky Mountain Mineral Law Foundation and in 2005, I was the Program Chair for the Foundation's Annual Institute. I am also a member of the Board of Trustees for the Northwest Mining Association.

My particular specialization is environmental permitting and compliance for mining operations. I have helped clients permit more than 30 exploration and mining plans of operations with the Bureau of Land Management and U.S. Forest Service and have helped them obtain related environmental and reclamation permits from state regulatory authorities. I have also represented mining companies in administrative and judicial appeals relating to their operating permits-before the Interior Board of Land Appeals, state administrative appeal boards, and federal courts in Arizona, Nevada, Montana and Washington. I also help clients comply with environmental laws and regulations and review those issues in property acquisitions.

Before joining Parsons Behle & Latimer, I worked in the office of Utah Governor Scott M. Matheson, where I was his staff assistant on natural resources issues. In that position, I was the primary contact with federal land management agencies, including the BLM, Forest Service and National Parks Service, under cooperative agreements between the State of Utah and those agencies.

For your information, I am currently registered with the Senate as a lobbyist on mining law matters for Barrick Goldstrike Mines, Inc., which is a subsidiary of Barrick Gold Corporation. I have worked with Barrick on mining law legislation for more than a decade. However, I am appearing today only as an individual and not on behalf of Barrick Goldstrike or any other mining company or association. Obviously, my views are influenced by all of my experiences, including my work for the mining industry, but the views I express here today are my own, and may or may not be the views of my clients.

CURRENT ECONOMIC CONDITIONS

Mr. Chairman, as you know too well, the economy of our nation and the world are in a far different condition than when this Committee last considered this issue in September, 2007. The rapid downtown in economic conditions in 2007 has hit the mining industry hard. In a report released a few weeks ago, PriceWaterhouseCoopers summarized the impacts on the mining industry, noting that in the first quarter of 2009 alone, 14 of the world's 40 largest mining companies announced mine closures, production cuts or moves to place mines on care and maintenance. In addition, $13 billion of capital expenditure has been deferred or cancelled. Combined, this has resulted in unemployment for more than 40,000 people across the industry.[1] Despite the downturn, costs of production have continued to soar, rising 27% in 2008 resulting in decreasing profit margins (or increasing losses) and further cutbacks.[2]

These same conditions have affected investment and operations in the U.S., where major mining projects have been deferred or cancelled and other properties are cutting costs to stay in business. The one bright spot in the mining industry has been gold, where prices increased as investors sought a safe haven from world economic conditions. In Nevada, for example, in the northern counties where the gold mining industry is based continue to enjoy low unemployment and stable government revenues, even as the rest of Nevada has been hit hard by the recession. However, gold prices have dropped 10% from the highest point in the most recent price cycle and cost pressures continue. The PriceWaterhouseCoopers study shows the impact of the world recession on selected metals prices with a chart* that shows price changes since 2003:

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[1] Mine: When the Going Gets Tough . . . Review of global trends in the mining industry - 2009, PriceWaterhouseCoopers (2009) p. 3.

[2] Id. at p. 13. The study also noted that American producers have been doubly disadvantaged by the combination of cost increases and exchange rates. Id.

* Graphic has been retained in committee files.

Source: Mine: When the Going Gets Tough . . . Review of global trends in the mining industry—2009, PriceWaterhouseCoopers (2009) p. 8.

The importance of the economic information in the context of your consideration of S. 796 and S.140 is threefold: First, as you consider measures to revitalize the American economy, you should not enact legislation that has a contrary effect on the mining industry. Though the total number of jobs may be relatively small, as the GAO reported to you in 2008 "hardrock minerals play an important role in the U.S. economy contributing to multiple industries, including transportation, defense, aerospace, electronics, energy, agriculture, construction and health care."[3] The availability of minerals will also affect our ability to achieve the objectives that Congress is setting for energy independence and expansion of renewable energy resources, including wind and solar power. Second, mining is the dominant economic force in some local western economies-counties in Nevada, Arizona, Montana, Idaho and New Mexico. Changes to the mining law should maintain, not threaten these local economies. Finally, the data demonstrate the simple fact that mineral commodity markets will always be cyclical. High prices driven by demand increases trigger additional exploration and investment. As production increases or demand falls, prices and profits fall. Any mining law legislation-particularly the royalty provisions-should moderate, not exaggerate the economic impacts of normal supply and demand cycles. Because the 8% royalty in S.140 (and Congressman Rahall's bill in the House) is assessed on gross proceeds, it would hit mining operations hardest when prices are down by decreasing gross revenues by an unavoidable 8%. In contrast, royalty provisions of S.796 which are based on net proceeds would moderate the economic impact of the royalty. When revenues are low or costs are high, operations would pay less, allowing them to reduce costs and maintain production and employment during tough times.

S.796 AND S.140

I will be providing comments on the royalty in S.140 and on specific provisions of S.796. I understand that the Congress, the Senate and this Committee are facing several extremely important and pressing issues, including economic revitalization, energy independence and problem of global climate change. Mr. Chairman, I appreciate your willingness to devote the time and attention to the mining law that your bill and this hearing represent. In particular, I know that the committee staff has invested an incredible amount of time and energy into this issue and into S.796. S.796 represents a major step forward on some issues, particularly the royalty provisions of the bill which recognize that a federal royalty on mineral production should be based on net proceeds or profit, rather than on the gross income from mineral sales. Unfortunately, S.796 remains seriously flawed and additional, significant changes are necessary if it is to effectively accomplish your stated objectives.

COMMENTS ON S.140

S.140 includes the same royalty provisions that are in Congressman's Rahall's bill in the House-an 8% gross royalty on new mining operations and a 4% gross royalty on existing operations. S.140 also adds a .3% gross "reclamation fee" on all hardrock minerals mining operations.

The royalty provisions of S.140 will substantially discourage investment and production on federal lands. The royalty provisions in S.796, which would deduct "reasonable transportation, beneficiation and processing costs" from the value of production before the royalty is applied, are preferable-though further clarification of the language is needed to assure that the royalty is properly calculated and applied as a net proceeds royalty.

A net proceeds or profit-based royalty has a less dampening effect on mining investment. Mining investments typically seek a long-term rate of return based on alternative investments and comparative risks. A royalty payment based on a percentage of the total proceeds from mineral sales directly reduces the potential rate of return-making all mining investments less attractive. Because revenue projections (and rates of return) are typically based on conservative price assumptions, the possibility that prices may exceed expectations-along with profits and royalty payments-does not reduce the initial projected rate of return.

[3] U.S. General Accounting Office, "Hardrock Mining: Information on State Royalties and Trends in Mineral Imports and Exports," GAO-08-849R (July 21, 2008), p. 2.

Authoritative studies[4] of the application of mining royalties identify several important considerations for determining royalty rates: The first is how the royalty payments fits with the overall economic contribution from mining activities. In testimony before the House Committee on Natural Resources, James Otto, one of the authors of the World Bank study on royalties, stated: "I urge policy makers to take into account the complete tax system when considering a change to any part of it. It is the impact of the tax system as a whole that will determine whether most mines are able to operate profitably, and with sufficient profits to reinvest in new exploration to replace reserves."[5]

In the U.S., mining on public lands produces substantial government revenue, even without a federal royalty. Mining operations pay property taxes, sales and use taxes, and business fees and taxes. In Nevada, for example, where mine operators pay a 5% net proceeds tax that is shared between state and county governments, the direct taxes paid by the mining industry in 2007 totaled just under $200 million, including more than $75 million in net proceeds tax.[6] That calculation includes only direct taxes and does not account for the income taxes paid by mine owners or shareholders or the taxes paid by mine employees and businesses that sell products and services to the mining industry.

The second consideration identified by the World Bank study is how a proposed royalty will affect mining investment. The 8% gross royalty that would be imposed by S.140 would decrease investment, decrease employment, and ultimately decrease total government revenues from mining on public lands. The legislative record from the House is clear on this point:

> Mineral prices are notoriously cyclical, more so than the prices for many other goods. The result is that high cost producers may and often do become unprofitable during periods of low prices. Royalty is a cost and if based on value, that cost will be incurred regardless of profitability. More marginal mines will close, perhaps permanently, in low price times because of royalty. This is the nature of the market system-low cost producers survive, high cost producers do not. . . . The impacts from closing a large mine can be hard on local communities, and can in the long run lessen overall fiscal revenues.
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> *Testimony of James M. Otto in Hearing Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, H.R.2262, Hardrock Mining and Reclamation Act of 2007 (Oct. 2, 2007) p. 23.*

> If mining costs can't be deducted, a mining company would have to pay the royalty regardless of how high these costs may be for difficult mining situations or for low grade ores. This would require a mining company to continue paying a royalty even when it is operating at a loss, and that royalty could even cause the loss. No mine can be operated long at a loss. The result would be that some mines would shut down prematurely, creating loss of jobs, federal, state and local taxes not paid, and supplies of goods and services suffer.
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> *Testimony of Jim Cress, Id at p, 26.*

Testimony before the House Committee on Natural Resources also indicated that the 8% gross royalty, and the total tax burden imposed on the U.S. mining industry if the 8% gross royalty were added to existing taxes, would be among the highest in the world.[7] That same testimony recounted the experience of other countries where revenues from mining had actually decreased as the result of excessive gross royalties. The House Committee apparently ignored this testimony when it passed the current version of the House mining law bill. This Committee should not make the same mistake.

COMMENTS ON S. 796

Substantial changes to S. 796 are necessary if it is to provide a reasonable framework for hard rock exploration and mining on public lands. My comments below rec-

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[4] James Otto, Craig Andrews, Fred Cawood, Michael Doggett, Pietro Guj, Frank Stermole, John Stermol and John Tilton, Mining Royalties: A Global Study of Their Impact on Investors, Government, and Civil Society, The World Bank (2006).

[5] Hearing Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, H.R.2262, Hardrock Mining and Reclamation Act of 2007 (Oct. 2, 2007) p. 23.

[6] John L. Dobra, Economic Overiew of the Nevada Mining Industry 2007, Nevada Mining Association (2008) at p. 8. Other direct taxes paid included $93 million in sales and use tax and $27 million in property taxes.

[7] See Hearing Before the House Subcommittee on Energy and Mineral Resources (Oct. 2, 2007) pp. 30-43.

ommend specific amendments but I have prioritized my comments for this testimony and have not attempted to present a complete or exhaustive list of the changes that should be made.

PERMITTING EXPLORATION ACTIVITIES

Section 302 requires that a permit be issued before any exploration activities may be conducted on Federal land. This is a significant, unnecessary and detrimental change from existing law and regulations. Under current law, BLM allows an expedited procedure for small scale exploration activities that has proven efficient and effective. S. 796 would eliminate that procedure.

BLM's surface management regulations for hard rock mining (43 C.F.R. Subpart 3809) include provisions for permitting exploration activities where the total surface disturbance of public land is 5 acres or less. In such cases, the exploration operator is authorized to file a "Notice" with the BLM which must include:

(1) Information describing the operator and identifying any mining claims where surface disturbance will occur;

(2) A description of the proposed exploration activity with a level of detail appropriate to the type, size and location of the activity, including

a. The measures that will be taken to prevent unnecessary or undue degradation during operations;

b. A map showing the location of the project area, including the location of access routes that will be used, improved or constructed;

c. A description of the type of equipment that will be used: and

d. A schedule of activities, including the date when exploration will begin and the date when reclamation will be completed.

(3) A reclamation plan that complies with the performance standards of the 3809 regulations; and

(4) An estimate of the cost to fully reclaim the operations. 43 C.F.R. § 3809.301.

Upon receipt, BLM reviews the Notice to determine if it is complete and in accordance with the regulatory requirements. Typically, the review is accomplished by circulating the Notice package among the resource specialists in the local BLM field office to identify potential questions, information needs, conflicts, issues or concerns. After the agency determines that the Notice is complete, BLM may notify the operator that (1) more time is required for review; (2) modifications to the proposed activities are necessary to prevent unnecessary or undue degradation; (3) further consultation is required concerning existing or proposed access routes; or (4) that a visit to the site is necessary before proceeding. BLM may also notify the operator that the proposed activities do not qualify as a notice-level operation. If BLM takes none of these actions, i.e., requires no further information or modifications, then the operator may proceed with the activities once it has provided adequate financial assurance in accordance with BLM's bonding regulations.[8] 43 C.F.R. § 3809.313. The financial assurance requirements for notices are spelled out in the regulations at 43 C.F.R. §§ 3809.551 to .556. The financial assurance must be adequate to cover the cost as if BLM were required to contract with a third party to reclaim the proposed operations. 43 C.F.R. §3809.552(a).

Activities subject to the Notice level procedures are limited by BLM's definition of "exploration" which includes "sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity or quality of mineral values present." 43 C.F.R. § 3809.5.[9] If the exploration involves bulk sampling that will remove 1,000 tons or more of ore for testing, then a plan of operations must be filed. 43 C.F.R. § 3809.11(b). The Notice level procedure is not available in certain areas, including areas designated as "closed" to off-road vehicle use, Areas of Critical Environmental Concern (ACEC's), or proposed or designated critical habit for threatened or endangered species. See 43 C.F.R. § 3809.11(b).

After activities have begun, notices must be modified if (1) BLM determines that changes are required to prevent unnecessary or undue degradation, or if the operator plans to make material changes in the plans or activities. 43 C.F.R. § 3809.331.

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[8] Operators of Notice level exploration activities must also comply with the requirements of BLM's regulations relating to use and occupancy of unpatented mining claims.

[9] Attached to this testimony is a collection of photographs of the kinds of activities-primarily exploration drilling-that are commonly allowed under the "Notice" provisions in the regulations. The photographs also show how surface disturbance from such exploration activities is reclaimed, including recontouring of the disturbed areas, revegetation and ultimately full reclamation that meets BLM's standards for release of financial assurance.

The current regulations authorizing Notice level activities are consistent with the recommendations of the National Research Council report Hard Rock Mining on Public Lands which was commissioned by Congress in 1999. The NRC Report concluded that exploration activities disturbing less than five acres had little potential for environmental harm and did not need to be evaluated under the more detailed procedures applicable to mining plans of operations. The Notice level provisions have also created some indirect benefits because as operators seek to keep total disturbance under the five acre limit to take advantage of the streamlined permitting procedures, they have a strong incentive to use existing roads and minimize new surface disturbance. Also, because the Notice is limited to five acres of undisturbed public land, operators have a strong incentive to quickly reclaim disturbed acreage.

In response to the recommendations in the NRC study, BLM made two changes to the regulations: first, the Notice level option was limited only to exploration activities-prior regulations had allowed "mining" operations under the same 5 acre rule. The NRC Report (and BLM's own internal reviews) indicated that small "mining" operations had the potential for environmental impacts because of the scale of disturbance (removal of larger quantities of material versus exploratory drilling) and the storage or use of chemicals in processing operations. Second, BLM required bonding for all Notice level activities. These changes were adopted initially in 2001 during the Clinton Administration and were ratified in a subsequent 2003 rulemaking by the Bush Administration.

The NRC Report recommended that the Forest Service modify its surface management regulations to adopt a similar "Notice" procedure for exploration activities that would disturb 5 acres or less of National Forest lands. The Forest Service has proposed changes to its 36 C.F.R. Part 228, but those changes have not been finalized.[10]

BLM has almost 30 years experience with Notice level activities and more than seven years experience with the revised regulations. Naturally, exploration is much more common than actual mining. Mining geologists estimate that for every economically viable ore deposit that is discovered and brought into production, as many as ten thousand exploration targets are identified and explored without success. In Nevada since 2005, BLM records indicate that Notices have exceeded plans of operations (including both production and exploration plans beyond the five acres threshold) by a factor of approximately ten to one. While only about 70 mining and exploration plans have been submitted and reviewed, exploration has gone forward under almost 700 notices.

The provisions in Section 302 of S.796 would have at least two important adverse consequences: first, permitting mineral exploration would take longer and cost more, with no attendant environmental benefit. As noted, the Forest Service does not have a regulatory provision similar to BLM's Notice procedures. All exploration activities on National Forest lands must be permitted under a plan of operations and reviewed under the National Environmental Policy Act. Based on my own experience, the time for permitting Notice level activities on BLM managed lands is a few months.[11] Approval of those same activities by the Forest Service typically takes between 18 months and two years. The second consequence is that the BLM's regulatory system and personnel-the resource specialists in the local BLM offices that review Notices and mining plans and manage all of the other public land resources-would be overwhelmed by the additional paperwork. Loss of the Notice provisions would increase their workload on mining permits almost tenfold. In most offices, BLM resources are already stretched thin, not just by mining but by all of the responsibilities that federal law places on the agency to manage energy, grazing, recreation and the other uses of public lands. Approval time for mining plans of operations-already measured in years-would be further delayed as the agency devotes additional resources to processing hundreds of new exploration permits.

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[10] The proposed changes in the Forest Service regulations did not clearly limit Notice level activities to exploration-some mining activities would have been allowed. Mining industry associations (National Mining Association and Northwest Mining Association) and others commented on the proposal and recommended that it be limited to exploration in accordance with the recommendations of the NRC Report.

[11] The regulations provide that activities can proceed within 15 days after the Notice is submitted, provided that BLM finds the Notice complete and does not require additional information. My experience is that in most cases BLM seeks additional information or time to review the Notice and that, by the time the financial assurance is submitted and approved, the entire process can take several months. In Nevada, the BLM and Nevada Division of Environmental Protection have created an online reclamation cost estimating tool that allows operators to calculate reclamation costs according to a set of standardized costs and assumptions set by the regulatory agencies. That process substantially speeds up bond calculations and approvals.

S.796 should be amended to allow the BLM to continue to administer exploration activities that disturb five acres of less of public land under the Notice provisions of the current regulations and to allow the Forest Service to modify its regulations to include the same provisions.

With regard to those exploration activities that will require an exploration permit under S.796, the limitations in Section 302(b) should also be amended. The current language prohibits the "removal of any mineral for sale" under an exploration permit, but advanced exploration may include removal of materials for processing to assess their amenability to certain existing processing facilities. For example, under an exploration permit an operator may want to remove a bulk sample from the property and process it through an existing mill or other processing facility to test or evaluate the metallurgical properties of the ore. The mineral products from test processing may be commingled with the output of the processing facility and sold. Such tests are not uncommon and should not be prohibited by law. The provision should be modified so that test mining or test processing can be allowed under an exploration permit with 1) a *de minimis* exception from the royalty for such activities, and 2) for production in excess of the *de minimis* provisions, require that the proceeds from the sale of mineral products be accounted for and subject to the royalty provisions.

PERMITTING OF MINING OPERATIONS

As I read the provisions of Section 303, it intends to authorize a regulatory program for hard rock mining on Federal lands that is not dramatically different from current BLM and Forest Service operations and policies. However, some important changes are necessary to make the program workable, effective and consistent with existing law.

Section 306(c) reaffirms that the familiar standard "unnecessary or undue degradation of the lands" standard from Section 302(b) of the Federal Land Policy and Management Act (FLPMA) will apply to mineral activities on public lands managed by the BLM and extends that standard to National Forests. Because "unnecessary or undue degradation" is the key term for management of mining under S.796, it should be defined. BLM has managed public land under the "unnecessary or undue degradation" standard for more than 30 years and has adopted a definition of that term as it relates to mining in the 3809 regulations.[12] 43 C.F.R. § 3809.0-5. That definition should be incorporated in to section 2 of S. 796:

> (22) Unnecessary or undue degradation.-The term "unnecessary or undue degradation" means conditions, activities or practices that:
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> (a) fail to comply with one or more of the following: the operation or reclamation standards set forth in this Act or in regulations promulgated thereunder, the terms and conditions of an approved exploration or mining permit or described in a complete notice, and other Federal and state environmental laws related to environmental protection and protection of cultural resources;
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> (b) are not "reasonably incident" to mineral activities. For purposes of this section, the term "reasonably incident" means the statutory standard "prospecting, mining, or processing operations and uses reasonably incident thereto" set forth at 30 U.S.C. 612 and includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities;[13] or
>
> (c) fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, units of the National Wilderness Preservation System, National Monuments and National Conservation Areas.

Section 306(c) and (e) also create confusion because subsection (c) sets forth the applicable "unnecessary or undue degradation" standard, but subsection (e) states that that standard shall be in addition to any requirements applicable to mineral activities under FLPMA, the National Forest Management Act of 1976 and the Organic Act of 1897 (the Forest Service Organic Act). This provision might be read to

[12] BLM's current definition of "unnecessary or undue degradation" was affirmed in Mineral Policy Center v. Norton, 292 F. Supp. 2d 30 (D. D.C. 2003).

[13] The definition of "reasonably incident" suggested here is taken from 43 C.F.R. § 3715.0-5 where the term is defined for purposes of BLM's use and occupancy regulations.

require that BLM and the Forest Service apply multiple overlapping regulatory standards to mineral activities on Federal lands.[14] S. 796 should be clarified to apply and define a single regulatory standard.

Section 306(d) authorizes the Secretaries of Interior and Agriculture to jointly promulgate regulations to carry out the Act. S.796 should include a transition provision to make it clear that the BLM and Forest Service can continue to manage mineral activities under their existing regulations (43 C.F.R. Subpart 3809 and 36 C.F.R. Subpart 228) until joint regulations are finalized.

Provisions in Title III should also be evaluated in light of the definition of "Federal land" in section 2(8). That section limits the definition of "Federal land" to land that is "open to location of mining claims under the general mining laws and this Act." The term is then used throughout S.796 in a context where the "open to location" limitation may be inappropriate. For example, Section 301 prohibits any person from engaging in mineral activities on "Federal land" without a permit. But the provision could be read to preclude BLM or the Forest Service from allowing mineral activities on withdrawn lands even where a claimant was able to demonstrate a valid existing right prior to the withdrawal. The definition should be modified or specific clarification written into the provisions where it is used.

SECURITY OF TENURE ISSUES

S.796 eliminates the option to obtain patent to mining claims. If claimants can no longer obtain title to the public lands within their claims, the law needs to provide an alternative mechanism that protects investments on unpatented claims. Several provisions in S.796 address the rights of mining claimants and operators to use and occupy public lands for mining purposes, but these provisions are incomplete and inconsistent and are likely to confuse more than clarify. As written, S.796 does not adequately define or protect the rights provided by the U.S. mining laws as those laws have been interpreted and applied by courts and agencies for more than a century.

Section 102(8) establishes that timely payment of claim maintenance fees or performance of required assessment work is sufficient to establish certain rights, but the provision falls short in two important areas. First, the provision includes an incorrect reference to the "*pedis possessio*" doctrine. That doctrine merely holds that a claimant in occupation of his claim while he or she is exploring for a valuable mineral deposit has the legal authority to exclude others from the claim. *Pedis possessio* rights are not sufficient security of tenure in unpatented mining claims to support investment in exploration or mining activities. By incorrectly referencing the *pedis possesio* doctrine, S.796 might be read to eliminate other important rights, including rights that currently exist before claims are located or valuable minerals discovered. The provision should be clarified to ensure that the payment of claim maintenance fees insures all of the rights traditionally associated with unpatented mining claims. Second, the provision might be read to undermine the basic provision of the mining law which guarantees that public lands are "open" for exploration and the search for valuable mineral deposits. Some exploration, particularly that which is presently classified as "casual use" under BLM's surface management regulations, takes place before mining claims are located. In other words, reconnaissance level field work may be completed to determine if claim should be staked. It is important that this work be allowed to continue without the prerequisite of claim location.

A related provision in the permitting title should be removed. Section 301(c) provides that nothing in the permitting section of S.796 would change "any requirement of law that a mining claim, millsite, or tunnel site be valid in order for mineral activities to be undertaken." This provision creates needless uncertainty in an area where the law is well settled and confuses the permitting process. BLM's current regulations provide that mining claim validity is relevant to permitting only where the lands proposed for mineral activities have been withdrawn from appropriation under the mining laws. 43 C.F.R. § 3809.100. Under those circumstances, BLM will not allow activities under a notice or plan of operation to proceed until BLM has prepared a mineral examination report to determine if the mining claims were valid at the time of the withdrawal and remain valid. Id.[15] Such an examina-

[14] The two sections can even be read to suggest that because S. 796 adopts an "unnecessary or undue degradation" standard in section 306(c) but retains the FLPMA standard in section 306(e) that Congress somehow intended that the agencies apply two different "unnecessary or undue degradation" standards.

[15] The regulation allows certain activities if necessary to maintain the affected claims or to confirm or corroborate the validity of the claim. 43 C.F.R. § 3809.100(b).

tion is necessary to determine whether the preexisting claims constitute "valid existing rights" for purposes of the withdrawal.

On land that remains open to location, a determination of mining claim validity is neither necessary nor relevant to the permitting decision. Even Professor John Leshy, who has argued that Interior Department should use its authority to contest mining claims more aggressively, has conceded that "where the land remains open to location of new claims, challenges to existing claims would usually be uselessly burdensome and expensive."[16] Based on past experience, Congress should expect that the provisions any of any amendment to the mining laws will be heavily litigated. Section 301(c) invites litigation and would likely send the reviewing Court on a quest to determine what existing "requirement of law" Congress was contemplating in the statutory language. Section 301(c) should be deleted from S. 796.

Section 102(a)(4)(B) is also unnecessary and troublesome. That provision bars a person (or a "related party") from relocating a claim for ten years if that person had relinquished the claim or allowed it to become null and void by not paying annual maintenance fees or performing assessment work. Because the penalty is so severe, the provision creates a powerful incentive for claimants to maintain stale and unworked claims. One of the original objectives of the claim maintenance fee was to discourage speculation and encourage claimants to proceed with exploration or drop the claims. As mineral commodity prices follow their normal cyclical patterns it is common to expect that claims will be dropped when prices are low and relocated (by original claimants or others) when prices are more favorable.

But the provision creates a more significant practical problem. Claim relocation is a common strategy for correcting or curing problems with mining claim titles or when mining claims locations have left small pieces of unclaimed land adjacent to or between claims. It is also common for claims to be changed from mining claims to millsite claims (or the reverse) as more information on claim mineralization and potential use becomes available. One of my partners at Parsons Behle & Latimer who specializes in mining property law called the provision "a complete disaster." Section 102(a)(4)(B) should be deleted.[17]

These provisions that address the operation of the general mining laws are complicated by the language of Section 506(c) which states that "this Act supersedes the general mining laws, except for the provisions of the general mining laws relating to the location of mining claims that are not expressly modified by this Act." The application of the mining law is illuminated by more than a century of agency and judicial precedent which has clarified the many complexities that occur in application of these laws to specific circumstances on (and in) the ground. Section 506(c) seems to discard this precedent inviting courts and agencies to rewrite or reinterpret the mining laws on a blank slate. Even though that approach would provide endless employment for future generations of mining lawyers, it would be an unfortunate and inefficient result. Changes to the mining law should incorporate and build upon legal precedent and history and not reopen settled questions.

CONCLUSION

Thank you for the opportunity to appear here today. I will be happy to answer any questions.

[Photographs of Exploration Drilling and Reclamation on Federal Lands have been retained in committee files.]

Senator UDALL. Thank you, Mr. Butler. We now turn to Mr. John Leshy, distinguished professor, University of California, Hastings College of Law based in San Francisco. Mr. Leshy, in a previous capacity also served as a Solicitor in the Department of the Interior under Secretary Babbitt. Welcome.

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[16] John D. Leshy, The Mining Law: A Study In Perpetual Motion (1987) at 262. At the time of Professor Leshy's book, claim contests were the primary means of ejecting occupants who had taken up residence on invalid mining claims. That problem was largely resolved by the adoption of "use and occupancy" regulations which now govern such use of mining claims and provide for expedited procedures to end unauthorized occupancy. See 43 C.F.R. Subpart 3715.

[17] If the concern is that claimants will drop and relocate claims to avoid annual claim maintenance fees, the Committee should investigate that concern more closely. In my experience, that is not a common practice, if only because of the risks involved in dropping claims. But if that concern is real, it is more easily addressed by requiring claimants engaged in that practice to pay any missed maintenance fees on claims that are dropped and relocated within a short (probably one year) time period.

STATEMENT OF JOHN D. LESHY, HARRY D. SUNDERLAND DISTINGUISHED PROFESSOR, UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF LAW, SAN FRANCISCO, CA

Mr. LESHY. Thank you very much, Mr. Chairman. I'm happy to be here. I thank you for the invitation. I thank the committee for its engagement on this issue. I echo Jim's comments about the staff and all the work it has done, excellent work, on this issue.

I'm here not representing any group. I want to briefly just address a couple of issues.

First, Mining Law reform and jobs and the economy. Everybody these days it seems is in favor of Mining Law reform. I'm greatly heartened by that to hear that's there's been no dissent in this room this morning on the need to get on with this task. That's quite a difference from not too long ago when the need for reform, the very need for reform was hotly contested.

Everyone and certainly including me wants to do it in a way that protects jobs and economic activity, particularly because we're in this great recession. I have no doubt that the two bills in front of this committee would preserve and expand jobs in this economy if they were enacted. I say that for two reasons.

First, generally broadly comparatively speaking this is a pretty healthy industry. We're basically talking about gold. That's, by far, the most important part of the hard rock mining industry.

In my written testimony I show how gold prices and gold production have dramatically boomed over the last 25 years. In this country, domestic gold production is way, way up for a variety of reasons. Interestingly at the same time, during that same period when the Federal Government was moving for the first time in history to regulate the hard rock mining industry to protect the environment. I think that this leaves really no doubt. That it's very powerful evidence that environmental regulation and economic growth of the hard rock mining industry are compatible.

Second, both of these bills would dedicate the revenues raised by reform to abandoned mine land clean up. This is a dedicated stream of revenues that will as Secretary Salazar pointed out, create new jobs. These are good jobs. Many of them are actually little different from the jobs involved in the extraction process itself in terms of moving earth, waste rock, re-vegetating and the like.

As many have pointed out hard rock mining on the Federal lands have long enjoyed a unique position.

First, because practically every other user of the Federal lands, oil and gas and coal, sand and gravel, timber, utilities operating, transmission lines, ranchers, hunters, anglers and recreationists, all pay something for the privilege of using the Federal lands. The hard rock mining industry, traditionally has not.

Second, practically everywhere this industry operates, elsewhere, other than on Federal lands. So on State or private lands and in every other country in the world, they pay something. The Federal lands are really unique exception. It's time to close that loophole. The financial provisions of both of these bills would make very significant improvement over current law.

The second area I will just mention very briefly. I address it in my written testimony. That's the argument that sometimes made that you can't extract more revenues from this industry, particu-

larly in terms of existing operations and existing mining claims. That's a really flimsy legal argument I deal with at great length in my written statement. I won't mention it more here because nobody has raised it.

The third issue and last issue I want to address is the authority of the government to control hard rock mining operations from the standpoint of unacceptable environmental damage. S. 796 does a couple of interesting and very important things here.

First of all it simplifies the process for withdrawing Federal lands from the operation of the Mining Law to protect truly special places. Federal land managers have long used the Land Management process that Acting Director Pool talked about to make basic decisions about where land uses are appropriate on particular areas of Federal land. But here as elsewhere the hard rock mining industry has long enjoyed a kind of a special protection from those withdrawal provisions.

Section 307 of 796 would substantially repeal that prohibition. Be consistent with the general thrust of why we're reforming the Mining Law which is to end this kind of unique special treatment this industry has gotten. Make it subject to the same kind of legal regime that all other users of the Federal lands are subject to.

The other way that S. 796 addresses this important issue is through the other provisions in title III which I think are very important steps in improving and making more consistent and predictable the Federal Government's regulation of hard rock mining on its lands. Secretary Salazar, I thought, talked quite eloquently about that and about the need in appropriate cases to have authority to veto bad mines. There are not that many, but sometimes bad mines are proposed that we know when we approve them are leading to long term environmental damage and cost to the taxpayer to clean up.

If the government is powerless to turn these things down, even if a mine threatens some kind of environmental disaster that would be unacceptable. I was very glad to hear Senator, I'm sorry, Secretary Salazar say that he had the authority under existing law which would be reaffirmed by S. 796. So thank you for the opportunity to speak here today.

[The prepared statement of Mr. Leshy follows:]

PREPARED STATEMENT OF JOHN D. LESHY, HARRY D. SUNDERLAND DISTINGUISHED PROFESSOR, UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF LAW, SAN FRANCISCO, CA

I appreciate your invitation to testify today, and the engagement of this Committee on reform of the Mining Law of 1872. I appear here today as a private citizen, expressing my own personal views, and not representing any group or institution. I have worked on Mining Law issues for thirty-five years, in academia, in government and in the nonprofit sector. I have testified many times before this Committee and its counterpart in the House on the subject. Today I want to address some specific issues raised by the two reform bills before this Committee:

1. The health of the hardrock mining industry and its ability to compensate the American public adequately for the extraction of publicly owned minerals.
2. Whether there are any constitutional or other legal limits on the authority of the Congress to require existing hardrock mining operations, or current holders of mining claims, to provide such compensation.
3. The authority of the federal government, under both current law and S. 796, to control and if necessary prohibit hardrock mining operations that pose

an unacceptable level of environmental damage or unduly sacrifice other important values found on federal lands.

On the first issue, gold is by far the most dominant hardrock mineral governed by the Mining Law of 1872. Exhibit A charts* U.S. gold production since 1840, before the fabled California Gold Rush that ultimately led to enactment of the Mining Law.

It shows that gold production greatly increased in the 1980s and has remained high ever since. This resulted from two factors: high gold prices, and development of techniques to recover gold from disseminated low-grade deposits. The vast majority of that production is found on federal or formerly federal lands.

It is also worth noting that this increase in production coincided with, and was not hampered by, the U.S. Forest Service's and BLM's first efforts to regulate hardrock mining to protect the environment, through regulations adopted in 1974 (USFS) and 1981 (BLM).

Today, the U.S. is the fourth largest gold-producing country in the world, behind Australia, South Africa and China. More than 80% of domestic gold production comes from gigantic open pit mines in Nevada—that State alone produces more gold than every other Nation in the world except Australia, South Africa, China, and Peru.

Exhibit B charts the price of gold over the past forty years. It shows a rapid increase in price in the late 1970s, and relative high values since then. Indeed, since April 2001 gold has more than tripled in value against the U.S. dollar, and the price has been hovering close to $1000 an ounce. While that figure is, in real dollar terms, well below the January 1980 peak, for a long time many investors have, in times of serious economic difficulty like today, invested in precious metals. As a result many observers expect the price of gold to remain high for the foreseeable future.

The costs of mining gold in the U.S. are well under one-half of the current price of gold. For example, the 2006 Economic Overview of Nevada Mining, found at http://www.nevadamining.org/position/economy, shows an average cost of production of $365 to $435 per ounce (depending upon whether non-cash costs like depreciation and reclamation are included). A February 2008 white paper by Standard & Poor's showed that Barrick and Newmont, the two largest gold mining companies in Nevada, had company-wide cash costs of between $282 and $377 per ounce. See https://www.compustatresources.com/support/pub/whitepapers/pdf/Mining.pdf

The domestic gold industry is, and for quite a long time has been, very profitable—an enviable position today in comparison to the economic carnage being visited across much of the American economy. It can readily absorb the modest royalties and other payments called for in the two bills before this Committee.

With one very modest exception, hardrock mining companies operating today on federal land are charged no rental, pay no royalty, and make no other payment in recognition of the fact that it is the people of the U.S. who own the minerals they are mining. (The exception is that those who hold mining claims on federal land pay a modest annual claim maintenance fee, the revenue from which, by law, must be spent administering the Mining Law, and not on other public purposes.)

The position of hardrock mining companies operating on federal lands is unique in two distinct ways.

First, practically all other users of the public lands—oil and gas and coal developers, operators of sand and gravel quarries, timber harvesters, utilities operating transmission lines, livestock grazers, even hunters, anglers and other recreationists—pay the government something (in most cases, something like market value) for the publicly-owned resources they are using and/or removing.

Second, practically everywhere else on the planet that hardrock mining companies operate—-on state or private lands in the U.S., and just about everywhere abroad—they provide some compensation to the governments and others who own the minerals.

It is long past time for Congress to close this glaring loophole. The justifications that persuaded Congress 137 years ago to authorize this giveaway of public property—when gold had strategic value and the West was sparsely settled—-have long since disappeared. Today 85% of the gold mined is used to make jewelry, and the West has long been the fastest-growing region of the country.

Both S. 796 and S. 140 contain several revenue producers. They differ somewhat in the details.

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*Exhibits A and B have been retained in committee files.

S. 796

Section 102 of S. 796 would raise the annual claim maintenance fee to $150. (Interior just raised the fee, effective September 1, to $140 per claim.)

Section 201 would establish a royalty from 2-5% of the "value of the production, not including reasonable transportation, beneficiation, and processing costs." It authorizes the Secretary to vary the royalty within this range for particular minerals, and to grant royalty relief for mines that are in production if they can show by "clear and convincing evidence" that absent a reduction, production would cease. Significantly, S. 796 would exempt from royalty payments production from federal land that, on the date of enactment, is subject to an approved plan of operations and is in commercial production.

Section 303(f) would require operators to pay annually a "land use fee" in an amount equal to four times the claim maintenance fee for each 20 acres of federal land that is included within the mine permit area. Payment of this fee would allow the operator to "use and occupy" all federal land within the mine permit area for such uses as are approved in the mining permit, if the uses are undertaken "in accordance with all applicable law."

Section 403 would establish an abandoned mine land reclamation fee on all hardrock mining—not just that found on federal lands—of from 0.3 to 1% of the "value of the production, not including reasonable transportation, beneficiation, and processing costs." For production on federal lands, this fee would be added to the royalty established in § 201. Currently approved and operating mines are not exempt from this fee.

All these funds, except for claim maintenance fees used to pay the costs of administering the Mining Law, are to be deposited in a Hardrock Minerals Reclamation Fund to be spent on abandoned mine cleanup.

S. 140

The royalty in S. 140 (§ 101) is higher than that of S. 796. It fixes a higher percentage (8% on new mines). Already approved and producing mines would also pay a royalty, albeit at a lower rate of 4%. Moreover, the royalty is levied on "gross income," which would allow companies fewer opportunities to game the system with inflated deductions. S. 140's claim maintenance fee (§ 102) is also higher than the counterpart in S. 796 ($300 as opposed to $150).

On the other hand, while Section 103 of S. 140 establishes a reclamation fee, it is a flat 0.3% of the gross income of the operation for each calendar year (the lower level of the range authorized by S. 796). S. 140 also exempts smaller operations, defined primarily as grossing less than $500,000 per year and operating on claims previously acquired from the government under the patent provision of the Mining Law.

As with S. 796, the money raised by S. 140 goes into an Abandoned Mine Cleanup Fund established by section 201(a) of the Act, except that the claim maintenance fee revenues shall be allocated first for the administration of the mining laws.

S. 140 does not contain a "land use fee" like that found in section 303 of S. 796.

The financial provisions in both bills would be a very significant improvement over current law. Given the hardrock mining industry's legacy of unsafe and polluting abandoned mines that dot the landscape, it is certainly appropriate to earmark the revenues from such provisions for an Abandoned Mine Cleanup Fund, which should be available without further appropriation. (The Fund in S. 140 is a true revolving fund, not subject to further appropriation, but S. 796 seems somewhat less clear, and I suggest clarifying it on this point.)

Given the industry's ability to absorb these payments without substantial dislocation, I believe the provisions of S. 140 provide more adequate return to the public than those in S. 796, with two exceptions:

(a) S. 796 allows for a higher reclamation fee (up to 1% as opposed to 0.3%), and
(b) S. 140 lacks the "land use" fee found in S. 796.

The case for including the "land use" fee can be put this way: The royalty in both bills would apply only to "production of all locatable minerals from any mining claim located under the general mining laws and maintained in compliance with this Act" (S. 796, § 201(a); S. 140, § 101). I presume this limits the royalty only to minerals extracted from federal lands.

Most of the domestic production of hardrock minerals comes from very large operations in the West that are on lands in a mixture of ownerships—private, state and federal. The ore body itself may not include any federal lands, or at most mere slivers or odd-shaped parcels intermixed with others. Very often, in other words, all or most of the actual ore body is on non-federal land, usually because it has already been patented (transferred into private ownership) for a token payment of $2.50 or

$5.00 per acre, under the generous terms of the Mining Law. See, e.g., Mineral Resources: Value of Hardrock Minerals Extracted From and Remaining On Federal Lands (GAO/RCED-92-192, August 1992).

Even where the U.S. no longer owns any part of the ore body, thousands of acres of federal lands are typically used to bring the mineral into production, primarily for dumping waste rock and mine tailings and processing the ore. These uses are effectively permanent and exclusive, as the land is, for all practical purposes, rendered unusable for things like ranching, forestry, wildlife habitat, and recreation.

Under current administration of the Mining Law, the U.S. receives no compensation for the use of its land for waste dumps and tailings piles, if they are claimed as "millsites." If hardrock mining companies were required to use Title V of the Federal Land Policy and Management Act of 1976 to gain permission for this use of federal lands, they would be required to pay fair market value, just as do others who use the federal lands for industrial uses like power plants or other facilities, transmission lines, water projects, and practically everything else.

Therefore it is appropriate to require hardrock mining operators, who permanently encumber thousands of acres of federal land as dumping grounds for waste, to pay a fee. The fee should reflect the value the federal lands contribute to the entire mining operation.

The next issue I want to address is whether there are any constitutional or other legal limits on the authority of the Congress to require existing hardrock mining operations, or current holders of mining claims, to compensate the public. The industry and its supporters have sometimes argued that mining claims are property interests, and therefore any requirement that existing claimants pay the public something for extracting federal minerals is a "taking" of their property.

With all due respect, this is a very flimsy argument. The truth is, there are very few legal limits on Congress's ability to apply reforms, including a royalty or other fees (or tighter environmental regulations, for that matter), to existing mining claims or to existing operations.

First of all, probably most mining claims found on federal lands do not have property rights against the U.S. at all. Many decisions of the U.S. Supreme Court, dating back decades, make clear that a mining claim located on the federal lands carries with it a constitutionally protected property right only if it contains a "discovery" of a "valuable mineral deposit."

Mining claims which lack such a "discovery" are mere licenses to occupy the federal lands. In other words, the legal status of locators of such claims is no different from that of a hunter or angler or other recreational user of federal lands. "[I]t is clear that in order to create valid rights . . . against the United States [under the Mining Law] a discovery of mineral is essential." *Union Oil* v. *Smith*, 249 U.S. 337, 346 (1919); see also *Cole* v. *Ralph*, 252 U.S. 286, 296 (1920).

The locator of a claim who has not made a "discovery" does have the right to exclude other mineral explorers from the claim, so long as the original locator is actively exploring for a mineral. This is the "pedis possessio" (foothold) doctrine recognized by the Supreme Court almost ninety years ago. *Union Oil* v. *Smith*, supra. But the locator has no rights against the United States until a discovery is made.

In practice, almost all mining claims are located for exploration purposes, in speculating that a mineral might possibly exist and be profitably mined from the claimed land. But hopes and speculations, the Supreme Court has long made clear, are not tantamount to a "discovery." See, e.g., *United States* v. *Coleman*, 390 U.S. 599 (1968); *Sullivan* v. *Iron Silver Mining Co.*, 143 U.S. 431 (1892). Thus most mining claims are not constitutionally protected property rights, and the United States has virtually unfettered authority over them, without any obligation to compensate the claimants.

With regard to mining claims that do include a "discovery," the analysis is a little different. Such claims do contain property rights, but the government's authority over them is very broad as well. The U.S. Supreme Court addressed this exact question in 1985, and its guidance is worth quoting at some length:

> Even with respect to vested property rights, a legislature generally has the power to impose new regulatory constraints on the way in which those rights are used, or to condition their continued retention on performance of certain affirmative duties. As long as the constraint or duty imposed is a reasonable restriction designed to further legitimate legislative objectives, the legislature acts within its powers in imposing such new constraints or duties. * * *
>
> This power to qualify existing property rights is particularly broad with respect to the "character" of the property rights at issue here. *Although owners of unpatented mining claims hold fully recognized possessory inter-*

> *ests in their claims, we have recognized that these interests are a "unique form of property." * * * The United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired*. See, e.g., *Kleppe* v. *New Mexico*, 426 U.S. 529, 539 (1976). * * *
>
> Claimants thus take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests. * * * In addition, *the property right here [in a mining claim with a valid discovery] is the right to a flow of income from production of the claim. Similar vested economic rights are held subject to the Government's substantial power to regulate for the public good the conditions under which business is carried out and to redistribute the benefits and burdens of economic life*.

United States v. *Locke*, 471 U.S. 84, 104-05 (1985) (emphasis added).

The government retains the right to require a payment (whether labeled a tax, royalty, fee, or something else) from a holder of a mining claim on federal lands, even one with a discovery and a property right, as part of its broad authority to adjust the "benefits and burdens of economic life."

This simply follows from the principle the Supreme Court has long followed, that federal taxes and fees cannot constitute compensable takings of private property. See, e.g., *Cole* v. *LaGrange*, 113 U.S. 1, 8 (1885) ("the taking of property by taxation requires no other compensation than the taxpayer receives in being protected by the government to the support of which he contributes"); *County of Mobile* v. *Kimball*, 102 U.S. 691, 703 (1880) ("neither is taxation for a public purpose, however great, the taking of private property for public use, in the sense of the Constitution").

Health, safety and environmental hazards are a large and continuing legacy of the hardrock mining industry operating on federal lands. This makes it particularly appropriate to tax, or levy a royalty or fee on, hardrock mineral production, or on the use of federal lands to support such production, for the purposes identified in S. 796 and S. 140—to fund cleanups of abandoned mines.

While Congress has ample authority to impose a royalty or other levy or to tighten environmental regulation of existing claims, obviously Congress can take equitable considerations into account, such as capital investments that have already been made in existing mines. S. 140 attempts to do this by reducing the royalty to 4% for production that is "subject to an operations permit on the date of enactment," and is actually in production.

S. 796, on the other hand, contains a *permanent* exemption from any royalty payment if the mine is "subject to an approved plan of operations or an operations permit" on the date of enactment, and is actually in production. While it is reasonable to levy a lower royalty on existing production, at least for a period of time, I am troubled by a permanent exemption or permanently lower royalty on existing mines.

Large hardrock mines can produce for much longer periods of time than most other capital investments. The Bingham Canyon copper mine near Salt Lake City, for example, has been in production for more than a century, and according to some accounts may continue to produce for several more decades. If S. 796 had been enacted in 1890, for example, Bingham Canyon production would still be royalty-free. It is very hard to justify exempting existing mines from a royalty beyond a reasonable period to amortize the investment involved.

Moreover, I am troubled that the line drawn in both bills between a full royalty, on the one hand, and a reduced (S. 140) or no (S. 796) royalty, on the other, is very fuzzy and will be hard to administer. The touchstone in both bills for more favorable treatment is whether production is "subject to an operations permit" (S. 140) or "subject to an approved plan of operations or an operations permit" (S. 796) on the date of enactment. Although I have not made a detailed examination of the matter, I do not believe that "plans of operations" or "operations permits" define the scope or duration of approved operations with any precision. Yet some precision is required when it spells the difference between paying a full royalty or a lower rate (S. 140) or nothing (S. 796). With many millions of dollars at stake, companies will argue that their approved plans or permits are for the "life of the mine," and if they succeed, the revenues to be derived from either reform bill could be drastically reduced.

I suggest that the Committee work with the Interior and Agriculture Departments, perhaps with the assistance of the Congressional Budget Office or the Government Accountability Office, to look hard at the terms of the BLM and Forest Service's approvals in these operating permits or plans of operations and see if a more precise line can be drawn.

Some hardrock industry supporters want an even more generous approach, to exempt all existing mining *claims*, and not just existing active *operations*, from a roy-

alty or other reforms. That should be strongly opposed. Most areas of federal land with significant mineral potential are already blanketed with speculative mining claims. As I've already explained, most of these claims lack a discovery and a concomitant property right. Most have seen little investment or action, beyond paying annual claim maintenance fees. Most mines likely to open in the next few decades will probably be on already-located claims. Thus exempting existing claims from new requirements (permanently, or for a period of years) would be a huge loophole, would generate little if any revenue to clean up abandoned mines, and would hardly constitute genuine reform of the Mining Law.

I believe, as I indicated earlier, that any levy Congress might enact will be a small factor in the overall profit and risk picture for these enterprises. Furthermore, S. 796 (though not S. 140), provides considerable flexibility (too much, I believe) in levying royalties. Specifically, the executive is given authority to (a) fix the rate between 2-5%; (b) define "reasonable transportation, beneficiation, and processing costs" that are deducted from gross income in setting the royalty base; (c) set the royalty mineral-by-mineral (§ 201(b)); and (d) grant relief from royalty payments when the miner can demonstrate that otherwise a shutdown would occur (§ 202). In this connection, an idea worth considering is to make the payments to the government on a sliding scale depending upon the market price of the commodity; e.g., if the price of gold doubles or is halved, the royalty could be adjusted accordingly.

The third and final issue I want to address is the authority of the government to control, and if necessary prohibit, hardrock mining operations from going forward when they pose an unacceptable level of environmental damage or unduly sacrifice other important values found on federal lands.

S. 140 does not deal with this subject. S. 796 addresses it in a couple of ways. The first is in Section 307, which would require the Secretaries of the Interior and Agriculture (acting through the local BLM or U.S. Forest Service land manager), within three years of enactment, to review certain lands under their jurisdiction and decide whether to remove them from operation of the Mining Law, subject to valid existing rights. This section also allows the federal land managers (on their own motion or upon direction from the Secretary after petition by a State Governor, Tribal head, or appropriate local governmental official) to propose to their respective Secretary, and the Secretary to decide whether, to amend applicable land use plans to remove land from the operation of the Mining Law.

Federal land managers have long used their planning processes to make basic decisions about what uses are appropriate on what areas of federal lands. Yet here, as elsewhere, the hardrock mining industry has been given special protection; specifically, a requirement that the land managers use a special and cumbersome process for removing federal lands from operation of the Mining Law. Federal Land Policy & Management Act, 43 U.S.C. §1712(e)(3)).

Section 307 would substantially repeal the current prohibition against using the ordinary land use planning authority to remove lands from operation of the Mining Law. This is consistent with the general thrust of Mining Law reform—to end the special treatment of the hardrock mining industry on our nation's public lands, and make it subject to the same regime as all other users of those lands.

The second way S. 796 addresses the control of environmental damage is through the other provisions in its Title III. In general, these are important steps in improving and making more consistent and predictable the federal government's regulation of hardrock mining on its lands.

The hardrock mining industry argues that the government already has sufficient authority to protect the environment and other values of the federal lands from hardrock mining operations. But it also wants any reform of the Mining Law to make clear that the government is powerless to turn down a proposed mining plan of operations even if the mine threatened environmental disaster by, say, permanently contaminating aquifers containing immensely valuable future drinking water supplies, and/or obliterating immensely valuable cultural sites, and/or permanently rendering unusable many thousands of acres of land immensely valuable for other uses.

History makes clear beyond peradventure that hardrock mining is a dirty business, and that such environmental disasters are not only possible but have often happened. When things can go bad in hardrock mining operations, the costs to repair the damage can be enormous, reaching hundreds of millions of dollars at a single mine site, and sometimes requiring perpetual water treatment. Cumulatively, well over a century of experience with the Mining Law of 1872 has saddled the Nation's taxpayers with a cleanup cost for thousands of abandoned mines that, according to some estimates, approaches fifty billion dollars.

Despite the fact that modern laws like the Clean Water Act apply to some extent to hardrock mining, environmentally disastrous mines still fall through the regu-

latory gaps. To take just one example of several that could be cited, Montana and U.S. taxpayers are today paying many millions of dollars to clean up the Zortman-Landusky mine—a mine which was approved with all the modern laws in place that the industry still argues are adequate and do not need changing.

Because existing standards and practices have not proved adequate to control hardrock mining to the extent necessary to protect the environment and other users of the federal lands, Mining Law reform legislation needs to improve the situation. It is also important that Congress legislate here to end the "ping-pong game" of succeeding executive administrations changing the rules. As this Committee knows, early on, the George W. Bush Administration weakened the so-called Part 3809 regulations governing hardrock mining on BLM lands, removing or watering down some key provisions that had been added in the Clinton Administration. Compare 65 Fed. Reg. 69,998 (2000) with 66 Fed. Reg. 54,837 (2001). Perhaps the most important change was to eliminate the federal government's explicit authority to disapprove proposed hardrock mines on federal lands if they threatened devastating, uncontrollable harm on other important natural and cultural resources.

The Bush Administration acted on the basis of a Solicitor's Opinion issued by my successor, which overruled an opinion I had issued as Solicitor in 1999. These dueling legal opinions differed on how to interpret a key phrase in FLPMA, in which Congress expressly amended the Mining Law to require the Interior Secretary to protect the public lands from "unnecessary *or* undue degradation" (emphasis added). 43 U.S.C. § 1732(b). My legal opinion was that "or" means "or," so that BLM has a responsibility to regulate hardrock mining on the public lands to protect against "undue" degradation, even if that degradation is regarded as "necessary" to mining. My successor's legal opinion was that "or" is better understood as meaning "and." Thus, in his view, BLM has no authority to prevent hardrock mining that causes "undue" degradation if such degradation is "necessary" to mining.

Environmental groups asked a federal court to settle this dispute. After full briefing, the court ruled that my reading of FLPMA was correct. *Mineral Policy Center* v. *Norton*, 292 F. Supp. 2d 30 (D.D.C. 2003). Strangely, the court went on to decide not to set aside the Bush Administration's removal of that express authority from the Part 3809 regulations. Conceding the question was "indeed extremely close," the court was persuaded by the Department of Justice's argument that—even conceding that the Bush Administration's Solicitor was wrong on the law—those regulations need not articulate that authority in so many words. Neither side appealed this ruling.

S. 796 would reaffirm the "unnecessary or undue degradation" standard and, because the last word on its meaning was rendered by the federal court in the Mineral Policy Center case, its view of that standard should control.

Section 306(c) of S. 796 makes clear that, like the BLM, the U.S. Forest Service is also to operate under this standard. This is appropriate because some large hardrock mines sprawl across both agencies' lands, and because the Forest Service continues to interpret its governing authority narrowly. This perhaps should not be a surprise, for the Forest Service was long reluctant to regulate hardrock mining on its lands at all. Congress gave it express authority to do so way back in 1897 (see 16 U.S.C. §§ 478, 551), but the agency did nothing to exercise it for more than three-quarters of a century.

The regulations the Forest Service finally adopted in 1974 (36 C.F.R. Part 228) were relatively tepid and have changed little since, despite vast ensuing changes in hardrock mining technology and practices. They require mining operations to "minimize," "where feasible," environmental impacts on national forest resources, 36 C.F.R. § 228.8, and to take "practicable" measures to "maintain and protect fisheries and wildlife habitat which may be affected by the operations." Id. at 228.8(e). In other words, the Forest Service has taken the position that the government cannot turn down a proposal to locate a hardrock mine on national forest lands even if it threatens dire environmental harm. The courts have generally deferred to the Forest Service's decisions, refusing, for example, to require it to select the most environmentally preferable approach, even when doing so preserves the profitability of the proposed mining operation. *Okanogan Highlands Alliance* v. *Williams*, 236 F.3d 468 (9th Cir. 2000).

In resisting the kind of environmental regulatory authority that is routinely applied to other federal lands users, the hardrock industry sometimes tries to draw a distinction between standards to protect "the environment" and standards to protect other land resource values. This distinction is not only very hard to draw in practice, but is not particularly useful in this context. Environmental standards are imposed to protect other resource values. For example, the government controls air and water pollution in part to protect viewsheds and wildlife habitat found on federal lands.

Every decision a federal land manager makes to allow a particular use of public lands ought to consider the impact of that use on other uses and values. If the impact is unacceptably large, the proposed use ought to be prohibited. The law routinely holds every other user of the public lands—oil or coal company, forest products company, electric utility, rancher, hunter, angler, or hiker—to that commonsense standard. Hardrock mining, which has the potential to cause more serious disruption than practically any of these others, deserves no special exemption from it.

CONCLUSION

I applaud your taking up this important issue of public policy, and I stand ready to advance this effort any way I can.

Senator UDALL. Thank you, Mr. Leshy. Ms. Robin Nazzaro is here. She is the Director of the Natural Resources and Environment arm of the Government Accountability Office. Welcome. We look forward to your testimony.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. NAZZARO. Thank you, Mr. Chairman and members of the committee. I'm pleased to be here today to discuss GAO's work on royalties the States charge and the number of abandoned hard rock mine sites and associated hazards—issues that are central to the debate on reforming the Mining Law of 1872.

The vast majority of Federal lands where hard rock mining operations occur are in the 12 Western States. These States have statutes governing hard rock mining operations on lands in their States. However, unlike the Federal Government, all 12 States assess royalties that allow them to share in the proceeds from hard rock minerals extracted from State-owned lands.

In addition, each of these States except Oregon, assesses taxes such as severance taxes, mine license taxes or resource excise taxes on the hard rock mining operations on private, State and Federal lands. I will use the term "functional royalty" to refer to these taxes that function like a royalty in that they permit the State to share in the value of the mine's production. Although States may use similar names for the royalties they assess, there can be wide variations in their forms and rates.

The royalties the States assess often differ depending on land ownership. For example, for private mining operations conducted on Federal, State or private land. Arizona assesses a functional royalty of 1.25 percent of net revenue on gold mining operations and an additional royalty of at least 2 percent of gross value for gold mining operations on State lands.

In addition 9 of the 12 States assess different types of royalties for different types of minerals. Wyoming, for example, employs three different functional royalties for all lands: net smelter returns for uranium, a difference in net smelter return for trona, and a gross revenue for all other minerals.

The royalties the States assess also differ in the allowable exclusions, deductions and limitations. For example, in Colorado, a functional royalty on metallic mining excludes gross income below $19 million, whereas in Montana a functional royalty on metallic mining is applied on all mining operations after the first $250,000 of revenue. The actual amount assessed for a particular mine may also depend on other factors, such as the minerals processing re-

quirements, mineral markets, mine efficiency and the mine's location relative to markets.

To estimate the number of abandoned mines, we consulted with mining experts at the National Association of Abandoned Mine Land programs, the Interstate Mining Compact Commission, and the Colorado Department of Natural Resources to develop a standard definition. What we had found in looking at past studies was that there was no standard definition and the estimates were all over the board. We defined an abandoned hard rock mine site as a site that includes all associated facilities, structures, improvements, and disturbances at a distinct location associated with activities to support a past operation which could include prospecting, exploration, uncovering, drilling, discovery, mine development, excavation, extraction, or processing of mineral deposits locatable under the general mining laws.

Using this consistent definition the 12 Western States, as well as South Dakota, reported the number of hard rock mine sites in their States. From this information we calculated a total of at least 161,000 abandoned hard rock mine sites in these States on private, State and local lands, excuse me, Federal lands. These sites have at least 332,000 features that may pose physical safety hazards such as open shafts or unstable or decayed mine structures and at least 33,000 sites have degraded the environment by, for example, contaminating surface water and ground water or leaving arsenic-contaminated tailings piles.

In conclusion, since 1979, GAO has reported on the need to reform the General Mining Act of 1872. Assessing a royalty on hard rock minerals could ensure that the public is compensated for hard rock minerals extracted from Federal lands, as more recently enacted laws require for oil, gas and other minerals as well as provide funds to address the abandoned mines and associated hazards.

Mr. Chairman, this concludes my prepared statement.

[The prepared statement of Ms. Nazzaro follows:]

PREPARED STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE

HARDROCK MINING.—INFORMATION ON STATE ROYALTIES AND THE NUMBER OF ABANDONED MINE SITES AND HAZARDS

WHY GAO DID THIS STUDY

The General Mining Act of 1872 helped open the West by allowing individuals to obtain exclusive rights to mine billions of dollars worth of gold, silver, and other hardrock (locatable) minerals from federal lands without having to pay a federal royalty. However, western states charge royalties so that they share in the proceeds from the hardrock minerals extracted from their lands. For years, some mining operators abandoned land used in their mining operations, creating environmental and physical safety hazards. To curb further growth in the number of abandoned hardrock mines on federal lands, in 1981, the Department of the Interior's Bureau of Land Management (BLM) began requiring mining operators to reclaim BLM land disturbed by these operations.

WHAT GAO RECOMMENDS

This testimony focuses on the (1) royalties states charge and (2) number of abandoned hardrock mine sites and hazards. It presents information from two GAO reports: Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land, GAO-08-574T (Mar. 12, 2008) and Hardrock Mining: Information on State Royalties and Trends in Imports and Exports, GAO-08-849R (July 21, 2008). GAO, among other steps, reviewed state statutes and regu-

lations on royalties on hardrock mining operations and asked 12 western states and South Dakota to provide information on the number of abandoned mine sites and associated features in their states using a consistent definition.

WHAT GAO FOUND

Twelve western states that GAO reviewed assess royalties on hardrock mining operations on state lands. The 12 western states are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. In addition, each of these states, except Oregon, assesses taxes that function like a royalty, which GAO refers to as functional royalties, on the hardrock mining operations on private, state, and federal lands. The royalties the states assess often differ depending on land ownership and the mineral being extracted. For example, for private mining operations conducted on federal, state, or private land, Arizona assesses a functional royalty of 1.25 percent of net revenue on gold mining operations, and an additional royalty of at least 2 percent of gross value for gold mining operations on state lands. The actual amount assessed for a particular mine may depend not only on the type of royalty, its rate, and exclusions, but also on other factors, such as the mine's location relative to markets.

To estimate abandoned hardrock mine sites in the 12 western states and South Dakota, we developed a standard definition for these mine sites and asked the states to report the number of mine sites and estimate the number of features at these sites that pose physical safety hazards and the number of sites with environmental degradation. Using this definition that GAO provided, states reported that there are at least 161,000 abandoned hardrock mine sites in their states, and these sites have at least 332,000 features that may pose physical safety hazards and at least 33,000 sites that have degraded the environment.

Mr. Chairman and Members of the Committee: I am pleased to be here today to discuss our 2008 work on state royalties on hardrock minerals and the number of abandoned hardrock sites and hazards-two issues that are central to the debate on reforming the General Mining Act of 1872.[1]

As you know, since the passage of the General Mining Act of 1872, mine operators have extracted billions of dollars worth of silver, gold, copper, and other hardrock (locatable) minerals from federal lands without having to pay a royalty.[2] Most of these lands are managed by the Department of the Interior's Bureau of Land Management (BLM) and the U.S. Department of Agriculture's Forest Service. Assessing a royalty on hardrock minerals could compensate the public for hardrock minerals extracted from federal lands, as more recently enacted laws require for oil, gas, and other minerals.

The vast majority of the federal lands where hardrock mining operations occur are in 12 western states.[3] These western states have statutes governing hardrock mining operations on lands in their state. However, unlike the federal government, these states charge royalties that allow them to share in the proceeds from hardrock minerals extracted from state-owned lands. In addition, most of these states charge taxes, such as severance taxes, mine license taxes, or resource excise taxes, on hardrock mining operations that occur on private, state, and federal lands. For the purposes of this report, we use the term "functional royalty" to refer to taxes that function like a royalty in that they permit the state to share in the value of the mine's production. Although states may use similar names for the functional royalties they assess, there can be wide variations in their forms and rates.

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[1] GAO, *Hardrock Mining: Information on State Royalties and Trends in Mineral Import and Exports*, GAO-08-849R (Washington, D.C.: July 21, 2008); and GAO, *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land*, GAO-08-574T (Washington, D.C.: Mar. 12, 2008). We also testified on these issues in 2009; see GAO, *Hardrock Mining: Information on Types of State Royalties, Number of Abandoned Mines, and Financial Assurances on BLM Land*, GAO-09-429T (Washington, D.C.: Feb. 26, 2009)

[2] Under U.S. mining laws, minerals are classified as locatable, leasable, or saleable. Locatable minerals include those minerals that are not leasable or saleable, for example, copper, lead, zinc, magnesium, gold, silver, and uranium. Only locatable minerals continue to be "claimed" under the Mining Act. For the purposes of this report, we use the term "hardrock minerals" as a synonym for "locatable minerals." Leasable minerals include, for example, oil, gas, and coal. The Mineral Leasing Act of 1920, 41 Stat. 437 (codified at 30 U.S.C. § 181) created a leasing system for coal, gas, oil and other fuels, and chemical minerals. Saleable minerals include, for example, common sand, stone, and gravel. In 1955, the Multiple Use Mining Act of 1955, 69 Stat. 367 (codified at 30 U.S.C. § 601) removed common varieties of sand, stone, and gravel from development under the Mining Act.

[3] The 12 western states are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

In addition to the lack of a requirement for hardrock mining operators to pay royalties, prior to 1981, BLM did not require them to reclaim the federal land they used. Consequently, hardrock mining operators have left thousands of acres of federal land disturbed through mineral exploration, mining, and mineral processing. Some of these disturbed abandoned mine lands pose serious environmental and physical safety hazards. These hazards include environmental hazards such as toxic or acidic water that contaminates soil and groundwater or physical safety hazards such as open or concealed shafts, unstable or decayed mine structures, or explosives. Cleanup costs for these abandoned mines vary by type and size of the operation.[4]

My testimony today focuses on the (1) royalties states currently charge on hardrock mining operations and (2) number of abandoned hardrock mine sites and number of associated hazards.

To address these objectives, we interviewed staff at BLM and the Forest Service; examined agency documents and data; and reviewed relevant legislation and regulations. To identify the types of royalties, including functional royalties, that the 12 western states assess on hardrock mining operations, we reviewed state statutes and regulations, as of March 2008, pertaining to royalties on hardrock mining operations. To aid in understanding general patterns in state royalties, we consulted academic and industry sources and then we categorized each royalty according to how it is assessed. To assess the number of abandoned hardrock mine sites, we asked the 12 western states and South Dakota[5]-which have significant numbers of abandoned hardrock mining operations-to determine the number of these mine sites in their states. We asked the states to use a consistent definition, which we provided, in estimating the number of abandoned mine sites and associated features that pose a significant hazard to public health and safety and the number of sites that cause environmental degradation.[6] We specified that states should only include hardrock (also known as locatable), non-coal sites in this estimate. From these data, we estimated the number of features that pose physical safety hazards and the number of sites with environmental hazards in the 12 western states and South Dakota. We also summarized six selected studies by federal agencies and organizations to document differences in estimates, definitions, and methodologies. This testimony is based on prior GAO reports whose work was conducted in accordance with generally accepted government auditing standards.[7]

THE 12 WESTERN STATES ASSESS MULTIPLE TYPES OF ROYALTIES, WITH DIFFERENCES IN TYPES AND RATES BASED ON THE MINERAL EXTRACTED AND LAND OWNERSHIP

Twelve western states assess royalties on the hardrock mining operations on state lands. In addition, each of these states, except Oregon, assesses taxes that function like a royalty, which we refer to as functional royalties, on the hardrock mining operations on private, state, and federal lands. To aid in the understanding of royalties, including functional royalties, the royalties are grouped as follows:

- *Unit-based* is typically assessed as a dollar rate per quantity or weight of mineral produced or extracted, and does not allow for deductions of mining costs.
- *Gross revenue* is typically assessed as a percentage of the value of the mineral extracted and does not allow for deductions of mining costs.
- *Net smelter returns* is assessed as a percentage of the value of the mineral, but with deductions allowed for costs associated with transporting and processing the mineral (typically referred to as mill, smelter, or treatment costs); however, costs associated with extracting the mineral are not deductible.
- *Net proceeds* is assessed as a percentage of the net proceeds (or net profit) of the sale of the mineral with deductions for a broad set of mining costs. The particular deductions allowed vary widely from state to state, but may include extraction costs, processing costs, transportation costs, and administrative costs, such as for capital, marketing, and insurance.[8]

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[4] For purposes of this testimony, cleanup refers to the mitigation of environmental impacts at mine sites, such as contaminated water, and the reclamation of land disturbed by hardrock operations.

[5] South Dakota was included because it has a significant number of abandoned hardrock mines and has been included in previous studies estimating the number of abandoned hardrock mines.

[6] We defined an abandoned hardrock mine site as all associated facilities, structures, improvements, and disturbances at a distinct location associated with activities to support a past operation under the general mining laws.

[7] GAO-09-429T, GAO-08-849R, and GAO-08-574T.

[8] For a full discussion of the definition and formula for each type of royalty, see GAO-08-849R.

Royalties, including functional royalties, often differ depending on land ownership and the mineral being extracted, as the following illustrates:

- For private mining operations conducted on federal, state, or private lands, Arizona assesses a net proceeds functional royalty of 1.25 percent on gold mining operations, and an additional gross revenue royalty of at least 2 percent for gold mining operations on state lands.
- Nine of the 12 states assess different types of royalties for different types of minerals. For example, Wyoming employs three different functional royalties for all lands: (1) net smelter returns for uranium, (2) a different net smelter returns for trona-a mineral used in the production of glass, and (3) gross revenue for all other minerals.

Furthermore, the royalties the states assess often differ in the allowable exclusions, deductions, and limitations. For example, in Colorado, a functional royalty on metallic mining excludes gross incomes below $19 million,[9] whereas in Montana a functional royalty on metallic mining is applied on all mining operations after the first $250,000 of revenue.[10] Finally, the actual amount assessed for a particular mine may depend not only on the type of royalty, its rate, and exclusions, but also on such factors as the mineral's processing requirements, mineral markets, mine efficiency, and mine location relative to markets, among other factors.

Appendix I* contains information on royalties the 12 western states assess on hardrock mining operations, with details on rates, royalty type, and deductions and limitations.

USING A CONSISTENT DEFINITION, STATES REPORTED AT LEAST 161,000 ABANDONED HARDROCK MINE SITES, WITH MANY POSING HAZARDS

To estimate abandoned hardrock mine sites in the 12 western states and South Dakota, we developed a standard definition for these mine sites.[11] In developing this definition, we consulted with mining experts at the National Association of Abandoned Mine Land Programs; the Interstate Mining Compact Commission; and the Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety, Office of Active and Inactive Mines. We defined an abandoned hardrock mine site as a site that includes all associated facilities, structures, improvements, and disturbances at a distinct location associated with activities to support a past operation, including prospecting, exploration, uncovering, drilling, discovery, mine development, excavation, extraction, or processing of mineral deposits locatable under the general mining laws. We also asked the states to estimate the number of features at these sites that pose physical safety hazards and the number of sites with environmental degradation.

Using this definition, states reported to us the number of abandoned sites on all lands in their states and we calculated a total of at least 161,000 abandoned hardrock mine sites in their states. At these sites, on the basis of state data, we estimated that at least 332,000 features may pose physical safety hazards, such as open shafts or unstable or decayed mine structures. Furthermore, we estimated that at least 33,000 sites have degraded the environment, by, for example, contaminating surface and ground water or leaving arsenic-contaminated tailings piles.[12] Table 1 shows our estimate of the number of abandoned hardrock mine sites in the 12 western states and South Dakota, the number of features that pose significant public health and safety hazards, and the number of sites with environmental degradation.

Regarding federal lands, BLM and the Forest Service have had difficulty determining the number of abandoned hardrock mines on the lands they manage. In Sep-

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[9] Under Colorado tax laws, gross income is the value of ore immediately after its removal from the mine and does not include any value added subsequent to mining by any treatment processes.

[10] That is, the Montana royalty is assessed on the gross value of product, less first $250,000. Gross value is the receipts received from the sale of concentrates or metals extracted from mines or recovered from the smelting, milling, reduction, or treatment of such ores. Receipts received is defined as the payment received, less allowable deductions.

* All appendixes and tables have been retained in committee files.

[11] It has been difficult to determine the number of abandoned hardrock mine sites from existing studies in part because there is no standard definition for a hardrock mine site. For example, six studies we reviewed relied on different definitions, and estimates varied widely from study to study. For a full discussion of these six studies, see GAO-08-574T, app. III.

[12] Tailings are a combination of fluid and rock materials that are left behind after the minerals are extracted. Tailings are often disposed of in a nearby pile.

tember 2007, the agencies reported an estimated 100,000 abandoned mine sites,[13] but we found problems with this estimate. For example, the Forest Service had reported that it had approximately 39,000 abandoned hardrock mine sites on its lands. However, this estimate includes a substantial number of non-hardrock mines, such as coal mines, and sites that are not on Forest Service land. At our request, the Forest Service provided a revised estimate of the number of abandoned hardrock mine sites on its lands, excluding coal or other non-hardrock sites. According to this estimate, the Forest Service may have about 29,000 abandoned hardrock mine sites on its lands. That said, we still have concerns about the accuracy of the Forest Service's recent estimate because it identified a large number of sites with "undetermined" ownership, and therefore these sites may not all be on Forest Service lands.

BLM has also acknowledged that its estimate of abandoned hardrock mine sites on its lands may not be accurate because it includes sites on its lands that are of unknown or mixed ownership (state, private, and federal) and a few coal sites. In addition, BLM officials said that the agency's field offices used a variety of methods to identify sites in the early 1980s, and the extent and quality of these efforts varied greatly. For example, they estimated that only about 20 percent of BLM land has been surveyed in Arizona. Furthermore, BLM officials said that the agency focuses more on identifying sites closer to human habitation and recreational areas than on identifying more remote sites, such as in the desert. Table 2 shows the Forest Service's and BLM's most recent available estimates of abandoned mine sites on their lands.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Committee may have.

Senator UDALL. Thank you, Ms. Nazzaro. Next we turn to Cathy Carlson. A fellow Coloradan who is the Senior Policy Advisor of Earthworks based in Boulder, Colorado.

Ms. Carlson.

STATEMENT OF CATHY CARLSON, POLICY ADVISOR, EARTHWORKS, BOULDER, CO

Ms. CARLSON. Good morning, Mr. Chairman. I'd don't think I've ever called you that before.

Senator UDALL. Good morning.

Ms. CARLSON. Senator Risch, Senator Shaheen, it's very nice to be here this morning. Thank you for allowing me an opportunity to come and talk about why I believe it's time to reform the Mining Law of 1872.

Earthworks is a national conservation organization dedicated to protecting communities and the environment from the adverse effects of mineral development both here in the United States and overseas. We've worked closely with the House and Senate Committees over the past two decades to draw attention to the ongoing damage that is occurring from hard rock mining on Federal lands. We're pleased to see the chairman's leadership in bringing this issue before the committee. We encourage the members of the committee to now take up reform and act upon it.

In the face of global warming we'll have less water in our streams and rivers in the region. That means less water for municipal and agricultural purposes and less water for fish and wildlife which support a robust recreation economy in the West. At the same time our water quality is at risk from mining.

In Colorado increased interest in uranium development in the Delores River watershed has alarmed the local government there. The prospect of another molybdenum project polluting the watershed above the town of Crested Butte has local citizens and com-

[13] BLM and Forest Service, Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines (September 2007).

munity leaders very concerned as well. I'd like to recognize Alan Bernholtz, the Mayor of Crested Butte, who was here in the audience today.

Mayor Bernholtz testified before this committee last year and really offered his first hand experience on the threats at Western communities like the Town of Crested Butte have that are being caused by the Mining Law of 1872. Even the city of Boise is concerned that it cannot protect its drinking water supply because of the Mining Law of 1872. You may be concerned about this as well, Senator Risch.

It's not just the water supplies that are threatened. One of the flagships of the National Park System is the Grand Canyon National Park. It's now threatened by new speculative claims for uranium mines.

This kind of mineral activity could damage the resources that the park was created to protect. There's also concern about the potential impacts of the whole Colorado River system. In fact the metropolitan water district of Los Angeles has expressed its concern about the potential for uranium mining near the park to pollute the river system as one of the recipients of the water downstream.

Congress needs to address the concerns of these local communities and protect these iconic landscapes. S. 796 introduced by Chairman Bingaman will help these communities balance mineral development while maintaining tourism and the clean air and water for all its citizens. I recommend that the bill be revised to ban hard rock mines on Federal lands that create a permanent source of pollution.

In this age of increasing water scarcity why in the world would Congress agree to open a spigot of polluted water and allow it to run in perpetuity across the public lands? Acid mine drainage or toxic pollution from uranium mines threatens our health. They threaten our livelihoods and our rural communities.

Very few mines have this problem, but when they do, do we really want them as a permanent liability on our Federal lands? They kill fish, poison ground water supplies. New Mexico adopted this policy in 1993 with the passage of its Surface Mining Act and a similar protection should be considered at the Federal level.

Both S. 796 and S. 140 introduced by Senator Feinstein will create economic opportunities for rural communities throughout the United States. These bills create jobs for backhoe operators, engineers, water specialists, consultants in the restoration of abandoned mines. According to a recent report by the State of Montana every million dollars spent on abandoned mine restoration creates 65 jobs. These are good paying jobs in rural that suffer the boom and bust of a mineral economy and having a dedicated source of funding as considered in S. 796 would help communities ride out the bust cycle with restoration work funded by the abandoned mine program created and funded with these legislative proposals.

The Congressional Budget Office reviewed the mining reform legislation passed by the House of Representatives in 1993 and again in 2007 and concluded that the bills would result in a net increase in jobs. We need these jobs and the revenue stream to support them to clean up these old mines. The estimates of the amount of

funding that's needed for abandoned hard rock mining range from $35–70,000,000,000.

We already know what the benefits are like from having a program for coal mine abandoned mine clean up. Many of the States represented on this committee have benefited greatly from the creation of a coal abandoned mine program and none more so than the State of Wyoming. But Alaska, California, Washington, Utah, Colorado, New Mexico, Kentucky, Tennessee, each of these States can point to the value of having revenues to address the safety and environmental damage caused by abandoned coal mining. Let's see if we can find a way to create a similar program for hard rock mining in the United States as well.

We can learn from this experience. Build a hard rock mining restoration program. We can put people to work in rural communities.

We should also learn from the history of the coal abandoned mine program and make sure that these funds are dedicated for the purpose of abandoned mine clean up. So that was the proposal that's set forth specifically in S. 796. I just want you to remember these bills are about creating jobs and economic opportunities in communities that deal with the boom and bust of mineral development.

S. 796 with a few changes can protect our critical water supplies, iconic landscapes and communities that have developed their own economies beyond mining. Let's move this legislation this year. Thank you.

[The prepared statement of Ms. Carlson follows:]

PREPARED STATEMENT OF CATHY CARLSON, POLICY ADVISOR, EARTHWORKS, BOULDER, CO

Thank you Mr. Chairman and Members of the Committee for the opportunity to speak to you today about the importance of reforming the Mining Law of 1872. I have been working to update this century old statute for over 20 years, and I am pleased to see the Chairman's leadership in introducing legislation and conducting this hearing.

EARTHWORKS is a national conservation organization dedicated to protecting communities and the environment from destructive mineral development, here in the United States and internationally. We work closely with broad coalitions of local government, Native Americans, citizen groups and other conservation organizations to improve the policies governing hard rock mining and oil and gas development.

Reforming the Mining Law has been a priority for our organization since it was created in 1987. We have had some success in effectively eliminating the patenting of federal lands through the annual appropriations process, and this policy should now be made permanent. We also worked with this Committee to remove oil shale from the jurisdiction of the Mining Law. All energy minerals, such as coal, oil, oil shale and uranium, should be managed under the Mineral Leasing Act. Uranium is the only energy mineral still subject to the Mining Law.

Now is the time to update the overall mining policies governing hardrock minerals on federal lands, and we urge you to include the following principles:

1. Eliminate patenting of federal lands
2. Establish a royalty for mineral production and a fee for use of federal lands for mineral activities
3. Enable land managers to deny mining activities on federal lands where conflicts exist with other resource values.
4. Adopt comprehensive reclamation requirements for all mining, with particular consider to protecting water resources that could be polluted by mining
5. Ensure that a financial assurance is in place and adequate to cover the costs of reclaiming mines
6. Create an abandoned mine program with adequate funding to begin to address the backlog of public safety and pollution from these old mines while creating jobs and economic development opportunities in the region.

S. 796, the Hardrock Mining and Reclamation Act of 2009, addresses many of these reforms. I suggest a few changes to the bill and it should be adopted by the Committee with those amendments. S. 140, the Abandoned Mine Reclamation Act of 2009 also represents an important step forward in mining reform. If the Committee is unable to reach agreement on a broader package of reforms, I encourage it to move S. 140, but EARTHWORKS prefers to see a more comprehensive approach to mining reform, such as S. 796.

THE NEED FOR MINING LAW REFORM

Communities across the West are dealing with the potentially destructive impacts of mineral development on federal lands.

This Committee heard last year about the challenges that the Town of Crested Butte and Gunnison County, Colorado were experiencing as they balance their robust tourism economy with the threat of mineral activity in their watershed. There is a new molybdenum mine proposed above the Town of Crested Butte that could result in a permanent source of pollution into the Town's drinking water supply. Some of the federal land was patented under the Mining Law about a decade ago, over the Town's objections. Now, it is unclear whether federal land managers have the authority to deny a mining operation on that portion of the project that will be on federal lands, even if the Town's drinking water source is threatened.

The Native American community in the southwestern United States is rallying to protect Mt. Taylor, a sacred site in New Mexico. Previous uranium development left behind a legacy of radioactive waste and groundwater contamination for the Pueblo communities. Now there is interest in a new uranium mining operation on Mt. Taylor that the Native Americans believe would destroy this important cultural treasure on federal lands. The local community is working to create a designation for this area to recognize its cultural value under state law, because there is no mechanism to protect this important cultural resource under the Mining Law of 1872.

In Arizona, there is substantial local opposition to the development of a new copper project in the Santa Rita Mountains south of Tucson. According to mining company executives, the Forest Service cannot deny the mining operation because the Mining Law of 1872 does not give the land manager the authority to say no to mining.

In Idaho, the City of Boise expressed concern about the prospect of a new gold mine above the City that would be located in their drinking water supply. The City deserves the right to protect its drinking water, which is such a critical resource in the West. However, the federal land managers don't recognize their authority to balance mineral activities with the demands for clean drinking water, because of the Mining Law of 1872.

Some of our most precious natural lands are also at risk.

Literally hundreds of new claims have been staked in the past few years near Grand Canyon National Park, which is one of the hallmarks of the National Park System and sees over 5 million visitors annually. The prospect of uranium development has raised concern from Park officials and the Metropolitan Water District of Los Angeles, which would receive the tainted waters if the uranium development pollutes the Colorado River. Congress responded in 2008 with an emergency withdrawal of the land around Grand Canyon National Park, but no action has been taken. Under the Mining Law, uranium development could take place across this landscape, threatening the resources within the Park.

A new silver mine is also being considered under the Cabinet Mountain Wilderness Area in Montana. This area is home to grizzly bears and was set aside by Congress for its outstanding natural values. There is no mechanism to protect the Wilderness Area under the Mining Law.

These are just a few examples of why we need to update this law. We need to be able to give communities the ability to balance the demand for minerals with the long-term needs of their citizens. We also need to protect critical drinking water supplies and our outstanding natural areas in the West.

KEY PROVISIONS IN S. 796

S. 796, the Hardrock Mining and Reclamation Act, represents a significant step forward in managing mineral resources on federal lands in the West.

S. 796 would create a process to look at the most valuable federal lands in the West and determine whether mineral activities should occur there. Currently, mineral activities can take place in wilderness study areas, on lands of critical environmental concern and along wild and scenic river corridors. There are also mining activities proposed near National Conservation System units such as the Grand Can-

yon National Park, which should be evaluated to determine if mining is an appropriate use of federal land in that area.

S. 796 would update our financial assurance or reclamation bonding policy for mineral activities that take place on federal lands. In the past "bust" cycles of this boom and bust industry, American taxpayers had to foot the bill for clean up of dozens of mine sites that were left unreclaimed after the mining companies declared bankruptcy in Colorado, Montana, South Dakota and Nevada. We need to protect the public from further liability in the event a company cannot meet its environmental obligations.

This bill would establish a comprehensive program for permitting and enforcement of mineral activities. Under existing law, the enforcement authority of federal land managers to protect other resource values on federal lands is limited. S. 796 would eliminate loopholes that allow small scale but potentially highly destructive activities to occur on federal lands without a permit. The Forest Service currently allows operations of 5 acres or less to operate on federal lands without a permit and with little oversight and management of these operations.

S. 796 falls short in its consideration of the water-related impacts of mining. The bill would require companies to avoid the creation of acid mine drainage to the extent practicable, but clearly allows mineral activities to be approved that could pollute federal water supplies and the drinking water of downstream communities. The bill provides for long-term financial assurances to cover the costs of water treatment, but Congress should go further and deny mining operations that will become permanent sources of pollution on federal lands in the West.

S. 796 should also be strengthened to clarify the role of the federal land management agency in balancing the demands for minerals against other uses. Communities, mineral companies and the public all witnessed the divergent interpretations of "undue or unnecessary" degradation by changing Administrations and the courts in the past several years. If the Secretary of the Interior and the Secretary of Agriculture are given clear authority to protect other public values in the prevention of "undue or unnecessary degradation," as the bill suggests, that authority should be explicit.

Finally, we note that the definition of National Conservation System Units varies in different statutes. We suggest that the definition of a National Conservation System Unit in the Hardrock Mining and Reclamation Act include National Wilderness Areas, which would be consistent with the definition from Alaska National Interest Lands Conservation Act, or ANILCA.

MINING LAW REFORM CREATES ECONOMIC OPPORTUNITY

S. 796, and S. 140 will have an immediate impact in the West in the creation of jobs and economic opportunity on rural lands. The western United States is littered with abandoned mines. Many of these mine sites generate acid mine drainage and other pollutants that degrade water resources. According to the Environmental Protection Agency, abandoned hardrock mines pollute roughly 40 % of the headwaters of the streams and rivers in the West.

There is no comprehensive inventory of the extent of the abandoned mine problem in the West. The U.S. Geological Survey produced some estimates and several states have also estimated the number of mine sites, "features" and openings, which are summarized in the table below and on the map on the following page. Each mine may contain multiple "features" or "openings."

TABLE 1. WESTERN STATE INVENTORY OF ABANDONED HARDROCK MINE SITES

Arizona	Estimated 100,000 "openings"
California	Estimated 47,000 mines
Colorado	23,000 mines, including coal sites
Idaho	8,800 mines
Montana	6,000 mines inventoried
Nevada	Estimated 200,000—500,000 mine "features" at 166,000 mines
New Mexico	Estimated 15,000 mines
Oregon	140 mines inventoried
South Dakota	900 mines in the Black Hills area
Utah	20,000 mine features, including coal
Washington	3,800 mines inventoried

S. 796 and S. 140 would create, for the first time, a comprehensive abandoned mine restoration program for hardrock minerals in the West. This program will create jobs for local citizens in rural communities to clean up abandoned sites. Once restored, these lands increase in value and provide an economic boost for the local economy.

Congress already recognized the economic value of abandoned mine restoration in the economic stimulus funding that was appropriated earlier this year. As part of that bill, the Bureau of Land Management and Forest Service all received funding for hardrock abandoned mine restoration. Here are just a few examples of the work that is underway with these funds:

- BLM is investing in the clean up at the Helen Mine in the Mayacmas Mining District, located in northern Napa and southern Lake Counties, California. The state found high levels of mercury contaminating the water at this site, and California Office of Health Hazard Assessment issued a fish advisory warning due to the mercury contamination in the fish population. Restoration efforts will start this year to remediate the water pollution associated with this mine.
- The Crystal Hill Mining District is located near La Garita in the San Luis Valley in Colorado. BLM identified the need to establish closures at these mines at least 5 years ago. With stimulus funding, these safety hazards will be addressed this year.
- The Rip Van Winkle mine is located in the Merrimac Mining District near Elko Nevada. It was identified by the BLM as a priority for restoration because of the acid mine drainage discharging from the site into Maggie Creek and potentially reaching the Humboldt River. The site characterization work has been completed for this site and now the reclamation work can proceed this year.

The 2009-2010 funding for abandoned mine restoration as part of the economic stimulus is very helpful to start restoration efforts, but it is just the tip of the iceberg. Abandoned mine restoration is estimated to cost $50 BILLION.

The reclamation funding generated by this legislation could amount to substantial funding for abandoned mine clean up in the West. Senator Bingaman's bill includes a land use fee, a royalty on new mineral production and a reclamation fee to generate revenues for this program. S. 140 would also establish a royalty for new and existing mines and a reclamation fee on mineral production.

The U.S. Geological Survey estimates minerals commodities production each year in its mineral commodity summaries. S. 796 and S. 140 both include a reclamation fee of at least 0.3 percent of the mineral production value to fund an abandoned mine program. Using U.S. Geological Survey data, EARTHWORKS estimate that a reclamation fee of 0.3 percent would generate about $50 million annually, minus processing, beneficiation and transportation costs (which can be discounted in the Bingaman bill).

There is no definitive estimate of the benefit of a royalty from federal lands, because the amount of federal land production is unknown. EARTHWORKS' best guess is that about 10% of the overall metals production comes from federal lands. A royalty of 4 percent for existing mines, which is included in the Feinstein bill, could generate another $60 million in revenue for abandoned mine restoration. Senator Bingaman's bill takes a more modest approach, and would establish a royalty only for new mining operations. This approach would not generate any revenue in the near future, until new mines on federal lands are approved and brought into production.

Based on the 2006 review of environmental impact statements prepared by Jim Kuipers and Ann Maest, EARTHWORKS estimates that at least 70,000 acres of mineral activities are permitted on federal lands in the West. The land use fee would be established that charges mining companies $500 for each 20 acres of federal land in the permit area. This land use fee could generate $1.75 million for abandoned mine restoration.

The claim maintenance fee is also increased in S. 796, and would be $10/claim higher than the current fee charged by the Department of the Interior. EARTHWORKS anticipates that these funds would be used primarily to cover the costs of administering the program.

According to a State of Montana study of abandoned mines, each million dollars spent will create 65 jobs. Many of these jobs are good, high paying jobs that could offset some of the layoffs occurring around the industry due to the current economic climate.

The restoration activity would also take degraded lands and put them into productive use. This will benefit local communities and the private landowners who have abandoned mines on their property.

S. 796 would establish the revenues for abandoned mine restoration and ensure that these revenues are available on a continuous basis and not subject to annual appropriations. Given the problems associated with the coal abandoned mine fund and its unobligated balances, the Committee is wise not to repeat the mistakes made in the coal program and ensure that the funding is actually used for hardrock abandoned mine restoration.

ITS TIME TO ACT

EARTHWORKS appreciates Senator Bingaman's leadership in bringing the debate over mining reform to the Senate Energy and Natural Resources Committee. We also applaud Senator Feinstein's continued interest in finding revenues to help create jobs and economic prosperity in old mining communities that are plagued with abandoned mines. We encourage the Committee to move forward on mining reform legislation and approve a bill in Committee.

[Photos have been retained in committee files.]

Senator UDALL. Thank you, Ms. Carlson. I'm going to turn to Senator Risch to introduce our last witness, Mr. Baker.

Senator Risch.

Senator RISCH. I'm going to introduce Mr. Baker. But before I do that, Ms. Carlson I would caution against using the example of Boise being afraid that it can't protect its water supply. The issue you're referring to is a mine that was proposed up at the headwaters of the Boise River.

In the city of Boise, we get most of our drinking water from wells, but we do get some out of the Boise River. An environmental group that was wanting to stop this was using this exaggerated argument to put fear in the hearts of Boisians that they shouldn't allow this mine because it would pollute the river. As Governor of this State I assured people that we have a very active Environmental Protection Agency. We have a very active State Department of Environmental Quality.

Regardless of the Mining Act of 1872 or any other law, we are not going to allow the Boise River to be polluted by any mine legally permitted or not legally permitted. Notwithstanding any other provisions of law, the Boise River—you can go into the city, into downtown where it runs through the heart of the city, take a cup and drink the water. It's going to continue to stay that way. I think Idahoans are going to protect it. So——

Mr. Baker, welcome. Mr. Baker is CEO of Hecla Mining. For those of you who don't know Idaho has an area called the Silver Valley.

The Silver Valley, up until about 30 years ago, produced more silver than anywhere else in the world. It has a number of very large mines with works that go a mile below ground. Those mines were operated by miners who made $60-$80,000 a year and sometimes more working on contract and incentive basis.

As a result of that it was an area that had very good economic development, and a very high quality of life. Unfortunately, obviously people found they could hire people in other countries at a couple dollars a day to mine the silver, which is quite a bit different than the $80 to $100,000 a year that these miners were making. As a result very few of those mines are left operating. In fact, I think probably the Lucky Friday is the only one that is operating. Am I right on that?

Mr. BAKER. Galena. The Galena is still operating.

Senator RISCH. Still operating? But in any event Mr. Baker's company has been active for many, many years in that area. They have been a great corporate citizen in Idaho. They have provided great jobs and a lot of the economics that have driven the State over the years.

Idaho has on its seal a miner which was one of the groups that actually settled the State. We became a State in 1890, 18 years after the Mining Law of 1872 was enacted. We have a long history with mining.

We do have a number of abandoned mines. They do attract people who go into the back country or wherever. They seem to be attracted to the—and they have a lot of interest in the history and the workings that are still there and still visible. So we have a lot of that in Idaho.

I look forward to, as I think everyone does, revamping the law of 1872 with a mind that we need to keep safety in mind first. Obviously the environment is very important. But while we do clean up, and while we do rehabilitation, we also have to keep in mind that the mining industry is extremely important to the people of America from a national security standpoint, and from an economic standpoint.

Everything in this room, everything on the person of everybody in this room was either grown or taken out of the land. We need to keep in mind that we need a healthy mining industry, while at the same time, we need to see that it's done, that we don't some of the catastrophes that we've had in the past in the mining.

So with that, Mr. Baker, welcome. We are interested in hearing your views on revamping the 1872 law.

STATEMENT OF PHILLIPS BAKER, JR., PRESIDENT AND CEO, HECLA MINING COMPANY, REPRESENTING NATIONAL MINING ASSOCIATION, COEUR D'ALENE, ID

Mr. BAKER. Thank you, Senator Risch. Thank you, Mr. Chairman for having me here. I am Phil Baker. I am the CEO of Hecla Mining Company. But I'm here testifying on behalf of the National Mining Association.

Hecla Mining Company started in 1891. We've survived depressions. We've provided critical minerals for two World Wars.

But we've also evolved into a technologically advanced, environmentally responsible company built on union labor. We are the Nation's largest producer of silver, second largest producer of zinc and third largest producer of lead. I think Hecla provides a good bell weather for mining reform.

Now the mining industry supports modernizing the Mining Law to give fair returns to the United States while providing a predictable, legal and regulatory framework that attracts mineral investment, keeps those high paying mining jobs and provide resources for America. My written testimony covers the role mining has had in creating jobs particularly in rural America where mines are the core industry of a community. Thus it details our extreme dependence on foreign metal production.

One example is the United States filing a WTO action against China just last month for withholding critical minerals to the United States With only 7 percent of worldwide exploration going

to the United States there will be a growing reliance on foreign production if we don't take action. Currently we have 100 percent net import reliance on 18 important minerals.

However, Mr. Chairman, I'm going to focus this oral testimony on royalties and fees and the impact on mines. The NMA supports a net profits type royalty of production payment because of industry profitability and the nature of how mines work. No other royalty structure such as a gross royalty or a net smelter return will work for our industry. Let me explain why.

In front of me you add to the light some silver from our Lucky Friday mine in Idaho. In the middle that ore was reduced to a concentrate that's going to be sent to a smelter and then to your left, the finished product a Mercury dime. Now the dime and the concentrate both have 2.5 grams worth of silver we'd need a lot more ore to have 2.5 grams of raw silver ore.

At the Lucky Friday it costs us 50 percent of the value of that silver to extract the ore. Another 10 percent to crush it, grind it, process it into concentrate. Then the overhead for our mine is another 30 percent of the cost.

So in the concentrate, but that material in the middle is shipped to a smelter. Ninety percent of the silver's value has already been spent. This leaves very little profit margin. The mine relies upon by products in order to be viable.

So how does this relate to various royalties? A gross royalty taxes the value of the silver ore, the rock to your right, ignoring the cost that it takes to get it to the surface. The net smelter return royalty or the NSR applies to the concentrate detecting only smelter and transporting costs.

The net profit royalty includes the cost of the final product, silver to taking it to market. In hard rock mining it is very expensive to get even a teeny fraction of the initial tonnage into a product that's saleable. A gross or even a net smelter return royalty is inconsistent with the nature of our business.

I'll use this Greens Creek mine, the largest private employer in Juneau to explain the impact of these three royalty structures. Greens Creek is the world's fifth largest silver mine and usually the lowest cost mine. So in Greens Creek if it's hurt by the royalty structure the negative impact on less robust mines is going to be magnified.

Greens Creek is subject to a net profits tax in Alaska resulting in a payment of 10 percent of our total pretax cash-flow since inception. This has been a win-win for Alaska and Greens Creek because early in the mine's life a very little cash-flow was generated, but about 300 jobs were created that pay almost three times the local average. Let's contrast Alaska's net profit approach with S. 140's, 4 percent gross tax that would have taken 50 percent of the pretax cash-flow and almost 100 percent of our pretax cash-flow at the 8 percent level.

A gross royalty is a punitive tax that would close the mine. If the intent of S. 796 is an NSR, Greens Creek could not operate. At 2.3 percent NSR, the bills minimum rate 20 percent of the pretax cash would be paid and over half the cash-flow at the bills higher rate, the 6-percent rate. So both the gross royalty and the NSR would

likely have caused the closure of a mine which is expected to operate a minimum of 35 years.

Mr. Chairman, I want to thank you for the opportunity for input on this bill and royalties in particular. I'll stop my presentation here.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF PHILLIPS BAKER, JR., PRESIDENT AND CEO, HECLA MINING COMPANY, REPRESENTING NATIONAL MINING ASSOCIATION, COEUR D'ALENE, ID

S. 796 AND S. 140

My name is Phil Baker, President and CEO of Hecla Mining Company. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before this committee on amending the mining law, which if not crafted with great foresight, will not only negatively impact the domestic mining industry, but also the economy and national security of the United States for many decades. I say this because the proposed changes will put an end to growth of a viable domestic mining industry, an industry that creates high paying jobs with good benefits and provides resources critical to national security. Mining also will play a pivotal role in America's transition to renewable energy as we produce needed resources.

The current law has been in effect for 137 years. What Congress does to change that law will have a lasting and far reaching impact, so I encourage the broadest and most thoughtful reflection as you move forward. Hecla,-established in 1891 in northern Idaho's Silver Valley-just 19 years after enactment of the Mining Law-is a particularly compelling example of the positive, long-term impact that hard rock mining has on the economy. We also tell the dramatic story of how mining has evolved into what it is today-a highly regulated, technologically advanced, and environmentally responsible industry. We are the oldest precious metals mining company in North America; the largest producer of silver in the U.S; second largest producer of zinc; and third largest producer of lead. We have operations and properties in four states all of which are represented on this committee—Alaska, Idaho, Colorado, and Washington.

For 118 years, Hecla has operated in more than twelve states from the east coast to the west. We operate on private property and on patented and unpatented claims on public lands. As a company, we operate with an environmental culture that is ingrained from the corporate level to individual site workers. We have invested millions of dollars in state-of-the-art environmental protection, remediation, and reclamation. We have won awards for this effort, including the 2007 Northwest Mining Association Excellence in Reclamation Award for Idaho's Grouse Creek Mining Project and the 2004 Nevada Governor's Excellence in Mining Award for the Rosebud Mining Project.

NMA has vast expertise and is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining companies.

The testimony that I bring is one of proactive change. NMA, Hecla, and all U.S. mining companies are here to encourage dialogue on the modernization of the existing mining law. We recognize that aspects of the existing system need to be changed to provide a fair return to the public from mining on public lands. There have been proposals for amending or "reforming" the mining law for many of the past twenty years. As we look at a world of increasing competition for minerals and metals needed to sustain economic growth and transition to a renewable and clean technology future, now is the time for thoughtful and reasonable amendments that will provide that fair return while preserving critically important land tenure rights provided by the current law.

Any changes to current mining law must focus on promoting and keeping mining jobs in the U.S. and diminishing the nation's reliance on foreign minerals while effectively protecting the environment and bringing fair return to the American public. Mining was one of the first industries to outsource jobs overseas as increasing exploration dollars and mine development moved to countries which embraced the economic and social benefits that come with mining development in a community. This reform needs to reverse the current trend of exploration, the first step in developing mines, from continuing to move outside the U.S. Today only 8 percent of all worldwide exploration dollars are spent in the U.S., which means fewer mines are

developed. This paltry level of exploration investment will continue to increase our reliance on foreign minerals, which will continue to negatively impact the domestic economy and national security. As we become even more dependent on foreign countries for mineral resources, fewer jobs will be created in the U.S., less tax revenue will be generated and the infrastructure and security of our country will be threatened, including the military, renewable energy infrastructure, and even our everyday lives.

MINING GENERATES GREAT AMERICAN JOBS

With more than 50,000 direct family-wage jobs with numerous benefits, including health care, that pay on average one-third higher than the U.S. industrial average and the ability to generate as many as four additional jobs elsewhere in the economy, U.S. mining provides more than vital resources for America-it can help rebuild America during these tough economic times. Minerals provide essential resources that modern society cannot live without. Minerals are the building blocks for every aspect of American commerce, including defense equipment, transportation systems, construction, telecommunications, electronics, medical research, renewable energy infrastructure and new energy technologies. The U.S. produces only half of the minerals that this nation uses in manufacturing. However, the more than $25 billion in metal mining products generates nearly $60 billion in economic output. More than $43 billion in nonmetallic mining generates more than $100 billion in economic output. Imagine the economic benefits if we produced all of our needed resources.

On a regional level in Alaska and Idaho, two key states where Hecla operates, mining plays a major role in the economies of rural communities as well as the states themselves. These two states have a total population of just more than 2.2 million people with about 684,000 in Alaska and 1.53 million in Idaho, which is less than 1 percent of the total population of the US. Both states have widely dispersed rural communities where high paying jobs with good benefits would otherwise be non-existent were it not for mining. These mining jobs also provide health, hospitalization and dental care insurance, achieving a fundamental goal the President has set for all Americans.

In Alaska, there are 3,500 jobs with a payroll of $245 million directly related to the many facets of mining from exploration to development of active mines. The impacts of the industry reach far into the economy with another 2,000 indirect jobs and payroll of $105 million. From 1981 until 2004 more than $3.0 billion has been invested in exploration and mine development. State and local governments also reap the benefits of this industry. In Alaska, $105 million was paid to the state in royalties, user fees and tax revenue. Local municipalities and regional governments received $15.6 million, and Alaska Native Corporations received $212 million.

In Idaho in 2007, over 4,900 Idaho residents were directly employed by the mining and processing industry, which directly accounts for $250 million in direct wages. These workers produced $817 million of mineral value. The total direct impact of mining was $665 million and indirect impact was $542 million for a total impact from mining on Idaho economy of $1.2 billion. Direct and secondary economic activity generated a total of $88 million to state and local governments through taxes, royalties and fees.

Obviously, a healthy and vibrant domestic mining industry can make valuable contributions to the United States' economy as a whole. But for rural western communities, mining often is the mainstay of the local economy. Take, for example, Juneau, Alaska where Hecla's Greens Creek Mine is located. Juneau, the capital of Alaska, is a remote community with limited high paying job opportunities. Greens Creek is the largest private sector employer in Juneau.

Hecla's Greens Creek Mine, Juneau, Alaska:

- Employs an average of 308 personnel;
- Pays an average salary of $92,000 which is almost triple the local average of $35,000 in Juneau;
- Has a total annual payroll of $28.3 million;
- Supports 210 indirect jobs in Juneau with annual payroll of $5.3 million;
- Supports 318 indirect jobs state wide with annual payroll of $7.7 million;
- Spends $43 million statewide for vendor goods and services;
- Pays $1.5 million to the City and Borough of Juneau in real property, business property and sales tax;
- Contributes $50,000 annually to charitable organizations; and
- Pays employees for several hundred hours of volunteer time.

Greens Creek Mine employees:

- Pay $430,000 in property taxes;

- Provide Juneau School District with 192 students, which accounts for $664,000 in state funding;
- Donate more than $15,000 personal dollars to charity; and
- Donate greater than 4,000 volunteer hours to charity, schools and community.

In the community, a household opinion survey showed that:

- 78 percent think that Greens Creek has a positive impact on the community;
- 83 percent think that mining is important to Juneau's economy; and
- 64 percent feel that Greens Creek does a good job of protecting the environment while 27 percent said that they don't know. Only 9percent were negative.

In rural Shoshone County, Idaho where Hecla has operated since 1891, there are similar economic and social impacts.

Hecla's Lucky Friday Mine in rural Shoshone County, Idaho:

- Employs an average of 271 personnel;
- Pays an average salary of $64,575 which is more than double the local average of $27,000 in Shoshone County;
- Has a total annual payroll of $17.5 million;
- Provides 1 in 10 jobs in rural Shoshone County;
- Supports indirect employment of 378 personnel; o Pays $11.6 million locally in vendor supplied good and services;
- Pays $3.8 million real property, business property and sales tax;
- Contributes $75,000 annually to charitable organizations; and
- Pays employees for several hundred hours of volunteer time.

Lucky Friday Mine employees:

- Are active volunteers in community and school organizations;
- Provide the local school district with 175 students which accounts for about $615,000 in state funding; and
- Are active volunteers with local emergency response teams.

Creede Project in Mineral County, Colorado:

Hecla has an extensive exploration project in this historic mining district in Mineral County, located at the head of the San Luis Valley, which includes one of the poorest areas in Colorado. If the project comes to fruition, Hecla will bring high paying jobs with good benefits to an isolated community, as well a positive impact on local economies in the San Luis Valley of southern Colorado and northern and central New Mexico. Local impact includes goods and services from local suppliers as well as those in larger cities such as Albuquerque.

SILVER, A STRATEGIC METAL

As president of the largest silver producing company in the U.S., let me use silver as an example of the critical role minerals play in our society to promote our way of life and our national and economic security. How could our society function without silver? Silver, our trademark metal, is a compelling example of a strategic metal for which we reliant on foreign sources.

Silver, a unique metal, has the highest thermal and electrical conductivities and highest reflectivity of all metals. Silver is indispensible for all renewable energy technology. Solar photovoltaic cells rely on silver for efficient collection and concentration of electrical current. Hybrid cars and wind turbines also require silver for efficient electrical transmission.

Silver, the king of electronics, is the standard for electrical conductivity against which all metals are compared. You hold silver in your hand every day, but on a grander scale, silver will play a vital role in updating our inefficient 100 year old national electric grid infrastructure.

Uses of Silver—Silver is a Critical Component of:

- Household electrical outlet: silver is a critical component for the outlets and your appliances to work;
- Common household appliances: microwaves, dishwashers, televisions, computers;
- Water purifiers: silver helps rid drinking water of bacteria, chlorine, lead and particulates;
- Energy saving windows: windows treated with silver reflect away almost 95 percent of the sun's rays;
- Batteries: especially small, lightweight batteries needed to power watches, cameras and other small electronic devices like cell phones and iPods;

- The strongest cast aluminum alloy known—used to protect C17 fighter jets and Apache helicopters;
- Solar panels: More than 90 percent require silver; and
- Medical advances: Silver nitrate has anti-bacterial properties that make operating rooms and hospitals safer.

The US is 60 percent import reliant on silver. How can that be? According to the U.S. Geological Survey, the United States is in the top five countries with significant silver reserves and resources. In 2008, approximately 1,120 tons of silver, with an estimated value of $570 million was produced in the US. Alaska continued as the leading producer state followed by Nevada. Silver has critically important uses, and the United States has significant resources that are not being mined. Amendments to the Mining Law should focus on ways to reduce dependence on imported silver and many other mineral commodities.

Silver is a metal that helps protect our armed forces and national security, potentially saves lives, and enhances our daily lives. Why do we rely on politically unstable countries to provide that-or any other—strategic metal?

The answer may partially be in the Behre Dolbear report *2009 Ranking of Countries for Mining Investment: Where "not to invest"*, which is attached for the record. The report ranks the United States 5 out of 10 on the basis of the tax regime, citing the 35% corporate tax income tax as one of the highest in the world. In addition, the report also cites state levies and concerns of Congressional actions imposing additional mining specific taxes (royalties). With regard to permitting delays, the U.S ranks a 2 of 10 citing the lengthy 5 to 7 year period required before mine development can commence. The report notes that many companies prefer to take the risk of operating in a more politically unstable country, where mines can be brought on line in 18 months rather deal with the arduous and expensive five to seven year permitting process in the United States.

AMERICA'S ABILITY TO PROVIDE NEEDED RESOURCES

The U.S. can and should be more self-reliant for the minerals we need. Despite known reserves of 78 important mined minerals, the United States currently attracts only eight percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic resources.

The U.S. Geological Survey has documented that America now depends on imports for 100 percent of 18 minerals commodities. In addition, the U.S. is more than 50 percent import reliant on another 43 commodities. This increased import dependency makes our country vulnerable in troubling political times and is not in our national interest. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, loss of high paying jobs and vulnerability to possible supply disruptions due to political or military instability.

For example the metals and minerals used in hybrid cars, wind turbines and solar panels have high net import reliance, while the U.S. has unmined domestic reserves. The net import reliance of some of those important metals is as follows:

- Aluminum 100%
- Rare earths 100%
- Platinum 91%
- Cobalt 81%
- Zinc 73%
- Silver 60%
- Titanium 54%
- Copper 32%

These statistics raise important questions about where the Nation obtains strategic minerals. For example:

- Should we create jobs and obtain rare earths from an environmentally responsible mine in California or rely on China for this strategic metal?
- Should create jobs and obtain cobalt from an environmentally responsible mine in Idaho or rely on politically unstable Congo, Tibet, or Siberia for this strategic metal?

Our import reliance crisis was brought to the forefront when President Obama filed a complaint with the World Trade Organization accusing China of limiting exports of raw materials such as bauxite and zinc, which are critical for production of steel, aluminum and other products. By withholding these raw materials, China creates unfair preference for their own industries.

A July 2009 U.S. News and World Report article, which is attached for the record, speaks directly to the U.S. import reliance for metals. We are 100% dependent on China for rare earth metals, even though there are known deposits in California and Idaho. China recognizes the critical importance of rare earth minerals which are considered "the backbone of the Information Age" and in many applications there is no substitute. China has aggressively purchased control of mines in Brazil and Australia and is working to make control world supplies of rare earth metals. Their dominance goes back to a carefully thought out plan from 1992 with the mantra "The Middle East has Oil; we have rare earths." Currently China controls more than 90% of the world's rare earths.

The U.S. News and World Report notes that since 2002 Chinese exports of rare earth metals have dropped from 60,000 tons to an expected 2009 export of +30,000 tons. A 2008 Australian analyst, Dudley Kingsnorth, predicted that by 2012 China will retain all rare earth metals for their domestic consumption, effectively cutting off the world from this critical commodity while global demand continues to grow.

Meanwhile American industry and American consumers retain a myopic vision of the supply chain and do not understand that the loss of critical minerals, the fundamental construction materials, will send more American industries to the countries that produce necessary raw materials. Will this signal an end for American industries which require rare earth minerals for their products? Will we be buying all of our wind turbines, solar panels, hybrid cars, electronics and other durable goods from China?

Our over-reliance on foreign supplies is exacerbated by competition from surging economies such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are rapidly increasing; they are growing their economies by using the same mineral resources that we need to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources.

JUST HOW PROFITABLE IS AMERICAN MINING?

There is a misconception that hardrock mining, especially precious metals, is enormously profitable. Many equate the value of minerals extracted from the ground with actual profits of mining companies; however, that is far from the truth. Mining company profits are influenced by a number of cyclical factors, most notably the value of the commodity being mined.

Unlike durable goods industries, which can increase the price of their products to compensate for increased costs of raw materials, energy, and labor, world markets dictate the price of metals while the mining company must still struggle with the increased costs to operate. In other words, a copper mining company cannot unilaterally decide to sell its copper at $4.00 per pound when the spot rate is $1.60 per pound.Just what does it take in time and capital investment to develop a mine in the United States? I'll use an example of a hypothetical mine similar in size to Lucky Friday or Greens Creek. Larger mines potentially could have double or triple costs and longer time to bring the mine to production. The following are the steps and costs to find and develop a mine in the U.S.:

- Grass roots exploration and drilling to define mineral deposit

  —Multiple years of sampling and drilling
  —$5 million per year for drilling

- Calculate reserves and develop Plan of Operations

  —2 to 4 years
  —Up to $3 million per year

- Submit Plan of Operations to Agencies and begin Environmental Impact Statement

  —5 to 8 years
  —Develop EIS and submit for public comment
  —Review public comment and respond
  —Appeals period
  —Record of decision
  —Entire permitting process
  —Cost over 5 to 8 years $10 million

- Actual Mine Development

  —Construction 2 to 3 years depending on type and size of operation
  —Development costs in excess of $250 million

- Total time and Costs before any ore is mined

—Time up to 15 years
—Total costs in excess of $300 million including such large capital investment items as:

—Ore processing mill $25-50 million
—Underground access shaft $250 million

At this point a company has already invested more than $250 million on a project that could become non-economic should the commodity price drop soon after production begins. After the mine goes into production, daily operating costs including fuel, power, labor, maintenance, chemical, etc. quickly impact profits.

In addition to operating costs at the mine, a company will have other costs related to support facilities, on and off-site exploration, development, depreciation, environmental compliance and a host of other items. All the while commodity prices fluctuate on a daily basis while the company is trying to recoup its initial investment which may take another 5 to 6 years. In short, a modern mining company needs to be prepared to invest several hundred million dollars for up to 20 years before the initial investment is recovered.

NMA SUPPORTS NET PROFIT ROYALTY FOR FAIR RETURN TO PUBLIC

NMA supports a fair return to the public through imposition of a royalty. The "key is to achieve a royalty that most mines can bear and still make reasonable profits." (Oct. 2, 2007, testimony of James Otto before the House Natural Resources Committee, attached for the record.) Since the imposition of a royalty has the potential to have significant economic consequences on existing and future mining operations, the type of royalty, the rate and its application to existing claims are all critical variables that must be considered. An 8 percent gross or Net Smelter Return (NSR) royalty, such as that contained in S140 does not properly balance a fair return to the public and the need to encourage the private investment required to develop mining operations and provide the resources needed by our economy. As described in a previous section, mining operations require long-term and substantial commitments of capital and years of development before investors realize positive cash flows. A royalty rate, that is the highest government-imposed rate in the world, will obviously impact return on investment, our ability to create good paying jobs here at home and our ability to meet more of our own needs for minerals. As noted by the World Bank:

> A mining country that relies on private firms to find and exploit its mineral resources must compete with other countries for investment. Its investment climate, which reflects how attractive the country is to domestic and foreign investors, depends ultimately on two considerations: first, the expected rate of return the country offers investors on their investments in domestic projects, and second, the level of risk associated with those projects.
>
> Otto, James et al., Mining Royalties: A Global Study of Their impact on Investors, Government, and Civil Society. World Bank, 2006, p. 183 (attached for the record).

The primary weakness of a gross or NSR royalty "is that low profit mines will have the same royalty basis as high profit mines, and this may impact them with regard to decisions about mine life, ore cut-off grade, and whether to continue operations when prices are low." (Oct. 2, 2007 Otto testimony) Because it is applied regardless of mine profitability, a gross or NSR royalty fails to take into account the cyclical and often volatile nature of commodity prices.

As demonstrated by extremes in highs and lows for commodity prices over the last couple years, the prices of hard rock minerals have historically been subject to great fluctuation. (See National Mining Association—Five year overview of select commodity prices, attached for the record.) The addition of a royalty can:

> turn a profitable mine into valueless rock with a sudden downturn in the market. Simply put, as commodity prices decrease the rate of return required to justify a mining investment increases more dramatically under a gross [or NSR] royalty than under a net [profits] royalty. Because the other costs of the mining operation are relatively fixed, the gross [or NSR] royalty takes a bigger bite out of the shrinking income pie as prices decrease.
>
> Oct 2, 2007, testimony of James Cress before the House Natural Resources Committee. (attached for the record)

A gross or NSR royalty would require a mining company to continue paying a royalty even when it is operating at a loss, and that royalty could even cause the loss. No mine can be operated long at a loss. The result would be that some mines shut down prematurely, jobs would be lost, federal state and local taxes would not be paid, and suppliers of goods and services would suffer.

A net profit royalty, in contrast, does not cause mining operations to operate at a loss. A net royalty automatically reduces during periods of low prices and increases again when prices are higher, permitting mining operations to weather periods of low commodity prices and maximize the recovery of marginal ore during periods of high prices. Due to the cyclical nature of demand for mineral commodities, there have been and will always be periods of lower commodity prices. A net profits royalty provides the best incentive to explore for minerals on federal lands throughout economic cycles so that the nation's needs can continue to be met.

Because the commodities affected by the proposed legislation are sold on a world market, U.S. costs must be competitive to attract the investment needed to promote domestic mining. Obviously, the royalty will impact U.S. costs and, if not carefully crafted, will put U.S. mining projects at a competitive disadvantage. A high gross or NSR royalty ignores the fact that:

The United States corporate tax rate of 35% is virtually the highest corporate tax rate in the world. This, combined with many high state levies, provide a significant negative incentive for future investments. Its major trading partners continue to lower their rates putting American corporations in increasingly uncompetitive situations. Behre Dolbear, 2009 "Where Not to Invest.(attached)"

Because other extractive industries pay a royalty based on gross value for the product does not mean that gross royalty is appropriate for hardrock mining. In an article by Doug Silver *When Ignorance Meets Greed: Welcome to the New Mining Law*, (attached for the record), the author explains why the gross royalty imposed on coal mining will not work for hard rock mining.

> It is rumored that the 8% figure targeted by congressional sponsors was likely derived from the royalty rate currently paid on federal coal lands (8%—12% depending on the mining method). After all, if the coal boys can pay it, why can't the metal miners?
>
> The answer is simple. In a coal mine, one mines massive blocks of mineral, crushes them and perhaps washes the coal. Then the coal is loaded and shipped to the utilities. In excess of 75% of every ton mined is used in the finished product. It should also be noted that coal processing (washing) and associated transportation costs are allowed deductions in determining the coal royalty value. The newly proposed royalty rate for the Hardrock industry is based on gross income without any deductions.
>
> Metal mining is quite different from coal mining. Copper mines can have grades of less than 0.5% per ton and gold mines often grade less than 0.05 ounces gold per ton mined. They then have to be beneficiated and often treated with special chemicals or smelting to crack the minerals and liberate the metal. This is an expensive process in which only a tiny fraction of the initial tonnage produces a final salable product. The economic differential between coal and metals mines is enormous, but apparently Washington is unaware of these commercial issues.

NMA OBJECTIVES FOR MINING LAW REFORM

NMA is committed to the development of a fair, predictable and efficient national minerals policy through amendments to the Mining Law of 1872. Appropriate changes to the Mining Law provide an opportunity to decrease our dependence on foreign minerals, promote job creation, drive economic growth and transition to renewable energy. Appropriate changes also will be developed within the existing and effective federal and state environmental regulatory framework that already governs minerals projects on public lands. Because of these existing comprehensive and effective regulations, modern mining in the U.S. is a worldwide model of environmental stewardship and reclamation achievements.

Responsible amendment to the mining law should achieve the following objectives:

- Utilize a Net Income Production Payment or Net Profits Royalty to Provide the Public Fair Compensation for Minerals Produced from New Mining Claims on Federal Lands

  —Production payment base should be net of operating costs—not a gross or NSR royalty;

—A net production payment is a better incentive for investment because it takes into consideration the costs to process ore into a marketable product and does not penalize operators during periods of low commodity prices;
—A net production payment should be structured to recognize that most mining claims already are subject to an underlying private royalty burden and that the combination of federal and private royalties must not make mines unprofitable;
—The net production payment should not diminish the revenue from state mineral taxes and severance taxes relied upon by state and local governments; and
—The net production payment should take into consideration the total tax contribution of mining companies so as not to undermine investments in mine development.

- Preserve the 30 U.S.C. Section 22 Rights of Self Initiation and Entry

—Preserve the Mining Law rights of self initiation and entry at 30 U.S.C. § 22 to enter and occupy public lands open to prospecting and exploration for locatable minerals and location of mining claims.

- Provide for Secure Rights to Use and Occupy Federal Lands for Mineral Purposes (Security of Tenure)

—Certainty regarding the ability to use and occupy the land through the entire lifecycle of exploration, development, mining and reclamation from the time of claim location through mine reclamation is needed to attract private investment in mining activities on federal lands; and
—Payment of the claims maintenance fee should be the sole mechanism that secures all rights to use and occupy federal lands for all mineral purposes throughout the entire life cycle of the project, including uses reasonably incident thereto pursuant to 30 U.S.C § 612 (a) and (b), both prior to and after discovery of a valuable mineral deposit.

- Establish an Abandoned Mine Lands Clean-up Fund with the Revenues Generated from a Net Income Production Payment

—Currently abandoned mine programs are funded through state programs and congressional appropriations to federal and state agencies;
—Funds should be coordinated with existing federal and state AML funds and programs; and
—Good Samaritan liability protection is needed to encourage and promote voluntary clean-ups.

- Recognize that the Existing Comprehensive Framework of Federal and State Environmental Laws Provides Comprehensive and Effective Regulation of All Aspects of Mining from Exploration through Mine Reclamation and Closure

—Mining is one of the most regulated industries in the U.S. with numerous environmental laws and regulations, which are administered by multiple federal, state and local agencies;
—The numerous federal and state environmental laws and regulations that govern mining demand a high level of environmental protection and require financial assurance to guarantee reclamation;
—No new or different regulations, environmental performance standards or financial assurance requirements are needed; and
—According to a 1999 National Academy of Sciences report, *Hardrock Mining on Federal Lands* this existing environmental regulatory framework for mining is "generally effective" in protecting the environment. The discrete regulatory gaps that were identified in this study have been filled.

- Recognize that the Existing Authorities for Closing or Declaring Unsuitable for Mining Those Federal Lands with Unique Characteristics or of Special Interest

—New authorities for protecting special lands are unnecessary as Congress has and continues to routinely use its ample existing authority to establish wilderness areas, national parks, wildlife refuges, recreation areas, and wild and scenic rivers that close lands to mining;
—Congress also has granted additional authority to the Executive Branch to close federal lands to mining. The Antiquities Act authorizes the President to create national monuments to protect landmarks and objects of historic and scientific interest; and

—Furthermore, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land withdrawal authority of the Federal Land Policy and Management Act.

The cornerstone of NMA's policy objectives is a predictable legal and regulatory framework to provide the long-term certainty and stability needed to protect existing investments and to attract new capital necessary to maintain a healthy and sustainable domestic mining industry. The importance of the domestic mining industry to our economy, our renewable energy future, our way of life and our national security cannot be ignored. Indeed, it is economically and environmentally irresponsible for us to ignore the vast mineral resources we have within our nation's boundaries when our domestic needs are so great.

S. 796 AND S. 140 FAIL TO MEET THE NEEDS OF U.S. MINING

NMA is aware that Chairman Jeff Bingaman (D-N.M.) introduced S. 796 to stimulate dialogue, and as such, NMA is committed to working with the Chairman and the Senate Energy and Natural Resources Committee to enact reasonable amendments to the Mining Law. In addition Senator Dianne Feinstein has introduced S. 140 the "Abandoned Mine Reclamation Act of 2009". NMA cannot support S. 796, the "Hardrock Mining and Reclamation Act of 2009" or S. 140 the "Abandoned Mine Reclamation Act of 2009" as currently written for two reasons. First, provisions in the bills will increase our Nation's dependence on foreign minerals-an outcome that will weaken our defense and compromise our agenda to develop a renewable energy infrastructure and renewable sources of energy. Secondly, S. 796 adds regulatory uncertainty that will undermine U.S. competitiveness and threatens thousands of high-paying mining jobs and countless mining-dependent communities. America's families, communities and businesses cannot sustain higher energy costs, additional job losses and further weakening of our economy during these difficult times. However, NMA does support many of the concepts in the royalty provisions of S. 796, particularly those providing for deductions. But because of the shortcomings described below, NMA is not able to give its full support.

Likewise, S. 140's 4 percent gross royalty on mines with current commercial production and 8 percent gross on new mines will result in premature closure of existing mines and make future mines uneconomic, resulting in an unhealthy increased reliance on foreign sources of minerals, a loss of high paying family-wage jobs, and bring severe economic hardship on mining-dependent rural communities. Furthermore, assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.

- Royalty Provisions of S. 796 Will Undermine Investment Because They Are Not Defined Adequately and Leave Most Critical Details to Future Rulemaking to Determine the Following:
  - —The exact amount of the royalty (a range of 2-5 percent to be decided by the Secretary of the Interior through regulations);
  - —The precise nature of deductions that are reasonably associated with beneficiation, processing and transportation;
  - —The standard to be used to determine the royalty rate; and
  - —Whether the entity responsible for payment of the royalty is the operator (which is the simplest way for the government to administer) as opposed to owners, coowners or underlying royalty owners.
- The Reclamation Fee in S. 796 and S. 140 is Unnecessary in Light of Other Fees imposed and Creates Uncertainty
  - —The reclamation fee is unnecessary, is an additional burden on mining companies that does not take into consideration the total tax contribution of mining companies, and will undermine investments in mine development.
  - —The reclamation fee would apply to production on nonfederal as well as federal lands
  - —As in the case of the royalty, there is no standard for the Secretary in determining the percentage (between 0.3 and 1 percent); and
  - —There is no provision to credit the fee against the royalty.
- S. 796 Fails to Clarify Rights to Provide Security Tenure Needed to Attract Investment
  - —S. 796 fails to clearly preserve self initiation and entry rights to go onto open public land and conduct mineral activities;

—S. 796 fails to replace the security that was provided by patenting with explicit legislative language that grants claimholders the right to use and occupy the land both prior to and after discovery of a valuable mineral deposit for all mineral activities authorized under the Mining Law throughout the entire life of the project; and
—S. 796 and S. 140 do not establish that claimants have rights against the United States and instead merely restate the common law doctrine that claimholder has the right to keep other claimants off his claim.

- S. 796 Includes a New and Unnecessary Mechanism for Land Withdrawals

—S. 796 gives local federal land managers the broad discretionary authority to withdraw lands from the operation of the mining law established under FLPMA § 202(c), which does not require an evaluation of mineral potential.
—S. 796 requires local federal land managers to conduct a complete review of numerous areas with potential special resource values-including more than 58.5 million acres in the 2000 Roadless Rule-for the purpose of identifying lands that should be withdrawn from mineral entry.
—S. 796 authorizes withdrawals that do not have to comply with the withdrawal procedures and congressional approvals required by the Wilderness Act of 1964 and the Federal Land Policy and Management Act (FLPMA).
—S. 796 has the potential to place substantial areas of mineral-rich federal lands off limits to mining without evaluating how these withdrawals will increase the Nation's dependency on foreign minerals or adversely affect the economy and America's transition to renewable energy sources and clean technologies.

- S. 796 Requires New Environmental Provisions That Will Duplicate Existing Standards

—S. 796 directs the Secretaries of the Interior and Agriculture to jointly promulgate new environmental and reclamation standards for mineral activities on federal lands;
—The new regulations are duplicative of requirements already applicable under FLPMA or the National Forest Management Act; and
—There is no on-the-ground justification for creating a new regulatory structure for hardrock mining. The 1999 National Academy of Science study referenced above found the existing regulations to be comprehensive and effective.

- S. 796 Creates An Inefficient Permitting Scheme for Exploration Activities

—The bill institutes an extensive new permitting scheme for exploration activities, even those that would impact fewer than five acres of land.
—S. 796 eliminates the current practical regulatory scheme for initial exploration activities, such as road building and exploration drilling that create less than 5 acres of surface disturbance. These regulations currently provide for an expeditious review and approval of proposed initial exploration projects and require a reclamation bond to guarantee that exploration-related surface disturbances be fully reclaimed; and
—S. 796 creates a more cumbersome permitting process for exploration activities, which will cause substantial delays for companies resulting in a slower pace of discovery and will place an increased administrative burden on surface land managers.

- S. 796 removes critical non-metallic commodities such as uranium from "locatable" to "leasable" status

—Changing the status of uranium and other non-metallic minerals to leasable commodities will effectively cripple these industries.
—Uranium and other non metallic commodities should remain locatable minerals because they require exploration and development similar to metallic minerals;
—Discovery, delineation and development activities typically require years of fact-finding including ground, aerial and satellite reconnaissance; exploration drilling; environmental baseline data gathering; workforce hiring and training; mine and mill planning, design and construction; decommissioning and decontamination.
—Uranium ore requires additional extensive and expensive processing in the form of mining, crushing of the ore, separation and concentration of the U3O8.

CONCLUSION: MINING CREATES JOBS

Two of the current administration's major priorities can be achieved with thoughtful modernization of the Mining Law: job creation and increased use of renewable energy sources. First, job creation related to mining will play a pivotal role in economy recovery. Second, mining produces strategic metals necessary for transition to renewable energy infrastructure for the United States. By keeping high paying mining jobs at home and producing those strategic metals, the U.S. will be positioned for a stable economic and renewable energy future. Just as we are trying to escape the downward spiral related to dependence on foreign oil, our goal, as a country, should also be to reduce dependence on foreign countries for strategic metals.

Across the U.S., mining has had a profound economic impact with generation of both direct and indirect jobs and economic output. In just nine western states, there are more than 35,000 direct metal mining jobs with a total payroll of more than $2.6 billion. That equates to an average wage of more than $74,000 per year plus benefits. The direct economic output in those 9 states is more than $17 billion. That is only the frame on a much larger economic picture which is composed of multiple indirect jobs, wages, tax revenues and social benefits.

The impact of all aspects of mining from exploration through production and reclamation ripples through the economy, especially in rural communities. Tax revenue is generated at federal, state and local levels. Indirect jobs are created. Schools benefit directly from increased enrollment and funding as well as from the generosity of mining companies in the area. Local communities develop stable infrastructure because of a healthy tax base. Community organizations that support arts, youth activities, senior citizens, recreation thrive in mining economy-based rural communities. At a time when unemployment is high and job creation is critical, mining can help drive a strong recovery by keeping jobs at home.The United States needs a robust minerals production industry to help meet the needs of American consumers. The transition into green technology is 100% dependent on the availability of critical minerals, many of which have known reserves and can be mined in the United States. Unfortunately, America is ceding to others the responsibility for meeting our minerals needs. Increased import dependency created by lack of U.S. mineral development is not in our national interest and causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations and vulnerability to possible supply disruptions due to political or military instability. The U.S. mining industry has fully embraced the responsibility to conduct its operations in an environmentally and fiscally sound manner. It hopes and expects that Mining Law legislation will recognize and honor both this commitment and the industry's contribution to our national well-being.

NMA appreciates the opportunity to provide this testimony.

ATTACHMENTS*

Behre Dolbear Group, Inc., 2009, 2009 Ranking of Countries for Mineral Investment: Where "not to invest", 17p

Burnell, James, March/April 2009, You Say Alternatives are the Answer: let's talk, The Professional Geologist, page 33-37.

Cress, James, January 24, 2007, Full Committee hearing: Oversight Hearing to receive Testimony on Reform of the Mining Law of 1872, 15p.

Cress, James, October 2, 2007, House Subcommittee on Energy and Natural Resources, Legislative hearing on H.R. 2262-Royalties and Abandoned Mine Reclamation, 7p.

Garber, Kent, July 1, 2009, America's New Energy dependence: China's Metals, U.S. News and World Report.

National Mining Association, 2009, 5-Year Metals Prices 2004-2008 for Copper, Nickel, Molybdenum, and Zinc

Otto, James et al., Mining Royalties: A Global Study of Their impact on Investors, Government, and Civil Society. World Bank, 2006, p. 183.

Otto, James, January 24, 2008, Senate Committee on Energy and Natural Resources, Reform of the Mining Law of 1872 (royalty), 5p.

Silver, Doug, 2009, When Ignorance Meets Greed: Welcome to the New Mining Law, SME.

Senator UDALL. Thank you, Mr. Baker, thanks to the entire panel for compelling, important, and insightful testimony. I'm going to recognize myself for 4 minutes and direct a question at

*Attachments have been retained in committee files.

Ms. Carlson. Then the rest of the panel should feel free to comment.

As a preface to that question, I want to note that Ms. Nazzaro said that there are at least 161,000 abandoned hard rock mine sites in the States that GAO analyzed. Obviously these areas need to be cleaned up. There are certain funding problems that we've heard about in cleaning up the sites.

But I've also heard from groups who have the funds today to clean up the sites who face liability challenges. With that in mind I drafted legislation that would authorize the EPA and the States to issue so called Good Samaritan permits. I did that in the House. I intend to do so in the Senate as well.

The permits would address the obstacle of the Clean Water Act liability exposure to those who had no responsibility at a mine site to come in and help clean up any water pollution from the site. I know, Ms. Carlson, you've worked on this particular challenge in Colorado and all over the country. Can you tell us about some of your experiences and whether in your opinion there's a need for this type of language?

Ms. CARLSON. Yes, thank you, Mr. Chairman. One of my favorite topics, talking about how to clean up abandoned mine sites. I think we have seen in Colorado and elsewhere, at least in the States where there's water associated with abandoned mines that water becomes an obstacle for State agencies, local governments, even non-profit organizations in their efforts to go out and try and clean up some of these old mine sites. They're concerned about the liability under the Clean Water Act.

We've been working with your office, Mr. Chairman and with the relevant committees, Senate EPW and the House Transportation Infrastructure Committee now for a while to see if we can draw attention to this issue. Try and address the liability for, under the Clean Water Act for cleanup of abandoned mines. See if we can actually get some of the money that I hope will come forward in Mining Law reform to address our most important water pollution problems.

Senator UDALL. Thank you. Any other members of the panel care to comment?

Mr. Butler.

Mr. BUTLER. Mr. Chairman, just briefly. I do think that there is a general agreement that that kind of a change in the law is necessary. I know from my own practice that the companies are discouraged from acquiring properties that have been abandoned if there are potential environmental liabilities whether Clean Water Act or otherwise associated with those properties.

So if that hurdle were overcome I think you would see some companies move in and clean up and re-mine some of these sites.

Senator UDALL. Any other members of the panel like to comment?

There are other examples in Colorado. One in particular that's been high profile for many years near the Keystone ski area, the Montezuma Mine was, still is, sending polluted waters downstream. There were a couple of local non-profits that wanted to help clean up that site.

As they further analyzed what it would take, they became very concerned that those institutions would be exposed to liability. They backed away. That clean up has not proceeded.

This is one example of an opportunity. If we could find our way clear to make sure that the liability provisions are in place for a Superfund that make sense, but also when you have Good Samaritans who want to do this kind of work that they could proceed.

Mr. Butler, if I might with the remaining time. I think we'll do a couple rounds if Senator Risch can stay. Because I know we have some areas that we'd like to pursue a little bit further.

In your testimony you oppose the requirement in S. 796 that all exploration activities including those covering five acres or less should be subject to a permit. You state that requiring a permit would not have any intended environmental benefits. Upon what do you base that conclusion? Doesn't requiring a permit mean that NEPA would apply while now under notice operations it does not?

Mr. BUTLER. That's exactly correct. The notice process has been going on under the BLM regulations for 30 years. Some changes were made based on the NRC report. It's now limited exclusively to exploration and full bonding is required.

The whole point of that exercise is that some of these small exploration operations can be permitted, if you will, without a specific permit being issued. It's similar to what EPA and some State environmental agencies use as a permit by rule. You specify what a company has to do and if they do that they can go ahead. That's the way the notice level process works.

For those small activities all that—if they go through the NEPA process they go through environmental assessment and end up with a finding of no significant impact this process allows that exercise to be avoided, again for these five acre or less exploration properties.

Senator UDALL. Thank you for that clarification. I'm sure this discussion will continue as we move forward on the legislation.

Let me turn to Senator Risch. I know we'll have a couple of rounds here. At least I want to pursue further discussion about royalty and the best way to prescribe royalties.

Senator Risch.

Senator RISCH. I'm going to jump in ahead of you on that. Ms. Nazzaro, does the administration, have they stated a position regarding the net return verses a gross tax?

Ms. NAZZARO. I've not seen anything that the administration came out in favor or against any of the legislation that's proposed.

Senator RISCH. How about the GAO? Have you guys taken a position at all on whether it should be net or gross?

Ms. NAZZARO. No. We've just laid out that the various types so that you can see, you know, what occurs. What you really need to take into consideration, not only is the type but also the rate.

Because you could actually have, for example if you took net proceeds where they get the greatest amount of deductions. But if the rate was higher that could actually be not as beneficial of a unit base that where the rate is lower. So it really needs to be a combination of the two.

What we have taken a position on is as you get more from a unit base to a net proceeds as I believe Secretary Salazar mentioned

today, it can get more difficult to audit and oversee that because the more deductions, the more complex the permitting would be and the provisions, it would be more difficult to audit.

Senator RISCH. Mr. Leshy, do you have a position on that?

Mr. LESHY. No, I think the GAO, Ms. Nazzaro laid it out, the relevant issues.

Senator RISCH. Ok. Mr. Baker, is it the MNA's position that this bill should look at the Alaska model as being something that's been tried and actually worked in a real life situation? Is that the position of NMA?

Mr. BAKER. Yes, certainly the Alaska model and the Nevada model are both good examples of a royalty that has worked, a royalty like taxes worked. As was mentioned earlier you've seen the growth in mining in Nevada under that sort of legislation. Same thing in Alaska, we've seen more mines come into production.

We think it's the way to go.

Senator RISCH. Any States have a gross tax right now?

Mr. BAKER. The answer is yes. There are States that have gross tax. But you also don't see a significant amount of mining activity in those States. It's not a growing industry where that's happening.

Senator RISCH. Which States? Can you tell me off the top of your head which States?

Mr. BAKER. Off the top of my head, I cannot. But I'd be happy to come up with a list and——

Senator RISCH. Please.

Mr. BAKER [continuing]. Supply that to the committee.

Senator RISCH. Alright. I appreciate that. Thank you.

Mr. Leshy.

Mr. LESHY. Yes, Senator. I'm sorry to interrupt. But I did have one thought that hasn't been mentioned concerning a royalty. That is whether or not you permanently and totally exempt existing mines verses only leveeing it on new mines.

That is a very significant issue. S. 796, I believe totally exempts existing mines. The counterpart bill in the House does not and neither does S. 140. It has a lower royalty on existing mines, but it's not a permanent exemption.

That's a very important issue in part because of, obviously, fairness to the existing mines. But also in terms of what kind of revenues you're going to generate from this because many of these mines or a number of these mines last a very, very long time. I mean the Bingham Canyon is the classic example. It's been mining for 140, 130 years and may mine for another 30, 40, or 50 years.

If you totally and permanently exempt existing mines you're creating a big hole in the revenue stream. That total and permanent exemption is far past any, you know, repayment of the original capital investment. So I urge caution in the committee on that because if you totally and permanently exempt existing mines you're really going to create a big hole in the revenue stream.

It's an unwarranted hole because obviously existing mines deserve some, you know, treatment that's different from new mines in terms of the investment structure and all of that. But a total and permanent exemption is not warranted in my view. Thank you.

Senator RISCH. But you're thinking of a phase in or something like that?

Mr. LESHY. A phase in, a lower rate or combination of the two, you know, a permanent, I mean an exemption for 10 years or a lower rate for a period of years or something like that. But that goes all out in perpetuity I think is too much.

Senator RISCH. Thank you. Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Risch. Let me turn back to Ms. Nazzaro, following up on Senator Risch's question. Can you give us more information on State-owned hard rock minerals and what type of royalty applies?

Ms. NAZZARO. Yes. We did a report last summer for the committee where we looked at the 12 Western States and in the four categories of royalties that we've been talking about today. There is a table in that report that identifies which States assess which type of royalties both on their State lands and then for all lands.

I believe the question that Senator Risch asked had to do with who was charging unit base? Was that the gross revenue? Which States?

Arizona charges it on State lands and all lands.

California on State lands.

Colorado on State and all lands.

Idaho on State lands.

Montana, State lands.

New Mexico, State and all lands.

Oregon on State lands.

Utah on State lands.

Washington State on State and all lands.

Wyoming on State and all lands.

Senator UDALL. Thank you for that clarification. As you point out there's a table that lays this all out in your report.

Ms. NAZZARO. Yes, in total 10 of those 12 States that we looked at charge the gross revenue for State lands and 5 States for all lands.

Senator RISCH. Can I follow up?

Senator UDALL. Sure.

Senator RISCH. Is the rate up and down in each of those States? I mean, is it uniform or is it all over the board?

Ms. NAZZARO. There is also an appendix in that report. Actually it's in our testimony, the official statement that goes State by State and gives you information on the type of royalty, the royalty rates and then all the provisions.

Senator RISCH. Off the top of your head, do you know what the range is?

Ms. NAZZARO. It does, it definitely varies. I couldn't give you the range. No. I could get that back to you.

Senator RISCH. Thank you.

Senator UDALL. I'm sure the GAO could. I'm sure our top notch staff could help us analyze it as well. I know we're talking about royalties. I'd like to take the opportunity to see what the other witnesses think. We have such an expert panel here of surface any different points of view and continue the discussion.

Mr. Leshy, you know that Mr. Baker, Mr. Butler are going to be strong in favor of a net proceeds royalty. Do you have another point of view? What royalty do you think would be best? Then how do you address their arguments about the cyclical nature of the min-

eral commodities market and the need for a royalty to be based on net proceeds?

Mr. LESHY. There are a couple of ways to think about this. One is that as I think everybody has said a big virtue in royalty is it has to be transparent and have minimum opportunities for gaming. The more there's gaming in the system and the more net it is the more opportunities there are for gaming, basically. Because the more introductions you have, the more supervision you need of the deductions and to make sure that, you know, a fair royalty is paid.

So for that reason and because I think the States' experience, as Ms. Nazzaro just pointed out, is that they use gross royalties they must be happy with them. So I think that is the way to go. In terms of the cyclical nature of the industry, you know, first of all it depends on which component of the industry. Some are more cyclical than others.

There are ways to ameliorate royalties in the oil and gas and coal situation for example, the Secretary has authority to forgive royalties in certain circumstances or reduce them if a mine is going to shut down. I believe that S. 796 has exactly that provision. So there are ways to design a royalty to make sure that in the real dire circumstances of a down cycle you don't throw people out of work.

So you can deal with that and still have a gross royalty or something that looks close to a gross royalty.

Senator UDALL. Thank you for that insight. Talk about uranium, if you would. Do you think it ought to be treated as a hard rock mineral under the 1872 law and why or why not?

Mr. LESHY. I think it should not. If you look at the characteristics of uranium from just about every standpoint, it's an energy mineral, it's a bedded mineral. It's mined much more like coal than the hard rock minerals are.

It's kind of a quirk that it's under the Mining Law. It's under the Mining Law, not because anybody thought about it. In 1872 uranium was not a mineral that was worth paying attention to.

In the aftermath of World War II, we actually ended up when uranium did become an interesting commodity. We ended up with kind of a hybrid system because some uranium, Federal uranium, is leased by the atomic energy, the old atomic energy commission, now the Department of Energy. Some of it is subject to the Mining Law.

There's never been a good reason to me why uranium should be treated as a hard rock as opposed to more like an energy mineral and leasable. S. 796 does have a provision calling for a study of this issue. I'd say that's sort of the minimum. I think it's worth considering just making it leasable in a Mining Law reform situation.

Ms. CARLSON. If I could add to that, Mr. Chairman.

Senator UDALL. Please, Ms. Carlson. Yes.

Ms. CARLSON. I know it was part of the debate that the Senate is having with respect to climate changes there's a lot of discussion about building more nuclear power plants in the United States. That's really going to have a tremendous impact on uranium markets as well as uranium production here in the United States So it would make sense at this point to actually get ahead of the curve

and see if we could come up with a more substantial, more responsible approach to uranium management, particularly on our Federal lands.

Senator UDALL. We're facing a time deadline here. If any of the other panelists wanted to make a final comment. Mr. Baker? Mr. Butler? I know Senator Risch and I would welcome that as long it's within the 1- or 2-minute timeframe.

Mr. BAKER. Sure, just one comment on the idea of the rate changing or the Secretary waving some sort of fee or some sort of royalty. Very, very difficult to implement. Very difficult for a company to plan. Very difficult for a company to have financing that's relying upon that sort of path.

You know, I don't think it's particularly a practical benefit to rely upon. I think it's good to have it in the legislation. But it's not something that too much weight should be put on.

Senator UDALL. Thank you. Mr. Butler.

Mr. BUTLER. I'll just add one point to that. There is quite a bit of experience out there in administering the net proceeds royalty, particularly in Nevada. The numbers are in my testimony. I believe that the mining industry in Nevada paid about $75,000,000, in net proceeds tax in 2007.

It's not that difficult to administer. There's a substantial record in front of the House Resources Committee that you might want to take a look at. My recollection is that that's suggests that the numbers that are needed to basically calculate the net royalty are numbers that most of the companies have to report in other legally required circumstances anyway.

So I think the opportunities for gaming the system are minimal. I think you can have a transparent net royalty. The advantage of that is that again when prices go down or costs go up, you don't need to have an administrative intervention because the amount of the royalty that has to be paid goes down as a matter of the calculation.

Then when times are good. Prices are high. The government gets a bigger check.

Senator UDALL. Thank you. I'm sure this very hearty discussion on royalty fee structure will continue. I do want to thank the panel for coming from far and wide to share your perspectives.

I would want to note that we've had several statements provided for the record. Without objection, they will be included in the hearing record. I assume each one of you would be available to answer further questions over the next weeks.

With that this hearing in the Energy and Natural Resources Committee is adjourned.

[Whereupon, at 11:46 a.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF ROBIN M. NAZZARO TO QUESTIONS FROM SENATOR BINGAMAN

ROYALTY

Question 1. What royalty structure would you recommend if the objective is to facilitate the federal government most effectively ensuring the receipt by the American people of fair market value for minerals mined on federal lands?

Answer. Our work focused on describing each ofthe state royalty structures for hardrock mining in the 12 western states. We did not analyze which structure would most effectively ensure the receipt of fair market value for hardrock minerals mined on federal lands.

Question 2. GAO has undertaken extensive work relating to past problems in royalty collections at the Department of the Interior. What can we learn from the problems that have occurred with respect to the past? Of the proposed royalty structures that you have analyzed for hardrock minerals, what royalty structure is the most enforceable, transparent and simplest?

Answer. Although we have not conducted the audit work necessary to determine what royalty structure is the most enforceable, transparent, or simplest, our prior work on federal oil and gas royalties suggests four key matters to consider regarding a possible federal royalty on hardrock minerals. First, the ability to determine an arms-length sales price (referred to as market price transparency) is important to ensure accurate royalty valuation. Gross revenue, net smelter returns, and net proceeds royalties are all calculated by multiplying the royalty rate by production volume by price minus certain costs (if allowed). Having adequate market price transparency will be important in order for Minerals Management Service (MMS) staff to verify the accuracy of these calculations and ensure the public is properly compensated for the hard rock minerals removed from federal land. Second, royalty deductions, exclusions, allowances, and provisions for royalty relief can add complexity to royalty calculations. This complexity can lead to errors in royalty valuation as well as auditing and compliance challenges. The most costly example of this problem that we observed in our prior oil and gas work involves the oil and gas royalty relief provisions in the Gulf of Mexico that were incorrectly administered which resulted in forgone royalties of between $21 billion and $53 billion, depending on total production, future oil and gas prices, and the outcome of litigation (see GAO-08-792R). Third, it will be important for MMS to conduct inspections to verify production quantities. We have previously reported that Interior lacks adequate assurance that federal oil and gas volumes are being measured accurately as required by law and agency policy (see GAO-08-893R). Finally, it will be important for MMS to have the administrative tools necessary for conducting audits and ensuring compliance. In her testimony to this Committee on Januazy 24, 2008, Deborah Gibbs Tschudy, MMS' Deputy Associate Director of Minerals Revenue Management, stated that MMS will be challenged to implement a royalty program for hard rock minerals, noting that MMS will require additional audit staff, modifications to its web-based reporting systems, effective audit and investigative authority, and a strong and effective enforcement system.

Question 3. What is the range of royalties (including functional royalties and severance taxes) charged by states for the production of hardrock minerals from state lands?

Answer. We reviewed 12 states' royalties for hardrock mining on state lands and functional royalties (such as severance taxes) for hardrock mining on state, federal, and private lands. All 12states have at least one royalty or functional royalty that is calculated by a percentage rate times a base, minus deductions and subject to other limitations. While these royalties all use a percentage rate, their bases, deductions, and limitations vary so widely that the percentages alone-ranging from 0.125 percent to 12percent-are not useful for comparing the magnitude of different royalties. For example, Alaska's mining license tax uses rates of 3 percent to 7 percent, but the first 3.5 years of mine production are exempt, and there is an exploration incentive credit. Colorado, in contrast, charges a severance tax of 2.25 percent on metallic minerals, but exempts the first $19 million per year in income, as well as giving a credit for the royalty. These examples illustrate the difficulty in comparing the magnitude of different royalties in the abstract. In addition, of these 12 states, 5 have at least one royalty or functional royalty that is unit-based; that is, the amount charged is calculated by a fixed dollar amount per unit and does not rely on a percentage rate applied to value. For example, California's fee on gold is $5 per ounce. Finally, several states have at least one royalty for which the rate or amount is determined on a case-by-case basis by the administrative agency; we did not collect data on the actual rates states charged for these royalties.

Question 4a. What type of royalty (gross, net smelter, or net profits or net proceeds) is used by the most states with respect to state-owned minerals?

Answer. Many of the 12 western states that we examined assess multiple types of royalties on state-owned lands, often depending on the mineral being extracted. Ten states assess a gross revenue royalty, three assess a net smelter returns royalty, three assess a net proceeds royalty, and two assess a unit-based royalty.

Question 4b. Do most states allow the subtraction of transportation and processing costs? Do most states allow the deduction of exploration, insurance, capital and sales costs?

Answer. Because all of the 12 western states we examined used multiple types of royalties depending on the mineral being extracted or land ownership, it is difficult to generalize about the deductions that are typically allowed within a state or across the states. For example, Idaho has two royalties that apply to hardrock minerals extracted from state lands. One ofthese applies to gold extracted from riverbed mineral leases and does not identify any deductions for transportation or processing while the other applies to all other minerals and does allow deductions for transportation and processing. However, deductions for transportation and processing costs are typically allowed by both net smelter returns and net proceeds royalties. All states except Oregon and Washington assess at least one royalty or functional royalty on federal, state, and private lands that is either a net smelter returns or net proceeds royalty. Deductions for exploration, insurance, capital and sales cost, among other things, are sometimes allowed by net proceeds royalties. Eight states assessed at least one net proceeds royalty (Alaska, Arizona, California, Colorado, Idaho, Nevada, New Mexico, and Utah), while four states did not (Montana, Oregon, Washington, and Wyoming.)

Question 5. How many states impose a royalty or tax on hardrock minerals mined from federal lands?

Answer. Eleven ofthe 12 western states that we evaluated assessed a functional royalty (typically in the form of a severance or license taxes) on the hardrock mining operations on federal lands, as well as state and private lands-Oregon was the only state not to do so.

MINERAL IMPORTS/EXPORTS

Question 6. I know that GAO has done a review of imports and exports of hardrock minerals. What trends did you observe? Could you please submit your findings for the record?

Answer. The Department of the Interior's U.S. Geological Survey (USGS) annually calculates U.S. "net import reliance as a percentage of U.S. apparent consumption" (hereafter referred to as "net import reliance") for nonfuel minerals using production data from annual USGS mineral industry surveys and import and export data from other sources. We analyzed these USGS data for 15 common hardrock minerals from 1975 through 2007 and observed multiple trends. The degree to which the United States has relied on imported minerals to satisfy its domestic consumption has held relatively constant for 4 of those minerals (fluorspar, gypsum) palladium, and platinum); fluctuated for 5 (copper, lead, silver, tungsten, and zinc); increased for 4 (barite, magnesium compounds, magnesium metal, and perlite); and decreased for 2 (gold and nickel.)

Moreover, in some years, the United States was a net exporter of some hardrock minerals. (These data can be found in Enclosure III of GAO-08-849R.)

RESPONSE OF ROBIN M. NAZZARO TO QUESTION FROM SENATOR MURKOWSKI

Question 1. Dr. James Otto testified in January 2008 that the viability of most mining projects is jeopardized when the total government take from combined taxes reaches 50 percent.

In terms of the total government take (i.e., the sum of state, federal and other taxes, fees, and royalties), can GAO quantify for the Committee whether or not the royalties imposed under either S.796 or S.140 would cause the U.S., or any individual state, to exceed that 50 percent threshold?

Answer. Our work focused on describing the 12 western states' royalty structures for hardrock minerals. We did not conduct the audit work necessary to determine the total govemment take from combined taxes and the proposed royalties in S 796 and S 140.

RESPONSE OF ROBIN M. NAZZARO TO QUESTION FROM SENATOR WYDEN

Question 1. Ms. Nazarro, you testified that Oregon is the only one of the twelve Western states that does not implement functional royalties. Has this particularly hindered cleanup efforts in Oregon on abandoned mine sites?

Answer. Our work was limited to describing the 12 westem states' royalty structures for hardrock mineral and we did not examine how the states used the royalties.

RESPONSES OF CATHY CARLSON TO QUESTIONS FROM SENATOR BINGAMAN

AML RECLAMATION

Question 1. How many jobs do you estimate the AML program provided by S. 796 will create?

Answer. It is difficult to estimate the total amount of revenue that will be available to the abandoned mine fund annually, given the uncertainty of the funds generated by a royalty. EARTHWORKS anticipate that the majority of the funds available to the Abandoned Mine Program will come from the reclamation fee and the land use fee that is established in S. 796. The land use fee should generate at least $2 million annually, and will likely be more than that amount, depending on future mineral activities on federal land. EARTHWORKS calculates that a 0.3 percent reclamation fee will generate at least $50 million annually to the fund. This is based on the USGS estimate of total hardrock mineral production for the last year information is available of $15—16 billion, multiplied times the minimum percentage in S. 796.

Based on this estimate, at least $52 million annually will be available for abandoned mine restoration, plus whatever funds are generated by the royalty looking forwards in time. The State of Montana estimates that every $1 million dollars spent on abandoned mine restoration will generate 65 jobs. Montana has substantial experience with abandoned mine restoration work, since they have been able to complete a comprehensive inventory of the abandoned hardrock mines in the state and initiate clean up projects at several priority sites.

If the hardrock abandoned mine program had at least $52 million annually available for restoration, EARTHWORKS estimates that at least 3400 jobs would be generated for abandoned hardrock mine restoration. These are good paying jobs in rural communities; bulldozer operators, reclamation specialists, and engineers.

If the Secretary of the Interior or the Congress determines that a 0.5 percent reclamation fee, or even a 1.0 percent reclamation fee is appropriate, the number of jobs created by the abandoned hardrock program will increase exponentially. In addition, if the federal government would collect a royalty from existing mines, even if there was a phase-in period for the new royalty, the number of jobs created for abandoned mine restoration would increase as well. The Congressional Budget Office determined that creation of a royalty for hardrock mining on public lands would create jobs overall.

Question 2. How did you arrive at your estimate of $50 billion for AML reclamation costs?

Answer. EARTHWORKS conducted an extensive survey of state hardrock abandoned mine programs in the West in the early 1990s and updated that information in 2003. We requested information on the number of abandoned mine sites in each state, and received information regarding best estimates of the amount of revenues

necessary to clean up abandoned mines. Based on this information, EARTHWORKS found that the estimated reclamation costs for abandoned hardrock mines ranged from $32—72 billion in the Western states, including federal, tribal, state and private land.

More recently, the Environmental Protection Agency reviewed the estimates of abandoned hardrock mine restoration. They determined that the estimated cost of abandoned hardrock mine restoration could be as high as $54 billion.

For the purposes of our testimony, I used $50 billion as a mid-range number in our estimate that $32-72 billion will be needed for abandoned mine restoration. It may be more accurate to include the range of costs, since there has never been a comprehensive inventory to determine the total costs in all the western state to restore abandoned hardrock mines.

URANIUM

Question 3. Do you think that uranium, as an energy mineral, should be treated as a hardrock mineral under the Mining Law of 1872, as is currently the case? Why or why not?

Answer. Uranium is the only energy mineral that is currently treated as a locatable mineral under the Mining Law of 1872. Congress passed the Mineral Leasing Act in 1920 to regulate the extraction of coal and oil and gas under a leasing system. More recently, Congress amended the Mineral Leasing Act to include oil shale. It makes sense for all the energy minerals to be treated under the same regulatory scheme.

Uranium development has left a tragic legacy in much of the West. Communities continue to deal with the health impacts of unregulated uranium mining, water sources have been polluted, and agricultural lands have been affected.

Looking forwards in time, uranium production may be a critical component of the Nation's energy policy, with a renewed interest in nuclear power to meet our energy needs. If this is the case, uranium should be leased under the Mineral Leasing Act on a competitive basis to make sure that the public receives a fair return for this commodity.

RESPONSE OF CATHY CARLSON TO QUESTION FROM SENATOR MURKOWSKI

Question 1. S.796 and S.140 allow "persons, corporations, associations and foundations" to make donations to the abandoned mine clean-up fund.

Is Earthworks prepared to put some of its financial resources into this effort?

Answer. EARTHWORKS is very interested in working with state and local governments to identify priority projects for consideration and help secure funding for these projects. We also work closely with grassroots organizations at the local level and can assist their efforts to clean up abandoned mines.

As a non-profit organization, we are not benefiting from mineral production from federal lands. In contrast, the United States produced over $16 billion in hardrock mineral production, and most of this production comes from the western United States. An undetermined, but substantial, amount of that total production is taken from federal lands without a return to the federal treasury. We believe the principal beneficiaries of the mineral development on public lands should assist the government's efforts to clean up the legacy of abandoned mine sites.

To date, we have not raised funds specifically to finance the abandoned mine restoration fund. We would be interested, if such a fund is established, in soliciting contributions to the fund from our members and supporters.

RESPONSE OF CATHY CARLSON TO QUESTION FROM SENATOR BINGAMAN WYDEN

Question 1. Mining operations have a poor track record on the American landscape. The EPA estimates that hardrock mining has degraded approximately 40 percent of western watersheds and that the clean up abandoned mines could cost taxpayers up to $50 billion. How has pollution from abandoned mines affected potential wilderness areas, wild and scenic rivers, National Parks, and other sensitive areas protected by Senator Bingaman's legislation?

Answer. There is an extensive legacy of abandoned mines across the western United States causing pollution to some of our most significant wildlands, river and other sensitive areas. For example, the National Park Service conducted an extensive inventory of abandoned hardrock mines in the National Parks, and discovered over 2000 abandoned sites that need restoration. Some of the highest priority National Parks for abandoned mine restoration are the Wrangell—St. Elias National Park in Alaska and the Death Valley National Park and Mojave National Preserve in California.

Congress recently approved stimulus funds to assist in some restoration work in the National Parks, which included restoration work for abandoned mines in Denali National Park (AK), Lake Mead National Recreation Area (NV) and other locations, but this is a drop in the bucket compared to the extent of the problem.

Our Nation's Wild and Scenic Rivers are also polluted from abandoned mines. For example, the Rogue Wild and Scenic River in Oregon is degraded from pollution discharging from abandoned mines, particularly the Alameda Mine. The Alameda Mine discharges acidic waters with high concentrations of heavy metals, and it is affecting the downstream sections of the Rogue River.

In addition to those rivers formally recognized as Wild and Scenic, Trout Unlimited identified numerous rivers in the West that are significant for their fisheries, but are polluted from abandoned mines, in their report *Settled, Mined and Left Behind.* Trout Unlimited's focus in their report included the American Fork River in Utah, the Red River in Oregon and the Blackfoot River in Montana.

One of the most significant problems from abandoned hardrock mine pollution can be found in the watersheds of some of the major cities in the West. The South Platte River in central Colorado provides drinking water and recreation opportunities for millions of people along the Front Range, but its headwaters are polluted from old mine workings. Pinto Creek in central Arizona feeds into the water supply for the City of Phoenix, but it is pockmarked with abandoned mines. The Mokolumne River in California provides drinking water for millions of people in the Bay Area, but needs to be treated to clean up metals and other pollutants from abandoned mines.

If Congress established and funded an abandoned mine restoration program for hardrock mines, similar to the program that currently exists for coal, we could restore the rivers and streams of the West and reduce the costs associated with treating water from these rivers for domestic and industrial uses. We could improve the recreational opportunities along these rivers as well, by enhancing the fisheries and cleaning up the water.

Thank you for the opportunity to submit answers to these questions for the record. Please feel free to contact me if you any additional questions.

RESPONSES OF JIM BUTLER TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. S.140 seeks to impose a royalty of 4 percent on existing operations. In response to a question posed at a hearing on the 1872 Mining Law last Congress, the MMS said "when the United States imposes royalties on mineral production, it is asserting a property interest".

In your opinion, would the royalty on existing mines contained in S.140 withstand a legal challenge on the grounds that it constitutes a taking of private property under the Fifth Amendment to the Constitution of the United States?

Answer. It is notoriously difficult to predict how the courts (including the U.S. Supreme Court) might rule on regulatory takings cases. The Supreme Court has stated that regulatory takings cases typically require an "ad hoc, factual inquiry" into the specific circumstances of each claim. Where a government action renders private property essentially valueless or deprives the owner of any economic use of his or her property, then the Constitution requires that the government compensate the property owner for that taking.

The 4 percent royalty on existing operations contained in S. 140 will simply take 4 percent of the gross proceeds from each existing mine. That will affect operations differently, but it is likely that the 4 percent loss in revenue will be sufficient to force some operations to cease mining earlier than would otherwise have happened or will render some portions of the property, or some mining claims essentially valueless. Those properties will have a viable takings claim.

The Committee should review the history of takings litigation associated with the Surface Mining Control and Reclamation Act ("SMCRA"). Today, decades after SMCRA's enactment, takings cases continue to work their way through the courts. The federal government has paid out millions in compensation for takings under SMCRA. The royalty provisions of S. 140 and the regulatory provisions of H.R. 699 will render mining properties unusable or uneconomic and will result in substantial takings claims against the government.

Question 2. States generally have some power to regulate federal lands within their borders unless a conflict with federal law arises. Section 308 of S.796 presumably seeks to ensure that any state laws or regulations that are stricter than the requirements of S.796 cannot be considered as conflicting with that federal law (if enacted).

What is your view of the impact that Section 308 of S.796 would have on the 1987 *California Coastal Comm'n* v. *Granite Rock Co.* decision by the U.S. Supreme Court?

Answer. The Supreme Court's decision in *Coastal Comm'n* v. *Granite Rock Co.,* 480 U.S. 572 (1987) is frequently cited for the proposition that, while state and local governments may regulate mining operations on federal lands to protect public health, safety and the environment, they may not restrict mining activities (through zoning or environmental controls) so severely as to frustrate the purposes of the federal mining laws. Thus, for example, in *South Dakota Mining Ass'n Inc.* v. *Lawrence County*, 155 F.3d 1005 (8th Cir. 1998), the Court of Appeals for the Eighth Circuit cited *Granite Rock* to hold that a county ordinance prohibiting issuance of any new or amended permits for surface metal mining was preempted by federal law.

Section 308 authorizes state reclamation, environmental, public health protection, bonding or inspection standards that are more stringent than S. 796 by declaring that they are not inconsistent with the new mining act. Section 308 thus provides that state reclamation and environmental standards—even if stricter than federal law—are not preempted. State or local zoning or land use planning standards that prohibit mining, however, should still be preempted. For example, the ordinance in *South Dakota Mining Ass'n*, which was considered by the court to be "a de facto ban on mining" should not be affected by Section 308.

Potentially more significant, however, are the changes to the federal mining laws which are made by S. 796. For example, section 506(c)(1) states that "This Act supersedes the general mining laws, except for the provisions of the general mining laws related to the location of mining claims that are not expressly modified by this Act." In *South Dakota Mining Ass'n*, and in similar cases, courts have looked to the mining law to determine the purpose of federal law and, in turn, to determine whether such purposes were frustrated by a state or local enactment. In South *Dakota Mining Ass'n*, the court cites 30 U.S.C. §§ 21 and 22 to determine that Congress had declared a national interest in the orderly and economic development of domestic mineral resources. S. 796 should restate and reaffirm that development of domestic mineral resources on public land—subject to appropriate environmental regulation and control—is in the national interest.

RESPONSES OF JIM BUTLER TO QUESTIONS FROM SENATOR BARRASSO

URANIUM MINING

Question 1. Nuclear energy currently provides more than 70 percent of the U.S.'s emission-free electricity. Nuclear power is a key part of our clean energy future. The United States imports most of the uranium it needs for its nuclear power generation.

Wyoming is the largest uranium producer and has the nation's largest uranium reserves. The U.S. has the domestic reserves to dramatically reduce our dependence on foreign uranium. Increased domestic uranium production is critical for maintaining as well as expanding our current nuclear power capacity.

It seems to me that uranium—in terms of discovery, mining, processing, and physical characteristics—is similar to gold, silver, copper, and other locatable minerals. I strongly believe that uranium should remain a locatable mineral.

- How does the uranium mining process compare to other locatable minerals with regards to exploration, discovery, and development?
- How does it compare to leasable minerals?
- What would the impact of changing uranium to a leasable mineral be on domestic uranium mining?
- What countries would the U.S. turn to over the next 20 years to compensate for a diminished domestic uranium supply?

Answer. Uranium provides a good example of how the mining law (and the system for locating mining claims) quickly and effectively responds to the forces of supply and demand. When uranium demand is high and prices rise, claims are located, exploration increases and new resources are found and developed. Changing to a leasing system for uranium would make the system less responsive and would rely on government identification of potential resources. If domestic demand for uranium increases, it is more likely additional resources would be imported if uranium is moved to a leasing system.

Historically, uranium exploration and mining have been more similar to the hard rock minerals than to coal, or oil and gas.

BENTONITE

Question 2. I have serious concerns with Section 504 of S. 796 and its impact on bentonite mining in Wyoming. Wyoming is blessed with some of the highest quality

bentonite in the world. It provides good paying jobs and a significant source of revenue for State and local governments.

I am concerned that Section 504 would remove Wyoming bentonite from the list of locatable minerals.

- Do you think in terms of exploration, development, and production, it makes sense to remove Wyoming bentonite from being defined as a locatable mineral?
- What would the practical impact of Section 504 be on domestic development of bentonite?

Answer. Section 504 of S. 796 would eliminate the ability to locate and develop uncommon industrial minerals (such as Wyoming bentonite) as locatable minerals under the mining law. Instead, those minerals would be disposed of under the Minerals Materials Act. While the "uncommon varieties" provisions of the mining law present some unique legal questions, the system has historically and continues to function effectively. Section 504 should be eliminated from S. 796 and these materials, including Wyoming bentonite, should continue to be subject to location and development under the general mining laws. I have had the opportunity to review the statement of the Industrial Minerals Association—North America on S. 796 which was submitted to the Committee and which addresses Senator Barasso's questions regarding Wyoming bentonite. I agree with that statement.

RESPONSE OF PHILLIPS BAKER, JR., TO QUESTION FROM SENATOR MURKOWSKI

Question 1. An opportunity to provide regulatory certainty has always been an aspect of Mining Law reform that benefits all stakeholders. Do you believe that S.796 and S.140 increase or decrease the level of certainty regarding regulations with which the mining industry must comply?

Answer. I agree completely that regulatory certainty should be the cornerstone of Mining Law reform. Uncertainty in the legal and regulatory regime applicable to mining projects inevitably chills the climate for capital investments in domestic mining projects. Without such certainty, including security of tenure or title, mining projects in the United States will not be able to attract the large capital investments needed to bring such projects to fruition and thus will exacerbate this nation's reliance on foreign sources of minerals.

While, the mining industry supports reasonable amendments to the Mining Law, including a fair financial return to the government for the use of federal lands, regulatory certainty is critical to attract investment and keep U.S. mining competitive in the global marketplace. S. 796 and S. 140, however, decrease the level of certainty regarding the regulatory regime applicable to mining. For example, S. 796 creates significant uncertainty by leaving critical details to be hammered out in future regulations, including the exact amount of the royalty; how deductions from the royalty are calculated and the standard to be used to determine the royalty rate. Furthermore, S. 796 fails to replace the security that was provided by patenting with explicit legislative language that grants claimholders the right to use and occupy the land for all mineral activities authorized under the Mining Law.

S. 140 also fails to properly balance a fair return to the public and the need to encourage the private investment required to develop mining operations and provide the resources our economy needs. Specifically, S. 140 would impose an 8 percent gross royalty on production from new mining claims, one of the highest government-imposed rates in the world, and as such will obviously impact return on investment, our ability to create good paying jobs here at home and our ability to meet more of our own needs for minerals. Furthermore the reclamation fee contained in S. 140 is an additional and unnecessary burden on mining companies that does not take into consideration the total tax contribution of mining companies, and will undermine investments in mine development.

RESPONSES OF PHILLIPS BAKER, JR., TO QUESTIONS FROM SENATOR BARRASSO

URANIUM MINING

Question 1. Nuclear energy currently provides more than 70 percent of the U.S.'s emission-free electricity. Nuclear power is a key part of our clean energy future. The United States imports most of the uranium it needs for its nuclear power generation.

Wyoming is the largest uranium producer and has the nation's largest uranium reserves. The U.S. has the domestic reserves to dramatically reduce our dependence on foreign uranium. Increased domestic uranium production is critical for maintaining as well as expanding our current nuclear power capacity.

It seems to me that uranium—in terms of discovery, mining, processing, and physical characteristics—is similar to gold, silver, copper, and other locatable minerals. I strongly believe that uranium should remain a locatable mineral.

How does the uranium mining process compare to other locatable minerals with regards to exploration, discovery, and development?

Answer. Uranium, as a metallic mineral, is much more akin to hardrock minerals governed by the Mining Law than fossil fuels under the Mineral Leasing Act. Extraction of uranium on federal lands is conducted similarly to extraction for other hardrock minerals governed by the Mining Law, involving advanced mining activities rather than traditional extraction techniques for energy resources such as oil and gas or coal. Oil and gas and coal are relatively plentiful, and occur over relatively large areas where found. Hardrock minerals are scarce and occur in small concentrations, and must be discovered by expending considerable money pursuing elusive prospecting clues. Once a prospect is identified, development commences at considerable cost, with the capital and labor intensiveness of large coal mines, but without the geologic or metallurgical certainty of coal mines. Furthermore, the combination of price volatility and the variations in the concentration and the chemical and geological characteristics of hardrock minerals such as uranium within an ore body can turn a profitable mine into valueless rock with a sudden downturn in the market.

Question 2. How does it compare to leasable minerals?

Answer. Uranium differs from leasable minerals such as oil and gas and coal. More exploration for uranium is required to find commercial developable deposits and unlike the leasable minerals, uranium requires significant processing prior to having a marketable product. For example, oil and gas are more readily marketable after being mined. Crude oil is sold in local and international markets and the price of the product that comes out of the ground is generally readily ascertainable at the well. Gas is also often sold at the well head, in some cases without any processing. Like other hardrock minerals, upon initial extraction, uranium itself has no real economic value—considerable upfront investment and ongoing operating expense must be incurred to turn it into a marketable product.

Question 3. What would the impact of changing uranium to a leasable mineral be on domestic uranium mining?

Answer. Uranium deposits on federal lands should be developed pursuant to the Mining Law rather than the Mineral Leasing Act. The Mining Law provides an incentive for those who take substantial financial risk to develop a mineral deposit. To encourage mineral development, the Mining Law is uniquely self-executing in that a citizen may enter upon much of the public lands and explore for minerals. 30 U.S.C. § 22. Thus, the Mining Law allows the right of self initiation and those who explore for and discover a valid claim, obtain the right to develop that claim as long as they meet all applicable statutory and regulatory requirements. By introducing great uncertainty regarding the lands ultimately available for uranium exploration and development, a leasing system will only serve to increase the United States' reliance on foreign sources of uranium.

Question 4. What countries would the U.S. turn to over the next 20 years to compensate for a diminished domestic uranium supply?

Answer. The United States currently consumes about 56 million pounds of uranium each year, yet only produces 4 and a half million pounds. The U.S. has the world's largest fleet of reactors and one of the world's largest resource bases of uranium of any country in the world. Yet, the U.S. imports over 90% of what is needed to operate its nuclear reactors. Traditionally, the United States has imported uranium primarily from Canada, Russia and Australia.

Other, less stable, countries such as Namibia and Kazakhstan, are increasingly contributing to U.S. imports. In addition, these other sources will become increasingly important as we face competition from China for available uranium.

BENTONITE

Question 5. have serious concerns with Section 504 of S. 796 and its impact on bentonite mining in Wyoming. Wyoming is blessed with some of the highest quality bentonite in the world. It provides good paying jobs and a significant source of revenue for State and local governments.

I am concerned that Section 504 would remove Wyoming bentonite from the list of locatable minerals.

Do you think in terms of exploration, development, and production, it makes sense to remove Wyoming bentonite from being defined as a locatable mineral?

Answer. Section 504 of S. 796 would wrongly eliminate the ability in the future to locate "uncommon varieties" of certain minerals such as bentonite, high grade cal-

cium carbonate and chemical grade limestone. These are specialty minerals that are not easily located or developed and as such, need the incentives provided by the Mining Law to encourage their development. NMA thinks any amendments to the Mining Law should preserve the ability to locate minerals that have clearly been historically recognized and are readily identifiable as uncommon varieties of industrial minerals.

Question 6. What would the practical impact of Section 504 be on domestic development of bentonite?

Answer. Bentonite deposits on federal lands should be developed pursuant to the Mining Law rather than the Minerals Materials Act. The Mining Law appropriately provides an incentive for those who take substantial financial risk to develop bentonite. Placing bentonite under the disposal by sale system of the Minerals Materials Act will introduce great uncertainty regarding the lands available for bentonite exploration and development, and will ultimately result in decreased domestic production of bentonite.

[Responses to the following questions were not received at the time the hearing went to press:]

QUESTIONS FOR HON. KEN SALAZAR FROM SENATOR BINGAMAN

GENERAL

Question 1. Does the Administration support the key concepts included in S. 796: that patenting should be eliminated; a reasonable royalty should be required; the law should be modernized; clear environmental standards should apply; and a robust abandoned mine land program should be established with a dedicated stream of funding?

ABANDONED MINE LANDS

Question 2. Does BLM have an inventory of the universe of abandoned hardrock sites on federal lands (including BLM and Forest Service)? Please provide your estimate of the number of abandoned hardrock mines on BLM and Forest Service lands listed by state.

- How much money does BLM expend annually on abandoned hardrock mine sites?
- How much money would be needed to conduct a comprehensive inventory?
- What is the estimate of money needed to reclaim these sites?

DATA

Question 3. Please provide the following information for the record:

- The number of mining claims located for each of the past 10 years listed by state.
- The amount of claim maintenance fees collected for each of the past 10 years listed by state.
- The amount of claim location fees collected for each of the past 10 years listed by state.
- The amount of funding expended to administer the hardrock mining program at BLM for each of the past 10 years.
- The number of notice operations listed by state.
- How many approved mining permits are there? Please list by state. Please provide number of acres of federal land covered by these permits.

QUESTIONS FOR HON. KEN SALAZAR FROM SENATOR MURKOWSKI

Question 1a. Section 307 of S.796 requires your agency to review massive amounts of federal acreage to determine its suitability for hardrock mining. The section also largely abandons the existing process for withdrawals of this kind as authorized under the Federal Land Policy and Management Act of 1976 (FLPMA).

Is it the Administration's view that this existing FLPMA process, which has been in place for over 30 years, is flawed in some way?

Question 1b. Is it the Administration's view that it should be made easier for the Interior Department to put domestic minerals off-limits to production through Administrative action?

Question 2a. In reaching a decision as to whether or not there is concurrence with the Administration's response to the previous question, it is essential that Congress have some metric by which to judge the efficacy of the existing withdrawal authorities and processes. Understanding the importance of such information, please provide two numbers.

First, how many total acres of federal land (including land managed by the U.S. Forest Service) have been withdrawn from location and entry under the General Mining Law of 1872 through Administrative, Executive branch authorities for such actions as contained in Federal Land Policy and Management Act (FLPMA), since that bill's enactment in 1976?

Question 2b. And second, how many total acres of federal land (including land managed by the U.S. Forest Service) have been withdrawn from location and entry under the General Mining Law of 1872 through the enactment of other, non-FLPMA, Congressionally-directed actions since FLPMA's enactment in 1976?

Question 3a. A 1999 report to Congress by the National Academies' National Research Council concluded that, "the overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective". It should be noted that Administrative improvements have been made since that finding.

Yes or no, does the Administration agree with this conclusion?

Question 3b. If no, what specific recommendation(s) of the 16 identified on pages 93-123 of that report remain insufficiently addressed, either through Administrative or Congressional action, in the Administration's view?

Question 3c. Further, and again only if the Administration does not agree with the aforementioned conclusion, what additional issues does the Administration believe are not sufficiently addressed by the existing environmental protections for hardrock mining as contained in the Bureau of Land Management's so-called 3809 regulations?

Question 4a. I am concerned that, in aggressively pursuing a transition to alternative energy technologies, the United States risks trading a reliance on foreign sources of oil for a reliance on foreign sources of minerals. The demand for minerals is apparent in the use of quartz crystal for photovoltaic panels (100% imported), indium for LED lighting technologies (100% imported), and rare earths for advanced batteries (100% imported).

Do you share this concern?

Question 4b. If so, do you believe reforms to the Mining Law should decrease, maintain, or increase the ability of the U.S. to produce the raw materials needed for clean energy technologies domestically?

Question 5. During your time in the Senate you played a central role in the debate over protecting from liabilities the "Good Samaritans" that may seek to clean up abandoned mines.

Do you think Good Samaritan protections remain an opportunity to facilitate the clean-up of abandoned mines?

QUESTIONS FOR HON. KEN SALAZAR FROM SENATOR WYDEN

Question 1. In your answer to questions from Senator Cantwell, you indicated that the Department of Interior has the ability to prevent mining claims that may cause undue degradation to public lands. However, many advocates of hardrock mining law reform suggest that mining, as mandated by the 1872 Mining Law, is to be treated as the highest and best use of public land, which creates a strong presumption in favor of allowing mining. Can you provide the Committee with a list of claims in the last five years that have been rejected because of concerns of undue degradation?

Question 2. Have there been incidences where mining claims were granted despite potential environmental concerns because of the priority given to mining as a use of public lands?

Question 3. As you know, the proposed legislation provides authority for the Department of Interior for a rulemaking on how royalties are applied to different categories of mining interests. Can you tell me some principles you would use in guiding that rulemaking process and ensuring that there was transparency?

QUESTIONS FOR HON. KEN SALAZAR FROM SENATOR BARRASSO

PUBLIC LAND WITHDRAWALS

Question 1a. Section 307 of S.796 mandates reevaluation of federal lands for withdrawal of minerals, opening up every single land management plan across the coun-

try. It would give the agencies new powers for mineral withdrawals. These are serious policy initiatives, with serious consequences.

The bill states that this entire process would be completed in three years.

Is such a massive undertaking really possible in that timeframe?

Question 1b. On average, how many years does each Resource Management Plan take, start-to-finish?

Question 2. In Wyoming, many RMPs are delayed by activist appeals and litigation.

What effect do administrative appeals and litigation have on the timeline imposed on you in the bill?

Question 3. What would be the effect of this mandate on other, non-mining users of public lands?

How would other administrative duties, such as grazing permit renewal, and trail designation, be affected?

Question 4. The BLM and Forest Service are extremely short on resources.

Can the agencies pay for this massive undertaking-without shortchanging management?

Question 5. Mining is a critical part of Wyoming's economy as well as our nation's economy. It provides good paying jobs for hardworking people. Minerals are also a crucial component our nation's infrastructure, our energy security, our health care technology, and our national security. Pushing American mining jobs overseas and increasing our dependence on foreign imports would have a devastating impact on our economy and our security.

Do you believe we need to increase the amount of federal lands off-limits to resource development?

APPENDIX II

Additional Material Submitted for the Record

[Due to the large amount of material received, only a representative sample of statements follow. Additional documents and statements have been retained in committee files.]

STATEMENT OF ROGER FEATHERSTONE, DIRECTOR, ARIZONA MINING REFORM COALITION, TUCSON, AZ, ON S. 796 AND S. 140

On behalf of the Arizona Mining Reform Coalition, I appreciate the opportunity to express our views about S. 796 and S. 140. Several of our member groups have submitted their own testimony and we support and incorporate their testimony into ours.

The Arizona Mining Reform Coalition works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. We work to hold mining operations to the highest environmental and social standards to provide for the long term environmental, cultural, and economic health of Arizona. Members of the Coalition include: The Grand Canyon Chapter of the Sierra Club, EARTHWORKS, Save the Scenic Santa Ritas, The Dragoon Conservation Alliance, the Groundwater Awareness League, Concerned Citizens and Retired Miners Coalition, the Center for Biological Diversity, and the Sky Island Alliance.

BACKGROUND

We commend Senator Bingaman and Senator Feinstein for their leadership in the long overdue and arduous process of reforming this anachronistic law. After 137 years, reform is long overdue. The 1872 Mining Law was passed in a time when the goal of the United States was to expand from coast to coast and to displace Native American nations especially in the West. That goal, right or wrong, has long since been fulfilled. Of all the major laws that govern the use of our nation's precious natural resources in the west, only the General Mining Law of 1872 remains unchanged. One of the most egregious wrongs of the 1872 Mining Law is the fact that anyone mining in the West may take hardrock minerals owned by the taxpayers and citizens of the Unites States for free. Timber companies pay for the ability to cut trees on public land. Ranchers pay for the ability to graze cattle on the western public lands. Oil and gas companies pay a royalty of between 8 and 12% for the ability to drill for oil and gas on our western public lands. Yet, after 137 years, mining companies from all over the world are still allowed to take a billion dollars worth of minerals from our public lands every year.

S. 796 and S. 140 are both significant and important attempts to correct this anachronism. We would like to see S. 140 incorporated, in its entirety into S. 796. This would be a strong bill that would protect our economic and national security while preserving our precious natural heritage.

In Arizona, there is no better example of why we need to reform the 1872 Mining Law than a proposal by Augusta Resources, a Canadian company who has never built or operated a mine in the 70 years they have been in existence. They have submitted a plan to build a mine in the Santa Rita Mountains just south of Tucson, Arizona. Called the Rosemont Mine proposal, they are planning an open pit copper mine in the heart of significant wildlife habitat and one of the prime areas that folks from Tucson come to recreate. The mine is proposed in the middle of one of the major watersheds the City of Tucson depends on for their water supply. There is massive public opposition to the mine proposal and virtually all elected officials in southern Arizona oppose the mine. Yet because of the 1872 Mining Law, it will be very difficult to stop this mine proposal. We urge the Committee to significantly reform the 1872 Mining Law to stop the Rosemont and other ill conceived and inap-

propriate mine proposals. We certainly use copper and other minerals, but there are better ways to obtain these minerals than from the Rosemont proposal.

S. 796, THE HARDROCK MINING AND RECLAMATION ACT OF 2009

On April 2, S. 796, Senator Bingaman (D-NM) introduced the Hardrock Mining and Reclamation Act of 2009, in the U.S. Senate. This bill is a modest proposal to update this century old law. While S. 796 does not go as far as the legislation that has been introduced in the House of Representatives (HR 699), and passed the House in the 110th Congress, the bill is a huge improvement over the status quo. While the Arizona Mining Reform Coalition would prefer that S. 796 looked much more like HR 699, we commend Senator Bingaman for starting the ball rolling and hope that the bill can be strengthened as it moves through the Senate.

Title I—Mining Claim Location

- Section 101 ends the patenting of mining claims and is consistent with HR 699.
- Section 102 raises the claim maintenance fees from $125 to $150 and the location fee for new claims from $30 to $50. The Secretary may adjust the claim maintenance fee every 5 years or more often if necessary to take into account inflation, using the Consumer Price Index.
- Section 103 defines limitations on mining claims.

We support these reforms in the Senate bill.

Title II—Royalties

- Section 201 sets a royalty rate of between 2 and 5% on the value of production for new mines only after transportation, beneficiation, and processing costs are deducted. The Secretary of the Interior is authorized to set the precise rate by regulation and the rate could vary based on the type of mineral.
- Section 202 would allow a mining company to ask the Secretary of the Interior to reduce or remove the royalty if the company can show "clear and convincing" evidence that mining would not occur without the reduction.

The Coalition supports the approach taken in the House bill. HR 699 establishes a royalty of 8% on new mines and 4% on existing mines and does not allow for exemptions or deductions from the gross value of the mineral extracted. The Senate bill, by contrast, would not provide a fair return to the federal treasury for mineral extraction on federal lands. We are particularly concerned about Section 202, because it provides a broad exemption for the mining companies to claim that they cannot afford to pay the American public for mineral development on federal lands.

Title III—mining activities

- Section 301 requires a permit to engage in mineral activities on public lands.
- Section 302 requires a permit for anyone who wants to explore for minerals, except casually in a way that does not use mechanical means or disturb the surface (while allowing for rockhounding, panning, and other casual uses without a permit).
- Section 302(d)(1)(A) requires the Secretary of the Interior to approve an exploration permit subject to compliance with mining and other laws. However, Section 302(d)(2) allows the Secretary to deny an exploration permit if mining or other laws cannot be met.
- Section 303 requires a permit for engaging in mineral activities and sets the terms for mineral activities on public lands (except casual use).

  —Mining operators would be required to avoid acid mine drainage (to the maximum extent practicable) but there is not a ban on the creation of acid mine drainage. While this section calls for a mining application to describe potential impacts to ground and surface water, it does not require hydrological balance or ban treatment in perpetuity as a condition for granting of a permit.
  —A mine permit can be denied if it violates mining or other applicable laws. Under this section a mine permit is good for 30 years and can be renewed.
  —This section also allows the collection of land use fees for the use of public lands by a mine. The fees would be collected yearly, but the bill does not state for how long. Fees, (including the claim maintenance fee) would be $37.50 per acre.

- Section 304 requires that an operator obtain some kind of financial assurance before developing minerals on federal lands.

  —The bill allows the possibility of corporate guarantees, which is weaker than existing policy for mineral development on federal lands. The Secretary may,

according to the bill, allow incremental financial assurance instead of the entire amount up front.

—This section requires public review of the bonding amount every 3 years over the life of the mine (expect in cases of incremental bonding where the review would be every year.)

—A mining company may be required to set up a trust fund to fund long term or perpetual water treatment.

- Section 306 deals with operation and reclamation standards for mineral activities on federal lands. The bill requires that the mining company return land and water to pre-mining conditions or other beneficial uses (including the generation of renewable energy) after mining. This section requires the Secretary of Agriculture to create regulations that prevent unnecessary or undue degradation from mining on our national forests (the Secretary of Interior already has this obligation.)
- Section 307 establishes a process for the Secretary of the Interior to determine what lands should be available for mining. It requires the Secretaries of Interior and Agriculture to review most crucial public lands within 3 years and determine, subject to valid existing rights, tracts of land that should be withdrawn from mining. The Bill allows a Governor, Tribal leadership, or local governments to petition the Secretary for lands to be included in withdrawal, but unlike the House bill, puts the burden of proof on the petitioner rather than the Secretary.
- Section 309 requires that mines be inspected at least once a quarter.

• The Coalition recognizes that these provisions are an improvement over existing law, but they fall short of the kind of protection needed for communities in Arizona, and are not nearly as good as the House bill.

• We recommend:

—A determination of the financial viability of a mining company be included as part of the permitting process.

—A ban on any mine that causes acid mine drainage.

—Permits for mines should only be for 20 years.

—No mining should be allowed that cannot restore the hydrological balance after mining.

• The bill fails to mention the critical need for mines to maintain the regional water balance.

• The land use fees are insufficient to provide a decent return to the taxpayer for the permanent alteration of the land.

• We oppose the loophole allowing corporate guarantees and the use of incremental financial assurance. This provision would allow mining companies to alter federal lands without any insurance policy in place to protect the taxpayer from the liability for that damage.

• We are concerned that the federal land review ordered in Section 307 would lead to a lengthy administrative process similar to the RARE II review that took place on Federal lands in the 1970's. In that instance, federal lands managers failed to consider millions of acres of federal lands that should be protected for their wildland values, and subsequently these lands were damaged by overuse. We prefer the language in the House bill regarding the right of a Governor, Tribal Leader, or local government to petition for mineral withdrawal than this language.

TITLE IV HARDROCK MINERALS RECLAMATION FUND

Title IV establishes a fund for the cleanup of abandoned mine lands, sets up the structure of the Fund, and the dispersal of monies within the Fund for Abandoned mine cleanup.

- Section 403 requires all hard rock mines to pay into the Fund an annual reclamation fee of between 0.3 and 1.0% of the value of production after the deduction of transportation, beneficiation, and processing costs. The Secretary of the Interior would set the exact amount.

We like this title generally although we would like to see higher fees to put more money into the Fund for abandoned mine cleanup. As with the royalty amount in Section 201, the fee outlined in Section 403 allows so many deductions that a clever mine would pay nothing into the Fund.

Title V—Miscellaneous Provisions

This title is the "cleanup" title that adds everything else that did not fit elsewhere. The two main features here are:

- Section 504 eliminates a provision that allows certain uncommon varieties of minerals to be governed by the 1872 Mining Law and would shift the management of these minerals to the stricter leasing laws.
- Section 505 would require a review of uranium development on public lands that would be written by the National Academy of Sciences under an arrangement with the Secretary of Interior and the Secretary of Agriculture. The study would be completed within 18 months after this bill was made law and would make recommendations as to changes to Federal law and agency regulations to allow for the production of uranium while protecting public health and safety and the environment. The study would determine if uranium should be removed from operation under the 1872 Mining Law, what fees should be added to insure reclamation of new and abandoned sites, and whether additional lands should be withdrawn from uranium mining claims.

We support these provisions.

S. 140, THE ABANDONED MINE RECLAMATION ACT OF 2009

Senator Diane Feinstein (D-CA) introduced this bill on January 6, 2009.

What the bill does is to set up an Abandoned Mine Clean-up Fund that would be funded by new and current mines on public lands, by mine claim fees and by a reclamation fee on all mine whether on public or private lands.

We support this bill.

Title I—Mineral Exploration and Development

Section 101 sets up a royalty structure for new and existing mines on public lands. All new mines that have not been permitted before passage of this bill would pay a royalty of 8% on the gross income from mining. This is very similar to the new mine royalty provision in HR 699 (the Rahall Bill). All existing mines will pay a royalty of 4%, again similar to the Rahall Bill.

Section 102 raises the annual claim maintenance fee (currently at $140) to $300 per year. In addition, the claim location fee and the claim transfer fees are also raised. This section allows the Secretary of Interior to adjust these fees to reflect changes in the Consumer Price Index. The Secretary shall adjust the fees every 5 years or more frequently if needed.

Section 103 sets up a reclamation fee. This requires every operator of a Hardrock mine in the United States to pay a reclamation fee of 0.3% unless the annual income of the mine is less than $500,000.

Section 104 gives the owner of a mining claim authority to use the mining claim for prospecting and exploration if the claim maintenance fee is paid in a timely manner.

These changes are long overdue. For too the United States has given away its hardrock resources for free while enduring a huge clean-up burden that in many cases far outweighs the total economic benefit from the minerals mined. These fees and royalties are competitive and not overly burdensome on the mining industry while creating a mechanism for putting Americans to work cleaning up a 137 year legacy of pollution and neglect. Since mining companies, like all Americans are in favor of environmental safeguards and cleaning up old pollution, one would think they would embrace these costs as the way of doing business in our new American economy.

Title II—Abandoned Mine Cleanup Fund

Section 201 sets up the fund and requires that monies in the fund be prudently invested while they are awaiting use.

Section 202 allows donations, royalties from Section 101, fees from Section 102, and the reclamation fees from section 103 to be deposited in the Fund.

Section 203 allows the Secretary of interior to use monies in the Fund to reclaim and restore land and water resources adversely affected by past mining activities on federal lands. It allows other land within the boundaries of any national forest system unit that is not federal land to also be cleaned up with Fund money. It allows lands managed by the BLM to be cleaned up using the Fund. In addition, it allows mines that are at least 50% located on public land to be cleaned up using the Fund.

Section 204 says which lands are eligible to use money from the Fund. Only abandoned mines that were not reclaimed before the enactment of this bill and for which no responsible mine owner or operator can be found.

Section 205 says that money in the Fund will be disbursed by the Director of the Office of Surface Mining Reclamation and Enforcement. The Director can spend the money directly or make it available to the BLM, the Forest Service, the Park Service, the US Fish and Wildlife Service, any other Federal agency, any Indian Tribe, to any other public entity has the ability of carry out a reclamation program.

> This bill is silent on the question of the degree of clean up that is required or allowed. While we understand that the bill was meant to be a clean look at one piece of the reform "pie," some clarity to make sure that if funds are spent for clean up that the cleanup effort would meet the full requirements of all US environmental protection laws.

Title III—Effective date

Section 301 says that this Act will take effect immediately upon its being signed into law.

> The sooner these provisions can take effect, the better!

SUBMISSION OF SAVE THE SCENIC SANTA RITAS (WWW.SCENICSANTARITAS.ORG)

[Save the Scenic Santa Ritas has submitted the following documents, which are retained in Committee files:]

1. Copies of resolutions passed by local government entities opposing the proposed Rosemont mine.
2. A list of Southeast Arizona organizations and businesses that oppose the mine.
3. News stories and editorials from local newspapers.
4. Save the Scenic Santa Ritas press releases and opinion pieces published in local newspapers.
5. A Save the Scenic Santa Ritas brochure.

STATEMENT OF THE ENVIRONMENTAL WORKING GROUP, ON S. 796

Environmental Working Group commends Senator Jeff Bingaman on the introduction of the Hardrock Mining and Reclamation Act of 2009 and for his leadership on this important issue. This bill marks the first serious effort to reform the 1872 Mining Law in the Senate since 1994.

The legislation would help move our mining law into the 21st Century by implementing a first-ever royalty and reclamation fee for hardrock mining and by creating an abandoned mine cleanup fund. The fund would help create jobs in rural communities to mitigate the boom/bust cycle of mining and would help address the estimated $20-$55 billion cleanup cost of abandoned mines. The legislation would put a permanent end to patenting—a giveaway under which mining interests have been able to privatize public land for as little as $2.50 an acre.

Mining reform is long overdue. Mining has been the United States' leading source of toxic pollution for nine consecutive years according to the Environmental Protection Agency's Toxics Release Inventory. According to our analysis of Bureau of Land Management (BLM) records, the number of mining claims on federal land has surged from 207,540 in January 2003 to 451,463 in January of 2009. Any of these claims could be developed into a mine including thousands of claims near communities and National Parks. The impacts to people, water and wildlife could be catastrophic. And yet, the industry continues to operate largely under a law signed by President Ulysses S. Grant in 1872 that treats mining as the highest and best use of federal land.

We urge the committee to pass comprehensive mining reform. While Sen. Bingaman's bill is a significant step forward, the committee should work to strengthen the legislation by ensuring that reform includes the following provisions:

- Balance mining with other interests: Land managers should have the ability to balance mining with other resources such as water quality. Currently, land managers take the position that they must approve mining no matter the impacts on other resources. Managers must have the ability to determine in some cases that mining in not appropriate just as they can with oil, natural gas and other extractive industries.

The situation near Grand Canyon National Park highlights this concern. In December 2007, the Forest Service approved a British company's plan to conduct exploratory drilling for uranium as close as two miles to the park. "The 1872 Mining Law specifically authorizes the taking of valuable mineral commodities from Public Domain Lands," the service wrote in justifying its decision. "A 'No Action' alternative is not an option that can be considered." As of January 2009, there were 1,165 mining claims within five miles of the park, any one of which could be developed. This spring, the BLM gave the green light for a Canadian company to conduct exploratory drilling near the park.

The Bingaman bill takes a step forward by applying a standard to all federal lands that land managers must prevent "unnecessary or undue degradation" resulting from mining. However, federal land managers' deferential stance toward mining on public lands and testimony presented to the committee last year from former BLM and Forest Service Chief, Mike Dombeck, suggests that this standard is not strong enough to empower land managers to say no to a mine. The committee should work to strengthen this standard.

- Protect special places: Mining companies should generally be allowed to operate on federal lands, but some places should be off-limits to claims. These places include Forest Service Roadless Areas, Wilderness Study Areas, lands designated for inclusion in the Wild and Scenic River System, and lands petitioned for withdrawal from mining by tribal, state or local governments.

Once a claim is staked in these areas, taxpayers may have to spend millions to prevent mining. In 1996, the federal government paid $65 million to buy out patented claims just three miles from Yellowstone National Park that would have been the site of a major gold mine. The mine would have been located at the headwaters of three streams that flow into the park.

The Bingaman bill would help protect special places by authorizing a study of the areas mentioned above with the provision that the Secretary may put them off-limits to mining following completion of the study. The committee should go further and place these sensitive areas off-limits to claims.

- Tougher standards for mine permits and cleanup: Mining companies should not be able to receive a mining permit if their mines would require perpetual water contamination or where operations would impair the resources of National Parks or Monuments. Companies should also put up enough money before operations begin to cover the full costs of cleanup should the company go bankrupt or abandon the site.

The Bingaman bill would help improve mining standards by allowing the government to order creation of a long-term fund for water treatment for each mine. The bill also provides that the government may not release any bonds that cover the cost of cleanup until any discharge of water from the mine has ceased for at least five years or the mine operator has met all discharge limits and water quality standards for at least five years. These standards should be strengthened with requirements that no permit shall be issued until companies can establish that their operations will not result in perpetual water treatment or harm to National Parks or Monuments.

- An end to mining's tax break: In addition to being able to mine royalty-free, mining companies can claim a tax break on up to 22 percent of the income that they make off hardrock minerals mined on federal public lands. Though this issue is outside the committee's jurisdiction, committee members should join with other members of Congress to close this loophole.

Mining provides materials essential to our economy, but it must be conducted in a way that strikes a balance with other values. We look forward to working with the committee to ensure that mining on our public lands is conducted in a responsible manner.

STATEMENT OF LAURA SKAER, EXECUTIVE DIRECTOR, THE NORTHWEST MINING ASSOCIATION, SPOKANE, WA, ON S. 796 AND S. 140

The Northwest Mining Association (NWMA) appreciates the opportunity to provide the following statement to the committee for the hearing record. The timing of this hearing on these two bills, following committee passage of the "American Clean Energy Leadership Act of 2009," is appropriate because how you choose to amend the Mining Law will determine whether the vision and goals of the American Clean Energy Leadership Act of 2009 will be achieved. Building America's clean, re-

newable energy infrastructure and achieving energy independence will require minerals and lots of them—minerals we have in America.

If you choose to modernize the Mining Law in a way that provides a fair return to the public while preserving certainty and land tenure rights, and encourages private investment in finding, developing and producing domestic mineral resources, you will take an important step toward energy independence and a clean energy future. However, if you enact the changes proposed in S. 796 and S. 140, you will create uncertainty, discourage private investment in U.S. minerals, impede the development of America's renewable energy infrastructure, export tens of thousands of high paying mining jobs and trade an unhealthy dependence on foreign oil for an increased, unhealthy reliance on foreign sources of minerals.

This statement will address these issues in detail and provide recommendations for modernizing the Mining Law in a way that will help America achieve a renewable energy future, preserve and create high paying jobs, stimulate economic recovery and decrease America's reliance on foreign sources of minerals.

NORTHWEST MINING ASSOCIATION—WHO WE ARE

NWMA is a 114 year-old non-profit mining industry trade association with offices in Spokane, Washington, and 1,650 members residing in 40 states. Our members are actively involved in exploration, mining, and reclamation operations on BLM and USFS administered land in every western state, in addition to private, land grants and tribal lands. Our membership represents every facet of the mining industry including geology, exploration, mining, reclamation, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-base membership includes many small miners and exploration geologists as well junior and large mining companies. More than 90% of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with locating mining claims, exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations.

NWMA's members have extensive knowledge of the Mining Law of 1872, The Federal Land Policy and Management Act (FLPMA), The Surface Resources Act of 1955, administrative and judicial decisions interpreting those laws, and the USFS and BLM Surface Management Regulations governing hardrock mining operations on federal public land (the 228 and 3809 Regulations respectively), as well as the multitude of laws, rules and regulations of the various States that are applied to mineral activities on public lands.

INDISPENSABLE TO ENERGY INDEPENDENCE & ECONOMIC RECOVERY

Hardrock mining is essential to America's clean energy future. A plain and simple fact is that American renewables need American metals and minerals—unless, of course, we are willing to trade our unhealthy dependence on foreign oil for a dangerous dependence on foreign sources of critical minerals. Plans to aggressively expand our renewable energy production will require significant amounts of copper, steel, molybdenum, zinc, gold, silver, cobalt, lead, uranium and rare earth minerals. For example, wind turbines such as the Vestas V90—3.0 MW require approximately 335 tons of steel; 4.7 tons of copper; 3 tons of aluminum; 13 tons of glass fiber; 1,200 tons of reinforced concrete; and 2 tons of rare earth minerals. Also, hybrid vehicles require at least 50% more copper than the average car, and the motor requires rare earth minerals.

No renewable energy project, including wind turbines, solar panels, or fuel efficient cars can move forward without metals and minerals that are produced, or could be produced, from mines in the United States. This point is clearly made in the attached peer-reviewed article, *You Say Alternatives Are The Answer . . .Let's talk: Resource Constraints on Alternative Energy Development*, by James R. Burnell, Minerals Geologist with the Colorado Geological Survey.* The article discusses 18 "Hot List Commodities" needed for alternative energy development and states that although the U.S. has deposits of many of these minerals; our country relies on imports for nearly all of the minerals required for building our renewable energy infrastructure.

Mr. Burnell concludes that:

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*All attachments have been retained in committee files.

1. Most alternative energy technologies require scarce strategic metal for their fabrication and operation.
2. Increasing use of these technologies will be constrained by global supply and price issues with the metals.
3. Policy makers in the U.S. should consider a constructive attitude toward exploration and development of strategic commodities necessary for "green" energy. The move toward some degree of self-sufficiency for these commodities would not only help the U.S. balance of trade, but provide good jobs in mining and a stronger possibility for jobs manufacturing renewable energy hardware domestically rather than importing it.
4. Discussions about increasing "green" energy are generally inconsistent with anti-mining policies.

In addition, a healthy and vibrant domestic mining industry is indispensable to our economic recovery. Mining creates new wealth and provides the high-paying family wage level jobs with good benefits our country desperately needs. Moreover, the indirect employment multiplier for the mining industry is twice the national average. In 2007 (the latest year for which statistics are available), the U.S. mining industry provided:

- Direct jobs—376,310
- Indirect jobs—1,079,400
- Total mining payroll—$22.1 billion, generating $64.6 billion throughout the economy
- $98.4 billion of finished mineral, metal and fuel products; building block materials that were further transformed into consumer and industrial goods creating an additional $1.8 trillion in value added products.

Mining supports the very foundation of our economy. The $787 billion stimulus package passed by Congress and signed by President Obama includes a public works initiative to upgrade our nation's infrastructure that will require metals and minerals. Indispensible components of our infrastructure include steel, copper, industrial minerals, molybdenum and iron ore. No infrastructure project, including bridges, buildings or transportation, in fact, no society can move forward without metals and minerals.

Unfortunately, S. 796 and S. 140 will frustrate or prevent the domestic mining industry from providing metals, minerals and jobs necessary for energy independence and economic recovery. Any claims that renewable energy development will lessen our reliance on foreign oil ring hollow if the Nation becomes more reliant on foreign sources of the metals and minerals necessary to build our renewable energy infrastructure, including but not limited to, wind turbines, solar panels, hybrid vehicles and transmission lines. Regrettably, as drafted, S. 796 and S. 140 are guaranteed to increase our reliance on foreign sources of the critically important metals and minerals. Therefore, in considering these bills, Congress must ask and answer questions such as the following:

Do we want to get the rare earth minerals needed for wind turbines and hybrids from California?

or

Do we want to import the rare earths from China?

Do we want to get the copper needed to build wind turbines and hybrid vehicles from Arizona and Utah?

or

Do we want to import the copper from Peru, Chile, and Mexico?

Do we want to get the gold and silver we need for electronic and medical equipment from Nevada, Idaho, Colorado, and Alaska?

or

Do we want to import the gold and silver from China, South Africa, and Australia?

The U.S. can and should be more self-reliant for the minerals we need. Despite reserves of 78 important mined minerals, the United States currently attracts only

seven percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic sources.

Currently, America is 100 percent dependent on foreign sources for 18 minerals commodities and more than 50 percent import reliant on another 45 commodities. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, loss of high paying jobs and vulnerability to possible supply disruptions.

Our over-reliance on foreign supplies is exacerbated by competition from the surging economies of countries such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are ever-increasing; they are growing their economies by employing the same mineral resources that we used to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources.

Furthermore, S. 796 fails to recognize the evolution of the mining industry from its pick and shovel days to the highly regulated, technologically advanced and environmentally responsible industry that it is today. Much has changed since 1969 (when NEPA was enacted as our first modern federal environmental law), with regard to federal and state environmental regulations governing hardrock mining and financial assurance requirements. The USFS adopted their 36 CFR 228A regulations in 1974, updated them in 2005, and issued financial assurance guidelines in 2004. The BLM promulgated its 43 CFR 3809 regulations in 1980 and updated them in 2000 and 2001. Congress has enacted a plethora of environmental laws applicable to hardrock mining beginning with NEPA in 1969, and every public land state has enacted comprehensive environmental laws and regulations for hardrock mining, including requirements for mined land reclamation secured by financial assurance. One state alone, Nevada, currently holds more than $1 billion in financial assurance.

S. 796 assumes a state and federal regulatory vacuum that simply does not exist. S. 796 ignores the fact that the U.S. has the highest environmental standards and the most stringent regulations in the world. It ignores the fact that existing environmental laws, regulations, and financial assurance requirements protect the environment, ensure public participation in the process and ensure that modern mines are reclaimed and do not become tomorrow's abandoned mines.

Congress should not enact laws like S. 796 and S. 140 that discourage private investment in mineral development or unduly burden existing production with royalties, taxes and fees. S. 796 and S. 140 will result in premature mine closures, job losses and economic devastation of rural communities. In addition, these bills will increase our reliance on foreign sources of minerals from countries that may be hostile to our economic and national security interests, such as China, Russia, and Venezuela, and do not require the environmental protections we demand in America.

The efforts to build a renewable energy infrastructure, rebuild and expand our nation's infrastructure, energy production and transmission grid shine a spotlight on the need to develop the Nation's mineral and energy resources on both public and private lands and to streamline our permitting and regulatory processes. In order to get Americans working, the Administration and Congress must streamline the regulatory burden and prioritize funding for permitting functions of federal regulatory agencies so that mineral development projects are reviewed and permitted in a timely manner without sacrificing important environmental protections. Unnecessary delays jeopardize projects and inhibit investment, economic expansion and job growth. Over-burdensome bureaucratic processes frustrate job creation and are detrimental to economic recovery.

It is more important than ever for the United States to responsibly utilize our own mineral and energy resources. In fact, our economic and energy security depends on it. The U.S. mining industry stands ready to provide the jobs and materials needed to build our renewable energy infrastructure and lead this nation out of recession and into mineral and energy independence. However, S. 796 and S. 140 are counterproductive to a healthy and vibrant domestic mining industry, economic and energy security, and will not only frustrate job creation but eliminate current high-paying jobs, often exporting them to foreign countries.

AMERICA'S REQUIREMENTS FOR AN AMENDED MINING LAW

America continues to need a Mining Law that promotes responsible development of the Nation's mineral resources by private investors to ensure our energy, economic, and national security, contribute to economic recovery and improve the balance of trade while preserving and increasing family-wage mining jobs; a Mining Law that reduces uncertainty, creates a fair, simple to administer royalty and en-

sures the right to enter and use and occupy public lands open to location for the entire life cycle of a mining project and a Mining Law that takes advantage of the comprehensive and effective state and federal regulatory framework for environmental protection. For reasons already discussed and outlined further below, S. 796 and S. 140 fall woefully short in meeting these objectives and the needs of our country.

However, as demonstrated by the attached table, with four exceptions that need to be addressed in an amended Mining Law, the 1872 Mining Law, though 137 years old, still meets the key requirements for a successful mining law. Objectives like providing a stable business climate, reducing uncertainty, promoting private investment in finding and developing mineral resources on public lands, preserving and increasing family wage level jobs and guaranteeing land tenure rights from entry through closure and reclamation. Objectives that were reaffirmed by Congress when it passed the Mining and Minerals Policy Act of 1970 and the Federal Land Policy and Management Act (FLPMA) of 1976 and are met with existing law.

The 1872 Mining Law provided the legal framework and incentive for private investors to search for, find, and develop the minerals that built America—our railroads, highways and buildings; the metals that electrified the nation; and the metals and minerals that helped win two world wars. And, as mentioned above, twice in the past 40 years, Congress has reaffirmed the purpose of the Mining Law and a primary purpose of our public lands—to meet the mineral needs of our Nation through private enterprise. That need is as great today as it was 137 years ago. Our highly technological society and desire to develop a renewable energy infrastructure requires minerals, and lots of them.

Notwithstanding the success of the current law, NWMA strongly supports surgical, common-sense amendments to the Mining Law that address the well recognized short comings in the current law—the lack of an appropriate royalty to provide a fair return to the people; the need for a tenure security provision to replace patenting; a funding mechanism to reclaim historic abandoned mines; and Good Samaritan protection to encourage reclamation of historic abandoned mined lands (AMLs). An amended Mining Law also must ensure a miner's rights to enter upon, use, and occupy public lands to explore for, find and develop mineral deposits. And, an amended Mining Law should recognize and use the existing environmental regulatory framework for mineral activities that the National Research Council in 1999 found to be generally effective in protecting the environment.

Unfortunately, there is nothing surgical or common-sense about S. 796 and its approach to amending the Mining Law. It fails to accomplish the key requirements for a well functioning Mining Law, will create uncertainty, and by repealing the current Mining Law, throws the baby out with the bath water. The Mining Law does not require a major overhaul. It only needs a minor tune-up. Set forth below are NWMA's recommendations for amending the Mining Law and a discussion of some of the major problems with S. 796 and S. 140.

NWMA RECOMMENDATIONS FOR AMENDING THE MINING LAW

NWMA urges Congress to enact Mining Law amendments that will reduce America's reliance on foreign minerals; provide domestic sources of the minerals needed for America's renewable energy infrastructure and its national and economic security; create thousands of high paying family-wage jobs; and strengthen the economy in rural communities throughout the West. Specifically, NWMA believes responsible Mining Law legislation should accomplish the four objectives outlined below:

Provide Security of Land Tenure

If Mining Law amendments are going to eliminate the rights of mining claimants to patent mining claims with a discovery of a valuable mineral deposit, then the legislation must provide secure rights to enter public lands and to use and occupy those lands for the purpose of making a mineral discovery and developing a mine. Security of land tenure is needed throughout the entire mineral life cycle of entry, location, prospecting, exploration, development, mining, and reclamation in order to attract investment capital for exploration and mine development and to support business investment decisions to build a mine.

The only way the country will benefit from a continuous and robust future stream of royalty payments will be to maintain a pipeline of new discoveries that eventually become future mines. To achieve this important objective, public lands must remain open to exploration and development. This means that the Mining Law must provide a right of entry and access on lands open to the operation of the Mining Law and the right to use and occupy public lands for mineral purposes throughout the mineral lifecycle of exploration, development, mining and reclamation. Of course,

these mineral activities must be conducted in compliance with laws and regulations to protect the environment and to reclaim the land.

Thus, NWMA believes that an amended Mining Law must preserve the Mining Law rights of self initiation and entry at 30 U.S.C. δ22 to enter and occupy public lands open to location to prospect and explore for locatable minerals and to locate mining claims. Once a mining claim has been located, security of tenure and all rights to use and occupy federal lands for mineral purposes should be tied to the payment of the initial claim location fee and the annual claims maintenance fee. There should be no other fees or fair market value assessment for mineral activities on federal lands.

Royalty

Congress should enact a royalty that provides the public fair compensation for minerals produced from future discoveries while allowing reasonable deductions to produce a marketable product.

- The royalty must be structured to consider the entire cost burden of state and federal income taxes, sales taxes, and other taxes, and not be so high that it becomes impossible for companies to recover the significant capital cost and up-front investment in exploration and mine development. Attached hereto and incorporated by reference is the 2009 Country Ranking Study by Behre Dolbear. This study indicates that countries with a greater than 50% government take are unfavorable to mining, expresses concern about the 35% U.S. corporate tax rate and gives the U.S. a ranking of 5 out of 10 on the basis of an unfavorable existing tax regime and concerns that it will get worse due to the enactment of a federal royalty.
- The royalty must also consider that underlying private royalties burden most mining claims. The combination of federal plus private royalties must not make mines unprofitable because unprofitable mines will close prematurely or never be built in the first place. Royalties will not be realized at closed mines or mines that are not built. In addition, the royalty must not diminish the revenue from state mineral taxes and severance taxes on which state and local governments depend.
- The royalty must be prospective. Assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation. The courts, including the U.S. Supreme Court, have recognized that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes which entitle claim holders to extract and sell minerals "without paying any royalty to the United States as owner." *Union Oil Company* v *Smith*, 249 U.S. 337, 348-49 (1919). "Even though title to the fee estate remains in the United States, these unpatented mining claims are themselves property protected by the Fifth Amendment against uncompensated takings." *Kunkes* v *United States*, 78 F.3d 1549, 1551 (Fed.Cir.1996). This position is more fully explained in the attached legal memorandum prepared by Beveridge & Diamond pc, attorneys at law. This memorandum is incorporated by reference as though fully set out herein.
- Mine operators and not owners, co-owners, or underlying royalty owners should be liable for paying the royalty. This is analogous to the collection of federal royalties on coal and oil and natural gas. The Minerals Management Service (MMS) has significant experience collecting royalties from coal operators and oil and gas operators. Thus, placing the royalty liability on mine operators will simplify administration of hardrock royalties by MMS.

ABANDONED MINE LAND RECLAMATION

All royalties collected from hardrock mineral production should be used to reclaim historic abandoned mine lands. There is no need for a new federal AML program. Existing state, BLM, USFS, and Army Corps of Engineers (RAMS) AML programs have proven track records of successfully reclaiming AML sites. Rather, the legislation should create a hardrock AML fund, and all monies should be distributed to existing federal and state AML programs without the requirement of an annual appropriation. The fund also should allow for donations by persons, corporations, associations and foundations, and other monies that are appropriated by the Congress of the United States.

It is important to recognize that the AML problem is a finite and historical problem and not one that will grow in the future. Most AMLs predate the passage of NEPA, federal and state environmental laws and the establishment of federal and state hardrock mining regulatory programs. The few exceptions occurred during a

time when federal and state hardrock mining regulatory programs were in their infancy and reclamation and financial assurance requirements consisted primarily of re-grading and re-vegetation. In those early years, closure and reclamation requirements were not based on detailed modeling of likely long-term water quality impacts, and did not include comprehensive financial assurance requirements based on those models. Today, they do.

Since 1974, federal and state financial assurance requirements for hardrock exploration and mining projects have evolved to ensure that today's reclamation bonds are comprehensive and conservative. In addition, over the last 25-35 years, the BLM, the USFS and every western state with hardrock mining activities have enacted environmental laws and regulatory programs for hardrock mineral activities. These regulatory programs work together with today's reclamation bonding and financial assurance requirements to ensure that today's mines will not become future AML sites.

The attached NWMA White Paper entitled "*The Evolution of Federal and Nevada State Reclamation Bonding Requirements for Hardrock Exploration and Mining Projects*" documents how federal and state regulators have used existing regulatory authorities to respond to and eliminate short comings in the reclamation bonding program. This paper demonstrates that federal and Nevada regulators, with the mining industry's full participation and concurrence, have significantly improved and expanded reclamation bonding requirements in the last 5 years based on the lessons learned at mine bankruptcy sites in the 90's. This paper further documents that current reclamation bond requirements are comprehensive and conservative and consider all likely contingencies based on agency costs to implement, manage, and complete reclamation of sites requiring government intervention. This White Paper is incorporated by reference as though fully set forth herein.

It also is important to understand that the vast majority of hardrock AML sites are not problematic. A 1998 Western Governors Association (WGA) report estimated that more than 80% of AML sites create neither environmental nor immediate safety hazards. Where problems do exist, safety hazards are the primary problem although some AML sites have both environmental and safety issues.

The Center of the American West released a study in 2005 entitled "Cleanup of Abandoned Hardrock Mines in the West." The Center, which is affiliated with the University of Colorado, states at page 31 of its report that "only a small fraction of the 500,000 abandoned mines [identified by the Mineral Policy Center] are causing significant problems for water quality."

In 2007, the USFS and BLM published a report entitled *Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines*. This report estimates that there are approximately 47,000 abandoned mine sites on more than 450 million acres of federal land managed by those two agencies. This report estimates that as many as 10% of the AML sites on USFS-or BLM-managed land may include environmental hazards and that the balance, or approximately 90%, are landscape disturbances or safety hazards. The finding that landscape disturbance and safety hazards comprise the bulk of the AML problem is consistent with other reports.

Although much of the public debate about the AML problems typically focuses on environmental issues, it is really safety hazards that deserve our immediate attention. Nearly every year, the country experiences one or more tragic accident or fatality at an AML site where somebody has fallen into or become trapped in an unreclaimed historic mine opening. AML safety hazards pose a far greater risk to the public than AML environmental problems. Therefore, we should focus first-priority AML funds on eliminating safety hazards at abandoned mine sites located near population centers and frequently used recreation areas.

THE NEED FOR GOOD SAMARITAN PROTECTION

While some progress has been made by industry and existing State and federal AML programs in reducing safety hazards and remediating and reclaiming hardrock AMLs, the number one impediment to voluntarily cleanup of hardrock abandoned mine lands is the potential liability imposed by existing federal and state environmental laws, in particular the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (commonly known as Superfund), the Resource Conservation & Recovery Act (RCRA), and the Toxic Substances Control Act. Under these laws, a mining company, state or federal agency, NGOs, individuals or other entities that begin to voluntarily remediate an abandoned mine site could potentially incur "cradle-to-grave" liability under the CWA, CERCLA, and other environmental laws, even though they did not cause or contribute to the environmental condition at the abandoned mine land site.

Furthermore, they could be required under the CWA to prevent discharges to surface waters from the AML in perpetuity, unless those discharges meet strict effluent limitations and do not result in exceedences of stringent water quality standards, something that may not be possible; and in any event, may be so expensive that no company, individual, or other entity would undertake a voluntary cleanup.

Virtually everyone who has looked at the AML issue in the west has recognized and documented the legal impediments to voluntary cleanup of AMLs and has urged that those impediments be eliminated. These groups include the Western Governors Association, the National Academy of Sciences, and the Center for the American West.

In order to improve the effectiveness of any AML reclamation effort, the legislation should include effective Good Samaritan language that will create a framework, with incentives and liability protection for numerous entities, including mining companies, local, state and federal agencies, NGOs, and tribes, to voluntarily remediate historical environmental problems caused by others at abandoned hardrock mine sites in the United States. Several Good Samaritan bills have been introduced in the past, but only S. 1848, introduced in 2006 by Senators Salazar and Allard, passed out of committee. We strongly supported, and continue to support the Salazar/Allard approach to Good Samaritan legislation and believe that approach should be included in Mining Law Reform legislation.

NWMA provided testimony on AML issues at the October 2, 2007 House Energy and Mineral Resources subcommittee legislative hearing on H.R. 2262 and the March 12, 2008 Senate Energy and Natural Resources oversight hearing. A copy of both testimonies is included with this statement and incorporated by reference as though fully set forth herein.

At the March 12, 2008 Senate Energy & Natural Resources Committee oversight hearing, NWMA presented a chart which demonstrates that there were more than 120 years of hardrock mining in the U.S. before the first environmental law was enacted. The subcommittee should carefully study this chart. It will demonstrate clearly that the AML problem is historic.

Environmental Standards and Regulations

Mining Law amendments must recognize that existing federal Surface Management Regulations (BLM 43 CFR 3809 and USFS 36 CFR 228)—coupled with the country's framework of federal and state environmental statutes and regulations that apply to all industries, including mining—effectively protect the environment. Operations under the Mining Law are subject to all applicable federal and state environmental laws and regulations. Mining does not get an "olly, olly, oxen free" under the *Clean Water Act, the Endangered Species Act* or any other applicable environmental law and regulation. Federal land managers have an absolute right and duty to say "no" if a mining proposal will not comply with all applicable state and federal environmental laws and regulations. If a mining proposal cannot meet *Clean Water Act* standards, the mine does not get a permit to operate. Federal land managers and regulators tell mining companies "no" all of the time. They require changes in the Plan of Operation, and they require significant efforts to ensure there will be no water quality violations. The current regulatory framework is working to protect the environment.

Furthermore, the current National Environmental Policy Act (NEPA) review and public participation process provides an effective tool for gathering public comments that influence regulators' decisions about project proposals. The existing federal and state environmental laws, regulations, environmental protection standards and the NEPA process work together to provide federal and state regulators with stringent and comprehensive regulatory authority to effectively regulate all aspects of mineral projects and to comply with land management goals.

In 1999, the National Academies of Science, National Research Council, published a report entitled *Hardrock Mining on Federal Land*. This report was prepared at the direction of Congress to determine if federal and state environmental laws and regulations were effective in protecting the environment. The report concluded that "[t]he overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated, but generally effective." The report identified five regulatory gaps which were filled when BLM updated their 3809 regulations in 2001. S. 796 treats these "gaps" as if they remain unfilled. No new or different regulations, environmental performance standards or financial assurance requirements are needed.

S.796 AND S. 140 FAIL TO MEET INDUSTRY OBJECTIVES AND THE NATION'S REQUIREMENTS FOR AN AMENDED MINING LAW

"The Hardrock Mining and Reclamation Act of 2009" (S.796) has many fatal flaws that will create uncertainty for the mining industry, discourage investment in U.S. mining, impede economic recovery, lead to the loss of high-paying mining jobs bringing severe economic hardship to countless mining-dependent communities, and result in an increased reliance on foreign sources of minerals and metals.

While Senator Bingaman's bill may appear to be a more moderate approach to updating the Mining Law than H.R. 699, a careful reading reveals that it is a "Trojan horse" that will create serious problems for the Nation if it becomes law. Also, several of these flaws apply to S. 140. Here's why:

- Both S. 796 and S. 140 decimate security of land tenure by eliminating the rights to use and occupy public land for mineral purposes which will thwart exploration and development.
  - —Eliminating pre-discovery rights to enter, use and occupy public lands open to mineral entry creates intolerable uncertainty because exploration becomes a discretionary use of public land where permission to explore can be revoked at any stage. This loss of pre-discovery rights significantly increases the risks associated with mineral exploration and will lead to a substantial decline in mineral discoveries and future mineral production.
  - —Eliminating the right to use and occupy non-mineral public lands for ancillary facilities such as processing facilities, unmineralized rock storage areas, roads, etc., and making these uses discretionary, also creates intolerable uncertainties which will thwart mine development.
  - —Before substantial investments will be made to explore and develop mineral deposits, miners must know that their rights to enter, use and occupy public lands open to mineral entry are secure from entry through mine closure.
- S. 796 eliminates notices for exploration, failing to recognize exploration's limited, short-duration surface disturbance and replaces notices with a burdensome exploration permitting process (§302).
  - —The resulting downturn in exploration will lead to a dramatic decline in discoveries of new mineral deposits and will significantly reduce future domestic mineral production. * The language conflicts with the recommendations of the National Research Council.
  - —S. 796 contains vague and uncertain royalty provisions that leave the most critical details to a long and uncertain rulemaking process, including the exact amount of the royalty; the precise nature of deductions that are reasonably associated with beneficiation, processing and transportation; the standard to be used to determine the royalty rate; and who is responsible for payment of the royalty (§201-§203).
  - —The resulting economic uncertainty will inhibit or freeze investment until the rulemaking is complete and damage U.S. mining industry competitiveness in the global marketplace.
  - —Assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.
  - —Under the expanded royalty obligations, each person liable for royalty payments is to be jointly and severally liable for royalty on all locatable minerals lost or wasted, inviting the government to make economic decisions concerning mineral deposits that only a miner is capable of making.
- Similarly, S. 140's 4% gross royalty on mines with current commercial production and 8% gross on new mines will result in premature closure of existing mines and make future mines uneconomic, resulting in an unhealthy increased reliance on foreign sources of minerals, a loss of high paying family wage jobs and bring severe economic hardship on mining-dependent rural communities. Furthermore, assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.
- S. 796 prohibits any person or related party from relocating a mining claim, millsite or tunnel site for 10 years after a claim or site is dropped or becomes null and void regardless of the reason and provides no right to cure an oversight or error on the payment of the claim maintenance fee (§ 102(a)(4)(B).
  - —Fails to recognize the cyclical nature of mineral prices and the economic and geological reasons for dropping and relocating claims.

—Unnecessarily penalizes companies wanting to invest in domestic mineral exploration and production without any policy or on-the-ground justification.
—Increases risks and costs associated with grassroots exploration and mining resulting in fewer new mineral discoveries and an increased reliance on foreign sources of minerals.

- The unsuitability withdrawal provisions in S. 796 give federal land management agencies unprecedented broad authority to subjectively withdraw lands from mineral development. Incredibly, it leaves that decision to the discretion of the local land manager without considering the mineral potential of the lands or providing guidelines and standards to follow (§ 307).

—Putting potentially mineralized lands off-limits to mining will increase the Nation's reliance on foreign minerals.
—FLPMA and the Antiquities Act of 1906 provide more than adequate statutory authority for any withdrawal of lands deemed necessary by the agencies to protect lands too sensitive for mining-related activities.
—The substantial land withdrawals of the past 4 decades demonstrate that no new additional withdrawal authority is necessary.

- S. 796 mandates the Secretaries of Interior and Agriculture to jointly promulgate regulations to carry out the Act without guidelines or standards, potentially creating duplicative environmental regulations while ignoring the existing comprehensive framework of federal and state environmental laws that the National Research Council (NRC) found effective in protecting the environment from impacts of mining (§ 306(d)).

—New regulations in addition to requirements already applicable under the Federal Land Policy and Management Act or the National Forest Management Act will create confusion, uncertainty, and cause further permitting delays, making the U.S. less attractive to investors.
—This is a solution in search of a problem.

- S. 796 includes a very restrictive definition of "casual use." The definition "ordinarily result in no or negligible disturbance of federal land or resources" is very narrow and imprecisely defined, leaving the door open to a more restrictive definition by regulation (§ 2(4)).

—Allows the agencies to require a permit for virtually every activity adding tens of thousands of permit applications. There is no way the BLM or USFS could process the thousands of permits that would be required, causing greater permitting delays for all projects;
—In spite of evidence to the contrary, this implies that all prospecting and exploration activities are significant and will require an EA or EIS, adding delays, burdening the agencies' workload and increasing permitting costs without any corresponding environmental benefit.

- S. 796 requires public notice and comment prior to the release of any financial assurance (§ 304).

—Release should be based strictly on technical criteria, financial analysis and the reclamation plan as set forth in the mining permit;
—If the reclamation work has been accepted by the agency, there is no legitimate matter on which public opinion should be considered.

- S. 796 removes bentonite, high grade calcium carbonate deposits and other locatable industrial minerals from operation of the Mining Law, and potentially could remove uranium (§ 504 and § 505).

—Overrules several IBLA cases and the McClarty test for verifying distinct and special value.
—Subjecting these minerals to agency discretion, highly restricted permits, and competitive sales under the Material Sales Act of 1947 will make it more difficult to attract investment and meet America's demand for these important minerals from domestic sources.

- S. 796 repeals the General Mining Laws except for the provisions relating to location of mining claims not specifically modified by the Act (§ 506(c)).

—Repealing 137 years of interpretation and precedent is bad public policy, creating uncertainty and increasing the likelihood of unnecessary and costly litigation. The Mining Law needs surgical amendments to address recognized shortcomings, not a complete overhaul.
—Throws the baby out with the bath water.

- As currently drafted, the reclamation fee in S. 796 (§403) and S. 140 (§103), when combined with the royalty in S. 796 (§201) and S. 140 (§101), would render most mines uneconomic resulting in premature closure of existing mines and fewer mines being built, increasing the Nation's reliance on foreign sources of minerals.

CONCLUSION

S. 796 and S. 140 are disastrously bad bills for the U.S. mining industry and, more importantly, for the country, its economy and the American workforce. S. 796 eliminates security of land tenure, creates insurmountable regulatory hurdles, empowers third-parties to petition to withdraw lands from mining—even after valuable minerals have been discovered, and creates new unrealistic and impractical standards for mining. S. 140 imposes a gross royalty scheme that would cause premature mine closures, wasting of public minerals, depriving the public of a longer royalty stream, and causing greater global environmental impacts. S. 796 and S. 140 create many uncertainties for the mining industry. But one thing is certain—these bills will create the following serious problems for the Nation if they become law:

- America's renewable energy future will be jeopardized;
- America's national and economic security will be severely weakened as well paying, family-wage level jobs are exported overseas and our Nation becomes more reliant on foreign sources of strategic and critical minerals;
- Mineral production on America's public lands will be abruptly curtailed;
- America's already extensive reliance on foreign sources of minerals will dramatically increase due to the significant reduction in domestic mineral production;
- Mining-dependent rural communities will experience devastating economic hardships;
- The federal government will be subject to substantial takings litigation.

NWMA urges Congress to enact Mining Law amendments that will reduce America's reliance on foreign minerals; encourage production of domestic sources of the minerals needed for America's national and economic security; promote the creation of thousands of high-paying family-wage jobs; and strengthen the economy in rural communities throughout the West. However, S. 796 and S. 140 are not the answer. In fact, if S. 796 or S. 140 is enacted it will have the exact opposite result.

NWMA appreciates the opportunity to provide this testimony and looks forward to working with the Committee to develop common-sense, appropriately balanced amendments to modernize and reform the Mining Law of 1872 consistent with this testimony.

STATEMENT OF THOMAS S. "SCOTTY" HINMAN, BOARD CHAIRMAN, BIG HORN COUNTY OFFICE OF COUNTY COMMISSIONERS, BASIN, WY, ON S. 796

The Big Horn County Commissioners of Wyoming appreciate the opportunity to comment on new legislation to reform the General Mining Act of 1872 known as the Hardrock Mining and Reclamation Act of 2009 (S. 796).

Big Horn County along with other sites in Wyoming and Montana are blessed with the highest quality bentonite in the world. The companies mining this mineral in Big Horn County are American Colloid Company, Bentonite Performance Minerals, MI SWACO, and Wyo-Ben, Inc. The revenue collected in Big Horn County from bentonite mining in 2008 was 12 % of the county's total taxable income.

The presence of the bentonite mining industry is vital to our county. This industry not only contributes to our county budget but provides employment to 1, 202 individuals, which is around 17% of our county residents. To place bentonite under the Mineral Materials Act and make it a common leasable mineral (Section 504 of the revision), could severely affect the bentonite companies willingness to invest in future projects in our county and thus limit economic growth. This single change would be a departure from the long standing classification of bentonite as a locatable mineral and cause another layer of record keeping and confusion when dealing with payments and reporting. Please leave bentonite in the category of locatable minerals.

We support a reasonable royalty system for locatable minerals that takes into account the value and expenses associated with production of these minerals. Industrial minerals generally are low-cost, low margin minerals and the royalty rates must reflect those facts. The proposed 2% royalty on mine mouth valuation would be a reasonable level of royalty for use of federal land.

We feel that the current system of regulatory oversight by both the State and Federal agencies provides a very good framework for environmental stewardship. Permitting delays already prevent timely development of resources, so adding another layer of environmental requirements would not improve reclamation and would only serve to delay development. The Big Horn County Board of Commissioners would appreciate your support for a realistic royalty, secure land tenure, and reinforcement of existing environmental standards (not new ones) for industrial minerals. The presence of this industry is vital to our county.

We would request that this letter be submitted for the record at any hearing on this issue.

With the signature below of our chairman, the Big Horn County Commissioners unanimously supports the mining industry in Big Horn County. We would invite you to contact us with any questions in regards to our concern.

Thank you for your time and consideration.

STATEMENT OF KEITH GRANT, BIGHORN COUNTY COMMISSIONER, LOVELL, WY

The four bentonite companies in our county American Colloid, Bentonite Performance Minerals, Wyo-Ben and MI Drilling are vital to our county. This industry not only contributes to our county budget but provides employment to a number of citizens living in this area. To place bentonite under the Mineral Materials Act and make it a common leasable mineral and impose an 8% royalty could be devastating to Bighorn County. There are 1,202 mining jobs in Bighorn County as of 2006 second only to Government with 1542 jobs. This industry is very important to the survival of Bighorn County.

It is my understanding that the current mining law reform discussion in Washington is placing industrial minerals such as bentonite with valued metals, such as gold and silver. Industrial Minerals generally are low-cost, low margin minerals and the royalty rates must reflect those facts.

The revenue collected from bentonite mining is significant as well as the employment it offers to many individuals in Bighorn County . We hope you will support our concern and place a royalty on bentonite that is realistic. We value the presence of these Bentonite companies in our county and the relationship we have built with them in protecting our natural resources.

The royalty obligation to develop minerals on the public lands must be reasonable to keep industrial mineral production on public lands globally competitive. A royalty rate for industrial minerals produced from new mining claims on the order of two percent (2%) based on mine-mouth values (e.g., "dirt out of the ground") is regarded as both reasonable and fair.

I would appreciate any efforts on our behalf you could put towards this process.

STATEMENT OF MARK G. ELLIS, PRESIDENT, THE INDUSTRIAL MINERALS ASSOCIATION—NORTH AMERICA, ON S. 796

On behalf of the Industrial Minerals Association—North America (IMA-NA), we offer this testimony regarding the hardrock Mining and Reclamation Act of 2009 (S. 796).

IMA-NA is a trade association that represents companies that produce industrial minerals such as ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, mica, soda ash, talc, and wollastonite, and associate member companies that provide goods and services to the industry. IMA-NA typically represents seventy-five percent or more of the production for each of these minerals in the United States. IMA-NA members have demonstrated a commitment to the goals of sustainable development and operating in an environmentally responsible manner.

The United States enjoys the most environmentally benign processes for production of industrial minerals in the world. Industrial minerals are critical to manufacturing many of the products that we use every day. They are used in the production of drinking water, electricity, steel, copper, gold, glass, ceramics, paper, plastics, cement and concrete, rubber, detergents, insulation, pharmaceuticals, cosmetics, and oil and gas exploration and extraction. They also are used to make foundry cores and molds used for metal castings, in paints, filtration, metallurgical applications, refractory products and specialty fillers.

According to the U.S. Geological Survey's 2009 Mineral Commodity Summaries published earlier this year, the industrial minerals industry currently employs an

estimated 81,000 workers in the United States.[1]This number is higher than either the metal or coal sectors of the industry. The total annual production of the industrial minerals industry is $43,600,000,000.[2]

The industrial minerals industry is very active throughout the Western United States and quite a bit of the production is on public lands. Any update to the General Mining Law of 1872 stands to greatly impact our industry, and thus the manufacturing industry within the United States. In fact, as currently drafted, the legislation would decimate the market for some of our minerals, and forfeit many of the jobs provided by our industry.

IMA-NA supports meaningful Mining Law reform. The United States is blessed with an abundance of natural resources, including minerals. As the nation grew, the General Mining Law established the framework for the exploration, discovery and development of hardrock mineral resources. Those mined resources helped create the wealth and infrastructure that established America as a great nation. Our population continues to require those same resources to sustain an improving standard of living. Today we expect, and demand, that mining be conducted responsibly and in accordance with all environmental protection laws. We live in a globally competitive environment and the U.S. continues to need a legal framework that encourages the long-term capital investment required to develop and produce minerals on the public lands. When mining is concluded, the land should be reclaimed, restored, or improved. The federal treasury also should be reasonably compensated for the minerals extracted. Meaningful Mining Law reform should recognize and embrace these basic concepts.

While IMA-NA is generally supportive of the effort undertaken by Chairman Bingaman to update the Mining Law of 1872, we have significant concerns about some of the provisions included in the proposed legislation.

INDUSTRIAL MINERALS ARE AND MUST BE LOCATABLE MINERALS

The Industrial Minerals Association—North America and its members strongly encourage the Chairman and Members of this Committee to strike Section 504 "Uncommon Varieties" from the proposed Hardrock Mining and Reclamation Act of 2009. From the perspective of an industrial minerals producer, uncommon industrial minerals are properly defined as locatable minerals and must remain locatable minerals if these minerals are to be developed beneficially on public lands.

Why Uncommon Industrial Minerals Are Properly Defined As Locatable Minerals

A primary implication of having a mineral defined as a locatable mineral is the primacy of access afforded to the person who has discovered a commercially viable deposit of the mineral. Once a person has undertaken the work and expense of staking a claim, exploring the claim for a suitable mineral resource, and delineating the resource to determine commercial viability, it is logical that access to that deposit for the purpose of developing the found mineral be awarded to that person. In our view, the logic is as applicable to uncommon industrial minerals as it is to hardrock minerals.

Uncommon industrial minerals, as recognized in Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), have the attribute of being "valuable because the deposit has some property giving it distinct and special value". Conceptually, the "property" inherent in an industrial mineral deposit that gives that deposit distinct and special value is no different than a gold deposit where the "property" that gives the deposit distinct and special value is the gold contained in the rock. Bentonite clay has properties that make it rarer and more valuable than common clay. High-calcium limestone has properties that make it rarer and more valuable than common limestone. Gold-bearing rock has properties that make it rarer and more valuable than common rock.

Significant expenditures are required to explore for and delineate uncommon industrial mineral deposits. Several deposits may be explored before one is identified as having the required properties and size to make it commercially viable. Like hardrock deposits, uncommon industrial mineral deposits are explored using drilling machinery to collect core samples that are analyzed to determine if the required mineral properties exist. Samples must be taken over wide areas to delineate the extent of the deposit. Development of an uncommon industrial mineral deposit (e.g., clearing the land, removing soil and overburden rock, developing the mine, constructing infrastructure and installing machinery) in order to put the deposit into production also requires significant expenditure.

[1] See U.S. Geological Survey, 2009, Mineral Commodity Summaries 2009, p.8 http://minerals.usgs.gov/minerals/pubs/mcs/2009/mcs2009.pdf

[2] Id.

For example, the investigation and exploration costs to identify a high-calcium limestone or pure-dolomite limestone deposit (to be used for commercial quicklime production), permit and develop a quarry, and then put the quarry into production can exceed $30 million. The additional investment to permit and construct a quicklime manufacturing facility can easily exceed $100 million.

There is also significant legal precedence regarding how industrial minerals are treated under the General Mining Law. In 1979, the U.S. Department of Interior's Bureau of Land Management (BLM) filed suit against Kaycee Bentonite Corporation.[3] The BLM contended that 130 claims made under the General Mining Law were invalid because the bentonite (a clay) found within the claims was not a valuable mineral subject to location under the mining laws. The BLM asserted that only "uncommon varieties" of bentonite or bentonite of an "exceptional" nature as compared to other deposits of bentonite are locatable, and because the bentonite in question did not satisfy certain physical-chemical standards adopted by BLM, it was not an "uncommon variety" of bentonite or an "exceptional" bentonite.[4]

In his decision, Administrative Law Judge Robert Mesch found that when determining whether bentonite was of the "uncommon variety" one had to use the "exceptional/common clay" test. The question here is whether the particular bentonite has exceptional qualities that make it useful for purposes for which common clays cannot be used. Judge Mesch noted in his decision:

> "Wyoming" or "western" bentonites have a unique set of chemical and physical properties. No earth or non-bentonitic clay, however treated or blended, can duplicate those chemical and physical properties. It is the chemical and physical properties of bentonite, itself, which make it useful for purposes which common clay cannot be used. Blending or the use of chemical additives does not add to or alter its chemical or physical properties, it merely enhances the properties inherent in bentonite as it occurs in nature.[5]

The decision was affirmed by the Interior Board of Land Appeals (IBLA) three years later following an appeal from the BLM.[6] These decisions have given a legal precedence to the claim that bentonite is an uncommon clay, and should be locatable under the General Mining Law of 1872.

Why Uncommon Industrial Minerals Must Remain Locatable Minerals

Because of the significant cost of exploration, delineation, and development of an uncommon industrial mineral deposit and associated processing facilities, the only viable business model for commercial development of these deposits is one that is based on secure, long-term, exclusive access to the deposit. No business operator would be willing to pursue costly exploration and delineation of an uncommon industrial mineral deposit if a competitor could then access the deposit through a competitive contract sale. No business operator would invest in development of a deposit and construction of a processing facility if they only were assured access to the deposit for a maximum of ten years.

If uncommon industrial minerals do not remain as locatable minerals, new uncommon industrial minerals projects will not move forward. This will result in future shortages of these minerals, increased costs for consumers of these minerals, and the loss of good, high-paying jobs.

Why Strike Section 504

Section 504 of the proposed Hardrock Mining and Reclamation Act of 2009 would have the affect of ensuring uncommon industrial minerals would not continue to be defined as locatable minerals. Section 504 also would overturn legal precedents that have established clear definitions for how to determine if an industrial mineral should be deemed locatable.

Section 504 (b)(2)—DISPOSAL, states:

> Disposal—Subject to valid existing rights, effective beginning on the date of enactment of this subsection, notwithstanding the references to the term common varieties in this section and to the exception to the term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in this section (including block pumice referred to in subsection (c)(1)) shall be subject to disposal

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[3] See *United States of America* v. *Kaycee Bentonite Corporation*, U.S. Department of Interior Office of Hearings and Appeals—Hearings Division, IBLA 79-445, April 26, 1979.

[4] See id, p. 4.

[5] See id., p.36.

[6] See *United States* v. *Kaycee Bentonite Corp*., 64 IBLA 183 (1982)

only under the terms and conditions of the Act of July 31, 1947 (commonly known as the Materials Act of 1947)(30 U.S.C. 601 et seq.)

As we understand this language, it would appear that all deposits of these minerals[7], whether common or uncommon, would be subject to disposal under the Mineral Materials Act and removed from the General Mining Law. The Mineral Materials Act authorizes the Secretary to dispose of mineral materials on the public lands of the United States through competitive sales in accordance with rules and regulations promulgated under the authority of the Act. The regulations for this purpose are found at 43 CFR Part 3600. These regulations were designed in anticipation of small volume, short-term commodity type sales of material, such as sand and gravel needed for road projects. They establish a disposal method that involves competitive contract sales based on volume or tonnage, two-year price adjustments and a maximum contract period of 10 years. The BLM can designate an area for common use and the submission of a mining and reclamation plan is at the option of the BLM.

Conditions for disposal under the Mineral Materials Act are such that no viable business model would exist for identifying and exploiting these valuable mineral resources. As stated above, the consequence of uncommon industrial minerals not remaining as locatable minerals will be the cessation of uncommon industrial mineral development on public lands. Jobs would be lost. Small towns that rely on these high-paying mining jobs that are their life-blood would be destroyed. And the federal government would be costing itself millions of dollars each year in lost revenue from the royalty fees under consideration.

It is for these reasons that we strongly encourage the Chairman and Members of this Committee to strike Section 504 "Uncommon Varieties" from the proposed Hardrock Mining and Reclamation Act of 2009.

ROYALTY PROVISIONS

IMA-NA strongly supports a production payment or royalty for materials extracted from public lands. IMA-NA believes the approach taken in the legislative proposal by Senator Bingaman amounts to a good first-step and solving the royalty rate issue in Title II. We are concerned though that the actual rate is left uncertain as it is subject to a rulemaking process. The uncertainty could damage the mining industry in the U.S. as they wait for the rulemaking process to conclude.

IMA-NA believes that any production payment royalty system should be based on mine-mouth values for minerals produced from new mining claims on federal lands. Industrial minerals, although some are rare and unique, typically are low-cost, low-margin minerals and the royalty rate applied to industrial minerals must reflect those facts. In establishing a royalty rate and valuation methodology Congress historically has recognized distinct economic models among the various minerals produced from public lands. Similar distinctions must be carried forward in the royalty rate and valuation methodology related to locatable minerals in any reform of the Mining Law. The royalty obligation to develop minerals on the public lands must be reasonable to keep industrial mineral production on public lands globally competitive. A royalty rate for industrial minerals produced from new mining claims on the order of two percent (2%) based on mine-mouth values (e.g., the unprocessed mineral) is regarded as both reasonable and fair.

SECURITY OF TITLE AND TENURE

IMA-NA is very concerned that this legislation will significantly impact the security of tenure our operations require by eliminating the right to use or occupy public land for mineral purposes. We would support amendments that provide for security of title and tenure from the time of location through mine reclamation and closure. Long-term capital investments require certainty and the patenting of lands historically provided that certainty. If patenting were abandoned, a substitute legal framework would be required to clarify existing rights applicable to surface and subsurface activities in advance of, as well as during, development and through reclamation.

ENVIRONMENTAL STANDARDS

IMA-NA supports recognition of the existing comprehensive framework of federal and state environmental laws that regulate all aspects of mining from exploration

[7] The minerals listed at the beginning of section 504 referenced here include: sand, stone, gravel, pumice, pumicite, cinders, and clay. Stone could refer to high-grade calcium carbonate, diatomite, talc, and other industrial minerals.

through reclamation and closure. Additional environmental standards specific to mining on public lands are not the solution. Instead, the solution lies in compliance with, and uniform enforcement of, existing laws and regulations.

ABANDONED MINE LAND AND COMMUNITY IMPACT FUNDS

IMA-NA supports the establishment of AML and community impact funds financed by revenue generated from the royalty/production payments. Any new programs should be coordinated with existing state and federal programs.

ACCESS TO PUBLIC LANDS

IMA-NA supports multiple use of public lands. Absent specific Congressional withdrawals, the public lands should be open to mineral exploration and development. When not closed for safety reasons related to mining operations, the public lands should be open to other compatible uses. Mineral exploration and development can, and should, occur concurrently and sequentially with other resource uses.

CONCLUSION

IMA-NA supports meaningful Mining Law reform. Our industry is a significant portion of the United States mineral industry, and as a key feedstock to many everyday products, a vital part of the manufacturing industry. The industrial minerals industry that has operations on public lands stands to be severely impacted by Section 504 of S. 796, the Hardrock Mining and Reclamation Act of 2009.

The industrial minerals industry is responsible for the employment of roughly 81,000 employees throughout the United States, a number that is not quite three times that of the metals sector.[8] The industry had a total production of $43,600,000,000 in 2008.[9] Removing industrial minerals, such as bentonite and calcium carbonate, from the provisions of the General Mining Law and placing them under the jurisdiction of the Mineral Materials Act of 1955 would potentially be an industry killer, and almost certainly will be a jobs killer in the western United States. Industrial minerals operations typically exist in rural areas, and are the lifeblood of small communities. The industry provides secure, high-paying jobs that help to keep rural communities afloat.

The Mineral Materials Act of 1955 was designed to give states easy access to common materials such as stone and gravel used for building roads. The extraction of these materials is not reliant on security of tenure of land or capital investment, whereas industrial minerals' operations are extremely reliant on capital investment and security of tenure of land. Some of our operations require $60-100 million in investments and require 50 years or more to adequately complete operations.

Attempts to move industrial minerals into the Mineral Materials Act have been denied by the IBLA in the past. Industrial minerals, such as bentonite, have consistently been recognized as unique and locatable minerals under the General Mining Law in these challenges. To do otherwise at this stage would be ignoring decades of established case law and precedence.

For these reasons, the Industrial Minerals Association—North America and its members strongly encourage the Chairman and Members of this Committee to strike Section 504 "Uncommon Varieties" from the legislation when S. 796, the Hardrock Mining and Reclamation Act of 2009, comes up for consideration.

IMA-NA stands ready to participate constructively in this important discussion regarding how to ensure a fair, predictable and efficient legal and regulatory climate in Mining Law reform. We thank you for the opportunity to submit this statement for the record, and would be happy to make ourselves available to the Committee to answer any questions you may have regarding our statement.

STATEMENT OF THE INTERSTATE MINING COMPACT COMMISSION AND THE NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS, ON S. 796

This statement is submitted on behalf of the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) concerning the "Hardrock Mining and Reclamation Act of 2009" (S. 796) introduced by Senator Bingaman and the "Abandoned Mine Reclamation Act of 2009" (S. 140) introduced by Senator Feinstein. Our statement will focus primarily on those portions of the bills that address the reclamation of abandoned hardrock

[8] See U.S. Geological Survey, 2009, Mineral Commodity Summaries 2009, p. 8. http://minerals.usgs.gov/minerals/pubs/mcs/2009/mcs2009.pdf The metals sector employs 33,000 workers.
[9] Id.

mines. However, we will also generally speak to the provisions of S. 796 that establish new requirements for the mining of locatable minerals on public domain lands under the Mining Law of 1872. We appreciate the opportunity to submit this statement.

The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) are multi-state governmental organizations that together represent some 30 mineral-producing states and Indian tribes, each of which implements programs that regulate the environmental impacts of both coal and hardrock mining. Many of these programs involve delegations of authority from the federal government pursuant to national environmental laws such as the Surface Mining Control and Reclamation Act (SMCRA), the Clean Water Act and the Resource Conservation and Recovery Act. Under these statutes, the states and tribes exercise primary responsibility for the permitting and inspection of the affected mining operations, for the enforcement of applicable environmental performance standards, and for the protection of public health and safety.

The development of our Nation's mineral resources is a critical component of our national well-being and security. Our manufacturing activities, transportation systems and the comfort of our homes depend on the products of mining. At the same time, it is essential that an appropriate balance be struck between the need for minerals and the protection of public health and safety and the environment. Over the past 40 years with the passage of sweeping national environmental laws, the states and Indian tribes have taken the lead in fashioning and then implementing effective programs for the regulation of mining and its impacts, including the cleanup of inactive and abandoned mine lands. As we face new challenges associated with homeland security, climate change and alternative energy sources, the importance of mineral development will be heightened, as will the role of state and tribal regulatory authorities.

We commend both you, Mr. Chairman, and Senator Feinstein for your continued commitment to craft a meaningful and effective program for reclaiming and restoring the land and water adversely affected by past hardrock mining. Without a national solution for this legacy issue, it is unlikely that significant progress can be achieved. This is due primarily to the lack of sufficient funding, not a lack of will by the states, tribes and others to do something about the matter. The states and tribes—often together with our federal agency partners—have made notable progress in addressing the issue. But our efforts need a substantial boost and the legislation before the Committee today will accomplish this goal.

Nationally, abandoned mine lands continue to have potentially significant adverse effects on the environment. Some of the types of environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, sedimentation, chemical release, and acid mine drainage. Safety hazards associated with abandoned mines account for deaths and/or injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years prior to the implementation of present day controls, are scattered throughout the United States. The sites are located on private, state and public lands.

Over the years, several studies have been undertaken in an attempt to quantify the hardrock AML cleanup effort. In 1991, IMCC and the Western Governors' Association completed a multi-volume study of inactive and abandoned mines that provided one of the first broad-based scoping efforts of the national problem. Neither this study, nor any subsequent nationwide study, provides a quality, completely reliable, and fully accurate on-the-ground inventory of the hardrock AML problem. Both the 1991 study and a recent IMCC compilation of data on hardrock AML sites were based on available data and professional judgment. The data is seldom comparable between states due to the wide variation in inventory criteria. Nevertheless, the data do demonstrate that nationally, there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that cumulative remediation costs are very large.

Across the country, the number of abandoned hardrock mines with extremely hazardous mining-related features has been estimated at several hundred thousand. Many of the states and tribes report the extent of their respective AML problem using a variety of descriptions including mine sites, mine openings, mine features or structures, mine dumps, subsidence prone areas, miles of unreclaimed highwall, miles of polluted water, and acres of unreclaimed or disturbed land. Some of the types of numbers that IMCC has seen reported in our Noncoal Report and in response to information we have collected for the Government Accountability Office (GAO) and others include the following gross estimated number of abandoned mine sites: Alaska—1,300; Arizona—80,000; California—47,000; Colorado—7,300; Montana—6,000; Nevada—16,000; Utah—17,000 to 20,000; New York—1,800; Virginia—3,000 Washington—3,800; Wyoming—1,700. Nevada reports over 200,000 mine

openings; New Mexico reports 15,000 mine hazards or openings; Minnesota reports over 100,000 acres of abandoned mine lands and South Carolina reports over 6,000 acres. While the above figures attempt to capture a universe of all abandoned mine sites by state, the actual number of sites that pose significant health, safety or serious environmental problems is likely far lower.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. And although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states and tribes are intimately familiar with the highest priority problems within their borders and know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm.

Estimating the costs of reclaiming hardrock abandoned mines is even more difficult than characterizing the number of mines. If one accepts the estimates of the number of AML sites, one can develop a very rough estimate for the costs of safeguarding mine hazards and reclaiming small surface disturbances. But the costs of remediating environmental problems such as ground water and surface water contamination, acid rock drainage or wind blown contaminants are extremely difficult to estimate. And many of these problems will not be fully detected unless thorough assessment and testing occurs at a site

In a recent effort to quantify and forecast what states could spend immediately as part of an economic stimulus package that focuses on the cleanup of abandoned hardrock AML sites over the next 18 to 24 months, IMCC and NAAMLP provided information from nine western states to your Committee in a statement submitted for the record at a hearing on "Clean Energy and Natural Resource Proposals to Stimulate the Economy and Create Green Jobs" last December. An updated summary of that information is attached to this statement. Few of these projects have been funded to date and are examples of how new funding under the proposed legislation would immediately be put to use.

In addition to the forecasts provided by these states regarding economic and job enhancements, it should be noted that, in general, for every dollar spent by the states/tribes on local construction, this translates to $2.70 that is spent in the local economy for things such as supplies and materials, local equipment rentals and equipment operators, and employee support.

Today, state and tribal agencies are working on hardrock abandoned mine problems through a variety of state and federal funding sources. Various federal agencies, including the Environmental Protection Agency, the Bureau of Land Management, the National Park Service, the U.S. Forest Service, and the U.S. Army Corps of Engineers have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states and tribes with our hardrock AML work and, as states and tribes take on a larger role for hardrock AML cleanups into the future, we will continue to coordinate with our federal partners. However, most of these existing federal grants are project specific and do not provide consistent funding. For states and tribes with coal mining, the most consistent source of AML funding has been the Title IV grants under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states and tribes to use these grants only at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites. It is worth noting that recent fatalities at abandoned hardrock mine sites have been in states without SCMRA-funded AML programs. The small amount of money that SMCRA states have been able to spend on physical safety hazards at hardrock sites appears to be making a difference. More specific information regarding the nature and extent of the hardrock AML accomplishments of the states and tribes is available from IMCC and NAAMLP.

As states and tribes work to address the remaining inventory of abandoned hardrock mine sites, we are increasingly concerned about the escalating costs of addressing those problems that continue to go unreclaimed due to insufficient funding. Unaddressed sites worsen over time, thus increasing reclamation costs. Inflation exacerbates these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. In addition, the states and tribes are finding new, higher priority problems each year, especially as many of our urban areas grow closer to what were formerly rural abandoned mine sites. New sites also continually appear due to the effects of time and weather. This underscores the need for constant vigilance to protect our citizens and the importance of the legislation before the Committee today.

With the foregoing as background, we will now address several aspects of both S. 796 and S. 140 that deserve mention. One of the most important features of both bills is the establishment of a consistent and robust funding source for addressing hardrock AML problems. While we do not have a formal position on the various roy-

alty and fee provisions contained in the two bills, we do believe that some combination of these funding mechanisms is critical to the success of a hardrock AML program. Without certain, reliable funding from year to year, the states and tribes will be unable to effectively plan for and execute a meaningful AML program. We therefore strongly recommend an appropriate combination of funding sources that will consistently support a long-term AML program that will result in substantial reclamation work over the life of the program. We also support continued funding for the hardrock AML programs already in place at BLM, the Forest Service and the National Park Service. These programs have a unique focus and should not be supplanted by new legislation. Much valuable work continues to be accomplished pursuant to these programs, often in partnership with the states and tribes.

Another key component of an effective hardrock AML program is the provision contained in S. 796 concerning state programs. Today, there are abandoned mine land programs in most states. These include the 28 programs established by states and tribes under SMCRA Title IV, along with states across the country that are not eligible for Title IV funding, including Nevada, California, Arizona, Idaho, New York, South Carolina and North Carolina. All of these states and tribes are experienced with administering federal grants and completing AML projects in a cost-effective manner, including projects on federal land. It is essential that the states and tribes be provided an opportunity to assume primary responsibility for implementing any hardrock AML program given the unique differences among the states and tribes in terms of geology, climate, terrain and other physical and environmental conditions. This state/tribal-lead approach will assure the most critical AML problems are addressed first, since the states and tribes are closer to the problems and can make a better determination about priority sites and actual remediation work. In addition, they also have assembled professional staffs with many years of experience (in some cases over 30 years) and an excellent local contracting knowledge base. State and tribes would require minimal staffing increases compared to a new federal program, thereby increasing on-the-ground results per program dollar.

In the West, several states, including New Mexico, Colorado, Utah, Wyoming and Montana, have used SMCRA Title IV funds to address a number of significant AML problems, both coal and hardrock. In addition, these AML programs have cooperative agreements with the Forest Service, the National Park Service, BLM and the U.S. Army Corps of Engineers that allow those agencies to fund AML projects on their lands when money is available. It is simply more efficient for the federal land managers to use the already established state AML programs with their staff of experienced engineers, reclamation specialists and project managers to design and conduct cost-effective AML projects on federally-managed land within each state's boundaries. Given the importance of the states being able to access SMCRA Title IV funds for noncoal AML work, any new legislation should ensure that this practice can continue or increase. In this regard, we support the provision in S. 796 that would recognize and incorporate state and tribal programs approved under Title IV of SMCRA. This provision should be expanded to include approval of equivalent state AML programs in non-SMCRA states.

With regard to overall administration of the Hardrock Minerals Reclamation Fund, we support the proposed role of the Office of Surface Mining Reclamation and Enforcement (OSMRE). We believe that OSMRE has the required expertise to oversee and administer the Fund and the overall AML program based on its 30 years of experience under SMCRA. We also support the necessary funding for OSMRE to carry out its duties under the law.

We support the uses and objectives of the Fund designated in both bills and believe they capture the nature of the complex AML problems faced by the states and tribes. With regard to expenditures from the Fund, and to be consistent with the state/tribal-lead approach that we advocate, we support the awarding of grants to states and tribes contained in S. 796. We recommend that these annual expenditures from the Fund be off-budget and not subject to the annual appropriations process. Given the known inventory of AML problems, we believe this approach will guarantee that annual contributions to the Fund are immediately distributed for work on-the-ground rather than retained in a Fund that does little but generate interest. And with regard to allocations from the Fund, we support the formula contained in S. 796 that takes into account both current and historic mineral production. We believe that this arrangement represents a fair and equitable disposition of moneys paid into the Fund and will allow the states and tribes to effectively manage their programs and accomplish meaningful reclamation work. It may be helpful to clarify that the 20 percent of Fund allocations paid to the states based on existing production are defined as a percentage of the total moneys paid into the Fund for the current year by the respective states. As for the 30 percent allocation from the Fund based on historic production, there will likely have to be some consideration

given in the formula to how the specific mineral commodity is measured (ounces v. pounds v. tons) and the reference year from which historic production is calculated. For instance, Nevada's and California's mineral contributions to the nation predate both the 1872 Mining Law and the 1900 date from which historic production has been previously calculated.

With respect to eligible land and water, we agree with the definition in both bills. However, the legislation should recognize that most hardrock AML problems are on non-federal lands, even in the West. In most states, federal lands contain less than a quarter of all hardrock AML sites. In part, this is due to the patenting of mining claims in the nineteenth and early twentieth century that led to mining occurring on private land. And when there are abandoned mine problems on federal lands, they often spill over into adjacent non-federal lands or in-holdings. To be effective, a hardrock AML program needs to be able to spend funds on all classes of land. It should also be clarified that there is no limitation on when land and water becomes eligible. In California, for example, many of the legacy AML sites pre-date the 1872 Mining Law, so limiting eligibility to only those problems that are post-1872 would be problematic.

A critical component of any reclamation program is prioritization of sites and identification of remediation options. Abandoned mine lands range from sites with features that require no remediation because of their minimal size or risk; to sites which require significant earthwork, topsoiling and revegetation for erosion and pollution control; to safeguarding shafts and adits that present public safety hazards; to remediating sites with significant toxic leachate causing contamination of ground and surface waters. In addition, there are hardrock mine sites with such a conglomeration of features, access problems, drainage problems, etc., that estimated reclamation/remediation costs exceed the entire annual AML budget of a state/tribe. Regardless of which inventory or listing of sites is used, a large portion of sites will require little if any reclamation. In other cases, the per unit cost of reclamation is relatively small. These sites will also rank low in priority because of the reduced threat to public health or the environment. On the other end of the spectrum, there will be a small number of sites that require a significant amount of funding to remediate and that contain a chronic risk to public health or the environment. Under current law, these are the sites that are being or might be remediated under Superfund (the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)). The AML priority sites should be those that constitute a physical threat to public safety, and sites with significant contamination, but that will likely never score high enough to be remediated under CERCLA.

Given the above considerations, each state or tribe should be provided the discretion to determine which among the many sites in its respective AML inventory deserves the most immediate attention, with input from the federal land management agencies on whose land the sites may be located. The states and tribes can also best decide the appropriate remediation required under the circumstances given available funding and resources. The priority scheme included in both bills appears to accommodate this approach and as such we support it.

Another aspect of any hardrock AML program is the process of quantifying the problem. A consistent and purpose-driven inventory of AML problems is critical to understanding the magnitude of the problems the states and tribes face. Assessing the present and future impacts to the safety and health of citizens and the impacts to the natural environment, while recognizing the changing cost structure of a long-term program, are key to a meaningful inventory of problems. However, lessons need to be learned from the inventory of abandoned coal mines undertaken pursuant to the Surface Mining Control and Reclamation Act, which is estimated to have cost more than $25 million and is still fraught with controversy. Based on the SMCRA experience, any hardrock AML inventory needs to: have well thought out goals and instructions; maintain standardized inventory procedures; keep inventory crews small to minimize inconsistencies in reporting methods; minimize the influence on the inventory by those with vested interests in the results; require any federal agency inventory work to be coordinated with the states; utilize state-of-the-art GPS imagery; and be conducted with consideration for seasonal vegetation cover. In this regard, we support the $5 million cap contained in S. 796 on the amount of money to be invested in any inventory effort, so as not to divert money and energy from on-the-ground reclamation work. In addition, those states whose AML programs meet the above standards should be allowed to keep and rely upon their existing inventories and associated databases, rather than being required to create or adopt new ones.

A new complication for state and tribal AML work that also needs to be addressed is the limited liability protection provided for noncoal AML work undertaken with SMCRA Title IV funds. A recent rulemaking by OSMRE removed this protection

and it could have a significant chilling effect on the ability of the states and tribes to undertake some of their noncoal projects with SMCRA funds. This may need to be addressed with a perfecting amendment to SMCRA, but to the extent it can be addressed in the pending legislation, so much the better.

S. 796 would provide for two special allocations from amounts paid into the Fund: 1) 10 percent for grants to non-hardrock mining states and 2) 10 percent for grants to public entities and nonprofit organizations, such as watershed groups. We strongly support both of these allocations and believe that their incorporation into the bill will likely generate additional support for the bill. States other than the western hardrock AML states have significant noncoal AML problems within their borders and there are limited, if any, funds available to address these sites. Therefore, to the extent that a small but reasonable amount of funding can be set aside for work in these states, it will make a difference in their efforts to remediate these sites. Based on our experience with watershed cooperative agreements under SMCRA, we believe that a program for nonprofit or public entities will provide a welcome shot-in-the-arm for their efforts to address water contamination and acid rock drainage issues in critical watersheds.

Now turning to those provisions in S. 796 that address active hardrock mining operations under the 1872 Mining Law, we have one over-arching concern. The bill establishes new permitting requirements for both exploration and active mining operations and requires the development of new operation and reclamation standards by the Secretary. The bill sets new requirements for monitoring, inspections and financial assurance and enhances existing enforcement standards. While the bill, at Section 308, provides a recognition of state laws that "meet or exceed the requirements of this Act" and deems them to be "consistent with" the Act, it does not reconcile the inter-relationship between these state laws and the federal regulatory program established by the Act.

Most western states already operate comprehensive regulatory programs that apply to active hardrock mining operations within their borders, regardless of whether those operations occur on private, state or public lands. Some western states have cooperative arrangements in place that allow coordination between the states and federal land management agencies. It is critical that any new federal law not only recognize the existence of these programs and agreements, but be structured in a way that avoids duplication of regulatory efforts and resources and ensures maximum coordination between the states and the federal government. In this regard, it is important for the bill to address how these existing state/federal relationships are to continue into the future. Without this adjustment, the potential for confusion and ambiguity among applicable regulatory requirements is great, which could in turn result in permit delays and litigation. The avoidance of duplicative, conflicting federal requirements is also critical to the continued effectiveness of the existing, well-established state regulatory programs that are already in place.

The National Academy of Sciences spoke directly to this issue in its1999 Report entitled "Hardrock Mining on Federal Lands". One of its first findings and conclusions was that "existing regulations are generally well coordinated, although some changes are necessary." The report went on to add that "the overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective. The structure reflects regulatory responses to geographical differences in mineral distribution among the states, as well as the diversity of site-specific environmental conditions. It also reflects the unique and overlapping federal and state responsibilities."

In light of these findings, which are still relevant today, we believe that the Congress should move cautiously in requiring an entirely new federal regulatory regime that will simply duplicate the existing framework that is in place. To the extent that adjustments are required in this framework, they can be undertaken through other means. In fact, over time, this has occurred as state regulatory programs have matured and federal/state cooperative agreements have been updated. An excellent overview of the status of state noncoal regulatory programs can be found in a publication by IMCC entitled "Noncoal Minerals Report", released in May of last year. A copy is available on IMCC's website (www.imcc.isa.us) or by contacting us.

A couple of examples may help to illustrate our concerns. S. 796 does not provide for a specific mechanism (as the House bill does) to establish cooperative agreements or coordinated approaches between the federal government and the states in order to avoid duplication of resources and conflicts of laws. For instance, ground water discharge permits issued by the state fully address many of the same elements presented in S. 796, including operations, reclamation, and long-term water treatment. Provisions need to be established whereby a state can take the lead for these types of requirements, especially where state law meets or exceeds the minimum requirements of the federal law. These provisions will be critical to avoid du-

plication and unnecessary burdens on state and federal regulatory staff and the mining industry.

Another example involves financial assurance. Any joint financial assurance instrument between federal agencies and the states would be difficult to administer, especially for long-term water treatment. The Committee may want to consider adding language that allows the mine operator to provide evidence of existing financial guarantee under state law that meets or exceeds federal requirements. The state would continue to hold the financial assurance instrument and it would be directly payable to the state in the event of forfeiture. This would avoid the need for formal state/federal agreements on the matter, which in the past have proven difficult to reach, due in part to the complexities of administering long-term financial assurance for water treatment.

To the extent that any coordinated regulatory approach under the bill anticipates the adoption of enhanced requirements in existing state programs to meet federal standards, it will be incumbent on the federal government to provide the necessary funding to accomplish this task. The states are not in the position to incorporate new federal mandates with existing resources, which are already stretched to the limit. In addition, there are certain requirements included in the bill that could prove problematic for the states to adopt given current restrictions under state law. We therefore urge the Committee to reconcile and incorporate in any reform of the 1872 Mining Law provisions that address the relationship between existing state regulatory programs and new requirements under the Act. For instance, where a state's program meets or exceeds the requirements under the new law, will the state continue to take the lead in regulating hardrock mining operations in the state, or will there also be a duplicative federal regulatory program in place? If the latter, how will coordination of regulatory efforts (and resources) be addressed? If the state is allowed to take the lead, but there are portions of the state's program that are deemed to be "inconsistent with" the new law, how will this be reconciled? How will the "consistency" standard be defined? Will there be opportunities for federal funding assistance where a state chooses to expand its regulatory jurisdiction to address new requirements under the Act? Should a formal state/federal cooperative agreement be provided for under the law?

There is also some question about what the term "locatable mineral" means under the law and perhaps this should be clarified. Some minerals are "locatable" under certain circumstances and "leasable" under others. For instance, uranium, which is currently locatable under most cases, is leasable under the Atomic Energy Act program mentioned in S. 796 (Section 505(B)(2)(D)), and may become entirely leasable under future legislation. This creates confusion as to whether all abandoned uranium sites are now, or will be in the future, eligible for funding under the AML provisions of these bills. This is particularly important given the legacy of AML sites from past mining of uranium in New Mexico and other states. We realize that the bill provides for a study by the National Academy of Sciences focused on this matter. However, in the meantime, we believe that it is important to clarify that, until such time as it is determined otherwise, uranium continues to be a locatable mineral and thus subject to the provisions of the Mining Law. In this regard, there is a concern that the limitation on eligible land and water at Section 402(d)(2) (referencing section 411(d) of SMCRA) could preclude the use of Hardrock Minerals Reclamation Fund moneys on uranium mine cleanups.

Thank you for the opportunity to submit this statement. Should you have any questions or require additional information, please contact us.

ATTACHMENT.—EXAMPLES OF HARDROCK ABANDONED MINE PROJECTS READY FOR IMMEDIATE FUNDING

- South Dakota—South Dakota has one major mining Superfund site waiting for remediation. The Gilt Edge Mine Superfund Site is located in the northern Black Hills, approximately four miles from the town of Deadwood. Mining activities began at the site in 1876 and continued intermittently for more than 100 years. The most recent owner of the site, Brohm Mining Company, operated a large-scale, open pit, heap-leach gold mining operation at the site from 1986 until 1999. Brohm affected 265 acres consisting of open pits, waste rock depositories, process facilities, and a heap leach pad. This mining activity caused significant acid rock drainage. In 1999 Brohm abandoned the site and in 2000 the EPA listed the mine as a Superfund Site. Work accomplished to date is the construction of a lime water treatment plant for treating acid water and the capping of a 65-acre acid generating waste rock facility. EPA recently issued a Record of Decision for the remediation of the rest of the site which includes three pits, waste rock depositories, a heap leach pad and process facilities. Re-

medial design is estimated to take one year with the selected remedy emphasizing site-wide consolidation and containment of mine waste. The estimated cost for the remaining reclamation work is $50 million and it will take five to seven years to complete depending on availability of funding.

- Montana—Potential abandoned mine projects for funding total $31.7 million, with 202 persons projected to be employed. Some of these projects are outside of the current AML planning window, but could be brought to construction within 18 months or less. Other projects face challenges related to access to the affected lands by landowners or CERCLA actions by the federal government. Some examples of projects include a bond forfeiture and a recent environmental emergency, as follows:

Engineered portal plug for Evening Star/Big Dick mine blowout and discharge to Little Blackfoot River. (Powell County). $6.5 million, 20 employed.

Silver Creek Tailings removal and stream reconstruction project (Lewis and Clark County). $10 million, 40 employed.

Basin Creek Mine closure—bond forfeiture bankruptcy. Lewis and Clark and Jefferson Counties. $4.7 million. 50 employed.

Winston Area Multi-site Mine Waste Repository and Reclamation Project: East Pacific, Sunrise-January, Custer Millsite, and Chartam Mine Sites (Broadwater County). $3.4 million 40 employed.

Emery Mine Reclamation Project (Powell County). $5 million. 25 employed.

Frohner and Nellie Grant Mine (Jefferson County) $1.5 million, 15 employed.

Broken Hill Mine Reclamation Project (Saunders County). $.8 million. 12 employed.

- Colorado—The following projects address serious mine hazards and environmental problems associated with abandoned or inactive mines. The state and local community-based watershed groups use the funding to develop and construct projects that safeguard dangerous mine sites and to remediate environmental problems associated with abandoned mines such as acid mine drainage, and erosion of mine and mill waste piles into streams and rivers. In addition these funds provide local economic benefits by creating hundreds of jobs in Colorado's construction industry. Every project dollar expended translates into jobs in the construction, labor, equipment, materials and service industries.

What follows is a very general list of the types of upcoming projects. All are undergoing reviews related to NEPA, landownership, state purchasing and contracting but could quickly be on deck for final review and processing. Summary of all of the projects below: $5-7 million dollars spent in the construction and technical consulting industry. Translates roughly into 500 jobs. (Would not necessarily be new jobs but work for people already in the industry.)

BLM and USFS Safeguarding and Environmental Remediation Projects—$2 million in 09. Colorado AML already partners with BLM, USFS and NPS to contract and manage these projects. Colorado AML is in a good position to assist with funding that would be granted to these agencies for AML work in Colorado.

Safeguarding Hazardous Mine Openings Statewide in Colorado's Mineral Belt areas: $ 1 million in 09—Several hardrock safeguarding projects have been developed for this year. These projects could be out to bid in the summer season for completion in 2010.

Environmental Mine Site Reclamation—$2 -$5 million. Projects in the following river watersheds: Colorado, Animas, Arkansas, Rio Grande, and South Platte—all related to remediation of environmental problems associated with abandoned mines such as acid mine drainage, and erosion of mine and mill waste piles into streams and rivers. This will include funding to partner with local watershed groups to expedite design and construction of projects. Many watershed groups have projects outlined but have never had significant funding to get them off the ground. Through our watershed agreements we are all in a position to manage and construct these types of projects.

Reclamation of Forfeited Mine Sites. $500,000—Projects statewide. These forfeited mine sites are not considered "abandoned", but instead would be classified as inactive. There is not a solvent company to clean up such sites, and the responsibility to perform reclamation remains with the state.

- Utah—the state could spend $9,471,033 on six projects in five rural counties for an estimated 93 new jobs if total reclamation (as opposed to just physical safety hazard abatement only) is allowed. Hazard abatement only would be about $525,000 with 53 jobs created.

- New Mexico—the state has six projects with a total estimated construction cost of $1.95 million that could be undertaken within the 18—24 month time frame. There are two additional projects with a cost of $750,000 that could also likely meet the deadline. These costs are only for the construction contracts, and do not include any costs for investigation, evaluation, design or oversight. The projects all involve noncoal and are on federal lands.
- Wyoming—In the next 18 months Wyoming can put $10 to $12 million worth of projects on the ground. The number of jobs that would be involved is harder to estimate but based on similar sized projects it would be around 75 people but less than 100.
- Arizona—the state has Twenty-three (23) high-risk mine sites with 81 openings which can be identified for closure in the next 24 months. These areas typically have high use for backcountry touring and off highway vehicle activities, and recreational mineral collection by winter visitors, or are located near populated areas. Many of the 23 mine sites has several openings with depth's greater than 50 feet. These mine sites are hardrock AML projects. The number of jobs created by and through AML hardrock remediation is difficult to estimate because, in general, the abandoned mines that need to be addressed resulted from the efforts of small-time prospectors. We would estimate the number of jobs created to be 50-100. This number is subject to change once the momentum of closures increases throughout the 24 month timeline. The estimated costs are $810,000.
- California—the state estimates that approximately 47,000 abandoned mines are distributed throughout California. Of these, approximately 5,200 sites (11% of 47,000) present environmental hazards, and more than 39,400 sites (84%) present physical safety hazards. Some of the highest priority AML sites (for example, Iron Mountain) are being addressed, but the majority have not been evaluated to determine the required cleanup actions to protect public health and safety and the environment. In addition, there are numerous areas throughout the Sierra, including tribal lands that are contaminated from historic mercury use associated with gold mining. Hundreds of millions of dollars will ultimately be necessary to remediate all the AML sites within the State. As you know, California does not currently receive federal AML funding as it is not a SMCRA state.

In 2007, at the request of Senator Feinstein's office, California's state and federal agencies working on AML issues created lists of priority AML sites with environmental and physical hazards. The list is being updated, but a current version is available from the state or IMCC. This list provides a snapshot of the known environmental, human health, and safety problems posed by abandoned mines in California. It is important to note that many AML sites have not yet been inventoried or assessed for hazards. The prioritization process used for each list is briefly outlined in the document.

Of the sites on the list, many can be considered at/near a "shovel-ready" stage (i.e., projects already advanced that can put out to bid/work begun within 18 months). Listed alphabetically below are six of the State's priorities identified by the Office of Mine Reclamation, State Water Resources Control Board, and Department of Toxic Substances Control.

Argonaut Mine, Amador County (private land/low-income PRP):	$2.0M
La Joya Quicksilver Mine, Napa County (private land/low-income PRP):	$2.0M
New London Mine, San Luis Obispo County (California National Guard):	$3.0M
Oro de Amador, mine tailings in Amador County (city of Jackson):	$5.0M
Plumas Eureka Mine, Plumas County (State Parks):	$3.0M
150-200 priority physical hazard features on federal and state lands:	$1.5M
TOTAL	$16.5M

Other priority sites would likely be provided by federal agencies such as the Bureau of Land Management, U.S. Forest Service, and National Park Service (an estimated 67% of California's AML sites lie on federal land). We would like to stress that any hardrock AML funds for California's priority AML sites should go directly to the State of California or that the federal agencies receiving funds funnel them to the State.

Please note, the above "short list" represents only a partial list. We would be happy to work with California Senators Boxer and Feinstein and the Senate Energy and Natural Resources Committee as a whole to provide a complete list that cor-

responds to our updated priorities. The above short list also does not address the many abandoned mine sites that would benefit from funding for assessment investigations prior to cleanup Should such funds be available, California could use an additional, initial $5,000,000 to conduct investigations at AML sites that pose immediate threats to human health and the environment to define cleanup construction projects. State and federal agencies would work together to conduct the investigations and select the highest priority cleanup actions. Sites and cleanup actions would be defined within less than a year of initiation of the investigation work and construction contracts could be awarded using contractors in place several months thereafter (thus, within 18 months from the notification of funding to award additional cleanup construction contracts).

STATEMENT OF NAN STOCKHOLM WALDEN,
FARMERS INVESTMENT CO.

[The below table of contents materials have been retained in committee files:]

Provided by:
Arizona Mining Reform Coalition: www.azminingreform.org
Pima County, Arizona: www.pina.gov
Save the Scenic Santa Ritas: www.scenicsantaritas.org
Hilton Ranch Organization: www.hiltonroad.com
Center for Biological Diversity: www.biologicaldiversity.org
Sky Island Alliance: www.skyislandalliance.org
Coalition for Sonoran Desert Protection: www.sonorandesert.org
Tucson Audubon Society: www.tucsonaudubon.org
San Xavier District of the Tohono O'Odham Nation: www.tonation__nsn.gov
Farmers Investment Co: www.greenvalleypecan.com
RanchoSonado: (520) 398-8328

TABLE OF CONTENTS

STATEMENT OF THE AMERICAN LAND RIGHTS ASSOCIATION, BATTLE GROUND, WA, ON S. 796 AND S. 140

If it can't be grown, it has to be mined

S-796/S-140 JOB KILLERS AKA GHOST TOWN ACTS OF 2009

As gold nears $1,000 an ounce, America's mom and pop small prospectors and miners are protesting, "Don't steal our American Dream". House vote may be near on the draconian Rahall bill (HR 699) to end mining in western states. Its clone, S-796 is now in the Senate Energy and Natural Resource Committee Chaired by Jeff Bingaman (D-NM).

"A way of life for hundreds of thousands of citizens and a national asset for America would be destroyed by imprudent changes to the present location system under the existing General Mining Law," said Donald Fife, Chairman of the National Association of Mining Districts and Mining Director for the American Land Rights Association.

S-796 is a bill designed by U. S. House of Representatives Natural Resource Committee Chairman Nick J. Rahall (D-WV) to gut the General Mining Law.

"Enactment of S-796 would cause the loss of hundreds of thousands of jobs and the destruction of the fragile economies of hundreds of communities in the Western States. S-796 should really be titled The Ghost Town Act of 2009" said Fife.

"What's missing from the public debate is any recognition of how dependent many American industries, especially high-technology industries, are on mining. The mining industry in turn depends on the exploration and development activities of many thousands of prospectors and small-scale miners," Fife said.

"This is "R and D" for future mineral supplies, that must produce some 40,000 lbs. of minerals per capita per year to maintain our American standard of living. By destroying free enterprise and the entrepreneurial incentives contained in the General Mining Law, S-796 strikes at the roots of America's economic well-being," Fife continued.

Radical opponents of the General Mining Law have bombarded Congress and the public with the most outrageous propaganda.

"The biggest myth is the claim that real estate speculators are staking claims and then buying public land for $2.50 an acre, or the price of a hamburger at McDonald 's. Nothing could be further from the truth.

Thousands of mom and pop prospectors are looking for valuable hard rock mineral deposits. Only a very few ever find a deposit valuable enough to patent. A patent gives secure title that a small entrepreneur needs to collateralize (finance) his development to production," Fife said .

Development of a claim and the Federal patenting process can take decades. The cost of obtaining a patent, according to U.S. Forest Service and Bureau of Land Management sources, can cost from several thousand to more than a hundred thousand dollars per acre. For example, when you add all the exploration costs, such as road building, drilling, sampling, testing, surveying, and lawyers fees the costs skyrocket.

"Homestake Mining Company documents that during a 100-year period, only about one mining claim in 5,000 ever became a paying mine. For contrast the U.S. Geological Survey estimates that it takes about 100 petroleum exploration wells to find a new oil or gas discovery in North America

It can take decades more plus additional huge investments to get all the permits for operation and environmental reclamation that are required before mining can begin. So, when the radical environmentalist claim that people are stealing public land for the price of a Big Mac, what they fail to mention is before you can buy your $2.50 hamburger, you first must pay for and build a McDonald's franchise," said Fife.

"Recently, George and Ray Burton and their families of Big Bear Lake, California received a patent to their gold claims in the nearby Holcomb Valley Mining District 50 years after their father, Cecil Burton, filed a patent application. All too often, bureaucrats violate prospectors' and miners' civil rights by delaying action until after they have died," said Fife.

George's and Ray's parents, who filed the original patent application, died decades ago never, realizing the fruit of their American Dream.

Last fall the misinformed U.S. House of Representatives passed the draconian Rahall mining "reform" bill, "Hardrock Mining and Reclamation Act" which is the same as the current HR-699. This bill and S-796 dictates a 2% to 8% gross royalty on minerals produced from mining claims, and among other things, gives regulatory agencies the authority to reject proposed mines and to authorize citizen lawsuits.

If S-796 passes, patenting a discovery is eliminated making it nearly impossible for small miners to finance a small mining enterprise. It will mean the end of mineral discovery in the West. Staking of mill sites are eliminated creating the probability that processing facilities will be built on top of ore reserves.

In the past, royalties on high-risk mineral exploration and mining proved to be a failure. From the early 1800's to the 1840's, the federal government had a 5% royalty on minerals on federal lands held in trust for the states. Favoritism and bureaucracy made it more expensive to collect the royalty than the government received.

Chairman Rahall was recently featured in an Associated Press story September 19, 2008. The title was, "Interior Chief Vows to Stop Ethics Storm."

According to the AP wire story by Dina Cappiello, from 2002 to 2006 energy companies leasing oil and gas on Federal lands through the Department of Interior's Denver Office, which "is responsible for marketing billions of dollars worth of oil and natural gas that energy companies barter to the government in lieu of cash royalty payments for drilling, nine of the government employees received thousands of dollars in gifts including meals, ski and golf trips and snowboarding lessons. Two workers accepted gifts on 135 occasions."

After the Civil War, in 1866, a new placer mining law was proposed with a 5% royalty. It was found that royalties imposed on mines captured and leased by the Union Army during the Civil War were stripped of high-grade ore and abandoned before lower grade minerals could be extracted.

This is the same scenario S-796 will create, leaving millions of tons of lower-grade minerals in the ground. Due to the poor track record of the previous royalty system, Congress passed the 1866 mining law without a royalty provision. The 1866 law was modified in 1870 and 1872 without the royalty provision, and has been modified more than 20 times since. Each of these modifications has been without a royalty provision on hard rock minerals.

Contrary to the belief of environmentalists and others, a mining claim is not a mine. It only gives citizens the right to look for an economic mineral discovery. Even just "looking" now requires "holding or rental fees," extensive and expensive bonding and is subject to nearly endless environmental regulations.

Former Attorney General Janet Reno in an official AG Opinion to former Senator Bennett Johnson, then Chairman of the Senate Energy and Natural Resources Committee, declared the "rental or holding fee" illegal. The under the tenth amendment Supreme Court has ruled that a mining claim with a discovery is the same as private property with an unperfected title until the mineral patent is granted. Apparently only subdivisions of a state such as cities or counties jurisdictions may levy a property tax.

Once an economic mineral discovery meets the "prudent man rule" that is, a prudent citizen will expend his time, effort, and capital with the reasonable expectation of development of a valuable mine, only then does the citizen have "discovery" under the General Mining Law.

Most mom and pop prospectors can't qualify for a "bond," so they must come up with cash for a Certificate of Deposit as financial assurance for reclamation. That is a huge and often too large a hurdle for many mom and pop prospectors.

The National Association of Mining Districts represents mainly small "mom and pop" prospectors who still find most of the new discoveries despite all the new satellite and other technologies. "Most discoveries, around 90%, are still found by mom and pop miners," said Fife.

The General Mining Law is part of the American Dream. During the California gold rush people saw in action the revolutionary idea that an individual could search for gold and with his own labor, discover a valuable mine and actually own it.

This was confirmation of America as land of the free. Before this new American free enterprise way, the King and/or the State owned the minerals. Individuals had to pay a "royalty" to government, if they were lucky enough to receive permission from the King to prospect. S-796 gives bureaucrats this same authority, eliminating the self initiation provision of the existing law to stake a claim on a mineral discovery without permission of the "King" or Federal bureaucrats.

"The existing mining law may be the last of the truly free enterprise laws on the books," said Fife.

Some proponents of Rahall's "Ghost Town Act" claim that the land has been prospected for more than 150 years and everything has been found. This compares to the head of the US Patent Office in the 1890's when he proposed closing the office, "because everything worthwhile had been invented."

According to Vincent McKelvey, (Former Director of the US Geological Survey, 1976 to 1978): "Appraising mineral resources is an emerging science. A final once and for all inventory of any mineral resource is nonsense. Mineral reserves and resources are dynamic quantities and must constantly be appraised. As known deposits are exhausted, unknown deposits are discovered, new extractive technologies and

new uses are developed and new geologic knowledge indicates new areas and new environments are favorable for mineral exploration."

"As an example, the space age element gallium, when combined with arsenic, creates a gallium-arsenide solar cell that increases the production of electricity by 15% to 20% over silicon solar cells. This new technology recently won the trans-Australian Solar Car Race," said Fife.

"Gallium-arsenide computer chips can reportedly replace silicon chips increasing the speed of computers theoretically by more than tenfold. This could make the difference between winning and losing thermo-nuclear war," said Fife.

In the search for uranium in the 1950's, it took thousands of mom and pop explorationists were urged to find these rare anomalies of nature that would supply the future demand for this and other strategic elements. Presently gallium sells for more than $40 per ounce.

In the late 1940's explorationists, looking for uranium on the California Nevada border in a place that had been mined for gold and silver numerous times over 200 years since the Spanish in the 1700's, found Rare Earths.

This discovery led to color television, efficient lighting and a great saving of energy and jet fuel by reducing the weight of electric motors in half and providing many other benefits to society. The only other source of Rare Earths is in China. Rep. Rahall would have considered this area mined out and of no use to society. This ignores the constant upgrades in technology that make minerals really a renewable resource because it is possible to keep going back to mineral sites and finding economic discoveries.

The language of HR-699 is also being considered as S-796 in the U.S. Senate Energy and Natural Resources Committee, chaired by Senator Jeff Bingaman (D-NM). Reportedly, Senator Harry Reid (D-NV), Senate Majority Leader, from the small mining town of Searchlight, Nevada, has serious reservations about the negative impact on jobs and the economy if HR-699 should become law.

The American Land Rights Association is a non-profit, public interest membership organization dedicated to protecting the rights of individual private property owners, including small Mom and Pop prospectors and miners possessing rights vested under the General Mining Law.

Randy Dunn expands on the seriousness of the lack of availability of domestic rare earths elements. In our energy and electronic industry, China threatens to be the dominant producer and consumer of rare earths in the world. We need domestic exploration and discovery of these vital elements. The general mining law of 1872 that encouraged the rare earth discoveries of the mountain Pass California deposit is needed for our electronics and defense industries.

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ATTACHMENT.—RANDY DUTTON'S LETTER TO THE EDITOR

Absence of mining endangers alternative energy future.

Americans will be held hostage to Chinese for the very alternative energy devices now being promoted.

Rare Earth Limit to Alternative Energy

A battle is raging of which few are aware. And progressives, in their naïveté, are ensuring America will lose it. For years now progressives have been blocking carbon based energy development while promoting alternative energy. A world powered by wind, wave, solar, and advanced electronics they told us will make America energy self-reliant, and no longer a pawn of the Middle East. All the while, these progressives and similarly minded courts blocked US based mining of minerals, and both conservative and progressive politicians have so indebted America we're losing control over our own assets. This now has set the stage for a major conflict.

China, flush with American cash from our spending spree and continued borrowing, now controls about 97% of the world's rare earth metals. What China doesn't control from domestic production, they've bought up in other countries, including America, and now China is cutting exports.

What are rare earth metals, and who cares you ask? Well these 17 elements are essential ingredients for many of the high tech components necessary for consumer electronics, lighter weight permanent magnets as used in electrical generation, weapons systems, aircraft, and some rechargeable batteries such as used in electric vehicles. If you have a Blackberry, LED TV, or cell phone, rare earth metals are contained within.

It is believed that soon after 2012 China will consume all the available production of rare earth metals thus making virtually none available for foreign based manufacturing—meaning, American commercial and military productions may be out of this key ingredient. Once again America is held hostage to a resource supplier, this time China.

How often have you heard that mining and oil drilling are bad and that we can develop alternatives that will drive our economy and make our lives better? What future do you think exists for our children when we have no fossil fuels to rely upon because we refused to invest in their extraction, and the alternative energy we were told would save us, becomes too expensive to mass produce?

What will we do when the only wind turbine supplier is China, and our money has devalued to the point we can't buy any? Our likely future results from politicians who don't understand science or economics. What is certain is that they understand lobbyists and political dealing. Their financial futures likely already are secure, but the same cannot be said for our children. The only chance we have is for the public to wake up and understand that our future is in American self-reliance—not government control.

We must accept that survival means being producers—from the raw materials, to advanced components, to finished products. We must stop relying upon a dysfunctional government and career politicians to bail us or anyone else out with our own money.

Randy posts these letters at his blog on the GHGOP.org website at http://www.ghgop.org/conservativevoice/ConservativeBlogs/tabid/59/Default.aspx

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STATEMENT OF THE HOLCOMB VALLEY MINING, FAWNSKIN, CA, ON S. 796 AND S. 140

The Holcomb Valley Mining District was established in 1860 after William F. Holcomb discovered gold here on May 4, 1860. More than $100 million in gold has been mined since that time and numerous gold deposits still exist in the district. Gold at near $1,000 per ounce has created a flurry of activity. As in the great depression the unemployed are out taking advantage of the 1872 Mining Law by staking claims and panning enough gold to feed their wives and kids.

Since the 1947 discovery of the Lucerne Valley Limestone Province, high-grade limestone has over shadowed gold production. Presently the district is the largest producer of cement and other limestone products in the western United States. There are only four other high-grade limestone districts in the entire United States.

Local limestone production is more than 5 million tons per year and worth more than $300 million dollars per year FOB mine. This raw material supports several thousand jobs in California and neighboring states. The value added to the economy is greater than one billion dollars per year. All the cement to build Glen Canyon Dam on the Colorado River came from this mining district. Eighty percent of cement is limestone. Ultra high grade filler extender limestone saves imported crude oil used to make resin feed stocks for paints and plastics.

Ultra high grade limestone is made of calcium carbonate, currently in demand to fight the epidemic of osteoporosis affecting our aging population. All of these benefits and many more to American society are the result of the incentive to take risks to explore, discover and develop minerals under the 1872 mining law!

The Holcomb Valley Mining district is made up of mom and pop miners and prospectors as well as the Cushenbury Mine Trust—a Dental, Vision and Life Insurance Fund for the union workers who lost their jobs when the Kaiser Steel Mill in Fontana and the Eagle Mountain Iron Mine were closed and forced into bankruptcy by overzealous environmental regulations and Japanese dumping of steel at less than the cost of production in the late 1970's and early 1980's.

The Cushenbury Mine Trust was created by agreement between the former Kaiser Steel Corporation and the United Steel Workers of America (AFL-CIO). The union workers acquired eleven thousand (11 thousand) acres of mining claims of the former Kaiser Steel Corporation in the San Bernardino Mountains for their insurance fund assets. The Cushenbury Mine Trust has sold or is now selling limestone to Specialty Minerals, and OMYA, and regional cement plants, Mitsubishi, Riverside and Cemex. Mining income goes to several thousand beneficiaries for life insurance and for dental services, eye exams, eyeglasses, eye surgery, and for white canes and guide dogs for blind union members and their families' death benefits.

If allowed to expand mining operations, the trust would increase benefits to union beneficiaries. S-796 dictates a 2% to 8% gross royalty on minerals produced from mining claims gives regulatory agencies the authority to reject proposed mines and

to authorize citizen lawsuits even if permitted, the royalty would eat away benefits to the union workers.

Senator Feinstein's' companion Abandon Mine Act S-140 proposes to take an annual holding fee and another 1.5% additional royalty from claim holders like the Cushenbury Mine Trust. Senator Feinstein's' proposed increase per claim of $300 per year is a certain death to mineral discovery, exploration and development, there will be very few claims to tax and little to no royalty for the abandon mine fund. Ninety-nine percent of unpatented mining claims have a negative cash flow while expending exploration and development funds. For mom and pop prospectors and small miners who find most of the original discoveries, it can be sweat equity and a portion of their social security pension.

If S-796 passes, patenting a discovery is eliminated making it nearly impossible for small miners to finance a small mining enterprise. It also destroys the prospector right to self-initiation, which eliminates the bureaucracy giving permission to explore and stake claims. Staking of mill sites are eliminated, creating the probability that processing facilities will be built on top of ore reserves. Endless current regulations have already greatly suppressed new exploration and discoveries. Passage of either S-796 or S-140 will mean the end of exploration, discovery, development and new mines in the west and Alaska.

In the past, royalties on high-risk mineral exploration and mining proved to be a failure. From the early 1800's to the 1840's, the federal government had a 5% royalty on minerals on federal lands held in trust for the states. Favoritism and bureaucracy made it more expensive to collect than the royalty than the government received. Confederate mines captured by the Union Army were leased out at high royalty rates. The high grade ores were stripped out leaving thousands of tons of lower grade ore in the ground. S-796 and S-140 make the same provisions, and will do the same.

House National Resources Committee Chairman Rahall was recently featured in an Associated Press story September 19, 2008. The title was, "Interior Chief Vows to Stop Ethics Storm". It exposed the Department of Interior employees managing the oil and gas leasing system who took bribes more than 135 times!

The 1872 mining law boosts economy; changing this law would hurt the industry and cost jobs all over the country. Opponents of the 1872 Mining Law typically engage in class warfare: pitting "Big Mining" (capitalists) against the bureaucracy allegedly representing the little people, this creates a false image by ignoring the hundreds of thousands of little mom and pop prospectors and small miners who are trying to prospect and inventory America's rare anomalies of nature called economic mineral deposits.

Ironically mineral exploration is not incompatible with wilderness as vast areas are need to search, but only a relatively small area is needed for extraction. Designated wilderness is incompatible with mineral or energy production because it is now a crime to even look.

Radical environmentalists have peddled the myth that the mining law is just another government giveaway for long that even the sensible people at the New York Times and other media now believe it. "Big bad companies are stealing our land for $5 an acre!" If you believe that, call Interior Secretary Salazar to claim your piece of the pie. You'll learn it can cost millions to patent a single claim.

No federal royalty is currently levied on mineral production. Canada, Mexico, Australia and Chile don't charge royalties, either. The General Mining Law of 1872 is eighty six (86) years younger than our Constitution and amended just as often. The current law provides incentives for people to discover and develop hard-rock minerals on federal lands. In effect, it encourages risk-takers to create wealth out of nothing, just as the protection of patent laws, encourage inventors.

Make no mistake; mining is risky business! Lifetimes are spent prospecting. Frequently it takes several generations to bring a deposit into production. It is naive to believe just any claim can be brought into production within 5 or 10 years. It commonly takes 15 to 20 years under existing regulations and law. The Burton family of Big Bear Lake, California waited 50 years for their U.S. mineral patent here in the Holcomb Valley Mining District. Citizen lawsuits authorized by S-796 will add years to the permitting process.

According to Homestake Mining Company, it takes 5,000 claims to be explored and tested to find one profitable mine. This means there is a negative cash flow on the other 4,999 claims principally owned by mom and pop small explorationists. Once a discovery is made, it can take 10 to 20 years and millions, even billions, of dollars to get a mining project going with endless environmental regulations. These investments employ thousands of Americans at the (highest wages of any industry). Building sophisticated heavy equipment used in mining provides thousands more

good jobs across the nation. Bingaman and Rahall insist that a 2% to 8% gross royalty plus tons of new regulations won't harm the industry.

The S-796 and S-140 are job killing machines. Large Mining Companies will just move overseas to countries like Australia, Canada, Chile or Mexico where they understand royalty at the "mine mouth" leads to leaving millions of tons of lower grade ore in the ground. Wealth that will never be brought into the economy to be taxed.

The hundreds of thousands of Americans involved in domestic exploration, discovery, development, production and mining equipment manufacturing will be left behind. One mining job usually creates 15-20 jobs in the general economy. In addition the domestic tax base will tend disappear along with mining.

Tens of thousands of people who have invested time and money under one set of rules now find that Congress is about to change the rules retroactively. The results: mines closed, jobs lost, future projects abandoned. Let's not export another vital American industry overseas. Let's save the existing mining law. It's not broke, don't fix it! Further, don't send anymore American jobs overseas.

STATEMENT OF THE PUEBLO OF LAGUNA, LAGUNA, NEW MEXICO

- The Pueblo of Laguna ("Pueblo") is the site of what was once the world's largest open pit uranium strip mine: the Jackpile Mine.
- The U.S. Atomic Energy Commission was the primary purchaser of uranium from the Jackpile Mine during the operation of the mine between 1953 to 1983.
- Two surface water tributaries near the mine and the Rio San Jose have since tested positive for radiation contamination. Groundwater is also at risk for radiation contamination.
- Water is scarce and precious in our arid part of New Mexico; thus contamination of our water resources is devastating to our people and the entire region.

Pueblo of Laguna urges reformation to the Mining Law of 1872

- The Pueblo has spent over 50 years dealing with the impact of uranium mining and knows first hand the hardships suffered by communities in the proximity of such hardrock mines. It is for this reason that the Pueblo urges you to support legislation reforming the Mining Law of 1872.
- The bill should include provisions for funding its objectives through royalties paid by hardrock mining operations.
- The bill should also include four provisions that the Pueblo considers to be particularly prudent, useful, and of great importance, as follows:

  —Set new environmental standards for hardrock mining on federal lands, many of which adjoin indian country and share water resources essential to tribes' health and welfare.

  —Establish a hardrock reclamation account for clean-up of hardrock mines, many of which now leach dangerous pollutants from pits, tunnels, and tailing piles into surface and ground water on tribal lands. The secretary should be permitted use that account for reclamation and restoration of land and water resources adversely affected by past mineral activities on [federal and tribal] lands. the funds should be available to the tribes themselves to undertake reclamation activities. After years of arco (successor to anaconda) denying responsibility for cleanup of the jackpile mine and reclamation, the pueblo received $43 million to reclaim the land, although an environmental impact statement estimated that it would cost $400 million to successfully reclaim the mine. The pueblo's reclamation project was the first attempt in the world to reclaim an open pit uranium mine, without any existing standards for reclamation. To this day, we have lingering environmental issues and are seeking funds to address them.

  —Establish a hardrock community impact assistance account fund to help communities, including tribal communities, that have been adversely impacted by pollution from hardrock mining. The account should provide assistance for the planning, construction, and maintenance of public facilities and the provision of public services to indian tribes that are socially or economically impacted by mineral activities conducted under the general mining laws.

  —Provide tribes a voice in the decision to grant or deny hardrock mining permits. The bill should allow tribes to petition for withdrawal of federal land from the general mining laws, including petitions based on value of a watershed to supply drinking water, wildlife habitat value, and cultural, religious, or historic resources that are important to the indian tribe.

STATEMENT OF PATRICK HURLEY, GRASS VALLEY, CA, ON S. 796

I oppose S 796, the Hardrock Mining and Reclamation Act of 2009, as this legislation is detrimental to America's economic well-being, and will descimate the mining industry. For over forty years I have trying to turn my hard rock mining claims into an operating mine. During this time I have spent endless hours, tens of thousands of dollars, trying to turn my mining claims into an operating mine. If successful I will supply our nation with rare earth minerals and gold. Three years ago I discovered that one of the footwall quartz veins contained rare earth minerals. Under the General Mining law I am able to operate. Without this law my operations will cease and I will not employ miners who make around $65,000.00 a year and pay taxes.

Prospectors and small-scale miners like me find 90% of our mineral resources not large mining corporations. I put up surety bonds in order to operate and once I reach a certain size I have to operate under California's CEQA Law, which has the strictest water quality and reclamation regulations in the country.

To patent my mining claims so I have secure title to obtain financing to get in production will cost several thousand to a hundred thousand dollars per acre. These are US Forest Service and BLM source estimates. These exploration costs include road building, drilling, sampling, testing, surveying and attorney fees. The patenting process can take decades and the cost you pay for the land is negligible, Raise the price the patent applicant pays per acre to two thousand dollars and it still pales to the rest of expenses.

Even in China an entrepreneur is left alone during the incubation period of a factory or business. Only when it is successful do they step in to get their share. In an American miner's case the government gets minerals for technology, jobs that pay taxes and if I show a profit I pay taxes.

Again I ask you to not enact S 796. Please leave the General Mining Law as it is. States like California already have all the environmental and reclamation concerns covered.

STATEMENT OF GEORGE COPENHAVER, PG, CEG, SAN DIEGO, CA, ON S. 796

Please accept my testimony in opposition to S.796 Hardrock Mining And Reclamation Act of 2009.

I do this as an American whose family fought in the Revolutionary War to oppose Crown constraints on many freedoms that we now hold dear.

The 1872 Mining Law encouraged (and still does) individuals to explore for valuable minerals on Pubic Lands at their own cost and labor. The existing law should not be modified any further. If it is, there are vast areas in the western States that will be effectively locked up against private (and Public) exploration. In other words, you will have reversed mineral exploration over 200 years to King George's time, where only the politically influencial few could posess,or extract, minerals.

In contrast, the Canadian government continues to encourage mineral exploration. I recently joined the PDAC (Prospector-Developer Association of Canada). It is ironic that the Canadian government (formerly under British rule) supports mining exploration and communicates the its values to its citizenry.

STATEMENT OF PETER J. CLARKE, EXPLORATION GEOLOGIST, RENO, NV, ON S. 796 AND S. 140

Would you please forward this letter to the Committee on Energy and Natural Resources now deciding the future of mining in the United States of America, with the legislation contained in Senate bills S. 796 and S. 140.

I am an exploration and mining geologist with over 40 years practical experience with the last 20 years based in Nevada.

Our country has serious economic problems at present brought on by politically motivated, economically shortsighted decisions over the past few years. Unfortunately, the majority of in Congress empowered to make long-lasting economic decisions are lawyers, and inexperienced in business. Just today I read how Socrates came to understand that he is a wise man because he knows his own ignorance. Be wise.

The US is a very large country, and mining is a very diverse industry. Legislation drafted to suit Vermont or West Virginia can be very damaging to Nevada, Idaho or Utah and Arizona. Environmental issues are well controlled by existing amendments to the Mining Law and by State agencies. If any change is made it should result in shifting more power to the states from federal control. Local legislation works best.

The hope of royalties as a source of revenue to the Federal Government at the expense of the States and Counties is troubling. Metal prices are cyclic, controlled by supply and demand on the world market. Royalties add to the cost of production that will raise the cut-off grades and eliminate mining lower grade material. Raising costs will cause shutdowns during the down cycles, and once closed an operation is not likely to reopen. Production, employment and tax revenue are all shut off. Longer term we all lose.

You have the power to harm the western economy, and make us even more dependant on countries such as China and the Democratic Republic of Congo for our security. Please don't do it!

STATEMENT OF MICHAEL A. PATTERSON, PRESIDENT, CERRO GORDO MINING DISTRICT, KEELER, CA, ON S. 796 AND S. 140

My name is Michael Patterson. I am a 62 year-old veteran and private businessman. I have been a California General Building Contractor and Real Estate Salesperson. I became a co-founder and CEO of three renewable solar and wind energy companies in California, beginning in 1979. For a brief period I was chairman of the Kern County Wind Energy Producers Association during the mid-1980's. I have been directly involved and participated in the fight against desertification and environmental degradation in the Owens Valley of Eastern California for over 20 years. I have been a principal in the mining industry in California since the mid-1980's to date, as both general manager and now owner of Cerro Gordo Mines, a nationally important historical poly-metallic mining district. I have been co-restorer of the famous Cerro Gordo Ghost Town for the past 25 years. I am currently the president of the Cerro Gordo Historical Society, an educational not-for-profit 501 (c) (3) corporation, that has been working to build a mining museum within the Cerro Gordo Ghost Town for roughly a decade.

I have witnessed California lead the world in the development of renewable industries, most notably the Wind Energy Industry. Though Congress supported the early development of the U.S. Wind Energy Industry, subsequent congressional actions, at the behest of special interests, stripped away that leadership, with advantage going overseas to Danish, Dutch, Spanish, Japanese and other off-shore industrialists and financiers. Over two-decades later, the U.S. wind-industry is struggling to reemerge in the leadership role that was warranted and only recently have partial successes been achieved; successes that have been retarded again by the current recession.

Beginning in 1849, California and then the west led the world with development of the modern mining industry. The U.S mining industry is the most educationally, technologically and environmentally advanced mining industry among the nations. Together, with water and agriculture, mining led the way for California to become one of top-ten most wealthy geo-political regions of the world. Even California's Silver Screen and Silicon-Valley has been totally dependent on mining. Today, California's political climate, (which is largely unfriendly to both agricultural water-users and the mining industry and disproportionately friendly to urban development), one can point to the issuance of governmental "IOU" certificates in lieu of universally recognized (though now globally maligned) paper currency or even the historic currencies of gold or silver, because enough "taxes, licenses and fee's" cannot be collected to support California's habits. "As goes California...so goes the nation."

It is not new information that nearly all of the private sector within the United States of America is reeling from acts it believes has been perpetrated upon it's citizenry by unethical businessmen, bureaucrats, politicians and special interest groups posing as benevolent members of our society, in order to achieve advantage over the private sector and it's properties, for their own personal, corporate and political gain.

While the accounting of our economy includes those monies that are recycled through the budgets of every public sector entity in our country, the primary generators of all wealth in our country are found in our system of property rights and the legally created ownerships of all animal, mineral and vegetable resources at our moral disposal, held in title by the private sector and managed in trust by the public sector.

If we are to replace the private sector as the primary generator of all of our country's wealth, with wealth created by our national governments and our state governments; (our bureaucrats, politicians and the special interest groups that often seem to seduce and persuade all three branches of both our elected and appointed officials, including the judiciary, it seems), we are unwisely entering into a societal experiment that has failed in every example in the history of the world.

If our private sector is so immoral as to require the public sector to manage our private sector's affairs, for the private sector's own good, then the benevolence of the public sector must be unerringly universal and must be without blemish in order to achieve the social "justice" the public-servants are mandated to perform, as integral to their job description , rather than achieving the more desirable state of being our citizenry's champions against social "injustices." I don't believe world history supports the possibility of that conclusion. Our own country is the best example in history where the private sector has steered the public sector, through a winding moral course where the fight for "rights" and the fight against the "injustices" of kings, dictators, despots and political deviants, have proven time and again the very best way to manage our cumulative business.

You are probably asking yourself what all this has to do with S. 796 and S. 140. The answer is this: Today brave American's in the private sector are struggling to regain their confidence and their economic footings in a deepening and lasting recession. Again, it is only the private sector that creates any property-derived capital and measurable wealth. Any legislation that diminishes the private sector will, by nature be magnified many times over as our collective monies are circulated and absorbed into the burgeoning public sector and it's natural tendency to over-regulate and blindly legislate.

We need you, our elected leaders, to step off that slippery slope and do everything in your power to limit the public sector's influence to it's smallest effective component and to allow the private sector to be as creatively successful as we have been historically. Please help Americans get over the perception that our state and national leaders are behaving far too casually, with "business-as-usual" and are not personally reading every word of any proposed legislation that comes into their work-place. Please vote "NO" on bills like S. 796, dubbed the "Ghost Town Act of 2009" and S. 140 the ultra expensive and unnecessary "Abandoned Mine Act" (and incidentally and equally or even more importantly, S. 787, the astonishingly ill-advised "Clean Water Restoration Act").

God Bless America. Thank you.

STATEMENT OF FREDERIC C. JOHNSON, III, PG, UTAH LICENSED PROFESSIONAL GEOLOGIST, VIRGIN, UT, AND PRESIDENT OF INDUSTRIAL MINERAL DEVELOPMENTS, INC., LAS VEGAS, NV

Honorable Chairman Bingaman and Members of the Committee, thank you for this opportunity to discuss the ramifications of S. 796 and S. 140 upon the U.S. Mining Law.

I am testifying as a licensed geologist with over 35 years experience in the minerals industry with emphasis on industrial minerals. I currently work with Industrial Mineral Developments, Inc. from Nevada to assist small, medium, and large mining companies with permitting and moving their mining claims toward the development of the mineral in the ground. I am also Vice President of the Cerro Gordo Mining District, California and a member of the National Association of Mining Districts.

Legislating changes to streamline the regulatory environment of mine permitting through the bureaucracies is even more important than the proposed changes to the General Mining Law that has been amended many times (more recently 1974, 1976, 1981, and 2001) by regulations. A critical part of any legislation regarding the U.S. Mining Law should be studying and insuring the viability of this vital U.S. industry prior to and within the language of any legislation. S. 796 and S. 140 unfortunately overlook priority one. This first priority should be to study and address the ramifications of the proposed bills on national security and the socioeconomic viability of local, state, and national economies.

In the rush to get more tax money out of the mining industry with a "one bill fits all" solution all minerals will get the same treatment and this could drastically damage the mining industry in this country. Large metal mines are different than small metal mines. Large non-metal industrial mineral mines are different than small non-metal mines. Surface mines are different than much more expensive underground mines that will be needed in the future. All of these factors should be weighed when determining the economic viability of mining and extracting more taxes and royalties from the industry. S. 796 and S. 140 's new federal royalties and fees on top of those already paid to the states will force mining companies of metals, precious metals, and vital industrial minerals such as limestone, gypsum, feldspars, dolomites, talc, borates, and important "green" energy rare earth minerals to locate operations outside the United States. Obviously this will increase end user prices, energy costs, and US dependence upon foreign sources for almost everything we use

everyday. The proposals within these two proposed bills will drastically hurt the mining industry and the United States at a critical time in its economic history. " If it can't be grown, it has to be mined." Now is not the time for dangerous economic legislation!

I am sure that most of this Committee's members understand that many ingredients of our everyday items come from mining (toothpaste, ice cream, cars, jet engines, tires, insulation, building rock, television components, computers, plastics, etc. etc.); therefore, it should be obvious that the mining of just one mineral does not supply this. It should also be obvious that some minerals have higher profit margins than others. In fact some locatable minerals such as gypsum for building wallboard or limestone could not withstand any royalties.

Some would like Congress to believe that the gold industry is the main industry governed by the Mining Law of 1872, but this is an obvious untruth. All locatable minerals are governed by the Mining Law as amended and a great many of these needed minerals work on marginal profits within this country's highly regulated mining environment.

Reform to help or reform to hurt? I guess the decision is whether to legislate to maintain a highly regulated, efficient, and safe mining industry in the United States or to legislate royalties, fees, and burdensome regulations for agencies and industry that will send our country's jobs and economy overseas to countries that do not care about the environment. We are already at the brink of losing the revenue because mining companies are leaving the U.S. due to high taxation and long lee times for permitting in the U.S.

All of this comes at a time when our country needs to be ramping up its exploration for those minerals of the future that will help us become energy independent and environmentally friendly. It is disturbing to see a country put itself out of business by adopting short sighted over regulation and land management practices that deter the research and development (exploration) necessary for the future. It is this incentive to explore in the United States that is not addressed and is hurt by some of the proposals within S. 796 and S. 140.

Please consider implementing the following concerning S. 796 to help the industry and our great country:

1. Please do not have multiple fees and royalties (royalty, land use fees, abandoned mine fees) because the industry in the locatable mineral states is already taxed (pay royalties) to the public through the states on their mining and production. Additionally, financial assurances are required, US Fish and Wildlife fees are usually extracted, and county and state permitting fees are extracted. It is not true that the mining industry is just like any other public land user. No other user hunter or fisherman gives so much back to the country in fueling economy and job growth. History has proven royalties a failure because companies will leave potentially valuable reserves in the ground due to royalty inflated cut-off grades for ore.

2. Please understand that mining economy is cyclical; therefore, the idea that much of the mining industry can absorb many extra costs is simply not true.

3. Please consider not implementing any royalties on industrial non-metallic minerals due to their high capital costs and low profit margin. Consider that the states already tax mining entities on their production.

4. Please consider one-time fees for abandoned mine reclamation fees rather than taxing production. In the states, production royalties are already put into abandon mines programs. The federal government needs to interact with the states to insure that there is not double jeopardy in taxation on the mine owner.

5. Please note that the overstated "token payment of $2.50 to $5.00 per acre" to patent land is a dissemination of misinformation promoted by well-funded enemies of the mining industry. I have personally been involved in the patent process with a medium sized industrial mineral company in the western U.S., and this process took 15 years and many thousands of dollars per claim in legal fees to complete. S. 796 removes the protection of invested assets by outlawing patents; however, it gives no protections to those who have invested.

6. Regulations since 1993 have put smaller miners at a distinct disadvantage to the larger operations in exploring and discovering new mineral deposits by only allowing them to waiver 10 mining claims from fees that they can only afford to put into their claimed area on the ground. The waiver should be for at least 25 claims.

7. Please put a time limit on the agencies response to permit requests to streamline the permitting process. This time line was implied in the 1981 version of 43 CFR 3809 regulations and was dropped in the 2001 re-write. The length of time to permit is too long and costly to industry and the agencies. It

would be nice if the bureaucracies in our country were set up to work like businesses motivated by success rather than otherwise. This needs fixing.

8. If any royalty is enacted by this legislation, only the larger producers of the higher profit metals industry could afford a net royalty such as S. 796 proposes. There needs to be cap on how much production would qualify for royalty. In the past royalties have not worked well.

9. Language permitting exploration activities Section 302 in S. 796 should be taken out of the bill because the BLM and States have adopted effective and efficient procedures for small-scale exploration operation. The only change necessary would be to clarify the language in 43 CFR 3809 that applies to Notice Level operations where it allows 1000 tons with less than 5 acres disturbance for testing which is confusing language. Any new legislation should clarify that a Notice level operation could have exploration and small mining to test and/or sell minerals from a financially assured 5 acres or less. Many times with industrial minerals, 1000 tons is not enough to explore all the market variables. The present language suggests that it would take 5 acres to acquire 1000 tons of rock, and this is highly unlikely.

10. Please review and clarify the confusing Section 102(8)to ensure that payment of maintenance fees insures all the rights traditionally associated with unpatented mining claims. This section should not mean that exploration is contingent upon having a mining claim. The law should provide for secure rights to use and occupy the federal lands for mineral purposes by paying the maintenance fee or doing assessment work with a waiver.

11. The mining maintenance fee of $300 in S. 140 is too high. Interior is already raising the fees. Small miners need more claims for their waiver.

12. Please note in any legislation that the 30 U.S.C. Section 22 Rights of Self Initiation and Entry are preserved. S. 796 does not guarantee this right or give security for tenure and investment.

13. Please recognize that the current framework of federal and state environmental regulations and laws provide effective regulation for all aspects of mining, reclamation, and mine closure.

14. S. 140's gross royalties will result in significant mine closures and should not be considered.

15. A reclamation fee and land use fee are on top of other fees that do the same thing and are additional burdens upon an industry in uncertain times.

16. The mechanisms for land withdrawals in S. 796 can only confuse and hurt the industry in all aspects. Withdrawals should be proposed and brought through the processes that BLM is allowed under FLPMA. These new mechanisms can remove mineral rich land from the exploration database. New mineral species found in new ground could be the next saving grace for the free world just like the finding of new animal species can be the next great cure. Therefore the continued removal of the shrinking federal land base from exploration has dire consequences for the future. A mining law bill is not an appropriate place to set up of a new withdrawal system for the Department of Interior. Please drop these provisions.

17. Please consider dropping Section 102(a)(4)(B) from the S.796 proposed bill. This bars relocation of a dropped claim for 10 years. This does not take into account the many reasons for dropping and reacquiring claims. In fact dropping a claim and reacquiring it to correct defects or surveying errors or types of claim is more expensive than simply paying the maintenance fee. There is no reason for this provision other than to confuse and complicate the existing law and the proposed law.

18. The language in Section 506 c should be re-worded as it implies that this S. 796 completely replaces the Mining Law and all the adjudication and precedents that have gone before.

19. Many of the environmental provisions are addressed in existing regulation and are not needed or are confusing in this S. 796 bill.

20. Uranium should remain a locatable mineral because of the extensive exploration and research and development needed for discovery and production. Moving this mineral to a leaseable will hurt the uranium industry at a time when exploration needs to be ramping up to supply alternative energy.

The mining industry in the United States creates jobs and healthy communities; however, many of the aspects of this proposed legislation would add to unemployment in our country and increase costs of many essential minerals to the consumer at a time when economic help is needed in the private sector. S. 796 and S. 140 as written are actually bills for the government to extract more fees and not bills to help anything about the industry or the present economic crises.

In November of 2007, then candidate and now President Barack Obama stated that essentially the same proposed Mining Law legislation as S. 796 "places a significant burden on the mining industry and could have a significant impact on jobs." He also opposed the proposed fees in the 2007 legislation.

Abandoned mines should be addressed by commissions to interact with existing state plans, fees, and regulations and should be paid for by one time specific fees that do not tax production any more.

Thank you again for this opportunity to testify with my expertise on proposed changes to this vitally important industry.

ADDENDUM.—STATEMENT OF FREDERIC C. JOHNSON, III

Honorable Chairman Bingaman and Members of the Committee, please accept this addendum to my testimony regarding S. 796 and S. 140.

Additional ramifications of the royalties and fees proposed by these bills is that mining leaving the United States for other countries will leave China in sole control of the rare earths mineral industry. No one will be here to explore and develop the known rare earth deposits in the U.S. that have been made politically unavailable. Unknown to many China and Turkey are also poised to control about 80% of the borate production in the world.

Rare earths are extremely important in high speed computer and television technology and borates are essential to glass, fiberglass, and heat treated glass products. The heat shields on the space shuttle are made from borates and borate is an important radionucleide blocker for nuclear reactors.

One of the great unknowns to the general U.S. public is that our country does not produce very much of anything anymore and that mining is one of our only remaining production industries. The very few raw material commodities that U.S. mining produces will be further curtailed by implementation of excessive royalties and fees.

The problem with this is that the United States will then have to depend upon China and other countries to supply their future raw materials as there will be little or no mining in the U.S. China is already decreasing exports of rare earths needed for the new energy systems because it is supplying their own country's economy.

This is not the time to build more dependency by running business off. It is doubtful that the United States can remain a leader of the free world when it cannot produce.

The Mining Law as amended (many times) is no longer an antiquated law. In fact, it is one of the few laws that are working to help rebuild the economy of our country.

Please think about it and do not pass S. 796 and/or S. 140 with their royalties and fees.

Thank you for your reasonable consideration of the facts and common sense logic that does not harm what is working well.

Abandoned mines legislation should focus on working with the states on their plans to address the problems.

STATEMENT OF JANET L. LIBERTY, CHELAN, WA

Before you vote "for" S 796 Mining Law, please consider all of this Testimony which has been researched with complete honesty and integrety. Please do not vote on any bill that you have not read completely and do not understand the impact it could have on "we the people."

"A way of life for hundreds of thousands of citizens and a national asset for America would be destroyed by imprudent changes to the present location system under the existing General Mining Law," said Donald Fife, Chairman of the National Association of Mining Districts and Mining Director for the American Land Rights Association.

"S 796 is actually a bill designed by U. S. House of Representatives Natural Resource Committee Chairman Nick J. Rahall (D-WV) to gut the General Mining Law.

"Enactment of S 796 bill would cause the loss of hundreds of thousands of jobs and the destruction of the fragile economies of hundreds of communities in the Western States. "S 796 should really be titled The Ghost Town Act of 2009" said Fife.

"What's missing from the public debate is any recognition of how dependent many American industries, especially high-technology industries, are on mining. The mining industry in turn depends on the exploration and development activities of many thousands of prospectors and small-scale miners." Fife said.

"This is "R and D" for future mineral supplies that must produce some 40,000 lbs. of minerals per capita per year to maintain our American standard of living. By destroying free enterprise and the entrepreneurial incentives contained in the General Mining Law, S 796 strikes at the roots of America's economic well-being." Fife continued.

"Radical opponents of the General Mining Law have bombarded Congress and the public with the most outrageous propaganda.

"The biggest myth is the claim that real estate speculators are staking claims and then buying public land for $2.50 an acre, or the price of a hamburger at McDonald's. Nothing could be further from the truth.

"Thousands of mom and pop prospectors are looking for valuable hard rock mineral deposits. Only a very few ever find a deposit valuable enough to patent. A patent gives secure title that a small entrepreneur needs to collateralize (finance) his development to production." Fife said.

"Development of a claim and the Federal patenting process can take decades. The cost of obtaining a patent, according to U.S. Forest Service and Bureau of Land Management sources, can cost from several thousand to more than a hundred thousand dollars per acre."

For example, when you add all the exploration costs, such as road building, drilling, sampling, testing, surveying, and lawyers fees the costs skyrocket.

"Homestake Mining Company documents that during a 100-year period, only about one mining claim in 5,000 ever became a paying mine." For contrast the U.S. Geological Survey estimates that it takes about 100 petroleum exploration wells to find a new oil or gas discovery in North America

"It can take decades more plus additional huge investments to get all the permits for operation and environmental reclamation that are required before mining can begin. So, when the radical environmentalist claim that people are stealing public land for the price of a Big Mac, what they fail to mention is before you can buy your $2.50 hamburger, you first must pay for and build a McDonald's franchise," said Fife.

"Recently, George and Ron Burton and their families of Big Bear Lake, California received a patent to their gold claims in the nearby Holcomb Valley Mining District 50 years after their father, Cecil Burton, filed a patent application. All too often, bureaucrats violate prospectors' and miners' civil rights by delaying action until after they have died," said continued.

"George and Ron's parents, who filed the original patent application, died decades ago never realizing the fruit of their American Dream. Fife said.

"Last fall the misinformed U.S. House of Representatives passed the draconian Rahall mining "reform" bill, "Hardrock Mining and Reclamation Act" which is the same as the current HR-699 in the House. This bill and S 796 dictate a 4% to 8% gross royalty on minerals produced from mining claims, and among other things, gives regulatory agencies the authority to reject proposed mines and to authorize citizen lawsuits." Fife continued.

"If S 796 passes, patenting a discovery is eliminated making it nearly impossible for small miners to finance a small mining enterprise. It will mean the end of mineral discovery in the West. Staking of mill sites are eliminated creating the probability that processing facilities will be built on top of ore reserves.

"S 796 even retroactively eliminates patents depriving miners of years of work counting on the law as it is now written.

"In the past, royalties on high-risk mineral exploration and mining proved to be a failure. From the early 1800's to the 1840's, the federal government had a 5% royalty on minerals on federal lands held in trust for the states. Favoritism and bureaucracy made it more expensive to collect the royalty than the government received." Fife continued.

House Natural Resources Committee Chairman Rahall was recently featured in an Associated Press story September 19, 2008. The title was, "Interior Chief Vows To Stop Ethics Storm."

According to the AP wire story by Dina Cappiello, from 2002 to 2006 energy companies leasing oil and gas on Federal lands through the Department of Interior's Denver Office, which "is responsible for marketing billions of dollars worth of oil and natural gas that energy companies barter to the government in lieu of cash royalty payments for drilling, nine of the government employees received thousands of dollars in gifts including meals, ski and golf trips and snow boarding lessons. Two workers accepted gifts on 135 occasions."

"After the Civil War, in 1866, a new placer mining law was proposed with a 5% royalty. It was found that royalties imposed on mines captured and leased by the Union Army during the Civil War were stripped of high-grade ore and abandoned before lower grade minerals could be extracted." said Fife.

"This is the same scenario S 796 will create, leaving millions of tons of lower-grade minerals in the ground. Due to the poor track record of the previous royalty system, Congress passed the 1866 mining law without a royalty provision. The 1866 law was modified in 1870 and 1872 without the royalty provision, and has been modified more than 20 times since. Each of these modifications has been without a royalty provision." Fife continued.

"Contrary to the belief of environmentalists and others, a mining claim is not a mine. It only gives citizens the right to look for an economic mineral discovery. Even just "looking" now requires "holding or rental fees," extensive and expensive bonding and is subject to nearly endless environmental regulations." said Fife.

"Former Attorney General Janet Reno in an official AG Opinion to former Senator Bennett Johnson, then Chairman of the Senate Energy and Natural Resources Committee, declared the "rental or holding fee" illegal. The Supreme Court has ruled that a mining claim with a discovery is the same as private property with an unperfected title until the mineral patent is granted.

"Once an economic mineral discovery meets the "prudent man rule" that is, a prudent citizen will expend his time, effort, and capital with the reasonable expectation of development of a valuable mine, only then does the citizen have "discovery" under the General Mining Law." Fife continued.

"Most mom and pop prospectors can't qualify for a "bond," so they must come up with cash for a Certificate of Deposit as financial assurance for reclamation. That is a huge and often too large a hurdle for many mom and pop prospectors.

The National Association of Mining Districts represents mainly small "mom and pop" prospectors who still find most of the new discoveries despite all the new satellite and other technologies. "Most discoveries, around 90%, are still found by mom and pop miners," said Fife.

"The General Mining Law is part of the American Dream. During the California gold rush people saw in action the revolutionary idea that an individual could search for gold and with his own labor, discover a valuable mine and actually own it.

"This was confirmation of America as land of the free. Before this new American free enterprise way, the King and/or the State owned the minerals. Individuals had to pay a "royalty" to government, if they were lucky enough to receive permission from the King to prospect."

"This may be the last of the truly free enterprise laws on the books," said Fife.

Some proponents of S 796, the "Ghost Town Act" claim that the land has been prospected for more than 150 years and everything has been found. This compares to the head of the US Patent Office in the 1890's when he proposed closing the office, "because everything worthwhile had been invented."

According to Vincent McKelvey, (Former Director of the US Geological Survey, 1976 to 1978): "Appraising mineral resources is an emerging science. A final once and for all inventory of any mineral resource is nonsense. Mineral reserves and resources are dynamic quantities and must constantly be appraised. As known deposits are exhausted, unknown deposits are discovered, new extractive technologies and new uses are developed and new geologic knowledge indicates new areas and new environments are favorable for mineral exploration."

"As an example, the space age element Gallium, when combined with Arsenic, creates a Gallium-Arsenide solar cell that increases the production of electricity by 15% to 20% over Silicon solar cells. This new technology recently won the trans-Australian Solar Car Race for the Hughes Corporation," said Fife.

"Gallium-Arsenide computer chips can reportedly replace silicon chips, by increasing the speed of computers theoretically by more than ten fold. This could make the difference between winning and losing thermo-nuclear war," said Fife.

In the search for uranium in the 1950's, it took thousands of mom and pop explorationists were urged to find these rare anomalies of nature that would supply the future demand for this and other strategic elements.

In the late 1940's explorationists, looking for uranium on the California Nevada border in a place that had been mined for gold and silver numerous times over 200 years since the Spanish in the 1700's, found Rare Earths.

"This discovery led to color television, efficient lighting and a great saving of energy and jet fuel by reducing the weight of electric motors in half and providing many other benefits to society. The only other source of Rare Earths is in China. The supporters of S 796 would have considered this area mined out and of no use to society. This ignores the constant upgrades in technology that make minerals really a renewable resource because it is possible to keep going back to mineral sites and finding economic discoveries." Fife concluded.

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The U.S. Senate Energy and Natural Resources Committee is chaired by Senator Jeff Bingaman (D-NM). Reportedly, Senator Harry Reid (D-NV), Senate Majority Leader, from the small mining town of Searchlight, Nevada, has serious reservations about the negative impact on jobs and the economy if S 796 should become law. Please, Senator, if you have any doubts concerning this testimony, contact Mr. Don Fife and ask your questions.

STATEMENT OF BELINDA L. HERSH, SWEET, ID

My husband and I are one of those little "mom and pop" operations that would be severly affected if this law is approved in committee and taken on to the senate. Please don't do this. There is no need and it feels like we are fighting the government all the time as it is. We are over regulated, over governed and frankly it wears us out and all we want to do is make a living and survive. Just because people are elected to the government, doesn't mean they HAVE to make laws. It just means you are there to protect folks like us. Quit making it harder for us to live.

STATEMENT OF BRADY ROBINSON, OUTDOOR ALLIANCE

Chairman Bingaman and Committee Members:

My name is Brady Robinson and I live in Boulder, Colorado where I serve as the Executive Director for the Access Fund, a national climbing and mountaineering advocacy group dedicated to maintaining recreational access and conserving the climbing environment.

I provide this testimony for the legislative hearing on the Hardrock Mining and Reclamation Act of 2009 (S. 796) on behalf of the Outdoor Alliance, a coalition of six national, member-based organizations devoted to conservation and stewardship of our nation's public lands and waters through responsible human-powered outdoor recreation. Outdoor Alliance includes: Access Fund, American Canoe Association, American Hiking Society American Whitewater, International Mountain Bicycling Association, and Winter Wildlands Alliance. Collectively, we have members in all fifty states and a network of almost 1,400 local clubs and advocacy groups across the nation, including hundreds of clubs and local advocacy groups in states with significant current and historical mining activity.

The intersection between mining activity and human-powered outdoor recreation pursuits is significant. Indeed, many western epicenters for human-powered outdoor recreation, such as Bandelier National Monument and Questa Dome in the Sangre de Cristo National Forest, in New Mexico, Mt. St. Helens in Washington, the Rogue River in Oregon, and Yosemite National Park and the Lake Tahoe Area in California and Nevada, happen to be the same places where there are dramatic increases in new mining claims or potential for new mines.

Although hardrock mining is an important part of our nation's history and of many Western economies, it need not take place everywhere that ore can be found. This is especially the case with certain types of federal public lands that are valued for their landscapes, ecosystems, and the opportunities they provide for enjoyment for all Americans. Furthermore, we believe that in addition to the natural and social values embodied by America's unique public lands, the economic benefits of outdoor recreation in the West should also be protected from past and future mining practices.

From our perspective, hardrock mining reform should focus primarily on three fundamental areas: (1) creating a fair royalty system to fund abandoned mine cleanup; (2) environmental protection standards that explicitly recognize the value of our public lands beyond what can be extracted by mining interests; and (3) protecting federal lands that have exceptional non-extractive value, such as National Conservation Areas, Wild and Scenic River corridors and Inventoried Roadless Areas from future mining activity.

I. CREATE A FAIR ROYALTY SYSTEM TO FUND ABANDONED MINE CLEANUP

The human-powered outdoor recreation community is intimately familiar with the ecological legacy of our federal hardrock mining policy because climbers, hikers, boaters, skiers and mountain bikers witness its effects on the ground. As such, the Outdoor Alliance has a strong interest in cleaning up the 500,000 abandoned mines across the West through new legislation that puts in place effective environmental safe guards to prevent future similar problems. Abandoned mines are more than a visual blight on the landscape: significant pollution and safety concerns also result from abandoned mines all across the West.

There is an enormous financial cost associated with past and current mining practices because most of these abandoned mines are now essentially the responsibility of the American taxpayers. Mining activities in the United States have resulted in upwards of 500,000 abandoned mines on Bureau of Land Management lands, 25,000 to 35,000 abandoned mines on Forest Service lands, and more than 2,000 in the National Park System. Estimated cleanup costs for abandoned hardrock mines in the United States could exceed $50 billion.[1] Furthermore, according to the Environmental Protection Agency, mining has already contaminated the headwaters of more than 40 percent of the watersheds in the West.[2]

Despite the intimidating scope and cost of cleaning up abandoned mines, hardrock mining operations pay no royalties on the gold, copper, silver and uranium extracted from public lands. The Outdoor Alliance therefore believes that a fair and workable royalty system is required to fund long-overdue efforts to reclaim hundreds of thousands of abandoned mines across the West that continue to contaminate our public lands and waters. We are delighted that S. 796 endeavors to pursue this goal by creating a royalty system to fund abandon mine clean-up.

II. ENVIRONMENTAL PROTECTION STANDARDS

For the last 137 years, hardrock mining activities on federal land have enjoyed preferential treatment. Under the current law, mining is generally seen as the "best use" of federal lands. Although hardrock mining is subject to a number of federal and state environmental protection statutes, hardrock mining also benefits from a number of exceptions to these laws. From our perspective, S. 796 goes a long way in improving this situation. For example:

- Section 301 (d) requires that the permit process for mining activity be coordinated "To the maximum extent practicable" with the National Environmental Policy Act of 1969 (NEPA);
- Under Section 303(b), permits applications must take into account pre-mining land and water resources and develop an operations plan that both avoids the formation of acid mine drainage to the maximum extent practicable and employs best management practices;
- The notice and comment provisions in Section 303(c) relating to permit issuance decisions will also have an indirect, but material impact on the environmental aspects of future mining activity; and
- Under the Section 306 the bill includes provisions that direct the Secretary of Agriculture to "take any action necessary to prevent unnecessary or undue degradation of the lands."

These provisions, and a number of others, are a serious improvement over the status quo and would help modernize our nation's hardrock mining policy. We believe, however, that there is some room for modest improvement. First, we think that a comprehensive statement directing the Secretaries of Interior and Agriculture to assure that mining activities be conducted in a manner that is protective of the environment, and also be placed in the context of other uses and values of federal land, including habitat, clean air and water and sustainable recreation is necessary to place hardrock mining activity in perspective with 21st century conservation and stewardship values. Second, we believe that the "Administration of Land" provisions in Section 306(c) cover not only the Secretary of Agriculture, but the Interior Secretary as well.

IV. PROTECTION OF SPECIAL PLACES

Our nation's unique public lands provide critical wildlife habitat, clean water supplies, and unmatched human-powered recreation opportunities. These irreplaceable and vulnerable areas generally are not appropriate places for mining and should be protected from new mining claims.

We recognize that metal plays a significant role in much of the outdoor equipment that we use to explore public lands. However, given the massive ecological footprint of modern mining, the human-powered outdoor recreation community believes that some special and unique public lands and waters should be categorically withdrawn from future mining development. This can be accomplished by protecting (subject to existing rights) lands recommended for wilderness designation, wilderness study

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[1] United States Environmental Protection Agency, Office of Solid Waste and Emergency Response, *Cleaning Up the Nation's Waste Sites: markets and Technology Trends*, September 2004.

[2] United States Environmental Protection Agency, *Liquid Assets: America's Water Resources at a Turning Point*, 2000.

areas, national monuments, wild and scenic rivers (and those determined eligible and under study for inclusion in the system), as well as inventoried roadless areas.

As we understand it, rather than a categorical withdrawal of all such land, S. 796 directs the Secretaries of Agriculture and Interior to work with local land managers to review these and other categories of federal lands with high ecological values to identify parcels that should be withdrawn from future mining activity. This review must be completed within three years of enactment of S. 796. The implication appears to be that any land in these categories not identified to be withdrawn from mining within this three year window would then be open to mining henceforth. While an improvement over the status quo, this approach does not appear to be adequate considering the millions of acres of public land at stake. Outdoor Alliance favors withdrawing all of these categories of high ecological value Federal land from mining at the outset.

To the extent categorical withdrawal of high ecological value Federal land high-value ecological is not an option, we encourage the Committee to consider inverting the proposed withdrawal mechanism in a manner that would vest mining interests with the responsibility of analyzing mineral potential in these federal land categories subject to a discrete time period to petition the respective Secretaries to open limited parcels to mining activity. Whatever lands in these federal categories not opened by the respective Secretaries would, of course, be closed to mining activity henceforth. Some type of public notice and comment would further enhance this process.

V. CONCLUSION

The human-powered community places a greater value on public lands beyond our own use and enjoyment of these special areas. That is why we work with federal land managers to design rules and policies that conserve and protect public lands and create and follow our own internal environmental protection standards-from clean climbing to the "Leave No Trace" ethics-that ensure our activities coexist with other uses and limit our impacts on the environment. Requiring the mining community to similarly put their use of public lands into the greater context of the public interest is only fair, and long overdue. Accordingly, we support the provisions in S. 796, subject to the modest policy suggestions discussed herein, that aim fund abandoned mine cleanup, elevate environmental protection standards, and make off-limits to mining the many high-value natural and recreation sites on public lands.

Thank you for the opportunity to provide written testimony on this important legislative initiative.

STATEMENT OF JON J. INDALL, COUNSEL, URANIUM PRODUCERS OF AMERICA, SANTA FE, NM

The Uranium Producers of America ("UPA") was founded in 1985 to promote the viability of the domestic uranium industry. Current members include Energy Metals Corp., Power Tech Uranium Corp., UR-Energy USA, Inc., Cameco Resources, Denison Mines Corp., Laramide Resources Ltd., Mestena Uranium LLC, Power Resources, Inc., Strathmore Minerals Corp., Uranium Resources Inc., and Neutron Energy, Inc. UPA member companies are actively pursuing exploration, development and production of domestic uranium resources in Wyoming, Colorado, Texas, South Dakota, Arizona, Nebraska, Utah and New Mexico. We appreciate the opportunity to provide a statement concerning S. 796 and S. 140. The UPA strongly urges that any changes to the existing Mining Act be made only after careful consideration of the adverse impacts such changes could have on our nation's ability to become more energy independent. The United States currently imports approximately 90% of the uranium used to power the nation's one hundred and four nuclear power reactors. This fact alone should cause energy policymakers concern and requires that no additional impediments to increase domestic uranium production be put in place. UPA's position is that domestic uranium production is vital to the national security and energy independence of the United States and, if given a fair chance, will, once again, play a key and sustaining role in the front end of the nuclear fuel cycle.

I. GOOD ENERGY POLICY DEMANDS THAT DOMESTIC URANIUM PRODUCTION BE ENCOURAGED

The role of nuclear power as a major emission free energy source was much discussed in this Committee's recent hearings on climate change and a national energy policy. The confluence of high oil prices and the need to reduce greenhouse gas emissions has justifiably promoted the interest in the development of renewable and al-

ternative forms of energy. Nuclear power provides emissions-free, stable, base-load power to electricity users. The 104 operating nuclear power plants in this country produce 20% of our electric power and approximately 75% of our carbon free electricity. These reactors resulted in the avoidance of almost 700 metric tons of carbon emissions in 2007. This is more than Canada emits on an annual basis or twice the amount emitted by privately-owned vehicles in the U.S. on an annual basis. Emission free nuclear power provides a constant, reliable baseload source of energy that is required to grow our economy.[1]

As policymakers are recognizing the vital role that nuclear energy must play to meet our nation's electricity demands in an inexpensive, clean manner. UPA believes the following facts must be considered as the United States embraces the role that uranium must play to ensure our country's secure energy future:

- The United States currently imports over 90% of the uranium it needs for the present nuclear power fleet.
- The United States has significant domestic uranium reserves. Today's higher prices have enabled new companies to enter into exploration and will, in turn, stimulate competition as they work to provide U.S. utilities with greater variety of secure domestic supply for their nuclear fuel. Previous exploration in New Mexico alone has been established by geologists at over 600 million pounds of unmined uranium resources, much of this on public lands, and it is certain that future exploration and mining will expand on this number.[2] The resources in other public lands states are significant, and these resources can be produced in an environmentally responsible manner following today's existing standards and regulations for mining. Extremely conservative estimates by the Energy Information Administration in 2004 show uranium resources by state based on $50 per pound prices to be:

Wyoming	363 million lbs.
New Mexico	341 million lbs.
Arizona, Colorado, Utah	123 million lbs.
Nebraska, South Dakota	40 million lbs.
Texas	23 million lbs.[3]

[3] U.S. Energy Information Agency, 2006.

UPA believes EIA estimates will be greatly exceeded as exploration and development proceeds.

- The renewed exploration of uranium has energized rural communities in the western United States. These former mining communities are welcoming the domestic uranium mining as they anticipate many high-wage jobs and significant economic development investments in their towns and counties, as well as increased tax revenues to support infrastructure, educational and social needs.[4]
- Three countries produce 60 per cent of the uranium used in current reactors. If projected new build reactors are constructed and come on line, an additional 64,615 tons of uranium production over current annual worldwide production of 41,195 tons of uranium will be required to meet their needs.[5]
- Our nation's energy demands must be fulfilled to keep our economy growing. On May 8, 2006, the House Committee on Government Reform produced findings on a committee study on securing America's energy future. Finding 8 from this report stated "Injuclear energy must become the primary generator of baseload electricity, thereby relieving the pressure on natural gas prices and dramatically improving atmospheric conditions."[6] This finding is based on the fact that electricity generated from nuclear power is inexpensive and clean.

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[1] See Murkowski Speaks on the Need for Nuclear Energy, Press Release June 2, 2009.

[2] See McLemore and Chenoweth, Uranium Resources in the San Juan Basin, New mexico, New mexico Geologic Society, 2003.

[4] See Resolution in Support of the 1872 Mining Law by he Cibola County Commission and Resolutions Supporting New Uranium Mining by the Cibola and McKinley County Commissions and Grants, New Mexico, City Commission, attached as Exhibit 1.

[5] World Nuclear Association 2008.

[6] Seeking America's Energy Future, Majority Staff Report to Comm. on Government Reform, Chairman Tom Davis, and Subcommittee on Energy and Resources, Chairman Harrell E. Issa, Comm. on Government Reform, U.S. House of Rep., May 2006.

Against the world wide backdrop of a nuclear power renaissance, policymakers must ask the question, is it good energy policy to maintain an overwhelming reliance on foreign uranium? The answer is obviously no. Congress has determined that importing 70% of oil is terrible energy policy and our nation cannot afford the consequences of maintaining its over reliance on foreign uranium. To do so would be sheer folly and could set the state for repercussions such as those we have experienced due to our over reliance on oil. However, S. 796 and S. 140 make domestic uranium production more difficult if not impossible on public lands.

II. THE MINE ACT REFORM PROPOSED IN S. 746 AND S. 140 WILL PREVENT NEW URANIUM MINES ON PUBLIC LANDS AT A TIME WHEN CONGRESS SHOULD BE WORKING TO ENCOURAGE JOBS TO REINVIGORATE THE ECONOMY

At a time when Congress should be looking to the mining industry to promote employment and tax revenues, it makes no sense to make mining on public lands more restrictive. That is what the proposed "reforms" contained in S.796 and S. 140 would accomplish. These bills decimate the security of land tenure, create a burdensome permitting process and place vague and uncertain loyalty provisions into law. All of these proposals will make the ability to acquire the necessary investment to develop and permit new uranium mines impossible. Other provisions contained in these proposals simply pile on layers of bureaucracy and impediments that would make anyone seeking to develop a mine on public lands certifiably insane. The UPA supports the positions taken by the National Mining Association and Northwest Mining Association against these legislative efforts. These associations have provided thoughtful, reasoned responses to the proposed legislation that would curtail most, if not all, mining on federal lands if enacted in their current forms.

If the Committee's intent is to stop mining on public lands, it should so state. Instead of unreasonably raising the bar on those attempting to provide our country with a stable supply of vital energy resources, the Committee should seek reasonable reform that does not price companies out of mining on public lands or simply delay the permitting process beyond the ability of reasonable investment backed expectations. At a time when the nation's economy cries out for more jobs, these proposals seem to tell miners, suppliers and others that make their living directly or indirectly from these operations that the Committee is not interested in the good, high paying jobs created by every mining operation. President Obama has recognized the impact ill-advised Mine Act Reform would have on current and future jobs. "I would not pass legislation that would unduly hinder the industry or cause job loss in rural Nevada or other mining areas."[7] As stated by Senator Harry Reid, "[n]othing should rank higher among our priorities today than protecting the jobs we have throughout Nevada and encouraging the creation of new ones.[8] This is true for other states that have new uranium operations poised to deliver the fuel needed for nuclear power and jobs so desperately needed in these areas.

A summary of a study done in 2008 for proposed uranium mining jobs by the Arrowhead Center of New Mexico State University is attached as Exhibit 1 and shows that approximately 3,200 direct and 5,000 indirect and induced jobs can be created in New Mexico alone, if planned projects can proceed.[9] All public land mining projects in New Mexico must undergo an Environmental Impact Statement and meet the closure and bonding requirements of the New Mexico Mining Act. This process takes at least two to three years in order to get the baseline data required for any uranium project. Undertaking a new uranium project takes patience, tenacity and significant investment. The proposals found in S. 796 and S. 140 raise significant impediments to an already difficult task.

III. URANIUM SHOULD REMAIN AS A LEASEABLE MINERAL.

Although uranium is used to create energy, it is not like coal oil and natural gas and should be kept as a locatable mineral. Coal, oil and natural gas are fuel minerals that are typically located in vast sedimentary basins such as the Powder River Basin, San Juan Basin, Permian Basin, or the mid-continental US and Appalachians. Once an oil or natural gas well is successfully completed, it can produce with little or no additional effort other than insuring the well is in operating condition and functioning.

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[7] "Not All in Mining Industry Favor McCain," Elko Daily Free Press, October 10, 2008.

[8] "Sen. Harry Reid: Making Mining Law Reform Work for Nevada," Special to the Nevada Appeal, July 29, 2009.

[9] See James Peach and Anthony Popp Summary of "Economic Impacts of Planned Uranium Mining and Milling Operations in New Mexico," Arrowhead Center, Inc., August 1, 2008, attached as Exhibit 2.

Uranium deposits are small and difficult to locate and define. Extensive exploration drilling, usually several hundred exploration holes, is required to delineate the ore body. Uranium ore bodies are not found in blocks like coal reserves, but are sinewy and broken up underground. Uranium deposits are also found at depths in excess of 3,000 feet below the surface. Uranium deposits are often found in roll fronts that are long, linear, discontinuous, narrow ore deposits. These are very common in New Mexico, Texas, Wyoming and Nebraska. Such orebodies are difficult to locate and must often be drilled out on 25-50 foot centers. These require a reductant such as a humate substance to cause the uranium to drop out of the fluids to form the ore deposit. Such deposits are unlike any coal, oil or natural gas deposits. Finally, uranium deposits differ from coal, oil and gas because factors such as ore grade, depth, metallurgical problems and additional geological constraints have great impact on the economics of mining a uranium deposit. Uranium deposits are much more like other hard rock minerals than coal, oil or gas reserves.

The discovery, delineation and development of an in-situ or conventionally recoverable uranium ore deposit involves the same activities as those required for development of copper, cobalt, zinc, gold or other hard rock mineral deposits. Such activities require years of fact-finding including grounds, aerial and satellite reconnaissance; extensive exploration drilling; core exploration drilling; environmental baseline data gathering; metallurgical testing; workforce hiring and training; mine and mill planning, design and construction; reclamation planning and decommissioning. Any uranium mine on public lands requires an Environmental Impact Statement which is not required for oil and gas operations. Once uranium ore is removed from the ground, it requires additional extensive and expensive processing in the form of mining, crushing of the ore, separation and concentration of the U308. Further off-site steps include conversion, enrichment, and fuel fabrication. The in-situ process, while somewhat less expensive, still requires discovery and delineation of an economic orebody, mine planning and construction, recovery, separation and concentration, and all of the additional downstream steps of conversion, enrichment and fuel fabrication. None of these expensive and time consuming steps are required for coal, oil or natural gas.

The Department of Energy has conducted leasing of uranium properties in Colorado. However, these properties have a major distinction from other possible future uranium leases on public lands. These properties were developed and delineated by the federal government during the initial federal government procurement program. If the federal government would develop and delineate future uranium ore deposits on public lands, a stronger argument of making uranium a leaseable mineral could be made. However, that will not be the case and it will be the private company or individual that will take the risk and expense to explore, discovery, delineate and permit uranium deposits on public lands. The federal government takes no risk or cost in the development of the vast majority of uranium properties needed to power our nation's nuclear fleet to produce clean, inexpensive electricity.

IV. URANIUM MINING ON FEDERAL LANDS SHOULD NOT BE SINGLED OUT FOR ADDITIONAL STUDY

Section 505 of S. 796 would require the Secretary of the Interior to conduct a study of uranium development on federal lands. Part of this study would be to consider whether uranium should be a leaseable mineral rather than a locatable mineral. For the reasons set forth in Point III of UPA's statement, uranium should remain as a locatable mineral. The remaining purposes for the proposed study is to analyze the laws and agencies that already govern the development of uranium on federal lands. UPA members submit that this study has no merit, is unnecessary and simply creates more delays and impediments against the overriding need for new domestic uranium mining.

One of the issues proposed to be studied is whether adequate financial surety or bonding exists under current law. The Nuclear Regulatory Commission, which just completed a Generic Environmental Impact Statement for new in situ recovery uranium projects, requires sufficient bonding to assure groundwater restoration and other decommissioning activities based upon industry-wide practices.[10] In New Mexico, a conventional uranium mining project on federal, state, or private lands is subject to bonding under the New Mexico Mining Act which requires fmancial assurance that the mine site be reclaimed to achieve a self-sustaining ecosystem.[11] Federal agencies also have bonding requirements, and it is clear that uranium mines,

[10] 10 C.F.R. Part 40, Appendix A, Criterion 9.

[11] NMSA 1978, §§ 69-36-1, et seq. and Title 19, Chapter 10, Parts 1, 4 and 6, New Mexico Administrative Code.

like other hard rock mineral mines, have sufficient bonding safeguards to assure sufficient site reclamation.

The Nuclear Regulatory Commission ("NRC") and Environmental Protection Agency ("EPA") regulate in situ recovery through regulations found in 40 C.F.R. Part 40, Appendix A and 40 C.F.R. Part 192, respectively. These regulations have been continuously updated to implement new standards as the industry and its regulators come to better understandings of the impacts of uranium recovery. Standards and protection levels for air emission and ground water protection have increased dramatically since uranium mining began in the 1950's. The United States needs a secure source of uranium production. This activity can be accomplished in a manner to protect the public, the workers and the environment. Additional study is not necessary.

V. CONCLUSION

In the 1950's, the Congress created the Atomic Energy Commission ("AEC") to assure that the country could produce enough uranium to supply our nuclear weapon needs. The AEC charged private industry to create the uranium producing industry, noting "that the mining industry would be the backbone of this vigorous program aimed at augmenting the uranium supply of the U.S.A."[12] The United States went from virtually no uranium production to an over abundance of this vital element under the AEC Procurement Program. The Procurement Program provided incentives to private industry to start a domestic uranium industry from scratch, including a market for the product.[13] Recognizing the importance of the domestic uranium industry in the nuclear fuel cycle and the nation's national security and energy independence, Congress was concerned that the country maintain the vigorous domestic uranium industry the AEC had created.[14] Today, the United States is at a similar crossroads. It is a given that nuclear power is a vital component to the baseload production of clean, inexpensive electricity. Some would argue that it is the best source to fulfill this need. We import almost all of the uranium necessary to fuel our nation's nuclear reactors. The question before the Committee is whether to adopt the proposed legislation that's effect will be to commit the United States to a continued over reliance on foreign uranium and to deprive thousands of citizens from the good, high paying jobs that would be created by domestic uranium operations or to negotiate reasonable Mine Act Reform and not single out uranium from other locatable minerals.

[Attachments have been retained in committee files.]

STATEMENT OF THOMAS F. COFSKY, VICE PRESIDENT, MANUFACTURING AND LOGISTICS, OIL-DRI, CHICAGO, IL

I am writing to express our opposition to the Hardrock Mining and Reclamation Act of 2009. It may be time for mining law refomt, but we must not pass this bill if we wish to keep well-paying mining and manufacturing jobs in this country. Bad legislation such as this is not mining law reform!

Particularly objectionable is the imposition of a four to eight percent royalty on gross revenues (rather than profits). Without deductions for the cost of mining, processing or refining, incentives to mineral development are removed and maximum mineral resources recovery is discouraged.

Of concern, also, is the loss of the ability to patent mineral discoveries as well as the loss of existing patented discoveries. Companies such as ours expend time and money in locating, proving and retaining reserves for future development and use. We need the ability to develop and hold patents to maintain viable sources of raw materials and thus keep mining and manufacturing jobs in rural locations where good jobs are scarce. The ability to prove the presence of "locatable minerals" that provide specific benefits is basic to the ability to develop a new mine and im-

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[12] Holger Albrethsen, Jr. and Frank E. McGinley, Summary History of Domestic Uranium Procurement Under U.S. Atomic Energy Commission Contracts—Final Report, U.S. Dept. of Energy, Oct. 1982.

[13] Sheldon P. Wimpfen, Manager, Grand Junction Operations Office, U.S. Atomic Energy Comm'n, Address to Colo. Mining Ass'n (Denver, CO, February 13, 1953.

[14] S. (Joint Committee) Rep. 88-1325, 88th Cong., 2d Sess., 1964 U.S.C.C.A.N. 3121 ("the measures taken in this bill to assure the viability of the domestic uranium industry are in the national interest since this industry is closely related to our vital defense and security interests") & 3135 ("the maintenance of a viable domestic industry is an integral part of a sound nuclear industry and may, indeed, be closely intertwined with the defense and security interests of the United States"); 110 Cong. Rec. 20,145 (1964) (remarks by Congressmen Aspinall & Morris).

portant to assure future raw materials supplies to existing businesses. Further more, the retroactive elimination of patents issued breaches trust between the issuer (our government) and the individuals and businesses that have expended considerable money and time to obtain them and raises significant constitutional issues.

It is also important that the staking of mill sites remains a viable use of public land. Under current mining law, mill sites can be staked to locate processing facilities near to, but not on top of, the mineral claims. Elimination of this feature increases the chances that processing facilities will end up on top of valuable minerals.

Finally, mining and manufacturing have been and are currently being regulated at all levels of government. The addition of another, duplicative regulatory framework that conflicts with existing programs across the country {such as those administered by the Bureau of Land Management, the United States Forest Service and the individual state and local governments) is onerous and unnecessary. In our global economy, it is crucial that capital investments for successful mineral development go to countries that offer stable public policy climates. In fact, the World Bank has advised nations that to attract {and keep) necessary investment in viable mining and manufacturing industries, governments must adopt the fundamental principle of "no surprises" in the enactment and administration of laws and policies.

Oil-Dri Corporation of America has been a responsible miner and manufacturer of mined products for nearly 70 years. We currently employ workers or have mining operations in Illinois, Georgia, Mississippi, California and Nevada. We need your support so that we can continue to run our business. Please support our entrepreneurs, businesses and miners! Please voice opposition to 5.796—The Ilardrock Milling and Reclamation Act of 2009.

STATEMENT OF ALAN BERNHOLTZ, MAYOR, TOWN OF CRESTED BUTTE, CRESTED BUTTE, CO

This correspondence is provided in connection with the Committee's hearing relative to S. 796. We would appreciate it if the Committee would enter this correspondence into the hearing record as the issues you will be addressing with the Senate bill are of vital importance to the Crested Butte community.

BACKGROUND

Citizens of Crested Butte and Gunnison County, Colorado believe that a pending proposal to engage in molybdenum mining operations on Mt. Emmons located just west of Crested Butte's municipal boundaries and within the Town's municipal watershed threatens their way of life. The planned mining operations will be situated primarily on federal lands. There is a very legitimate concern that these mining operations will (i) pollute the Town's watershed and, in turn, contaminate the community's drinking water, and (ii) destroy the local economy that for the past 35 years has been based on tourism and recreational opportunities due to the area's scenic beauty and pristine environment. Action is needed to preserve this community. Much of the problem stems from the fact that mining operations on federal lands are currently governed by the outdated General Mining Law of 1872 (the "Minim', Law") that no longer serves the nation's interests.

Crested Butte is a world-class ski town and National Historic District with a resident population of approximately 1,500 persons. The community was once a small coal mining community. Gunnison County and the Town have however, over the course of the last 35 years, converted themselves almost entirely into a tourist-based economy, with a strong agricultural component. Skiing, fishing, hiking, kayaking, rafting and mountain-biking are the life-blood of the economy. To be sure, the clean environment, recreational opportunities and access to abundant public lands allow the community to thrive.

In 2007, U.S. Energy Corp. of Riverton, Wyoming, announced that it would begin developing a molybdenum mine project on Mt. Emmons. The proposal, while not fully developed, is likely to include the development of extensive under and above ground mine workings, numerous milling facilities (possibly including one within a few thousand feet of Crested Butte's drinking water reservoir), at least two large water reservoirs, one or more substantial tailings dumps and a system of pipelines, roads, lighting and other associated industrial mining infrastructure. The proposed project would most likely consist of a 6,000 to 10,000 ton per day mining operation. The operation would use parts of nearly 6,000 acres of patented (365 acres) and unpatentcd (5,600 acres) mining claims located on federal land. It would cover more than eight square miles. A map illustrating a possible version of the proposed

project and a map delineating the Town's municipal watershed is included herewith for your reference.*

In 2008, Thompson Creek Metals Company, Inc. announced that its subsidiary, Thompson Creek Metals Company USA, had signed an Option Agreement with U.S. Energy that gives Thompson Creek the right to acquire up to 75% of the Mt. Emmons molybdenum project. Under that agreement, Thompson Creek will act as the project manager and will handle the assessment, environmental permitting, exploration and development of the property.

The community's concerns are three-fold. Operation of a molybdenum mine in this proposed location would: (1) irreversibly destroy hundreds of acres within Crested Butte's municipal watershed by including one or more mill sites within this area (this could lead to contamination of the Town's drinking water and threaten the downstream agricultural and ranching communities that also rely on water from this drainage); (2) damage thousands of acres of prime wildlife habitat and destroy the pristine nature of the area with its large-scale industrial activities, dust, increased traffic, noise and lighting; and (3) significantly harm the local economy, by lessening or eliminating "amenities" (i.e., magnificent views, clean air, clean water and immediate access to the outdoors and nature) that are critically important to attracting tourism.

In order to adequately protect Crested Butte, the community urges necessary and comprehensive reform to the Mining Law.

WITHDRAWAL OF PUBLIC LANDS

At the outset, the community respectfully requests Congress to immediately withdraw, subject to valid existing rights, the lands on and surrounding Mt. Emmons located within Crested Butte's municipal watershed from mineral entry under the Mining Law. Such action will help ensure that the community can depend on a healthy watershed and a sound long-term tourism and agricultural-based economy.

THE MINING LAW AND S. 796

A. Authority to Deny a Mining Permit

To encourage mining the existing Mining Law generally opens federal lands to mining operations so long as mining companies agree to operate in a manner that will -minimize adverse impacts" to the environment and provide sufficient financial security to address reclamation once mining operations cease. The U.S. Forest Service (the -Forest Service") may require a mining company to modify its proposed -Plan of Operations" (i.e., the mining permit) to accommodate certain concerns; but, essentially, and of critical import, the Forest Service does not believe that it has the authority to deny the mining company the right to conduct its mining operations.

This situation is in sharp contrast to other activities that occur on federal lands. Authorized by later-enacted statutes, the federal government has full discretion to allow or deny, for example, ranchers the right to use federal lands as grazing lands for their herds or to grant oil and gas companies the right to engage in exploration and production of hydrocarbons on federal lands.

The Mining Law must be updated and made consistent with these other laws so that the determinations about appropriate activities permitted on federal lands are made based on the public interest, not the interests of private mining companies.

1. H.R. 699—The Hardrock Mining and Reclamation Act of 2009

Section 301 of H.R. 699 grants the Secretary of the Interior for Bureau of Land Management (BI,M) lands, or the Secretary of Agriculture for Forest Service lands, the right to deny permission to engage in mining operations if the applicable Secretary determines that "undue degradation" would result from such activities. -Undue degradation" in the House bill is defined as irreparable harm to significant scientific, cultural or environmental resources on public lands that cannot be effectively mitigated. Crested Butte strongly supports these provisions.

2. S. 796

Section 303 of the Senate bill also grants the Secretaries the right to deny permission to engage in mining activities on federal lands; however, denial is only allowed if the applicable Secretary determines that mining permit does not meet the requirements of (a) the Mining Law (as amended by the Act). (b) the regulations implementing the Mining Law (as amended by the Act), or (c) other applicable laws. So, although the Senate bill allows the agencies to disapprove mining proposals that

*Maps have been retained in committee files.

cause "unnecessary or undue degradation," that term is never defined. This is a significant flaw with S. 796.

Under the current regulatory definition and interpretation of "unnecessary or undue degradation," the BLM takes the position that "unnecessary or undue degradation" is not an independent standard and is only found when the proposed operation would violate some other environmental law. Thus, the Senate bill essentially provides no meaningful standard by which the Secretary can judge a permit application, except perhaps if the proposed mining operations would violate another statute such as the Clean Water Act. The Senate bill does not substantively change the current review process, outside of requiring the undefined "unnecessary or undue degradation" requirement to apply to the Forest Service in addition to the BLM.

Crested Butte submits that these changes are inadequate and do not protect the public interest. Any mining reform legislation must adopt the House bill language on mining permits, allowing the applicable Secretary to deny a permit if the subject mining operation would result in "undue degradation." To ensure that the standard is meaningful, the definition of "undue degradation" provided in the House bill must he adopted.

B. Withdrawal of Federal Lands

The mining industry is very concerned that the Secretary could determine, at the conclusion of the permitting process, that a permit is not warranted after a mining company has expended years and great sums of money trying to meet all aspects of the mining statute and to develop its Plan of Operations in a manner consistent with the requirements of the Forest Service. Therefore, it seems practical to establish an amended withdrawal provision that would require the Secretary, based on a petition from the state, local community or Indian Tribe, to withdraw certain federal lands from the operation of the Mining Law, subject to valid existing rights, at the commencement of the permitting process.

1. H.R. 699

Section 202 of the House bill would allow any State, political subdivision or an Indian Tribe to petition the applicable Secretary for the withdrawal of a specific tract of federal land in order to protect specific "values" important to the community. "Values" may include a watershed to supply drinking water, wildlife habitat, cultural or historic resources or scenic vistas of the area. In addition, the Secretary would have to grant the petition, subject to valid existing rights, unless the Secretary finds a compelling reason to deny the request because it is "against the national interest."

2. S. 796

Section 307 of the Senate bill also allows withdrawal; however, that action must meet the criteria of the Federal Land Policy Management Act of 1976 provision addressing the development and revision of federal land use plans. The criteria set forth in that provision includes encouraging the Secretary to make federal land use plans consistent with state and local plans, so long as they are consistent with federal law. Unlike the House bill, the Senate bill, as is the case under current law, provides that the Secretary's withdrawal decision is entirely discretionary. There are no effective standards that the Secretary is required to meet when considering withdrawal.

Crested Butte submits that these changes are inadequate and do not protect the public interest. Any mining reform legislation must adopt the withdrawal provisions of the House bill so that the Secretary must properly consider and balance benefits from future mining operations, values important to the state and local communities (e.g., preservation of a watershed) and the national interest when evaluating the potential impact a mining operation will have on certain federal lands. If the local community, state or Indian Tribe provides sufficient evidence of an important public value in withdrawing the land, then absent a counter and overriding national interest, the Secretary must issue the withdrawal.

CONCLUSION

Because the proposed molybdenum mine on Mt. Emmons could result in significant degradation to the environment of the region (pollution of the area's watershed and drinking water) and to the region's tourist and recreational-based amenities-based economy, the federal lands within the Crested Butte watershed area should be withdrawn, subject to valid existing rights, from mineral entry under Mining Law.

It is extremely difficult, however, to obtain withdrawal under the antiquated Mining Law because there is essentially a rebuttable presumption that milling is the

preferred use of federal lands. Due to this presumption, Secretarial withdrawals are rare, even when the withdrawal is requested by a broad consensus of local and state elected officials.

Therefore, the Mining Law must be amended to make it consistent with other more recently-adopted federal schemes that mandate broader review, taking into account environmental and economic concerns, e.g., Surface Mining Coal and Reclamation Act of 1977 (SMCRA). In particular, the final amended Milling Law must: (1) grant the Secretary authority to deny a mining permit if the mining operation would result in undue degradation as is provided in the House bill; and (2) direct the Secretary to withdraw federal lands from mineral entry under the Mining Law, subject to valid existing rights, to protect specific values important to the subject community—again as stated in the House bill. Adoption of these provisions will ensure a proper balance among the interests of the mining industry, state and local communities and the national interest.

Thank you, in advance, for the opportunity to submit the foregoing comments for the record during your Committee hearing, The Crested Butte community hopes that the Committee and the larger Senate will take our concerns and comments discussed herein with the utmost sense of urgency as communities like Crested Butte stand to lose everything should the Senate fail to amend the Mining Law in a timely and responsible manner.

STATEMENT OF STEVEN C. BORELL, P.E., EXECUTIVE DIRECTOR, ALASKA MINERS ASSOCIATION, INC., ANCHORAGE, AK

Thank you for the opportunity to comment on 5.796, Hardrock Mining & Reclamation Act and 5.140, Abandoned Mine Land Reclamation Act. This bill is of extreme importance to the Alaska Miners Association and its members.

The Alaska Miners Association is a non-profit membership organization established in 1939 to represent the mining industry in Alaska. The AMA is composed of more than 1000 individual prospectors, geologists and engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, diamonds, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials. The future and livelihoods of many of our members depend on the General Mining Law.

The Alaska Miners Association is very concerned about 5.796. We believe that this legislation would effectively eliminate new mining operations on the federal public lands. This legislation would add unbearable royalty costs, unknown permitting costs, uncertainty of land tenure, uncertainty for exploration, uncertainty for mining, uncertainty for financial assurance, and uncertainty for enforcement.

The proposed gross royalty alone would force most existing mines to close down. Others would be forced to begin high-grading their deposits thereby leaving metal in the ground that could otherwise be mined. The impact would be that mines would close much sooner than otherwise and many thousands of workers would loose their jobs. A gross or "Net Smelter Return" royalty is a parasitic cost that must be paid, even when the mine is loosing money.

Mr. Phillips Baker testified at the 7/14/09 hearing on S.796. He stated flatly that, if a gross royalty as proposed in this legislation was applicable to the Greens Creek mine in Alaska, that mine would have to be closed. What he did not say was that in about 1993 the Greens Creek mine had to be idled because of low metal prices and was not re-started until 1995. During that shutdown the owners of the mine seriously considered closing the mine permanently. If a gross royalty had been in place at that time, the mine would have been idled sooner and it would have been idle longer, and likely would have been closed and reclaimed. Rather than that occurring, the mine was able to re-start and from 1995 to the present time, that mine has employed 260 direct workers and has been the largest tax payer to the local Juneau Borough. That is 14 years of excellent jobs plus significant local tax payments to the local municipality.

A reasonable net proceeds royalty following the State of Alaska or State of Nevada approach would not have those negative impacts. Under a net proceeds royalty the royalty is not a parasite that will kill a mine. Under a net proceeds royalty, when the miner is successful, the government also receives a direct payment. All those times when the miner is working hard but is loosing money or is just breaking even, the government is still benefiting through taxes paid by the mine employees, and through the associated economic activity that supports the mine and the taxes paid by the employees of those support companies. All of these benefits cease if a gross royalty forces the mine to close.

As stated above, 5.796 adds several types of uncertainty. These are uncertainties that are in addition to a business that is already wrought with geologic, metallurgical, operating cost, and metal price uncertainties.

The ultimate uncertainty is one of land tenure. Without land tenure certainty, companies will not explore or build mines. Persons and NGOs opposed to all mining would use the provisions of 5.796 to block every mine project. The provision for closing lands to mining after a company has spent large sums of money exploring will in itself mean the end of all future mines. Opponents will have new ways in which they can use to harass, extend and block projects with the result that companies will not bother to explore on federal lands in the U.S.

There is no need or justification to evaluate lands for more set-asides. Such evaluations have been done throughout the country on numerous occasions and a huge amount of federal land is already completely off-limits to any resource development. Additionally, in Alaska, the "No More" intent language of the Alaska National Interest Lands Conservation Act (ANILCA) promised that the need for national parks, preserves, monuments, refuges, wild & scenic rivers, special conservation areas, wilderness designations, etc. has been satisfied. The promise was that no more administrative closures were appropriate and no more congressional closures were appropriate.

S.796 also contains several points where challenges can be made by project opponents that would tic up the permitting of a project. Within the Clean Water Act, Clean Air Act, etc. there are already many venues that project opponents can harass, extend and block projects. However, this legislation will add several more ways to block projects.

We could go into considerably more detail and delineate the specifics for each point. However the conclusion would be the same.

We urge that 5.796 be tabled and that it not proceed any further.

STATEMENT OF JANE DANOWITZ, DIRECTOR, PEW CAMPAIGN FOR RESPONSIBLE MINING, PEW CHARITABLE TRUSTS

After 137 years, this may be the year. Last month, the Senate Energy and Natural Resources Committee heard testimony on reform of the 1872 Mining Law. Secretary of the Interior Ken Salazar testified "It is time to make reform of the Mining Law part of our agenda of responsible resource development." He later commented We arc committing significant resources from the Department of Interior to get this done. I think there is a possibility we can get mining reform done in this Congress." (Associated Press. July 14, 2009)

Attached you will find recent editorial support for reform of the 1872 Mining Law as momentum continues to build. The enclosed editorials are from the New York Times, the Salt Lake Tribune, the Reno GaEette-Journal and the Denver Post.

As the Denver Post editorial board notes: "The political stars Finally may be aligned for a much-needed update to this antiquated law. Now, our federal lawmakers need to step up and make sure the changes go far enough and make a real difference."

If you have questions or would like any additional information, please feel free to contact Velma Smith, Campaign Manager for the Pew Campaign for Responsible Mining, at VSmith@pewtrusts.org or 202.887.8859.

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