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Hardrock Mining on Federal Lands

Statement of
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Before the
Subcommittee on Mining and
Natural Resources
Committee on Interior and Insular Affairs
House of Representatives

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our work to date on various issues relating to the Mining Law of 1872 and provide our views on certain provisions of H.R. 3866, the "Mineral Exploration and Development Act of 1990".

Over the last 4 years GAO has reported on several aspects of the Mining Law of 1872 and its administration and has made a number of recommendations to the Congress and the federal land-managing agencies.[1] We have reported that the existing annual work requirement no longer ensures that mining claims are developed and that some claims are being used for nonmining activities. In order to promote mineral development and ensure that claims are available to legitimate miners, we have recommended that the Congress require claim holders to pay the federal government an annual holding fee in lieu of the existing annual work requirement. We also have reported that the Department of the Interior's bonding policy has not ensured that mining operations on its lands are reclaimed and recommended that it require some form of financial guarantees to help ensure reclamation. In addition, because we found that the mining law's patent provision has permitted valuable federal lands to pass into private ownership for a fraction of their value, we have recommended that the Congress eliminate patenting. This

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[1]See attachment I for a listing of recent GAO reports and testimony.

would make the Mining Law of 1872 more consistent with current national natural resource policies and preserve the government's opportunity to obtain revenues for minerals extracted from its lands.

In our view, H.R. 3866 would accomplish the intent of our recommendations that we have made to the Congress. The bill's requirement for graduated diligent development expenditures or graduated payments in lieu of development should encourage timely development of mineral resources and discourage unauthorized activities on federal lands. The bill's requirement for financial guarantees covering all mining operations that will cause significant surface disturbance should ensure reclamation of land scarred by mining operations. In addition, recent action taken by Interior's Bureau of Land Management (BLM) indicates that it is at least partially adopting our recommendation to require financial guarantees to help ensure reclamation. Finally, the bill will eliminate the patent provision thereby preventing lands from passing out of federal ownership and keeping open the opportunity for the government to obtain revenues for minerals extracted from its lands.

BACKGROUND

The Mining Law of 1872 was enacted to promote the exploration and development of mineral resources on federal lands. These lands

cover approximately 688 million acres, primarily in the western United States. The principal federal land-managing agencies--Interior's BLM and the Department of Agriculture's Forest Service--manage about 270 million and 191 million acres, respectively. This represents about 67 percent of all federally owned lands. Each agency is responsible for the surface management of mining-related activities on its lands.

Under the mining law, U.S. citizens and businesses can freely prospect for hardrock minerals[2] and uncommon varieties of mineral materials[3] on federal lands not specifically closed or withdrawn from mining. They can file claims with BLM (for a fee of $10 each), giving them the right to use the land covered by a claim for mining-related activities and the right to sell the minerals extracted without any monetary compensation to the federal government. To preserve the rights to their claims, claim holders must certify that they have annually performed at least $100 worth of drilling, excavating, or other development-related work (often referred to as the act's "diligence" or "annual work" requirement) for each claim.

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[2]Hardrock minerals include gold, silver, lead, iron, and copper.

[3]The Surface Resources Act of 1955 removed mineral materials, often referred to as common variety minerals, such as sand, stone, gravel, cinders, and clay from coverage under the Mining Law of 1872. However, when these materials have properties that give them special and distinct value, they are considered uncommon and are subject to the mining law.

While the mining law does not clearly specify which types of surface activities are authorized and which are not, the Surface Resources Act of 1955 restricted those activities to prospecting, mining, or processing operations and "uses reasonably incident thereto." The act, however, left to the federal land-managing agencies the task of determining what activities are reasonably incidental to mining.

Once mining activities are completed on BLM and Forest Service lands, these agencies must ensure that mine operators reclaim the land. Finally, if specific requirements are met, the mining law allows claim holders to obtain fee simple title[4] to both the land and the mineral rights by patenting the claims, depending on the type of claims, for either $2.50 or $5.00 an acre--amounts closely approximating the fair market value of western grazing and farm land in 1872.

THE MINING LAW'S NOMINAL ANNUAL WORK REQUIREMENT IS NOT ACHIEVING ITS OBJECTIVE

The purpose of the $100 annual work requirement is to encourage mineral development. However, in March 1989 we reported that this requirement no longer accomplishes this objective because

[4]Fee simple title means acquiring all rights and interests associated with a property.

the amount of work required is too small to promote mineral development and the annual work requirement is difficult to enforce and is often not met. While no hard data exist, BLM and Forest Service officials estimate that over 80 percent of the 1.2 million claims considered "active" are not being explored, developed, or mined.

Because the mining law makes it relatively easy and inexpensive for claim holders to file and preserve the rights to their claims, some of the claims not being actively explored, developed, or mined are being used for unauthorized residences, nonmining commercial operations, illegal activities, or speculative activities not related to legitimate mining. In August 1990 we reported that agency officials estimate that of the over 662,000 mining claims in 3 states--Arizona, California, and Nevada--about 1,600 have known or suspected unauthorized activities occurring on them.

Unauthorized activities create a variety of problems, including blocked access to public land by fences and gates; safety hazards to those using the land, such as threats of physical violence; environmental eyesores caused by abandoned vehicles, dumped garbage, and road construction; environmental contamination caused by the unsafe storage of hazardous wastes; investment scams that defraud the public; and increased costs to reclaim damaged land or acquire land from claim holders intent on profiting from

holding out for monetary compensation from parties wishing to use the land for other purposes.

One hundred and eighteen years ago, the $100 annual work requirement represented a sizeable annual investment--the equivalent to about 25 days of labor. Today, $100 represents a nominal yearly expense--about an average day's work. To develop a claim today, the Office of Technology Assessment estimates that an average annual expenditure of several thousand dollars per acre is needed.

In March 1989, we recommended that the Congress amend the mining law to require claim holders to pay the federal government an annual holding fee in place of the existing annual work requirement. And in August 1990, we recommended that this annual holding fee be graduated over time. Among other things, we believe that if implemented, our recommendation should reduce the number of invalid, inactive, and abandoned claims and reduce the number of unauthorized activities occurring on them. This would, in turn, promote mineral development by making these claims available to legitimate miners.

H.R. 3866's provisions doubling the size of claims to 40 acres and requiring diligent development expenditures ranging from $800 to $6,400 per claim each year and, after 5 years, the option of making graduated annual payments ranging from $800 to $3,200 per

claim in lieu of diligent development, would meet the intent of our recommendations. The bill also contains requirements that should facilitate enforcement and help promote legitimate mineral development.

SOME DAMAGE CAUSED BY HARDROCK MINING HAS NOT BEEN RECLAIMED

Not only do unauthorized activities scar the land, mining operations, by their very nature, disturb it and, if left unreclaimed, create environmental and public safety hazards. In an April 1988 report, we estimated that, as a result of hardrock mining operations in 11 western states, over 280,000 acres relating to abandoned, suspended, or unauthorized operations on federal lands needed reclamation at an estimated cost of $284 million.

The Forest Service requires financial guarantees to cover reclamation costs wherever significant disturbance is likely to occur. As we reported in August 1987, this requirement was working effectively to ensure reclamation. BLM's land protection program, however, has been far less demanding. Although BLM could, it rarely required financial guarantees or bonds to ensure reclamation of mining operations involving more than 5 acres and its regulations did not permit it to require financial guarantees for operations involving 5 or fewer acres unless the operator had been cited for noncompliance in the past. Because of the costs

involved in reclaiming mining sites, and the Forest Service's success in using financial guarantees to ensure reclamation, we recommended that BLM adopt a bonding policy, similar to the Forest Service policy, which requires operators to post financial guarantees if their operations, regardless of size, are likely to cause significant land disturbance.

On August 14, 1990, BLM issued a revised policy requiring bonding of all mining operations involving more than 5 acres as well as for all operations utilizing cyanide and all operators with established records of noncompliance. BLM's revised policy goes a long way toward meeting the intent of our earlier recommendation. However, it does not require financial guarantees to cover reclamation costs for the vast majority of mining operations--those involving 5 or fewer acres. In 1988, these operations comprised over 80 percent of new mining operations.

We still believe that BLM should adopt a bonding policy requiring operators to post financial guarantees if their operations, regardless of size, are likely to cause significant surface disturbance, and support the provision in H.R. 3866 mandating that Interior require such guarantees.

THE MINING LAW'S PATENT PROVISION IS NOT CONSISTENT WITH CURRENT NATIONAL NATURAL RESOURCE POLICIES

Over the years, several federal laws have established policies that call for the federal government to maintain ownership of public lands and obtain fair market value or adequate compensation for the resources it controls. However, in March 1989, we reported that through the mining law's patent provision, the government has sold about 3.2 million acres of land for $2.50 or $5.00 an acre. We reviewed 20 patents issued since 1970 for which the government received less than $4,500 but which in 1988 were estimated to be worth between $13.8 million and $47.9 million.

Moreover, when federal lands pass into private ownership through patenting, the federal government also loses forever the opportunity to obtain revenues from hardrock minerals extracted from these lands. BLM and the Forest Service estimate that roughly $4 billion of hardrock minerals were extracted from federal lands in 1988. Although the government has never collected revenues from the sale of these minerals as it does for fuel and common variety minerals, we question whether the government should be precluded from doing so in the future. We have recommended that the Congress amend the Mining Law of 1872 to eliminate the patenting of both hardrock minerals and the land required to mine them. This change would permit the land to remain under federal ownership and provide

the government the opportunity to collect revenues for the minerals extracted.

The mining law's patenting provision also applies to uncommon varieties of mineral materials. Our ongoing work, being done for this subcommittee, has shown that 780 acres of mining claims within the scenic Oregon Dunes National Recreation Area have passed into private ownership for a small fraction of their estimated value because they contain an uncommon variety of sand covered by the mining law's patent provision. We believe that this is another example of how the patent provision of the mining law runs counter to other national natural resource policies and legislation relating to federal stewardship.

Less than a year ago, the claim holder acquired the land from the government for $1,950. The Forest Service believes that the presence of private lands within the recreation area will limit its ability to manage adjoining federal lands and that the activities which may occur will be inconsistent with the scenic and other values that contribute to the public's enjoyment of the area. Thus, it is attempting to reacquire the patented lands through a land exchange. Such an exchange will require agreement on the value of the patented land. Preliminary estimates are that the value of the land could range from about $350,000 to possibly as much as $12 million.

H.R. 3866 proposes to eliminate the patent provision of the Mining Law of 1872 thereby retaining public lands in federal ownership. In addition, this bill would remove uncommon varieties of mineral materials from the mining law. Thus, lands containing materials such as sand, stone, gravel, cinders, and clay could no longer be claimed under the mining law and these materials would be sold to the highest bidder under the Materials Act of 1947. These provisions are consistent with our recommendations intended to ensure that the mining law be amended to conform with current federal laws and policies that call for the federal government to maintain ownership of public lands and obtain fair market value or adequate compensation for the resources it controls.

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In conclusion, while our work has identified a number of problems with the mining law and its administration, we believe that the provisions of H.R. 3866 address the intent of the actions we have recommended and would well serve the nation's natural resource policy interests.

Mr. Chairman, this concludes my statement. We would be pleased to respond to any questions you or members of the Subcommittee may have.

RECENT GAO REPORTS AND TESTIMONY ON HARDROCK MINING ON FEDERAL LANDS

1. Public Lands: Interior Should Ensure Against Abuses From Hardrock Mining (GAO/RCED-86-48, Mar. 27, 1986).

2. Federal Land Management: Nonfederal Land and Mineral Rights Could Impact Future Wilderness Areas (GAO/RCED-87-131, June 30, 1987).

3. Federal Land Management: Financial Guarantees Encourage Reclamation of National Forest System Lands (GAO/RCED-87-157, Aug. 24, 1987).

4. Federal Land Management: Limited Action Taken to Reclaim Hardrock Mine Sites (GAO/RCED-88-21, Oct. 21, 1987).

5. Federal Land Management: An Assessment of Hardrock Mining Damage (GAO/RCED-88-123BR, Apr. 19, 1988).

6. Importance of Financial Guarantees for Ensuring Reclamation of Federal Lands (GAO/T-RCED-89-13, Mar. 7, 1989).

7. Federal Land Management: The Mining Law of 1872 Needs Revision (GAO/RCED-89-72, Mar. 10, 1989).

8. Federal Land Management: Unauthorized Activities Occurring on Hardrock Mining Claims (GAO/RCED-90-111, Aug. 17, 1990).