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The Hardrock Mining and Reclamation Act of 2007

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Introduction

Chairman Costa and members of the Subcommittee, my name is Ronald L. Parratt. I am an exploration geologist and President and CEO of AuEx Ventures, Inc. (AuEx), a small publicly-traded company that focuses on gold exploration here in Nevada. Prior to AuEx, I managed minerals exploration in Nevada for Santa Fe Pacific Gold and Homestake Mining Company for an aggregate of 24 years. I also serve as a member of the Nevada Commission on Mineral Resources. This seven member Commission is responsible for advising the Governor and the Legislature on matters involving mineral development, and directing policy and adopting regulations for the Nevada Division of Minerals. I was appointed to this Commission to represent the exploration segment of Nevada's mineral industry. Given the time constraints associated with preparing my written remarks, I am not speaking on behalf of the Mineral Resources Commission. However, the Commission is keenly interested in this legislative dialogue given the substantial problems H.R. 2262 would create for Nevada's mining industry and will respond to this bill separately.

I very much appreciate the opportunity to testify today and describe for you the many ways in which H.R. 2262 will create serious impediments for mineral exploration and mine development on federal lands. As the world's fourth largest gold producer, Nevada will bear the brunt of this bill because most Nevada exploration projects and producing mines are located wholly or partially on public lands and 87 percent of Nevada is federal land. But H.R. 2262 will impact more than just Nevada's gold mines. Nevada is blessed with many other important mineral resources such as silver, molybdenum, copper, tungsten, and barite. Exploration for these important minerals will also suffer dramatically. The end result will be a serious economic downturn for Nevada's mining communities like Elko. But the adverse effects of this bill will extend far beyond Nevada. H.R. 2262 will make the U.S. more reliant on foreign sources of the minerals we use every day and need for our way of life. As such, H.R. 2262 is contrary to the well being of Nevada and our Nation.

During my 30 years as an exploration geologist I have worked all over the western U.S. Nearly all of my work has been on western public lands, with most of it here in Nevada. My testimony is based on this experience and focuses on how H.R. 2262 will be especially problematic for exploration because it:

1. Increases the risks associated with mineral exploration and development on public lands by eliminating the current right to use and occupy public land for mineral activities;

2. Gives federal land managers discretionary authority to reject permits for exploration and mining on the basis of where a project is located – even if it can meet environmental protection criteria;

3. Eliminates the existing practical regulatory review process for exploration projects which cause limited disturbance that can be easily reclaimed and substitutes in its place a costly and cumbersome process that is overkill for exploration; and

4. Inappropriately withdraws millions of acres of public land from exploration and mining without due consideration for the resource potential of these areas or how placing these lands off-limits to mining will increase the Nation's reliance on foreign sources for the minerals we need to maintain our way of life.

Exploration and Mining are Risky and Expensive – There is No Free Gold

Exploration and mining are high-risk endeavors because mineral deposits are rare, hard to find, and expensive to develop. To illustrate this point, I would like to describe my own personal experiences to demonstrate the substantial risks and costs inherent in mineral exploration and mine development.

During my 30-year career, I have directly managed exploration programs that have spent well over $150 million to drill many thousands of holes which have evaluated hundreds of mineral exploration targets. This huge investment resulted in only three discoveries that were ultimately developed into producing mines – the Lone Tree, Trenton Canyon, and Rabbit Creek Mines, all of which are located in Humboldt County, Nevada about 85 miles west of where we are today. That process of exploration, discovery and development took nearly two decades of persistence to accomplish. These mines have employed many hundreds of people starting in the mid-1980s and continuing to the present and have been an important economic engine that has helped drive the economy of this region for many years.

Our company, AuEx which is now 4 years old, is actively exploring 17 targets involving public land in Nevada. We and our joint venture partners will spend close to $4.0 million this year to test these mineral targets. Of course we hope this investment will result in one or more mineable discoveries – but there is no guarantee this will happen. It will likely take more investment, several years of exploration and a lot of luck to be successful. Most exploration projects fail to find commercial mineralization.

I was told by a friend that a witnesses at an earlier hearing on this bill described mining companies taking what he called "free gold" from public lands. I hope that the exploration expenditure information that I have just mentioned convinces you that *there is no free gold*. It takes a substantial investment in exploration and development to find a mineable deposit. Once the deposit is found, an additional investment of from $50 million to several $100 millions is typically required to build the mine and related facilities. This entire exploration and mine development investment is made without knowing what mineral prices will be when the mine finally goes into production making fluctuations in metal prices an additional and substantial element of risk. The entire process from exploration and development through mine construction and operation can easily take 6 to 10 years and even more. Once again – there is no free gold. It takes many millions of dollars, a long time, and a fair measure of good luck to develop a profitable mine which will hopefully pay back that investment.

The Mining Law Must Accommodate the Substantial Risks Associated with Exploration and Mineral Development – Unfortunately H.R. 2262 Increases the Risks

I'm sure that H.R. 2262 will lead to a dramatic decline in mineral exploration on public lands because it adds land tenure and permitting risks to what is already a very risky endeavor. H.R. 2262 eliminates the right under the current Mining Law to use and occupy public lands for mineral exploration and development. Instead, H.R. 2262 empowers federal land managers with discretionary veto power to reject permit applications for exploration and mining on lands where mineral development is allowed consistent with multiple use principles.

This discretionary authority to deny permit applications would allow federal regulators to make a judgment about an important mineral deposit and the associated investment to find it. To make matters worse, in making this judgment, H.R. 2262 does not require regulators to consider the Nation's need for mineral resources or to determine whether the proposed exploration or mining project can be developed in an environmentally acceptable way that complies with all applicable environmental protection standards. Instead, at any stage of the exploration and mine development process, federal land managers would have the ability to deny permit applications. This deviates significantly from the present permitting process in which applicants eventually can obtain permits to explore or mine once they prove the project will meet all environmental protection requirements and furnish an adequate bond to guarantee reclamation.

H.R. 2262 puts mineral dollars at risk every step along the way of the mining life cycle, from exploration to mining. This added uncertainty will dramatically reduce – if not eliminate – mineral exploration and development on public lands.

The discretionary permitting process proposed in H.R. 2262 ignores the fundamental geologic fact that mineral deposits only occur in specific and limited places as a result of special geologic conditions. Mineral deposits cannot be moved and must be developed where they are located. Laws and regulations governing mining must recognize and accommodate this unique aspect of mining – miners do not get to choose where mines are located. Unfortunately, H.R. 2262 ignores this essential geologic reality about exploration and mining.

Exploration and Mining Require Secure Possession of the Land – H.R. 2262 Eliminates Security of Land Tenure

Under the current law, locating and maintaining mining claims gives the claim holder the right to be on the land for the purpose of making a mineral discovery and, if a discovery is made, the right to develop the claim. This right starts at the very beginning stage of exploration, when claims are staked, and extends through exploration, deposit definition, mining, and reclamation. Because discovering and developing a mineral deposit takes many years, it is absolutely essential that this right endure throughout the entire mineral lifecycle from initial exploration to discovery, to mine development, to mineral production, and finally to reclamation and closure.

Starting in 1993, exploration and mining companies have had to pay the federal government for this right when Congress made a significant change to the Mining Law by requiring claim holders to pay fees for mining claims. These fees, including an initial claim location payment and an annual claims maintenance payment, are substantial. The current claim location fee is $30 per claim; the annual claims maintenance fee is $125. BLM also assesses a $15 processing fee and adjusts the location and claims maintenance fees every five years to reflect changes in the Consumer Price

Index. Here in Nevada, claim owners also pay $8.50 per claim to the county in which the claim is located.

These fees are a substantial part of a company's mineral exploration budget. For example, AuEx controls approximately 2,000 mining claims for which we will pay just over $250,000 to BLM this year to keep these claims in good standing. These fees apply to all mining claims, at all stages of exploration and mineral development activities, regardless of whether the claim will eventually be mined or not. Fees are commonly paid in this manner for many years before a claim has any potential to become a paying mine.

Prior to 1993, this fee did not exist. Instead, miners performed on-the-ground work, called assessment work, to maintain their claims in good standing. Eliminating assessment work (except for small miners) and substituting the claims fee system was a substantial change to the Mining Law.

Today, rather than investing $250,000 of our company's resources this year in drilling or other on-the-ground work to advance our understanding of our mineral properties – as would have been the case prior to 1993 – we give that money directly to the government. The payment of these fees should constitute a good-faith contract with the federal government that payment of all necessary fees guarantees claim owners like AuEx the right to use and occupy public land for the purpose of mineral exploration, development, and mining. This security of land tenure is absolutely essential to the future of exploration and mining on public lands. Without secure possession of our claims, exploration and mining will dramatically decline.

Unfortunately, H.R. 2262 does not provide security of land tenure. Instead, it creates substantial land tenure uncertainties that will lead to a dramatic decline in exploration – which will ensure that the pipeline of new discoveries will dry up. Without a steady stream of new discoveries, domestic production of the minerals America needs will decline and eventually stop altogether, leaving the Nation even more reliant than we are today on foreign sources of minerals.

The Environmental Title in H.R. 2262 is Unnecessary - FLPMA and the 3809 Regulations Already Changed the Mining Law by Adding Comprehensive and Effective Environmental Protection Mandates

The 1993 change to the Mining Law that established fee requirements for mining claims is not the only significant change to the Mining Law I have witnessed during that past 30 years. I have also experienced enormous changes in the way in which mineral exploration is conducted and regulated on public lands.

When I first started working here in Nevada in the late 1970s, there were no environmental regulations governing mineral exploration. No permits or reclamation bonds were required. If you needed to build a road or drill some exploration holes, you simply did so as soon as you could find an available contractor to do the work. Unfortunately, reclamation was not required.

All of that changed dramatically in 1981 when BLM's 43 C.F.R. Subpart 3809 surface management regulations for hardrock mining went into effect. These regulations implement the Congressional mandate in the Federal Land Policy and Management Act of 1976 (FLPMA) that mineral activities on public lands must be conducted in a manner that prevents unnecessary or undue degradation. BLM updated these regulations in 2001. No disturbance can be created on public land until an approved permit and an acceptable reclamation bond are in place.

As a result of the 3809 regulations, and the Nevada state reclamation statute enacted in 1989, mineral exploration today is highly regulated. Other states have enacted similar reclamation and bonding requirements.

Mining-industry critics often assert that the Mining Law contains no environmental protection requirements. This distortion fails to tell the whole story. FLPMA and the 3809 regulations dramatically changed how exploration and mining are conducted on public land, resulting in a significant *de facto* evolution of the Mining Law in response to modern environmental awareness and protection objectives.

Therefore, as this Subcommittee considers H.R. 2262, especially the environmental provisions in Title III, I would like to ask you to keep in mind how quickly and substantially the environmental regulatory requirements for exploration and mining have evolved. In a period of only 26 years, we have gone from no regulation to truly comprehensive regulation. From no bonding requirements to an effective bonding program in which BLM holds nearly $1 billion in reclamation bonds for hardrock mineral projects.

To put the bonding requirements into perspective, my company currently provides close to $400,000 in financial assurance (and these are cash deposits) to BLM to guarantee reclamation on eight of our Nevada exploration sites. BLM and state regulators – not AuEx – have determined that this is the appropriate bond amount based upon what it would cost these agencies to reclaim our sites. On average, our bonds require $3,000 to $4,000 or more of reclamation cost per acre of disturbance – substantially more than the value of typical outlying Nevada real estate. There should be no doubt that we are taking very good care of this land and are serious about our reclamation obligations.

The point I wish to emphasize here is that there is already a robust system in place to ensure reclamation and environmental protection at mineral exploration and development sites. The regulatory controls, environmental protection mandates, and reclamation bonding requirements that are already in place are appropriate for mineral exploration and mining on public lands, and are working well to guarantee that mineral activities are conducted in an environmentally sensitive way. There is no need to throw out the current system and substitute in its place the draconian changes proposed in Title III of H.R. 2262.

It should also be noted that reclamation bonding for initial exploration projects is a relatively new requirement. BLM started requiring bonds for exploration projects that disturb fewer than five acres in response to one of the recommendations in the Congressionally-funded National Research Council (NRC) study entitled "*Hardrock Mining on Federal Lands*" This 1999 study made the recommendation that bonds should be required for all exploration and mining activities that involve the use of motorized equipment off of existing roads.

BLM implemented this recommendation when it issued the revised 43 CFR 3809 regulations in 2001. This addition of bonding requirements for initial exploration project represents yet another significant change to operations under the Mining Law.

H.R. 2262 Creates a One-Size-Fits-All Permitting Process for Exploration and Mining that is Inappropriate for Initial Exploration Projects

Another serious problem with H.R. 2262 is that Title III creates a burdensome permitting process for initial exploration projects by eliminating Notice-level operations. In its place, Title III establishes a uniform permitting process for all mineral activities – from drilling a couple of holes to building a mine, without any consideration of the obvious and substantial differences in the on-the-ground impacts between the two.

The environmental impacts associated with exploration are predictable, well understood, temporary, and can be readily reclaimed. They consist mainly of building temporary and fairly primitive dirt access roads, leveling out an area for each drill site, and digging a sump to collect drilling fluids. All of these disturbances can be fully reclaimed once the drilling project is completed. A hundred or more early-stage exploration projects are permitted now each year. Some photographs of exploration drilling and road building are included with this testimony to show the very limited nature of the surface disturbance impacts typically associated with exploration.

Section 302 of H.R. 2262 eliminates the current two-tiered permitting system in which initial exploration drilling programs are regulated under BLM's 3809.300 series regulations for Notice-level operations. A BLM-approved Notice allows the permit holder to disturb a maximum of five acres of public land, with the requirement that all disturbance must be bonded and must comply with the FLPMA environmental protection mandate at 43 U.S.C. § 1732(b) to prevent unnecessary or undue degradation. The 3809 environmental performance standards at 43 C.F.R. § 3809.420 implement this FLPMA mandate.

The Notice approval process typically takes about 30 days as BLM reviews a Notice application to evaluate whether there are any special on-the-ground issues that need to be protected, to verify that the proposed exploration work will not create unnecessary or undue degradation, and to make sure that a sufficient financial guarantee is being provided.

This relatively straightforward and streamlined permitting process is both appropriate and necessary for initial exploration projects. Because the nature of the impacts associated with this type of project are well understood, limited, and temporary, a more detailed and time consuming process would waste scarce agency resources and would cause unacceptable delays for exploration companies, without creating any environmental benefits. In light of the fact that initial exploration activities are already fully regulated and bonded, there is no justification for the dramatic changes proposed in H.R. 2262 to eliminate this efficient, practical, and cost-effective approach to regulating initial exploration projects.

Eliminating the notice-level permitting process is completely at odds with one of the recommendations in the above-mentioned 1999 NRC study on hardrock mining on federal lands. This study specifically recommends that the Forest Service adopt a procedure similar to BLM's notice process for efficiently reviewing and regulating exploration projects that disturb fewer than five acres. In discussing this recommendation, the NRC report states the following:

> "The objective of this recommendation is to allow exploration activities to be conducted quickly when minimal degradation is likely to occur. The Committee believes, that with reclamation bonds or other financial assurances in hand for land disturbance, exploration should be able to proceed expeditiously." (NRC, 1999, page 98.)

Keeping Lands Open to Exploration and Mining is Essential – H.R. 2262 Inappropriately Puts Millions of Acres Off-Limits to Exploration and Mining

As discussed above, mineral deposits are rare, hard to find, and once discovered, cannot be moved; they can only be developed where they are found. The 1999 NRC study explains this immutable fact of geology in the following way:

> "In contrast with most other industries, hardrock mining has few alternatives relative to location, because economic occurrences of minerals are geologically and geographically scarce. Only a very small portion of Earth's continental areas, certainly less than .01%, contains the economic portion of its non-fuel mineral endowment. Thus, one cannot arbitrarily decide to build a mine here or there, but rather one must discover and mine those few places where nature has hidden its minerals." (NRC, 1999, page 140.)

Title II of H.R. 2262, "Protection of Special Places," renders millions of acres off-limits to exploration and mining. At a minimum, it withdraws the 58.5 million acres identified in the Roadless Area Conservation Rule of January 2001, all lands that are currently being managed as Wilderness Study Areas, and several other land status categories on which exploration and development are not currently prohibited. From AuEx's perspective, it will mean that vast areas of the Humboldt-Toiyabe National Forest will suddenly become unavailable for exploration and mining. Because we have several properties on the Humboldt-Toiyabe National Forest, this provision concerns us very much. At the very least, no withdrawals should be made until an appropriate study of the mineral resource potential has been completed. Better yet, these lands should remain open to exploration and mining.

From a broader perspective, this categorical withdrawal should concern the American public because it will mean that presently unknown and undiscovered deposits of minerals that we need like gold, silver, copper, zinc, molybdenum, tungsten, etc. can never be explored for – let alone ever be developed. These deposits will never help the Country meet its needs for these minerals. This withdrawal will only serve to increase the Nation's reliance on foreign sources of minerals. Please remember that substantial land withdrawals have already occurred over the past decades putting many millions of acres off-limits to mining, including land here in Nevada. The additional large land withdrawal proposed in H.R. 2262 is not good public policy for America.

Besides exacerbating the existing domestic mineral availability problem, this wholesale withdrawal is unnecessary to protect special places. Both Congress and the Executive Branch already have numerous mechanisms for withdrawing lands from operation of the Mining Law. The 1999 NRC study examines the administrative mechanisms that BLM and the Forest Service can use to protect special places and describes at least five mechanisms that federal land managers already have for protecting valuable resources and sensitive areas from mining.(NRC, 1999, pages 68 – 69.)

Exploring for Hardrock Minerals is Very Different from Oil, Gas and Coal

Throughout the long history of the legislative debate about changing the Mining Law, the question is often asked: "Why should hardrock minerals be treated differently than coal, or oil and gas?" The answer to this question is simple – they should be treated differently because they are substantially different. I would like to briefly discuss the differences between these natural resources from an exploration perspective.

As I described earlier, hundreds of holes must be drilled in order to discover and develop a hardrock mineral deposit. Moreover, once these holes are drilled and the mineral deposit is adequately defined to justify developing a mine, several $100 million of additional investment is typically required to build a mine. All this is expended before any return is generated from the project.

In marked contrast, in the case of oil and gas, one successful drill hole is potentially all that is needed to develop a producing resource. These holes are more expensive individually than the typical mineral exploration hole but the odds for success are higher. Once a discovery is made, the discovery hole can essentially become the oil and gas "mine" with a saleable product at the wellhead.

Coal is also very different from hardrock minerals. When coal companies bid on a federal coal lease, the existence of the coal deposit is already known and not in question. Coal companies don't bid on the right to explore for coal. They already know the coal is there. Rather, they are bidding on the right to mine the coal and produce a product directly out of the mine that is saleable with little or no processing.

There are many other differences between hardrock minerals, coal, and oil and gas that extend beyond exploration into the development and production stages. These differences are beyond the scope of my testimony which focuses on exploration so I will leave it to others to discuss them. However, as this Subcommittee considers H.R. 2262, I would ask you to keep in mind that the differences between these natural resources start at the exploration stage and must be thoroughly understood and carefully considered in order to develop a bill that is appropriate for hardrock minerals.

Conclusion

H.R. 2262 will be devastating for hardrock mining in America. This devastation will start at the very initial stages of mineral exploration, creating a ripple effect that will extend through development and mining. The decline in exploration that will result from this bill will translate into no new discoveries and subsequently no new mines on public land. This will lead to even greater dependence on foreign sources of mineral resources that make our economy work.

This is clearly not in the best interest of either the State of Nevada or of the American public. Our way of life demands readily available and affordable minerals to build our cars, bridges and other infrastructure, appliances, electronic equipment like computers and cell phones, power transmission facilities, and all of the other necessities, conveniences, and even luxuries of modern life that we are so lucky to enjoy in this country. H.R. 2262 would change all of that, making the U.S. much more reliant on foreign countries than we already are for essential minerals.

Reference Cited

Hardrock Mining on Federal Lands (1999), Committee on Hardrock Mining on Federal Lands, Committee on Earth Resources, Board on Earth Sciences and Resources, Commission on Geosciences, Environment, and Resources, National Research Council.

Notice-level exploration drilling in Nye County Nevada

Notice-level access road building in Pershing County, Nevada

Notice-level Exploration Drilling in Churchill County, Nevada

Development Drilling Defining the Extent of the Mineral Deposit at the Site That Became the Lone Tree Mine in Humboldt County, Nevada