



Hardrock Mining on Federal Lands

Energy and Natural Resources Committee
United States Senate

Statement of the National Mining Association
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Copper & Gold.
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Good morning, Mr. Chairman and members of the Committee. My name is Tim Snider, and I am President and Chief Operating Officer of Freeport McMoran Copper & Gold. In March, Freeport acquired Phelps Dodge Corporation, which has operated copper mines in New Mexico and Arizona since the 1880's. I am a third generation copper miner and started my career at Phelps Dodge in 1970. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before the Committee on this issue of great importance to the domestic mining industry. NMA members support reform of the Mining Law and look forward to working with the Committee to try to resolve this issue during this Congress.

NMA is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining industry. Our association and our members, which employ or support 170,000 high-wage jobs, have a significant interest in the exploration for, and development of, minerals on federal lands. The public lands in the Western states are an important source of minerals, metal production and reserves for the nation's security and well-being. Mining on federal lands provides for high-wage employment, vitality of communities, and for the future of this critical industry.

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

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

The cornerstone of NMA's policy objectives is a predictable legal and regulatory framework to provide the long-term certainty and stability needed to protect existing investments and to attract new capital necessary to maintain a healthy and sustainable domestic mining industry. The importance of the domestic mining industry to our economy, our way of life and our national security cannot be ignored. Indeed, it is irresponsible for us to ignore the vast mineral resources we have within our nation's boundaries when our domestic needs are so great.

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

Fair Return

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

The imposition of a royalty has the potential to have significant economic consequences on existing and future mining operations, but the impact will vary depending upon the type of royalty imposed. Determining the type of royalty, the rate and its application to existing claims are critical. As noted in the World Bank royalty study, mining is "particularly sensitive to [royalty] effects because of its cost structure and vulnerability to substantial market-driven demand and price swings." Otto, James. *Mining Royalties: A Global Study of Their Impact on Investors, Government, and Civil Society*. Washington, DC: World Bank, 2006, p. xiv.

A net income royalty produced from new mining claims on federal lands would provide the public with a fair return and with funds for restoring

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

Abandoned Mine Lands

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

Certainty/Security of Tenure

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

Furthermore, security of tenure is critical in obtaining the financing necessary for mining projects. Investors need to know that a mining project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations. Mining projects—

from exploration to extraction to reclamation and closure—are time- and capital-intensive undertakings, requiring years of development before investors realize positive cash flows. Uncertainty in the legal regime applicable to mining projects can chill the climate for capital investments in domestic mining projects. Potential investors must know their expectations will not be turned upside down by fundamental alteration of laws, regulations or policies. As the World Bank recently found, to attract such investments, governments need to adopt the fundamental principle of “no surprises,” such as changes in laws, regulations or policies. *Id.* at 73.

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

Despite reserves of 78 important mined minerals, however, the United States currently attracts only eight percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic resources. The 2007 U.S. Geological Survey Minerals Commodity Summaries reported that America now depends on imports from other countries for 100 percent of 17 mineral commodities and for more than 50 percent of 45 mineral commodities. *2007, U, 2007, p. 7.* This increased import dependency is not in our national interest. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, and vulnerability to possible supply disruptions due to political or military instability.

Our over-reliance on foreign supplies is exacerbated by competition from the surging economies of countries such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are ever-increasing; they are growing their economies by employing the same mineral resources that we used to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources. Even now, some mineral resources that we need in our daily lives are no longer as readily available to the United States.

Environmental Standards

Under current law, a mineral exploration or mining operation on federal lands is subject to a comprehensive framework of federal and state environmental laws and regulations including: the Clean Water Act; the Safe Drinking Water Act; the Clean Air Act; the National Environmental Policy Act; Toxic

Substances Control Act; the Resource Conservation and Recovery Act; the Endangered Species Act; and the Bureau of Land Management (BLM) and Forest Service surface management regulations for mining. These laws and regulations are “cradle to grave,” covering virtually every aspect of mining from exploration through mine reclamation and closure. According to the 1999 report on issued by the National Academy of Sciences (NAS) panel of experts convened by Congress, this existing framework for mining is “generally effective” in protecting the environment. *Hardrock Mining on Federal Lands*, National Academy of Sciences, National Academy Press, 1999, p. 89.

That 1999 NAS report also found that “improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection. . . .” *Id.* at 90. Notably, the Department of the Interior’s 2000 and 2001 regulations governing mining and reclamation on BLM lands (“the 3809 regulations”) significantly strengthened the standards for mining on federal lands, including new provisions on guaranteeing reclamation through financial assurances.

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

Importance of Access

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

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

Efforts to amend the Mining Law must recognize existing authorities to close certain "special places" to mining activity. Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. Congress also has granted additional authority to the Executive Branch to close federal lands to mining. The Antiquities Act authorizes the president to create national monuments to protect landmarks and objects of historic and scientific interest. Finally, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land withdrawal authority of the Federal Land Policy and Management Act. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public lands. These existing laws and authorities are adequate to protect special areas. New closures of public land, based on vague and subjective criteria without congressional oversight, would arbitrarily impair mineral and economic development.

Conclusion

The United States needs a robust minerals production industry to help meet the needs of American consumers. Unfortunately, America is ceding to others the responsibility for meeting our minerals needs. Increased import dependency created by lack of U.S. mineral development is not in our national interest and causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations and vulnerability to possible supply disruptions due to political or military instability. The U.S. mining industry has fully embraced the responsibility to conduct its operations in an environmentally and fiscally sound manner. It hopes and expects that Mining Law legislation will recognize and honor both this commitment and the industry's contribution to our national well-being.

NMA appreciates the opportunity to provide this testimony.