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HARDROCK MINERAL BONDING

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

HARDROCK MINING BONDING REGULATIONS AND THE DECISION ON THE SECRETARY OF THE INTERIOR TO PUBLISH ON FEBRUARY 28, 1997, A FINAL RULEMAKING ON BONDING OF "HARDROCK" MINING OPERATIONS ON PUBLIC LANDS

MARCH 20, 1997—WASHINGTON, DC

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HARDROCK MINING BONDING REGULATIONS

THURSDAY, MARCH 20, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to call, at 12:35 p.m., in room 1324, Longworth House Office Building, Hon. Barbara Cubin (Chair of the Subcommittee) presiding.

STATEMENT OF HON. BARBARA CUBIN, A U.S. REPRESENTATIVE FROM WYOMING; AND CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mrs. CUBIN. The Subcommittee on Energy and Mineral Resources will please come to order. The Subcommittee is meeting today to hear testimony on Hardrock Mining Bonding Regulations. Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member.

This will allow us to hear from our witnesses sooner and help keep members on their busy schedules, and, boy, can we attest to that. Therefore, if any other members who are not here have any statements then they can be included in the record later for all of you to see.

Today the Subcommittee will review the decision of the Secretary of the Interior to publish on February 28th of this year a final rulemaking on bonding of hardrock mining operations on the public lands administered by the Bureau of Land Management. This may come as a shock to some who characterize me as anti-environmentalist. In fact, I have even been called an eco-thug because of my position on State primacy for coal mining regulation.

But I do not oppose financial assurances from companies who are mining in this country to guarantee to the people of this country that reclamation of lands disturbed by mines will take place. I absolutely believe in it and it should be done in the finest way.

My coal miners in the Powder River Basin are bonded, as are oil and gas operators, and others. I think this is as it should be and I do believe in bonding. That is not the reason for this hearing. However, from where I sit, it appears to me that this Administration has decided to ignore the Administrative Procedures Act mandate to ask for meaningful public input on proposed rules and regulations before coming out with a final rule which will significantly impact a group of our citizens.

And let me state in my State we have very, very little hardrock mining which makes or should make it even clearer that the issue of bonding is not what is at point here, the issue is to insure the integrity of the process. That is what I view as the Subcommittee's responsibility in this case.

In the case at hand, way back in July of 1991, during the middle of the Bush Administration, the BLM proposed a rule concerning financial guarantees for reclamation of mining operations conducted under the general mining law. That was nearly five and one-half years ago, and some 220 responses were received before the 90-day comment period closed. On February 28 then of this year a final rule was published by the Department of the Interior with an effective date of March 31, 1997.

In my mind, that is an awfully long shelf-life for public comments. A lot has happened in the last five years. Like bread, public input can go stale. Technology can be made stale with the passage of time. There are many things that are in the proposed rule that were not even covered in the input in the first five years ago.

I am not suggesting that the Department of the Interior to have thrown out the entire six-year-old responses on the last proposal of the bonding issue, but I am only suggesting that the Secretary ought to have exercised good judgment and recognized the need to reask the public for meaningful input and repropose this final rule for timely comment.

Now, I recognize that some rulemakings in other agencies like the EPA, for example, can drag on for years and years, but it seems that those air quality regulations and other environmental rulemakings are often proposed and reproposed and re-re-proposed. They go on for a long time but they are not put on the shelf, ignored, and then picked up five and one-half years later.

And the public has a bite at those regulations each time, so it is not a case of dormant rules suddenly being awakened and sprung on an unsuspecting group of citizens. But that is what it looks to me like is happening here.

Furthermore, the rule at issue is a part of the so-called 3809 surface management regulations for the BLM, for which the Secretary has announced the formation of a task force to review the adequacy of the program. In other words, the entire plan of the Secretary's mandate under FLPMA, "to prevent unnecessary and undue degradation of public lands" will be scrutinized.

I understand that the BLM plans to hold scoping meetings in several western locations in the relatively near future. If the Secretary could not wait for that task force to review the current bonding regulations for the revision of the entire 3809 section, at a minimum I think he could have directed the final rule to have been reproposed after a 60-day period where there could be up-to-date, meaningful input from the public.

And the comments that the Department would receive from reproposing the bonding rule would include insights that were not available in 1991 because the regulatory landscape of the various western States has changed in the intervening six years. My guess is that these State regulatory bodies, individually, or collectively through the Western Governors' Association would have something

to say about this final rule but they have been frozen out from commenting on the rule.

Alaska's legislature, for example, agreed to form a statewide bond pool to insure small miners would have access to financial guarantees for reclamation, but my understanding is, and I have read a letter from the governor of Alaska, that the final rule of the BLM is ambiguous at best about whether such a pool provides satisfactory assurance.

In other words, will seasonal placer mine operators be caught up in the interpretation of this rule just as they need to make decisions on whether or not to improve their equipment or move in equipment?

At the same time in the lower 48 States, will Nevada's statewide bonding pool, a surety of last resort as it has been described to me, be a satisfactory financial assurance? And if so, what is the possible impact upon the total liability of the pool and is it enough to prompt a finding of an unfunded mandate upon the State? I think these are legitimate questions that have not been posed to the public and have been only if considered at all done internally and the law strictly requires for public input.

Closer to home, how will the mine operators who utilize in-situ leach methods to recover uranium, this would be in my home area, from the Powder River basin, how will they be impacted? And does reclamation, as defined in 3809 for bonding purposes, include neutralization of the aquifers when other Federal and State laws clearly apply, not reclamation in the traditional sense of reshaping and revegetating the land?

And what about the imposition of criminal penalties in the final rule for operators who fail to comply with a notice of non-compliance? Is it really within the jurisdiction of an agency to determine what should be felony law? Regardless of one's view of the BLM as public law enforcement agents, is not this a change from the 1991 proposal? Is there sufficient rationale alone in that one subject to seek more input? I believe that there is.

Certainly when summed up together with the questions that I have already mentioned and others that I have not and there are many others, it is clear to me that the Secretary should have done the right thing and asked the public for meaningful input at this time on this rule. I reiterated my sense that financial assurances are a necessary part of doing business on the public lands today, but I surely do not see the reason why the public should have been shut out from the opportunity for meaningful comment on this rule.

It is my desire to respectfully request that the Secretary withdraw the final rule and at the very minimum extend a 60-day comment period. With this statement, I welcome our witnesses to this hearing and recognize the Ranking Member, Mr. Romero-Barceló for his opening remarks.

STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, RESIDENT COMMISSIONER FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. I would like to begin by saying that you are to be commended in holding a hearing today on the Bureau of Land Management's new requirement for

hardrock mining on public lands. The new rule, published in the **Federal Register** on February 28 of this year, will do much to ensure that miners, and not the public, pay for restoring public lands after mining is complete.

This is an important change in policy. Therefore, we hope that any questions or issues regarding the procedures used to implement the new rule will be answered during this hearing. The underlying policy of the final rule is sound. Under this new rule, the Bureau of Land Management will require all miners to maintain full financial bonds, or guarantees, for 100 percent of the cost of restoring public land that their activities have disturbed. This is a significant change from the previous policy that exempted miners disturbing less than five acres of public land from providing proof of such protection.

The Inspector General of the Department was extremely critical of the previous policy stating that it did not provide an adequate guarantee that mining operators would reclaim the land after mining. Reclamation is necessary to ensure that environmental damage, such as acid mine drainage, groundwater and drinking water contamination, does not occur. Reclamation also ensures that the land can again be used for other purposes, like recreation, once mining is complete.

The Bureau of Land Management first proposed changing the rules in 1991. The process is finally complete with the issuance of the new regulation. American taxpayers have for too long borne the risk and expense of cleaning up after unscrupulous miners. Now, under the BLM's new rules, the cost of cleaning up the disturbance caused by mining will be placed squarely on the mining community's shoulders where it should be.

Activities that do not disturb the land, such as panning for gold in mountain streams, will not require a bond. But anyone engaged in mining activity that disturbs the land such as digging or excavating will be required to post a bond or other financial guaranty covering 100 percent of the cost of reclamation. The Bureau of Land Management will release the bond after reclamation is completed. The rule also requires that a professional engineer certify the projected costs of reclamation.

The Bureau of Land Management already requires reclamation of land disturbed by mining. By requiring bonds, with 100 percent of costs taken into account and increasing the minimum dollar requirement, the Bureau of Land Management is ensuring that reclamation will occur without tax dollars. Thank you, Madam Chair.

Mrs. CUBIN. Thank you for your remarks. Ms. Green, do you have any opening remarks?

Ms. CHRISTIAN-GREEN. Thank you, Madam Chair. I have no opening remarks.

[Statements of Mr. Young and Mr. Ensign follow:]

STATEMENT OF THE HONORABLE DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

Madam Chairman, we are here today because high level bureaucrats in the Department, under the guise of Secretary Babbitt, have once again decided that Washington, D.C. knows best. After more than five years of silence on bonding, Washington, D.C. wants to impose a new bonding rule on miners by decree. Washington, D.C. does not want the opinion of the Congress, it does not care what the States

have done, and it has no intention of allowing any public input into this decision. But, we have laws which mandate that they follow a fair process before making rules. We are asking the Department of Interior today to demonstrate that, in making this bonding rule, they have respected both the letter and the spirit of the laws mandating a fair process.

In my district, most mines are small placer gold mines. They employ about five people and produce less than 700 ounces of gold each year. Together, they produce the bulk of Alaska's gold. They are critical to Alaska's economy. They are essential in rural areas where mining may be the sole source of jobs.

These mines are actually small businesses. Many are family-owned and operated. In fact some of today's Alaska miners are descendants of the hardy participants in Alaska's original gold rushes.

Most placer mines affect only a few acres each season and use simple technology. Old stream deposits are dug up, the gravel washed, and the gold removed by gravity. Toxic discharges are not a problem. The State of Alaska requires reclamation and has a bonding system. That system ensures reclamation while providing bonds at reasonable cost to Alaska's independent miners. The state system works. But along comes Secretary Babbitt, after five years of hibernation, to "fix" the problem. The Department is trying to fix a problem that the states are handling just fine.

What does this new Washington, D.C. rule mean for individualistic, hard-working Alaska placer miners?

—They must comply with inflexible, costly regulations.

—They will have to hire expensive engineers to certify reclamation plans.

—If Washington, D.C. refuses to accept bonds underwritten by the Alaska state bonding pool, they will have to lay out huge sums of cash or marketable securities.

Many small mining businesses in Alaska will not survive this rigid Washington, D.C. rule.

Finally, Madam Chairman, I have a letter from the Governor of the State of Alaska to Interior Secretary Babbitt, which expresses his concern regarding this rule on hardrock bonding and asks that the Secretary reconsider this new rule. I request that this letter be made part of the written record of this hearing.

Thank-you Madam Chairman.

STATMENT OF HONORABLE JOHN ENSIGN, A U.S. REPRESENTATIVE FROM NEVADA

Thank you, Madam Chairman, for the opportunity to testify before the Subcommittee on the final rule published by the Bureau of Land Management concerning bonding of hardrock mining operations on BLM lands.

In a state like Nevada, where 87% of the land is federally owned and the mining industry is the second largest employer in the state, we all must keep a watchful eye of the land management practices of our federal agencies. Likewise, in a state with such a federal presence, it is extremely important that the federal agencies work in harmony with local officials and the public. There must be constant communication between the agencies, the land users and local officials.

In the case of this final rulemaking, it appears that little or no effort was afforded to the public to communicate with the BLM in regards to this action. The Administrative Procedures Act specifically mandates that the public be given ample opportunity to comment on such proposals. In July of 1991 a similar proposal was suggested by the Bush Administration. The public was granted the customary comment period, yet no further action was taken. Now, nearly seven years later, this proposal becomes a final rule. It is irresponsible of this Administration not to solicit additional comments from the public. In the past seven years, my State of Nevada has changed dramatically and I think similar changes have occurred all over the West.

I do not want to give the impression that I am opposed to bonding. The largest mines in Nevada are currently required to bond 100% of the reclamation costs because they operate in excess of five acres. It is important that we do all we can to ensure that the land is reclaimed to its original state. We also must recognize the technological gains and advancements the industry has made to prevent many of the mistakes of the past.

I simply believe that all interested parties should be given the opportunity to respond to this proposal before it becomes final. A lot of changes have occurred in the past seven years and I believe it would be beneficial to the Bureau to understand new and current comments on the proposal. I hope this Administration would recognize the importance of recent views and make this proposal available for the public's comments.

Thank you, Madam Chairman.

Mrs. CUBIN. Now if all of the witnesses that will testify before the committee today would please stand and raise your right hand to be sworn in.

[Witnesses sworn.]

Mrs. CUBIN. Our first panel then, I would like to call Mr. Leshy, who is the Solicitor for the Department of the Interior, and ask for his testimony. I would like to remind all of the members of the panel that we have a time limit of five minutes for your presentation and if you could stick as closely to that as possible, that would be appreciated. And we have some lights down there to tell you when to go and when to caution and when to stop so do whatever you need. Mr. Leshy.

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

Mr. LESHY. Thank you, Madam Chair, and members of the Subcommittee, I appreciate the opportunity to testify here today to discuss the final rule on bonding for hardrock mining operations. The authority for these rules comes from the Federal Land Policy and Management Act which directs the Secretary of the Interior—it is his duty, not his discretion—to prevent unnecessary and undue degradation of public lands from, among other things, hardrock mining operations conducted under the old Mining Law.

Most members of the mining industry are responsible operators who live up to their reclamation obligations, but there is no denying that when protective measures are not taken or are inadequate, the consequences can be very costly, and unfortunately sometimes the costs are passed on to Federal taxpayers and not borne by the mining industry. There is a substantial record on which we acted in strengthening these hardrock rules.

Your letter of invitation asked me specifically to address why BLM had published new regulations after they "appear to have been dormant over five years." With all due respect, I think it is impossible to say that the public policy debate about environmental regulation of hardrock mining has been anything like dormant at any time over the last five years.

This bonding regulation is a central part of that debate and I do not think anyone concerned with the subject could have possibly believed that Interior had put environmental regulation, including the bonding regulation, in some sort of deep freeze. There have been thousands, maybe millions of words spoken about hardrock mining environmental regulation over the last several years.

I must reject the suggestion that we somehow behaved irresponsibly by suspending work on the final rule after we published the draft rule in 1991, while we waited for Congress to grapple with and we hoped enact acceptable reform of the Mining Law. In fact, deferring to Congress and waiting for it to act in the 103rd and 104th Congresses was a very responsible thing to do. I think it would have been terribly confusing had we come out in the middle of a congressional debate on the subject with a final bonding rule.

That deference to congressional action explains a substantial part of the time between the draft and final rule. The other part of the time was taken up by our need to carefully and fully comply with the numerous procedural hoops in the rulemaking process

that Congress and the President have created for rulemakings. A number of these requirements are new. Compliance with the Paperwork Reduction Act alone here took several months in between the draft and final rule.

Some might think it a little ironic that, because during the time between the draft and final rule we decided to defer to congressional action and we took great pains to comply with the requirements, most of them from Congress, on the rulemaking process, we are now criticized. Frankly, I think if the reverse had been true—that if we had not waited for Congress or if we had not done a careful job jumping through these rulemaking hoops—we would have been severely criticized. I guess no good deed goes unpunished.

Your letter also asked me to address the merits of publishing the rule as a final rule without meaningful recent public input. There are several things to say about that. First, we had substantial public input on the draft regulations. It was meaningful. We carefully considered those comments in putting together the final rule. There has been no effort or attempt here to short circuit full consultation with the public as a normal part of the rulemaking process.

I must say a careful consideration of public input here was in stark contrast to that of the BLM in the Bush Administration. In 1990, the director of the BLM made some very substantial changes in the bonding policy of the BLM without publishing a rule at all, but instead by simple memorandum signed by the director, without going out for public comment. It made many more significant changes in the previous practice than the changes between the draft and final rule here, and those changes were made, I repeat, without any effort to get public comment.

The differences here between the draft rule published in 1991 and the final rule published earlier this year are relatively insignificant in the overall context of the proposal. The draft rule would have required bonds for all notice mines and all plan mines. So does the final rule. The only difference is in the level of bonding required. The draft rule would set the level at full cost for certain categories of mining and a prescribed maximum per acre for other categories. The final rule requires full cost for all categories with some mandatory minimums.

Both the draft and final rules enlarged the categories of qualifying bond instruments. There are few differences in the kind of instruments accepted between the two: the final expanded in one area and contracted in a couple of others. There are a few other changes primarily for clarity. The basic structure, approach, and most of the details remain the same. Changes are exactly the kinds of changes that are within the original scope of the rulemaking and are the kinds of changes one would expect in a normal rulemaking process in response to public comment.

There is nothing out of line here, legally or otherwise. We look at this, in conclusion, as really a simple matter. A mining claimant operating under the old Mining Law of 1872 is offered a practically unparalleled opportunity in modern American life—access to explore for and develop valuable public property while paying the owners of that property, the taxpayers, pocket change.

If a claimant cannot provide some assurance to the taxpayer that he, and not the taxpayer, will bear the cost of restoration, protecting water quality and the health of the land, then that person or entity should not be out there on the public lands threatening water, air and land. We are glad, Madam Chair, that you share that policy.

We think the final bonding regulation is a reasonable effort to protect the nation's hardworking taxpayers. They deserve nothing less than satisfactory guarantees that they will not be left holding the bag for careless or irresponsible mining operations, and we have found no reason in law or policy to delay the implementation of the rule. Thank you for the opportunity to testify. I am, of course, happy to answer questions.

[Statement of Mr. Leshy may be found at end of hearing.]

Mrs. CUBIN. Thank you for your testimony. I have to say I am somewhat surprised. I frankly think that these issues are much too important to be partisan and I truly regret that you felt the need to bring up something that happened in the Bush Administration and try to justify actions taken by you or the Secretary or whomever. We have got to get the partisan politics out of natural resource issues, out of environmental issues, out of development issues, Mr. Leshy, because nobody has any credibility when it is partisan.

We have to depend on the process. We have to hold the process inviolate because only by protecting the process can we protect the resource and can we protect the American people and their right to be compensated for their minerals and their right to have their land reclaimed. And I would appreciate it if you appear in front of this Subcommittee again that we leave the politics out of this.

You started your testimony by saying that the debate has not been dormant about this bonding or about these regulations over the past five-and-a-half years. I would suggest certainly there has not been anything dormant about discussing bonding issues and environmental issues but certainly the specific regulations and the changes from the draft rules to the final rules in my mind are significant while I realize we have a difference of opinion.

In fact, after I read them I wondered if you had read both the draft and the final because there are lots of differences and they are major. I am sorry that you feel that no good deed goes unpunished but you cannot deny this is an unique instance where comments are taken 5–1/2 years ago, draft rules come out 5–1/2 years ago, and now it is jerked off the shelf, switched around.

Well, I guess that is enough of that. I do appreciate the fact that you are here. I wish your testimony had been more insightful as to why the Secretary chose not to seek new comments on this rule. There were no reasons offered as to why no new comments were asked. Perhaps you can help us understand that decision in a minute, but let me say up front I was trained as a chemist, not a lawyer, and although several of our colleagues today are lawyers they will help me out on those issues but I do know that the Administrative Procedures Act which guides rulemaking has been interpreted by the courts to require agencies to solicit meaningful public input before imposing a final rule.

I would suggest that input from up to ten years ago may not be meaningful, is not meaningful at this point in time. You may be aware that I wrote the Secretary asking for internal documents within the Department which may shed light on the final decision on why this decision became final. These have not yet been provided to me.

I appreciate the Department for providing the Subcommittee with some of the documents that I requested for this hearing. However, the Congress and this Subcommittee have a responsibility under House Rule 10 and 11, Committee Rule 6 in Article 1 of the U.S. Constitution that requires this Subcommittee to have virtually unfeddered access to nearly all departmental documents.

Therefore, I expect all requested documents to be produced. Any observer would probably agree that the rule we are looking at today was finalized in a highly irregular manner. I intend that we get to the bottom of this issue of the issuance of this rule. Doing so absolutely requires access to the documents that I requested without conditions that inhibit the legitimate oversight functions of this Subcommittee.

While the President's concerns are understood, I want to make three points from the Subcommittee's perspective. This must also be very clearly understood by you, by the Secretary, and by the President. While it is for the President to assert deliberative process privilege himself, this privilege is not available to the Department.

Secondly, under congressional precedent, it is for the Congress to determine in its sole and sound discretion whether to accept any claim of any attorney privilege that the executive exerts. I intend to take the views and desires of the Department in making this decision but nonetheless it does not change the basic fact.

Third, even if documents are qualified for the attorney-client privilege disclosure to Congress does not waive that privilege as to third parties. So the Department should not be concerned with releasing documents or limiting access to them. Furthermore, we are talking about a rule that is a final rule. The Subcommittee is simply trying to bring the decisionmaking process concerning that rule into the true light of day.

The rule itself may very well come to be the rule that is accepted and acceptable to everyone involved, but my job and the job of this Subcommittee is to protect the integrity of the process in order that we can protect the people of these United States. I would appreciate your sending me the rest of the documents as soon as you can so that we can get to work so that I can understand why this unique process has occurred. I would like to know the reasons for bringing this out as a final rule at this late date.

Mr. ROMERO-BARCELÓ. Madam Chair.

Mrs. CUBIN. Mr. Barceló.

Mr. ROMERO-BARCELÓ. I just wanted to make sure, I understand that the Department believes some of the documents to be turned over are considered privileged documents and if that is so I am sure that before they turn over the documents they would like to enter into some kind of a written agreement or stipulation to make sure that those privileged documents are not made available to anyone else.

Mrs. CUBIN. Mr. Barceló, I would suggest to you that that is not within the authority nor the purview of the Department. The President, yes, but the Department, no.

Mr. LESHY. May I speak to that issue?

Mrs. CUBIN. Excuse me?

Mr. LESHY. May I speak to that issue, Madam Chair?

Mrs. CUBIN. Please.

Mr. LESHY. The concern expressed by Congressman Romero-Barceló is exactly right. We have no desire to withhold documents that you have requested. We will make them available to you. The procedure we are trying to work out here on quite short notice, since we got the document request I think last week, is a procedure that we have worked out with any number of congressional committees, I think including this one in the past, which is to just have an understanding that the documents we turn over to you will not be disclosed outside of the committee without at least checking with us, because they involve things that could become privileged in litigation and if they are disclosed——

Mrs. CUBIN. Well, Mr. Leshy, why did we have to have this hearing for you to tell us that?

Mr. LESHY. We have told you that previously. My deputy wrote the committee counsel a letter a couple days ago, I believe, which spelled all this out. They have had numerous phone conversations. I thought it was well on its way to being resolved. We are asking for no special treatment here.

We have worked this out with Congressman Burton's committee, we have worked this out with any number of other committees under which we make available documents that could be sensitive where we could waive privilege if litigation ensued over a matter, documents that we would normally keep privileged and not disclose in litigation. All we are trying to work out is an understanding of how these documents will be treated. We are not trying to withhold any documents.

Mrs. CUBIN. Just because you give them to us does not waive the privilege in a judicial process.

Mr. LESHY. We have to have an understanding about what you are going to do with the documents in order for us to be assured when we turn them over that the privilege——

Mrs. CUBIN. And I believe you have had that under—I believe that you have understood very well. I believe that you have been very disagreeable about providing those documents to us but there is no question there has never been—how simple can it be? We want to understand how the decision for the final rule was derived and we need these documents. How simple can it be?

Mr. LESHY. We have reached arrangements like this with any number of other committees without difficulty. We are simply trying to reach an equivalent understanding here. We have had no problem in this area. We have had numerous discussions with your counsel and your staff on this. I thought we were working this out.

Mrs. CUBIN. We can get you a letter today if it will be satisfactory and I hope the documents will be coming forthwith. Mr. Romero-Barceló, do you have questions?

Mr. ROMERO-BARCELÓ. Do I understand it is all right to word the agreement, to make an agreement as to how the committee is going to proceed with what is considered privileged documents?

Mrs. CUBIN. We will agree to discuss why we need the documents. However, we are not obligated to do that and I would like to make that very clear on the record. I will give them a written assurance as to how we will handle the documents if that is the problem.

Mr. ROMERO-BARCELÓ. Is that a concern of the Department?

Mr. LESHY. The concern of the Department is simply that some of the documents that have been requested, that we are willing to supply, are documents that we could assert a disclosure privilege on if the matter concerning these rules ends up in litigation, and we need to just have an assurance, an understanding with the committee, about how those documents will be treated.

Again, this is something we have worked out with any number of congressional committees on matters like this. This is not anything unique to this arrangement, and we have worked this out without problem everywhere else. I am not sure why we are having a problem here.

Mrs. CUBIN. We are having the problem here, Mr. Leshy, because of the time involved. Just as you seem to think it is all right to use testimony that is ten years old, 5–1/2 years old to make a final rule, you think that time span is acceptable, I do not think it is acceptable to request documents and be stonewalled and that is what I feel has happened in this case. But you will have the letter today.

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair.

Mrs. CUBIN. I do not know who was—OK, Mr. Cannon, do you have any questions for Mr. Leshy?

Mr. CANNON. I do, Madam Chair, thank you. Let me just at the beginning that I find attempts to not communicate documents most irritating and highly consistent with many other activities in this Administration. I do not think it moves toward a good public policy or development of public policy.

One of the things that I am deeply interested in is how this issue got pushed forward again. I assume, Mr. Leshy, you were a party to some discussions about bringing this issue, the rules, forward again. What precipitated that? Who got together and decided that we ought to have these rules promulgated?

Mr. LESHY. Thank you, Mr. Cannon. There is absolutely nothing irregular about the process that was followed here. In the Bush Administration in about 1989 the decision was made to do a rulemaking on bonding—1990, I think. In 1991 proposed rules were published. In 1993 the process had advanced to the point where the final rule was being prepared.

At the time the Congress, both Houses, were very seriously debating Mining Law reform. That Mining Law reform legislation would have superseded these rules. As you may recall, both Houses of Congress in 1993 and '94 passed Mining Law reform bills and there was a very long conference committee deliberation and it was not until October of 1994 that that failed.

Up until that failure I think many, many people thought that there would be Mining Law reform. We made the judgment in 1993

as Congress was debating it that we would only introduce serious confusion and consternation into the process and cause a great deal of understandable concern in the industry as to what was going on if we came out with a rule while Congress was debating this subject, so we made what I thought was a very rational decision in early '93 to put it on hold until Congress solved the problem for us.

Now Congress did not solve the problem, so in early 1994 we resumed the process of going forward with a final rule. Congress in the meantime had added on some new requirements in the rulemaking process and we wanted to do this very carefully and thoroughly and make sure we complied with everything and it frankly took a couple years to put all that together to come out with a final rule.

There was nothing irregular about the process. Rulemaking often takes years. We looked very carefully at the issue the Chair raised, about are we somehow behaving inconsistently with the law to come out with a final rule that has been several years since the draft rule——

Mr. CANNON. My question does not go to irregularity. I have heard your discussion of that. At the point in time, I think you were saying it was in October of '94, there was apparently some decision that Congress was not or it was apparent that Congress was not moving forward and that the Department should take up the rulemaking again. Who was part of that discussion? I take it you were. Who else was there and what was the nature of the discussion?

Mr. LESHY. Frankly, I cannot recall. I am sure I was involved. I am sure the Secretary was involved. I am sure Assistant Secretary Armstrong was involved. Probably Acting Director Dombeck of the BLM and the people, the career people in the BLM who had worked on this process and several other people.

It was a logical—if you put yourself back at that time, we had made a very serious effort with the Congress to try to get Mining Law reform, and when that failed at the very end of the 103rd Congress, then we all said to ourselves, OK, now what do we do and what do we have in process that we have interrupted while we had been waiting for Congress.

There were a number of things we had in process. We had a rule on use and occupancy of mining——

Mr. CANNON. Pardon me, I would actually like to just focus on the issue of that meeting. The Secretary was quoted in I believe the Washington Post the other day as being critical of Congress' failure to do things that needed to be changed and then went forward to say that these rulemakings were going to go forward to do things that he thought was right.

I am wondering what was actually said in that meeting or if you have any recollection of the discussion because I do not think it is proper for the Department to substitute its judgment for Congress and if we have issues that are difficult here they ought to be perhaps left to wait on us. So what I am really wondering is what happened in that discussion? Who took the initiative, do you recall? Do you have any recollection of the nature of the discussions about what Congress did or said or failed to do and what the context was for moving the rule forward?

Mr. LESHY. I do not recall specifically what the discussions were, although I can surmise what they were about. You have to remember that this bonding rule was to address a problem that was identified in the Reagan and Bush Administrations as a problem that needed to be addressed. That was why the proposed rule was published. That is why the rulemaking process was started. It was suspended while Congress was considering the same subject——

Mr. CANNON. We do have a limited time. Would you summarize for me what was said if you can do that.

Mr. LESHY. I imagine that after Mining Law reform went down in the 103rd Congress we all got together and said, OK, now what, since Congress has failed to address this problem this year, what are we going to do on the initiatives we had underway that we suspended while we were waiting for Congress to act.

And as I said, that included the bonding rule, it included use and occupancy regulations, it included a policy on acid rock drainage, and it included a number of other things, so all of these things that had been put to one side while Congress was deliberating, we now essentially said, OK, there is no reason to put them to one side. We are following and carrying out the commitment made in the Bush Administration to upgrade the bonding rules and so we put that back into the active calendar.

Mr. CANNON. My time is now out. Thank you very much, Mr. Leshy.

Mr. LESHY. Thank you.

Mrs. CUBIN. Mr. Rahall, do you have questions? That is right, I yielded to you. Mr. Barceló.

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. Mr. Leshy, it would appear that the mining operators with mines of five acres or less on public lands feel that the rule is unfair and it would place a costly burden on them. How would you respond to these concerns?

Mr. LESHY. First of all, this is not an issue on which there was really a difference between the draft and final rules. That is, the draft rule would have required bonds for all operations including those under five acres. So does the final rule. So the discussion we had been having about that issue is not really directly relevant to the impact on small miners.

The second thing to say is that many States already impose such bonding requirements, and where they do, these rules defer to them where they are the equivalent to the Federal practice, so this is not a brand new sweeping requirement that applies everywhere where nothing applied before. Third, we did as part of the effort over the last year make a very serious analysis of the impact of this on small miners. That was part of the so-called "determination of effects" of the rule that is required by one of the regulatory reform acts.

Actually we worked very hard on that to make it as accurate as we could. It lays out what might be the maximum impacts and we think they are really frankly pretty marginal. Most operations under five acres either will not be hit with a new requirement because they are already part of this under State law, or where they are hit with a new requirement it will be phased in to some extent and they can handle it, and if there are a few marginal operations

that cannot handle it, frankly I think the policy judgment that has been made, and I think it is the correct one, is that those people should not be operating on public lands if the net result of their operations is going to be the taxpayer foots the bill to clean up.

Mr. ROMERO-BARCELÓ. For the record, do you have any numbers of how many hardrock mines have been abandoned without being reclaimed, actual number?

Mr. LESHY. There is a fairly rich record of that in the GAO, General Accounting Office reports. The GAO issued several reports in the mid to late '80's. We have asked the BLM informally for some further information on that. There are dozens of operations, I think it is fair to say, that over the last several years where people have walked away and left a cleanup mess that the taxpayer will have to pay for. So these rules address a genuine problem.

Mr. ROMERO-BARCELÓ. On the other hand, Mr. Hocker, who will be testifying after you suggests disappointment in the rule. He feels that the Department should have made the rule stronger. And how do you respond to the concerns that the rules are weak and they do not meet the Secretary's legal obligations to protect the public lands?

Mr. LESHY. Well, what we have tried to do there, Congressman, is strike a balance between the concerns that you expressed about the impacts on small miners and the taxpayers' interest in not paying for these cleanups. We recognize the rules could have been stronger in certain areas but we think they are reasonable accommodation of a healthy mining industry and the taxpayers—the needs of the environment and the interests of the taxpayers.

Mr. ROMERO-BARCELÓ. As you prepared the final rule how do you consider the effect of the changes in the State law since 1991, was that taken into consideration and if so, how?

Mr. LESHY. Well, the general approach of the final rule, like the draft rule, is to say basically these are the Federal standards and if State laws meet those standards, so that if you get a bond under State law and it is the equivalent essentially of the Federal standard, we will not require anything else. We are not going to duplicate State requirements.

So to that extent, when States change their laws, they are automatically incorporated or accommodated in the rule. The rule does not specifically go out and say, "Nevada is fine," and "Wyoming needs to do more," or whatever. We just simply say that this is the Federal floor, and if a miner complying with State law will meet or exceed that floor, then the BLM will defer essentially to that.

Mr. ROMERO-BARCELÓ. And how will the changes in the State law affect the rule, the bonding rule?

Mr. LESHY. Again, future changes in the State law would be handled the same way. That is, if a State that falls below the Federal floor now would improve its law to come up to the Federal floor then we would defer to the State law. We do not want to duplicate State law where we think it meets Federal standards.

Mr. ROMERO-BARCELÓ. In other words, where the State protects the lands more than the rule the State law applies?

Mr. LESHY. Generally speaking, that is true. A State can impose more stringent reclamation or bonding requirements and apply them to Federal——

Mr. ROMERO-BARCELÓ. But not lose their requirements.

Mr. LESHY. But not loosen them. We do not think we can do that and have the Secretary live up to his legal obligation to protect public lands from unnecessary and undue degradation.

Mr. ROMERO-BARCELÓ. And how difficult is it to secure a bond for small miners?

Mr. LESHY. Well, I can get you more information on that. The BLM people that deal with this issue on a daily basis think that these rules can be complied with in the vast majority of cases without great difficulty. I should note that one of the changes made in the rule, from the previous rule that was in effect, actually enlarges the category of instruments that will suffice to meet the financial standards.

In other words, we have to some extent raised the bonding requirements, but we have also enlarged the ways you can comply, so in that sense the changes operate in favor of the industry.

Mr. ROMERO-BARCELÓ. What are the guarantees, financial guarantees, does the Bureau of Land Management accept? I guess I have run out of time.

Mr. LESHY. They are enumerated——

Mr. ROMERO-BARCELÓ. Briefly.

Mr. LESHY. They are enumerated in the final rule. There is a whole list of them, stocks, municipal bonds, the normal kind of surety bond you would go out and acquire, and various other kinds of assets that you can essentially post as security for your operation and they are listed completely in the final rule.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Leshy.

Mr. LESHY. Thank you.

Mrs. CUBIN. Mr. Gibbons.

Mr. GIBBONS. Thank you, Madam Chairman. Mr. Leshy, I share the Chairman's sentiments about the unwillingness of your agency to come forward with documents that are requested and I share also her sentiments when I listen to your answers, how vague they are, because you only say that the reason you are not submitting those documents is because you have a belief that some of the documents may possess some privileged information.

You cannot hide the whole bundle of documents under such a request and I would share with the Chairman in her request to get these documents to us because I am very concerned about the substitution of what your agency believes is the information we should have. We should have every piece of paper in this committee that your agency has that we ask for, privileged or not. Now let me ask a final question.

Mr. ROMERO-BARCELÓ. Would you yield for a minute?

Mr. GIBBONS. You know, I will in a minute if I can, Mr. Barceló.

Mr. ROMERO-BARCELÓ. All right.

Mr. GIBBONS. I appreciate your concern in this matter and perhaps we will get into a dialog or colloquy without interrupting Mr. Leshy's answers to this. I am sure that we are all going to share in that. Mr. Leshy, has not the BLM or the Department of the Interior sought out or established a 3809 task force to review Mining Law regulations?

Mr. LESHY. Yes.

Mr. GIBBONS. Doesn't it seem odd to you that 3809 also includes bonding requirements and that if you produce this proposed change today that a review of the 3809 regulations would also produce a proposal to change bonding regulations?

Mr. LESHY. The 3809 task force that the Secretary directed be established in January of this year is looking at a whole range of——

Mr. GIBBONS. Mr. Leshy, just answer the question, will the 3809 task force look at bonding issues?

Mr. LESHY. It may.

Mr. GIBBONS. So we could see another change to the bonding requirements under 3809 review, yet you are telling us that because you feel that you have got to rush through this change today after a hiatus since 1991 of information and public output and State regulatory changes that it has got to be done today?

Mr. LESHY. The bonding inadequacy was identified as a problem ten years ago. Every day that goes by without it being addressed puts the taxpayers at risk. The effort was well on the way, nearly on the brink of completion, in 1993.

Mr. GIBBONS. Mr. Leshy, if it puts the taxpayers at risk, why did you wait so long to get to it today? Have you not had this issue before you since 1991?

Mr. LESHY. As I said before, we waited essentially for two reasons. One is to try to let Congress try to reform the law, and, second, to make sure we complied with all the regulatory requirements.

Mr. GIBBONS. Obviously, you did not need to wait for Congress, did you?

Mr. LESHY. Well, I can just imagine that if we had put a bonding rule out in 1993 that we would have been hauled up perhaps before this committee or another one being asked what are you doing, we are fixing this law, why are you throwing this in the middle of it and confusing everybody? That was a great concern and I think frankly it was a reasonable decision to defer until Congress enacted Mining Law reform.

This was not a casual effort by Congress. Both Houses of Congress for the first time in 125 years passed bills to reform the Mining Law and there was a six-month conference——

Mr. GIBBONS. I just do not want to see you back here before this committee if you are going to do it today with this proposal as you propose, come back with a 3809 review task force committee recommendations and change it again.

I think this is just an extreme inexcusable process that you are going through today by denying due process and democracy to all those people who want to contribute, who want to comment on these changes. Putting that aside, what other BLM requirements have a bond that is submitted directly to the BLM for them to hold? What requirements?

Mr. LESHY. I may have to get some further advice here but I am quite sure that a number of mineral leasing operations bonds are imposed. Certainly, the Office of Surface Mining and the State coal regulators impose bonds routinely as a matter of coal mining.

Mr. GIBBONS. Are those held by the State or the BLM?

Mr. LESHY. Well, with respect to coal mining it is the Office of Surface Mining, the Federal agency and State agencies. I think it

is fair to say that in many, many different kinds of developments, certainly mining activities, oil and gas and coal, bonds are a routine part of doing business at both——

Mr. GIBBONS. Mostly held by States though?

Mr. LESHY. State and Federal agencies. I think the arrangements are basically the same as I described earlier, that is, if the States may impose a higher requirement than the Federal floor if they choose to so to avoid duplication—

Mr. GIBBONS. Is the BLM then going to take responsibility for managing those funds within its own accounts if it establishes this requirement for bonds to be submitted directly to the BLM and held by the BLM?

Mr. LESHY. I may need a little help here. BLM, I think does not actually hold the bonds. They simply must be certified that the bonds are there, held by a financial institution, a trust account, and you can put common stock in a stock account under the rules——

Mr. GIBBONS. It does not require them to be held by BLM but it says they can be submitted to the BLM.

Mr. LESHY. The assurance that they are there, the certification that they are there and available to pay for reclamation costs if the miner walks away, that is what we need. We do not necessarily need the cash as long as we can put our hands on the cash if there is a failure.

Mr. GIBBONS. So we can do this through a State regulation. The States could do this and the States are doing this today, aren't they?

Mr. LESHY. Right. As I explained before, if a miner has to post a bond under State law that meets the Federal standards, that is all we require, as we do not want to duplicate and do not duplicate State law where it is adequate.

Mrs. CUBIN. Mr. Rahall, do you have any questions for the Solicitor?

Mr. RAHALL. Thank you, Madam Chair. John, let us begin with a little stroll down memory lane. And let me add, by the way, that it is your book on Mining Law reform written in your earlier career as a professor that first sparked my interest in the whole arena of reforming the Mining Law of 1872 when I became chairman of this Subcommittee in 1985.

So I commend you for that book and your expertise which I think ranks up there above and beyond the call of duty. And you have given historical facts here and I appreciate that. We were very close, very close, in the 102nd Congress of passing a reform bill. We got a bill out of the House of Representatives about a 3 to 1 margin bipartisan support including the now Speaker of the House of Representatives who voted for that bill. No, we cannot trust him, what did you say?

And we have had many other related votes in the House like on the patent moratorium, etc., which had strong bipartisan support. But nevertheless the point is that what you have said about you not being able to go forward at that time because of the conflicting signals it would send is a very valid point and you are right, had you tried to do that you would have been hauled up here in a second and asked, and grilled to death about why are you doing this

when we are so close and we were so close, we were in conference committee, to passing a reform bill.

We were right up to the edge until we got the plug pulled out from under us. So that is very sensible that you waited that long. You know, there are those, and I am sure we will hear from them before this afternoon is out——

Mrs. CUBIN. Would the gentleman yield?

Mr. RAHALL. Can I just finish this memory lane bit?

Mrs. CUBIN. What I have to say has to do with memory lane too.

Mr. RAHALL. Oh, OK, you are going to tell me when I was chairing this Subcommittee.

Mrs. CUBIN. No, Mr. Rahall——

Mr. RAHALL. OK. I yield to the Chair, yes.

Mrs. CUBIN. Thank you. I just wanted to remind the gentleman that the 104th Congress also passed Mining Law reform and it was vetoed by the President. That is the only part of memory lane I was able to stroll down. That is the only reason I remember that.

Mr. RAHALL. Oh, yeah, I was getting to that. You are talking about sham reform. I am talking about real reform.

Mrs. CUBIN. Oh, OK, there is a difference.

Mr. CANNON. Would the gentleman yield? I suppose sham depends which side of the aisle or which side of the industry you are from.

Mr. RAHALL. Well, we will get to that too. Darn it, you interrupted my memory. OK, as I was saying, there are some that are going to be on this panel yet today that are going to come forward and attack you pretty stringently probably, I would guess, that on November 10, 1994, that year, the day after the revolution or whatever took place, that you did not come forward that day and do this, and that what you have done now today is not strong enough.

They are going to say probably there should not be a cap on your proposed rules. So you are going to take it from both sides. There is no doubt about it. And I might also recall, and I am sure you will remember when our good friend, Cy Jamison, at the time and a former staffmember on this Subcommittee at the time was BLM director, when he saw was happening back with the Rahall reform bill started moving, he told us, perhaps it was not on the public record, I will not go that far, but he was very clear. He told us that he was seeking to soften our reforms up here in Congress by taking administrative actions.

Let us not let the record go without that being very clearly put on it. So I think let us get to the heart of the matter and let us ask if what you are proposing here, if not this new bonding requirement is actually less stringent, John, less stringent than what some of the States already are imposing?

Mr. LESHY. I believe that is true, yes. As I said, if States exceed our requirements obviously a miner has to comply with the State requirement but has automatically met ours by complying with the State requirements.

Mr. RAHALL. That concludes my questions then. Thank you, Madam Chair.

Mrs. CUBIN. Thank you, Mr. Rahall.

Mr. CANNON. Madam Chair, can I ask another question?

Mrs. CUBIN. You can. We are going to do a second round. We will make it real quick. I wanted to just make two points or ask two questions, if you will. The surety requirements that the State—correct me if I am wrong, but as I understand the final rule the surety requirements that the States have set up will be approved by the BLM manager in the State, is that correct, the State bonding pools?

Mr. LESHY. I think that is right. I am sorry, Madam Chair. I had to make sure of the answer. Yes, it is the State offices. They make the determinations about whether or not the State bonds are adequate.

Mrs. CUBIN. And I think that is laudable. I think that is a good idea. But the only thing that troubles me about this is that the rules are going to go into effect March 31, 1997—the rule is going to March 31, 1997, and the States will not have reported to you what those financial requirements are by that time.

As a matter of fact, estimates are that it will take maybe six months at minimum into the summer to get that information from the States compiled and get it to you so why not allow an additional 60 days input because there are things in here that are substantially different than the proposed rule.

And honestly I am so sincere when I tell you this, I do not have an investment in what those things are. I just have an investment in protecting the process. So why not? I mean you will not even have everything you need to implement the law anyway.

Mr. LESHY. Madam Chair, the BLM State offices are in constant communication with the State regulators because the State regulators and the BLM folks work side by side in hardrock mining regulation and have for many years. Our State people are thoroughly familiar, our BLM people in those States are thoroughly familiar with what the State requirements are.

We already accept State bonds in many cases that meet the requirements of the old regulations. Many of those will meet the requirements of the new regulations. Since these rules have come out, we have had a lot of meetings with the State regulators in places like Alaska——

Mrs. CUBIN. But, Mr. Leshy, it was from your own office that we found out that it would not be done by the time the rule went into effect which leaves the miners in a situation where they do not have any idea whether the surety of last resort as the State bonding pools are called will be adequate to cover their liability.

So I mean I just—my question to you is not whether or not they are going to get it done because I heard from your office they are not going to get it done by March 31 and it will be some months after that, but that is not the question. The question is assuming it will not be done, why not just give an additional 60 days after 5–1/2 years?

Mr. LESHY. Madam Chair, I think you are probably talking to different people in the BLM than I am talking to because the people in BLM I am talking to think there is no problem here with transition to the new rule. I should also point out that the most significant change in the new rule is the requirement for bonding by notice operators. Now the way the notice system works is——

Mrs. CUBIN. No, that is not the question. The question is assuming that the work will not be done by March 31 which is just a little while away, why not give an additional 60 days?

Mr. LESHY. I cannot answer the question because I have not been persuaded, or told by anybody, frankly, in the Department that we cannot implement these rules on schedule.

Mrs. CUBIN. OK, then, well, you cannot because what if a manager in a State determines that the State pool is not adequate, then it might require State legislation to make the pool adequate or to fix it so that it complies with what the manager would require.

I just honestly do not see the rush for this and even though you say this is nothing new, they did this or that in the Bush Administration and they have done this or that before, the APA is very explicit about having meaningful public comment and this is an anomaly in the process. Can you cite one single time for me where draft rule has been on the shelf for 5–1/2 years and then with no intervening activity at all the final rule comes out from the BLM?

Mr. LESHY. Madam Chair, we looked at this issue when we were resuming work on the final regulations. Obviously, the BLM and my office, consulted on, well, do we have any legal problems with moving forward with this rule? We looked and researched all the cases under the Administrative Procedure Act. There is not a single case that we could find that says mere passage of time requires you to republish as proposed.

Mrs. CUBIN. Well, let me just respond to that for a second. The CEQ maintains a web site. And with a couple of clicks on the mouse you can find guidance on CEQ matters such as when EIS data goes stale. Stale is the quote. And I happen to have here a page from NEPA Net and there it is. And let me read to you what it says about stale data.

"EISs that are more than five years old should be carefully reexamined to determine if the criteria in Section 1502.9 compelled preparation of an EIS supplement. If an agency has made a substantial change in a proposed action that is relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary changes."

OK, I realize this is not EIS. I also recognize what the spirit of the APA law is, if not the word of the law. And why should the decision on this rule be different than data that is collected for an environmental impact statement because essentially it is the same data?

Mr. LESHY. The court cases in this area, Madam Chair, basically look at the opposite problem, when an agency is dragging its feet and not putting out rules fast enough. We have looked at all those court cases. The basic question they ask is very simple: Is the final rule within the scope and notice of what was proposed? Are the changes that are made between the draft and final rule reasonable in the sense that the people subject to the rule could have anticipated that these kind of changes would have been made?

And if you look at the draft and final rules here there is no question in my mind, we are on very, very solid legal ground. Nobody could look at the draft——

Mrs. CUBIN. That would require a lawsuit by one of the affected parties but the Congress does have the authority to stop the implementation by proposing legislation and I would certainly hope that we did not have to go to all of that trouble just to be able to get what is due the public anyway. But my time is up. Mr. Romero-Barceló, do you have any further questions?

Mr. ROMERO-BARCELÓ. Yes, Madam Chair. Mr. Leshy, I am your friend here on this panel and I do not mean that in any way whatsoever to anybody else, but I am just trying to set that in front for the following reasons. I hear as I listen to everything that has been said and my concern is that to me 60 days in terms of talking about five years or six years seems like a very short time.

Let us assume that whatever you said is completely correct and that you have complied with all the legal requirements and that no one can overturn the rule. Let us assume that. However, if the people that are going to be bound by that rule feel somewhat that they have not been given an adequate opportunity to address themselves to the rule then the people that you are going to be ruling are going to be very dissatisfied I would feel that the rule is unfair even if it is fair.

It is unfair because they feel they did not have a chance. Now what reason is there for not giving 60 days additional—what harm, what prejudice would this cause other than the fact that it would take 60 days longer after five years to where the bonding would not be required, would not be implemented in some areas?

That seems to be a small harm when you compare that to the reaction of the people that are going to be bound by the rule that feel that they were not being given an opportunity.

Mr. LESHY. Congressman, I just must respectfully disagree with your assessment of what the impact of these rules is going to be. Our feeling from the meetings that BLM has had with the field people throughout the west that would be affected by this is that this is not going to be a big deal.

I have met personally with many representatives of the mining industry as late as last week, where I discussed many, many issues of concern to the industry, and these bonding regulations were not a concern to the people I was talking with because the States imposed these things fairly routinely.

In most places the industry complies with them. We are talking about essentially a fairly localized impact. We are also talking about a rule that has been discussed and a subject that has been addressed for many, many years, a problem first identified in 1985–86. The time has come to draw it to a close and move forward, and we think we can do that with a minimum disruption on this industry.

Mr. ROMERO-BARCELÓ. Mr. Leshy, I hear everything you said and it still seems to me that you have not answered my question about why is it so important, why is 60 days so bad, why is 60 days so inconvenient when 60 days would allow those people that feel themselves left out of the process an opportunity to speak up? Why

is that such a big problem? I just find it very difficult to see it and I want to see it but I find it very difficult.

Mr. LESHY. Let me make sure I understand what you are suggesting. You are suggesting a 60-day delay in implementation of the rule to allow for more comment or exactly what?

Mr. ROMERO-BARCELÓ. Right.

Mr. LESHY. Well, maybe we just have a different perception about the nature of the problem and whether there is a problem and how much difficulty might be in store for complying with the rule. I am happy to take back to the Secretary that suggestion and see what he wants to do about it, but I can tell you that we considered when this rule ought to be implemented, and what the timeframe ought to be.

Part of the problem is you are starting a field season for mining operations relatively soon. Delay in implementation could actually be even more disruptive because then you are into the middle of the season and you have to worry about a bond, so that is another consideration that would have to be taken into account here.

The BLM is doing extensive public outreach on this rule, is making sure that everybody out there knows what the requirements are. And I also have to point out that, as my written statement points out, there is a certain phase-in to this. The people most affected are the notice miners, operating under five acres, who have not had a requirement of a bond before in most cases.

You only have to under these rules post a bond when you file a new notice, so if you are operating this year within the terms of a notice that you filed last year, you do not need a bond until you file a new notice. So there is a good deal of transition phase-in to this requirement anyway. Many of those notice operations will not have to post a bond this year, because many of them will be operating within the terms of their notice. So there is already a good deal of accommodation and transition built into this rule as we have designed it.

Mr. ROMERO-BARCELÓ. I still have a problem that the fact of the opportunity to speak up to something. That is my problem. In the democratic system I think that people should be given an opportunity. I just feel from what I have heard it seems we might have been lacking in that. Thank you.

Mrs. CUBIN. Thank you, Mr. Barceló. Mr. Cannon.

Mr. CANNON. Thank you, Madam Chair. Just to comment following up on Mr. Barceló's comments. You answered the question, Mr. Leshy, in the context of the transition under the new rule and much of that I believe went the lack of urgency for having the rule in place right now.

In other words, the transition period you talked about means that it is not an urgent thing to do. I believe what Mr. Barceló was talking about was taking the input from people who will be affected by the rule. And the rule, as I understand it, differs fundamentally from where I think government is going today.

In other words, in the State of Utah and many other States you have bonding provisions already. People locally in Utah, I believe, have a better sense of what they need to do there than people in Washington do and that is I think the area where the rush to judg-

ment has created some difficulty and so I just echo Mr. Barceló's views on that.

I think you get a lot more buy-in than you lose in the other areas which you have actually minimized yourself. Let me ask just one technical question. In the determination to do the rule the economic effect on small entities BLM used a different definition for small entity. It is in section 3 of the Small Business Act according to which the BLM can only change that definition if they have had consultation with the Small Business Administration Office of Advocacy and, two, after an opportunity for public comment. Did BLM go through those two steps in this process?

Mr. LESHY. I am sorry. Is the question why we used a different definition?

Mr. CANNON. No, the question is did you—having used the different definition of small business entity, did you consult with the Small Business Administration Office of Advocacy and, secondly, did you offer an opportunity for comment, public comment, on that?

Mr. LESHY. Congressman, I am not frankly sure of the answer. I will have to supply it after the hearing. Let me make sure I have your two questions. Did we consult with the SBA Office of Advocacy and did we allow comment on that decision?

Mr. CANNON. Right.

Mr. LESHY. OK. I will get back to you in writing as soon as I can.

Mr. CANNON. Let me just add one other comment. We have heard about the possibility of a sham legislation which did by the way pass the House and the reaction in the Department of the Interior. This is obviously an area where we are having a major transition in America. I believe that the Department should be careful in the process of Federalizing issues which do not need to be Federalized and taking actions that are or could be perceived as being one side of the issue as opposed to the other side which is the industry.

In fact, we live in America off the fruit of the land. Both the Speaker's chair in the House, we have an eloquent statement that talks about passing laws that will allow for the development of natural resources so that all can enjoy the wealth of America and I think it inappropriate to act unilaterally with an agenda which is inconsistent with what I believe is the general view of how we should develop our resources and whether or not we should Federalize certain aspects of the control of the development of our resources. Thank you.

Mrs. CUBIN. Mr. Rahall, do you have anything further?

Mr. RAHALL. No.

Mrs. CUBIN. Mr. Gibbons.

Mr. GIBBONS. Yes, Madam Chair, thank you very much. Mr. Leshy, I want to explore a little bit more about some of your comments. In particular, you stated that it would be no big deal the implementation to this with regard to certain States. I want to talk about the economic assessment of the rule on the economy. The BLM states that the impact for both notice and plans will be about $17.1 million.

From the testimony we have received today, some of the background information that we have looked on bonding pool liabilities, I think this figure may be grossly underestimated. For example, sources that I have from the State I represent which is Nevada,

our government is very worried about the new rule's requirement for a professional engineer to certify reclamation cost estimates which will push many small miners including junior companies into seeking refuge in the State bonding pool.

I understand that to be bonded by the pool under the current Nevada law a miner must show three turndowns from commercial surety companies before being eligible. Now please help us understand how the new requirement for notice level operators to be fully bonded impact Nevada where State law does not now require bonding of less than five acres.

Mr. LESHY. Congressman, the determination of effects that you refer to, which came up with the $17 million figure, as I recall actually made every assumption that it could make in favor of maximizing that figure. In other words, while your information may be that that is an understated figure, I think the determination of effects discussion itself makes it clear that it is, at least in the BLM's view, the maximum figure.

That document also contains an appendix, I believe, which discusses the impact State by State, which shows in terms of small operators in Nevada the BLM's estimate, and these are estimates of people on the ground out there, that perhaps 15 individual operators will cease operations. That is out of a small miner base of over 8,000. So we are talking about, at least the BLM thinks, a loss of about two-tenths of 1 percent in the base operation.

I should also say that this determination of effects, I have worked on a number of rules in my career in the Department, I think frankly that this was one of the most careful and searching and full determinations that we have ever done. We sometimes take these things pretty casually. We made an extra effort here to do as honest and sober and detailed an assessment as we could of the impacts of these operations and I think that document, if you stack it up with other documents like it in other rulemakings, you will be impressed with the care with which BLM took their job here of assessing the impact.

We wanted to make sure we knew what we were doing with this rule, to make sure that we did not impose unnecessary pain or disruption on this industry.

Mr. CANNON. Madam Chair, I have no more questions, thank you.

Mrs. CUBIN. Having no more questions myself, do any of the others on the panel have questions. Well, if not then, we can proceed. Thank you very much, Mr. Leshy, for being here. We do have some questions that we would like to submit in writing in the interest of time, I know you have to be gone by 2:00. Thank you so much for your appearance here today.

Mr. LESHY. Thank you very much, Madam Chair.

Mrs. CUBIN. If the second panel could please come forward. I would like to welcome to this Subcommittee hearing today, Mr. Paul Jones, President of the Minerals Exploration Coalition from Golden, Colorado; Mr. Carl Hanneman, President, Alaska Mining Association from Anchorage, Alaska; and Mr. Philip Hocker, the President of the Mineral Policy Center, Washington, DC.

Thank you for coming. I am sorry that I am not going to be able to stay for your testimony but I know we will have good representation. Mr. Jones, would you like to begin for us, please?

STATEMENT OF PAUL JONES, PRESIDENT, MINERALS EXPLORATION COALITION, GOLDEN, COLORADO

Mr. JONES. Thank you, Madam Chair. Good afternoon. My name is Paul Jones. I am the Executive Director, not the President, of Minerals Exploration Coalition. I am pleased to be here this afternoon to address your committee on the BLM bonding regulation. I have over 35 years experience in the mining industry in North and South America in all levels of activity from that of a junior engineer through the Chief Executive Officer of publicly held companies.

The Minerals Exploration Coalition is an advocate on public policy issues involving access to, and the safe and environmentally responsible use of public lands of the United States for mineral exploration. On February 28, as it has been previously mentioned, the Bureau of Land Management issued a rule on bonding of mining and exploration activities on the public lands.

I am very deeply concerned about the manner in which this Administration established this rule. Unfortunately, the rule is formulated and published by the BLM without recent publication of notice to issue a rule, without recent public comment on the proposed rule, and without consideration of events which affect the need for or the operation of the rule.

BLM's notice indicates that the proposed rulemaking process began in July of 1991, five and one-half years ago. Many relevant changes have occurred since 1991 which affects the recently issued rule, particularly changes have occurred since 1991 in the State regulations affecting mineral exploration on public lands which justify if not mandate that proposed rules should be reissued, a reasonable comment period established, public input taken and used in the formulation of the new rule, whatever its content.

In January, on the 6th of January, Secretary Babbitt sent a letter to the Assistant Secretary of Lands and Mineral and the Acting Director of the BLM asking them to prepare a plan to modify the hardrock mining surface management regulations commonly called 3809 regulations which some of you Members have already mentioned.

When MEC saw that letter, we assumed that any such rule change that is in the 3809 regulation would follow normal procedures publishing the proposed rule change, taking public comment, considering that comment, and promulgating the final rule. The propagation of the rule on bonding of minerals or mineral activity gives us considerable alarm about how the Secretary plans to formulate new rules under 3809 regulations.

The Mineral Exploration Coalition publishes an Exploration Permitting Directory, and I brought a copy of it just to show you, it covers 21 States, including all of the western States where most of the public land is located. In addition, it includes midwestern and eastern States where mineral mining occurs. The directory also includes BLM and Forest Service regulations on exploration activities.

Numerous changes have occurred in this directory since the July 1991 rules were initially published. A review of our directory will indicate that all 21 States require some form of bonding for either exploration and/or mining activity on public lands. These basic requirements for the States are shown in Section 5 of this manual which is a one-page exhibit. I want to give the Clerk a copy of it for your record.

This exhibit tells what is required, what permit is required, which forms are provided, if drill holes are required to be plugged and bonds are to be provided. Sixteen of the 21 States require bonding for exploration. Two other States require bonding under certain circumstances. Numerous revisions have been made in our directory in the past few years that modify the various provisions—as the States modify their reclamation standards.

In particular, the States of Arizona and New Mexico have come out with completely new regulations since the 1991 date. The States of Colorado, Minnesota, Montana and Nevada have made substantial changes in their regulations. Just two weeks ago we received a complete new set of regulations from the State of Montana.

In the case of Colorado significant changes were made to the Colorado Mined Land Reclamation Act following the Summitville Mine incident with new rules under the revised act being formulated in 1994. I was personally deeply involved in both the legislative and rulemaking process in Colorado and will discuss this in more detail shortly.

In reviewing our permit on the BLM rules, they even came out with a new set of regulations or a new handbook on reclamation in 1992, certainly after the closure of the public comment period we talked about earlier. In the case of the Colorado regulations, I was the Chairman of the Colorado Mining Association in 1992 and 1993 when the Summitville Mine was abandoned by Galactic Resources.

I was and am Chairman of the CMA Summitville Task Force. This group—as such I have been involved in the negotiations that reshaped our State law and the regulations that came out of it. We made some major changes in the Colorado law all which enhance the regulation in Colorado of the mining industry. Most significantly about that, we made major changes on our bonding requirements.

I have gone into more detail in my written testimony. In conclusion, I think the red light is on, in conclusion, the Minerals Exploration Coalition believes the new rule regarding bonding on mineral activity on public lands deserves new public comment and reconsideration before implementation.

The changes in the applicable State regulations related to mineral exploration and mining activity have changed considerably since public comments were taken on the proposed rules in 1991. These changes without exception have strengthened the requirements on mineral activity, including that on public lands. Adequate regulation exists in States where exploration occurs on public lands, thus the need to rush into this new rule is not necessary.

MEC is also concerned about the method of implementation of the rule on bonding that this method indicates a disregard on the part of the Administration and of the Department of the Interior

for the normal rulemaking process. This gives us much concern on the upcoming 3809 regulation modifications.

In conclusion, I would like to clearly state that MEC is not opposed to posting bonds on exploration activity if that bond is in a reasonable amount and is fairly administered. We already post bonds for most all of our exploration activities. However, MEC believes adequate change has been demonstrated in both the need for and the circumstances about the BLM rule on bonds to justify additional rulemaking of this issue prior to it being implemented. We strongly urge the BLM to withdraw this rule, reinstitute the normal rulemaking procedure in this matter. Thank you, and I am quite willing to take questions.

[Statement of Mr. Jones may be found at end of hearing.]

Mr. GIBBONS. [presiding] Thank you, Mr. Jones. Mr. Hanneman, you are next.

STATEMENT OF KARL HANNEMAN, PRESIDENT, ALASKA MINING ASSOCIATION, ANCHORAGE, ALASKA

Mr. HANNEMAN. Thank you, Mr. Chairman. I appreciate the opportunity to talk with you today. My name is Carl Hanneman. I am President of the Alaska Miners Association, and I am also a mining engineer and President of Alaska Placer Development. For the past 17 years I have produced gold from Federal mining claims in Alaska, both under notices and plans of operations.

And my relationship with BLM over the years has been professional and a positive relationship and it is fair to say that that is representative of other miners in the State on 3809 issues, but we have grave concerns about this present proposal, the final rule.

And I would like to deviate somewhat from my prepared remarks to address some of the issues that have been raised here. There are basically four reasons why this rule should not be implemented at this time. It is six years stale now. The second is that there is in fact substantive changes between this final rule and the proposed.

In the context of the overall 3809 review it is inappropriate to proceed with the bonding leg of regulations at this time, and there has certainly been an inadequate analysis of the economic impact of this on our industry. To summarize some of the changes in the regulative community that has occurred since the last public comment period, the State of Alaska established a reclamation statute in 1992.

This bond pool provides coverage for the full cost of reclamation. For the five-year period since the inception of this rule there were an average of 104 bonded operations in Alaska. In 1996 there were 112 bonded operations, 59 of these were on Federal lands. Since inception there have been no bond forfeitures or draws against the bond pool. That is since 1992 all operations larger than five acres have completed reclamation as required including all those on Federal lands.

All notice level operators, including 96 on Federal lands, of those 96 none have established a record of noncompliance, so I submit that this data shows that there is no compelling need to adopt this final rule now, that the program is working in Alaska. I also submit that there is a misconception about the relationship between BLM and the regulated community.

In a January 6, 1997, memo from Secretary Babbitt he states, "I understand that in practice it is relatively unusual for BLM to question what happens on these operations". This is simply not the case. Miners go into the BLM during the winter, prepare their plans, modify their plans. The authorized officer determines when the reclamation is going to be sufficient. They visit the sites and they have significant input to the notice level operators.

No operator can resubmit a notice and proceed under notice in a subsequent year until his reclamation is complete from the prior year as determined by the authorized officer. So the Secretary would just a couple of months ago assert otherwise demonstrates that the policies are not being driven by current information.

The final rule is substantially different than the proposed rule and I will just use two examples. One is the bonding amount and the other are the financial instruments allowed. They went from a maximum cap on the bond to there being no cap at all. That is a major change in approach from the aspect of a small miner unable to obtain a bond so you go from being possibly able to financially meet the bonding requirement to certainly not being able to.

When you add the cost of third party contractors the BLM has just simply not considered the fact that most sites in Alaska are remote, that you have to transport your equipment to those sites, that the cost of that transportation is very expensive whether it is overland winter freighting or by barge. Most of Alaska does not have roads and therefore when they estimate the economic impacts of the bonding and the bonding amounts there is a substantive change when they require a third party contractor estimates to complete the bonding.

Then you look at the type of bonding instruments allowed. They purport to have added flexibility by adding additional financial instruments. Well, let us look at the ones they eliminated. They eliminated the right to use real property or mining property, that is, your house or your mining property. They eliminated the right to use your mining equipment, so for most small operators in Alaska the assets that they might otherwise have available to meet a bond have simply been removed. That is a substantive change from the proposal and demands further review.

Their proposal to promulgate these final regs should be done in the context of the overall 3809 review. If the argument that is appropriate to look at what Congress was doing and do a thorough overall review of 3809 policies is appropriate a couple years ago it is certainly appropriate now. It is premature to be addressing the bonding leg of this in the context of the task force that has been established.

With respect to the economic impacts, there are a number of things here where they have simply inadequately represented or estimated the economic impacts. One is this cost of transporting equipment to the sites. They estimated cost to plan operators in Alaska of $470,000. Under this proposal the cost of my operation alone would be $312,000 or 66 percent of this total. I am only one of 59 operators. It is clear that they have misunderestimated the economic impacts.

I want to make it clear that we do not object to reclamation. In fact, reclamation can and is being done under the current State

program but it is the financial impact of posting the bond when you cannot even obtain such a bond is what we object to. For the reasons cited above, the AMA believes it has not been provided proper opportunity for meaningful comment prior to the rule being effective.

In January 1997, Secretary Babbitt announced that BLM has moved forward to complete "a Final Rule on hardrock mine bonding to strengthen financial assurance requirements to meet reclamation responsibilities". The Secretary also said "It is plainly no longer in the public interest to wait for Congress to enact legislation."

I submit that it is in fact Congress, not the Secretary, that should establish public policy in this regard. If Congress does not see fit to enact certain laws, on what basis does the Secretary gain justification for proceeding on his own? The AMA thinks that the recently issued final rule is flawed. We urge this committee to do everything in its power to restore integrity to the public process. Thank you.

[Statement of Mr. Hanneman may be found at end of hearing.]

Mr. GIBBONS. Thank you, Mr. Hanneman. Mr. Hocker.

STATEMENT OF PHILIP HOCKER, PRESIDENT, MINERAL POLICY CENTER, WASHINGTON, DC

Mr. HOCKER. Mr. Gibbons, Mr. Rahall, thank you very much for holding this hearing today and thank you both for staying in attendance. We appreciate that very much. I am tempted to join Mr. Rahall with some trip down memory lane. It is hard to avoid. We have had hearings in this room when the entire dias was filled on these topics and I anticipate that in the not too distant future we may have the entire dias filled again working on reforming the 1872 Mining Law. I look forward to it and I look forward to your participation in that.

These regulations are the tip of that iceberg. I think it is tremendously important that that iceberg be put in motion this way and we encourage the Department to move forward. We have talked a little bit in this memory lane trip about Congress versus the Administration but that seems to be—it is kind of like one of those weather vanes that different people want to blow one way or the other.

And it was very clear in the Bush Administration first that the need for these regulations was widely and unequivocally acknowledged and supported, that the Administration and the Interior Department were committed to carrying out exactly the type of regulations that are under discussion today.

The need for those regulations had been established through many widespread, thorough, documented studies, hearings held in this room and also hearings held in the other chamber, studies (of which I have a few with me here today) prepared by the General Accounting Office, studies prepared internally by the Interior Department, and in fact even reports by organizations and members of the mining industry itself.

All of those studies pointed to the need for better protection for the public interest so that we the taxpayers would not have to pay to clean up the problems from mismanaged mining on public land.

Now I applaud the statements of Mr. Jones and Mr. Hanneman today because I think they represent responsible mining operators and I think that their efforts and the care with which they are carrying out their operations, I speak on the basis of my trust in them and not on personal knowledge of their work, is exemplary.

But we have been through this before. We went through it with the coal industry, as Mr. Rahall knows. We went through it with what was known as the two-acre exemption which was an effort to frankly give special privilege to small coal operators on the theory that they could not do enough damage to make much difference and that it would be in the general public interest to let them go ahead unbonded in order to allow them to persist.

After a long experiment of many years, that experiment was found to be a failure and Congress in this room and in the chambers made the decision that the two-acre exemption was bad public policy and needed to be ended. These regulations are in effect a regulatory extension in hardrock mining of the end of the two-acre exemption.

Now we believe in the Mineral Policy Center, and although we have not polled the environmental organizations broadly, I think it is fair to say that this is their view too, first, that these rules are long overdue. In fact, we were pleased although somewhat concerned when Director Jamison in 1991 made a commitment in hearings, according to my recollection, I have not been able to relocate his testimony although we are working on that, that these regulations would be promulgated.

Shortly thereafter, the draft regulations were put forward by the Department in 1991 and then for no reason that we could determine the Bureau of Land Management did not go forward and adopt final regulations. Early in 1993 we called Secretary Babbitt's people within the Bureau and said, "OK, how about moving forward with the bonding regulations," and they said, "Well, we are looking to see what Congress does, we have not made a decision on that yet." Our files show records of that telephone conversation.

We urged them at that time in 1993 to move forward with the adoption of bonding regulations because we believed, and still believe, that the public interest was at risk because of this. Now we are in 1997. Finally—I think four years later than they should have—the Clinton Administration has brought forth these rules. We see no need for further delay. We think there is, in fact, a very specific reason to move forward with these right now because, as Mr. Leshy pointed out earlier, because of the timing of the mining season, because of the annual seasonal nature of many of these activities, a relatively short delay could postpone for an entire year the effect of these regulations on notice operations.

We quite frankly believe these regulations are far too weak. We would prefer not to see distinction made between what are called notice operations and plan operations mining. The U.S. Forest Service for many years has operated under a system of treating mining operations of all different sizes essentially under the same rules. That system has worked well for the Forest Service and we think it would work well on Bureau of Land Management lands as well. We would prefer to see that adopted.

Furthermore, I think it is worth commenting that what changes have been made between the draft and the final regulations as we see them today are well within the scope of the public debate—the changes that have been made are well within the scope of the public debate which was carried on both in 1991 and was reflected in very broad industry comments as well as environmental group comments that were made on the draft 1991 regs.

So the changes which Mr. Hanneman and others have referred to are well within the range of discussion and the type of public comment and information which was submitted in 1991. There is no need for, and nothing would be gained by, postponing the implementation of these regulations and soliciting further comment. The issues have been aired. The issues are on the table. The issues were fully considered by the Department when these regs were adopted.

We hope to see the regs strengthened in the near future, but we see no need for delay in putting this level of protection for the public interest into place right away. Thank you for the opportunity to comment.

[Statement of Mr. Hocker may be found at end of hearing.]

Mr. GIBBONS. Thank you, Mr. Hocker. Mr. Jones, you listened and heard the Solicitor earlier talk about his concerns about this issue and this bill and the need for it, and then Mr. Hanneman listed out four of his reasons why he thought this bill and its urgency were not necessary at this point in time. You have heard Mr. Hocker recite almost verbatim what Mr. Leshy talked about. What is your opinion, what is your analysis of this bill and what impact do you think it would have on the industry from your perspective?

Mr. JONES. The bonding regulations are not a stand alone issue. The bonding regulations have to tie in with the other 3809 regulations. Now I am not here today to try to get a lengthy delay in the bonding process. As I said in my prepared statement and said here in my verbal statement, MEC does not object to bonding but we are concerned that there are several things in the regs as we see them that are cloudy or murky in their meaning.

The bond will be released when BLM is satisfied that reclamation has been completed. What reclamation? What degree of reclamation? What limits of reclamation? Now this is all put together in the operating plan but this is an important part of the release language and that is really not addressed in the regs satisfactorily.

There is a requirement in there for professional engineer approvals or workups of the cost estimates and I understand why that is in there and I understand how it is in there. And that makes good sense on a mining operation of a large nature. Colorado requires that but on only certain specific things. If I go out in the public lands and drill five drill holes, do I have to have a professional engineer go out with me and do an estimate beforehand of what it is going to cost? And what is that cost going to impact the small explorations that go out.

There is no criteria in the regulations and maybe this is expecting too much from government, there is no criteria for a maximum amount of time BLM has to respond on these things, these permit applications or plan of operations. This is crucial to the small

miner. It is crucial to the exploration. It is crucial to the big companies how long this process can go on.

I understand there are probably some small miners that abuse the process and doing away with the small miner exception I understand is politically probably correct but it will impact these people. It will impact them probably more so than it will impact the large company and I think this needs more thought into it. One of the things that I do not believe is in the present regs and I do not believe it is the present BLM 3809 regs that I think concerns us is when we file information with BLM on exploration projects, we need that information contained in a confidential manner.

Under our Colorado State regulations that can be held and if I go in and ask for a competitor's exploration plan I will not get to see it. Exploration is a product of the brain. Our concepts are proprietary. We are out maybe staking claims on the public domain because I got a better idea than the guy next to me of why there should be minerals in that area and that needs to be maintained in a proprietary nature.

These are some of the areas that I am concerned about that need to be worked on in total, not in part. I do not disagree that we need to have bonding. I for one believe the States know better what works in a given State than the Federal Government but I also have learned over my 35 years that the Federal Government is going to regulate and I have got to follow their regulations.

So I think there are pieces of this thing that need to be looked at a little more. There has been a lot of things happened in the five and one-half years since those things came out originally that I think there would be much to gain by going through the rulemaking process again. And that is my main contention for being here today.

Mr. GIBBONS. Real quick like, Mr. Hanneman, you have heard Mr. Leshy and even Mr. Hocker talk about your field season and the exploration and the impact of this rulemaking or the lack of it being rushed through at this current time. What is your impression of that situation and how would you say the impact would be on your exploration season if this is delayed 60 days for a comment period?

Mr. HANNEMAN. Well, the data that demonstrates in Alaska that there is no compelling need to rush. In five years there has not been a demand to draw on the bond pool nor has anyone been out of compliance. So there is no need. With respect to the—it is already close to spring now. There are miners that are already over the barrel, so to speak, with respect to this reg. It is unclear as to whether notice level operators will or will not be included when they are going back on their operations.

It says in the preamble that notice level operators would not be impacted but in the reg itself it does speak there is no such exemption so there is ambiguity already. Further public comment process would help, not hinder. With respect to the impacts, the small operator in Alaska simply cannot get a surety and so we have no objection to doing the reclamation. In fact, the Alaska Miners Association was an important part of getting the reclamation law passed but the inappropriate financial burden of the bond is what will hurt.

And there are several places I have pointed out where BLM has just simply inadequately addressed the economic impact and we think that they should look at it again but most importantly in the context of the whole 3809 reg. In this process they have established a bond release mechanism that includes language and standards that is not in existing 3809 so they are in fact establishing reclamation standards and also visiting the notice level operator issue to the issues that were identified for the task force to address.

So it is premature for them to proceed and attempt to resolve those issues at this time, not in the context of the whole 3809 review.

Mr. GIBBONS. Thank you. Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. Mr. Jones, I would like to ask you about the chart that you handed out for the record. In this chart I notice that there are four States, Arizona, Missouri and North Dakota that do not require reclamation bonds, correct?

Mr. JONES. That is correct. Four States or is it three States?

Mr. RAHALL. I have checked off four here, Arizona, Missouri, North Dakota—I am sorry, I did add—that is right. You are right. Three, I am sorry.

Mr. JONES. I think there are three and there are two variables.

Mr. RAHALL. Right, two variables. OK. Well, surely all the other States have different bonding requirements and my question, I guess, is can you tell us which States have stronger bonding requirements?

Mr. JONES. Not without going through my manual one by one but I would be glad to make that comparison and put it in writing.

Mr. RAHALL. OK, I appreciate it. I think it would be a help for all the committee. According to the BLM, Alaska, Nevada, New Mexico and Utah exempt small operations, is that correct?

Mr. JONES. What are the States?

Mr. RAHALL. Alaska, Nevada, New Mexico and Utah. According to BLM they all exempt small operations.

Mr. JONES. Our permitting manual does not indicate that Alaska exempts but I think there are some quirks in Alaska regs that are slightly different than some of the others. New Mexico, it has a rule which I do not have with me. I would have to get that for you. And I can make you a comparison of what each State requires for bonding or does not require and who it exempts.

Mr. RAHALL. OK, but the bottom line again is these proposed new bonding regulations really would not be as stringent on some States as already——

Mr. JONES. For instance, in Colorado it may or may not be. I am very familiar with the Colorado regs. If it costs $500 an acre to fix the damage you incur, that is the bond. If it costs $10,000 an acre to fix the damage required, that is the bond. It is case specific in Colorado and I think some of the other States are very much that way. So it is very difficult to make a categorical statement that BLM is or is not more rigid than all the States.

Mr. RAHALL. OK, but you do agree that there is bonding requirements required, minimum bonding requirements required?

Mr. JONES. As I understand the new bill and regs, they have got $1,000 for notice of intent minimums and they have got a $2,000 for plan of operations. If that were compared to Colorado and there

were a portion of your operation that required $500 per acre to reclaim your bond for that portion would be $500. If you had a portion that required a lot more, say $10,000, that acreage bond would be $10,000 per acre and your cumulative bond would be a composite of all the pieces.

Under the BLM reg as I see it, and I did not come here to argue the merits of the bond, but as I understand it, if you got 100 acres under bond under the BLM plan it is $2,000 times 100 acres. There is $200,000. So it very definitely may be more or less than it might be in the State of Colorado.

Mr. RAHALL. Phil, let me ask you, if I might. Is there one State that stands out as striking the right balance between protecting the taxpayer while also placing reasonable bonding requirements on mining operations?

Mr. HOCKER. We would favor the State of California. Let me add, though, frankly I think a problem that we all face is that predicting from the rules on the books exactly what bond a miner is actually going to be required to post for a given operation could be a challenge.

Mr. JONES. It is case specific.

Mr. HOCKER. But I think two things that might help the discussion, first it is our understanding that Arizona should be added to your list of States that do not require bonding for small operations.

Mr. RAHALL. Yes, that already—that is according to Mr. Jones' chart too.

Mr. HOCKER. And, secondly, one of the changes that—there were as has been pointed out some changes between the draft and the final regulations—one of the changes was that the draft regulations promoted in 1991 would have capped, placed a cap, as I understand it, on the maximum level of bonding per acre.

We do not believe that per acre calculation is a wise way to protect the public interest. USEPA was among those, and also many BLM staff who in 1991 commented, that a per acre cap would not be appropriate and so BLM has replaced the per acre cap with basically a third party calculation by a responsible professional of the actual cost to do the job. We think that is an excellent change and also I would add one that clearly was envisioned in and was within the scope of comments that were received in 1991.

Mr. RAHALL. It was part of my reform bill that passed the House of Representatives, is that correct?

Mr. HOCKER. One of the many excellent parts of that bill.

Mr. RAHALL. Thank you, just for the record. No comment from the other side. Mr. Chairman, let me if granted permission include as part of the record and perhaps as part of this panel's testimony a letter from the American Rivers, Mineral Policy Center, National Wildlife Federation, Sierra Club, Western Mining Action Project, and Western Organization of Resource Councils to Secretary Babbitt dated March 12 of this year if that could be just made part of the record as part of the testimony.

[The letter may be found at end of hearing.]

Mr. GIBBONS. Without objection and I will also say to the witnesses who testified earlier that your written comments will also be made part of the record as well as though you have made in oral argument.

Mr. RAHALL. Thank you.

Mr. GIBBONS. Mr. Hocker, I just had one question for you and perhaps it is something you can help me understand a little bit better here as we wrap this up. One of the GAO studies that you waved about earlier in your testimony indicated that the legacy of abandoned hardrock mines in this country was about $180 million or so. Was that not what you just said in your testimony?

Mr. HOCKER. I actually did not bring that particular report with me because I placed——

Mr. GIBBONS. But you said something about——

Mr. HOCKER. There is such a report, yes.

Mr. GIBBONS. Now isn't it true that your group's study puts this figure at about $36 to $72 billion?

Mr. HOCKER. $32 to $72 billion was the estimate we came up with. The Interior Department Inspector General calculated $11 billion. There are other numbers floating around.

Mr. GIBBONS. Which one do you place greater belief in?

Mr. HOCKER. Ours.

Mr. GIBBONS. Why?

Mr. HOCKER. First, in all candor, a range of $32 to $72 billion is a fairly wide range and there is a lot of uncertainty in there. We tried, sir, to do frankly a type of analysis which we felt was necessary and which we have not seen anyone else do. And the data on this, and I bet there is unanimity on this panel on this point, the data are not conclusive. And one thing that I would love to see this Subcommittee call for would be an adequate expenditure to really do an assessment and actually inventory this problem.

But what we attempted to do was take the data that were available which were of two kinds. First, counts of the total numbers of abandoned sites that exist, and, secondly, some costs for the costs of reclamation of different categories of sites. And clearly to take the cost of reclaiming the Superfund site and apply that to the total count which is approximately 552,000 abandoned mines would be nonsense.

So what we tried to do was to categorize, OK, roughly what percentage of these are fairly minimal sites that do not require any effort, what percentage are sort of landscape disturbance or pits which are going to require maybe a few thousand dollars to regrade and reclaim, which ones are serious water pollution-sites, and which ones are Superfund sites.

And then we tried to apply reasonable cost projections to each of those. That was what produced the $32 to $72 billion estimate. That has been on the table since '93 and frankly no one has done a more thorough scientific analysis since then that I am aware of.

Mr. GIBBONS. Thank you. Mr. Rahall.

Mr. RAHALL. No questions.

Mr. GIBBONS. I would like to thank the witnesses for their participation and testimony today. We appreciate it and with that if there is no other testimony, we will call this hearing to a close. Thank you very much.

[Whereupon, at 2:37 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF JOHN LESHY, SOLICITOR, DEPARTMENT OF THE INTERIOR

Madam Chair and members of the Subcommittee, I appreciate the opportunity to appear here today to discuss the final rule on bonding for hardrock mining operations.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) directs the Secretary to prevent unnecessary or undue degradation of the public lands from, among other things, activities conducted pursuant to the Mining Law of 1872 (mining of locatable minerals, such as gold, lead, silver, uranium, and bentonite).

The consequences to the health of the public lands and the implications for the American taxpayer from inadequate steps to carry out this mandate are potentially very large, even staggering. The Departments of Agriculture and the Interior are currently defendants in several lawsuits seeking to hold the government, as landowner, liable for the cost of cleaning up toxic wastes from defunct mining operations carried out throughout the west under the Mining Law of 1872. The irony is that after over a century of making publicly owned minerals available for next to nothing, the taxpayers may face cleanup costs running into billions of dollars. Most members of the hardrock mining industry are responsible operators. But there is no denying that when protective measures are not taken, or are inadequate, the consequences can be costly.

Some idea of the potential scope of the problem is described in a GAO Report of April 1988 to the House Subcommittee on Mining and Natural Resources. The GAO estimated that 424,049 acres of federal land were then unreclaimed as a result of hardrock mining operations in the 11 western states. 281,581 of these unreclaimed acres related to abandoned, suspended or unauthorized mining operations. The estimated cost to reclaim this land was about $284 million. The remaining 142,468 acres of federal land were being mined at that time and would eventually need reclamation.

The Bureau of Land Management's (BLM) original regulations implementing section 302(b) of FLPMA became effective on January 1, 1981. That rule, 43 CFR 3809, required mining claimants to complete reclamation on Federal lands administered by the BLM during and upon termination of exploration and mining activities under the mining laws. The rule classified mining-related activities into three categories: casual use, notice, and plan of operations. Activities are termed "casual use" if they involve negligible surface disturbance and do not use mechanical excavating equipment. However, if there is surface disturbance involving mechanical excavating equipment, notice of the operation must be provided to BLM. Plans of operations were required where surface disturbance of more than 5 acres, or any disturbance greater than casual use in some special category lands, was involved. At BLM's discretion, bonding was required on plans of operation. No bonds were required for casual use or notice operations unless there was a pattern of violations.

The preamble to these regulations promised a review of them within three years. Since they took effect, much internal and external (GAO and Congressional committees) attention has been directed at, among other things, the adequacy of BLM's bonding policies. In addition, the dramatic rise of the gold mining industry in Nevada during the 1980's increased the public's awareness of the need for reclamation. Near the end of the Reagan Administration, the BLM Director established a Mining Law Administration Program Task Force to address significant issues. The Task Force's December 1989 report recommended that BLM's program "needs to be strengthened to meet BLM's responsibilities," and addressed bonding, among other things. As a result, a revised bonding policy was issued in August 1990 as a short term change. In July 1991, a proposed rule on Hardrock Bonding was published in the *Federal Register*. The preamble to this proposed rule explained that the Department's history under the 3809 bonding regulations led BLM "to conclude that bonding or other financial or surety arrangements would be useful additions to the tools available to land managers to protect against unnecessary or undue degradation of the land caused by [notice] operations...." (56 FR 31602). The published summary of the proposed rule explained:

"The proposed rule would require submission of financial guarantees for reclamation for all operations greater than casual use, create additional financial instruments to satisfy the requirement for a financial guarantee, and amend the noncompliance section of the regulations to require the filing of plans of operations by operators who establish a record of noncompliance." (56 FR 31602).

During the 90-day comment period, which expired on October 9, 1991, the BLM received over 200 comments on the proposed rule. Some said the policy went too far; others said it did not go far enough. All of the comments were carefully considered in developing this final rule.

In August 1992, BLM completed a preliminary draft of the final rule incorporating changes suggested during the comment period. Internal Departmental review of the preliminary draft final rule was then begun. In addition to the proposed bonding rule, on September 11, 1992, BLM published a proposed rule which strengthened the BLM's enforcement program against the illegal occupancy of mining claims for non-mining purposes.

Because it appeared at the beginning of the 103rd Congress that action on comprehensive legislation to reform the 1872 Mining Law was likely, completion of BLM's bonding and occupancy regulations was suspended. If enacted, the reforms being considered would have superseded the rules.

Once the 103rd Congress adjourned without enacting Mining Law reform, the Department resumed work on a number of efforts to address shortcomings in regulation of hardrock mining, including the bonding rule. Among these efforts, BLM also published an acid rock drainage policy in April 1996. The occupancy rule was completed and published in final form on July 16, 1996. Work then focused on finalizing the bonding rule.

In response to public comment, and after due consideration, some changes were made between the draft and final rule. These changes are a logical outgrowth of the proposed rule. While the proposed rule will enhance environmental protection by ensuring consistent application of bonding requirements, the overall impact of the rule on the hardrock mining industry is actually relatively limited for several reasons. First, as was noted earlier, the Department already has the discretionary authority to impose bonds for up to 100% of the costs of reclamation on plan level operators, and some states already require this level of bonding. In other states, which do not currently require 100% reclamation bonds, the BLM will be cooperating with operators and state mining administrators throughout the remainder of 1997 to achieve a smooth transition. Second, the bonding requirement for notice level operators, which was part of the proposed as well as final BLM rule is not a new requirement in most states. Moreover, the requirement will be phased in, which will ameliorate its impact where it is new. Operators with existing notices on file with BLM which have initiated operations will not be required to provide 100% bonding until they file a new notice. With past history as our guide, we expect that it will take four years before all notice level operators are covered.

The BLM has implemented an extensive program to inform interested parties of this final rule. BLM's homepage on the Internet (http://www.blm.gov) includes the final rule as well as background documents including a press release, question and answer sheet, and a fact sheet. Other outreach efforts include, for example, BLM staff visits to various mining centers and meetings with miners and mining industry officials, as well as state regulators.

We believe this rule is a reasonable forward step to carry out our statutory mandate. We will do all we can in implementing this rule to ensure that the health of the land is preserved, taxpayers' interests are protected, and any negative implications for the mining community are minimized.

This concludes my statement. I will be pleased to answer questions.

TESTIMONY OF PAUL C. JONES, EXECUTIVE DIRECTOR, THE MINERALS EXPLORATION COALITION

Introduction.

I am Paul C. Jones, Executive Director of the Minerals Exploration Coalition, an advocate of the multiple use of public lands of the United States. Today I am pleased to testify before your Committee today regarding the recently published Bureau of Land Management regulations related to bonding of exploration and mining activities on the Public Lands.

I have over 35 years experience in the mineral industry in North and South America in all levels of the industry from junior engineer to Chief Executive Officer of publicly held corporations.

The Minerals Exploration Coalition, located in Golden, Colorado, is an advocate on public policy issues involving access to, and the safe and environmentally responsible use of, public lands of the United States for mineral exploration and development. Our membership, including more than 30 corporations, represents a diverse group of professionals and companies engaged in mineral exploration on public lands.

Presentation.

On February 28, 1997 the Bureau of Land Management (BLM) published a final rule in the Federal Register (62 FR 9093-9103) concerning a portion of 43 CFR 3809 relating to the surface management of lands subject to the mining law, more par-

ticularly to bonding of exploration and mining activities on the public lands. I am deeply concerned about the manner in which the Administration established this rule.

Unfortunately this rule was formulated and published by the BLM, effective March 31, 1997, without recent publication of a notice to issue the rule, without a recent public comment period on the proposed rule, and without consideration of events which affect the need or operation of the new rule. BLM's notice of Final Rule stated that the notice of proposed rule was published on July 11, 1991 (56 FR 31602) with the period of public comment closing October 9, 1991—five and one-half years ago.

Why did the BLM not issue the final rules in 1991 or early 1992, or even in the early days of the Clinton Administration—not five and one-half years later? What is the urgency which does not allow re-publication of proposed rule, a new public comment period, and the formulation of a final rule in this process—five and one-half years after the period of public comment for the proposed rule was closed.

I suggest, ladies and gentlemen, that many relevant changes have occurred since 1991 which affects, if not makes unnecessary, the recently issued rule. Particularly, numerous changes have occurred in state regulations affecting mineral exploration on public lands which justify, if not mandate, newly formatted proposed rules be issued, a reasonable comment period established, and public input taken and used in the formulation of the final rule—whatever its content.

On January 6, 1997 Interior Secretary Babbitt sent a letter to the Assistant Secretary, Land & Minerals and the Acting Director, BLM requesting they present to the Secretary a plan to modify the hardrock mining surface management regulations (43 CFR 3809) commonly called "3809 Regulations." More recently we have learned that the Secretary has established a Task Force to review and prepare modifications of such regulations.

When we at MEC saw the January 6, 1997 letter from Secretary Babbitt we assumed, apparently in error, that any such rule changes related to 3809 Regulations would follow the normal procedure of publishing proposed rule changes, taking public comment on those issues, and considering that public comment in formulating the final rule. The propagation of the rule on bonding of mineral related operations gives us considerable cause for alarm about how the Secretary plans to formulate new rules under the 3809 Regulations.

The Mineral Exploration Coalition publishes an exploration Permitting Directory covering the regulations of 21 states, including all western states where most public land is located. In addition most, if not all, mid-western and eastern states where metal mining occurs are included. The Directory also includes BLM and U.S. Forest Service (FS) rules governing exploration activities. This directory is updated on an annual basis to incorporate any changes in state or federal regulations which occur in the preceding year. Numerous changes have occurred in the directory in the last six years.

A review of the MEC Permitting Directory will indicate that all of the 21 states covered require some form of bonding for exploration and/or mining activity on the public land. The requirements for prior permitting, reclamation and bonding in each state may vary, but most states do cover all acreage disturbed without regard to ownership, whether it be private, state or federal. Sixteen of the twenty one states require bonding for exploration. Of the states covered in the MEC manual, only Alaska does not require permitting and bonding of exploration activities on federal lands.

Numerous revisions have been made to our directory in the past few years as the individual states have modified their reclamation regulations. A brief review indicate that modifications have been made to the regulations in almost all states since 1991. In particular, the states of Arizona, New Mexico have instituted the regulation of exploration and mining activities since the BLM ask for comments on their most recent proposed rules in 1991. In addition the states of Colorado, Minnesota, Montana, and Nevada have made major changes in their legislation and/or regulations governing exploration permitting and reclamation since 1991. Just two weeks ago the MEC office received a completely revised set of regulations from Montana to incorporate into the 1997 edition of our directory.

In the case of Colorado significant changes were made to the Colorado Mined Land Reclamation Act in 1993 following the Summitville Mine incident with new rules under the revised act being propagated in 1994. I was personally deeply involved in both the legislative and rule making process in Colorado and will discuss that process in more detail shortly.

A review of the federal permitting section of the MEC Permitting Directory indicates changes were made to both the BLM and FS sections since October, 1991. Of particular note was the reference on page 4-8 related to BLM Manual Handbook H-

3042-1 dated February 2, 1992 and entitled *Solid Minerals Reclamation Handbook,* issued obviously after the date of closure of public comment on the 1991 BLM draft rules. The contents of this handbook appear to be incorporated into the release language of the bonding rule, again without public comment.

In the case of the Colorado Regulations major changes in the underlying legislation and subsequent regulation were made in 1993 and 1994 as a result of the Summitville Mine abandonment by Galactic Resources Ltd. I was Chairman of the Colorado Mining Association (CMA) in 1992-93 and Chairman of the CMA Summitville Task Force from 1993 to the present. As such I participated in the process of revising our state law (93-247) to correct deficiencies in the law and subsequent change in regulations under that law in 1993-94 and to a lessor extent in 1995.

Major changes of the Colorado Mined Land Reclamation Act were made in 1993. These changes specifically included modification of the previous law which provided minimal requirements for small operations, elimination of statewide permitting of exploration to a system where each project must be separately permitted under a confidential "Notice of Intent to Explore" system, introduction of a "Designated Mining Operation" classification covering operations which use hazardous chemicals or have the "potential" to produce acid forming chemicals or heavy metal concentrations in runoff water and, most importantly to this discussion, significantly increased bonding requirements on all operations within the state. Under current regulations, all operations, whether exploration, development, or mining, must be adequately bonded.

Colorado regulations apply to all lands within the state, whether private or government owned (including federal lands). Certain, but not all, portions of the permit application must be approved by a Professional Engineer. Bonds must be sufficient to allow the State to conduct the reclamation in the event of abandonment by the operator. The form of the bond must be fungible and in the name of the State of Colorado.

Exploration and/or operating bonds under the Colorado Mined Land Reclamation statute will vary dependent upon the nature of disturbance, pre-activity condition of disturbed surface, and other relevant conditions. Bonds posted range from $500 per acre to over $10,000 per acre on limited areas.

As you can see from my description of the Colorado regulations, our state adequately regulates both exploration and mining operations on both public and private lands in the state. Similar regulations apply in most other Western states.

I do not wish to devote time at this hearing to critique specific items of the new rules which are considered by many as objectionable. However, I will mention several items which deserve meaningful consideration:

—the new rules do not outline specific time frames for the procedures for releasing the bond established for reclamation. All states with which I am familiar establish specific procedures for partial and final release of bonds;

—the requirement for a professional engineer appears overkill on minor exploration plans and operating plans for mining operations of minor impact;

—no criteria is established for a maximum review time allowed BLM for plan approvals, in fact the Q & A sheet states delays are inevitable;

—the elimination of the small miner (5 acre) exemption may be overly restrictive, both from the standpoint of impact on small operations, and from the impact on BLM staffing required to administer the program; and

—no method is established for providing confidential treatment of exploration data or information, a requirement which is of major importance to the exploration community.

MEC is also concerned about the negative impact this new rule can have on exploration by individual explorationist who are an integral part the U. S. exploration scene. The self-initiation process provides a very high percentage of the new mineral discoveries in the United States. We believe the rule in its present form will cause much confusion on what will consist of "casual" use of public lands for exploration. Will driving a pickup or jeep along designated roads to inspect an area be classified as "casual use", or will it require complying with "notice level" requirements and posting of a bond prior to commencement of the activity? Will a geologist be required to meet "notice level" requirements and post a bond to perform field mapping, take "chip samples", or conduct geophysical surveys on public lands? Will the staking of unpatented mining claims require advance "notice level" filings. If any of these issues are the case, we believe such a requirement will be overly restrictive, costly, and unduly time consuming for the nature of the impact such an activity will have on the public lands. These items are not adequately addressed in the new rules.

Similar concerns may be expressed for the legitimate "small miner" who operates in a environmentally sensitive manner, yet does not have the financial resources to engage a professional engineer to compile a "notice level" or more formal "plan of operation" for a small, under five (5) acre mining operation.

Conclusion.

The Minerals Exploration Coalition believes the new rule regarding bonding for mineral activity on the public lands deserve new public comment and reconsideration before implementation. The changes in applicable state regulations related to mineral exploration and mining activity have changed considerably since public comments were taken on proposed rule in 1991. These changes, without exception, have strengthened the requirements for mineral activity, including that on public lands. Adequate regulation exist in most states where exploration occurs on public land, thus the need to rush this new rule into effect is unnecessary.

MEC is also concerned that the method of implementation of the rule on bonding indicates a disregard on the part of the Department of Interior for the normal rule-making process. This gives us much concern regarding the upcoming activities of BLM in revising 3809 Regulations.

In conclusion, I would like to clearly state that MEC is not opposed to the posting of a bond for exploration activity if that bond is in a reasonable amount and is fairly administered. We already post such bonds for almost all our major exploration activities in the states in which we work. However, MEC believes adequate change has been demonstrated in both the need for and circumstances about the BLM rule on bonding to justify additional rule-making on this issue prior to a final rule being implemented. We strongly urge the BLM to withdraw this rule and re-institute normal rule-making procedures in this matter.

STATEMENT OF KARL L. HANNEMAN, PRESIDENT, ALASKA MINERS ASSOCIATION

Introduction

Good afternoon. My name is Karl Hanneman. I am President of the Alaska Miners Association (AMA), a nonprofit industry support organization with approximately 1000 members. I am also a mining engineer and President of Alaska Placer Development, Inc., a small private company that for the past 17 years has produced gold from federal claims in five locations in Alaska, both under notices and plans of operations. On behalf of the Alaska Miners Association, I would like to thank you for the opportunity to share our concerns about the BLM Final Rule on bonding.

To summarize the importance of the mining industry in Alaska, it was the fourth largest industry in 1996. An important element of this industry is the approximately 200 small placer miners that are scattered throughout the state. According to statistics from the State of Alaska, the average small placer miner employs 3 to 4 people. The mining industry provides one of the few private sector job opportunities in rural Alaska.

My mining operation is conducted under a plan of operations near the town of Livengood, 70 miles north of Fairbanks. Unlike the previous locations I have worked, Livengood has the luxury of being accessible by road. We have been at this location for 13 years and employ 10-15 people for 8 months per year and 3 people year round. Although our annual disturbance is about 5 acres, the large settling ponds that we need to recycle 100% of our process water and our overburden storage areas brings our total footprint to about 250 acres.

My relationship with BLM Alaska personnel over the years has been positive and professional and it would be fair to say that this is representative for the industry as a whole on 3809 issues. I have seen many improvements in mining practices in recent years, and by and large these have occurred in a constructive atmosphere with Alaska BLM. However, the AMA has serious concerns about the Final Rule now presented by BLM headquarters.

Four Reasons that Final Rule should not be adopted.

The following comments will focus on the procedural reasons that the Final Rule should not be adopted. Although the AMA has serious concerns about many of the provisions of the Final Rule, our review of specific provisions of the rule will not be exhaustive, but rather only certain portions will be discussed in order to highlight the fact that BLM needs additional information before being able to proceed with a proper rule.

Six year old public process is stale

The proposed rule was published on July 11, 1991, with the public comment period expiring on October 9, 1991. During the five and one half years that elapsed

before notice of the Final Rule, important changes have occurred within the regulated community and much relevant information has not been properly evaluated. I cite the State of Alaska reclamation law and BLM field staff practices as examples.

After closure of the comment period on the proposed rule, the Alaska State Legislature passed a State reclamation law. This Statute became effective in 1992 and applies to all land in Alaska, including state, federal, private, and municipal land. The law requires prevention of unnecessary and undue degradation of land and water and contemporaneous reclamation to a stable condition. The law requires plans with bonding for 5 acres or more and notices with an annual statement of reclamation for less than five acres. A statewide bonding pool was established whereby a refundable deposit of $112.50 per acre is paid to create a surety and a nonrefundable fee of $37.50 per acre per year is paid to the bond pool. The bonding pool provides coverage for the full cost of reclamation.

During creation of the bonding pool, the AMA worked with the BLM State Division of Mining, and the Alaska State Legislature to ensure that it was established in a manner that could be used by miners operating on federal lands. The BLM Director at that time encouraged the AMA to establish this bonding pool and get it in place as rapidly as possible. AMA is presently working with BLM Alaska and State of Alaska officials to determine if the State bonding pool can provide coverage under BLM's Final Rule without adding significant burden on the operators. Despite very positive attitudes by all directly involved, at this time there is no assurance that the effort will be successful.

For the five year period since inception, there were an average of 104 bonded operations in Alaska. In 1996 there were 112, 59 of which were on federal land. Since inception, there have been no bond forfeitures or draws against the bond pool. That is, since 1992, all operations larger than 5 acres have completed reclamation as required, including all those on federal land. During 1996, no notice operators, including 96 on federal land, established a record of noncompliance.

This new data shows that there is no compelling need to adopt the Final Rule. It is interesting to note that the February 38, 1997 notice of the Final Rule indicated that "This Final Rule will advance the BLM's mission of protecting the public against unfunded liabilities". I wonder who has established this as BLM's mission? Since the data does not show any such unfunded liabilities in Alaska, then what is BLM's real mission? In any event, it is clear that the five and one half years since the first comment period closed has simply been too long and BLM headquarters needs the benefit of this new data so that it can accommodate the successful statewide bonding program that is working in Alaska.

BLM headquarters also needs to learn how closely BLM personnel work with the mining operators in Alaska to ensure and improve compliance. In this regard, the January 6, 1991 memo from Secretary Babbitt states with respect to notice level operations: "I understand that in practice it is relatively unusual for BLM to question what happens on these operations". This statement demonstrates a lack of awareness for the input that BLM staff have on notice level operators in Alaska. It must first be noted that many operators scale their operations to stay just below the 5 acre annual disturbance threshold. In order to stay below this threshold year after year, reclamation must be conducted concurrently in such a fashion that the total unreclaimed acreage does not exceed 5 acres. The BLM authorized officer is the one that makes the determination as to when the reclamation is sufficient. To work toward this end, miners make frequent visits to BLM offices in the winter to work with BLM staff on permit applications and notices. Mining plans are developed to accommodate the requirements of the BLM staff. BLM staff make field visits in the summer and work with the operator depending upon what equipment and resources are available. No notice level operator is allowed to continue the next year under a notice unless the prior years reclamation is completed to the satisfaction of the BLM staff. Thus BLM staff clearly have significant input to notice operations in Alaska. That the Secretary would just a couple a months ago contend otherwise demonstrates that the policies embodied in the recent Final Rule are not being driven by current information.

In stark contrast to statements from BLM headquarters, unfunded liabilities are not a significant issue in Alaska and BLM staff do in fact have considerable input to notice operations. These are just a couple of examples, but in order to allow BLM policy to be based on current data rather than suppositions, it is apparent that BLM should gather additional information before proceeding with a Final Rule.

The Final Rule has substantive changes that could not have been anticipated from the proposed rule.

The Final Rule has substantive changes that could not have been anticipated from the proposed rule. To highlight just too examples, I will review bond amounts and the type of financial instruments allowed.

The proposed rule had a maximum bond amount of $2,000 per acre. The Final Rule has a minimum bond amount of S2,000 per acre with a maximum of 100% of estimated reclamation costs. This is a major change in approach, from one of a cap on potential bonding liability, to one that is completely open-ended. In light of the BLM's stated desire to rewrite the reclamation standards, this open-ended nature becomes even more significant. Then in addition, reclamation costs must be calculated as if third party contractors were performing the reclamation after the site is vacated by the operator. In addition, the calculation must be certified at operator expense by a third party professional engineer. Each of these changes are substantive in themselves. Taken together, the effect is to raise the bond amount to a prohibitive level. To evaluate this effect on many operators in Alaska, it is important to note the logistics of typical sites in Alaska, including many that I personally worked at. Many have no road access. Access can be by many miles of winter trail, passable only when the ground is frozen. Often a barge trip along a river or the coast is required before the winter overland travel can begin. This might mean starting travel many months before any work could be conducted on the claims.

Now consider the types of bonding instruments allowed. The proposed rule allowed a first-lien security interest for mining equipment and first-lien security interests for real property, including mining property. The Final Rule eliminated both of these options. For many of the small operators in Alaska, mining equipment and mining property are their major assets. Thus in this Final Rule, not only would the bonding amount be calculated completely different, but the assets most likely available to the miner to meet the bond are eliminated from consideration. This is indeed a substantive change that demands further review.

Inappropriate to promulgate the Final Rule when revision of 3809 regulations are pending.

It is inappropriate to promulgate the Final Rule when review of the entire 3809 regulation is pending. On February 25, 1997 BLM announced a task force to address (1) the use of best available technologies to prevent unnecessary and undue degradation of public lands; (2) performance standards for the conduct of mining and reclamation activities; (3) alternatives to the current exemption from reclamation standards for mining operators of five acres or less; and (4) ways to improve coordination between the BLM and state regulatory programs. According to the press release, BLM expects these issues to generate sufficient public interest and have effects significant enough to justify an EIS. It is therefore inappropriate for these same issues to be included in the present bonding rulemaking without similar solicitation and evaluation of public input.

Existing 3809 regulations allow release of bonds in accordance with the approved plan. The Final Rule establishes a new policy that would release 60% of the bond upon "backfilling, regrading, establishment of drainage control, and stabilization and neutralization of leach pads, heaps, leach bearing tailings. The remaining 40% would be released only upon revegetation to establish a diverse, effective, and permanent vegetative cover and until any effluent discharged from the area has met, without violations and without necessity for additional treatment, applicable effluent limitations and water quality standards for not less than 1 full year." This language does not exist in the present 3809 regulations. Are these not new performance standards for the conduct of mining and reclamation activities? Are these not the same issues identified for the task force to review? In fact they are and it is premature to include them in a Final Rule at this time without full NEPA review.

Similarily, existing 3809 regulations exempt compliant notice operators from bonding provisions. Not so with the Final Rule, which would require bonding to the full cost of reclamation of all notice operators and would not release such bonds until the new reclamation standards had been achieved. Are these not alternatives to the current exemption from reclamation standards for mining operations of five acres or less? Are these not the same issues identified for the task force to review? In fact they are and it is premature to include them in a Final Rule at this time without full NEPA review.

The full 3809 review is also supposed to address ways to improve coordination between the BLM and state regulatory programs. It is clear that in the Final Rule, BLM does not have a good understanding of Alaska's successful reclamation law and bonding pool program. We encourage improved coordination in this regard. But if such an effort is important enough to be cited as an objective of the task force, to be conducted with full NEPA review, it should be completed in that forum and not bypassed by a six year stale rulemaking

There was an inadequate analysis of the economic impact.

BLM has inadequately analyzed the economic impact of the Final Rule. As stated above, BLM has not correctly considered the cost of getting third party equipment to remote Alaska sites. For notice operators, BLM assumed 2.5 acre disturbance per notice and $2,500 per acre reclamation costs. Last year I paid $2,300 just to haul a small bulldozer to and from a mining property that was on the road system. Access to remote Alaska sites by barge, winter trail, or air would be many times more expensive. Clearly BLM has missed by an order of magnitude the cost of transporting the equipment, let alone completing any work once on site. Contractors sending equipment to remote areas of Alaska for major parts of a year will demand standby rental rates that dwarf BLM's assumptions. A medium sized bulldozer will rent in Alaska for $10,000 to $15,000 per month and several months rental drives the calculated third party costs far beyond those estimated by BLM.

Another inadequate economic analysis involves the BLM assumption that operators currently conducting plan level activities on mining claims that are excluded from State or native selections would relinquish their claims as a result of the new rule. BLM has not evaluated the economic impact to the operators who purportedly would relinquish their claims.

BLM has inadequately estimated the cost to plan operators in Alaska. First, BLM incorrectly states that a statutory cap on bonds exists in Alaska when the bonding pool in fact provides full coverage. This again reflects a lack of understanding regarding the Alaska bonding program. Nevertheless, BLM estimates that plan operators will have to provide an additional $1,250 per acre in financial guarantees for a total of $470,000. For my operation alone, and since there is no assurance that the state bonding pool will be applicable, my company would have to come up with an additional $312,500. That is 66% of BLM's estimate for all of Alaska, and we are just one of 59 plans. Suffice it to say that BLM's economic analysis is inadequate.

In trying to soften the blow of the Final Rule, BLM states that "Again, in reality, the incremental costs associated with obtaining the surety would be...lower than the full value of the surety". BLM incorrectly assumes that a surety could be obtained without collateralization of the full surety amount. Insurance agents in Alaska report that bonds are not available without full collaterization and then only for a limited duration, but not for the term of the lease or plan of operations.

The BLM says that the proposal will not adversely affect investment or employment factors locally and any incremental cost associated with this rule will merely be absorbed without any effect. Certainly for my operation, there would be significant adverse effect and for many other operations as well there would be loss of jobs and economic activity in areas where there are few other job alternatives.

BLM estimated that there will be a "short term effect.. on approximately 498 notice operators nationwide, who when faced with the need to obtain a bond for reclamation will either move to other land, downsize their operations, or altogether cease activities." Given that BLM has underestimated the cost of reclamation using third party equipment it is clear that they have also underestimated the number of small entities that will be adversely affected.

BLM estimated that the practical effect of the rule will be the "removal of some properties from their inventory of holdings, making them available for other interested parties to develop. They may also quickly enter the marketplace and attempt to lease the operation out to a junior or major company...". This statement demonstrates a lack of understanding about the structure of the Alaska industry. That notice operators are largely mom & pop operations is a function of that being all the properties can support. No junior or major company is interested in the meager cash flow generated by these small deposits. Any potential replacement operators are likely to be just as financially strapped as the originals. Thus the Final Rule is clearly designed to help usher the small operator out of business and the economic effect on the small operator has been grossly underestimated.

Summary

For the reasons cites above, the AMA believes that it was not provided the proper opportunity for meaningful comment prior to the rule becoming effective. On January 6, 1997. Secretary Babbitt announced the BLM has moved forward to complete "a Final Rule on hardrock mine bonding to strengthen financial assurance requirements to meet reclamation responsibilities". The Secretary also said "It is plainly no longer in the public interest to wait for Congress to enact legislation." I submit that it is in fact Congress, not the Secretary, that should establish public policy in this regard. If Congress does not see fit to enact certain laws, on what basis does the Secretary gain justification for proceeding on his own? The AMA thinks that the

recently issued Final Rule is flawed and we urge this Committee to do everything in its power to have it withdrawn.

STATEMENT OF PHILIP M. HOCKER, PRESIDENT, MINERAL POLICY CENTER

Chairman Cubin, members of the Subcommittee:

My name is Philip M. Hocker; I am President of Mineral Policy Center. On behalf of the Center and of many other concerned citizens, I thank you for the opportunity to testify before this Subcommittee today regarding the Interior Department's issuance on 28 February 1997 of new bonding regulations for hardrock mining ("the new bonding rules ").

Summary: "The Tip of the Iceberg" of 1872 Mining Law Reform:

We support the publication of the new bonding rules. They are badly needed, and long overdue. The process by which they were promulgated has been adequate. We think the rules themselves are very weak and do not meet the Secretary's legal obligations to protect the public lands, but they are an important step forward. To put the rules and this hearing in context:

These bonding rules are only the "Tip of the Iceberg" of reforming the 1872 Mining Law. We know much more lies underneath this beginning. Now that the berg is finally in motion, it must continue to move forward until all the pieces of comprehensive 1872 Mining Law reform are in place. Existing law gives the Administration the powers to accomplish important parts of this process; we urge the President and Secretary to use those powers vigorously. Still, some of the worst abuses the 1872 Mining Law makes legal—its giveaways of billions in gold with no royalty, its careless sale of valuable mineral lands for $5.00 per acre, and its free grant of a compensable "right to mine" to anyone who can make a profit on the public lands—these can only be cured by Congress. I urge this Subcommittee to help this iceberg along by acting promptly to cure these abuses.

Introduction:

Mineral Policy Center is a nonprofit national citizens' organization of approximately 2,000 members. The Center is dedicated to the adoption of policies which serve the long-term national interest for environmentally-clean and fiscally-responsible management of our mineral resources. The Chairman of our Board of Directors is Stewart L. Udall, who served with distinction in the House of Representatives, and as Secretary of the Interior from 1961 to 1969.

Mineral Policy Center supports responsible mining in the United States and worldwide—mining which operates with sound environmental controls, mining which prevents environmental pollution while it is being conducted and which restores the lands after mining is finished, and mining which pays the American people a fair return for valuable public property which the industry exploits. Current laws do not ensure that all mining operations will meet those standards.

Mining does cause massive, costly, enduring damage to the environment if not carefully controlled. Allowing mismanaged and irresponsible mining to continue damages both the environment, the Treasury, and the reputation of the many companies that are operating responsibly. Comprehensive reform is in everyone's best long-term interest.

Information Required to be Disclosed:

Mineral Policy Center's principal office is located at 1612 K Street, NW, Washington, DC 20006. Our telephone number is 202-887-1872—it's easy to remember. I am employed by the Center as its President and Executive Director. A summary of my professional qualifications and experience is attached to this testimony. Neither the Center nor I have received any financial support in the form of Federal grants or contracts since October 1, 1994.

Adequate Bonding of Hardrock Operations is Needed:

On 15 December 1992, a Canadian mining company gave the American people an early Christmas present: the Summitville Mine.

The mining company walked away from its cyanide heap-leach gold mine site at Summitville, over 11,000 feet up in the Colorado Rockies, in the dead of winter. The U.S. EPA had to take over the site as an emergency measure, to keep the pipes from bursting and dumping millions of gallons of cyanide into the Alamosa River. Cyanide was not the worst of the Summitville Mine's environmental problems. That, together with acid mine drainage and copper-metal pollution caused by mining at the site, and other cleanup measures, will cost the American taxpayers more than $140 million dollars to repair. Those are dollars which cannot be spent to clean up

Superfund sites in childrens' neighborhoods around the country, because there was not an adequate bond at the Summitville Mine.

Mining has caused massive environmental damage in many areas of the United States. This is a problem of mining which is being done today, not just of mining in the past. Mining companies, not the general public, should be responsible for paying the costs of cleanup when mining sites cause pollution problems. America's largest Superfund site is a 120-mile section of the Clark Fork River in Montana. This site is contaminated with heavy-metal toxins left behind by sloppy mining in Butte. The most costly Superfund cleanup in the country has been projected to be the Torch Lake, Michigan, lakebed—smothered in the tailings dumped by copper mining operations. Copper is gravely toxic to aquatic life.

The Iron Mountain Mine in California discharges, every day, waters which the mine has polluted with over a ton of copper and zinc metal. These waters have caused massive fish kills, contaminated water supplies, and polluted the environment. Costly action must be taken every day to keep these poisons from killing the salmon fishery in the Sacramento River. Officials predict that the discharge of pollution from the Iron Mountain Mine will continue for three thousand years.

Adequate bonding is needed to protect the public from having to pay the massive costs of these cleanups. Bonding is an essential tool to ensure that the mining company, not the public, will take financial responsibility. Bonding is a preventive measure, not an after-the-fact process like Superfund.

Bipartisan Background for the New Bonding Rules:

Many studies and reports have demonstrated the need for improved bonding rules for Mining Law activities. The General Accounting Office (GAO) reported in "Unauthorized Activities Occurring on Hardrock Mining Claims" (August, 1990) that about 1600 claims "have known or suspected unauthorized activities occurring on them." In an earlier review of whether mining sites were being reclaimed, GAO reported that "Of 246 sites that were inspected, 96 sites, or 39 percent, had not been reclaimed at the time of inspection." ("Interior Should Ensure Against Abuses from Hardrock Mining," March, 1986).

The bonding rules which the Department of the Interior recently issued are based on action which was first proposed by the Bush Administration under Bureau of Land Management (BLM) Director Cy Jamison in 1991. The Bush Administration's proposal arose from a review of problems under the 1872 Mining Law, and a series of studies and Congressional hearings—such as the Oversight Hearing on 7 March 1989 on Mine Reclamation and Bonding which was held by this Subcommittee's predecessor under then-Chairman Rahall.

The 1991 proposal to revise the Federal Regulations for bonding was an extension of earlier BLM agency action, including Instruction Memorandum 90–582, which recognized the need for increased financial assurance to protect the public from having to pay cleanup costs for irresponsible mining.

Changes in State Requirements Since 1991

The Subcommittee has invited comment on whether "changes in State laws and regulations regarding reclamation make untimely the comments solicited [by DoI] in July, 1991."

It is true that there have been changes in state reclamation requirements and bonding rules since 1991. Yesterday, for example, the legislature of the State of Idaho raised the minimum bonding level in that state from $1,800 to $2,500. We have not had time to examine all changes in state reclamation laws and rules which may have occurred since the 1991 comment period, but I am generally familiar with the progress that has been made in this area. Given the nature of the 28 February rules, and the nature of the concerns which were raised in 1991, I see no reason why comments made by any concerned interest group in 1991 would not still apply. Thus, I see no need for the Department of the Interior to have solicited fresh comments prior to issuing this final rule.

Relevance of the Question: The new DoI bonding rules subordinate their requirements to relevant state requirements in many, we believe excessive, ways. Mineral Policy Center does not endorse this position. However, we note that the adoption of state reclamation rules is not being challenged here today. Since to a very large extent the new Interior rules allow state rules to be substituted for the new BLM requirements, there was clearly no need from the viewpoint of a mining operator for Interior to invite new comment after 1991 based on changes in state requirements. The operator is subject to state requirements in any event; the Interior rules make little change in that, so no new comment is needed.

Bureau of Land Management's Responsibility vis-a-vis States: The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary, and thus the BLM, to "take any action necessary to prevent unnecessary or undue degradation

of the lands." (Section 302(b)) The Interior Department's responsibility in this regard cannot be delegated to the states, though there may be inter-agency cooperation. BLM is obliged to base its bonding regulations on what is necessary for the Bureau to directly ensure that mining operators will provide financial resources to repair any damage they cause to the public lands.

Shortfalls in State Regulations: Even if BLM did not have a unique responsibility, there are many significant gaps in state requirements which make them inadequate protection for the environment of federal lands. A few of the specific areas where state requirements fall short of minimum federal policy needs are:

True Cost of Reclamation: The cost of reclaiming environmental damage at a mining site can be very large. Because cleanup of acid drainage or other water pollution may be required, the number of acres disturbed by a miner is often not a good gauge of the cleanup cost. The new BLM rules correctly require (except, unfortunately, for "notice-level" mining) that the financial guarantee be "sufficient to cover 100 percent of the costs of reclamation... calculated as if third party contractors were performing the reclamation after the site is vacated." This condition was requested in comments which the US Environmental Protection Agency, and many BLM staff, submitted on the draft rule which was proposed in 1991 [according to *Mine Regulation Reporter*, 250ct91].

However, the rules of many states only require a fixed or maximum amount of bond, calculated on a per-acre basis. Changes in state laws since 1991 have not removed this problem. Arizona passed a new mine reclamation and bonding law in 1994, but that law sets a maximum per-acre security level of $2,000, and allows discretionary reductions below that. Alaska allows miners, rather than posting any bond at all, to participate in a "bonding pool," and the liability of the pool for reclamation is capped at $750 per acre. [llAAC 97.425(e)]

Small-Acreage Operations: Small-acreage sites can create very costly or destructive environmental impacts, because size is not a good gauge of potential for damage. Nonetheless, some states do not require "small operators" to post any financial security. This leaves the public to bear the risk of substantial costs—to finance someone's hobby. Arizona exempts operations below five contiguous acres. [§49-1221] In fact, the Arizona law reassures miners by declaring "Nothing in this chapter shall prevent an owner or operator... from creating a surface disturbance of five acres or less." [§49-1223] New Mexico exempts mines of two acres or less from bonding requirements.

Scope of Comments vs. State Changes: The bonding regulations proposed in 1991 drew a large number and wide variety of comments. Some comments, including those of Mineral Policy Center, addressed broad policy issues relating to mining regulation. Others covered the specific impacts the proposed regulations might have on mining operators. These comments provided the Interior Department with public input which covered the entire scope of issues which needed to be addressed in regulations. The changes which have been enacted in state regulation in the intervening years have not created any qualitative change in the issues—any change which would require a reconsideration of issues not covered in the original proposal and comments.

Opportunity to Comment in 1991:

The Interior Department gave widespread public notice in 1991 that new rules regarding bonding of hardrock mining operations were planned. The draft rules were published in the Federal Register on July 11th. The deadline for comments was extended from 9 September to 9 October 1991. The rulemaking proposal was widely discussed in both mining industry trade publications and in environmental organization circles.

Mineral Policy Center submitted comments on the proposed rules in 1991. We felt that the rules proposed in 1991 were too weak to protect the public interest. We also felt that rules for bonding in isolation had limited usefulness, and that the underlying reclamation standards and permitting process in 43 CFR 3809 needed to be revised to make new bonding meaningful.

Many of the concerns the Center submitted in our comments 1991 still apply to the final rule as issued. This Subcommittee's letter of invitation to testify asked whether the Center was "given a meaningful opportunity to comment before publication of the final rule." I would have to say "yes, we were" given that opportunity, since the comments we formally submitted still apply to the final rule.

Content of the New Bonding Regulations, and the Need for 43 CFR 3809 Revision:

Mineral Policy Center commented in 1991 that the bonding rules which were proposed by BLM Director Jamison then were "like building a three-legged stool which is equipped with only one leg—and a short leg, at that." We commented that protecting the public interest required:

* Covering all impacts from activities conducted pursuant to the 1872 Mining Law, including those of "notice-level" operations at any size, as well as casual use;

* Establishing standards for the work to be covered by bonds, which would include water-quality protection and a definition of "reclamation" which would strengthen and clarify the weak and vague definition in the existing regulations at 43 CFR §3809.0-5(j).

* Requiring that bonds be posted in liquid form readily accessible to the land manager.

While the 28 February 1997 rules improve on the 1991 proposal, none of the tests we called for in 1991 has been met. These new bonding rules still fail to protect the public interest, and they still fail to meet the Secretary's obligations under FLPMA.

The complete body of rules adopted in 1980 under 43 CFR 3809 are not adequate; these new bonding regulations only marginally improve that. We hope the revision process announced by Secretary Babbitt, to require "best available technology and practices" as a means to prevent "unnecessary or undue degradation" will be more effective than these bonding rules.

Conclusion

Madame Chairman, I thank you for inviting me to testify on this important subject. I look forward to working with you and the Subcommittee on these issues as the Administration proceeds with long-overdue overhaul and strengthening of the Code of Federal Regulations sections that apply to hardrock mining.

As I said at the opening of my statement, these bonding rules are only the "Tip of the Iceberg" of reforming the 1872 Mining Law. They must be supported by additional regulatory reforms adopted by the Interior Department as soon as possible. The Congress must also assist this process by passing comprehensive legislation to reform the 1872 Mining Law. I urge this Subcommittee to help accelerate this process, by scheduling hearings on H.R. 253, the comprehensive reform bill Representatives Miller and Rahall have introduced, as well as holding hearings on the other bills pending that address hardrock mining issues.

$32 to $72 Billion Dollars is the estimate which *Burden of Gilt,* Mineral Policy Center's 1993 study, calculated must be paid to clean up the accumulated legacy of environmental destruction from hardrock mining. Bonding will not pay for that history, but it will keep it from growing in the future.

I would like the record to show my deep thanks to Heather Langford and Sarah Dawson, of Mineral Policy Center's staff, for the important assistance they gave me which made it possible to compile and present this testimony.

I would be pleased to respond to questions.

* * *

Attachments to Statement: "Mine's toxic leaks render river lifeless," *The Denver Post,* 11Nov91; "Bankrupt mine costly to EPA," *The Denver Post,* 24Dec92; Philip M. Hocker—a brief biographical description.

TONY KNOWLES
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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March 14, 1997

The Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Mr. Secretary:

I am writing to express my concern regarding a new rule issued by the Bureau of Land Management (BLM) related to reclamation bonding requirements for hardrock mining. This new rule will adversely impact Alaska miners, notably small operators.

I have concerns about the process in which this final rule was adopted. As you know, the rule was published over five and one-half years ago, while the new rule was adopted without any additional notice. In light of the long delay since the earlier comment period, and in fairness to those affected by the rule, an additional comment period would be appropriate. In fact, given your recent request to the Assistant Secretary for Land and Minerals and the Acting Director of the BLM to upgrade hardrock mining environmental regulations generally, perhaps their effort could include a review of the reclamation bonding requirements.

While I share your desire to ensure that all mining sites are properly restored, as you might imagine this final rule adoption comes as quite a surprise. No public discussion has taken place in five and a half years. A fair and informative process that brings all the parties to the table would give the Department of Interior the opportunity to discuss this issue with Alaska and other affected states. For instance, it would be helpful to know how many unreclaimed sites exist and if this rule would cure any problems that may exist. It would also be helpful to know if there are other means to accomplish the same goal such as bonding pools. This process would be more productive than a unilateral agency decision.

I hope you will reconsider this new rule and have department officials work with the mining community and other interested parties to develop appropriate bonding requirements that balance the need for environmental safeguards with the economic realities of the mining industry. In this regard, more careful consideration should be given to state laws which already exist.

Thank you for your consideration of my views.

Sincerely,

Tony Knowles
Governor

cc Western Governors' Association
Erskine Bowles, Chief of Staff

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U.S. House of Representatives
Committee on Resources
Washington, DC 20515

March 24, 1997

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JOHN LAWRENCE
DEMOCRATIC STAFF DIRECTOR

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20250

Dear Mr. Secretary:

During a Subcommittee hearing on hardrock mining bonding regulations held Thursday, March 20th, Solicitor Leshy indicated that he would provide a written answer to a question from Mr. Cannon of Utah concerning the Bureau of Land Management's definition of a small entity.

In Section 7 of its "*Determination of Effects of Rule,*" the BLM defined a "small entity" as "an individual or a limited partnership, considered to be at 'arm's length' from the control of its parent companies." This definition is not the definition used in Title 5 of the U.S. Code, Section 601. **My understanding is use of a different definition is allowable only if three conditions are met:**

(1) the definition is determined after consultation with the Office of Advocacy of the Small Business Administration,

(2) after an opportunity for public comment is provided, and

(3) the agreed upon definition has been published in the *Federal Record.*

Please answer the following questions regarding these requirements:

(1) Did the BLM develop its definition of "small entity" in consultation with the Office of Advocacy of the Small Business Administration?

(2) Did the BLM provide a period for public comment on the proposed definition of a "small entity?" If yes, when was this comment period open?

(3) Did you publish this definition in the *Federal Record?* If so, when?

Please provide a timely written response for incorporation into the official hearing record, and furnish any documentation not already provided to the Subcommittee. Follow-up questions may be forthcoming after my examination of additional documents that were not made available for review prior to the hearing.

I reiterate my desire for the Department to stay this rulemaking from becoming effective on March 31, 1997, and urge you to seek meaningful, timely comment from the public. Should the answers to the questions posed above demonstrate a procedural flaw in the requirements for agency rulemaking, I trust you will take the necessary action to halt the rule's effectiveness without further action by the Congress. Thank you for your attention to this matter.

Sincerely,

Barbara Cubin

Barbara Cubin
Chairman, Subcommittee on
Energy & Mineral Resources

cc: Ranking Member Carlos Romero-Barceló
Congressman Chris Cannon

IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

April 3, 1997

The Honorable Barbara Cubin
Chairman, Subcommittee on Energy and Minerals
Committee on Resources
U.S. House of Representatives
1626 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Cubin:

This responds to your letter of March 24, 1997, following up on a matter raised by Congressman Cannon during the March 20 subcommittee hearing on the Bureau of Land Management's (BLM) hardrock bonding rule. Congressman Cannon and you have inquired about the definition of small entity used in the BLM's Determination of Effects (DOE) for this rule. Specifically, you have asked whether (a) the Department had consulted with the Office of Advocacy, Small Business Administration (SBA) in developing its definition; (b) BLM provided for public comment on its proposed definition; and (c) BLM published its definition in the Federal Record (presumably, Federal Register).

The applicable section of the Regulatory Flexibility Act, 5 U.S.C. § 601, incorporates as its definition of "small business" the definition of "small business concern" under section 3 of the Small Business Act. That Act defines a "small business concern" as "one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. § 632. The SBA has, by regulation, suggested a numerical size standard of 500 employees for industries like mining. 13 C.F.R. 121.201. Agencies like BLM may adopt their own size standards, which differ from SBA's standards, for purposes of performing a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act after consultation with SBA's Office of Advocacy. 13 C.F.R. 121.902(b)(4).

In preparing its DOE, BLM did not establish its own size standard. Instead, BLM looked to guidance provided by Congress on the specific issue of what is a small business for purposes of hardrock mining on federal lands. Congress's definition is found in its so-called "small miner" exemption from the claim maintenance fee requirement applicable to all mining claimants found on federal lands. The maintenance fee provision, which is an integral part of the administration of the mining laws, was originally enacted as part of the Interior and

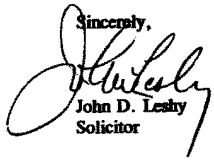
Related Agencies Appropriations Act for FY 1993 (Act). 106 Stat. 1374, 1378-79 (1992).[1] In this Act, Congress required the owner of each unpatented mining claim to pay a claim rental fee of $100 per claim each year to the Secretary of the Interior. Addressing the concerns of small business, Congress exempted those claimants holding ten or fewer claims from compliance with the payment requirement. See 138 Cong. Rec. S15849 (daily ed. September 30, 1992) (discussion between Senator Stevens and Senator Bumpers). This provision is known as the "small miner" exemption. 138 Cong. Rec. S11582 (daily ed. August 5, 1992) (statement of Senator Stevens, then the Chairman of the Small Business Committee and the author of the "small miner" exemption).

In complying with the Regulatory Flexibility Act by analyzing the impact of its rule enhancing financial guarantees required of hardrock mining operations, BLM acted reasonably in using Congress's definition of a small miner. Because BLM did not craft its own definition, it was not required to consult with SBA's Office of Advocacy or seek public comment.

Finally, as I explained in my testimony at the hearing, BLM has provided for phased implementation of the rule with respect to notice operators, those most likely to be small businesses and most likely to be affected by the rule. BLM expects that it will be about three years before all notice operations are covered by the rule.

For all of these reasons, we believe the approach in BLM's DOE required no consultation with SBA's Office of Advocacy, no solicitation of public comment, nor publication in the Federal Register. More generally, we believe that the Department has complied with all applicable laws and regulations in its development of this rule and see no need to delay its implementation.

Sincerely,



John D. Leshy
Solicitor

cc: Honorable Carlos Romero-Barcelo
Honorable Chris Cannon

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[1] The Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 405 - 407 (1993), extended the requirement to pay a fee and continued the exemption provision with minor modifications designed to simplify the eligibility criteria for the exemption.

American Rivers ✿ Mineral Policy Center ✿ National Wildlife Federation
Sierra Club ✿ Western Mining Action Project
Western Organization of Resource Councils

March 12, 1997

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Babbitt:

The undersigned organizations thank you for the initiative you are showing to develop a comprehensive set of administrative actions to address hard rock mining impacts on the environment. This is an essential companion to the initiatives set forth in the President's proposed budget on "fiscal reforms" to the Mining Law of 1872. Substantial environmental damage continues to occur from active and abandoned mines, which needs to be addressed through administrative actions.

We want to share with you our views on the administrative actions that could be undertaken by the Department of the Interior to correct problems with the implementation of the mining regulatory program on federal lands under the Department's jurisdiction.

For citizens in the communities affected by hard rock mining and those from across the country who we represent, our highest priorities for administrative action are to:

- Provide discretion for land managers to determine if mining is an appropriate use of the public lands, and to deny mining activities which are not appropriate.
- Establish and enforce comprehensive operation, bonding and reclamation standards that will ensure that mining activities do not produce long-term environmental impacts on public lands.
- Protect our scarce western water resources.
- Give the public access to information about the patent applications which are pending on public lands.
- Integrate full environmental costs in the determination whether a mining claim is "valid" under the 1872 Mining Law.

There are a number of administrative actions at your disposal to address the impacts of hard rock mining on the environment. We encourage you to consider all of these proposals. They are broken into two parts -- reforms to the "3809" surface management regulations of the Bureau of Land Management (BLM), and other administrative actions.

PART I. "3809 Regulations"

Operation and Reclamation Standards

The Department of the Interior should develop comprehensive operation and reclamation standards to address the impacts of hard rock mining on the environment, under 43 CFR 3809. It is critical to establish principles under which mining activities will be conducted, before, during and after excavation of the mineral. It is also critical that these standards apply for all hard rock mines on public lands, regardless of state law which may address mining standards for mineral activities within a state.

The Interior Department was recently upheld in the action taken by the Bureau of Land Management (BLM) to adopt comprehensive standards for the conduct of livestock grazing operations on federal lands. (See, e.g., Public Lands Council v. Babbitt, Civ. Action No. 95-CV-165-B (D. Wyoming), Memo Op, June 12, 1996). The same broad authority should apply to hard rock mining.

1. Operating Standards

Ensure the protection and restoration of habitats for threatened and endangered species, as required by the Endangered Species Act.

Ensure that water quality of mining effluents complies with applicable water quality standards, including the prevention of contamination of surface and ground water with acid or toxic-mine drainage.

Maintain ecological processes, including the hydrologic cycle, nutrient cycle and energy flow in the mining area.

2. Reclamation Standards.

Establish a general standard that the lands and water affected by mining be restored to a condition capable of supporting the uses the lands and waters supported prior to mining, as determined by the land use plan.

Restore the water resources affected by mining to pre-mining condition, and restore the recharge capacity of the area.

Restore fish and wildlife habitats affected by the mining operation.

Recontour lands affected by mining to the land's original natural topography.
Revegetate the mine site to a condition capable of supporting uses that the lands supported prior to mining, using native species wherever possible.

Reclamation Bonding

Reclamation bonding requirements should take into account the full cost of reclamation for all operations. When the Interior Department proposed regulations to update its reclamation bonding

requirements in 1992, significant gaps in the proposed coverage of reclamation bonding existed, such as th failure to require reclamation bonding to cover all facilities within a permitted mining operation. In additio the deference to existing state reclamation bonding policies severely undermined the potential environment gains from adopting a new federal bonding policy for federal lands.

There presently exists a notable lack of a requirement to bond for long term monitoring and maintenance. Modern mining creates large waste rock dumps, spent heap leach pads, and tailings dams, all of which are abandoned on public lands. All of these abandoned facilities require some level of long tern monitoring and maintenance which is either presently ignored, or the costs passed on to the public. These costs need to be recognized with the calculation of a bond.

Inspection and Enforcement

The Interior Department needs to adopt a credible inspection and enforcement program to ensure th the impacts of hard rock mining are known, and action is taken against operations that fail to meet the applicable requirements of federal and state law.

The Interior Department should establish regulations to provide for the assessment of civil penalties against mining operations that fail to meet the requirements of the mining permit, or that fail to achieve the standards set forth for hard rock mineral production on public lands. FLPMA provides broad authority for the Department to develop enforcement programs that will compel compliance with the land management statutes.

The Interior Department should include a "permit block" provision in its regulations -- a requiremei that operators be denied new permits to mine when they failed to meet applicable state and federal environmental requirements on previous mines. The recent District court decision in Wyoming upheld the broad authority granted the BLM under FLPMA to require such enforcement mechanisms. See, Public Lands Council v. Babbitt, supra.

Included in the inspection and enforcement program should be authority for citizens to monitor the impacts of hard rock mining, particularly on water quality. Third party monitoring already is occurring witl the BLM's reliance on data provided by industry. Citizens should be given equal authority to provide information on mining impacts. The State of Montana has such a provision.

Eliminate the Five Acre Mine Exemption

The Interior Department should eliminate the five acre exemption for "notice" mines on federal lands. The "notice mines" have been a source of continued abuse of the Mining Law, and the 3809 regulations. Many of activities claiming the 5-acre exemption under current regulations are not mines at all Other mining companies string together small mines to avoid a look at the cumulative impacts of the minir operation on the environment. Finally, modern technology has eliminated the distinction of small mines as environmentally benign. These small mining operations, particularly heap leach gold operations or placer mines, can and do cause major environmental damage. They should be regulated to the same standard as a mining operations.

Participation with the Task Force

We understand that a task force has been created to address reforms to the "3809 Regulations" at the Interior Department. We look forward to opportunities to work with that task force on regulatory reforms under 43 CFR 3809.

PART II. Other Administrative Actions

Agency Discretion

The Interior Department should promulgate regulations to provide discretion for land managers to determine if mining is an appropriate use of particular public lands, and to prohibit mining activities that would interfere with the enjoyment and protection of other public uses. FLPMA requires a reasoned and informed balancing of values. 1732(a) of FLPMA says "The Secretary shall manage the public lands under principles of multiple use and sustained yield ..." The 9th Circuit concluded that the multiple use principle "requires that the values in question be informedly and rationally taken into balance." Sierra Club v. Butz, 3 Envt'l L. Rep. 20,292, 20,293 (Th Cir. 1973).

The Interior Department has an obligation to determine where mining can be balanced against other uses of the public lands, and where it cannot. BLM needs to exercise its authority under FLPMA before mineral activities proceed on public lands. The Department has the discretion to deny claims.

Public Disclosure on Patent Applications

The Interior Department should develop regulations which grant the public the authority to review and challenge the validity of hard rock mining claims. Section 202(f) of FLPMA gives the Department broad authority to provide for public participation in the programs of the Bureau of Land Management, including mining.

The Interior Department should issue new regulations providing for public disclosure of the information upon which patent applications are based. Numerous organizations, led by the Mineral Policy Center, petitioned the Interior Department to adopt new regulations for disclosure of information in patent applications. This petition has received public comment. The Interior Department now needs to move forward with rulemaking on this issue.

The "Validity" of Mining Claims

Since any "rights" only attach to "valid" mining claims, the Department of the Interior should integrate the full range of economic values, including natural resource damages, long-term and short-term environmental costs, and the loss of public use of mined land, into the determination of whether a mining claim is "valid" under the 1872 Mining Law. The determination of the validity of a mining claim is based on whether the mineral deposit is marketable, and whether the mineral resources are more valuable than the other resources at stake. Under existing law, the environmental costs associated with the mining of a mineral deposit must be factored into these tests to determine the validity of a mining claim.

The Interior Department should issue a Solicitor's Opinion which clearly identifies the factors to b considered in a validity exam, including the costs of the operation on water resource degradation, and othe resource values that will be foregone if the mining continues. In those circumstances in which the surface and other resources are more valuable than the mineral resource, the land management agencies should invalidate the claim. The Interior Department also should mandate that a validity determination is required prior to consideration of a mine plan. We believe this test should be met for all proposed mining operations.

We also ask for a procedure to permit citizen challenge of claims on federal lands.

River Protection

We strongly encourage the Interior Department to adopt final regulations pursuant to section 7 of t Wild and Scenic Rivers Act. Several of our organizations submitted extensive comments on the draft regulations proposed in the Federal Register on September 10, 1996. In addition, similar regulation shouk be adopted by the National Park Service and U.S. Fish and Wildlife Service. The Interagency Council on Wild and Scenic Rivers should be charged with ensuring consistency in such regulations.

In addition, the Solicitor's office long ago recognized that section 9 of the Act imposes upon the Secretary a mandatory duty to issue regulations controlling pollution control and scenic protection from mining operations. See Memorandum from Associate Solicitor John D. Leshy to Director, Bureau of Lanc Management, "Effect of Wild and Scenic Rivers Act (16 U.S.C. sections 1271 - 1287) on Mineral Development Under the Mining Laws," dated September 25, 1978.

We interpret the Act and the comments to mean that regulations to control mining operations in wi and scenic river areas are required. Except for pollution control and scenic protection, the content of the regulations is within the discretion of the Secretary. The issuance of regulations, however, is mandatory. Considering that the Act was passed by Congress in 1968, we urge you to prepare appropriate regulations for mining claims in wild and scenic river areas as soon as possible.

Remarkably, more than 28 years after Congress passed this Act, the Department has still not promulgated such regulations. Such regulations should ensure, besides the statutorily required protections for pollution control and scenic protection, that other natural resource values are protected. In addition, National Wild and Scenic Rivers, and other conservation system units, should be provided regulatory protection from incompatible mining activities on non-federal lands, including stream-beds of navigable rivers.

Staffing Needs

Qualified staff in key areas of the mining regulatory program is a major need for the BLM in its effort to implement its current program, much less future programs.

BLM should use its current resources from the revenue generated by the claim maintenance fee to establish "inspector" positions in its use authorization program. These personnel would be charged with fulfilling the agency's current inspection policy of quarterly inspections for all cyanide heap leach operations, and semi-annual inspections of all other operations.

BLM also has a need for qualified personnel to review and evaluate the chemical and hydrologic impacts of mining on the environment. Existing revenues should be used to develop a core staff of chemists, hydrologists and other expertise in those states or districts with major mining activities.

Abandoned Mine Sites

The Interior Department should complete the inventory of abandoned hard rock sites present on federal lands under the Department's jurisdiction. These sites should be prioritized for the potential for clean-up, threats to public health and safety, and the potential technical and economic feasibility of correcting the damage at the site. If the Clinton Administration is successful in its initiative to establish a hard rock abandoned mine land fund paid for by monies generated from a royalty on hard rock minerals, these baseline data will be needed to get the program off the ground. In addition, the Department should ensure that the FY 1999 budget includes increased funding for the Abandoned Mine Land Project. This modest program requires far greater funding if it is to meet its program objectives.

CONCLUSION

The Interior Department has broad authority to ensure that the environmental costs of hard rock mining on public lands are considered, and to protect the public and the environment from damage to lands and water resources caused by mining activities.

We look forward to working with you as you move forward with regulatory changes in the Departments under your jurisdiction. Please feel free to contact any of us if you have questions concerning this list of recommendations for administrative action.

Sincerely,

Tom Cassidy
American Rivers

Stephen D'Esposito
Mineral Policy Center

Cathy Carlson
National Wildlife Federation

Drusha Mayhue
Sierra Club

Roger Flynn
Western Mining Action Project

Richard Parks
Western Organization of
Resource Councils

cc: Bob Anderson, BLM "3809" Task Force
John Leahy, Solicitor
Senator Dale Bumpers
Representative Nick Rahall

March 25, 1997

The Honorable Barbara Cubin
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
1626 Longworth Building
Washington, D.C. 20515

Re: Bureau of Land Management Mining Claim Bonding Requirements, Final Rule

Dear Representative Cubin:

Sealaska Corporation is the ANCSA corporation for Southeastern Alaska. The Corporation has an active mineral exploration and development program in place on its lands and also engages in mineral exploration on the public lands. We are concerned with the scope and content of the revised mining claim bonding regulations and in particular with the Secretary's method of implementation. The final regulations were published in the Federal Register, February 28, 1997 with an effective date of March 30, 1997.

The original mining claim bonding regulations were the subject of public hearings in 1991. To Sealaska's knowledge there has not been any additional stakeholder participation in the rule making process in the six year period between the original hearings and the implementation of the final regulations. Since 1991 however, various states have implemented or revised their own reclamation and bonding requirements for mineral activity. The BLM Final Rule does not appear to take this into consideration.

Sealaska understands that the Bureau of Land Management has recently been directed by the Secretary to upgrade its hardrock mining surface management regulations, the 43CFR 3809 regulations. Certainly any review of the 3809 regulations will include a review of the mining claim bonding requirements that are a part of those regulations. Given the Secretary's directive, Sealaska suggests that the Final Rule on mining claim bonding of February 28, 1997, be withdrawn pending the review of the entire mining claim

One Sealaska Plaza, Suite 400 · Juneau, AK 99801-1276 · Phone (907) 586-1512 · Fax (907) 586-1826

bonding requirement within the context of changes to state law and mining technology and practices that have occurred since the Final Rule was subject to any public input.

If you have any questions regarding our position on this matter or require additional input, please contact Alan Mintz, our Legislative Counsel at (202) 298-1837 or Robert W. Loescher, Executive Vice President, Natural Resources here at Sealaska (907) 586-1512.

Thanking you for your consideration.

Sincerely,

SEALASKA CORPORATION

Leo H. Barlow
President & Chief Executive Officer

cc: Congressman Don Young
Senator Ted Stevens
Senator Frank Murkowski
Governor Tony Knowles
Alaska Miners Association
AFN - Julie Kitka and Land Committee
Alan Mintz, Esq.
Robert W. Loescher
Sam Kito, Jr.

PAUL S. GLAVINOVICH
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P.O. Box 112816
Anchorage, Alaska 99511

Telephone
(907) 345-3646

March 24, 1997

Representative Barbara Cubin
Subcommittee on Energy and Mineral Resources
U.S. House of Representative
1626 Longworth Building
Washington, D.C. 20515

Re: Bureau of Land Management Mining Claim Bonding Requirements,
Final Rule of February 28, 1997

Dear Representative Cubin:

I am writing to express my personal concern with the scope and content of the revised mining claim bonding regulations and in particular with the Secretary's method of implementation of those regulations. The final regulations were published in the Federal Register, February 28, 1997 and given an effective date of March 30, 1997.

The new regulations will severely curtail mineral activities at the "notice" level and are particularly punitive to those operators who have been "good stewards of the land". The requirement that the reclamation appraisal include the mobilization of equipment from off-site is particularly onerous for those of us that work in Alaska. The Secretary has certainly selected a strange way to reward those operators who have gone out of their way to do it right.

The original mining claim bonding regulations were the subject of public hearings in 1991. To my knowledge there has not been any additional stakeholder participation in the rule making process in the six year period between the original hearings and the implementation of the final regulations. Since 1991 however, various states have implemented or revised their own reclamation and bonding requirements for mineral activity. The BLM Final Rule does not appear to take this into consideration.

I note that the Bureau of Land Management has recently been directed by the Secretary to upgrade its 3809 regulations, the hardrock mining surface management regulations. Certainly any review of the 3809 regulations will include a review of the mining claim bonding requirements that are a part of

those regulations. Given the Secretary's directive, I suggest that the Final Rule on mining claim bonding of February 28, 1997, be withdrawn pending the review of the entire mining claim bonding requirement against recent changes to state law and mining technology and practices that have occurred since the Final Rule was subject to any public comment.

Thank you.

Paul S. Glavinovich

cc: Congressman Don Young
Senator Ted Stevens
Senator Frank Murkowski

ALASKA MINERS ASSOCIATION, INC.
501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

April 7, 1997

The Honorable Barbara Cubin
Chairman, Subcommittee on Energy & Mineral Resources
Committee on Resources
1626 Longworth HOB
Washington, DC 20515

Dear Chairman Cubin:

The Alaska Miners Association (AMA) desires to supplement the testimony presented by President Karl Hanneman at your Subcommittee hearing on hardrock mining bonding regulations held on March 20, 1997.

In addition to the comments previously submitted, the AMA believes that the rationale used by the BLM to establish the definition of small entity in the Final Rule is flawed. BLM states that it "believes that its definition will better assess the impacts on small entities". It is AMA's position that BLM has developed this definition improperly.

BLM has also inadequately evaluated the economic effect on the small entities. By incorrectly including all entities granted an exemption from the claim maintenance fees in the population of small business concerns, BLM underestimated the true impact of the regulation.

BLM states that "a definition of small entity which takes into account revenue, at least in part, provides a truer test..." However, 96% of the entities included by BLM in the population of small entities have little potential to generate revenue and thus fail BLM's own criteria. BLM data show that while there were 37,134 mining claimants who hold less than 10 mining claims, there were only 1,232 notices and 214 plans filed in FY 1996. With neither a notice or plan filed, there are therefore 35,688 entities that have little potential to generate revenue. BLM's analysis thus fails on two counts; either it underestimates the percentage of small business concerns with revenue potential that will be affected, or it underestimates the number of claim holders that will be affected in the future as they develop their mining claims under notices or plans.

The AMA believes that there are strict guidelines on the definitions of small entities and appreciates your efforts to require BLM to provide an accurate evaluation of the effects of the rule on small business.

Sincerely,

Karl Hanneman
President

March 27, 1997

Marion F. Ely II
P.O. Box 2577
Apple Valley, CA
92307

The Honorable Barbara Cubin
Chair Mining Subcommittee
1114 Longworth House Office Building
Washington, DC 20515-5001

Per my conversation with Ms. Marshall the following comments ar submitted for the record of your committee meeting of March 20 1997 on the BLM bonding regulations. Not enough time for details

These regulations should be withdrawn until notification is give to those directly impacted along with time to review and commen before they are again refined and made final. In this untimel action the BLM has made a mockery of due process. In cleve wording, the February 28, 1997 Federal Register notice noted tha 218 comments, not letters of correspondence, were received. It i obvious that the vast majority of those impacted are unaware c what has transpired due to BLM negligence in notification. Althoug possessing the names and addresses (required by FLPMA) of at leas 30,000 small miners directly impacted by these regulations (BI figures), the BLM has **never** notified them of this proposal (Publication in the Federal Register does not count when the name and addresses of those being targeted are **known** to the BLM.)

As presently being implemented, bureaucrats have the fina regulatory say without any recourse by those being skewered. I addition, the regulators can introduce things not present in th original proposal without further public comment. An action c this magnitude without notification is government at its worst! The presses are probably already running to prepare notificatic letters to those being affected. Reprehensible.

Surprise with no recourse seems to be Secretary Babbitt's modu operandi. Take a six year old proposal, review what few comment are received, work them over and then spring the results as FINAI Most importantly, do not notify the targets of your action unti they have to comply. What kind of a country is this becoming?

As an example, this is how I learned of the regulations. I happene to see a press release of the final action. I drove 200 miles t a repository library to see a copy of the February Federal Registe and they had just received it. In California the Federal Registe arrives about two to three weeks after its published date. In thi case March 12. I find it interesting to note that nearly two week before I became aware of this action, during the last week c February, I received an unsolicited mailing from a bonding company Coincidence?

Does the BLM have the decency and courage to withdraw thes regulations and then notify and solicit comments from those bein impacted by the regulations? Stay tuned and don't bet on it.

Sincerely,

Marion Ely II

MEC

MINERALS EXPLORATION COALITION

Minerals Advocate in Public Policy

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Paul C. Jones
Executive Director

March 28, 1997

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Robert W. Schafer
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Burton bookkeeping

The Honorable Barbara Cubin
Chairperson
Subcommittee on Energy and Mineral Resources
United States House of Representatives
1626 Longworth HOB
Washington, D. C. 20515

Re: Testimony before Subcommittee on Energy and Mineral Resources Regarding BLM Bonding Rule - March 20, 1997

Dear Madame Chairperson:

Thank you on behalf of the ***Mineral Exploration Coalition (MEC)*** for the opportunity to testify before your Committee March 20, 1997 on the "final" BLM Bonding Regulations concerning mineral exploration and development activities on BLM managed lands.

At the request of Congressman Rahall, I have summarized surety, or bonding, requirements covering the 21 states covered by ***MEC's*** Permitting Directory. A copy of that summary is enclosed for your entire Committee's use.

Included in the enclosed summary of surety requirements is the table which I provided with my written testimony at the hearing. The table provides a general summary of permitting requirements governing exploration in the 21 states covered by our Permitting Directory. Of particular note in the table, the states of Missouri and North Dakota currently (12/95) have no requirement for surety covering exploration activity in the state. However, little, or no, BLM managed land exist in either of these two states.

Arizona currently (3/97) does not require surety for exploration activity, but does require surety for all drilling operators doing exploration work in the state.

I would like to correct one error appearing in my written testimony presented to your Committee March 20th. Contrary to what appears at the bottom of page 2 of my written testimony, Alaska currently (3/97) requires surety for all exploration activity which disturbs five (5) or more acres in a general area on all private, state and federal lands in the state.

The ***Minerals Exploration Coalition*** feels very strongly that adequate substantive changes have occurred since the comment period on the "proposed rule" was closed in October, 1991 to clearly justify the BLM taking additional comments on the matter prior to issuing the final rule. Hopefully the Acting Director of BLM, with your Committee's encouragement, will rescind the recent rule and institute a normal rulemaking process in this matter.

As the representative of ***MEC*** I am pleased to have had the opportunity to have made a presentation to your Committee regarding the manner in which the Bureau of Land Management issued the recent final rule on bonding of mineral activity on BLM managed public land.

The ***Minerals Exploration Coalition*** is an advocate on public policy issues involving the access to, and the use of, public lands of the United States for mineral exploration and development. Our membership, including over 30 corporations, represents a diverse group of individuals and companies engaged in mineral exploration on the public lands.

Yours very truly,
Minerals Exploration Coalition

Paul C. Jones
Executive Director

cc: Bill Condit, Subcommittee Staff

SUMMARY OF BONDING REQUIREMENTS

RELATED TO

MINERAL EXPLORATION

The ***Minerals Exploration Coalition (MEC)*** publishes a *"Permitting Directory For Hardrock Mineral Exploration"*. This directory, updated on an annual basis, addresses permitting requirements for 21 states, including all western states in which hardrock mining occurs. Also included is a section of Forest Service and BLM permitting requirements, including bonding.

This is a summary of the current bonding, or "reclamation surety", requirements for the states included in the ***MEC*** Directory. This summary covers requirements in effect as of December, 1995, unless otherwise noted.

In addition the attached table, *"State Mineral Exploration Permitting Summary"* presents a general overview of requirements for permitting mineral exploration activity in the 21 states listed. This table, revised as of March, 1997, appears in the Appendix section of ***MEC's*** Permit Handbook.

MEC has made every effort to ensure the completeness and accuracy of the information presented in this summary. Information is based upon data furnished by each state and federal agency listed below. The compilation is, however, provided with the understanding that ***MEC*** is not rendering legal, accounting, or other professional services and is not liable for errors or omissions in the data presented herein.

The ***MEC*** publishes and updates the *"Permitting Directory For Hardrock Mineral Exploration"* on an annual basis with revisions being issued mid-year. The Directory can be obtained for $75.00 per copy from the ***MEC*** office at the address below:

Minerals Exploration Coalition
1019 8th Street, Suite 305
Golden, Colorado 80401
Phone 303-277-1155
Fax 303-277-1212

The ***Minerals Exploration Coalition*** is an advocate on public policy issues involving the access to, and the use of, public lands of the United States for mineral exploration and development. Our membership, including over 30 corporations, represents a diverse group of individuals and companies engaged in mineral exploration on the public lands.

STATE SURETY REQUIREMENTS

Alaska

In accordance with Alaska Statute 27.19, bonding is required for all exploration and/or mining operations having a disturbed area of five acres or greater. It is required to bond all such areas, regardless of ownership of the land - ie. private, state or federal lands. The area must be bonded for a minimum of $750 per acre unless the operator can demonstrate that a third party contractor can do the required reclamation for less than that amount.

Individual performance bonds may be provided. A State-wide bonding pool has been established and may be joined by completing the bond pool application form. A bond form should be used to determine the specific amount required for bonding. Federal land managers may have additional bonding requirements.

(Revised through 3/97)

Arizona

The state of Arizona does not currently have any reclamation surety requirements for hard rock mineral exploration.

However, any driller or drilling contractor must have an Arizona Well Driller's license from the Department of Water Resources and a A-4 General Drilling Contractors License. The A-4 License requires bonding ranging upwards from $5,000 dependent upon the total cost of work accomplished per year. A driller with revenues of $1 million per year would be required to post a $40,000 surety bond. Bonding is to assure compliance with drilling regulations of the state. Licenses are obtained from the *Registrar of Licenses* in Phoenix.

(Revised through 3/97)

California

Lead agencies shall require financial assurances of each surface mining operation, as follows:

1. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the state, in an amount the lead agency determines to be adequate to perform the reclamation in accordance with the surface mining operation's approved reclamation plan.

2. The financial assurance shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is complete.

3. The amount of financial assurances required for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

4. The financial assurances shall be made payable to the lead agency and the Department of Conservation.

(Revised through 3/97)

Colorado

Upon filing the *Notice of Intent to Conduct Prospecting*, a financial warranty shall be provided in an amount determined by the Division. The amount shall be equal to the cost of reclaiming the area to be disturbed. A statewide financial warranty may be submitted by a single operator for all of its Colorado exploration activities in an amount determined by the Division of Minerals and Geology. Amounts are based upon projected cost of reclamation for all areas to be disturbed.

Under memorandums of understanding with he Bureau of Land Management and U.S. Forest Service, all financial warranties established to ensure reclamation are to be posted with the State of Colorado.

Idaho

The amount of the bond is determined by the estimated cost of reclamation, plus 10 percent, but not to exceed $1,800/acre.

Michigan

Surety bond requirements for mineral well permits are as follows: a single drill hole is $2,000 and a blanket bond for two or more drill holes is $5,000.

Minnesota

Bonding may be required for companies that are registered as explorers with the state. The Commissioner may request evidence that the applicant for the *Authorization to Conduct Geological Data Gathering Activities* or *State Mineral Lease* is technically and financially capable of performing under the terms of the *Authorization* or *Lease* and that the applicant has shown the capability to comply with environmental laws and permits.

Missouri

There are currently no reclamation surety requirements in Missouri.

Montana

An applicant for an exploration license must file with the Department of Environmental Quality (DEQ) a performance bond payable to the State of Montana with surety satisfactory to the DEQ. In lieu of such bond, the applicant may file with the state a cash bond deposit, an assignment of a certificate of deposit, or an irrevocable letter of credit. The bond shall not be less than the estimated cost to complete the reclamation of the disturbed land, as determined by the DEQ.

A blanket performance bond covering two or more operations may be accepted by the state. Such blanket bond shall adequately secure the total reclamation cost of all projects combined. For surety bonds, CD's and irrevocable letters of credit, only Montana DEQ forms will be accepted. These forms are available upon request from the Montana DEQ office.

The DEQ is required by law to hold a bond on all exploration activities. The U.S. Forest Service and Bureau of Land Management also have bonding authority on lands under their jurisdiction. On Forest Service and Bureau of Land Management lands, the state and Forest Service or Bureau of Land Management calculate a bond that is acceptable to both agencies. The bond cannot be released until both the state and Forest Service or Bureau of Land Management approve of the reclamation.

(Revised through 3/97)

Nevada

The operator must provide surety in an amount sufficient to ensure reclamation of the entire area to be affected by the project; or a portion of the area to be affected if, as a condition of the issuance of the permit, filing additional surety is required before the operator disturbs areas not covered by the initial surety. The following types of surety are allowed:

1. Trust fund
2. A bond
3. Irrevocable Letter of Credit
4. Insurance
5. A corporate guarantee
6. Any combination of the above

State-wide bonds are also allowed. In addition, a bond-pool for small miners managed by the Nevada Department of Minerals is provided.

Surety must be reviewed at least every three years to assure its adequacy.

An operator may request a reduction in the bond amount to a prescribed per acre minimum cost. The request may be granted to those operators who have a history of responsible stewardship of public land.

Incremental bond release allows for release of 60 percent of surety when earth work is complete. Another 25 percent can be released after revegetation is completed. The remaining surety is to be released upon satisfaction of all permit requirements.

New Mexico

The 1994 Regulations require Financial Assurance for exploration operations (Rule 12), the amount to be determined by the Director of the Department of Natural Resources

North Carolina

Acceptable reclamation bond is required to be posted with the state before an exploration or mining permit can be issued. Bonding methods available are as follows:

1. Assignment of savings bonds;
2. Surety bonds;
3. Cash deposits;
4. Irrevocable Letter of Credit

North Dakota

The state of North Dakota does not currently have any reclamation surety requirements for hard rock mineral exploration.

Oregon

Prior to disturbance, an adequate financial surety must be submitted to assure performance of requirements of the exploration permit. Bonding is determined by estimating the cost of surface reclamation and drill hole abandonment if the state were to perform the reclamation.

Blanket financial surety may be posted for two or more exploration projects. Double bonding with the BLM or Forest Service is not required.

South Carolina

A separate bond must be filed for each *Certificate of Exploration* or *Operating Permit* issued or a blanket bond may be filed covering all certificates or permits in the state.

South Dakota

Reclamation surety is required for every *Notice of Intent to Conduct Exploration*. The surety amount is based on the costs of plugging all proposed test holes and the estimated reclamation cost. A statewide financial surety, in the amount of $20,000 may be provided as surety for all the exploration activities of a single operator.

Tennessee

A bond in the amount of $1,000 is required to be in force for a well from the time a drilling permit is granted until the well is abandoned.

In lieu of an individual bond, a blanket bond in the amount of $10,000 covering all wells drilled or to be drilled in an extensive drilling program may be obtained.

A deposit of cash or certified check shall serve in lieu of either of the above bonds.

Upon satisfactory completion of regarding and revegetation of all disturbed areas and access roads, one third of the reclamation bond will be released.

After plugging and upon final reclamation and satisfactory survival of the vegetation through two growing seasons, the remainder of the bond will be released.

Utah

The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.

The Division will determine the required surety amount based on site-specific calculations reflecting the Division's cost to reclaim the site. The operator shall submit a completed *Reclamation Contract* (Form MR-RC) with the required surety amount. Surety shall be required until such time as reclamation is deemed complete by the Division.

Washington

Upon receipt of an operating permit an operator may not commence surface mining until the operator has deposited with the Department of Natural Resources an acceptable performance bond or bank letter of credit. (Prospecting and exploration

activities are included within the definition of "surface mining.") This performance bond shall be a corporate surety bond executed in favor of the Department of Natural Resources by a corporation authorized to do business in the state of Washington.

The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be surface mined during the next twelve-month period, and any previously surface mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The Department of Natural Resources shall have the authority to determine the amount of the bond that shall be required, and for any reason may refuse any bond not deemed adequate.

In lieu of the surety bond required by this section the operator may file a cash deposit, negotiable securities acceptable to the Department of Natural Resources an assignment of a savings account or of a savings certificate in a Washington bank, or bank letters of credit acceptable to the Department.

Wisconsin

The *Exploration License* application must be accompanied with surety in an amount adequate for the exploration program, and in a minimum amount of $5,000. The bond may be periodically increased by the Department to an amount adequate to fund the termination of all drill holes constructed by the explorer.

Wyoming

A bond in the minimum amount of $10,000 shall be posted for each exploration area. The bond amount is based on the estimated reclamation cost. The amount may be reduced when the discoverer demonstrates to the satisfaction of the Administrator a lesser estimate, computed in accordance with established engineering principles, for accomplishing proper hole completion and restoration in accordance with the standards set out by the Department.

FEDERAL AGENCY SURETY REQUIREMENTS

U.S. Forest Service

Any operator required to file a plan of operation shall, when required by the authorized officer, furnish a bond prior to approval of the plan of operations. Release of the bond is conditioned upon satisfactory completion of reclamation. In lieu of a bond, an operator may deposit cash in an amount equal to the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions are sufficient. In addition, memorandums of understanding with several states exist, which allows for the posting of a single bond with the state.

In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of exploration.

Bureau of Land Management

This section is to be revised to cover new regulations issued by the BLM on February 28, 1997 in 62*FR*9093-9103. These regulations are effective on all BLM administrated lands as of March 31, 1997.

(Revised through 3/97)

March 28, 1997

Minerals Exploration Coalition
1019 8th Street, Suite 305
Golden, Colorado 80401
Phone 303-277-1155
Fax 303-277-1212

STATE MINERAL EXPLORATION PERMITTING SUMMARY				
STATE	PERMIT REQUIRED	STANDARD FORMS Required	DRILL HOLE PLUGGING REQUIRED	BOND REQUIRED
Alaska	STATE LANDS	YES	NO	VARIABLE
Arizona	NOTICE	YES	YES	Drill Contractor
California	YES	NO	YES (Lead Agency)	YES
Colorado	NOTICE	YES	YES	YES
Idaho	NOTICE	NO	YES	YES
Michigan	APPLICATION	NO	YES	YES
Minnesota	NOTICE	NO	YES	VARIABLE
Missouri	NO	NO	YES	NO
Montana	LICENSE	YES	YES	YES
Nevada	YES	Yes	YES	YES
New Mexico	YES	NO	YES	YES
North Carolina	YES	YES	YES	YES
North Dakota	YES	NO	YES	NO
Oregon	YES	NO	YES	YES
South Carolina	YES	YES	YES	YES
South Dakota	NOTICE	YES	YES	YES
Tennessee	YES	YES	YES	YES
Utah	NOTICE	YES	YES	YES
Washington	YES	NO	NO	YES
Wisconsin	LICENSE	YES	YES	YES
Wyoming	NOTICE	Yes	YES	YES

Revised 3/97

MEC

MINERALS EXPLORATION COALITION

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Charles Burton
Burton Bookkeeping

March 28, 1997

The Honorable Nick Joe Rahall
United States House of Representatives
2307 Rayburn House Office Building
Washington, D. C. 20515

Re: Response to Question at Hearing of Subcommittee on Energy and Mineral Resources, March 20, 1997

Dear Congressman Rahall:

At the Hearing of the Subcommittee on Energy and Mineral Resources into the BLM Bonding Issue you asked if I would provide you with an outline of the bonding requirements covering mineral exploration activities of the states included in the *"Permitting Directory for Hard Rock Mineral Exploration"* published by the ***Mineral Exploration Coalition (MEC)***. Attached to this letter is a summary of such regulations covering the 21 states included in the ***MEC*** Directory.

Included in the enclosed summary of surety requirements is the table which I provided with my written testimony at the hearing. The table provides a general summary of permitting requirements governing exploration in the 21 states covered by our Permitting Directory. Of particular note in the table, the states of Missouri and North Dakota currently (12/95) have no requirement for surety covering exploration activity in the state. However, little, or no, BLM managed land exist in either of these two states.

Arizona currently (3/97) does not require surety for exploration activity, but does require surety for all drilling operators doing exploration work in the state. Contrary to what appears at the bottom of page 2 of my written testimony, Alaska (3/97) requires surety for <u>all exploration activity</u> which disturbs five (5) or more acres in a general area on all private, state and <u>federal</u> lands in the state.

The ***Minerals Exploration Coalition*** is pleased to have the opportunity to make a statement before the House Subcommittee on Energy and Mineral Resources on this important matter to our industry and to respond to your questions following our formal testimony.

Please contact me if you have questions after you have the opportunity to review this data.

Yours very truly,
Minerals Exploration Coalition

Paul C. Jones
Executive Director

cc: The Honorable Barbara Cubin
Chairman, Subcommittee on Energy
and Mineral Resources

Bill Condit, Subcommittee Staff

Mine's toxic leaks render river lifeless

Despite fines, promises, cyanide flowing into Alamosa River and downstream

By Kit Miniclier
Denver Post Staff Writer

Deadly cyanide-laced water from a huge gold mine near Wolf Creek Pass has killed all aquatic life in 17 miles of the Alamosa River and the Terrace Reservoir, and it may have seeped downstream to the Rio Grande, say state and federal officials.

The leaks from Summitville Consolidated Mining Co. continue, despite a $100,000 fine levied against the company this year, agreements to take remedial actions, closure of the once-popular fishing reservoir after a massive fish kill and complaints from downstream users.

"We went up to the mine last month to investigate reports of an environmental disaster and we found an environmental disaster," said Mark Hughes, an attorney with the Sierra Club's Legal Defense Fund.

"I was appalled. There seemed to be substantial leaks and runoff, and the mine operators didn't seem to know where it came from or what might be in it."

The sprawling open-pit mine is 11,700 feet above sea level and about 16 air miles southeast of the summit of Wolf Creek Pass in southern Colorado.

A Colorado Department of Health video of the seepage showed brilliant blue sludge and water — ranging in color from orange to yellow to molasses — leaking into natural waterways from the mine site last summer.

"This ought to be on the 9 o'clock news," observed the filmmaker on the unedited video.

The company, a wholly owned subsidiary of Galactic Resources Inc. of Canada, is using 40 million to 50 million gallons of

Please see MINE on 7A

Gold mine's leaks deadly for aquatic life

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MINE from Page 1A

yanide-laced water in the 45-acre eap leaching process to extract old from several million tons of re, said mine general manager ill Williams.

"We've got problems, there is no uestion about that," Williams eadily admits, explaining that bout 100 gallons of water a minte are leaking from the leach eap.

An elaborate system of ditches nd ponds is designed to catch the aks and either pump the fluids ack to the leach pad, or treat hem and then spray the treated ater on the landscape.

However, under an agreement etween the company, state health epartment and Mined Land Recmation Board, the company eased landscaping applications n Oct. 30.

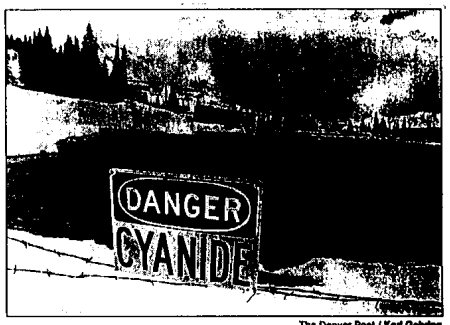
"At this point, there isn't any acid runoff from the heap," Williams said. "We feel we are on the right track, and we are going to clean this place up."

The company expects to continue leaching operations at least another six months, though it finished mining operations this fall.

State game officials stopped stocking the Terrace Reservoir with 15,000 trout fingerlings annually after a massive cyanide leak rolled down Whiteman Creek into the Alamosa River in 1990, killing all life in 17 miles of the river and in the reservoir, which is south of Del Norte, said Jerry Apker of the division of wildlife.

The fish kill extended 7 or 8 miles below the reservoir, killing fish in at least one private farm pond, and may have reached the Rio Grande.

The first reported fish kill attributed to the mine occurred in 1986, shortly after the operation began. The most recent was six weeks ago, when 500 to 1,000 gallons of the cyanide-laced water spilled into Whiteman Creek.



The Denver Post / Karl Gehring

DEADLY WATER: A sign warns of the danger at one of the Summitville Consolidated Mining Co.'s holding ponds.

The Denver Post

24 December 1992

Bankrupt mine costly to EPA

Agency spends $800,000 a month to clean up cyanide wastes

By Mark Obmascik
Denver Post Environment Writer

The Environmental Protection Agency is being forced to spend $800,000 a month to prevent a bankrupt gold mine from polluting the Alamosa River with millions of gallons of cyanide-laced wastes, officials said yesterday.

EPA managers said they have hired 45 workers to operate waste-treatment systems at the troubled Summitville gold mine near Del Norte. Summitville already has been blamed for wiping out virtually all aquatic life in the 17 miles of the Alamosa River downstream from the mine.

Federal intervention was required after state regulators failed to require the mine operator, Galactic Resources of Vancouver, British Columbia, to post a reclamation bond big enough to cover cleanup costs.

EPA officials are concerned that Summitville pollution will kill wildlife, hurt irrigation supplies for downstream San Luis Valley farmers and taint shallow drinking-water wells used by residents of the small town of Capulin.

The Summitville site now is contaminated with at least 170 million gallons of cyanide-contaminated liquids. But money shortages may force the federal government to stop treating up to 30 percent of the polluted discharges from the mine, said EPA site manager Hays Griswold.

"It's a bit disturbing what was put out here," said Griswold, who's directing the crew of workers. "We're trying to do the best we can, but because of the cost factor, we're going to have to scale down."

EPA hopes to cut pollution-control costs to $250,000 per month, Griswold said. But the agency still

Please see MINE on 5B

EPA may run out of money to pay for gold mine cleanup

MINE from Page 1B

is expected to run out of money to control Summitville contamination by May, he said.

The Summitville project is being paid by the federal Superfund, which is financed by a tax on petroleum products.

One of Colorado's biggest mining operations, Summitville opened in 1984 and extracted an estimated 280,000 troy ounces of gold before the company declared bankruptcy this month.

State regulators usually require mine operators to post a bond adequate to cover cleanup costs. But the Colorado Mined Land Reclamation Board only required Summitville to put up $4.7 million — far short of the $20 million needed for cleanup.

Both Gov. Roy Romer, who appointed six of the mine board's seven members, and Colorado Department of Natural Resources Director Ken Salazar, who is a board member, declined to comment yesterday on the Summitville fiasco.

Mike Land, director of the state division of minerals and geology, said the $4.7 million would have been sufficient if Summitville had obeyed its state operations permit. The state levied $130,600 in fines against the mine company for repeated environmental violations before Summitville filed for Chapter 7 bankruptcy protection.

Rio Grande County District Judge John Kuenhold this week made permanent a temporary injunction preventing the Summitville operator from abandoning the mine site. But the effect of that order is unclear, because the EPA already has taken over mine operations.

"This is a tragedy," said Mark Hughes, an attorney with the Sierra Club Legal Defense Fund. "State government saw the tragedy coming, but everybody who had the levers of power in state government didn't do anything about it. The state blew it."

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