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H.R. 2262, the Hardrock Mining and Reclamation Act of 2007

Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
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Thank you for the opportunity to present the views of the Department of the Interior on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007.

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

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

Background

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

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

Mining's Importance to the United States

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

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

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

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

BLM's Management and Regulation of Mining

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

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

BLM's surface management regulations were issued under the authority of FLPMA in 1981 and amended in 2000 and 2001. The regulations seek to provide protection of the public lands from

unnecessary or undue degradation during hardrock mining and reclamation of areas disturbed during the search for and extraction of mineral resources.

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

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

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

- reviewing and processing notices and plans of operations to prevent unnecessary or undue degradation;
- requiring financial assurances to provide for reclamation of the land; and
- considering alternative forms of reclamation after a mine is closed such as using the land for landfills, wind farms, biomass facilities and other industrial uses, in order to attract partnerships to utilize the existing mine infrastructure for a future economic opportunity.

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

Congressional Moratorium on Patenting

In the FY 1995 Interior Appropriations Act (and in each succeeding year to date), Congress prohibited the Department from accepting new mineral patent applications or processing those applications which had not reached a defined point in the patent review process. Congress authorized the Department to continue to process those applications that were grandfathered

under the moratorium and also required an annual report to Congress on the status of BLM's progress. When the moratorium was first put into effect in 1994, 626 patent applications were pending, of which 221 were subject to the moratorium and 405 were grandfathered and not subject to moratorium. Of those 405 grandfathered applications, 38 remain for BLM to process as of this date. The Department transmitted the most recent status report on mineral patenting to Congress on June 27, 2007.

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

- **Patents on Mining Claims**

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

- **Royalty**

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

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

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

- **Environmental compliance**

Hardrock mining operators on public lands are required to comply with existing state and Federal laws, including the Clean Water Act; Clean Air Act; Endangered Species Act; Federal Land Policy and Management Act (FLPMA); National Environmental Policy Act (NEPA); and

National Historic Preservation Act. We believe that these existing statutes and related regulations provide sufficient authority to regulate mining operations when properly monitored and enforced by state and Federal regulatory agencies. BLM's 2000 and 2001 revision to its surface management regulation discussed earlier provide a sound framework to prevent unnecessary or undue degradation of the public lands and are consistent with the recommendations of the National Academy of Sciences. These regulations were upheld by the D.C. District Court in 2003. We believe the legislative restatement and expansion of the existing environmental standards and permitting requirements in H.R. 2262 are both unnecessary and redundant and would only complicate BLM administration of its program and operator compliance.

- **Procedural Concerns**

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

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

Conclusion

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