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H.R. 2262, THE HARDROCK MINING AND RECLAMATION ACT OF 2007 — PART 1

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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LEGISLATIVE HEARING ON H.R. 2262, TO MODIFY THE REQUIREMENTS APPLICABLE TO LOCATABLE MINERALS ON PUBLIC DOMAIN LANDS, CONSISTENT WITH THE PRINCIPLES OF SELF-INITIATION OF MINING CLAIMS, AND FOR OTHER PURPOSES. "THE HARDROCK MINING AND RECLAMATION ACT OF 2007"

Thursday, July 26, 2007
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Jim Costa [Chairman of the Subcommittee] presiding.

Present: Representatives Costa, Pearce, Rahall, Grijalva, Gohmert, Heller, and Sali.

STATEMENT OF THE HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COSTA. The Subcommittee on Energy and Mineral Resources hearing this morning on H.R. 2262 will now come to order. This legislation is an important bill that has been introduced by the Chair of the Natural Resources Committee, our good friend, a gentleman from West Virginia, Congressman Mr. Rahall, an area that he has worked on long and hard.

But before we get to the substance of this matter, I have a few preliminary items I need to address. Under Rule 4[g], the Chairman and Ranking Members may make opening statements. If any members have any other statements, they will be included in the record under unanimous consent.

Additionally, under Committee Rule 4[h], additional material for the record should be submitted by members and witnesses within 10 days of the hearing. I have asked in previous hearings that those witnesses please try to expedite their efforts and assist because it is helpful. The cooperation makes a difference, in responding to any questions that have been submitted to the witnesses.

Now let me make a couple of other comments. Mr. Heller is our Ranking Member de jour, and Mr. Pearce will be here I suspect later this morning. He is in another committee with markup, and so we understand sometimes we have overlapping responsibilities. Nonetheless, we have an ambitious hearing this morning with I believe 11 witnesses, and we must be mindful of other people's time so we will begin. I know Mr. Heller will fill in well on behalf of Mr. Pearce.

It is an important issue that we have here today. This kicks off an effort to reform the 1872 Mining Law. There probably are not a lot of other cases in American law where a Congress enacts a piece of legislation, a President signs it—in this case President Ulysses Grant—and then for a period of over 100 years, if you do the math over 130 years, the law is not changed, and certainly we all have different perspectives on law but we know a lot has changed in our country, and as it relates to the subject matter, and in fact I think many of us do believe it is time that we take into account the changes and look at modifying the 1872 law, and that is what Mr. Rahall's measure does.

Even by international standards, when we look at 110 different nations throughout the world, over the last 20 years there have been numerous changes in mining laws, and analysis according to the World Bank and others reflect that. Many committee members and many of those testifying today have much of the history with mining law. I am very pleased that two of those individuals, Chairman Rahall, as well as Congressman Miller, for two decades have sought reform.

Senator Craig, who will be testifying momentarily, used to be a member of this committee, used to be a member of the Subcommittee with Chairman Rahall. So, this is a bit of a reunion of sorts, and certainly their combined in-depth knowledge of mining issues reflects—if you look at Idaho as an important mining state in the country—over 140 years of legacy of hardrock mining. In the Senate version of the mining law, this is an area that Senator Craig has obviously had a great interest in as well.

Since the late 1980s, as we look at the legislation before us, there have been over 30 oversight and legislative hearings on this subject, yet no changes. Some of the newer hardrock mining issues I think are important that this committee take the opportunity to learn. The Subcommittee will be holding a hearing, a field hearing in Nevada in August with Senator Harry Reid. I believe the date is August 21 in Elko, Nevada, for those of you who want to come to Nevada.

The economic issues, of course, in hardrock mining companies among many that we will be discussing is the issue of royalties and royalty payments. How to bring a fair return to taxpayers while also looking at ensuring the sustainability of the mining industry. We also have other environmental issues that include water, wildlife and recreation impacts.

I believe there is a need to be transparent but have workable criteria on how we proceed with the continued important resource of mining, the economic benefits and yet at the same time that balancing act that I always talk about, and that is to ensure—as this

Subcommittee attempts to do—the environmental issues because we must be good stewards of the environment.

When you talk about the environment, it is a sad note but the fact is that there is estimated to be over $32 billion backlogged in abandoned cleanup for mines. That is a large number. There are thousands of sites throughout the country. We have many of them in California. The adequacy of the law and the regulations in light of the current efforts to develop new mining claims throughout the West I think makes it more urgent than ever that we do this work.

For example, in my state alone, in California, there are new claims in the following areas: 29 Palms, the Joshua Tree National Park, and Big Bear Lake in the San Bernardino Mountains not far from the City of Portola. Clearly those examples can be I think illuminated in other parts of the West.

So, I think what is important is that this subcommittee do its work. That we get the information, the very best information we possibly can. People say that the West has changed, and in my view I think it is time to change the 1872 Mining Law. So, for all of those reasons, we want to take everybody's input and expertise and do our due diligence to try to do the best work product we possibly can.

With that, I note that we have some additional opening statements of Mr. Heller, and then we will defer to the Chairman of the Committee, and you are going to submit your statement, Mr. Chairman?

Mr. RAHALL. No. Just very quickly—

Mr. COSTA. Very quickly. Let us have the Chairman speak first.

STATEMENT OF THE HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman. I certainly want to commend you and the Ranking Member, Mr. Heller, for conducting these hearings today on H.R. 2262, legislation reform of the Mining Law of 1872. It is a particular honor and delight to welcome back former Ranking Member of your subcommittee actually, Mr. Chairman, our colleague from the other body, Larry Craig of Idaho, a dear friend. I have been in his district and been in his state on this issue and other issues before our committee when he so ably served here but he saw fit to go over to that other body, but that is his problem.

I have been at this for so long that I guess I am almost at a loss of words, and therefore I am going to be brief because frankly I have said everything that I need to say about the need to reform the Mining Law of 1872 over the past 20 years or more. As the first Chairman of this Committee, under the first Chairman under whom I served, Mo Udall, used to say, everything that needs to be said has been said but not everybody has said it.

So without further ado, let me note that I certainly recognize it is a changed landscape out there in terms of what constitutes a hardrock mining industry in this country, in terms of how that mining is done, and in terms of the expectations of the people that reside in the area. A lot has indeed changed not only since 1872 but since we last visited this legislation in the Congress.

I also recognize that the principles behind this legislation and I am certainly not locked in stone with every word and provision, but the principles remain valid. The people of the United States, the true holders of these lands, deserve to receive a payment in return for the disposition of the resources we all own. Nobody in their right mind would allow timber, oil, gas, coal or copper to be cut, drilled for or mined on lands they own without some reimbursement and neither should the United States.

In all cases we do require payment except in the case of hardrock minerals such as copper, silver and gold. People of the U.S. also deserve to see that the lands they own are properly managed, whether it be forest lands in the east or public lands in the West. Certainly the states have stepped up to the plate in terms of hardrock mining on Federal lands and the regulations thereof but they are, when all is said and done, Federal lands owned by all of the people of the United States, and it seems to me that it is appropriate to have Federal guidelines on hardrock mining and reclamation operations.

Certainty is what we strive for here to remove the cloud of uncertainty that currently exists over the industry so that indeed financial decisions can be made for the future. The pending legislation is a proposition to accomplish these goals despite the fact that it is premised on decades of similar bills including those which twice passed the House of Representatives in a bipartisan fashion. It is still, to coin the title of a book authored by John Leshy, a study in perpetual motion.

So again, I welcome Senator Craig to our committee today as well as the other witnesses, many of whom have traveled long distances to be with us, to share with us their expertise on this issue, and again I thank you, Subcommittee Chair Costa, for holding this hearing today. Thank you.

Mr. COSTA. Thank you, Mr. Chairman, and hopefully we will transition this from a study in perpetual motion to a work in progress as we move along. The Ranking Member this morning is the gentleman from Nevada, Mr. Heller. I recognize him for an opening statement.

STATEMENT OF THE HON. DEAN HELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. HELLER. Thank you, Mr. Chairman, and thank you for your time in bringing this particular piece of legislation. I want to thank Chairman Rahall also for his dedicated time and energy over the 20 years of bringing this bill forward, and I know this goes back and forth quite a bit, and there is a lot of energy expended on this particular bill, and I am certain that that will change during this cycle also.

I want to thank Senator Craig for being with us here today. I also want to thank the other 10 members that will be on this panel for your time and energy and efforts to be here. I would like to point out Ted Wilton specifically since he is from my district, from Spring Creek, just outside of Elko and welcome him here today.

I do not think there is any state that is affected more by this piece of legislation than the State of Nevada. Approximately 85 percent of the lands in Nevada are controlled by the Federal gov-

ernment. Hardrock mining on public lands in Nevada provides high wage jobs that benefit many of the rural communities in my district. Mining employees pay income taxes. They shop at local stores. They eat at local restaurants.

These wages are critical to many local economies in Nevada. However, under the Hardrock Mining and Reclamation Act of 2007, thousands of jobs will be threatened in my district if this piece of legislation becomes law. This bill seeks to establish a royalty structure that will make mining operations less economical. The jobs in mineral production could be exported to other countries. It could force operators to relocate their operations offshore causing domestic production of needed commodities to be eliminated or reduced.

It creates a bypass of Congressional authority for approval of land withdrawals and creates the potential of expanding administrative authority to close vast amounts of public lands and access not only to mining operations but access to the general public. It establishes unattainable environmental regulations that could mire any mining claim in litigation, should it be able to move forward despite the excess of cost and bureaucratic red tape.

My district encompasses over 110,000 square miles. Of that, mining operations are less than 6,000 square miles. There is still over 100,000 square miles for other land uses. Mining has been a good steward of the public lands, and has benefitted many of the communities in my district. I urge the Chairman to take a more measured approach to any reforms having to do with the Mining Law of 1872. Thank you, Mr. Chairman. I yield back.

Mr. COSTA. Thank you, gentleman from Nevada. I will now recognize——

Mr. SALI. Mr. Chairman?

Mr. COSTA. Yes.

Mr. SALI. Can I make a brief statement?

Mr. COSTA. Yes, when I recognize you. We have the gentleman from Arizona who is the Chairperson of the National Parks, Forests and Public Lands who I was going to recognize at this time.

Mr. GRIJALVA. Thank you, Mr. Chairman, and let me just thank you for your indulgence in allowing me to sit in on this meeting. I appreciate that very much. My statement I will submit for the record, and the overlap on the public lands and the very important piece of legislation that our committee Chairman has brought forth, 2262, is a vital piece of legislation. It affects the public lands in this country in a very direct way, and the taxpayers in a very direct way, and I am grateful to you and the Ranking Member for holding this hearing. Thank you.

Mr. COSTA. Thank you, the gentleman from Arizona and my friend and colleague. I will now recognize Mr. Soto for a brief statement.

STATEMENT OF THE HON. BILL SALI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SALI. That actually will be Mr. Sali.

Mr. COSTA. I am sorry.

Mr. SALI. Well, Mr. Chairman, as with most things in life, it really boils down to your perspective, and while I appreciate the fact that the good Chairman has been to Idaho, I think it makes a dif-

ference when you actually live in the West, and with due respect, West Virginia is not the West.

It makes a difference when you have actually been engaged in mining. I have. It makes a difference when you have been involved in mining trying to turn a profit. That gives you a special perspective. I have. Mr. Chairman, there are some issues that I think are problematic with the bill draft that has been introduced by the Chairman.

Number one, there is really going to be a discouragement of mining with the provisions that have been added here, as the Ranking Member points out. The fees and royalties that will be charged are going to be a discouragement to mining for those who are trying to actually make a mine work and earn a profit from it. There are no incentives that are set in place to offset those things that will discourage mining.

It will only serve to further regulate one of the most regulated industries in the land, and as a result of all that, I think it will have two results. The first is it will increase our dependence on minerals from foreign sources, and I think the thing that we ought to compare that to is, for example, our importation of oil and gas in this country. When we import 60 percent of our oil from foreign countries and then we gripe about the fact that OPEC is actually the one that is setting our prices that we pay at the pump, we need to consider very strongly setting a similar policy for mining in this country.

Finally, the end result will be if we discourage mining in this country we will not only end up with that shortage of domestic mining—which will be a national security issue—we will at the end of the game export a number of jobs. Many of those are high paying union jobs which will go away in this country. I think we have to keep all of those perspectives in mind as we proceed with the hearing of this bill. Thank you, Mr. Chairman.

Mr. COSTA. Thank you, Mr. Sali, and certainly the gentleman from Idaho is entitled to his opinion. I am not going to get into a debate at this time. I would hope that your concerns with regards to the legislation does not at all attempt to impugn or question the author's sincere desire to make changes and reform. We can agree to disagree. We have an industry that has had record profits, and I would submit to you that our importation—which we all I think lament of energy—is not because we do not encourage energy development in the United States or limit it. We consume more energy than we have in the United States is part of our problem, at least the energy we like to use which is cleaner burning energy.

But again I am not going to get into a debate because we want to hear our witnesses. Senator Craig, who called last week and talked about his desire to testify before the Committee, his long history as the distinguished Senator from the great State of Idaho, who has long worked in this issue as well as many other issues that he and I have worked on together, indicated that he would very much like to be here and to see his old friend, Mr. Rahall, and to give us the benefit of his insights on how we might deal with this issue.

So, we are very much looking forward to his testimony, and the Chair will now recognize the Senator from the great State of Idaho for five minutes.

STATEMENT OF THE HONORABLE LARRY E. CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Well, thank you very much, Mr. Chairman. Should I say Chairmans all?

Mr. COSTA. We have a few here.

Senator CRAIG. Yes, you do, and I appreciate that. It is a great opportunity for me, and I thank you for allowing me this opportunity. Mr. Chairman, you are correct. We have worked on a variety of issues together and continue to do so. Chairman Rahall has spoke a bit of our history together as we have worked on this issue, and I would agree between he and I together we collectively probably have as much or more knowledge on 1872 Mining Law, other than Jim Zoia sitting in the back of the room over there, and I have always blamed the Chairman's ill-gotten direction on this issue to Zoia, not to him. So it is understandable.

But having said that, let me also recognize my Congressman Bill Sali for being here this morning. He resides over a district that at one time was one of the largest mining Congressional districts in the nation, and I was its Congressman, and it was the second largest economy of that Congressional district when I was its Congressman in 1980. Mining is probably now fourth, possibly fifth.

As a result of international markets and access to public land mining base resource, our world changed dramatically. Last I checked in Idaho, a few moments ago, the average wage was nearly $30,000 but the mining wage was $44,000 a year. So the point made is an important point as it relates to bits and pieces of the economy, Mr. Chairman, but let me talk this morning in a broader sense and specifically in general to what you are attempting to do here because I am one of those who believes that great nations rely first upon themselves and second upon the nations around them.

I am concerned because I do think we have an energy crisis in this country that we have grown increasingly reliant on foreign sources and less on our own. I am increasingly concerned that that might happen in our food supply, and you and I have engaged in that as we cannot get a policy together that allows our large specialty crop producers, primarily, to have access to a labor force that allows them to farm and supply for the retail markets of our country, i.e., our consumers. You have a migration going on in your district today, and it has not happened in Idaho yet because of our type of cropping but that migration is to take American capital, American know-how and move it offshore because we cannot do it here.

I believe—and let me put it in this vernacular because I think that Chairman Rahall understands it—I believe that mining is not the canary in the coal mine but it is the canary of an economy. It is an indicator of whether a nation can sustain its economies. Now for example, we are interested in energy. Copper today is a major component in hybrids, in automobiles. It will continue to be, if we move our country toward electric transportation, ever increasingly

valuable, and as a result of that I think it is tremendously important that we recognize the value of that mineral once again.

Silver connectivity. When Chairman Rahall and I were debating silver 20-plus years ago, it was a value added. It was a numismatic metal. Today it is an industrial metal. It connects our fingertips to the digital world. Increasingly valuable.

Gold still is little industrial, largely numismatic, but extremely valuable to the economy and the base resources of our state, and as Congressman Heller has said it, a big piece of his economy in his state. So, for just a moment, let me look at the bill that is before you. I am very familiar with some of its provisions. Let me lay out a couple of thoughts.

First, in order for a domestic industry to succeed it must be allowed a profit, and I think it is tremendously important that we recognize profitability, and I have supported a royalty on hardrock metals. We did in the last dust up that we tried to get to some years ago but how we formulate a royalty, how we calculate it in relation to investment and return on investment and capital realized is going to be very, very critical or we will blight the ability of our industries to perform.

That coupled with the reality of the cost of doing business today, a world of difference from the cost of doing business even 20 years ago when we first started debating this issue in this room and in this subcommittee, that world and those costs have changed dramatically, and I think we have to be increasingly aware of that reality. Discovery. Very important. The allowance of discovery.

I always really laughed a little bit kind of down inside when the environmental community would say, "Well, we will block this land off over here and you can go mine there." They had forgotten the age old adage that the gold is where you find it and, once found, the principle of the 1872 Mining Law was once discovered development and the right to do so under a patenting process.

The right of discovery remains important today but more important than all of that, once discovered, is tenure. How do we secure tenure for a company to make the kind of long-term investment it takes to sustain an operation and to continue to produce through the life of the resource itself? So, I am going to look a little less at patenting and a lot more at tenure and the stability of tenure than I maybe once did because I am willing to adjust to the economies and realities of the industry.

At the same time, I understand the importance of what we are about. Now, having said that, I brought an organization to Idaho some years ago called the Center for the New West. So you see, Mr. Chairman, I believe there is a new West out there, a much different appreciation for our lands and all of their resources than there was in 1872, than there was in 1982 and 1984 and 1986 when I was here in this committee.

At the same time, there is a reality of balance. If we look at the old 1872 Mining Law itself and say, "Here it is. Here are the books," then let us also put all of the case law with it that would fill this table, and then—and you are going to be hearing from the BLM that is the primary land steward of the subsurface right. They are the ones that sit down with the mining company and develop a mining plan and put it together and link it to bonding and

link it to how they will practice upon the land as it fits with all the resources around in an environmentally sound way.

So dovetailed into the 1872 law is the Clean Air Act and the Clean Water Act and the Endangered Species Act and on and on and on. The 1872 Mining Law as Grant signed it is a very different law today. Its primary premises remain but it has grown to be a very different law in a very different world in a very different public land environment, and that is something that is extremely important.

And so in recognizing all of that I think it is important that we write something that is clear, that is practical, that is reasonable and understandable, that returns to the owners of that public land, the American citizenry some value for the resource that they have allowed development of. I have no difficulty with that. But I am going to make sure that the bird, that canary when it breathes deeply does not fall over on its side and die because I do believe that mining must remain a basic part of the fundamental reality of what we do.

Good Samaritan liability coverage. OK. Let us see what we can do to handle that. Reclamation. Absolutely. Abandoned mine lines, a legacy of the past. How can we deal with it in a way that lessens the human liability and in some instances environmental liability from mine seepage and all of the kinds of things that can and do happen in certain mining settings?

Let me close with this thought. Senator Reid and I are very close on this issue and have worked closely on this issue for some time, and I visited with Senator Reid prior to coming over because I want to make myself very clear. It is suggested by Chairman Rahall that while the House has passed on several occasions mining law reform that maybe we have been the enemy of the good. Over on the Senate side I would like to suggest that maybe we are the caretakers of the future. The viability of the economy of a mining industry.

But having said that, both Senator Reid and I agree that if change can be made we ought to make it, but I would hope we would work together to do so because a bill that does not represent the reality of where we are but has a message more than a practicality probably does not get as well received in the Senate as it might ought to. I am Ranking on the Public Lands Subcommittee. We will give it due diligence.

At the same time, I think both Senator Reid and I are extremely concerned that the Carlin trend remains viable. That the economies of my state, the economies of Nevada, are in large part fed by the resources of those joint areas of natural phenomena, basically known as microscopic gold, and I do not want to blight that, and we will not blight that in any way.

Last, thank you again for your diligence, your tolerance, the time you have offered. Both Senator Reid and I were at a press conference yesterday, and we were looking at a fire burning in Idaho and in northern Nevada called the Murphy Complex. As of yesterday it burned 628,000 acres. It may have gotten to 700,000 acres last night, a very large fire burning across the borders of Nevada and Idaho.

We had it up on a wall on a map, and we were talking with the Secretary of Interior and the acting Director of the BLM, and it was just a spot on a map in a very big area but to bring it into context at 620,000 acres it was 80 percent the size of Rhode Island, and it was hardly a spot on a map in the State of Idaho and Nevada. I think that the Congressman from Idaho and what the Congressman from Nevada are saying is let us not lose our perspective as to the reality of what we deal with, and in doing that, we will work together to see if we cannot modernize a very valuable law to our country. Thank you.

[The prepared statement of Senator Craig follows:]

Statement of The Honorable Larry E. Craig, a U.S. Senator from the State of Idaho

Chairman Costa and Ranking Member Pearce and members of the subcommittee, I appreciate you allowing me to testify on a subject that I have not only been a proponent of, but also involved in since I was a member of this subcommittee.

I believe it is appropriate that I begin this discussion by pointing out our increasing reliance on foreign mineral sources. Not unlike energy, Americans depend heavily on a variety of mineral sources for everything from the cars we drive, to the pharmaceutical drugs we take.

This country must wake up and realize that energy and minerals are a key component of national security. Transportation, national defense, and growing economies are all subject to domestic energy and mineral resources. In fact, some have used hybrids as a piece of the energy savings pie, but hybrids require significantly more copper than our traditional cars. As legislators, we must recognize our vulnerability and ensure that we do not make it worse.

According the USGS, the U.S. reliance on mineral imports has nearly doubled over the past decade, and with the rising economies like China, it will only get worse. Looking into the 21st Century and the continuing development of the U.S., China, and other countries, our needs and dependence will not diminish—they will intensify. That is why America and its economy can't survive without mining policy that promotes domestic mining in a way that is environmentally responsible.

In 2006, U.S. metal mines produced $23.5 billion worth of metal ores and generated some 170,000 jobs. In Idaho, mining often provides some of the highest paying jobs to our communities and is generally the sole driver to those rural economies.

As you know, Mr. Chairman, most of our country's hardrock minerals are located on federally owned lands, which hold the highest environmental standards. Many opponents of mining point to the years before most of our time and the mining practices that have occurred then, and not the practices that are in place now.

We often talk about the 1872 Mining Law as a legacy, but outdated law. However, since Eisenhower signed what has become a valuable piece of legislation, many other presidents have signed laws that many would argue have strengthened environmental law including the 1872 act. The Clean Water Act, Clean Air Act, NEPA, FLPMA, RCRA, not to mention agency directives and the mounting litigation are all part of the myriad policies that direct what does and does not happen on our public lands.

I know this is a legislative hearing on Chairman Rahall's bill, and I would like to take this opportunity to provide some thoughts on a few concepts raised in this legislation, in no particular order.

First, in order for a domestic industry to succeed, it must be allowed to profit. Having said that, we are at a time where public land royalties are a necessary for mining law reform to pass. Whether you are cutting timber, grazing cattle, or drilling for oil, you pay a royalty, and mining shouldn't be any different.

However, the royalty must be carefully set and be reasonable to avoid choking out our domestic industry. An eight percent net smelter return royalty doesn't mean anything if there isn't an industry to apply it to. Additionally, it should not be the intent of this Congress to apply this royalty to already-discovered minerals and change the rules in the middle of the game.

Second, while patenting may be the practice of the past, the investment longevity isn't. In order for this industry to continue developing its resources, investments will have to be stable and long lasting. I am sensitive to my state, which generally promotes access for recreation, hunting, and grazing. However, we must look for ways

to secure tenure to the companies that continue to provide the needed minerals our economy depends on.

Third, Congress must be very careful not to bottle neck the lands open to location. Again, limiting our domestic ability to locate and mine essential minerals will only increase our reliance on foreign sources.

Fourth, the American people insist on financial assurance and the ability of industry to reclaim lands. Recent changes to the financial assurance regulations for mining on federal lands have made a difference. I believe the mining industry today has captured the confidence of the people who have taken the time to visit and research current mining practices and reclaiming techniques.

And lastly, we must improve our ability to reclaim and restore our land and water resources by improving the way abandoned mine land funds are distributed and creating comprehensive Good Samaritan liability coverage. In order to address old practices, we must provide resources to return portions of our public lands back their historic beauty.

I believe many of the concepts addressed in this legislation are important and must be debated. However, I am very concerned that this legislation could kill a very important domestic industry.

I have watched over the years as robust logging, ranching, and mining industries suffer over what I believe have been unintended consequences by the interpretation of federal laws by activist judges. We must be cognizant of our past mistakes and ensure we do not repeat those same mistakes. We can avoid that by clearly laying out the intent of this Congress.

I am the Ranking Member on the Public Lands and Forestry Subcommittee in the Senate, and I hope to address many of the issues I have raised here. Senator Reid and I have worked together on mining reform for many years, and we continue to work to ensure that Congress moves legislation that can work for industry while balancing environmental concerns.

We hope to work in a bicameral fashion and pass overdue mining reform this Congress. Again, I appreciate the opportunity to participate here today, and I look forward to working with you on this important issue. With that Mr. Chairman, I conclude my testimony.

Mr. COSTA. Thank you very much, Senator Craig, for your very comprehensive statement, and we will look forward to working with you. I know the author of this legislation, as I am, is very mindful of the fact that I have never seen a one-house bill be successfully signed into law. Consequently, we are going to have to work together, and you bring a great deal of knowledge to the table, and we will look forward to working with you and Senator Reid. It is one of the reasons that I decided to hold the Subcommittee field hearing in Nevada because of our recognition of the importance to the issue of not only Nevada but other western states. So, we will look forward to continuing to work with you.

Senator CRAIG. Well, thank you. I know Senator Reid has said he will be at the hearing, and I am going to try and make it down for it. So, we will hope to see you. Where is that going to be?

Mr. COSTA. Elko, Nevada.

Senator CRAIG. Elko.

Mr. COSTA. Not far from Idaho.

Senator CRAIG. You will love Elko.

Mr. COSTA. I know. I have been there before.

Senator CRAIG. All right.

Mr. COSTA. They have great cowboy poetry there in the wintertime.

Senator CRAIG. That they have.

Mr. COSTA. Yes. All right.

Senator CRAIG. Thank you.

Mr. COSTA. If members have some questions that they would like to opine of you, I am sure you will respond. The issue of royalties

I would like to get more thoughts from you as we deal with oil and gas, what comparatively would be a level of fairness in hardrock and the other issues on cleanup I am interested in your thoughts as well. All right. OK. We will move on.

Mr. RAHALL. Mr. Chairman?

Mr. COSTA. Yes.

Mr. RAHALL. Mr. Chairman, may I just say in response to the Senator that I appreciate his testimony this morning and the manner in which he expressed a willingness to work together. I also have visited with Majority Leader Reid on this issue alone, and he has expressed a willingness to work together. In the testimony he gave, there is not much I could disagree with.

Certainly we all want to see industry make profits. I represent the coal industry. As you know, Larry, we have traveled throughout the West when I was Chairman of this subcommittee, visited about every mine I can think of whether it be silver, copper, uranium, regardless. We had an extensive set of hearings on this legislation.

We are going to have some more hearings under Chairman Costa, and I think in response to the gentleman from Nevada, just because I am from West Virginia I know a little bit about mining in the West too, having been in those mines, and we have a mining industry in my state too, which we did not devastate by any Federal surface mining law 30 years ago almost this very day. So we can have Federal legislation and not put the industry out of business. Thank you.

Mr. COSTA. Thank you, Senator, and thank you Chairman Rahall. In conversation with the gentleman from Nevada, I know he knows that you know about mining. It was the gentleman from Idaho who was not certain of your acumen in over 30-plus years of mining in West Virginia, but I know sometimes those guys out in the West all look alike. I want to get on with our testimony here.

We have our first panel, and that involves the witnesses Mr. Henri Bisson, Deputy Director of the Bureau of Land Management; Mr. John Leshy, former Solicitor General of the Department of Interior; Ms. Jennifer Martin, Commissioner of the Arizona Game and Fish Commission; Mr. J. P. Tangen, former Regional Solicitor of the Department of Interior for Alaska. I think we have everybody who we have asked to testify in this first panel.

You have all come forward as you have, and as I look at the table I know that there is a lot of expertise that we will benefit from and also experience in testifying before Congressional committees. With that said, we have those lights that are in front of you, and they are there for a reason, notwithstanding sometimes our unwillingness to comply with them. But we would appreciate the witnesses keeping their statements within five minutes.

Certainly that is why we provide the opportunity for longer written statements to be submitted for the record and for us to benefit in more in-depth information that you may have and want to provide the Committee and, of course, we will ask questions beyond the time that is allowed for this first panel, and we will submit those in writing to you for any follow up. With that said, the Chair now recognizes Mr. Bisson, who will now testify for five minutes.

STATEMENT OF HENRI BISSON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. BISSON. Thank you, Mr. Chairman and Chairman Grijalva and members of the Subcommittee. My name is Henri Bisson. I am the Deputy Director of the Bureau of Land Management. I thank you for the opportunity to present the views of the Department of the Interior on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007. On October 25, 2001, the Department of the Interior urged Congress to resolve contentious issues surrounding the mining law that had been raised by the states, industry and the environmental community in a way that provides stability to the industry and improves our environment.

While H.R. 2262 provides comprehensive revisions to the General Mining Act of May 10, 1872, as amended, we do not believe it accomplishes these goals. Instead, this bill could harm the domestic production of mineral resources. These types of mineral resources are essential to economic growth, advanced industry and technology and improve the quality of everyday life for Americans. We therefore cannot support the bill as drafted.

We often take for granted the availability of computers, telephones, clothing, toothpaste, cosmetics, medicines, cars, sports and recreation equipment, appliances and sundry other items that make our homes safe, convenient and comfortable. None of these would exist without the types of minerals produced under the 1872 Mining Law. The phenomenal advance of culture, science and technology remains dependent on mineral resources.

Any legislation that increases the cost of domestic metal production could affect the availability of these materials domestically with potential adverse security and economic costs to our citizens. In contrast, some of the benefits from the production of these minerals can be very local, providing jobs in small communities throughout the West where employment opportunities are limited. For every direct job in mining, three supporting jobs are created.

BLM has the responsibility to ensure that minerals production is conducted in a responsible manner that serves the social and economic needs of the Nation and protects the environment. BLM has accomplished this through the principles of sustainable development, the promulgation of surface management regulations and the issuance of policy guidance.

Despite the BLM's efforts to administratively improve mining operations, certain issues cannot be resolved without additional statutory authority. Unfortunately, H.R. 2262 does not adequately resolve these issues. Four examples are: H.R. 2262 proposes to prohibit the Secretary from issuing patents except for those grandfathered under a moratorium. The Department believes this issue warrants additional consideration and would like to work with the Committee toward resolution.

The Department believes the perspective application of a royalty or production payment merits further discussion. We are concerned that imposing a royalty on existing mining claims could raise constitutional concerns. We believe the legislative restatement and expansion of existing environmental laws and standards and codification of the BLM's permitting requirements in H.R. 2262 is both

unnecessary and redundant. This would only complicate BLM administration of its program and operator compliance.

We support full and transparent public participation at appropriate stages. Under NEPA and FLPMA, Congress established a public process that did not give an individual the ability to block Federal actions unnecessarily. Certain provisions of H.R. 2262 appear to do just that. The Department remains committed to continuing to find administrative solutions to emerging issues as well as working with the Congress and other interested parties to find legislative solutions to those problems that cannot be resolved administratively including the future role of mineral patenting and requiring some form of prospective royalty or production payment.

Because H.R. 2262, in our view, does not present workable solutions on these issues, we look forward to working with the Congress to consider other options. I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Bisson follows:]

Statement of Henri Bisson, Deputy Director, Bureau of Land Management, U.S. Department of the Interior

Thank you for the opportunity to present the views of the Department of the Interior on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007.

On October 25, 2001, the Department of the Interior urged Congress to resolve contentious issues surrounding the Mining Law that have been raised by the States, industry, and the environmental community in a way that provides stability to the industry and improves our environment.

While H.R. 2262 provides comprehensive revisions to the General Mining Law of May 10, 1872, as amended, we do not believe that H.R. 2262 accomplishes these goals. Instead, this bill could harm the domestic production of mineral resources; these types of minerals are essential to economic growth, advance industry and technology, and improve the quality of every day life for Americans. We, therefore, cannot support the bill as drafted. We do remain committed to continuing to find administrative solutions to emerging issues as well as working with the Congress and other interested parties to find legislative solutions to those problems that cannot be resolved administratively. We look forward to working with you toward that end.

Background

For over 135 years, the 1872 Mining Law has served to assure a reliable and affordable domestic supply of the minerals—gold, silver, copper, lead, zinc, and uranium—critical to our economy and national security. The 1872 Mining Law also promoted the settlement of the western United States by providing an opportunity for any citizen of the United States to explore the available public domain lands for valuable mineral deposits, stake a claim, and, if the mineral deposit could be mined, removed, and marketed at a profit, patent the claim. Patenting results in the claimant acquiring ownership not only of the mineral resources but also of the lands containing these mineral deposits at the statutory price of $2.50 or $5.00 per acre.

By 1976, when the Federal Land Policy and Management Act (FLPMA) was enacted, settlement of the West was no longer the primary force driving federal land and resource management policies. FLPMA provides that the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands. Today, the provisions of the 1872 Mining Law are implemented alongside the multiple use mandate of FLPMA.

Mining's Importance to the United States

We often take for granted the availability of gold, silver, copper, lead, zinc and other minerals and their contribution to the quality of life we enjoy in this country. In 2006, the total value from domestic metals production was approximately $23.5 billion. Computers, telephones, clothing, toothpaste, cosmetics, medicines, cars, sports and recreation equipment, appliances that make our homes safe, convenient, and comfortable—none of these would exist without the types of minerals discovered and developed under the 1872 Mining Law.

As much as we enjoy these conveniences and luxuries, it is the mineral products used in areas such as agricultural production, communication, transportation, technology, and national defense that make a truly profound contribution to our way of life. The phenomenal advance of culture, science and technology remains dependent on mineral resources. In an example that is close to home for Americans, the automobiles most of us drive every day contain nearly 60 pounds of copper, and the newly popularized hybrid vehicles use nearly three times as much copper as the average automobile. Furthermore, most vehicle manufacturers specify that the copper used be "new" copper. In another example, the calcium contained in the vitamin supplements many of take every day comes from mined calcium deposits.

Metal mining is an international business, with purchasing and sales conducted through the London Metals Exchange and the New York Commodities Exchange and secondary exchanges. Metal marketing operates within a free market system, in which the price is determined by what a willing buyer and a willing seller agree upon. The international prices for the metals are fixed daily on the exchanges, and costs of production control the economics of particular companies.

In contrast, some of the benefits from production of these minerals can be very local, providing jobs in small communities throughout the West where employment opportunities are often limited. For every direct job in mining, three supporting jobs are created. Producers must buy fuel, pipes, wire, and other industrial products, and as a general rule, these requirements are contracted out to local fuel distributors, hardware suppliers, and related businesses. Producers pay Federal, State, and local taxes, both income and property taxes.

BLM's Management and Regulation of Mining

BLM has the responsibility to ensure that, as with other multiple uses, minerals production on Federal lands is conducted in a responsible manner that serves the social and economic needs of the nation and protects the environment. BLM has accomplished this through the principles of sustainable development, the promulgation of surface management regulations, and the issuance of policy guidance.

Sustainable development is the basis for a policy framework that ensures that minerals and metals are produced, used, and recycled properly. In the context of mining, the United States joined 193 other nations in 2002 in signing the Sustainable Development Plan of Implementation applicable to mineral resources.

BLM's surface management regulations were issued under the authority of FLPMA in 1981 and amended in 2000 and 2001. The regulations seek to provide protection of the public lands from unnecessary or undue degradation during hardrock mining and reclamation of areas disturbed during the search for and extraction of mineral resources.

The 2000 and 2001 revisions to BLM's surface management regulations incorporated many of the recommendations of the Congressionally-mandated study by the National Research Council (NRC) Board on Earth Sciences and Resources in its report, "Hardrock Mining on Federal Lands (1999)." The study examined the environmental and reclamation requirements relating to mining of locatable minerals on public lands and the adequacy of those requirements to prevent unnecessary or undue degradation of public lands.

Under the regulations, all mining and milling activities are conducted under a plan of operations approved by BLM, and following environmental analysis under the National Environmental Policy Act (NEPA). BLM must disapprove any mining that would cause unnecessary or undue degradation of the public lands. A mining operator, as well as an exploration operator (exceeding casual use), must provide financial guarantees covering the full cost to reclaim the operation. BLM may require an operator to establish a trust fund or other funding mechanism to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining reclamation and maintenance requirements after a mine is closed. In response to previous GAO recommendations, the BLM has implemented a tracking system under which BLM state directors are required to certify each fiscal year that the reclamation cost estimates for proposed and operating mines have been reviewed and are sufficient to cover the cost of reclamation. Currently, the BLM holds financial guarantees in excess of $900,000,000 to cover the costs of reclamation of mining operations on BLM-managed public lands.

BLM policy guidance was set out in 1984 and updated by the BLM Director in 2006. The guidelines promote balancing environmental, social, and economic needs while practicing environmental stewardship and promoting stakeholder participation. These efforts include:

- reviewing and processing notices and plans of operations to prevent unnecessary or undue degradation;
- requiring financial assurances to provide for reclamation of the land; and

- considering alternative forms of reclamation after a mine is closed such as using the land for landfills, wind farms, biomass facilities and other industrial uses, in order to attract partnerships to utilize the existing mine infrastructure for a future economic opportunity.

In 2005, the Administration completed an assessment of the BLM Mining Law Administration Program that, in addition to highlighting options for BLM management improvements, reiterated the point that the program suffers from deficiencies relating to its enabling legislation, the 1872 Mining Law. In particular, this review noted that the program is operating under several temporary authorities, producers do not compensate the government for minerals extracted from Federal lands, and the program lacks clear authority to assess administrative penalties.

Congressional Moratorium on Patenting

In the FY 1995 Interior Appropriations Act (and in each succeeding year to date), Congress prohibited the Department from accepting new mineral patent applications or processing those applications which had not reached a defined point in the patent review process. Congress authorized the Department to continue to process those applications that were grandfathered under the moratorium and also required an annual report to Congress on the status of BLM's progress. When the moratorium was first put into effect in 1994, 626 patent applications were pending, of which 221 were subject to the moratorium and 405 were grandfathered and not subject to moratorium. Of those 405 grandfathered applications, 38 remain for BLM to process as of this date. The Department transmitted the most recent status report on mineral patenting to Congress on June 27, 2007.

H.R. 2262

Despite the BLM's efforts administratively to improve mining operations, certain issues cannot be resolved without additional statutory authority. Unfortunately, H.R. 2262 does not adequately address these issues. We offer four examples for discussion in this testimony.

- **Patents on Mining Claims**

Under the 1872 Mining Law, any citizen who can prove to the satisfaction of the Secretary of the Interior the discovery of commercially exploitable hardrock mineral deposits on the public lands and who has complied with all other applicable requirements may obtain a property right in both the minerals and the surface lands within the boundaries of the mining claim. This provision encouraged explorers and settlers to move West during the decades following the Civil War. H.R. 2262 proposes to expand on the current annual appropriations moratoria and permanently eliminate the issuance of patents, except for those grandfathered under the moratorium that began in 1994. While expansion of the West is no longer relevant, the Department believes this issue warrants additional consideration and would like to work with the Committee toward resolution.

- **Royalty**

A second key aspect of the 1872 Mining Law is that it grants citizens the right to develop and extract hardrock minerals from the public lands. Under the 1872 Mining Law, a hardrock mining operator is not required to pay the government any percentage of the value of the minerals extracted in the form of a royalty or production payment, although profits from mining operations are subject to Federal and state income tax. At least until 2008, payment of a $125/year maintenance fee also is required by the Mining Law, as amended by various Appropriations Acts.

In contrast, Federal coal and onshore oil and gas resources remain in Federal ownership and are leased by the Federal government subject to a royalty, as provided under applicable laws. In 2006, the Federal government collected more than $3.6 billion in royalty payments from these onshore (non-Indian) leases.

The Department believes that the prospective application of a royalty or production payment issue merits further discussion. However, we are concerned that a royalty or production payment applied to existing claims could raise Constitutional concerns.

- **Environmental Compliance**

Hardrock mining operators on public lands are required to comply with existing state and Federal laws, including the Clean Water Act; Clean Air Act; Endangered Species Act; Federal Land Policy and Management Act (FLPMA); National Environmental Policy Act (NEPA); and National Historic Preservation Act. We believe that these existing statutes and related regulations provide sufficient authority to regulate mining operations when properly monitored and enforced by state and Federal regulatory agencies. BLM's 2000 and 2001 revision to its surface management regu-

lation discussed earlier provide a sound framework to prevent unnecessary or undue degradation of the public lands and are consistent with the recommendations of the National Academy of Sciences. These regulations were upheld by the D.C. District Court in 2003. We believe the legislative restatement and expansion of the existing environmental standards and permitting requirements in H.R. 2262 are both unnecessary and redundant and would only complicate BLM administration of its program and operator compliance.

• **Procedural Concerns**

We support full and transparent public participation at appropriate stages. Under such landmark statutes as NEPA and FLPMA, Congress established a role for members of the public and structured a process by which the public could make their views known about a proposed governmental action—approval of a mining plan of operations, for example—to agency decision-makers. This role has been appropriately implemented through BLM regulations and policy. What Congress did not do in those statutes was give an individual the ability to block Federal actions unnecessarily. Certain provisions in H.R. 2262 appear to do just that.

Congress has entrusted to the Secretary of the Interior the final decision as to whether a petitioning party has met the requirements of the law concerning the issuance of a lease, right-of-way, or the granting of a land or mineral patent. The Secretary exercises this authority judiciously. For example, of the 405 grandfathered patent applications, the Secretary has contested the validity of 99 applications, and another 80 were withdrawn by the applicants, at least in part due to concerns raised by the Department. We see no purpose in disturbing the Secretary's long-established authority in this area of public land administration.

Conclusion

The Department remains committed to continuing to find administrative solutions to emerging issues as well as working with the Congress and other interested parties to find legislative solutions to those problems that cannot be resolved administratively, including the role of mineral patenting and requiring some form of prospective royalty or production payment. Because H.R. 2262, in our view, does not present workable solutions on these issues, we look forward to working with the Congress, industry, the environmental community, and other interested parties to consider other options. I will be glad to answer any questions.

Mr. COSTA. Thank you, Mr. Bisson, and at the appropriate time I believe there will be questions for you. The Chair would now recognize Mr. Leshy to testify for five minutes.

STATEMENT OF THE HONORABLE JOHN LESHY, FORMER SOLICITOR, U.S. DEPARTMENT OF THE INTERIOR

Mr. LESHY. Thank you, Mr. Chairman. I appreciate your invitation to testify here today, and it is nice to be back in this room, and nice to be addressing this issue in the Congress again as we all have for many years. I want to make three points. First, why is reform of the mining law important? The mining law is actually applicable to somewhere between 3 and 400 million acres of Federal land. That is about four times the size of California, and it can affect many more acres than that because mining, like it or not, is a dirty and disruptive business. It involves moving vast amounts of earth. It involves chemicals like cyanide and mercury. It can have great effects on water pollution, wildlife habitat, et cetera.

It is also a major industry. It is a multi-billion dollar industry, and it can, the mining law can, absent annual action by Congress, lead to the privatization of public lands, and in fact over the years something more than 3 million acres of public land, an area about the size of Connecticut, has been privatized under the mining law.

Second, what is wrong with it? Well, to reiterate points that have already been made, one thing that is wrong with it is that the mining law does allow a privatization, and in this it is really terrifi-

cally out-of-step with just about every other public land policy. This country made a decision dating back seven or eight decades ago to essentially keep public lands in public hands, and the mining law is sort of the last remaining glaring exception to this policy.

Second, another glaring exception to contemporary public land policy, the owners of these minerals are not compensated for their extraction and use. That is the owners being the American public, the American taxpayers. The mining law makes the Federal lands about the only place on this planet where the owners of the minerals are not directly paid when the minerals are removed. If you mine on private lands, if you mine on state lands, if you mine in any country elsewhere in the world, you are paying the owner of the mineral a royalty. The Federal lands under the Mining Law of 1872 is about the only place where this does not happen.

Today, as we all know, every other user of the public lands, whether it is a rancher, a hunter, a fisherman, a timber harvester, all pay the United States something for the privilege of using and extracting that resource. Not so under the mining law.

Third, the mining law has some or at least grafted onto the mining law has been some environmental regulation but that environmental regulation is unfortunately inadequate. It is not comprehensive. It does not address things like balancing the use of Federal lands for mining against other uses such as wildlife habitat, and it has regulatory holes in it such as groundwater and groundwater pollution which are not regulated under the Clean Water Act and other environmental laws. So there are some big problems with the mining law, and this has been recognized by study commissions, blue ribbon commissions that go back 100 years.

Third, why now? Why is now an important time, an appropriate time to reform the mining law? First of all, I think industry or at least more progressive segments of the industry are ready for it. They understand that it is increasingly difficult to defend these kinds of special exemptions from contemporary policy, a contemporary public land policy. Second, the West where the mining law operates and only operates has changed dramatically in the last 20 years since this Congress last seriously considered reform.

The West has changed. It is the fastest growing and most urban region in the country. Its politics have changed. Now there are hunters and fishermen and local governments and ranchers and farmers who are concerned because the mining law still applies to about 60 million acres of land where the Federal government owns the minerals but not the surface.

So ranchers and farmers find themselves looking out on their lands and companies are staking mining claims on it to get at the Federal minerals underneath. The surface owners have inadequate ability to deal with those mining proposals. The tourism industry, which is a huge industry in the West now, and the residents of the West, generally whose quality of life depends on those open spaces, all look at mining differently today. They all look at it and say, "Why are these special exemptions justified?"

So that these special favors that the mining industry enjoys under the mining law really are increasingly difficult to defend. So for that, I applaud this committee in taking on this really important public land issue. Reforming the mining law would be a huge

legacy issue for future generations of Americans, and it would bring this industry into the 21st century. Badly needed. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Leshy follows:]

Statement of John D. Leshy, Harry D. Sunderland Distinguished Professor of Law, University of California, Hastings College of the Law

I appreciate your invitation to testify today, and I especially appreciate this subcommittee taking the initiative to address reform of the Mining Law of 1872. There is no more important task among the constellation of issues raised by our public lands, which encompass nearly one-third of the Nation's real estate and a much larger portion of its valuable natural resources, including minerals.

I appear here today as a private citizen, expressing my own views, and not representing any group. I have worked on Mining Law issues for thirty-five years, in academia, in government and in the nonprofit sector. I hope in this testimony to provide some larger perspective on the effort you have initiated with the introduction of H.R. 2262.

Calls to reform the Mining Law date back to a few years from its passage, and have been made by many U.S. Presidents, from Republicans like Theodore Roosevelt and Richard Nixon to Democrats like Jimmy Carter and Bill Clinton. Almost forty years ago, as Stewart Udall was stepping down after eight years as Secretary of the Interior, he called its repeal the biggest unfinished business on the Nation's natural resources agenda.

Signed into law by President Ulysses S. Grant four years before the telephone was invented, this antiquated relic is the last statutory survivor of a colorful period in the Nation's history that began with discovery of gold in the foothills of the Sierra Nevada in 1848. The mining "rushes" that ensued accelerated the great westward expansion of settlement. And they swept to statehood California (the golden state), Nevada (the silver state), Montana (the treasure state), Idaho (the gem state) and eventually Arizona (the copper state). The same era witnessed the enactment of numerous other laws filling out the framework for that great movement—laws like the railroad land grant acts and the Homestead Act of 1862. A generation later, Congress followed up with landmark laws like the National Forest Organic Act in 1897 and the Reclamation Act of 1902, and a generation after that, with the National Park Organic Act of 1916 and, in 1920, the Mineral Leasing Act and the Federal Power Act.

All of those other laws have long since been repealed, replaced, or fundamentally reformed, often more than once. Today the public lands and resources are managed under laws like the Federal Land Policy & Management Act of 1976, the Federal Coal Leasing Amendments of 1976, the Surface Management Control and Reclamation Act of 1977, the National Forest Management Act of 1978, the Reclamation Reform Act of 1982, and the Federal Oil and Gas Leasing Reform Act of 1987.

Amazingly, despite the fact that, since 1872, the population of the U.S. has grown more than seven-fold (from less than forty million to more than 300 million), the population of the eleven western states plus Alaska (where the Mining Law principally applies) has grown from about one million to nearly 70 million, and our society and economy have changed in ways beyond comprehension, the Mining Law has escaped fundamental overhaul.

It is not for lack of trying. It has long been recognized that the Mining Law is thoroughly out of step with evolving public resource management principles. Indeed, the first Public Land Commission created by Congress to assess public land policies recommended in 1880 that it be thoroughly rewritten. That recommendation has been echoed by many blue-ribbon commissions since. There is widespread agreement that the Law's three most important shortcomings are as follows:

> First, the Mining Law allows privatization of valuable public resources, at bargain-basement rates. This so-called patenting feature is the last vestige in federal law of nineteenth century public land disposal policy. Much abused for purposes that have nothing to do with mining, it has resulted in an area of federal land larger than the State of Connecticut passing into private ownership, much of it in scattershot inholdings that continue to complicate land uses throughout the West to this day. While Congress has since 1994 enacted appropriation riders to forestall new applications for patents, it must do so each year, or patenting resumes.
>
> The fragility of these riders was driven home in the fall of 2005 by the now-infamous Pombo-Gibbons legislative proposal that would have lifted the moratorium on new patents and greatly liberalized the terms of pat-

enting. That ill-conceived proposal—which passed the House but then died under a storm of protest—could have resulted in the privatization of more millions of acres of federal lands.

As long as privatization remains a core feature of the Mining Law, the temptation remains for future mischief-makers to try similar stunts. Patenting is not necessary to mine; indeed, the Supreme Court recognized in 1884 that the "patent adds little to the security of the party in continuous possession of a mine he has discovered or bought." Many large mines are found at least partly on un-patented federal lands. It is time for Congress to repeal, once and for all, the Mining Law policy allowing willy-nilly privatizing of the federal lands.

Second, the Mining Law fails to produce any direct financial return to the public. Mining companies are charged no rental, pay no royalty, and make no other payment that recognizes that the people of the U.S. own the minerals being mined. This is unique in two ways. First, virtually all other users of the public lands—oil and gas and coal developers, timber harvesters, energy companies that run transmission lines across the federal lands, cattle grazers, and even, these days, hunters, anglers and other recreationists—pay the government something (in most cases, something like market value) for the publicly-owned resources being used or removed. Second, everywhere else hardrock mining companies operate on this earth—on state or private lands in the U.S., and just about everywhere abroad—they pay royalties to the governments and others who own the minerals.

It is time for Congress to close this glaring loophole. Whatever justification might once have been offered for such a giveaway of public property—such as when gold had strategic value and the West was sparsely settled—has 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.

Third, the Mining Law results in inadequate protection of the environment and other uses of the public lands. All other users of the public lands who can cause significant environmental disruption are subject to a straightforward system of regulation which requires them to minimize the environmental effects of their activities and clean up any mess they create. And all other users are subject to the fail-safe authority of the government to say no to proposed activities that threaten major environmental harm which cannot be prevented or mitigated appropriately.

The Mining Law itself is utterly silent on environmental regulation. While it is the case that operations carried out under it no longer escape regulation, thanks to laws like the Clean Water Act, these other laws do not comprehensively address the myriad of environmental threats posed by hardrock mining (such as groundwater depletion and pollution and disruption of wildlife habitat), nor do they weigh the value of mining against other values and uses of the public lands. The hardrock mining industry has long used the silence of the Mining Law on such issues to stoutly contest the reach of the government's authority over its activities.

The industry has long had powerful allies in the government on these matters. For example, just within the last few years my two immediate successors as Solicitor of the Interior Department issued legal opinions agreeing with the industry that the Mining Law hamstrings government authority. One concluded that the government lacks authority to say no to Mining Law hardrock mining operations proposed for the public lands even if they pose huge threats to the environment. Another concluded that the Mining Law gives the mining industry the right to use as much public land as it thinks it needs as a dumping ground for the residue of its vast hardrock operations—operations which these days can involve hundreds of millions of tons of waste from gigantic open pits several miles across and a mile or more deep. It is no wonder that the federal land management agencies continue to feel cowed when they contemplate exercising regulatory controls over this industry.

Mining is a dirty business, and must be carefully controlled to prevent environmental disasters. History teaches not only that things can go bad with hardrock mining operations, but when they do, the costs to repair the damage can be enormous. Well over a century of mining under 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. While the industry is now subject to some reg-

ulation, bad things still happen. Montana and U.S. taxpayers are paying millions of dollars to clean up the Zortman-Landusky mine in Montana—a mine which was approved under so-called "modern" regulatory standards that the industry argues are adequate and don't need strengthening.

It is long past time to close these regulatory loopholes and eliminate these ambiguities so as to make clear to all in the industry—as well as to federal land managers—that the hardrock mining industry will be held to the same standards, and be subject to the same kinds of regulatory authority, that apply to all other users of the public lands.

* * *

About fourteen years ago, the House of Representatives handily approved a comprehensive reform proposal introduced by Chairman Rahall and others. That effort nearly succeeded, failing in the last hours of the 103rd Congress. In the years since then, much has changed. Today, Mining Law reform is both more imperative and, in my judgment, more achievable. I'd like to take a few moments to explain why.

First, the industry structure, operations and economic impact have evolved considerably. The domestic hardrock industry now produces much more gold than it ever did—the U.S. is the third leading producer in the world. And the industry is heavily concentrated, with many fewer companies and many fewer mines than ever before. More than four-fifths of U.S. gold production now comes from a single state—Nevada. The four largest mines, all in Nevada, account for well over half the total domestic production. The thirty biggest mines (more than half in Nevada, including twelve of the fifteen largest) yield 99% of total production. Barrick Gold, a Canadian company, is the biggest, accounting for about 40% of domestic U.S. (and 8% of world) gold production. Production of copper and other precious metals are similarly concentrated. Moreover, the hardrock industry now operates with such ruthless efficiency that it employs far fewer people than it used to. Its workers may be relatively well-paid, but they are far fewer in number and much more geographically concentrated than they ever were.

In the meantime, the economies of the western states have evolved rapidly away from their historic roots dependent on resource extraction. Today the regional economy where the Mining Law applies—the western states in the lower 48 plus Alaska—has changed dramatically. While mining used to be a dominant industry in many western locales, today in most places its impact is small, even minuscule. The West is now the most urban and fastest growing region in the country. Moreover, its dynamic growth and economic health are fundamentally linked to the quality of life provided by the open spaces and recreational amenities of the public lands.

As a result, the politics of the region have changed at the ground level. Westerners are increasingly unsympathetic to the idea that the hardrock mining industry deserves these special exemptions from the laws and policies that apply to everyone else. It is not surprising, then, that when the mining industry seeks to exploit its favored position under the Mining Law, more and more local people—ranchers, hunters, anglers, retirees, land developers, tourist industry officials, municipal water providers and other local government officials—are asking why this nineteenth century policy still exists. And their concerns are growing because soaring mineral prices, particularly for gold, copper and uranium, have led to a new rush of claimstaking under the Mining Law in areas with high values for other uses.

People in the west are also more familiar than most with the consequences of failing to control the industry. They live with the thousands of abandoned mines scattered throughout the region, and are familiar with the sorry legacy of polluted streams and disrupted landscapes that will require billions of dollars to repair. And they resent the fact that, under the current regime, the dollars to pay for this cleanup will come more from taxpayers than from the industry that created the mess.

Another noteworthy change in recent years is that, for the first time, the hardrock mining industry is facing some pressure to reform from the demand side—the jewelry industry that consumes much of its product. With leadership from Tiffany and other major jewelers, this movement has helped persuade some major mining companies, concerned about their reputations as well as their impacts, to work to improve their practices and make other accommodations to modern social and environmental values. In short, the industry is no longer so monolithic and so reflexively hostile to change.

It bears repeating that the H.R. 2262's reforms do no more than put in place practices and policies that oil and gas operators, coal miners, electrical utilities, ski areas, and other intensive users of the federal lands have operated under quite successfully for decades. I have no doubt that the innovative, progressive companies in this industry—and there are some, who have flourished around the world by being so—will adapt readily to such reforms, just like other public land users have.

I am also confident that reforming the archaic Mining Law will not—as some industry spokespeople have ritually maintained—put an end to the domestic hardrock mining industry. Every year Canada's Fraser Institute surveys mining industry executives and uses the results to rank the most favorable jurisdictions in the world for hardrock mining, considering a variety of factors, including political stability. The American West is always at or near the top of the rankings. Furthermore, skyrocketing mineral prices means the industry is thriving as never before, and any modest increase in production costs that might result from reforms like H.R. 2262 can readily be absorbed.

Once again, I commend your leadership for taking up this important issue. You have the best opportunity in a generation to achieve a landmark legacy in public land policymaking. I stand ready to help any way I can to move this forward, and I would be happy to answer any questions you may have.

Response to questions submitted for the record by John D. Leshy, Harry D. Sunderland Distinguished Professor of Law, U.C. Hastings College of the Law, San Francisco, California

Question 1: The BLM's current "Part 3809" Regulations governing surface management of hard rock mining on federal lands have been in place since 2001. What is your assessment of the adequacy of these regulations in terms of protecting the environment in hardrock mining operations?

Answer: In my judgment, the current Part 3809 Regulations are not adequate, for several reasons.

First, early on the Bush (II) Administration weakened these regulations significantly, removing a number of key provisions that had been added by the Clinton Administration. Compare 65 Fed. Reg. 69,998 (2000) with 66 Fed. Reg. 54,837 (2001). One of the most important was to eliminate the federal government's so-called "right to say no" to proposed hardrock mines that threaten devastating, uncontrollable effects on the natural and cultural resources of the public lands.

The Bush Administration acted on the basis of a Solicitor's Opinion issued by my successor, which overruled an opinion I had issued in 1999. These legal opinions differed on how to interpret a key phrase in the Federal Land Policy and Management Act of 1976 (FLPMA), where 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" really ought to be construed 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 and argument, the court ruled that my reading of FLPMA was correct, and the Department has the responsibility to say no to proposed hardrock mines that cause "undue" degradation even if it is "necessary" to mining.

Somewhat bizarrely, however, the court decided not to set aside the Bush Administration's removal of the express "right to say no" from the 3809 regulations. Conceding the question was "indeed extremely close," the court was persuaded by the Department of Justice's argument that, even if my view was correct and the Bush Solicitor's view incorrect, those regulations need not contain an express right to say no because they could still be interpreted as allowing the Department to prevent "undue" degradation. Environmental groups could, the court reasoned, challenge Interior's implementation of those regulations if they believed the Department was allowing "undue" degradation in particular cases in the future. Mineral Policy Center v. Norton, 292 F. Supp. 2d 30, 46 n. 18 (D.D.C. 2003). Neither side appealed this ruling.

In my judgment, this is too important a matter to be left in this current muddled state. H.R. 2262 would require the BLM and the Forest Service to deny approval of proposed operations unless they determine that "there will be no undue degradation of natural or cultural resources. (§ 303(d)(1)(H); see also § 301(1) (mineral activities shall be required to "protect the environment, public health, and public safety from undue degradation"). By disjoining "undue" from "unnecessary," H.R. 2262 makes clear that the government has the responsibility to say no to a proposed hardrock mining operation if it finds severe, un-mitigatable adverse impacts would be visited on other public resources and values.

As I said in my statement to this Committee on July 25, I believe the public interest requires no less. Every other user of the public lands—oil or coal company, forest products company, rancher, hunter, angler, or hiker—is held to that common-sense standard. Hardrock mining, which has the potential to cause more serious disruption than any of these others, deserves no special exemption.

The current Part 3809 regulations have other shortcomings. For example, they inadequately address hardrock mining's potential for adverse impacts on surface and groundwater supplies, which can be considerable. The Ninth Circuit recently ruled that existing federal law did not require BLM to protect water supplies in approving hardrock mining plans. Great Basin Mine Watch v. Hankins, 456 F.3d 955 (9th Cir. 2006).

They also do not apply to national forest land, and the counterpart U.S.F.S. regulations (36 C.F.R. Part 228) are even weaker. This is not surprising, for the Forest Service was long reluctant to do any regulation of hardrock mining on national forests. Congress gave the U.S.F.S. express authority to regulate mining to prevent destruction of the national forests way back in 1897 (see 16 U.S.C. §§ 478, 551), but the agency waited more than three-quarters of a century to adopt its first regulations on the subject. The regulations it finally adopted in 1974 were relatively tepid and have changed very little since, despite the vast changes in hardrock mining technology and practices.

Among other things, they claim authority only to "minimize" adverse impacts to the forests. In other words, the Forest Service, like the Interior Department, currently takes the position that the government cannot say "no" to a proposed hardrock mine on lands it manages that threatens dire environmental harm. The courts have agreed that existing law applicable to the Forest Service requires no more. Okanogan Highlands Alliance v. Williams, 236 F.3d 4676 (9th Cir. 2000).

Neither the BLM nor the Forest Service do a very good job regulating small-scale mining operations—so-called "notice only" mines and wildcat explorations. These kinds of operations can devastate fish and wildlife habitat, because some of these operators mishandle toxic chemicals and use earthmoving equipment carelessly. Yet many times the government land managers (as well as other users of federal lands and the public) do not even get notice in advance of these operations, and compliance with laws like NEPA, the Clean Water Act or the Endangered Species Act are often wanting.

Finally, there is the matter of "bonding," where the government requires operators to provide financial assurance for cleanup so that the taxpayer does not foot the bill if the operator defaults or goes bankrupt. The Part 3809 regulations are better than they used to be on bonding. (To its credit, the Bush Administration did not water down the Clinton Administration's stiffening of bonding standards in the Part 3809 regulations intact.) The Forest Service regulations here too are not as good, leaving it with much more discretion on bonding.

As several governmental reports document, bonds are still sometimes set at inadequate levels, putting the taxpayers at risk. See, e.g., Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs (GAO # 05-377, June 2005) (reporting on a 2004 survey showing 48 mining operations on public lands had closed without cleanup since BLM began requiring financial assurances; in more than half the cases, the financial assurance was inadequate, to the tune of at least $56 million, to cover the cleanup costs); see also Environmental Liabilities: Hardrock Mining Cleanup Obligations (GAO #06-884T, June 14, 2006) (recommending hardrock mining be given a high priority in developing financial assurance requirements, because it presents taxpayers with an especially serious risk of having to pay cleanup costs, with some mine owners defaulting on multiple occasions, leaving taxpayers to bear cleanup costs); Environmental Liabilities: EPA Should Do More to Ensure that Liable Parties Meet Their Cleanup Obligations (GAO #05-658, August 17, 2005); U.S. EPA, Office of Inspector General, Nationwide Identification of Hardrock Mining Sites (Report No. 2004-P-00005, March 31, 2004).

Federal officials require financial assurances in the amount sufficient to repair and reclaim what they forecast will be the adverse effects of the proposed mine, but their forecasts often prove to be unduly optimistic. Recent studies show they often underestimate the amount of environmental degradation from proposed hardrock mines, particularly from disruption and pollution of water supplies. See Ann Maest and Jim Kuipers, Comparison of Predicted and Actual Water Quality at Hardrock Mines: The Reliability of Predictions in Environmental Impact Statements (2006); and Predicting Water Quality at Hardrock Mines: Methods and Models, Uncertainties, and State-of-the-Art (2006). The cost to repair or control that kind of damage can be high, and the bond amount—which is often calculated simply on the basis

of moving dirt, replacing soil and reestablishing a vegetative cover—can be woefully insufficient to cover it.

Question 2: Do you think there are any circumstances under which patenting, or transferring title to federal land to hardrock mining companies, is ever justified?

Answer: I have thought hard about this question over the years. At one time, I thought the answer was clearly no—patenting was never justified. But as I have continued to ponder the matter, I have come to a somewhat different conclusion, and believe that privatization of the federal lands involved in large hardrock mining operations can be justified under certain carefully defined conditions.

I start with the proposition that many, perhaps even most, major hardrock mining operations in the West are on lands in a mixture of ownerships—private, state and federal. Often the federal lands, particularly those where the ore body is found, may be mere slivers or odd-shaped parcels intermixed with others. See, e.g., Mineral Resources: Value of Hardrock Minerals Extracted From and Remaining on Federal Lands (GAO/RCED-92-192, August, 1992).

Giving mining companies title to federal lands involved in these active, major, heavily capitalized mining operations would consolidate and simplify ownership and reduce regulatory and other complexities. After major hardrock mining operations cease, the lands involved often serve very little public value for other uses. Moreover, continuing federal ownership can cloud the responsibility for protecting public health, safety, and the environment from pollution endemic to these sites.

On the other hand, I can think of at least two federal interests that ought to be protected.

First, taxpayers have an interest in getting a fair return on valuable publicly-owned resources. But I see no reason why the U.S. could not protect this fiscal interest while still privatizing these lands. Congress could make privatization contingent upon the mining operation making a payment (lump sum or periodic) to the Treasury to capture an appropriate share of future income streams made possible by the use of these federal lands in these mining operations.

Mining companies have sometimes showed a willingness to entertain such arrangements and pay real money to simplify and secure their land positions. In the last Congress and again in this one, for example, legislation has been introduced to approve a complex series of land exchanges in Arizona between the United States and the Resolution Copper Company (a joint venture between BHP Billiton and Rio Tinto). According to news reports, Resolution is seeking to tap a large deep underground copper deposit. While it already owns or controls considerable land in the area, it wants title to some federal land (which may or may not include part of the ore body) to facilitate the operation. To gain title (through a proposed congressionally-approved exchange), Resolution is apparently willing to pay the United States substantially more than it would be required to pay to gain title under the Mining Law (assuming Congress failed to renew the annual moratorium on patenting, and assuming Resolution qualified for patents). That is, Resolution has acquired title to and is offering to trade to the United States considerable land of high conservation and recreational value. Not having examined the details of this proposal, I am not prepared to comment on whether the arrangement represents a fair return to the federal taxpayer. But it is an example of a major mining entity being willing to pay genuine value for privatizing federal land in order to facilitate a major mining operation.

Second, the U.S. should ensure that privatization does not unduly threaten the environment in general, and nearby federal lands in particular. So long as the U.S. retains title to some of the lands affected, some environmental regulations and procedures that attach only to activities on public lands would continue to apply—such as NEPA, Endangered Species Act § 7, National Historic Preservation Act, Native American consultation and protection laws, and parts of the Clean Water Act. Here too, however, I believe it should be possible, with some creativity, to fashion ways to protect this federal environmental interest. For example, privatization could be conditioned on working out an agreement or compact between state and federal regulators that establishes a regulatory framework to allow this interest to be protected.

For these reasons, I think privatizing federal lands involved in major hardrock mining operations can be considered. I hasten to point out that Mining Law patenting has a long and sorry history of abuse. Most of the 3.2 million acres patented have in fact never been used, or used very little, for mining. Instead, they have been used for residential or other kinds of development, as private recreational retreats, spas, golf courses, and many other things. Given that record, any legislation that

retains some opportunity to privatize lands in connection with hardrock mining must be very carefully drawn.

In short, I think privatization is an option worth considering, so long as it (a) is narrowly tailored to apply only to active or approved bona fide major mining operations; (b) retains for the U.S. the discretion to decide whether, under all the circumstances, the public interest is better served by deeding the land to the mining company rather retaining it in public ownership; (c) provides appropriate compensation to the United States for the fair value of the federal lands and minerals involved in the land being privatized; and (d) accommodates federal interests in protecting federal lands and resources not being privatized through some arrangement worked out in advance with state regulators.

Question 3: Should uranium be treated separately from other Mining Law minerals?

Answer: I believe a very powerful case can be made that uranium ought to be treated more like the fossil fuels and other energy minerals. Coal, oil and gas, tar sands, oil shale, and geothermal resources are all governed by leasing systems, most of them dating back to 1920. These industries have generally flourished under leasing systems, and the public's fiscal and environmental interests are (at least for the most part) adequately protected. Uranium is the only energy mineral treated differently, and only to some extent, for some federal uranium is already subject to leasing rather than to the Mining Law—a result of some post World War II withdrawals of some federal land on the Colorado Plateau which transferred jurisdiction to the Atomic Energy Commission (the Department of Energy has since succeeded to this jurisdiction). Moreover, uranium is often found in geological beds and thus shares characteristics with the other fossil fuels.

Furthermore, there is no justification for continuing to subsidize the domestic uranium industry (and with it the civilian nuclear power industry) by allowing publicly-owned uranium to be mined without a royalty or other payment to the Treasury. As with hardrock mining, past uranium mining and milling has left a big cleanup bill for the taxpayer. The government is currently spending many millions of dollars, for example, to move a large mill tailings pile away from the banks of the Colorado River adjacent to Moab, Utah, and has spent much public money in cleaning up uranium mines and mills in the past. And there is more to do. Consumers of uranium should pay these bills, not taxpayers. Finally, there is no strategic argument for subsidizing domestic uranium production (some of which might in fact be exported). Canada and Australia, two friendly countries, have abundant uranium resources.

For all these reasons, I believe the idea of simply putting uranium under the Mineral Leasing Act ought to be given very serious consideration. It would be a welcome part (but only a part) of Mining Law reform.

Question 4: What improvements might be made to H.R. 2262? What are your thoughts on the bill's treatment of the royalty issue?

Answer: As I read H.R. 2262, it applies a royalty only to mineral ore extracted *from federal lands.* It does not apply any kind of rental (other than the claim holding fee already in law) or royalty to the use of federal lands to support minerals that have already been patented. Yet it is very common, as I noted in response to question 2, above, for there to be a jumbled mixture of private, state and federal ownership of large hardrock mines. Sometimes all or most of the actual ore body is on non-federal land (often, because it has already been patented under the generous terms of the Mining Law).

Even where the U.S. no longer owns any part of the ore body, the federal lands play a key role in bringing the ore body into production—by providing lands for mineral processing, for dumping waste rock and mine tailings, and so forth. The United States should, in my judgment, receive a return for the use of its land in these circumstances that reflects its contribution, both past and present, to the overall operation.

Suppose, for example, that the ore body of a large producing mine was 75% in private ownership, having been previously patented under the Mining Law, and 25% federal land. And suppose that thousands of acres of federal land are being used as waste rock dumps and tailings piles for the mining operation. It seems to me that a royalty or payment to the Treasury which is limited to the 25% of the ore body still in federal ownership is inadequate return to the public for this use of the public's resources. Mine operators who use thousands of acres of federal land as a dumping ground ought to pay something more than a nominal fee. Their payment ought to reflect some measure of the value these federal lands contribute to the entire mining operation. I would be happy to work with the committee to try fashion something that would do that.

Regarding other improvements in H.R. 2262, I would note that previous reform bills addressed various matters connected with claim location, claim size and the like, trying to simplify the red tape that has long plagued the on-the-ground implementation of the old Mining Law. I devoted some attention in my book on the Mining Law to some of these anachronistic—even silly, to modern eyes—features, such as the distinction between lode and placer claims. The Mining Law also contains, in my judgment, inadequate protection for legitimate explorers against claim-jumping by rival miners, and has some limits on claim size that seem arbitrary and anachronistic. H.R. 2262 is silent on these matters. It is worth considering whether to address these matters in reform legislation.

As I said in my written statement to the Committee, I believe the most important reasons to reform the Mining Law are to end the opportunity for wholesale patenting, to capture some revenue for the public which owns the minerals and land involved, and to hold the hardrock mining industry to the same kinds of environmental standards and regard for other uses of the federal lands that are routinely applied to all other users of the federal lands.

If the legislation contains adequate measures on these three points, I believe it is appropriate for the Congress to consider and incorporate any reasonable suggestions the hardrock mining industry has to make the Law more simple and efficient from its perspective. The Congress should, however, take care to ensure such improvements do not undermine or defeat the thrust of the legislation on the three most important points.

Finally, I have one other suggestions for improvement in H.R. 2262. Section 307 is a generally thoughtful attempt to mesh federal and state regulatory authority and responsibility by providing for a "common regulatory framework." § 307(c)(2). As I noted in response to question 2, this is especially important because many large mines are on a mixture of federal and state or private lands. So long as federal lands are involved, however, the federal government needs to have the right unilaterally to inspect and enforce federal regulations, and this should not be left to implication, as it is now. Therefore, I recommend adding, at the end of this subsection, a new sentence along the following lines: "Under this common regulatory framework the United States shall retain the right independently to inspect the mining operations and to bring enforcement actions."

Question 5: At the hearing on July 26, the Administration suggested that applying a royalty to existing mining claims might be unconstitutional. What are your views on this? In your answer, please address generally the extent to which Congress's authority to apply reforms of the Mining Law to existing mining claims might be limited by constitutional protections for private property.

Answer: There are very few limits on Congress's ability to apply reforms to existing mining claims. First of all, it has long been clear—and reaffirmed in many decisions of the U.S. Supreme Court—that a mining claim located on the federal lands does not automatically carry with it a constitutionally protected property right. Mining claims where there has not yet been a "discovery" of a "valuable mineral deposit" are mere licenses to occupy the federal lands. Their legal status 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 on which a discovery is lacking does have the right to exclude other miners 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. This means the United States can change its policy or rules, and even effectively extinguish such claims, at any time before a discovery is made, without any obligation to pay compensation.

In practice, almost all mining claims are located in advance of discovery, to provide a foothold on public lands in order to explore for valuable mineral deposits; that is, people locate mining claims in speculation that a mineral might possibly exist and be profitably mined from the claimed land. But hopes and speculations, the courts have 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 do not carry with them constitutionally protected property rights, and Congress retains practically unfettered authority to change the rules regarding them.

With regard to mining claims that are buttressed by a "discovery" of a "valuable mineral deposit," the analysis is a little different. These contain property rights that are good against the government, so that if the government utterly prevents or shuts down mining operations, the claimant may—and I emphasize may—have a legal argument for compensation. Whether the argument for compensation is successful depends on a case-by-case, fact-intensive analysis. See, e.g., Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002). It is clear, for example, that the government retains ongoing regulatory authority over even unpatented mining claims that have a discovery and a property right. The government can tighten up regulations or impose new regulations if it has a reasonable case for doing so. 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 interests 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 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). As the last-quoted sentence makes clear, 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 continuing redistribution of the benefits and burdens of economic life.

Finally, it is important to note that the discovery creating a property right against the government is dependent upon the marketability of the mineral. This means it may disappear—and with it the property right against the government—as a result of changing market conditions and other factors relevant to marketability. As the Supreme Court has held, a "locator who does not carry his claim to patent...does take the risk that his claim will no longer support issuance of a patent." Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963).

In this connection, the Interior Department and the federal courts have long held that, in determining whether a discovery exists, the cost of complying with environmental laws and regulations must be taken into account. The courts have recognized that adding environmental restrictions may in fact affect claim validity, and thus in effect reduce or eliminate the government's obligation to compensate claimants. See, e.g., Clouser v. Espy, 42 F.3d 1522 (9th Cir. 1994) ("virtually all forms of [government] regulation of mining claims—for instance, limiting the permissible methods of mining and prospecting in order to reduce incidental environmental damage—will result in increased operating costs, and thereby will affect claim validity. However, the...case law makes clear that such matters may be regulated by the government"); Reeves v. United States, 54 Fed. Cl. 652 (2002) (person who located mining claims in a wilderness study area had no compensable property right to have a mining plan approved).

For all these reasons, I believe it is well settled that the government has nearly unfettered authority to apply newly enacted laws and regulations, including a royalty, to mining claims that are not accompanied by a discovery; that is to say, most of the several hundred thousand claims currently of record. It also has very considerable power to apply to new regulations to mining claims that have a discovery without creating any obligation to compensate the claimants.

Because of the strength of the case for congressional authority, I was wholly unpersuaded by the rather casual assertion in BLM Deputy Director Bisson's testimony on July 26 that a royalty on existing claims would raise constitutional

"takings" questions. Given the analysis I set out here, I recommend the Committee give no weight to his assertion unless the executive branch—and I would include here the Department of Justice as well as the Solicitor's Office of the Interior Department—supplies the committee with a legal memorandum backing up Mr. Bisson's statement and refuting my analysis.

Mr. COSTA. Thank you very much, Mr. Leshy. Our last witness on this panel is Mr. Tangen, who will testify for five minutes. I am sorry. Ms. Martin. I am getting ahead of myself. I apologize. Ms. Martin, and then we will have Mr. Tangen.

STATEMENT OF JENNIFER MARTIN, COMMISSIONER, ARIZONA GAME AND FISH COMMISSION

Ms. MARTIN. Thank you, Mr. Chairman, and members of the Subcommittee. My name is Jennifer Martin, and again I am a member of the Arizona Game and Fish Commission, and I appreciate this opportunity to voice support for House Resolution 2262. The Southwest is the nation's richest store of minerals and industrial metals, and Arizona ranked first in mineral production in the U.S. in recent years. Mineral development remains a major component of the economy throughout the West.

The General Mining Act of 1872 was highly effective in settling the West and providing economic growth not just to the West but to the nation, and it is in the public interest to continue to benefit from our mineral resources. However, the focus on westward migration in the 1872 act is antiquated. The question is not if the 1872 act needs to be updated to address current natural resource issues but how it needs to be updated so that the mining industry can continue to fulfill its vital economic role while providing sound stewardship of the land and opportunities for outdoor recreation.

While mining has boosted western economies over many decades, it has also impacted the West's natural resources including native wildlife and habitat and vital springs, streams and wetlands. The 1872 act was written when some of today's most valuable mineral resources and most expedient extraction techniques were completely unknown and when the American West was a vast and seemingly endless continuum of wide open space.

One hundred and thirty years later westward expansion is clearly not the national priority that it was. Those seemingly endless open spaces have been transformed. Urban development continues to spread throughout the West, and the remaining open public lands compete for many uses. It is the charge of each of us to balance those uses in the public's best interest.

The 1872 act contains no measures for environmental impacts. That was simply not the concern then that it is now. Because no mechanism for cleanup and restoration following extraction was identified, the Environmental Protection Agency now estimates that 40 percent of western headwaters are now contaminated by a combination of acidity, heavy metals and sediment resulting from abandoned mines. H.R. 2262 addresses this issue by creating a fund derived from royalties placed on mining revenue to reclaim and restore natural systems and watersheds following mining activities.

Since bonding programs established at the state level vary widely throughout the West and in many cases fall well below the ac-

tual cost of reclamation, taxpayers carry the burden of restoring our public lands. The proposed legislation would establish a consistent and more adequate standard and funding mechanism for reclamation. This is especially crucial in relation to watersheds in the arid Southwest.

Water availability is a critical issue and water contamination has severe implications for human health as well as wildlife. The majority of our Federally listed endangered species in Arizona are aquatic wildlife which are highly sensitive to watershed contaminants, and 75 percent of all of Arizona's wildlife species depend on riparian systems during some portion of their life cycles. H.R. 2262 takes positive steps toward ensuring that mining activities will be conducted in a manner that allows for the continuation of wildlife species.

Because H.R. 2262 requires reclamation of not only developed sites but also exploration activities, road systems and other exploration impacts that have been left unmitigated in the past will be addressed in the future. While H.R. 2262 proposes to provide a mechanism for restoring mined areas, it also protects special places from initial impacts. Title 2 identifies national monuments and parks, wilderness and roadless areas and other sensitive places ineligible for mining activities, and this will provide a tremendous benefit to wildlife and outdoor recreation by setting aside our remaining relatively untouched areas.

Studies indicate that hunting, angling, wildlife viewing and other outdoor activities generate an economic impact of approximately $5 billion annually to the State of Arizona, roughly equalling that of hardrock mining enterprises, yet the 1872 law is interpreted to identify mining as the best and highest use of public land where minerals have been located. That may well have been the case at the time but the need clearly exists to prioritize mining activities as they relate to the economy and the public interest as they stand today.

H.R. 2262 accomplishes this by protecting special places, establishing environmental standards and implementing fiscal reforms. I am glad to be here discussing this topic today, and I applaud your interest in updating the 1872 act, and I urge you to continue to move forward on this issue. Thank you.

[The prepared statement of Ms. Martin follows:]

Statement of Jennifer L. Martin, Arizona Game and Fish Commission

Mr. Chairman and members of the Subcommittee, my name is Jennifer Martin, and I am a Member of the Arizona Game and Fish Commission. I appreciate this opportunity to voice support for House Resolution 2262, the Hardrock Mining and Reclamation Act of 2007.

The Southwest is the nation's richest store of minerals and industrial metals, and Arizona ranked first in mineral production in the U.S. in recent years. Mineral development remains a major component of the economy throughout the west. The General Mining Act of 1872 was highly effective in settling the West and providing economic growth not just to the West, but to the nation. It is in the public interest to continue to benefit from our mineral resources. However, the focus on westward migration in the 1872 act is antiquated. The question is not if the 1872 act needs to be updated to address current natural resource issues, but how it needs to be updated so that the mining industry can continue to fulfill its vital economic role while providing sound stewardship of the land and opportunities for outdoor recreation.

While mining has boosted western states' economies over many decades, it has also impacted the west's natural resources, including native wildlife and habitat, and vital springs, streams and wetlands. The 1872 act was written when some of today's most valuable mineral resources and most expedient extraction techniques were completely unknown, and when the American West was a vast and seemingly endless continuum of wide open space.

130 years later, westward expansion is clearly not the national priority that it was. Those seemingly endless open spaces have been transformed. Urban development continues to spread throughout the west, and the remaining open public lands compete for many uses. It is the charge of each of us to balance those uses in the public's best interest.

The 1872 act contains no measures for environmental impacts. That was simply not the concern then that it is now. Because no mechanism for cleanup and restoration following extraction was identified, the Environmental Protection Agency now estimates that 40 percent of western headwaters are contaminated by a combination of acidity, heavy metals and sediment resulting from abandoned mines. H.R.2262 addresses this issue by creating a fund derived from royalties placed on mining revenue to reclaim and restore natural systems and watersheds following mining activities. Since bonding programs established at the state level vary widely throughout the west, and in many cases fall well below the actual cost of reclamation, taxpayers carry the burden of restoring our public lands. The proposed legislation would establish a consistent and more adequate standard and funding mechanism for reclamation.

This is especially crucial in relation to watersheds in the arid Southwest. Water availability is critical issue, and water contamination has severe implications for human health as well as wildlife. The majority of our federally listed endangered species in Arizona are aquatic wildlife, which are highly sensitive to watershed contaminants. 75% of all of Arizona's wildlife species depend on riparian systems during some portion of their life cycles. H.R. 2262 takes positive steps towards ensuring that mining activities will be conducted in a manner that allows for the continuation of wildlife species.

Because H.R. 2262 requires reclamation of not only developed sites, but also exploration activities, road systems and other exploration impacts that in the past have been left unmitigated will be addressed in the future.

While H.R. 2262 proposes to provide a mechanism for restoring mined areas, it also protects special places from initial impacts. Title II identifies National Monuments and Parks, Wilderness and Roadless Areas and other special and sensitive places as ineligible for mining activities. This will provide a tremendous benefit to wildlife and outdoor recreation, by setting aside our remaining relatively untouched areas.

Studies indicate that hunting, angling, wildlife viewing and other outdoor activities generate an economic impact of approximately $5 billion annually to the State of Arizona, roughly equaling that of hardrock mining enterprises. Yet the 1872 law is interpreted to identify mining as the best and highest use of public land where minerals have been located. That may well have been the case at that time, but the need clearly exists to prioritize mining activities as they relate to the economy and the public interest as they stand today. H.R. 2262 accomplishes this by protecting special places, establishing environmental standards, and implementing fiscal reforms.

I am glad to be here discussing this topic today. I applaud your interest in updating the 1872 act, and I urge you to continue to move forward on this issue.

Thank you.

Mr. COSTA. Thank you, Ms. Martin, for your testimony, and we will look forward to the Q and A when that time arrives. Now we have last, but certainly not least on this panel, Mr. Tangen, who will testify for five minutes.

STATEMENT OF J.P. TANGEN, FORMER REGIONAL SOLICITOR, ALASKA

Mr. TANGEN. Thank you, Mr. Chairman. My name is J. P. Tangen. I am a practicing attorney in Alaska, and I have represented mining clients from 1975 until 1990. In 1990, I became Regional Solicitor for the Department of the Interior serving under

Secretaries Lujan and Babbitt and working for my good friend John Leshy, and in 1994 I left the Department to become President of a publicly traded Canadian gold mining company. In 1998 I returned to the private practice of law, in which I have been engaged ever since.

The Alaska Miner's Association, who I am representing today, is an organization of approximately 1,000 members consisting of a broad array of individuals, mining companies and supporting businesses. Alaska hosts the largest amount of public land in the United States, including the two largest national forests. Alaska also hosts five large operating lode mines and over 100 placer mines generally of a smaller "mom and pop" size.

Alaska boasts the largest silver producing mine in North America and the largest producing zinc mine in the world. We also lay claim to be what may become one of the largest copper properties in the world and several exploration projects with production potential well in excess of a million troy ounces of gold.

Every operation in the state is under intense scrutiny from Federal and state agencies, and in many instances there is intense local scrutiny as well. Alaska has an active community of non-government organizations that monitor mining operations and aggressively use the courts and the media to advance their agenda. Alaska has an excellent record for reclamation operations at Valdez Creek, Poker Flats, Illinois Creek and numerous small placer mines have been properly cleaned up following the completion of successful mining operations.

Likewise, Alaska is sensitive to local concerns. The A. J. Mine in Juneau was not reopened despite an extensive investment primarily due to public opposition. The Kensington project, also in the Juneau area, remains in a preproduction mode because of intense public scrutiny for over 20 years. Mines in other populated areas on the other hand, such as the Fort Knox mine in Fairbanks and the Rock Creek project in Nome, while having been held to strict standards and careful evaluation, have generally been greeted with local acceptance.

Presently nearly 50 million acres of prospecting land in Alaska remains potentially available for mineral development. Although geologists believe there are many opportunities to develop mines on Federal lands in Alaska, the number of Federal claims has diminished. For many years Federal mining claims were attractive because of two cornerstone qualities: self-initiation and security of tenure.

Under the current law, any qualified person can locate a mining claim on vacant, unappropriated public domain without prior governmental consent. Under H.R. 2262, the explorer would have to secure a permit, with attendant cost delays, before conducting any noncasual mineral activities. A mining claim is not valid unless it contains a certain minimum amount of mineralization. Ascertaining whether adequate mineralization is present will require such a permit. That means to get a permit the applicant will have to have knowledge he cannot gather without a permit, a classic "Catch-22."

The bill eliminates patents. That in itself is not a barrier to the location of Federal claims but it has resulted in many Federal

claimants losing their claims and their investments as a result of inadvertent clerical failures under the current law. H.R. 2262 also imposes a royalty on mining operations. A royalty is a tax on gross income. It is analogous to taxing a bank solely on its deposits.

The true benefit of a mine is often that it brings jobs, goods and services to areas where such things are scarce. Furthermore, there is usually a long delay between exploration and commencement of production. Typically a decade or more passes before a return on investment is realized. Only after a mine is permitted, construction is complete and production begins is capital investment realized. An unfair royalty delays pay back, makes mining less attractive and competitive investments.

There are lots of other problems with the bill. Title 3 has a lot of problems in it as far as how people can manage it. Title 5, the administrative provisions particularly are going to precipitate litigation but on behalf of the Alaskan Miner's Association let me simply summarize by saying we regard 2262 as anti-environment because it may induce operators to relocate offshore where they are not going to be faced with the same high standards of environmental protections as is found in the United States.

It will cause the loss of high paying mining jobs because relocating mines offshore will result in the loss of thousands of jobs. It is a risk to the health and safety of mine workers because miners know the countries may not be able to get the benefit of our stringent health and safety laws. It will contain an unfair royalty requirement because the proposed royalty is calculated on gross receipts. It is wasteful because a gross royalty will encourage operators to leave lower grade mineralized material in the ground.

It is a threat to national security because domestic production of needed commodities will be reduced or eliminated. It is unlikely to generate substantial revenue in the United States because mining operators move offshore. They will not pay royalties, taxes and fees. It will create three large, new unfunded bureaucracies because the BLM will have to staff up to deal with a huge volume of additional paperwork created by applicants, all of which must be reviewed and adjudicated.

The bill will require a significant new law enforcement inspection arm to oversee on-the-ground compliance, and the bill will require a separate new bureaucracy to adjudicate the royalty matters. It is likely to foster litigation because NGO's are encouraged to sue. It is anti-Alaskan because a large percentage of the vacant and unappropriated public domain is in Alaska.

It is anti-business because mines in foreign countries will purchase equipment, supplies and services locally bypassing U.S. suppliers. It is anti-small miner because small miners simply cannot afford the cost of compliance, and it is a violation of the ANILCA clause, Alaska National Interest Lands Conversation Act clause because by making it possible to declare certain lands special places there is a risk that additional lands will be placed under restrictive land use status.

Mr. Chairman, I thank you for the time and attention. I respectfully request that this bill not be passed as it is written.

[The prepared statement of Mr. Tangen follows:]

Statement of J. P. Tangen, on behalf of the Alaska Miners Association

Good Morning Mr. Chairman.

My name is J. P. Tangen; I am appearing hear today at the invitation of the subcommittee on behalf of the Alaska Miners Association.

The Alaska Miners Association is an organization of approximately 1,000 members consisting of a broad array of individuals, mining companies and supporting businesses.

Alaska hosts the largest amount of public land in the United States including the two largest National Forests.

Alaska also hosts five large operating lode mines and over 100 placer mines generally of a smaller, "mom and pop" size. Alaska boasts of the largest silver producing mine in North America and the largest producing zinc mine in the world. We also lay claim to what may become one of the largest copper properties in the world and several exploration projects with production potential well in excess of 1,000,000 Troy ounces.

Alaska mines and prospects are located on state land, private land and federal public land. Every operation in the state operates under intense scrutiny from federal and state agencies. In many instances, there is additional local oversight of the mining operations as well. Alaska has an active community of non-governmental organizations that monitor mining operations and aggressively use the courts and the media to advance their agenda.

Alaska has an excellent record for reclamation. Operations at Valdez Creek, Poker Flats, Illinois Creek, and numerous small placer gold mines have been properly cleaned-up following the completion of successful mining activities, and the affected areas has been restored to a landscape that makes the detection of the past mining operations literally impossible.

Likewise, Alaska is sensitive to local concerns. The A.J. Mine in Juneau was not reopened despite an extensive investment, primarily due to public opposition, and the Kensington Project, also in the Juneau area, remains in a pre-production mode because of intense public scrutiny for over twenty years.

Other mines in populated areas, on the other hand, such as the Fort Knox Mine in Fairbanks and the Rock Creek Project in Nome, while having been held to strict standards and careful evaluation, have been generally greeted with local acceptance.

In a word, there are many mining success stories in Alaska, and those stories embrace a history of nearly 150 years. Ours is a proud industry that has produced many of the commodities that America has demanded and required and has excellent prospects for doing so into the future.

Much of the land selected by the State pursuant to the Alaska Statehood Act and by Alaska Native Regional Corporations pursuant to the Alaska Native Claims Settlement Act was chosen because of its mineral potential. However, even after those large tracts were removed from the public domain and National Forests and after another 108 million acres were set aside for inclusion in National Parks, Preserves, Wildlife Refuges, Monuments, Wilderness and Wild and Scenic River System Areas, nearly fifty million acres of prospective land remains potentially available for mineral development. It is those fifty million acres that would be among the lands targeted by H.R.2262.

Although geologists believe that there are many opportunities to develop mines on federal lands in Alaska, the number of federal mining claims has diminished in recent years to only approximately 8,000. Prospectors and developers have demonstrated a preference to look to state and private land rather than to hassle with the federal government.

The attractive qualities of federal claims have been diminishing in recent years. Initially, a federal mining claim, whether placer or lode, was an attractive choice because of two cornerstone qualities: self-initiation and security of tenure. By self-initiation I mean that any qualified person, under the law, could locate a federal mining claim on vacant and unappropriated public land without a permit or prior governmental consent. By security of tenure, I mean that the locator would have prior rights against all the world, and under the statute, have the right to purchase the fee title to that land from the United States once their time, talent and effort established that minerals existed and were economically mineable. These basic rights will disappear if H.R. 2262 becomes law.

H.R. 2262

Under H.R. 2262, instead of citizens having the right to go onto public lands and locate mining claims, the explorer would have to secure a permit, with attendant costs and delays, before conducting any mineral activities. Since a mining claim is

not valid unless it contains a certain minimum amount of mineralization, and since ascertaining whether that minimum mineralization is present in a given location, meaningful exploration would require a permit.

Ironically, the issuance of a permit to conduct such mining activities appears to be dependent upon the applicant having knowledge about the property that he cannot gather without having a permit in hand. In essence, this initial hurdle will bring an end to most exploration activity on public land.

Patents

The bill terminates the possibility for issuing patents. Since the moratorium imposed by the United States Senate in 1994 and renewed each year since then in the Interior Appropriations Acts, new patent applications have not been processed by the Department of the Interior. In an environment of rising commodities prices, that in itself has not constituted a barrier to the location of federal mining claims; however, when combined with the stringent reporting requirements enacted by FLPMA, many federal claimants have lost their claims and their investment as the result of inadvertent clerical failures.

Royalties

Concomitant with these two negative qualities, H.R. 2262 also would impose an overwhelmingly burdensome royalty on mining operations. This royalty, although called a "net smelter return" royalty, is defined to be a gross income royalty, which means that no deductions, not even those customary in the industry, would be allowed. This is analogous to taxing a bank on its deposits and or a grocery store on its total value of inventory. Generally, because mining is a labor intensive industry that employs local people in remote locations, the true benefit of a mining operation is that it brings jobs, goods and services to areas where such things are scarce, not that it can generate a revenue stream through royalties or taxes.

In addition, because there generally is a very long delay between initial exploration and the commencement of production, typically a decade or more passes before a return on investment is realized. It is only after a mine is permitted, construction is completed and production begins that the capital investment can be rewarded. A royalty based on gross production will unnecessarily delay payback and dilute the return on investment, making an operation less attractive than competitive investments. If the royalty is too high, it alone will make the project uneconomic.

Any royalty imposed on a mining operation should always be based on net profits and never on gross receipts. I understand that the State of Nevada has a net profits tax law that might be readily adaptable for federal use. Miners are not opposed to paying fair royalties and taxes, but are opposed to paying punitive royalties and taxes where there are no operating revenues available to satisfy the government's demands.

In another sense, however, the imposition of a royalty on mining operations in the United States is very bad public policy because American mines compete on a global market. Domestic production of commodities sold around the world directly reduces our adverse balance of trade. Production of metals and mineral products inside the United States benefit the nation; but, producers have to be competitive.

Mineral deposits are scattered around the globe in a pattern that is independent of political boundaries. Some governments are more solicitous of the health and welfare of their people and the environment than others. In the United States, where we have stringent health and safety laws, environmental and natural resource laws, and wage and hour laws to protect our workers and the environment, the per pound or per ounce cost of production is going to be higher than in places that do not impose or enforce such legal requirements.

America is a favored target for exploration because of government stability, but if the costs of production outweigh the risks of nationalization, for instance, then it follows that mining companies will migrate off-shore. In a very tangible sense, an excessive financial burden on domestic mining has two palpable consequences: 1.) mining companies will emigrate to places where the strictures are not so oppressive and; 2,) mining companies will be dissuaded from maximizing the return from a given deposit.

Inducing mining companies to move offshore engenders a cascade of problems. Where the operating standards are not as stringent as they are in the United States, wages may be lower, worker safety may be compromised, and the environment may be threatened.

This is not to imply that global mining companies are unscrupulous. On the contrary, the common experience is that once a global company establishes profitability in a third world nation, it becomes at risk for nationalization or aggressive efforts

on the part of the host government to sequester as much of that profitability as possible. In such cases, it is the host country rather than the mining company that is externalizing the social costs. Working profitably in industrialized countries with sophisticated social mores, therefore, is good for the planet and the people on it. As a nation, we ought to be exporting our standards and not our mining industry.

To clarify the second point—mineral deposits are often concentrated in a central core with grades tapering out toward the periphery. Efficient operations recover as much as they profitably can. The higher the operating cost, the more likely that low grade material will be left behind. Royalties and taxes are an arbitrary operating cost; therefore, such royalties and taxes directly beget waste of the mineral resources on an area.

The Demise of Self-Initiation

H.R. 2262 has a lengthy section specifying the requirements for a permit to conduct non-casual mining activities on federal public lands. These requirements are deliberately stacked to ensure that compliance is overwhelmingly burdensome financially, if not physically impossible.

To illustrate, under section 304(b) of the bill, the Secretary is required to suspend an operating permit if he determines that any affiliate of any claimholder is in violation of any regulation promulgated under this Act. In other words a sister company holding a single mining claim in Arizona could be the cause of a major mine shutting down in Alaska simply because the Arizona affiliate committed a minor violation of a regulation. This is not discretionary, and under Section 504 providing for citizen suits any person may sue to compel the Secretary to suspend such a permit.

The bill specifies that a permit application must contain details in twenty-two information categories, including: violations of various environmental and mining laws by the applicant or an affiliate within the preceding five years; all forfeitures or revocations of any mining bonds or permits by an applicant or an affiliate; all permits ever issued under SMCRA or FLPMA; the type and method of mineral activities proposed; the anticipated starting and termination dates of each phase; maps; information on facilities; soils and vegetation; topography; water supply intakes and surface water bodies; biological resources; measures to exclude fish and wildlife; predisturbance monitoring of groundwater; an assessment of cumulative impacts on the hydrology; a description of the monitoring and reporting systems; accident contingency plans; compliance with any land use plans; cumulative impacts; evidence of financial assurance; site security; information on soils and geology; a copy of the applicant's required public notice; and such other environmental baseline data as the Secretary may require.

Any person who may be adversely affected by the proposed mineral activities may request a public hearing to be held near where the mineral activities are proposed. After a public hearing, the Secretary must formally determine whether the application is complete; whether the proposed reclamation is likely to be accomplished by the applicant; whether the land can be returned to a productive use; whether the area is open to location; whether the applicant has obtained all necessary Federal, State, and local permits; whether the cumulative impacts to human health, water resources, wildlife habitat, and other natural resources will not cause undue degradation; whether the applicant has given adequate financial assurance; whether there will be no undue degradation of natural or cultural resources; whether the applicant or any affiliate is ineligible to receive a permit; and whether ten years following mine closure, treatment of surface or ground water will be required. Permits cannot be issued for more than ten years at a time, must be reviewed every 3 years, and are subject to modification by the Secretary.

What was once a prime virtue of the federal mining law, under H.R. 2262 will now be completely eliminated and virtually no one would be well-advised to seek mining opportunities on federal public lands. There is nothing in Title III that that is needed to improve the safety or environmental quality of mining in the United States. This Title should not be enacted into law.

Title V—Administrative Provisions

The "administrative provisions" set forth in Title V of H.R. 2262 provide an enforcement regimen that further deters mining activities on federal public lands. The provisions of Title V grant unusual and pervasive powers to the Secretary and the general public.

For instance, "[a]ny person who knowingly—engages in [an activity incidental to mineral exploration] without a permit required under title III—shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both." § 506(g-h). The Secretary is granted the authority to

issue and enforce cessation orders or "take such alternative enforcement action [without limitation] against the claim holder or operator (or any person who controls the claim holder or operator) as will most likely bring about abatement in the most expeditions manner possible."

Anyone, "without regard to—the citizenship of the parties" can commence a civil action "against any person" to compel compliance with any provision of this Act or any regulation promulgated under title III.

[A]ny authorized representative [of either the Secretary of Agriculture or the Interior] may—without advance notice, stop and inspect any motorized form of transportation that such Secretary has probable cause to believe is carrying locatable minerals—for the purpose of determining whether the operator of such vehicle has documentation "if such documentation is required under [§ 102(b)(4) of] this Act...."

These illustrations are not exhaustive. The draconian powers afforded the Secretaries put prospective claimholders at such risk and to such expense as to ensure that no one could conceivably justify seeking a permit under this bill as a reasonable business proposition.

Special Places

In addition to the foregoing burdens which would be placed on the mining industry by this bill, virtually anyone could preclude a mineralized site from being developed by identifying it as a "special place" under the provisions of title II. Special places include lands recommended for wilderness designation; lands designated as wilderness study areas or National Monuments; lands in, under study for inclusion in, or eligible for inclusion in the National Wild and Scenic Rivers System; lands segregated from mineral entry; lands designated as Areas of Critical Environmental Concern; lands identified as sacred sites in accordance with Executive Order 13007; and lands identified in the Roadless Area Conservation rule of January 2001.

Summary

This bill, if enacted, would prevent all further mining and exploration and on federal public lands in the United States. The steps necessary to get permission to engage in mineral activities are extensive, burdensome, unnecessary and very expensive. The risks, for even the slightest violation by affiliates remote from an operation of the most inconsequential regulation, include loss of all rights as well as possible fines and imprisonment. Even operating mines have only a maximum of three years to either close or bring themselves into full compliance. The rewards for successfully complying with the proposed law are severely curtailed through the imposition of a disproportionate gross royalty.

From the perspective of the Alaska Miners Association, there is nothing positive included within this bill and we regard it as:

- Anti-Alaska, because a large percentage of the vacant and unappropriated public land in the United States is in Alaska and, to the extent that this bill adversely impacts the hardrock mining industry, it impacts Alaska the most;
- Anti-small miner, because many of Alaska's miners are mom and pop placer operators and they cannot possibly afford the cost of compliance;
- Anti-environment, because it will force operators to relocate their operations offshore where there are not the same high standards of environmental protection as are found in the United States;
- Anti-worker, because many prospects will not become mines and will not create new jobs in this country;
- Anti-business, because mines in foreign countries will purchase equipment, supplies and services locally, by-passing U.S. suppliers;
- Wasteful, because by charging a high gross royalty on mining operations, it will encourage operators to mine only the high-grade areas of a deposit and leave lower grade mineralized material in the ground;
- A threat to the national security, because, by encouraging operators to relocate off-shore, domestic production of needed commodities will be eliminated or reduced, as is currently the case with oil and gas;
- Causing the loss of high-paying mining jobs, because workers at major mines in the United States today often earn $50,000 per year or more while relocating mines off-shore will result in the loss of thousands of those mining jobs;
- A risk to the health and safety of mineworkers, because miners in the United States benefit from stringent laws that protect their health and safety, while miners in other countries may not be able to get the benefit of such laws;
- Unlikely to generate substantial revenue for the United States, because if mining operations move off-shore, they will not pay royalties, taxes or fees;
- Creating three large, new bureaucracies, because the BLM will have to staff up to deal with the huge volume of additional paperwork created by applicants, all

of which must be reviewed and adjudicated, the bill will require a significant new enforcement and inspection arm to oversee on the ground compliance, and the bill will require a separate new bureaucracy to adjudicate the royalty calculations;

- Containing an unfair royalty requirement, because royalties are calculated on gross receipts;
- Likely to foster litigation, because NGO's are encouraged to sue to enforce the statutory requirements; and
- A violation of ANILCA's "no more" clause, because by making it possible to declare certain lands "special places" there is a risk that additional lands will be placed into a restricted land use status.

We respectfully request that this bill not be enacted.

Mr. COSTA. Mr. Tangen, we will list you doubtful, and you exceeded the time that was allotted by a minute and 15 seconds. So I am feeling very charitable this morning.

Mr. TANGEN. I appreciate that. Thank you, sir.

Mr. COSTA. That completes the testimony of this panel. We will move to questions but, before we do, I misstated. The gentleman from Nevada was not the Ranking Member de jour. He was only the Ranking Member for a half an hour. Maybe 45 minutes. The Ranking Member from New Mexico, the gentleman from New Mexico has been able to rejoin us, and we appreciate that, and I will allow him to make a brief opening statement.

STATEMENT OF THE HON. STEVAN PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. PEARCE. Thank you, Mr. Chairman. Yesterday, as you know, we had a full committee oversight hearing on the Surface Mining Control and Reclamation Act of 1977 to look at what has transpired in the 30 years since the law was enacted. The testimony provided by the witnesses was informative. Today we are meeting for the first of what I assume will be several legislative hearings on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007. Many of the provisions in H.R. 2262 are similar to the provisions in SMCRA.

In other words, it is like SMCRA for hardrock mining. The problem is that this is unnecessary, and the more plumbing you have the more ways there are to clog up the drain. Hardrock mining already has its own set of reclamation standards that were promulgated after the National Forest Management Act and the Federal Land Policy and Management Act were enacted in 1976, a year before SMCRA.

These laws are the statutes that directed the respective agencies to develop regulations governing hardrock mining on the Forest Service and BLM managed lands. This was and is appropriate, and as the vast majority of hardrock mining is in the West, it is on Federal land. Primarily in most western states the majority of the land is owned by the Federal government.

It is a very different playing field in coal mining, which is primarily located on private lands in the Midwest and the eastern states at the time the Surface Mining Act was enacted. These land management statutes are coupled with other environmental laws to manage mining activities on Federal lands. The environmental regulations include the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation Recovery Act, the

Comprehensive Environmental Response Compensation Liability Act and the Toxic Substance Control Act, and finally the National Environmental Policy Act.

These laws provide for public notice and comment opportunities, citizen suit provisions and various appeal processes that allow the public and affected communities to fully participate in the mine processes. In fact, all of these opportunities to challenge mining projects have served to draw out the permitting process on Federal lands, and it can take 12 years or more to get final approval to operate a mine.

Proposed provisions in Title 3 and 5 of H.R. 2262 would greatly exacerbate already cumbersome permitting processes. Any company trying to operate would be in perpetual permitting nightmare. Every three years a permit would be subject to review. Compare this to hydroelectric facilities that are permitted for 50 years or nuclear facilities that are permitted for 40 years. I doubt that we would see any revenue to the Federal Treasury for mines on Federal lands under H.R. 2262. The only individuals that appear to be getting rich off this scheme are the environmental trial lawyers. There certainly will not be any money for hardrock abandoned mine land programs.

This is not the direction that we should be taking in our national minerals policy. With the economic growth and industrialization we are seeing in China and India, the demand for all commodities worldwide has skyrocketed. This will continue in the future. I would ask unanimous consent to submit for the record today's Washington Times front page article that says that China is powering the world's economy. They have surpassed the United States. At a time when we face very difficult circumstances in our economic future, we are going to take steps that will make hardrock mining more difficult.

The main thing that we have in New Mexico as hardrock mining is copper. The copper resources need to be available if we are going to continue to, for instance, use hybrid cars because they use 100 percent more copper than a standard full-size vehicle. Copper is not the only significant resource that we are mining. Clearly we are moving in the wrong direction on national minerals policy. We should be holding hearings to identify what needs to change to encourage domestic mineral development not on bills that will drive it offshore.

I fear that if this bill passes we will not see these resources developed. We will export these high paying family wage jobs with benefits offshore and undermine our economic and national security. I thank the witnesses for their testimony and look forward to hearing from them. Thank you, Mr. Chairman.

Mr. COSTA. Thank the gentleman from New Mexico. I will begin with the first line of questioning. Mr. Leshy, you testified in your opening statement about the three issues that you think need to be addressed: The privatization of public lands impact; the direct financial return, i.e., royalties; and, of course, the protection of the environment as it relates to cleanup. As a number of my colleagues have stated in their comments, opening statements, notwithstanding the fact that the law has not changed since 1872, there have been other laws that have been enacted that do impact

hardrock mining and regulations that have been implemented governing surface management of hardrock mining. I am talking BLM's current part 3809 that was issued, I believe, in 2001.

What is your assessment of the adequacy of these regulations and the other overlapping laws that others claim adequately provide the protection?

Mr. LESHY. Thank you, Mr. Chairman. First of all, I would say that the BLM 3809 regulations have been the subject of controversy and litigation and in the Clinton Administration we tightened up those regulations, and then one of the very first things the Bush Administration did was to essentially gut most of the reforms that we tried to put into place.

So they really do inadequately consider the environmental impacts of hardrock mining in several key ways, particularly concerning—as I mentioned in my opening statement—groundwater, and I should also point out in this connection that the Bush Administration also reversed a couple of legal opinions that I wrote—which is their prerogative—which says that their legal position is that the government has no authority under the Mining Law of 1872, despite all of these other environmental laws that have been mentioned.

It has no legal authority to say "No" to a proposed hardrock mining operation on public land, no matter how devastating the effect on the environment. If it cannot be controlled, if it cannot be mitigated, no matter how devastating the effect, the mining law prohibits the government from saying no.

Another legal opinion that they have signed takes the position that the hardrock mining industry has the right under the mining law to use as much public land as it thinks it needs as a dumping ground for the residue of its vast hardrock operations. Tailings piles, waste dumps, et cetera. If it needs 10,000 acres, the mining law gives it the right to have those 10,000 acres.

Mr. COSTA. All right. Mr. Leshy, I do not want to occupy all my time on that area but I will submit some additional questions, and you can provide additional information. This issue of patenting I am interested in or the privatization of Federal lands as it relates to the hardrock mining. Do you think there are any circumstances under which the patenting makes sense, and if so, please explain briefly?

Mr. LESHY. The issue of patenting is an interesting one, and frankly it is one I thought about a lot over the last 30 years and have somewhat changed my position on frankly. I believe that generally speaking that the patent provision in the mining law has been frankly much abused. I mean the historical record is clear about that. The 3 million acres have been patented. Almost none of them are actually used for mining. Most of them are used for weekend cabins and that sort of thing.

So there is a big problem with abuse of that patenting provision. But your question, I think, really focuses on with an actual ongoing mining operation does it make sense for the government to keep title to that land, if it is in the middle of a big open pit, for example, and I think there are two interests of the government in keeping title. One is because of the need to make a financial recovery. That is get a royalty or some sort of financial payment for that.

The second is to make sure that the environment is protected in the mining operation. The Federal title gives the government regulatory authority.

Mr. COSTA. All right. Let me——

Mr. LESHY. Both of those things can be——

Mr. COSTA. How about the issue of uranium? Should it be treated differently than other mining law minerals?

Mr. LESHY. Well, you know it is interesting. Uranium is the only energy mineral that is not leasable. Every other mineral that the Federal government owns that has energy value, whether it is oil shale, oil and gas, coal, tar sands, everything else is leasable. Uranium is not. It is under the old mining law although interestingly some uranium is leasable because the old Atomic Energy Commission actually reserved some lands and leases the uranium on those lands.

So uranium is in this oddball category. It is very different from the other hardrock minerals, and I think you could make a pretty powerful case that uranium really does not belong under the mining law at all—that it ought to be leasable like the other energy minerals are.

Mr. COSTA. My other questions I will submit to you for the record, but I would like you to at a later date provide recommendations how this proposed legislation could be improved. My time has expired. I will have another round but I will defer now to the Ranking Member, the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. Mr. Leshy, when I contemplate your testimony do you think that we are doing a very bad job then with respect to the stewardship of the public lands and hardrock mining, specifically where they intersect?

Mr. LESHY. We could do a much better job, especially if you compare how hardrock mining is regulated and sort of fits into the public land landscape compared to other uses, whether it be oil and gas, coal, timber harvesting, cattle grazing. Hardrock mining really stands out.

Mr. PEARCE. Are there examples worldwide of countries who do that better?

Mr. LESHY. I have not made a careful study but I think if you look at other countries they do a better job. They certainly do a better job of getting money from their ownership of hardrock mines. As I said in my statement, the United States public lands are the only place in the world I think where the owner of the mineral does not get a financial return on the extraction.

Mr. PEARCE. So you do not really think that there should be a move to withdraw hardrock mining from Federal lands? In other words, that would not be the end result of what you are suggesting?

Mr. LESHY. No. I think the industry is a very viable industry. It is making record profits. It is producing more hardrock minerals than ever before. The talk has been, for example, about the importance of patenting. To some, you know there has been no patenting for the last 13 years because of the annual moratoria that Congress has put on and production has gone way up.

Mr. PEARCE. When you consider the record profits, does it concern you that the profits—there are only about three major mining

corporations left in the country, and I was looking at rates of return on assets which is in the 8 percent range. As a business owner, I can tell you that that is extraordinarily low. Now there are some companies worldwide who do have tremendous returns. Now does it concern you that the U.S. firms appear to be weakened tremendously economically and may even go the direction of other companies previously that have simply had to cease operations because the environment in the U.S. is not very open to profit making?

Mr. LESHY. The Frazier Institute in Canada takes a survey every year of mining industry executives and looks at all jurisdictions around the world in terms of is this a good place to do business? The United States always ranks at or near the top of those surveys.

Mr. PEARCE. Mr. Bisson, I have a follow-up question. Say 10 years ago, what rank was the U.S. in total exploration dollars 10 years ago and what is it today?

Mr. BISSON. Mr. Pearce, it is my understanding from some statistics I have looked at recently that the U.S. currently ranks at about 8 percent of the total mining exploration dollars spent in the U.S. Ten years ago, it was about 20 percent.

Mr. PEARCE. So worldwide it looks like investment is evacuating out. Twelve percent has evacuated out of the U.S.

Mr. BISSON. In mining exploration.

Mr. PEARCE. That is 12 percent of the total world market used to be here but now it has left here. Mr. Tangen, any reason why you can imagine that that capital is fleeing the U.S.? How much are we talking about? How many dollars are we talking about that 12 percent drop in investment in U.S. properties? Would you have a clue how big the industry is?

Mr. TANGEN. I cannot answer that.

Mr. PEARCE. Mr. Bisson, do you know approximately?

Mr. BISSON. In 2006, the total amount was something like $13.9 billion. So it is 8 percent of that. If it is anywhere near——

Mr. PEARCE. So it is in the billions?

Mr. BISSON. It is close to a billion dollars.

Mr. PEARCE. OK. Mr. Tangen, I am sorry I interrupted. So why would that capital be saying we are not going to invest any more in the U.S.?

Mr. TANGEN. I expect it is probably——

Mr. PEARCE. Is your microphone on?

Mr. TANGEN. I am sorry. I expect there are a couple of reasons. Number one is that there is better opportunities elsewhere where the governments are trying very hard to invite them into the country, and a lot of people feel oppressed by the regulatory regimen that is in place in the United States right now that I know of.

Mr. PEARCE. So you are saying that other countries have an inviting atmosphere, and would you describe the atmosphere here as not inviting?

Mr. TANGEN. I believe that it depends on the Administration. It varies from time-to-time. It is a lot more friendly. It has been a lot more friendly in some years than it has been in others.

Mr. PEARCE. Thank you, Mr. Chairman. I see my time has expired. I will have a second round if you go that way.

Mr. COSTA. Yes. Thank you. Next is the gentleman from Arizona, the Chairman of the Subcommittee on National Parks and Forestry, Mr. Raúl Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman, and I think somebody used the analogy in the agonizing people are doing over royalties that it is like taxing a bank, and I think there is some data that is important for us to be aware of that there were 207,000 active claims in 2005 in this country. Two hundred and forty-five billion is the value of minerals that have been extracted since the law went into effect.

Zero is the amount of royalties we have collected on that extraction and on those patents on those private lands. There are half a million abandoned hardrock mines in this country. The Interior Department itself said that the reclamation, the cleanup price tag is $32 billion, and we have collected zero in royalties in the past. So I think that you know while royalties are the issue to some extent here, the patenting process is the issue here, there is an attendant cost to the taxpayer of this country that is also part of this legislation, and I think we need to be aware of it as well.

But a couple of quick questions. Mr. Bisson, are there examples for where taxpayers have had to pay millions of dollars to buy back critical lands, say, for a wilderness area, a national monument that has already been patented under the mining law? Do we have any figures about how much the Federal agencies have spent in this recovery process, for lack of a better word?

Mr. BISSON. Your question is directed at me, sir?

Mr. GRIJALVA. Yes. I am sorry.

Mr. BISSON. I am vaguely aware of some instances where that has happened but I do not have any specifics today but would be happy to provide that information.

Mr. GRIJALVA. I think that would be important information for the Committee to know what that cost has been and look forward to that information. Mr. Leshy, we received some testimony that says that Congress really does not have the ability to affect existing mining claims. I would like your thoughts on that. Are there really limits on the ability of Congress to apply reforms to existing mining claims?

Mr. LESHY. Mr. Chairman and Mr. Grijalva, I think the Federal government, that Congress has a very broad authority to regulate the existing mining claims including putting a royalty on existing mining claims, and on that point I disagree with the suggestion of the Interior Department on this. I would be happy to submit a legal memorandum that explains this further but I think one essential point to understand is that a mining claim in and of itself is not any kind of property interest against the government.

This has been clear in Supreme Court decisions for 100 years. A mining claim without a proven discovery is essentially a license to occupy the lands. A mining claimant without a discovery is in the same position as a hiker on the Federal lands from a property standpoint. Most mining claims do not have a discovery. Therefore, most mining claims there is really no constitutional restraint on what Congress could do.

Mr. GRIJALVA. Thank you. And let me ask a question of Ms. Martin from the great and wonderful State of Arizona. Under the Com-

mission, Arizona Game and Fish Commission, when there is a fish kill or a migratory bird treaty act violation that occurs as a direct result about mining, what happens? What is the Commission's role? What is the Commission's ability to mitigate?

Ms. MARTIN. Chairman, members of the Subcommittee, it is certainly our role to manage wildlife to try to address those issues as best we can. We really do not have financial support from any sources relating to where the impact was generated typically to deal with that. Our funding sources come from the supporting community, Federal funds that are devoted to nongame wildlife and those kinds of sources.

So we work on habitat. We manage wildlife. We reintroduce species when necessary, and the type of situations that you are talking about that frequently has occurred in the State of Arizona that there have been fish kills and streams contaminated by mining activities, migratory waterfowl using tailing ponds at stopover points. There have been high mortality there.

In some cases when the EPA or DEQ gets involved there are citations. Agencies that have the authority to do so can assess fines, and sometimes then some of those funds will go back to reclamation of those sites. Sometimes there is litigations and a ruling will take money from the industry and put it back into that site but I think what legislation like this could do would be streamline that process and preclude the need for litigation, preclude the need for those agencies to issue citations, and just initially have legislation that identifies where the funding will come from to address those kinds of issues.

Mr. GRIJALVA. Thank you very much. Mr. Chairman, my time is up, and thank you for the opportunity to be part of this hearing.

Mr. COSTA. Thank you, gentleman from Arizona. We always like your participation in our hearing. Next we have the gentleman from Texas I do believe, Mr. Gohmert, my classmate, for five minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. I do appreciate all the witnesses being here and it seems like a rather fortuitous confluence of circumstances. I heard somebody use that term before. We previously had hearings this year on the Deep Water Royalty Relief Act of 1995, and Mr. Leshy, I see that you were Solicitor during the Clinton Administration from 1993 to 2001, and so you may be able to fill in a gap here.

There was some conflicting testimony whether the failure to include the price thresholds in leases issued in 1998 and 1999 may have been a mistake or not, and since you were the Solicitor I just wanted to ask were you involved in that process, in the negotiation of those leases in 1998 or 1999?

Mr. COSTA. Would the gentleman yield for a moment?

Mr. GOHMERT. Yes, sir.

Mr. COSTA. Is this related to the hardrock mining?

Mr. GOHMERT. Well, it is related from this standpoint. Attorneys and judges generally know a witness' credibility is always at issue, and it would go to that.

Mr. COSTA. But we are not in a courtroom, and we are not——

Mr. GOHMERT. I realize that.

Mr. COSTA. You are a very effective Congressperson, and I suspect those days that when you sat on the bench, you were a very effective judge. I have no doubt but we are here to get information and testimony on the subject matter before the Committee. The Chair will rule that we maintain germaneness as it relates to the subject matter. You and I——

Mr. GOHMERT. So credibility is not an issue here? You are saying I cannot find out about the credibility of this witness' judgment when he has come in here and he has told us about what we should and should not do, what would and would not be effective, and we do not know if he just cost this country $10 billion? I think that is important.

Mr. COSTA. Well, I do not doubt that the gentleman thinks it is important. The fact is that the majority and minority try to fairly determine who the witnesses will be, and it is not our intent, it is not this Chair's intent, to impugn the integrity of any of the witnesses. I may disagree with their statements. I may take issue with their points of view, and you may do so as well. That is perfectly within the rules but none of these witnesses here today are being cross-examined about their sincerity as to their testimony.

Mr. GOHMERT. Sir, I have never questioned the sincerity, and I have never impugned the integrity. That was not part of my question. I was not doing that whatsoever. The question is one regarding credibility and credibility of judgment, and that is always an issue, and my understanding of the rules, the administrative rules in these hearings is that they are not nearly as strict as the rules in court, and that what in the minds of a relevant person would be relevant would come into play.

I understand your ruling but I did not impugn his integrity. It is not an issue of integrity. It is an issue of judgment, and we have just heard his judgment on a number of these issues, and I felt like if perhaps his call cost this country $10 billion it could be relevant, and it could affect the way that we looked at these leases.

Mr. COSTA. Well the——

Mr. GOHMERT. But I appreciate your defense of the gentleman, and I will move on with respect to your ruling.

Mr. COSTA. Then the gentleman from Texas has had an opportunity to make his point of view known.

Mr. GOHMERT. I did not find out the answer though.

Mr. COSTA. Well, the point is that I want to ensure that we have comity and we have cooperation on a bipartisan fashion with this hearing, and I just think it is important that we stay to the subject at hand, and I just think that the question was moving beyond the germaneness of this legislation that we are talking about here.

Mr. PEARCE. Would the Chairman yield?

Mr. COSTA. Yes, I will yield to the gentleman from New Mexico.

Mr. PEARCE. Thank you. First of all, I would note that I would hope the gentleman from Texas has his time restored to the point at which we began the discussion. Also on the case of impugning, I remember in this hearing room, in this year that Johnnie Burton came as a witness and her entire character was called into question and whether or not she was adequately discharging the responsibilities of her job. Also I had to stand and defend Mr. Bisson

at an earlier hearing. So the fact that we will or do not impugn character is one that would stand for open discussion itself.

Mr. COSTA. Well, I hope the gentleman from New Mexico believes that I have been fair in my application of allowing members to express their views and to ask question as they see fit and to have an opportunity——

Mr. PEARCE. Absolutely do.

Mr. COSTA. So I would like to get on with the hearing.

Mr. PEARCE. You bet. I just wanted to make some observations.

Mr. COSTA. I would like to explore the opportunity for the gentleman from Texas to continue his questions, and I am not sure where he was at the point of the time where I——

Mr. PEARCE. He was probably about——

Mr. GOHMERT. I would be glad to go back to that point.

Mr. PEARCE.—three and a half. I would guess at about the 3:45.

Mr. GOHMERT. I know exactly where I was. I could go right back to it. But——

Mr. COSTA. No. I am talking about your——

Mr. GOHMERT. Since you ruled otherwise.

Mr. COSTA. I am talking about in terms of your time.

Mr. GOHMERT. Well, Mr. Leshy, I noted that you had commented earlier. In my years on the bench, sometimes you notice the look in a person's eye, the way they say things. Your comment that the Bush Administration had gutted many of the regulations that you had put in place seemed to be with some sense of disdain, even though you followed up by saying, of course, that is any Administration's right. You were not pleased about the Bush Administration's gutting some of the regulations that perhaps you had worked on, is that correct?

Mr. LESHY. That is correct.

Mr. GOHMERT. OK. Thank you. I did want to ask, Mr. Bisson, do you happen to know what percentage of the known coal reserves in the United States are available for lease in mining?

Mr. BISSON. I do not have that figure but I would be happy to research it and get that information for you, sir.

Mr. GOHMERT. Do you have any kind of estimate?

Mr. BISSON. No. Because all of my work has been in the West. I am really unfamiliar with coal resources in the eastern part of the United States where there are substantial resources. I am aware that as an example in Alaska, the International Petroleum Reserve Alaska, that 40 percent of the nation's coal reserves are there, and they are currently withdrawn from being made available.

Mr. GOHMERT. Right. And that was my understanding, when we were talking about mining, that we have tremendous reserves, and then for some reason the Clinton Administration, for example, I know put much of our coal reserves off limits, and I have always been intrigued how we pay so much to countries that hate us for our energy when we keep shooting ourselves in the foot in putting things off limit that would allow us to discontinue paying people that hate us.

But with regard to mining policies, I would like to say I have seen a couple of letters submitted here who have typed names and that always makes me concerned. I never used to accept those as

a judge but here again normally in court the rules of evidence are much more strict than they are at a hearing like this.

Mr. COSTA. They are.

Mr. GOHMERT. Under most circumstances. Obviously there are some exceptions but I would like to submit that when I see that letters are speaking for the millions of hunters and anglers of which I am one, and though I may agree with most of the things in these letters, having things in there spoken on my behalf, I would just like the record to reflect they are not speaking for me on all issues, and that also you know having a lot of natural resources in east Texas where I am from we see two ways of doing things, and one is you can mine, you can extract resources that God has blessed this nation with, and require with adequate regulations an environment which actually is better after the mining than before, and everybody comes out a winner, and we have seen situations where there is actually companies coming in and extracting resources that allowed the area to be improved after it was over.

It was all a matter of what was enforced and what was required. So I am not against mining, extracting resources, getting off the dole from the——

Mr. COSTA. I think the gentleman has clearly made his statement. We will take that as a statement, not a question, of course; and I might remind the gentleman that coal is not under the 1872 Hardrock Mining Act.

Mr. GOHMERT. Well, in view of some of the comments, I still felt it was relevant because some of those seem to be alluded to as the biggest polluters. It still applies.

Mr. COSTA. I understand your point.

Mr. GOHMERT. Thank you.

Mr. COSTA. Let us move on. It is my turn, and a quick question for Ms. Martin from Arizona. Why do you think the Superfund is not sufficient to address the impacts of mining in Arizona and elsewhere?

Ms. MARTIN. Mr. Chairman, the Superfund is an excellent tool for——

Mr. COSTA. Speak closer to the mic, please.

Ms. MARTIN. I am sorry. Thank you, sir. The Superfund is an excellent tool for addressing sites with very high contaminant concentrations but that still neglects the majority of mined areas. Because the fund is limited, the criteria that need to be met to make it on the national priority list, which guides allocations of those funds, it is very difficult to get a site placed on that list.

In Arizona, we have over 100,000 abandoned mine sites, 55 of those proposed to maybe someday be on the NPL, 9 sites actually are Superfund sites in the State of Arizona, and sites with relatively low levels of contamination can have severe wildlife impacts to waterfowl and also throughout the food chain because contaminants have a tendency to concentrate as they move up the food chain.

In addition to that, the Superfund addresses only hazardous waste. So there is a public safety issue that is clearly not addressed by the Superfund. We have 80,000 open mine shafts scattered throughout our public lands.

Mr. COSTA. In essence, the problem is much bigger than the Superfund is capable of handling? I mean is that your bottom line?

Ms. MARTIN. That is correct, sir.

Mr. COSTA. All right. Mr. Bisson, I want to move over to you. As was discussed by both Senator Craig and in the question that I addressed earlier to Mr. Leshy, the issue of patents, of course, is part of the discussion in this legislation. As you know, the annual Congress imposed moratorium since 1994 but notwithstanding that there are or were patents in the pipeline. Can you tell me roughly how much acreage has been covered since 1994 on patents?

Mr. BISSON. I do not know that I have the acres with me. I could follow up with you.

Mr. COSTA. Please provide that information.

Mr. BISSON. But I can tell you that in fact we have issued over the 405 cases we had when the moratorium was put in effect, more than 90 percent of the patents have been addressed, and we only have 38 left to complete.

Mr. COSTA. OK. At $2.50 to $5.00 per acre, how much money did those patents reflect?

Mr. BISSON. I do not have that information with me.

Mr. COSTA. Can you provide that for us too?

Mr. BISSON. Yes.

Mr. COSTA. My understanding—and I do not know how in-depth your knowledge is on it—but that the Bureau of Land Management must disapprove of the mining or any mining that would cause unnecessary or undue degradation of public lands. To your knowledge, do you know how many times the Bureau of Land Management has disapproved any of those permits?

Mr. BISSON. I cannot tell you the exact number but I am aware of a particular mining situation in California where the Bureau has taken the position to prevent the mining from happening, and it is in the courts right now.

Mr. COSTA. OK. In 2005, and this relates to the regulations 3809 that we spoke of earlier, there was a report that not all hardrock mining operations on BLM lands had required the financial assistance in place and that some lacked reclamation plans or current cost estimates as it related to the requirements under the law. Could you tell me your response to that government accountability report?

Mr. BISSON. I can tell you that at this point in time we have close to $1 billion in financial assurances in place for the mines that are on public lands. We require financial assurances that cover the complete cost of reclamation, and we have the ability to require establishment of a trust fund to address any follow up monitoring of water quality or any other issues into the future once a mine is closed.

Mr. COSTA. Our research tells us that there are about 48 hardrock mining operations that have been closed due to bankruptcy, and it is estimated that there may be a $50-million-plus cleanup that the taxpayers may inherit on that. Do you think there is a problem as it relates to the Bureau of Land Management's efforts to require that the 3809 regulations were implemented so that the guarantees that were required as a part of those permits that those costs would be maintained? Do you see a problem there?

Mr. BISSON. It is my understanding that the bulk of those bankruptcies occurred on operations that were preexisting, using past practices. I am not aware of any specific bankruptcies where lands remain to be reclaimed that have gone into and have been mined while the 3809 regulations we are dealing with right now have been in place but I can do some more research.

Mr. COSTA. We would like you to look at that and find out because I am not sure that is not the case but between now and our hearing in Elko in August if you could provide that information and the other information. My time has expired but to know what percent of the operating mines and how many mines does the Bureau of Land Management inspect each year, and you can submit that later on.

Mr. BISSON. Yes, sir.

Mr. COSTA. OK. And the next witness is the gentleman from Nevada, the once Ranking Member of this committee, Mr. Heller.

Mr. HELLER. Thank you, Mr. Chairman.

Mr. COSTA. You did a very good job.

Mr. HELLER. Thank you. It was an honor. I will yield my time to the Ranking Member.

Mr. COSTA. OK.

Mr. PEARCE. Thank you. I thank the gentleman for yielding. Mr. Leshy, when I read in Section 505, the Administrative and Judicial Review, subparagraph [b][6][b], I read that notwithstanding the decision of the United States Court of Appeals for the 10th Circuit in the High Country Citizens Alliance v. Clark that the appropriate Federal District Court has jurisdiction to hear any judicial challenge to the Secretary's actions described in subparagraph [a], and it continues on. So are you familiar with that case at all?

Mr. LESHY. Yes, I am.

Mr. PEARCE. Has that case ever been heard in court?

Mr. LESHY. Yes. It was a decision of the 10th Circuit Court of Appeals I think.

Mr. PEARCE. Was it heard before the 10th Circuit?

Mr. LESHY. Yes, and it was decided by the 10th Circuit.

Mr. PEARCE. It went to District Court—Federal District Court.

Mr. LESHY. Federal.

Mr. PEARCE. And what was decided there?

Mr. LESHY. Yes. The 10th Circuit Federal Court of Appeals.

Mr. PEARCE. No. What did the District Court decide?

Mr. LESHY. I cannot remember actually. I know——

Mr. PEARCE. Actually, I think I have that information surprisingly enough, and they decided against, against the request by the plaintiffs I think.

Mr. LESHY. Well, I know what the——

Mr. PEARCE. And then it was appealed. Was it not appealed to the 10th Circuit?

Mr. LESHY. Yes.

Mr. PEARCE. So if you were not familiar with what decision was made why would it be appealed?

Mr. LESHY. No.

Mr. PEARCE. What is your relationship to the case as a matter of fact?

Mr. LESHY. Well, I followed it as an academic. The 10th Circuit decided the case. The case is over.

Mr. PEARCE. Did you ever or were you involved specifically in the case?

Mr. LESHY. I believe I signed onto an amicus brief that asked the Supreme Court to——

Mr. PEARCE. So you signed on, and you were acting in some consulting fashion, and you were not familiar with the first decision?

Mr. LESHY. Well, I cannot remember what the first decision was but I know what the 10th Circuit——

Mr. PEARCE. But would it be appealed? You are a lawyer. I am not. The appeal process I would consider it is only going to be appealed if there is some decision that is contrary to the beliefs of the people who bring the suit. So of giving that, let us move on. So what the 10th Circuit Court did is basically they said yes or no, we are going to agree or disagree?

Mr. LESHY. This was a case where a local community of Crested Butte, Colorado——

Mr. PEARCE. Yes, I appreciate knowing that but I am asking what the Court decided, sir.

Mr. LESHY. The case was the local community of Crested Butte, Colorado——

Mr. PEARCE. If you would tell me what the 10th Circuit. I have five minutes, sir. What did the 10th Circuit say?

Mr. LESHY. Asked the Court to review the decision of the Department of Interior to issue a patent for a mountaintop overlooking the town. They did not want that land to be privatized under the Mining Law of 1872.

Mr. PEARCE. Was that review done?

Mr. LESHY. The 10th Circuit said in its final decision and the final decision of the Courts was that under the old mining law because of its peculiarities no citizen had the right to bring a Court action to review the government's decision to issue that patent. That, in my judgment and the judgment of about 25 other law professors who signed this brief, was totally out of step with the law. What the law ought to be.

Mr. PEARCE. So you then had remedy, and the remedy was? What remedy did you take then?

Mr. LESHY. The remedy is in this legislation.

Mr. PEARCE. The remedy. You did not go to the Supreme Court?

Mr. LESHY. The Supreme Court denied review.

Mr. PEARCE. So the request was made for the Supreme Court to look at it?

Mr. LESHY. Right.

Mr. PEARCE. And they said we do not feel any facts that are compelling?

Mr. LESHY. They did not say anything. They said, we deny review.

Mr. PEARCE. We are not going to review?

Mr. LESHY. Right.

Mr. PEARCE. So we have now——

Mr. LESHY. The issue——

Mr. PEARCE.—carried this to the District Court, and they found against. We have carried it to the Appellate Court, and they found

against. It went to the Supreme Court, and they said, we do not really see a problem that would rise to that level. And you here testifying today have been signed onto that for whatever you call that, and now I find the legislative fix that would bypass every Circuit, every decision made up to this point. It is amazing. Stunning.

Mr. LESHY. Every——

Mr. PEARCE. Did you talk with anybody about this section? Have you in any time in your history conferred with anybody, staff or anybody about this section and the inclusion in the bill or has that just kind of come out of the blue?

Mr. LESHY. No. I have talked to the staff about this.

Mr. PEARCE. You have talked to staff.

Mr. LESHY. Yes.

Mr. PEARCE. So you were signing on in Court. You were a participant through all processes. You know that the Court system found. Mr. Bisson, did the agency ever take a look at that request?

Mr. BISSON. I am not aware of it, sir.

Mr. PEARCE. OK. Do you have any regulatory status on such things?

Mr. BISSON. On the——

Mr. PEARCE. On such reviews.

Mr. BISSON. Not that I am aware of. Are you talking about the patent review?

Mr. PEARCE. Yes.

Mr. BISSON. We do have regulatory requirements for patent review and standards that we have to comply with.

Mr. PEARCE. I thank the gentleman. I see that my time has expired. I thank the gentleman for yielding his time.

Mr. COSTA. Thank you, gentleman from New Mexico. I will add that whether one is a private citizen or whether one serves in the legislative or executive branch or the judicial branch I do not think one gives up their rights as citizens to participate in the legislative process, and certainly, Mr. Leshy, you are viewed as valuable to the Chairman in writing any legislation, and your views are opined that is certainly the privilege that we all can take of all the people who have expertise here.

So I want to thank you, and I want to thank this panel for your testimony, and we need to move on because we have a lot of things going on on the Floor, and we have another panel that is patiently waiting, and we would like that new panel to come forward. We have I believe five witnesses on the new panel, and we will look forward to hearing your statement. No, there are three of us. So we are going to run through regular order here.

I was wrong. We have six members of this panel. Well, we are pleased to have all of you, and let me make sure that I am on the proper page here. Our next panel involves the following witnesses: Mr. Steve Ellis, Vice President of Programs for Taxpayers for Common Sense; Mr. Dusty Horwitt from Public Lands Program Analyst for Environmental Working Group; Mr. Tony Dean, Sportsman and Radio Host of Tony Dean Outdoors; Mr. Michael Marchand, Chairman of the Confederated Tribes of Colville—Colville I am told, is that proper pronunciation—Reservation; Mr. William Champion, President and CEO of Kennecott Utah Copper Corporation; and

Mr. Ted Wilton, Executive Vice President of Neutron Energy Company.

I think I have included everyone, and so we will begin with Mr. Ellis and recognize him for five minutes. As I told the previous panel, for those of you who may not be familiar with the process here testifying in Congress, we have a five-minute rule. I try to apply that equally. Some days more successfully than others.

Nonetheless, we would appreciate your following within that five-minute rule, and if you go beyond that, I will politely let you know that you need to wind up. So we appreciate your time and the distance you traveled and any further information obviously will be submitted for the record. Mr. Ellis for five minutes.

STATEMENT OF STEVE ELLIS, VICE PRESIDENT OF PROGRAMS, TAXPAYERS FOR COMMON SENSE

Mr. ELLIS. Thank you. Good morning, Chairman Costa, Ranking Member Pearce, members of the Subcommittee. Thank you for inviting me to testify this morning on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007. I am Steve Ellis, Vice President of Taxpayers for Common Sense, a national nonpartisan budget watchdog group. Since its inception in 1995, TCS has pushed for the reform of the General Mining Act of 1872. It is a relic of an entirely different era and high time it is amended to reduce its exorbitant taxpayer subsidies.

Taxpayers for Common Sense supports H.R. 2262 as a strong step toward reigning in the excesses of the Mining Law of 1872. I will detail some of these reasons. The 1872 Mining Law enables entitles to patent or buy Federal land for a pittance.

Under the law you would pay in 1872 dollars less than 31 cents to buy an acre of Federal land. So you end up with examples such as in Crested Butte, Colorado where the Federal government sold 155 acres to the Phelps Dodge Mining Company for approximately $790, despite a company estimate that the land could produce up to $158 million in after tax profits over 11 years. This is an area where land prices range as high as a million dollars per acre.

In 1994, Congress began enacting one-year patent moratoriums. However, continuing the decade-long process of one-year extensions makes little sense for anyone. H.R. 2262 rightly throws patenting of Federal land onto the ash heap of history. Despite the private sector extracting public assets from the ground, under the Mining Law of 1872 taxpayers receive no compensation whatsoever.

Since enactment of the mining law, the total value of minerals that have been taken without compensation is an estimated $245 billion. That is the equivalent of emptying Fort Knox of all its gold two and a half times over. By comparison, the oil and gas industry generally pays 12 and a half percent in royalties on what they extract from onshore Federal lands. H.R. 2262 requires an 8 percent royalty on net smelter returns. Net smelter is essentially the gross revenue for the mineral product that the mine receives from a refinery or smelter.

This ensures that the royalty automatically adjusts to changes in the market and does not over- or undercharge. TCS is aware of other proposals such as net revenue or net profits royalty but we

believe these offer too much opportunity for gamesmanship on what the deductible costs will be.

Mineral Business Appraisal, a self-described geologic and mining expert in the appraisal of all types of mineral property describes net profits royalty indicating, "There are virtually no buyers for this type of royalty because of the creative accounting that the mining operator can use to depress the royalty payment. The distinguishing feature of net profits royalty is that depending upon the exact definitions in the mining lease in the actual calculations, it will very often be zero."

According to Mineral Business Appraisal, net smelter royalty payments are "also fairly simple to calculate and administer, in that only the selling price and the quantity of mineral product produced or sold are required for the determination." In addition, "this type of royalty will usually have the highest market value of all the royalty types."

One significant change that Taxpayers for Common Sense would like to see in H.R. 2262's royalty structure is to increase the payment to at least 12-and-a-half percent, which would harmonize it with high rates for other extractive industries. All too often after the minerals have been removed mining operations split town and leave communities with a mess and taxpayers holding the bag for cleanup. It is a big bag.

A 2004 report by the EPA put the cost of remediation of hardrock mines at $20-to-$54 billion. To address these unfunded liabilities, H.R. 2262 tightens existing regulations requiring financial assurance and operation plans and restricts mining from areas where the risk of an expensive cleanup is too great.

Over the years, the Department of Interior has been prodded repeatedly to require adequate financial assurances in the form of surety bonds and other tangible assets. To help taxpayers deal with the existing fiscal hangover, H.R. 2262 uses the royalty payments to establish two trust funds. One would receive two-thirds of the royalty payments to clean up areas where the mining industry left communities and taxpayers with a costly mess. The other would receive one-third of the royalty payments to help states, communities and Indian tribes that are socially and economically impacted by past mineral activities.

Both of these trust funds would remain on budget and would be subject to future appropriations. These two trust funds absorb the entire revenue generated by the royalties in H.R. 2262. As the bill progresses toward enactment, TCS urges Congress to enable a portion of the revenue generated by the bill to be deposited in the general treasury. The minerals extracted from the land are owned by all of us, and all Americans should reap the financial benefits.

In conclusion, taxpayers have waited for far too long for real reform of the Mining Law of 1872. Public lands are taxpayer assets and should be managed in a way that preserves their value, ensures a fair return from private industry using them for profit, and avoids future liability. Thank you very much, and I would be happy to take any questions that you might have.

[The prepared statement of Mr. Ellis follows:]

Statement of Steve Ellis, Vice President, Taxpayers for Common Sense

Good morning Chairman Costa, Ranking Member Pearce, members of the Subcommittee. Thank you for inviting me to testify this morning on H.R. 2262, The Hardrock Mining and Reclamation Act of 2007. I am Steve Ellis, Vice President of Taxpayers for Common Sense, a national non-partisan budget watchdog group.

Since its inception in 1995, TCS has pushed for reform of the General Mining Law of 1872. We are not advocating modernizing this law simply because it is 135 years old. After all, our Constitution is well over 200 years old and we all think that it is a very fine document. However, we have amended the Constitution 27 times over the years for good reasons. The Mining Law of 1872 is a relic of an entirely different era and it is high time it is amended to reduce its exorbitant taxpayer subsidies.

Subsidies are simply a tool to encourage behavior that might otherwise not occur. The subsidies in the Mining Law of 1872 were intended as an incentive to populate the West and encourage economic development and production that Congress and President Grant believed would not otherwise occur. H.R. 2262 recognizes that the law is an anachronism, and now it is time to ensure that taxpayers aren't forced to continue picking up the tab.

Taxpayers for Common Sense supports H.R. 2262 as a strong step toward reigning in the excesses of the Mining Law of 1872. I will detail some of these excesses and describe how H.R. 2262 addresses them.

Giveaway of Federal Land

Under the Mining Law of 1872, a claimant can "patent" or purchase a claim for either $2.50 or $5.00 per acre. Just to put that in perspective, the 2006 purchasing power of $2.50 from 1872 is just 15 cents. $5.00 is 31 cents. That's how little we are valuing taxpayer's property. Staking a claim on federal land simply requires an annual maintenance fee of $125 per acre plus an additional $30 location fee and $15 new mining claim service fee for first timers.

A couple examples of taxpayers getting soaked by patenting:

- In Crested Butte, Colorado the federal government sold 155 acres to the Phelps Dodge mining company for approximately $790, despite a company estimate that the land could produce up to $158 million in after-tax profits over 11 years. This is in an area where land prices range as high as $1 million per acre.
- In Nevada, in 1994, American Barrick paid $9,765 for 1,950 acres that contained an estimated $10 billion in gold.

In some cases, it appears that mining patents have been little more than a ruse for developers to get their hands on valuable federal property before flipping it for other, more lucrative uses. A few examples:

- In 1983, the Forest Service sold 160 acres near the Keystone, CO ski resort for $400. Six years later the land sold for $1 million.
- In 1970, a businessman bought 61 acres in Arizona for $153. Just ten years later he sold it to a developer for $400,000 plus an 11% share in future profits.

In FY1995, Congress began enacting one-year patent moratoriums. Patent applications that were in the pipeline have been grandfathered, but new patents have not been issued. However, continuing the decade-long practice of one-year extensions makes little sense for the mining industry or taxpayers. H.R. 2262 rightly throws patenting of federal land onto the ash heap of history. The Congressional Research Service points out a critical fact: ending the practice of patenting "will not stop the production of valuable mineral resources from the public lands, but will prevent the further transfer of ownership of public lands to the private sector." Transfer of public lands to the private sector at bargain basement prices should be stopped permanently.

Gold and Other Valuable Minerals for Free

After charging a pittance for the land, the Mining Law of 1872 essentially ignores that mining is about recovering valuable minerals from the land. Despite the private sector extracting public assets from the ground, taxpayers receive no compensation whatsoever. Since enactment of the mining law, the total value of minerals that have been taken without compensation is an estimated $245 billion. That's the equivalent of emptying Fort Knox of all its gold two and a half times over.

By comparison, the oil and gas industry generally pays 12.5% in royalties on what they extract from onshore federal lands. States appear smarter than the federal government on this issue as well, with many of them requiring royalties for mining on state lands.

H.R. 2262 requires an 8% royalty on net smelter returns. Net smelter return is essentially the gross revenue for the mineral product that the mine receives from a refinery or smelter. This ensures that the royalty automatically adjusts to changes in the market and does not over- or undercharge. TCS is aware of other proposals

such as net revenue or net profits royalty, but we believe these offer too much opportunity of gamesmanship on what the deductible costs will be. I am reminded of naïve film investors that agree to take a share of the profits—after the expenses, there are no profits.

Mineral Business Appraisal, self-described geologic and mining experts in the appraisal of all types of mineral property, describe net profits royalty, indicating "[t]here are virtually no buyers for this type of royalty because of the creative accounting that the mining operator can use to depress the royalty payment amount. The distinguishing feature of a net profits royalty is that, depending upon the exact definitions in the mining lease and the actual calculations, it will very often be zero."

According to Mineral Business Appraisal, net smelter "royalty payments are also fairly simple to calculate and administer in that only the selling price and quantity of mineral product produced or sold are required for their determination." In addition, "this type of royalty will usually have the highest market value of all the royalty types." Simple, predictable, and valuable, that sounds like it is in the taxpayer's interest.

One significant change Taxpayers for Common Sense would like to see in H.R. 2262 royalty structure is to increase the payment to at least 12.5%, which would be more commensurate with other extractive industries. A key point to remember is that the 12.5% royalty would still be based on current markets and still represents a very small share of the gross return.

Sticking Taxpayers with the Fiscal Hangover

All too often, after all the minerals have been removed, mining operations split town and leave communities with a mess and taxpayers holding the bag to pay for clean up. A 2004 report by the U.S. Environmental Protection Agency (EPA) Inspector General indicated that the Superfund National Priority List contained 63 hardrock mining sites and another nearly 100 sites could be added in the future. The price tag for cleaning up all of these sites was $7-$24 billion, with more than half of that amount likely to be stuck on taxpayers. Because clean-up takes such a long time, it is likely that some of the businesses currently on the hook will no longer remain viable and the taxpayer's share of clean-up will increase.

The potential unfunded liability from hardrock mining sites is even larger. A 2004 report by the EPA put the cost of remediation of hard rock mines at $20-$54 billion. Although regulations for bonding were tightened with Section 3809 rules, they are still too weak to adequately protect taxpayers. According to a June 2005 report by the Government Accountability Office (GAO), the Bureau of Land Management (BLM) indicated that 48 hardrock operations on BLM land had ceased without reclamation since the agency began requesting some form of financial assurances in 1981. BLM estimated the costs of reclaiming 43 sites at $136 million, which the GAO indicated is a low-ball estimate.

To address these unfunded liabilities, H.R. 2262 requires financial assurance and operation plans, and restricts mining from areas where the risk of an expensive clean-up is too great. Over the years, the Department of Interior has had to be prodded repeatedly to require adequate financial assurances in the form of surety bonds and other tangible assets. Clearly, further legislation to ensure taxpayers are not stuck with the tab for cleaning up mining messes is required.

To help taxpayers with the fiscal hangover, H.R. 2262 uses the royalty payments to establish two trust funds. The Abandoned Locatable Minerals Mine Reclamation Fund would receive two-thirds of the royalty payments and other fees and related collections. The Locatable Minerals Community Impact Assistance Fund would receive one-third of the royalty payments. Both of these trust funds would remain on budget and would be subject to future appropriations.

The abandoned mines fund would essentially tap mining industry royalties and other payments to clean up areas where the mining industry left communities and taxpayers with a costly mess. The community impact assistance fund would help States, communities and Indian tribes that are socially or economically impacted by past mineral activities.

These two trust funds absorb the entire revenue generated by the royalties and other fees associated with H.R. 2262. As the bill progresses toward enactment, TCS urges Congress to enable a portion of the revenue generated by the bill to be deposited in the General Treasury. The minerals are extracted from land owned by all taxpayers, and all taxpayers should reap the financial benefits. Moreover, TCS believes that the standards for both funds should be clarified and tightened. Clean-up standards should be strong and explicit, and restrictions placed on the community impact fund to ensure that it doesn't become a long term subsidy, but rather

a time-limited tool to help communities redirect their economy in the wake of a mining operation.

An additional provision in H.R. 2262 prevents bad actors from being involved in future operation of mines. This will hopefully put an end to the racket where shell companies and foreign subsidiaries make a business decision to declare bankruptcy or close shop only to sprout up with another mine in a different location.

Conclusion

Taxpayers have waited far too long for real reform of the Mining Law of 1872. Public lands are taxpayer assets, and should be managed in a way that preserves their value, ensures a fair return from private interests using them for profit, and avoids future liability. H.R. 2262 certainly advances that cause, which is why Taxpayers for Common Sense supports the bill. As it moves through the legislative process we will work to ensure that taxpayer protections are strengthened, some percentage of the royalty payments are returned to the treasury, and that the royalty rates are increased to match those for oil and gas.

Mr. COSTA. Thank you, Mr. Ellis, and thank you for staying within the five-minute rule. Our next witness before us is Mr. Horwitt, who I will ask to testify for five minutes, please.

STATEMENT OF DUSTY HORWITT, PUBLIC LANDS PROGRAM ANALYST, ENVIRONMENTAL WORKING GROUP

Mr. HORWITT. Thank you, Mr. Chairman, distinguished members of the Subcommittee. My name is Dusty Horwitt. I am a Public Lands Analyst with Environmental Working Group. We are a nonprofit research organization here in Washington and Oakland, California. Thank you for this opportunity.

As we speak, there is a land rush in the West for mining claims that is driven by the sky high price for uranium and other metals and caused by demand from our own nation, China, India and other countries around the world. For the last several years, Environmental Working Group has analyzed mining claims on Federal lands using a computerized database from the Bureau of Land Management. Our work has appeared in publications around the country—The Arizona Republic, Albuquerque Journal, Fresno Bee, Denver Post, New York Times, and The U.S. News and World Report.

Mr. Chairman, what we have found is that each and every day there is a frenzy of claims escalating throughout the West. This threatens a crisis for the Grand Canyon, where there has been an explosion of uranium mining claims. I would like to show a graph that is up on the screen.

Our research has found that in 12 western states mining claims have increased more than 80 percent since January 2003. Over an eight-month period from last September to this May, the BLM has recorded 50,000 new mining claims. This land rush is sweeping the West, despite the remnants of an earlier generation of uranium mining that left a legacy of death and disease, despite the fact that mining is our leading source of toxic pollution, and despite the fact that valid mining claims give the claim holders a property right that the Federal government has interpreted as superseding efforts to protect the environment and preserve our American heritage.

What this means is that speculative Chinese demand for uranium has more influence over the fate of mining in the West than people who work and live there. I would like to show a few images that show the threats to some of our treasured places, show areas

that bear the legacy of past uranium mining, and remind us that mining impacts can spread across great distances.

Up on the screen is an image of Grand Canyon National Park. The claims are featured in blue on the North and South Rims. What we found is that as of July of this year mining interests hold 815 claims within five miles of the park, 805 of those stakes since January 2003, and most of these are for uranium. A Canadian company, Quaterra Resources, has already proposed to drill exploratory holes for uranium north of the Canyon. This operation would include a helicopter pad to carry supplies in and out in already crowded air space.

Next let us look at a map of the canyon country in southern Utah and Nevada. Here we can see many claims that are also for uranium. Arches National Park in Utah has 869 claims within five minutes of its boundary, 864 of them stakes since January 2003. Canyonlands National Park, 233 claims within five miles, all of them staked since January 2003.

Some of the claimed land that you can see on the Colorado side are areas treasured for their scenic and recreational values. You will note the town of Moab, Utah, near the top left corner of the map. The Department of Energy has started a decade-long project there to clean up 12 million tons of uranium mine waste near Moab that has contaminated the land near the Colorado River. This waste is a threat that could contaminate drinking water for millions of people. The cleanup costs are estimated anywhere from $412 million to $697 million.

One other place I would like to show is Yosemite National Park in California. Here you will see 83 claims within five miles of the park, 50 of them staked in the last four years. Without proper protections for our public lands, these claims can be costly. In 1996, the Federal government paid $65 million to buy out patented claims just three miles from Yellowstone National Park. These claims would have been a mine at the headwaters of three streams that flow into the park.

What this incident shows is that mine pollution can spread across great distances. In 1992 in Summitville a spill of cyanide heavy metal laden water killed some 20 miles of the Alamosa River in Summitville, Colorado. The area is now a Superfund site. Other towns in the West currently face mine proposals that could affect their drinking water.

H.R. 2262 would help address these problems by providing standards to protect water quality, permanently ending the sale of public land for no more than $5 an acre, and empowering land managers to balance mining with other values and resources, just like they do with other industries that operate on Federal land. Mining provides materials essential to our economy but it must be conducted in a way that strikes a balance with other resources, especially increasingly scarce water supplies in the West.

When hundreds of mining claims are pushing up to the edge of the Grand Canyon, it is time to draw the line. We need reform, and we need it now. Thank you.

[The prepared statement of Mr. Horwitt follows:]

Statement of Dusty Horwitt, JD, Public Lands Analyst, Environmental Working Group

Background

Mr. Chairman, distinguished Members of the Subcommittee: My name is Dusty Horwitt, and I am a Public Lands Analyst at Environmental Working Group (EWG), a nonprofit research and advocacy organization based in Washington, DC, and Oakland, California. I thank the members of the subcommittee for this opportunity to testify.

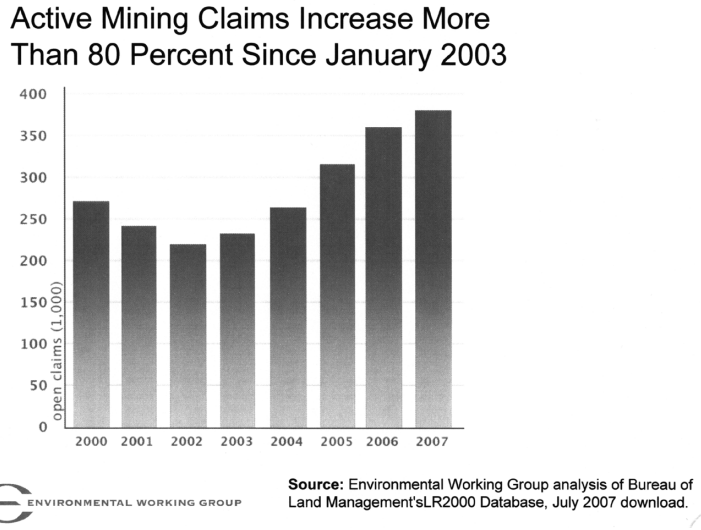
The Washington Post recently reported that China plans to spend $50 billion to build 32 nuclear power plants by the year 2020. Some experts predict that China may need 200 or even 300 plants by 2050. And China is hardly alone in its desire to increase the use of nuclear power.

At first glance, this issue would appear to have little to do with today's hearing on reforming the Mining Law of 1872. But there's a land rush in the West for mining claims and it's driven by the sky-high price of uranium and other metals caused by speculative demand from China, the United States and players around the globe.

Today, in the world of U.S. mining law, speculative Chinese demand for nuclear fuel has more influence over the fate of mining in the American West than the people who work and live there. Short of buying out the claims or other congressional intervention, the federal government interprets mining law as providing virtually no way to stop uranium or other hard rock mining, even when it is in plain view of national parks such as the Grand Canyon, once a claim is staked.

For the last several years, the Environmental Working Group has analyzed mining claims on federal land, using computerized data provided by the Bureau of Land Management. Our work has been reported in dozens of news outlets including the Albuquerque Journal, Arizona Republic, Fresno Bee, Denver Post, and Seattle Post-Intelligencer (see attachment #1 for full list).

Mr. Chairman, what we have found is a frenzy of claim staking that is escalating each day and threatens a crisis for the Grand Canyon, where there has been an explosion of uranium mining claims. A mining claim gives the claim holder the right to mine on federal land.



Our research shows that in 12 Western states, the total number of active mining claims has increased from 207,540 in January 2003 to 376,493 in July 2007, a rise of more than 80 percent. Over an eight-month period, from last September to this May, the BLM recorded more than 50,000 new mining claims. Current claims cover an estimated 9.3 million acres.

Source: Environmental Working Group analysis of Bureau of Land Management's LR2000 Database, July 2007 download.

We have seen this increase in every Western state, with claims for all metals increasing by 50 percent or more in Arizona, Colorado, New Mexico, Nevada, South Dakota, Utah and Wyoming.

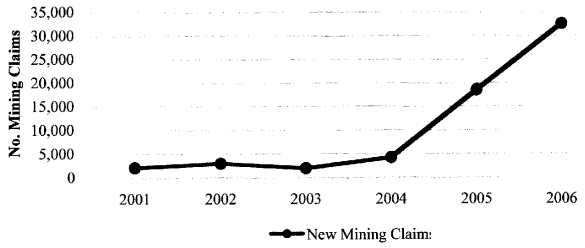
Mining claims have increased in every one of twelve Western states.

State	Claims active as of January 2003	Claims active as of July 2007	Percent Increase
Arizona	22,711	40,670	79%
California	18,981	22,494	19%
Colorado	5,430	18,391	239%
Idaho	10,598	13,013	23%
Montana	10,554	12,779	21%
New Mexico	7,550	11,348	50%
Nevada	100,972	179,773	78%
Oregon	5,088	6,087	20%
South Dakota	1,030	2,340	127%
Utah	8,723	28,968	232%
Washington	2,193	2,492	14%
Wyoming	13,710	38,138	178%
12 state total	207,540	376,493	81%

Source: Environmental Working Group analysis of Bureau of Land Management's LR2000 Database,
July 2007 download.

Many of the new claims are for uranium. The BLM reports that the estimated number of uranium claims staked in Colorado, New Mexico, Utah and Wyoming combined increased from less than 4,300 in Fiscal Year 2004 to more than 32,000 in Fiscal Year 2006.

Uranium Mining Claims Skyrocket in Colorado, Ne Mexico, Utah, and Wyoming



Source: Bureau of Land Management

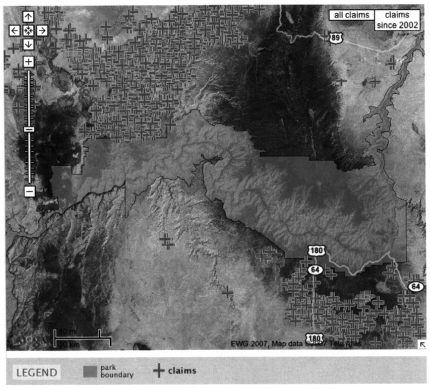
Many of these claims are being staked by foreign mining companies and speculators who could mine the land or sell to multinational corporations who often extract minerals using techniques involving toxic chemicals, giant earthmoving equipment, sprawling road networks and vast quantities of water where water is a precious, scarce resource.

This land rush is sweeping the West despite the remnants of an earlier generation of uranium mines that have left a legacy of death and disease, despite the fact that mining as a whole is our leading source of toxic pollution and despite the fact that mining claims give companies a property right that effectively supercedes efforts to protect the environment and preserve our American heritage.

In the face of a landslide of global economic forces that threaten many of our most valued natural places and the health of people all across the American West, the 1872 Mining Law offers the legal equivalent of a pick and a shovel.

The following photo images were produced by EWG by linking federal data on mining claims with Google Earth satellite photos of national parks. They show the clear threats to just a handful of our most treasured national parks and depict areas that bear the legacy of past uranium mining pollution. They remind us that mining impacts can spread across great distances carried by wind and water.

815 Mining Claims within 5 Miles of Grand Canyon National Park, 805 Staked Since January 2003



ENVIRONMENTAL WORKING GROUP

Source: Environmental Working Group analysis of Bureau of Land Management'sLR2000 Database, July 2007 download.

This satellite image of Grand Canyon National Park from our website shows mining claims featured in blue, clustered on both the north and south rims. We found that as of July, mining interests hold 815 claims within five miles of the Park, 805 of them staked since January 2003. Many of these claims are for uranium.

A Canadian company, Quaterra Resources, has already proposed to drill exploratory holes for uranium on claims just north of the Canyon. The operation would include a helicopter pad to carry supplies in and out. The idea of uranium mining near America's greatest national treasure is troubling and the thought of helicopter flights of radioactive material in an area already crisscrossed by dozens of tourist flyovers a day is even more disconcerting.

The same explosion of claims has occurred in the canyon country of southern Utah and Colorado.

869 Mining Claims within 5 Miles of Arches National Park, 864 Staked Since January 2003
233 Mining Claims within 5 Miles of Canyonlands National Park, All Staked Since January 2003

ENVIRONMENTAL WORKING GROUP

Source: Environmental Working Group analysis of Bureau of Land Management'sLR2000 Database, July 2007 download.

Many of these claims are also for uranium. Arches National Park in Utah has 869 claims within five miles of its boundary, 864 of them staked since January 2003. Nearby, Canyonlands National Park has 233 claims within five miles, all staked since January 2003. Many of the claims on the Colorado side are near lands treasured for their scenic and recreational values.

The Legacy of Uranium Mining

Near the top left of the map is the town of Moab, Utah. The Department of Energy has begun a decade-long project to clean up 12 million tons of radioactive uranium mine waste near Moab that have contaminated land near the Colorado River. The waste is a threat that could pollute drinking water for millions. Cleanup estimates range between $412 million and $697 million.

You'll also note the town of Monticello, Utah at the far south of the map. Colorado's Grand Junction Daily Sentinel recently reported that residents of Monticello claim unusually high rates of cancer they believe were caused by a now-closed uranium mill.

The Los Angeles Times reported in a landmark series last year how uranium mining has left a legacy of cancer and a degenerative disease known as Navajo Neuropathy on the Navajo reservation that includes Arizona, Colorado, Utah and New Mexico.

The last image shows Yosemite National Park in California.

83 Claims within 5 Miles of Yosemite National Park,
50 Staked Since January 2003

ENVIRONMENTAL WORKING GROUP

Source: Environmental Working Group analysis of Bureau of Land Management'sLR2000 Database, July 2007 download.

Here, there are 83 claims within five miles of the Park, 50 of them staked in the last four years. You can see the five-mile boundary in a lighter shade of green. And there are still more national parks and monuments that face threats from mining.

National Parks and Monuments with mining claims within five miles include:

Park or Monument	Active Claims	Claims Staked Since Jan. 2003
Death Valley National Park, CA and NV	1,693	503
Arches National Park, UT	869	864
Grand Canyon National Park, AZ	815	805
Joshua Tree National Park, CA	409	117
Canyonlands National Park, UT	233	233
Mt. Saint Helens National Volcanic Monument, WA	204	105
Capitol Reef National Park, UT	161	151
Great Basin National Park, NV	154	18
Yosemite National Park, CA	83	50
Zion National Park, UT	66	54
Yellowstone National Park, ID, MT, WY	21	1

Without proper safeguards for our public lands, protecting national parks from these claims can be very costly. 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.

Mining is the Nation's Leading Source of Toxic Pollution

The increase in claims including those near our most treasured places is cause for concern given the significant impacts of mining for uranium and other metals. According to the U.S. Environmental Protection Agency's Toxics Release Inventory (TRI), metal mining is the leading source of toxic pollution in the United States—a distinction the industry has held for eight consecutive years (1998-2005), ever since mining was added to the TRI list.

The EPA has also reported that more than 40 percent of Western watersheds have mining contamination in their headwaters. The total cost of cleaning up metal mining sites throughout the West is an estimated $32 billion or more.

Unearthing Pollution

The extraordinary pollution generated by metal mining is caused largely by digging and the sheer size of contemporary mining operations. Modern mining practices are a far cry from the use of mules and pick axes that were common during the late 1800s when the Mining Law was written. In part, the techniques have changed because concentrated deposits of gold and other metals are largely gone. Mining companies now excavate "mineralized deposits," or ore that contains microscopic amounts of precious metal.

To extract the amount of ore they desire, modern mining operations typically have to remove enormous quantities of rock and dirt with heavy, earthmoving equipment. The holes they dig can exceed one mile in diameter and 1,000 feet in depth.

Mining companies commonly use cyanide or other chemicals to extract metal from tons of low-grade ore excavated in modern mining operations. In this process, known as heap leaching, companies excavate huge quantities of rock and earth filled with microscopic particles of precious metal. They place the earth on a plastic-lined heap leach pad and then spray or drip cyanide over the earth. As the cyanide trickles through the heap, it binds to the precious metal. The mining company then collects the metal from the cyanide solution in liquid-filled pits at the base of the rock pile

Cyanide and other chemicals can poison water, land and wildlife near mines, but most mining pollution results from digging. When mining companies dig for metals, they expose sulfur-laden rock to air and water, resulting in the formation of sulfuric acid. The acid often drains away from the mine site into ground or surface water where it makes the water so acidic that fish and other organisms cannot survive. This phenomenon is known as acid mine drainage. At California's abandoned Iron

Mountain mine, for instance, scientists discovered the world's most acidic water with a pH of -3.6, 10,000 times more acidic than battery acid.

The acid itself is not the only problem. When the acid comes in contact with rock, it dissolves toxic metals including arsenic, cadmium, lead and mercury, and carries those metals into water sources. Acid mine drainage from the Iron Mountain Mine, for example, has periodically released harmful levels of heavy metals into the Sacramento River and has virtually eliminated aquatic life in several nearby creeks. Roughly 70,000 people use surface water within three miles of Iron Mountain Mine as their source of drinking water. Acid mine drainage laden with heavy metals is a problem throughout the West from past and present mines.

Once it begins, such pollution is very difficult to stop. For example, Roman metal mines are still draining acid in Europe. Closer to home, the EPA wrote that Newmont's Phoenix proposal in Nevada "will likely create a perpetual and significant acid mine drainage problem requiring mitigation for hundreds of years." Furthermore, reclaiming acid draining mines after mining ceases is a huge financial liability. That State of New Mexico estimates that one copper mine will cost more than a quarter billion dollars to clean up.

Spreading Pollution

It is important to understand that mining pollution often spreads far beyond the site of the mine. For example, in Summitville, Colorado in 1992 a spill of cyanide and heavy metal-laden water killed some 20 miles of the Alamosa River. The area is now a Superfund Site. Taxpayers have already spent $190 million to clean up the area and will likely be tapped for millions more in the future.

Another example of extended mining impacts is the plume of contaminated groundwater beneath the Bingham Canyon mine. The EPA reports that the plume extends for 72 square miles. The mine is part of the Kennecott South site about 25 miles southwest of Salt Lake City that has been proposed for Superfund status. The mining watchdog group, Earthworks, estimated that the Bingham Canyon mine will leave taxpayers with the largest liability of any mine in the United States: more than $1.3 billion.

A third example comes from Arizona in 2006, where dust from a 400-foot-high tailings pile at Phelps Dodge's Sierrita Mine spread over a two- to four-and-a-half-mile radius, coating homes and lawns in nearby Green Valley with white powder. The company said it sampled the tailings several years earlier and found no cause for concern but the state cited the company for failing to prevent the dust from blowing onto homes.

Residents of Crested Butte, Colorado, Boise, Idaho and other towns, are currently facing significant mine proposals that could threaten local water supplies and other resources.

The threat we face today, however, is more serious than in years past. The specter of uranium mining operations is looming over the Grand Canyon and many other treasured national parks and monuments, and the 1872 Mining Law provides inadequate tools to control it. Indeed, the 1872 Mining Law does the opposite: it directly facilitates the problem by granting property rights with huge speculative incentives for staking claims, providing weak standards for protecting water, and creating a potential bonanza with no royalty payments if the claim pans out. Under current law, speculative plans to increase the use of uranium by nuclear industry officials and political leaders around the globe can place our public lands at risk and leave Westerners and federal land managers at the mercy of multinational mining companies.

When mining threatens to scar if not destroy places like the Grand Canyon, it is time to draw the line. We no longer need to subsidize the mining industry, particularly when other extractive industries operate on our public lands without the mining industry's special treatment and particularly when our national parks and monuments are at risk. We need reform, and we need it now.

HR2262 Would Bring Much-Needed Improvements to Mining Law

We recommend a number of changes to mining law, several of which parallel provisions contained in HR2262.

- **Royalty payments:** Mining companies should pay taxpayers a royalty on the value of the metal they extract. Currently, mining companies pay no royalty unlike every other extractive industry operating on federal land.
- **Abandoned mine cleanup fund:** Cleaning up abandoned mines is estimated to cost $32 billion or more. Congress should create a fund to accomplish this important task.
- **Tougher standards for mine cleanup:** Mining companies should be required to prevent perpetual water contamination and put up enough money before op-

erations begin to cover the full costs of cleanup should the company go bankrupt or abandon the site.

- **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. Congress should close this loophole.
- **No more land giveaways:** For years, mining interests have been able to buy claimed land from the federal government for $2.50 or $5.00 an acre. Since 1994, Congress has placed a moratorium on these giveaways that must be renewed annually. Congress should enact a permanent ban.

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 subcommittee to ensure that mining on our public lands is conducted in a responsible manner.

Thank you for this opportunity to testify.

Attachment #1

Coverage of EWG Mining Research Has Appeared in the Following Outlets:

ABC News
Albuquerque Journal
Argus Leader (Sioux Falls, South Dakota)
Arizona Daily Star (Tucson)
Arizona Republic (Phoenix)
Ashville Citizen-Times (North Carolina)
Associated Press
Billings Gazette
Boston Globe
Christian Science Monitor
The Daily News (Los Angeles)
Duluth News-Tribune (Minnesota)
Denver Post
Deseret Morning News (Salt Lake City)
Eugene (Oregon) Register-Guard
Fresno Bee (California)
The Gazette (Colorado Springs)
Houston Chronicle
Idaho Statesman (Boise)
International Herald-Tribune
Las Vegas Review-Journal
Modesto Bee (California)
New York Times
Philadelphia Inquirer
The Press-Enterprise (Riverside, California)
The Record (Stockton, California)
Reno Gazette-Journal (Nevada)
Rocky Mountain News (Denver)
Sacramento Bee
Salt Lake Tribune
San Francisco Chronicle
Seattle Post-Intelligencer
Spokesman-Review (Spokane, Washington)
The Star-Ledger (Newark, NJ)
St. Louis Post-Dispatch
St. Paul Pioneer Press (Minnesota)
St. Petersburg Times (Florida)
U.S. News & World Report
Ventura County Star (California)
Washington Post

Attachment #2

At the request of the Committee on Natural Resources Subcommittee on Energy and Minerals, we have included tables that show the distribution of mining claims among Congressional Districts.

Congressional districts with more than 1,000 mining claims, ranked by number of claims per district.

Representative	State	Number of mining claims	Estimated Acreage
Rep. Dean Heller	NV	168,906	3,677,297
Rep. Barbara Cubin	WY	38,094	941,652
Rep. Jim Matheson	UT	19,988	553,046
Rep. Rick Renzi	AZ	18,882	490,812
Rep. John T. Salazar	CO	14,188	301,591
Rep. Dennis R. Rehberg	MT	12,765	288,427
Rep. Trent Franks	AZ	11,601	294,365
Rep. Bill Sali	ID	7,441	185,147
Rep. Stevan Pearce	NM	6,834	182,949
Rep. Michael K. Simpson	ID	5,572	124,865
Rep. Gabrielle Giffords	AZ	5,260	114,002
Rep. Chris Cannon	UT	5,199	235,060
Rep. John T. Doolittle	CA	4,706	180,745
Rep. Jerry Lewis	CA	4,701	146,100
Rep. Howard P. Buck McKeon	CA	4,698	137,995
Rep. Raul M. Grijalva	AZ	4,322	125,059
Rep. Greg Walden	OR	3,997	130,103
Rep. Tom Udall	NM	3,702	83,466
Rep. Jon C. Porter	NV	3,335	187,250
Rep. Rob Bishop	UT	3,187	108,575
Rep. Stephanie Herseth Sandlin	SD	2,346	51,544
Rep. Wally Herger	CA	2,133	80,018
Rep. Peter A. DeFazio	OR	1,895	75,799
Rep. Doug Lamborn	CO	1,555	45,455
Rep. Bob Filner	CA	1,520	32,316
Rep. Cathy McMorris Rodgers	WA	1,385	28,578
Rep. Kevin McCarthy	CA	1,268	55,475
Rep. Mark Udall	CO	1,197	33,291

Members of House Natural Resources Committee with mining claims in their districts ranked by number of claims.

District	State	Number of mining claims	Estimated Acreage
Rep. Dean Heller	NV	168,906	3,677,297
Rep. Bill Sali	ID	7,441	185,147
Rep. Stevan Pearce	NM	6,834	182,949
Rep. Chris Cannon	UT	5,199	235,060
Rep. Raul M. Grijalva	AZ	4,322	125,059
Rep. Rob Bishop	UT	3,187	108,575
Rep. Stephanie Herseth Sandlin	SD	2,346	51,544
Rep. Peter A. DeFazio	OR	1,895	75,799
Rep. Doug Lamborn	CO	1,555	45,455
Rep. Cathy McMorris Rodgers	WA	1,385	28,578
Rep. Kevin McCarthy	CA	1,268	55,475
Rep. Mark Udall	CO	1,197	33,291
Rep. Jeff Flake	AZ	51	1,055
Rep. Elton Gallegly	CA	41	1,042
Rep. Thomas G. Tancredo	CO	22	389
Rep. Jim Costa	CA	21	1,045

Mr. COSTA. Thank you, Mr. Horwitt. I appreciate your testimony. Our next witness here is Mr. Dean to testify for five minutes.

STATEMENT OF TONY DEAN, RADIO HOST, SPORTSMAN, TONY DEAN OUTDOORS

Mr. DEAN. Chairman Costa and members of the Subcommittee, thank you so much for the opportunity to speak today. I consider it an honor to address this committee. My name is Tony Dean. I am a sportsman, conservationist and producer and host of radio and television outdoor shows. I live in Pierce, South Dakota. I am also a member of Sportsmen United for Sensible Mining, a campaign led by the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation, and with all due respect to the gentleman from Texas who is not with us, I think he was referring to my written testimony.

I am going to say that I am here on behalf of millions of hunters and anglers with the exception of the gentleman from Texas at his request, and others who recreate on and enjoy our public lands to address the need for reform of the general Mining Law of 1872.

I want to make clear of the fact we are not anti-mining. In fact, we support responsible mining. I have a letter with me today that is signed by 22 national hunting and fishing organizations, including the Congressional Sportsmen's Caucus, calling for commonsense reforms to the hardrock mining law, and I respectfully request that letter be submitted for the record.

If there is an overriding theme in what we have to say it is simply keep the public lands in public hands. The lands managed by the BLM and the Forest Service harbor some of the most important fish and wildlife habitat and provide some of the very finest angling and hunting opportunities in the country. Fifty percent of our

blue ribbon trout streams are found on public lands administered by the BLM and Forest Service.

More than 80 percent of the critical elk habitat in America is found on lands managed by the Forest Service and the BLM. Unfortunately, more than three million acres of our public lands, along with the extraordinary habitat they once provided, have essentially been given away to mining companies for as little as two and a half dollars to $5 an acre under the patenting provisions of the Mining Law of 1872. I want to applaud Chairman Costa and Chairman Rahall for introducing this legislation which would prohibit the continued forced sale or patenting of public lands and help keep public lands in public hands.

In addition to ending the forced sale of our public lands, this bill does protect special places on our public lands by declaring certain types of lands too special to ruin with industrial development. In addition to those listed in my written testimony, we would hope you could also include national wildlife refuges.

Sportsmen simply want biologists and resource professionals of the BLM and the Forest Service to have the authority to deny permits for mining in areas that are vital to fish, water and wildlife, and we strongly believe that mining should be on a level playing field with other resources when it comes to deciding where and how to develop our public lands. The Mining Law of 1872 does not require protection of natural resources. Mining activities and their harmful impacts on water quality, habitat and other resources are governed by a vague and weak patchwork of a combination of Federal and state laws.

At least $32 billion is estimated to be needed for mine waste cleanup in the United States. Sportsmen support a fair royalty on the mining industry with the returns going to states to help restore fish and wildlife habitat. I want to point out some places where mining done in a relatively irresponsible manner has caused some real problems. How not to mine in the West.

The Zortman Landusky Mine in Montana will be generating acid mine drainage for thousands of years, and will probably take tens of millions of taxpayer dollars and long-term water quality treatment. Then there is Mores Creek, just north of Boise, Idaho, which has literally been turned upside down by mine waste. The Stibnite mine on the Payette National Forest in southern Idaho pours arsenic, arsenic into the Salmon River.

The Silver Butte Mine in Oregon decimated 18 miles of Middle Creek, Rock Creek and Kentucky as a blue-ribbon trout stream but in stretches it is essentially dead because of coal mining, and the mines in the Coeur D'Alene River Basin in Idaho ruined thousands of acres of important wildlife habitat and miles of valuable fisheries but the example I am personally most familiar with is in my state, South Dakota.

In the early 1970s, I traveled to our lovely Black Hills to do some trout fishing in some of the Black Hills streams, and for the first time I saw Whitewood Creek, going on the outskirts of Lead and Deadwood, South Dakota. Deadwood, of course, is relatively famous. I think they named a TV series after it or maybe they named Deadwood after the TV series. I am not sure.

But there I saw Whitewood Creek which looked like any other trout stream in that it tumbled over rocks and had what we fly fishermen call pocket water but it had something else. It had the foulest looking color I have ever seen. It was like dirty dishwater gray. I would not dare cast a fly into that water, and I did some nosing around. What is causing this? And I was told it was the mine tailings from Home Stake Gold Mine, and I remember saying to my wife, "How can anyone allow something like this?"

Well, they did allow it, and frankly it was not until Governor Bill Janklow, our former Governor and a former member of this body and then Attorney General took Home Stake to court and, of course, I should preface it by saying every time somebody questioned what Home Stake was doing they trotted out the old argument, well maybe we will close the mine and take all these jobs with us, and that would usually shut up the local population.

But Governor Janklow, then the Attorney General, took Home Stake to court and won an out-of-court settlement which state biologists used to restore the stream, and just this past spring I caught and released two 20-plus-inch browns in Whitewood Creek, and it now boasts a good population of wild brown trout.

I want to thank you most sincerely for this opportunity to express my views to the Committee. We strongly support these efforts. We look forward to working with you to ensure that mining on public lands is modernized to the benefit of fish, wildlife and water resources. Thank you.

[The prepared statement of Mr. Dean follows:]

Statement of Tony Dean, Sportsman, Producer and Host of "Tony Dean Outdoors"

Chairman Costa, and members of the Subcommittee, thank you for the opportunity to speak today. It is an honor to address this committee. My name is Tony Dean. I'm a sportsman, a conservationist, the producer and host of a radio and television talk show on the Great Outdoors, and a resident of South Dakota. I am also a member of Sportsmen United for Sensible Mining, a campaign led by the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation. I am here on behalf of the millions of hunters and anglers, fish and wildlife professionals and others who recreate on and enjoy our public lands to address the urgent need for reform of the General Mining Law of 1872.

The Mining Law of 1872 is an antiquated statute that allows mining companies to take valuable hardrock minerals from our public lands without paying any royalties to taxpayers—often while degrading water quality, destroying fish and wildlife habitat, and limiting recreation opportunities. The law also offers up our cherished public lands for forced sales to mining companies for as little as $2.50 to $5 per acre.

The Mining Law of 1872 contains no requirements for protection of natural resources, such as water quality and wildlife habitat, and has resulted in a monumental legacy of environmental degradation. Many current and abandoned hard rock mines are sources of acid mine drainage and toxic pollutants such as cyanide, arsenic, mercury and lead. According to the EPA, 12,000 miles of streams and 180,000 acres of lakes and reservoirs have been polluted by mine waste and at least 40 percent of the headwaters of western rivers and streams are degraded from mineral activities. There are more than 500,000 abandoned hard rock mines in the U.S. Many cause extreme environmental degradation and are hazardous to public safety. An increasing number of mines will require water quality treatment in perpetuity. It is time that Congress addressed the enduring legacy of hard rock mining's impacts on our nation's fish and wildlife and other natural resources.

Signed into law by President Ulysses S. Grant, the Mining Law of 1872 was intended to attract settlers and prospectors to the frontier to open the West. Historically, mining played an important role in the social and economic well-being of many communities, and it was vital in the development and settlement of the western United States. Today, the West has been settled and is home to many of the

fastest growing cities in the country. Mining companies currently enjoy record prices for gold of nearly $700 per ounce. Times have changed, and now—after 135 years—it's time to update this archaic legislation.

That is why the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation launched the Sportsmen United for Sensible Mining campaign yesterday. I have a letter with me today signed by several national hunting and fishing organizations calling for common sense reforms to hard rock mining law. I respectfully request that this letter be submitted for the record.

I had my own experience with a stream damaged by gold mining. I moved to South Dakota in 1968, and several years later, traveled to the Black Hills to fish trout. I came across Whitewood Creek near Lead and Deadwood and was astonished at its appearance. It was ugly, dishwater grey, and devoid of fish life. It was only after Homestake closed the mine, and the State of South Dakota initiated court action, did they accept their stewardship responsibilities and rehabilitate the creek. Today, Whitewood Creek runs clean and clear and supports a good population of wild brown trout. But why was it necessary to initiate court action to get a huge company to accept their stewardship responsibilities? I wondered at the time, how many other Whitewood Creeks existed across the Western United States. As it turns out, there are far too many.

For many years, Congress has considered reform of the General Mining Law of 1872. We urge you to take action on modernizing the 135 year old mining law this Congress, and we offer our assistance and support.

Keep Public Lands in Public Hands

One of the most important reasons to reform the Mining Law of 1872 is to "Keep Public Lands in Public Hands." Public lands managed by the Bureau of Land Management (BLM) and the Forest Service harbor some of the most important fish and wildlife habitat and provide some of the finest hunting and angling opportunities in the country. For example, public lands contain well more than 50 percent of the nation's blue-ribbon trout streams and are strongholds for imperiled trout and salmon in the western United States. More than 80 percent of the most critical habitat for elk is found on lands managed by the Forest Service and the BLM, alone. Pronghorn, sage grouse, mule deer, salmon, steelhead, and countless other fish and wildlife species, as well as the nation's hunters and anglers, are similarly dependent on public lands.

America's hunters and anglers depend upon public lands and waters for habitat managed for the sustainability of fish and wildlife resources and open access to pursue their tradition of hunting and fishing. American families have enjoyed hunting, fishing and other forms of recreation on our public lands for generations.

More than 270 million acres of federal land are open to hardrock mining under the 1872 Mining Law, mostly in the Rocky Mountain West and Alaska. Because the1872 Mining Law has not been meaningfully reformed, many of America's most treasured public lands are at risk—important wildlife habitat and hunting areas, valuable fisheries, sensitive roadless areas and popular recreation sites.

Unfortunately more than three million acres of our public lands—along with the extraordinary habitat they once provided—have been practically given away to mining companies for as little as $2.50 to $5 per acre under the patenting provisions of the Mining Law of 1872. I applaud Chairman Costa and Chairman Rahall for introducing legislation in the form of H.R. 2262, the Hardrock Mining and Reclamation Act of 2007, which would prohibit the continued forced sale or "patenting" of public lands. Title I of this legislation eliminates the issuance of patents for vein, lode, placer and mill site claims.

Protection of Special Places and Crucial Wildlife Habitat

In addition to ending the forced sale of our public lands, the Hardrock Mining and Reclamation Act of 2007 protects special places on our public lands by declaring that certain types of lands shall not be open to the location of mining claims, subject to valid existing rights. Special places protected under Title II of this legislation include Wilderness lands, Wilderness Study Areas, Inventoried Roadless Areas, National Parks, Wild and Scenic Rivers and National Monuments and Areas of Critical Environmental Concern on BLM lands. I recommend that these protections be extended to National Wildlife Refuges as well, subject to valid existing rights. These special places include some of the best fish and wildlife habitats in the U.S. and many of them offer spectacular hunting and fishing opportunities. These areas are among the crown jewels of our public lands and should be off-limits to new mining.

Sportsmen simply want biologists and resource professionals of the BLM and the Forest Service to have the same authority to examine the potential impacts of mining in areas that are vital to fish, water, and wildlife resources, and to be able to

deny a permit if those values would be compromised by mining activities. The U.S. Forest Service and Bureau of Land Management should have the authority to determine at both the site permitting level and during the planning process that areas with crucial fish and wildlife values are not compatible with mining. Resource professionals who know on the ground conditions the best should be able to maintain the status quo on public lands that harbor endangered species; crucial calving, lambing and winter range used by elk, mule deer, pronghorn, big horn sheep and other game species; sage grouse leks and buffers surrounding leks; and waters that are strongholds to imperiled native trout and salmon species.

Environmental Considerations and Multiple Use

The Mining Law of 1872 does not require protection of natural resources. Mining activities and their harmful impacts on water quality, wildlife habitat and other natural resources are governed only by a vague and weak patchwork of federal and state laws. Sportsmen support strengthening protections for fish, wildlife and water resources against the adverse impacts of mining activities.

H.R. 2262 takes vitally important steps to address the environmental costs of hardrock mining and return balance to the management of our public lands by establishing environmental standards for mining activities. Title III ensures that the Secretary of the Interior shall require that all mineral activities on mining, millsite and tunnel claims shall "protect the environment, public health and public safety from undue environmental degradation." Title III also requires that the Interior Secretary assure that all mineral activities are conducted in a manner that recognizes the value of such lands for other uses including recreation, wildlife habitat and water supply.

H.R. 2262 affirms the critical principal of multiple use management of BLM lands that is laid out in the Federal Land Policy and Management Act (FLPMA). FLPMA's multiple use provision requires BLM to balance competing resource values to ensure that the public lands are managed in a manner that will best meet the present and future needs of the American people. FLPMA mandates that BLM manage for multiple uses in a manner that protects the quality of ecological, environmental, air, water and other values.

Unfortunately, the Mining Law of 1872 doesn't allow for multiple use management and protecting ecological, environmental, air, water and other values. BLM has insisted that it must approve all mining activities on public lands, even when undue environmental degradation will result. Title III of H.R. 2262 firmly establishes that BLM must manage mineral activities in the context of multiple use and other values, including providing wildlife habitat, hunting, fishing and other forms of recreation. This much needed authority is not new, it simply aligns the 135 year old Mining Law with public land laws passed in the 1970s. For example, the Forest Service and BLM routinely deny grazing permits or timber sales because those activities could imperil water resources or compromise important fish and wildlife habitat. H.R. 2262 allows those agencies the right to deny a mining permit if mining will cause an unacceptable amount of environmental degradation.

This common-sense provision will allow federal resource professionals discretion to deny mining permits in areas of high fish and wildlife value such as the Nine Mile Creek watershed about 30 miles west of Missoula. The Forest Service, Trout Unlimited and a lot of other groups have spent a lot of time and money on mining-related restoration in the watershed and are beginning to make some headway. Then several months ago, a miner purchased an old claim at the mouth of the creek to suction dredge from July to October of this year, in the very same stretch of creek that is being restored. Agency geologists say there is no chance he can make any money with the venture. But he will make a mess, add sediment to the creek, kill some fish and create a bunch of big holes in the stream channel—because he can. It happens time and time again. But the agency's hands are tied—if he submits a valid plan of operations, there is basically nothing they can do to stop him.

H.R. 2262 also requires that any active mining permits contain reclamation plans and evidence that companies have adequate financial resources to assure that reclamation will take place. It requires that lands be restored to a condition capable of supporting their prior uses, including providing quality fish and wildlife habitat. The environmental framework established by Title III will help to prevent the long-lasting water quality contamination and other environmental problems that have resulted in a staggering backlog of challenging and costly mine cleanups. For example, just north of Boise, Mores Creek, a tributary to the Boise River, has been turned upside down by past mining activities. The area could and should support a recreation-based economy, but because the state and federal government have no resources to clean up the past damage and restore the area, the nearby communities suffer. The Zortman Landusky mine in Montana will generate acid mine drainage

for thousands of years, and will likely require tens of millions of taxpayer dollars in long term water quality treatment.

Unfortunately the Zortman Landusky Mine, Whitewood Creek and Mores Creek are not isolated examples. Sportsmen across America have experienced the tragedy of dead streams and ruined wildlife habitat. The Stibnite mine on the Payette National Forest in southern Idaho pours lethal arsenic into the Salmon river, the Silver Butte mine in Oregon decimated 18 miles of Middle Creek, Rock Creek in Kentucky is a blue ribbon trout stream but is devoid of life in stretches due to coal mining, the mines in the Coeur D'Alene river basin in Idaho ruined thousands of acres of important wildlife habitat and miles of valuable fisheries. These examples are just the tip of the proverbial iceberg.

H.R. 2262 would help to prevent such environmental problems by establishing a solid environmental framework to regulate hardrock mining under a single, strong federal law.

Reclamation and Restoration of Fish and Wildlife Habitat

At least $32 billion is estimated to be needed for clean-up costs to address the legacy of hard rock mining stemming from the more than one half million abandoned mines in the U.S. Of particular importance to sportsmen is the need for a reclamation fund to restore fish and wildlife habitats that are adversely affected by past mining activities. H.R. 2262 establishes an Abandoned Locatable Minerals Mine Reclamation Fund which would be funded by fees and royalties from active hardrock mining. Expenditures from this fund would be available for the restoration and reclamation of land and water resources.

Sportsmen support a fair royalty on the mining industry with the returns going to states to help restore fish and wildlife habitat and improve hunting and angling opportunities. Since 1977, the coal industry has contributed more than $7 billion to recover lands affected by abandoned coal mines. Hunters and anglers in the West think it's time the hard rock mining industry contributed to the recovery of lands and waters damaged by mining. Unlike the coal, oil and gas industries, the hardrock mining industry currently pays no royalties on the taxpayer-owned minerals it mines on federal lands. It is estimated that the U.S. government has given away more than $200 billion in mineral reserves through royalty-free mining and the give-away of our public lands.

I would recommend to the committee that a set amount from the Abandoned Locatable Mine Reclamation Fund be made available each year for restoring fish and wildlife resources. These funds should be made available to state fish and wildlife departments, conservation organizations, and others to implement fish and wildlife habitat improvement projects associated with past mining.

Little restoration of abandoned hardrock mine lands occurs in the West today because there is little money available for clean-up, and because of liability concerns associated with handling mine waste. Sportsmen support "Good Samaritan" protections for communities and others that wish to conduct restoration activities and that have no connection to the abandoned mine waste. Sportsmen groups know how to work with local communities and states to clean up abandoned mines, but the status quo provides an enormous disincentive for action. For example, it took Trout Unlimited two years to secure permits to clean up several piles of abandoned mine waste in Utah's American Fork Creek. The waste was harming a state-sensitive fish species, the Bonneville Cutthroat Trout. After two years of haggling with EPA over permits, it took Trout Unlimited about a month to conduct the clean-up. With the proper incentives, sportsmen and conservation organizations can provide a helping hand to address the much needed reclamation of abandoned hardrock mining sites.

Conclusion

Thank you, most sincerely, for this opportunity to express my views to the Committee. I applaud Chairmen Costa and Rahall for the introduction of H.R. 2262, and for addressing the urgent need for reforming the Mining Law of 1872. Sportsmen strongly support these efforts and we look forward to working with you to ensure that mining on public lands is modernized to the benefit of fish, wildlife, and water resources.

Mr. COSTA. Thank you, Mr. Dean, and we appreciate your testimony, although you did exceed your timeline. Nonetheless, we appreciate your being here. Now I would like to recognize the following witness, Mr. Marchand, to testify. Mr. Marchand.

STATEMENT OF MICHAEL MARCHAND, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, WASHINGTON STATE

Mr. MARCHAND. Good morning, Chairman Costa, Ranking Member Pearce and members of the Subcommittee. My name is Mike Marchand, and I am testifying today on behalf of the Confederated Tribes of the Colville Reservation in Washington State. I am Chairman of the Colville Business Council, the governing body for the Tribes. The Tribes appreciate this opportunity to testify regarding our experiences in dealing with the proposed mineral development on Federal public lands under the 1872 law.

The lands that we have in question today are what we call the old "North Half" of the Colville Reservation where the Colville Tribes have reserved hunting and fishing rights under an 1891 agreement with the United States. As a result of our experiences, we have learned that the 1872 Mining Law must be reformed. We believe the current bill is an excellent beginning for that reform but it needs to be modified to include specific provisions to protect tribal reserved rights.

We have submitted detailed written testimony and also intend to provide some suggestions for provisions to protect tribal reserved rights. I want to focus my points on the following. History of the North Half. The Tribes are a confederation of 12 original Tribes from the northwest which includes such Tribes such as Chief Joseph's Nez Perce people. The Colville Reservation is located in north central Washington. It was established in 1872 by executive order.

At that time, it consisted of three million acres. The entire area is rich in mineral resources, particularly the northern portion. In 1891, the Colville Tribes entered into an agreement with the United States to cede the North Half of this reservation, roughly 1.5 million acres of the original three million. We were paid about $1 per acre under that agreement.

The Tribes were promised and reserved the hunting and fishing rights throughout this North Half that we ceded. The agreement was ratified by Congress, and in the 1975 Antoine v. Washington case the United States Supreme Court affirmed our hunting and fishing rights for the North Half. The North Half continues to be a very important cultural and hunting and fishing area for my people.

Many of our Tribal members depend on food for the meat and fish under these rights. The Colville Tribes exclusively regulates Tribal member hunting and fishing on the North Half to ensure sustainability of the wildlife resources. Any development in the North Half that could affect our wildlife habitats or fish habitats, water resources and native plants is a matter of serious concern to our people.

Recent attempts at mining development on the North Half. In the early 1990s, Battle Mountain Gold Company proposed an open pit gold mine for Buckhorn Mountain on the North Half. The Federal agencies involved were the Forest Service, Bureau of Land Management and the law was the 1872 Mining Law. The Tribes had very serious concerns about this proposal and repeatedly sought Federal agencies to uphold your trust responsibility to pro-

tect the resources in which we hold reserved rights in the wildlife and habitat, stream flows and water quality.

The Federal agency position was essentially that the company had a right to mine under the mining law, and that the agency's trust responsibilities consisted only of ensuring that general laws were complied with. In other words, the trust responsibilities that we were promised apparently meant nothing in this case.

The Colville Tribes and other groups managed to block this open pit mine through various lawsuits. Washington State Appeals Board concluded that the company's water quality stream flow mitigation plans were fundamentally flawed under state law. This shows that our concerns about the mine were justified. We were unable to show in our Federal litigation that the Federal agencies had violated any Federal laws.

It troubles us that such a flawed project did not raise any red flags under Federal law or under the special trust responsibility promised to us to protect our rights. An Indian Tribe should not have to depend on a state law to protect its fundamental rights promised to us by the Federal government.

Recommendations for H.R. 2262. The bill is commendable and a comprehensive effort to reform the mining law but it lacks any procedural and substantive safeguards for Tribal reserved rights that could be affected by mining development. We will be providing suggestions for language to be added to Section 303 of the bill to provide those Tribal rights safeguards. In addition, we will provide some suggestions for clarifying the references to the apparent waiver of sovereign immunity in Section 504 savings clause.

So in conclusion I would just like to thank you for this opportunity to testify today. Thank you.

[The prepared statement of Mr. Marchand follows:]

Statement of The Honorable Michael E. Marchand, Chairman, Colville Business Council, on behalf of the Confederated Tribes of the Colville Reservation

Good morning Chairman Costa, Ranking Member Pearce, and members of the Subcommittee. My name is Mike Marchand, and I am testifying today on behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or "Tribes"). I am the Chairman of the Colville Business Council, the federally recognized governing body of the Colville Tribes. The Colville Tribes appreciates this opportunity to testify regarding our experiences in dealing with proposed mineral development on federal public lands in which the Tribe has reserved rights, specifically a large portion of the Reservation that was opened to the public domain in the late 1800s that we refer to as the "North Half." It is this experience that shapes our view of how the General Mining Act of 1872 ("1872 Mining Law") needs to be reformed.

As explained in more detail below, the Tribes has learned firsthand that the 1872 Mining Law does not provide adequate environmental safeguards for fish and wildlife habitat, hydro-geologic conditions, water quality, and post-mining reclamation. In this regard, H.R. 2262 represents badly needed reform for most of these problems. However, the legislation does not in its current form address another shortcoming of the 1872 Mining Law: its failure to provide any consideration of special tribal rights and interests in the natural resources of federal public lands and the corresponding federal trust duty to safeguard those rights.

A brief legal history of the Colville Tribes and Colville Reservation is necessary to set the context for our experiences and views on the 1872 Mining Law and H.R. 2262. Under its Constitution, which was first approved by the Department of the Interior in 1938, the Confederated Tribes of the Colville Reservation is a single tribe and tribal government formed by confederating 12 smaller aboriginal tribes and bands from all across eastern Washington State. The Colville Reservation today encompasses approximately 2,275 square miles (1.4 million acres) in north-central Washington State. The Colville Tribes has nearly 9,300 enrolled citizens, making it

one of the largest Indian tribes in the Pacific Northwest. About half of the Tribes' citizens live on or near the Colville Reservation.

The North Half and Its Importance to the Colville Tribes

The Colville Reservation was established in the same year as the Mining Law, by the Executive Order of July 2, 1872. At that time, the Colville Reservation consisted of all lands within Washington Territory bounded by the Columbia and Okanogan Rivers, extending northward to the U.S.-Canadian border. As established by the Executive Order, the Colville Reservation encompassed approximately 3 million acres.

During the 1880s, the Colville Tribes came under increasing pressure to cede the North Half of the Colville Reservation, in large part because it was rich in minerals. A federal delegation was dispatched to the Reservation to seek a cession of the Tribes' lands. In 1891, many of the various aboriginal Indian tribes and bands of the Colville Reservation approved the Agreement of May 9, 1891 ("1891 Agreement"), under which the Tribes ceded the North Half, which consists of roughly 1.5 million acres. The North Half is bounded on the north by the U.S.-Canadian border, on the east by the Columbia River, on the west by the Okanogan River, and on the south is separated from the south half of the Colville Reservation by a line running parallel to the U.S.-Canadian border located approximately 35 miles south thereof.

The 1891 Agreement reserved to the Colville Tribes and its citizens several important rights to the North Half, including (a) the right of individual Indians to take allotments within the ceded territory, which allotments would be held in trust for their benefit and excluded from the public domain; (b) payment by the United States for the ceded lands of $1.5 million (one dollar per acre); and (c) express reservation in Article 6 of the Agreement of tribal hunting and fishing rights throughout the ceded lands, which rights "...shall not be taken away or in anywise abridged...The reservation of these rights in Article 6, in turn, preserved instream and associated water rights for fish and wildlife that a federal appeals court decision, in the Walton case discussed below, found were secured in the 1872 Executive Order.

Congress, however, did not immediately ratify the entire 1891 Agreement or provide the payment promised to the Colville Tribes. Instead, in the Act of July 1, 1892, 27 Stat. 62, it restored the North Half to the public domain and opened the lands to settlement. Then, in the Act of February 20, 1896, 29 Stat. 9, Congress provided that the mining laws of the United States, including the 1872 Mining Law, would apply throughout the North Half. Thus, Congress opened the North Half to the public domain and applied federal mining laws to the North Half before it actually paid the Tribes for the ceded lands. Congress did not fully ratify the 1891 Agreement to affirm the hunting and fishing rights or pay the Colville Tribes for the North Half until it passed a series of appropriations acts from 1906 through 1910.

The history of the ratification of the 1891 Agreement and the nature of the tribal rights reserved are set forth in the U.S. Supreme Court's decision in Antoine v. Washington, 420 U.S. 194 (1975). The specific issue in Antoine was whether the State of Washington could regulate hunting and fishing on the North Half by citizens of the Colville Tribes. The Court held that the hunting and fishing rights reserved by the Colville Tribes in the 1891 Agreement were in full force and effect, and that Congress's method of ratification had the same Supremacy Clause effect as a treaty to pre-empt State regulation of tribal hunting and fishing activities. Also, it is important to note that the U.S. Court of Appeals for the Ninth Circuit has examined the events leading up to the establishment of the Colville Reservation under the 1872 Executive Order, and has emphasized the elements of a bargain, analogous to a treaty, between the Indians and the United States. Confederated Tribes of the Colville Reservation v. Walton, 647 F.2d 42, 44, 46-7 (9th Cir. 1981). In Walton, the Court concluded that one of the inducements for the Indians to confine themselves to the Colville Reservation (and give up valuable tracts of land with improvements outside the Reservation) was to secure access to traditional salmon fisheries in the Columbia River and its tributaries. Accordingly, the Court found that the 1872 Executive Order reserved federal water rights to the Tribes for fisheries preservation and irrigated agriculture. 647 F.2d at 47-48. As noted above, the Tribes' federal water rights for fish and wildlife were preserved for the North Half in the 1891 Agreement.

Today, the North Half remains a critically important subsistence and cultural hunting area for Colville tribal citizens. The area is remote and mountainous, with substantial forest resources, much of it in federal public lands administered by the U.S. Forest Service or the Bureau of Land Management. The Colville Tribes exclusively regulates North Half hunting by tribal citizens in much the same manner as it regulates on-Reservation hunting, and coordinates with the Washington Depart-

ment of Fish and Wildlife for habitat and population surveys. Deer, elk, and moose from the North Half continue to be an important source of food for tribal families. Although the construction of the Grand Coulee Dam in 1940 immediately eliminated salmon from the Columbia River on the North Half, salmon are still present in the entire length of the Okanogan River and the Tribes is actively working to restore their abundance in that river.

The fish, wildlife, and ground and surface water resources of the North Half are of critical cultural and legal importance to the Colville Tribes. The federally protected rights in these resources that the Tribes has preserved from its original ownership of the North Half, together with the potential impact within adjacent Colville Reservation watersheds from development activities on the North Half, make the Tribes' interests in this area unique. And of course, mineral development entails a very high level of environmental impact.

Mining Development in the North Half in the Last Decade

During the 1990s and continuing today, the Colville Tribes has been very actively involved in responding to attempts to develop a gold deposit located on Buckhorn Mountain, near the Canadian border within the North Half. In the early 1990s, Battle Mountain Gold Company proposed the Crown Jewel project—a huge open-pit, cyanide leach process mine for the Buckhorn Mountain and its vicinity. This proposal was governed by the 1872 Mining Law.

The Colville Tribes actively opposed the Crown Jewel proposal because it would have caused great disruption to wildlife in an area where many tribal members hunt and would have permanently altered the geohydrology and water quality in the mine area and adjacent streams. It would have created a large, permanent pit lake of dubious water quality, and left hundreds of tons of potentially toxic waste rock and tailings in the vicinity of the mine. This would have adversely affected our hunting, fishing, and water rights under the 1891 North Half Agreement, and also seemed in direct conflict with the basic cultural values of the Colville Tribes.

In opposing the Crown Jewel proposal, we filed at least two major lawsuits in federal court, a patent protest with the Department of the Interior, and two appeals in Washington State administrative and judicial tribunals. Ultimately, Washington State law provided the basis for defeating the open-pit proposal. A state administrative appeal board reversed the 16 water rights permits that had been granted by a state agency, on the grounds that the company's mitigation plan in fact did not mitigate for streamflow depletions and shifts in groundwater behavior. Okanogan Highlands Alliance, Colville Tribes, et al. v. State of Washington, Dept. of Ecology et al., Pollution Control Hearings Board, State of Washington, No. 97-146 (Final Findings of Fact, Conclusions of Law and Order, Jan. 19, 2000). That same appeal tribunal also found fundamental flaws in the company's proposed water quality protection plans. The company ultimately decided not to pursue all its appeal opportunities for the adverse state decisions, and instead abandoned the open-pit proposal.

Despite success under State law, we were very disappointed to discover during the course of our efforts against the Crown Jewel proposal that federal agencies—including the Bureau of Land Management, but in particular, the U.S. Forest Service—took the position that the 1872 Mining Law all but gave the company a right to mine in whatever manner it deemed necessary to promote its economic interests. At best, the Forest Service paid lip service to the concept that as the lead federal agency responsible for the Environmental Impact Statement, it also had a special trust responsibility to safeguard the Colville Tribes' rights and interests in the natural resources of the North Half. The Forest Service took the position that its special trust responsibility was in fact not special at all, and could be entirely satisfied by complying with other federal statutes related to natural resources protection. The federal courts essentially agreed. Okanogan Highlands Alliance et al. v. Williams, 236 F.3d 468 (9th Cir. 2000). In other words, a project that was found to be fundamentally flawed under state law triggered no red flags or trust responsibility concerns under federal law. This remains deeply troubling to the Colville Tribes, and serves as an example of why H.R. 2262 needs to include some provisions specific to the reserved rights of tribes.

More recently, the Kinross Gold Company has been pursuing an underground mine proposal for the Buckhorn Mountain gold deposit. Although it seems apparent that the underground mine would eliminate some of the more grossly adverse environmental impacts (for instance, there will be no huge open-pit lake that would fill with water likely to violate Washington water quality standards for several heavy metals), this proposal still involves potentially serious adverse impacts to the Colville Tribes' interests. At this point, we have not launched an all-out campaign of appeals and litigation to block this project, but that does not mean we actively support the proposal or that we are satisfied it can be implemented without poten-

tially serious harm. We are attempting to work with Washington State agencies to develop acceptable mitigation requirements for certain key permits that have not yet been issued. In general, the federal presence on the project is minimal compared to the open-pit proposal, in part because the lands for the project have been patented in the past few years. If H.R. 2262 had been the law governing the underground proposal, patenting would not have occurred and federal responsibilities would have been greater.

Mining Development on Tribal Lands

It should also be noted that since the late 1970s, the Colville Tribes has on three occasions formally considered development of its own mineral resources (which is governed not by the Mining Law but by statutes specific to Indian lands). In each case, however, the Tribes' governing body—recognizing the significance of the mining issue—has sought the input of tribal citizens. One such proposal involved a molybdenum mine at Mt. Tolman on the Colville Reservation. That project was initially approved by a referendum vote of tribal members in the late 1970s. The Tribes subsequently entered into a lease agreement with Amax Mining Co. (now an affiliate of the Phelps Dodge Corporation) to proceed with the project. Amax walked away from the project in the early 1980s, however, in response to a severe depression in the molybdenum market.

The recent rise in molybdenum prices has prompted renewed interest in Mt. Tolman. In 2006, the Tribes conducted another referendum vote of Colville tribal citizens for guidance on whether to revive the Mt. Tolman project. Despite the need for governmental revenue and jobs, the referendum was overwhelmingly rejected, and the Tribes' governing body has no plans at this time to consider it further. In addition, in the 1990s, the Tribes conducted a series of public meetings to ascertain the views of its citizens regarding gold development on the Reservation, again because of the potential for governmental revenue and jobs. The response at that time was also strongly against such development.

Recommendations for H.R. 2262

If H.R. 2262 had been the governing law for the Crown Jewel open pit proposal, there is no question that the federal agencies would have had to do more to identify potential impact on the natural resources of the North Half in which the Colville Tribes holds reserved rights, and to do more to require mitigation for those impacts. So this bill is undeniably a good effort at reform.

H.R. 2262, however, does not have any provisions (a) requiring mining applicants to identify potential tribal rights in the area to be affected by a proposal; or (b) requiring federal agencies to understand the nature of those rights and how they are currently exercised, or to ensure that mitigation is required for impacts to those rights.

Conclusion

The Colville Tribes has grave concerns about mining on the North Half, particularly under the terms of the 1872 Mining Law, and we have also been wary of proceeding with any mineral development within the Reservation (where the Mining Law does not apply). However, the Colville Tribes is not driven by an anti-mining ideology. We cannot rule out that the Tribes or its citizens may one day conclude that there is a way to have responsible mineral development on the Colville Reservation. We are pragmatists, not romantics or ideologues, and we appreciate from our experiences in managing our forest resources the value of sustainable natural resources development. For us, the key concepts are pragmatism and sustainability, consistent with the protection of basic tribal rights and values. Mineral development in the 21st century under a 19th century Mining Law is neither pragmatic nor sustainable.

The Colville Tribes appreciates the opportunity to testify. We will be providing the Subcommittee with our proposed changes to H.R. 2262 that will address the issues we raise in this testimony, and look forward to working with the Subcommittee on these and other issues affecting Indian tribes. At this time, I would be happy to answer any questions the Subcommittee may have.

Response to questions submitted for the record by the Confederated Tribes of the Colville Reservation

(Note: the Colville Tribes has submitted in a separate document recommendations on how, in its view, H.R. 2262 should be modified)

(1) How would the Tribe benefit from the ability of land managers to balance mining with other land uses as proposed under H.R. 2262?

The balancing of mining with other land uses by federal agencies as proposed under H.R. 2262 would generally benefit the Confederated Tribes of the Colville Reservation ("Colville Tribe" or "Tribe") by providing the Tribe with an opportunity to comment on a claim holder's response to the new substantive criteria established by the Act, specifically those listed in Section 303(b). Although the criteria in Section 303 do not explicitly mention Indian tribes or tribal reserved rights, they would provide an opportunity for the Tribe to participate in the general public comment process on issues that impact the Tribe's interests.

(2) What other key issues from the Tribe's perspective should mining law reform address?

As noted in the Tribe's written testimony, H.R. 2262 is a solid beginning for much needed comprehensive reform of the General Mining Law of 1872, but it does not include any provisions specific to the special reserved rights of Indian tribes or the corresponding federal trust duty to protect those rights. This is not surprising, as the 1872 Mining Act applies only to those lands in the public domain. Most tribal landholdings are either Indian reservations or other categories of land falling within the statutory definition of "Indian country" as set forth at 18 U.S.C. § 1151. These lands are not in the public domain and are, therefore, outside the purview of the 1872 Mining Act.

The Tribe has submitted to the Subcommittee a document with specific recommendations on how H.R. 2262 should be modified to more specifically address tribal interests. These recommendations are therefore only summarized here.

First, many Indian tribes in many cases possess treaty or reserved rights on ceded lands that may no longer be part of the tribes' land bases. Such is the case with the area that we refer to as the North Half. As noted in our suggested changes to H.R. 2262, the Colville Tribe believes that the legislation should be amended to include substantive criteria in Section 301(b) that address the reserved rights in these instances.

Also, the Tribe believes that the apparent waiver of tribal sovereign immunity in Section 504(e) should be clarified to provide that nothing in the Act shall be construed to waive tribal sovereign immunity. Finally, the Tribe believes that it is appropriate to include tribal-specific provisions in the Reclamation Fund sections of the bill.

(3) What are your thoughts on Title II, including Section 201(b)(6)? Have the tribes had any experience declaring a site sacred under Executive Order 13007?

The Tribe supports title II, which provides that certain lands shall not be open to the location of mining claims under the general mining laws on or after the date of enactment of the Act. Specifically, Section 201(b)(6) excludes lands identified as "sacred sites" in accordance with Executive Order 13007. EO 13007 generally provides that in managing federal lands, each executive branch agency with statutory or administrative responsibility for the management of federal lands shall, to the extent practicable, (a) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (b) avoid adversely affecting the physical integrity of such sacred sites. EO 13007 defines "sacred sites" as those sites identified by an Indian tribe. The Tribe strongly supports this provision because EO 13007 acknowledges and reaffirms the government-to-government relationship between the United States and Indian tribes.

The Tribe has not had occasion to formally declare a sacred site under EO 13007. Rather, the Tribe has—by tribal resolution and by agreements with various federal agencies—assumed responsibility under Section 106 of the National Historic Preservation Act (NHPA) for administering the pertinent provisions of that Act for all lands within the boundaries of the Colville Reservation and all off-reservation trust allotments. The NHPA and its implementing regulations provide for specific treatment of sacred sites. The Tribe has generally had its concerns adequately addressed in the Section 106 process. Hence, the Tribe has not had a need to cite the more general EO 13007 provisions in connection with the sacred site issues that our technical staff generally becomes involved with.

Confederated Tribes of the Colville Reservation
Proposed Modifications to H.R. 2262

September 12, 2007

Consistent with the Confederated Tribes of the Colville Reservation's ("Tribe's") testimony at the July 26, 2007 Energy and Minerals Subcommittee hearing, the Tribe submits the following recommendations for modifying H.R. 2262. As noted in our written testimony, H.R. 2262 is an excellent beginning for much needed comprehensive reform of the General Mining Law of 1872. As introduced, however, the bill does not include any provisions applicable to the special reserved rights of Indian tribes or the corresponding federal trust duty to protect those rights. In general, H.R. 2262 treats Indian tribes the same as any other member of the general public. In instances where mining activity has the potential to affect tribal reserved rights, the Tribe believes that those rights should be addressed specifically in this bill.

Section 303. Proposed New Subsections.

Section 303 includes many new requirements for applicants, operators, and the Secretaries of the Interior and Agriculture. There are several places where new provisions to safeguard tribal reserved rights should be incorporated, as indicated below (language offered with subsequent subsections to be renumbered accordingly):

"[New Subsection 303(b)(9).] A description of any rights in natural or cultural resources reserved by treaty, statute, executive order, or other federal law by or on behalf an Indian tribe that may be affected by planned mineral activities, and measures planned to protect, or mitigate for impacts to, such resources, including how the affected tribe is to be involved in the development and implementation of such measures."

"[New Subsection 303 (c)(7).] An explanation of how the proposed condition of natural or cultural resources in which an Indian tribe holds rights reserved by treaty, statute, executive order, or other federal law will be adequate to protect the affected tribe's use of such resources or to mitigate for impacts to the affected tribe's use of such resources."

"[New Subsection 303 (d)(1)(D).] The condition of natural or cultural resources in which an Indian tribe holds rights reserved by treaty, statute, executive order, or other federal law, after the completion of mineral activities and final reclamation, will be adequate to protect, or to mitigate for impacts to, the affected tribe's use of such resources."

Section 402. Proposed New and Modified Subsections.

Sections 401-405 establish a Reclamation Fund and provide for its use, and sections 421-423 establish a Community Impact Assistance Fund and provide for its use. Both of these funds represent an innovative approach to reclamation and impact assistance derived from proceeds of mineral activity. The Colville Tribe acknowledges and appreciates the provisions for expending the Reclamation Fund to restore Indian lands (Section 403(a)), for making Reclamation Funds available to Indian tribes performing reclamation activities (Section 404), and for providing Impact Funds to affected tribes (Section 422).

In addition, consistent with our rationale for adding tribal-specific provisions to Section 303, the following tribal-specific provisions should be added to Section 402 with respect to uses of the Reclamation Fund.

"[New Subsection 402(a)(8).] Restoring and enhancing land, water resources, fish and wildlife habitat, and cultural resources in which an Indian tribe holds reserved rights under a treaty, statute, executive order, or other federal law."

"[Modified Subsection 402(b)(3) [New language in italics]. The restoration of land, water, fish and wildlife, and cultural resources previously degraded by the adverse effects of past mineral activities, *including, but not limited to, such resources in which an Indian tribe holds rights reserved under a treaty, statute, executive order, or other federal law."*

Section 504(e). Waiver of sovereign immunity of Indian tribes, Proposed Modification.

The last sentence of 504(e) currently reads, *"Nothing in this Act shall be construed to be a waiver of the sovereign immunity of an Indian tribe except as provided in section 303."*

It should be rewritten to read, *"Nothing in this Act shall be construed to be a waiver of the sovereign immunity of an Indian tribe."*

Discussion of Sovereign Immunity Provision.

The sovereign immunity of an Indian tribe from unconsented suit is a very significant, carefully guarded attribute of tribal sovereignty. Tribes routinely negotiate voluntary waivers of immunity in a variety of contractual instruments, with the scope and nature of the waiver tailored to the circumstances of the transaction. Some tribes have enacted statutes to specify the circumstances under which immunity is waived. Congress has on occasion also waived the immunity of tribes. See *Blue Legs v. United States Bureau of Indian Affairs,* 867 F.2d 1094, 1096-1097 (8th Cir. 1989) (holding that the Resource Conservation and Recovery Act of 1976 authorizes suits against Indian tribes by private parties).

Federal courts have routinely held that a Congressional waiver of immunity will not be lightly found, but must be clear, express and unequivocal. *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58-59 (1978). As drafted, the bill's waiver provision is vague and confusing. In addition, for Congress to waive tribal immunity in the context of comprehensive reform of the 1872 Mining Law, there should be a clear policy rationale for doing so, and none is apparent in the case of H.R. 2262.

It seems clear by the plain language that 504(e) intends to waive tribal sovereign immunity in certain instances, with reference to section 303. But a clear view of the scope of the waiver does not emerge from a review of section 303. Section 303 is a long section containing a variety of requirements that apply variously to "persons," "applicants," "operators," and the Secretaries of the Interior and Agriculture. None of the many requirements in section 303 expressly apply to Indian tribes, and there is no language anywhere in section 303 that refers to a waiver of tribal immunity. Accordingly, Section 504(e) is either in error when it refers to section 303 (and the actual intent is to refer to some other section for the immunity waiver), or somehow intends to waive tribal immunity to allow suit against a tribe for violating section 303.

H.R. 2262 could be interpreted to authorize such a broad waiver. The Definitions section of the bill, Section 2(a), includes definitions of "Indian tribe," "person," "applicant," and "operator." The definition of "person" includes Indian tribes. "Applicant" and "operator" are both defined with reference to the term "person," which, as noted, includes "Indian tribes." The citizen suit provisions in Section 504 authorize any "person" to sue any "person" (including but not limited to the Secretary of Agriculture or Interior) for violation of "any of the provisions" of the Act. That would include any of the many requirements in Section 303 that apply to "persons," "applicants," or "operators." Arguably, then, tribal sovereign immunity is waived for a situation where a tribe, or perhaps a tribal corporation, is applying for, or has received, a permit to carry out mining activities on federal public lands and is alleged to be in violation of one of the many provisions of section 303.

The Colville Tribe is unaware of any situation where an Indian tribe or tribal corporation has ever sought to carry out mining activities on federal public lands under the 1872 Mining Law (as apparently recognized in Section 2 (a)(10)(B) of the bill, mining activities on tribal lands are carried out under other statutes). If further review confirms that Indian tribes do not seek to engage in mining development on public lands, then the bill's purported waiver of tribal sovereign immunity would seem to be a solution in search of a problem.

If a tribe or tribal corporation were to apply to conduct mining activities under the Act, it would be more appropriate for the Secretary to promulgate regulations that provide how remedies may be had under the Act with respect to such tribe or tribal corporation under such circumstances. Such remedies could include a negotiated waiver of immunity tailored to the circumstances of the transaction or permit process that the tribe in question may be involved in. That is how remedies are handled for contracts with Indian tribes that are subject to 25 U.S.C. § 81, which require the approval of the Secretary of the Interior. See 25 U.S.C. § 81(e) (requiring the Secretary of the Interior to promulgate regulations identifying the types of contracts or agreements subject to Secretarial approval); 25 C.F.R. Part 84 (regulations implementing 25 U.S.C. § 81).

The Colville Tribe believes that existing law authorizes the Secretary to promulgate such a regulation. The Tribe, however, would not object to a provision in H.R. 2262 to make that authority explicit with respect to promulgation of a remedies regulation for tribes or tribal corporations that engage or intend to engage in mineral development activity under the 1872 Mining Act and this bill.

Finally, the Colville Tribe is concerned that the purported waiver of tribal sovereign immunity in the citizen suit provision could be abused by organizations or individuals seeking to influence a tribe. For example, a citizen group composed of tribal members or non-members, or both, could sue or threaten to sue a tribe in order to force that tribe to become involved in opposing or supporting a mineral de-

velopment project—even if the tribe desired to remain uninvolved or desired to be involved in a manner contrary to the desires of the citizen group.

Confederated Tribes of the Colville Reservation
Additional Proposed Modifications to H.R. 2262

October 11, 2007

Consistent with the Confederated Tribes of the Colville Reservation's ("Tribe's") testimony at the July 26, 2007, Energy and Minerals Subcommittee hearing, the Tribe submits the following recommendations for modifying H.R. 2262. These proposed recommendations supplement the recommendations we submitted to the Subcommittee on September 12, 2007.

Section 201(b): Section 201(b) provides that mining claims cannot be located on certain categories of lands after enactment of the Act. Among other categories of land excluded are "[l]ands identified as "sacred sites" in accordance with Executive Order 13007." Executive Order 13007 defines "sacred site" as:

> [A]ny specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

We understand that certain interests have expressed concern that this provision could result in a situation where a mining company (or other person) expends significant resources in connection with locating a mining claim, only to have the site of the claim later be declared a sacred site by an Indian tribe or Indian individual.

Upon further examination of this Section 201(b), and to preserve and clarify the government-to-government relationship with Indian tribes, we recommend striking the current language in Section 201(b)(6) and replacing it with the following, which is a variation on the definition of "sacred sites" in Executive Order 13007:

> Any delineated location on federal land that is identified by an Indian tribe as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided, however, that this subsection shall not apply when the identifying Indian tribe consents to the location of the mining claims or mineral activities.

This language would retain some of the definition of "sacred sites" in Executive Order 13007, but would also include language that ensures that Indian tribes may also identify sites that have cultural significance. A redline of the changes in the proposed language above to the "sacred sites" definition in Executive Order 13007 is shown below:

> [A]ny specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as having traditional religious or cultural importance; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. provided, however, that this subsection shall not apply when the identifying Indian tribe consents to the location of the mining claims.

The omission of the words "specific," "discrete," and "narrowly" is intended to allow for Indian tribes to designate areas on federal lands within which a sacred site is located without being required to specifically identify the sacred site. This is a concern for the Tribe, as the Tribe has a policy of not identifying the exact locations of sacred sites. Instead, when applicable, the Tribes will delineate an area that includes the sacred site but that is large enough so as to not reveal the sacred site to outsiders. Many Indian tribes, including the Colville Tribes, have experienced instances where sacred sites have become known to the general public and, in turn, defaced by vandals or plundered by grave-robbers.

The addition of the language "as having traditional religious or cultural importance" is taken from Section 101(d)(6)(A) of the National Historic Preservation Act of 1966. This language is intended to allow Indian tribes to identify sites that also have traditional cultural importance, as opposed to just religious significance. Sites that have cultural significance may include archaeological sites, burial sites, traditional food or plant gathering sites, rock art sites, sites associated oral tribal traditions or legends, or any other site deemed culturally important by an Indian tribe.

The omission of the language relating to "Indian individuals" would ensure that any sacred site designation is made by an Indian tribal government, not an individual Indian. The government-to-government relationship memorialized in executive orders such as Executive Order 13007 signifies a special relationship between the United States and Indian tribal governments. Such a political relationship generally does not exist with an individual Indian acting in an individual capacity. Clarifying that only Indian tribal governments may designate sacred sites also avoids the need to resolve two issues not addressed in Executive Order 13007: (a) whether an Indian individual is an "appropriately authoritative representative" of an Indian religion; and (b) which entity should make that determination.

One can envision any number of scenarios where an individual Indian could claim to be an authoritative representative of an Indian religion for purposes of declaring a sacred site. A declaration of a sacred site by such an individual, or the qualifications of the individual making the declaration, could then be challenged by a third party (including a mining applicant or even perhaps an Indian tribe), and federal agencies or courts would be left to sort out the aftermath. Any determination or inquiry by a federal agency or a court of whether a person is an "authoritative representative of an Indian religion" could implicate First Amendment considerations. Limiting the designation of sacred locations to Indian tribal government avoids these difficult issues.

The addition of the proviso allows for persons who intend to locate mining claims on lands where sacred sites are located to consult with the identifying Indian tribe and secure the tribe's consent. As introduced, H.R. 2262 could be construed to prohibit the location of mining claims on lands where sacred sites may be located—even where an Indian tribe and a mining company have agreed to a mitigation plan and the tribe has consented to the location of the claim. Allowing Indian tribes to consent to such activities, should they so choose, respects tribal sovereignty.

Finally, we recommend the inclusion in an appropriate section of the Act a provision that requires the Secretary of the Interior to provide Indian tribes with actual notice of any proposed or pending mining activities on federal lands over which the tribes may possess reserved rights. Such a provision could read:

> The Secretary shall provide actual notice of any valid existing rights, mineral activities, or new claims under the general mining laws to any Indian tribe where such valid existing rights, mineral activities, or new claims are located (a) on lands in which the Indian tribe holds rights reserved by treaty, statute, executive order, or other federal law; or (b) on lands identified by an Indian tribe as having traditional religious or cultural importance.

The addition of this new language would ensure that Indian tribes are notified as early as possible of any potential mining claims or activity on lands in which they may have an interest. Conversely, this provision would also provide third parties with notice as early in the process as possible of potential tribal rights and sacred sites on areas within which mining claims might be located.

Mr. COSTA. Thank you very much, and we do appreciate your coming the long distance that you did. Our next witness to testify is Mr. Champion for five minutes. Put the mic close so we can hear you.

STATEMENT OF WILLIAM CHAMPION, PRESIDENT AND CEO, KENNECOTT UTAH COPPER CORPORATION

Mr. CHAMPION. Thank you very much for the opportunity to testify this morning. My name is Bill Champion. I am the President and CEO for Kennecott Utah Copper. Kennecott is a copper mining, smelting and refining company located in Salt Lake City, Utah. I am here today at my capacity as the Vice Chairman for the National Mining Association representing many of my colleagues in the hardrock mining business. The mining industry is committed to work very proactively and productively with Congress for the development and the implementation of a fair, a predictable and an efficient national minerals policy because U.S. mineral resources are vital to the nation's economic well-being.

The cornerstone of NMA's policy objectives is a predictable legal and regulatory framework that will provide long-term stability that we need to protect existing investments but also to attract new investment capital to domestic mining. There are several essential elements to mining law reform that we are committed to discuss and engage with. We recognize the necessity for a reasonable and fair return to the public for payment of minerals produced from new mining claims on Federal lands.

We recognize that there are different methodologies by which to accomplish that. Chairman Costa, you referenced in your opening comments a World Bank royalty study that was recently completed that looked at various methodologies to return a fair return to the public. If you will, the conclusion from that is that mining is particularly sensitive to royalty effects because of our cost structure in the industry and also the vulnerability that we have based on the dynamics of our markets and the price swings that we oftentimes see.

National Mining is supportive of an approach that looks at net income production payments, not one on gross royalties. We believe net income is a better approach that will satisfy the needs of our entire business cycle. We also recognize and support that the production payment should be applied to the cleanup and reclamation of many of the abandoned mine sites that exist throughout the nation. These sites which are mined and left in an unreclaimed state before the advent of modern environmental practices can be addressed by using these funds to assist in the safe cleanup and reclamation of these historic sites.

Chairman Rahall also discussed in his opening comments the necessity for certainty. As an investor, I think all of us would appreciate and would require certainty in the investments we make, and our industry is no different than that. Having security of land tenure or title from the initial exploration through the development and operation of our mining sites and ultimately through the reclamation and closure is really an essential component of a modern mining law to provide certainty for private investment in mineral development and ensure the integrity of closure and reclaimed operations.

We need continued access to public lands and Federal minerals to ensure that the country's mineral needs continue to be met. As has been pointed out by many people previously, we are dependent on a number of different imported minerals already today. That need and that dependency continues to grow. Probably in the neighborhood of 50 percent or more of the Federal lands are already excluded from mining. We believe that the issue of suitability can best be handled by the existing processes that are in place. Legislative processes that review suitability of mining appear to be working quite well.

The final issue has to do with environmental standards. We should recognize very clearly the comprehensive framework of Federal and state environmental laws that currently exist. In 1999, Congress convened a panel of experts from the National Academy of Sciences to take a look at the effectiveness of existing environmental regulations and laws and the results of that clearly show that the existing laws and existing regulations were more than

adequate to protect against mining related environmental impacts, and in fact the study suggested that new legislation or new regulations or new laws were not needed but simply implementing those that were currently available would be the best way forward.

Thank you very much for the opportunity to speak with you today. I would be happy to answer any questions that you might have. Thank you.

[The prepared statement of Mr. Champion follows:]

Statement of William Champion, President and CEO of Kennecott Utah Copper Corp., on behalf of the National Mining Association

My name is William Champion, President and CEO of Kennecott Utah Copper Corporation. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before the Subcommittee on this issue of great importance to the domestic mining industry.

NMA 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 industry. Our association and our members, which employ or support 170,000 high-wage jobs, have a significant interest in the exploration for, and development of, minerals on federal lands. The public lands in the Western states are an important source of minerals, metal production and reserves for the nation's security and well-being. Mining on federal lands provides for high-wage employment, vitality of communities, and for the future of this critical industry.

NMA is committed to the development of a fair, predictable and efficient national minerals policy through amendments to the Mining Law of 1872. Because the vitality of the modern American economy is firmly rooted in the ready availability of metals and minerals that are essential to our way of life and our national security, our efforts in the end should result in a mining law that:

- Secures a fair return to the government in the form of a net income production payment for minerals produced from new mining claims on federal lands;
- Establishes an abandoned mine lands clean-up fund financed with revenue generated from a net income production payment;
- Provides the certainty needed for private investment in mining activities on federal lands by ensuring security of title and tenure from the time of claim location through mine reclamation and closure;
- Recognizes the existing comprehensive framework of federal and state environmental laws regulating all aspects of mining from exploration through mine reclamation and closure; and
- Recognizes existing authorities for closing or declaring unsuitable for mining those federal lands with unique characteristics or of special interest.

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 way of life and our national security cannot be ignored. Indeed, it is irresponsible for us to ignore the vast mineral resources we have within our nation's boundaries when our domestic needs are so great.

The United States has an abundance of natural resources including 78 metals and minerals that are the foundation of our modern industrial economy. Only the combined countries of the former Soviet Union and Australia rank higher than the United States in the global distribution of 15 metals with critical uses.

Fair Return

A progressive and responsible approach to modernizing the Mining Law can achieve a fair return to the public and fund the restoration of abandoned mine lands, while encouraging the private investment required to develop and carry out environmentally and socially responsible mining operations.

The imposition of a production payment or royalty has the potential to have significant economic consequences on existing and future mining operations, but the impact will vary depending upon the type of production payment or royalty imposed. Determining the type of royalty, the rate and its application to existing claims are critical. As noted in the World Bank royalty study, mining is "particularly sensitive to [royalty] effects because of its cost structure and vulnerability to substantial mar-

ket-driven demand and price swings." Otto, James. Mining Royalties: A Global Study of Their Impact on Investors, Government, and Civil Society. Washington, DC: World Bank, 2006, p. xiv.

A net income production payment produced from new mining claims on federal lands would provide the public with a fair return and with funds for restoring abandoned mine lands. This type of production payment or royalty most appropriately balances the need to both provide a fair return to the public and to foster a strong domestic minerals industry. Gross royalties, or certain royalties based on a net smelter return, on the other hand, may result in significant losses to state and federal treasuries, mine closures, job losses and discouragement of new mines. The World Bank study appropriately cautions against gross royalty approaches as compared to approaches based on ability-to-pay or profit-based approaches: "Nations should carefully weigh the immediate fiscal rewards to be gained from...high levels of royalty, against the long-term benefits to be gained from a sustainable mining industry that will contribute to long-term development, infrastructure, and economic diversification." Id. at 3. This type of royalty also encourages operators to leave lower grade (less profitable) ore in the ground, resulting in wasted public resources.

The net income production payment should only apply to claims located after the enactment of the production payment or royalty provision. Such an approach protects settled financial expectations and sunken investments and prevents "takings" litigation.

Abandoned Mine Lands

Using revenue generated from net production payments on new claims to fund the clean-up or rehabilitation of abandoned mine lands (AML) is an essential aspect of amending the Mining Law. AML sites, which were mined and left in an unreclaimed state before the advent of modern environmental laws and reclamations practices should be addressed by: using funds generated through a production payment or royalty to assist in clean-ups; coordinating existing federal and state AML funds and programs; and Good Samaritan liability protection to promote voluntary clean-ups. The funds should be used for the actual clean-up and rehabilitation of abandoned mines and not to cover administrative overhead costs.

Certainty/Security of Tenure

Ensuring long-term security of tenure (or title) is an essential component of a modern mining law necessary to encourage the private sector to invest in mineral activity on federal lands. In the past, such security was provided by the patenting process, which allowed mine claimants to obtain ownership of the lands being mined or used for mining purposes. While the current congressional moratorium on patenting has not brought mining on public lands to a halt, it highlights the need for additional security of tenure in the mineral and the surface while claims are being held in advance of, as well as during, development and operations. Inclusion of language in the Mining Law is needed to clarify the rights to use and occupy federal lands for mineral prospecting, exploration, development, mining, milling, and processing of minerals, reclamation of the claimed lands, and uses reasonably incident thereto.

Furthermore, security of tenure is critical in obtaining the financing necessary for mining projects. Investors need to know that a mining project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations. Mining projects—from exploration to extraction to reclamation and closure—are time- and capital-intensive undertakings, requiring years of development before investors realize positive cash flows. Uncertainty in the legal regime applicable to mining projects can chill the climate for capital investments in domestic mining projects. Potential investors must know their expectations will not be turned upside down by fundamental alteration of laws, regulations or policies. As the World Bank recently found, to attract such investments, governments need to adopt the fundamental principle of "no surprises," such as changes in laws, regulations or policies. Id. at 73.

Because mining operations by their very nature require long-term and substantial commitments of capital, the stability of the statutory and regulatory framework plays a crucial role in decisions to invest in a mining project. As a result, the investments critical for bringing a mine to fruition tend to migrate toward projects planned in countries that offer predictable regulatory climates that correspond to the long-term nature of mining operations.

Despite reserves of 78 important mined minerals, however, 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

2007 U.S. Geological Survey Minerals Commodity Summaries reported that America now depends on imports from other countries for 100 percent of 17 mineral commodities and for more than 50 percent of 45 mineral commodities. 2007, U, 2007, p. 7. This increased import dependency 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, and vulnerability to possible supply disruptions due to political or military instability.

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. Even now, some mineral resources that we need in our daily lives are no longer as readily available to the United States.

Environmental Standards

Under current law, a mineral exploration or mining operation on federal lands is subject to a comprehensive framework of federal and state environmental laws and regulations including: the Clean Water Act; the Safe Drinking Water Act; the Clean Air Act; the National Environmental Policy Act; Toxic Substances Control Act; the Resource Conservation and Recovery Act; the Endangered Species Act; and the Bureau of Land Management (BLM) and Forest Service surface management regulations for mining. These laws and regulations are "cradle to grave," covering virtually every aspect of mining from exploration through mine reclamation and closure. According to the 1999 report on issued by the National Academy of Sciences (NAS) panel of experts convened by Congress, this existing framework for mining is "generally effective" in protecting the environment. Hardrock Mining on Federal Lands, National Academy of Sciences, National Academy Press, 1999, p. 89.

That 1999 NAS report also found that "improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection...." Id. at 90. Notably, the Department of the Interior's 2000 and 2001 regulations governing mining and reclamation on BLM lands significantly strengthened the standards for mining on federal lands, including new provisions on guaranteeing reclamation through financial assurances.

Importantly, the NAS panel of experts cautioned against applying inflexible, technically prescriptive environmental standards stating that "simple "one-size-fits-all" solutions are impractical because mining confronts too great an assortment of site-specific technical, environmental, and social conditions." Id. Furthermore, recognition of the existing comprehensive framework of federal and state environmental and cultural laws that already regulate all aspects of mining from exploration through mine reclamation and closure avoids unnecessary and expensive duplication. Additional standards or enforcement mechanisms are not needed to protect the environment.

Importance of Access

Access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry. As stated in the 2006 BLM Minerals Policy Statement: (1) except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest and (2) with few exceptions, mineral exploration and development can occur concurrently or sequentially with other resource uses.

Federal lands account for as much as 86 percent of the land area in certain Western states. These same states, rich in minerals, account for 75 percent of our nation's metals production. As the 1999 NAS report to Congress noted, the "remaining federal lands in the western states, including Alaska, continue to provide a large share of the metals and hardrock minerals produced in this country." Id. at 17.

Efforts to amend the Mining Law must recognize existing authorities to close certain "special places" to mining activity. Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. 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. Finally, 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. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public

lands. These existing laws and authorities are adequate to protect special areas. New closures of public land, based on vague and subjective criteria without congressional oversight, would arbitrarily impair mineral and economic development.

Conclusion

The United States needs a robust minerals production industry to help meet the needs of American consumers. 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.

Mr. COSTA. Thank you, Mr. Champion, and I appreciate your testimony. There are a couple of areas that I am interested in coming back and getting your thoughts on, but we have one more witness and the final witness in this panel is Mr. Wilton. We ask you to testify please for five minutes.

STATEMENT OF TED WILTON, EXECUTIVE VICE PRESIDENT, NEUTRON ENERGY COMPANY

Mr. WILTON. Thank you, Mr. Chairman and members of the Committee. I would like to express my appreciation to this committee for the invitation to speak before you today. My name is Ted Wilton. I am from Spring Creek, Nevada. I am a minerals geologist. I have been one for 39 years. I previously served on the Nevada State Board for Multiple Use of the Public Lands, and I am a former member of the BLM's Great Basin Resource Advisory Council.

I am not here today to represent any particular organization but I am here to speak on behalf of an awful lot of men and women, many thousands of men and women who produced the minerals that fuel our economy. People who work in mines from Missouri to Nevada, from Alaska to New Mexico. Together we are the ones who produce the minerals for the American economy. We work and live in the areas where mining is carried out, and we are the ones who are going to bear the immediate consequences of H.R. 2262, and we are affected perhaps more so in an immediate term than anybody else by this proposed legislation.

We feel that the bill will have some profound and lasting effects on our livelihood, on the industry, and we feel that the bill as is currently structured presents a severe and real threat to the livelihood of the American mining industry. We have concerns about the nature and level of the royalty. We are concerned about the permit review and renewal process, and we are concerned about the complexities as they relate to the environmental processes review and standards that are included in this bill.

In particular, that concern is based on the fact that the U.S. mining industry is the most regulated from the perspective of health and safety and from environment of any mining industry on the planet. Why are we concerned about this? If the industry is threat-

ened, as it appears under this bill, our jobs go away. That is plain and simple.

Now you might say that this is a bit of a boy crying wolf. Well, I want to say to you that I, for one, am one who had his job exported overseas in 1997, and I had the privilege of working in such wonderful places as Colombia, Guatemala, northern Argentina, the Russian far east. I worked in the Solomon Islands on the Island of Guadalcanal and Papua New Guinea. I had the privilege of working in essentially every continent on the planet, except for Africa during that time. So I believe it is a valid thing to say that our jobs can be exported overseas because I have seen that happen, and this is a concern that is not just Ted Wilton's concern. It is a concern that many of my friends and neighbors in northeastern Nevada have.

When I left Elko, Nevada on Tuesday morning to fly over here, when I checked in at the airport, the gate agent asked me what are you going to Washington for, and I explained to her why I was coming, and it was to testify on this bill. Well, when I went to the gate and she took my boarding pass, she said to me, Ted, make sure that you speak firmly and clearly because even though I do not work in mining, if the mines in the Elko area are closed, my job goes away as well.

We live in an area that has got a very vibrant economy. We have very good jobs. We are paid more than just a living wage. We have health and hospitalization insurance not just for ourselves but for all of our family members. The economic consequences of this bill are such that it threatens those jobs. It threatens the small businesses in rural America in the areas of mining, and we are deeply concerned about this.

We believe that there is a need to look at the Mining Act and to refine it to make it more modern but please, as you consider your votes on this bill, please consider the unintended consequences as well. I would like to thank the Committee for the opportunity to make this testimony today, and if I can answer any questions I would be happy to do so.

[The prepared statement of Mr. Wilton follows:]

Statement of Ted Wilton, Spring Creek, Nevada

Mr. Chairman and Members of the Committee "

I would like to express my appreciation to the Committee for the invitation to speak before you today. My name is Ted Wilton, and I am from Spring Creek, Nevada; I am a minerals geologist, and I have been one for more than 39 years. I am a member of the Board of Trustees of the Northwest Mining Association, one of the nation's largest organizations representing the interests of the mining industry. I have previously served on the Nevada State Board for Multiple Use of the Public Lands under then-Governor Bob Miller, and as a member of the U.S. Bureau of Land Management's Northwest Great Basin Resource Advisory Council. Today I would like to take this opportunity to convey my views and the thoughts of many of thousands of men and women who work at mines in such diverse localities as Pilot Knob and Ste. Genevieve, Missouri; Fairbanks, Alaska; Republic and Kettle Falls, Washington; Douglas, Wyoming; Naturita, Colorado; Challis and Kellogg, Idaho; Grants and Silver City, New Mexico; Superior, Arizona; and my friends and neighbors throughout rural Nevada. Together, we are the ones who produce the minerals that are the raw materials for many of America's products and the nation's energy requirements. We work and live in the areas that mining is undertaken, and together we will bear the consequences of H.R. 2262 more so than any other group in the United States.

H.R. 2262 would, if enacted dictate profound changes in the conduct of mineral exploration, mining and processing of "locatable minerals" on the Public's lands, as well as upon State and privately-owned properties under certain circumstances. Together, the provisions of H.R. 2262 represent profound and sweeping changes to one of the most fundamental components of the American economy.

The inclusion of an 8 percent royalty, on top of a multitude of existing State and Federal fees and taxes adds yet another substantial cost for doing business to the domestic mining industry. As we all know, mining and mineral producers do not set the prices for their commodities. Commodity prices, which are highly volatile at the best of times, are not set or driven by the American miner who produces them; instead they are driven by global forces well beyond the control of individual companies. This considerable additional cost to the producers of just this royalty will result in closure of mines, and many other mines will never open at all. Those few mining operations that will have the ability to absorb this additional burden, and remain competitive with cheaper foreign minerals producers, will have to raise their cut-off grades to maintain a semblance of economic viability with the result being that many valuable mineral resources, some of which are critical and strategic, will never be mined from a secure domestic source. And yet, even if these mines remain competitive in the marketplace, the economic and operational lives of these mines will be shortened significantly.

Provisions of the bill requiring periodic review and renewal of operating permits (over three to ten year periods), even when the mines are complying with, or exceeding the requirements of their approved plans of operation, will create a high degree of uncertainty as to the sustainability of these operations. For an industry that requires significant levels of capital investment from third-parties for construction and equipment purchases, these levels of uncertainty created by this provision of H.R. 2262 will have a chilling effect within the investment community, and this bill will weaken the industry's ability to finance project expansions or development of new domestic sources of minerals and metals.

America's mining industry has developed, in concert with State and Federal personnel, the most consistently effective environmental programs of any country in the world. Together we have developed techniques to mitigate the effects mining and mineral processing activities have upon surface and groundwater resources, and we continue to refine and advance these mitigation methods and reclamation procedures. The domestic mining industry has achieved a higher level of environmental performance than at any time in our nation's history, and the environment is the better for this progress. Successful mine reclamation is practiced on a daily basis on a large scale, restoring previously mined lands to other productive uses. The United States mining industry presently operates within a complex web of State and Federal environmental laws, rules, and regulations that set the framework for the protection of air, surface and groundwater resources, provides for the protection of cultural and historical resources, and gives the American public a significant opportunity to work with regulators and the mining companies to develop measures to minimize and mitigate the impacts of mining activities. Provisions of H.R. 2262 will add an additional unnecessary and costly level of complexity to a system of rules and regulations that already works very well.

The bill includes sweeping provisions for placing large blocks of the Public's lands "off-limits" to mineral exploration and mining activities. This method of creating defacto wilderness is particularly troubling, and substantially changes the current procedures for Public Land management and access. These provisions eliminate the public's rights for input into the decision-making process, a key component of our participatory democracy, and the bill places into the hands of a select few the decisions that affect many—a concept that violates one of America's basic foundations.

The enforcement provisions of H.R. 2262 are extremely troubling to me—collectively, the various elements of the bill that deal with record keeping, the ability of the Federal government to examine the records of law-abiding companies without formal notice, the presumption of guilt of the mining companies until they prove themselves innocent, "stop and search" powers to determine if locatable minerals are contrary to the free society that our nation is.

Summary:

It is my opinion, and that of all of us who work in the domestic mining industry, that H.R. 2262 would have a profoundly detrimental and lasting effect upon the American mining industry. Provisions of this bill are so onerous that not only the vitality, but the very existence of the American metals mining industry will be in considerable jeopardy if the bill is enacted:

It will force the closure of many, if not most of the mines that produce a broad range of mineral commodities necessary to provide the goods and services that American society requires;

America will be placed into a position of nearly 100 percent reliance upon foreign sources of minerals, from such distant and insecure places as the Democratic Republic of the Congo, Mongolia, Bolivia, Zimbabwe, Kazakhstan, Namibia, Peru, and South Africa;

Domestic sources for the fuel that produces 20 percent of our base-load electrical power—uranium for nuclear energy—will be further reduced, resulting in an even greater reliance on foreign energy sources than before;

This bill will result in a nearly total closure of metal mines in the United States. It will result in the loss of many thousands of high paying jobs: jobs that provide far more than a "living wage", jobs that provide health and hospitalization insurance for not only employees, but all members of their families. These jobs provide access to financial support for education of our children, and these jobs provide participation in retirement plans, which include financial contributions by our employers;

The many small businesses that have grown up in our towns where mining is the cornerstone of the local economies—businesses that embody the dreams and investments of many Americans who are not directly employed by mining companies, will also bear the consequences of H.R. 2262, and the likely shut-downs of the mines;

Our prosperous and friendly towns, most of which are situated in rural America, will suffer greatly. Local economies will be significantly impacted, and our nation will be worse off for this loss.

While I do not dispute the notion that some refinement and reform of the General Mining Law might be needed, H.R. 2262 does not achieve this goal. It is a bill that punishes not only mining companies, it punishes the investors in these companies and the communities that depend on mineral production for their very existence. It jeopardizes national security by creating an otherwise unnecessary and dangerous reliance upon foreign sources of metals and minerals.

The unintended consequences of H.R. 2262 are profound, and they are far-reaching. The impacts upon the economy, the nearly total reliance on foreign sources for raw materials, the loss of jobs—each is significant in its own right, and together these consequences outline a situation that is highly unfavorable for America. At the same time, H.R. 2262 fails to meet its stated goal—to reform and modernize the American mining industry.

Mr. COSTA. Thank you very much for your focused and personal view as to the impacts of your experiences and your interest as we try to be mindful in our due diligence on considering this legislation. Now, we are at the question period. Question and answers, and so I get a chance to start first. Mr. Dean, you obviously are an outdoor enthusiast and have testified to that effect.

You talk about acid mining drainage being harmful to surface and groundwater. Have any of your organizations done an inventory as to the impact of the acidity that has been impacted throughout the West as it relates to mining?

Mr. DEAN. I do not know the answer to that, Mr. Chairman.

Mr. COSTA. OK. What is the sort of activity that takes place in terms of the consideration? I mean among your talk show and others is this an issue that really gets much discussion among your outdoor enthusiasts?

Mr. DEAN. Well, the show I do is not essentially a talk show whereby listeners are invited. I script it out, and then I do the show each day, and frequently interview people from all walks of life but I would like to shed some light on what some hunters and anglers are saying. Last week when I knew I was going to be coming to Washington, there was a group of hunters and fishermen that I coffee with about once a week at the Ram Coda Hotel in Pierce, South Dakota, and I mentioned I was going to be in Wash-

ington, D.C. to testify on reform of the Mining Act of 1872, and someone said——

Mr. COSTA. I bet you got an earful.

Mr. DEAN. Interestingly the majority of them did not know anything about the Mining Act of 1872. So I started explaining what it did and what it enabled mining companies to do, and once they understood it there was a sense of general outrage that they could take public lands and do what they did with public lands, and in some cases destroy streams with irresponsible mining.

Mr. COSTA. All right. But that is anecdotal, and I do appreciate your comment.

Mr. DEAN. Thank you.

Mr. COSTA. Let me move on. Mr. Champion, the comments you made as related to the World Bank, I am trying to figure out in this legislation if we look at oil and gas where royalty fees are paid, what would be applicable that would be fair as it relates to the issue of trying to provide money?

I do appreciate your comment that if some agreement is reached and enacted into law that it should be dedicated first priority to clean up those existing and abandoned mines. I concur with that but give me a sense of what you think is the best way to approach this. You talked about net income versus royalties and fees of anywhere from 8 percent—and some have talked as high as 12 percent—the tradeoffs.

Mr. CHAMPION. I think you need to be cautious with regards to comparing oil and gas to hardrock mining. Generally speaking, those markets are considerably different. Mostly regional in the case of oil and gas. When it comes to hardrock mining, our markets and our competition is really global competition. So anything that——

Mr. COSTA. Could you not say that is true with oil and gas?

Mr. CHAMPION. Pretty much I would say that, yes.

Mr. COSTA. What?

Mr. CHAMPION. Yes, I would.

Mr. COSTA. OK.

Mr. CHAMPION. With regards to hardrock mining, our competitors are really global competitors. So anything that has an impact on increasing our cost base disadvantages us significantly. So the approach that we have looked at and the one which we would support would be a net income approach. Recognizing that the cost structure of our business, about 80 percent of our cost is fixed cost, so even while the price of our metals can fluctuate, it is more difficult to remove costs from our operations, and so we are overly burdened when prices of the metals are at lower——

Mr. COSTA. OK. I have that but how do you monitor the net costs? How do you apply that, if in fact that were to be viewed acceptable?

Mr. CHAMPION. Well, you know we do calculations, of course, on a monthly basis in terms of what our net income is. So there is a very transparent way to be able to——

Mr. COSTA. And that is transparent. The issue of attempting to try to deal with outside patenting or selling lands to corporations, do you think there are some other ways in which we could deal

with a tenure issue? As you noted, Senator Craig talked about the patent issue and this issue of tenure. Your thoughts?

Mr. CHAMPION. Well, we recognize that that is a key issue with regards to this legislation, and I think it deserves some attention. It deserves some review. I do not have the answer today for that but I think a productive conversation is needed, and one that we are certainly welcome to engage with as an industry.

Mr. COSTA. Mr. Ellis, if this legislation were enacted and became law, what do you think a fair rate of return would be, and do you have any comment on the net income versus a royalty?

Mr. ELLIS. Sure. Well, first we certainly have looked at oil and gas, and oil and gas is really the original global commodity. I mean the prices are set on a worldwide market. It is a price that is dictated to.

It is not necessarily a local competition, and certainly we looked at comparing it to the royalty rate for onshore production rather than offshore production on the outer continental shelf which is more than 16 percent but then also part of when you set the royalty rate—and there are a variety of different ways of calculating the royalty—it is clear that it makes it easier to be transparent if it is the net smelter rate that was envisioned in the bill rather than having one where you have certain allowances, you deduct certain costs, you look at just the profits.

I mean those are all going to be much more difficult to calculate, and it is certainly something that was brought up in the World Bank study that those are more difficult to calculate as well.

Mr. COSTA. All right. My time has expired. I will defer to the gentleman from New Mexico.

Mr. PEARCE. Thank you, Mr. Chairman. Large panel. I hope we have two rounds at least. A lot of questions coming up. Mr. Dean, you had made a quote about a Congressional group that had signed on to your letter. Who was that that signed that?

Mr. DEAN. The Congressional Sportsmen's Caucus.

Mr. PEARCE. That is the reason my staff came running up here. I am the Vice Chairman of the Congressional Sportsmen's Caucus, and they were wondering if I had signed something without their knowledge. I would question whether or not the Congressional Sportsmen's Caucus has signed your letter, sir.

Mr. DEAN. I believe the Congressional Sportsmen's Foundation has.

Mr. PEARCE. If you would like to change that officially in the record, I would appreciate that.

Mr. DEAN. I would be happy to.

Mr. COSTA. We will for the record clarify.

Mr. PEARCE. Thank you.

Mr. COSTA. And submit the correction.

Mr. PEARCE. Thank you. Mr. Ellis, the gold for free. Where does that line form? I would like to head out there as soon as we get through. Where does the line form for free gold?

Mr. ELLIS. Well, it has been forming since 1872 as far as what you extract from the earth.

Mr. PEARCE. OK. So now $9,765——

Mr. COSTA. You have just got to find it first.

Mr. PEARCE. It is just finding the line. Nine thousand seven hundred and sixty-five dollars and you get $10 billion in free gold. Did you ever kind of in the middle of the night think about trying to get $10,000 of your own money and throwing this career behind you that you are pursuing now and get $10 billion free? Is that an accurate representation of the real situation?

I mean $10 billion of gold for free. Gold and other valuable minerals for free. I am reading your testimony here on page—it is not numbered but the second page. And I just wonder, is that an accurate reflection of what is actually going on? Did not the company that——

Mr. ELLIS. Well, you are talking about American Barrack in Nevada. Is that the one you are talking about, sir?

Mr. PEARCE. It does not ever enter your mind that maybe your mother-in-law could go out and apply for you? I do not know. That is a billion free.

Mr. ELLIS. My mother-in-law is a physician.

Mr. PEARCE. It seems like that we would have——

Mr. ELLIS. I think she is doing all right.

Mr. PEARCE. Thank you. It seems like that we would have lines of people stacked up to get this free gold. It seems like that maybe——

Mr. ELLIS. Sir, I am not suggesting that mining is not a difficult industry, and I certainly recognize that, that it is not——

Mr. PEARCE. How much did——

Mr. ELLIS. The——

Mr. PEARCE. If I could reclaim my time, sir. How much did American Barrack have to invest before they could even start the mining process to harvest that $10 billion in gold?

Mr. ELLIS. I do not have that information.

Mr. PEARCE. Let me give it to you. It is $1 billion. Are you familiar with returns on investment? Anything like that? Are you familiar with——

Mr. ELLIS. Of course I am, sir.

Mr. PEARCE. OK. So basically the mining industry, let us say, 20 percent return on investment. So you get $10 billion. You get 20 percent rate of return. That is $2 billion, if I am doing the math right. Two billion to cover $1 billion speculative cost, and if the price of minerals dropped just incrementally your fixed costs in a mine remain very high, and when I read your testimony, sir, I think it is very, very uncharacteristic of what is going on. We are driving these mines out of our midst, and you are testifying that we are giving away minerals for free.

Mr. Horwitt, do you believe that we should not have mines on public lands or are you thinking that we did not get the final gist and final point that you are making?

Mr. HORWITT. Not at all. We are not opposed to mining on Federal land.

Mr. PEARCE. You just think that we should do it more responsibly?

Mr. HORWITT. That is correct.

Mr. PEARCE. OK. Mr. Champion. Sorry. Mr. Wilton, thank you for your testimony, and again we hear lots of people up here and to hear someone actually take it down to the field level and talk

about the people and when you talk about the jobs that have been outsourced, careers that you are in, I think I share your fears that we are outsourcing a lot.

Mr. Champion, you have worked all over the world. You have heard the claims earlier by Mr. Leshy that this country does pretty bad compared to the scale. I mean we did not get any percentages but he said there are a lot of countries that do better. Which countries? You have worked all over the world. Which countries do better or are there any countries that do better in environmental stewardship?

Mr. CHAMPION. Well, I am not aware of any countries that do a better job than the United States with regards to environmental stewardship, and certainly as you travel around the world one of the things that does disadvantage us is——

Mr. PEARCE. Let me pull the poster up over here. That one from Russia. I like to do this because I really think it is critical because we have a lot of people who are critical of industry, and they say that we do a bad environmental job. This is in Russia where they have a high government stake. They have a high government take, and I agree with you that I think the U.S., as bad as it might be when we complain among ourselves, that this is what we see in the countries that have high government takes. Thank you, Mr. Chairman. I would look for a second round if we get it.

Mr. COSTA. The eye is in the beholder and as was once said a picture is worth a thousand words. I would suggest that that was a case where government had no concern about the outcome of the resource except getting it but either way you slice and dice it, it is not good. My question to a couple of the folks, Mr. Wilton, the current testimony was that the overlapping law with the Clean Water Act and other issues is suffice to cover the job.

There was a scientific study that I will find here if you need the quote but said that three out of four major mining operations in the U.S. failed to meet water quality standards according to current law and regulations. What do you think the problem is?

Mr. WILTON. I am not an environmental specialist, Mr. Chairman. However, I would first raise the question of are these historical issues that date back to the pre-dating of the Clean Water Act? Are these issues that deal with the EPA Gold Book standards? I do not know the answer to your question.

Mr. COSTA. We will submit you the information, and you can respond in written testimony. How does that sound?

Mr. WILTON. I would be pleased to do that, sir.

Mr. COSTA. Mr. Ellis, you talked and I had asked the question earlier about net income versus a royalty payment, and then there was the comment that was made—I am not sure if it was by you or the gentleman from Kennecott, Mr. Champion—about net smelter versus other royalty types. Could you in more detail give your thoughts on the pros and cons?

Mr. ELLIS. Well, certainly. I mean net smelter as indicated is relatively simple to calculate in the fact that you are looking at what is the actual cost as you are seeding it into smelter, and what is the amount of money that is there, whereas the net revenue is going to adjust for some of the costs that are incurred by the company bringing that mineral to market. And so you are essentially

figuring out some of the deductions as you go along for the net income which according to the World Bank study is one where there is more room for manipulation or where it is much less transparent to the taxpayer that they are actually getting the money that they were promised.

Mr. COSTA. So in essence you would prefer the net smelter?

Mr. ELLIS. Yes, sir.

Mr. COSTA. OK. Mr. Horwitt, I appreciated your maps, and you know for a lot of us you know when it kind of becomes local it comes home. Yosemite National Park I used to represent and for all of my colleagues who are within the area we all consider it our own backyard so to speak, even though it is the trust of the people of the United States but it is obviously a very special place. The map that you showed talked about 50 staked claims since January 2003. I must say that I am somewhat surprised or very surprised. What is the nature of those claims? What kind first?

Mr. HORWITT. Well, the Bureau of Land Management does not record generally the type of metal the claims are staked for. Wyoming is the one state that requires claimants to declare the type of metal they are going after. So you know I can only speculate. I know that California has historically been a gold mining region, and the prices of gold are high so they could be for gold. But essentially that information is not included in the Bureau of Land Management records.

Mr. COSTA. We have seen a lot of increase, as you noted in your testimony, of those various mining claims. It has increased actually I believe 80 percent in the last four years. Do you think this is historically—if you have done the research, if you have not just tell me—a high rate of claims that have been made or is it average or is it below average in terms of other times within the 20th Century?

Mr. HORWITT. Certainly the highest rates we have seen in recent years since the Federal government began charging an annual fee from claim holders. There were many, many more claims staked before I believe it was 1993 when the Federal government required claim holders to pay an annual fee to hold their claims, and at that point many claims dropped off. So the numbers that we see now are the highest in many, many years.

Mr. COSTA. OK. My time is expiring here but I want to know about the notion of foreign companies that are staking many of these claims. There have been issues of outsourcing jobs abroad. Do you think there is a distinction when foreign companies come to the United States and make these claims, and do you think H.R. 2262 would make any difference?

Mr. HORWITT. The short answer is yes. I think the foreign claim staking raises two issues. One, it clearly shows with so many foreign and multinational companies operating on Federal land that this is not the 1800s anymore. It is not people going out with picks and shovels. It is you know sophisticated companies with huge earthmoving equipment staking these claims, and we need our law to be updated accordingly.

Also it raises the potential that if a mine were to be established by a foreign company and that mine were to go bankrupt which is a fairly common occurrence in the industry, the Federal govern-

ment would have more difficulty tracking down the assets of that company if there were a shortfall between what the company put up and the cleanup costs.

Mr. COSTA. OK. My time has expired. Mr. Heller.

Mr. HELLER. Thank you, Mr. Chairman, and again thanks to the panelists, everybody that is here. I really appreciate your time and efforts to get here and personally I want to welcome Mr. Wilton here from Spring Creek, from my district. I have a couple of questions. I am kind of listening to this whole process over the last couple of hours, and though I may disagree I certainly do not want to make it such that it is challenging anybody.

But we continually hear about record profits. I have heard panelists talk about record profits. Some of us up here have talked about record profits. I think gold prices right now are trading at about $686 an ounce right now. I do not know what it was five or six years ago. It was half that much.

I think at that time, if I recall visiting eastern Nevada, very little research and development going on at that time because they could not afford it because of the price of gold at that time. Would it be fair to say, Mr. Wilton, that the economy of Spring Creek, Nevada, the economy has a lot to do with the price of gold?

Mr. WILTON. Yes, sir. That is as true a statement as you will be able to make about that today.

Mr. HELLER. You know unlike oil and gas where they have a governing body that sets prices, we do not set gold prices worldwide. I think there is quite the difference between trying to compare those two resources. Let us move just quickly to environmentally sensitive. I have heard too many panelists talk about whether or not the industry here beats some of these environmental responsibilities, and going through a short list these are the following Acts that they have to follow, and this is just a partial list.

Hardrock mines must comply with the National Historic Preservation Act, the Air Quality Act, National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Clean Water Act, Endangered Species Act, Federal Land Policy and Management Act, Resource Conservation Act, the Toxic Substance Control Act, the Clean Water Act Amendments of 1977, Archeological Resource Protection Act. I mean we can go on and on. Super fund Amendments Reauthorization Act. Clean Air Act Amendments of 1990.

I want to hear it again, Mr. Champion. Is there any other country that does a better job environmentally as this industry here in America?

Mr. CHAMPION. None that I am aware of, sir.

Mr. HELLER. Let us move to economic return. A prior panelist said that mining law has no direct financial return to the public. The senator, good Senator Craig from Idaho, mentioned that the average salary for a member employed in the industry was $42,000. I think that was a few years ago because I think in Nevada it is around $60,000.

As I mentioned in my opening statement, they pay income taxes. I think that has a financial return to the public. They do shop at local stores. They eat at local restaurants. I think that in itself also has direct financial return to the public. I think these wages are

critical to many as we mentioned earlier, to the local economies here in Nevada.

They also pay net proceeds to the State of Nevada. They are taxed in Nevada. So it just raises the question if there is any economic benefit mining has. If there is any financial return. I have to disagree with the comments of previous panelists.

Finally, estimated acreage. It was said by one of the panelists—I think it is the free gold guy sitting over here—that there is a compiled chart showing the number of mining claims in my state with the estimated acreage. My district I think was on the top of that list with over three million acres of mining claims, and that does seem like a lot of lands, and I think actually it was Mr. Dean. I think you were mentioning that.

However, I do not know if that is real accurate. If you do the math, you break it down, that is 5,736 square miles, three million acres. My district is 110,000 square miles. I would think that 100,000 square miles is enough space for wildlife habitat to flourish. As a hunter and fisherman myself, I would mention that those that apply for hunting licenses in the State of Nevada we get three times as many applicants as we actually have tags. I do not think anybody is complaining about the 100,000 square miles not being enough space for wildlife habitat. So is there anything that I have said that is inaccurate, Mr. Champion, at this point?

Mr. CHAMPION. Not that I am aware of, sir.

Mr. HELLER. Anybody else on the panel? Thank you. I will yield.

Mr. COSTA. Thank you. The gentleman from New Mexico and I have made a Solomon-like decision, and that is that we are going to share this last round of five minutes. I am going to take 2 minutes and 30 seconds, and the balance, and then we will bring the hearing to a close. As I said, we are going to have a follow-up hearing in Nevada at Elko during the week of August 21, and we will obviously continue the discussion. We are looking at the past hearings and the oversight, but we do have a busy schedule on the Floor with appropriations measures and also the Reauthorization of the 2007 Farm Bill. So we do have a lot of items on our plate today and tomorrow and the rest of this month.

So let me begin. Mr. Marchand, we have not intended to neglect you. You talked about the challenges facing the Confederated Tribes of Colville Reservation in trying to assert your rights on the crown jewel proposal. How would you suggest that the Tribe would benefit from the land managers to balance the mining with land uses if in fact this proposed legislation were to become law?

Mr. MARCHAND. We have a lot of experience with other developments such as hydropower and we have worked out mitigation of things on the river system, and I think similar things could be applied to mining, and I think mining is probably you know a reality but we just would like to see it be more responsible and give some consideration to our interests and issues for our Tribe.

Mr. COSTA. All right. But is this on sovereign land? I am not familiar with the actual site and proposal.

Mr. MARCHAND. It is——

Mr. COSTA. It is adjacent to sovereign land?

Mr. MARCHAND. It is debatable. We have reserved rights to hunt and fish affirmed by the Supreme Court on these lands.

Mr. COSTA. All right. OK.

Mr. MARCHAND. We will buy it back for a dollar an acre if you want to give it back to us.

Mr. COSTA. All right. We will take that under consideration. Mr. Horwitt, you identified hundreds of claims that have been within five miles of national parks beyond Yosemite. What do you think land managers can do to address these claims?

Mr. HORWITT. I think they are in a difficult situation. There are several options that are not that great. One, they could buy out the claims but that tends to be very expensive.

Mr. COSTA. Very expensive.

Mr. HORWITT. I mentioned that happened at Yellowstone, and it was $65 million.

Mr. COSTA. Right.

Mr. HORWITT. Also they could challenge the validity of these claims. That also tends to be expensive and time-consuming. There is a case in Oregon right now that has gone on for several years, and it is still not over. Or they can you know operate in the current system which has proven to be inadequate to address the impacts of mining.

Mr. COSTA. Thank you very much. My time has expired. The gentleman from New Mexico. Holly, he has 2 minutes and 30 seconds.

Mr. PEARCE. I thank the gentleman for that, and I would—just not to be contentious—but I would lobby on behalf of not cutting the baby in half. I would lobby for the full five minutes. So the Solomon deal you were talking about. Mr. Dean, again the same question I had for Mr. Horwitt. Do you feel like there is too much activity, too much mining activity on public lands—too much mining activity on Federal lands? You are talking constantly and your letters say that we like the open spaces.

Mr. DEAN. I do not recall saying that.

Mr. PEARCE. OK. So you do not have an objection to mining occurring? OK. Real fine. Mr. Champion, the law itself, up or down, do you believe that this would facilitate more jobs or fewer jobs in the country?

Mr. CHAMPION. As written, it would result in fewer jobs.

Mr. PEARCE. Fewer jobs and a healthier or weaker industry?

Mr. CHAMPION. Significantly weaker industry.

Mr. PEARCE. Mr. Wilton, you have been in the industry almost all your life. The bill in front of us is 2262. Is it going to improve the industry? Is it going to make the jobs of the people you know on a first name basis stronger or weaker?

Mr. WILTON. It will make it weaker, Congressman.

Mr. PEARCE. Mr. Ellis?

Mr. WILTON. It will make the industry weaker. It will make jobs go away.

Mr. PEARCE. And the royalty provision itself is a key concern to both of you? Yes or no?

Mr. WILTON. Yes.

Mr. PEARCE. Yes. Mr. Ellis, these are guys who live in the industry. This does not concern you? In other words, does not worry you that you are hearing from the people who make the jobs that it is going to make the industry weaker is not a big concern to you?

Mr. ELLIS. Sir, I am certain that it is going to have some effect on the industry. I mean they have not had to pay a royalty for the 135 years of existence but that does not mean that industries cannot grow stronger and modify and adapt in these different situations, and so I mean to me this is something that taxpayers have been left out of the loop for awhile, where they have not been getting any return from the gold as we were talking about before, and so certainly I think that this is a legitimate step forward on behalf of taxpayers, and that the mining industry will adapt and go forward, and I mean that happens to companies and industries across this country.

Mr. PEARCE. I would refine that all down to be you do not see a concern if they report that companies would be weaker that you in fact believe that by some method they will just simply get stronger, and I would appreciate that observation. Thank you, Mr. Chairman. I appreciate it. We have a few questions to submit in writing.

Mr. COSTA. Very good. And I want to thank you, and I want to thank all of the members of the Subcommittee for your participation this morning. I want to thank the witnesses.

Mr. PEARCE. I have a couple of UC requests I forgot to do. One of the local county commissions has submitted a resolution, and then also the Uranium Producers of America have a document they would like submitted.

Mr. COSTA. OK. Yes. And we really did not get a chance. I am very interested in how uranium is treated on this issue, and I suspect we will get more into that detail at the subsequent hearing. But again I want to thank you, and I want to thank the members of the Subcommittee, and those witnesses who were patient and testified and who answered the questions to the best of their ability, and we will look forward to continuing this dialogue.

I know the Chairman is very interested, as he said in his opening statement, on taking input from everyone. So at this time this concludes the Subcommittee hearing on Energy and Mineral Resources dealing with the Hardrock Mining and Reclamation Act of 2007. This committee is adjourned.

[Whereupon, at 12:55 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mrs. McMorris Rodgers follows:]

Statement of The Honorable Cathy McMorris Rodgers, a Representative in Congress from the State of Washington

The 1849 California Gold Rush found Okanogan County and the Methow Valley in the middle of a chain of prospectors that stretched from California to Alaska. From 1896 until the great depression, gold business boomed in the towns of Ruby, Conconully, Barron, and Loomis. Today there are some tailings and a few old buildings that survive. Thousands of claims remain from Pateros to Hart's Pass, but almost none are being worked, yet it was gold that helped bring some of the first people to Northeastern Washington.

Today the mining industry in Washington state is vital to our economy. The combined direct and indirect economic impact was $2.5 billion dollars in 2005. Across the United States, hardrock mining employs or supports 170,000 high paying jobs and has an output valued at more than $40 billion.

The United States is one of the world's largest producers and consumers of minerals and metals. We use them in our everyday life—they are essential to our economic and national security. However, I am concerned that we are becoming in-

creasingly dependent upon foreign countries to provide critical minerals that are needed to make Boeing airplanes, superconductors, or military equipment. In fact, according to the U.S. Geological Survey, reliance on mineral imports has nearly doubled in the past decade. And it may not even be necessary. The United States possesses vast undeveloped minerals that far exceed many of our industrial competitors. For example, according to the National Mining Association, the U.S. possesses 550 million tons in identified and undiscovered reserves of copper. Yet, the U.S. produces only half the copper it consumers despite the fact that the price of copper is at record levels. And with the demand for hybrid cars increasing, the need for copper will continue since hybrid cars use four times the amount of copper of a conventional car.

One reason for declining development of mineral resources in this country is an increasingly burdensome regulatory structure. There are more than 15 federal environmental laws that apply to any major mining project. Yet this bill contains additional environmental requirements that are duplicative and sometimes conflict with existing state and federal environmental law. In 2005, I was appointed to chair a task force on updating and strengthening the National Environmental Policy Act (NEPA). NEPA was hailed as visionary when it was signed into law in 1970, yet has since become a process that is too often used to delay, if not halt projects, and has produced unintended consequences.

I can't say I ran for Congress on a platform to update and improve NEPA. However, whether it is important transportation and public works projects, oil and gas development, healthy forests, mining, grazing or any other federal project, NEPA is required and oftentimes the tool to delay or to shutdown projects.

Battle Mountain's Crown Jewel project is located in Okanogan County. It has undergone an excruciating seven year permitting process, received more than 53 state and federal permits, and was issued a favorable Record of Decision (ROD) in January 1997. The project has withstood administrative challenges to every permit and the ROD as well as several legal challenges. In December 1998, a federal district court upheld the EIS and ROD. After spending more than $85 million on the project, Battle Mountain Gold was on the verge of receiving its operating permit when it was taken hostage by the Department of the Interior and its Solicitor, who has attempted to change 127 years of law with the stroke of his bureaucratic pen. Fortunately, through the efforts of Senator Gorton, Representatives Nethercutt and Hastings, and many others, Congress rightfully intervened and set the project back on track.

This is one of many examples that point to the need to reform the NEPA process to provide firm time guidelines and deadlines, to provide sideboards and bring accountability to the process, and to require the losing party to pay all costs and attorney fees if they challenge agency decisions in court. Without these reforms, the mining industry will continue to seek opportunities outside the U.S.

This is simply unacceptable. We live in a resource rich country and we should not be strangling ourselves economically by not utilizing the resources we have been given or by putting them off limits. We need to work together to support common sense solutions to establish and maintain regulatory certainty and predictability for the mining industry and reduce excessive, duplicative and expensive permitting delays.

[The statement submitted for the record by the Uranium Producers of America follows:]

Statement submitted for the record by the Uranium Producers of America

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., Uranium Energy Corp, UREX Energy Corp., Denison Mines Corp., Laramide Resources Ltd., Mestena Uranium LLC, Power Resources, Inc., Strathmore Minerals Corp., Uranium Resources Inc., Neutron Energy, Inc., Western Uranium Corp., and U.S. Energy Corp. UPA member companies are actively pursuing exploration, development and production of domestic uranium resources in Wyoming, Colorado, Texas, South Dakota, Arizona, Nebraska, Nevada, Utah and New Mexico. We appreciate the opportunity to provide a statement concerning H.R. 2262. The UPA strongly urges that any changes to the existing Mining Act be made only after careful consideration of the devastating impacts such changes could have on our nation's ability to become more energy independent. UPA's position is that domestic uranium production is vital to

the national security and energy independence of the United States and will, once again, play a key and sustaining role in the front end of the nuclear fuel cycle.

Today in America, and indeed worldwide, there is truly a nuclear power renaissance. And this renaissance requires as its foundation the essential fuel—uranium. 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 country needs an energy independence policy that includes nuclear power as a centerpiece of implementation. Legislation such as H.R. 2262 is counterproductive to that goal;
- 70% of the American public is in support of nuclear energy[1] essentially because of their concern over rising gasoline and natural gas prices and the growing concern over CO_2 gases and global warming. Legislation such as H.R. 2262 is not at all responsive to these public concerns;
- 20% of America's electricity is currently generated by clean nuclear power, and this amount must grow in order for us to reach energy independence. H.R. 2262 will stifle this growth;
- In order to even simply maintain the current 20% level of America's baseload electricity generation that comes from nuclear power, more uranium must be produced, both domestically and worldwide, and H.R. 2262 will certainly unduly impede such production in America;
- Some of the most ardent environmentalists, such as Patrick Moore, Norris McDonald and James Lovelock, urge that nuclear energy is the most efficient means of addressing their greenhouse gas concerns because nuclear energy production is free.

The United States currently derives 20% of its electricity from nuclear power. In order to generate this electricity, domestic nuclear utilities consume approximately 56 million pounds of uranium in the 104 commercial reactors that they operate. In order to break our nation's addiction on foreign oil and substantially reduce greenhouse gas emissions, nuclear power generation must play an increasingly larger role in generating base-load electricity in our country. Since worldwide demand for uranium is rapidly increasing and has far outstripped supply for many years, it is imperative that the rebounding domestic uranium mining industry discover and produce new sources of uranium from within the United States. Much of the resources that have been discovered in the past and that will be found and mined in the future are on U.S. public lands. The Department of Energy recently noted in its Environmental Assessment to open DOE controlled lands for uranium leasing, that expansion of its leasing program in Colorado would be supportive of the goals of the Energy Policy Act of 2005. (Public Law 109-58). The Act emphasizes the reestablishment of nuclear power as a major source of energy.

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 "[n]uclear energy must become the primary generator of baseload electricity, thereby relieving the pressure on natural gas prices and dramatically improving atmospheric conditions."[2] This finding is based on the fact that electricity generated from nuclear power is inexpensive and clean.

In order to grow the nuclear power industry in the United States, as it is growing in the rest of the world, we must provide for a significant portion of the basic fuel for our reactors to come from within our borders. The uranium resources are available. At today's prices, domestic uranium producers can compete with foreign producers to supply a meaningful portion of domestic nuclear utilities needs. At this time, government policy makers should be doing everything reasonably possible to encourage new production, not put up barriers to this production. Foreign nations such as Kazakhstan and Russia are spending millions to encourage the production of nuclear fuel. In the United States, private industry and investment will fund the effort to reestablish domestic uranium production. However, until mines can be permitted and new processing plants licensed and constructed, it is critical that additional impediments to this industry be minimized. H.R. 2262 contains such impediments.

Dating back to the early days of the Atomic Energy Commission, the Federal Government has played a leading role in the development of the domestic uranium pro-

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[1] Nuclear Energy Institute Survey 2005.

[2] Seeking America's Energy Future, Majority Staff Report to Comm. on Government Reform, Chairman Tom Davis, and Subcommittee on Energy and Resources, Chairman Barrell E. Issa, Comm. on Government Reform, U.S. House of Rep., May 2006.

ducing industry. The Federal Government partnered with private companies to create this industry. Unfortunately, the Federal Government also played a leading role in the demise of the industry. Early enrichment contract practices and liquidation of massive quantities of government uranium stockpiles created circumstances in which the market price of uranium had little to do with the cost of producing uranium. The result was to decimate the domestic uranium production industry over a period spanning a quarter of a century. We are deeply concerned that H.R. 2262 will turn back the clock on the uranium industry and thwart its success just as it recovers from over twenty-five years of critical struggles.

An industry which in the 1970's provided over 18,000 jobs and operated over 300 mines and 26 mills in the U.S., had shrunk by 2001 to less than 400 jobs, three mines and only one operating mill. Further, 44 million pounds of uranium was produced annually from mines in the U.S. the 1970's, and only about 5 million pounds will be produced in 2007. This level of production meets less than 10% of the current demands on our country's nuclear power industry. With today's great geopolitical uncertainty, production of such a small fraction of U.S. nuclear utility demand from domestic sources should become a matter of significant concern. The UPA urges Congress to spur increased production and not place impediments on the domestic uranium production industry that will prevent it from providing domestic fuel supply to what Congress has urged to become a growing U.S. nuclear power fleet.

Much of our annual domestic uranium resources currently come from fast-depleting inventories that U.S. utilities purchased in past decades or from uranium imported from foreign sources. The majority of the fuel for domestic reactors currently comes from blended down uranium from Russia's nuclear arsenal. This program ends in 2013. However, renewed interest in nuclear power, coupled with the recognition that there is simply not enough existing uranium production to meet reactor requirements has created a demand for new domestic uranium production, and UPA is poised to meet a substantial portion of this demand. This critical contribution of fuel from within our national borders is a vital component of national energy security.

The Energy Information Administration and the International Atomic Energy Agency have projected that there will be a significant difference between known supply and demand for uranium worldwide for at least the next ten years. The gap between 2007's worldwide production of about 106 million pounds and current worldwide demand of an estimated 185 million pounds is not likely to shrink. Indeed, it is likely to grow and rapidly. The number of new reactors currently planned or under construction is estimated at over 140, adding nearly one-third to the current total of 440 reactors worldwide. In the near future, current and newly constructed reactors will require 275 million pounds of uranium annually. Uranium production must grow both domestically and worldwide to meet the increased demand.

Even assuming the current "best case scenario" for anticipated production, the worldwide market (and by extension the U.S. market) will still be "short" 100 million pounds over the next decade. New production could fill a significant portion of this gap, perhaps as much as 20% of total western and U.S. demand.

New exploration and production, however, is already subject to many barriers, such as increased prices for equipment, the cost of chemicals, fuel and labor, and a shortage of drill rigs, as the oil and gas industry is keeping these rigs and their crews busy around the clock as that vital industry works to do its part to provide U.S. energy security. Regulatory standards are much more stringent than in the past, and several of the western states have enacted mining laws that provide for closure plans and bonding that will assure operations that will protect workers, the public and the environment. This fact was recently recognized by the Department of Energy Environment Assessment for uranium leases. DOE found that concerns about past uranium production practices were not relevant to future mining because current regulations and standards would adequately protect workers, the public and the environment.[3] New technologies and a modern understanding of the impacts associated with uranium production are in place to assure that permitted and licensed operations will benefit the communities in which they operate.

Today, as prices of uranium rebound in response to this supply gap, they still remain below the inflation-adjusted prices of the 1970's. Still, a renaissance of the domestic production industry has begun. 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

[3] Finding of No Significant Impact for the Uranium Leasing Program, U.S. Department of Energy, Office of Legacy Management, July 2007.

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.[4] 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 (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.

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.

Uranium also fills an important role in the reduction of greenhouse gases that cannot be replicated by base-load power generation. The 104 U.S. nuclear power plants produce no CO_2 emissions, nor do they produce emissions of other greenhouse gases. Nuclear energy is the only large-scale and cost-effective energy source that can reduce greenhouse gas emissions, while continuing to satisfy the growing demand for reliable base-load generated electricity in the U.S. Many in the environmental community have embraced nuclear power as the only source of electricity to meet our growing energy demands while diminishing the greenhouse effect. To increase the number of nuclear power plants, we must increase the fuel to power these reactors. Domestic sources, many of which are known from past exploration on public lands, are plentiful and can be exploited to produce much of the necessary fuel.

H.R. 2262, if enacted in its present form, presents formidable regulatory hurdles to the uranium industry. For example, the legislation as proposed would limit permits for a maximum of ten years. Thus, a producing operation that met permit requirements would face the uncertainties of renewal if it had the capacity to produce beyond ten years. This barrier would dramatically decrease investment in exploration and mining. Operators would have great difficulty in obtaining project financing when the longevity of the permit is subject to the vagaries of subjective renewal. This provision would stifle mining industry investments in public lands for many commodity sectors, not just uranium.

Ironically, H.R. 2262, as drafted, would actually foster uranium production in other countries. For instance, the proposed 8% royalty alone would certainly render millions of pounds of otherwise recoverable lower grade uranium deposits in the U.S. to be uneconomic and, therefore, unmineable and would likely prevent many mines from ever opening.

On July 10, 2007, the lead story in The Financial Times of London was the latest report from the International Energy Agency. The article quoted the IEA reported as saying, "Oil looks extremely tight in five years' time," and noted "the prospects of even tighter natural gas markets at the turn of the decade." Uranium faces similar, perhaps much tighter, supply issues. As these resource supplies tighten, America must endeavor to expand its resource base.

It is ironic that today's hearing on H.R. 2262 is being held only eight days following Federal Reserve Board Chairman Ben Bernanke's testimony before the House Banking Committee. On July 18 Chairman Bernanke stated that today's high energy and commodity prices, plus a "bloated trade deficit," present one of the greatest risks to the U.S. economy. H.R. 2262 represents legislation that will make domestically produced energy and commodities even more costly, or even not available, and the unnecessary importation of needed uranium to fuel America's nuclear power industry will only add further to the trade deficit.

Commodity prices and supply are being driven by emerging Asian markets. China has tied up major uranium supplies in Australia to meet its expanding nuclear generation requirements. Forward thinking energy policy in the United States demands

[4] See McLemore and Chenoweth, Uranium Resources in the San Juan Basin, New Mexico, New Mexico Geologic Society, 2003.

that we recreate the extensive uranium production capacity our country once enjoyed as a result of the Atomic Energy Commission's Uranium Procurement Program in the 1950's and 1960's. The use of public lands to assist in making America less dependent on foreign uranium should be encouraged, not hamstrung, as would be the case if Mining Act reform is adopted without fully considering the consequences of ill-conceived legislation. Today's domestic uranium industry stands ready, willing and capable to help America achieve its goal of energy independence and national energy security. The industry cannot do so if H.R. 2262 is enacted.

The domestic uranium industry has located claims on public lands, because significant uranium deposits are located there. The domestic industry is also securing rights to private and state lands across the West as well, because these lands have uranium potential also. The extent of uranium reserves in the America West may be staggering, but its full extent may never be known without the freedom to explore and then mine these lands.

[The Washington Times article submitted for the record by Mr. Pearce follows:]

"China powering world economy"

[Published in the Washington Times on July 26, 2007]

By Patrice Hill—China, this year for the first time, has dislodged the United States from its long reign as the main engine of global economic growth, with its more than 11 percent growth eclipsing sputtering U.S. growth of about 2 percent, according to the International Monetary Fund's 2007 projections released yesterday.

China's growth, which has been fueled by booming domestic building and commercial development, as well as soaring exports, has accelerated even as U.S. growth dropped to 0.7 percent in the first quarter under the weight of a profound housing recession. China is expected to drive a hearty 5.2 percent expansion of the global economy this year, the IMF said.

The United States, with one-quarter of the world's economy and the richest consumer markets in the world, has dominated global growth for decades. But China's emergence has been foreshadowed for years by its pull on world commodity markets, where it has driven up the price of raw materials to record levels, from oil to copper, in its race to build and export goods around the world.

"This year for the very first time—with its very strong growth expected, and with the growth slowdown in the United States—China will be contributing the largest part to the increase in the global growth measured at market exchange rates," said Charles Collyns, the IMF's deputy director of research.

China will provide one-quarter of the annual growth rate of the world economy, and, Mr. Collyns said, "if you add together Russia and India as well, you get over half of global growth coming from the emerging-market countries."

Although the IMF expects U.S. growth to rise back above 3 percent in the second quarter, it predicts that spreading housing and credit problems will push it back into the 2 percent range by year's end. In a reversal from previous years, economists expect exports to fast-growing global markets to be an important contributor to U.S. growth this year while consumer spending on imports fades, a trend that promises to help tame the nation's huge trade deficits with China and other countries.

China's seemingly insatiable appetite for raw materials with its huge footprint in world export markets has given it the key role of locomotive for other economies as diverse and far away as New Zealand and Saudi Arabia. The spigot of revenues that resource-rich countries such as Russia have earned, in turn, has fueled booming domestic markets for building and consumption.

Better growth in Europe and Japan also is contributing to a healthy world economy this year. Many economists attribute the improvement there as well as in emerging countries such as Russia and Brazil to the successful adoption of U.S.-style economic policies—among them, lower taxes, less-regulated labor markets and stable monetary regimes. China also is benefiting from the imposition of economic reforms through its entry into the World Trade Organization.

"This is a good global economy. It's remarkable," said John Taylor, a scholar at Stanford University's Hoover Institution and former Treasury official. "In the 1990s, there was one global crisis after another, but we haven't seen one since 2002."

The adoption of stable, low-inflation monetary policies in Brazil, Mexico, South Africa and Turkey and the enactment of low, flat taxes in Russia and some Eastern European countries during the 1990s are paying major dividends with strong growth that is helping to pull the U.S. out of an economic slumber, he said.

After years of preaching by the U.S. and IMF about the benefits of good economic policies, "countries are following better policies all over the world," he said, resulting in lower inflation and interest rates and healthy growth.

Most impressive is the way soundly managed Latin American economies such as Brazil, Mexico and Chile have resisted calls from Venezuelan President Hugo Chavez for a return to the popular socialist policies that held back Latin growth and spurred hyperinflation in previous eras, he said.

"I don't see any enthusiasm for him from other Latin American countries," other than a few small economies like Bolivia, he said, despite the oil subsidies that Mr. Chavez has been lavishing on the region in an effort to gain allies.

"The change you're seeing began in the U.S. during the 1980s and spread to other countries in the 1990s," he said. "We have more balanced growth, and globalization is causing more interconnectedness. It spreads the riches around."

While China has adopted some economic and financial reforms, it has resisted calls from the IMF and U.S. for reforming its fixed-currency regime, which economists think is keeping the yuan artificially low against the dollar. The result has been unprecedented U.S. trade deficits. Mr. Collyns said the exchange-rate distortion also has had the effect of making China's economy appear smaller than it really is, masking the influence that the Asian giant has been exerting on the world economy for years.

With better economic regimes in place, countries like China and India, with populations of more than 1 billion apiece, have the potential for explosive growth that can quickly outstrip the U.S., with its 300 million population.

Even though large parts of China's economy remain poor and underdeveloped, it is on course to exceed the overall size of the U.S. economy within a few years, and the emergence of rapidly growing middle classes in countries such as India and Russia put them not far behind.

The baton of global consumption is being passed from the developed nations in general, and the United States in particular, to the developing nations," said Joseph P. Quinlan, chief investment strategist at Bank of America.

"Consumption is no longer the domain of the U.S. Going to the mall on Saturday afternoon is just as popular in Bangkok and Sao Paulo as it is in Boston and San Antonio."

[A resolution submitted for the record by Cibola County, New Mexico, follows:]

Cibola County Commission
Elmer Chavez, Chairman
Bonnie Cohen, 1st Vice-Chair
Jane Pitts, 2nd Vice-Chair
Antonio Gallegos, Member
Edward J. Michael, Member

Cibola County
515 West High Street
Grants, New Mexico 87020
Phone (505) 287-9431 – Fax (505) 285-5434

David Ulibarri
County Manager

RESOLUTION 07-21

SUPPORT OF FEDERAL MINING LAW OF 1872

Supporting the Mining Law of 1872, its contributions to employment and the economic development of the rural American West and its encouragement of the exploration and mining of uranium for U.S. energy and security needs.

WHEREAS, Cibola County, New Mexico, has been blessed with a bountiful endowment of uranium resources, a critical national resource that has helped in the past, and will in the future, to reduce U.S. dependence on foreign oil and alleviate the energy crisis; and

WHEREAS, Cibola County is proud to be the home of the Uranium Capital of the World; and

WHEREAS, certain of these uranium resources located in Cibola County will provide a secure domestic source of energy for the U.S. in the future and are on public lands subject to the Mining Law of 1872; and

WHEREAS, attempts by Congress to amend this law will add yet another unnecessary level of uncertainty to the domestic uranium industry's efforts to re-establish a strong domestic energy production base that is critical to our national energy supply and security; and

WHEREAS, Cibola County's uranium resources will provide a cost effective and efficient alternative source of energy without atmospheric emissions or greenhouse gases from carbon-based forms of power generation; and

WHEREAS, the mining and milling of uranium in Cibola and neighboring Counties will be conducted according to modern standards and regulations that are protective of the health of uranium workers, the public and the environment;

WHEREAS, the renaissance of the uranium mining and milling industry in Cibola County is already beginning to re-establish a significant tax base, providing local employees and contractors with high-wage jobs and important benefits leading to an enhanced quality of life for the region's residents, and will provide much needed economic stimulus to the County as it continues to grow; and

WHEREAS, nuclear energy is one of the most economical energy sources and provides 20% of U.S. electricity needs; and

WHEREAS, it is essential, in this time of global uncertainty and an increasing reliance on unreliable foreign sources of energy and other strategic minerals and goods, that the U.S. do all it can to enhance domestic energy production and not inhibit this production; and

WHEREAS, the Mining Law of 1872, as amended, has served the U.S. well and has been substantially enhanced over many years through many other Acts of Congress to ensure that a wide range of environmental protection measures are carried out by the mining industry and that a fair economic return be made to federal, state and local governments in the form of tax revenues; and

WHEREAS, H.R. 2262, if enacted in its present form, would create drastic barriers to the investment in the exploration and development of uranium in Cibola County; and

WHEREAS, it is the desire of the Cibola County Board of Commissioners to go on record in support of the domestic uranium mining and milling industry and the Mining Law of 1872 and its current enforcement on U.S. public lands; and

NOW, THEREFORE, BE IT RESOLVED, that the Cibola County Board of Commissioners urges Congress to support America's domestic uranium industry and its important role in providing critical energy resources from our nation's public lands, to enforce the Mining Law of 1872 in its current form and that any modifications be carefully considered so they do not hinder the future production of uranium on public lands.

PASSED, ADOPTED AND APPROVED, at a duly called meeting of the Cibola County Board of Commissioners in Grants, New Mexico, this 23 day of July, 2007.

CIBOLA COUNTY BOARD OF COMMISSIONERS

Elmer Chavez, Chairman

ATTEST:

Eileen M. Martinez
Cibola County Clerk