

Town of Crested Butte

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January 17, 2008

VIA OVERNIGHT DELIVERY

Honorable Jeff Bingaman
Chairman, Committee on Energy and Natural Resources
Unites States Senate
Washington, D.C. 20510

RE: Written Testimony / Oversight Hearing / Reform of the 1872 Mining Law / Town of Crested Butte, Colorado

Honorable Chairman and Members of the Committee:

Thank you for the opportunity to submit our comments and respond to the Committee's questions regarding reform to the 1872 Mining Law. As the Mayor of a small community in western Colorado surrounded by federal land, I understand the importance of sensible and effective public lands management that meets the needs of small communities like ours and all Americans.

Crested Butte is keenly interested in a number of issues related to the reform of the 1872 Mining Law, but several are of paramount concern. At the outset, any reform must consider the essential importance of municipal watersheds to the health and vitality of western communities. Watershed protection must take precedence over industrial mining development. Relatedly, state, local and tribal governments must be given a much larger role in the determination as to whether and where mining development can proceed. The ability of these governments to have certain critical areas withdrawn from entry and development must be a central tenet of any reform legislation.

Crested Butte, Colorado

Crested Butte is a world-class ski town and National Historic District with a resident population of approximately 1,600 persons. We are located 230 miles southwest of Denver. Crested Butte is sandwiched between the Raggeds, Maroon Bells and West Elk Wilderness areas - 50 miles directly upstream from the Black Canyon of the Gunnison National Park.

Crested Butte has a rich mining history and we are proud of our heritage. Times have changed though and our residents and economy no longer depend on mining. In our community, skiing, fishing, hiking and mountain-biking, to name a few, are the life-

bloods of our economy. It is our clean environment and recreational opportunities, enhanced greatly by our abundant public lands that have allowed us to thrive.

As a former mining town, we recognize the importance of a strong and stable mining industry. We are cognizant, however, that the future of our community depends on a healthy, intact watershed and long-term and sustainable economic prospects not subject to the boom-and-bust cycle of mineral development. We believe that comprehensive reform can achieve these goals.

The Lucky Jack Project

Of all the issues facing Crested Butte, like those of most communities across America, none are more important than protecting our quality of life, the health of our citizens, our environmental values and the economic vitality of the community. Today, as we prepare to testify before the Committee, all of these values are threatened by a large-scale industrial mining project proposed on United States Forest Service (Forest Service) lands just one mile outside our Town boundary. This project, a/k/a the "Lucky Jack Project" is proposed in our watershed where the Town obtains its domestic water. A map depicting the location of the Town's municipal watershed is attached hereto. Currently, the Lucky Jack Project will be regulated by the antiquated provisions of the 1872 Mining Law. Although we have just begun our review of this proposed molybdenum mine, it is clear to us that current federal law materially fails to protect the interests of our community, local residents and businesses and the tourists that visit and sustain Crested Butte.

Based on our initial understanding of the Lucky Jack Project, the mine will dump hundreds of thousands of tons of mine wastes and mine tailings into Crested Butte's watershed, disturb thousands of acres of prime wildlife habitat, eliminate critical recreational areas from public use and essentially turn pristine National Forest lands outside of our Town – all of which are surrounded by federally designated wilderness - into a permanent industrial dump site.

As depicted in red on the attached map, the project proponents (U.S. Energy Corp. and Kobex Resources, Ltd. (collectively, "U.S. Energy/Kobex")) have filed mining and millsite claims on large areas of the Gunnison National Forest right above the Town. We obtained the red highlighted portion of the map from U.S. Energy/Kobex's website on the date of this correspondence. These claims are slated for U.S. Energy/Kobex's network of waste dumps, pipelines, roads and related facilities.

1872 Mining Law

Under the federal government's interpretation of the 1872 Mining Law, the Forest Service is powerless to deny the Lucky Jack Project. At best, under the agency's mining regulations located at 36 CFR Part 228A, the Forest Service can only "minimize adverse impacts", but cannot deny the proposed project to protect public resources and local interests.

Public resources and local interests are vital to Crested Butte. In addition to the need to protect our watershed, the Town relies heavily on various forms of tax revenues from tourists, local residents and businesses, second homeowners and other recreational users of public lands – the same lands that will be impacted by the Lucky Jack Project. None of these values are considered by the Forest Service in its perfunctory duties under the 1872 Mining Law. Due to the vital importance of reform of the 1872 Mining Law to this community, both the Town and Gunnison County passed unanimous resolutions urging the immediate and comprehensive reform of this antiquated law. We have attached the Town's August 7, 2007 resolution and the September 18, 2007 County resolution for your reference.

Specific Reform Issues and Responses

The resolutions cited above outline, in our view, the minimum conditions for reform. The Town's specific answers to the questions posed by the Committee in its January 7, 2008 correspondence are as follows:

- (1) **Should legislation provide for new environmental standards for hardrock mineral activities? If so, what should those standards be and what transition rules would be appropriate for their implementation?**

Reform of the 1872 Mining Law, must, at its core, contain new environmental standards to protect public resources from adverse impacts. The current regulatory standards, especially the completely ineffective "minimize adverse impacts" requirement in the Forest Service regulations, must be substantially strengthened. At a minimum, Congress must establish the principle that proposed mining operations, in certain situations, be denied as a matter of sound public policy and law. Both the Bureau of Land Management (BLM) and the Forest Service must be given the authority to balance other public uses and values on public lands in determining whether a specific mining proposal can be approved.

For example, under the current mining law and regulations, mining in Crested Butte's watershed is considered by the Forest Service as "the highest and best use" of the public lands above our Town – regardless of the impacts to our watershed and other values. This is directly contrary to the health and vitality of our community. The

decision whether mining can occur must be balanced with the needs of the community, especially regarding the protection of watershed integrity and the economic values inherent in high-quality waters and lands.

The federal land agencies must have the authority to consider and protect the non-mining values that are so important to towns like Crested Butte. Each mining proposal must be judged on its own merits. In some situations, such as ours, mining is not the preferred use of federal land. In this case, watershed protection, the maintenance of a vital recreation-based economy and similar values are paramount to the residents of this area. In other areas of the western United States, however, mineral development may be considered the best use of federal land and mining should proceed accordingly. Each situation is different and the federal land agencies must have the authority and discretion, with substantial input from the local communities affected thereby, to recognize that mining may not be the most beneficial use of public land.

Regarding the implementation of the much-needed authority to protect other valued public resources from mining development, any reform to the 1872 Mining Law must apply, at a minimum, to all projects that have not received required federal, state and local approvals and have not undergone thorough and comprehensive environmental reviews. Existing operations may be conducted under their current approvals, but any revision or expansion to existing operations must be subject to any new requirements.

(2) Should legislation designate categories of lands as not available for location and entry? If so, what categories should be designated?

Yes. Certain lands should not be available for location and entry. At a minimum, municipal watersheds must be withdrawn from location and entry. Other values, such as roadless areas, wild and scenic rivers, prime wildlife habitat, Native American sacred grounds, and lands important to local recreation-based economies, such as Crested Butte's, also deserve withdrawal. Because local residents, businesses and elected officials are best able to ascertain the importance of local public lands for these values, it is critical that states, counties and municipal governments (as well as tribal governments) have a direct say in these withdrawal decisions. Thus, H.R. 2262's provision enabling these governments to petition for withdrawal must be enacted. It is important that the standard for approving such a petition be reasonable and that such petitions be granted as a matter of course except in cases of a vital national interest that requires that lands be kept open for mineral entry.

(3) Should the legislation address situations where mining claims should not be developed due to environmental or other concerns? If so, how should this be addressed?

Yes. As with the withdrawal of lands from mineral entry, certain lands, as a general matter, must be protected from mineral development. Each mine project, and the

public resources to be impacted thereby, must be viewed on a case-by-case basis. This must occur at the outset of the permitting process. If existing claims are proposed for mineral development, the federal land agency, with the invited and comprehensive input from local communities and the affected public, must then decide if mining is the appropriate use of that public land. Some mining operations, due either to their significant impacts or due to the location of the proposed development, must be deemed unsuitable for those lands. Other projects, due to proposed environmental safeguards and the lack of important resources or public concern, should be permitted to go forward.

In the case of Crested Butte, it is clear that industrial mineral development of the public lands on Mt. Emmons and within the Town's statutorily established municipal watershed would result in significant adverse environmental impacts that are not addressed under the 1872 Mining Law. The Town's watershed represents a prime example of an area that is clearly unsuitable for mineral development.

It is also important to recognize the critical need for local and state regulation of hardrock mineral development. Some mining companies have argued that such close-to-the-ground regulations are pre-empted by federal mining policies and laws. That is wrong and frankly makes no sense as it is the local communities that are directly affected thereby. It is imperative that local and state statutes and regulations that limit or prohibit mineral development and its impacts under certain circumstances be recognized by Congress as an integral part of natural resource development and regulation in the western United States.

(4) What additional financial assurances, if any, should be required for mining operations?

Although the BLM and Forest Service regulations regarding financial assurances have improved in recent years, significant improvements are still necessary. For example, under current BLM and Forest Service regulations and policies, the agency and the mining company determine the amount of the financial assurance with little or no public input (i.e., the financial assurance amount is determined after the mine is approved and the National Environmental Protection Act (NEPA) process concluded). Further, the financial assurances only cover what the company is proposing to do as part of its initial plan of operations. These warranties never account for the potential for spills, leaks and other problems. Mining companies must be required to establish, in addition to the basic "reclamation" financial assurances, a trust fund or other mechanism to account for potential failures. The western United States, even in the "state-of-the-art" era of modern mining, is riddled with examples of such problems that were not predicted by the company or the regulator. The Summitville Mine disaster in Colorado is one of the most egregious examples, with cleanup costs exceeding \$200 million and counting. In that case, the State of Colorado required only a bond for less than \$5 million. The result of this disaster is that the taxpayer has been forced to largely foot the bill. This is unacceptable.

Closer to home, Crested Butte residents live with the threats posed by a defunct silver/lead/zinc mine that continues (and has for the last 30 years) to discharge contaminated water directly into our watershed. While at the same time the Environmental Protection Agency (EPA) is in the process of re-mediating the Standard Mine Superfund less than one mile away. This Superfund site is also in the Town's municipal watershed. Yearly treatment costs for the water running out of the defunct mine exceed \$1 million with no end in sight. State and federal reclamation laws failed to protect against this situation. We should not make the same mistake twice. Any reform of the 1872 Mining Law must account for such contingencies and should contain comprehensive provisions ensuring that in the future local communities do not have to deal with the mess left behind by inadequate financial assurances.

(5) What type of additional enforcement and compliance provisions, if any, are needed?

The current system of lax enforcement and compliance must be substantially strengthened. For example, under current regulations the agencies have little authority to issue cease and desist orders without complicated and lengthy legal proceedings, even in the face of clear environmental harm. The agencies must have the authority to curtail, or halt if necessary, any activity not in compliance with the applicable plan of operations.

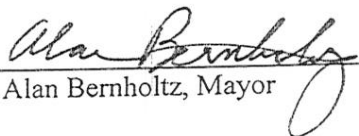
Further, under current law, there are no citizen inspection or enforcement provisions, even on the public's land. At a minimum, a citizen suit provision similar to those contained in the Clean Water Act and the Surface Mining Control and Reclamation Act (for coal mines) is needed. Such provisions have been part of these laws since the 1970s and have worked well in the past. Communities such as Crested Butte must be able to seek legal redress for violations of federal mining and public land laws.

Conclusion

On behalf of the people of Crested Butte and all those that visit and enjoy our special place, thank you very much for the opportunity to bring our concerns to your attention. The future of Crested Butte is dependent on your protection of our water, our land and our economy. All of this is at risk without real, comprehensive reform of the antiquated 1872 Mining Law. We request that Congress act as expeditiously as possible to bring mining regulation into the 21st Century.

Respectfully,

TOWN OF CRESTED BUTTE,
a Colorado home rule municipal corporation

By: 
Alan Bernholtz, Mayor

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Enclosure