THE EFFECT OF FEDERAL MINING FEES AND PROPOSED FEDERAL ROYALTIES ON STATE AND LOCAL REVENUES AND THE MINING INDUSTRY

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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CONTENTS

	Page
Hearing held May 15, 1999	1
Statements of Members:	
Bryan, Hon. Richard, a Senator in Congress from the State of Nevada, letter to Mr. Gibbons	6
Cubin, Hon. Barbara, a Representative in Congress from the State of Wyoming, prepared statement of	5
Gibbons, Hon. Jim, a Representative in Congress from the State of Nevada	1
Additional material submitted by	4
Prepared statement of	3
Statements of witnesses:	
Carpenter, Ann, Vice President, Exploration and Business Development, Nevada Colca Gold, Inc., Reno, Nevada	81
Prepared statement of	82
Coyner, Alan R., Administrator, Nevada Division of Minerals	10
Prepared statement of	13
Additional material submitted by	15
Dempsey, Stan, Chairman, Royal Gold, Incorporated, Denver, Colorado	70
Prepared statement of	72
Additional material submitted by	74
Drozdoff, Leo M., Chief, Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection, Carson City, Nevada	56
Prepared statement of	57
Letter to Ms. Cherie Sexton	65
Letter to Ms. Cherie Sexton	109
Letter to Mr. Paul McNutt,	125
Letter to Mr. Dave Aberswerth and Bob Anderson,	129
Letter to Mr. Bob Anderson,	138
Fields, Russell A., President, Nevada Mining Association	6
Prepared statement of	8
Guinn, Hon. Kenny C., Governor, State of Nevada, prepared statement of	35
Additional material submitted for the record by:	
Ingle, Hugh, President, Nevada Miners and Prospectors Association, Yerington, Nevada	83
Prepared statement of	84
Kennedy, Larry, Exploration Manager, Battle Mountain Gold, Reno, Nevada	
Lewis, F. W., F.W. Lewis, Incorporated, Reno, Nevada	86
Prepared statement of	87
Miller, Glenn C., Cochair, Mining Committee, Toiyabe Chapter, Sierra Club, Reno, Nevada	41
Prepared statement of	43
Myers, Tom, Director, Great Basin Mine Watch, Reno, Nevada	44
Prepared statement of	47
Parratt, Ronald L., Commissioner, Commission on Mineral Resources, State of Nevada	25
Prepared statement of	26
Rhoads, Dean A., Chairman, Natural Resource Committee, Nevada State Legislature	35
Prepared statement of	38
Soberinsky, Victoria, Deputy Chief of Staff for Governor Kenny Guinn, State of Nevada	33

Page

Additional material submitted:
Backgound Memo from the Committee 104
Federal Register, Notice of Intent and scoping 120
Loptien, Greg D., Sparks, Nevada, prepared statement of 105
Western Governors' Association, letters and prepared statement of 113
Women's Mining Coalition, Reno, Nevada 157
Guinn, Hon. Kenny C., Governor, State of Nevada, prepared statement of 35

THE EFFECT OF FEDERAL MINING FEES AND PROPOSED FEDERAL ROYALTIES ON STATE AND LOCAL REVENUES AND THE MINING INDUSTRY

SATURDAY, MAY 15, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES,
COMMITTEE ON RESOURCES,
Reno, Nevada.

The Subcommittee met, pursuant to call, at 2 p.m. at the Washoe County Commission Chambers, 1001 E. 9th Street, Building A, Reno, Nevada, Hon. Jim Gibbons presiding.

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Ladies and gentlemen, it's my honor to open this Subcommittee on Energy and Mineral Resources hearing here in Nevada. To begin with, I want to welcome all of you here. We're going to make a slight change in the format simply because some of the witnesses that were on the first panel have been unavoidably detained, so we will end up starting with the second panel.

Let me also tell you that at the end of all of the hearing time for those people that are on scheduled panels, we're going to try to open it up, time permitting, for an open mike to let those public citizens out here that want to have a voice to be heard, we're going to offer them a minute or a minute and a half—I know that sounds like a short time, but when the TV cameras are on you, it's a long time.

So figure out what you're going to want to say. We'll try to open it up so you will have an opportunity, if you weren't on one of the panels to begin with.

Let me also say that this hearing today is to hear testimony on the effect of Federal mining fees and proposed Federal royalties on State and local revenues and the mining industry, so we want to somewhat focus it down a little so we don't get too far adrift and start dividing our attention and focus on areas that may not be applicable to today's hearing.

Before I get to my remarks, I'm going to advise all of those panels that we have listed here that I will swear you in.

This is an official congressional hearing and you will be testifying under oath, and so I just want to advise you of the procedure that

before we start with each of you, we will ask you to take an oath, which I will have you stand and administer to you.

Let me begin this morning by welcoming all of you here to this hearing, and we all know that Nevada is the largest gold producing State in the country and the third largest gold producer in the world. It's my honor and pleasure to welcome and thank you for taking time out of your busy schedules to share your thoughts on mining with this Committee. Today, we'll hear what I think is very important testimony on the effect of existing Federal fees such as the $100 per claim holding fee in addition to proposed Federal fees, such as royalties, on the mining industry, State and local economic activity and revenues.

The Committee also wishes to gather information on the probable effects of various existing and proposed Federal fees on trends in our Nation's domestic mineral exploration, production, and reserves.

Mining is a basic economic activity necessary to all mankind. The knowledge and use of metals is so important to human civilization that the progress of early man is marked by the advancement in his knowledge of metals. Man's most primitive period in tool making was known, of course, as the Stone Age. Man's subsequent technological advancements for the next 2,500 years is characterized by his increasing ability to work with metals, and the periods of this advancement are divided into the Copper Age, the Bronze Age, and the Iron Age.

Now, as a former mining geologist, myself, and a cochairman of the Congressional Mining Caucus, let me say that I have a deep appreciation and understanding of Nevada's mining industry. Nevada, the Nation's leader in gold production, has 30 operating gold producing companies that employ more than 14,000 people; and these people mine more than $3 billion worth of metals annually, and Nevada alone provides an annual direct contribution to the Federal Government of more than $113 million.

As the second largest employer in the State, mining provides $1.5 billion in personal, business and State and local government revenues.

These numbers make it easy to realize why mining is such an important part of Nevada. Around the globe mining continues to be a basic economic activity which supplies strategic metals and minerals that are essential for modern agriculture, construction, and manufacturing.

A recent study by the National Research Council concluded that one of the primary advantages of the United States, that it possesses over it's strongest industrial competitors Japan and western Europe, is our domestic resource base.

The domestic mining industry provides about 50 percent of the metal used by U.S. manufacturing companies. The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver, and zinc, and still has substantial domestic reserves of these metals.

Twelve western States containing more than 92 percent of U.S. public land account for nearly 75 percent of U.S. domestic metal production. Thus, much of the United States' future mineral supplies will likely be found on public lands in the West.

As I'm sure everyone here knows, the Second Congressional District, which I have the privilege of representing in Congress, encompasses some of the most important mining areas in the United States. Precious metal mining constitutes the majority of economic activity in the north central and northeastern parts of Nevada.

One of the reasons why this Committee selected Reno for this hearing is not simply because I live here, but because Nevada is an important public lands mining State, with more than 87 percent of the Nevada lands managed by the Federal Government; and mining accounts for approximately 9 percent of our State's gross State product. Consequently, any detrimental effects of Federal mining policy are going to have a serious consequence to the mining industry and to the livelihoods of families across this State of Nevada.

Some seem to believe that mining doesn't matter in this new age. They think that the future of mankind can be secured without basic material resources. They often think that if they produce words and ideas in the "information age," then nothing else is necessary. Well, they're wrong.

Mining matters to everyone. Mining makes our civilization and high living standards possible. Everything you will use today began in a mine. Everything you do today depends on mining. Today we'll examine the existing and proposed Federal policies, particularly those policies relating to royalties and fees toward mining on Federal lands.

Hopefully, what we learn here today will help us find out the consequences that these policies have had or will have on those who would invest their capital toward finding mineral deposits and developing mines.

There is an old adage out there. Many of you know it, and we're trying to spread it as far as we possibly can, and it goes: "If it isn't grown, it has to be mined." And I think that is an important thought for all of us to maintain. With that, it's time for this hearing to begin.

[The prepared statement of Mr. Gibbons follows:]

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Welcome to Nevada, the largest gold producing state in the Country and the third largest gold producer in the world. It is my honor and pleasure to welcome and thank you for taking time out of your busy schedules to share your thoughts on mining with this Committee.

Today we will hear important testimony on the effect of existing Federal fees, such as the $100 per claim holding fee. We will also hear testimony about the effect of proposed Federal fees, such as royalties on the mining industry, on state and local economic activity and revenues. The Committee also wishes to gather information on the probable effects of various existing and proposed Federal fees on trends in our nation's domestic mineral exploration, production and reserves.

Mining is a basic economic activity necessary to mankind. The knowledge and use of metals is so important to human civilization that the progress of early man is marked by the advancement in his knowledge of metals. Man's most primitive period of tool-making is known as the Stone Age. Man's subsequent technological advancement for the next 2500 years is characterized by his increasing ability to work metals, and the periods of this advancement are divided into the Copper Age, Bronze Age and Iron Age.

As a former mining geologist and Co-Chairman of the Congressional Mining Caucus, I have a deep appreciation and understanding of Nevada's mining industry. Nevada, the nation's leader in gold production, has 30 operating gold producing compa-

nies that employ more than 14,000 people. These people mine more than $3 billion worth of metals annually. Nevada alone provides an annual direct contribution to the Federal Government of more than $113 million. As the second largest employer in the State, mining provides $1.5 billion in personal, business, and state and local government revenues. These numbers make it easy to realize why mining is such an important part of Nevada.

Around the globe, mining continues to be a basic economic activity which supplies strategic metals and minerals that are essential for modern agriculture, construction and manufacturing. A recent study by the National Research Council concluded that one of the primary advantages that the United States possesses over its strongest industrial competitors, Japan and western Europe, is its domestic resource base. The domestic mining industry provides about 50 percent of the metal used by U.S. manufacturing companies. The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver and zinc and still has substantial domestic reserves of these metals.

Twelve western states, containing more than 92 percent of U.S. public land, account for nearly 75 percent of U.S. domestic metal production. Thus, much of the United States future mineral supplies will likely be found on public lands in the West.

As I'm sure everyone here knows, this Congressional district which I represent in Congress, encompasses some of the most important mining areas in the United States. In addition, precious metals mining constitutes the majority of economic activity in the north central and northeastern parts of Nevada.

One of the reasons why the Committee selected Reno for this hearing is because Nevada is an important public lands mining state, with 87 percent of Nevada's lands owned by the Federal Government and mining accounting for approximately 9 percent of the Gross State Product. Consequently, any detrimental effects of Federal mining policy are going to have serious consequences to the mining industry and to the livelihoods of families across this great State.

Some seem to believe that mining doesn't matter in this new age. They think that the future of mankind can be secured without basic material resources. They think that if they produce words and ideas in the "information age" then nothing else is necessary. They are wrong.

Mining matters to everyone. Mining makes our civilization and our high living standards possible. Everything you will use today began in a mine. Everything you do today depends on mining.

Today we will examine existing and proposed Federal policies, particularly those policies relating to royalties and fees, towards mining on Federal lands. Hopefully, what we learn today will help us find out the consequences that these policies have had or will have on those who invest their capital toward finding mineral deposits and developing mines.

Remember if it isn't grown, it has to be mined!

With that it is time to begin. Will the first panel please be seated.

[The information follows:]

LETTER TO PARTICIPANTS FROM HON. HARRY REID, A SENATOR IN CONGRESS FROM THE STATE OF NEVADA

THE HON. HARRY REID,
U.S. SENATE,
WASHINGTON, DC,
May 14, 1999.

Dear Hearing Participants:

I want to first thank Congressman Gibbons for allowing a statement to be read on my behalf, and I would also like to thank him for arranging this hearing.

The mining industry is an important part of Nevada's economy. Furthermore, our mining industry employs thousands of Nevadans who would otherwise be hard pressed to find employment in other areas.

This past week, I was able, through my seat in the Appropriations Committee, to include some language that will ensure that the Department of Interior takes into account a study that was mandated by Congress last year. This study is being conducted by the National Academy of Sciences and will cost nearly $1 million. To ignore this study, as is Secretary Babbitt's intention, is a sheer waste of taxpayer monies.

Again, I would like to thank Congressman Gibbons for his hard work on this issue, and I only wish that I could be there with you today.

With all best wishes,

Sincerely,

HARRY REID,
United States Senator.

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Our domestic hard rock mining industry has long utilized the public lands of the Western United States and Alaska as its primary exploration base. Indeed, since 1866 approximately three million acres of mineral rights have been patented to discoverers of valuable deposits of gold, silver, copper, lead, zinc, and many other mineral commodities which fall within the purview of the general mining laws. Of course, this figure represents only a small fraction of the public domain of this Nation (my home state of Wyoming alone is twenty times larger) but it is critical to the health of our industry because as geologists like to say "ore deposits are where you find them."

An early champion of these western miners was President Abraham Lincoln. Indeed, only a few hours before leaving for Ford's Theater on April 14, 1865, Mr. Lincoln wrote the following in a note to House Speaker Schulyer Colfax:

> "I have very large ideas of the mineral wealth of our Nation. I believe it practically inexhaustible. It abounds all over the western country, from the Rocky Mountains to the Pacific, and its development has scarcely commenced .... Immigration, which even the war has not stopped, will land upon our shores hundred of thousands more per year from overcrowded Europe. I intend to point them to the gold and silver that waits for them in the West. Tell the miners from me, that I shall promote their interests to the utmostof my ability; because their prosperity is the prosperity of the Nation, and we shall prove in a very few years that we are indeed the treasury of the world."

I would note that President Lincoln wasn't concerned with collecting fees from the western miners—President Polk had done away with attempting to collect mining royalties in 1848—rather, his focus was upon stimulating the economy of a still rather new nation. But, one hundred thirty years later this doesn't seem to be a concern of President Clinton one iota. In this Administration's zeal to protect the environment at all costs, and balance the budget on the backs of commodity producers, a flurry of user fees, tax changes and royalty proposals have found their way to Capitol Hill. Supplementing proposed law changes are rulemakings, Solicitor opinions and case adjudications which have not been subject to the legislative process to insure common sense prevails. And I, for one, believe that is what has been missing lately from Interior Department edicts.

Our hearing today is intended to solicit views on this topic from those in the know—elected officials, state mining regulators, mining industry folks and concerned environmental advocates. I trust the record we are beginning to establish with this first of several planned field hearings in western venues will show there are negative impacts upon our local communities and state treasuries from poorly thought out policies advanced by the Clinton Administration. We are following in the wake of the National Academy of Sciences (NAS) panel who came to Reno recently to gather information on the mining regulatory environment. That panel was not charged with examining fee impacts, as we will do today, but we anxiously await its objective verdict on the necessity for the extraordinary changes in the surface management regulations proposed by Secretary Babbitt in February of this year.

The loss of mineral exploration jobs in this country over the last several years is well documented. If we lay off the prospecting end of the business sooner or later there are no reserves to replace those mined and fashioned into the products society demands. Oh yes, we may be able to import gold the chip makers need for the tech revolution, or platinum for automobile catalytic converters, etc. but not without doing damage to our already outrageous balance of trade, and not without taking good jobs away from Americans. We must think through the consequences of any legislative "fixes" sought by special interest groups as well as administrative rulemaking proposals, before taking or allowing actions which have been deemed to be in the "public interest" simply because the advocates for the changes have said so over and over again without sufficient rebuttal by affected parties. Of course, these folks have been too busy trying to make a living from mining, or are elected officials thousands of miles from the beltway who must legislate in the wake of the fed's un-

intended (and intended?) consequences. So we have come to you. Let's hear what you have to say.

LETTER TO MR. GIBBONS FROM HON. RICHARD BRYAN, A SENATOR IN CONGRESS FROM THE STATE OF NEVADA

UNITED STATES SENATE,
WASHINGTON, DC.
May 15, 1999

Congressman JIM GIBBONS,
400 South Virginia Street
Reno, Nevada 89501

Dear Congressman Gibbons:

Thank you for holding an oversight hearing in Reno today to discuss the effect of Federal mining fees and proposed Federal royalties on state and local revenues and the mining industry and its employees. As you know, mining is the second largest industry in the State of Nevada. In addition to direct employment in mining, there are also thousands of jobs in the State related to providing goods and services needed by the industry.

I regret that previous commitments prevent me from attending this hearing and I appreciate your efforts in bringing these important issues to the attention of our constituents.

Sincerely,

RICHARD H. BRYAN,
United States Senator.

Mr. GIBBONS. I would ask the second panel to come up here and take a seat. And let me say that we're going to try to keep everybody to a certain time limit. You're welcome to summarize your statements. We will, of course, without objection, admit your written testimony for the record. It will be complete as it is submitted, and with that, I'd like to have the first panel stand, so I can administer the oath to them.

[Witnesses sworn.]

Mr. GIBBONS. Let me take this moment to introduce our panel here. We have Russ Fields, President, Nevada Mining Association from Reno, Nevada; Alan Coyner, Administrator, Nevada Division of Minerals, Carson City; Ron Parratt, Commissioner, Commission on Mineral Resources for the State of Nevada from Reno.

Gentlemen, welcome, and we'll start with Mr. Fields. It's all yours.

STATEMENT OF RUSSELL A. FIELDS, PRESIDENT, NEVADA MINING ASSOCIATION

Mr. FIELDS. Thank you, Congressman.

I'm Russ Fields. I'm President of the Nevada Mining Association. We appreciate the Committee holding this field hearing in Reno.

Mining has always played an important role in Nevada's economy since before statehood. In 1998, Nevada mines led the Nation in precious metals production, producing some 76 percent of domestic gold and 38 percent of the Nation's silver, among many other minerals.

Any Federal action concerning hard rock mining has the potential to significantly impact Nevada and Nevada's mining industry. At the end of 1998, there were more than 13,200 men and women directly employed at the mines, and another estimated 43,000 jobs involved with providing goods and services to the industry.

The direct mining jobs are the highest paid sector in our State

economy. With an average annual salary of $50,000, this is well above the average salary in Nevada of less than $29,000. Direct mine annual payroll exceeds $650 million in Nevada.

Mining contributed over $1.81 billion to Nevada's personal incomes each year over the last couple of years. Mining's tax payments to State and local government in the 1996-1997 tax year totalled approximately $125.5 million.

These tax payments come in the forms of sales and use tax, property tax, and Net Proceeds of Mines Tax. A large portion of these taxes stay with the local government. Over $1 billion in State and local taxes have been paid by the Nevada mines from 1987 through last year.

Producers of metals such as gold and silver and copper are price takers. That is, the price of their product is set in the world market place that cannot be affected by any single producer or groups of producers. Given this fact, the only business variable that a mine can control in the long run is its cost of production.

As an example: We're currently experiencing 20-year lows in the price of gold. In 1998, Nevada mines reduced their direct costs of production by an average of approximately $15 per ounce. This was done through gains in productivity brought about by improved efficiency and mining of higher grade material where possible.

Certain capital expenditures and exploration activities are being delayed, as well, to conserve cash. Unfortunately approximately 1,550 direct mining jobs were lost during 1998 as a result of tightening expenses. There is obviously a limit to how far expenses can be reduced.

As costs rise or prices fall, or both, what previously may have been counted on mining companies books as mineable reserves, may fall into an unmineable category. It's no longer ore because this material can no longer be mined at a profit.

If a mine's ore reserves are reduced due to economics, the life of a mine is shortened and the economic benefit of mining comes to an earlier end. Increased fees, costs, and royalties imposed by the Federal Government result in reduced ore reserves and therefore reduced mine lives. The result is a loss of employment and positive economic benefits on counties and communities.

A significant part of the discussion over the General Mining Law has surrounded the issue of royalty. Any royalty is an added expense and will have a negative impact on mining in communities in which mining takes place. However, if there is to be a royalty, a net proceeds type of royalty seems to fit hard rock mineral production the best, because it takes into account the cost of extracting the metal from the rock and the fact that producers have no opportunity to pass costs through to customers.

When prices are low, as they are now for gold and copper, for example, the royalty amount will be lower; but under net proceeds, operations can stay in business and continue to employ people and make their contributions to the local economies.

When prices are higher, certainly the royalty amount will be higher. This is fair and equitable to the public and to the industry as well.

In summary, any increase in Federal fees reducing regulatory costs, or excuse me, including regulatory costs, fees and royalties,

has the exact same impact on a mining company's bottom line as does the reduction in the price received from the mineral product.

Currently mining is facing many increased costs in this low-priced environment. Together, these increases in costs and reduction in prices result in impacts on local and State government as a result of business impacts on the mining industry. Given this situation, Congress should take great care as it considers the imposition of new fees and costs on this industry.

The specific impacts of any fee, royalty, or cost of compliance should be carefully evaluated.

Thank you very much, and I would like to personally thank you again, Congressman Gibbons, for holding this hearing in Nevada.

[The prepared statement of Mr. Fields follows:]

STATEMENT OF RUSSELL A. FIELDS, PRESIDENT, NEVADA MINING ASSOCIATION

I am Russ Fields, President of the Nevada Mining Association. We appreciate the Committee holding this field hearing in Reno. We are sitting only several hours away from the greatest gold producing region in North America. The Nevada Mining Association is the trade association for Nevada's mining industry. We have approximately 400 members ranging from several of the largest gold, silver and copper mining companies in the world to individuals who are interested in mining. Our members also include industrial minerals producers: miners of crushed stone, barite, limestone and gypsum, among others. Suppliers to the industry—those who provide the goods and services needed to conduct the business of mining—are also among our membership.

NEVADA'S HARD ROCK MINERAL INDUSTRY

Mining has always played an important role in Nevada's economy. Indeed, it was the fabulously rich Comstock lode silver mines, just 17 miles from Reno that provided the economic engine and population that led to Nevada's becoming a state in 1864. Over the years, this state has had numerous episodes of mining for a wide variety of mineral products—copper, tungsten, lead, zinc, silver, antimony, gypsum, barite and the list goes on. Today, gold is by far our most important mineral product. In 1998, Nevada mines led the nation in precious metals production, producing some 76 percent of the domestic gold and 38 percent of the nation's silver.

Although Nevada's mining industry faces a number of important market, technical and regulatory challenges, the industry has developed a large, efficient and economically viable capital base that is fundamentally sound and sustainable well into the next century. This capital base has been built through investment of over $10 billion in expenditures in plant and equipment and exploration since 1980.

Any Federal action concerning hard rock mining has the potential to significantly impact Nevada and Nevada's mining industry. This state is approximately 87 percent owned by the Federal Government. These lands are held in the form of military withdrawn lands, wilderness, a national park and public lands managed by the Department of Interior, Bureau of Land Management and the U.S. Forest Service. The military lands, wilderness and park are, of course, off limits to mining. It is the BLM and Forest Service managed lands where a miner operating under the General Mining Law of the United States and myriad other Federal and state laws and regulations has an opportunity to develop hard rock mineral resources.

ECONOMIC IMPACTS OF MINING IN NEVADA

At the end of 1998, there were more than 13,200 men and women directly employed by the mines and another estimated 43,000 jobs were involved in providing goods and services to the industry. The direct mining jobs are the highest paid sector in our state economy, with an average annual salary of $50,000. This is well above the average salary in Nevada of less than $29,000. Mining contributed over $1.81 billion to Nevadans' personal incomes in 1997.

In addition to the significant employment in Nevada's rural counties, with direct mine annual payroll exceeding $650 million, tax payments to state and local government in 1996-97 totaled approximately $125.5 million. These tax payments come in the form of sales and use tax—modern mining is extremely capital intensive with some single pieces of equipment costing in the millions—property tax and net proceeds of mines tax. A large portion of these taxes stays with the local government

due to state tax distribution formulae. Over $1 billion in state and local taxes have been paid by Nevada mining from 1987 through last year.

The key to sustaining tax revenues from Nevada's minerals industry is maintaining capital investment in the industry's production capacity and in mineral exploration. Nevada's unique geology is clearly the most important factor in attracting capital investments and exploration expenditures. However, Nevada's tax and regulatory structure also play a key role in industry investment decisions. A reasonable tax and regulatory environment are critical to maintaining a world class minerals industry capable of sustaining production here in our state. More importantly, a consistent, reasonable Federal mineral policy is essential for the future of mining, both here and throughout the U.S.

THE BUSINESS OF MINING

There are some facts about modern hard rock mining that are relevant. First, for metals such as gold silver and copper, miners are price takers. That is, the price of their product is set in the world market place that cannot be effected by any single producer. The dynamics of the markets also preclude any group of producers from being able to have any significant effect on the price. Given these facts, the only business variables that a mine can control in the long run are its costs of production.

As an example, we are currently experiencing 20-year lows in the price of gold. In 1998, Nevada mines reduced their direct cost of production by an average of approximately $15 per ounce. This was done through gains in productivity brought about by improved efficiency and mining of higher-grade material where possible. Certain capital expenditures and exploration activities are being delayed as well to conserve cash. Unfortunately, approximately 1,550 direct mining jobs were lost during 1998 as a result of tightening down on expenses. Many others involved in providing goods and services have also struggled during this period. That situation continues today.

Second, the regulatory climate for modern mining adds costs and time delays. The modern mining industry has largely agreed with the vast improvements in protection of land, water, air and wildlife over the past 15 to 20 years. These improvements, which absolutely distinguish modern mining's environmental practices from historic activities, do add significant costs to doing business. However, to the extent these changes are reasonable and actually benefit the environment and improve safety, mining has been supportive.

Third, because metals and other valuable minerals are distributed unevenly in the earth's crust, geologists focus on identifying concentrations of metals or minerals that have the prospect of being mined and produced at a profit. Concentrations that have this property are called ore deposits. Because the term ore, by definition, implies that it can be developed and produced at a profit, what is ore and what is not changes routinely with changes in price and changes in costs. As costs rise, or prices fall or both, what previously may have been counted in a mining company's books as ore reserves, may fall into an unmineable category. It is no longer ore because it can't be mined at a profit. If a mine's ore reserves are reduced due to economics (or any other reason), the life of the mine is shortened and the economic benefit of mining comes to an earlier end.

EFFECTS OF FEDERAL FEES AND ROYALTY

The foregoing facts about the business of mining are well-recognized in our industry, but they bear repeating in some detail because increased fees, costs, royalties and so on imposed by the Federal Government result in reduced ore reserves and therefore, reduced mine lives. The obvious result is the loss of employment and the positive economic impacts on communities.

Exploration is one of the first mining related activities to suffer the effects of higher costs brought on by fees, royalties and so on, or lower prices. Exploration is the effort mining companies make to discover new mineral deposits to take the place of ore that is mined. Nevada, and the United States, has seen significant decreases in exploration activities over the past several years. In Nevada, the state Division of Minerals reported a 32 percent decline in exploration expenditures for 1997.

A significant part of the discussion over the General Mining Law has surrounded the issue of royalty. Any royalty is an added expense and will have a negative impact on mining and the communities in which mining takes place. However, if there is to be a royalty, a net proceeds type royalty seems to fit hard rock mineral production best because it takes into account the costs of extracting the metal from the rock and the fact that producers have no opportunity to pass royalty through to customers. When prices are low, as they are now for gold and copper, the royalty will be lower, but under net proceeds, operations can stay in business, jobs and contribu-

tions to local economies can be maintained. When prices are higher, the royalty will also be higher. This is fair and equitable to both the public and to the industry.

As opportunities in the United States are made less attractive because of more regulation and higher costs, including the effect of fees and royalties, the mining companies will leave for foreign venues. Mining capital is highly mobile. In this regard, Nevada and the United States are competing for mining business with the likes of Chile, Australia, Indonesia, South Africa and many other places that host economically recoverable mineral deposits. This results in lost opportunity for domestic creation of wealth through mining and the positive economic impacts at all levels.

CONCLUSION

In summary, any increase in Federal fees, including regulatory costs, maintenance fees, royalties or the removal of any benefit, such as percentage depletion, has the exact same impact on a mining company bottom line as does a reduction in the price received for the mineral product. Currently, modern mining is facing many increased costs in a low price environment. This exacerbates the problem and increases the impacts on local and state government as a result of business impacts on the mining industry. This suggests that Congress should take great care when considering the imposition of new costs on this industry. The specific impacts of any fee, royalty or cost of compliance should be carefully evaluated.

We are particularly thankful for the Subcommittee's decision to come to Nevada to receive information to assist you in making good decisions.

Mr. GIBBONS. Thank you very much. Ladies and gentlemen, as you have noticed, there is a little light affair over here. This is the standard procedure. On the table up here, there is a green, a yellow and a red light. It's just like the stoplight you have in a traffic stop. When it's green, you can go and talk all you want; when it's yellow, you ought to be wrapping it up; and when it's red, remember, I possess the gavel, and the volume control on the microphone, in order for us to move along.

Before I go to the next witness, I was reminded that I was remiss in my duties as the chairman to recognize two distinguished individuals in the audience, both of whom are very dear friends, one of whom is more of a dear friend than the other. Senator Dean Rhoads is here, and my wife, Assemblywoman Dawn Gibbons, is here. I would like to welcome them both.

And as well, we have a wonderful group of people from I should say the "People For the USA" represented here as well, so welcome, everyone.

Mr. GIBBONS. Mr. Coyner, the mike is all yours.

STATEMENT OF ALAN R. COYNER, ADMINISTRATOR, NEVADA DIVISION OF MINERALS

Mr. COYNER. Thank you, Mr. Chairman. I will ask you to have my testimony at hand because I will be referring to several charts. My name is Alan R. Coyner, and I'm the Administrator of the Division of Minerals for the State of Nevada.

The mission of the Division, as promulgated by the legislature, is to promote, advance and protect mining and the development and production of petroleum and geothermal resources in Nevada. In light of that mission, the Division has an ongoing concern about the negative economic impacts to the economy of our State from Federal mining fees, regulatory changes, and proposed royalties.

And certainly, as you know, hard rock mining is an integral part of Nevada history and the Nevada way of life. It is truly unique, paralleled but not equaled by any other State in the Union. And accordingly, Nevada has devoted a lot of time and energy and re-

sources to maintain a healthy, viable, and above all, responsible mineral industry.

An essential component of this has been the relationship between the Federal agencies and the State and has resulted in what we call the Nevada Model, and it's something with regard to that cooperative relationship we're rightly and justly proud of.

This Committee is seeking to ascertain the effect of Federal mining fees and proposed royalties on State and local revenues, and with that in mind, I would like to supply you with data that provides evidence of the linkage between the regulatory environment and mineral exploration activity in our State, independent of the commodity price.

The Division conducts an annual exploration survey to determine the level of mineral exploration activity in Nevada, and responses are generally received from approximately 50 companies, all of which have exploration programs in the State.

If you look at chart number 1, this is the active claims in Nevada, and you will see a curve described through the 1980s and early 1990s of increasing activity peaking in 1991, and then as rule making was promulgated with regards to the $100 mining claim fee, you will see that that enactment in 1993 resulted in the drop of claims from approximately 400,000 to 150,000 claims.

I've also put on there the price of gold. You can see that that drop is independent of that price. This drop in claims resulted in a loss of at least $25 million in annual assessment expenditures toward the discovery of new deposits and a redirection of $15 million annually from exploration to the Federal Treasury.

If you look at chart number 2, this is exploration expenditures for companies active in Nevada and this looks at the time period from 1994 through 1998. And you can see that range for those companies active in the State ranged from $450 million to $1.1 billion worldwide during a time of static or declining gold prices. But during that same period total dollars spent in Nevada declined from $154 to $120 million with a further decrease projected for 1998 of $94 million.

This is somewhat more easily seen in chart number 3 which is essentially percentage of expenditures, and again for that time period we can see the rising curve upwards of the rest of the world and the lowering curve for Nevada from 35 percent down to about 12 percent projected in 1998. Again this reduces or eliminates the influence of price, and suggests mining fees, proposed royalties, and the cost of regulation have negatively impacted the economy of our State.

Chart 4 I've borrowed from John Dobra, of the University of Nevada, Reno, and the Natural Resources Industry Institute, and it confirms the trend that the division has found, and extends it backward to about 1992, and you can see there, that under his data, firms active in North America were spending some 60 percent of their budgets in the United States, and that percentage is now down around 25 percent.

This demonstrates especially that exploration dollars are extremely liquid and flow internationally.

And with that, I will also note that I've appended Dr. Dobra's remarks to my testimony. The Division has asked him to do a study

in April of 1999 on the local impacts of this spending reduction. That report is due in early June, and we would appreciate the Committee allowing testimony to remain open to allow inclusion of that final report in June.

In conclusion, there is no question that current Federal fees and regulations have negatively impacted mineral exploration activity in the State of Nevada. They have played a major role in the exodus of exploration dollars and geological talent from Nevada and the United States to foreign countries.

Successful Federal mining policy must strike a reasonable balance among the need for regulation, environmental concern, and economic activity. The exploration surveys conducted by the Nevada Division of Minerals indicate recent Federal actions have upset that balance.

Mining claim fees, changes in the 3809 regulations, the Crown Jewel decision, and the enactment of a Federal royalty will only serve to increase the uncertainty and hasten the exodus. Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you for a very timely presentation of the testimony. We'll have it all submitted for the record.

[The prepared statement of Mr. Coyner follows:]

KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MINERALS
400 W. King Street, Suite 106
Carson City, Nevada 89703
http://www.state.nv.us/b&i/minerals
(775) 687-5050 • Fax (775) 687-3957

LAS VEGAS BRANCH:
2501 E. Sahara Avenue
Suite 206
Las Vegas, Nevada 89104
(702) 486-4343
Fax (702) 486-4345

DAN TOM
Director

ALAN R. COYNER
Administrator

U.S. House of Representatives
Committee on Resources
Subcommittee on Energy and Mineral Resources

Oversight Hearing Reno, Nevada May 15, 1999

"Effect of Federal Mining Fees and Proposed Federal Royalties on State and Local Revenues and the Mining Industry"

Testimony of Alan R. Coyner
Administrator, Nevada Division of Minerals

My name is Alan R. Coyner and I am the Administrator of the Division of Minerals for the State of Nevada. My educational background includes undergraduate work at Michigan Technological University in Geological Engineering and graduate work at the University of Minnesota Duluth in Geology. I have a master's degree in Business Administration from the University of Nevada Reno.

I have worked as an exploration geologist and manager in the minerals industry for nearly 25 years. My experience includes the exploration for, and development of, uranium, base and precious metal deposits, as well as industrial minerals. I have worked for large international mining companies and small family-owned mineral producers.

The mission of the Division as promulgated by the Nevada Legislature is "to promote, advance, and protect mining and the development and production of petroleum and geothermal resources in Nevada." In light of that mission, the Division has ongoing concerns about the negative economic impacts to the economy of our State from Federal mining fees, regulatory changes, and proposed royalties.

Hard rock mining is an integral part of Nevada history and the Nevada way-of-life. It is a truly unique phenomenon, paralleled but not equaled by any other state in the Union. Accordingly, Nevada has devoted a tremendous amount of time, energy, and money over the years to create and maintain a healthy, viable, and above all, responsible mineral industry.

An essential component of this phenomenon has been the relationship between Nevada and the Federal agencies charged with the management of public land in the State. The "Nevada Model", as it is known in the mining industry, is witness to the levels of effectiveness and efficiency reached by that cooperative relationship. That model is the product of the continuous and ongoing efforts of all the stakeholders, industry, government, and the public, to balance our global natural resource needs with our economic and environmental concerns. We are rightly and justly proud of it.

This Committee is seeking to ascertain the effect of Federal mining fees and proposed Federal royalties on state and local revenues and the mining industry. With that in mind, I would like to present the Committee with data that provides evidence of the linkage between the regulatory environment and mineral exploration activity in our State, independent of the commodity price.

The Division of Minerals has conducts an annual exploration survey to determine the level of mineral exploration activity in Nevada. Responses are generally received from approximately 50 companies, all of which have exploration programs in the State.

Chart #1 - Active Claims in Nevada

- An increase in exploration activity in the 80's and early 90's, dominated by gold, led to major increases in the "rate of discovery" as defined by number of deposits and ounces of reserves, and record production levels in the 90's.
- The $100 per claim annual maintenance fee enacted in 1993 resulted in a 60% drop in the number of claims (400,000 to 150,000) despite static gold prices. This fee resulted in a loss of at least $25 million in annual assessment expenditures toward the discovery of new deposits, and a redirection of $15 million annually from exploration to the Federal treasury.

Chart #2 - Exploration Expenditures for Companies Active in Nevada (dollars expended)

- Annual exploration expenditures worldwide steadily increased from 1994 through 1997 from $450 million to $1.1 billion during a period of static or declining gold price.
- During that same period total dollars spent in Nevada declined from $154 million to $120 million, with a further decrease projected for 1998 to $94 million.

Chart #3 - Exploration Expenditures for Companies Active in Nevada (budget percent)

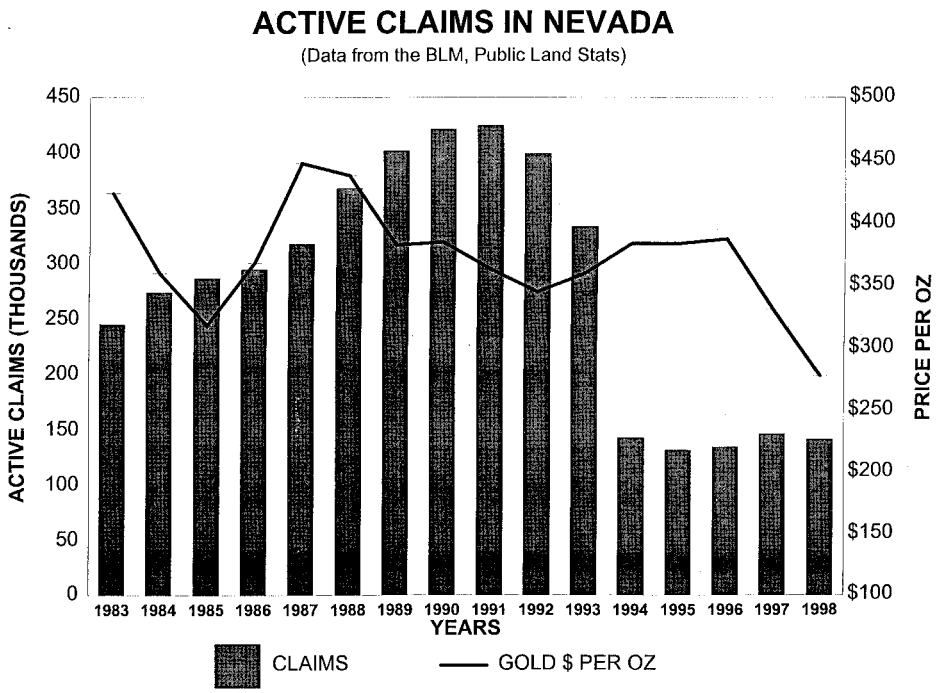
- The percentage of company budgets spent in Nevada has steadily decreased from 34% in 1994 to 12% in 1998 (projected).
- Reduces or eliminates the influence of price and suggests mining fees, proposed royalties, and the cost of regulation have negatively impacted the economy of Nevada.

Chart #4 - Percentage Allocation of North American Precious Metal Producers' Exploration Expenditures to the U.S. 1992 - 1999 (from John Dobra, UNR, NRRI)

- Confirms that the trend indicated for Nevada is true for the U.S. as a whole and if examined back to 1992 shows a decrease in budget percent from nearly 60% to 25%.
- Further demonstrates that exploration dollars are extremely liquid and flow internationally

There is no question the current Federal fees and regulations have negatively impacted mineral exploration activity in the State of Nevada. They have played a major role in the exodus of exploration dollars and geological talent from Nevada and the United States to foreign countries. Successful Federal mining policy must strike a reasonable balance among the need for regulation, environmental concern and economic activity. The exploration surveys conducted by the Nevada Division of Minerals indicate recent Federal actions have upset that balance. Mining claim fees, changes in the 3809 regulations, the Crown Jewel decision, and the enactment of a Federal royalty will only serve to increase the uncertainty and hasten the exodus.

CHART 1


ACTIVE CLAIMS IN NEVADA
(Data from the BLM, Public Land Stats)
ACTIVE CLAIMS (THOUSANDS)
450
400
350
300
250
200
150
100
50
0
$500
$450
$400
$350
$300
$250
$200
$150
$100
PRICE PER OZ
1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998
YEARS
CLAIMS
GOLD $ PER OZ

EXPLORATION EXPENDITURES FOR COMPANIES ACTIVE IN NEVADA

(Data from the Division of Minerals Annual Exploration Survey)

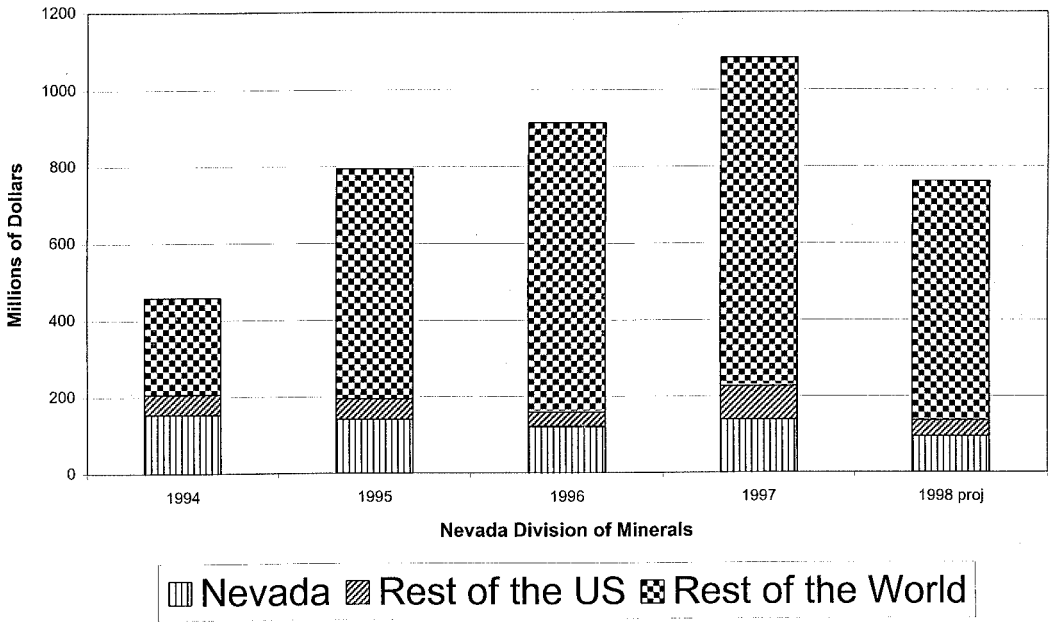


CHART 3

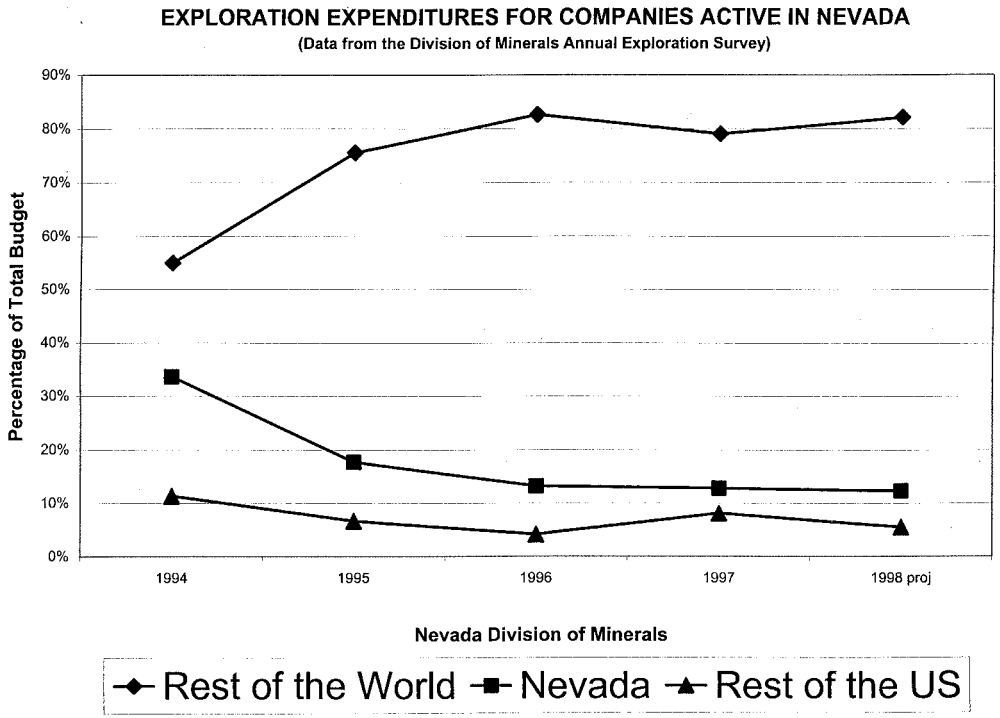
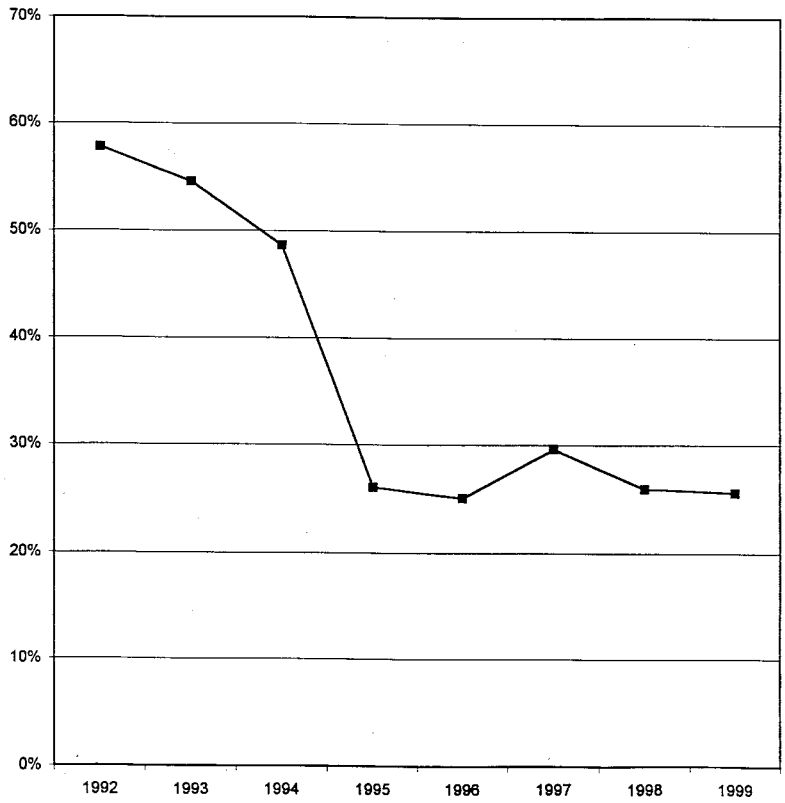

EXPLORATION EXPENDITURES FOR COMPANIES ACTIVE IN NEVADA
(Data from the Division of Minerals Annual Exploration Survey)
Percentage of Total Budget
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
1994
1995
1996
1997
1998 proj
Nevada Division of Minerals
Rest of the World
Nevada
Rest of the US

CHART 4

Figure 1 - Percentage Allocation of North American Precious Metals Exploration Expenditures to the U.S., 1992 - 1999



KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MINERALS
400 W. King Street, Suite 106
Carson City, Nevada 89703
http://www.state.nv.us/b&i/minerals
(775) 687-5050 • Fax (775) 687-3957

LAS VEGAS BRANCH:
2501 E. Sahara Avenue
Suite 206
Las Vegas, Nevada 89104
(702) 486-4343
Fax (702) 486-4345

DAN TOM
Director

ALAN R. COYNER
Administrator

U.S. House of Representatives
Committee on Resources
Subcommittee on Energy and Mineral Resources

Oversight Hearing Reno, Nevada May 15, 1999

"Effect of Federal Mining Fees and Proposed Federal Royalties on State and Local Revenues and the Mining Industry"

Addendum to the Testimony of Alan R. Coyner
Administrator, Nevada Division of Minerals

The Nevada Division of Minerals has contracted in April 1999 with the University of Nevada Reno, Natural Resources Industry Institute and University of Nevada Reno, Center for Economic Development for a research report on the economic impacts to Nevada of proposed changes in U.S. mining laws and public lands regulations. The report, which will be authored by John Dobra and Thomas Harris, is due to be completed by early June. I am including some of the preliminary findings of that report as an addendum to my testimony with the request that the hearing record remain open to allow inclusion of the final report in June.

Nevada's Mining Industry

- Nevada's Mining Industry produces a variety of minerals but it is the nation's leading producer of precious metals, producing approximately 70 percent of U.S. gold and 43 percent of U.S. silver.
- In 1997, Nevada gold and silver output was valued at $2.7 billion and generated economic impacts of increasing Gross State Product by $4.9 billion, inducing a total of 51,700 jobs, and adding $1.5 billion to Nevadans' personal incomes.
- Overall, precious metal mining in Nevada and its indirect economic impacts accounted for 9 percent of Gross State Product in 1997.
- Precious metal mining's economic significance in Nevada is much greater in rural parts of the State where mining activities are centered. For example, in Elko, Eureka and Lander counties which produced 6.9 million ounces of gold in 1998, or about 86 percent of Nevada production, during much of the 1990's precious metals production directly accounted for almost half of total employment and over 60 percent of personal income. Consequently, the health of the precious metals industry is critical to the economic health of this region of the state and the thousands of people who live there.

Mining Law and Regulatory Reform

- Attempts by environmental groups to reform U.S. Mining Law have been underway for the past decade. In the late 1980's, Representative Rahall in the House and Senator Bumpers in the Senate introduced bills that would have, among other things, imposed onerous royalties and restricted access to public lands for mineral entry.
- Having generally failed in these efforts in Congress, the Clinton administration's Department of the Interior has more recently been attempting to achieve through reform of 43 CFR § 3809 surface mining regulations some of the measures that Congress has expressly refused to pass.

Impacts of Mining Law and Regulatory Reform

- The BLM's Draft Environmental Impact Statement (DEIS) prepared on its' proposed changes to 43 CFR § 3809 states that one of the impacts of its Proposed Action will be to reduce mining activity by 5 percent. There is no apparent justification for this estimate provided by the BLM and it has been widely criticized.
- We believe the impacts of the Proposed Action need to be viewed in the longer term and broader context including what has occurred since the current administration began its efforts in 1993. This period is critical to understanding the impacts of the administration's Proposed Action because, as noted above, it pursues the objectives of a failed legislative agenda.

The Influence of Low Gold Prices (see Figures 1 and 2)

- We also believe it is necessary to distinguish between the impacts of Mining Law and Regulatory reform and the impacts of low gold prices. The latter, it has been claimed by some proponents of the reforms, are to be entirely blamed for the reduction in exploration activity on public lands in Nevada and the rest of the western U.S. Figures 1 and 2 suggest otherwise.
- Figure 1 shows the percentage share of major North American precious metals producers' exploration spent in the U.S. from 1992 to 1998.[1] As the figure indicates, in 1992 and 1993, over half of exploration spending by North American producers was spent in the U.S. and much of that in Nevada. This situation, however, changed radically after 1994. After 1994, the U.S. share of these companies' exploration budgets shrank to half of the 1992 and 1993 levels.
- Since Figure 1 shows the U.S. percentage **share** of exploration spending, the price of gold is irrelevant to the discussion. While it is true that mineral company exploration budgets usually shrink when commodity prices fall, Figure 1 indicates that because of **other factors**, the U.S. share of these expenditures, regardless of their level, has been halved. We would suggest that these **other factors** include political risks in the U.S. including:

[1] The figure is based on data collected by John L. Dobra, Ph.D., in surveys of major North American precious metals producers with U.S. production for studies of the U.S. gold industry published in 1994, 1996 and 1998 by the Nevada Bureau of Mines and Geology, Mackay School of Mines, University of Nevada, Reno. Although the number of companies responding to the survey varied from year to year because of factors like mergers and acquisitions, the respondents generally accounted for 85 to 95 percent of U.S. domestic gold production.

- Threats of production royalties
- A moratorium on the issuance of patents on mining lands
- The imposition of a $100 per year per claim holding fee which raises the cost of holding land for exploration purposes and which resulted in the abandonment of a very significant percentage of mining claims in the U.S.
- Threats of elimination of the percentage depletion allowance on U.S. mining lands acquired under the provisions "Mining Law of 1872" while keeping it for foreign production
- Increasing delays in approving permits for mine development under existing "3809" regulations
- Threats of increased delays in approving permits for exploration as well as mine development under proposed changes to 3809 regulations.
- Threats of up to 38 percent increases in the costs of exploration, according to the BLM's 3809 DEIS

- If the above is not sufficient to dispel the notion that the U.S. precious metals industry's current problems are solely due to low gold prices, then Figure 1 should be considered with Figure 2, which shows annual average gold prices over the same period. U.S. share of exploration expenditures (Figure 1) declined when gold prices (Figure 2) were increasing.
- Since 1992, gold prices have fallen from $344 to $294, or 14.5 percent. Over the same period, the U.S. share of North American producers' exploration budgets has fallen 49.7 percent. Low gold prices are a problem for the industry, but they are clearly not the reason that the industry has turned its focus outside of the U.S. and Nevada.

The Economic Impacts of Mining Law and Regulatory Reform

- As noted, the BLM projects a 5 percent decrease in mining activity because of the proposed 3809 regulations. Their analysis of the economic impacts of this reduction indicates that this would result in a $90.8 million per year economic loss, 70 percent of which, we assume, would be born by Nevada. Over a 10 year period, the net present value of this cost to Nevada would be $542.2 million (at a 3 percent discount rate).
- We would suggest, however, that this estimate reflects a very naïve view of how the mining industry works. BLM has assumed that the proposed regulations will reduce current mine production by 5 percent. We do not believe that the proposed regulations will have much, if any effect on **currently permitted** mining activity. The effect will be on **future** activity.
- Figures 3, 4 and 5 further illustrate the nature of the problem. Figure 3 shows the percentage allocation of North American precious metals industry exploration by region from 1996 to

projected 1999.[2] Data for the U.S. are the same as the last four years shown on Figure 1. Note that in 1998, the U.S.'s 24 percent share of these expenditures amounted to $89.2 million.

- In considering these data, it is important to keep in mind that in the mining industry, exploration leads to discovery of ore bodies which, in turn, leads to development of new mines, and then to further capital spending to maintain and expand these mines. Figures 3, 4 and 5 illustrate this process and the magnitudes of the economic impacts involved in each phase.
- Figure 4 shows the percentage allocation of North American precious metals producers' development expenditures from 1996 through 1999. This figure graphically indicates the consequences of the drastic drop off in U.S. exploration expenditures illustrated by Figure 1. The figure also indicates that the economic impacts of the development of new mines are an order of magnitude greater than exploration expenditures.
- The practical implication of Figure 4 is that in the last year, only two new mines have been put into production in Nevada. The only mine outside of Nevada that could be put into production that we are aware of is Battle Mountain Gold's Crown Jewell project in Washington. This project, however, has been tied up in a permitting process for several years, and has just had its Notice of Decision to allow it to go forward revoked in a rather unusual manner by the Department of the Interior and the U.S. Forest Service. The general belief in the industry is that the approval of the proposed changes in the 43 CFR § 3809 surface mining regulations will only lead to more delays, expand the BLM's ability to act in an arbitrary manner and drive even more capital overseas.
- Figure 5 further illustrates the economic impacts of these trends and suggests that the magnitude of economic losses from the BLM's Proposed Action is much greater than the BLM has acknowledged. Figure 5 shows that the U.S. continues to receive the lion's share of capital expenditures at existing mines. This reflects the fact that operators must maintain their existing operations. The Figure also shows that these expenditures are another order of magnitude greater than exploration and development expenditures.
- In contrast to the BLM's estimate of an adverse economic impact from the proposed regulations on the order of $90.8 million per year and $542.2 million over ten years, Figures 4 and 5 suggest that if the BLM succeeds in blocking new mine development in Nevada and the western U.S., the economic costs per year will be greater than the BLM's estimate for ten years.
- It must be remembered, however, that these operations are depleting their reserves, which are estimated to total 118.9 million ounces, at a rate of approximately 11 million ounces per year.[3] In addition, partly because of the political risks described above, relatively little is being spent in the U.S. to replace these ounces by exploration. This clearly does bode well for the U.S. precious metals industry or for the local economies dependent upon the industry.

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[2] Figures 3, 4 and 5 are based on data collected on a 1998 survey conducted by John L. Dobra for publication in *The U.S. Gold Industry, 1998*, Nevada Bureau of Mines and Geology, Special Publication 25, Mackay School of Mines, University of Nevada, Reno, 1999.

[3] Dobra, op. Cit.

Figure 1 - Percentage Allocation of North American Precious Metals Exploration Expenditures to the U.S., 1992 - 1999

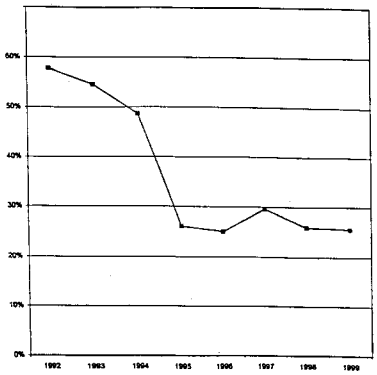


Figure 2 - Average Annual Gold Prices, 1992 - 1998

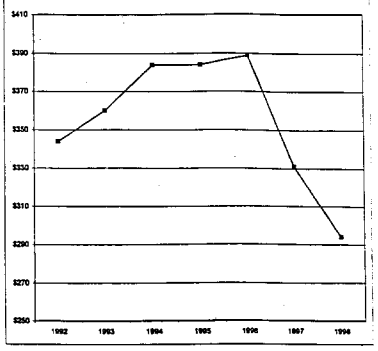


Figure 3 - Percentage Allocation of North American Precious Metals Producers' Exploration Expenditures 1996-1999

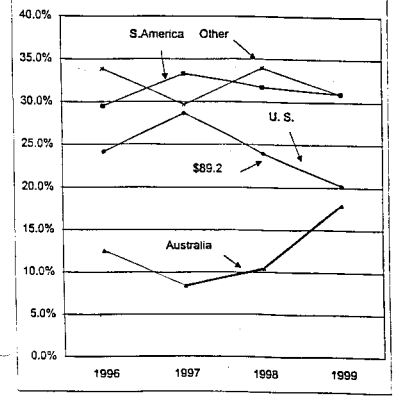
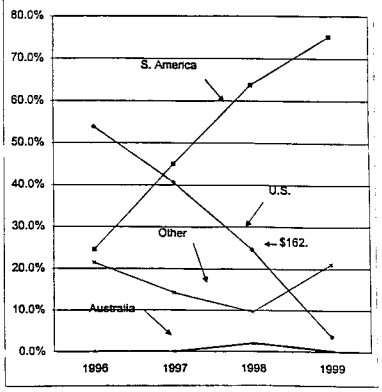


Figure 4 - Percentage Allocation of North American Precious Metals Producers' Development Expenditures, 1996 - 1999



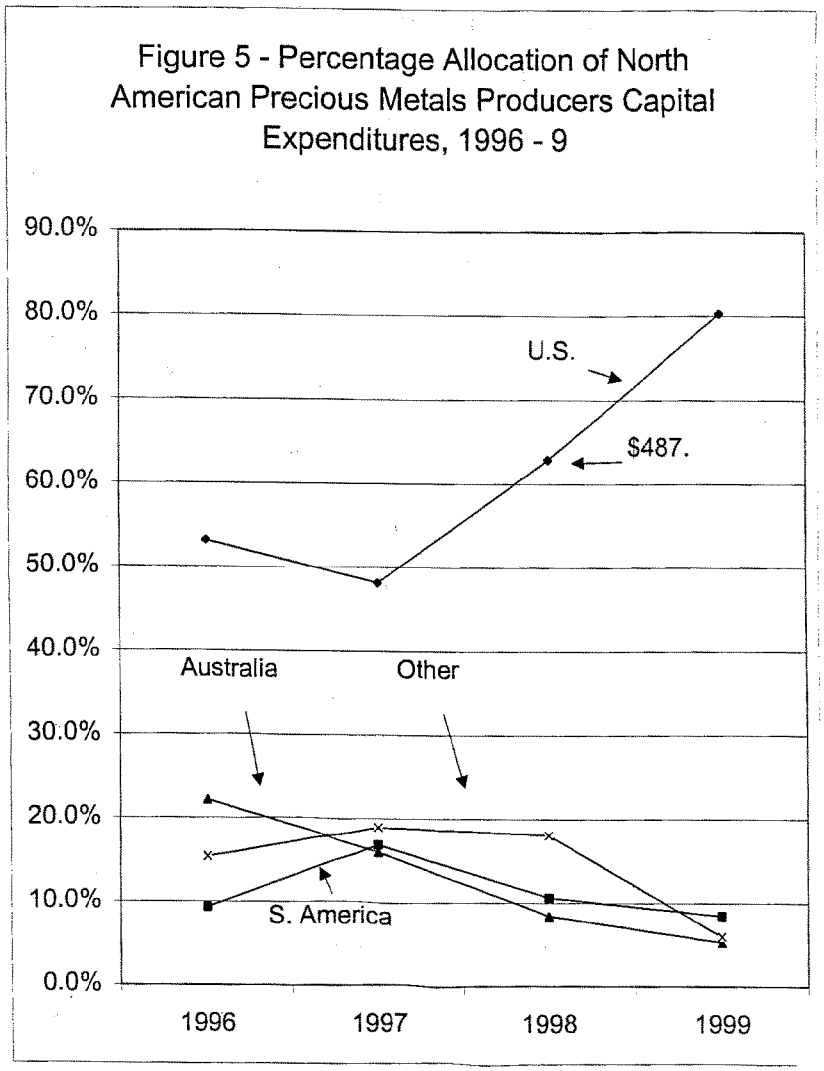


Figure 5 - Percentage Allocation of North American Precious Metals Producers Capital Expenditures, 1996 - 9
90.0%
80.0%
70.0%
60.0%
50.0%
40.0%
30.0%
20.0%
10.0%
0.0%
U.S.
$487.
Australia
Other
S. America
1996
1997
1998
1999

Mr. GIBBONS. Mr. Parratt, the floor is yours.

STATEMENT OF RONALD L. PARRATT, COMMISSIONER, COMMISSION ON MINERAL RESOURCES, STATE OF NEVADA

Mr. PARRATT. Thank you, Mr. Chairman. My name is Ronald Parratt, and I am here today in my capacity as a commissioner on Nevada's Commission on Mineral Resources, a position I've held for the last 8 years.

As background, I have been directly involved in private industry in mineral exploration in the western United States for almost 27 years, and I've lived here in Reno the last 20, working predominantly in Nevada and exploring for gold.

In 1993 the Bureau of Land Management implemented a $100 per mining claim fee, or about $5 per acre that was to be paid to the Federal Government in August of each year in lieu of the traditional assessment work or physical exploration that was previously required annually to keep a mining claim valid.

In 1993, prior to the fee, there were approximately 330,000 active mining claims in Nevada. Following the requirement of the fee in 1994, the number of active mining claims fell to around 140,000, or a reduction of almost 60 percent. Although I don't have comparable numbers for other states, I'm sure that similar reductions in the number of claims occurred as well.

Certainly in Nevada, some of these claims might have dropped for normal business reasons, although in my view, the principle reason, without doubt, was the claim fee. In support, I'd offer that I was responsible for dropping several thousand mining claims that year for my employer who was one of Nevada's larger explorers.

Filing fees paid for 1995, 1996, 1997 and 1998 in Nevada have generated a total of almost $60 million for the BLM, an average of almost $15 million a *year, and resulted directly in a corresponding reduction in exploration spending in Nevada during that time.

The great majority of mining claims in Nevada, and certainly throughout the west, are held for exploration purposes, and only a relatively small percentage of claims are actually in use for active mining operations.

This means only a small percent of the aggregate mining claim fees are paid for out of the budgets of individual mining operations, and that the bulk of these fees are paid for out of exploration budgets. Again, payment of the fees directly results in reductions in actual exploration activity and a reduction in the industry's ability to discover new resources to replace those that are being mined.

This fee is another added cost for the business of exploration in Nevada and our country, and reduces the effectiveness of our precious exploration dollars. Not only does this hurt the exploration business per se, but also with the multiplier effect that translates into fewer jobs for those industries which service exploration groups such as drilling contractors, laboratories, restaurants and even motel owners.

Much of this activity, of course, is in Nevada's rural communities.

To put some perspective on the size of this burden to the exploration business, it's estimated that in 1998 between $90 and $100

million were spent in Nevada on exploration. Mining claim fees paid to the BLM for that year were $13 million, which results in adding a budget burden of about 13 percent to the industry as a whole just to hold Federal land.

For some added perspective, comparable costs for holding exploration rights on lands in countries who are competing to get these dollars and jobs are as follows—for comparison, keep in mind the United States fee is about $5 per acre:

Canada has a variable structure but always less than a dollar per acre; Mexico again is variable, but always less than 50 cents per acre; Chile, 48 cents per acre; Peru, 80 cents per acre; and Argentina, 11 cents per acre. New proposals, including royalties and new reclamation fees are being considered as well, which would further burden mining companies and exploration. The cumulative impact of these will be to further weaken and reduce the effectiveness of our exploration dollars and has weakened the competitiveness of our domestic mining industry.

We must do everything possible to keep this from happening and seek to encourage a strong domestic industry. Thank you.

[The prepared statement of Mr. Parratt follows:]

STATEMENT OF RONALD L. PARRATT, COMMISSIONER, COMMISSION ON MINERAL RESOURCES, STATE OF NEVADA

Mr. Chairman and Members of the Resources Committee, my name is Ronald L. Parratt and I am here today in my capacity as a Commissioner on Nevada's Commission on Mineral Resources—a position I've held for the past 8 years. As background, I've been directly involved in the private sector in mineral exploration in the western United States for almost 27 years and have lived here in Reno for the last 20 years working predominately in Nevada exploring for gold.

In 1993, the Bureau of Land Management implemented a $100 per mining claim fee ($5/acre) that was to be paid to the Federal Government in August of each year in lieu of the traditional assessment work or physical exploration that previously was required annually to keep a mining claim valid. In 1993, prior to the fee, there were approximately 330,000 active mining claims in Nevada. Following the requirement of the fee in 1994, about 190,000 claims were dropped and the number of mining claims fell to about 140,000 or a reduction of almost 60 percent. Although I do not have comparable numbers for other states, I'm sure that similar reductions in the number of claims occurred as well. Certainly in Nevada some of these claims might have been dropped for normal business reasons. However in my view, the principle reason was the claim fee. In support I would offer that I was responsible for dropping several thousand mining claims that year for my employer who was one of Nevada's larger explorers. Filing fees paid for 1995 to 1998 have generated about $60mm for the BLM—an average of almost $15mm per year and resulted directly in a corresponding reduction in exploration spending in Nevada during that time. The great majority of mining claims in Nevada—and certainly throughout the west—are held for exploration purposes and only a relatively small percentage of claims are actually in use for active mining operations. This means only a small percentage of the aggregate mining claim fees are paid for out of the budgets of actual mining operations and the bulk of these fees are paid for out of exploration budgets.

Again, payment of the fee directly results in reductions in actual exploration activity and a reduction in the industry's ability to discover new resources to replace those being mined. This fee is another added cost for the business of exploration in Nevada and our country and reduces the effectiveness of our precious exploration dollars. Not only does this hurt the domestic exploration business per sec, but also with the multiplier effect, it translates into fewer jobs for those industries which service exploration groups such as drilling contractors assay laboratories and motel owners. Much of this is in Nevada's rural communities.

To put some perspective on the size of this burden to the exploration business, it's estimated that in 1998 between $90mm and $100mm was spent on exploration in Nevada. Mining claim fees paid to the BLM were about $13mm which results in this fee adding a budget burden of about 13 percent to the industry as a whole just to hold Federal land.

For some additional perspective, comparable costs for holding exploration rights on lands in countries who are competing to get these exploration dollars and jobs are as follows; (and for comparison keep in mind that the U.S. Federal fee is $5/acre) Canada less than $1/acre, Chile $0.48/acre, Peru $0.80/acre and Argentina $0.11/acre. Mexico is also low but I don't have an exact figure.

There are of course additional fees paid to hold mining claims in the U.S. which total about $15/claim per year. New proposals including royalties and new reclamation fees are being considered as well which would further burden mining companies and exploration. The cumulative impact of these will be to further weaken and reduce the effectiveness of our exploration dollars and hence weaken the competitiveness of our domestic mining industry. We must do everything possible to prevent this from happening and seek to encourage a strong domestic industry. Thank you. I'd be pleased to answer any questions.

Mr. GIBBONS. Thank you, Mr. Parratt, and I want to congratulate the first panel here that's testified. Not one of you got to the red light. We appreciate that.

Let me maybe throw a question out there. I don't know if Mr. Fields or Mr. Coyner or Mr. Parratt want to answer this, but my original question is for the audience and I think even for the record, we need to know a little bit about the different types of royalty proposals that are out there. I know that one we talked about already is a gross royalty, versus net proceeds, versus net smelter return. Maybe if somebody could just give us a very brief—it's a very technical question, but if somebody wants to give us just a thumbnail sketch so we can understand how each one of those impacts the bottom line, and what each one would produce, if you can.

Mr. FIELDS. Okay, I will tackle that, Mr. Chairman. This is Russ Fields, for the record.

Of the three types of royalties you mentioned, let me start with gross royalty. This is one that has been proposed in the last several Congresses, and in several bills.

Gross royalty is a royalty that would be imposed on the gross sales price of the mineral commodity, whether it be gold or copper, et cetera. It would be applied directly to that price that is received.

For example: Today the price of gold is about $276. An 8 percent gross royalty, which has been proposed in the past, would amount to approximately $23 per ounce of gold. As my testimony indicated, this would be the same thing as a $23 fall in the price of gold.

It would go right through to the bottom line, bringing the value received to the mining company then to something like $253, based on today's gold price.

Now, the problem with that, from the mining company's standpoint, is that is very close to the cash cost of production, the direct cost in terms of dollars to produce an ounce of gold at many of our gold mines here in northern Nevada.

That means that there is nothing left over to pay back the cost of capital. There is nothing left over to pay for administrative overhead and expenses, and, as Mr. Parratt will attest, there is nothing left to pay for exploration activity to find the next ore deposit.

I think the result of a gross royalty along those lines would be a very rapid slowdown in the production of hard rock minerals here in the State.

I think we would see high grading of ore deposits and shortening of lives, as I mentioned in my testimony, shortening of mine lives. And the impacts of such a royalty would be very, very substantial.

Now, the second type of royalty that has been discussed in Congress is referred to as a net smelter royalty, and really, with net smelter and the other type that I will discuss, net proceeds, the devil is in the details, how you really define the royalty.

But net smelter royalty for most purposes, would be defined as taking the gross value of the gross receipts, gross revenues produced by the minerals.

Again let's use gold as an example. At $276 an ounce, you'd take that gross $276 and deduct from that the cost of final refining, producing refined metal out of the door, that is the gold and silver mix that we produce at our mines, and then apply the royalty to that, so it's very close to a gross royalty because the cost of refining as a percentage of the total cost, is very small.

I have mentioned in my testimony that if there is to be a royalty, it should be based on a net proceeds type approach. That's what we do here in the State of Nevada for our taxation of minerals. It's called the Net Proceeds of Mines Tax.

What that does, is it allows a miner to deduct the cost of producing the metal and turning the metal into money, so in other words, the cost of mining, the cost of milling, the cost of transportation, those costs are allowed to be deducted from the gross receipts, leaving a net profits number, and that is the point at which royalty would be affixed, at the net proceeds level.

It makes more sense in many ways because when the markets fluctuate so much, when the price is high the royalty amount will be higher. When the price of the metal is low, the amount of Royalty will be lower, so it allows a mining company, then, to perhaps stay in business and then continue to operate even while it pays a royalty, which may not be the case in the case of a gross.

That was longer than my testimony I apologize for that.

Mr. GIBBONS. You did very well. It was very enlightening to hear what you say.

Let me turn to Mr. Coyner. Could you maybe explain or expand a little bit more on the Nevada Model that was in your testimony so that we can develop that a little further.

Mr. COYNER. One of the largest—or a factor within that model, is the testimony that Russ just gave. It's a net proceeds approach on a royalty which, I think implies we're in this thing together, and that can be extrapolated to a national sense as well.

These minerals and others in our State are necessary for our national security, as you well know, and there should be a participatory process of all the owners in that security.

As we look at the mining companies that are active in the State, most are public stock companies. A lot of that stock is held by Americans. So it does imply that we're in this together and we need to make those decisions together.

The Nevada Model is a subset on that. Essentially the State agencies, the Federal agencies, the environmental groups, all the stake holders come together and forge this process as we go forward in Nevada.

We appreciate that, and that's a very good working relationship. It resolves differences early. It obviates the need for lawsuits. It makes for good working relationships and friendly working relationships.

So that, in essence, is the Nevada Model. It's been copied by other States which gives testimony to its effectiveness.

Mr. GIBBONS. Mr. Coyner, on these charts that you have submitted to us, is there a point on there which you can identify for us the time in which the Nevada Model or the net proceeds implementation took effect in this chart, perhaps to show if there is a significant downward trend simply due to Nevada's implementation of a net proceeds royalty?

Do you recall what year we implemented that?

Mr. FIELDS. Mr. Chairman, this is Russ Fields, for the record. The Net Proceeds of Mines Tax has been a part of Nevada since the very early days. In fact, I think it is in the Constitution that mines shall be taxed on their net proceeds, so it's a very, very old tax that goes way back before any of, I think, Mr. Coyner's charts.

I would say that I had the opportunity in 1989 to be very involved with the State government's efforts to adopt its reclamation program which—and also its water pollution control program for mines.

Both of those things happened in 1989, and I think that was probably, in my recollection, realistically where we could say that the Nevada Model was born. It was a collective cooperative effort of State agencies, the Federal Government, the environmental community, and mining industry, so there, again, I think that probably predates everything on Mr. Coyner's charts.

I'm looking at the Active Claims in Nevada chart over my neighbor's shoulder here, and what happened in 1993 to the mining claims had nothing to do with the State of Nevada and had everything to do with the imposition of a $100 per claim per year holding fee from the Federal Government, so that's probably the most remarkable thing that is affecting the charts that I'm looking at here.

Mr. COYNER. Mr. Chairman, I would add that I think that if Dr. Dobra were here he would express that the 1990s and it's capital development and development expenditures and also our production have risen and that is sort of an inertia effect of all this exploration and activity that we saw in the 1980s and the early 1990s.

The problem we see now is that that exploration activity has been curtailed, so the worry is for the future. Certainly, as we need to replace these reserves Mr. Parratt spoke of, we have a need to expend those exploration dollars, and they are not being spent in considerable amounts.

I mean we're talking multi-hundreds of millions of dollars per year that are not being spent in Nevada, and that's significant.

Mr. GIBBONS. The point I want to make is that the imposition of Federal royalties, is it your opinion that it will have a dramatic lowering of the production from the mines of metals and minerals in this State?

Mr. COYNER. Certainly if the royalty is in any way punitive or high relative to other countries in the world. Again, mineral production is a global business. Money flows to where it is welcome. If those royalties are excessive or judged to be excessive, production will go off shore.

Mr. FIELDS. If I may Mr. Chairman, just to add a little bit to that: Yes, the impact would be immediate. I think the charts that

you see here about what happened to the mining claims, this speaks to the fact that business will react immediately to its business conditions. It will not wait. It has other opportunities.

We could definitely see an exodus certainly first of exploration, a slowdown of mining, and then decline and stoppage of mining if the royalty is onerous enough. It would be very simple to overturn this apple cart right now, especially with the low price environment that our mines are dealing with.

Mr. Coyner's Division of Minerals has estimated that approximately 30 percent of Nevada's nation-leading gold production is derived from public lands, today. That 30 percent represents now approximately three million ounces of gold, which is more than any other State produces, coming right from Nevada.

Now, that royalty, any Federal royalty would be applied to that 3 million ounces of gold if something were to happen today.

I also submit, as you mentioned in your opening remarks, that the future of the mining industry in Nevada is on public lands; that 30 percent is going to increase over time if we can preserve the status quo, because 87 percent of our State is owned by the Federal Government.

There is simply no other place to explore than on public lands, so if we were to have a Federal royalty, in the future, it will be imposed upon any new discoveries that are made on those Federal lands.

The big IF, though, is will there be any exploration of those lands? I suspect that there will be much less if there is a gross royalty. So the imposition of any royalty will have an immediate negative impact on the State of Nevada, its State government, its local government, its communities and certainly the mining industry.

Mr. GIBBONS. Well, let me ask each of you to put on a hat that has a broader perspective and wider vision than just the State of Nevada. Do any of you have an opinion as to the effect of a reduction in our mining capability with regard to our national economy or our national defense, natural security? The role mining plays nationally would be affected in some way by this, and if any of you have any thoughts, I'd like to hear about that.

Mr. PARRATT. Well, there is no doubt that everything in our economy runs from mining because as you said earlier, if it can't be grown it has to be mined, everything from the computers we operate, to the building we're in, to the lights that are illuminating this room are coming from mining. We have to preserve a strong industry in this country. Mining is very, very important to our economy.

Mr. FIELDS. The State of Nevada is blessed with, as you know, Mr. Chairman, the kind of geology that is conducive to lots of various types of minerals.

In the past this State has produced tungsten; it's produced antimony; it's produced molybdenum; it's produced manganese. The list goes on and on.

Today we're producing gold and silver and copper and a variety of industrial minerals, but all of these minerals are somehow used to make this Nation strong. For example, tungsten, is used in the hardening of steel which is used in weaponry.

We need those, obviously we do. Gold, now, is so important in electronic components, computers. When this Nation does its work

overseas in the war arena, which we do from time to time, we have to have gold to make those components work correctly the first time, every time.

So that is just a small example, and certainly there are others who'll testify today who have lived the time when we were in major wars and we needed to have the mineral commodities that this State can produce, and this Nation can produce.

Another thing that is important is our mineral production, especially for gold, is allowing the United States to be a net exporter of gold. It does contribute to the balance of trade for this United States, which, it's a contribution. It's certainly not enough to say that we're going to turn that balance of trade around, but it's a contribution. Nevada is doing its part for the balance of trade.

Mr. GIBBONS. I just have two final questions for this panel, and then we'll try to move on.

Mr. Coyner maybe I can direct this to you. The Nevada Division of Minerals, has it made any estimates of remediation? I know in the past practice of mining, we have a lot of abandoned mines out there which no company today would tolerate or even be permitted to contribute to, but we have the remediation cost question, I'm sure.

Have you tried to quantify the abandoned mine lands problem in Nevada in terms of dollars, and do you have any handle on what the eventual total cost would be to solve this problem?

Mr. COYNER. The Nevada Division of Minerals is charged with the physical securing of hazardous mines in the State. With the abandoned mines programs we have, we estimate those numbers to be in the 50,000 to 100,000-type range in terms of hazardous openings.

The cost of each of those to remediate is about $500 per site or so, so that would give you a fee or figure on the physical hazard side. Now, if we're going to talk about the environmental hazard side, it's a much larger issue and a much bigger number.

I don't think anyone in this State has really put their mind to it yet in terms of what that total is, but let me say in that regard, that we have recently struck up an interagency task force of both the State agencies and the Federal agencies utilizing monies that are coming to us from the BLM to take a look at exactly that problem and try to get a handle on that.

So in order to put a total number on that right now would be somewhat premature, and again, it depends on what you call satisfactory with regards to the remediation. How much, to what level must you remediate it.

It's a national issue. It's being tackled actively in places like Colorado, Montana, and California as well, and we're doing the same here in Nevada, but I really can not put a number on it here for you today, Mr. Chairman.

Mr. GIBBONS. Finally, let me ask a question about educational outreach. I know all of you have been involved in that for some time, and maybe you can explain to us for the Committee and for the record, your educational outreach for Nevada students with regard to mining.

Mr. COYNER. I will start with that. As you know, Russ Fields was my predecessor at the Division of Minerals, so we have both been

very actively involved in our education program there, and we partner that program with the Nevada Mining Association and with members of the industry.

There are many, many professionals involved in the business today in Nevada that feel quite strongly about mineral education of our people and of our school children.

We sponsor in Nevada, teachers' workshops twice yearly, one in the spring in Las Vegas and one in the summer in northern Nevada. These are very well attended and very highly spoken of. Again those are partnered with industry and the Nevada Mining Association. We regularly go into the school classrooms. My division alone does over 200 presentations during the course of the school year, and everyone from our secretary/receptionist to the administrator participates in those duties.

We feel very strongly about that mission and getting that word out to the Nevada schoolchildren. And finally I think we do need to realize that of the 1.8 million people in our State, 1.3 million live in Las Vegas and that, again, is a very unique thing to Nevada. We do have a brand new growing population down there that needs to hear that message and needs to understand why mining is important to them, so we're very concerned about that.

And we continue to push regularly and hard on that mineral educational issue.

Mr. GIBBONS. Finally, before I let you go—I know, I promised you just two questions, but I can't let you go without this one.

Do you see an area, any of you see an area, knowing the present status of Nevada laws, where the Federal Government needs to enact stricter laws that have been overlooked on your behalf, or an area where you think the Federal Government should step in to enact stricter laws because the State for some reason may have failed or is unable to proceed in that area?

Mr. FIELDS. No. I think the point that needs to be made to the Federal Government is that the production of hard rock minerals is an activity that requires closeness—I'm not sure that's the right term, but close oversight from local and State regulators, because of the unique character of different kinds of mines, and conditions.

We have mines here in areas that produce 2 inches per year of rainfall. Montana has mines in areas that produce 50 inches of rainfall, and Alaska, much more. How can the Federal Government come up with a one-size-fits-all type of regulation to deal with the wide variety of mineral resources that we have and the wide variety of climatic, geographic and economic conditions that we have?

I think the current debate over the 3809 regulations is a case in point. Nevada has developed a network, a system of regulations that work very well for Nevada. Other states have developed networks, systems of laws and regulations that work very well for their conditions.

I think the role for Federal oversight is just that. It's an oversight to make sure that broad public policy guidelines are being met, but leave it to the local States actually to do the regulation on them.

Mr. GIBBONS. I'm not his straight man.

Mr. Coyner?

Mr. COYNER. Mr. Chairman, I would add something from one small perspective, which is the State bond pool. The Division of Minerals does administer that program for the State, which helps the smaller and moderate-sized mining companies meet their bonding obligations.

The track record of that bond pool has been one of no forfeitures during the time of it's existence. So we have demonstrated the State can respond on that level and manage that actively and with satisfaction.

Another point I will make is that we have had several companies in difficult times in the recent past year or two with regard to finances and bankruptcy. The system, because of the well-thought-out nature of it in Nevada, has responded to those timely and with decision, and it's being managed in a proper and appropriate way.

So, again, I think the evidence is the Nevada Model, if you want to call it that, responds to various situations, is very well designed and suits our State very well and good.

Thank you.

Mr. GIBBONS. Mr. Parratt.

Mr. PARRATT. I can only agree with what my counterparts at the table have said. I think things are going quite well in Nevada. I don't think we need any additional regulations on the Federal side.

Mr. GIBBONS. Well, gentlemen, thank you very much for your time and testimony here today. It's been very helpful, and we appreciate you being present today to help us better understand Nevada, its mining industry, and the future in hand for where we want to go.

With that, I'll go ahead and release this panel and call the next panel up. I don't know if Assemblywoman Marcia de Braga has made it to the room, but it will consist of Victoria Soberinsky, the Deputy Chief of Staff for Governor Kenny Guinn; Senator Dean Rhoads, we have also mentioned here earlier, Chairman, Natural Resource Committee, Nevada State Legislature; and Assemblywoman Marcia de Braga, Chairman of the Natural Resources, Agriculture, and Mining Committee for the Assembly, Nevada State Legislature.

Mr. GIBBONS. Do we only have the two of you?

[Witnesses sworn.]

Mr. GIBBONS. It's good to see you. Let me welcome both of you to the panel today. I apologize for the delay. We appreciate your time, your patience in waiting, and Mrs. Soberinsky, the floor is yours.

STATEMENT OF VICTORIA SOBERINSKY, DEPUTY CHIEF OF STAFF FOR GOVERNOR KENNY GUINN, STATE OF NEVADA

Ms. SOBERINSKY. Thank you very much, Mr. Chairman, and for the record my name is Victoria Soberinsky, and I am the Deputy Chief of Staff for Kenny Guinn in Nevada.

I appreciate the opportunity to testify today regarding the effects of Federal mining fees and proposed Federal royalties on State and local revenues and the mining industry.

Mining is an integral part of Nevada history and the Nevada way of life. Nevada continues to be a world leader in gold production and produces the most silver, magnesite and barite in the Na-

tion. Accordingly, Nevada has devoted a tremendous amount of time and resources over the years to create and maintain a strong and responsible mining industry.

I believe that Nevada is one of the most environmentally responsible mining regions in the world; however, even with Nevada's successes and proven track record, I believe Congress and the State should continue to work with the industry and the environmental community to continue to minimize mining effects on the land and the other land users.

To be clear, the issues of reasonable Federal mining fees and proposed Federal royalties are legitimate discussion points. However, the impact from these proposed fees, royalties and proposed Federal regulations on my State, our local communities and the mining industry are equally important.

The industry is an important contributor to the Nation's economy and my State's economy in particular. Nevada's mining industry has created approximately 13,000 jobs directly related to mining with an additional 45,000 jobs indirectly related to the industry.

Generally speaking, these are high paying jobs that average close to $50,000 per year. Rural Nevada communities, such as Elko, Carlin, Battle Mountain, Winnemucca, Ely, Eureka and Tonopah are all dependent on a vibrant mining industry.

As you contemplate proposed Federal fees and royalties and have the opportunity to review proposed Federal regulations, I hope you will keep in mind those communities and those families who built a future around a responsible and environmentally sensitive mining industry.

I'd like to make some brief remarks about the Department of Interior's initiative to amend its land management, or 3809 regulations.

Nevada has closely monitored this initiative since the Secretary of Interior directed the BLM to draft regulations in January of 1997. Since that time there has been no real justification offered by Interior regarding the need to make changes.

Some people in groups have described our opposition to the 3809 revision as anti-environmental. I can assure you that nothing can be further from the truth. Nevada has strong State laws and regulations requiring reclamation of land disturbed by mining.

Today, Nevada holds over $500 million in reclamation sureties to ensure successful reclamation. My State has also developed comprehensive regulations governing water quality standards at mining operations. These requirements are working well because the environmental community, mining industry, and State and Federal regulators crafted them with a great deal of cooperative effort.

Nevada's opposition to BLM's draft 3809 regulations is based on the fact that our comments and input regarding this action have largely been ignored.

I believe the current draft regulations are onerous, unnecessarily burdensome and duplicative. In short, Interior is attempting to move the responsibility for environmental oversight of mining operations from Nevada and other western States to Washington, DC.

Interior's efforts would clearly and significantly impact Nevada's mining industry; but they will also adversely impact Nevada's economy and our environment.

Nevada is the most arid State in the Nation. The condition of public lands and the reliable quality and quantity of Nevada's water resources are vitally important to our State. Nevada has demonstrated it's eminently qualified to protect these resources. Another level of Federal bureaucracy is simply not necessary.

I believe reasonable mining fees and Federal royalties would benefit all stake holders, including the States, Federal Government, and industry. Proposed changes in mining fees should end the $2.50 to $5 per acre patenting fee and replace it with provisions to sell the patent for the surface land's market value. This type of royalty would closely resemble the State of Nevada's net proceeds system.

The administrative costs of our program are $250,000 annually, but the system has historically generated millions of dollars on an annual basis.

Nevada would support these types of fee and royalty proposals because they are fair. While these fees would clearly increase costs in these difficult economic times, industry could benefit because it would reduce some uncertainties and risks associated with mining in the United States today.

The price of gold today is approximately $280 per ounce. This very large variable has been the main force behind the loss of nearly 1,000 jobs across Nevada in the last 2 years.

While commodity prices cannot be controlled, the need to reduce other variables is evident. Nevada would support improvements in the status quo in the areas of fees, royalties and regulations, as long as they have a benefit and are consistent with our goals and objectives, most notably to have a strong, well-regulated, environmentally sound mining industry.

Thank you very much, Mr. Chairman.

Mr. GIBBONS. Thank you very much, Ms. Soberinsky.

[The prepared statement of Hon. Kenny C. Guinn follows:]

STATEMENT OF HON. KENNY C. GUINN, GOVERNOR, STATE OF NEVADA

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify today regarding the effects of Federal mining fees and proposed Federal royalties on State and local revenues and the mining industry. Mining is an integral part of Nevada history and the Nevada way-of-life. Nevada continues to be a world leader in gold production and produces the most silver, magnesite and barite in the nation. Accordingly, Nevada has devoted a tremendous amount of time and resources over the years to create and maintain a strong and responsible mining industry. I believe that Nevada is one of the most environmentally responsible mining regions in the world. However, even with Nevada's success and proven track record, I believe Congress and the states should continue to work with the industry and the environmental community to continue to minimize mining effects on the land and the other land users.

To be clear, the issues of reasonable Federal mining fees and proposed Federal royalties are legitimate discussion points. However, the impacts from these proposed fees, royalties and proposed Federal regulations on my state, our local communities and the mining industry are equally important. The industry is an important contributor to the nation's economy—and my state's economy in particular. Nevada's mining industry has created approximately 13,000 jobs directly related to mining, with an additional 45,000 jobs indirectly related to the industry. Generally speaking these are high paying jobs that average close to $50,000 per year. Rural Nevada communities such as Elko, Carlin, Battle Mountain, Winnemucca, Ely, Eureka and Tonopah are all dependent on a vibrant mining industry. As you contemplate proposed Federal fees and royalties and have the opportunity to review proposed Federal regulations, I hope you will keep in mind those communities and those families who built a future around a responsible, environmentally sensitive mining industry.

I would like to make some brief remarks about the Department of Interior's initiative to amend its land management or 3809 regulations. Nevada has closely monitored this initiative since the Secretary of Interior directed the BLM to draft regulations in January 1997. Since that time, there has been no real justification offered by Interior regarding the need to make changes. Some people and groups have described our opposition to the 3809 revisions as anti-environmental. I can assure you that nothing can be further from the truth. Nevada has strong state laws and regulations requiring reclamation of lands disturbed by mining. Today, Nevada holds over $500 million in reclamation sureties to ensure successful reclamation. My state has also developed comprehensive regulations governing water quality standards at mining operations. These requirements are working well because the environmental community, mining industry, and state and Federal regulators crafted them with a great deal of cooperative effort. Nevada's opposition to BLM's draft 3809 regulations is based on the fact that our comments and input regarding this action have largely been ignored. I believe that the current draft regulations are onerous, unnecessarily burdensome and duplicative. In short, Interior is attempting to move the responsibility for environmental oversight of mining operations from Nevada and other Western states to Washington, D.C. Interior's efforts would clearly and significantly impact Nevada's mining industry, but they will also adversely impact Nevada's economy and our environment, Nevada is the most arid state in the Union. The condition of public lands and the reliable quality and quantity of Nevada's water resources are vitally important to our state. Nevada has demonstrated that it is eminently qualified to protect these resources. Another level of Federal bureaucracy is simply not necessary.

I believe reasonable mining fees and Federal royalties would benefit all stakeholders including the states, Federal Government and industry. Proposed changes in mining fees should end the $2.50 to $5.00 per acre patenting fee and replace it with provisions to sell the patent for the surface land's fair market value. This type of royalty would closely resemble the State of Nevada's net proceeds system, which has proven to be highly effective. The administrative costs of our program are $250,000 annually, but the system has historically generated millions of dollars on an annual basis.

Nevada would support these types of fee and royalty proposals, because they are fair. While these fees would clearly increase costs in these difficult economic times, industry could benefit because it would reduce some uncertainties and risks associated with mining in the United States today. The price of gold today is approximately $280 per ounce. This very large variable has been the main force behind the loss of nearly one thousand jobs across Nevada over the last two years. While commodity prices can not be controlled, the need to reduce other variables is evident. Nevada would support improvements to the status quo in areas such as fees, royalties and regulations as long as they have a benefit and are consistent with our goals and objectives, most notably to have a strong, well regulated, environmentally sound mining industry. Thank you.

Mr. GIBBONS. Senator Rhoads, welcome, and the floor is yours.

STATEMENT OF DEAN A. RHOADS, CHAIRMAN, NATURAL RESOURCE COMMITTEE, NEVADA STATE LEGISLATURE

Mr. RHOADS. Thank you.

Good afternoon, Mr. Chairman. I'm Dean Rhoads, Chairman of the Nevada Senate Natural Resources Committee. I wondered perhaps, when this hearing is over with, if you could do Dawn and I a favor and lend us your light there for the legislature.

Mr. GIBBONS. It is a wonderful thing.

Mr. RHOADS. We have 16 days left, and I'm sure if we had that light there we could cut it down to 8.

Mr. GIBBONS. I will see if I can send you a copy of it.

Mr. RHOADS. Mining is an industry, as you know, that I have spent many years hearing about from your side of the table. It's a pleasure to be here today, after four months of the legislative session, to sit on the witness side to share with you some of my observations I've collected for over the years.

As a rancher from Tuscarora, in the morning I could look out and see the Independence Mine, and in the spring we'd drive the cattle down through Barrick, Rodeo, Meickle and Newmont's mine, and by the Digal mine and by Rossi Mine.

I've spent almost all my entire professional career working near mining and learning about its effects on rural communities. In 1977, when I was elected to the Nevada Assembly I began considering mining from a policy perspective. My experiences as a legislator have brought to life the complexities of mining on a statewide level.

In 1985, I was appointed to the interim Public Lands Committee, a committee which I've chaired since that time. I've also been Chairman of the Natural Resources Committee since 1995.

While mining exists throughout Nevada, it's my Senate District that is the most productive mining region in the State, and arguably, the third most productive region in the world. I represent Elko, Lander, Humboldt Counties and most of Eureka County. The effects that mining has had on my District over the years has been profoundly positive at times and very poor at others due primarily to market fluctuations.

The simple fact is that the value of Nevada's primary ores—gold, silver, and copper, are established on the open market. Economic fluctuations, sometimes severe, are felt throughout the rural communities that I represent.

These counties depend on tax revenues from the Net Proceeds of Mines. Even with the current depressed market, Net Proceeds of Mines constitutes between 20 percent to—in the case of Eureka County—50 percent—of the rural counties' assessed valuation. In contrast, net proceeds of Mines in Clark County is only $8 million of the county's total $26 billion in assessed valuation.

Additionally, there have been roughly 1,500 layoffs over the past year, year and a half, throughout Nevada. Yet, these laid-off workers come primarily from rural Nevada, representing a rather significant percentage of the work force.

The fate of rural Nevada is not dire, thankfully. There are signs of economic diversification, and ranching and tourism and farming continue to contribute to the economy. Moreover, Nevada's rural communities consist of survivors—people who always keep their chins up and endure the tough times. And there have been tough times.

Nonetheless, it's my district that must be remembered when considering policies such as royalties and fees on mining. A lot can be learned from studying the effects on our communities by the recent drop in the price of gold—a factor that is out of our control.

Parallels can certainly be drawn between the changing market and changes in royalties and fees. Additional reductions in mining revenue, even those that are seemingly small on paper, will have weighty repercussions on the local businesses, infrastructures, and families of rural Nevada.

I appreciate the Subcommittee's attention to these details, and I thank you again for the opportunity to testify here today on this most important issue. We thank you.

Mr. GIBBONS. That light really works, doesn't it?

Mr. RHOADS. It sure does. Senator O'Neil would really like that. I should grab it up for the last day of the session and give it to him.

[The prepared statement of Mr. Rhoads follows:]

STATEMENT OF DEAN A. RHOADS, A STATE SENATOR FROM THE STATE OF NEVADA

Good afternoon Mr. Chairman and members of the Subcommittee. I'm Dean Rhoads, Chairman of the Nevada Senate Natural Resources Committee.

Mining is an industry that I have spent many years hearing about from your side of the table. It is a pleasure to be here today on the witness side to share with you some of the observations I've collected over the years.

As a rancher from Tuscarora, Nevada, which is in the northern-most part of the state, I have spent almost all of my entire professional career working near mining and learning about its effects on rural communities. In 1977, when I was elected to the Nevada Assembly, I began considering mining from a policy perspective. My experiences as a legislator have brought to light the complexities of mining on a state-wide level. In 1985, I was appointed to the interim Public Lands Committee, a committee which I have Chaired since that time. I have also been Chairman of the Senate Natural Resources Committee since 1995.

While mining exists throughout Nevada, it is my Senate district that is the most productive mining region in the state, and arguably the third most productive region in the world. I represent Elko, Lander, Humboldt and Pershing Counties, and half of Eureka County.

The effects that mining has had on my district over the years has been profoundly positive at times and very poor at others due primarily to market fluctuations. The simple fact that the value of Nevada's primary ores—gold, silver, and copper—are established on the open market, economic fluctuations—sometimes severe—are felt throughout the rural communities that I represent.

These counties depend on tax revenues from the Net Proceeds of Mines. Even with the current depressed market, Net Proceeds of Mines constitutes between 20 percent to—in the case of Eureka County—50 percent of the rural counties assessed valuation. In contrast, Net Proceeds of Mines in Clark County is only $8 million of the county's total $26 billion in assessed valuation.

Additionally, there have been roughly 1,500 lay-offs over the past year and a half throughout Nevada; yet, these laid-off workers come primarily from rural Nevada, representing a relatively significant percentage of the work force.

The fate of rural Nevada is not dire, thankfully. There are signs of economic diversification, and ranching and farming continue to contribute to the economy. Moreover, Nevada's rural communities consist of survivors—people who always keep their chins up and endure the tough times. And there have been tough times.

Nonetheless, it is my district that must be remembered when considering policies such as royalties and fees on mining. A lot can be learned from studying the effects on our communities by the recent drop in the price of gold—a factor that is out of our control. Parallels can certainly be drawn between the changing market and changes in royalties and fees. Additional reductions in mining revenue, even those that are seemingly small on paper, will have weighty repercussions on the local businesses, infrastructures, and families of rural Nevada. I appreciate the Subcommittee's attention to these details.

Thank you, again, for the opportunity to testify here today on this important issue, which is critical to the livelihood of rural Nevada.

Mr. GIBBONS. Well, both of you, thank you for your time here today, and Senator Rhoads, let me just begin with you because you were mentioning about rural life, rural lifestyle and impact. And there are some, but particularly the opposition to the mining industry, who claim that the development of tourism can replace the loss of the jobs in mining industry and the economic base or other resource-dependent jobs in our rural communities.

As a legislator from rural Nevada, can you comment on this idea of where you see tourism supplanting the loss of jobs and the quality of the lifestyle, where, as Ms. Soberinsky stated, the average salary is about $50,000 for someone in the mining industry?

Can you just give us your opinion and your perspective.

Mr. RHOADS. I think as a rural legislator, one of the big issues in this session of the legislature is how are these rural counties going to survive with their hospitals deteriorating, with their schools—they do not have enough tax base to generate any revenue. As far as any economic development that would create tourism, they don't have enough private land to put a decent tourism attraction on.

We're working in these last 2 weeks, addressing the rural counties is going to be one of the major issues we come up with; and I think for the first time in Nevada history, or at least the first time since I have been in the Nevada legislature—and that's 22 years—you're going to see the State actually participate in some kind of funding mechanism to get these rural counties back into decent financial shape.

And most of it has been caused, in a lot of the rural counties, because of the declining mining industry, thanks to the Federal Government. So that is a factor.

Mr. GIBBONS. Well, I know, Senator Rhoads, because of your action and your ideas, many of us in Congress, Senator Reid and myself, have instituted what we call the Northern Nevada Public Lands Bill, which we have introduced, which will sort of assist some of these poor counties, both in their need to grow, need to expand, in some of the communities, as well as a resource or revenue source for some of these very important needs, like education, health care and maintenance of highways, et cetera.

So I applaud you for your efforts in looking for those solutions as well.

Ms. Soberinsky, for the record I read along with you in your statement, and I do want to correct one thing: I believe you stated, and maybe it was a misstatement, that the bonds held by Nevada were $50 million. In your record of testimony you said $500 million.

Which is correct? It's on page 2——

Ms. SOBERINSKY. Five hundred million, from my information.

Mr. GIBBONS. Okay. And Ms. Soberinsky, the Department of the Interior has maintained that their Draft Proposal 3809 regulations were developed in cooperation with the States. Since Nevada may well be one of the most important mining states in the Union, one would assume, of course, that they had solicited a great deal of input from the State of Nevada; but in your testimony, you have indicated otherwise.

How would you characterize the Interior Department's efforts to seek the State of Nevada's input into their Draft 3809 regulations?

Ms. SOBERINSKY. Mr. Chairman, as you know, we're a new administration, however I've spoken to various State agencies, including Pete Morris at the Department of Conservation and Natural Resources, and have been told that there was relatively no solicitation from the Department of the Interior on our concerns, Nevada's concerns in particular, but on the draft regulations as a whole, and that our input was largely ignored and not taken into consideration at all.

Mr. GIBBONS. Now, would you mind submitting to the Committee for the record, a record of or description of any meetings, or your suggestions that came from the State of Nevada with regard to the

proposed 3809 regulations so that we can incorporate that into this record?

Ms. SOBERINSKY. Absolutely. We would be happy to do that.

[The information follows:]

Mr. GIBBONS. Let me explain for those of you in the audience, the gentlemen that are sitting up here beside me are not Congressmen. They are staff. Jack Victory from Fallon over here is my legislative director and works with me in Washington, DC.

John—I forgot your last name, I'm sorry——

Mr. RISHEL. Rishel.

Mr. GIBBONS. [continuing] Rishel, is the staff member from the Committee. And Doug Fuller is the staff legal counsel for the Resource Committee, and, of course, when I forget to do something, they'll hand me a note. Let me say that for both of you, maybe we can get one final question and then be pleased to let you resume your busy lives.

If I were to go back to Congress and give them one statement or summary about Nevada mining, what should I tell them?

Ms. SOBERINSKY. This is actually—I was going to add on to Senator Rhoads' comments earlier when you had asked about tourism replacing the mining industry. I'd say most importantly, I think sometimes what the Federal Government forgets is that the mining industry and the people that make up the mining industry are integral parts of the communities that they live in.

They are the first ones there with scholarships when needed; they're the first ones there when there is a health care crises. They are the first ones there when there is a family in their community that needs something.

They are not just this monolithic industry that mines gold out of the ground and takes all its profits and runs. They significantly contribute to the livelihood of each of those communities, and I think that that is something that the Federal Government needs to take into consideration in dealing with this issue.

Mr. GIBBONS. I'm not her straight man.

Mr. RHOADS. I would say, Congressman, that we should tell them that the people that are the closest to the ground are the ones that can make the wisest decisions, and we live there and we're going to come back there. And we're going to take care of that ground much better than somebody from Maryland or Pennsylvania, or Arkansas. I have been telling them that for 25 years back there, and sometimes we gain a little, and a lot of times we lose, but thanks to Congressmen like you and others, I think that there's a little bit of light at the end of the tunnel now and we might be getting our voices heard, so we appreciate that.

Mr. GIBBONS. Well, thank you. We're happy to have both of you here today. Thank you for your very helpful testimony.

Again, we'll excuse you, and appreciate your follow-up with any additional testimony or documentation that you have.

With that, let me call our third panel up, Glenn Miller, Cochair Mining Committee, Toiyabe Chapter, Sierra Club, Reno, Nevada; Tom Myers, Director, Great Basin Mine Watch, Reno, Nevada; Leo Drozdoff, Chief, Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection, Carson City, Nevada.

Gentlemen.

[Witnesses sworn.]

Mr. GIBBONS. Welcome to each of you. As you have heard, your full written testimony will be submitted for the record. You're free to paraphrase and summarize in any way you see fit.

The lights will come on for you, each one, to give you a certain time frame within which to discuss your points.

Mr. GIBBONS. With that, Professor Miller, we'll turn to you first.

STATEMENT OF GLENN C. MILLER, COCHAIR, MINING COMMITTEE, TOIYABE CHAPTER, SIERRA CLUB, RENO, NEVADA

Mr. MILLER. Thank you. I appreciate the opportunity to make some brief comments, and I appreciate your willingness to hold this hearing.

I think all the speakers before us have made the comment, which is very true that the industry is very much depressed right now because of a severe depression in gold prices.

When gold was up at $400 an ounce, I think everybody was happier. It's a lot easier to talk to industry when they have a lot of money, about environmental issues, and it's more difficult when they don't have as much profit margin present.

But the issues that I guess I'd like to make is that even though the depression is there in prices, and profitability is not there, the environmental, risk of the environmental costs remain about the same, and I am very concerned that the funds to insure that the mines are mining in an environmentally responsible manner be retained.

There is an issue of bankruptcies in Nevada. Now, the numbers, I'm not completely sure about. They change on a fairly frequent basis, but there are over 13 mining sites that have gone into bankruptcy in recent years, and some of these operations are major ones.

The Arimetco's Paradise Peak and the Yerington copper mine. Those are ones where the bonding was severely problematic. Part of it was a corporate bond that is no longer, at least, accessible at present. Pegasus' large mine, Florida Canyon; and Alta Gold is now in bankruptcy. They may come out of bankruptcy; but they have Olinghouse mine just above the Pyramid Lake reservation, plus two other mines in Nevada.

While bonds are available for these mines under Nevada regulations—I was involved in establishing both the legislation that established reclamation law, which, although it was debated very highly in 1989—I remember having shouting matches in the legislature, during that time—whether that was a consensus process, I don't know, but the way legislation goes, it did move forward.

That, we agreed would not bond for fluid costs. Now, probably I think one of the largest emerging problems from mining and environmental issues have to do with how to handle fluids that come out of the waste rock dumps, fluids that come out of heaps, and pit lakes.

There is no authority, and in fact there is specifically an inability to bond for those specific units on major mines. And those are probably some of the largest environmental problems with largest costs that ultimately may be incurred.

One of the mines, Paradise Peak, half of the bond was held as a corporate guarantee, may come back but it's problematic. We have to get in line with other of the debtors from that mine.

This now has a tailings impoundment that you can see when it blows, like it has blown for the last few days, you can see it from 10 miles away, the tailings impoundment dust, or dust which causes—pretty reactive materials can be seen 10 miles away. It has a pit lake that the last time I saw any gauge on it, was going sour, going acidic, there was a tremendous amount of physical risk from that site also because of the very high instability in the wall rock.

Who's going to pay for this? I mean, this is not a trickle cost. This will be many millions of dollars. And I guess that I would argue that a royalty fee, should it be established, should be dedicated to paying for those mines that go under that are not sufficiently bonded.

Three quick points here: I want to provide a brief overview of three generic problems that are becoming increasingly prevalent in Nevada.

Pit lakes: In the next 30 years, there will very likely be more water in pit lakes than all the other man made reservoirs in Nevada, excluding, of course, Lake Mead. And I don't think anyone argues that point at all.

It's also my belief that the water quality in these pit lakes will not meet the majority of uses that include agricultural, either irrigation or stock watering, certainly not domestic water quality uses, so that water that will be in those pit lakes will largely be unavailable for ranching, for agriculture or for domestic use.

At least one of the pit lakes in Nevada contains constituents that are really severely problematic to wildlife. The two largest manmade lakes in Nevada will be pit lakes and will contain a total of 1 million acre feet of water.

It's a long term commitment that we are doing right now. We're committing long term resources for the future.

The second one is discharge from precious metals heaps. This an issue I don't think anybody felt would be a major problem. It's now becoming apparent that a large number of heaps in Nevada will drain following snow and rain infiltration and this will be over many, many decades.

Even if you get one furlong of water through a pit, through a heap, with the rainfall in it Nevada will require on the order of 20, 30, 40 and beyond decades. So it's a problem that is effectively permanent, and how we a handle that water is not clear at all.

I think Leo Drozdoff may have some comments about that.

Finally, discharge from waste rock dumps: As in other States, drainage from waste rock dumps is a problem. A problematic mine is the Big Springs Mine, which was a model mine. I appeared on a video in support that mine. Now it has sulfate concentrations coming up; some pH declines that are very slight, with some indication that may be becoming an acid site. At the very least, it's causing significant problems for the north fork of the Humboldt.

Somebody is going to pay for this. Somebody is going to pay. Right now the BLM is getting funds out of appropriations to pay—for some of this, so it's either going to be the taxpayers, or I would argue that a good burden of that should be on the industry that

has and will continue to gain a profit from those activities. Thank you.

Mr. GIBBONS. Thank you.

[The prepared statement of Mr. Miller follows:]

STATEMENT OF GLENN C. MILLER, CO-CHAIR OF THE MINING COMMITTEE OF THE TOIYABE CHAPTER OF THE SIERRA CLUB

My name is Glenn C. Miller, and I reside at 581 Creighton Way, Reno NV. I have been active in the Toiyabe Chapter of the Sierra Club for over 20 years on the subject of mining on public lands. I have observed the mining industry in Nevada grow nearly ten-fold during that time, from less than $400 million per year in 1980 to over $3 billion in 1997. This industry has undergone dramatic changes during that time, and I have followed the development of new state and Federal regulations, and observed changes in the mining industry in their response to regulations.

In many ways, gold mining in Nevada is less expensive and offers better operational characteristics than are present in other states that have higher rainfall. These features, as well as a friendly regulatory attitude towards mining, have allowed Nevada to become the nation's largest producer of gold and silver. When gold was near $400 per ounce, the industry was very profitable; at $280 per ounce, the industry is severely stressed, except perhaps for the very lowest cost producers. Even in these times of financial stress, the environment still requires just as much protection as when the mining industry was much more profitable. Protecting the environment requires sufficient funding to plan, permit, regulate and close these mines. To reduce funding now when mine closure is becoming an increasing concern is very short sighted.

I wish to make four simple points regarding the fees charged for mining claims and a potential royalty, which would help to pay for some of the costs associated with mining.

1. Even though the profitability of mining may have decreased, the costs for regulating mining remain, and may be increasing due to the increased need for careful regulation during closure of mines. The gold mining boom that began in the early 1980's utilized new techniques for mining. This very large-scale mining has created new environmental issues that have not previously been considered and closure problems are now becoming apparent. These issues are discussed below. At any rate, the need for increased funding for the Federal and state regulatory agencies is apparent. Unless this funding comes from the mining industry, it will probably need to come from the general fund. Thus, retention of Federal and state fees on claims is critically important to retain, as are the current permit fees required by the State of Nevada.

2. Bankruptcies of mining companies are becoming a common occurrence in Nevada. Companies which operated or owned over 13 mining sites have gone into bankruptcy in recent years in Nevada. Some of those operations are major mines, including Arimetco (Paradise Peak and the Yerington copper mine), Pegasus (Florida Canyon) and Alta Gold (Olinghouse mine and two other mines in Nevada). While bonds are available for many of these mines, they are not generally bonded for management of fluids which are released following closure of heaps, or long-term management of pit lakes, when they occur. For one of the mines, (Paradise Peak) half of the bond was held as a corporate guarantee, which is problematic, to say the least when the net worth of the company is less than the debt. This mine now has a pit lake that may be turning acidic, a tailings impoundment that blows tailings dust miles away and heaps that are not closed properly. Who has the responsibility of protecting the public from long-term costs of remediation? Those costs are likely to range in the millions of dollars, or if left alone will provide long-term physical and chemical risks to the public and wildlife.

3. If a royalty is established, I urge that those funds be used to partially offset the costs the public will incur for management and remediation of mines on public lands. I am convinced that those costs will be substantial and doubt that any royalty will be sufficient for the public costs that are being incurred with present mines today. However, it will help.

4. Finally, I want to provide a brief overview of three generic problems that are becoming increasingly prevalent in Nevada:

- Creation of pit lakes: Within the next 30 years, there is very likely to be more water in pit lakes than all the other man-made lakes completely in Nevada. It is also my belief that the water quality in the majority of those pit lakes will be sufficiently poor that it will be degraded for domestic use, irrigation, and stock watering. Some of the pit lakes presently in Nevada exceed standards for

protection of wildlife. The two largest man-made lakes in Nevada will be pit lakes and contain a total of over 1 million acre-feet of water. This is a tremendous long-term commitment of the limiting resource in Nevada.

• Discharge from precious metals heaps. It is now becoming apparent that a large number of heaps in Nevada will drain following snow and rain infiltration. Based on research my laboratory has conducted at the University of Nevada, this water will be contaminated for many decades. We do not have firm plans for management of that water, other than to simply allow it to drain into the subsurface environment. In fact, this option is the regulatory fix which is being permitted by the State of Nevada, even on federally managed public lands.

• Drainage from waste rock dumps. Just as in other states, drainage from waste rock dumps is a problem. While acidic drainage was not thought to be a substantial problem in the current gold mining areas, we now have several sites where acids are being generated. One of those sites, the Big Springs Mine was considered a model mine in the early 1990's. By 1992, the sulfate concentrations began to increase from drainage from waste rock dumps, and a serious decrease in pH of the drainage water is now an apparent trend. Waste rock dumps at other sites are also releasing contaminants loads that did not exist prior to mining.

These problems are now occurring when the industry is very stressed. The problems will not simply go away, and many of them will continue to increase as the larger mines close. Rather than consider reducing fees, the Congress needs to recognize that someone has to pay the piper. Those costs will be paid either by the industry that gained the wealth from the activity, or it will be the public who will bear the cost in money or resource loss if they are not fixed.

Thanks for the opportunity to provide these comments.

Mr. GIBBONS. Dr. Myers.

STATEMENT OF TOM MYERS, DIRECTOR, GREAT BASIN MINE WATCH, RENO, NEVADA

Mr. MYERS. Thank you. Mr. Chairman, my name is Tom Myers, I am a Director of the Nevada-based environmental advocacy group, Great Basin Mine Watch. Thank you for this opportunity to testify on the issue of immediate concern to members of our group and the State of Nevada, and thank you for holding this hearing.

And the light is still red right now. I'd hate to be eliminated after my first paragraph.

Mr. GIBBONS. It'll just give you that much more time.

Mr. MYERS. Thank you. As requested, I will address two subjects: Federal holding fees such as the claim maintenance fee, and royalty payments.

As part of the 1993 appropriations bill, Congress allowed the BLM to start collecting $100 year per claim fee on mining claims as part of their appropriations. This has been renewed twice with an additional $25 location fee added in 1995.

Fees collected have ranged from $30- to $36 million dollars between 1995 and 1998 with the majority going to the BLM's Mining Law administration Budget. If this Committee proposes elimination of the fee, the administration of the program must financed from general revenues.

Who could oppose this fee? The amount is a mere blip on the annual budget of large companies. For those holding a claim block until the market improves, the fee frees them from doing expensive and environmentally damaging maintenance work.

The small miner exemption eliminates the fee as an issue for honest, small-scale miners and exploration companies.

The only people really hurt by this holding fee are speculators. These are people who stake multiple claims in a minerals-rich area

in hopes of mining the legitimate mining companies who would rather buy out a claim than challenge it's validity.

You have received testimony today that these fees have decreased the exploration activity in Nevada. We respectfully disagree with the opinion that this is a problem. In 1993, the number of registered claims dropped from 258,000 to 126,000, while nationally, claims dropped from 760,000 to 294,000.

Coincident, statistically insignificant drops in exploration are due to the price of gold. Any increase in exploration in foreign countries merely reflects the fact that Nevada has been explored for 125 years.

The overseas areas, such as Russia, are virgin territory.

Regarding royalties, Great Basin Mine Watch supports an 8 percent net smelter royalty, which is in the low end of the 5 to 15 percent range currently charged by states on their lands. My written testimony includes calculations that prove that at least 80 percent of operations will remain profitable with such a royalty even if gold prices drop to $250 per ounce.

Based on an operating cost of $212 per ounce, the effective royalty rate after tax deductions and depletion allowances are considered, is only 5.48 percent.

But a longer-term look reveals much more about the industry and production. Between 1987 and 1992 the real price of gold fell by $220 per ounce. During that time period of precipitous price declines, gold production boomed increasing 128 percent.

An industry that can boom amidst price declines that are 15 times the likely effective size of a Federal royalty is unlikely to be crippled by that royalty.

More importantly, the industry has adjusted to changing prices by decreasing their costs substantially with time. The preferred method of decreasing costs is to discover and produce higher quality ore. Unfortunately for the worker and for Nevada's economy, production costs are often lowered by more efficient processing which usually means more mechanization and less labor.

I expect that as the industry expands, more gold will be produced with less labor, just as in the timber industry.

The impact of the Federal royalty will likely be about a 2 percent reduction in total production and employment, which represents about a day's worth of not normal job growth in the West. Only 1 in 1,000 western jobs are in metal mining and only 1 in 6 of those jobs rely on Federal land. Therefore, royalty payments have a potential to effect a tiny sliver, about 3 of every 10,000 of total western jobs in the mining industry.

This is not to make light of the concern of local communities in eastern Nevada who do depend to a substantial degree on minerals production. However, the answer is not continued corporate welfare or subsidies. The answer is more diversification of the local economies.

Great Basin Mining Watch recommends that royalties be used for abandoned mine reclamation. Production in Nevada alone, 143 thousand—excuse me—$143 million per year. Nevada looses a huge economic opportunity because the Federal Government does not charge royalties that are applied to abandoned mine clean up.

Federal royalties could also solve potential problems that Glenn referred to a minute ago with things like bankruptcies, corporate bonding, and a few other problems. In conclusion, I want to reiterate that the fastest growing rural western regions are places where people want to live because of their beauty, not because of what they extract from the earth. Thank you very much.

[The prepared statement of Mr. Myers follows:]

Testimony of Tom Myers, Ph.D.
Director, Great Basin Mine Watch

Before the House Resources Subcommittee on Energy and Mineral Resources

Effect of Federal Mining Fees and Proposed Federal Royalties
on State and Local Revenues and the Mining Industry

Reno, NV
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Chairman Cubin, members of the subcommittee, my name is Tom Myers. I am a director of the Nevada based mining advocacy group *Great Basin Mine Watch*.

Thank you for this opportunity to testify on an issue of immediate concern to members of our group and the state of Nevada.

This hearing effectively considers two subjects: federal mining fees such as the claim maintenance fee and royalty payments. As I will describe, both fees and royalties have a positive impact on the economy at large, statewide and locally and on the environment. They are also essential for maintaining the BLM's role in managing the minerals program.

Claim Maintenance Fees Have Protected the Public's Resources

As a part of their 1993 appropriations bill, Congress allowed the BLM to start collecting a $100 per year per claim fee on mining claims as a part of their appropriations. This was a two-year authorization. During the 1994 appropriations process, the fee was reauthorized through September, 1998 and an additional $25.00 location fee was added. Finally, the 1998 appropriations reauthorized both fees through September, 2001. These fees are in addition to the $10 recording fee authorized by the Federal Lands Policy and Management Act in 1976.

The maintenance fees (originally called a rental fee) replace the requirement for the claimholder to perform $100 of development on the claim. In general, prior to mining, the development was for exploration on the site. Annually, the claimholder would provide to the BLM a signed affidavit that they had completed this work. It is our opinion that many of the affidavits would have been false statements. If they were not false, the amount of damages and unreclaimed roads and exploration scars would be far greater than currently exists. The legislation provided for a small miner exemption: anyone holding less than ten claims could continue to perform maintenance on the site.

The money collected from these fees goes directly to the mining law administration budget of the BLM. It is deposited in a special account from which Congress appropriates to the program in the BLM. Any additional fees go to the federal Treasury to help balance the budget. The following table shows the amount of money paid nationally for claim maintenance and location fees and the appropriation to the BLM from this fund[1].

Fiscal Year	Fees Collected	Appropriations
1993	53,200,000	
1995	30,700,000	28,500,000
1996	33,800,000	28,500,000
1997	35,800,000	32,500,000

[1]Roger Haskins, BLM Washington Office, 5/13/99, personal communication.

1998	30,000,000	32,500,000

In FY 1998, the claim brought in $13,387,600 in Nevada alone[2]. As the table illustrates, the fee provides an important revenue stream. Fees from the industry are paying for the administration of the program. If this subcommittee proposes the elimination of the fee, the administration of the program must be funded from general revenues. Without some source of funding, the public lands will be damaged and the BLM will not be able to fairly administer the Mining Law which will be a negative deterrent to the efficient development of the nation's mineral resources. Defunding the program is not an option.

Who could oppose this fee? For large companies, the amount is a mere blip on their annual budget. The small miner exemption eliminates the fee as an issue for honest, small scale miners and exploration companies. For large companies with many claims that are actively pursuing the resource on their claim, the claim maintenance fee may represent an additional cost. For companies that are just holding the claim until the market improves, the fee frees them from doing expensive and environmentally damaging maintenance work.

The only people really hurt by this fee are speculators. These are people who stake multiple claims in a minerals rich area in hopes of mining the legitimate mining companies who would rather buy out a claim than challenge its validity before the Appeals Board or in the courts. These speculators may not have the money to pay the annual fees.

It is also to important consider what type of fee a maintenance fee is. We conclude that this is a holding fee rather than a mining fee. By holding fee, we mean that the fee is a fee paid to the federal government for the right to hold the land for the future use by the claimholder. The land is not subject to disposal under other laws without paying off the claimholder. The fee is not paid for the right to mine the land.

Most proposed Mining Law reforms would also impose "holding fees" or rental charges on all unpatented mining claims on Federal land. In the proposed legislation, these per acre rental fees would increase with the age of the claim. Both the proposed rental fees and the current maintenance fee primarily affect holders of **non-producing** Federal mineral claims. They represent only a tiny part of the overall costs of an operating mine. For non-producing claims, rental or maintenance payments can be avoided by simply abandoning those claims that have little prospect of profitable near term development. In 1993 in Nevada, the number of registered claims dropped from 258,000 on February 28 to 125,700 claims on September 1[3] while nationally claims dropped from 760,000 to 294,000[4]. In any case, since the burden of these payments does not fall on operating mines with substantial employment, the employment impacts are likely small

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[2]Steward, L., BLM NV State Office, 5/12/99, personal communication.

[3]Id.

[4]Haskins, note 1.

or non-existent. If mining claims are abandoned because profitable future development is not imminent, those minerals are not lost. As economic conditions change and mining of that land becomes viable, claims could be filed again. The primary impact of these rental charges is to discourage the indefinite holding of claims to minerals on Federal lands for speculative (as opposed to production) purposes. No substantial negative employment impact can be attributed to this.

Royalties: Does the Public Get its Fair Share?

Great Basin Mine Watch supports an 8 percent net smelter royalty which is in the low end of the 5 to 15% range charged by states on their lands. It may be slightly higher than the average charged by private owners[5]. A gross royalty calculates the payment based on the value of the refined mineral minus the nonmining costs of smelting. Smelting is more relevant with respect to copper than gold as the costs of smelting gold are less than $1.00/ounce[6].

What will be the effect of this additional cost to the industry? The following table illustrates a series of calculations of net profit for the production of 1,000,000 ounces of gold at the average production price of $212/ounce for three different gold prices[7]. A net smelter royalty is based on the final sales price of the mineral minus the cost of refining which, for gold, is less than $1.00/ounce[8]. The term is based on copper smelting and outdated for gold, but continues to be used in royalty proposals.

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[5]Dobra, J.L., 1999. The U.S. Gold Industry 1998. Natural Resource Industry Institute, University of Nevada, Reno page 22.

[6]Id., page 21.

[7]These calculations follow the report: Humphries, M., Mining Law Reform: The Impact of a Royalty, Report 94-438 ENR, Congressional Research Service, Washington.

[8]Dobra, page 21.

	Price of Gold per Ounce		
	$350	$300	$250
Gross Revenue for 1,000,000 oz	350,000,000	300,000,000	250,000,000
(smelting costs, $1.00/oz)	(1,000,000)	(1,000,000)	(1,000,000)
(transportation, guessed)	(1,000,000)	(1,000,000)	(1,000,000)
Net Smelter Returns	348,000,000	298,000,000	248,000,000
(8% Net Smelter Royalty)	(27,840,000)	(23,840,000)	(19,840,000)
Gross Mining Income	320,160,000	274,160,000	228,160,000
(operating costs)	(212,000,000)	(212,000,000)	(212,000,000)
Net Operating Income	108,160,000	62,160,000	16,160,000
(depreciation)	(10,000,000)	(10,000,000)	(10,000,000)
Predepletion Income	98,160,000	52,160,000	6,160,000
(depletion @ 50% of pre income)	(49,080,000)	(26,080,000)	(3,080,000)
Pretax Profit	49,080,000	26,080,000	3,080,000
Federal Tax @ 32%	(15,705,600)	(8,345,600)	(985,600)
State Tax @ 5%	(2,454,000)	(1,304,000)	(154,000)
Net Profit	30,920,400	16,430,400	1,940,400
Without the Royalty			
Net Operating Income	136,000,000	86,000,000	36,000,000
Predepletion Income	126,000,000	76,000,000	26,000,000
(depletion)	63,000,000	38,000,000	13,000,000
Pretax Profit	63,000,000	38,000,000	13,000,000
Federal Tax at 32%	(20,160,000)	(12,160,000)	(4,160,000)
State Tax at 5%	(3,150,000)	(1,900,000)	(650,000)
Net Profit	39,690,000	23,940,000	8,190,000
Decrease in profit due to royalty	8,769,600	7,509,600	6,250,000

Based on these conditions, the effective royalty rate, after deductions are considered, is only 5.48%. More importantly, profits are still made even at the industry average production costs even with gold prices dropping to $250/oz. It also must be mentioned that the depletion allowance is not a net cash flow loss to an operation but a tax deduction representing the fact that reserves are being depleted.

When compared to a net profit of $39,690,000 with gold selling at $350/oz without a royalty, the profit loss is 79.3% just for a price drop to $250/oz. With the proposed royalty, the additional profit loss is only 15.7%. During the past week, the price of gold dropped by about $15.00/ounce which also represents about a 15% drop in profit. A royalty would be a small portion of the profit loss.

But a longer term look reveals much more about the industry and production. Consider the impact of overall price changes since 1987. Between 1987 and the end of 1992 the real price of gold fell by 40 percent or about $220 per ounce. During that time period of precipitous price declines, gold production boomed, increasing 128 percent. An industry that can boom amidst price declines that are 15 times the likely effective size of a Federal royalty is unlikely to be crippled by that royalty.

It is very difficult to believe that royalties will cause much of a difference in mining investment and employments, especially since royalty costs will be far less than the general price changes, generally negative, experienced by investors in the gold market during recent years.

But more importantly, the industry has adjusted to changing prices by decreasing their costs substantially with time. For US producers, total cash operating costs have declined from $256/ounce in 1995 to $214/once in 1997 and are projected to be under $190/ounce in 1998[9]. Recent costs at Cortez's Pipeline Deposit have been $125/ounce and were previously below $100/ounce. Placer Dome reports their average costs have dipped below $200/ounce globally.

How does a company reduce its costs? The preferred method, both by the company and the worker, is to discover and produce higher quality ore. When a company moves less ore per ounce of mineral, its costs go down.

But unfortunately for the worker and Nevada's economy, production costs are often lowered by more efficient processing, which usually means more mechanization and less labor. Nationally, about 2000 workers lost their jobs in the mining industry in 1998. About 1200 of those were due to production cutbacks and about 800 were due to bankruptcy which may have been affected by gold prices. In 1997, about 14,800 workers were employed directly in Nevada's mining industry [10].

Another way of decreasing costs is through mergers. During periods with low prices, corporations frequently expand their reserves by buying out smaller producers. Newmont recently purchased Santa Fe to become the largest US gold producer. Today, approximately 75% of Nevada's gold production is derived from two companies, Newmont Gold Co. and American Barrick Gold Co., although there continues to be active participation by numerous other larger and medium sized companies with Nevada holdings[11]. This consolidation has allowed Newmont to decrease costs by processing ore at centralized facilities rather than at each mine. This, of course, decreases costs, and employment.

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[9]Dobra, page 4.

[10]Price, J.G., 1998. Overview, pages 3-9 in The Nevada Mineral Industry, 1997. Nevada Bureau of Mines and Geology Special Publication MI-1997.

[11]Kuipers, J., 1999. DRAFT Report to the National Wildlife Federation. To be released Summer, 1999.

Currently, the average royalty over all lands in the United States is about $11.00/oz. Because it is an average, the actual royalty on state and private lands must exceed the average because all production on federal lands is free of royalties. Because only 30% of all gold production occurs on public land, the actual royalty must have been about $14.00. Thus, the lack of a royalty on public land represents a subsidy of about $14.00/ounce to the industry to produce on public land.

The total cash cost average may also be considered as a distribution of cumulative production as a function of the price of gold. Because of a few very high cost producers, almost 6.5 million of the nation's 8.5 million ounce production occurs at costs below the current average cost. Almost 88% of all production costs less than today's price of gold (5/12/99, $272/ounce). Even if the royalty adds $15.00 directly to the cost, more than 85%, or just a 3% decrease, of all production will still occur at rates less than the current price of gold.

Many of the highest cost producers will continue to produce at a loss because of their high capital investment or because they must process poorer to reach more profitable ore so that their costs will decrease. Pits that extend below the water table will fill with water if operations cease; due to water quality problems, temporary shutdowns may cause permanent loss of mining opportunities, therefore few companies will allow this to occur. Not many will experience Alta's problems where they were improperly processing their ore which caused very high costs[12] and possibly led to the company's bankruptcy.

In conclusion, the impact of a Federal royalty will likely be a 2 percent reduction in total production and employment, which represents about a day's worth of normal job growth in the West. Only one in a thousand western jobs are in metal mining and only one in six of those jobs relies upon Federal land, therefore royalty payments have the potential to affect only a tiny sliver, about 3 out of every ten thousand jobs (0.025 percent), of total western jobs. And that potential impact itself will only be a tiny fraction of these jobs. It should not be surprising, then, that the potential negative impact of Mining Law reform on the western economies is tiny.[13] And the minerals will still be there for future extraction.

This is not to make light of the concern of local communities in eastern Nevada who do depend to a substantial degree on minerals production. However, the answer is not continued subsidized low costs of production; the answer is more diversification of the local economies. Elko and Ely should capitalize on the beauty of their location in the state with the most remaining defacto wilderness of any Western state. As Tom Powers has reported, counties with the most

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[12]At the company's Olinghouse Mine. Local newspapers reported processing problems. A local mining engineer suggested to me that they were using improper techniques.

[13]MPC, All that Glitters.

wilderness have, by far, the highest growth rate of any other places in the West[14]. Extraction is not sustainable; natural beauty is.

Great Basin Mine Watch recommends that royalties be used for abandoned mine reclamation and cleanup at existing operations that are insufficiently bonded. Production in Nevada alone will yield about $143,000,000 per year. Nevada is loosing a huge economic opportunity because the federal government does not charge a royalty that is applied to abandoned mine cleanup. Reclamation activities require skilled engineers and labor. The number of sites requiring cleanup could assure a sustainable source of jobs for decades, unlike primary production which is extremely boom and bust. Consider two problems in Nevada which may require large sums of money to fix.

According to the Nevada Department of Environmental Protection (NDEP), 13 mines in the state are owned by companies in bankruptcy.[15] Potential difficulties recently prompted the NDEP to request a special appropriation of $1,000,000 from the state to establish an emergency response fund to provide for operation of those mines in the event the operators decide to abandon the mine sites, which was approved by the state in 1998. The state is also concerned about the cost of interim operations prior to beginning reclamation and closure of the mine sites under bankruptcy, and in cases where bankruptcy appears imminent they have made requests for additional bonding to provide for up to six months interim operations.

NDEP has also expressed concerns with the situation in the state with respect to self-bonding. Approximately 75% of the $438,000,000 in total bonding liability by the state and federal agencies is covered under self-bonding provisions allowed in Nevada. In the event of continued depressed gold prices, the probability of additional mines closing and companies filing for bankruptcy protection will increase. In addition there is the potential that some of the major mining companies could potentially face financial difficulties, in part because some of those companies livelihoods are entirely based on gold production.[16]

Royalties could be used to help remedy these local problems.

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[14]Power, T.M., 1996. Lost Landscapes and Failed Economics. Island Press.

[15] The list of mines currently in bankruptcy includes the County Line, Paradise Peak/Ketchup Flat, and Yerington mines owned by Arimetco International Inc (the County Line and Paradise Peak/Ketchup Flat mines were formerly owned by FMC Gold Corp, which sold the closed mines and reclamation liability to Arimetco), the Florida Canyon mine owned by Pegasus Gold Corp. (now Apollo Gold), the Mt. Hamilton mine owned by Mt. Hamilton Mining Co., the Tonkin Springs mine owned by the Tonkin Springs Joint Venture, and the Gold Bar and Gold Canyon mines owned by Atlas Gold Mining Inc.

[16]Kuipers

This discussion may best be summarized by quoting from the Mineral Policy Center[17]:

a. Metal mining employment in the West is a very small part of total employment (one tenth of one percent).

b. Most metal mining (70 to 85 percent of it) in the West does **not** take place on Federal land. It takes place on private, state, and tribal lands where royalties are already being paid.

c. The net impact of the proposed 8 percent royalty is very modest compared to the value of the minerals when offsetting reductions in taxes and other royalties are considered.

d. The royalty would not raise the cash costs of any significant number of mines above current commodity values.

e. In the near term, mines often continue to operate even when cash costs are above the value of the mineral being extracted.

f. Mines can control their costs per unit by adjusting the quality of the ore that they process and engaging in other cost control measures.

Conclusion

It is time to change the economy of most of Nevada and the rest of the rural West from a third-world style, raw material exporting economy to a first world economy where environmental amenities and open space are valued and lead to growth and prosperity. The fastest growing rural Western regions are places where people want to live because of their beauty, not because of what they can extract from the Earth or feed their animals with.

[17]MPC, All that Glitters.

Mr. GIBBONS. Look at that. It's still green.
Mr. Drozdoff.

STATEMENT OF LEO M. DROZDOFF, CHIEF, BUREAU OF MINING REGULATION AND RECLAMATION, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION, CARSON CITY, NEVADA

Mr. DROZDOFF. Thank you Mr. Chairman. My name is Leo Drozdoff and I'm the Mining Office Bureau Chief of the Nevada Division of Environmental Protection. The Nevada Division of Environmental Protection of the Nevada Department of Conservation and Natural Resources appreciates the opportunity to provide testimony to the Committee on Resources, Subcommittee on Energy and Mineral Resources.

Since you have requested testimony on the effect of Federal mining fees and proposed Federal royalties on State and local revenues and the mining industry, we will provide the Subcommittee with some background pertaining to Nevada's well-run mining regulatory programs.

I will probably also touch on a couple of points Doctor Miller talked about as well. The NDEP is only one of several State agencies that regulate mining operations in Nevada. The Mining Bureau of NDEP is charged with ensuring that the quality of Nevada's water resources are not degraded as a result of mining operations and provide that the land is properly reclaimed and returned to a productive post mining land use.

Other bureaus within NDEP are charged with protecting Nevada's air quality and insuring that solid waste at mining operations is handled appropriately.

Generally speaking, the prevailing instrument that the NDEP uses to regulate activities on mine sites is the operating permit. The cost to obtain these permits, that is, air, water, reclamation, et cetera, may range from $100,000 for a mid-sized facility to several million dollars for a large operation with sensitive environmental issues.

The annual cost associated with these permits, that is, the fees paid to support the State regulatory programs, can range from $20,000 to $70,000 a year, or probably more.

For example, NDEP's entire Mining Bureau operating budget of $2 million is completely supported by fees paid by the industry. NDEP's Mining Bureau does not receive any State general fund or Federal monies. The monitoring costs that ensure that a mining facility remains in compliance with their operation permits routinely exceeds $100,000 per year.

And lastly, the State of Nevada holds, or jointly holds with Federal land managers, over $500 million in reclamation sureties. These costs don't include construction costs necessary to meet environmental requirements. In addition, costs from other State and Federal programs, most notably, NEPA requirements, rival and can dwarf the costs associated with the NDEP's programs.

Our reason for summarizing these programs is to neither boast nor apologize, but rather to underscore the states priorities. With these costs, this State realizes tangible benefits, most notably a well-regulated mining industry, and a protected environment.

Currently there are literally dozens of new regulations on the horizon which can not only negatively impact the mining industry, but also Nevada's ability to regulate mining activity.

It's our hope that when Congress has the opportunity to review new regulations or fees, it will ascertain whether these proposals add value and benefit like we believe Nevada's already do.

I would like to just make you aware that some of the environmental issues raised by Dr. Miller, my fellow panel member, are certainly legitimate discussion points.

I guess to stay on point I will summarize them generally and be glad to answer specific questions, but from my perspective the NDEP is equipped to address these issues, and more importantly, we are effectively addressing these issues. The State program is a dynamic program. We're clearly in a changing environment and we're contemplating some changes to our environmental programs, but that's the beauty of the State program, that it has the ability to do that.

So with that, I would be happy to answer any questions that you have.

Mr. GIBBONS. Mr. Drozdoff, thank you very much for your very helpful testimony.

[The prepared statement of Mr. Drozdoff follows:]

STATEMENT OF LEO M. DROZDOFF, P.E., BUREAU CHIEF, MINING REGULATION AND RECLAMATION, STATE OF NEVADA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

Mr. Chairman and members of the Subcommittee, the Nevada Division of Environmental Protection (NDEP) of the Nevada Department of Conservation and Natural Resources appreciates the opportunity to provide testimony to the Committee on Resources, Subcommittee on Energy and Mineral Resources. Since you have requested testimony on the "effect of Federal mining fees and proposed Federal royalties on state and local revenues and the mining industry," we will provide the Subcommittee with some background pertaining to Nevada's well run mining regulatory programs. The NDEP is only one of several state agencies that regulate mining operations in Nevada. The Mining Bureau of NDEP is charged with ensuring that the quality of Nevada's water resources are not degraded as a result of mining operations and provide that the land is properly reclaimed and returned to a productive post mining land use. Other bureaus within NDEP are charged with protecting Nevada's air quality and ensuring that solid waste at mining operations is handled appropriately.

Generally speaking, the prevailing instrument the NDEP uses to regulate activities on mine sites is the operating permit. The costs to obtain these permits (air, water, reclamation, etc.) may range from one hundred thousand dollars for a mid-sized facility to several million dollars for a large operation with sensitive environmental issues. The annual costs associated with these permits, that is, the fees paid to support the state regulatory programs can range from $20,000–$70,000 per year or more. For example, NDEP's entire Mining Bureau operating budget of $2 million is completely supported by fees. NDEP's Mining Bureau does not receive any state general fund or Federal monies. The monitoring costs that ensure that a mining facility remains in compliance with their operating permits routinely exceed $100,000 per year. Lastly, the State of Nevada holds or jointly holds with Federal land managers, over $500 million in reclamation sureties. These costs certainly don't include construction costs necessary to meet environmental requirements. Additionally, costs from other state and Federal programs, most notably NEPA requirments, rival and can dwarf the costs associated with the NDEP's programs.

Our reason for summarizing these programs is to neither boast nor apologize, but rather to underscore the State's priorities. With these costs, the State realizes tangible benefits—most notably a well regulated mining industry and a protected environment. Currently, there are literally dozens of new regulations on the horizon, which can negatively impact not only the mining industry, but also Nevada's ability to regulate mining activities. It is our hope that when Congress has the opportunity

to review new regulations or fees it will ascertain whether these proposals add value and benefit like Nevada's already do.

I would be happy to answer any questions you may have. Thank you.

Mr. GIBBONS. Let me start with Dr. Miller, if I may.

You talked about the need for a royalty to take care of the environmental problems that have been or are currently existing, or may exist in the future. Dr. Miller, is it your position that the Federal Government under a Federal royalty could do a better job than if we had a State royalty to take care of the very the same thing?

Mr. MILLER. Yes. Either way. I mean I have no—I think on publicly-owned land, there is a responsibility that those land management agencies, that they answer to the public. It is public lands. I think there needs to be a substantial involvement in that discussion, exactly how that reclamation or damage reduction occurs.

But you know, I have no particular—you know, money is money. Whether—but I have yet to hear of the State of Nevada suggesting that there should be a royalty for reclamation. The money, the net proceeds, which has declined considerably in the last year, 1997-1998, I don't think there has ever been a discussion of utilizing that to reclaim lands that are damaged.

I was out at Pyramid Lake yesterday and there is a site there that is from historic mining, I believe a copper site, tremendously acid generating, that is—on an ephemeral basis, during high runoff, does flow into Pyramid Lake. That's something that nobody has any money to pay for, certainly not—it's on reservation property.

It's one of the issues that the BLM in their abandoned mining lands program is looking at fixing, but that's the kind of issue that is an historic issue.

Then I believe there is all these other things that are being created now that we don't know about that we'll know about 20 or 30 years from now. There should be some money somewhere to pay for those. And I believe that is an industry responsibility because it's the industry that created the wealth that went—you know, I am a great supporter of wealth creation. There is a lot of money that's made, profits made. And some of that needs to stay somewhere in order to correct those problems that are being created and have been created in the past years.

Mr. GIBBONS. Dr. Miller, We're all aware of the Superfund, a Federal program to clean up hazardous sites around this country.

Mr. MILLER. Yes.

Mr. GIBBONS. A very, very, lucrative fund which has gone almost totally unapplied to the things it was supposed to do. Instead it goes to court battles filling the pockets of lawyers rather than cleaning up sites.

Mr. MILLER. No argument there.

Mr. GIBBONS. So I guess my point is, would you believe that a one-size-fits-all Superfund type, that is paid mostly out of Nevada since we're the largest metal-producing State in the country, would be the way to do this, or should it be individualized, because problems, as you heard earlier, are local to Nevada that aren't local to Montana, that aren't local to Utah or Arizona?

Mr. MILLER. Congressman, you're in the Nevada Legislature. The chances of getting a royalty passed in Nevada on mining, I think

you have a better idea of exactly what the chances of that would be.

They are not very high, and I guess my suggestion is I don't care where the money comes from. But it should come from somewhere. I don't think Nevada politically would ever pass a royalty to fix abandoned mine damage in this State—and if you believe they would, I would appreciate you asking the legislature if they would, because you know, I think you have quite a bit of influence on that issue.

Mr. GIBBONS. Let me say that we heard, also, testimony—and not to argue with you, because I don't intend to do that, but we have 1.3 million people in Las Vegas, and I don't know of too many mines in Las Vegas, and the majority of the members of our legislature come from Las Vegas, who have a deep abiding interest in the welfare of not just Las Vegas, but all of Nevada.

I would think as the face of Nevada changes, so might the political will of this State. I think it's very onerous to suggest that those people in Nevada should pay for damage that is done in Utah.

Mr. MILLER. Absolutely not. I agree with that. I agree with that.

Mr. GIBBONS. Mr. Myers, I have looked at your testimony—excuse me, Dr. Myers, if you prefer—I looked at your testimony, and your royalty analysis on page five, that's here, in your written testimony, is based on heap leach gold as I see it. Is that correct?

Mr. MYERS. Yes, it is. It's based—the calculations in there are based on a table from a Congressional Research Services paper of several years ago.

Mr. GIBBONS. So did you take into consideration other metal mining operations and milling costs, or copper and zinc in your calculations there?

Mr. MYERS. No, not at all. I mean, I could have hundreds of permutations of that calculation. What I tried to do is similar to what the author of that report did, for copper—I believe his example was copper—is I tried to come up with a variety of examples and using the 1997 average cost of production, or 212, which I think—$212.

Mr. GIBBONS. On page 8 of your testimony, you state that "production"—I presume gold, because it's not qualified in there—"will yield about $143 million per year." Presumably that's with an 8 percent net smelter royalty payments to the Federal Government?

Mr. MYERS. Correct.

Mr. GIBBONS. That's the basis of your statement?

Mr. MYERS. That's correct.

Mr. GIBBONS. I can't see how you derive that estimate of $143 million, because according to the information that I have—and maybe you can help us understand better—about 32 percent or 2-½ million ounces of gold is produced from public lands——

Mr. MYERS. Do I have——

Mr. GIBBONS. [continuing] Each year, so if I may, going back to page 5 of your testimony, the 8 percent net smelter return on that ranges from 20 percent at $250 per ounce gold, to $28—excuse me that would be $20 per ounce for $250 gold; $28 per ounce for $350 per ounce gold. This equates, in my calculations, to a total royalty to the Federal Government of about $50.2 million at $250 per ounce and/or 70.4 million at the $350.00 level. I'm just curious: At what point did you assume the price of gold to get to $143 million?

Mr. MYERS. Well, the $143 million was not my calculation. It was a quote from another report, which I see I did not footnote, but it was from the draft report that came from—that is referenced in number 16.

Mr. GIBBONS. So would you submit a corrected version of your testimony based on those questions, so we don't have to put this misrepresentation into the record for us, Doctor?

Mr. MYERS. I'd disagree that there is a misrepresentation in the calculations that I provided you on page 5, but I can change $143 back to $143 million, if you'd like. Is that what you are asking me to change?

Mr. GIBBONS. Precisely, because you've submitted this document and your testimony as being the truth, and I want to be sure we have the facts, the truthful facts as they come out, and I don't want to associate you with a misstatement that might somehow become problematic or difficult later on, Doctor. So let's go back to your table on page 5.

Mr. MYERS. Okay.

Mr. GIBBONS. I don't see any provision in this table for capital costs in your table, and in 1997, according to my information, the average gold mining costs in the United States were $287 per ounce or about $75 higher than operation costs?

Mr. MYERS. I do have a line there for depreciation which is depreciation on capital. That number comes as sort of a guesstimate of the knowledge very similar to the table that was in the Congressional Research Service report where they——

Mr. GIBBONS. Your depreciation in that, though, is $10 per ounce.

Mr. MYERS. Depreciation is—okay. It was not based on a per ounce amount. It was based on, say, $100 million capital investment depreciated over a 10-year period, or something like that.

I'm not an expert on depreciation. The number that was used there came from the Congressional Research Service report that I used.

Mr. GIBBONS. So what—Where do you get the other $65 that you assess in there?

Mr. MYERS. I'm sorry. Which other $65 are you referring to? We go from—we go from a gross revenue through smelting costs and transportation. The smelting costs are very minimal according to John Dobra, so I'm quoting from him in that particular number. Then it comes down to net smelter returns; then I applied an 8 percent royalty to that to come up with the gross mining income. Then operation costs were based on $212 per ounce. I came up with net operating income. I subtracted a guessed-at amount for depreciation, just, as I say, for example, and we go down to a pre-depletion income; and I used the same depletion amount as used by the CRS report, and came up with pre-tax profit of a certain amount; and I applied taxes to it and came up with a net profit.

Mr. GIBBONS. Okay. Well, according to my mathematics—While I don't have a Ph.D in economics, accounting, or mathematics, and I know you can help me out, but when I look at this I see $287 is your total cost less operating costs of $212; $75 is assessed as other costs; and only $10 for depreciation in there. I just need you

to tell me how you account for the additional cost of $65 per ounce in your testimony.

Mr. MYERS. I'm not sure where the $287 you just mentioned comes from. I'm sorry I don't see it in my table.

Mr. GIBBONS. Looking back through there, according to your reference here, Dobra, J.L. 1999, giving you $212 per ounce; there is also a reference in there for $287 per ounce for gold.

Mr. MYERS. For the operating cost?

Mr. GIBBONS. No, no, that's the total cost.

Mr. MYERS. In Dobra's——

Mr. GIBBONS. Dobra's, the document you referenced here as——

Mr. MYERS. Right.

I've referenced the chart in Dobra's 1998 report, and he also predicts that in 1998 the price will be $190 per ounce.

Mr. GIBBONS. I just would ask you, for the record, if you would mind submitting a recalculated table and figures for us so that we have the correct information to go forward with, because it's a bit uncertain here, Doctor. That's all I'm trying to do is not put you on the spot, I'd just like to clarify some questions that I have.

Mr. MYERS. Well, I need to know which number you'd like me to change in the calculation, because every number in this table is correct.

Mr. GIBBONS. Well, yeah, well, just for the record, reconcile the total cost.

Mr. MYERS. It appears from the difference in the figures, because if you look on figure—if you look on figure 5, he talks about 1997 average total cash cost of $199. On figure 4 he talks about an average total cash cost of $212 per ounce.

I see an awful lot of different numbers that Dr. Dobra is using here. I believe the one in figure 6 that you're referring to, the 287, includes some capital costs that would not be a part of the net smelter returns calculation that I'm using, nor what the CRS report that I was using referred to.

So I'm using the number—the 212 is as close to the number for the example that I was trying to use.

Mr. GIBBONS. Doctor, I'm not an economist, nor am I an accountant, and I know the original question started off with the provisions you may have submitted for capital costs in your testimony, and capital costs seem to be, overall, a part of operating costs of the mine.

Mr. MYERS. The only thing I submitted on capital costs is the depreciation value which is a really guessed-at number, because there is no average capital cost that I was able to obtain.

Mr. GIBBONS. Well, Mr. Drozdoff—Is that how I pronounce your name? Am I doing it correctly?

Mr. DROZDOFF. Yes, that's correct. Thank you.

Mr. GIBBONS. The witnesses on your panel have alluded to 13 mine bankruptcies in Nevada that have caused reclamation problems. Are these mines major? And could you comment on the bankruptcy issue and try to quantify for the Committee, what, if any associated reclamation or other environmental problems exist due to that bankruptcy?

Mr. DROZDOFF. Yes, I would be glad to. For the record, the NDEP does not use the term "major" to classify a mine. So any answer I give you is sort of just a feel.

I would probably agree with Dr. Miller in terms of the major mines that he mentioned, I'd say Florida Canyon, which was previously owned by Pegasus and is now owned by Apollo Gold, that would clearly constitute a major mine.

I think any of the other ones after that can run in scale from small to moderate size. Now, in terms of the tangible issues associated with bankruptcy, I would like to take a couple moments to get into that.

Currently, as we sit here today, there are two facilities that were in bankruptcy that are being actively reclaimed with either our oversight or in the case of one facility, simply a government contract.

Mr. GIBBONS. Which two are those?

Mr. DROZDOFF. That would be the Goldfield Mine south of Tonopah and the Mt. Hamilton Mine west of Ely. In the case of the Goldfield Mine, we began working with the bonding company and began reclamation work last year. I am happy to report that we're already working through some bond release for work completed at that facility.

In the case of Mt. Hamilton, we worked with the United States Forest Service, and in that case the bonding company surrendered it's bond, and we negotiated a contract with a third-party contractor in April, and work is proceeding.

So to characterize—the seminal issue with bankruptcies, is, as you know, they take a while. And that's unfortunate, but I can assure you that we're involved in that process, and if we need to do something over and above what we have in place, we're ready to do that.

And I will make one last point: When this bankruptcy issue became an issue, we worked closely with the industry and were able to develop what we call an emergency management fund. Again, a State fund put in place; the Governor's office, Governor Guinn's office, reviewed the budget; the Nevada Legislature approved our budgets, so there is some willingness to work there.

And what we have in place now is a moderate fund of approximately $300,000 per year that enables the State, if it needs to—if in fact some of these problems in terms of vacating a site occur, we would have the ability or have the ability now to have a contractor in place to simply go out and handle it while we transition to dealing with the bonding companies.

So, I don't know that you can estimate or take that bankruptcies automatically are a cost to the taxpayer. Frankly, in this State that simply hasn't materialized, and I can only assure you that we won't let it materialize.

Mr. GIBBONS. Thank you.

Dr. Miller, you're a renowned scientist, and a lot of us respect your opinions and the studies that you have done. When you talk about these ground waters in mines, do we have good data for premining ground water studies that show the composition and the quality of the water before mining was there?

Mr. MILLER. Yes, I would indicate that there is at least one mine that I know of that went into bankruptcy where the bond was put back and it's cost much more. That's the Fury Mine in a national forest just south of Berlington. It was a $160,000 bond and it's cost in excess of $500,000, that the Forest Service has put in. That's one example. And that was an older mine from the early 1980's, that had no State involvement except from the regulatory perspective.

There are several examples and I would be happy to provide those at the request of the Committee. There is an example where the ground water has been, I think, substantially impacted just because of reinfiltration of dewatering water, and that's a site north of Winnemucca where the total dissolved solids has gone from on the order of 100 milligrams per liter to over 1,000 milligrams per liter because of water that was a pretty good quality water, then it was infiltrated in ponds, it's settled and gone back to the ground water system and dragged a lot of salts with it.

That's no longer being done. There is another example where we have data where the water has ponded and then daylighted out some distance away, in new springs where this occurred where the electrical conductivity has gone upwards of 8,000 micros per centimeter, which is a fairly saline water, so that's two examples of where water has reinfiltrated and daylights some other place or goes down in the ground water system.

There is an example with very good data from the Independence Mining Company's Jerrit Canyon Mine, a very large tailings impoundment, 2- or 300—300 acres I believe is the size, where there is a very good marker in chloride, where there is water that is flowing down there in an ephemeral stream coming from where the chloride concentration is above that tailings impoundment, or nearly 14 milligrams per liter, and at least two majors that have made with over 700 milligrams per liter, which chloride is not a problem, but it indicates there is water that is migrating from that tailings impoundment underground and daylighting into an ephemeral stream that does drain into the water. There is another example where the sulfates concentration of three existing mines are less than 30 milligrams per liter, that in one drainage below waste rock, go over 1,400 milligrams per liter.

Clearly, indications I think that all is not perfect. I mean, I think the Division and I—I don't want to get into an argument with the Division. I think the Division does a good job, and the BLM and Forest Service does a good job, but there are problems that occur.

Nobody lets problems happen when you know a problem is going to happen. If you know the problem is going to happen—the Division of Environmental Protection and the agencies are very good about just not permitting it, if they know it's going to happen, but it gets in the gray area where we think it won't or it might, or there is a remote chance that it will, and that is where the issue comes up when you expect it won't happen. And I was one who never expected the Big Springs—I thought that was a model mine, and it was a model mine, great reclamation, a good example. Bad things happen even when you have a well-thought-out plan. Those are the problems. And who's going to pay for those?

That's the biggest issue, all those inadvertent problems that are created. Nobody thought, I think that the Ketch-up Flat or Para-

dise Peak mine site would be as much of a problem as it is today, but who's going to pay for that? And that's the real question, I think, on fees, and that's where I think there needs to be some funding established to address these inadvertent problems when mining companies go under and when problems arise in the years ahead.

Mr. GIBBONS. Mr. Drozdoff, of course, you have just heard Dr. Miller. I don't want to pit Dr. Miller against you——

Mr. MILLER. I don't either.

Mr. GIBBONS. [continuing] but could you give me your interpretation and your impression of what the testimony was you just heard?

Mr. DROZDOFF. Yes, I can, and I appreciate your sensitivity to that, because it's not my desire either.

I guess there is a number of ways I can go. Philosophically, I don't know that you can call something of an issue a problem. And I guess, you know, if the standard of environmental protection statutes, be they Federal or State, is that you're never going to have issues to deal with, I think that's an impossible standard.

I mean the fact is clean water—every Federal environmental standard that is out there, there are certainly issues and sites that come along with them. And that's part of what we do. I think, I think for there to be an effective environmental protection statute or regulation is when you're confronted with these issues what do you do, are you equipped to deal with them? I think that's the seminal point.

You know, I don't want to get into—I would be glad to though, if you would like summaries of any of these issues discussed today, I will be glad to update you on what the State of Nevada Division of Environmental Protection has done in regards to these issues.

Mr. GIBBONS. For the record, would you submit them? We don't need to go into them in detail at this point, but we would like to have this information for the Committee at a time so that we can look at it.

[The information follows:]

PETER G. MORROS, Director
ALLEN BIAGGI, *Administrator*
(775) 687-4670
TDD 687-4678
Administration
Water Pollution Control
Facsimile 687-5856
Mining Regulation and Reclamation
Facsimile 684-5259

STATE OF NEVADA
KENNY C. GUINN
Governor

Waste Management
Corrective Actions
Federal Facilities
Air Quality
Water Quality Planning
Facsimile 687-6396

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851

May 27, 1999

Cheri Sexton
U.S. House of Representative
1505 Longworth House Office Building
Washington D.C. 20515

Subject: May 13,1999 Field Hearing Regarding Mining Fees, Energy and Mineral Resources Subcommittee

Dear Ms. Sexton:

I testified before the above referenced subcommittee earlier this month. During the questions and answer period Congressman Gibbons requested information pertaining to BLM's 3809 draft regulations and testimony offered from other panel members during the hearing.

Representatives from the Nevada Division of Environmental Protection (NDEP) and other state officials participated in three Western Governors meetings with BLM's 3809 task force. The meetings were conducted in Denver and occured on April 8,1997, March 3, 1998 and September 22,1999. From April 1997 to present, NDEP has either directly prepared or assisted in the preparation of several comment letters regarding the 3809 regulations, they are summarized as follows and included for your renew:

- April 22,1997 WGA letter outlining the States concerns regarding 3809
- June 16, 1997 NDEP letter - 3809 comments
- April 15, 1999 WGA letter - predecisional draft comments
- April 22,1998 NDEP letter - preliminary comments on the BLM's Predecision Draft 3809 regulations
- October 9, 1999 WGA letter - predecisional draft comments

- October 9, 1998 — WGA letter - predecisional draft comments
- April 2, 1999 — NDEP letter requesting additional time to review draft regulations and EIS in light of the NAS study (Note: request officially turned down by BLM on the May 10,1999 comment deadline)
- May 10, 1999 — NDEP letter commenting on the proposed 3809 regulations and EIS

A brief review of these letters make it clear that nearly all of our basic issues have yet to be addressed. In fact, the concerns we stated in the April 22, 1997 WGA letter remain issues today and were delineated in our May 10, 1999 comment letter. So while its true that BLM met with State of Nevada representatives, it is also true that they have simply chosen not to respond to our input and concerns despite being given numerous opportunities to do so. Nevada has invested a great deal of time and energy in this process and has demonstrated that it is willing to participate in a meaningful discussion about BLM's 3809 regulations.

Also during the hearing, a panel member raised several general and specific issues regarding environmental matters in Nevada. We appreciate the Congressman's interest in these matters and they are addressed below.

GENERAL ISSUES:

Pit lakes

Pit lakes are regulated by NDEP under Nevada Administrative Code (NAC) 445A. The regulations state that pit lakes which form as a result of mining operations may not degrade surrounding ground water or affect adversely the health of human, terrestrial or avian life. As part of the water pollution control permitting process, extensive modeling and data collection take place prior to the creation of a pit lake. Long-term post-closure monitoring is used to corroborate the modeling, and ensure that the regulatory requirements are being met. Pit lakes not in compliance with these requirements are managed via administrative or civil procedures.

Discharge from Heaps

Heaps are also regulated under NAC 445A. Mines are required to chemically stabilize heaps upon closure, to ensure that heaps are left in a condition such that waters of the state are not degraded and reclamation activities are not adversely affected. Some heaps will have small amounts of long-term effluent due to rain and snow melt. The potential impacts of any effluent are evaluated as an integral part of the closure process. Post-closure monitoring for 5 to 30 years after chemical stabilization ensures non-degradation of water resources.

Drainage from Waste Rock Dumps

Waste rock dumps are carefully regulated as well. A waste rock management plan is required as part of NDEP's permitting process. The plan addresses waste rock characterization and handling at the mine site, including plans for special handling and treatment of rock with acid generation potential. Chemical characterization is required during construction of waste rock facilities to minimize the potential for impacts to surface or ground water.

SPECIFIC SITE ISSUES:

Paradise Peak

The operator of the Paradise Peak facility has declared bankruptcy. The site is still under the care and maintenance of the same operator. Concerns such as the blowing of tailings material are legitimate and they are being addressed, but the timeliness of the response is hindered by having to go through the bankruptcy court. The most recent water quality sample from the pit lake showed a substantial improvement in contaminant levels and pH. One side of the pit is slowly sliding into the lake, and may eventually eliminate the lake completely. The site is fenced and manned, and therefore the pit is not a physical threat to the public.

Twin Creeks Infiltration

A panelist mentioned a site near Winnemucca that was causing increased salt levels in ground water due to infiltration of mine water. He may have been referring to the Twin Creeks project. Dewatering water from the Pit was being returned to the ground water system using infiltration basins. This activity is carefully regulated by a number of agencies to ensure that ground water resources are not degraded. During initial filling and operation of such basins, naturally occurring salts are often flushed from the underlying soils. This is a short-lived and predicted phenomenon; salt concentrations in monitoring wells soon return to normal levels. Continued monitoring confirms that the ground water is not degraded.

Grantsville

This heap leach project was constructed prior to the institution of our State regulations. Therefore, NDEP did not have a role in the permitting of the project and the engineering design and bonding were not in conformance with today's standards. It is being closed by the U.S. Forest Service in cooperation with the regulation branch of the Bureau of Mining at NDEP. It is my understanding that the USFS has spent approximately $570,000 on the project which did exceed the $130,000 posted bond.

Big Springs

This site is at high altitude and receives much more precipitation than most Nevada mines. Therefore, the site's usefulness in terms of a general discussion about waste rock dumps in Nevada is very limited. It is an older site constructed prior to current State regulations and the

waste rock dumps were constructed in drainage channels. Water-rock interaction appears to have caused an increase in chemical constituents, mainly sulfates, in the streams. The mine operator, without enforcement action by the regulatory agencies, has implemented extensive remedial actions at the site. The waste rock dumps have been regraded, cover systems were designed and constructed and a growth medium added to support revegation and to minimize the infiltration of water. Diversion ditches have been installed, resulting in the diversion of millions of gallons of water from passing under the dumps. These actions, implemented in the past several years, are already showing a benefit in reduction of contaminant levels in the streams. It is anticipated that the coming years will see increased benefits as the vegetation matures and residual water from the waste rock dumps is depleted. We are monitoring the situation closely.

Jerritt Canyon

The tailings impoundment at Jerritt Canyon is the subject of an extensive seepage remediation program, implemented by the operator and regulated by NDEP. The tailings impoundment was constructed before Nevada's regulations were developed and some seepage of contaminants into the shallow ground water immediately surrounding the impoundment has occurred. This seepage is contained and monitored by a large network of pumpback, injection and monitoring wells. Monitoring results have demonstrated that contamination has been contained, and has not reached the nearby surface waters of Foreman Creek.

Lastly, we would like to correct some of the written testimony provided by Dr. Tom Myers. In his remarks he stated that NDEP requested a special appropriation of $1 million to assist us with bankrupt mining facilities. This is not true. NDEP allocated $600,000 over the next two years from our existing operating revenues in order to retain a contractor in case an unplanned or emergency situation occurs. It is important to note that such a situation has not occurred to date, and NDEP will only expend funds when our contractor is needed. NDEP believes it is important to be prepared and equipped to handle these types of potentially difficult situations.

Please contact me at (775) 687-4670 ext. 3142 if we can provide additional information on these matter.

Sincerely,

Leo Drozdoff, P.E.
Bureau Chief
Mining Regulation and Reclamation

cc: Victoria Soberinsky, Deputy Chief of Staff
Peter G. Morros, Director DCNR
Allen Biaggi, Administrator

Mr. GIBBONS. Let me ask one final question, Mr. Drozdoff, and I certainly appreciate the patience all three of you have given to us today.

Earlier—and you heard me ask the Governor's office this question—the Department of Interior has maintained that their draft 3809 regulations were developed in cooperation with the states, as the State agency with primary responsibility for regulating surface mining, has the Department of Interior solicited a lot of input, some input from your agency in writing their draft 3809 regulations on surface mining?

Mr. DROZDOFF. I would say that we have not been given—our wishes have simply not been heard in this process. It's true that the BLM met formally three times with the states via the western governors, but the fact is that, as the Governor's representative stated, we believe that our input has largely been ignored.

I can refer you to a letter that the western Governors wrote back early in the process, March of 1997, where we asked for five basic points: to focus on outcomes; to examine the existing Federal regulatory tools; to recognize differences in climate and geology; to avoid extreme and outdated examples; and focus on intra-agency cooperation.

I will tell you, that in the draft that is out today, none of these five principles that we have asked for were dealt with. So I'd characterize the meetings as yes, they were perfunctory, we had them, but I candidly do not believe that our interests or inputs or comments have been heard.

Mr. GIBBONS. Do you have that letter in front of you?

Mr. DROZDOFF. Yes.

Mr. GIBBONS. Would you submit a copy of that for the record?

Mr. DROZDOFF. Sure.

Mr. GIBBONS. Also, if there is a summary of any attempted meetings would you also submit that for the record?

Mr. DROZDOFF. I will.

Mr. GIBBONS. That goes for any of the witnesses here. They are certainly free at any time to make supplemental inputs to this process.

Gentlemen, I appreciate your involvement.

Mr. MYERS. Would you mind if I add something. You questioned a number that I provided, and I can tell you exactly where the $143 million came from before. It's based upon numbers that I didn't do the calculation of, but what it was is, if you figure about a $300 price for gold, an 8 percent smelter royalty, just 8 percent on $300, that's about what a little over 7 million ounces production, which is the 1995 value, you come up close to $143 million. That's about where that number comes from, so I'd like to—I'd like to—I mean you have managed to question numbers rather than the ideas that I presented here, and that, you know, I am sorry but that was——

Mr. GIBBONS. Well, I want you to understand that 32 percent, as you heard testified by the State Division of Mineral Resources, is the amount of gold that is produced off of public lands, so in that case, you're only going to have 32 percent of your $143 million; and that's where I was trying to get at your testimony, that we are, as a State, or whatever, missing $143 million. It isn't questioning your

integrity. It's questioning the documentation and the information that you have presented.

Gentlemen, thank you very much. We appreciate it greatly.

I'd like to call our fourth panel: Mr. Stan Dempsey, the Chairman of Royal Gold, Incorporated, Denver, Colorado; Ann Carpenter, Vice President, Exploration and Business Development, Nevada Colca Gold, Inc., Reno; Hugh Ingle, President, Nevada Miners and Prospectors Association, Yerington, Nevada; and Mr. Frank Lewis, F.W. Lewis, Incorporated, Reno, Nevada.

Before we hear your testimony, we have a process of swearing you in. Would you all raise your right hands?

[Witnesses sworn.]

Mr. GIBBONS. You may be seated.

Mr. Dempsey, the floor is yours.

STATEMENT OF STAN DEMPSEY, CHAIRMAN, ROYAL GOLD, INCORPORATED, DENVER, COLORADO

Mr. DEMPSEY. Thank you, Mr. Chairman. I am Stanley Dempsey, Chairman of Royal Gold, Inc. Royal is a gold royalty company. It's a public company and its shares are listed on the NASDAQ national market system and the Toronto stock exchange.

Our market capitalization is around $75 million. We have 3,000 shareholders in this country and some institutional shareholders in places like France and Switzerland. We spend about $3½ million per year on exploration. About half of that is in the U.S. and about a half of it is overseas, mostly in Europe.

We're also investing additional funds in projects operated by other mining firms. Our typical project involves the search for a deposit large enough to interest a major mining company. We then typically farm out the project, keeping a royalty.

As a royalty company, we think we do have a pretty good understanding of the economics of mineral royalties, and one thing that we're very careful about is to never burden a mine with so much royalty burden that we injure the ability of the mine to produce.

It would be a hollow triumph to own a royalty on a mine that is not operating. We have no debt, and we will be profitable next year, but we must live off what we have and what we will have coming in in the coming year. I say that because the capital markets for exploration dollars are as flat as I've ever seen them in my career.

Just to give you an anecdote: We recently listed on the stock exchange in Toronto, and our listing ceremony is Monday. I'll go back to Toronto tomorrow to participate in that. The investment bank that is our sponsor on the Toronto exchange, three weeks ago said, "We don't think we really need a party as a part of the listing ceremony because nobody is interested in gold stocks."

Two weeks ago they called back and said, "Gosh, the markets are heating up; things are looking better. Maybe we ought to have a party." Thursday we got another call. Subsequent to the sell-off of gold by the British, no party.

So in the industry, we used to look at windows opening for financing, and of course Canada is one of the principal places that people in the smaller companies go to get capital, both Canada and

Europe. We used to have windows that would go for 6 or 8 weeks, and people had prospectuses all canned up and ready to go.

Today the windows are maybe a week long or less, so it's absolutely true that the exploration industry's source of capital has dried up. How long that will be, we don't know, but it's a difficulty for the industry and a difficulty for the folks that make their living in exploration in Nevada.

To get right to the point, since most of my testimony has been given already by my predecessors and certainly the State folks who have done a good job, too, and I endorse the many things that my mining colleagues have said in their testimony.

With regards to the claim fees, the Federal claim fees, our company supports claim fees. We think it was a useful change in the mining law because it cleared up the pedis possessio problem the explorers had. It's gotten rid of a lot of fraud.

In saying that, those claim fees do need to be reasonable because they are a major issue in deciding how long to keep a set of mining claims. Obviously there was a big drop in claims in 1993 or 1994. In looking at the data that the BLM has collected in the last few years, it looked like the claim maintenance fees had sort of come into equilibrium, some claims being added, some going out.

I think that we may see another serious drop in the number of claims because explorers like our company are looking at the situation and we're changing our targets a little bit to emphasize grade; and looking for large, low grade heap leaches at the moment is not particularly attractive.

We're shifting our strategy to much higher grade material. Those are extensive programs that require lots of claims to be effective, and we're actively cutting back.

I attached to your copy of my written submission, some charts of some of our projects around the State. They include some projects we have dropped, like Ferber. That's a project that started for gold. We think there is probably a copper project there that may be economic. We've dropped it. We just can't stand the land holding costs. We're just not getting money into the ground.

You can see in those charts how the claim fees do affect it. You can also see my chart for Milos in Greece where I have the whole Island of Milos tied up under a mining license from the State of Greece and the Nation of Greece.

You can see the relative claim fee costs there. So it's my testimony Congressman, that claim fees are extremely important. They are probably a little high. It might even be a time for the government to think about at least a temporary lowering of those fees to recognize the situation that we're in. Thank you.

Mr. GIBBONS. Thank you, very much, Mr. Dempsey.

[The prepared statement of Mr. Dempsey follows:]

TESTIMONY TO THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON THE
"EFFECT OF FEDERAL MINING FEES AND
PROPOSED FEDERAL ROYALTIES ON STATE AND LOCAL
REVENUES AND THE MINING INDUSTRY"

By:

STANLEY DEMPSEY
CHAIRMAN & CHIEF EXECUTIVE OFFICER
ROYAL GOLD, INC.
DENVER, COLORADO

MAY 15, 1999

Royal Gold Inc. is a Denver-based gold royalty company. Our shares are traded on the NASDAQ National Market System and the Toronto Stock Exchange. The basic business of the Company is to securitize gold related income. We do so by creating or buying royalties on gold mines. My testimony today focuses on how we create royalties by exploring and farming out our finds to larger mining companies, and how claim fees affect our exploration thinking.

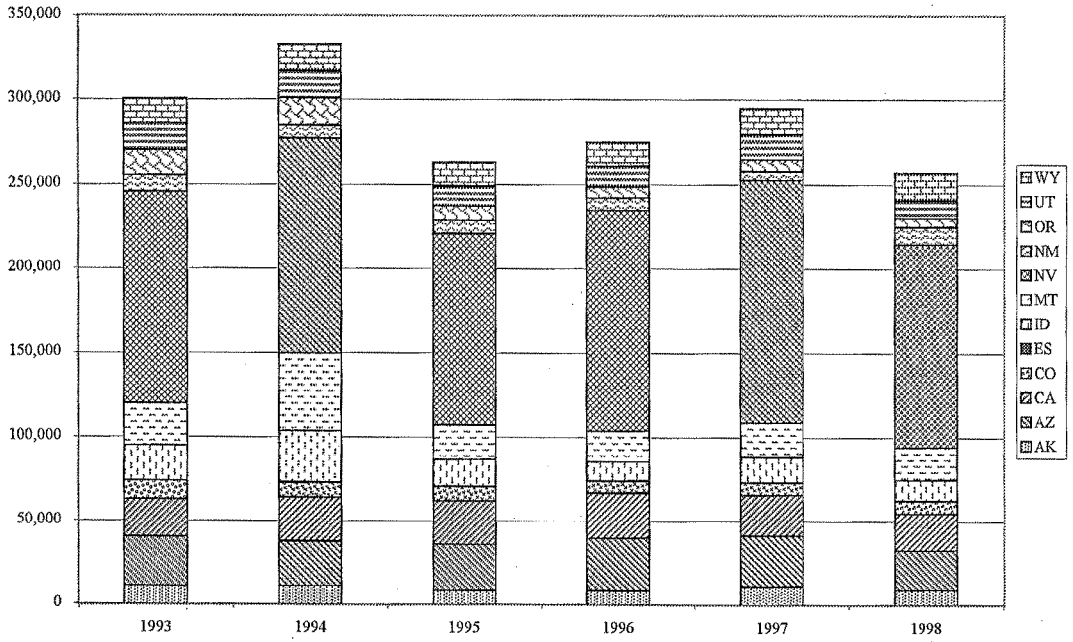
I will focus attention on the following questions:

- Who explores?
- Why?
- How?
- How do the economics work?
- What is the impact of claim fees?
- What is the future of exploration on public lands?

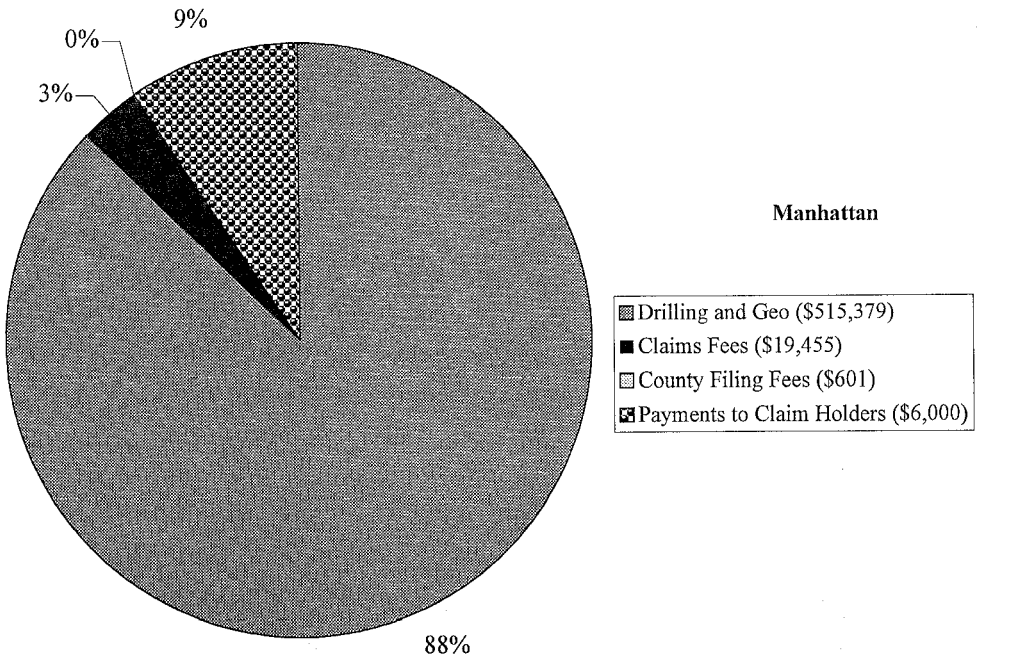
Attachments:

1. Claim Fee Trends
2. Fees at Manhattan Project
3. Fees at Alligator Ridge Project
4. Fees at Ferber Project
5. Fees at High Desert Project
6. Fees at Milos, Greece, Project
7. Fees at Inyo Gold Project

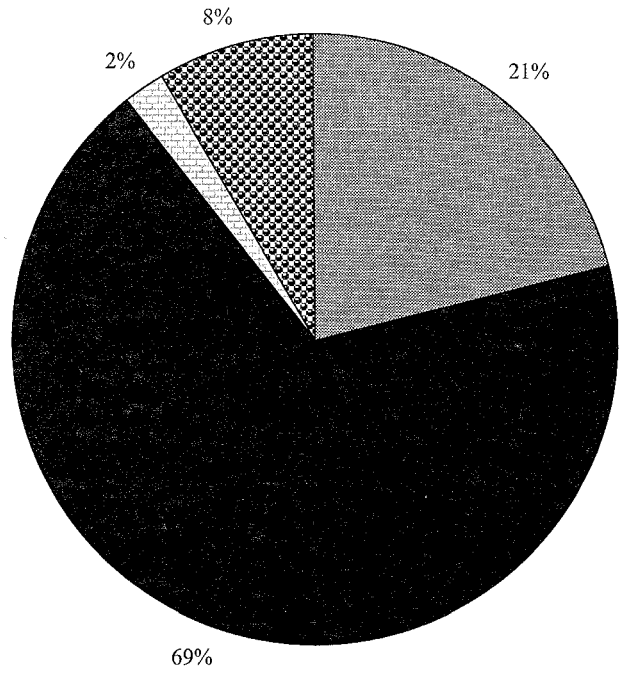
Claims



ATTACHMENT 1



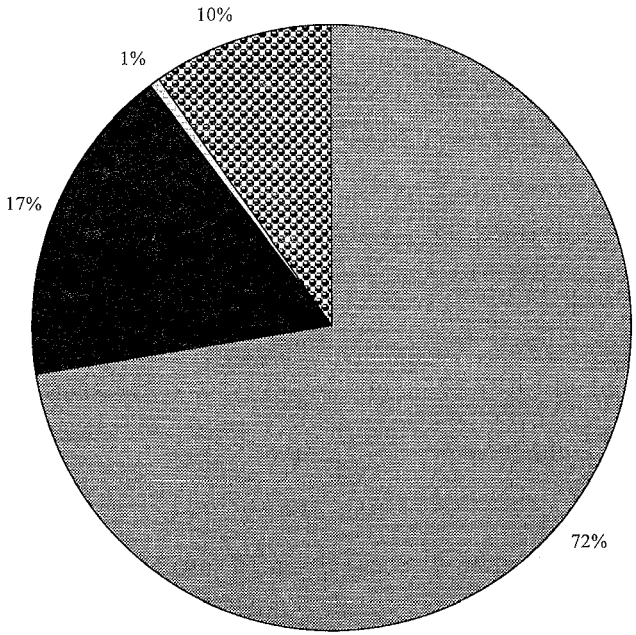
ATTACHMENT 2



Alligator Ridge

- Drilling and Geo ($51,081)
- Claims Fees ($163,800)
- County Filing Fees ($5,733)
- Payments to Claim Holders ($19,795)

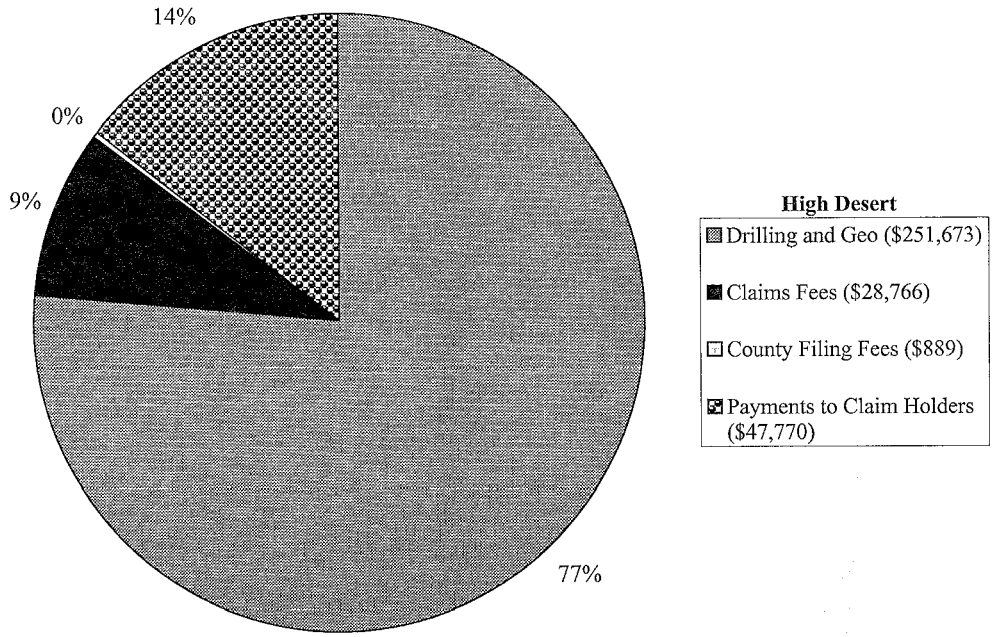
ATTACHMENT 3



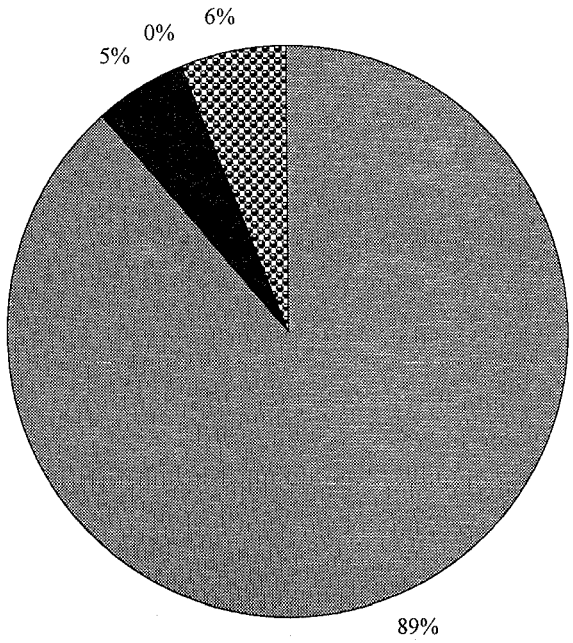
Ferber Costs

- Drilling and Geo($280,435)
- Claims Fees ($66,798)
- County Filing Fees ($2,065)
- Payments to Claim Holders ($37,500)

ATTACHMENT 4



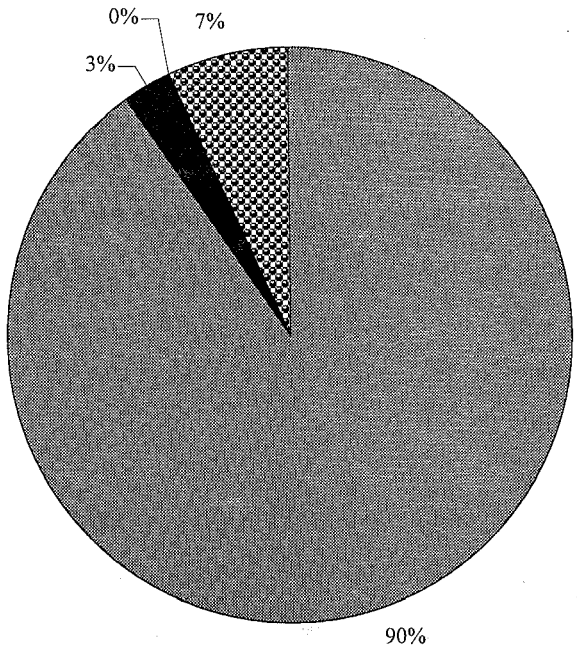
ATTACHMENT 5



Milos, Greece

- Drilling and Geo ($2,671,678)
- Claims Fees ($160,000)
- County Filing Fees ($0)
- Owner Costs ($185,699)

ATTACHMENT 6



Inyo Gold

- Drilling and Geo ($4,201,372)
- Claims Fees ($124,805)
- County Filing Fees ($3,859)
- Payments ot Claim Holders ($325,000)

ATTACHMENT 7

Mr. GIBBONS. Ms. Carpenter, it's your turn.

STATEMENT OF ANN CARPENTER, VICE PRESIDENT, EXPLORATION AND BUSINESS DEVELOPMENT, NEVADA COLCA GOLD, INC., RENO, NEVADA

Ms. CARPENTER. My name is Ann Carpenter I am founder and director of Nevada Colca Gold, Inc., a small Nevada corporation which focuses on doing exploration and mining hopefully in the U.S. and in Mexico. The group is made up of four individuals with international and domestic experience in exploration and in mining.

In addition, I'm here representing the Women's Mining Coalition. I'm the president of the Women's Mining Coalition and this coalition is a grass roots organization supporting environmentally responsible mining.

As I said, NCGI is currently focused here in the U.S. As well as Mexico, but we've found that we need to start shifting our attention only to Mexico. We're diminishing our attention here in the United States because of the prohibitive state of business here in the U.S., if you will.

Existing and proposed Federal and State fees, cumulatively these equate to a significant financial burden in both today's low metal prices as well as in times of strong metal prices.

As well, current political and regulatory environments in the U.S. create a negative environment within which to develop a mining exploration related business.

Our corporation is just starting up. As we all know, in business everything is timing, and maybe the timing just isn't correct now, but we're finding it very, very difficult to do any business here in the U.S. especially with the proposed fees, and with the proposed changes to regulations.

Doing business in Mexico especially, it's quite a bit more friendly, as was previously intimated by the panel that first spoke. I believe it was Al Coyner, who indicated that—well, no, actually it was Mr. Parratt whose testimony illustrated that the cost per acre of doing business here in the U.S. was significantly higher than anywhere overseas; and certainly we see that in Mexico and other Latin American countries. I've done quite a bit of exploration in Latin American based countries as well as in Africa, and we have seen quite a bit of difference in those cost per acre bases.

I have to indicate, too, that in Mexico, I would not consider Mexico virgin ground. Mexico has at least a 500-, 450-year mining and/or exploration history. The reason that we want to do business there is that two of my partners or associates have experience doing operations in Mexico, for some of which they have received accolades and environmental awards.

Business in Mexico is very similar to—especially regulations, reclamation regulations—are very similar to the U.S. Mexico has adopted lot of the EPA standards, and implemented them. And the responsible mining companies doing business in Mexico have implemented them as per choice.

Some of the negative regulatory political changes at hand are also reasons for pushing exploration of mining focuses for our company off shore. The Leshy mill site opinion; clean air and clean

water proposals; TRI; certainly the 3809 proposed revisions; diesel particulate rule making; MSHA; land disposal issues and others, that's just a partial list.

As was previously talked about—again, I think this was Al Coyner that said this—we need a partnership in assessing proposed Federal fees, just like we have the partnership that has been developed here in the State between the NDEP and the Federal agencies.

In my previous capacity with another company I was the exploration manager and I was in charge of trying to put—permitting a large 1.5 million ounce deposit very close to Reno, and I had to work closely with both the State of Nevada Department of Environmental Protection as well as the BLM in trying to push this through, and I can tell you that those two agencies, they had adopted a memorandum of our understanding, and they implemented it very easily, and they worked well together, and they have evolved into what I can see is a decent working relationship between the two agencies They complement each other; they add a check and balance.

This was not an easy project. It had pit lake issues, it was close to a rural town. It had a lot of the significant issues that you see with some of the larger sized mines, and they were dealt with, the mitigation measures that were recommended were agreed to, and both agencies came together and worked well on it.

NCGI did try to fund three properties here in this State, and we were not able to get funding, and as Mr. Dempsey has indicated, you generally go to Canada, Europe, Japan, anywhere, for the funding, and it's become very, very difficult to get funding in today's market because of the low gold prices.

Our company has tried to focus on production-oriented projects as a start up and not just exploration based, and it's still very difficult to find the funding. And with that I will close.

Mr. GIBBONS. Thank you very much, Ms. Carpenter. I appreciate that.

[The prepared statement of Ms. Carpenter follows:]

STATEMENT OF ANN S. CARPENTER, VICE PRESIDENT, EXPLORATION AND BUSINESS DEVELOPMENT, NEVADA COLCA GOLD, INC., RENO, NEVADA

Some of the negative regulatory and political concerns include the actions listed below:

- The Leshy millsite opinion (politically driven "takings") affecting: Battle Mountains's Crown Jewel project, Noranda's Montnare project in Montana; and Kinross' Delamar mine in Idaho.
- Clean Air and Clean Water proposed rules;
- TRI;
- 3809 proposed revisions;
- Diesel Particulate rulemaking;
- MSHA;
- Land disposal issues
- Others . . .

All of the above (as well as other proposed rulemakings not listed) complicate the ability to do business here in the U.S. All are costing the industry on both an individual and on a cumulative level. The expense and time it takes to review the individual and cumulative effects of all of these actions is adding up, creating an economically negative business environment here in the U.S. With all of the proposed rulemakings and changes to existing legislation and regulations, there have been few to no resulting benefits illustrated. These actions are tantamount to a politically motivated anti-Mining (anti-resource) environment.

NCGI has tried to fund three properties here in the state of Nevada, without success. Funding has been virtually impossible to secure to support exploration and development activities. Some funding institutions and individuals perceive doing business in the U.S. as a negative, due to existing and proposed Federal and state fees, as well as to all of the current political and regulatory activities. NCGI has therefore focussed most of its activities in Mexico, where funding has been easier to secure to advance projects.

Thank you for allowing me to testify.

Mr. GIBBONS. Mr. Ingle, the floor is yours.

STATEMENT OF HUGH INGLE, PRESIDENT, NEVADA MINERS AND PROSPECTORS ASSOCIATION, YERINGTON, NEVADA

Mr. INGLE. Mr. Chairman, I'm President of the Nevada Miners and Prospectors Association, and that's NMPA, and we agree that mining is in a graveyard spiral; that the Federal Government is at the controls; the government has ceased to scan the instrument panel and is focused on only one instrument, gold.

Because there are still profitable gold mines, it seems like the Federal Government has decided to load them up with laws, rules, regulations, fees, fines and so forth in an effort to find the breaking point without considering that these same costs will be applied to the mining of the less noble metals and minerals which helped us win World War II and the Korean War.

These rules, regulations, and so forth may preclude the mining of these other mineral assets quickly enough in emergencies similar to the Korean War. During World War II, mining was considered so critical to the war effort that miners were exempt from the draft.

Nevada has significant deposits of tungsten, mercury, manganese, copper, iron, molybdenum, lead, antimony, beryllium and vanadium, with some ores containing combinations of these minerals. At various times Nevada has led the Nation in the production of many of these minerals.

Many ore deposits are small by today's standards, less than 100 tons per day production, and require the expertise of the small operators to be successful, an expertise that is rapidly disappearing from the western U.S.

In contrast to the attitude of the Federal Government, the State of Nevada seeks to encourage exploration for and the opening of new mines. Nevada encourages the small operators as well as the large. Small operators are aided by the various Nevada agencies. These agencies actually serve in large part as a staff for the small operators if called upon.

They also enforce regulations. The State of Nevada recognizes the vast difference between small and large operations, and in the past has tried to provide for the survival of the small operator.

The effect of Federal mining fees and proposed Federal royalties on State and local revenues in the mining industry in general is to discourage exploration for new domestic mines, change some of our reserves to waste, and shorten mine life.

There are many rules and regulations which are enforced by the State of Nevada but mandated by the Federal Government. There are at least 33 possible State and Federal permits that may be required, not all of which are required for each and every mining and milling operation.

In addition, some local regulations may need to be met. Suffice it to say that every rule or regulation passed that adds to the cost of mining or processing turns some ore into waste. An example of this would be the proposed Federal royalties which would add costs to and probably come out of revenues now reserved for States and local government entities.

The Nevada Miners and Prospectors Association believes that this revenue would only be a pittance to the Federal Government, but could be the life blood of rural Nevada.

The NMPA believes that the most damaging rule for the small operator and prospector was the imposition of the $100 per claim annual fee in 1993. Active mining claims held in Nevada dropped from 334,558 to 143,805. That differs a little bit with other figures that you got, but not much.

Most of the claims were dropped by small operators and prospectors. Many of those claims held strategic metals and minerals that are temporarily not in demand. Now, instead of developing new mines and prospects as the original rules intended, those who can afford to pay the fee pay the fee, and no prospect or mine is developed.

An additional fallout from moving people off claims either by occupancy rules or by fees is the cost for abandoned mine lands which the surviving claim owners now pay.

One of our greatest concerns is the timely availability of a reliable domestic supply of minerals and metals in times of national emergency. Many ships that were sunk and crews lost transporting ores and minerals in early World War II should be ample warning for the future.

Perhaps the Federal Government is living proof of Thomas Sowell's observation, "What we learn from history is that we never learn anything from history."

Thank you.

[The prepared statement of Mr. Ingle follows:]

STATEMENT OF HUGH C. INGLE, JR., PRESIDENT, NEVADA MINERS AND PROSPECTORS ASSOCIATION

The Nevada Miners and Prospectors Association (NMPA) believes that Nevada mining is in a graveyard spiral and that the Federal Government is at the controls. The government has ceased to scan the instrument panel and has focused on only one instrument—gold. Because there are still some profitable gold mines, it seems that the Federal Government has decided to load them up with all the laws, rules, regulations, fees, fines, etc. in an effort to find the breaking point without considering that these same costs will be applied to the mining of the less noble metals and minerals which helped us win WWII and the Korean War. These rules, regulations, etc. may preclude the mining of these other mineral assets quickly enough in emergencies similar to the Korean War.

From Nevada Bureau of Mines and Geology Special Publication 15, I quote: "Responding to the extraordinary demand for base metals, expansion of open pit mining during 1951 resulted in a sizable increase in Nevada copper production. However, the output of lead and zinc, reflecting the dearth of ore that could be developed rapidly and economically fell considerably below 1950." Nevada has significant deposits of tungsten, mercury, manganese, copper, iron, molybdenum, lead, zinc, silver, placer gold, antimony, beryllium, and vanadium, with some ores containing combinations of these minerals. During 1955 there were 222 individual tungsten operations in Nevada. At various times, Nevada has led the nation in production of many of these minerals. Many ore deposits are small by today's standards (less than 100 tons/day production) and require the expertise of the small operators to be successful, an expertise that is rapidly disappearing from the western U.S.

In contrast to the attitude of the Federal Government, the State of Nevada seeks to encourage the exploration for and the opening of new mines. Nevada encourages the small operators as well as the large. Small operators are aided by the Nevada Division of Minerals, the Nevada Division of Environmental Protection, the Nevada Mine Inspector, and the Nevada Division of Wildlife. These agencies actually serve in large part as a "Staff" for the small operators if called upon. They also enforce the regulations. Unfortunately there is no allowance made for the vast differences in operations between the small operators and the large ones under the latest BLM 3809 proposal. The Notice level in the old 3809 Regulations provided for this difference; the State of Nevada recognizes this difference and in the past has tried to provide for the survival of the small operator. Another quote from Special Publication 15 is significant at this point, "Many factors including low gold prices, **an increase of state and Federal regulations affecting mining, and increased uncertainty concerning long term access to Federal lands for mineral development contributed to the decline** in gold exploration from 1989 to 1992."

The "Effect of Federal Mining Fees and Proposed Federal Royalties on State and Local Revenues and the Mining Industry" in general is to discourage exploration for new domestic mines, encourage exploration for foreign mines, change some "ore reserves" to "waste," shorten mine life, strip some rural communities and counties of their tax base, economy, and much of their employment, and destroy the livelihood of small mine operators, small businesses that provide mine services, local independent geologists and prospectors, and destroy a "way of life" for those hardy souls who value their independence more than life. There are many rules and regulations which are enforced by the State of Nevada but mandated by the Federal Government, so that the "State and Federal Permits Required in Nevada before Mining or Milling Can Begin" is a hybrid and the blame hard to place correctly. There are at least thirty-three possible State and Federal permits that may be required, not all of which are required for each and every mining and milling operation. In addition some local regulations may need to be met. Suffice it to say that every rule or regulation passed that adds to the costs of mining or processing turns some "ore" into "waste" and denies the people of the United States the value and use of an asset. I don't mean to imply that we don't need regulations, not at all, but only that we be judicious, and make sure that what we lose is worth the price we pay. An example of this would be the proposed Federal Royalties which would add to costs and probably come out of revenues now reserved for the states and local government entities. The Nevada Miners and Prospectors Association believes that this revenue would only be a pittance to the Federal Government but could be the lifeblood of rural Nevada. By the nonimplementation of Alternative 3 in the newly proposed BLM 3809 regulations, enough money may be saved to avoid the need for a Federal royalty.

The NMPA believes that the most damaging rule for the small operator and prospector was the imposition of the $100 per claim annual fee in 1993. Active mining claims held in Nevada dropped from 334,558 to 143,805. Most of the claims were dropped by small operators and prospectors. Many of those claims held strategic metals or minerals that were temporarily not in demand. There still remain 138,000 active mining claims in Nevada, with a total of 7,333 claimants. Over 65 percent of all claimants hold less than ten claims and an additional 14 percent hold eleven to twenty claims. This group is the nucleus of the small operators. Now, instead of developing new mines and prospects as the original rules intended, those who can afford it pay the fee and no prospect or mine is developed. An additional fallout from moving people off the claims, either by occupancy rules or by fees, is the cost for abandoned Mine Lands, for which the surviving claim holders now pay fees.

One of our greatest concerns is the timely availability of a reliable domestic supply of minerals and metals in a time of national emergency. The many ships that were sunk and crews lost transporting ores and minerals early in WWII should be ample warning for the future. Perhaps the Federal Government is living proof of Thomas Sowell's observation—"What we learn from history is that we never learn anything from history."

Mr. GIBBONS. Thank you, Mr. Ingle, and may I say there has been a great deal of change in the philosophy of this country since World War II. When I graduated with my first degree in mining geology in 1967, my first job wasn't in the industry. It was in the military. The day I walked home with my diploma, handed it to my mother she handed me my draft notice. So we have changed philosophies in this country about the importance of mining.

Mr. INGLE. I didn't get a chance to graduate before they got me.
Mr. GIBBONS. Mr. Lewis, please.

STATEMENT OF F. W. LEWIS, F.W. LEWIS, INCORPORATED, RENO, NEVADA

Mr. LEWIS. Congressman Gibbons, thank you very much for listening to me. I'm trying to give some specific examples of what's happened to me since I started mining in 1953 in Ely, Nevada.

My company owns the Lewis Mine in Humboldt County Nevada. It's leased to a small Canadian company that has an adjacent mine. They have been working there for the last 15 years, and at the peak of their operation, which was a couple of years ago, they had 212 employees.

They shut down mining last year and they have 50 men working on the shut down. It's very interesting to note that this year, they have purchased some mining properties and joint ventured with some companies working in South America.

We're sending the jobs down there from here as we close down our mines due to I think very onerous and unnecessary regulations and fees. I had a lot of mining claims that I spent my life developing in different areas of Nevada.

I made quite a little bit of money mining, and I've spent it all mining, too, and that has been a problem with my wife at times, but she's still with me, so she put up with me for a long time.

I dropped 75 percent of the mining claims in whole districts that I had a lot of interest in, and I spent a lot of money on over the years trying to find ore, but if you give the money to the Federal Government, you can't put it in the ground, so those areas are abandoned of interest unless somebody else has them.

I had a small operating mine in Churchill County. I bought that property first in 1962. I am happy to see one of your aides, John Rishel, sitting at your right hand, who worked on that property. I met him, he was sitting there in 1975, I had it leased to a small Canadian company, and they were trying to drill for some ore. I drilled later and found additional ore.

I drilled a 1,000-foot decline there and put in many drill holes trying to set up a small mine. I had two working miners and a supervisor working for me in my little two-bit company. I also had, at that time, after these previous rules and regulations were put into effect, I had to have one man working on the permitting and the evaluation and all the things that the environmental people have put into the law.

Well, one man doesn't sound like much, does it? It was 25 percent of my payroll. That's a pretty big thing, and that's the reason that there are very few, if any, small miners working here in Nevada today.

Hugh Ingle is still struggling; I gave up. I shut down the operation and spent $1 million of my own savings when I did so. Because of the increased fees, the $15,000 I was paying on the unpatented claims surrounding my mining claims, and the onerous regulations, I couldn't make any money. I couldn't stand it, so there is a mine that won't be mined unless something happens.

It's interesting about the talk about the price of gold. The first mine I worked in was in Ely, Nevada. I worked with my father-

in-law. It was a hand pick and shovel job. Gold was $35 an ounce, silver was 90 cents. So I haven't seen it all, but I have seen a lot. I have seen it go up and I have seen it go down.

And you have fluctuations in the mining industry, and that's the problem with the Federal laws, there is no flexibility. It used to be you could work on a project, spend your money, and in hard times, sometimes you wouldn't have any money to spend other than just assessment work, but you could hang on. There is a longevity to it, and in some places I've worked over 40 years trying to develop a mine. Some of them have been leased out at times during good times, and then you get them back.

Another comment that you have talked about extensively that's not in my notes, it's about these various kinds of royalties. The mine finder, which is sometimes people like me, the land owner, which is people sometimes like me, when we lease a mine, the operator gets to deduct some of his expenses.

It might be of interest to you to know that on every nickel I get by way of a royalty on the mine, I pay a gross tax and there is no compensation or deduction for any of the exploration costs or expenses that I had and the ongoing monitoring fees, and so, when the Federal Government puts an 8 percent net smelter, that means there will be 13 percent coming from the fellow that had to go find it, if he gets anything, because he probably won't get anything because the Federal Government will be getting the royalty he might have gotten, and that's a very great discouragement to exploration people.

I will give you another specific example. My son went to the Mackay School of Mines; he got a degree in metallurgical engineering, and he opened up an assay lab in Reno, and I helped finance him. And he had a very nice business going, had 22 employees and made a profit every year for a long time.

He now has 12 employees and the reason is because the companies are going elsewhere where they are more friendly received. And he's going to have to go there, too, if the mining exploration stops in Nevada.

I see I have a yellow light, so thank you very much.

[The prepared statement of Mr. Lewis follows:]

STATEMENT OF F. W. LEWIS, F. W. LEWIS, INC., RENO, NEVADA

Mr. Chairman Congressman Gibbons and Members of the Subcommittee:

I am writing my comments about the annual claim fees, proposed royalties to be collected from BLM and Forest Service lands, other laws and regulations, and the 3809 revisions which are being placed on mining in the United States.

My company owns the Lewis Mine in Humboldt County Nevada. It is leased to a small Canadian company that has produced on it periodically for the last fifteen years. The payments from that operation have been of major impact to keep my own company going. They had two hundred eleven employees at one time. They ceased production last year and there are about fifty employees left slowly shutting down the operation. It might be of interest to this Committee while they are shutting down here they have acquired several South American projects which they are opening up. The jobs here are being transferred there to more friendly countries that want to expand the development of their natural resources.

I had a small operating mine in Mineral County, Nevada. I had two miners working, and a working supervisor. I had to hire one other professional to manage the environmental regulations. He produced absolutely nothing, and therefor the operation lost money. I had to shut the mine down, tear out all of the equipment, drop a hundred and fifty unpatented claims and give up. I had spent over a million dollars on the operation of my own savings. I had been working on this property since

1962 forced out of business by the added costs of the Federal Government rules regulations and fees.

My son Mark went to School at the Mackay School of Mines earning a degree in Metallurgical Engineering. Fifteen years ago he opened an assay laboratory, and I financed him. Last year the operation was down fifty percent in gross sales with the exodus of mining to foreign soils. No one in the Federal Government seems to care what is happening in the Industry and no one is trying to do anything about it, except perhaps some few in the Congress. On the other hand the Bureaucrats have done everything in their power to make matters worse. Trying to figure out why or who is trying to kill the Mining Industry would be a good exercise of this Committee. What's the sense of it? My son's employees have dropped from twenty-two to twelve. If exploration ceases he will have to close, perhaps moving to South America if he wants to continue his profession.

Forty-five years ago I moved to Ely Nevada. I worked for a contractor who worked for the Consolidated Copper Mines Company, which was later bought out by Kennecott.

I met my wife's father and we went into the mining business in Ely shipping gold and silver flux ore to Kennecott. This was pick and shovel, hand tramming, and a 5-ton old 1939 truck to haul our ore off the hill. I did not even have a thermos bottle. My wife, Sharon used to walk the mile up the side of the mountain at noon in the winter time to bring us a quart mason jar full of hot coffee. One time I figured it out and we were making a little over five dollars an hour, after paying our expenses.

Those were of course the "good old days." Those were the days when the American government believed in private property, instead of so much in Federal property. The government's job was to protect our shores and our property for the people. Now they perceive their job is to protect the land from the people.

I remember then how helpful the Federal Government used to try to be to encourage mining and private investment. They had Federal 0.M.E. loans, which they offered prospectors and small miners to encourage them to drill and explore. Although I never obtained any such loan I know several people who did, and mines were developed because of it.

The United States Bureau of Mines itself would go prospecting in promising mining districts even drilling on lands that were owned by private individuals. Such holes were drilled on some patented claims, which my company owns in Silverton, Colorado.

Some of this encouragement of the mineral production was because a certain Senator or Congressman from Oklahoma mapped where all the ships were sunk during the Second World War trying to bring essential raw minerals to our war industries. If my memory serves me I think his name might have been something like Ed Edmonds (?). There were thousands of ships sunk, and thousands of Americans killed because many of our mines had shut down due to the depression.

Batan fell because our soldiers were out of materials to fight with, not because a superior force beat our men. The Federal Government itself was negligent in failing to supply sufficient ammunition and other supplies so our men could continue fighting. I was told that much of the ammunition they did have was surplus left over from World War One. The Federal Government knew War was likely, but they did little to see that our overseas bases were properly supplied with what they needed to fight with.

A person even now can purchase a private parcel of land in Nevada for as little as $50 per acre, some for a $100 and some for $200. Some prime property, of course, is worth more.

The hundred dollar annual fee, and threat of the existing Federal regulations for rehabilitation of lands used in mining now require one to spend tens of thousands of dollars, hundreds of thousands of dollars, occasionally even a million dollars per acre rehabilitating land. Rehabilitation means covering over a valuable future mining site when the country may some day need the low-grade minerals left in the ground. The best value to our nation for these lands should be left exposed so we can enjoy those beautiful veins, dips, angles, spurs, beddings, rocks and minerals. Then present day prospectors can see, explore, and enjoy them, and future generations can start there when they need more of the minerals.

What an economic wasteful attitude the Federal Government has adopted. They have decided what is the best way for them, not us to enjoy the Federal lands.

Somehow or other the Federal Government with the environmental community has decided that the only thing that has beauty is the top of the last sagebrush leaf which has fallen off the bush.

What about the Grand Canyon? It is but a big beautiful hole in the ground. If it were man made the Federal Government and environmentalist would want to

cover it up spending billions on the non-productivity activity, which removes capital from our society that could produce factories, jobs, and wealth for our nation.

The Federal Government used to think private property was one of the sources of wealth and happiness of our nation's citizens. At some point in time many in the Federal bureaucracy and environmental organizations have become convinced that the Federal Government should own and control property.

The big change started I noticed around 1955.

I was drafted into the army in 1955. I remember sitting on the edge of my cot in Fort Ord California basic training camp sending twenty five of the ninety dollars per month I was earning to Jon Collins, my then attorney, trying to fight the Forest Service who was condemning the surface rights to my mining claims. They had passed the Surface Management Act.

Ever since then it has been a fight for survival against the Federal Government and their overstaffed non-producing employees.

These hundred dollar annual fees, regulations, new 3809 regulations are just another impediment to explore and mine for those of us who make our living, and who enjoy the mining industry.

The rules extend permitting time, require the BLM to expand its presence by hiring many new non-productive people, cost a lot of money-wasted, for no economic benefit to our society. All together the anti mining acts will also cost the State of Nevada good paying jobs and loose the State and counties tax money, and net proceeds of mine taxes they now receive from mines.

I have slowly been going out of the Mining Business. With the hundred dollar claim fees I dropped over three-quarters of my unpatented claims. Every new law and every new fee will force more of us to stop trying to find minerals. But, then isn't that the purpose?

I have stopped staking claims.

I have stopped my drilling programs because I now have to give the Federal Government annual fees using the money I would normally spend on exploration to pay them rather than to try to find something. Then too the new permitting requirements already on the books are so time consuming and so discouraging, that it no longer seems a wise investment.

The unfriendly Government has convinced me that I should not spend my savings on mining any more as I have done for the last forty-five years.

It is not just the laws they have already passed but they have demonstrated that they are going to continue passing new regulations, charge more for everything, hire more government employees, and have ever-stricter regulations. Some mines have spent as many as fifteen years in the permitting process trying to open up.

In my view it is now impossible for a small individual to mine anything. A few may still be trying, but not many. An unfriendly Government has killed us dead.

It is still possible for an individual to prospect, and try to find a financed company to deal his properties to. More fees and more regulations, and especially if Royalties are assessed by the Federal Government will kill that window, because the Federal Government will get the share the person doing the hard work and making the investment might have gotten.

Every year we are threatened with more and ever more regulations not passed by Congress but by the Interior Department and Bureau of Land Management. The newest set of regulations are known as the 3809 Revisions. They will delay all forms of exploration, and mining, and make costs greater. They are unneeded, and by me unwanted and do not help me or any of my friends, but instead harm us.

If the new 3809 Regulations, Alternative Three, being proposed by the BLM are passed rest assured more companies will go into bankruptcy, and nowhere in their assessment have they accounted for that.

Many mines in Nevada are now loosing money. The Robinson mine in Ely will have to shut down and Ely will once again be shrinking in population. Several Mines are now in bankruptcy partially due to Federal Government Regulations and of course because of low metal prices. Sometimes I wonder if anyone left alive in Washington DC has a lick of economic common sense. Does no one care? We offer money to Honduras because of a devastating storm. We send food to North Korea because their people are hungry. NOT ONE RED CENT NOR HELP OF ANY KIND IS BEING OFFERED TO THE PEOPLE IN ELY TO KEEP THEIR ONE MAIN INDUSTRY GOING FOR THE SAKE OF EVERY ONE THERE.

Chairman Gibbons, Members of the Subcommittee I thank you very much for allowing me this opportunity to express myself

Mr. GIBBONS. It's proof that the system works. Thank all of you for your insightful and very helpful testimony.

Let me jump back to Mr. Ingle. You indicated that on average, it takes 33 permits to open a mine.

Mr. INGLE. Yes.

Mr. GIBBONS. Do you have any rough estimate as to how long that process is from the time you begin working on the permitting process until the end of the permitting process enabling you to stick the first shovel in the ground to recover your investment?

Mr. INGLE. It's pretty hard to say because you have a public comment period on these permits, and sometimes there is no opposition and sometimes there is a lot of opposition. So it can go from—I would think that the minimum for a small operation would be one year, but some things take 4 or 5 years.

So I can't give you a good figure. I think some of the bigger companies have experienced long, drawn out affairs, and so they would be better able to tell you what we do, or have done is, go to the Division of Environmental Protection; the Division of Minerals, and the Division of Wildlife.

The State agencies and we have tried to work with them, and that has been a kind of a fast track with us. We are pretty small, and we try to make as little noise as possible, as little dust as possible, and so we're able to avoid a lot of problems that the big companies have.

Mr. GIBBONS. Mr. Dempsey, you talked about shifting your focus on some of your ongoing mines away from average ore grade to shifting it to high grade, in other words, to make the payment on that capital expense. Will you ever be able to go back and recover the low grade that's left in there without the presence of some of those high grade pockets? Is there some economic consideration to doing that when you do it?

Mr. DEMPSEY. I'm really talking about our exploration targets, and the type of deposits we're looking at. I'm not talking about existing mines. With the price decrease, when you run numbers for a model or hypothetical mine based on the type of deposits you might find, when you project that you couldn't make money if you found it, it's not a very good investment.

We look for the same types of things that the majors do, and they are changing their focus, too. And all of us are looking for higher grade material, hopefully at the surface, not necessarily at the surface, but with this type of price environment, a lot of the things have been the stock and trade of Nevada, the smaller deposits are not going to be—people aren't going to look for them.

Mr. GIBBONS. Mr. Dempsey, let me ask a question I think a lot of the people in this audience are curious about. We hear a lot of times about companies going overseas, going to Mexico.

Do you use the same method of operation, environmental concerns and considerations in those countries that you use in this country?

Mr. DEMPSEY. Absolutely. Everybody in this industry has gotten the word, that health, safety and environment are major issues, and all of us are adhering to the highest possible standards.

Community acceptance is our biggest issue. We're having a hard time getting permitted anywhere in the world, and the idea of a pollution haven is nuts. We can't finance a mine overseas if we don't adhere to the highest standards. The EBRD, the World Bank,

IMF group, all require that we submit impact statements there, too. So that's one hoary canard that ought to be put aside.

Mr. GIBBONS. Ms. Carpenter, I was interested to hear you testify as the President of the Nevada Women in Mining Coalition. Could you tell us a little about what the purpose of that coalition is and maybe help us understand a little more about what it does.

Ms. CARPENTER. Well, the Women's Mining Coalition was developed back in 1994 when a couple of key women that are still involved in the organization thought that they should take a great idea to the CEOs, that it would be a great idea to go back to Washington and educate the Congressmen, Senators and Representatives, on what the mining industry is and put a different face on it in the sense of women as opposed to men or just the CEOs going back east and delivering a status quo, if you will.

What it did is it humanized it—not to say that CEOs are inhuman, but it provided a different face for people to be able to relate to the industry, and it showed that women in the industry span many jobs, from mining engineers to environmental engineers to geologists to mine geologists, to explorationists, to environmental coordinators, governmental affairs, the whole gamut that the men have jobs in, but it just provided a different relationship for Congress to relate to.

Part of the objective of our coalition is to educate congressional folks on what the industry is, the fact that we are an environmentally conscious industry. We're evolving with the needs, as we discover more and more issues that come up.

We try to be as interactive as possible and meet the objectives that are raised.

Mr. GIBBONS. Do you have any specific examples of women or people in your coalition that, over the last year, have lost a job?

Ms. CARPENTER. Oh, yes.

Mr. GIBBONS. Put a face on that for us, would you, and what that means to them, what it means to Nevada.

Ms. CARPENTER. It's not just Nevada. There is a woman that I was doing some work with up in Montana. There was a small mine there we were trying to advance forward and couldn't get funding on it because, gosh, it's Montana, and they just outlawed cyanide, and shut the door on a lot of different issues, and it's been completely politicized up there.

And here is a woman in Montana who used to drive a hog pack, and she's a single mom raising three kids—and there are two issues here I might try to a address—but she's trying to raise a family, and she's in a pretty low rent area, beautiful, beautiful place to live and the cost of living is not all that high, but she can't raise a family.

She's lost her job and she's had to go turn to waitressing to try to support a family, and she can't do it.

This addresses the recreational question I think you had earlier, where we can replace mining or other technology, say, with the recreational industry, and she was one testament that that just doesn't work. She said, "I don't know about you, but I don't want to make beds for living and I don't want to make minimum wage. I can't raise a family on it."

So she took a job down at Magnum BHP's operation. It could have been San Miguel or one of the operations down in Arizona, but she had to leave her home State in order to do that, and that's just one example. There are many.

Mr. GIBBONS. You have been involved in the permitting process of mines before. Maybe the question I should ask Mr. Ingle is, is there an average time frame in there? But more importantly, is there a cost associated with this permitting?

Ms. CARPENTER. Yes, time is money. The longer it takes, the more money it costs. The bigger the project, the more money it costs because there are a lot more environmental issues that need to be addressed and greater concerns that need to be addressed, and that costs money.

And the money that it takes for baseline studies to—in my case we had a pretty advanced pit lake study that had to be done which included pit computer modeling and water quality and quantity issues, and that actually took the longest time. We realized the greatest delay with that. But there were some big issues that were raised and needed to be addressed, and mitigation standards that needed to be drafted up, and then implemented within the EIS process.

It can be anywhere from a year and a half, now—it used to be a year. If you had a decent sized project and not too many issues, if you'd done a baseline study and you realized you don't have pit lake issues and you don't have any threatened and endangered species issues, then maybe you could get it done in a year.

I think it would take that time now. It's at least a year and a half, and I'd agree with Mr. Ingle here that it would probably be upwards of 5 years for some of the larger operations, and I was surprised to hear him say that it's at least a year for him on a small mine aspect, but even the EAs that people are having to do now, Environmental Assessments, versus an Environmental Impact Statement, they are so broad and complete evaluations that they cost almost—they're pretty comparable in time and cost from an industry standpoint, the bearer of the cost, it takes about the same time and money, and are you better off doing the EIS in that case.

Mr. GIBBONS. Thank you.

Mr. Lewis, what, in your professional opinion, can a miner do to reduce the cost of producing a metal?

Mr. LEWIS. What many companies are trying to do now is to leave the country.

Mr. GIBBONS. That's a bit draconian.

Mr. LEWIS. But what many people would like to see happen in Washington, as I might be so bold as to suggest——

Mr. GIBBONS. Could you pull the mike closer so everyone can hear? Thank you.

Mr. LEWIS. What we would like to see is Congress take back the prerogative of passing the laws. We would like to see the people that we talk with and that we can deal with and can associate with be responsible for the laws that are passed.

To have a Federal bureaucracy that we have never even seen any of the people that are proposing these laws, that we have no impact on whatsoever when we go to their meetings and we talk, talk to Mr. Tom Leshendock, and try to make a point with him, and he's

a wonderful fellow, and a good man to talk to, but he doesn't pass any rules.

He has—I wish he did have a lot of influence, but I don't think they listen to him either. I mean they're passing laws that have nothing to do with the reality of here, and that's really hurt us, hurt us bad, killed us dead in many instances.

Mr. GIBBONS. Do you have any specifics, other than the fact that you go to a heap leaching? What I'm trying to get at is maybe some specifics other than perhaps reducing the cost of the delays as Ms. Carpenter has talked about in terms of the permitting process.

Is there anything you can do to reduce the costs? I mean you have wages, you have materials that you purchased, you have capital costs, what can you do today? Let's say tomorrow it's going to be less.

Mr. LEWIS. I think the Crown Jewel mine has been 15 years in the permitting process. You could pass a law that the BLM and the Forest Service couldn't take longer than a year. That would be a reasonable thing that would reduce our costs some.

They are now getting ready to require very onerous and difficult bonding for smaller companies on less than a 5-acre parcel. We used to have a 5-acre rule that you could go in and get a fairly quick permit to go in there and drill your holes, but if you have to go through an extensive and expensive time-consuming evaluation, environmental evaluation, that would be a way to, by keeping those laws out, that would be a way to reduce your costs.

I've pretty well given up. I hate to admit this, but I've pretty well given in up trying to drill or explore on unpatented claims.

I happen to be fortunate in having some patented mines that I bought forty years ago, so I am still able to operate under the State regulations, and if you stay under 5 acres disturbance, why, you can get an exploration program through. But they are making it so difficult that's not worth the risk of the investment here.

And another thing that is very, very troublesome is that they don't just pass a set of laws and then that's it. We have the 1872 Mining Law up until 1955. That's when they really started changing it. They changed it then and I can remember sitting on my bunk at Fort Ord, California. I had been drafted into the Army. I was getting $90 a month and I was sending $25 a month of that to my attorney in Ely trying to protect my mining claims from the Forest Service. And that was a difficult thing to do. I was very fortunate that I wrote a letter to our then Congressman, and he helped me. And he had to look at the mineralization and they let me alone then for a while until they started passing some more laws.

And even with the laws that have just recently been passed, we have a whole new group of laws coming in, not from Congress, but from the Federal agencies.

That's a very discouraging thing, because no matter what law they pass today, you know they're going to want a whole bunch more tomorrow.

Mr. INGLE. Might I add something to that?

Mr. GIBBONS. Yes, Mr. Ingle.

Mr. INGLE. On these other minerals, what does Congress propose to do, or do they propose to do anything to open those minerals up economically, because they are a security need for this country?

We pass these things off as insignificant, but those minerals, for instance, there were 222 tungsten mines operating in 1950 or 1952, and there is no way of shouldering the cost with these other minerals. We have gold and it's kind of on a pedestal by itself. But these other minerals, we may find out are essential some day, and we wouldn't have made any preparations, any more than we did before World War II or before the Korean War or any other war. We never get ready.

And I would like to know if there is any way to do that, to make some kind of a law that will require the government to take notice of these things, and during the war, we had DMEA and we had all sorts of subsidies to produce these minerals. Then we have the strategic stockpile, and we sold that off even when the market was down for mercury and silver and maybe some other minerals, and we closed other domestic mines. And I don't see any logic to it, and maybe I'm stupid or something, but I just can't see it.

Mr. GIBBONS. Let me say that I appreciate your insight to all this, and it is an issue that I haven't an answer for you at this time, but it's an issue that I will take back with me. I will do some research on it, and I will get back to you personally as to your question on this issue, because I think it's very important that we look down the road in a projection of what we're going to need and how much will we need it, and where is it and how long will it take us to get there.

Because we don't have a strategy to get there, we will do what you started your comments off with: We will fail to learn from history what history has taught us.

Mr. Lewis?

Mr. LEWIS. Along that line, I'd like to make the note that Bataan fell because the soldiers were out of the materials to fight with, not because of superior forces forcing our men out of their bunkers.

The Federal Government itself was negligent in failing to supply ammunition and other supplies so our men could continue fighting. Had they had sufficient supplies, they would probably still be fighting today.

I was told that much of the ammunition on the Bataan Peninsula was surplus ammunition that was left over from World War I. And our government knew war was coming, but they didn't do anything about it.

Mr. GIBBONS. We have the very same issue facing this country today with regard to our military: The overextension of our military with operations that have seriously depleted the munitions stores, the munitions reserves, depleted our ability to repair engines because we can't get the parts and we can't get the materials to repair these needed items, and yet we keep sending our young men and women over there to do a job, and we're asking them to do a mission that they can't physically do because we haven't given them the resources to do the mission with.

And so the questions you have raised and the issues you have raised are the exact reason why this hearing is necessary and why it is so very important to hear the testimony and to take this infor-

mation back and give it to the Department of Interior when it comes to their decision about this 3809 proposed regulatory change.

Mr. INGLE. I was one, among one of the first Navy air squadrons called back to duty for the Korean War, and in the first month, we had one old airplane and no tools to keep it flying. It took us 6 months to get one air group supplied, and when we went to Korea, paint was peeling off the ship, we couldn't get many of the aircraft off the deck.

The pilots went into the ocean right in front of the carrier. Bombs went off under our own aircraft, and then they didn't go off when we wanted them to go on the enemy. I had 13—or 11 guns, .50-caliber guns between two airplanes, and only one of them fired.

And I had another time when I had six .50-calibers and this anti-aircraft battery wasn't firing, but when I fired, they started firing, and I had one gun. And these things are rockets, we couldn't tell where they were going. It was pretty rough. And I don't want to see that again—I don't want my—my son's too old now, maybe my grandson will have to go, but I think he deserves better than that.

Mr. GIBBONS. Well, ladies and gentlemen, this is exactly the purpose of this hearing, and this is why it's so critically important to understand the significance of mining not just to Nevada, but to this Nation, to the national security.

I did want to give some time for those people that haven't been on one of these panels to get a chance to have the microphone and talk about their issues, but I do want to, again, thank each of you for your contribution here today.

Thank you for your time and your patience, and any point that you wish to submit additional information, please feel free to submit it to the Committee. We will be happy to assimilate it into the hearing today.

[The information follows:]

Mr. GIBBONS. With that I want to thank all of you for your patience today. Thank you. Ladies and gentlemen, before we call on those individuals who want to come down and have an opportunity to speak, I would ask that you come to the desk over here to see Daniel, Daniel Grimmer with our office, if you'd raise your hand.

We need to have your name and address for the record so that we can respond. If you will just give it to him, and then one at a time or two at a time, remember, we need to keep this within a reasonable length of time or we will be here all night. Everything that needs to be said will have been said by everybody by the time we're finished here, so I appreciate that.

And also Madam Reporter, for the record, Senator Reid and Senator Bryan have submitted statements, and we'll incorporate their statements at the beginning of the record for purposes of our hearing today.

What we will do to in order to maximize the time here, we'll have to set some ground rules, because we only have the room until 5 p.m.

What I'd like to do is, if you can, use the mike here. We'll put one person there and one or two here, and after each person has testified—and please try to limit it to one or two minutes. I know that sounds like a short time, but again, it ought to give you an idea to be very succinct and try to wrap things up and put your

statement into the record, so just pick a microphone, and when you start, give your name and address for the record, and we'll go from there.

Gentlemen, you're the first up, so please.

Mr. FRENCH. My name is Gregory French, Reno.

I want to talk about the effect of Federal fees and State taxes on the mining industry as well is the rural economies.

Many here have already talked on the effects of the fees on the mining industry. I am going talk a little bit on the effect it has on small towns. We need to know the importance of—I'm sorry—we all know the importance of the net proceeds tax on rural counties and school districts. Senator Rhoads gave a good example of that.

In times of a mineral price depression, the bottom has dropped out for the mining companies right now, and the taxes they produce.

While the added fees that are going in, that are proposed, the added regulations are just the piece de resistance for Interior Secretary Babbitt. His war cry has been modified after the countercultural philosopher Cheech Marin: We don't need no stinking mines.

Rural school districts are seeing the pinch now. Many require State funds, instead of—require more State funds and less if the trend continues, less State money for new initiatives, and more money will be taken from the general fund and given to the school districts. In many cases, reduced money will require school districts to cut teachers and become non-compliant with State standards.

In addition, additional royalties and fees will make mining unprofitable and therefore reduce taxes and tax structures for the counties and small communities. The intense lobbying against the rural counties for higher Federal taxes, fees, duplicate regulations by the environmental groups like the no mineral policy center are all targeted toward rural counties in effect.

These environmental corporations do not care about the people in rural Nevada. As Dr. Myers said, we're just a small sliver. They are pushing their agendas to stop mining, lock up Federal ground from the public, and raise more money for their funds instead of caring for the rural counties. Thank you very much.

Mr. GIBBONS. Thank you. Very timely. Thank you very much.

Gentlemen, you may choose which one goes first.

Please identify yourself. The floor is yours.

Mr. MCLANE. My name is David McLane, and I am what the State of Nevada terms a displaced miner. I'm here today to put a face on what happens when an industry reacts to external pressures to lower their cost of doing business.

Twenty years ago, I graduated with a bachelor's degree in geology. Twice in the last 18 months, I have been laid off from companies that have been forced to cut their costs in the face of an ever lowering price in the commodity they produce.

I was unemployed for five months after the first layoff. For the last nine years I have lived in Winnemucca. Prior to 1998, Winnemucca's growth rate was approximately 15 percent and we were truly a boom town. In 1996 we made it on the list as the ninth best small town to live in in America.

Today Winnemucca is a much different place to live. In a community whose population totals approximately 12,000, there are over 160 homes on the market. Many of them have been for sale for over a year. Our unemployment rate since December of 1997 has almost doubled, and our community today is desperately trying to reinvent itself in regards to economic diversification.

I myself have been forced to leave behind a career that I truly love, and at age 43 I'm trying to embark on a totally new one. Yesterday, the stock market dropped over 200 points in reaction to the CPI going up the highest it's been in the last 9 years. The price of gold dropped almost $2. Clearly the risk of inflation and increased interest rates is not affecting our commodity.

I ask you to please consider the effect that additional fees and royalties will have on the thousands of people who live in northern Nevada whose lives are so closely linked to the health of the gold mining industry.

Thank you Congressman Gibbons, for holding this hearing and giving me the opportunity to talk.

Mr. GIBBONS. Thank you very much.

Mr. WILSEY. Good afternoon, Congressman Gibbons. My name is Cy Wilsey. I am the U.S. Land Manager for Homestake Mining Company. I am also the Public Lands Committee Chairman for the Nevada Mining Association.

I'd like to make just a couple of quick points. As you heard earlier, there are plus or minus 150,000 active mining claims in Nevada today. As Mr. Parratt spoke, that takes approximately $15 million per year out of the exploration budget for the companies that are active here.

To put that in a little clearer perspective, that would be probably about 300 geologists per year for the sixth month field season. It could be equated to 1,500 to 2,000 drill holes, and for the benefit of Dr. Miller and Dr. Myers, that doesn't include reclamation.

To the 8 percent gross royalty that Dr. Myers spoke about, that would be probably, if not certainly, one of the highest mineral production royalties of any country in the world that has an appreciable mineral production record. With that, existing mines today probably would continue to produce. It most certainly would force them to raise their cut-off grade.

That would be mean that they would leave lower grade materials in the pit walls or they could not recover some materials, and without the higher grade materials, they probably could not, probably, go back and get that.

Most certainly 8 percent royalty is going to kill exploration. You know, we are the research and development arm for the mining industry, and that's going to be gone when the existing mines are mined out, as they will be. Every one is a finite resource.

Those jobs and this country's expertise will be going somewhere else in the world.

Thank you.

Mr. GIBBONS. Thank you, Cy.

Yes, sir.

Mr. PIQUET. Thank you, Congressman. For the record, my name is Tibeau Piquet. For the record, I'm the past Humboldt County Commissioner and the present State chairman for the People for

the USA, and a point of clarification: We used to be People of the West, but with government regulatory oversight encroaching on our private lives and private property, we have people in Rhode Island and now Maine. So we really are People for the U.S.

This is not about ranching or mining alone. It's about access. In a State like Nevada where more than 83 percent of the land is owned by the government, access is critical.

Recreation has long been a great alternative to economic activities such as mining and logging, but now you the recreators, and the American public are in the same boat because environmentalists are rapidly getting disillusioned with recreating. It attracts crowds; it requires infrastructure ski lifts, accessible campgrounds.

Encouraged beautiful landscapes rather than authenticity or biodiversity are the ecological goals. It brings sprawl. Throughout the years, green groups and Federal agencies held tourism out as a replacement for western communities where mining, logging and other natural resource industries have been eliminated.

Now that those industries are disappearing, they have changed their minds about tourism. Chief Don Beck of the U.S. Forest Service gave a speech recently stating there was 70 percent less timber harvested now and that the recreation industry could be next. The side boards are set up.

So, we can't cut on it, can't dig on it, can't graze on it; and now we can't even play on it. The new U.S. Forest Service road policy will close thousands of miles of road and turn approximately 31 million acres into de facto wilderness.

Our public lands policy needs common sense and balance. Access is for everyone, not the few, and it's being lost incrementally so no one is taking notice. Access is the foundation of mineral exploration and quality of lives in rural Nevada. It's part of our freedom.

I appreciate the chance to talk. Thank you.

Mr. GIBBONS. Thank you very much.

Yes, ma'am.

Ms. STRUHSACKER. Mr. Chairman, thank you for this opportunity to chat with you this afternoon. My name is Debra Struhsacker. I am an independent environmental consultant here in Reno, and also a member of the Women's Mining Coalition. I would like to share with you some information today on the abandoned mines issue with the thought that it might be useful to you.

About a year go the National Mining Association retained me to do a study on successfully reclaiming abandoned hard rock mines. The findings of the study suggests that there can be enormous synergism between a vibrant and active mining operation and reclamation of nearby abandoned mines.

I'd like to suggest that that study—one of the implications from that study is that fees are not the only way to a achieve reclamation of abandoned mines. That if we could improve the atmosphere for mining in this country and remove some of the institutional barriers that the Clean Water Act, CIRCA, and other liability considerations and some of these other existing laws create, that there could be ways to incentivize the industry to actually achieve an even greater level of synergism.

So that although it may be necessary to create an abandoned mine fee or royalty, that there could be other ways of using a very active mining operation to reclaim adjacent lands.

We found from this study that the types of improvement that mining companies have realized include water quality improvement, cultural resource preservation, wetlands enhancement, and if you think it would be useful to you, I'll make sure you get a copy of the study.

Mr. GIBBONS. Would you, please.

Ms. STRUHSACKER. Yes, sir. Thank you very much.

Mr. SNOW. I am Charles D. Snow. I'm a consulting geologist, a graduate from the University of Utah, 1952, and registered professional geologist in Wyoming. And I certainly appreciate the chance, Representative Gibbons, to testify here today.

After I was retired, I did quite a bit of poking around, did a little consulting, and a lot of prospecting. To cover a decent-sized prospect for, say, a gold anomaly takes about 100 claims. I was expending about $10,000 a year taking ground samples, soil samples, or trace minerals to identify a possible drilling target.

My samples were encouraging and it was going forward quite well, but then $10,000 a year doesn't sound like very much, but that's all my budget could afford. The government then put on this $100 per claim, or $5 an acre for those claims that I had. Well, I could cut back to 10 claims, but that certainly didn't cover the prospective area that I was looking at. So I dropped out, and in doing so, there are now about a month or month and a half of time taking samples, living in motels, paying for also the assay work, only a few hundred samples, but the assayers don't get to assay them now. These are now gone.

Regulatory agencies have increased the time that it takes to get permitted on mines, and this cost and the time value as money is one thing that really needs to be addressed. Thank you.

Mr. GIBBONS. Thank you, Mr. Snow.

Yes, sir.

Mr. PRENN. My name is Neil Prenn. I'm president of Mine Development Associates, a small consulting company that employs 12 people here in Reno.

I believe that we all want to be fat and happy and not have to worry about disturbing the earth or causing any kind of disturbance in our own back yard. We would like to have our cake and eat it. The mining industry is, by its nature, a dirty industry. It disturbs the earth. It produces everything we need.

I believe that this country is doing everything it can to not have this industry. I believe that the purpose of the BLM was to promote multiple use of our public lands. I don't see that multiple use is being thought about anymore. I just wanted to clear up one thing in that the Fury was mentioned here, that it was a bankrupt company.

We worked on the reclamation there. We got partial release of the bond for physical things like dozing, but we couldn't agree with the BLM, or excuse me, the Forest Service to get partial release of the bond while the heap was being cleansed.

So as a contractor, we could not take the risk of getting no money for doing the work, and that's what the Forest Service

would have enforced on us. And we believe that we had test work to show that we could have cleansed the heap with the bond money that was there.

Mr. GIBBONS. That was a very important point you made, so in essence, what you're saying is the Forest Service stopped you from reclaiming the mine.

Mr. PRENN. They stopped us from reclaiming because they made us, a contractor, take the risk.

Mr. GIBBONS. Okay, thank you very much.

Yes, ma'am.

Ms. MASON. Congressman Gibbons, my name is Susie Mason, and I am the vice president and manager of land and administration for Pittston Nevada Gold Company. It's a joint venture between an Australian company and a U.S.-based coal company. We're doing only exploration work and acquisitions work in the United States so we have no operating mines. The capital to support my company is coming from Australia.

I can say without any reservation at all that the imposition of additional fees and royalties, and making the environment less friendly in this country is a disincentive to exploration in the United States. And I can say that without any hesitation whatsoever. I am a member of the Women's Mining Coalition as well, and one of the things that we tried to tell the Congressmen and the Senators when we went back to Washington was that mining has changed. We use the best of technology now. We have the highest standards in the world, and the world has turned to us and adopted our standards, and we have done everything that we could to take this industry from a pick and shovel—although that's a great origin and a great history, to a very environmentally responsible industry, and I don't know how much more that we can take in terms of pressures on this industry and continue to function.

It seems as though every concession that we make, every improvement that we make; every efficiency that we put in to place gets undermined by yet another level of bureaucracy, another layer of regulations, another pile of things to go through, another hearing to come and testify to, which I'm grateful for, but that takes time away, in a small group.

My company only employees about five people, and that takes time away from the job we're trying to do, which is to find more mineralization. We are responding to laws that are being proposed, we're responding to regulations that are being proposed. Everywhere we turn there is another emergency that takes us away from the real job that we have, which is to try to find mineralization and to keep this country going.

If it's not grown, it's mined, and that's true; and I really believe that the war that is going on is not just Kosovo, it's been going on for quite some time and it involves the natural resources sector of this United States economy.

Mr. GIBBONS. Thank you very much.

Yes, sir.

Mr. SHAW. Thank you, Congressman Gibbons, for this opportunity to speak to you.

My name is Chris Shaw. I'm a geologist working in the mining industry in Winnemucca, Nevada. I'm also State chairman of the wilderness committee for the People for the USA.

My job has been directly affected by the high price of governmental regulation in addition to the low gold price. I formerly worked at a low grade open pit gold and silver mine as an exploration geologist. As a result of the low gold price, now I'm working as a production geologist at a high grade underground gold and silver mine.

The additional cost of production such as implementation of the revised 43 CFR 3809 BLM Surface Management Regulations will cause more layoffs in heavily mining-dependent rural northern Nevada. Our community is already burdened with many people out of work from the downturn in the gold mining industry. Any further increase in cost to our industry in northern Nevada and small towns in Nevada heavily dependent on gold mining places undue and unfair burdens on our citizens and employers, causing more layoffs than would otherwise occur.

The current 43 CFR 3809 regulations are sufficient to both protect the environment and still provide the highest paying wages in rural and small town Nevada.

Thank you.

Mr. GIBBONS. Thank you, Chris.

Yes, sir.

Mr. HINKEL. My name is Randy Hinkel, Congressman Gibbons. I'm a consulting geologist from Carson City and also an environmental manager.

Several people have alluded to the liability issues and things like that, with cleaning up old mines. I think that—and I am going to be very short—I think that if the government would give the people a tax credit to go after these things, they could produce both minerals from them and clean up some environmental eyesores that people won't touch right now because they are totally afraid of the liability issues involved with them.

And I think you could apply that to chemical Superfund sites and all kinds of things in the current environmental scheme of things. I think it's more command-driven instead of offering people incentives to take care of these problems.

Thank you.

Mr. GIBBONS. Randy, that was an excellent statement for it's brevity and what you went after, because it's an interesting proposal and one which is very interesting to hear.

Yes, sir.

Mr. KENNEDY. Thank you, Mr. Chairman.

I'm Larry Kennedy. I'm exploration manager with Battle Mountain Gold based here out of Reno, and I just want to address my comments mainly toward the royalties and some proposals that have been discussed, mainly to point out that hard rock mining of gold, copper, and other minerals is much different and can support a much smaller royalty provisions than we see with, for example, oil, gas, coal, and industrial minerals.

I'm concerned when we hear some of the proposals that may be proposed, that they may be based on different models, for example, other than net proceeds.

And just to bring up another point along this line, the mining business, especially in a rural environment, part of the capital costs set up infrastructure that is very important for the economic development in these areas. Comments, for example, of subsidies from the mining industry I find especially ludicrous with respect to these industries.

In our industry, we don't have the option of moving a mine. A mine is where you find it. It's dictated by the geology, and this is where we need to put the process and the facilities.

If I could make one other comment: One of the reasons that we see this flux of exploration money and development money going overseas is the uncertainty in permitting, and the uncertainty in being able to develop deposits; and certainly to that end I want to applaud your efforts, Congressman Gibbons, and those of some of our other legislators in helping us in overcoming some of those uncertainties.

Thanks.

Mr. GIBBONS. Thank you very much, Larry.

Well, did we save the best for last?

Mr. COLLORD. Maybe, maybe not. My name is Jim Collord, and I've sat through this hearing and haven't heard much about an issue that is of extreme importance. I'm the environmental superintendent of Cortez Gold Mine. I've been a third-generation miner, and there is an issue that is on the radar screen about that far away and that is the Crown Jewel issue. And it relates to the mill site issue that was alluded to earlier. It's such a severe issue for the mining industry that basically you could shut this industry down in this State on public lands. Even some of the mines that have a lot of operations on private land also have waste rock dumps on unpatented lode claims. It could shut them down.

This issue is so severe, so critical, and it's in Congress's hands right now. And my recommendation to you, Congressman, is to go back and monitor closely and take care of this industry. Do not let this issue kill it.

Mr. GIBBONS. Jim, let me say that Slade Gorton is trying to put language into the supplemental appropriation bill that will deal with this very issue that you're talking about because many of us see it as a very critical issue.

I mean it is a bomb with a short fuse, and so we need to work quickly on that, and we're hoping that we'll be able to keep it in the supplemental appropriation as well.

Mr. COLLORD. Okay. My only comment on that is just make sure the language covers the entire mining industry, that it's not project-specific. It is critical to Barrick, it's critical to Cortez, it's critical to every mine.

Mr. GIBBONS. Jim, if you have suggested language——

Mr. COLLORD. I've not seen the language that is in there, but I understand it is specific to Crown Jewel, which is great, they deserve that decision to carry forward, but be aware of the impact that it could have on the rest of us.

Mr. GIBBONS. Would you send our office a letter expressing your concerns so we can forward that on?

Mr. COLLORD. Hopefully the Kosovo spending bill will be done and the language is proper.

Have you seen the language?

Mr. GIBBONS. Not yet. I've heard about it, but I haven't seen——

Mr. COLLORD. Nobody seems to know what it says.

Mr. GIBBONS. Well, they're still in their conference committee. I've watched it until I turned blue.

Mr. COLLORD. But understand, this is not the way to regulate an industry, and it has to be monitored.

Thanks.

Mr. GIBBONS. Absolutely, thank you very much.

Ladies and gentlemen, the record for this hearing tonight will be open for a period of 2 weeks within which anyone can submit a comment. You want to send them to Cherie Sexton, U.S. House of Representatives, Room 1626, that's the Longworth House Office Building, Washington, DC 20515, and we'll give you that address if you didn't have a chance to write it down. Not many of you are stenographers. I spoke a little fast. But we have that address up here, and we will be happy to provide it for you at the end of this hearing.

Let me wrap this up and bring it to an end because we're 15 minutes beyond our IOU for the county here in this building.

I want to assure you that everyone's presence here today is significant. Today is a Saturday, and you came out of your houses. You could have gone fishing, you could have gone to do a number of other things with a whole lot more fun than sitting through a 3-hour hearing on this issue, but it's so significant that you took the time to come here, and I want to applaud each and every one of you for your dedication and your contributions here today.

And because of today's hearing and the importance of the testimony and the facts that were brought before this Committee, I am going to go back to Washington and ask the House Resource Committee and the chairman of the Committee, Representative Young from Alaska, to hold similar hearings across America in this country on these issues to educate not just Congress, but to educate the American people as well, because of the 435 Members of Congress, directly or indirectly 395 of them have some relationship to the mining industry.

It is pathetic to go to Congress and not have them better educated in the importance of this industry to their own home districts. So if we had 395 supporters out of 435, believe you me, we could make some strong headway in doing what's right for the industry, doing what's right for Nevada, doing what's right for America.

With that, ladies and gentlemen, if there is no other testimony, I will close the hearing, and again, thank you very much.

[Whereupon, at 5:20 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

BACKGROUND MEMORANDUM

John Rishel, Legislative Staff
Date: May 13, 1999
Subject: Subcommittee Oversight Hearing on "Effect of Federal Mining Fees and Proposed Federal Royalties and Fees on State and Local Revenues and the Mining Industry"

The Subcommittee on Energy and Mineral Resources is scheduled to meet on Saturday, May 15, 1999 at 2 P.M. in the Washoe County Commission Chambers at 1001 East 9th Street, Building A, Reno, Nevada to hold a hearing on "Effect of Existing Federal Mining Fees and Proposed Federal Royalties and Fees on State and Local Revenues and the Mining Industry."

BACKGROUND

The Subcommittee on Energy and Mineral Resources is holding this oversight hearing to gather factual information on the effect of existing Federal fees, such as the $100 per claim holding fee and proposed Federal fees, such as royalties, on the mining industry, state and local economic activity and revenues. The Committee also wishes to gather information on the probable effect of various existing and proposed Federal fees on trends in our nation's domestic mineral exploration, production and reserves.

Mining is a basic economic activity which supplies strategic metals and minerals that are essential for agriculture, construction and manufacturing. A recent study by the National Research Council concluded that one of the primary advantages that the United States possesses over its strongest industrial competitors, Japan and western Europe, is its domestic resource base. The domestic mining industry provides about 50 percent of the metal used by U.S. manufacturing companies.

The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver and zinc and still has substantial domestic reserves of these metals. Twelve western states containing more than 92 percent of U.S. public land account for nearly 75 percent of U.S. domestic metal production. Thus, much of the United States future mineral supplies will likely be found on public lands in the West.

The Committee selected Reno for this hearing because Nevada is an important public lands mining state, with 87 percent of Nevada's lands owned by the Federal Government and mining accounting for approximately 9 percent of the Gross State Product. Precious metals mining constitutes the majority of economic activity in the north central and northeastern parts of Nevada. Consequently, any detrimental effects of Federal mining policy are definitely going to impact this important mining state.

A major public lands mining issue is what constitutes a fair share of revenue for the Federal Government from a mineral deposit on public land. Presently, the Federal Government does not levy a royalty or other fee on minerals extracted from public land. Many critics of the general mining law say that it is only fair that the Federal Government charge a royalty or other fee on minerals mined on public lands. Some have even advocated that a fee be levied on minerals taken from former public lands which have been privatized over the years through the mining law. Suggested mining royalties or fees range from 3 percent of net proceeds to 12.5 percent of gross proceeds.

A Federal royalty on hardrock mineral deposits is more complex than it seems at first glance. About 80 locatable (i.e, claimed under the mining law) mineral commodities and a wide diversity of mineral deposit types occur on public lands. Unless care is exercised in determining a royalty, mining of some commodities and many lower-quality mineral deposits will be uneconomic. For example, a high gross royalty penalizes producers in high cost regions. Also, costs of production are not equal for all commodities. For example, smelting, refining and ore transportation costs at some gold mines consume less than ten percent of the metal's selling price, whereas for zinc mines these costs account for about 65 percent of the metal's selling price. A high gross royalty based solely on the economics of mining the nation's richest gold deposits makes zinc mining uneconomic.

The Federal Government profits from the existence of a mineral deposit somewhere beneath public lands only when that deposit is found and developed. For a royalty to generate the maximum return on the "public's assets," it must not reduce exploration or mining activity.

A royalty must be based on the ability of most mines to pay—not the ability of one or two of our country's most profitable mines to pay. Unlike private landowners, the Federal Government receives income in the form of taxes from mining on public lands. If a Federal royalty is imposed which causes many mines to close and others

never to be developed, the government will lose hundreds of millions in personal and corporate income tax revenues—a loss greatly exceeding any revenue gains from the royalty.

State and local tax revenues can also be severely impacted by a Federal mining royalty. Federal royalties are deductible from the base on which many State and local taxes are levied, and State and local governments also share in tax losses caused by reduced mining activity. A state like Nevada could lose millions in tax revenues due to the negative impact of a high Federal royalty.

The experience of the British Columbia provincial government with mining royalties provides an excellent practical example of the severe impact of a high, government-levied gross royalty. British Columbia imposed a 5 percent gross mining royalty in the early 1970's. Grassroots exploration ceased, mines closed and new mines were not developed. More than 5,000 jobs were lost. This ill-conceived gross royalty was quickly repealed once its devastating effect became obvious.

Evidence is mounting that the Federal $100 per claim maintenance fee is a prime culprit in a protracted downward trend in U.S. mineral exploration. The $100 maintenance fee was first authorized via a "rider" on the FY 93 Interior appropriations bill. The fee was then slightly modified and extended through FY 98 in the 1993 Omnibus Reconciliation Act. This fee was again extended through FY 2001 in another appropriations rider on the FY 99 Interior appropriations bill.

The current $100 fee is not competitive with similar fees on Federal acquired lands, state-owned lands or private land. At current rates the fees discourage mineral exploration on public lands, particularly during the early stages. The early stages of exploration require large land positions (typically around 30,000 acres or 1,500 claims) to reduce risk to acceptable levels. Historically, initial exploration is often conducted by those least able to bear the cost of this fee, small companies, often called junior exploration companies, who raise high risk money from investors hoping for the big strike. Obviously, long term imposition of a high fee discourages initial mineral exploration and significantly escalates the cost of early stage high-risk exploration which has serious ramifications on this country's ability to replace critical domestic reserves of metals as current reserves are mined out.

A company can avoid the maintenance fee by simply shifting exploration, primarily at the grassroots or early stage, from high cost U.S. public lands to countries like Canada, Mexico or Chile which seek to attract exploration rather than levy high tolls on this activity. Continuation of these trends in mineral exploration raises serious concerns that as known domestic reserves are exhausted, significant declines in U.S. mineral production will occur.

Thirteen witnesses are scheduled to testify, including three elected officials or their representatives, three state officials, the President of the Nevada Mining Association, two representatives from environmental groups and four representatives from the mining industry. For further information, please contact Bill Condit at x59297 or John Rishel at x60242.

STATEMENT OF GREG D. LOPTIEN, SPARKS, NEVADA

Dear Representative Gibbons:

I am writing this letter in the hope that my views, concerning issues discussed or touched upon at the Oversight Hearing in Reno come to your attention. I am uncertain whether or not you can accept letters concerning these issues as part of the hearing process; regardless I will attempt to briefly state my views.

Before I begin allow me to express my appreciation for your efforts to fully understand the issues that face the mining industry in this country, for the opportunity to allow members of the mining community to express their views and for your past and continuing support of our and the nations industry. Too often the views of the industry are not relayed to the public or are misrepresented.

The current depressed world market for metals and industrial minerals has been devastating to this nation's mining industry. Over the last seven years the mining industry has been fighting an uphill battle against the Democratic-controlled administration, in particular Secretary Babbitt. Anti-mining environmental extremist, both within and outside of the government, are engaged in an all out assault on the mining industry not to make it a better, cleaner, more environmentally friendly industry but to kill it. The mining industry has, albeit sometimes reluctantly, worked diligently to become a more environmentally sensitive and responsible industry. So much so that most of the time the environmentalists can only point at problems that exist as a result of mining practices that occurred 30, 40 or 100 years ago.

About four years ago I attended a lecture at UNR given by an author who had written a book on the changing attitudes in the west. The positive and negative aspects of mining were touched upon and following the lecture I happened to find myself standing near the wife of a locally prominent environmentalist. She was discussing the horrors of mining with another lady. The other lady stated that she thought that the mining industry was making strides to "clean up their act." The wife stated "Deary, you don't understand. We just don't like them." In a nutshell, this summarizes what the environmentalists are after. They do not care how much the industry does to "clean up their act" they don't want mining! This is obvious when one considers the contorted logic that was used by the Interior's Solicitor Leshy and the efforts enacted to stop the New World project in Montana from "destroying Yellowstone."

With regards to your concerns about existing Federal fees and proposed fees (royalties) on the mining industry in the U.S. I would like to provide the following comments. The current BLM management fees are essentially a rental and have placed a burden on the mining industry that in recent years has become almost a hardship. The mining industry gets nothing for this management fee and the monies collected, while it is my understanding, have not gone to rehabilitation of abandoned mine lands. One positive aspect of the "rental fee" has been that many bogus and fraudulently held claims disappeared from the books opening up more land for legitimate exploration. Mining companies would prefer to put this "rental" money into the property (and this generally means into the pockets of local/rural contractors who perform tasks such as drilling, road building etc.) and thus progress their evaluation of the lands mineral potential. I believe a more equitable and workable solution to the management fee situation would be to allow the companies/individuals to select either "rental" payment in whole or part for the land claimed. Should the claim holder choose to invest the money into the "ground" then they must demonstrate, through documentation, a dollar value of work performed on all or a portion of the claims.

The issue of proposed royalties from revenues from mineral ventures is one of extreme sensitivity in the mining community. And well it should be as it stinks of Medieval times and the royalty claimed by the Kings from work done by peasants. The Federal Government gets its share of the profits from taxes levied against the mining companies and since the government did not participate in any of the risk taking to find, develop, mine and refine the minerals it should not get any royalty. One of the biggest proponents of a mining royalty in the Senate was Senator Bumpers who, if my memory is correct, pushed legislation that allows the Oil industry (a big industry in his state) to pass on the cost of their royalty fees to the consumer. Rather a two-faced stance if you ask me. I find it interesting that in the past decade the explosion of mining ventures worldwide was largely due to the removal of onerous royalties required by many nations and the adoption of a United States-style mining laws. Royalties, such as those proposed (8-12 percent gross revenue to 2-8 percent net revenue) would have a devastating effect on the U.S. mining industry and only the most profitable deposits could hope to survive. The loss of tax revenue to the Federal Goverment from mines put out of business by a royalty would, in my opinion, far exceed the revenues taken in by the royalty. Again, it is my belief that proponents of a royalty do not wish to generate additional income for the Federal coffers as much as they desire to adversely impact the mining industry.

Of particular concern to me regarding any changes to the mining laws and regulations is the impacts that these changes will have on rural communities. While I live in Sparks I do spend the vast majority of my working days in the small rural communities of Nevada. I see how important mining jobs are to rural Nevadans and I see the benefits that these folks get from the mines in more ways than a pay check or revenue for the county. Spouses of mine employees are doctors, nurses, teachers, coaches, child care providers, tutors, school board members, scoutmasters, firemen, ambulance drivers, EMT's, county commissioners, sheriffs, etc. These people provide vital infrastructure support in these communities that are taken for granted in the larger cities. Mines not only supply jobs to the people in these small towns but they also routinely provide scholarships to students to further their education, provide necessary and expensive engineering and environmental assistance for such things as waste water treatment. Some time the mines are the only nearby source for emergency healthcare (EMT's) or ambulances. Mining companies also routinely participate and fund development or rehabilitation of riparian areas working in cooperation with organizations such as Ducks Unlimited and the Rocky Mountain Elk Foundation. Barrick Gold (in Elko) and Magma, now BHP, (in Ely) fronted substantial cash to ensure the construction of High Schools in both of those towns. None of these services, activities or gifts have ever been provided by an environmental

group and if mines are run out of business the burden of providing these services win fall on the taxpayers of the state.

Comments concerning the development of recreational and or tourist attractions/destinations in rural areas that might offset the loss of mine jobs was of interest to me. I grew up in Colorado and as you are aware that state spends a great deal of time and money to promote tourism. Tourists flock to Colorado to see the beautiful scenery and to ski at the large resorts. The locals who do not own shops or restaurants in these resort areas work for minimum wage as clerks, cooks, waitresses, maids, busboys etc. and can not afford to live in the resort communities. For example, people who work at Vail, Colorado can not afford to live there and must commute from the towns of Eagle, Wolcott, Avon and Gilman. The small community of Dillon, where I used to live is largely a community of apartments that house the people who work at Breckenridge, Keystone, Arapahoe Basin and Copper Mountain ski resorts. Tourism may be more environmentally friendly but it does not provide for much unless you own a business marketed to the tourist. Tourism is a fickle sort of industry and not every rural area fits the criteria to make it a thriving resort or destination. Tourism is no more reliable than mining for longevity and does not pay anything near mining wages.

Several other issues, not touched upon at the Hearing, that I believe negatively impact on the mining industry or could be implemented to both bolster the industry and reduce environmental impacts are:

- Equalize the cost of production from foreign-owned overseas mining companies with those of the U.S. that have to bear the cost of regulatory and environmental laws. While many U.S. firms implement U.S. level environmental standards at their overseas operations many other foreign companies do not. Just as the U.S. does not import agricultural products that do not meet U.S. standards then also the U.S. should not allow the importation of metals from mines that do not follow U.S. environmental standards.
- Current U.S. laws allow small, but vocal activist-groups to stall large multi-million/billion dollar projects for years with trivial lawsuits. This practice is even used against the Federal Government, as evidenced by a Reno Gazette-Journal article on June 9, 1999. In this article a small activist group, the Southwest Center for Biological Diversity, had filed a lawsuit against the U.S. Fish and Wildlife Service to force the listing of the Rio Grande Cutthroat as an endangered species. The article states that this group "has filed about 100 lawsuits" in the last four years. A similar situation occurred with the Crown Jewel mine in Washington and is on-going with the Carlotta Copper project in Arizona (a new mine proposed between two exiting mines). Changes that would allow companies to obtain lost revenue, from the activists and their organizations, for delayed projects would alleviate unfounded nuisance lawsuits from groups and individuals who know that such delaying tactics are on their side.
- Perhaps a trade of dollars spent by mining companies to clean up historic environmental mine problems for management fees and or taxes could be considered. There would have to be the acknowledgment that once the company touched the contaminated site that they would not be permanently liable for it provided they actually improved the site.
- Under the Canadian mining law companies that acquire claims on Federal ground must turn over all data (maps, geophysical surveys, geochemical surveys and drill hole logs/assays etc.) to a central agency (Bureau of Mines ?) once the claims are abandoned. This does not occur in the U.S. but if companies where required to release this sort of data to the U.S. Bureau of Mines/BLM/USGS then less disturbances to the Federal lands may occur. For example, currently, once a company has walked away from a property for whatever reason (change of emphasis by the company, results not encouraging, results do not indicate a large enough deposit for a particular company, etc.) then the data acquired from those efforts is archived and lost to the rest of the mining community. Should that data become available to the public then subsequent companies that claim the property do not have to conduct additional drilling, trenching, road building or other surface disturbing actions but can build on past efforts. Also properties that appear very promising on the surface but reveal less promise underground will be easily identified and passed over by simply reviewing the agency-held data. A small fee to access the data or small tax to provide for, maintain and store the data would not be a burden to companies since they would realize significant benefit from such information.

I hope that this letter will be of interest and possible use to you on the subcommittee. I apologize for the length as I did intend to be as brief as possible. Once again, I am very thankful for all of the interest in the industry that you have expressed and the support you have provided for all the years that you have been my representative.

PETER G. MORROS, Director
ALLEN BIAGGI, *Administrator*
(775) 687-4670
TDD 687-4678
Administration
Water Pollution Control
Facsimile 687-5856
Mining Regulation and Reclamation
Facsimile 684-5259

STATE OF NEVADA
KENNY C. GUINN
Governor

Waste Management
Corrective Actions
Federal Facilities
Air Quality
Water Quality Planning
Facsimile 687-6396

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851

May 27, 1999

Cheri Sexton
U.S. House of Representative
1505 Longworth House Office Building
Washington D.C. 20515

Subject: May 13,1999 Field Hearing Regarding Mining Fees, Energy and Mineral Resources Subcommittee

Dear Ms. Sexton:

I testified before the above referenced subcommittee earlier this month. During the questions and answer period Congressman Gibbons requested information pertaining to BLM's 3809 draft regulations and testimony offered from other panel members during the hearing.

Representatives from the Nevada Division of Environmental Protection (NDEP) and other state officials participated in three Western Governors meetings with BLM's 3809 task force. The meetings were conducted in Denver and occured on April 8,1997, March 3, 1998 and September 22,1999. From April 1997 to present, NDEP has either directly prepared or assisted in the preparation of several comment letters regarding the 3809 regulations, they are summarized as follows and included for your renew:

- April 22,1997 WGA letter outlining the States concerns regarding 3809
- June 16, 1997 NDEP letter - 3809 comments
- April 15, 1999 WGA letter - predecisional draft comments
- April 22,1998 NDEP letter - preliminary comments on the BLM's Predecision Draft 3809 regulations
- October 9, 1999 WGA letter - predecisional draft comments

- October 9, 1998 — WGA letter - predecisional draft comments
- April 2, 1999 — NDEP letter requesting additional time to review draft regulations and EIS in light of the NAS study (Note: request officially turned down by BLM on the May 10,1999 comment deadline)
- May 10, 1999 — NDEP letter commenting on the proposed 3809 regulations and EIS

A brief review of these letters make it clear that nearly all of our basic issues have yet to be addressed. In fact, the concerns we stated in the April 22, 1997 WGA letter remain issues today and were delineated in our May 10, 1999 comment letter. So while its true that BLM met with State of Nevada representatives, it is also true that they have simply chosen not to respond to our input and concerns despite being given numerous opportunities to do so. Nevada has invested a great deal of time and energy in this process and has demonstrated that it is willing to participate in a meaningful discussion about BLM's 3809 regulations.

Also during the hearing, a panel member raised several general and specific issues regarding environmental matters in Nevada. We appreciate the Congressman's interest in these matters and they are addressed below.

GENERAL ISSUES:

Pit lakes

Pit lakes are regulated by NDEP under Nevada Administrative Code (NAC) 445A. The regulations state that pit lakes which form as a result of mining operations may not degrade surrounding ground water or affect adversely the health of human, terrestrial or avian life. As part of the water pollution control permitting process, extensive modeling and data collection take place prior to the creation of a pit lake. Long-term post-closure monitoring is used to corroborate the modeling, and ensure that the regulatory requirements are being met. Pit lakes not in compliance with these requirements are managed via administrative or civil procedures.

Discharge from Heaps

Heaps are also regulated under NAC 445A. Mines are required to chemically stabilize heaps upon closure, to ensure that heaps are left in a condition such that waters of the state are not degraded and reclamation activities are not adversely affected. Some heaps will have small amounts of long-term effluent due to rain and snow melt. The potential impacts of any effluent are evaluated as an integral part of the closure process. Post-closure monitoring for 5 to 30 years after chemical stabilization ensures non-degradation of water resources.

Drainage from Waste Rock Dumps

Waste rock dumps are carefully regulated as well. A waste rock management plan is required as part of NDEP's permitting process. The plan addresses waste rock characterization and handling at the mine site, including plans for special handling and treatment of rock with acid generation potential. Chemical characterization is required during construction of waste rock facilities to minimize the potential for impacts to surface or ground water.

SPECIFIC SITE ISSUES:

Paradise Peak

The operator of the Paradise Peak facility has declared bankruptcy. The site is still under the care and maintenance of the same operator. Concerns such as the blowing of tailings material are legitimate and they are being addressed, but the timeliness of the response is hindered by having to go through the bankruptcy court. The most recent water quality sample from the pit lake showed a substantial improvement in contaminant levels and pH. One side of the pit is slowly sliding into the lake, and may eventually eliminate the lake completely. The site is fenced and manned, and therefore the pit is not a physical threat to the public.

Twin Creeks Infiltration

A panelist mentioned a site near Winnemucca that was causing increased salt levels in ground water due to infiltration of mine water. He may have been referring to the Twin Creeks project. Dewatering water from the Pit was being returned to the ground water system using infiltration basins. This activity is carefully regulated by a number of agencies to ensure that ground water resources are not degraded. During initial filling and operation of such basins, naturally occurring salts are often flushed from the underlying soils. This is a short-lived and predicted phenomenon; salt concentrations in monitoring wells soon return to normal levels. Continued monitoring confirms that the ground water is not degraded.

Grantsville

This heap leach project was constructed prior to the institution of our State regulations. Therefore, NDEP did not have a role in the permitting of the project and the engineering design and bonding were not in conformance with today's standards. It is being closed by the U.S. Forest Service in cooperation with the regulation branch of the Bureau of Mining at NDEP. It is my understanding that the USFS has spent approximately $570,000 on the project which did exceed the $130,000 posted bond.

Big Springs

This site is at high altitude and receives much more precipitation than most Nevada mines. Therefore, the site's usefulness in terms of a general discussion about waste rock dumps in Nevada is very limited. It is an older site constructed prior to current State regulations and the

waste rock dumps were constructed in drainage channels. Water-rock interaction appears to have caused an increase in chemical constituents, mainly sulfates, in the streams. The mine operator, without enforcement action by the regulatory agencies, has implemented extensive remedial actions at the site. The waste rock dumps have been regraded, cover systems were designed and constructed and a growth medium added to support revegation and to minimize the infiltration of water. Diversion ditches have been installed, resulting in the diversion of millions of gallons of water from passing under the dumps. These actions, implemented in the past several years, are already showing a benefit in reduction of contaminant levels in the streams. It is anticipated that the coming years will see increased benefits as the vegetation matures and residual water from the waste rock dumps is depleted. We are monitoring the situation closely.

Jerritt Canyon

The tailings impoundment at Jerritt Canyon is the subject of an extensive seepage remediation program, implemented by the operator and regulated by NDEP. The tailings impoundment was constructed before Nevada's regulations were developed and some seepage of contaminants into the shallow ground water immediately surrounding the impoundment has occurred. This seepage is contained and monitored by a large network of pumpback, injection and monitoring wells. Monitoring results have demonstrated that contamination has been contained, and has not reached the nearby surface waters of Foreman Creek.

Lastly, we would like to correct some of the written testimony provided by Dr. Tom Myers. In his remarks he stated that NDEP requested a special appropriation of $1 million to assist us with bankrupt mining facilities. This is not true. NDEP allocated $600,000 over the next two years from our existing operating revenues in order to retain a contractor in case an unplanned or emergency situation occurs. It is important to note that such a situation has not occurred to date, and NDEP will only expend funds when our contractor is needed. NDEP believes it is important to be prepared and equipped to handle these types of potentially difficult situations.

Please contact me at (775) 687-4670 ext. 3142 if we can provide additional information on these matter.

Sincerely,

Leo Drozdoff, P.E.
Bureau Chief
Mining Regulation and Reclamation

cc: Victoria Soberinsky, Deputy Chief of Staff
Peter G. Morros, Director DCNR
Allen Biaggi, Administrator

WESTERN GOVERNORS' ASSOCIATION

Edward T. Schafer
Governor of North Dakota
Chairman

Tony Knowles
Governor of Alaska
Vice Chairman

James M. Souby
Executive Director

Headquarters:
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

(303) 623-9378
Fax (303) 534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001
(202) 624-5402
Fax (202) 624-7707

www.westgov.org

April 22, 1997

Dave Alberswerth
Bob Anderson
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Dave and Bob:

Thanks again for meeting with us on the Bureau of Land Management's Section 3809 rulemaking. The meeting was helpful and productive. We hope you and the rest of the Bureau's 3809 Team found it useful as well.

We were pleased to hear you reaffirm that there is no desire to duplicate existing state and federal reclamation authorities by way of this rulemaking. Reclamation, enforcement, and bonding on BLM lands must be a partnership between the Bureau and the states. As we have finally learned after years of fighting over prescriptive standards and paperwork in the surface mining coal program, our partnership should focus on on-the-ground outcomes, not process and paperwork.

By way of this letter and on behalf of the entire Governors' Mine Waste Task Force we want to reiterate some of the key points we made, commit to paper what we agreed to as follow up to the meeting, and provide a set of suggested guiding principles to help your Team tackle the scoping process and the proposed rulemaking.

Key Points

First, we agree it is wise to review governmental policy on a regular basis to ensure that our policies are accomplishing their desired objectives. Therefore we support the scoping effort to examine how well the current 3809 regulations are working. As state environmental and reclamation officials responsible for mining activities on all lands within our states, we have not identified any problems on the ground caused by the existing 3809 regulations. Generally, these regulations are working well.

Second, as we have maintained throughout a similar debate on reform of the 1872 Mining Law, prescriptive national reclamation standards will not work. We have learned through years of regulation that differences in climate and geology dictate different reclamation approaches. Further, we have found that best available control technology

is not an effective approach. It stifles innovative approaches, does not adequately take into account differences in climate and geology, and may result in over-regulation for the sake of regulation rather than for the results.

Third, states have, and will continue to defend, their central role in environmental quality regulation. The Federal Land Policy and Management Act is, as its very name implies, a land management act. The proposed 3809 rulemaking should not be a backdoor attempt to carve out new environmental authorities for BLM that duplicate or attempt to supersede federally delegated and/or state legislated environmental authority.

Fourth, the states recognize the Bureau's legitimate land management authority and responsibilities. As such, while we have not encountered significant problems with the existing BLM 5 acre exemption, if you receive testimony at your upcoming field hearings that leads to a conclusion to propose changes in the current exemption, we are ready to assist you in developing solutions. The states have used several different approaches to regulating operations of less than 5 acres that may prove instructive for the rulemaking. Bear in mind, while reviewing testimony you will receive, that a 5 acre exemption is not an exemption from regulation in most states. In Utah for example, the 5 acre exemption means an exemption from a permit (5 acres or less is "notice level activity"), not from reclamation requirements.

Fifth, on the issue of timeframes, all states have permit review timeframes. We feel they are an important component of our processes. Timeframes help provide certainty for the regulated community, the state, and the public and ensure the process is accountable. We are ready to share the different state approaches on this issue if you find that helpful.

Finally, bonding is an integral part of the regulatory and reclamation process. As such, we are encouraged you agreed to consider necessary changes to improve the Reclamation Bonding Rules BLM published in the February 28, 1997 *Federal Register* as part of your review of the 3809 regulations.

Follow up

As we agreed, we are happy to help Tom Leshendok of BLM's Nevada office in his data gathering effort on state regulatory and reclamation programs for mining. The effort, however, should be broadened to look at other federal statutory requirements (e.g., migratory bird protection statutes), existing BLM regulations, and other state requirements (i.e., bonding, public involvement, enforcement) to develop an integrated and complete picture of the regulation of mining on BLM land.

As a part of the regulator-to-regulator partnership approach we agreed to for this proposed rulemaking, we are prepared to host conference calls with your 3809 Team on specific issues as you move through the scoping process (and into rulemaking if that becomes your direction). This will enable your team to utilize the lessons learned from the states' years of on-the-ground reclamation experience. It will also help avoid duplication of existing state authorities.

Guiding Principles

We have taken the liberty of attaching a set of principles we recommend to help guide your approach during the scoping and, if warranted by the scoping process, the rulemaking process. We hope you find them useful.

Again, our thanks for a productive meeting. You have assembled a highly capable team. We will wait to hear from Tom on how we can be of assistance in his effort and from both of you on possible conference calls on key issues.

Sincerely,

Mike Long	Dianne Nielson, Ph.D.	Russ Fields
Director	Director	Administrator
CO Div. Minerals	UT Dept. Env. Quality	NV Div. Of Minerals

cc: Governor Mike Leavitt, co-lead governor for Mining
Governor Bob Miller, co-lead governor for Mining
Governor Roy Romer, co-lead governor for Mining
WGA Mine Waste Task Force

WESTERN GOVERNORS' ASSOCIATION

Edward T. Schafer
Governor of North Dakota
Chairman

Tony Knowles
Governor of Alaska
Vice Chairman

James M. Souby
Executive Director

Headquarters:
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

(303) 623-9378
Fax (303) 534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001
(202) 624-5402
Fax (202) 624-7707

www.westgov.org

April 22, 1997

TO: WGA Mine Waste Task Force

FROM: Chris McKinnon

RE: Update

BLM 3809 Regulations

As most of you know, BLM has announced a proposed rulemaking on their 3809 regulations. Enclosed is the Federal Register notice for the EIS scoping process which is now underway.

A representative subgroup of states met with BLM in a prescoping meeting on April 8th. A copy of the state letter summarizing the meeting is also attached. When and if conference calls with Interior are set up, as referenced in the letter, I will notify you so you can participate if you're available.

AML Cleanup Partnerships

As you know, we have arrived at agreements with both the Department of Interior and the mining industry on abandoned mine cleanup partnerships. The major focus of these partnerships, with state leaders in parentheses for issues already underway, are as follows:

1. Industry and Interior Jointly with States

   - Prepare brief report identifying number of high priority sites in each state by land ownership. Include cases studies of innovative approaches to cleanup. (Mary Ann Wright, UT)

   - Create forum to identify policy obstacles to increased cleanups (we'll use as a mechanism to further advance governors' "good Samaritan" resolution).

2. Interior and States

   - Develop and implement model Memoranda of Understanding to guide state-federal actions on site cleanups (Vic Anderson, MT), joint repositories (BLM/EPA), and shared liability (Dave Bucknam, CO).

- Identify state and federal funding sources for site cleanups as well as initiate discussions about how to increase on-the-ground expenditures through coordination of resources, greater efficiencies, redirected resources, and additional sources of revenue.

3. Industry and States

- Draft and issue RFP to determine feasibility and cost of developing on-line database of reclamation/remediation technologies for abandoned mine cleanup.

Please let me know if you want to be involved in any of these efforts.

Bevill Waste

See attached article.

Email Addresses

In light of increased reliance (and reliability!) of email, I am updating the Mine Waste Task Force list to include email addresses. If you use email regularly and would prefer to receive info from me via this means, please send your email address to me at *cmck@westgov.org*. Also, if your address, phone or fax, or designated state contact for the Task Force has changed, please let me know that as well. Thanks.

Western Governors' Association
Mine Waste Task Force

Suggested Guiding Principles for BLM 3809 Scoping/Rulemaking Process

Focus on Outcomes

There is a tendency in a regulatory review process to focus on writing standards, mandating technologies, and adopting processes, rather than concentrating on determining whether desired outcomes are being achieved. This has been recognized in the Government Performance and Results Act (GPRA) and the Administration's push to focus on program outcomes. The process for evaluating potential changes to the 3809 regulations should begin with an identification of the desired outcomes, compare the desired outcomes with the outcomes from the existing regulatory process, and identify shortcomings which revisions to the 3809 regulations might address. This approach will also lay the groundwork for the agency's compliance with the GPRA. As we have learned at great cost in SMCRA and other environmental programs, focusing first on standards, technologies and processes is wasteful for regulatory agencies, operators and the public; counterproductive to achieving environmental protection; and stifles innovative approaches.

Recommendation: Focus on outcomes on-the-ground.

Examine Existing Tools

There is also a tendency in a regulatory review process to push for new authorities if problems are found without adequately examining implementation of existing regulatory and policy tools. This approach is appealing because it looks bolder and more decisive than determining that existing tools (with better enforcement, training, resources, and/or staff direction) will fit the bill. However, as stewards of the public trust, we should all strive to avoid overlapping, confusing, and burdensome new requirements if better implementation of existing authorities is adequate.

Recommendation: Examine implementation of existing tools.

Recognize Differences in Climate and Geology

In researching different approaches by states and BLM offices, recognize that there are legitimate reasons for different approaches. Differing approaches does not mean one approach is better than the other. Again, focus on the outcome not the differences.

Recommendation Recognize the legitimacy of, and utilize, different approaches where warranted.

Avoid Extremes and Out of Date Examples

In public hearings we often hear extreme and misrepresented cases from both sides of environmental issues. On one hand a single failing is touted as common practice at every site, on

the other hand there is no problem at all. As examples of these extremes are raised in the scoping process, we encourage you to look behind the claims and determine whether the issue is still relevant. For example, a currently leaking cyanide heap which was constructed in the late 1980s might pre-date new state liner regulations now in place.

Recommendation: Examine claims carefully and avoid extremes or out-of-date examples.

Focus on Interagency/Intergovernmental Cooperation

Do not limit your analysis to BLM's authorities. As the Bureau is well aware, other federal agencies and laws and state laws, regulations, and policies all impact the current environment for mining on BLM land. Given the limited resources of both state and federal agencies, we have already learned that working together not only makes sense but saves money.

Many states now have MOUs with BLM to integrate their approaches and resources for mining on BLM land. This helps avoid duplication and gives operators greater certainty over what is expected. This kind of partnership can also help identify gaps in coverage of regulations and policies. If problems are found during the scoping effort, rather than new regulations, one answer might be to strengthen these partnerships and make them mandatory.

Recommendation: Focus on effective interagency/intergovernmental cooperation.

[Federal Register: April 4, 1997 (Volume 62, Number 65)]
[Notices]
[Page 16177-16178]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr04ap97_dat-108]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management
[WO-300-1990-00]

Intent to Prepare an Environmental Impact Statement for the Revision of the Surface Management Regulations--43 CFR 3809 for Operations Under the **Mining** Law of 1872, as Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) for the proposed revision of its regulations governing **mining** operations under the general **mining** laws. BLM invites comments and suggestions on the scope of the rulemaking and analysis. Specifically, BLM encourages the public to submit possible alternate language for the current definition of ``unnecessary or undue degradation'' and for current operational and reclamation requirements. We also ask that those who want to receive additional information send in a request to be placed on BLM's mailing list.

DATES: In order to be considered for preparation of the draft EIS, scoping comments are most useful if received on or before June 3, 1997. See the SUPPLEMENTARY INFORMATION section for the dates of scoping meetings.

ADDRESSES: Mail or hand-deliver written comments and requests to be put on the mailing list to Paul McNutt, 3809/EIS Team Leader, Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89502-2055. See the SUPPLEMENTARY INFORMATION section for the electronic access and filing address and for the locations of scoping meetings. Comments will be available for public review at the Harvard Way address from 7:45 a.m. to 4:15 p.m. Pacific time, Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul McNutt, (702) 785-6604 or via e-mail: pmcnutt@nv.blm.gov. An alternate contact is Scott Haight, (406) 538-7461 or via e-mail: shaight@mt1353.ldo.mt.blm.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background and Description of Information Solicited

I. Public Comment Procedures

Your written comments should be specific; be confined to issues outlined in this notice; explain the reason for any recommended change; and where possible, reference the specific section or paragraph of the current regulations which you are addressing. BLM appreciates any and all comments, but those most useful and likely to influence decisions on the content of the EIS are those that either are supported by

on the content of the EIS are those that either are supported by quantitative information or studies or include citations to and analyses of the applicable laws and regulations. BLM is particularly interested in receiving specific alternate language for existing regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. Comments received after the time indicated under the DATES section or at locations other than that listed in the ADDRESSES section will not necessarily be considered or included in the administrative record.

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: 3809EIS@wo.blm.gov. Please submit comments as an ASCII file and avoid the use of special characters or encryption. Please include your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact Mr. McNutt directly at (702) 785-6604.

[[Page 16178]]

Meetings

BLM will conduct scoping meetings on the following dates at the specified locations:

May 13--Cavanaugh's Inn at the Park, 303 N. River Drive, Spokane, WA
May 13--Colorado Room, Holiday Inn, 14707 W. Colfax Ave., Golden, CO
May 15--Pioneer Room, Carleson Center, 2010 Second Ave., Fairbanks, AK
May 15--Park Suite, Best Western Executive Park Hotel, 1100 North Central, Phoenix, AZ
May 20--Silver Legacy, 407 N. Virginia Street, Reno, NV
May 22--Pan American Room, Capitol Hilton, 16th and K Streets, NW, Washington, DC
May 28--Colonial Inn, 2301 Colonial Way, Helena, MT

BLM will conduct separate afternoon and evening meetings at each location, except for the Washington, DC location where we will hold only an afternoon meeting beginning at 1:00 p.m. BLM will hold the afternoon meetings from 1:30 p.m. to 3:30 p.m. local time and the evening meetings from 7:00 p.m. to 9:00 p.m. local time at each location. In Helena, the afternoon meeting will begin at 2:00 p.m.; in Fairbanks, the afternoon meeting will begin at 3:00 p.m.

The meeting sites for the public scoping meeting are accessible to individuals with disabilities. An individual with a disability who needs an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although BLM will attempt to meet a request received after this date, the requested accommodation may not be available.

II. Background and Discussion of Information Solicited

In a memorandum dated January 6, 1997, the Secretary of the Interior directed BLM to revise and update its Surface Management regulations (43 CFR part 3809) for operations under the **Mining** Law of 1872, as amended (30 U.S.C. 22 et seq.). This is a resumption of a rules revision effort that commenced in 1991, but was suspended in 1993 without publication of proposed rules, pending Congressional action that would have amended the **Mining** Law. Any regulatory changes would have been superseded and possibly incompatible with such legislative reform.

While the proposal to undertake comprehensive revisions to the Surface Management regulations was on hold, BLM did move forward to complete and implement specific Surface Management regulatory revisions, including the following final rules: Use and Occupancy of **Mining** Claims (July 16, 1996, 61 FR 37116), and Bonding (February 28,

1997, 62 FR 9093).

In the Secretary's direction to the BLM, he identified several areas of concern with the existing regulations. These include:

Definition of ``unnecessary or undue degradation.'' BLM contemplates revising the definition to more clearly require the use of ``best available technology and practices,'' local or State ``best management practices,'' or other similar technology-based standards appropriate in the conduct of hardrock **mining**.

Mining and reclamation performance standards. BLM currently does not have detailed performance addressing such areas as revegetation, contouring, and hydrology in the Surface Management regulations.

Notice level operations. For many hardrock **mining** operations that disturb 5 acres or less, the existing Surface Management regulations do not require advance approval of a plan of operations by BLM. Instead, an operator must provide BLM a ``notice'' which completely describes the operation and measures to protect the environment at least 15 calendar days before beginning activities on the site (43 CFR 3809.1-3). The task force is expected to propose at least three alternative ways of addressing this issue. One alternative would be to require all those intending to conduct **mining** to submit a plan of operations and receive BLM's approval before commencing operations (elimination of notice-level operations). A second alternative would be to narrow the scope of the notice provision; for example in areas of environmental sensitivity an operator planning to disturb 5 acres or less would have to submit a plan of operations and receive BLM's approval before commencing operations. A third alternative would be to tighten up the current notice provisions to better protect the environment, such as by requiring more information from an operator, allowing BLM more time to review a notice, and providing greater penalties for not meeting the requirements of the notice provisions.

Coordination with State regulatory programs. To ensure that the Federal Land Policy and Management Act's purpose of avoiding unnecessary or undue degradation is achieved, BLM would adopt rules that would minimize duplication and promote cooperation among regulators.

Issues tentatively identified for analysis in the EIS include impacts to:

Air and water resources;
Soils, vegetation, and topography;
Threatened and endangered species;
Cultural resources;
Fish and wildlife;
Exploration and **mining** activities; and
Local and regional economies.

Dated: March 31, 1997.
Bob Armstrong,
Assistant Secretary for Land and Minerals Management.
[FR Doc. 97-8601 Filed 4-3-97; 8:45 am]
BILLING CODE 4310-84-P

and the applicability of an announced reform in a given situation."

Steinberg said he understood EPA's frustration in examining a report that does not provide party or site names. The researchers "made a promise of confidentiality" to the report participants, "in order to get PRPs to fill out the questionnaires," Steinberg said.

Impact on Congress. The report "is not the last word on the debate in the superfund program," Steinberg said. According to CMA spokesman Owen Kean, the report provides "a pretty good snapshot of what superfund is like" at present.

Kean said the report was distributed to all of the key superfund committees, including the Senate Environment and Public Works Committee, and the House Commerce and Transportation and Infrastructure committees.

Steinberg shot down criticism that the Senate Republican reform bill (S 8) does not incorporate the administrative reforms into its language. "S 8 is a good bill," he said, "and the administrative reforms are a helpful interim step."

Congress should proceed "full speed ahead" with legislative reform, and not be "persuaded by comments that this is a fundamentally different program" from several years ago, he said.

Steinberg was asked whether he supported beefing up EPA's superfund budget, given the report's recommendation for the agency to expand its reforms. EPA's $650 million increase for superfund in its fiscal 1998 budget request has been questioned and criticized by Republican lawmakers at recent appropriations hearings (68 DEN, AA-1, 4/9/97).

The expansions to the administrative reforms suggested by the report "are not big budget drains," Steinberg explained. Expanding orphan share funding would involve forgiveness of claims for past costs, and would not affect budget levels, he said.

Steinberg said he never had been opposed to increasing appropriations for superfund.

By Jennifer Silverman

To obtain a copy of A Chemical Industry Perspective on EPA's Superfund Administrative Reforms, *call the Chemical Manufacturers Association at (703) 741-5000.*

Hazardous Waste

EPA Considers Narrower Bevill Exemption, Proposes Stricter Mineral Processing Rule

The Environmental Protection Agency is considering narrowing the Bevill exemption that currently frees extraction, beneficiation, and mineral processing waste from federal hazardous waste management rules.

In an April 18 supplemental proposal to the Phase IV land disposal restriction rules, EPA proposed to tighten the so-called Bevill exemption by retracting Bevill status from waste derived from mineral processing that uses both Bevill wastes and non-Bevill wastes.

The Bevill amendment was devised in 1984 by then Rep. Tom Bevill (D-Ala). Among other things, it exempted from the Resource Conservation and Recovery Act wastes resulting from mineral processing and the extraction and beneficiation of ores. EPA subsequently applied the exemption to high-volume, low-risk wastes in the mining and ore processing industries.

But in developing proposed land disposal restrictions for mineral processing wastes, EPA found significant environmental damage from Bevill wastes that are not required to be managed as hazardous wastes.

Therefore, the agency is proposing to make it more difficult for certain wastes to qualify for the Bevill exclusion. Under EPA's proposal, for a waste to qualify for a Bevill exclusion, all feedstocks entering the processing unit must be solely derived from the extraction, beneficiation, or processing of a virgin ore or material.

Alternative Materials. If alternative materials are used as feedstocks, the resulting waste would not be eligible for the Bevill exclusion. Currently, EPA allows the Bevill exemption to apply in some cases to waste derived from a process that uses both Bevill waste and a hazardous waste.

EPA proposed this for two reasons. One is to limit the amount of hazardous waste escaping regulatory control. The agency said this exemption from RCRA standards has led to instances of "widespread and serious environmental damage."

The other reason is that EPA has found the Bevill amendment creates an incentive to maximize the volume of materials processed through the Bevill exclusion because the resulting wastes are accorded RCRA exemption.

The proposal would not prohibit co-processing of non-Bevill and Bevill wastes. Co-processing still could continue, but the resulting wastes would be subject to RCRA hazardous waste management standards, EPA said.

EPA's regulatory impact analysis estimates that the above proposal is expected to cost the mineral processing industry about $36.6 million annually.

High-Volume Test. In a separate part of the supplemental proposal, EPA presented new information on risks posed by Bevill wastes and questioned whether some waste streams require additional study or regulatory controls.

In developing the mineral processing waste reproposal, EPA conducted a study on risks posed by Bevill mining wastes. Based on that research, EPA is considering whether to impose a high-volume test or other method that a Bevill waste would have to qualify for before being granted a RCRA exemption.

By regulatory definition, Bevill wastes are high-volume, low-toxicity wastes. The agency asked for comment on whether a high-volume standard should be used to determine Bevill eligibility—such as 45,000 tons of waste for solids generated annually and 1 million tons per waste streams for liquids generated in a year. If Bevill wastes are generated at those volumes, they would be granted the exemption.

'Associated' Wastes. Another approach EPA is seeking comment on evaluates whether a waste is "uniquely associated" with Bevill wastes, and therefore, excluded under RCRA. The principle states that any materials that come into contact with a Bevill waste, feedstock, or

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product during normal process operations becomes a uniquely associated Bevill waste when discarded.

A variation of this approach would be to consider small volume wastes that exhibit a hazardous characteristic before and after contact with the Bevill waste not uniquely associated, and therefore, not eligible for the Bevill exclusion.

According to EPA's regulatory impact analysis, both options for tightening the Bevill amendment together are expected to impose compliance costs of about $45 million.

Mineral Processing Proposal. In the same supplemental proposal, EPA reproposed the November 1995 rulemaking that would have applied a RCRA exclusion to recycled mineral processing waste. The original proposal attracted negative comments from both the mineral processing industry and treatment companies and environmental groups.

The reproposal—as expected—tightened the original proposal, by requiring storage in tanks and containers of recycled mineral processing waste before it is excluded from the definition of solid waste. In other words, EPA retracted its original proposal that would have allowed exempt recycling activities to take place on land.

EPA is not requiring the tanks and containers to meet RCRA Subtitle C management standards—only that the tanks and containers be capable of preventing releases of the waste. In addition, the exclusion only applies to mineral processing waste that is recycled into the original process within two production days. Also, the recycling must take place at the same facility where the waste was generated in order for the exclusion to apply.

Industry Practices Studied. The agency modified its proposal after reviewing comments from the November 1995 notice, and studying the industry more closely.

As a result, EPA found that land-storage of mineral processing waste and recycling of mineral processing waste is not as prevalent as originally believed.

In addition, the damage uncovered included significant environmental harm from the release of mineral processing waste at some facilities, the agency said.

EPA estimated compliance costs for storing wastes in tanks and containers to be about $8.4 million a year.

Treatment Standards for Metal Wastes. The supplemental rule also would have revised the universal treatment standards for metal wastes with toxic constituents.

In the agency's original Phase IV proposal—issued in August 1995—EPA proposed universal treatment standards for metal-bearing wastes. The standards set limits on hazardous constituents in the metal waste—rather than setting standards for all hazardous wastes.

But comments on the proposal took issue with EPA applying universal treatment standards to toxic characteristic metal wastes. EPA, therefore, modified the standards for 12 toxic metal bearing wastes. The result is that the standards for eight of the metals—barium, cadmium, lead, selenium, beryllium, nickel, thallium, and vanadium—are less stringent. But the treatment standards for four—antimony, total chromium, silver, and zinc—are more stringent than under the original proposal.

The proposed standards for the 12 metals would apply to all wastes—listed and characteristic—that are subject to universal treatment standards.

$10 Million Treatment Standards Cost. EPA estimated the treatment standards would cost the 136 facilities about $10 million.

EPA also proposed a conditional exclusion from RCRA for wood preserving waste that is recycled on-site.

The provisions would exclude wood preserving waste waters and spent wood preserving solutions from classification provided they are recycled and reused on-site during the production process.

EPA made the proposal because it may be inappropriate to regulate a reclamation process under RCRA when the process is an essential part of production and the materials being reclaimed are not part of the waste disposal program, EPA said.

Wood preserving solutions currently are regulated as hazardous waste under RCRA. The conditional exclusion would apply as long as the facilities recycle the waste on site and used for their intended purpose, the materials are managed to prevent release to the environment, drip pads comply with RCRA standards, and EPA or the state regulatory authority is notified.

Treatability Variance Amendment. Finally, the agency proposed amending its language in RCRA regulations that state the conditions for EPA applying a treatability variance.

With the October 1996 treatability variance granted to CITGO Petroleum in Lake Charles, La., EPA is facing legal challenge by local activists and the Environmental Technology Council.

Basically, the regulatory language is ambiguous and EPA is proposing to amend it to clarify its original intent. The CITGO variance still would remain valid under the rule change, but the agency is seeking comments on whether it needs to re-codify the variance.

EPA will be accepting written comments on the proposals for 60 days after publication in the *Federal Register*. EPA Administrator Browner signed the proposal April 18 and it will be published in the next few weeks.

Written comments can be sent to the RCRA Information Center, Office of Solid Waste (5305G), EPA, 401 M St. S.W., Washington, D.C. 20460. The docket number should be identified as F-97-2P4P-FFFFF.

HazMat Transport

Bill Would Enlarge Search Powers Of DOT; Industry Will Urge Congress To Amend It

The Transportation Department's proposal to reauthorize the hazardous materials law would expand the power of hazmat inspectors to open suspicious packages and analyze samples of materials being shipped, according to a copy of the draft legislation, which may be introduced in Congress in the next few days.

A leader of a coalition of industry groups told BNA April 21 that the coalition "can live with those changes," although the groups do object to other provisions in the bill and "will be going to Capitol Hill" to try

PETER G. MORROS, Director
L.H. DODGION, *Administrator*
(702) 687-4670
TDD 687-4678
Administration
Mining Regulation and Reclamation
Water Pollution Control
Facsimile 687-5856

STATE OF NEVADA
BOB MILLER
Governor

Waste Management
Corrective Actions
Federal Facilities
Facsimile 885-0868
Air Quality
Water Quality Planning
Facsimile 687-6396

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0866

June 16, 1997

Mr. Paul McNutt
Bureau of Land Management
P.O. Box 12000
Reno, NV 89520-0006

Re: 3809 Comments

Dear Mr. McNutt:

The Nevada Division of Environmental Protection (NDEP) of the Nevada Department of Conservation and Natural Resources appreciates the opportunity to provide comments to the BLM regarding the Bureau's 3809 rulemaking. The NDEP understands BLM's desire to review its regulations in order to assess their effectiveness. In general NDEP believes the existing regulations work well and we have not identified any significant, in-field problems caused by shortcomings in these regulations. However, we believe the scoping process will give BLM the opportunity to communicate with states with regulatory programs, such as Nevada's, to avoid creating duplicative and conflicting rules.

At the May 20, 1997 scoping meeting held in Reno, Nevada attended by NDEP officials, the BLM suggested eight potential topics for review. We know that some of these topics were raised in Secretary Babbitt's January 6, 1997 memorandum initiating the 3809 review process. Other than that directive, NDEP is not aware of why these topics were advanced, nor are we aware of why the process appears to be limited to these areas. Nonetheless, the following are NDEP's specific comments pertaining to the topics identified at the scoping meeting.

1. **Unnecessary and Undue Degradation**

We believe there may be a tendency in a regulatory review process to craft new regulations if problems are perceived without thoroughly examining the existing regulatory framework. The current 3809 definition of unnecessary and undue is quite comprehensive, as it relies on compliance with "applicable environmental protection statutes." Therefore, if any

federal, state or local mining regulatory requirement is not met BLM could consider that activity as unnecessary or undue degradation. In this current 3809 rewrite, BLM should strive to avoid creating overlapping, confusing, conflicting and otherwise burdensome new requirements if better interpretation and implementation of existing authorities is really what is appropriate. We believe that changes to the definition are not necessary.

2. **Performance Standards**

The process for evaluating potential changes to the 3809 regulations should begin with an identification of desired outcomes and compare these outcomes with what is occurring as a result of the existing regulatory program. Writing specific standards, mandating technologies and adopting processes is counter-productive to achieving environmental protection, in that they stifle innovative approaches and generally negatively impact regulatory agencies whose charge moves from protecting the environment to monitoring compliance with non-essential and peripheral requirements.

Reclamation performance standards should be broad in scope and defer to state programs whenever possible. States have developed standards for reclamation that take into account the ecologic, climatic, geographic and geologic site-specific issues which are essential to a successful regulatory program.

3. **5 Acre Threshold for Plans of Operations**

In general NDEP supports notice level activities. Due to the large number of existing notice level activities in Nevada, this agency is concerned that requiring plan of operations for small disturbances will detract from BLM's ability to address pressing needs, because it will be forced to spend time on non-critical issues. Additionally, as Nevada's reclamation statutes directly reference 43CFR Subpart 3809, any change in notice level criteria could have significant adverse impacts to our state programs.

4. **State Government Coordination**

Nevada is responsible for approximately 70% of this Country's gold production. Nevada's regulatory programs have essentially been used as a template in other states and countries, and have been used by the World Bank as standards in countries where mining regulations do not exist. As such, BLM should devote significant resources to evaluate Nevada's mining statutes, regulations and policies. Enclosed is a copy of "Nevada Mining Regulatory Programs" which has previously been provided to BLM's Bob Anderson and Tom Leshendock.

This 3809 review process is a good opportunity for BLM to take a proactive approach to improve BLM/state coordination. Many states, including Nevada, have MOU's with BLM to integrate their approaches and make the most of combined resources. This arrangement helps avoid duplicative requirements and gives the regulated community greater confidence in understanding requirements. To demonstrate Nevada's commitment to a strong state/federal relationship, NDEP will actually fund a federal employee to work in both agencies and serve as a liaison. The liaison will improve communication and allow both agencies to identify potential gaps in coverage of regulation and reduce conflicting or duplicative requirements. If problems are found during this scoping effort, BLM should consider methods such as liaison positions to strengthen state/federal relationships.

Finally, the existing 3809 regulations properly recognize State programs for both federally delegated environmental programs (Clean Air, Clean Water, etc.) and state law (groundwater protection, reclamation, etc.). Nevada is a fully delegated state and is a leader in groundwater protection and reclamation. The proposed 3809 rulemaking should not be a backdoor attempt to carve out new environmental authorities that duplicate or attempt to supersede federally delegated and/or state legislated environmental authority. It is important to remember that the Federal Land Policy and Management Act, as its very name implies, is a land management act.

5. **Time Frames for Review of Notices and Plans of Operations**

Time frames are absolutely necessary to ensure timely permitting processes and achieve accountability and must be included in BLM's regulations. Most, if not all states, including Nevada, have permit review time frames. A review of these time frames may be a benefit to the BLM. The notice level time frames should be established to allow the BLM to review the application. It is our perception that something in the neighborhood of 15 days is appropriate. The current plan of operations time frame of 90 days is not at all realistic, because the NEPA process establishes its own time frames which greatly exceed 90 days. NDEP would support a change to the plan of operations time frame in order to address NEPA requirements, provided that selected time frames are reasonable and do not impact the well established time frames that currently exist in state programs.

6. **Penalties**

Existing penalties under state and federal law are sufficient.

7. **Casual Use**

The current definition of casual use is sufficient and is important to retain for a variety of reasons. However, the definition could be improved by providing additional, current examples of what is considered casual use, such as prospecting or dredging.

8. **Bonding**

While NDEP supports bonding of all mining and exploration operations on public land, the State of Nevada has objected to the inadequate public process used to implement the bonding regulations published in the February 28, 1997 Federal Register. The final rules as published have the ability to negatively impact Nevada's regulatory programs. Additionally, we believe the requirement for a third party registered professional engineer to review reclamation calculations is unnecessarily burdensome. Lastly, state programs effectively establish water quality standards and effluent discharge requirements, therefore, they should not be associated with federal reclamation bond release criteria. This criteria creates new environmental authorities for BLM which we do not believe are appropriate. Based on these concerns, BLM should consider necessary changes to improve the Reclamation Bonding Rules as part of the review of 3809 regulations.

We appreciate the opportunity to provide these comments and look forward to continuing our professional relationship with BLM through this process.

Sincerely,

Leo M. Drozdoff, P.E.
Bureau Chief
Mining Regulation and Reclamation

LMD/btc
Enclosure

WESTERN
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Tony Knowles
Governor of Alaska
Chairman

Jim Geringer
Governor of Wyoming
Vice Chairman

James M. Souby
Executive Director

Headquarters:
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

(303) 623-9378
Fax (303) 534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001
(202) 624-5402
Fax (202) 624-7707

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April 15, 1998

Dave Alberswerth
Bob Anderson
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Dave and Bob:

Thanks again for coming out to Denver to meet with the states' mining regulatory representatives regarding the Bureau of Land Management's Section 3809 rulemaking. On behalf of the states represented at the meeting, attached are their preliminary collective thoughts on the technical issues in the working draft we discussed. Some states will send under separate cover additional comments dealing with state specific concerns.

One unresolved issue that would help us in the consultation process is to have BLM identify the problems with the current 3809 regulations that led BLM to seek changes to the regulations. Without a better understanding of what you see as the problems on the ground with the current system, it is difficult for us to give you any constructive feedback on whether your proposed approach would solve the problem. As you know, we think the current system is working pretty well.

A second unresolved issue is the proposal to apply state reclamation standards on BLM land if they are judged to be "consistent" with the proposed standards in the 3809 rulemaking. If consistency is viewed in a flexible, outcome-oriented fashion then we support this concept. However, as we said at the meeting, if "consistency" means state standards have to read chapter and verse like the proposed standards read to be consistent then we are very concerned. In fact, 43 CFR, Chapter II, §1610.3-2 suggests BLM regulations should strive to be consistent with other Federal and State resource related policies and programs, not the other way around.

As a suggested path forward to help resolve these uncertainties we request that every state BLM Director meet with their state agency counterparts as soon as practical to discuss three issues.

1. Are there problems on the ground on BLM land in that state that are a result of flaws with the current 3809 regulations and their implementation and if so what are they?

2. Would the state's current regulations and reclamation standards be viewed by the State BLM Director under the current BLM working draft of the 3809 rewrite as consistent and if not why not?

3. Could the current state-BLM memorandum of understanding, if there is one, deal with any problems identified in number one above rather than through a national rulemaking?

The information from these proposed State-State BLM Directors meetings could either be distributed prior to our next meeting or could serve as the first agenda item at that meeting. Armed with this ground up information, we think we would all be in a better position to help you refine your proposal before you issue a draft proposed rule in November.

We look forward to your response to our suggestion. Again, on behalf of the state mining regulatory representatives at the meeting, thanks for a very productive meeting.

Sincerely,

Chris McKinnon

cc: Western Governors
WGA Mine Waste Task Force
BLM Director Pat Shea
Senator Harry Reid

STATE OF NEVADA
BOB MILLER
Governor

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851

April 22, 1998

Michael Schwartz
Senior Program Analyst
Bureau of Land Management
1849 C Street, NW
Washington, D.C. 20240

Re: Preliminary Comments - 3809 Revisions, Predecisional Discussion Draft

Dear Mr. Schwartz:

As you are aware, on April 6, 1998 Nevada's Governor Bob Miller, issued a comment letter regarding the 3809 Predecisional Discussion Draft. In that letter, he indicated that further comments would be forthcoming from Nevada. This letter from the Division of Environmental Protection and another from Nevada's Division of Minerals constitute Nevada's review at this time.

As you recall, the States met with the Task Force members in March. BLM/Interior officials stated that their goals were flexibility and a commitment to continue to work with effective state programs. Many issues and potential areas of disagreement identified at the March meeting were attributed to "poor word choices." While Nevada appreciates the spirit in which this discussion draft was prepared, it must be noted that many of the draft proposals are problematic and if adopted, would negatively impact or contradict Nevada's mining regulatory program. Since a sizeable portion of BLM's mineral program is in Nevada, and Nevada's mines are responsible for approximately 67% of this nation's gold, these impacts and contradictions carry severe consequences.

As we stated during our March meeting, we suggest before any more work on discussion drafts occur, the task force should report back to the states in terms of a comprehensive review of every state mining program to determine functional equivalence with the proposed 3809 regulations. We also stated at the March meeting that every state BLM Director should meet with their state agency counterparts to determine if there are problems that have occurred due to gaps in the state regulatory program/3809 regulations. This step could assist the BLM in determining if a need exists to rewrite the 3809 regulations

Mr. Michael Schwartz
April 22, 1998
Page 2

§3809.001 Purpose and Objectives

One of the main points listed in Secretary Babbit's January 6, 1997 letter was "coordination with state regulatory programs..." Also, the task force members stated at our March, 1998 meeting that coordination with states was a primary goal. Therefore, it was very disappointing to see that the existing reference to "coordinate to the greatest extent possible with appropriate state agencies..." was completely eliminated from this section. Such an obvious change in purpose really throws into question BLM's desire to work with states.

§3809.010 Definition

Mitigation

We understand that the mitigation definition stems from NEPA. Since NEPA and FLPMA goals are not necessarily the same, we feel this definition is inappropriate. It should be noted that "restoring" the environment may be difficult to achieve and subject to wide interpretation, which is why Nevada's programs and the existing BLM regulations all use the term "reclamation" not "restoration. " The concept of mitigation compensation is particularly confusing.

MATP Most Appropriate Technology and Practice

While we understand that the task force was attempting to incorporate flexibility with this term, rather than use best available technology (BAT), this new acronym is problematic. MATP allows inordinate flexibility and latitude for interpretation by every BLM official. Without clear guidance, this terminology can result in district and state offices creating widely varying policies. These policies, once implemented without public input, will have the force of regulation and can produce arbitrary and conflicting results. It is not clear how and when an "equivalent level" of environmental protection will be determined.

Project Area

The existing project area definition works well and is appropriate. The new definition will mean that BLM can and must review private land issues if that land is described in a notice or plan. We do not feel that is appropriate.

Reclamation

The existing reclamation definition works well and is appropriate. The proposed definition implies that remediation is synonymous with reclamation, which it is not.

Riparian

This definition is confusing because it references wetlands. Wetlands are covered in the Clean Water Act, and are defined by the U.S. Army Corps of Engineers. We question the need for a new riparian definition.

Unnecessary and Undue

We are very troubled by the changes made to the unnecessary and undue definition. It is unclear how and when environmental impacts beyond those resulting from the use of MATP can be evaluated. It also begs the question, what is the use of MATP?

Since this 3809 review process began, Nevada has repeatedly stated that performance standards should be outcome based. In this discussion draft the BLM has created performance standards that can not be met and worse yet, has tied these performance standards to the definition of unnecessary and undue.

As we stated in our 6/16/97 letter to the BLM, the current 3809 definition of unnecessary and undue is quite comprehensive, as it relies on compliance with "applicable environmental protection statutes." Therefore, if any federal, state or local mining regulatory requirement is not met, BLM could consider that activity as unnecessary or undue degradation. Based on the new definition however, a State such as Nevada with fully delegated air and water programs could find itself in an endless loop of federal requirements. We could have a facility that complies with every air and water standard, but has not met a performance standard and is therefore out of compliance. This is simply an unworkable situation.

§3809.200 State Programs/Preemption

The existing 3809 rules explicitly build on and complement state mining programs by stating that they are not to preempt state laws. In the discussion draft, preemption would occur for all those State laws and regulations that are inconsistent with these new requirements. With this preemption coupled with performance standards on issues such as reclamation, safety, wildlife, water quality, wetlands, temporary closure and several others, BLM has created a one size fits all national program. Such a program is exactly what the states do not want. Moreover, this approach runs exactly counter to what the BLM has said it envisions, which was to not duplicate but rather effectively work with state programs. As you know, Nevada's regulatory approach has been viewed as a model program worldwide. Any new federal rules that would preempt such a program should be reevaluated.

§3809.210 State Programs

In this section, the question is asked "Under what conditions will BLM allow a state to regulate mining operations?" This is particularly offensive in that the BLM simply does not have the authority to allow or not allow a state to regulate mining operations. States regulate mining under authority of state laws and regulations, and delegated federal authority. From a practical standpoint however, this discussion draft creates the very real possibility that two separate regulatory programs could be in place. Such a scenario does not seem desirable.

BLM's offer to delegate 3809 implementation to the States is not reasonable. It seems that it is an attempt to exert authority far beyond what is granted by law. If States choose not to pursue delegation, the mining industry would face a desperate situation. They would have to get plan approval from undermanned, BLM district offices attempting to enforce unworkable regulations without guidance, support or direction. The only way out for industry would be to put pressure on the States to accept delegation. The new 3809 regs would act as an unfunded mandate, forcing States to expend their manpower and other resources enforcing unneeded and overly restrictive Federal regulations, that do not address a demonstrated need.

Lastly, Nevada's laws were written to work with the 3809 regulations. In fact, Nevada's reclamation law specifically cites the 3809 regulations so that Nevada and the BLM could integrate their approaches and make the most of combined resources. This system works and has worked for years, so it is questionable why the BLM would want to upend this approach now.

§3809.401 Plan Requirements

(b)(2) Description of Operations: We question what the BLM envisions in terms of engineering design, water management and quality assurance plans. Does the BLM have staff members capable of reviewing this type of information.

(b)(3) Reclamation Plan: As mentioned earlier, the term riparian restoration has a meaning different than reclamation. We do not understand the term deleterious material as it is not defined.

(b)(4) Monitoring Plan: Requiring a detailed monitoring plan duplicates this State's requirements and attempts to give BLM authority to regulate water quality and air quality. The BLM simply does not have the delegated authority to regulate water and air quality under the Clean Water Act and Clean Air Act, respectively. It appears a wildlife mortality program could impact Nevada's wildlife permitting program.

(c):The all-encompassing naturo of data requirements under NEPA is being cited as a component of 3809. By referencing NEPA requirements in 3809, BLM is attempting to use NEPA authority to regulate mining. NEPA is intended to be an evaluation process, not a regulatory device.

§3809.411 BLM's Response to Plans of Operations

(a)(4)(vii): BLM does not have the authority to intervene in an action with non-federal agencies or private individuals.

(c)(3): It is unclear what water quality standards are referenced. In any event BLM does not have the authority to set water quality standards. Additionally; permanent is not defined.

§3809.420 Performance Standards

(a)(1): It is unclear how the BLM would determine if a proper application of seed mixture occurred.

(a)(2): At many mine sites in Nevada, the land can have a topography that is flat. Therefore, often times it is simply not feasible to reshape waste dumps to blend with pre-mining, natural topography.

(a)(3): The BLM does not have the authority to regulate water quality under the Clean Water Act (CWA). Additionally, Nevada like many other states uses a variety of methods to ensure compliance with CWA.

(a)(4): The outright prevention of erosion is probably impossible and goes beyond generally accepted engineering practices.

(a)(6) We do not believe that "restoring altered stream channels with sinuosity, gradient and geometry, similar to natural conditions" is achievable. Moreover, this already comes under the purview of the Army Corps of Engineers.

(c)(3) Requiring containment of the 100-year, 24-hour storm event exceeds State of Nevada regulatory requirements, which require containment of the 25-year, 24-hour storm event and be able to withstand 100-year, 24-hour event.

(c)(6) States an operator must detoxify leaching solutions and heap or tailings materials during temporary closure and at final reclamation. Detoxification often takes years to accomplish, so it would be unrealistic to require this each time an operator went into temporary closure. Moreover, temporary closure is not defined. Additionally, we know of no practical method to detoxify tailings materials, so this requirement appears to be unrealistic. The discussion draft states that "upon completion of reclamation, all materials and discharges must meet the detoxification levels specified in the approved plan of operations." What criteria will be used to determine acceptable detox levels? Will guidance or policy be provided to the districts? What sort of input will be solicited?

(d) The BLM does not have authority to regulate ground or surface water quality. Water quantity issues in Nevada are the responsibility of the Nevada State Engineer.

(g) The BLM does not have authority to regulate ground or surface water quality.

(I)(4) When would retention be approved by the BLM, during the development of the plan or at the end of a project?

(j) Please refer to our comment under §3809.420(a)(2)

(k) The discussion draft states that you must partially or fully backfill pits unless you demonstrate to BLM's satisfaction it is not feasible for economic, environmental, or safety reasons". Not feasible should be defined . The requirement to backfill a pit can make or break the economics of a mining project. This is placing a great deal of power on the whim of "BLM's satisfaction." It is unclear when BLM's satisfaction could and would be achieved. Would it be during NEPA, during plan review, at the end of the project, or at some other juncture?

(m) The term "site of your operations" should be defined.

(p) Wetland mitigation is already under the purview of the U.S. Army Corps of Engineers.

(q) It is not clear what "appropriate mitigation measures" for pit backfill would be.

(v)(1) The requirement for comparable diversity and density to pre-existing "natural" vegetation in all cases and environments would be difficult to achieve and subject to wide interpretation. When would this "natural" assessment be conducted?

(v)(2) The outright prevention of noxious weeds seems unrealistic. Does the BLM envision requiring a noxious weed prevention and control plan?

§3809.432 Modifications

Currently, due to numerous existing requirements, the BLM is often unable to meet its required time frames. The requirements contained in this discussion draft will further impact this situation. What provisions will be added to ensure that the BLM meet its specified time requirements.

§3809 .591 Reduction of Financial Guarantee

This section needs to be clarified. What is "effluent discharged from the area?" What are "applicable effluent limitations and water quality standards?" How will the effluent quality be measured and evaluated?

§3809.600

Citizens accompanying inspectors raises, safety, liability and cost concerns. We think this is a bad idea.

We would like to emphasize that Nevada wishes to work closely and cooperatively with the task force in reviewing, and if necessary, revising the current 3809 regulations.

Sincerely,

Leo M. Drozdoff, P.E.
Bureau Chief
Bureau of Mining Regulation
and Reclamation

LMD/btc
cc: L.H. Dodgion, NDEP Administrator
Alan Biaggi, NDEP Deputy Administrator
Tim Crowley, Governor's Office
Alan Coyner, NDOM Administrator
Nevada Congressional Delegation
Chris McKinnon, WGA
Bob Anderson, BLM-Chairman 3809 Task Force
Tom Leshendok, BLM- Nevada

WESTERN GOVERNORS' ASSOCIATION

Jim Geringer
Governor of Wyoming
Chairman

James M. Souby
Executive Director

Headquarters:
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

(303) 623-9378
Fax (303) 534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001

(202) 624-5402
Fax (202) 624-7707

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October 9, 1998

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Bob Anderson
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Mr. Anderson:

Thank you and the rest of the BLM 3809 Team for meeting with the western state environmental regulators to discuss the August redraft of BLM's proposed 3809 regulations. Generally, the new draft is much more workable than the February draft.

We do appreciate your serious consideration of our comments on the February draft. Our common goals of maintaining a program that accommodates the variability of state environments, provides effective protection of resources, and allows development of minerals, is better served by this latest draft. The new revisions clarify and improve the workability of the proposed regulations. Improvements include the changes in definitions and the improved focus on outcome-based performance standards.

However, as we stated at the outset of our meeting, we remain concerned that BLM has still not made a compelling case for the need to rewrite the existing 3809 regulations. We believe the current system is working well, with each state and BLM state office and district office having established effective joint working relationships for regulation of mining on BLM property. To garner state support for the proposed changes to its 3809 regulations, it is incumbent upon BLM to demonstrate that there is a problem that needs fixing, that the proposed 3809 changes are the most efficient, effective, and equitable means to fix the problem, and that there are clear environmental benefits for any added costs to implement or comply with the new regulations.

Having said that, our goal in providing comments on BLM's draft proposed 3809 regulations is to ensure that if a compelling case is made for the need for changes to the current 3809 regulations, that any changes to the regulations result in equal or better environmental protection at little or no added cost in terms of time and taxpayers' money. With that as our goal, our primary concerns with the August draft relate to sections on definitions, performance standards, and the state-federal relationship. An ancillary but important subcomponent of the state-federal relationship issue is who is going to pay for any added costs to administer the new regulations.

You explicitly asked what the states' bottom line is regarding our ability to support regulatory changes. As the comments above demonstrate, if an objective and compelling case can be made for rewriting the 3809 regulations, we believe the regulations must:

* philosophically and practically recognize that mining does cause impacts and the goal of the regulations therefore cannot be to "prevent" or "minimize" impacts but rather should strive, like the current regulations, to prevent unnecessary and undue impacts;

* focus on surface management performance standards and include references to compliance with existing state, federal, and tribal environmental standards rather than BLM creating their own environmental performance standards, particularly as they relate to water quality and quantity;

* maintain an approach like the current 3809 regulations that relies on a state lead in implementing a "functionally equivalent" state regulatory program with a nonduplicative review and concurrence process reserved for BLM. In addition, where states incur additional costs for implementing the new regulations, they should be compensated for those costs.

We have attached detailed comments that expand on our comments above and reflect most of the major issues we discussed two weeks ago. In considering how we can collaboratively move forward from here in light of BLM's timeframes, we suggest that a brief conference call be held on any draft revisions resulting from our meeting and these comments. The conference call could be based on a copy of the draft regulations which shows, through strikeout and redlining, what additional changes have been made. As the draft EIS reaches the internal review stage, we also propose BLM provide a briefing to the states on the proposed alternatives and the impacts.

Again, thank you for making the trip out to Denver to meet with us. Please let us know if you have any questions or need any clarification of any of the points discussed herein.

Sincerely,

Chris McKinnon
Program Manager for Mining Regulations

cc: Western Governors
WGA Mine Waste Task Force

enclosure

Preliminary State Comments on
BLM August Draft of 3809 Rulemaking

Definitions

The meaning of "minimize" as it relates to these standards is of great concern. The second sentence of the definition should be dropped or should be modified to reflect the fact that mining does have impacts. The "unnecessary and undue" definition in the current regulations recognizes this fact. To "minimize" implies to reduce to the smallest level. The proposed definition of minimize ultimately says the application for a permit to mine must be denied to prevent impacts. The second sentence could also be modified to state that [you must prevent] impacts "which are not reasonably incident to the proposed activity."

Performance standards

The performance standards section of the proposed regulations has also been improved. However, concerns remain regarding water, wetlands and riparian areas and revegetation standards.

The water standards on page 30 need to focus more on compliance with state, federal and tribal laws and requirements, and less on the methods/rationale for source control which achieve compliance. These methods are essentially covered in other standards such as (b)(6), (c)(3) and others. If this language cannot be dropped on the basis of redundancy, any supporting detail should be presented as interpretive examples rather than as detailed mandates.

Wetlands performance standards need to incorporate the standard "compliance with state federal and tribal laws..." language (and drop (iv)) because of the role of the USACOE in these decisions. Paragraph (ii) and (iii) again are interpretive of the "mitigate damage " requirement in (I) and thus should be deleted. Bureau guidance documents would be a more appropriate place for such language.

Revegetation standards need to focus more on the need for functionally diverse communities supporting the postmining land use and providing surface stability (erosion control) rather than on "comparable in both diversity and density." Measurement of diversity and density in an evolving, dynamic plant community responding to climatic variability is an arguable academic exercise which often loses sight of the outcomes we are striving to achieve. One possible fix would be to rewrite Section 3809.420 (b)(5)(I) (A) and (B) to read:

(A) comparable to pre-existing natural vegetation in terms of ground cover; and
(B) compatible with the approved BLM land use plan or activity plan in terms of species composition

State-federal relationship

Our primary concern with the proposed state-federal relationship is the likelihood of duplication of

effort. Such duplication would nullify the effort to provide for a state to take the lead role in implementing the 3809 regulations and would add an unnecessary burden on the mining industry. To avoid duplication of effort, BLM's proposed concurrence on a state's decision regarding an application should be based upon the state's written findings which support the state's decisions not an independent parallel review of the application.

We are still concerned about the basis BLM will use to determine whether a state program will be approved. At the meeting we discussed the use of "functionally equivalent" as a standard. Although we understand BLM's intent, we remain concerned about the handling of input from third parties and the potential for third party lawsuits. From our discussion we agree that the standard to evaluate decisions against should be whether or not a decision to award or not award state "primacy" had been arbitrary.

Other concerns about the state-federal relationship include state remuneration for any additional workload a state may assume as a part of taking the lead role in implementing these new provisions. The current side-by-side that BLM is preparing should help clarify the added workload and/or what potential workload shifts may occur as a part of the primacy process. We look forward to seeing the results of this survey. These results should be used to determine what federal fiscal savings might occur as a result of workload changes with primacy. The equivalent amount of funds should then be utilized to support state implementation

With regard to the potential for "conflict" between state and federal standards - we concur with the use of the "Granite Rock" definition of "physically impossible to comply with both standards." Should this be worked into the definitions section to ensure consistent interpretation of "conflict" between state offices? Concern also remains about the "concur independently" standard that is utilized in the decision making process. We recommend that such a concurrence come from the state director's office because of concerns about the degree of consistency between district offices. However, we would certainly expect BLM to utilize input from the district office level.

Related to this is a concern about how differences of opinion would be resolved, particularly regarding case-by case MATP decisions, and about the basis for decision making to withdraw approval of state primacy. The regulations should make clear that such decisions are not lightly made on the basis of a single disagreement. (Please note there is also a problem to resolve on pages 6 and 29 regarding MATP and "unnecessary and undue degradation" which results in an endless loop as currently written).

A final issue we discussed is the need for a very clear appeals process for disagreements between the state and BLM. There should be a clear process (including who, what, where, when, and how) for the state appealing the decision by BLM to enter into an MOU with the state as well as decisions relating to the granting of a permit, inspection and enforcement, and bonding .

Other issues

Bonding was another major concern, as it relates to the permitting and public involvement processes. Public involvement should be coordinated with NEPA in a noncumbersome way which does not extend current decision making timeframes and increase costs by doubling the number of public notices and publications that are released. We suggest that regulatory language be crafted which

supports the following general process: Publish NEPA documents (or state's public notices) with the applicant's bonding estimate (in NEPA, Chapter 1, under agency responsibilities) with an accompanying agency statement regarding the adequacy of the estimate. (As an example: This estimate is/is not within the range of the agencies' preliminary estimate which is that bonding would range from approximately (x to y) million depending on the alternative selected. The final amount would also include costs for.... (anything the applicant left out) ....). Final bond requirements would then be published in the ROD or other written finding resulting from state or federal processes.

In response to BLM's questions regarding how the states define hobby mining we have attached a list to this letter.

Regarding inspection and enforcement; BLM should consider requiring a liability release from any members of the public wishing to accompany inspectors. Criteria should also be proposed for BLM use in determining when to overfile on a state enforcement action. If penalties are not returned to the program under other authorities, we also encourage BLM to look at the potential to use penalties in program implementation activities.

Attachment:

Montana definition--person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year.

California mining law does not define a hobby miner. We have the threshhold of one acre or 1000 cubic yards disturbance that kicks in our mining regulations. If the hobbyists stay under that threshhold they don't need to comply.

WESTERN GOVERNORS' ASSOCIATION

Headquarters:
600 17th Street Suite 1705 South Tower
Denver, CO 80202-5452
(303) 623 9378 Fax (303) 534 7309

Washington, D.C. Office:
400 N. Capitol Street, N.W., Suite 388
Washington, D.C. 20001
(202) 624-5402 Fax (202) 624-7707

FAX COVER SHEET

To: Leo Drozdoff

From: Chris McKinnon

Fax: 1 702 687-5856

FIRST VERSION

If all the pages from the fax are not transmitted, please call 303-623-9378

Note : Thanks for your participation at the BLM 3809 meeting. Attached is a draft response summarizing the meeting which Sandi Olsen (MT) draft and I rewrote the intro and made other minor edits. Please review and provide comments by Thursday, October 1. Thanks.

9/25/98 DRAFT

Dear Mr. Anderson:

Thank you and the "3809 Team" for meeting with the western state environmental regulators to discuss the August redraft of potential 3809 regulations. As we stated at the outset, we remain concerned that BLM has not as yet made a compelling case for rewriting the 3809 regulations. We believe the current system is working well, with each state and BLM state office and district office having worked out how to work together to jointly regulate mining on BLM property. Working together, we are doing a good job on-the-ground of protecting the environment and that is the bottom line.

Having said that, our goal in providing comments on BLM's draft 3809 regulations is to ensure any changes to the regulations result in equal or better environmental protection at little or no added cost in terms of time and taxpayers' money. To garner support for the proposed changes to its 3809 regulations, it is incumbent on BLM to demonstrate that there are clear environmental benefits for any added costs.

We do appreciate your serious consideration of our previous comments. Our common goals of constructing a program that accommodates the variability of state environments and processes and provides effective protection of resources while allowing development of minerals, is better served by this latest draft. It seems that many of our continuing and deepest disagreements stem from "a call by the policymakers" at BLM about the language in the draft.

The new revisions clarify and improve the workability of the proposed regulations. Improvements include the changes in definitions and the improved focus on outcome-based performance standards. However, as with the earlier version, we remain very concerned about the "primacy" process for state programs.

Our "primacy" concerns include the basis BLM will use to determine whether a state program will be approved. We discussed the use of "functionally equivalent" as a standard. Although we understand BLM's intent, we remain concerned about the handling of input from third parties. From our discussion we agree that the standard to evaluate decisions against should be whether or not a decision to award or not award primacy had been arbitrary.

Other primacy concerns include state remuneration for any additional workload a state may assume as a part of primacy. The current side-by-side that BLM is preparing should help clarify the added workload and/or what potential workload shifts may occur as a part of the primacy process. We look forward to seeing the results of this survey. These results should be used to determine what federal fiscal savings might occur as a result of workload changes with primacy. The equivalent amount of funds should then be utilized to support state primacy programs.

With regard to the potential for "conflict" between state and federal standards - we concur with the use of the "Granite Rock" definition of "physically impossible to comply with both standards." Should this be worked into the definitions section to ensure consistent interpretation of "conflict" between state offices? Concern also remains about the "concur independently" standard that is utilized in the decision making process. We recommend that such a concurrence come from the state director's office

because of concerns about the degree of consistency between district offices. However, we would certainly expect BLM to utilize input from the district office level. Related to this is the concern for whether or not duplication of effort would occur. Such duplication would nullify the effort to provide for state primacy and would add an unnecessary burden on the mining industry. Therefore BLM's concurrence should be based upon the state's written findings which support the state's decisions.

Related to this is a concern about how differences of opinion would be resolved, particularly regarding case-by case MATP decisions, and about the basis for decision making to withdraw approval of state primacy. The regulations should make clear that such decisions are not lightly made on the basis of a single disagreement. (Please note there is also a problem to resolve on pages 6 and 29 regarding MATP and "unnecessary and undue degradation" which results in an endless loop as currently written).

The performance standards section of the proposed regulations has also been improved. However, concerns remain regarding water, wetlands and riparian areas and revegetation standards.

The water standards on page 30 need to focus more on compliance with state, federal and tribal laws and requirements, and less on the methods/rationale for source control which achieve compliance. These methods are essentially covered in other standards such as (b)(6), (c)(3) and others. If this language cannot be dropped on the basis of redundancy, any supporting detail should be presented as interpretive examples rather than as detailed mandates.

Wetlands performance standards need to incorporate the standard "compliance with state federal and tribal laws..." language (and drop (iv)) because of the role of the USACOE in these decisions. Paragraph (ii) and (iii) again are interpretive of the "mitigate damage " requirement in (I) and thus should be deleted. Bureau guidance documents would be a more appropriate place for such language.

Revegetation standards need to focus more on the need for functionally diverse communities supporting the postmining land use and providing surface stability (erosion control) rather than on "comparable in both diversity and density." Measurement of diversity and density in an evolving, dynamic plant community responding to climatic variability is an arguable academic exercise which often loses sight of the outcomes we are striving to achieve.

Bonding was another major concern, as it relates to the permitting and public involvement processes. Public involvement should be coordinated with NEPA in a noncumbersome way which does not extend current decision making timeframes and increase costs by doubling the number of public notices and publications that are released. We suggest that regulatory language be crafted which supports the following general process: Publish NEPA documents (or state's public notices) with the applicant's bonding estimate (in NEPA in Chapter I under agency responsibilities) with an accompanying agency statement regarding the adequacy of the estimate. (As an example: This estimate is/is not within the range of the agencies' preliminary estimate is that bonding would range from approximately (x to y) million depending on the alternative selected. The final amount would also include costs for.... (anything the applicant left out) ....). Final bond requirements would then be published in the ROD or other written finding resulting from state or federal processes.

The meaning of "minimize" as it relates to these standards is of great concern. The second sentence of the definition should be dropped or should be modified to reflect our understanding that mining has

impacts. Otherwise the definition ultimately says the application must be denied to prevent impacts. The second sentence could also be modified to state that [you must prevent] impacts "which are not reasonably incident to the proposed activity."

In response to BLM's questions regarding how the states define hobby mining we have attached a list to this letter.

Regarding inspection and enforcement, BLM should consider requiring a liability release from any members of the public wishing to accompany inspectors. Criteria should also be proposed for BLM use in determining when to overfile on a state enforcement action. If penalties are not returned to the program under other authorities, we also encourage BLM to look at the potential to use penalties in program implementation activities.

In considering how we can collaboratively move forward from here in light of BLM's timeframes, we suggest that a brief conference call be held on any draft revisions resulting from our meetings. The conference call could be based on a copy of the language which shows through strikeout and redlining what changes have been made. Such input could be provided in a very short timeframe. As the draft EIS reaches the internal review stage we also propose BLM provide a verbal summary briefing to the states on the alternatives and the impacts to provide a basis of discussion and ensure that BLM and the states are still "tracking" with regard to the proposed changes.

You explicitly asked what the state's bottom line is regarding its ability to support regulatory changes. As the comments above demonstrate, if an objective and compelling case can be made for rewriting the 3809 regulations, we believe a funded primacy process that includes a nonduplicative concurrence is a key in developing sound regulatory change.

Attachment:
Montana definition--person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year.

PETER G. MORROS, Director
ALLEN BIAGGI, *Administrator*
(775) 687-4670
TDD 687-4678
Administration
Water Pollution Control
Facsimile 687-5856
Mining Regulation and Reclamation
Facsimile 684-5259

STATE OF NEVADA
KENNY C. GUINN
Governor

Waste Management
Corrective Actions
Federal Facilities
Air Quality
Water Quality Planning
Facsimile 687-6396

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851

April 2, 1999

Mr. Paul McNutt
Bureau of Land Management
P.O. Box 12000
Reno, NV 89520

Subject: 3809 Draft Regulations and Environmental Impact Statement Comment Period

Dear Mr. McNutt:

State of Nevada officials attended the BLM public hearings in Reno on March 23 and Elko on March 25, 1999 regarding the draft 3809 regulations and draft environmental impact statement. At that hearing we requested that the comment period for both matters be extended 120 days from the completion of the National Academy of Sciences study. The purpose for this letter is to formally make this request within the confines of this administrative procedures outlined by the BLM.

Throughout this two year regulation revision period, states including Nevada have requested a detailed statement of need. BLM has really not offered such a statement. We find it disingenuous that in its Fact Sheet the BLM points to a large number of abandoned mines, the infamous Summitville mine and other old environmental problems at mines sites to support its efforts on the 3809 revision, yet is precisely because of these types of issues that the existing 3809 regulations were developed. Moreover, it is because of these issues that states have taken the lead in crafting strong and meaningful environmental protection regulations. When States met with members of the 3809 task force in March 1997, we asked the task force to focus on current regulatory conditions and examine the implementation of the existing rules. States like Nevada contend that the BLM should review mining projects that are required to be compliant with the existing 3809 regulations and current state laws and rules to determine if regulatory problems or gaps exist. Further, if problems are identified, the BLM should determine if they have occurred as a result of improper implementation or deficient rules. Despite the Western

Governor's March 1997 request, this valuable exercise that would have resulted in meaningful dialogue on 3809 has not been completed by the BLM. NDEP is hopeful that the National Academy of Sciences study will do what the BLM has failed to do: complete a thorough review and assessment of present day mining regulatory programs.

It is very important to the State of Nevada, that we have the ability to review the NAS's work prior to commenting on the draft rules and draft EIS. Since the comment period expires on May 10, 1999, NDEP will need a response from the BLM by April 30, 1999.

Should the BLM choose not to extend the comment period, the NDEP will in all likelihood prepare additional comments by May 10, 1999.

Please feel free to contact me at (775) 687-4670 ext. 3142 if we may answer any questions you may have on this matter.

Sincerely,

Leo M. Drozoff, P.E.
Bureau Chief
Bureau of Mining Regulation
and Reclamation

cc: Peter Morros - Director DCNR
Allen Biaggi - Administrator NDEP
Jack Finn - Governor's Press Secretary
NV Congressional Delegation
Linda Eismann - LCB
Al Coyner - Administrator NDOM
Craig Shiffries - National Academy of Science

PETER G. MORROS, Director
ALLEN BIAGGI, *Administrator*
(775) 687-4670
TDD 687-4678
Administration
Water Pollution Control
Facsimile 687-5856
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Facsimile 687-6396

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851

May 10, 1999

Bureau of Land Management
Administrative Record
Nevada State Office
P.O. Box 12000
Reno, NV 89520-0006

Re: Comments Proposed 3809 Regulation Revision and Environmental Impact Statement Comments

To Whom It May Concern:

The Nevada Division of Environmental Protection (NDEP) of Nevada Department of Conservation and Natural Resources appreciates the opportunity to provide comments regarding the proposed 3809 regulation revision and corresponding environmental impact statement. The NDEP is one of several state agencies that regulate mining operations in Nevada. The Mining Bureau of NDEP is charged with ensuring that the quality of Nevada's water resources are not degraded as a result of mining operations and provide that land is properly reclaimed and returned to a productive post mining land use.

Because of our responsibilities, we have closely monitored BLM's efforts to rewrite its current 3809 regulations. During this process, we met with BLM/DOI officials at the Western Governor's offices three times to attempt to provide meaningful input into the process. It is important to review and summarize the discussion and correspondence from our very first meetings held in March 1997 to put into perspective the lack of progress that has occurred over the last two years.

In our first meeting, BLM officials stated that they had no desire to duplicate existing state and federal reclamation authorities by way of this rulemaking. This point was memorialized in 4/22/97 WGA letter to the BLM.

Additionally in that letter we provided the BLM with Five Guiding Principles for the reclamation process, they are as follows:

1. Focus on Outcome
2. Examine Existing Tools
3. Recognize Differences in Climate and Geology
4. Avoid Extreme and Out of Date Examples
5. Focus on Inter-agency Cooperation

Earlier this year, when BLM officials were asked about the duplicative and, in some cases conflicting nature of this rulemaking, states were advised that BLM now needed a "federal floor" for its 3809 regulations. This shift was never explained or justified. So while it may be true that BLM and/or DOI met with state representatives several times throughout this rulemaking process, from our perspective, these meetings have had little value.

This rulemaking does not focus on outcomes, but rather adds troublesome definitions and performance standards. BLM has not reviewed any on the ground "issues" within the context of the current regulations to determine if problems stem from improper implementation. The federal floor that BLM envisions it will receive from these proposed regulations makes no effort to differentiate the wildly diverse climate and geology present in the American West. The BLM has chosen to use Summitville and Anaconda operations in Clark Fork basin in Montana in its Environmental Impact Statement and Fact Sheet. These outdated issues are precisely the ones that have no place in a meaningful discussion about the 3809 regulations. BLM does not and never has had jurisdiction over the Summitville site. The historic Anaconda operation in the Clark Fork Basin resulted in toxic metal discharges into streams, but this operation simply would not be allowed today as it would violate both the Clean Water Act and Montana mining statutes and regulations. Lastly, the BLM has never attempted to quantify the results and benefits realized when federal, state and local authorities integrate their approaches into meaningful partnerships. The points mentioned above underscore the point that the BLM has simply chosen not to respond to our input and concerns despite being given numerous opportunities to do so.

The NDEP does not believe the draft 3809 regulations meet Congressional intent in several areas:

- The draft rules do not recognize that well run mining operations create disturbances. The fact that we have a term of "unnecessary and undue" means that it should be evident that there are disturbances that are both due and necessary. The current 3809 standard is reasonable and normal disturbance, while the proposed standard is minimize and prevent. It must be understood that the only way to minimize and prevent due and necessary disturbance is to simply minimize and prevent mining. The BLM does not and should not have this type of authority.

- The BLM has overstepped its authority, especially in the area of water. Surface waters are protected by the Army Corps of Engineers and the EPA via the Clean Water Act. In the case of EPA, that authority is delegated to the States. Groundwater is the sole purview of the states under state water law. Nevada has made these points throughout this rulemaking process, yet the BLM has never cited its authority to regulate surface and groundwater. The BLM should either site its authority or revise its draft regulations in a manner similar to the Clean Air Act and Solid Waste requirements.

- In Nevada we have enjoyed a successful State/BLM relationship for over a decade. The existing 3809 regulations clearly envisioned a true partnership by plainly stating that the BLM should make every effort to work with states (3809.0-2(c)). This section of the existing rule has been removed. The proposed 3809 regulations direct the BLM to work with States as long as their rules do not conflict with the BLM (§3809.3).

§3809.5 Definitions

Minimize

How will BLM determine the "lowest practical level?" The traditional dictionary definition of minimize does not include the terms avoid or eliminate.

Mitigation

We understand that the mitigation definition stems from NEPA. Since NEPA and FLPMA goals are not necessarily the same, we feel their definition is inappropriate. The concept of mitigation compensation is particularly confusing.

MATP - Most Appropriate Technology and Practice

MATP allows inordinate flexibility and latitude for interpretation by every BLM official. Without clear guidance, this terminology can result in district and state offices creating widely varying policies. These policies, once implemented without public input, will have the force of regulation and can produce arbitrary and conflicting results. It is not clear how and when an "equivalent level" of environmental protection will be determined.

Riparian

BLM has defined riparian as a transition between saturated wetlands and upland areas. Will the BLM publish riparian maps? Does the BLM have the expertise to provide riparian consultations?

Unnecessary and Undue

Since this 3809 review process began, Nevada has repeatedly stated that performance standards should be outcome based. In the proposed regulations, the BLM has created performance standards that cannot be met and worse yet, has tied these performance standards to the definition of unnecessary and undue.

As we stated in our 6/16/97 letter to the BLM, the current 3809 definition of unnecessary and undue is quite comprehensive, as it relies on compliance with "applicable environmental protection statues." Therefore, if any federal, state or local mining regulatory requirement is not met, the BLM could consider that activity as unnecessary and undue degradation. Based on the new definition however, a State such as Nevada with fully delegated air and water programs could find itself in an endless loop of federal requirements. We could have a facility that complies with every air and water standard, but has not met a performance standard and is therefore out of compliance. This is simply an unworkable situation.

§3809.202 Defer to States

BLM's offer to delegate 3809 implementation to the states is not reasonable. It seems that it is an attempt to exert authority far beyond what is granted by law. If States choose not to pursue delegation, two separate regulatory programs could be in place. As BLM is currently not meeting regulatory time frames, this situation will only deteriorate if BLM must now enforce unworkable regulations without guidance, support or direction. To avoid this scenario states would be forced to pursue delegation. Thus, the new 3809 regulations would act as an unfunded mandate, forcing States to expend their manpower and other resources on unneeded Federal regulations, that do not address a demonstrated need.

§3809.401 Plan Requirements

(b)(2) Description of Operations: We question what the BLM envisions in terms of engineering design, water management and quality assurance plans. Does the BLM have staff members capable of reviewing this type of information.

(b)(3) Reclamation Plan: The term "riparian restoration" has a meaning different than reclamation. We do not understand the term "deleterious material" as it is not defined.

(b)(4) Monitoring Plan: Requiring a detailed monitoring plan duplicates this State's requirements and attempts to give BLM authority to regulate water quality and air quality. The BLM simply does not have the delegated authority to regulate water and air

quality under the Clean Water Act and Clean Air Act, respectively. It appears a wildlife mortality program could impact Nevada's wildlife permitting program.

(c): The all-encompassing nature of data requirements under NEPA is being cited as a component of 3809. By referencing NEPA requirements in 3809, BLM is attempting to use NEPA authority to regulate mining. NEPA is intended to be an analysis and disclosure process, not a regulatory device.

§3809.411 BLM's Response to Plans of Operations

The BLM does not have the authority to intervene in an action with non-federal agencies.

§3809.420 Performance Standards

(b)(2) There is a great disparity between air and water requirements. Since the BLM does not have the authority to regulate water quality, the water standard should simply be "Your operations must comply with applicable Federal and State laws and requirements."

(b)(3)(iv) It does not make sense to reference certain federal agencies or requirements. There are literally dozens of federal requirements met by operators and hundreds if state and local requirements are added. The agencies and rules mentioned are no more or less important than those not mentioned.

(c)(7) In almost every case, backfilling would seriously impair possible future extraction of mineral resources. The BLM has a Congressional mandate to manage the nation's mineral resources. The preemption to backfill pits runs counter to this mandate. The "appropriate mitigation measure" seems particularly nebulous.

§3809.432 Modifications

Currently, due to numerous requirements, the BLM is often unable to meet its required time frames. The requirements contained in the proposed regulations will further impact this situation. What provisions will be added to ensure that the BLM meet their specified time requirements.

§3809.555 Financial Guarantees

The State of Nevada accepts insurance as an appropriate form of surety.

§3809.590 Surety Release

This provision runs counter to the spirit of concurrent reclamation - BLM is requiring concurrent reclamation but with this provision is making it more costly and time intensive for surety release.

§3809.600 Inspections

Citizens accompanying inspections raises safety liability and cost concerns, therefore we think this is a bad idea.

DEIS

The NDEP supports the "No Action" alternative as described in the DEIS. In the past the NDEP has supported a workable bonding requirement on public land and would support this type of action.

The presentation of the "No Action" alternative is profoundly insufficient, because it fails to incorporate many regulatory measures currently in effect, such as BLM policies, memorandums, etc. It also fails to incorporate an adequate discussion of state programs. Since the current definition of unnecessary and undue provides for, among other things, compliance with state requirements - it is important to describe these requirements. These omissions lead a reader to believe much of what is being proposed does not exist in some form today - which is erroneous. The BLM needs to accurately portray the current mining regulatory environment. This could be accomplished in part by genuinely and realistically describing the "No Action" alternative. Simply put, however, the BLM has failed to complete a meaningful review of state programs as we requested in our 4/98 letter to the BLM. Moreover, BLM has failed to complete this review despite its own regulation which requires that it be done (§3809, 3-1(b)).

Under alternative 2, the BLM explains on Page 39 that they would defer regulating exploration and mining to the states. In addition, "BLM would neither review nor approve of any specific project. Nor would any federal decision or undertaking be subject to NEPA review or compliance with Section 106 of the National Historic Preservation Act." This Alternative is simply not viable in that it would require congressional legislation and is not within the scope of the 3809 regulations, which is an argument that the BLM is quick to point out when justifying no analysis of agency funding and staffing. NEPA review will occur by other federal agencies when federal decisions are required. It is therefore a misrepresentation to inform the commenting public that precious metals mines, for example, would not undergo NEPA review by the Army Corp of Engineers. Practically every mine in the western United States falls under the Corps jurisdiction. This affects any reasonable analysis between alternatives because the BLM has backed NEPA compliance costs out of all economic modeling performed under Alternative 2.

The NDEP submits that commenting on the proposed rules, the preferred action, while simultaneously reviewing the NEPA documents is not acceptable and runs counter to CEQ

regulations. Additionally, the DEIS describes the Nevada regulations as the "proposed program" yet Nevada will be negatively impacted with a cost estimate of $93 million. This simply does not make sense.

In Nevada, the BLM has articulated a problem associated with notice level violations. The BLM should provide an actual estimate to reclaim these sites so that a true cost can be provided in the EIS. Additionally, in regard to this list of notice level problems in Nevada, we believe the BLM has missed an extremely important trend. Only eleven of these notice level problems have occurred since 1993. Therefore, over the past five years, there has been, on average, two mining related notices of noncompliance in Nevada which could translate into six per year nationally based on the historical number of notice level activities. The year 1993 is significant because that is the year BLM adopted the $100 per year claim fee and eliminated the $100 work assessment . This meant that claim holders were no longer required to cut roads and dig trenches to satisfy the work assessment requirements. The date seems to suggest that notice level disturbance problems have been greatly reduced since 1993. The BLM has not commented on this trend and has made no effort to account for it in the DEIS.

There is a fatal flaw in the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis. In the section on water quality benefits, a value of $20 per household per year, 500,000 affected households, a probability of an "accident" of 0.05%, and 300 potential locations where such accidents might occur were used to arrive at total benefits of $15 million per year. This is incorrect; the figures actually result in benefits of only $1.5 million per year. Over a 10 year period, the water quality benefits were calculated to range from $63.9 million - $127.9 million. Division by a factor of ten according to the correction above yields benefits of only $6.4 million - $12.8 million. Water quality benefits are a major factor in the estimate of net benefits associated with the proposed rule. The Net Qualified Benefits as presented are $16.9 million - ($9.6 million). Incorporation of the corrected water quality benefits lowers this range to ($40.6 million) - ($124.7 million). The analysis concludes that it is reasonable to assume that the benefits associated with the proposed regulation are at least equal to the costs. The error in calculating water quality benefits renders the conclusion completely invalid.

Lastly, the NDEP is outraged that the BLM has denied our 4/2/99 request to extend the comment period associated with the draft 3809 regulations and draft environmental impact statement. We renew our request to extend the comment period 120 days from the completion of the National Academy of Sciences study.

Please feel free to contact me at (775) 687-4670 extension 3142 if we may answer any questions you may have on this matter.

Sincerely,

Leo M. Drozdoff, P.E.
Bureau Chief
Bureau of Mining Regulation
and Reclamation

LDM/btc
Attachment
cc: Peter G. Morros - Director DCNR
Allen Biaggi - Administrator NDEP
Jack Finn - Governor's Press Secretary
NV Congressional Delegation
Linda Eismann - LCB
Heather Elliott - Nevada State Clearinghouse
Al Coyner - Administrator NDOM
Craig Schiffries - National Academy of Science

STATEMENT OF WOMEN'S MINING COALITION, RENO, NEVADA

RE: Comments on the Draft Environmental Impact Statement—43 C.F.R. 3809 Surface Management Regulations for Locatable Mineral Operations

INTRODUCTION

The Women's Mining Coalition (WMC) is a grassroots organization of women involved with the hard rock mining industry. Our membership is comprised of women working in many facets of the mining industry including geology and exploration, engineering, business and management, mining and heavy equipment operation, equipment manufacturing, and sales of goods and services to the mining industry. We have members located from coast to coast in many different states.

The WMC is keenly interested in the Department of Interior, Bureau of Land Management's (BLM's) current efforts to revise the 43 C.F.R. Subpart 3809 regulations ("the 3809 regulations") because many of our members work at mines located on BLM-administered lands, and a number of our members work for companies that provide equipment, goods and services to mines on BLM lands. Based on first-hand experience, many WMC members can attest to the success which the 3809 regulations have had in promoting environmentally responsible mining and effective reclamation of mines on BLM-administered lands.

In a letter dated June 18, 1997 to Mr. Paul McNutt, 3809 EIS Team Leader, (copy attached and incorporated by reference as though fully set forth herein) the WMC provided comments to the BLM regarding the agency's proposal to revise the 3809 regulations. Specifically, we responded to the issues raised in the March 1997 materials from the BLM's 3809 Task Force that outlined issues to be considered during the proposed scoping and revision of the 3809 regulations, and to comments made by Secretary Babbitt in his January 6, 1997 memorandum to the Assistant Secretary, Land & Minerals and the Acting Director, BLM. As discussed throughout this letter, the WMC finds that the BLM's Draft Environmental Impact Statement (Draft EIS) and the accompanying proposed rule have failed to acknowledge or consider a number of the issues, concerns, and questions raised in our June 18, 1997 letter to Mr. McNutt.

In developing our comments on the Draft EIS, we have relied on our members' experience in working on mining and mineral exploration projects on BLM-administered lands, and have given special consideration to the following:

- The strength, comprehensive nature, and proven track record of the 3809 regulations;
- The level of environmental protection and the reclamation achieved under the current regulatory framework applicable to mining, including the 3809 regulations;
- The lack of any compelling justification or need identified by the BLM that would warrant modification of the 3809 regulations;
- The failure of the Draft EIS to give any consideration to a number of issues, concerns and alternatives that the WMC raised during BLM scoping meetings and in our June 1997 written comments, and the alternatives and issues we feel need to be evaluated in the Draft EIS but, regrettably, are not; and
- Our concerns that the BLM's effort to revise the 3809 regulations not be misused as a political process.

The comments in this letter focus principally on the Draft EIS. The WMC is submitting a separate letter outlining our comments on the proposed regulation at 43 CFR §3809 Rules; 64 Fed. Reg. 6422 (February 9, 1999). In addition to the specific issues and comments raised in this letter, the WMC fully supports and adopts the comments filed by the National Mining Association, the Northwest Mining Association, and the Nevada Mining Association as though fully set forth herein.

COMMENTS ON THE SCOPE OF THE DRAFT EIS DEVELOPED IN CONJUNCTION WITH THE REVISED 3809 REGULATIONS

The Draft EIS Fails to Consider Issues and Alternatives Raised by the WMC During Scoping

The WMC submitted detailed written comments to the BLM in a June 18, 1997 letter addressed to Mr. Paul McNutt, 3809 EIS Team Leader. The WMC finds that the BLM's Draft EIS and the accompanying proposed rule have failed to acknowledge or consider a number of the issues, concerns, and questions raised in our June 1997 letter to Mr. McNutt. This is just one of many reasons why the WMC deems the Draft EIS to be substantively flawed and procedurally inadequate.

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 C.F.R. §1500) and for preparing documents, such as this Draft EIS, requires the BLM to acknowledge,

track, and respond to issues raised during project scoping. In preparing this Draft EIS, it appears that the BLM has ignored its own internal guidance considering comments received during public scoping. For example, page V-2 of the BLM's NEPA Handbook (H-1790-1) includes the following statements regarding scoping:

• **Scoping the EIS** (40 CFR 1501.7, 1506.6 and 1508.25). The purpose of scoping, generally, is to focus the analysis on significant issues and reasonable alternatives in order to eliminate extraneous discussion and limit the length of the EIS. Among other things, scoping helps: involve the public and affected agencies early in the process; identify significant issues to be analyzed as well as alternatives and potential impacts to be addressed; and allocate assignments for preparing the document among lead and cooperating agencies . . .:

Page V-3 directs the BLM to consider public input in identifying the proposed action:

• **S"l. d. Define Proposed Action.** Defining the proposed action plan is key to subsequent analysis. It is an ongoing process which usually begins prior to the issuance of the NOI. *In the case of a BLM-initiated proposal, the proposed action will usually evolve and change based on the results of public input during scoping and subsequent analysis.* (Emphasis added). Thus, for internal proposals, the identification and definition of the proposed action is generally more tentative in the early stages. . ."

The Draft EIS sections entitled "Alternatives Considered by Eliminated" (page 9), and "Issues and Concerns Not Addressed" (page 22) make absolutely no mention of the following issues and suggested alternatives presented in our June 18, 1997 letter to Mr. McNutt and repeated verbatim below:

• *"The DEIS Must Include a Detailed Discussion of the No Action Alternative*—The DEIS must include a substantive and thorough analysis of the No Action Alternative to evaluate the level of environmental and reclamation regulatory requirements that would be applicable to future mining projects on BLM lands with no changes to the 3809 regulations. The No Action Alternative must consider existing state and Federal regulatory programs and the BLM's existing authority and recent use of this authority to modify the 3809 Regulations through policy guidelines and rulemaking on selected topics (e.g., the development of BLM policy guidance on acid rock drainage and cyanide, and new occupancy and bonding rules)."

Comments on the Draft EIS: The Draft EIS is woefully inadequate in this respect because it does not accurately describe or consider existing state environmental and reclamation laws and regulations affecting mining. The Draft EIS fails to acknowledge and analyze the comprehensive nature of these existing state regulatory programs, the significant level of oversight and control authorized by these regulations, the large number of environmentally responsible mines that have been developed under these regulations, and current satisfactory coordination of the state regulatory programs with the BLM's 3809 regulations.

• *"The DEIS Must Analyze the Wide Range of Sites and Mines Regulated Under the 3809 Program.* There is an enormous diversity of climate, terrain, geology, mineral deposit types, and mining methods represented by mine sites on BLM lands. Both the Affected Environment and Environmental Consequences chapters of the DEIS must give full and equal weight to the many different types of environmental settings and mines, and provide a separate analysis of the impacts that would occur at these different settings and mines if the various alternatives considered in the DEIS were implemented."

GT3 Comments on the Draft EIS: The Draft EIS describes the affected environment and environmental consequences in terms of various environmental resources (e.g., wildlife, vegetation, wetlands, etc.) on BLM-managed lands throughout the western U.S. However, it focuses mainly on the gold industry (principally in Nevada) and largely ignores important base metal and industrial mineral production on BLM-managed lands elsewhere in the west. The Draft EIS and economic analyses on which it is based fail to adequately consider impacts to different sectors of the mining industry and have thus severely underestimated the consequences associated with Alternatives 3 and 4.

• *"The DEIS Must Include a Detailed Analysis of State and Other Federal Environmental Laws and Regulations Affecting, Mining*—The Affected Environment chapter of the DEIS should also include a detailed discussion of the many state environmental and reclamation regulatory programs and Federal laws and regulations affecting mining. The Environmental Consequences chapter should assess how these programs would be affected due to implementation of the DEIS alternatives. In particular, this analysis should quantify impacts to state mine

land reclamation programs and Federal environmental regulatory programs for which the states have primacy. Because many of these state regulatory programs were developed after enactment of FLPMA and development of the 3809 regulations, the DEIS should acknowledge the evolution of these programs and the coordination that has developed between the BLM and state mine land reclamation and environmental regulatory agencies."

Comments on the Draft EIS: As noted above, the Draft EIS does not adequately consider existing state environmental and reclamation regulations.

• *"The DEIS Must Include a Detailed Analysis of Socioeconomic Impact*—Any changes to the 3809 regulations that could result in significant delays in approving future mineral exploration and mining PLANS could cause adverse economic and social impacts to mining communities, state economies, and other stakeholder groups including geologists, consultants, drilling contractors, analytical laboratories, and restaurant owners and motel/hotel operators in mining and exploration areas who derive a substantial portion of their income working for or providing goods and services to the hard rock mining industry. The Affected Environment chapter of the DEIS must acknowledge and quantify the positive social and economic impacts associated with mining. The Environmental Consequences chapter must disclose any positive or adverse social and economic impacts that would result from implementation of the DEIS alternatives. This analysis must be site specific; a generic or national evaluation will not adequately assess the impacts to local communities and regional economies."

"Additionally, the DEIS must evaluate the economic impacts that proposed changes in the 3809 regulations would have on mining equipment manufacturers and companies that provide goods and services to the mining industry. Many of these companies are located in parts of the country not typically considered mining states such as Wisconsin (P & H Mining Equipment and Nordberg), Illinois (Caterpillar), New Jersey and Texas (Ingersoll Rand), etc. The continued existence of thousands of jobs in these states relies on a strong mining industry in the western U.S. The DEIS must thoroughly evaluate the economic consequences to these workers and to their state economies caused by changes to the 3809 regulations."

•2 Comments on the Draft EIS: As described in more detail below, the national and generic evaluation presented in the Draft EIS (especially Appendix E) and the accompanying "Initial Small Business and Regulatory Flexibility Act Analysis" significantly underestimate the adverse economic impacts to specific communities and regions.

• *"The DEIS Must Consider Specific Impacts to Notice-Level Operators*—The Secretary's directive to repeal, narrow, or otherwise modify the 5 acre NOI process will have a direct and focused impact upon individuals, small operators, and companies who perform most of their mineral exploration and/or mine development work under an NOI. The DEIS should include a separate socioeconomic analysis of the impacts of the proposed changes upon this groups of stakeholders. Because most mineral discoveries start as NOI-level exploration projects, the DEIS must also evaluate the impact that elimination of the NOI process or delays in the NOI approval process would have on the rate of discovery, and the impact to local, regional and national economies as a result of diminished levels of exploration, discovery, and mine development."

Comments on the Draft EIS: As described in more detail below, the economic analyses presented in the Draft EIS (especially Appendix E) and the accompanying "Initial Small Business and Regulatory Flexibility Act Analysis" are grossly dismissive of the economic hardships that many Notice-level operators (i.e., individuals and small businesses engaged in exploration and providing goods and services to the mineral exploration and mining industries) will experience if the BLM's proposed action (Alternative 3: Preferred Alternative) is implemented. Additionally, the Draft EIS fails to disclose the adverse impacts to the rate of discovery and the concomitant increased reliance on foreign minerals that would be associated with Alternative 3.

•*"The DEIS Must Consider Cumulative Impacts*—The DEIS must evaluate the cumulative impacts of any proposed changes to the 3809 regulations with respect to other connected actions including but not limited to the EPA's proposed National Hard Rock Mining Framework, the BLM's recent use and occupancy regulations, the BLM's new bonding regulations, other EPA initiatives such as the recent addition of the hard rock mining sector to the Toxic Release Inventory (TRI) reporting requirements and potential changes to the RCRA Bevill exclusion for certain mining wastes, and changes to the Mining Law of 1872 being contemplated by Congress. This analysis should evaluate the cumulative im-

pacts of changes in the 3809 regulations in conjunction with potential changes in royalties, fees, taxes, reporting requirements, and a plausible range of future regulatory developments." (Note: the new bonding regulations referenced above were remanded in May 1998).

Comments on the Draft EIS: The Draft EIS fails to consider cumulative impacts associated with other Federal rulemaking affecting mining. In addition to the issues listed in our June 1997 letter, the following new Federal actions are examples of the regulatory proposals that should be included in a cumulative impacts analysis: Clean Water Act proposals regarding Total Maximum Daily Load (TMDL), the Advanced Notice of Proposed Rule Making to change water quality standards, and the Department's recent (and inappropriate) decision regarding the use of mill sites in connection with mining claims.

• *"The DEIS Must Consider Impacts to Minerals Availability*— Changes to the 3809 regulations that result in significant delays in the PLAN and NOI approval processes may have an adverse impact on the supply of domestic hard rock minerals. The DEIS should evaluate the impact that revisions to the 3809 regulation would have upon minerals availability, and the potential for increased reliance on foreign mineral supplies. This analysis should consider the balance of foreign trade payments as a result of decreases in domestic mineral production. Similarly, the DEIS should consider how the 3809 regulations could be modified to encourage and facilitate mining on BLM lands and the resulting positive economic effects of increased mineral exports and decreased mineral imports."

Comments on the Draft EIS: The Draft EIS fails to consider any of these issues. In addition to being unresponsive to the WMC, the BLM's omission of these issues is in direct conflict with Sec. 102(a) (12) of the Federal Land Policy and Management Act of 1976 (FLPMA) in which Congress declares that it is the policy of the United States that:

the public lands be managed in a manner which is recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands"

The Draft EIS should disclose how the BLM's Preferred Alternative and Proposed Regulations comply with U.S. laws that recognize the need for mining, including Sec. 102(a)(12) of FLPMA and the Mining and Minerals Policy Act of 1970 as enacted by Congress. The rulemaking process does not grant the BLM the authority to ignore, repeal, or amend these Congressional mandates.

• **The DEIS Should Consider Alternatives to Facilitate Mining and to Create Reclamation and Environmental Incentives—**Although the Secretary's January 6, 1997 memorandum does not contemplate changes to the 3809 regulations to facilitate mineral exploration and mine development or to create incentives for reclamation and remediation of abandoned mines, a number of beneficial social and economic impacts on the local, regional, and national levels could accrue from selected changes. The WMC believes that regulatory changes to streamline the review process and stimulate clean-up of abandoned mines would significantly **enhance mineral exploration levels without compromising the high level of environmental protection and reclamation success realized under the present regulatory system. The WMC strongly urges the BLM to expand the scope of the DEIS to evaluate revisions to the 3809 regulations to encourage and facilitate environmentally responsible mining and reclamation of abandoned mines."**

Comments on the Draft EIS: Alternatives to facilitate environmentally responsible mineral exploration and mining would be consistent with Sec. 102(a)(12) of FLPMA and the Mining and Minerals Policy Act of 1970 as enacted by Congress. These laws require the BLM to manage the public lands in a manner that encourages responsible development of the nation's mineral resources. Neither the Draft EIS nor the proposed regulations fulfill this responsibility. Additionally, the WMC's June 1997 comments regarding reclamation of abandoned mines remain unanswered.

As demonstrated in the discussion above, the BLM has not fulfilled its obligations under NEPA and the CEQ regulations to respond to our comments and suggested alternatives. At the very least, the Draft EIS should explain why many of the WMC's issues and suggested alternatives were eliminated from further consideration. The Draft EIS violates NEPA through its failure to assess the many reasonable alternatives that the WMC and other mining interests proposed during the 1997 scoping effort. The omission of any mention of these alternatives in the Draft

EIS is such a serious and fundamental flaw that a new Draft EIS and further public comment is needed to comply with NEPA.

COMMENTS ON THE CONTENT OF THE DRAFT EIS DEVELOPED IN CONJUNCTION WITH THE REVISED 3809 REGULATIONS

The Proposed Regulations Described in Alternative 3 are a Solution in Search of a Problem

As stated in the WMC's June 18, 1997 letter to Mr. McNutt, the BLM must develop a Statement of Purpose and Need. The WMC recognizes that the Draft EIS includes a statement of "Purpose of and Need for Action." However, the data presented in the Draft EIS do not support this statement—especially with respect to problems described for Notices of Intent (NOIs).

The BLM must justify the proposed revisions to the 3809 regulations. The Draft EIS and other BLM materials furnished to date provide no compelling reasons to change the regulations. In fact, an April 1992 BLM study of the 3809 regulations showed no need for any changes to the environmental or reclamation provisions of these regulations. The BLM policies and guidelines developed since 1992 including the cyanide, acid rock drainage, and surface occupancy guidelines are substantive contributions to the 3809 program, suggesting the conclusions reached in April 1992 remain valid. In fact, as discussed below, the data presented in the Draft EIS do not support the conclusion that the regulations need substantial revision.

The WMC questions the appropriateness of the BLM's proposal to revise these long-standing regulations that have been working well in light of the following: the large number of environmentally responsible mines developed under the 3809 regulations, the industry's good track record in complying with these regulations, the requirement at 43 C.F.R. §3809.0-5(k) that mining operations comply with all applicable state and Federal environmental and reclamation laws, and the complete absence of any actual evidence that the existing regulations are inadequate.

The Draft EIS Mischaracterizes ″Problems″ Associated with Notices of Intent. Throughout the rulemaking process, the BLM has asserted that one of the principal reasons the 3809 regulations need to be rewritten is due to environmental problems associated with NOIs. However, the data in the Draft EIS do not support this contention. To the contrary, the data presented suggest that problems associated with NOls are limited in scope and nature.

In describing the environmental consequences of the No Action Alternative (i.e., no changes to the NOI process), the Draft EIS states the following:

> "Notice provisions could be difficult to enforce because no reclamation bond is required for Notice-level activity. The lack of a bond and enforcement process could result in areas not being reclaimed when operators leave, *although this is not a common practice. BLM issued about 500 notices of noncompliance (out of about 29,400 Notices filed for failure to reclaim, representing 2 percent of all Notices submitted.* (Draft EIS, page 89, emphasis added).

Although the WMC would like to see the mining industry strive for a 100 percent compliance record, a 98 percent compliance track record (i.e., a two percent noncompliance history) hardly constitutes a serious problem. In fact, this high level of compliance impresses us as a significant achievement. The BLM should evaluate other alternatives like better implementation (see the discussion below recommending an NOI Alternative), to evaluate ways to correct the 2 percent noncompliance problem. There is no justification for the BLM's Proposed Action (Alternative 3) for a wholesale rewrite of the regulations.

Congress Has Already Solved the N0I "Problem"

To the extent to which a problem existed with the NOI process, it appears that Congress solved this problem in August 1993 with the vote to eliminate assessment work. In August 1993, Congress changed the requirement for mining claimants to perform $100 of annual assessment work on each unpatented claim, and substituted the current requirement to pay an annual claim maintenance fee. Although many claim owners performed sound geologic work (i.e., drilling, sampling, geophysical surveys, etc.) to satisfy the assessment work requirement, some claim holders did not. Some claimants would fulfill the assessment work requirement mainly through trenching and other surface disturbing activities. Mining claimants' need to perform physical, on-the-ground work to meet the assessment work requirement (and to create visible proof that the work had been done) was thus the driving force behind much of the NOI-level surface disturbance created prior to 1993.

Data compiled by the BLM in Nevada proves that the number of problematic NOIs has dramatically declined following the elimination of the assessment work requirement in 1993. In August 1997, the Nevada State Office of the BLM provided information to Nevada Assemblywoman Marcia de Braga (chair of the Assembly

Committee on Natural Resources, Agriculture and Mining) with a table entitled "BLM-Nevada State Record of Environmental Problems Associated with Notice-Level Mining or Exploration." This table lists 156 problematic NOI sites in Nevada. A review of this table reveals that only 10 of the 156 problem NOls were filed in 1993 or later. Five of the problem NOIs were filed after 1993. The remaining five problematic NOIs were filed in 1993. An examination of the 1993 NOls would reveal whether the surface disturbance occurred prior to August, 1993 when the assessment work requirement was eliminated.

At the very least, the Draft EIS should be revised to evaluate the extent to which there are problems with NOIs filed since 1993.

Inaccurate and Inflammatory Statements in the Draft EIS Should be Eliminated

The WMC is very concerned about the following inaccurate and inflammatory statement on page 89 of the Draft EIS:

> "Under the existing regulations, if the area occupied by an operation increases by no more than 5 acres a year, the operation could remain a Notice-level mine and bypass the Plan of Operations process. Some operations could become fully operational mines exceeding 200 acres, be regulated only by a Notice, and still not have to undergo environmental review."

Many of our members have worked with BLM offices throughout the western U.S., and have extensive experience with both the NOI and the Plan of Operations processes. None of us have encountered this scenario with any NOI, or in any BLM office. Our collective experience is that the BLM fully enforces the 5-acre limit on NOIs in compliance with the current regulations which state the following at §3809.1-4: "An approved Plan of Operations is required prior to commencing:

> (a) operations which exceed the disturbance level (5 acres) described in §3809.1-3 of this title."

The scenario on page 89 cited above strays so far from our collective experience that we are forced to conclude that it has been created from whole cloth. This apparent excursion from reality significantly diminishes the credibility of the entire Draft EIS and calls into question the BLM's intentions and ability to perform an objective environmental analysis based on fact and sound science

There is simply no evidence to suggest that mines exceeding 200 acres have been or can be permitted with an NOI in the unlikely event that this scenario accurately describes a project somewhere on BLM-administered land, it would clearly be an example of improper implementation of the existing regulations. If such a project exists, it is inappropriate to recommend comprehensive changes to the 3809 regulations when proper administration of the existing regulatory program would solve the problem. It is equally improper to justify the need for new regulations based on one, extreme example.

The Draft EIS Should Evaluate a Specific Alternative Devoted to Changes to the Notice of Intent Process

The Draft EIS describes a concern that NOI-level activities are occurring in environmentally sensitive areas without adequate BLM involvement. However, it is the collective experience of our members that the BLM commonly places restrictions and requirements on NOI-level activities to protect cultural resources, riparian areas, wetlands, wildlife, and other environmental resources. Based on this experience, the BLM has demonstrated that the agency already has appropriate regulatory tools and policies for controlling impacts associated with NOI-level operations. If problems are occurring, they are most likely due to poor administration and implementation of the existing regulations—not due to inadequate regulations. These administrative problems and implementation inconsistencies probably result from budget and staffing constraints.

With this in mind, the WMC requests that the BLM evaluate a fifth alternative—"The NOI Alternative." This alternative should focus on the NOI process and how to use the existing regulations to address any remaining problems (i.e., non-assessment work issues) associated with failure to reclaim NOI sites, or NOI activities in sensitive areas. The NOI Alternative should determine how increased staffing and budget levels could achieve more consistent and improved oversight of NOI activities. We also recommend that this alternative consider adding a bonding requirement for NOI-level operations.

The WMC finds no justification whatsoever for the BLM's current proposal for a complete revision of the 3809 regulations. We feel that proper analysis of an NOI Alternative would show that any real problems with the existing regulations could be solved with focused, surgical changes to the rule, and more consistent and complete implementation of the existing 3809 regulations.

Comments on the BLM's Small Business and Regulatory Flexibility Act Analysis with Respect to Exploration and Nevada

The BLM's Economic Analysis is Seriously Flawed

Many WMC members work as independent consultants, contract exploration geologists, or are employed by small businesses. The Draft EIS is grossly dismissive of the adverse economic impact that the proposed regulations (i.e., Alternative 3) would have on for small businesses. The WMC finds the BLM's economic analysis as presented in the "Initial Small Business and Regulatory Flexibility Act Analysis" and the Draft EIS wholly inadequate. The shortcomings in the BLM's economic analysis as presented in the Draft EIS would be laughable if it were not for the importance of this issue and the severe economic and lifestyle consequences that many of our members would experience if Alternative 3—The Proposed Action is enacted. Additionally, many of our members live and work in Nevada. The Draft EIS and the Regulatory Flexibility Act (RFA) analysis conclude that the adverse economic impact on Nevada would be insignificant. This conclusion is wrong. The flaws and inadequacies contained in the BLM's economic analysis are described below.

1992 Data Are Not Representative of Today's Industry.

The BLM's Regulatory Flexibility Act (RFA) analysis is based on 1992 data. The industry has significantly changed and contracted since 1992 due an increasingly hostile regulatory and political climate for mining in the U.S., corporate downsizing and mergers, and reduced metals prices. The dramatic decline in the number of NOls and Plans of Operation since 1992 shown in Figure I (RFA, page 92) should be sufficient indication that it is inappropriate to use 1992 information to model the impact of the proposed regulations on today's industry.

The RFA Mischaracterizes; Impacts on Exploration

The BLM's analysis fails to consider mineral exploration and mining as distinctly different industry sectors, and focuses most of the evaluation on its impact on mining companies (e.g., companies with operating mining properties). Moreover, the RFA analysis completely ignores the impact upon independent exploration geologists who earn their living working as consultants and contractors to mining companies. Some of these individuals also own mining claims and pursue exploration activities on their own behalf with the hope of leasing their claims to mining companies. These individuals comprise a significant portion of the exploration industry sector. As one measure of the importance of this group to the exploration industry, roughly one-third of the 925 members listed in the Geological Society of Nevada's recently published 1998-1999 membership directory are described as individual geologists, geologic consultants, and independent consultants.

Although the RFA analysis acknowledges that exploration is typically performed by small companies, the underlying assumption is that most exploration is conducted by companies rather than individuals:

> "Exploration activities are often considered higher risk activities and may be conducted by relatively less well capitalized firms. However, a substantial portion of exploration activities are conducted by major mining companies which would not be expected to be impacted by changes to the bonding requirements. Available data does not allow the BLM to readily distinguish between the employment and financial characteristics of existing Notices." RFA, page 93).

It should be noted that while larger companies may perform a significant portion of the Notice and Plan level exploration work, many retain contract geologists to conduct this work.

The RFA Analysis Fails to Recognize Impacts to Individual Geologists as an Industry Group

The RFA analysis concludes that the proposed regulations would have an insignificant impact upon the mining industry, but fails to consider the impacts on the exploration sector as a whole and on the independent exploration geologist segment of the exploration sector. The impact of the proposed regulations is described as ranging from $17,300 to $127,000 on an annual basis, or $72,140-$533,857 over the period of analysis on each affected entity (RFA, page 95). According to the RFA, analysis this impact equates roughly to 1 percent of the 1997 total U.S. value of locatable mineral production of $17.7 billion, and about 5 percent of the $1.62 billion estimated value of locatable minerals production in the western U.S.

This analysis is wholly inappropriate for the exploration sector of the industry which should be evaluated as a Research and Development arm of the industry—not a revenue producer. Moreover, this characterization ignores the impact to the group of independent geologists that form a significant element of the exploration sector. WMC members do not look forward to a reduction in annual income of

$17,300 to $127,000, and find the BLM's characterization of this impact as "insignificant" to be insensitive and offensive. It is highly likely that our male colleagues who are individual geologists and consultants have a similar perspective. In fact, it is hard to imagine that anyone (except perhaps Bill Gates and others in his income group) would consider such a reduction in income to be without significance.

The RFA Analysis Ignores the Real Costs Associated with the Plan of Operations—EA Process

The RFA analysis further characterizes the impact on exploration activities as an annual cost increase ranging from 0–38 percent, depending upon whether a validity exam and a Plan of Operations are required. For most exploration projects, the RFA analysis (page 101) assumes that in most cases, only a Plan of Operations will be required and that the costs associated with a Plan of Operations are on the order of $25,000. Presumably, this cost increase includes preparation of a third-party Environmental Assessment (EA), although the RFA analysis is vague on this point. The RFA analysis does not provide any data to substantiate this cost estimate. Based on our members's experience, average costs for a Plan of Operations and third-party EA for an exploration project are substantially more than $25,000.

Moreover, the RFA analysis completely ignores the time value of money issue, seasonal constraints associated with exploration, and the substantial delays typical for the Plan of Operation/EA process. (The WMC incorporates by reference herein, information that the industry has recently provided comments to the Office of Management and Budget that substantiates that securing approval of a Plan of Operations is significantly higher than $25,000. See, for example, the March 25, 1999 letter from R. Timothy McCrum to Mr. David Rostker, Policy Analyst with the Office of Information and Regulatory Affairs, OMB).

Even if the average cost increase of $25,000 in the RFA analysis were a valid estimate, it is inappropriate to characterize this increase as inconsequential. Once again the RFA analysis has assumed that exploration is being performed by larger mining companies that are capable of absorbing this cost increase. The analysis completely fails to consider the significance of this impact on the individual geologist sector, both in the context of time and money.

The draft regulations would give the BLM considerable discretionary authority to require a Plan of Operations for exploration proposals that would disturb fewer than five acres (i.e., work that can currently be undertaken by filing a Notice of Intent). However, the RFA analysis inappropriately downplays the circumstances in which a Plan of Operations rather than a Notice of Intent would be required:

> ". . . For the most part, exploration activities would not require an extensive or detailed Plan of Operations due to the nature of the activities. The infrequent need for validity exams and the limited need to prepare detailed Plans of Operation suggests that the cost increases associated with the proposed regulation are likely to be quite low, perhaps 5 percent, or less." (RFA, page 102).

It is unclear what the BLM means by "an extensive or detailed Plan of Operations" because the data requirements for a Plan of Operations are established in the 3809 regulations. Perhaps the reference to "extensive or detailed" pertains to the scope of the EA that is required to evaluate and approve a Plan of Operations. In any event, the RFA analysis completely misses the point. The increased costs, both in time and money, are associated with the NEPA process and the associated Federal consultation requirements (e.g., for cultural resources, Native American issues, threatened and endangered species, etc.)—not with preparation of the Plan of Operations. The RFA's characterization of the increased exploration costs associated with the proposed regulations is inaccurate and disingenuous at best.

The RFA Ignores Impacts to Nevada

Another significant flaw in the RFA analysis is its failure to analyze impacts on a regional basis. The RFA evaluates impacts nationwide rather than looking at specific geographic regions that are likely to bear the brunt of the adverse impacts associated with the proposed regulations. This allows the impacts to be homogenized and smoothed out across the country, thereby masking the significantly adverse consequences that the proposed regulations will have on areas in which exploration and mining are a major portion of a region's economy. This is a significant shortcoming in the RFA in light of the fact that the Draft EIS includes a number of statements that disclose that Nevada will be more adversely affected by the proposed regulations than other states. For example, in discussing the decrease in the value of mine production from public lands that would result due to the draft regulations (the Proposed Action and Preferred Alternative—Alternative 3), the Draft EIS states:

> "Most states would see decreased levels of mining on public lands, ranging from $55,000 in Oregon to $93 million in Nevada. Nevada's share of the loss would

be more than half of the loss for the study area as a whole." (Draft EIS, page 214).

Substantial Revisions are Needed for the Economic Analysis and the Draft EIS

The RFA analysis and the Draft EIS improperly characterize the exploration component of the mining industry and fail to analyze and disclose impacts to individuals and small businesses involved with exploration. As the Research and Development (R&D) arm of the mining industry, exploration is critically important to the long-term future of mining in the U.S. A regulatory climate that restricts exploration will ultimately cause a significant down-turn in future mining activities. Thus, the adverse economic impacts associated with the proposed alternative are substantially underestimated.

The RFA analysis and Draft EIS should be revised to correct the significantly flawed analysis of the impact of the proposed regulation on the exploration sector. The revised documents should analyze the severe impacts that the proposed regulations would have on individual geologists and consultants, and disclose the long-term adverse effect that reduced exploration would have on mining.

CONCLUSION

In our June 1997 letter to Mr. McNutt, the WMC expressed concerns that the Secretary was using the 3809 rulemaking process to advance a political agenda. We have ongoing concerns that this is the case—especially in light of recent Department actions such as the Solicitor's opinion regarding millsite and lode claim ratio requirements. We believe the 3809 rulemaking process should be an opportunity for collaboration and constructive dialogue based on facts, science, and an honest assessment of the level of environmental protection and reclamation successes achieved under the *status quo.*

Political rhetoric will only detract from the outcome of this process. The Secretary's ongoing politicization of mining issues is unfortunate and inappropriate, and we hope in the future the Secretary and others can put aside politics to decide this important issue. One immediate action that the Secretary should take to reduce the political invective would be to extend the comment period on the Draft EIS until after the Natural Research Council/National Academy of Sciences (NRC/NAS) Committee on Hardrock Mining on Federal Lands has completed their Congressionally mandated study. The Secretary's current schedule ignores Congress' desire that the results of the NRC/NAS study be incorporated into the final rule, and wastes the $800,000 of taxpayers' money earmarked for the study.

Due to the unreasonably rushed public comment period, the WMC has not had sufficient time to complete our review of the significant volume of materials furnished with this rulemaking. Therefore, the absence of specific comments in this letter should not be construed as agreement with any of the issues or concepts presented in the Draft EIS, the Initial Regulatory Flexibility Act, the proposed rule or any other BLM materials associated with this rulemaking.

Sincerely,

Ann Carpenter
President

Barbara Sullivan
Secretary

Dominique Cone
Vice President

Debra Struhsacker
Author of Letter

Laurabelle Minser
Treasurer

Attachment: WMC June 18, 1997 letter to Mr. Paul McNutt, 3809 EIS Team Leader

Mr. Paul McNutt, 3809 EIS Team Leader
Bureau of Land Management, Nevada State Office
850 Harvard Way
Reno, NV 89502-2055

Dear Mr. McNutt:

INTRODUCTION

The Womens Mining Coalition (WMC) is a grassroots organization of women involved with the hard rock mining industry. Our membership is comprised of women working in many facets of the mining industry including geology and exploration, engineering, business and management, mining and heavy equipment operation, equipment manufacturing, and sales of goods and services to the mining industry. We have over 437 members located from coast to coast in 36 different states.

The WMC is keenly interested in the Department of Interior, Bureau of Land Management's (BLM's) current efforts to revise the 43 C.F.R. Subpart 3809 regulations ("the 3809 regulations") because many of our members work at mines located on BLM-administered lands, and a number of our members work for companies that provide equipment, goods and services to mines on BLM lands. Based on first-hand experience, many WMC members can attest to the success which the 3809 regulations have had in promoting environmentally responsible mining and effective reclamation of mines on BLM-administered lands.

The WMC welcomes this opportunity to provide comments to the BLM regarding the agency's proposal to revise the 3809 regulations. We are responding to the issues raised in the March 1997 materials from the BLM's 3809 Task Force that outline issues to be considered during the proposed scoping and revision of the 3809 regulations, and to comments made by Secretary Babbitt in his January 6, 1997 memorandum to the Assistant Secretary, Land & Minerals and the Acting Director, BLM.

In developing our comments, we have relied on our members' experience in working on mining and mineral exploration projects on BLM lands, and have given special consideration to the following:

- The strength, comprehensive nature, and proven track record of the 3809 regulations;
- The level of environmental protection and the reclamation achieved under the current regulatory framework applicable to mining, including the 3809 regulations;
- The lack of any compelling justification or need identified by the BLM that would warrant modification of the 3809 regulations;
- The shortcomings of the BLM's scoping efforts and the inappropriateness of the BLM's plans for concurrent development of both the Draft Environmental Impact Statement (DEIS) and the revised 3809 regulations;
- The alternatives and issues we feel need to be evaluated in the DEIS; and
- Our concerns that the effort to revise the 3809 regulations not be misused as a political process.

COMMENTS ON THE ISSUES RAISED BY SECRETARY BABBITT AND THE 3809 TASK FORCE SCOPING MATERIALS

Definition of Unnecessary or Undue Degradation

Many WMC members have direct experience in working under the 3809 regulations and implementing measures at the mine sites at which they work to prevent unnecessary or undue degradation. It is our collective experience that the unnecessary or undue degradation clause of the 3809 regulations has proven to be a comprehensive mechanism that effectively mandates environmental protection. Given the level of environmental protection required by this clause, the impressive track record of the industry's compliance with this standard, and the numerous examples of environmentally responsible mining and outstanding reclamation at mines developed since 1981 under the jurisdiction of the 3809 regulations, we find no justification whatsoever to modify the definition of unnecessary and undue degradation.

Our members find that the unnecessary and undue degradation definition specified in 43 C.F.R. §3809.0-5(k) requires stringent, comprehensive, and appropriate levels of environmental protection for the following reasons:

- The definition states "Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation." This requirement to comply with other state and Federal environmental regulations is an effective built-in mechanism for continually updating the 3809 regulations by incorporating all other relevant environmental laws and regulations simultaneously with their enactment.

• The requirement to comply with "applicable environmental protection statutes and regulations" automatically encompasses all environmental performance standards, including technology-based standards from other environmental and reclamation laws, as well as financial assurance requirements mandated in state and Federal laws and regulations.

• The current definition appropriately implies a site-specific environmental performance standard. Retention of this site-specific concept is critically important to ensure that environmental and reclamation measures employed at mines on BLM-administered land are responsive to site environmental conditions. The enormous diversity of climate, terrain, geology, and the biologic and social environments at mines on BLM-administered lands throughout the country demands a site-specific performance standard that gives the BLM the necessary regulatory flexibility and discretion to make custom-tailored decisions appropriate for the site under consideration.

• The current definition is a rigorous standard that demands comprehensive environmental protection and reclamation at mines on BLM-administered land. The BLM's ability to make site-specific decisions about mines in no way lessens the mining industry's burden of compliance compared to other industries. Like all industries, the mining industry must comply with all applicable state and Federal environmental protection laws and regulations because all mines operate under the umbrella of these provisions in addition to the 3809 regulations.

• Secretary Babbitt's January 6, 1997 memorandum on the 3809 regulations advocates modifying the 3809 regulations to include a new standard mandating the use of "best available technology and practices." Any modification of the 3809 regulations to include a best available technology and practices standard would be inappropriate because it would not improve environmental performance, add any extra measure of environmental protection, or achieve better reclamation at mines on BLM-administered land. To the contrary, the one-size-fits all approach implicit in the best available technology standard would result in inferior reclamation because there is no best universal approach to reclamation. Superior reclamation can only be achieved if the BLM and mine operators retain the ability to custom-tailor reclamation measures to fit site-specific environmental conditions. The wide range of environmental conditions on BLM-administered lands throughout the country demand the flexibility currently provided by the unnecessary and undue degradation definition.

The 5-Acre Threshold for Notice Level Activities

The BLM must retain a process that allows for rapid review and authorization of mineral exploration activities in order to remain in compliance with the provisions of §2 of the Mining and Mineral Policy Act of 1970, § 102(a)(7),(8), and (12) of the Federal Land Policy and Management Act of 1976 (FLPMA), and the 3809 regulations that direct the Department of Interior to encourage the development of Federal mineral resources and reclamation of disturbed lands. For example, 43 U.S.C. §3809.0-1(a) states that one of the objectives of the 3809 regulations is to:

> "Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary and undue degradation and provide protection of non-mineral resources of the Federal lands;"

Many WMC members are exploration geologists actively engaged in mineral exploration efforts on BLM-administered land and thus have direct and extensive experience working under the Notice of Intent (NOI) 5-acre process. Based on this experience, we are unaware of environmental problems associated with exploration activities performed under NOIs.

The unnecessary and undue degradation performance standard mandated in the 3809 regulations applies to mineral exploration activities pursued under either an NOI or a Plan of Operations (PLAN). Thus compliance with all applicable environmental laws and regulations, and appropriate reclamation are requirements for both NOI and PLAN sites. Those WMC members who are exploration geologists, environmental coordinators, and reclamation specialists have been personally responsible for implementing reclamation measures and ensuring compliance with the unnecessary and undue degradation performance standard at numerous NOI sites throughout the country, and can attest to the environmental protection measures, standard of care, and reclamation efforts typically performed at NOI sites.

The BLM's scoping materials do not reveal any identified problems with the 5-acre NOI threshold. Absent any clearly stated problem with the 5-acre NOI threshold, and in light of the stringent environmental protection and reclamation requirements applicable to NOI sites, the WMC sees no justification whatsoever for chang-

ing the 5-acre NOI process for mineral exploration sites. Should the BLM have concerns regarding the limited number of mining operations that may be authorized under an NOI, the WMC recommends the BLM make specific comments regarding any issues or concerns affecting these operations, and confine the analysis of changes to the 5-acre NOI process to these types of sites.

It is critically important that the BLM retain a process to expedite the review and authorization of exploration-level activities. Weather constraints at exploration sites in a number of settings throughout the country severely limit the practical exploration season. Moreover, a number of stakeholders including but not limited to geologists, consultants, drilling contractors, analytical laboratories, and restaurant owners and motel/hotel operators in exploration areas earn a significant portion of their livelihood during this exploration season. Any changes to the review and authorization process for small and initial (i.e., under 5 acres) exploration efforts that result in significant delays in the approval process will adversely affect these stakeholders. With this in mind, a thorough analysis of the socioeconomic ramifications to these stakeholders of any proposed changes to the NOI review process must be included in the DEIS prepared to evaluate revisions to the 3809 regulations.

In evaluating any potential changes to the 5-acre NOI threshold, the BLM must consider its newly established (February, 1997) bonding requirements for NOI sites. It should be noted that the WMC strongly supports reclamation and appropriate financial assurance requirements at all mine and mineral exploration sites, regardless of their size. However, we strenuously object to the process—or in this case the lack of process, used by the Secretary to promulgate these new bonding requirements.

Time Frames for BLM Action on Plans of Operations

The WMC encourages the BLM to establish and comply with mandatory time frames for reviewing and approving PLANS. The mining industry is currently experiencing problematic delays in the BLM's PLAN approval process. For the most part, the delays are related to the time it takes the BLM to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA). At least some delays appear to be due to insufficient BLM staffing levels. Establishing clear regulatory deadlines should help define BLM staffing requirements.

The DEIS should evaluate the potential for further delays in the BLM's PLAN approval process if substantial changes are made to the 3809 regulations. This evaluation should assess the expanded BLM staffing levels that would be required to (1) avoid additional delays, and (2) to decrease the time required for BLM PLAN approval.

Coordination with the States

Coordination with state regulatory agencies is one of the stated objectives of the 3809 regulations and directives in the Secretary's January 6, 1997 memorandum. Specifically, 43 C.F.R. §3809.0-1(c) states the following:

> "Coordinate, to the greatest extent possible, with appropriate state agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations."

To satisfy this objective, and to minimize duplication among regulators as directed by the Secretary, the BLM must continue to work closely with state agencies because all of the western mining states have comprehensive environmental and reclamation regulations applicable to hard rock mining.

The WMC strongly encourages the BLM to continue to coordinate and cooperate with western state regulatory agencies, many of whom have significant and valuable experience in regulating the environmental aspects of hard rock mining. Many WMC members, having worked in a number of western states, have first-hand experience with the states' expertise and the current level of coordination between the BLM and the states. It is the WMC's opinion that the states and the BLM are working well together and that the mining operations under this joint state-Federal regulatory jurisdiction are complying with applicable environmental requirements and implementing successful reclamation measures. The WMC sees no reason to change these cooperative efforts.

Performance Standards

Because the unnecessary and undue degradation standard in the 3809 regulations mandates compliance with all applicable state and Federal environmental laws and regulations, hard rock mining operations on BLM land must already comply with a number of environmental performance standards. Mining operations developed under these regulations expend considerable resources complying with these re-

quirements. The 3809 regulations also establish another performance standard—the mandate to "Provide for reclamation of disturbed areas" [see 43 C.F.R. §3809.0-2(b)], but wisely and appropriately do not include prescriptive, one-size-fits-all reclamation performance standards.

Given the diversity of climate, terrain, geology, mineral deposit types and mining methods regulated under the jurisdiction of the 3809 regulations, uniform Federal reclamation performance standards would be completely inappropriate and would significantly diminish the quality of reclamation currently being achieved at hard rock mines on BLM lands. In 1979, the National Academy of Sciences performed an independent review of the hard rock mining industry and evaluated whether uniform, Federal environmental or reclamation standards would be appropriate. This study, known as the COSMAR Report, concluded that hard rock mining standards must be tailored to site-specific conditions in order to be responsive to the diversity of the environmental settings in which hard rock mining occurs in the U.S.

COMMENTS ON THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT DEVELOPED IN CONJUNCTION WITH THE REVISED 3809 REGULATIONS

Irregularities in the Public Scoping Process

In conjunction with revising the 3809 regulations, the BLM will be developing a programmatic EIS to evaluate the impacts associated with the proposed regulatory changes. The WMC feels it is imperative for the BLM to conduct a comprehensive and detailed analysis of the impacts of any proposed revision, and consider stakeholder issues, concerns, and comments. With this in mind, we support preparation of a programmatic EIS. However, the WMC has significant concerns regarding the BLM's public scoping efforts and plans for developing the EIS, and question whether these efforts and plans satisfy the spirit and obligations of NEPA.

A number of WMC members have considerable experience working with the BLM during preparation of NEPA documents for proposed mining projects on BLM land. This experience runs the gamut from project proponent to third-party consultant selected to prepare the NEPA document. The BLM's public scoping process and plans for developing the programmatic EIS do not conform with the public scoping process typically used by the BLM for mining projects, and in our opinion, may not fully comply with NEPA requirements for the following reasons:

- *The BLM Must State a Proposed Action Prior to Public Scoping*—The BLM's scoping documents do not include a definitive and specific Proposed Action statement. The absence of a specific Proposed Action statement makes it impossible for the public to provide substantive comments regarding the BLM's proposal. Thus, the scoping performed to date is generic in nature and does not satisfy NEPA requirements to allow the public to comment on the agency's proposal because none has been set forth.

The BLM Must Develop a Statement of Purpose and Need—In addition to lacking a Proposed Action, the BLM's scoping notice also does not provide a statement of Purpose and Need. The absence of a statement of Purpose and Need is another shortcoming with respect to NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 C.F.R. §1502.13) which state that every EIS must "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

The BLM must justify their proposal to revise the 3809 regulations. To date, the BLM has offered no compelling reason to change the regulations. In fact, the April 1992 BLM study of the 3809 regulations showed no need for any changes to the environmental or reclamation provisions of these regulations. Thus it appears there are no tangible or substantive reasons to modify the regulations. If the BLM is relying on any new information which might justify changing the 3809 regulations, this new information should be made available to the public.

The WMC questions the appropriateness of the BLM's proposal to revise these long-standing regulations that have been working well in light of the following: the large number of environmentally responsible mines developed under the 3809 regulations, the industry's good track record in complying with these regulations, the requirement at 43 C.F.R. §3809.0-5(k) that mining operations comply with all applicable state and Federal environmental and reclamation laws, and the complete absence of any stated need to modify the 3809 regulations.

- *The BLM Should Provide Additional Scoping*—To comply with NEPA, the BLM should hold additional scoping sessions following development of a draft proposal to revise the 3809 regulations to allow the public to comment on the specifics of the proposed changes to the regulations. As stated above, the scoping effort performed to date is generic in nature and insufficient to allow public input on the proposed regulatory changes.

• The BLM Should Prepare the DEIS After Public Scoping on the Draft Revisions to the 3809 Regulations

As stated in the March 12, 1997 memorandum from Sylvia Baca, Acting BLM Director, to Bob Armstrong, Assistant Secretary, Lands and Minerals Management, the BLM plans to develop the Draft EIS (DEIS) concurrently with developing the proposed revisions to the 3809 regulations. The WMC feels this is a completely inappropriate aberration of the NEPA process. NEPA provides the public both a right and an orderly process for commenting upon major Federal actions. The simultaneous preparation of the DEIS and the revised regulations puts the cart before the horse, denies the public the right to comment on a specific proposed action, and is a significant departure from the typical public NEPA review process.

The DEIS should evaluate the impacts of the proposed revisions to the 3809 regulations and should consider and respond to public issues, comments, and concerns about the proposed revisions. Therefore, the DEIS should not be prepared until after the public has had an opportunity to review and comment upon the BLM's draft proposal for revising the 3809 regulations.

Alternatives and Issues to be Evaluated in the DEIS

The WMC supports preparation of a DEIS that comprehensively evaluates the range of alternatives to revising the 3809 regulations, and thoroughly analyzes the impacts associated with each alternative. With this in mind, we offer the following comments and suggestions:

The DEIS Must Include a Detailed Discussion of the No Action Alternative—The DEIS must include a substantive and thorough analysis of the No Action Alternative to evaluate the level of environmental and reclamation regulatory requirements that would be applicable to future mining projects on BLM lands with no changes to the 3809 regulations. The No Action Alternative must consider existing state and Federal regulatory programs and the BLM's existing authority and recent use of this authority to modify the 3809 Regulations through policy guidelines and rulemaking on selected topics (e.g., the development of BLM policy guidance on acid rock drainage and cyanide, and new occupancy and bonding rules).

• *The DEIS Must Analyze the Wide Range of Sites and Mines Regulated Under the 3809 Program* There is an enormous diversity of climate, terrain, geology, mineral deposit types, and mining methods represented by mine sites on BLM lands. Both the Affected Environment and Environmental Consequences chapters of the DEIS must give full and equal weight to the many different types of environmental settings and mines, and provide a separate analysis of the impacts that would occur at these different settings and mines if the various alternatives considered in the DEIS were implemented.

• The DEIS Must Include a Detailed Analysis of State and Other Federal Environmental Laws and Regulations Affecting Mining—The Affected Environment chapter of the DEIS should also include a detailed discussion of the many state environmental and reclamation regulatory programs and Federal laws and regulations affecting mining. The Environmental Consequences chapter should assess how these programs would be affected due to implementation of the DEIS alternatives. In particular, this analysis should quantify impacts to state mine land reclamation programs and Federal environmental regulatory programs for which the states have primacy. Because many of these state regulatory programs were developed after enactment of FLPMA and development of the 3809 regulations, the DEIS should acknowledge the evolution of these programs and the coordination that has developed between the BLM and state mine land reclamation and environmental regulatory agencies.

Based on information provided to date, the BLM has not identified any gaps between the 3809 regulations and state mine land reclamation and environmental programs. The DEIS should assess whether any such gaps exist. If gaps are identified, proposed changes to the 3809 regulations should evaluate ways to fill the gaps. If this analysis reveals no gaps between state programs and the 3809 regulations, few if any revisions to the 3809 program are warranted—otherwise, the Secretary's directive to minimize duplicative regulations will not be satisfied.

• *The DEIS Must Include a Detailed Analysis of Socioeconomic Impacts*—Any changes to the 3809 regulations that could result in significant delays in approving future mineral exploration and mining PLANS could cause adverse economic and social impacts to mining communities, state economies, and other stakeholder groups including geologists, consultants, drilling contractors, analytical laboratories, and restaurant owners and motel/hotel operators in mining and exploration areas who derive a substantial portion of their income working for or providing goods and services to the hard rock mining industry. The Affected Environment chapter of the DEIS must acknowledge and quantify the

positive social and economic impacts associated with mining. The Environmental Consequences chapter must disclose any positive or adverse social and economic impacts that would result from implementation of the DEIS alternatives. This analysis must be site specific; a generic or national evaluation will not adequately assess the impacts to local communities and regional economies.

Additionally, the DEIS must evaluate the economic impacts that proposed changes in the 3809 regulations would have on mining equipment manufacturers and companies that provide goods and services to the mining industry. Many of these companies are located in parts of the country not typically considered mining states such as Wisconsin (P & H Mining Equipment and Nordberg), Illinois (Caterpillar), New Jersey and Texas (Ingersoll Rand), etc. The continued existence of thousands of jobs in these states relies on a strong mining industry in the western U.S. The DEIS must thoroughly evaluate the economic consequences to these workers and to their state economies caused by changes to the 3809 regulations.

• *The DEIS Must Consider Specific Impacts to Notice-Level Qperators*—The Secretary's directive to repeal, narrow, or otherwise modify the 5 acre NOI process will have a direct and focused impact upon individuals, small operators, and companies who perform most of their mineral exploration and/or mine development work under an NOI. The DEIS should include a separate socioeconomic analysis of the impacts of the proposed changes upon this groups of stakeholders. Because most mineral discoveries start as NOI-level exploration projects, the DEIS must also evaluate the impact that elimination of the NOI process or delays in the NOI approval process would have on the rate of discovery, and the impact to local, regional and national economies as a result of diminished levels of exploration, discovery, and mine development.

• *The DEIS Must Consider Cumulative Impacts*—The DEIS must evaluate the cumulative impacts of any proposed changes to the 3809 regulations with respect to other connected actions including but not limited to the EPA's proposed National Hard Rock Mining Framework, the BLM's recent use and occupancy regulations, the BLM's new bonding regulations, other EPA initiatives such as the recent addition of the hard rock mining sector to the Toxic Release Inventory (TRI) reporting requirements and potential changes to the RCRA Bevill exclusion for certain mining wastes, and changes to the Mining Law of 1872 being contemplated by Congress. This analysis should evaluate the cumulative impacts of changes in the 3809 regulations in conjunction with potential changes in royalties, fees, taxes, reporting requirements, and a plausible range of future regulatory developments.

• *The DEIS Must Consider Impacts to Minerals Availability*—Changes to the 3809 regulations that result in significant delays in the PLAN and NOI approval processes may have an adverse impact on the supply of domestic hard rock minerals. The DEIS should evaluate the impact that revisions to the 3809 regulation would have upon minerals availability, and the potential for increased reliance on foreign mineral supplies. This analysis should consider the balance of foreign trade payments as a result of decreases in domestic mineral production. Similarly, the DEIS should consider how the 3809 regulations could be modified to encourage and facilitate mining on BLM lands and the resulting positive economic effects of increased mineral exports and decreased mineral imports.

• *The DEIS Must Consider Impacts to Existing Operations*—The DEIS must evaluate how existing operations would be affected by proposed changes to the 3809 regulations. The WMC encourages the BLM to develop a grandfathering alternative applicable to all existing operations. In the unfortunate event that the revised 3809 regulations mandate prescriptive performance standards, some element of grandfathering is necessary for both existing sites and sites at which a PLAN modification is filed in the future because it may be impossible or impractical to retrofit existing operations to comply with new standards.

• *The DEIS Should Consider Alternatives to Facilitate Mining and to Create Reclamation and Environmental Incentives*—Although the Secretary's January 6, 1997 memorandum does not contemplate changes to the 3809 regulations to facilitate mineral exploration and mine development or to create incentives for reclamation and remediation of abandoned mines, a number of beneficial social and economic impacts on the local, regional, and nation levels could accrue from selected changes. The WMC believes that regulatory changes to streamline the review process and stimulate clean-up of abandoned mines would significantly enhance mineral exploration levels without compromising the high level of environmental protection and reclamation success realized under the present regulatory system. The WMC strongly urges the BLM to expand the scope of the

DEIS to evaluate revisions to the 3809 regulations to encourage and facilitate environmentally responsible mining and reclamation of abandoned mines.

CONCLUSION

The WMC appreciates this opportunity to provide comments to the BLM, and we look forward to what we hope will be a cooperative EIS process that includes additional opportunities to comment on proposed changes to the 3809 regulations. We are also hopeful that this process not become a political forum. We believe this should be an opportunity for collaboration and constructive dialogue based on facts, science, and an honest assessment of the level of environmental protection and reclamation successes achieved under the status quo. Political rhetoric can only detract from the outcome of this process. With this in mind, we are concerned that the Secretary's statement in his January 6, 1997 memorandum regarding Congress' failure to enact legislation reflects a political agenda. This politicization is unfortunate and inappropriate, and we hope in the future the Secretary and others can put aside politics to decide this important issue.

Sincerely,

Ruth Carraher
President

Susie Patton
Treasurer

Teresa Conner
Secretary

Debra Struhsacker
Author of Letter