

NEW WORLD MINE PROPOSED BUYOUT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

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NEW WORLD MINE PROPOSED BUYOUT

TUESDAY, MAY 20, 1997

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

The Subcommittee met, pursuant to notice, at 1:30 a.m., Room 1324, Longworth House Office Building, Hon. Barbara Cubin (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING; AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER RESOURCES

Mrs. CUBIN. Come to order. The Subcommittee is meeting today to hear the testimony on the agreement reached by the United States, the environmental community, and the mining industry in the New World Mine proposed buyout.

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 members to keep their schedules, so I won't talk to the other members.

Today the Subcommittee meets in its oversight capacity to review the agreement reached among the Clinton Administration, Crown Butte Mines Incorporated and the Greater Yellowstone Coalition to buy out the proposed New World mining project near Cooke City, Montana. Until late last week, we had intended to discuss the methodology proposed to buy out the old private old-growth timber lands in the Headwaters Grove of Humboldt County, California, as well. But this was because the Administration had proposed to fund both of these deals via schemes involving Mineral Leasing Act receipts. All that changed when the White House and the Congressional negotiators decided to add \$700 million to fund priority land acquisitions and exchanges to the 5-year budget agreement. Therefore, if the budget resolution on the floor later today is adopted, the funding for these two acquisitions would likely be through the usual mechanism of an appropriation from the Land and Water Conservation Fund and not the original plan to divert mineral lease receipts. That is certainly something that I had questioned earlier on.

So why are we here today? Because I believe that the authorizing committee with jurisdiction over mining interests generally has an obligation to hear this issue. Was a legitimate property right of Crown Butte Mines, Incorporated, threatened in a governmental

taking by the endless delays in the environmental documentation and permitting? Would Yellowstone National Park likely have been imperiled by the building of this proposed New World Mine? In sum, when the facts are this case are brought to light, do they support this buyout agreement?

Let me say at the outset that I am not urging the permitting of a gold mine next door to a place that I cherish, that I have gone to since I was a child. That is Yellowstone National Park. But that doesn't mean that I am ready to recommend to the Appropriations Committee to write a \$65 million check to Crown Butte Mines. And, yes, I realize that unless and until the owner of the private lands and the mineral rights buys into the agreement, there really is no deal. But, in my opinion, it is time to ask the parties to the agreement to state for the record why they believe it to be in the best public interest to do this deal.

Remember, just saying it is in the public interest to do the deal doesn't make it so. That is why an environmental impact statement was in the works, so that permitting decisions would be made on a scientifically sound basis. Perhaps more than anything else in the New World deal, the termination of the EIS process bothers me greatly. Will ratification of this deal by Congress in the context of a check made out to Crown Butte Mines and drawn on the United States Treasury establish a precedent for short circuiting the environmental process when people become fearful that a permit might be imminent, whether it is for a mine or trees of whatever?

Understanding the background leading up to the August 1996 agreement, I assure you, is critical to forging a willingness to pay attitude here in Congress. It is time to stop doing this deal behind our backs and then announcing a done deal. We are fully capable of deciding whether or not to spend \$65 million of taxpayers' money to protect Yellowstone National Park, but don't expect us to write a check on the basis of a handshake between President Clinton, Director Clark and Chairman Elers.

[The prepared statement of Hon. Barbara Cubin follows:]

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF WYOMING

Today the Subcommittee meets in its oversight capacity to review the agreement reached among the Clinton Administration, Crown Butte Mines, Inc., and the Greater Yellowstone Coalition to buy-out the proposed New World mining project near Cooke City, Montana. Until late last week we had intended to discuss the methodology proposed to buy out private old-growth timber lands in the Headwaters Grove of Humboldt County, California, as well. This was because the Administration had proposed to fund both these deals via schemes involving Mineral Leasing Act receipts. All that changed when White House and Congressional budget negotiators decided to add \$700 million to fund "priority land acquisitions and exchanges" to the five-year budget agreement. Therefore, if the budget resolution on the floor later today is adopted, the funding for these two acquisitions would likely be through the usual mechanism of an appropriation from the Land and Water Conservation Fund, and not the original plan to divert mineral lease receipts.

So why are we here today? Because, I believe the authorizing committee with jurisdiction over "mining interests generally has an obligation to hear this issue. Was a legitimate property right of Crown Butte Mines, Inc. threatened with a governmental taking by the endless delays in environmental documentation and permitting? Would Yellowstone National Park likely have been imperiled by the building of the proposed New World mine? In sum, when the facts of this case are brought to light, do they support this agreement?

Let me say at the outset that I am *not* urging the permitting of a gold mine next door to a place I do indeed cherish, Yellowstone National Park, but that doesn't

mean I am ready to recommend the appropriations committee write a \$65 million check tomorrow to Crown Butte Mines. And, yes, I realize that unless and until the owner of the private lands and mineral rights buys into the agreement there really is no deal. But, in my opinion, it is time to ask the parties to the agreement to say for the record why they believe it to be in the public interest to do this deal.

Remember, just saying its in the public interest to do this deal, doesn't make it so. That's why an environmental impact statement was in the works—so permitting decisions would be made on a scientifically sound basis. Perhaps more than anything else in the New World deal, the termination of the EIS process bothers me greatly. Will ratification of this deal by Congress—in the context of a check made out to Crown Butte Mines and drawn on the United States Treasury—establish a precedent for short-circuiting the environmental process when people become fearful a decision to permit a mine (or log trees, for that matter) appears imminent?

Understanding the background leading up to the August 1996 agreement, I assure you, is critical to forging a “willingness to pay” attitude here in Congress. Its time to stop doing this deal behind our backs and then announcing a done deal. We're fully capable of deciding whether or not to spend \$65 million of taxpayers' money to protect Yellowstone Park, but don't expect us to write the check on the basis of a handshake between President Clinton, Director Clark and Chairman Elers.

Mrs. CUBIN. I turn now to Subcommittee Ranking Member, Mr. Romero-Barcelo, for any opening statement he might have.

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

Mr. ROMERO-BARCELÓ. Thank you, Madam Chair. Madam Chair, we appreciate the opportunity to hear from the Clinton Administration, the Greater Yellowstone Coalition and the Crown Butte Mine Corporation today on the proposal to protect Yellowstone National Park from the adverse effects of the proposed New World Mine. And we understand that this hearing will not address the Headwaters proposal since the recent budget negotiations have rendered our jurisdictional interest moot.

Before I mention anything, I just want to bring forward just a memory that I have. Whenever I think of the Yellowstone National Park, I remember when I went there with my family and our children were small. And we wanted to see—above all we wanted to see Old Faithful. One of the children decided that they had to go to the boy's room, and so we figured we had enough time. So we went to take my son to the boy's room. We came back out. Old Faithful had already steamed out and we were so disappointed. Anyway, it was a wonderful experience to visit Yellowstone National Park. It is a wonderful park.

We are pleased that the President and Republican leadership chose to include the provision in the recently agreed to budget for acquisition of the New World Mine's mining claim and also to acquire the Headwaters Redwoods Forest through the Land and Water Conservation Fund Act. Yellowstone is our nation's first national park. The Headwaters Forest in California is the largest unprotected stand of ancient old-growth redwood trees in the world. Extreme and serious pressures that would have severely affected these areas prompted, indeed even forced, the Administration to step in and try to save them.

According to the Minerals Management Service, the revenues generated by the Outer Continental Shelf Leasing program are rising, up to nearly \$6 billion this year, with anticipated revenues more than \$10 billion by the year 2000. One of the more recent

OCS lease sales brought in some 826 million to the Federal Treasury in 1 day.

Since this is a primary source of funding for the Land and Water Conservation Fund, it is indeed appropriate that the Federal Government buy the New World and the Headwater properties outright rather than resort to complicated land exchanges.

Thank you, Madam Chair.

[The prepared statement of Hon. Carlos Romero-Barceló follows:]

STATEMENT OF HON. CARLOS A. ROMERO-BARCELÓ, A RESIDENT COMMISSIONER IN
CONGRESS FROM THE STATE OF PUERTO RICO

Madame Chair, we appreciate the opportunity to hear from the Clinton Administration, the Greater Yellowstone Coalition and the Crown Butte Mine Corporation today on the proposal to protect Yellowstone National Park from the adverse effects of the proposed New World Mine. We understand that this hearing will not address the Headwaters proposal since the recent budget negotiations have rendered our jurisdictional interest moot.

We are pleased that the President and the Republican leadership chose to include provision in the recently agreed to budget for acquisition of New World Mine's mining claims and also to acquire the Headwaters Redwoods Forest through the Land & Water Conservation Fund Act. Yellowstone is our nation's first national park. The Headwaters Forest in California, is the largest unprotected stand of ancient old-growth redwood trees in the world. Extreme and serious pressures that would have severely affected these areas prompted—indeed even forced—the Administration to step in and save them.

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Since this is the primary source of funding for the Land and Water Conservation Fund, it is indeed appropriate that the Federal Government buys the New World and Headwaters properties outright rather than resort to complicated land exchanges.

Mrs. CUBIN. Thank you, Mr. Barceló. Now I will introduce our panel of witnesses. We have Ms. Kathleen McGinty, Chair, Council of Environmental Quality for the Executive Office of the President; Mr. Karl Elers, Chairman, Crown Butte Mines, Incorporated; and Mr. Mike Clark, Executive Director of the Greater Yellowstone Coalition. And before we start, I would like to swear in the witnesses. I believe that you were notified that you would be sworn in. And I hope that is OK with you. So would you mind standing and I will administer the oath.

[Witnesses sworn.]

Mrs. CUBIN. Thank you. We do that for all witnesses in this Subcommittee, so don't make any inference from it at all.

Let me remind the witnesses that under our committee rules they must limit their oral statements to 5 minutes, but that their entire statement will appear in the record. And that way we can move along with our questioning more quickly.

The Chair now recognizes Ms. McGinty to testify.

STATEMENT OF KATHLEEN MCGINTY, CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY, EXECUTIVE OFFICE OF THE PRESIDENT

Ms. MCGINTY. Thank you, Madam Chair and members of the Subcommittee, for the opportunity to testify before you regarding the President's effort to protect Yellowstone National Park. The

Yellowstone agreement was borne of and reflects this Administration's commitment to preserve and protect for future generations of Americans the world's first national park and indeed the crown jewel of our national park system. This agreement is reflective also of our commitment, wherever possible, to work in partnership with industry and other interest groups to achieve our environmental goals.

Let me express at the outset, Madam Chair, the President's deep gratitude to the Congressional leadership who have now joined us in this effort to protect Yellowstone by securing in the budget agreement the funds necessary to get this job done. Let me also, if I might, at the outset just recognize and commend those whom I share the podium with here, Crown Butte, now Battle Mountain, and the environmental groups represented by the Greater Yellowstone Coalition. In every instance and at every moment they have acted in absolute good faith and have worked honorably to keep the best interests of Yellowstone and the economy paramount.

As mandated by NEPA, my role is to advise the President on environmental policy matters and coordinate activities of Federal agencies and departments with regard to matters across agency jurisdictional lines. Accordingly, I do chair the Executive Committee and oversee the interagency team that is assembled to ensure implementation of the Yellowstone National Park agreement.

Madam Chair, to turn to some history here, in 1989 Crown Butte Mines, Incorporated, a subsidiary of a Canadian mining company, proposed a gold, copper and silver mining complex located less than three miles from the northeast border of Yellowstone National Park. The rights to minerals at the New World Mine sight had been obtained under the 1872 Mining Act. Under Federal law, therefore, the U.S. Government had no choice. We were obligated to process the company's proposal to mine these minerals and use Federal lands for a large tailings impoundment.

Crown Butte submitted a plan for review that called for 15 years of operation, six major facilities, a 70 to 100 acre tailings impoundment behind a proposed 90-foot tall dam. The tailings impoundment would have been expected to contain the highly acidic waste rock and metals in perpetuity.

The EIS process began in April 1993. The EIS was originally expected to be issued as a draft in April 1994, however work slowed when the preliminary findings began clearly to show that major adverse impacts on Yellowstone were threatened, specifically, significant environmental damage to the Clark's Fork of the Yellowstone River, a federally designated wild and scenic river, where identified risks to critical grizzly bear habitat and to Yellowstone Park itself were highlighted.

Interagency review of the preliminary drafts of the EIS also showed the need for new studies, and in particular to examine groundwater flows. The preliminary draft EIS was made widely available and reviewed not only in Montana but throughout the United States. This occasioned the identification of still more concerns. For example, many analysts, including mining engineers, were critical of the proposed submerged tailings system. Concerns were raised, among other things, about seismological risks in the area. It was highlighted, for example, that this area had experi-

enced more than 4000 earthquakes within a 180-mile radius. The need for more analysis concerning containment of the 5.5 million tons of highly acidic waste rock that would be generated by the mine was also raised as, again, were risks associated with the tailings impoundment.

In March 1995, Wyoming Governor Geringer wrote to Montana Governor Racicot to say that the alternative preferred by the company could have a significant adverse impact on Wyoming water resources and suggested that the tailings impoundment be subjected to a wholly separate review. Moreover, again because of the highly acidic nature of the ore body, Governor Geringer called for a 75 to 100 million dollar bond to be posted to cover any potential liabilities from damages.

As concerns about the EIS grew, court battles were also beginning. Crown Butte was embroiled in a citizen's suit brought under the Clean Water Act by a coalition of 14 environmental groups. In October 1995, the company was found liable by a Federal District Court. Simultaneously, legislation was introduced in both the House and the Senate to interfere with or block the mine. With concern therefore growing all around and from all fronts, it became abundantly clear that there would be years of contentious litigation over the mine regardless of whether the Federal Government approved or denied the company's application.

Faced with this potential for costly and resource intensive litigation, the environmental groups and the company entered into discussions in an effort to identify creative options to address their differences. In February 1996, Crown Butte, their parent Hemlo Gold, and the Greater Yellowstone Coalition came to Washington, approached CEQ together to explore whether the Administration would be willing to consider a novel approach to the problem. And that is exchanging Federal assets in exchange for the company's agreement to cease and desist further pursuit of the mine.

At that point, my staff formed a small interagency working group to assess implications and possible elements of such an approach. They concluded that there were enough common interests among the parties that we should pursue more detailed discussions. All parties agreed that confidentiality was necessary and appropriate because the discussions would involve issues regarding ongoing and potential future litigation and because premature release of information could adversely affect the company's stock.

In April 1996, the Administration appointed Mr. John Schmidt, who was then the Associate Attorney General of the United States, and Mr. Jim Pipkin, Counselor to the Secretary of Interior, to further the discussions with the environmental group and the company. Regular discussions were held focusing primarily on, first, the value of the mine, second, the cleanup and restoration of environmental impacts associated with many years of small scale mining in the area, resolving protracted legal proceedings, and finally, resolving potential Federal enforcement actions.

In August 1996, the discussions came to fruition. At that time President Clinton, Crown Butte Mines and a coalition of environmental groups announced that the parties had reached an agreement in principle to protect Yellowstone and the surrounding area. Moreover, the agreement would ensure that environmental impact

of historic mining in the area would be remediated and that years of costly and contentious litigation would be avoided. The August 12 agreement, therefore, represented a major milestone in the effort to protect Yellowstone. However, the agreement did not complete the job. Rather, as an agreement in principle it laid out a plan of action, actions when completed would protect the park.

Two of the most significant action items included, first, the undertaking of the Federal Government to identify \$65 million of Federal assets to be exchanged to Crown Butte, and second, Crown Butte's undertaking to acquire the property it currently leases from Ms. Margaret Reeb, a Montana resident and the other major landowner in addition to Crown Butte in the area.

To turn briefly to the Federal Government's undertaking, immediately upon conclusion of the agreement in principle, the Federal agencies began the work of identifying the necessary assets. In the course of this effort, we reviewed surplus military installations, General Services Administration surplus property, National Forest timber lands, leased and unleased coal lands and other Federal lands. We actively participated in and supported Governor Racicot's Montana Initiative to explore a mix of timber and coal lands in Montana.

For various reasons, each of these properties ultimately proved unsuitable for the exchange. Some properties were contaminated, for example. Others had previously been committed to other uses, while still others were opposed by various interest groups.

After this exhaustive search and rigorous effort, we therefore proposed to divert mineral royalties from existing mines in Montana. While diversion of royalties was generally favorably received, the required offset we chose, the Conservation Reserve Program, proved to be controversial. It was in this context that the President and Congressional leadership took the issue up in the balanced budget negotiation. To reiterate what I expressed at the outset, the President is extremely appreciative of the leadership support in securing the funds now necessary to protect Yellowstone for future generations.

To summarize that budget provision relevant to this matter, an additional \$700 million is proposed to be reserved from the Land and Water Conservation Fund on top of the President's request for the fund for this year. Of that amount, \$315 million is reserved for priority Federal land exchanges, namely \$65 million for the completion of this agreement to protect Yellowstone and \$250 million to secure the Headwaters Forest in Northern California. The budget agreement is, therefore, a major milestone in the effort to protect Yellowstone. These are new and additional funds so other priorities will be protected. And indeed, the remaining \$385 million can be put to priorities agreed by the Congress and the Administration.

However, several more steps need to be completed before the Yellowstone agreement can be implemented. First, Crown Butte must fulfill its obligation to acquire the property it leases from Ms. Reeb. Second, evaluation of the property must be completed. And finally, the budget resolution must be passed and then acted upon by the Appropriations Committee.

Madam Chair, I am confident that this is a fair way to resolve a potentially long, bitter and expensive battle to save Yellowstone.

We in the Administration have been proud to work with the environmental groups represented here and with the Crown Butte Company, all who have acted honorably, in good faith and with the best interests of Yellowstone and the economy in mind. Madam Chair, saving Yellowstone does require that many people come together to find common ground on behalf of this truly national treasure. You have spoken eloquently about Yellowstone and indeed, the need to find bipartisan solutions. I hope that we can work closely with you and other Members of Congress now to finish this important job.

Thank you for the opportunity to speak to this important initiative, and I am certainly available to take whatever questions you might have.

[The prepared statement of Kathleen McGinty may be found at end of hearing.]

Mrs. CUBIN. Thank you very much. Mr. Elers.

STATEMENT OF KARL E. ELMERS, CHAIRMAN, CROWN BUTTE MINES, INC.

Mr. ELMERS. Thank you, Madam Chair and the members of the Subcommittee. My name is Karl Elers, and I am Chairman of the Board of Directors of Crown Butte Mines, Inc, a Montana corporation. I assumed that position in March of this year. This is my first appearance before a Congressional committee, and I appreciate the invitation to be here.

The letter of invitation to testify indicated the committee's interest in the agreement reached between Crown Butte, the Administration and certain environmental interest groups in August 1996. Crown Butte found the decision to enter into the August exchange agreement a difficult one. A brief chronology of the events leading up to our decision to execute the agreement will shed some light on why Crown Butte decided on this course of action. And toward this end, I think I will be giving a lot of the same chronology as Ms. McGinty, but from the perspective of Crown Butte, obviously.

The area in dispute, known as the New World Mining District, is a historic district dating back to 1869. In 1978, the U.S. Congress specifically considered and excluded the New World District from the Absaroka-Beartooth Wilderness due to past mining activity and the present mineral potential. Proposing a state-of-the-art mine with a strong reclamation plan to remediate historic mining disturbances made sense, yet Crown Butte became the focus of a national and international debate.

The permitting process for the New World property began formally over 6 years ago in November 1990 when Crown Butte submitted its operating permit application. The permitting process for the New World property proved to be complex and time consuming and was met with unusually high opposition. In all, more than 25 separate state, Federal and county permits would be required prior to approval of the project. A revised operating permit application was resubmitted to the lead agencies in 1992 following extensive changes resulting from the decision by Crown Butte not to use cyanide in the processing.

Crown Butte responded to a total of six reviews of the operating permit application before it was declared complete in 1993 and the

EIS process began. Crown Butte was initially informed that the draft EIS would be available in late 1994. This date was not met. In 1994, Crown Butte was advised by the agencies that a draft of the EIS would be issued by the end of the second quarter of 1995. This date was not met and Crown Butte was subsequently advised by the State of Montana that the draft EIS would be released in the fall of 1995. This date was also not met. In March 1996, Crown Butte was advised by the lead agencies that the draft EIS would be released by late spring or early summer of 1996. The draft EIS had not been released by August 12, 1996, when Crown Butte executed the exchange agreement. The EIS process has been suspended pursuant to the terms of the exchange agreement.

As I mentioned earlier, the Crown Butte District is in a historic mining area. Crown Butte's activities at the site have included reclamation of historic mining activities. And in December 1992, the company received an excellence award for outstanding commitment to environmental protection from the U.S. Forest Service. This award recognized the company's innovative and successful efforts to mitigate historic adverse environmental impacts.

In 1994, following a complaint by special interest environmental groups, the Corps of Engineers alleged that some of the company's reclamation activities had been in violation of the Clean Water Act. Crown Butte responded that it did not believe these allegations were accurate, and in September 1995 the Corps issued Crown Butte a Section 404 permit authorizing future reclamation activities.

Under the Comprehensive Environmental Response and Liability Act, or CERCLA, the EPA initiated an investigation of continuing environmental impacts from previous activities in the Henderson Mountain vicinity.

In January 1995 interest groups filed a complaint against the company with the Department of the Interior contesting Crown Butte's mineral patent applications, which effectively asked that the patents not be issued.

In February 1995 the groups requested the U.N. World Heritage Committee to investigate whether Yellowstone qualified for inclusion on the list of world heritage sites in danger. Such determination would require the U.S. to take unspecified steps to protect Yellowstone.

In June of that year, a senior Interior Department official stated that Yellowstone was in danger. The U.N. committee visited Yellowstone in September 1995, and the National Park Service, a co-operating agency in the New World EIS, hosted the event. In December 1995, the committee declared Yellowstone a world heritage site in danger.

By June 1995, Crown Butte had exhausted its cash resources and has since been forced to rely on loans totaling approximately \$5 million to date to sustain day-to-day operations.

In August of that year the President took an aerial tour of the mine site. The tour was followed by the Secretary of the Interior withdrawing an area of approximately 19,000 acres, including the New World property, from location under the Mining Law.

In October 1995, the District Court ruled on a complaint filed by the interest groups, finding that Crown Butte was in violation of

the Clean Water Act for not yet having obtained an NPDES permit for water coming from historic mine workings. A trial was set but has been stayed in light of the exchange agreement.

Madam Chair and members of the Subcommittee, I am sure you can readily see that what began as an attempt to build a modern, state-of-the-art mine in an area where historic mining has occurred for over a century and which was specifically excluded from wilderness designation by the Congress, quickly became a battle of national and international proportions.

By mid-year 1996, Crown Butte had already been in the permitting process for almost 6 years and promised dates for the release of the DEIS had consistently not been met. Crown Butte had run out of cash and the whole process had become fraught with delays and uncertainty. The company found the decision to enter into the exchange agreement a difficult one. Crown Butte has always believed its proposal to build and operate safely and responsibly a small state-of-the-art underground gold mine at New World was not only environmentally sound of itself, but also represented the best way to remediate historic mining activities which date back more than 100 years.

In the end, the exchange agreement provided a practical solution to a unique set of circumstances. The protracted permitting delays, legal challenges facing ongoing development and potential liabilities related to historic mining caused the economics of the project to deteriorate. Crown Butte's management ultimately decided the agreement was in the best interests of the shareholders and would compensate them, in some measure, for the amount they have spent to date in acquiring, exploring and attempting to permit the property.

Madam Chair and members of the committee, that concludes my statement and I, too, would be pleased to respond to questions.

[The prepared statement of Karl Elers may be found at end of hearing.]

[Supplemental information of Karl Elers may be found at end of hearing.]

Mrs. CUBIN. Thank you, Mr. Elers. The Chair now recognizes Mike Clark.

**STATEMENT OF MICHAEL CLARK, EXECUTIVE DIRECTOR,
GREATER YELLOWSTONE COALITION**

Mr. CLARK. Thank you, Madam Chair and members of the Subcommittee. My name is Michael Clark. I am the Executive Director of the Greater Yellowstone Coalition, a Bozeman, Montana-based group with field offices in Cody, Wyoming, and Idaho Falls, Idaho. We are 14 years old. We have a membership of 7400 members, 119 corporate members and 120 organizational members. Our mission is to preserve and protect the Greater Yellowstone ecosystem and the communities it sustains.

Today I also represent the Beartooth Alliance, the Gallatin Wildlife Association, Montana Wildlife Federation, the Wyoming Wildlife Federation and the Wyoming Outdoor Council. Each of these groups has worked closely with us on the New World Mine.

Thank you for the invitation to testify on the agreement negotiated in 1996 between the Clinton Administration, Crown Butte

companies and the conservation community. Congress now has the key role in creating and approving legislation that will resolve this issue permanently. We welcome your leadership. We look forward to working with you in completing the agreement.

We continue to believe that the New World agreement is a good deal for the American people. We also acknowledge that it has been far more difficult to achieve than we had originally thought, but it is still a valid way of resolving this situation. Without the agreement, the mining companies and the conservation community would still be locked in a major confrontation over the threat of a gold mine outside Yellowstone. The agreement provides a method for ending this battle and for allowing each of us to move on to other issues.

The agreement provides the company with a fair exchange for its assets. It creates a \$22.5 million reclamation fund to clean up and restore the polluted lands on Henderson Mountain. It provides research funds to study the situation, offering the possibility that the cleanup could benefit other polluted mining sites in the interior west. And it ensures that the wild character of the lands adjacent to Yellowstone and the Absaroka-Beartooth Wilderness will be protected from industrial development for the region's wildlife and for the benefit of future generations.

We are supportive of the efforts recently to use the Land and Water Conservation Fund to complete this agreement. We now look to the leadership of Congress to conclude the deal by passing new legislation that will resolve this situation.

I would like to ask that you add to my written testimony recognition of two groups that worked with us that were not included in that testimony. These are the Mineral Policy Center and the National Parks and Conservation Association, which worked with us very closely on this situation.

Thank you. I will be glad to answer any questions.

[The prepared statement of Michael Clark may be found at end of hearing.]

Mrs. CUBIN. Thank you. Thank all of you very much. I think I will start the questioning. Let us go ahead and put the light back on so that we will limit our questions to 5 minutes each.

I would first of all like to ask unanimous consent to allow Rick Hill, Representative from Montana, to sit with us and to question the witnesses. OK, hearing no objection.

OK, I will start out. Ms. McGinty, I applaud your efforts for working with all the parties involved and in reaching an agreement. I think it helps everyone when that can happen. I do have some concerns and questions. I do indeed recognize that the budget negotiators have agreed to \$700 million of additional funds available through the LWCF for priority land acquisition. My math, and yours too, says that this deal costs \$315 million, and yet the price tag is 700 million. I would like to know what other things you plan to spend it on, particularly if part of the buyout will be private oil and gas rights that are adjacent to the Everglades, and also if part of the money is intended to go to Escalante to buy out the school sections and the lands that are not Federal lands there.

Ms. MCGINTY. Yes, thank you. There are several parts to this aspect of the budget agreement. As the committee is aware, the Land

and Water Conservation Fund itself is a fund with a balance on the order of, I think as the Ranking Member noted in his opening remarks, on the order of \$11 billion. What this budget agreement says is that of that \$11 billion balance \$700 million will be reserved in 1998 in addition to the President's request for fiscal year 1998 for two things. One is 315 million of that 700 million will go to the priority land exchanges, 65 million for New World Mine and 250 million for Headwaters.

The balance, Madam Chair, to get more specifically to your question, will—is available for unidentified purposes, but for purposes that the Congress in consultation with the Administration may identify other priorities. It will just go through the normal process that the Congress in consultation with the Administration follows every year in allocating the Land and Water Conservation Fund.

Mrs. CUBIN. It just seems so extravagant based on our current financial situation. It stymies me. While I might agree that—and do agree that if the buyout takes place it ought to come from the Land and Water Conservation Fund, but then I am asked to put in an additional \$315 million for something I don't even know what it is. That is troublesome to me, but I applaud you. You have done a good job based on your priorities and your job is. I think it is the budgeters and the negotiators, maybe, that I need to take this up with.

Ms. MCGINTY. It will come back, just to be clear. That money will be—the remainder, the 385 million of the 700—

Mrs. CUBIN. Right.

Ms. MCGINTY [continuing] as opposed to the two things for Yellowstone and Headwaters. That will be up to the Congress in the normal course to decide how those moneys should be appropriated in consultation—

Mrs. CUBIN. Sure.

Ms. MCGINTY [continuing] with the agencies.

Mrs. CUBIN. I realize that. However, I still think it goes a little bit farther than I would like to see it go.

I recognize that this deal and Headwaters both involve corporate interests being bought out of their permitting dilemmas, and I believe at this stage that Crown Butte may have been unfairly treated during the process in terms of delays and all of the problems that they run into. But my question is this. Would an individual miner or small landowner have received compensation as Crown Butte appears to be going to?

My Chairman Don Young, for example, has small miners in Denali Park in Alaska and in another area that have wrestled with the Federal Government for over 15 years trying to get their just compensation. And I just wonder why Battle Mountain Gold's interests are to be bought out and John Q. Public appears to be sent packing in this area.

Ms. MCGINTY. Well, I will take the first part of the question, Madam Chair. The imperative here was to protect Yellowstone National Park, and what we attempted to do, again in partnership with the company and the environmental groups that were involved was to say is there a way to resolve what has at this point become quite a heated battle over this issue, resolve it in an amicable way that both protects the environment, Yellowstone Park, and

is respectful of the company's legitimate property interests. And that is why we were—we came together to forge this agreement.

Mrs. CUBIN. Mr. Elers, let me say up front that I realize you were not in your current position when this agreement was brokered, when it was proposed. Therefore when I say you, I am not talking about you. I am talking about the collective you, which would be your company.

I believe that too much misinformation and manipulation relating to the development of this mine has occurred. I believed, as did a vast majority of my constituents, that the Administration in an attempt to stop development of this mine intervened in the established EIS process and stopped it by offering a deal to Crown Butte. It is commonly believed in my state that the EIS was coming out to be favorable for the development of the mine and that the President would go to any legal means to prevent that from happening, therefore, if not violating the process at the very least compromising it.

It is also very commonly believed that the CEQ held a metaphorical gun to your head by telling you that the mine would never be developed and so your only alternative was to take the deal. Then 1 day some representatives from the Administration came to my office and I learned from them that in fact Crown Butte approached CEQ with the brokering and assistance, admirably so, of the Greater Yellowstone Coalition. Therefore, for virtually months I had been relating misinformation to my constituents and to the press and never once did anyone from Crown Butte bother to come forward and say, no, the Administration didn't step in and stop this, we made the first move.

I am sure that the truth lies somewhere between Crown Butte's out of the clear blue coming in and saying I want to make a deal and "that you will never get your mining permits so you better deal." I am sure that the truth lies somewhere in between there. I suppose we will never know exactly what it is.

I understand that the Department of Interior provided this Subcommittee with a box of documents, mostly related to how the deal to divert oil, gas and coal leases, coal lease revenues from the U.S. Treasury to the mining company to pay for the deal. The Forest Service also sent up a huge box of things. And I—because they didn't come until late Friday night, I haven't had the opportunity to go through them and I don't know when I will, but what I do know is that before this Subcommittee makes any recommendations on this buyout I will personally go through every single document that is furnished to us, and that could take a very, very long time.

Having said that, I would like to ask you the question. In your statement, and this is a quote, it says the draft EIS had not been released by August 12, 1996, when Crown Butte executed—oh, excuse me, that is not the one I wanted to ask.

When you say that the Park Service hosted the U.N. committee on the world heritage at Yellowstone National Park in 1995, does that mean that they paid for the heritage committee to come over here? Do you know the answer to that?

Mr. ELSERS. I don't know the answer to that, Madam Chair.

Mrs. CUBIN. Do you know the answer to that, Ms. McGinty?

Ms. MCGINTY. No, I don't, Madam Chair.

Mrs. CUBIN. While I am concerned that Crown Butte has been less than forthcoming in this matter, I am also concerned that Crown Butte wasn't exactly getting the fair deal that they are guaranteed under the Constitution. The Administration appears to have been dealing with a stacked deck. It appears that all of the resources of the Department of Interior and CEQ were ready to be used if necessary against the mining company, the State of Montana or any other citizen who was against development of the mine. The President even interrupted his own vacation to take an aerial tour of the site, so there is little doubt in my mind that the EIS was not going to be published by a Federal agency with a preferred alternative to allow the mine to be developed.

So let me ask you, Mr. Elers, and then I better give up my time. Is your parent company's gold mine in South America subject to this same kind of treatment by the Bolivian Federales?

Mr. ELMERS. No, Madam Chair, they are certainly not. The Bolivian government, with whom we have had a relationship now for about 10 years—about 9 years—has been very supportive of our mining activity and anxious to see it through to development. I might also point out that we were subject to the covenants of international lending agencies, the Bolivian government's environmental standards, as well as our own corporate standards of environmental protection in developing that mine. But that mine was developed very expeditiously.

Mrs. CUBIN. So is it fair for me to say that the New World Mine is just another example of why so much investment capital is moving out of the United States into other countries?

Mr. ELMERS. That is a fair assessment. Certainly speaking for our own parent company organization, we have moved most of our exploration activities outside of the United States.

Mrs. CUBIN. Thank you very much. Mr. Barceló.

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

Ms. McGinty.

Ms. MCGINTY. Yes.

Mr. ROMERO-BARCELÓ. I enjoyed your testimony.

Ms. MCGINTY. Thank you, sir.

Mr. ROMERO-BARCELÓ. I would like to ask a question. I realize that you are not the Administration's expert witness on the Mining Law of 1872, so I ask that you refer this question to the Department of Interior.

Ms. MCGINTY. Yes.

Mr. ROMERO-BARCELÓ. For a written response.

Ms. MCGINTY. I would be happy to.

Mr. ROMERO-BARCELÓ. My question is as follows. Is Mr. Elers correct in his assertion that application of the comparative value test would be contrary to the longstanding practice of the Department of the Interior?

Ms. MCGINTY. Well, sir, you have guessed right. I am not the expert on that, but I would be happy to have the Department respond to you in writing immediately.

Mr. ROMERO-BARCELÓ. And more to the point, is imposition of this test consistent with law and legal precedent?

Ms. MCGINTY. I will also have to have the Department respond.

Mr. ROMERO-BARCELÓ. And finally, the other question is also, can Crown Butte's patent applications be approved under the patent moratorium put in place by Congress?

Ms. MCGINTY. Similarly, I will need to provide a written response from the Department.

Mr. ROMERO-BARCELÓ. I would appreciate that. And now, Mr. Elers, this question relates to the Crown Butte's patent applications under the 1872 Mining Law. Why do you say in your testimony that the imposition of the comparative value test would be contrary to the longstanding practice of the Department of the Interior in determining whether or not to grant Crown Butte's application to patent or to acquire the mining claims in question?

Mr. ELMERS. The patent applications, we believe, were subjected to a lot more challenge than a normal patent application would be subjected to due to their proximity to Yellowstone.

Mr. ROMERO-BARCELÓ. That is the reason why you make that statement, in other words?

Mr. ELMERS. I believe that is the primary reason.

Mr. ROMERO-BARCELÓ. And also in your testimony you state that Crown Butte's proposal for the New World Mine would have represented the best way to remediate the effects of hundreds of years of mining disturbances. How would Crown Butte have accomplished this?

Mr. ELMERS. Through water treatment, through remediation of the longstanding leakage of acid mine drainage from existing historic mines, and also in surface disturbances through continuing to reclaim areas that were surface mined, particularly, I believe, during World War II for copper. A lot of that work has been done. A lot of work yet remains to be done.

Mr. ROMERO-BARCELÓ. Thank you very much, Mr. Elers.

Mr. ELMERS. Thank you, sir.

Mr. ROMERO-BARCELÓ. And, Mr. Clark, I would like to ask you—Ms. McGinty and Mr. Clark, would you care to respond to Mr. Elers' explanation of the remediation and how it would work on the New World site? First of all Mr. Clark.

Mr. CLARK. I am sorry, sir. I couldn't hear everything you asked.

Mr. ROMERO-BARCELÓ. I said would you care to respond to Mr. Elers' explanation of the remediation and how it would work at the New World site, what he just said.

Mr. CLARK. Well, the company proposed to use its milling operations to clean up that site if it were in full operation. Obviously with the mine not going ahead, that will not occur, but the reclamation agreements that we negotiated allows for \$2½ million to be spent on the site. That is a huge amount of money for our region, and we think that that amount of money will go a long way toward cleaning up the existing pollution on that site. So we think that when this is over that site will be much better than it was and we will be able to walk away with it, all of us, with our heads held high.

I am also hopeful that research activities that are proposed to be conducted there will have application in other parts of the interior west where historic mining sites also occur.

Mr. ROMERO-BARCELÓ. Thank you very much. And, Ms. McGinty, you agree with Mr. Clark's statement?

Ms. MCGINTY. Yes, absolutely, sir. In fact, I think one of the most important parts of this agreement is that that money that Crown Butte has put on the table will be available immediately to begin the cleanup job that even today is affecting water quality in the area. It will create jobs in terms of getting the cleanup job underway and I think it will be a very important step forward for the area.

Mr. ROMERO-BARCELÓ. Thank you, Ms. McGinty. And finally, Mr. Clark, for the record, why did the Greater Yellowstone Coalition and other environmental groups consider the New World Mine unacceptable?

Mr. CLARK. I have only been at the Greater Yellowstone Coalition for 3 years. The decision to fight the mine that was made by the Greater Yellowstone Coalition was made before I was there, but I believe that decision was made in 1993 or 1994. So it was well underway by the time I arrived. The early determination was that a mine of that size poised on the mountains above Yellowstone and above the Clarks Fork River was an unacceptable risk because it would create irreversible impacts in the region.

And I think that is an important distinction for us, because, for example, we do think that logging should go on. We think that grazing in the public lands should go on. We think that activities like that, as long as they are not irreversible, are ones that could occur on the public lands if these are not major environmental consequences. But in that site, at that location, we thought that a mine of that size operating the way it was proposed was an unacceptable risk to Yellowstone. And we concluded that no risk was acceptable to the Yellowstone Park, so we made a determination that is quite different from the way we ordinarily look at industrial proposals in our region.

Mr. ROMERO-BARCELÓ. In other words, there is no way, in your opinion, that a gold mine could be created and operated safely at the New World site?

Mr. CLARK. We would be against an industrial scale gold mine operating at that site, sir.

Mr. ROMERO-BARCELÓ. Thank you very much.

Mrs. CUBIN. Thank you. Mr. Duncan.

Mr. DUNCAN. Ms. Cubin, I am going to yield my time back to Mr. Hill, because he is—this is involving his state. But I do want to say that I continue to be concerned about the secrecy that is involved in some of these situations. Just a few days ago we held a hearing in another Subcommittee of this committee about the Utah land grab of the Grand Staircase Escalante, the property that you mentioned earlier. And that went on for months and there was intentional efforts made in that case to keep that hidden from the public and keep that secret.

And now I read that there was the same type of secrecy in the Headwaters situation in California. And I don't know anything about that situation out there, whether it would have been good or bad, but I can tell you that we are told that some of these laws like the antiquities law and others have been used for many years but they have not been used with the secrecy that is going on at this time. We have never had things like this happen in this country before. And apparently there are too many people at high levels

in this government who are so arrogant and so elitist that they think they should be allowed to run this country with no input from the Congress or from the people. And I think it is a very sad situation, a very sad day in this country.

And with that, I yield my time to Mr. Hill.

Mrs. CUBIN. I think Mr. Hill wants the time altogether, so I ask unanimous consent—

Mr. DUNCAN. He can have my time.

Mrs. CUBIN [continuing] to recognize Mr. Dooley and then put yours altogether.

Mr. DOOLEY. Thank you, Mrs. Cubin. And I apologize for being delayed as I had a conflict. And I really don't have any questions at this time, so I will be brief. I would say, though, that I really, you know, want to commend Ms. McGinty and the Administration for the work that they have done in specific reference to the Headwaters. This is an issue that I have been involved in in a legislative capacity for the last, oh, I guess it was almost 6 years where we have tried to find a way that we can ensure that we provide an adequate level of protection for what is a fairly unique natural resource.

And the reason I am commending the Administration is that I think in this case that they approached this with the objectives of trying to ensure that we would respect the private property rights of an individual and at the same time achieve the objective of what I think that most of us would agree would be embraced by the majority of the American people in preserving the Headwaters Forest. And I am very pleased that in the process of negotiating the budget agreement that they were able to secure the potential that this can be purchased.

I had some concerns about the original plan in terms of the sale of some Federal assets, even oil and gas leases, which while in itself might not have been impossible to orchestrate and to achieve, though certainly would have added an additional degree of complexity to consummating this Headwaters purchase. I would hope that the Administration, though, would be very diligent in ensuring that we reach an agreement on the HCP for the Headwaters as well as the sustained yield, which are also integral components of bringing this Headwaters issue to conclusion.

But I think it is, you know, with Mr. Duncan's concern certainly we can't have—we need to have openness in this process. I felt pretty, you know, kept apprised of this and certainly I appreciate the Department of Interior's interest in working with a lot of the local oil producers in my district. I just hope that come October that we have finished this and it is off the table and out of the political arena.

And I think we could probably—I could certainly say the same with the Crown Butte Mines issue, that hopefully we can resolve that and achieve, I think, the objective, which will be reflecting the values of the American people, and at the same time demonstrating our commitment to respect the private property rights of individuals. So thank you.

Mrs. CUBIN. Thank you, Mr. Dooley. I ask unanimous consent for Mr. Hill to be able to give an opening statement.

Mr. HILL. Thank you, Madam Chairman.

Mrs. CUBIN. No objection.

**STATEMENT OF HON. RICK HILL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MONTANA**

Mr. HILL. I want to thank you, Madam Chairman, for holding the hearing today and for allowing me to take part as an ex officio member of the Subcommittee. The people of Montana have not been given very much information on the substance of the proposed New World Mine buyout, and I am hoping today that we can get to the bottom of some of the issues and questions that I have received on this.

Most of the discussions and negotiations have taken place behind closed doors, so today maybe we will have the opportunity to be privileged to what some of those discussions were.

The opinion of Montanans is mixed about whether the proposed buyout is good or bad for Montana. Much of the confusion over this buyout can be attributed to the lack of knowledge. And given the latest development, Montanans remain puzzled. It is my hope today that our witnesses will shed some light on whether the proposal the President signed is still in play or whether they are now considering other options. I hope also that they will shed some light on how we got to this point, how were the interests of Montana and taxpayers and the environment weighed in the negotiations.

I remain optimistic that we can see a way clear to resolve the issue. And I believe an important first step is the completion of an environmental impact statement. I have asked in a letter to the President, which I ask unanimous consent to have inserted in the record, that the environmental impact statement on the New World Mine be completed. Before we ask the taxpayers to pay for a property, it only seems right that the taxpayers know what they are buying.

I have not yet received a response to my request, and I hope today that Ms. McGinty can shed some light on the President's views on the importance of completing an environmental analysis on this proposal. The people appearing in front of us today have worked long and hard on the effort. No one wants to see that effort wasted, including this member. Through the conversations we have today I would hope—it would be nice if we can discern a path toward a common goal of doing what is good for the people of Montana and Yellowstone Park.

[The prepared statement of Mr. Hill follows:]

STATEMENT OF HON. RICK HILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE
OF MONTANA

I want to thank Chairman Cubin for holding this hearing today and for allowing me to take part as an ex officio member of this subcommittee. The people of Montana have not been given much information on the substance of the proposed New World Mine buy-out and I hope that through this hearing today we can get some important questions answered.

Most of the discussions and negotiations have taken place behind closed doors, so I am interested in hearing from those who have been privy to the discussions. The opinion of Montanans seems to be mixed as to whether the proposed buy-out is good or bad for our state. Much of the confusion over the buy-out can be attributed to a lack of knowledge. Given the latest developments, Montanans are all a little puzzled.

It is my hope that our witnesses today can shed some light on whether the proposal the President signed is still in play or if they are now considering other options. I also hope we can shed some light on how we have come to this point. How were the interests of Montana the U.S. taxpayers and the environment weighed in the negotiations?

I remain optimistic that we can see a way clear to resolve this issue. I believe an important first step is the completion of the environmental impact statement. I have asked in a letter to the President, which I ask unanimous consent to have inserted in the record, that the environmental impact statement on the New World Mine project be completed. Before we ask the taxpayers to pay for a property, it only seems right that the taxpayers know what they are buying. I have yet to receive a response to my request and hope that Ms. McGinty can shed some light on the President's views on the importance of completing the environmental analysis.

The people appearing in front of this committee today have worked long and hard on this effort. No one wants to see that effort wasted. Through the conversation we have today it would be nice if we can discern a path toward our common goal of doing what's best for the people of Montana and Yellowstone Park.

Mr. HILL. As this process has gone forward, I have actually tried to help make this agreement complete. I believe that the agreement is incomplete. The President's political priorities have been addressed in this agreement. The Greater Yellowstone Coalition's narrow priorities have been represented in this agreement. Crown Butte's economic priorities have been represented in this agreement, but the people of Montana have not been represented in this agreement or even had the opportunity to be represented in any capacity in any stage of the negotiations.

The concerns with the people of Montana and the concerns of the State of Montana and the communities who have been impacted or will be impacted are very important to me. I have participated and tried to develop the Montana Initiative that Ms. McGinty referred to, yet nothing in this proposal, nothing in this proposal at this stage reflects any of the values that were part of that negotiation.

We have had one proposal that involved the trading of public lands in Montana, which has now been jettisoned. We had another proposal that involved using the CRP, the Conservation Reserve Program, as a mechanism for this. That has now been jettisoned. I have to tell you frankly, although I have tried to be helpful in this process, it seems like this is a moving dynamic situation. And not one single instance has anybody from the White House or any of the parties involved tried to consult with me in the process.

So anyway, I would ask that that statement be inserted in the record, and I do have some questions. Starting with you, Ms. McGinty, let me understand this. Is the purpose of this buyout to avoid legal liability on the part of the government? Is that part of the motivation here?

Ms. MCGINTY. Sir, I am not aware of any legal liability on the part of the government. The motivation is to protect Yellowstone, but to do it in a way that is respectful of private property rights.

Mr. HILL. So it is your view, then, that the U.S. Government does not have any liability or any potential liability as a consequence of the activities that occurred here with regard to the New World Mine, either on the part of Crown Butte or on the part of Greater Yellowstone Coalition.

Ms. MCGINTY. I am not aware of any legal liabilities that the Federal Government would have in this case, no, sir.

Mr. HILL. OK, so then the purpose of the buyout is to protect Yellowstone Park from environmental damage, is that correct?

Ms. MCGINTY. Yes, sir, and in a way that is respectful of the company's rights.

Mr. HILL. But one of the objectives is to protect Yellowstone Park from potential harm?

Ms. MCGINTY. I would say a paramount objective, certainly.

Mr. HILL. And so could you tell me on what objective criteria the assessment was made that there was potential environmental damage to Yellowstone Park?

Ms. MCGINTY. Certainly. The work that had been done pursuant to the environmental impact statement had produced a significant amount of commentary that, for example, expressed concern about the seismological risks in the area, 4000 earthquakes had occurred in this area. The ore body is highly acidic. Those earthquakes combined with acidic ore body posed a grave threat to, for example, the Clark's Fork of the Yellowstone River, a wild and scenic river. Critical grizzly bear habitat concerns were raised about that habitat being adversely impacted. The record is replete with concerns raised by many, including Governor Geringer of Wyoming, very concerned that Wyoming's water resources would be severely damaged if the mine were sited in, for example, some of these other things like an earthquake would have or could have happened at the site.

Mr. HILL. And the purpose of the environmental impact statement was to make—to raise those environmental risks and require Crown Butte to propose how it would mitigate those risks, is that correct?

Ms. MCGINTY. In the face of Crown Butte's proposal to the government to assess what the environmental impacts of that proposal might be, yes, to itemize them clearly, to see if they could or could not be mitigated. Some of these concerns, for example seismological risk, there is not a way necessarily to stop mother nature from having earthquakes. So some could be mitigated, some could not, but that certainly is the work that was underway, yes.

Mr. HILL. Obviously Crown Butte does not have the power to stop earthquakes, but certainly they would have within their power to develop the mine in a fashion that would mitigate the potential environmental risks associated with an earthquake. Wouldn't that be part of what they would be required to address in their environmental impact statement?

Ms. MCGINTY. Part of the process is to see if such a result could be achieved, yes.

Mr. HILL. And so all of the risks that you just described, which may or may not be valid risks, but they are risks that were raised in the scoping process and the environmental assessment—

Ms. MCGINTY. Yes.

Mr. HILL [continuing] were part of the responsibility of Crown Butte as we go through the environmental impact process to address in some fashion. Would that not have been part of that process or the expectation of that process?

Ms. MCGINTY. Well, it would be part of Crown Butte's responsibility, but also other parties to the EIS process. For example, the Park Service certainly would have a responsibility to ensure that Yellowstone Park was not threatened. The Forest Service similarly that Gallatin National Forest was not threatened.

Mr. HILL. And all those agencies were invited to be participants in this process, is that not correct?

Ms. MCGINTY. Yes, and they were participating.

Mr. HILL. I think the superintendent of Yellowstone Park kind of withdrew from that process toward the end because of his opposition, but aside from that—so in the end, at the time the environmental impact statement would be completed, we would then have a complete picture of what those environmental risks are and what efforts were possible to deal with those risks, is that correct? Is that what the expectation of that would have been?

Ms. MCGINTY. That would have been the effort, yes. I think it would have been a very significant undertaking yet to put that picture together.

Mr. HILL. And at that point in time when that would have been completed, had Crown Butte not been able to address those environmental hazards that you have described as the President's concern, this mine wouldn't have gone forward, would it?

Ms. MCGINTY. I suppose if the risks could not be mitigated, that various parts of the permitting process—the EIS itself would not necessarily have said yes or no to the mine. What would follow from the analysis there were various permitting activities, whether, for example, the Corps of Engineers would be able to issue a wetlands permit.

Mr. HILL. So what you are saying is that the various permits, probably a dozen or more permits, the decision on those permits would have been based upon whether or not the environmental risks could or could not have been mitigated. My question to you, then, is that if in fact this mine poses all the risks that cannot be mitigated that you have identified as the reason for the President taking this action, why in the world should the taxpayers pay anything for this?

Ms. MCGINTY. Well, I wouldn't assume, sir, that actions couldn't be taken somehow to minimize some of those risks. That is the calculation that we all were faced with. The issue was there is a chance that a mine could be sited in this area. There is a chance that it might not. Balancing those risks, we thought that this agreement that both ensured the protection of Yellowstone Park, ensured the protection of the economies around Yellowstone Park that have been built up over the last century and a quarter, and ensured the company's rights, was the best balance of interests that could be achieved.

Mr. HILL. So you—if I might have one last question on this line. So the White House is in possession, then, of documents, material, the environmental impact statement at this stage. I believe maybe other agencies have done assessments of their involvement in this process and evaluation of these hazards. If I might—this is just a yes or no question. Will you make and will you instruct all those agencies to make that information available to this committee, any information that is in the possession of any of the agencies that deals with these environmental evaluations that you examined objectively, so that this committee could also do that objective analysis?

Ms. MCGINTY. Yes, and I would remind you, sir, that the EIS is, and all of these assessments are fully public and have been throughout the process.

Mr. HILL. In any agency, any other agency that has done any internal evaluations of this both—I mean, involving this particular project?

Ms. MCGINTY. Yes, any analysis that was done to comment on the proposal being made——

Mr. HILL. No.

Ms. MCGINTY [continuing] to assess the——

Mr. HILL. I want any subsequent analysis as well. I mean, any analysis of this whole thing that has been done by various government agencies. Is there any reason this committee can't have—be in possession of that?

Ms. MCGINTY. I can't imagine a reason. And in fact, as the Chairman pointed out at the opening, we have already produced, I think, a significant amount of documents from various agencies on this matter.

Mr. HILL. And if there are others that we can identify——

Ms. MCGINTY. We would be happy to work with you on that, certainly.

Mr. HILL. Thank you. Thank you, Madam Chair.

Mrs. CUBIN. Yes, and I would ask also that you would work with the committee staff to identify documents we have and what you don't. So thank you for that.

Mr. Cannon.

Mr. CANNON. Thank you, Madam Chair. If my colleague from Montana would like to continue asking questions, I would be happy to yield my time to him.

Mr. HILL. Thank you. Thank you very much. Going on, Katie, I don't mean to be—I am not picking on you here. I just want to get this thing all fleshed out here.

Ms. MCGINTY. That is fine. That is fine.

Mr. HILL. Because I seriously do want to be part of the solution, but I can tell you that I don't believe that the people of Montana have been considered in this solution at this point. And I am not convinced yet that the people in those communities have. I am not arguing here to try to make this project a reality. I am trying to find a way for the people of Montana to be treated fairly in the process. Now I know that you and I might disagree about whether that has occurred or not, but that is what I am after here. And I am also trying to flesh this out.

In your testimony you list conditions for a fair and equitable deal. Let me read to you what they were. That there be a reliable long-term protection of Yellowstone Park. And I think that is a value that we all share. That Crown Butte receive reasonable value for its investment with Federal assets of sufficient liquidity to meet the company's needs. Reasonable value, I think we may have some disagreement about. That the company should pay for the cleanup of contamination, past contamination. That the company get reposed on the pending litigation and that the plan recognize the uniqueness of Yellowstone and the importance of mining to the economy.

And it is that question that I want to just talk about a little bit in that last point, and that is the uniqueness of Yellowstone and the importance of mining to the economy. It is my understanding that the use of the Land and Conservation Fund does have, at least historically, provisions for the completion of some economic assessment, how is the local economy going to be impacted, that it has of course an evaluation of the environmental risks and that there be a determination of recreational value if that is its historical purpose.

And so do I have your assurances that if in fact—and incidentally, the budgeteers are not quite of the mind set you are that the intention of this money that is being put into the Land and Conservation Fund was for this purpose. But presuming that you intend to use it for that purpose, which you have been clear here, are we going to see the Administration require the completion of those steps before this deal would be consummated?

Ms. MCGINTY. Two things. First of all, the President has the commitment of the Congressional leadership on this matter. Second, absolutely, and the agreement itself is expressly conditioned on the completion of the kind of analyses that you highlight. A full assessment will be done so that pursuant to law we can make the determination that this exchange is in the best interests of the American people.

Mr. HILL. So if Congress made some attachment to this proposition that clarified that, at least in principle the Administration would not have any objection to that?

Ms. MCGINTY. Well, I would be interested to discuss it with you.

Mr. HILL. OK.

Ms. MCGINTY. I would just remind—

Mr. HILL. I am just talking in general terms at this point, obviously. So are you suggesting that there is an agreement with the leadership in the negotiations with the President that is different from the agreement that is represented in the budget agreement that we are about to vote on today? Because the budget agreement is not specific with regard to this. Is there some written agreement between the President and the leaders in Congress with regard to specifically that that \$700 million provision, part of that is to be earmarked for this transaction?

Ms. MCGINTY. In fact, the budget resolutions now passed by the committee, the budget committees in the House and Senate, specifically earmark \$315 million for priority land exchanges. That \$315 million figure is derived from \$65 million for the—in order to protect Yellowstone and the balance, 250 million—

Mr. HILL. Is there some written communication that confirms that between the White House and Congressional leadership?

Ms. MCGINTY. As part of the overall budget agreement, yes.

Mr. HILL. No, I mean independently. The agreement doesn't specify this transaction. You are saying it is your understanding that that is what it means, but there is nothing that is specific to this transaction in the budget resolution.

Ms. MCGINTY. This is part of the agreement that the Congressional leadership reached with the President of the United States.

Mr. HILL. Is that agreement in writing independent of the budget?

Ms. MCGINTY. The budget agreement is indeed in writing, yes, sir.

Mr. HILL. I mean independent of the budget resolution.

Ms. MCGINTY. Whatever documents have been produced, the agreements reached between the President and the Congressional leadership has been part and parcel of all of that effort, yes, sir.

Mr. HILL. As you know, I wrote to the President. I made reference to it, that I believe the environmental impact statement should be completed for the reasons that I have described. You just recently indicated that you would agree that economic assessment and some environmental assessment is required under the Land and Conservation Fund. Will the EIS be completed or not or will some alternative environmental assessment be completed prior to the consummation of this deal if it is consummated?

Ms. MCGINTY. Because there is no proposal, we do not intend, no, sir, to complete the EIS that was pending at the time the agreement was reached in August 1996. Now, there is an EIS underway that analyzes the impacts of the withdrawal of some lands in this area that Mr. Elers referred to from mining activity. That is underway, but the EIS relevant to the former proposal to site a mine is not underway pursuant to our agreement with the company. And we do not have the intention to bring that back up.

Mr. HILL. OK.

Ms. MCGINTY. Thank you.

Mr. HILL. Thank you very much. As you know, Margaret Reeb was not included as a party to the agreement, and she is actually the owner substantially of this property and of the mineral deposit, is that correct? I am a little concerned that in the conversation that has occurred here there has been some suggestion that this project was allowed to go forward because of Crown Butte's ability to patent mining claims under the 1872 Mining Act. It is true that Margaret Reeb's claims are patented claims, but these are claims that were made substantially in the past that she has acquired over some several years. I think decades, is that correct?

So it is not really the application of the 1872 Mining Law that is dealing with those mineral deposits, is that correct?

Ms. MCGINTY. The original claims derived from the 1872 mining law—

Mr. HILL. Right. I mean, there are property all over the West that people own homes on and everything that are old patented mining claims.

Ms. MCGINTY. Sure. Many, many people have secured interests pursuant to the 1872 Mining Law.

Mr. HILL. Right, but this isn't something that is current. This isn't a current—this is not an effort to in the current state to try to add some patented mining claims. In fact, what we are looking—

Ms. MCGINTY. Oh, no, there are no new proposals. No.

Mr. HILL. I just wanted to clarify that just, you know, for the record.

Can you give us some suggestion of the timing of the announcement of this?

I am sorry, Madam Chairman. I will—

Mrs. CUBIN. We will do a second round, Rick.

I asked the question earlier and I think you answered it, but I didn't get the answer well enough to write it down here. Do you plan in the future, Katie, to buy out those oil and gas rights that are adjacent to the Everglades? Is that part of the priority list with the extra \$385 million?

Ms. MCGINTY. We have no proposal currently in mind to that end, no.

Mrs. CUBIN. And what about the oil and gas, what about the interest in the Escalante Grand Staircase? Is that to be—I am just trying to get an idea of what—\$385 million is a whole bunch of money and I am just trying to get an idea of what sort of things that extra money is for besides the Headwaters and the Crown Butte.

Ms. MCGINTY. Yes. We have specifically in mind only the Yellowstone agreement and the Headwaters agreement. The balance of the \$385 million would be subject to discussions between the various committees and the agencies to identify priorities that would be of mutual agreement.

Mrs. CUBIN. But as of this time there has been no discussion at all about what that money will be spent for?

Mrs. MCGINTY. No, ma'am.

Mrs. CUBIN. Well, then I have to congratulate you on the job you did all the more, because you beat the guys, I will tell you. Let us go to—it is true. I am impressed.

Let us go back to the World Heritage Committee of the United Nations that came into Yellowstone Park, if you can answer this question. Do you know if a cooperating agency has ever before hosted an international committee to come here and make judgment about a site outside the normal process like they did this time? Has that ever happened before?

Ms. MCGINTY. It may. I am not personally aware of an instance.

Mrs. CUBIN. Did anyone in the Administration believe that the U.N. committee and their decision was of—I mean, I don't know exactly how to say this. I guess the point I am going to make is for 6 years professionals from agencies from the two prime agencies that were doing the study, cooperating agencies, for 6 years a decision was not able to be made as to whether or not the development of the mine would jeopardize Yellowstone. And, you know, I think we are all singing out of the same book on saving Yellowstone, but then in 3 days the U.N. committee came in and determined that it was going to be a threat. Now did anybody in the Administration really think that signified anything more than political maneuvering? I mean, how much substance, how much weight did that carry?

Ms. MCGINTY. I have to say, Chairman, I can't speak to it in detail because I actually was unaware of it and didn't learn about it until after the committee had come and gone and issued its recommendation.

Mrs. CUBIN. Mike, do you know any—what is your feeling on that? Do you think that that is a real substantive decision made after 3 days when, as I said, for 6 years professionals couldn't decide and thousands and hundreds of thousands of dollars had been spent? Was that a political thing or was there any substance to it, do you think?

Mr. CLARK. Well, the committee made a decision based not simply on the threat of the mine but its perception that there were many activities occurring around the edge of the park that would affect the long-term viability of the park. And that included not just mining but private land development, logging, issues like that that could affect the habitat. The commission is empowered to carry out a treaty—

Mrs. CUBIN. Right.

Mr. CLARK [continuing] which is largely symbolic. Other sites include the pyramids of Egypt and the Galapagos Islands, the Eiffel Tower. It is largely a symbolic situation, I think, but it does direct attention. It has the power to say to the public there is something wrong here or there is something that needs to be considered carefully.

Mrs. CUBIN. So, but, in my opinion, it is just sort of grand-standing. The timing and everything was—this is why I feel that Crown Butte, you know, maybe wasn't treated quite fairly, because of this kind of grand-standing and any amount of money and any amount of resources that the government might have, since we paid for those people to come here, I think, was being used against Crown Butte. And I don't exactly think that is fair. While, you know, I don't necessarily disagree with the agreement that was made, I wouldn't like those things to continue on. We have to open up clear open and honest channels for communication and I don't think that this demonstrated that very well.

Mr. Hill.

Mr. HILL. Thank you, Madam Chair. Mike, your interest in this and your concern with regard to this proposition, obviously there is the threat to the value of the park, but also contamination at the site and existing contamination of water, surface water and groundwater, and also potential risks to the Clark Fork from the mine waste site. Is that a fair characterization of—

Mr. CLARK. Those are certainly some of our concerns, sir.

Mr. HILL. And would you identify this site as a site involving some serious environmental problems, existing problems?

Mr. CLARK. The historic mining pollution which exists there is significant for the area around the mine and has been for many years.

Mr. HILL. And part of the reason that you were part of this transaction and your insistence was that part of Crown Butte's responsibility here would be to clean up that site.

Mr. CLARK. That is correct, sir.

Mr. HILL. Mr. Elers, as you went through the process of trying to obtain—complete the EIS for the purpose of moving toward permitting, were there suggestions made to you that this could be listed as a Super Fund site or that EPA could be brought in to magnify your liabilities as some sort of a leverage to try to bring you to the table?

Mr. ELERS. Congressman, I am not sure if that occurred during the permitting process or if it were brought up during the early stages of trying to hammer out an agreement as ultimately occurred, but certainly there was a fear that Super Fund designation could be applied to the site with or without our mine ever being developed.

Mr. HILL. And, I mean, I get a sense sort of by hook or by crook they were going to stop this mine. And eventually that—you became—you realized that, that that is what brought you to the table.

Mr. ELMERS. Well, I don't think it would be argued by anyone that the Administration was very concerned about there being a mine developed and they were open and clear in their discussing with us their opposition to it.

Mr. HILL. And if this was listed as a Super Fund site, the liabilities could have been immense, is that correct?

Mr. ELMERS. Super Funds are not minor affairs, that is correct, sir.

Mr. HILL. Katie, I would ask you, do you know of a single instance where the Land and Water Conservation Fund has been used for the purchase of a toxic waste site?

Ms. MCGINTY. Well, sir, this site will not be a toxic waste site.

Mr. HILL. No, I am asking you the question. Do you know of an instance where the Land and Water Conservation Fund was used for the purpose of purchasing a toxic waste site?

Ms. MCGINTY. I am not an expert on the usages.

Mr. HILL. You are not aware—

Ms. MCGINTY. I am not personally—

Mr. HILL. The answer is that you are not aware of any?

Ms. MCGINTY [continuing] aware, not off the top of my head, no.

Mr. HILL. I guess, you know, maybe there is something unique about government. In business you use money to buy assets, not liabilities. And one of the concerns that I have, and I have expressed it repeatedly here, is the Federal Government buying a liability, not an asset. I mean if in fact this site and the development of this site poses all the risks and hazard that you have described, then it seems to me that the taxpayers should have no liability whatsoever.

Katie, I—

Ms. MCGINTY. Well, sir, most of those—excuse me. Most of those risks and hazards were potential and would have been eventuated if the mine were sited.

Mr. HILL. But some of them would have been managed, as Mr. Clark pointed out.

Ms. MCGINTY. Sure.

Mr. HILL. The development of the site was also going to manage some of those risks. IN fact, one of the reasons that the provisions of the agreement are the way they are is because mining wasn't going to take place and so some alternative method of mitigating the current existing hazards had to be dealt with. But, Katie—

Ms. MCGINTY. That is why—

Mr. HILL [continuing] let me ask you a question then. There is an article—I guess this is in Time magazine May 12, dealing with Margaret Reeb, who is the owner of the property. And incidentally, she is not a party to this agreement, is she? Was Margaret Reeb a party to the agreement between the President, Greater Yellowstone Coalition and Crown Butte?

Ms. MCGINTY. No, she is not a party to the agreement.

Mr. HILL. But she does own—substantially, she owns the mineral interest here, is that correct?

Ms. MCGINTY. I believe she has both land and mineral interests in the area, yes.

Mr. HILL. And she has expressed, I know, to me and to my staff, concern and opposition to this agreement going forward. Have you ever had any conversations with her?

Ms. MCGINTY. I have not spoken with her personally, no, sir.

Mr. HILL. Mike, have you ever had a conversation with her?

Mr. CLARK. I have tried to, sir. Two days after the announcement, she approached two of my staff in the parking lot in Livingston and asked why we had not talked to her prior to the announcement. I called her up the next day and asked for a luncheon and she agreed to that. On the day of the luncheon she called and left word that on advice of her attorneys she could not talk to me because she was carrying on confidential negotiations with Crown Butte.

Mr. HILL. You have never suggested to her that she should get on board?

Mr. CLARK. She has thus far been unwilling to meet with me, sir.

Mr. HILL. But, I mean, you have never communicated to her that kind of an expression that states basically you should get on board?

Mr. CLARK. I have tried to meet with her, but she has on advice of her attorneys been unwilling to do so.

Mr. HILL. OK, Katie, I would just ask—there is a quote in here. I will first ask if it is accurate. It says that Katie McGinty, the Chairman—Mrs. Reeb is saying that she doesn't want to be part of this agreement and she is concerned about it. In fact, she says she went into shock when she read about it. But let me quote from this. It says it may be that all she will end up with title to her property and no opportunity to mine. Katie McGinty, the Chairwoman of the White House Council on Environmental Quality says ominously there are other ways for us to arrange this agreement. What did you mean by there are other ways? Are you suggesting that you will just leave her out of the transaction, that she will be left without any value left in her asset?

Ms. MCGINTY. Not at all. And in fact, this agreement is expressly conditioned at our insistence as well as the insistence of the parties to the agreement that Ms. Reeb's interest will be respected. It is expressly a part of this agreement. And the agreement is conditioned on that principle.

Mr. HILL. I would like to ask some more questions later about that, if I could, Madam Chairman.

Mrs. CUBIN. I just have one last question for Mr. Clark. Our Subcommittee oversees most of the actions of the USGS, as you know. And one of their strong suits now, we are told, are the scientists that they have and their ability to predict acid mine drainage potential and to suggest remediation strategies. I wonder why doesn't the GYC trust the USGS to make judgment about the reclamation potential for Henderson Mountain in the context of permitting the New World Mine?

Mr. CLARK. Well, we would welcome any agency that has the capacity to take a look at that situation. And we were glad to see USGS and other scientists looking at that situation. In addition, we hired our own consultants to look at it to give us an independent analysis of what might occur there. And when we looked at the

mine, we looked at all those factors. We looked at all the information we could obtain, but we also used our own consultants. And incidentally, we looked at reclamation activities there in terms of the actual cost and the methods of doing it. Our estimates by our consultants were very much similar to that of the company's as we entered into the final round of negotiations. So we were in agreement with the company on how the cleanup could occur and roughly how much it would cost.

Mrs. CUBIN. The reason I asked the question is because GYC didn't like the results of the USGS study on the thermal—the geothermal features of, you know, pumping the water out of there. And so I just wondered if you were just going to choose in the future to not regard USGS's opinions and their science opinions and just get your own or whatever.

Mr. CLARK. Well, in regard to the geothermal situation, which is a proposal by a landowner to drill a deep well and use the hot water near Mammoth, there were a number of conflicting opinions about that. We used a number of senior scientists who had spent their whole careers looking at the geothermal fields around Mammoth, and their conclusion was that there was some risk if that well was developed commercially it might well affect the Mammoth Hot Springs area. I think in all these situations there is a range of opinion amongst the scientists, and we just believe that you should always take the most conservative perspective and minimize the risk to the park.

Mrs. CUBIN. So you are not saying if you give us the answer we want, then that is the one we will take and if you don't give us the answer we want, we won't take it, we will keep looking until we find someone that will give us what we want? That is what that sounds like to me.

We do have a vote. Rick, if you have just a question or more, I would like to adjourn the meeting before we go to vote, and then we will submit any questions in writing that we weren't able to ask today if that is OK.

Mr. HILL. If I might, Madam Chairman, three short questions. Mike, I would just ask you is your organization opposed to mining on public land?

Mr. CLARK. Mining on?

Mr. HILL. Public lands.

Mr. CLARK. No, sir, we are not.

Mr. HILL. So it is not the goal of your organization to prevent mining in Montana?

Mr. CLARK. This is the only mine that we have ever opposed.

Mr. HILL. What is the appropriate buffer for non-mining activities surrounding Yellowstone Park?

Mr. CLARK. I am sorry, sir, what?

Mr. HILL. What is the appropriate buffer for non-mining activities surrounding Yellowstone Park.

Mr. CLARK. We have never said there should be a buffer around the park. We have said that we should look at each proposal that potentially could have an impact on our region and assess that proposal itself.

Mr. HILL. OK, so you don't have any specific, I mean, two miles, three miles, five miles, ten miles? You just—you look at it site by site?

Mr. CLARK. The only buffer that I am aware of that we have ever supported is a band of land around the geothermal fields.

Mr. HILL. OK.

Mr. CLARK. But that is dealing with a specific piece of legislation.

Mr. HILL. I would ask you, Katie, Mrs. Reeb seems pretty insistent that she is not going to be party to this deal. What happens if she doesn't come to terms with the agreement? Does that vacate the whole agreement, in your view?

Ms. MCGINTY. Well, sir, as part of the agreement the Crown Butte Company is in regular contact with her. I know—

Mr. HILL. But if they can't deliver on that provision of the agreement, you said it is a requirement of the agreement, does that vacate the whole deal?

Ms. MCGINTY. Well, I wouldn't want to speculate on it. I have full confidence that the company will fulfill its obligations under the agreement. The company has worked in good faith and I have confidence that they will produce this part of their obligation as well.

Mr. HILL. So can I be assured at this point there are no discussions going on in any capacity that indicate that there might—in the event that she doesn't reach agreement, that there will be some alternative? Those discussions are not going on right now?

Ms. MCGINTY. Well, we will continue to have as a top priority the protection of Yellowstone. Right now we are—

Mr. HILL. No, but I am just asking about the contingency in the event that she doesn't agree. Is there discussions going on right now with regard to a contingency if that would occur?

Ms. MCGINTY. There are not.

Mr. HILL. OK, thank you very much, Madam Chairman.

Mrs. CUBIN. I thank the witnesses for their valuable testimony. I thank you for coming up here today. As I said earlier, the members of the Subcommittee will present additional questions in writing and the hearing record will be kept open for that purpose.

If there is no further business, then this meeting is adjourned.

Ms. MCGINTY. Thank you, Madam Chair, Mr. Hill.

Mr. ELMERS. Thank you.

Mrs. CUBIN. Thank you.

[Whereupon, at 3:05 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF KATHLEEN A. MCGINTY, CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY, EXECUTIVE OFFICE OF THE PRESIDENT

Madame Chair, members of the Subcommittee, thank you for the opportunity to testify before you regarding the role of the Council on Environmental Quality (CEQ) in the Administration's proposal for the protection of Yellowstone National Park. The Yellowstone agreement was borne of and reflects this Administration's commitment to preserve and protect for future generations of Americans the world's first national park and the crown jewel of our national park system. And, the agreement is reflective of our commitment, wherever possible, to work with industry and other interest groups in partnership to that end.

As mandated by the National Environmental Policy Act (NEPA), my role is to advise the President on environmental policy matters and coordinate activities of the Federal agencies and departments with regard to environmental matters that cross agency jurisdictional lines. Accordingly, I chair the Executive Committee and oversee the interagency team assembled to ensure implementation of the Yellowstone National Park agreement.

YELLOWSTONE NATIONAL PARK

In 1989 Crown Butte Mines, Inc., a subsidiary of a Canadian mining company, proposed a gold, copper and silver mining complex located partially on private property and partially on public lands managed by the Forest Service, less than three miles from the northeast border of Yellowstone National Park. The Forest Service and the State of Montana started preparing an environmental impact statement on the proposal to assess the environmental effects of Crown Butte's proposed plan of operations for the mine or another mine alternative. Crown Butte submitted a plan that called for 15 years of operation, with six major facilities, plus a 70-100 acre tailings impoundment behind a 90 foot tall dam. The tailings impoundment would have been expected to contain the highly acidic waste rock and metals in perpetuity. The Forest Service also faced a decision regarding whether to issue Pacific Power Company a Special Use permit to construct and operate a 69 KV power line on National Forest land.

The rights to the minerals at New World Mine had been obtained under the 1872 Mining Act. Under Federal law, the U.S. Government was therefore obligated to process the company's proposal to mine these minerals using Federal lands for a large tailings impoundment and other ancillary facilities. As a necessary prerequisite to this decision process, the company was required to fund data gathering and analysis for the Environmental Impact Statement (EIS) under the provisions of NEPA.

The EIS process began in April 1993. The EIS was originally expected to be issued as a draft in April 1994. However, because the preliminary findings showed that there could be major adverse impacts on the Clark's Fork of the Yellowstone River, a federally designated Wild and Scenic River, on grizzly bear habitat, and on Yellowstone National Park itself, work on the draft was extended. Interagency review of preliminary drafts of the EIS also showed a need for critical additional studies, including groundwater studies better to characterize the conditions at the proposed New World Mine site. These studies were needed to inform the Federal and state permitting agencies' analysis of the potential impacts of permitting the mine, and, if a mine were permitted, whether specific additional operating conditions were warranted. In addition, certain Federal agencies determined that additional information was needed for a risk assessment relating to the proposed tailings impoundment.

The preliminary draft EIS was made widely available and reviewed, not only in Montana, but throughout the U.S. Many analysts, including mining engineers, were critical of the submerged tailings system (see the *Engineering News-Record* editorial of March 14, 1994). Comments were raised concerning, among other things, seismological risks in an area that had experienced more than 4000 earthquakes within a 180 mile radius; the need for more analysis concerning containment of the 5.5 million tons of highly acidic waste rock that would be generated by the mine; the risks associated with the tailings impoundment; and importantly, the lack of information necessary to assess the potential impact of the proposed mine on groundwater. In fact, in March 1995, Wyoming Governor Geringer wrote Montana Governor Racicot to say that the alternative preferred by the company could have Wyoming water resources and suggested that the tailings impoundment should be the subject of a separate review. By late 1995, it was clear to everyone that there were significant issues involved with the development of the proposed New World Mine.

Because of the highly acidic nature of the ore body at the New World mine, for example, the Governor of Wyoming suggested that \$75-\$100 million was the appro-

ropriate bonding level. In addition, since the plan of operation called for "dewatering" a portion of Henderson Mountain, the Yellowstone Water Compact, a negotiated agreement between the State of Montana and the Department of the Interior regarding rights to water flowing into and out of Yellowstone National Park may have required Crown Butte to replace the diverted water. Moreover, Crown Butte was embroiled in a citizen's suit brought under the Clean Water Act by a coalition of 14 environmental groups in a Federal District Court in Montana. In October 1995, the company was found liable by the Federal District Court, and it was therefore abundantly clear that there would be years of contentious litigation over the mine, regardless of whether the Federal Government approved or denied the company's application.

Faced with this potential for costly and resource intensive litigation, the environmental groups and the company entered into confidential discussions in an effort to identify creative options to address their differences. In February 1996, Crown Butte, Hemlo Gold, and the Greater Yellowstone Coalition approached CEQ together to explore whether the Administration would be willing to consider a novel approach to the problem: exchanging Federal assets to Crown Butte in exchange for the company's agreement to cease and desist further pursuit of the mine. My staff formed a small interagency working group to discuss the implications and possible elements of such an approach. They concluded that the proposal could provide a solution to the New World Mine problem that was fair and equitable for all concerned if the following conditions were met: (1) there be reliable, long-term protection for Yellowstone Park; (2) Crown Butte receive reasonable value for its investment with Federal assets with sufficient liquidity to meet the company's needs; (3) the company should pay for the cleanup of contamination at the site, with appropriate oversight and participation by Federal and State agencies and public interest groups; (4) the company get repose on the pending litigation and potential Federal environmental claims; and (5) the plan recognize the uniqueness of Yellowstone and the importance of mining to the economy. Based on the work group's analysis and their discussions with the company throughout February 1996, we concluded there were enough common interests and that we should pursue more detailed discussions. Before entering into any detailed discussions, however, Crown Butte insisted, and the parties agreed, that the talks be strictly confidential. Confidentiality was necessary and appropriate because the discussion would involve issues regarding ongoing and potential future litigation and because premature release of information could adversely affect the value of the company's stock.

New World Mine is located in an area approximately 19,000 acres in size. Much of the area involves intermixed parcels of public and private lands patented under the 1872 Mining Law, and Federal lands subject to unpatented mining claims under that law. Most of the private lands at issue here are held by Crown Butte or Ms. Margaret Reeb, a Montana resident, who leased her lands to Crown Butte. Although there are other patented and unpatented claims in this general area that are owned by others, these claims are not critical to the development of the New World Mine or relevant to the goals of the Agreement.

To followup on the overture of the company and the conservation organizations, in April 1996, we appointed Mr. John Schmidt, the Associate Attorney General, and Mr. Jim Pipkin, Counselor to the Secretary of the Interior, to open discussions with the President of Crown Butte and the Chairman of Hemlo Gold, the Crown Butte parent company. Over the next several months, they held regular discussions with Mr. Ian Bayer, Chairman of Hemlo Gold and Mr. Joe Baylis, President of Crown Butte. These discussions focused primarily on (1) the value of the mine; (2) the cleanup and restoration of the environmental impacts associated with many years of mining; (3) resolving the protracted lawsuit, referenced above, brought against the company by certain environmental organizations; and (4) resolving potential Federal enforcement actions.

On August 12, 1996, President Clinton, Crown Butte Mines and a coalition of environmental groups announced that the parties had reached an agreement to protect Yellowstone and the surrounding area, to address the environmental impacts of historic mining in the New World Mine District, and to resolve pending or potential litigation and enforcement. The essential details of the Agreement are as follows: Crown Butte will forgo development of the New World Mine, the United States will transfer to Crown Butte \$65 million in Federal assets in exchange for title to all of the lands essential to development of the mine, specifically including patented and unpatented mining claims held by Crown Butte and fee title to lands leased by Crown Butte from Margaret Reeb; the company will place \$22.5 million in a trust fund to remediate historic environmental contamination in the New World Mine District; and the parties will enter into a consent decree implementing the cleanup and restoration actions, and settling the existing litigation by the environmental

groups and potential environmental claims by the Federal government. Although there are a number of conditions contained in the Agreement, the two major contingencies are (1) identification by the United States of \$65 million of Federal assets that can be exchanged to Crown Butte, and (2) Crown Butte's acquisition of the property it leases from Margaret Reeb. The agreement also stipulates that the United States will also work with the State of Montana, the environmental groups and the public appropriately to address contamination in the New World Mine District; and will perform a title search. In addition, the United States will subject this exchange to a valuation to verify the value of the property offered by Crown Butte. The agreement expressly stipulates that "consummation of the transfer of property is subject to confirmation by a valuation that the District property has a fair market value of at least \$65 million."

As you know, the Administration proposed a diversion of Federal royalties from currently producing coal, oil and gas operations in Montana to fulfill the terms of the agreement. When we made this proposal to Crown Butte on March 11, 1997, we underscored that this type of asset required Congressional approval. We proposed this approach after a rigorous analysis of the alternatives. In the course of this effort we reviewed surplus military installations, General Services Administration surplus property, National Forest timber lands, leased and unleased coal lands, and other Federal lands. We also actively participated in and supported Governor Racicot's "Montana Initiative" (discussed further below) to explore a mix of timber and coal lands entirely in Montana. For various reasons, each of these properties ultimately proved unsuitable for the exchange. Some properties were contaminated, for example. Others had previously been committed to other uses, while still others were strenuously opposed by various interest groups. After an exhaustive search and rigorous effort, we proposed to divert mineral royalties from existing mines in Montana. While diversion of royalties generally was favorably received, the required budget offset we chose, the Conservation Reserve Program, proved to be controversial. After consultation with many Members of Congress, we reexamined the possibility of using the Land and Water Conservation Fund and have concluded this is an appropriate method.

Current Status

Complete details of the agreement to protect Yellowstone were made fully and publicly available on August 12, 1996. In September 1996, Mr. Schmidt and Mr. Pipkin briefed Congressional staff on the terms of the agreement. In October 1996, I traveled to Montana with Mr. Schmidt and other Administration officials personally to brief the Governors of Montana and Wyoming, as well as Senator Conrad Burns. Since that time we have apprised the Governors, Members of Congress and congressional staff, of all relevant developments. On March 13, we provided the Interior Subcommittee of the House Appropriations Committee answers to questions they posed regarding the agreement.

Immediately after the August 12, 1996 agreement was reached, a Federal inter-agency group worked to identify Federal assets to use in an exchange with Crown Butte. In late November, Governor Racicot asked the Federal Government to consider a "Montana Initiative" (noted above) to satisfy the terms of the agreement. Administration officials met with the Governor and encouraged the development of such an initiative. Moreover, noting the timeframes outlined in the Agreement, the Administration dedicated considerable resources to assist the Governor in the development of the initiative. Specifically, the Administration offered technical help through the Bureau of Land Management and the Forest Service to support the initiative. When it was clear that the Montana Initiative would not reach fruition in the necessary timeframe, the Administration agreed with Crown Butte's proposal that the United States extend the relevant deadline for 30 days.

Despite these efforts, however, as details of the "Montana initiative" became public, every potential property discussed proved to be highly controversial with various Montana constituencies, including ranchers, Indian Tribes, small mill owners, conservationists, and some local governments. Because of the deadlines under the Agreement, it became apparent to Crown Butte and to the government that properties identified through the Montana Initiative could not properly be evaluated and delivered to Crown Butte within the time frames called for in the Agreement. Therefore, in order to meet our March 12 obligation to identify exchange property to Crown Butte, the Administration determined the most appropriate asset to be the Federal share of royalties from federally owned mineral estates—coal, oil and gas—that are currently under lease and production in Montana. In proposing this asset to Crown Butte, the United States underscored that Congressional approval would be necessary if the agreement were to be concluded on these terms.

As you know, Madame Chair, the Administration and congressional leaders have reached an agreement on a detailed budget agreement that establishes basic parameters for revenues, savings, and spending levels (both mandatory and discretionary) and will obviate our proposal to divert coal, oil and gas royalties. When the details of the agreement are final, there should be sufficient funds to acquire these high priority national resources without having to divert Federal coal, oil, and gas royalties or requiring any other offset. Within the discretionary levels, the agreement reserves \$700 million in fiscal year 1998 budget authority for priority Federal land acquisitions and exchanges. The Administration's top priorities are New World mine and Headwaters Forest proposals. Together with the Congressional leadership, we plan to work with the Budget and Appropriations Committees to achieve these goals.

Several more steps need to be completed before this agreement can be implemented. First, Crown Butte must demonstrate that it can fulfill its obligation to acquire the property it leases from Ms. Reeb. Second, a valuation of the property must be completed. And, finally, the budget resolution must be passed and then acted upon by the Appropriations Committee. I am confident this is a fair way to resolve a potential long, bitter and expensive battle to save Yellowstone, and we in the Administration are very appreciative of the support of the Congressional leadership to see this effort through.

Madame Chair, saving Yellowstone requires that many people come together to find common ground on behalf of this truly national treasure. You have spoken eloquently about Yellowstone and indeed, the need to find bipartisan solutions. I hope we can work closely with you and other Members of Congress in protecting Yellowstone, and address the many critical issues related to this challenge. Thank you for the opportunity to speak to this important initiative. I would be pleased to answer any questions you may have.

STATEMENT OF KARL E. ELMERS, CHAIRMAN OF THE BOARD, CROWN BUTTE MINES, INC.

Madam Chairwoman and the Members of the Subcommittee, my name is Karl Elmers and I am Chairman of the Board of Directors of Crown Butte Mines, Inc., a Montana corporation. I assumed that position in March of this year. This is my first appearance before a congressional committee and I appreciate the invitation to be here.

The letter of invitation to testify indicated the committees' interest in the agreement reached between Crown Butte, the Administration and certain special interest groups in August 1996. Crown Butte found the decision to enter into the August 12, 1996 Exchange Agreement a difficult one. By mid-year 1996, Crown Butte had already been in the permitting process for almost 6 years, promised dates for the release of the Draft Environmental Impact Statement had consistently not been met and the whole process had become fraught with delays and uncertainty. The Exchange Agreement provided a practical resolution to a unique set of circumstances and Crown Butte's management decided that the Agreement was in the best interest of the shareholders of the Company.

A brief chronology of the events leading up to our decision to execute the agreement will shed some light on why Crown Butte decided on this course of action. I hope it will assist the Committee in a better understanding of the current regulatory processes and the challenges they pose for those of us trying to operate in a responsible manner.

The area in dispute, known as the New World District, is a historic mining district dating back to 1869. A number of small mines and a copper smelter operated in this area intermittently until 1951. Sporadic exploration and development continued from 1955 until 1987 when the property was acquired and the issues now under review began.

I think it is also worth noting at this point, that in 1978 the Congress specifically considered and excluded the New World District from the Absaroka-Beartooth Wilderness due to past mining activity and mineral potential. Proposing a state-of-the-art, underground gold mine with a strong reclamation plan to remediate historic mining disturbances made sense. Yet, Crown Butte became the focus of a national and international debate.

To fully appreciate what has transpired during the process I would like to divide my remarks into two areas. First, the **Permit & EIS Process** which will highlight the events directly related to the permitting process, and second, **Additional Concerns** which will briefly describe a variety of other activities specifically designed

to thwart the project. From this discussion, I hope you will be able to understand the circumstances that lead to Crown Butte's willingness to execute a settlement agreement in August 1996.

Permit & EIS Process

The permitting process for the New World Property began formally over 6 years ago in November 1990 when Crown Butte submitted an eleven volume document as its Operating Permit Application. This permitting process and related environmental studies continued to be Crown Butte's main project activities up to August 1996. The permitting process for the New World Property proved to be complex and time consuming and it was met with unusually high opposition.

Mining activities on Federal lands within the state of Montana fall under the jurisdiction of both Federal and state agencies. The Gallatin and Shoshone National Forests were designated as the lead for the Federal agencies and the Montana Department of Environmental Quality was designated as the lead state agency for review of the application and development of an EIS for the project.

A number of other state and Federal agencies were designated as cooperating agencies. These include the U.S. Environmental Protection Agency ("EPA"), the U.S. Army Corps of Engineers ("the Corps"), the National Park Service, the U.S. Bureau of Land Management (BLM), the U.S. Bureau of Reclamation, the Montana Department of Health and Environmental Sciences and the Wyoming Department of Environmental Quality. In all, more than 25 separate Federal, state and county permits would be required prior to approval of the project. The major permits cover site construction, power line construction, mine operation, reclamation, modification of wetlands, water discharge, stormwater run-off and erosion control, air quality, and occupational health and mine safety.

As part of the Operating Permit Application, baseline studies was completed on a number of resource areas including aquatics, hydrology, wetlands, old growth, and wildlife. Geotechnical drilling and analyses were completed on both the proposed and alternative tailings disposal areas. Initial base-line and geotechnical work was completed for each alternative to address both regulatory and public concerns regarding the location of the tailings impoundment. Proposed plant and road locations were similarly evaluated.

During the very early stages of the permitting process opposition arose over the potential use of cyanide in Crown Butte's processing at the site. In 1992, Crown Butte's metallurgical testwork demonstrated that gold, copper and silver could be recovered without the use of cyanide. The revised process would use only gravity separation and froth flotation with gold recoveries indicated to be approximately 88 percent to 92 percent. As a result, Crown Butte withdrew two low grade surface mineable deposits (Como and McLaren) and the Fisher Mountain deposit from the permit area.

The Operating Permit Application was resubmitted to the Lead Agencies in November 1992 following extensive changes resulting from the decision to not use cyanide and to amend the Application to exclude the three deposits and to be responsive to agency review and comments upon the initial Application. The Lead Agencies completed, and Crown Butte responded to, a total of six reviews of the Operating Permit Application before the revised Operating Permit Application was declared complete on April 2, 1993.

A determination of completeness of the Operating Permit Application allowed the EIS process to begin. The EIS is required by state and Federal law and involves an assessment of the project's proposed operating plan, a review of alternatives to this plan, potential impacts of the plan, and methods to mitigate significant impacts. Responsibility for conducting public scoping meetings, writing the EIS document and issuing a decision rested with the Lead Agencies. They retained an independent third party consultant, paid for by Crown Butte, to assist in the process.

During 1993, a scoping document which determined what was going to be evaluated in the EIS process was prepared, and public comment was solicited. A number of potential environmental issues were identified for further study. The Lead Agencies then initiated the process of determining the impact of Crown Butte's proposed plan, identifying possible alternatives and comparing these alternatives. During the process, the Lead Agencies would select a preferred alternative and produce a draft of the EIS. The Draft EIS would include a biological assessment which evaluates potential impacts to threatened or endangered species.

Crown Butte was initially informed that the Draft EIS would be available in late 1994. This date was not met. In 1994 Crown Butte was advised by the Lead Agencies that a draft of the EIS would be issued for public comment by the end of the second quarter of 1995. This date was not met and Crown Butte was subsequently

advised by the State of Montana that the Draft EIS would be released in the Fall of 1995. This date was also not met.

During the period from January to August 1996, Crown Butte continued its efforts in the permitting process. A study on endangered species was completed and additional studies of wetlands and water quality issues were conducted. All requested data was provided to the Lead Agencies and internal drafts of sections of the Draft EIS were circulated by the Lead Agencies to the cooperating agencies, Crown Butte and the public for review and comment. None of the drafts made available to Crown Butte or the public identified the Lead Agencies' preferred alternative. In March 1996, Crown Butte was advised by the Lead Agencies that the Draft EIS would be released for public comment by late spring or early summer of 1996. The Draft EIS had not been released by August 12, 1996 when Crown Butte executed the Exchange Agreement. The EIS process has been suspended pursuant to the terms of the Exchange Agreement.

Additional Concerns

As I mentioned earlier, the New World District is a historic area. Crown Butte's activities at the site have included reclamation of historic mining activities and the Company's recent exploration activities. *In December 1992* Crown Butte received an Excellence Award for Outstanding Commitment to Environmental Protection from the United States Forest Service. This award recognized the Company's innovative and successful efforts to mitigate adverse environmental impacts. In 1994, following a complaint by special interest groups, the Corps alleged that some of the Company's reclamation activities, conducted over the preceding 3 years, had been in violation of Section 404 of the U.S. Clean Water Act. Crown Butte responded that it did not believe these allegations were accurate. In September 1995, the Corps issued Crown Butte a Section 404 permit authorizing future reclamation activities.

Under the Comprehensive Environmental Response and Liability Act ("CERCLA"), the EPA initiated an investigation of continuing environmental impacts from previous activities in the Henderson Mountain vicinity. The investigation covers 6,720 acres of land, of which the New World Property is a part. Under CERCLA, certain sites are "listed" on the National Priorities List for cleanup under Superfund legislation. To determine whether a particular site is listed, EPA conducts a series of investigations and then using the results ranks the potential hazard of the property. The ranking determines the need for future action. A Preliminary Assessment was submitted to the EPA in August, 1994, a Field Sampling Plan for an Expanded Site Inspection was completed in July, 1995, and an Analytical Report was presented to the EPA in April, 1996. While the Henderson Mountain vicinity has been through preliminary investigations, it has not been completely evaluated or ranked based on potential hazard and is not currently listed on the National Priorities List for Superfund cleanup.

On January 13, 1995, two special interest groups and an individual filed a complaint against the Company with the U.S. Department of the Interior in connection with Crown Butte's Mineral Patent Application. The complaint requests that the Secretary of the Interior take immediate jurisdiction over the Patent Application, that the Secretary take any other action necessary, including intervention in the proceeding, to protect the public interest by preventing the issuance of the patent, that the Secretary deny the Patent Application, or in the alternative, that the Secretary stay any action on the Patent Application until completion of the EIS then being prepared by the Lead Agencies. This complaint effectively asks that patents not be issued. Crown Butte has moved to have the complaint dismissed for numerous reasons. The complainants have claimed that the "comparative value test" should be applied in determining whether Crown Butte's claims are supported by a discovery, although imposition of the so-called "comparative value test" would be contrary to the long-standing practice of the Department of the Interior. There have been no actions or developments related to this matter since 1995 and the Company can not at this time predict the ultimate resolution of this matter.

In February 1995, a number of special interest groups requested that the World Heritage Committee (the "Committee"), formed pursuant to the United Nations 1972 Convention Concerning the Protection of World Cultural and Natural Heritage, investigate whether Yellowstone National Park qualified for inclusion on the "List of World Heritage in Danger." Such a determination would require the U.S. Government, a signatory to the convention, to take unspecified steps to protect Yellowstone National Park. This request was followed in June 1995 by a letter from a senior official in the office of the United States Department of the Interior stating that Yellowstone National Park was in danger. The Committee visited Yellowstone National Park in September 1995. The National Park Service, a co-operating agency in the New World EIS, hosted the event. The Committee enumerated both

“ascertained threats” and “potential threats” to the Park. The ascertained threats included endemic Yellowstone cut-throat trout, sewage leakage and waste contamination, road construction and visitor pressures year-round. The potential threats included impacts on quantity and quality of surface and ground water and other past and proposed mine-related activities, and proposed control measures to eradicate brucellosis in the bison herds. In December 1995, the Committee decided that Yellowstone National Park should be placed on the List of World Heritage in Danger and asked for continuing reports on the progress of the New World EIS and mitigating actions being taken to ensure in due course the removal of the site from this list.

By June 1995, Crown Butte had exhausted its cash resources and has been forced to rely on loans totaling approximately five million dollars to date to sustain day to day operations. Crown Butte intended to go to the equity markets upon release of the DEIS to raise the funds necessary to begin development of the site. The protracted delays placed Crown Butte in an unexpected cash bind.

In August 1995, the President interrupted a holiday in Wyoming for an aerial tour of the mine site. The tour was followed on September 1, 1995, by the Secretary of the United States Department of the Interior publishing a Notice of Proposed Withdrawal in the Federal Register with respect to an area of approximately 19,100 acres including the New World Property in Park County, Montana. The Notice resulted in a two-year moratorium on the location of new mining claims or millsite claims in such area. In September 1996, a notice of an amended withdrawal application was published. The amendment added an additional 2,960 acres of land and included a withdrawal of any private mineral interests that might be acquired by the United States pursuant to the Exchange Agreement. Pursuant to the requirements of the National Environmental Policy Act (“NEPA”), the Department of the Interior has prepared a Draft EIS to evaluate the potential impacts associated with the withdrawal. The Draft EIS was circulated for public comment and comments were accepted through April 28, 1997. After reviewing the comments, the Department of the Interior will publish a Final EIS and the Secretary of the Interior is expected to make a final decision on the proposed withdrawal no later than August 31, 1997. The Company has located millsites for necessary facilities as proposed in the Company’s Application for a Hard Rock Operating Permit and Proposed Plan of Operations, but has not located millsites for all alternative facility locations that were being analyzed in the NEPA process. During the period of any moratorium or withdrawal, the Company could not locate additional millsites on withdrawn ground, whether in new areas or to replace millsites in the event they were found to be invalid.

In September 1993, several special interest groups filed a complaint against Crown Butte and others in U.S. District Court, District of Montana, alleging that certain discharges from the New World Property were in violation of the U.S. Clean Water Act (CWA). On October 13, 1995, the District Court issued a Memorandum and Order ruling that Crown Butte and one other defendant were in violation of the CWA for not yet having obtained a CWA National Pollutant Discharge Elimination System permit for water coming from historic workings. The Company had applied for a CWA stormwater permit in October 1992. Crown Butte requested that the District Court allow an immediate appeal of the decision be taken to the Ninth Circuit Court of Appeals, which request was granted in January 1996, and the Company filed a petition with the Court of Appeals. On May, 1996, the Court of Appeals denied the Company’s petition for permission to appeal, and the District Court subsequently set the matter for trial on the issues relating to civil penalties.

A trial was scheduled for November 1996, but the District Court has stayed all proceedings in this case in light of the Exchange Agreement.

Conclusion

Madam Chairwoman and Members of the Subcommittee, I’m sure you can readily see that what began as an attempt to build a modern-day state-of-the-art mine, in an area where historic mining has occurred for over a century, and which was specifically excluded from wilderness designation by the Congress of the United States, quickly became a battle of national and international involvement.

By mid-year 1996, Crown Butte had already been in the permitting process for almost 6 years, promised dates for the release of the Draft Environmental Impact Statement had consistently not been met and the whole process had become fraught with delays and uncertainty. Even if Crown Butte had received the Draft EIS, it would still have been a long way from the issuance of the requisite Final EIS. Uncertainties with respect to Crown Butte’s ability to obtain the necessary permits would have continued and the effort to obtain such permits would probably have taken many years. The economic realities of continuing in the face of well organized,

well funded opposition and international organizations necessitated tough decisions. Costs and delays associated with permitting, litigation with significant potential liabilities and appeals had become unduly burdensome given the project economics.

Nevertheless, Crown Butte, as an environmentally responsible mine developer, found the decision to enter into the August 12, 1996 Exchange Agreement a difficult one. Crown Butte has always believed that its proposal to build and operate safely and responsibly a small state-of-the-art underground gold mine at New World was not only environmentally sound of itself, but also represented the best way to remediate the historic mining disturbances which date back more than 100 years.

In the end, the Exchange Agreement provided a practical resolution to a unique set of circumstances. The protracted permitting delays, legal challenges facing ongoing development, and potential liabilities related to historic mining in the New World District caused the economics of the project to deteriorate. Crown Butte's management decided that the Agreement was in the best interest of the shareholders because, if consummated, it would provide an end to the long permitting process which might otherwise continue for many more years with no guarantee of success or economic return to the shareholders and provide assets that could be liquidated relatively promptly and which would compensate the Company for the amount it has spent to date in acquiring, exploring and attempting to permit the property.

CURRICULUM VITAE

KARL E. ELMERS

*Chairman of the Board of Directors
Crown Butte Mines, Inc.*

Karl E. Elmers began his mining career in 1962 as a Mining Engineer at Duval Corporation's Carlsbad, NM, potash properties. He advanced through a series of management positions, including Resident Manager assignments for potash and sulphur properties, and Vice President of Project Development. He worked on numerous mineral programs in the Far East, Australia and Latin America in his development work for Duval, and later, as Vice President of Production, directed the company's copper, gold and industrial minerals operations. In 1985, he served as Senior Vice President of Operations of Pennzoil Sulphur Company, and later that year became the initial Managing Director of Western Ag-Minerals Company, an industrial minerals mining and marketing firm.

Elmers joined Battle Mountain Gold Company in May, 1987 as Executive Vice President, and became President in May, 1988. He was named Chairman and Chief Executive Officer of Battle Mountain Gold in April 1990. In March, 1997 he retired from the CEO's office, but continues to serve as Chairman of the Board of Directors of Battle Mountain Gold. Also in March 1997, Elmers was named Chairman of the Boards of Directors of Crown Butte Resources Ltd. and Crown Butte Mines, Inc.

He earned bachelor's degrees in both geological engineering and mining engineering from the University of Arizona College of Mines, and completed the Program for Management Development at Harvard's Graduate School of Business Administration.

Elmers is on the Board of Directors of the National Mining Association and the SME Foundation of A.I.M.E and was formerly on the Board of Niugini Mining Ltd. He has previously served on the Board of Directors of the Fertilizer Institute, the Northwest Mining Association, was Chairman of the Western Governors' Mining Advisory Council, and was President of the New Mexico Mining Association. He currently serves on a number of international relations and Houston civic boards, and is a member of the American Institute of Mining, Metallurgical and Petroleum Engineers, and the Canadian Institute of Mining. He was awarded the Order of Simon Bolivar by the President of the Republic of Bolivia for services to that nation. He and his wife Sandy reside in Houston, Texas.

SUPPLEMENTAL SHEET

TO THE WRITTEN TESTIMONY OF KARL E. ELMERS

Name: Karl E. Elmers, Chairman of the Board, Crown Butte Mines, Inc.
Address: 333 Clay Street, 42nd Floor, Houston, Texas 77002-4103
Telephone No.: (713) 653-7244
Summary of Comments:

Crown Butte, the Administration and certain special interest groups entered into an Exchange Agreement on August 12, 1996. Mr. Elers testimony recounts the chronology of events that occurred leading up to the agreement.

STATEMENT OF MICHAEL S. CLARK, EXECUTIVE DIRECTOR, GREATER YELLOWSTONE COALITION

Madam Chair and members of the Committee. Thank you for inviting me to testify today. My name is Michael Clark and I am the Executive Director of the Greater Yellowstone Coalition, a Bozeman, Montana-based organization with field offices in Cody, Wyoming and Idaho Falls, Idaho. Fourteen years old and with a membership of over 7400 individuals, 119 corporate members and 120 organizational members, GYC's mission is to preserve and protect the Greater Yellowstone Ecosystem and the communities it sustains.

The Greater Yellowstone Ecosystem consists of the two national parks, Yellowstone and Grand Teton, and seven national forests, and numerous thriving gateway communities. The area totals some 18 million acres of public and private land. It is the only largely intact ecosystem in the Lower 48 states.

Today I also represent the Beartooth Alliance, Gallatin Wildlife Association, Montana Wildlife Federation and the Wyoming Outdoor Council. Each of these conservation groups has worked closely with us on the New World Mine situation.

Thank you for the opportunity to testify today on the New World Mine Agreement negotiated in 1996 between the Clinton Administration, Crown Butte companies and the conservation community. Congress now has the key role in creating and approving legislation that will resolve this issue. We welcome your leadership and look forward to working with you in completing this Agreement.

This is an agreement that lays to rest one of the most controversial and contentious public lands battles in the West in recent years. It does so by breaking new ground in resolving conflicts through forming a consensus solution with three very different partners that protects the interest of each party. It does so by removing the threat of a huge mine from the mountains above Yellowstone Park. It does so by providing a fair market value for the company's property. And it does so by providing funds for reclamation of the historic mining lands at the site.

Eighteen months ago the idea that the mining companies and the conservation community would come to you with a common position and a common perspective would have been unthinkable.

We believe this agreement is a fair deal for the company, for the public and for the ecosystem which the conservation Unity seeks to protect.

It provides a useful example of how other environmental battles might be settled. To better understand how we came to this agreement, it may be useful to look at the actual proposal to create the gold mine at Henderson Mountain within the New World Mining District.

First, let me say that neither GYC nor the conservation community are in the business of opposing mines. For GYC, this is the first one we have ever opposed. We did so because we thought the mine threatened to create irreversible direct and indirect impacts to Yellowstone Park. We chose to fight against these impacts just as we have opposed the potential irreversible impacts that could have been caused by proposals to develop geothermal acquirers near the Park's boundaries.

The mine plans called for extracting \$800 million in gold, silver and copper from Henderson Mountain, which lies at the head of three key drainages in Greater Yellowstone: Miller Creek, a tributary of the Lamar River which flows through Yellowstone Park and joins the Yellowstone River within the Park, Fisher Creek; which flows into the Wild and Scenic Clarks Fork of the Yellowstone; and Daisy Creek, which flows north into the Stillwater River. All of these rivers are tributaries of the Yellowstone River.

The mine would carve deep tunnels under Henderson Mountain into an ore body containing very high concentrations of acid-producing materials. It would create a mill site and a year-round work camp for 175 persons during the 15-18 year mine life. And it would build a tailings impoundment the size of 70 football fields, containing 5.5 million tons of acidic mine wastes. It would do all of this in an earthquake-prone area, at altitudes above 8,000 feet, where snow often falls 10 months of the year. In addition, the presence of an industrial-scale mining operation on the edge of Yellowstone Park and adjacent to the Absaroka-Beartooth Wilderness would change the wild nature of the place forever.

The mine proposal sparked almost universal opposition in local and regional communities and across the nation. Cooke City residents organized a local group, the

Beartooth Alliance, which formed the early core of opposition to the mine. Regional and national groups such as GYC and American Rivers provided scientific and technical support in the permitting process and carried out a public education program aimed at the general public and the media. The Gallatin Wildlife Association, Montana Wildlife Federation, Sierra Club, Northern Plains Resource Council, Northwest Wyoming Resource Council, Wyoming Wildlife Federation and Wyoming Outdoor Council worked with their members to educate the public about the mine proposal. The Sierra Club Legal Defense Fund provided legal assistance. Many other conservation groups and community groups expressed concern about the proposal to mine gold near Yellowstone.

Early on, Senator Max Baucus voiced his concerns and that of many constituents when, in 1993, he sent a letter to the mining companies which said, in part, "I am not willing to gamble with a national treasure for short-term gain." The National Park Service came out against the mine, saying it feared the operations might harm Yellowstone National Park.

A 1995 poll revealed that Montanans opposed the mine by a 2 to 1 margin. Indeed, by 1995, practically every newspaper in Montana and Wyoming had editorialized against the mine. In Cody, Wyoming, 67 percent of the members of the Chamber of Commerce said they opposed the mine.

Leading national publications, including the NY Times and US News and World Report, editorialized against the mine and called for a trade or buy-out of the operation.

Wyoming's Senator Craig Thomas announced his opposition to the mine in 1996, in a press release stating, "There is only so long you can withhold your opinion when in fact you have a strong conviction that this might be the worst place to site a mine." His statement met with broad support in the region.

These kinds of activities and statements led to the joint agreement in August of last year to halt the mine proposal and seek a new solution.

The New World Mine Agreement, announced by the President in Yellowstone Park on August 12, 1996, calls for Crown Butte to cease its efforts to develop the New World mine and to transfer all of its holdings in the New World Mining District to the Federal Government.

In return, the company was promised Federal assets worth \$65 million. Of this total, \$22.5 million would be set aside in an escrowed account to underwrite reclamation of historic mining pollution at the New World mine site. In addition, plaintiffs in the Federal Clean Water Act lawsuit *Beartooth et al. v. Crown Butte Mines et al.* agreed to seek a quick and equitable settlement of their lawsuit consistent with the Agreement.

On April 12, 1997, the Clinton Administration offered to the mining companies an exchange of Federal royalty payments from Montana coal, oil and gas operations equal to the \$65 million value in the Agreement. One month later Crown Butte Mines said it would accept the offer if it could be assured that Congress would approve the overall deal.

Under the agreement, Crown Butte's property has to be appraised under the National Standards Act which requires a fair market appraisal of property purchased or exchanged by the Federal Government. If the appraisal determines that the company's property is less in value than the \$65 million, a new agreement may be called for. If the appraisal says the company's property is worth more on the market, the total amount to be paid by the Federal Government to Crown Butte cannot exceed \$65 million, thus capping the amount for which the Federal Government is responsible.

If the Federal Government transfers property to Crown Butte, these lands must also be appraised using standard Federal appraisal measurements. This approach assures all parties that a market-based assessment is utilized.

To complete the deal, Crown Butte has to also provide to the Federal Government title to all of its holdings in the New World Mining District, including relevant leased assets owned by other parties. If this is not possible, the agreement calls for the three parties to seek a new understanding based upon the assets which each side can provide. Thus far, Crown Butte has not been able to reach an agreement with Margaret Reeb, a landowner who had previously signed a long-term mining lease with Crown Butte to develop her part of the New World ore body. If Crown Butte cannot reach an agreement with Ms. Reeb, the three parties to the Agreement will then determine how to conclude the original agreement.

You have asked me to specifically explain how the agreement was negotiated.

The roots of this unique understanding between the conservation community, the mining companies and the Administration lie in a complex chain of events which took place in the summer and fall of 1995.

In September, 1993, nine groups, utilizing the Sierra Club Legal Defense Fund as counsel, filed suit against several Crown Butte and Noranda companies charging that they had violated the Clean Water Act in their operations at the mine site. The Plaintiff Group is composed of: Beartooth Alliance, Greater Yellowstone Coalition, Gallatin Wildlife Association, Montana Wildlife Federation, Northwest Wyoming Resource Council, Northern Plains Resource Council, Sierra Club, Wyoming Wildlife Federation, and the Wyoming Outdoor Council. The trial date was set for November, 1996.

The Crown Butte EIS had been delayed for several years due to the complexity of the proposal and its possible impact on the area. Co-led by the U.S. Forest Service and the State of Montana and financed by Crown Butte mining companies, the EIS had attracted national attention due to concerns about the possible impact of the proposed mine on Yellowstone Park and the Clarks Fork of the Yellowstone, Wyoming's only Wild and Scenic River. As the EIS process continued, major concerns surfaced that had not been adequately addressed by the EIS drafts.

Growing public concern about the mine's threatened impact upon Yellowstone National Park were expressed in thousands of letters, e-mail and phone calls to the White House and Federal elected officials.

In rapid succession, the following took place:

On August 20, 1995, President Clinton flew over the site and then met with conservation community leaders. He expressed his own doubts about the wisdom of a mine next to Yellowstone and announced a two-year moratorium on mining claims in the New World Mining District.

In October, 1995, Federal district court Judge Jack Shanstrom ruled that Crown Butte and its affiliated companies were violating the Clean Water Act for failing to obtain permits for ongoing water pollution at the New World Mining District. The companies faced a November, 1996 trial date to assess civil penalties for those violations.

The President's announcement and the events related above generated major new media attention on the mine, which resulted in numerous newspaper and TV features on the mine battle.

As these events unfolded, the conservation community began to seek ways to communicate informally with top leadership at Noranda. We indicated that if they wished to withdraw from the operations, we would cooperate with them in seeking a consensus on halting the mine and stopping the lawsuit. Finally, we asked for a meeting with them. In November, 1995, officials at Crown Butte and Hemlo Gold agreed to a private meeting with representatives of the conservation community.

On December 15, 1995, the meeting took place at Noranda headquarters in Toronto. GYC proposed to the company that it should withdraw from the mining venture and that, if it did so, there might be a way of exchanging company's assets at the mine site for Federal assets in other places.

These discussions resulted in the following agreements:

- The company would continue the dialog as long as the talks were kept confidential;
- The company would consider a GYC offer to initiate conversations with the Clinton Administration to explore a mutual interest in reaching an agreement to trade out company assets for Federal assets;
- GYC asked for a written statement from the companies authorizing GYC to make an approach to the Clinton Administration about a possible halt to the mine and an exchange of assets; and
- GYC and the mining companies mutually agreed that the companies believed they could permit the mine and operate it safely and that GYC believed that a safe mine was not possible; therefore, each party would continue its respective efforts until we could discover if an agreement was possible. The company would do everything possible to get the mine permitted, the conservation community would do everything in our power to stop approval of the mine.

On January 8, 1996, Crown Butte sent a letter to GYC authorizing an approach to the Clinton Administration about a possible exchange of assets if the New World mine was halted.

We immediately asked the staff of the Council on Environmental Quality at the White House to meet with us and the companies to consider whether or not an exchange of assets was of mutual interest if the New World mine was halted.

On February 1, 1996, representatives of Hemlo Gold and Crown Butte and representatives of the conservation group of plaintiffs met with CEQ staff in Washington DC to discuss a halt to the New World Mine and an exchange of assets. There was mutual agreement that talks should be pursued. All parties agreed to keep

the

talks confidential. The prior agreements between GYC and the company to continue their respective efforts to either permit or halt the mine remained in effect.

In March, 1996, the Clinton Administration created a special task force on the New World Mine led by Associate Attorney General John Schmidt and Ambassador James Pipkin of the Interior Department. In the meetings which followed, Ian Byer, Chairman of Crown Butte and CEO of Hemlo Gold, and Joe Baylis, President of Crown Butte Mines, LTD, and General Counsel of Hemlo Gold, represented the company. Doug Honnold, Managing Attorney of the Northern Rockies office of the Sierra Club Legal Defense Fund and lead counsel for the plaintiffs in the Clean Water Act lawsuit, and I represented the conservation community and plaintiffs in our lawsuit.

Discussions among the three parties began immediately and continued through the spring and early summer of 1996.

In March, 1996, the Wyoming Legislature passed a law giving authority to the state to deal with out-of-state solid waste coming into Wyoming under its Industrial Siting Act. The law imposed a fee of \$10 per ton on any waste created in another state that would be stored in Wyoming. It was described on the floor of the Wyoming Senate as a "rifle shot" aimed at the proposed Noranda mine and the possibility of using Wyoming land as a storage facility for the mine's wastes.

In June, 1997, Hemlo Gold announced that it was merging with Battle Mountain Gold Company of Houston, Texas and that its ownership in Crown Butte would transfer to Battle Mountain Gold. Talks continued during this period.

The discussions reached a new intensity in late July since it seemed that an agreement was within reach. Face-to-face talks began in August and culminated on August 12, 1996 with President Clinton's announcement that an agreement had been reached to halt the mine, to trade assets, to settle the existing Clean Water Act lawsuit, and to clean-up the historic mining pollution at the site.

Once the agreement was signed, the government began an immediate search for suitable properties to be used in the exchange. This special effort was led by the BLM. Our plaintiff groups were not intimately involved in that search although we did ask for periodic reports and we were given very generic descriptions of the progress. We developed a set of criteria to guide our response to any proposal. Key to this was the belief that we did not want to solve a problem on the edge of Yellowstone only to see it become a major environmental problem for some other community.

In December, 1996, Montana Governor Marc Racicot opened discussions about a possible trade involving timber lands in western Montana and coal lands in eastern Montana. We met with Gov. Racicot, representatives of the mining companies and members of the Federal task force on the Crown Butte Agreement to learn of the proposals. The Montana Wildlife Federation, the Montana Wilderness Association and the Northern Plains Resource Council were the primary groups that evaluated these potential exchange lands for the conservation community. They examined the proposals in detail and concluded that neither proposal was acceptable. Simultaneously, the proposals created a major public outcry over the sale of public lands in Montana and the proposals were withdrawn.

On April 12, 1997, after a one-month extension of the search, agreed to by all three parties to the Agreement, the Administration offered royalties from energy deposits in Montana as the method for exchanging \$65 million in Federal assets for the mining companies' property. One month later Crown Butte said that it would accept this approach provided that the assets were approved by Congress. Which brings us to the present time.

Some questions have been raised about why the Crown Butte EIS was halted by the Agreement. NEPA sets up a process for evaluating and assessing a specific proposal which might have an impact upon the environment. Once the companies decided to halt their proposed mine, there was nothing to do an EIS on. However, the BLM and the Forest Service are completing an EIS on the proposed withdrawal of public lands within the New World Mining District from further mining activity.

We believe the approach incorporated in the New World Agreement is a valid one which has addressed a multitude of very complex concerns about a long-running and highly contentious public land dispute. This consensus approach, which protected the interests of the public and the mining companies, may have relevance in similar situations elsewhere.

We continue to believe that the New World Agreement is a good deal for the American people. We also acknowledge that it has been far more difficult to achieve than we had originally anticipated, but it is still a valid way of resolving the New World Mine situation. Without it, the conservation community would still be involved in a highly confrontational and litigious confrontation with the mining com-

panies and the battle would still be playing out in the front pages of newspapers and tying up untold hours of time for many Federal public servants.

The Agreement provides a method of ending a long and difficult battle over the proposed gold mine that threatens Yellowstone Park and the Clarks Fork of the Yellowstone River.

It provides the company with a fair exchange for its assets.

It creates a \$22.5 million reclamation fund to clean-up and restore the polluted lands on Henderson Mountain and it provides research funds to study the situation, offering the possibility that the clean-up could benefit other polluted mining sites in the interior West.

And it ensures that the wild character of the lands adjacent to Yellowstone and the Absaroka–Beartooth Wilderness will be protected from industrial development for the region's wildlife and for the benefit of future generations.

We now look to the leadership of the Congress to conclude the New World Agreement by creating and passing legislation which permanently resolves this situation.

Thank you for the opportunity to testify. I will be glad to answer any questions.

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

May 16, 1997

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 JOHN LAWRENCE
 DEMOCRATIC STAFF DIRECTOR

MEMORANDUM

TO: Members, Subcommittee on Energy and Mineral Resources

FROM: Bill Condit, Subcommittee Staff Director

SUBJECT: Subcommittee oversight hearing on the Administration's proposed policy to utilize federal mineral lease receipts for purposes of private land acquisition - the New World Mine buy-out in Montana and the Headwaters forest "exchange" in California.

The Subcommittee on Energy and Mineral Resources is scheduled to meet on **Tuesday, May 20, 1997 at 1:30 P.M. in 1324 Longworth HOB** to hold an oversight hearing to review the Administration's pending proposals to acquire certain private lands in Montana and California utilizing precedent-setting methods involving receipts from oil and gas leases and coal leases let under the 1920 Mineral Leasing Act. The Subcommittee has jurisdiction over this Act as well as federal mineral estate disposition generally.

The hearing is intended to address the details of President Clinton's announced "deals" to stop the proposed New World Mine near Yellowstone National Park and to acquire land in the Headwaters region of California to prevent old-growth timber harvesting. Many questions remain as to whether or not the buyouts are in the public interest. This hearing will review the proposed mechanisms to fund these acquisitions through *sale of producing oil reservoirs* on federal leases in Kern County and elsewhere in California to the State of California, for proposed buyout of the Headwaters forest; and *diversion of oil, gas and coal receipts* from federal leases in Montana to pay Crown Butte Mines, Inc., to not proceed with plans to develop a mine.

According to widely-published accounts, the Administration believes the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Land Exchange Facilitation Act (FLEFA) grants the Secretary of the Interior sufficient authority to perform the first two actions without further Congressional sanction. The Chairman of the Council on Environmental Quality (CEQ), Ms. Katie McGinty has acknowledged to Members that the proposal for the New World Mine buy-out will necessitate an amendment to the Mineral

Leasing Act and a statutory offset to satisfy "pay-as-you-go" mandates (which at this juncture remains delaying enrollment of 2 million acres of cropland into the Conservation Reserve Program [CRP] of the USDA for one year). The Subcommittee is expected to hear from the Deputy Secretary of the Interior, the Chairman of CEQ, the chairman of Crown Butte Mines, Inc., the California Independent Producers Association, and the Greater Yellowstone Coalition.

BACKGROUND

Within the last year, President Clinton has announced "deals" brokered by the CEQ to acquire into federal ownership certain environmentally sensitive private lands in California and Montana. The magnitude of the dollar values involved (approximately \$250 million and \$65 million respectively) and the methods proposed make these deals of special importance.

Normally, the Administration would seek an appropriation within its budget request to acquire private lands for federal management purposes or use exchange authorities. The Interior and Related Agencies Subcommittee on Appropriations would act upon the discretionary request, and authorizing Committees (Resources and Agriculture, in these instances) would review the need for the land management agencies involved to acquire such properties. Perhaps because of the unusually high costs for these two proposals, the **New World Mine and Headwaters Forest** have spawned new ideas for ways to pay for the acquisitions. As the negotiations have emerged from their initial stages, the Administration now has announced novel approaches to using mineral royalties to buy out the landowners and proponents of the timber harvest and mining proposals.

Mineral Leasing Act of 1920

Since 1920, public domain lands valuable for prospecting and development of certain minerals including oil, gas and coal have been disposed via the Mineral Leasing Act (MLA, 30 USC 181 *et seq.*) In 1970, geothermal resources were added to the mineral leasing scheme albeit under separate statutory authority (30 USC 1001-1026). In general, the MLA requires disposition by lease only with rents and royalties due the United States, to be distributed according to a statutory formula which has evolved over time, but which now provides for half the "net receipts" to be shared with the State where the lease is situated with the remaining half going 20% into the General Fund of the U.S. Treasury and 80% into the Reclamation Trust Fund established under the Reclamation Act of 1902 (as in arid lands "reclamation" not in reclamation of lands disturbed by mineral lessees). Changing the manner in which rental payments and royalty revenues are administered clearly would require new law.

Until 1978, disposition of federal lands valuable for leasing act commodities could only be made *in the form and manner provided by* the MLA, but an amendment to Sec. 37 (30 USC 193) was enacted (P.L. 95-554) to also allow disposition as provided by the land exchange and mineral conveyance provisions of FLPMA (43 USC 1716 and 1719 respectively). The

legislative history of this amendment shows that the 95th Congress sought to grant the Secretary these authorities in order to expedite coal lands exchanges prompted by the fact that railroads owning checkerboard lands in the West were barred from holding coal leases under the MLA, greatly diminishing the value of their adjacent properties. However, the text of 1978 amendment did include all MLA commodities within its scope.

Federal Land Policy & Management Act

FLPMA, the 1976 “organic act” for the Bureau of Land Management, generally mandates a “public lands retention policy” passed by the 95th Congress to rein in the executive branch’s authority over the public lands. (For example, the President’s *implied authority* to withdraw lands, recognized by the U.S. Supreme Court in *Midwest Oil v. U.S.* [1914] was affirmatively repealed by Title VII.) Section 206 of FLPMA grants authority to the Secretary of the Interior (or Agriculture in the case of USFS lands) to exercise land management prerogatives via exchanges of public lands *and interests in lands* for privately held lands in the same State “where the Secretary concerned determines that the public interest will be well served by making that exchange.” (43 USC 1716). This section provides further counsel to the Secretary when determining public interest and requires that the lands leaving federal ownership not exceed the value of private lands to be acquired. The Headwaters buyout proposal is being touted as a FLPMA “exchange” because the proceeds from auction of producing oil reservoirs on federal leases would be swapped for title from Pacific Lumber Co. and Elk River Timber Co. old-growth timber acreage to be acquired.

Section 209 of FLPMA (43 USC 1719) provides for conveyance of mineral interest owned by the U.S. where the surface estate is non-federal and where the mineral reservation is deemed to prevent a more valuable use of the surface estate. The reuniting of “split-estates” under this provision appears to have little importance for the New World and Headwaters buy-outs as proposed.

Land & Water Conservation Fund

The Land and Water Conservation Fund of 1965 (LWCF) was established by the 88th Congress (16 USC 4601) as a trust fund in the U.S. Treasury for purposes of buying private lands (or interest in lands) for government management to preserve opportunities for outdoor recreation for future generations, *etc.* Requests for LWCF monies are discretionary and subject to appropriation by the Congress. About 90% of the funding for LWCF comes from Outer Continental Shelf Lands Act (OCSLA) oil and gas lease revenues to the U.S. Treasury, with the remainder coming from a motorboat fuels tax and recreation fees.

For three decades LWCF has been the trough from which dollars were ladled to buy ecologically sensitive lands by the federal and state governments. Initially uncapped, during the Carter Administration an authorization ceiling of \$900 million annual LWCF expenditures was enacted. As late as the Bush Administration the budget sought over \$350 million from

this source, but for several years requests have been far less, including **FY98** wherein the NPS is seeking \$71 million, the USFS about \$42 million, BLM about \$10 million, and US Fish & Wildlife Service about \$32 million, for an **aggregate total of \$155 million**.

The Judgment Fund

Another mechanism for possible use to acquire these or other high priority private land acquisitions may be to trigger the Judgment Fund of the U.S. Treasury (now codified at 31 USC 1304). Usually, this fund is tapped only to satisfy takings awards against the United States by parties litigating in the Court of Federal Claims. Occasionally, legislative takings are expressly provided for by Congress in what amounts to exercise of "federal zoning power" to stop a planned private action. A recent example was the proposal to build a private office park/residential complex adjacent to federal lands at Manassas National Battlefield. Congress stepped in to quash the development after planning efforts were announced but before earthmoving work took place, and the Judgment Fund paid the negotiated settlement value.

The Judgment Fund is a "permanent indefinite appropriation" meaning that Congress need not make an appropriation to satisfy an award from the fund, i.e., the "fund" is not replenished by revenues from any source. Thus, a check is written against Treasury but no budget offset would be required under PAYGO rules. Of course, that doesn't mean the buyout is any more worthwhile than if a specific offset were utilized, or that the total federal budget is any less unbalanced by use of this mechanism.

New World Mine

Property Descriptions

The location of the proposed New World Mine is two and one-half miles north of Cooke City, MT, and three miles east of Yellowstone National Park. In 1978, Congress specifically excluded the New World site from wilderness protection because of its potential for mineral development. There has been mining activity in this area for more than 125 years, including before Yellowstone was designated a national park on March 1, 1872.

The underground mine was projected to produce an average of 1,500 tons of ore per day and expected to yield 130,000 ounces of gold annually. Mine life was projected to be 10-15 years and would have employed up to 175 people. Goods and services purchased by the mine would have brought in more than \$8 million annually to the area, and federal, state and local governments would have benefited from an estimated 45.5 million in new taxes.

Land and Mineral Ownership Descriptions

Crown Butte Mines, Inc., has entered into a typical lease arrangement with the owner (Ms. Margaret Reeb) of long-ago patented lode mining claims on Henderson Mountain in the New World mining district of Montana. Thus the mineral deposit proposed to be mined is on private land as would be the proposed mill complex. Crown Butte staked mill site claims for the

proposed state-of-the-art tailings facility in the Fisher Creek drainage which was their preferred alternative. Later the company staked other mill site claims for alternative sites when it became clear the President would ask Secretary Dabbutt to exercise his withdrawal authority for some 20,000 acres of public lands surrounding this area. The mill sites are unpatented claims under the Mining Law of 1872 and remain public land.

Environmental Impact Statement

The original application submitted in Nov., 1990 and the application was declared complete in April, 1993. The U.S. Forest Service and the State of Montana's Department of Lands were the "co-lead agencies" in the EIS review process. Crown Butte Mines had engaged the services of a third-party environmental assessment firm to gather the data, as is often the case in natural resource permitting actions. No final EIS was completed, but the draft EIS was reputed to be close to publication for public comment but the process was terminated by the agreement announced in August 1996.

Proposal/Timeline

In December of 1995, the Greater Yellowstone Coalition contacted the Administration to arrange a meeting with Crown Butte Mines, Inc. An initial meeting was held in January, 1996, and held confidential because of pending merger agreements between several gold companies. President Clinton signed an agreement with Crown Butte Resources, Ltd. on August 9, 1996, to buy back the New World Mine with a \$65 million federal property deal. In the agreement, Crown Butte agreed to set aside \$22.5 million (of the \$65 million) to remediate environmental damage and /or natural resource damage existing in the area. The agreement was due to be completed by February 12, 1997, but was extended to April 12, 1997. On April 10, 1997, Crown Butte Mines, Inc. notified the Administration that it would exercise the option to delay its approval of the package until August 12, 1997. Negotiations are ongoing to meet the August deadline. To the Subcommittee's knowledge the landowner has yet to consent to proffer her title to the land, an important part of the deal.

Budget Offset/PAYGO

Current law requires Congressional approval if lands are traded from outside Montana or if the property is not surplus. The Administration has proposed to use the federal portion of oil, gas and coal royalties (not surplus) over a five year period from Montana leases to fund the \$65 million exchange thereby requiring legislation to complete the deal. The Administration proposes to defer the enrollment of two million acres into the Conservation Reserve Program (CRP) from FY97 to FY98 as a budget offset required under the provisions of the Budget Enforcement Act of 1990. This deferment would score as a PAYGO credit. However, many House and Senate Agriculture Committee Members strongly oppose the use of CRP funds in this manner, including House Agriculture Committee Chairman Bob Smith and House Agriculture Subcommittee on Forestry, Resource Conservation, and Research Chairman Larry Combest.

Headwaters Forest*Property Description*

The old-growth redwoods of the Headwaters Forest grove are located in Humboldt County in northern California. The federal oil and gas leases being considered are located in Kern, Fresno, Los Angeles and Ventura counties in California. Federal geothermal leases previously put on the table to make the State "whole" in the deal have reportedly been rejected by the State of California because of alleged insufficient reservoir life remaining to allow a long-term royalty stream.

Land and Mineral Ownership Description

MAXXAM Corporation is the parent company to Pacific Lumber Company which owns the Headwaters timber to be preserved under the exchange. Elk River Timber Company owns land adjacent to Headwaters that the government wants to obtain as a buffer for the old-growth grove. The 24 oil and gas leases under consideration are owned by 13 separate major and independent producers.

Proposal/Timeline

The Headwaters Land Exchange proposal was announced in December, 1996. The agreement initiated a land acquisition by the government, exchange of federal and state property for the Headwaters forest, and the development of timber management and habitat conservation plans. The land to be acquired is approximately 3,100 acres of virgin old growth forest (the Headwaters Grove plus the 422 acre Elkhead Springs grove), and an additional approximately 4,400 acres of second growth and recently cut-over land to serve as a buffer zone. The total public acquisition is 7,500 acres.

In exchange, the federal and state governments have offered:

- 2,967 acres of timber in Humboldt County, California;
- 24 federal oil, gas and geothermal lease interests in California;
- excess federal land in Laguna Niguel, California;
- 7,755 acres of Elk River Timber property adjacent to the Headwaters Forest;
- the 9,013-acre Latour State Forest;
- a number of small parcels of state land, some of which include structures, depending upon appraised value.

Pacific Lumber and the Elk River Timber Company would receive a total of \$380 million in land and assets from the federal government (\$250) and the State (\$130).

The BLM requested a reprogramming by the Appropriations Committee on April 1, 1997. The Appropriators have not approved or disapproved the request, but continue to raise concerns about the authority for the Administration to proceed with the proposal. On May 1st BLM published a Notice of Land Exchange, and an auction of the leases is set for August 1st. These preparatory activities will lead to a final exchange, currently scheduled for February 17, 1998, at which time a transfer of land to the federal government, cash to the lumber companies, and leases to the highest bidder is expected to occur simultaneously.

ISSUES PROMPTED BY NEW WORLD & HEADWATERS BUYOUTS

The magnitude of these two proposals (as well as additional burdens on the Treasury likely from buyouts of Pacific Northwest timber sales contracts, Grand Staircase-Escalante National Monument inholdings and leases, etc.) is twice the dollar value of the FY98 LWCF request for all four federal land management agencies in total. Obviously, were an LWCF appropriation to be sought for New World and Headwaters buyouts land acquisition projects (presumably on the "waiting list" for years) would be crowded out. Thus, the single most basic question prompted by these proposals is: "Can we afford to pay this price?" A detailed look at the proposals should also be had to satisfy Congress that even if found to be affordable, are these buyouts warranted? Where are they? A subset of this issue is whether or not the President ought to enter into commitments such as these without prior consultation with Congress so as to establish the priority of such acquisitions in the total budget picture. An LWCF request provides such consultation, but in these two cases Congress had no forewarning of impending deals.

Beyond these grander issues, however, lie the detailed questions regarding the President's proposed methodology for uniquely funding these two buyouts. Although both are acquisitions to protect environmentally sensitive lands the Headwaters is proposed for "buyout" via Secretarial exchange authority but the New World buyout needs legislation for consummation. Why? If public policy dictates that oil reservoirs beneath California on federal leases should be auctioned with the proceeds to go to Pacific Lumber Company in return for old-growth timberlands, why doesn't the Secretary propose a similar mechanism for oil, gas and coal produced from federal leases in Montana to payoff Crown Butte Mines in return for ending its New World Project?

Headwaters

Oil operators in Kern County have made investments in tertiary extraction methods (e.g., steam injection) to increase production of heavy crude oil in response to BLM's rulemaking to reduce federal royalty rates as a function of the API gravity (a measure of the viscosity) of the crude. Will such investments become "stranded" if the winning bidders for the leases are allowed to dictate new terms independent of federal regulations? Does the State of California have a legally recognizable interest in its half share of receipts to be foregone from these leases after auction? How does transfer of producing federal geothermal leases to the State of California fit into this equation? What is the not-less-than equal value from the State in exchange for the geothermal interests to be conveyed? Has the Secretary satisfied the defining criteria in FLPMA Sec. 206

when considering the public interest, and if so where is this analysis published?

New World

Appropriate questions to federal witnesses regarding this proposal include: Was the proposed gold mine/mill complex at Henderson Mountain in Montana near Yellowstone park a viable mining project? What environmental impact was the mine likely to have? Why was the EIS process to determine this impact terminated at the joint request of the company and CEQ? What precedent would amending the MLA's receipts distribution formula have upon future land acquisition proposals? How will the redistribution affect the State of Montana's net receipts sharing burden under the MLA? Will the US Forest Service take on a Clean Water Act (or Superfund) litigation risk after title transfer?

Alternatively, the wiser policy might well be to engage Congress in framing legislation in both instances to provide a funding mechanism, be it through the traditional LWCF request or a "diversion" of revenues for a time certain such as is proposed from the Mineral Leasing Act, albeit this triggers a need for a PAYGO offset. Thus the proposals would receive legislative branch scrutiny commensurate with the size of these deals.

STAFF CONTACT: Bill Condit & Sharla Bickley, x59297

Attachments

Bill Johnson

A M E R I C A N S C E N E

Nobody Asked Her

A very human, very stubborn glitch in the Yellowstone gold-mining deal

By PATRICK DAWSON LIVINGSTON

"They lived and they died for the dream these mountains gave them, and as in tribute... the wild forget-me-nots blossom every spring." —MARGARET REEB

MARGARET REEB IS SOMEWHERE IN HER 80s. IN HER Livingston, Mont., sitting room stands an ancient upright piano. On a wall hangs a photograph of Reeb and a smiling Eleanor Roosevelt. The topic of her verse—the mountain's beauty, the nobility of the pioneer gold miners who wrested their destinies from it—is a variation on an old frontier theme. Were she merely a wistful ex-school-teacher, one could dismiss Reeb as a member of a familiar but vanishing species: the Western romantic.

But as things stand, it would be imprudent. Because Reeb, although she did teach school for decades, does not merely admire the forget-me-nots on the sides of Montana's Henderson Mountain; she owns the rights to millions of dollars in gold ore lying somewhere beneath it. Ore that President Clinton vowed publicly would never be mined. But about which he may have spoken too soon. For Margaret Reeb is not simply the eccentric heroine in her own romantic western. A bona-fide scion of the mining heroes she celebrates, she has the financial leverage to throw a shudder into the massive federal machinery she believes would grind up their dream.

It has been nine months since Clinton played federal marshal in the Great Yellowstone Mine Shootout. The dispute began in the late 1980s as new techniques for locating pay dirt suddenly turned old claims on Henderson into a \$1 billion lode of extractable ore. The glitch was that the peak is a scant 2.5 miles upstream from Yellowstone National Park. Environmental groups, warning that a megamine would poison the park's ecosystem, threatened massive lawsuits against Crown Butte, the company planning a round-the-clock extraction effort. Then the Administration stepped in, and after months of secret talks, Crown Butte agreed to swap the mine for \$65 million worth of government holdings elsewhere. Clinton was able to upstage the first day of the Republican Convention last August by posing in a beautiful alpine meadow flanked by an environmentalist and a mining executive, announcing that "Yellowstone is more precious than gold."

But a key figure was absent from that photo op. Margaret

Reeb spent the summers of her girlhood on Henderson's slopes, where her father supervised a mine. Her family has owned claims in the district for over a century. "It was gold seekers who settled the West," she notes crisply. "They built the churches; they built the towns." Her purchase of dozens of nonproducing Henderson claims over 50 years probably struck some as more sentimental than savvy. But now her holdings, on lease to Crown Butte, constitute at least 40% of its goldfield—a portion so large that the pact is specifically contingent on her selling her rights to the company so that they can be part of the exchange.

But Reeb will not play ball. "I knew nothing about" the negotiations, she claims. "And when I finally got a copy of the agreement, I practically went into shock." Had any of the parties approached her, she says, she would have informed them. "Well, I'm not interested in selling my property." In part, the stance is just age-old miner's shrewdness: Don't sell your stake unless it's running out. But her rebuff also reflects a century of skirmishing between Western miners and the feds: "We Montanans feel pretty strongly about our love of the land," she says. "It is not American to be trying to wipe out selective private property."

The head of Crown Butte's new corporate parent has come calling at least twice since August, entreating her cooperation. But Reeb does not seem receptive to his blandishments. David Rovig, a former Crown Butte head who spent years talking her into leasing her claims to the company, doubts she will sell. "At the end of the day," he says, "Margaret doesn't give a damn whether the thing gets mined or not. She wants her property."

That may be all she ends up with. Katie McGinty, the chairwoman of the White House Council on Environmental Quality, says ominously, "There are other ways for us to arrange this agreement." One might involve Crown Butte's swapping only the land it owns, leaving Reeb's real estate an island in a sea of government property. Although her underground holdings are vast, her actual surface lot may be too small to accommodate a large-scale extraction operation.

Meanwhile, other problems have come up. Since signing the agreement, the Administration has not found any politically acceptable properties for a swap. It may have to try to pry \$65 million out of a Republican Congress through deferred agricultural subsidies. By comparison, Margaret Reeb could come to seem a pushover.



Reeb stands tall and resolute for her claim

"When I [read] the agreement, I went into shock." —MARGARET REEB

HEAD' ATERS EXCHANGE

Date and time of print 02/14/95 10:23 am

WGAS OIL	CAS 019266A	MDM SBM	20S-16E	6	Torch	0.080	26.3	85.4%	0.3%	19												
OIL	CALA 033569	SBM	11N-20W	28	Vintage Pet	0.080	26.4	85.7%	0.3%	20												
			11N-23W	18,32	Holmes																	
OIL	CALA 033068	SBM	12N-23W	19	Western Oil	0.052	26.4	85.8%	0.2%	21												
OIL	CALA 055052	SBM	3N-20W	1	Vintage Pet	0.051	26.5	86.0%	0.2%	22												
OIL	CACA 04969	SBM	3N-16W	10	Petro Res	0.051	26.5	86.2%	0.2%	23												
OIL	CACA 12855A	SBM	11N-23W	10	Crimson Res	0.046	26.6	86.3%	0.1%	24												
ESTIMATION OF VALUE FOR CA O&G LEASES, RANK 16 TO 24																						
O&G leases ranked 16-24 have an NPV of Approximately \$10 million *																						
1995 ROYALTIES																						
Total	30.8	\$ mil																				
Oil	26.8	\$ mil	from MMS Mineral Revenues 1995 Corrected by																			
Gas	4.0	\$ mil	subtracting CAS 071813 royalty, \$1.8 million.																			
Top 15 leases																						
Leases ranked 16 to 24 **																						
This is not an appraisal, it is an evaluation for planning purposes only																						
* 7% discount, 2% inflation, reduced royalty rate ended June, 2000																						
** Purchasers assuming business risks, paying taxes, and desiring a profit, would probably bid \$5 - 7 million																						
*** The low production leases may have a shorter economic life and/or higher sensitivity to oil prices																						
**** There is a reporting error related to lease CAS071813. MMS reports it as producing 5.3% of all Federal O&G royalties onshore California. The actual amount is less than 0.1%.																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">% of CA Total</td> <td style="width: 10%; text-align: center;">NPV (\$ mil)</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">82.3%</td> <td style="text-align: center;">209</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">4.0%</td> <td style="text-align: center;">10</td> <td style="text-align: right;">(Optimistic) ***</td> </tr> </table>												% of CA Total	NPV (\$ mil)			82.3%	209			4.0%	10	(Optimistic) ***
	% of CA Total	NPV (\$ mil)																				
	82.3%	209																				
	4.0%	10	(Optimistic) ***																			

HEADWATERS EXCHANGE

Date and time of print 02/14/97 09:23 am

HEADWATERS EXCHANGE										Feb 14, 1997	08:40
LEASES REPORTING ROYALTIES OF OVER \$50,000 IN 1995										LEASE ROYAL	CUM ROYAL
LSE TYPE	BLM LEASE NO.	MER	TWN-RNG	SEC	PROPRIETOR	LEASE ROYAL	CUM ROYAL	LSE %	CUM %	#	
						\$ mil	\$ mil	%	%		
OIL	CAS 019382	MDM	31S-22E; 32S-23E	22,23,25; 9,10	Monterey	7.317	7.3	23.8%	23.8%	1	
OIL	CAS 019392	MDM	31S-22E	27	Arco Western	5.895	13.2	42.9%	19.8%	2	
OIL	CAS 019381A	MDM	31S-22E		Monterey	2.741	16.0	51.8%	8.9%	3	
OIL	CAS 021592	MDM	31S-22E	21,29	CalResources	1.452	17.4	56.5%	4.7%	4	
OIL	CAS 019357	MDM	32S-23E	35	CalResources	1.214	18.6	60.5%	3.9%	5	
GAS	CAS 023382B	MDM	20S-16E	8,18,28,30,34	Torch	1.128	19.7	64.1%	3.7%	6	
OIL	CAS 021130	MDM	32S-23E	35	Arco Western	0.952	20.7	67.2%	3.1%	7	
OIL	CALA 076208	SBM	11N-23W	24	Arco Western	0.878	21.6	70.1%	2.9%	8	
OIL	CACA 28423	MDM	26S-21E	18	Mobil	0.778	22.4	72.6%	2.5%	9	
OIL	CAS 19389A	MDM	31S-22E	23	Torch	0.625	23.0	74.6%	2.0%	10	
OIL	CAS 021593	MDM	31S-22E	21	Cal Resources	0.517	23.5	76.3%	1.7%	11	
OIL	CALA 0149681	SBM	5N-19W	16,21,28,33,34	Seneca	0.513	24.0	78.0%	1.7%	12	
OIL	CAS 023382A	MDM	20S-16E	18	Torch	0.492	24.5	79.6%	1.6%	13	
OIL	CAS 019349	MDM	31S-22E	35	Texaco	0.450	25.0	81.0%	1.5%	14	
WGAS	CAS 019266B	MDM	20S-16E	6	Torch	0.393	25.3	82.3%	1.3%	15	
GAS	CAS 019376	MDM	26S-21E	30,32	Chevron	0.389	25.7	83.6%	1.3%	16	
OIL	CAS 020995	MDM	30S-22E	6	Torch	0.309	26.0	84.6%	1.0%	17	
OIL	CAS 019636	MDM	31S-22E	2	Berry Pet	0.178	26.2	85.1%	0.6%	18	

FINAL EDITION
Sunday, April 29, 1967

Oil, tree swap stirs ire

► Kern crude producers fear plan might jeopardize their investments.

By LOIS BERRY
California staff writer

When the government gets itself oil swaps, watch out.

The deal, which would swap a million acres of old-growth redwood trees in Northern California, known as the Headwaters.

The Department of the Interior said it would use a bunch of federally owned oil and gas leases to swap for the forest and - presto - that would be that.

What could be simpler?

Just about anybody, as it turns out.

Now, Congress is getting into the act, pushing its spotlight on the so-called "oil for trees" swap.

The Interior Department's plan was to trade the 24 federally owned oil and gas leases, most of which are in Kern County, for the forest.

Congress, however, says the deal is too good to let go without a hearing. But department representatives must now explain and justify that plan at a hearing before the House Energy and Mineral Resources subcommittee on Thursday.

At the same time, the Interior Department is seeking the money to buy the forest. The deal, which has been approved by Congress,

No one was more relieved than local oil producers when the deal was approved last month.

Congressional oversight last month amid concerns about what would happen to investments they've made on the oil leases and contracts they now have with the government.

"They're (the Interior Department) best moving forward with the plan and not going back and forth with the producers of these leases and the decisions it may cause," said David Gilbert, Kern County spokesman for the California Independent Petroleum Association.

No one's arguing against saving the trees. But how the Interior Department intends to achieve that goal has more than a few folks up at arms.

As it's said, the devil is in the details. Or in this case, several devils.

This is a quarter-of-a-billion-dollar deal which appears to have several areas of controversy," said Rep. Bill Thomas, R-Saltersfield. "It seems we're buying out a private individual company for a price that would be money to the point the feds are now trying to figure out how to buy off the state."

"At some point, you might say this is not such a simple swap. Every time an additional point comes to light, it brings up the fact that the administrators are not going to be working with Congress even though they think they don't have to."

There is some speculation as to why the Interior Department would like Congress at arm's length. Most observers believe the department doesn't want the deal to become a dead-end case that could be a tally unpalatable rider - such as endangered species act reform. If that were to happen, it would make it very difficult for President Clinton to sign.

Put it appears all the necessary steps the Interior Department has done to avoid Congressional scrutiny has resulted in exactly that.

Thomas said he will testify at Thursday's hearing, mostly about how much is not known about the deal.

Rep. Cal Dooley, D-Hatfield, a member of the House Energy and Conservation Committee, said he has a number of questions for Deputy Interior Secretary John Garamend.

"There is a fundamental issue as to whether this is an appropriate way to fund the purchase of more forest lands," Dooley said.

When is a sale not a sale?

The idea, at first, was simple. Headwaters was set to be bought by Pacific Lumber, which is owned by Macman Inc., which is owned primarily by Charles Hurwitz. Environmentalists want to limit the amount of logging that can be done on the land. The feds proposed to put up \$250 million for the purchase of the land. The state said it would like to have \$130 million worth of state lands.

But complications bubbled up almost from the start.

Hurwitz wanted cash instead of land.

In order to sell the oil leases to pay for the purchase of Hurwitz's forest, the Interior Department would need Congressional approval, according to federal law.

But asset swaps do not require Congressional approval.

The deal was first broached last December; it was suggested royalties from the oil lease, about \$65 million a year, would be used to pay for the purchase of the \$160 million was paid off. Though McIlroy said asset swaps for the Interior Department are not illegal, another administration official said the problem was budgetary concerns.

Then Hutchinson special assistant to the Secretary of Agriculture told the leases would be like "robbing Peter to pay Paul" in terms of what it would do to the federal budget.

"In the current budgetary climate, we were concerned about our ability to put additional pressure on the appropriations process," Hutchinson said.

Directing the royalties would also

results of everything in the account will switch all on the same day. The federal government will end up with Headwaters, the bidders will end up with the oil leases and Hurwitz will end up with the money.

"It's hard to characterize that as anything but a sale," Dooley said. "I'm not going to question why this country should be more than they're proposing is a restricted sale."

Interior Department and other administration representatives inside the "exchange" is in no way a sale.

"We're exchanging the value of the oil and gas leases for an equal value of Hurwitz's assets," said Dave McIlroy, chief of the Lands Division in the state office of the Bureau of Land Management, part of the Interior Department.

He said appraisals of the oil and gas lands were to have been completed and bids taken by Aug. 1. Now that Congress has pulled in the reins on McIlroy had no idea when bids would be taken.

The reason for the Aug. 1 deadline was so the Interior Department could go to Congress to make up the difference if the bids didn't meet the requirements total.

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"In the current budgetary climate, we were concerned about our ability to put additional pressure on the appropriations process," Hutchinson said.

Directing the royalties would also

sparks complaints, inquiries by lawmakers

trigger Congressional involvement because when revenue is deleted from the federal budget, Congress is legally bound to replace that loss either through new revenue or equivalent savings.

Tuchmann said Congress hasn't been intentionally kept out of the process.

"We've told Congress and everyone else that we'll work closely with them but we think we have the authority to complete the process under existing legislation," he said. "We're not trying to hide anything."

California's stake

There are other problems with the "oil for trees" deal.

The \$25 million a year in oil royalties is split between the federal government and the state. If the leases are sold, the royalties would go to the new owners and California didn't like the idea of losing \$12 million a year, which is used to help fund schools.

So, Deputy Interior Secretary Garwood came to the state earlier this month proposing a split-off deal. The federal government, he said, would give the state all the royalties paid on federally owned geothermal leases in Sonoma and Inyo counties to help make up for what California would lose in oil royalties. The geothermal leases generate about \$15 million a year, of which the state already gets \$7.5 million. Garwood told legislators the other \$7.5 million from the geothermal leases, plus anticipated

increased taxes from the privatized oil leases, would total about make up for the lost \$12 million a year.

But there was a catch. Again, the Interior Department can't give away federal lands from the geothermal leases without Congressional approval. It can only swap the money for an asset of equal value.

So, to get the \$7.5 million in geothermal lease money, Garwood said, the state would have to give the feds 70% or all of its stake in the Westwood forest. State legislators did not immediately embrace the deal.

Why, they wanted to know, would it cost \$150 million for a forest that would have no interest in for the feds than it currently receives?

A state task force is looking into the proposal.

Oil producers' lament

Meanwhile, Kern County oil producers are loudly protesting the entire deal.

As the "exchange" is structured, it might now, Interior would only sell the rights to the mineral reserves being produced on the oil leases. That means BLM would still retain the surface rights and mineral rights in other zones.

"Even if the people currently producing the leases bought those acres, the BLM could still lease out other leases," said the Kern County representative of California Independent Petroleum Association's Gilbert. The

creates a nightmare for operators on those leases.

Tuchmann disagreed, saying operators are given greater protection this way because whoever buys the leased mineral zone doesn't also have control of the surface rights and operators can still rely on their government contacts.

He did agree that one of the producers' greatest concerns, what will happen to royalty reductions given last year, is still up in the air.

The BLM and local producers hammered out agreements on reduced rates for stripper wells and heavy oil production last year. Based on those agreements, many operators increased investments on the leases and now fear those investments are in jeopardy.

Tuchmann and Tom Fry, acting deputy director of the BLM, will be in Berkeley on April 28 to talk to producers about their concerns.

Fed up with what they said was a lack of information from the Interior Department, producers began lobbying Congress for help.

"Is this the kind of public policy we want?" Gilbert said. "Where business people take up a parliamentary agreement with the government only to have the rug yanked out from under them?"

He has suggested numerous times the government use money in the federal Land and Water Conservation Fund to buy Headwaters. But that also requires Congressional approval.

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)

1. **Name:** MICHAEL S. CLARK
2. **Business Address:**
13 South Wilson Bozeman, Montana 59715
3. **Business Phone Number:**
406-586-1593
4. **Organization you are representing:**
GREATER YELLOWSTONE COALITION
5. **Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing:**
NA
6. **Any professional licenses or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:**
NA
7. **Any employment, occupation, ownership in a firm or business, or work related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:**
EXECUTIVE DIRECTOR, GREATER YELLOWSTONE COALITION
8. **Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:**
See above, also testimony, representing other groups
9. **Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994, from the _____, the source and the amount of each grant or contract:**
None
10. **Any federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the _____ by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:**
None
11. **Any other information you wish to convey to the committee which might aid the members of the Committee to better understand the context of your testimony:**
None

*Note: When the witness letter is sent out, complete the blank to identify the Federal agency or agencies overseeing the program or law which is the subject of the hearing.

55255

U.S. House of Representatives
Committee on Agriculture
Subcommittee on Forestry,
Resource Conservation, and Research
Room 1301, Longworth House Office Building
Washington, DC 20515

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April 17, 1997

The Honorable Barbara Cubin
Chairman, Subcommittee on Energy and Mineral Resources
1114 Longworth House Office Building
Washington, DC 20515

Dear Congresswoman Cubin:

I am writing in regard to the hearing by the Energy and Mineral Resources Subcommittee, scheduled for April 24, 1997. I understand that you plan to examine the Clinton Administration's proposal regarding the New World Mine at this hearing. As you are probably aware, in order to fund the buyout of the private interests in the New World Mine the Administration is proposing to arbitrarily reduce the number of acres that can be enrolled into the Conservation Reserve Program (CRP) for fiscal year 1997.

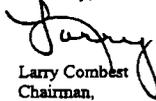
As Chairman of the House Agriculture Subcommittee on Forestry, Resource Conservation, and Research, I would like to make you aware of my vehement opposition to this proposal. As you will see in the attached press release, I agree with the Chairman of the House Agriculture Committee, Bob Smith, that this should be considered dead on arrival in my Subcommittee as well as the full Agriculture Committee. In addition, opposition has been expressed by other Members of the Agriculture Committee from both political parties as well as representatives of environmental and conservation organizations.

The Clinton Administration describes this proposal as a very innocuous delay in the sign-up of 2 million acres. The point is that they either do not understand or choose to ignore it that we have approximately 23 million acres of land currently under CRP contracts expiring this September and have not yet decided how many of these acres we will need to reenroll or new acres that need to be protected. During a hearing that our Subcommittee held on February 26th, officials from the Department indicated that they were unsure as yet how many acres they would enroll in CRP this year because they are unsure how many acres would be offered and of what environmental quality these acres would be. Now that CRP sign-up has been completed, the Department has indicated that at least 25.6 million acres were offered for enrollment in the CRP of considerable environmental benefit. Therefore, it makes no sense to reduce the amount of acres available for enrollment before we even have a good idea of how many acres we will need in the program.

I, along with Chairman Smith, will certainly defer to you and your Subcommittee regarding the aspects of the Administration's proposal dealing with issues other than funding. However, as I have made clear, paying for this proposal by limiting CRP enrollment clearly invokes the jurisdiction of the Committee on Agriculture, and we have already been in contact with the House Parliamentarian to ensure that, if and when any legislation containing this CRP mechanism is introduced, it will be referred to this Committee.

I appreciate your attention to these concerns. Please do not hesitate to contact me or the Subcommittee Staff Director, Russell Laird, if you have questions or concerns that we may be of assistance with.

Sincerely,



Larry Combest
Chairman,
Subcommittee on Forestry, Resource Conservation,
and Research

Enclosures

LC/rwl