

TESTIMONY BEFORE THE SENATE ENERGY & NATURAL RESOURCES COMMITTEE  
Hearing to Examine and Consider Updates to the Mining Law of 1872

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October 5, 2021

Chairman Manchin, Ranking Member Barrasso and members of the Committee, thank you for the opportunity to provide my input to the Senate Energy and Natural Resources Committee's Hearing to "Examine and Consider Updates to the Mining Law of 1872". My name is David Brown, and I am the President & CEO of Wyo-Ben, Inc. and represent the third generation of a 70 year old, small, family owned and managed mining and manufacturing business with headquarters in Billings, Montana and mining operations in the Big Horn Basin of south-central Montana and northwestern Wyoming. Wyo-Ben directly employs 140 associates in our Montana and Wyoming operations paying wages that are significantly higher than the median wages in the communities where we have operations and are some of the highest paying jobs in the area. We also indirectly employ another 60 people who work for our mining and hauling contractor. These wages, when combined with the local goods and services we purchase, have a significant impact on the economies of the rural towns and counties where we operate.

Wyo-Ben mines a mineral called Sodium Bentonite which is one member of a group of minerals known as 'Industrial Minerals'. These minerals, which are produced in high volumes and have low margins, are widely used in the products we rely on in our daily lives. While bentonite is found in many other parts of the world, the bentonite found in Wyoming and bordering states is exceptional in its quality characteristics. So much so that it is known as "Wyoming Bentonite" and is the benchmark for bentonite quality around the world. Wyoming Bentonite is used as a base material to create hundreds of different products that are sold worldwide. Wyoming Bentonite was used as the binder to create the sand mold used to cast the engine block for your car or truck. The municipal landfill in your community would have environmental issues if Wyoming Bentonite wasn't used to form the impermeable bottom liner that prevents landfill leachate from contaminating ground water. Streams and lakes would be far dirtier if contaminants were not removed from industrial wastewater before discharge using Wyoming Bentonite. It would be difficult to drill any kind of well or install the miles of telecommunication and utility lines buried throughout the country without using Wyoming Bentonite as the drilling mud. The wine, beer or fruit juice you enjoy would be unpalatably cloudy if not for the Wyoming Bentonite used to clarify it. And you would be very unhappy if not for Wyoming Bentonite's unique properties that allow your cat's waste to form odorless clumps for easy removal from the litter box.

While a large percentage of the bentonite mined in Wyoming is used domestically, about 20% is sold outside of North America. This is due to the exceptional performance characteristics exhibited by Wyoming Bentonite that are not easily duplicated by foreign sources of the clay. Despite this, there are significant quantities of lower quality foreign bentonites which find their way into the U.S. market due to their low cost. China is the second largest producer of bentonite behind the United States.

It's important for me to note that around 90 percent of the bentonite we use for our products is obtained from mining claims on federal lands administered by the Bureau of Land Management. Our mining is open pit employing efficient modern mining techniques using scrapers and dozers in a "continuous cast back" mining technique that we developed to place the overburden removed from one pit directly into the preceding pit in a pit series.<sup>1</sup> This allows us to spread topsoil containing live native plant seed directly on previously mined and backfilled pits. On average, we must move eight to ten cubic yards of overburden and topsoil for each cubic yard of bentonite we mine. The bentonite deposits we mine are very thin, averaging only 3 1/2 feet thick, and often run laterally for miles. The disturbance footprint of our pit is relatively small, averaging about 200 feet wide by 400 feet long. A typical pit is open for only a matter of months before the overburden and topsoil is replaced and we begin our planned revegetation process which focus on creating a diverse habitat that blends into the surrounding undisturbed lands.<sup>2</sup> As a result of our mining and reclamation practices, we have been honored to receive numerous awards from State, Federal and non-governmental agencies and industry associations for our exceptional environmental stewardship. These include the Bureau of Land Management's Hardrock Mineral Environmental Award, the Interstate Mining Compact Commission's Reclamation Award (Non-Coal Category), Several Excellence In Surface Mining awards from the Wyoming Department of Environmental Quality, the Wildlife Habitat Reclamation and Stewardship Award from the Wyoming Game and Fish Department, as well as several excellence in environmental performance and sustainable development awards from industry associations.

As a small company that operates in an industry segment with inherently low profit margins, and that relies heavily on mineral resources from federal lands, our ability to compete in the domestic and international marketplace is dependent on our ability to access and economically mine these resources. This is why any discussion about changing the Mining Law, the rules under which we have always operated, is of particular concern to us. Several significant changes to the Mining Law are being proposed in the "Hardrock Mining" section of the House draft of the budget reconciliation bill that is currently being negotiated in Congress.

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<sup>1</sup> See Appendix I

<sup>2</sup> See Appendix II

First, this section seeks to establish a new royalty system for hardrock mining of 8 percent of gross income for all new plans of operation and 4 percent of gross income for all existing plans of operation. While this may be more easily borne by larger mining companies, especially those outside of the Industrial Minerals segment, small industrial minerals companies like Wyo-Ben will be hard pressed to absorb this cost due to our already thin margins. We will also have a difficult time passing this cost on to our customers if our much larger global competitors choose to merely absorb the cost. This will put us in a difficult situation of having to reduce our cost of operation. Because we operate in small towns in Wyoming the people that work for us are like family so reducing staffing is something we do not want to have to do but would be forced to consider.

Second, this section seeks to establish a new "Reclamation Fee" of 7 cents per ton of displaced material which is defined as unprocessed ore and waste dislodged from its location at the time of mining. This proposal seems to be based on the idea that the state run mine reclamation programs are not doing their job and additional funds are needed by the federal government to ensure that mine reclamation is satisfactorily completed. There is no evidence to support this, however, and I am certain that the Departments of Environmental Quality in Montana and Wyoming, who are charged with regulating mine permitting, would be particularly upset to learn that Congress thought they weren't doing their job if this provision were to be passed into law. This new fee is very obviously punitive in nature and it will only further reduce our ability to be profitable and support the high paying jobs we now provide.

Third, this section seeks to increase the annual claim maintenance fee from \$165 to \$200 per 20 acres. In 1993 Congress enacted a law requiring payment of \$100 per year per claim as a claim maintenance fee with the provision that every 5 years the Bureau of Land Management could increase this fee by using the Consumer Price Index to adjust it for inflation. This has been done multiple times since then to the point where the fee is currently \$165. In 2012 Congress modified the requirement making it apply to each 20 acre parcel in a claim rather than each claim. The 21% increase in the maintenance fee sought by in this section is merely punitive in nature and has no basis. If passed into law, it will significantly impact small mining companies like Wyo-Ben who already annually pay significant sums to the federal government to keep their mining claims and the resources they need to continue in operation.

Additionally, two funding provisions are also included in the Hardrock Mining section. The first provides for \$2.5 billion in additional funding for the Abandoned Mine Lands program to "inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned locatable minerals mine land". The Abandoned Mine Lands program has been in existence since 1977 when the Surface Mining and Control Act was passed. Since that time it has collected \$11.674 billion to be used to address abandoned mines across the country. The Office of Surface Mining Reclamation and Enforcement states that \$9.461 billion of this amount has been spent leaving \$2.213 unappropriated.

If \$2.213 billion remains unspent after the AML program has been in existence for 44 years, why is an additional \$2.5 billion needed now? This provision of this section is a solution looking for a problem. The second funding provision provides for \$3.0 million to revise the rules and regulations in the Federal Land Policy and Management Act of 1976 (FLPMA) to prevent undue degradation of public lands due to hardrock mining activities. Across the country, states are charged with regulating mining activity and ensuring that mines are reclaimed before the mine operator is released from liability. Significant sums of money are put up in the form of reclamation bonds to insure that, if an operator fails and the state must assume responsibility for reclaiming a mine site that there are sufficient funds to do so. Since no mine reclamation bond associated with a permitted mine has been forfeited in over two decades this current system appears to be working well. As a result, we again appear to have a solution looking for a problem.

If additional funds are really needed to address real hardrock mining issues we need look no further than to the funds that are annually collected from the current Claims Maintenance Fee. According to the Bureau of Land Management's most recent statistics, they received over \$71 million in FY 2019 from claim maintenance fees and claim location fees. Less than \$40 million of that amount was used for administration of the Mining Law program with the remaining \$31 million going to the general treasury. If additional funding is really needed for mining related programs, Congress should look to these funds which should have been used for mining related issues.

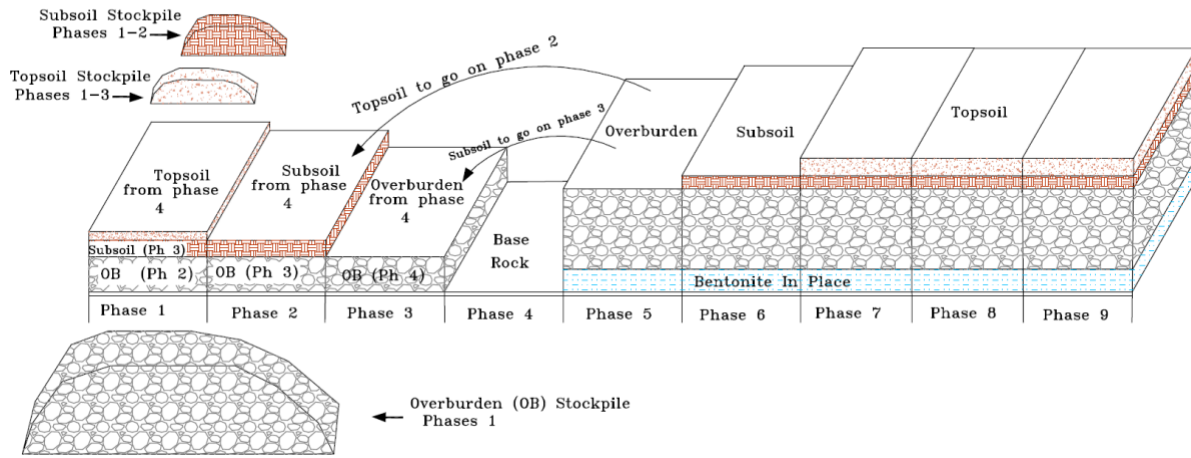
As the previous paragraphs illustrate, any discussion of changes to the Mining Law must recognize that this is an extraordinarily complex issue. There are 149 years of promulgated regulations and case law, that must be dealt with thoughtfully and with care. The current reconciliation bill provides neither the time nor the appropriate venue for such a detailed and thoughtful discussion of the issues inherent in such a change.

The "one size fits all" approach to mining law reform put forth in the Hardrock Mining Section will significantly affect our company's ability to remain competitive and, perhaps, our viability to continue to operate and offer good paying, high quality employment. Further, the negative impact of the proposed Mining Law changes on the nations supply chain as well as on our local communities would be severe. For all these reasons, I respectfully request the Committee to recommend to the full Senate that the Hardrock Mining Section be removed from the final Reconciliation Bill before it is sent to the President. I appreciate this committee taking the first step toward considering Mining Law reforms through regular order with this hearing and look forward to continuing to engage with you on this important issue.

That concludes my formal statement, and I would be happy to answer any question you may have for me.

Figure 1: Cast Back Mining Process

Cast Back Mining System



Appendix II: Undisturbed and Reclaimed Lands

**Figure 1: Reclaimed land on left, undisturbed land on upper right**



**Figure 2: Undisturbed land in upper right next to reclaimed land with pond**



