EFFECT OF MINING CLAIM FEES ON DOMESTIC EXPLORATION: ARE THEY WORTH IT?

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

March 29, 2001

Serial No. 107-12

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

71-409 PS WASHINGTON : 2001

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EFFECT OF MINING CLAIM FEES ON DOMESTIC EXPLORATION: ARE THEY WORTH IT?

Thursday, March 29, 2001
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 2:40 p.m., in Room 1324, Longworth House Office Building, Hon. Jim Gibbons, presiding.

Mr. GIBBONS. [Presiding.] The Subcommittee on Energy and Mineral Resources will come to order.

The Chairwoman, Barbara Cubin, is detained. She will be here momentarily and we are going to get this hearing underway. I want to welcome the ranking member, Mr. Rahall of West Virginia, and all the witnesses here today who are going to testify.

For the record, without objection, in order to make things flow a little more smoothly, I would like to enter into the record two letters, a letter from Mr. William Kohlmoos of Reno, Nevada, dated March 22nd, relating to the effect of mining claim fees on domestic exploration, and the letter from the Esmeralda County Board of Commissioners, dated March 21st, regarding the effect of mining claim fees on revenue streams for the county.

[The letters follow:]

WILLIAM B. KOHLMOOS
P.O. Box 50300
Reno, Nevada 89513

(775) 786-8082 e-mail: kohlmoos@accutek.com

March 22, 2001

Barbara Cubin, Chairman
Sub Committee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, D. C. 20515

Subject: Written Testimony for the Hearing on The Effect of Mining Claim Fees on Domestic Exploration – Are They Worth It?

I. INTRODUCTION:

A study conducted in 1975 by Angus MacDonald, geologist, determined that of 1,500 producing mines in Vancouver, Canada, 1,498 had originally been discovered by individual prospectors and two by geologists representing a mining company.

I am a prospector. I graduated as a science major from the University of California, and started prospecting for minerals in 1948 in Alaska, Canada, Mexico, and the United States. For 45 years my work in the exploration field provided a living. I was a typical prospector, in the field all the time, never wealthy, and often without adequate personal income. Minerals exploration expenses, including drilling, can easily add up to hundreds of thousands of dollars, and on occasion to millions of dollars. I had to pay these expenses from my income. Over the years I managed to earn a modest income and continue my exploration work.

My discoveries included eight properties which became producers and contributed to the economy of the United States. Three of these were barite mines. Barite is essential to the oil well drilling industry. My mines contributed substantially to the production of gasoline for your cars.

I also discovered a body of nickel, cobalt, and chrome, all of which are critical to the economy of the country. In addition I discovered three producing gold mines.

A prospector must look for years, and sometimes for a lifetime, to discover a single mineral showing. Then he must stake 100 to 500 or more mining claims to cover the area. Next comes the expense of conducting geochemical and geophysical mapping, and drilling to block out the ore body. Quite often there is nothing there and the investment is lost. He restores the land and abandons the property and his investment, and goes out in the field looking for another prospect. In one case in maybe 500 he discovers an ore body. By law, his monetary investment of work in the ground in order to prove and develop the property was considered his payment to the government for the right to stake and mine the minerals on the claim. And if he produced minerals he paid the government by means of the federal income tax.

Environmentalists argued that the law was not obeyed, and that claim holders did no work on their claims. They also charged the miners with using mining claims for growing marijuana.

These were both lies. The truth is that if a miner filed a false affidavit he would be guilty of a felony, and nobody I ever saw in my life grew marijuana on a mining claim. Either method for breaking the law could have been done in an extremely rare case, but neither was a practice of or accepted by the mining community.

The environmentalists also argued that a miner could actually buy the ground from the government for $2.50 per acre. This was an absurd lie. The BLM issued a report a few years ago that a mining company would spend about $45,000 per acre to get title to the ground. The $2.50 was payment only for the final piece of paper.

II. BUREAU of LAND MANAGEMENT TAX

In 1993 a rider was attached to a Senate Bill in Congress which gave the U. S. Bureau of Land Management authority to tax the holder of a Lode Claim. The BLM decided to charge $100 per claim per year and made the tax retroactive the first year, plus the coming year's tax, for a total of $200 per claim, with very little advance notice. The BLM also ruled that when a person paid the tax he didn't have to do any work on the ground to hold the claim.

At that time I personally owned 1,100 Lode Claims which I was developing, hoping to prove an economic ore body. In order to maintain my position under the new law I would have had to pay the BLM $220,000 that first year and $110,000 each year thereafter. This money would in no way develop the ground. It was tax money, lost from sight forever.

It would make no sense to just pay this large tax to the BLM year after year, and never do any development work on the ground to see if the claims were worth holding. Therefore, expensive exploration work and drilling would have to be done in addition to paying the tax. In my case, as an independent prospector, the total could easily have reached a half million dollars that first year, and a quarter million dollars each year after.

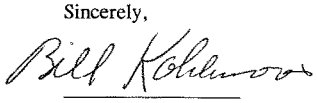
In addition, at the same time, the BLM imposed dozens of new rules requiring studies and permits costing hundreds of thousands of dollars, before a person could move a shovel-full of dirt to see what was underneath. These rules, plus the tax, wiped me out of business. I lost my claims. I am no longer a prospector. Many other prospectors, exploration geologists, and mining companies were also forced out of business.

III. CONCLUSION

I strongly oppose any such Mining Claim tax as being destructive to the minerals industry, and consequently to the economic health of the United States, for without minerals no country can exist.

I am requesting that this tax on lode mining claims be completely eliminated and the previous method of performing work to improve the ground be reinstated.

Sincerely,



Bill Kohlmoos

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March 21, 2001

The Honorable Jim Gibbons
United States House of Representatives
100 Cannon House Office Building
Washington, DC 20515

Dear Congressman Gibbons,

Thank you for taking the time out of your busy schedule on March 11th to discuss several important Esmeralda County issues. Per your request, I've prepared a summary concerning the adverse impacts of the annual mining maintenance fee imposed by the Bureau of Land Management (BLM).

The 1872 Mining Act required miners to spend a minimum of $100 every year in assessment work on each of their claims. Assessment work included exploration and development of mineralized zones and deposits, improvements to roads, development of water systems and exploration of additional water sources. This fee had the effect of increasing the value of mining properties and improving local economies and infrastructures.

On August 10th 1993, Congress enacted a law that required mining companies to pay an annual $100 maintenance fee per claim to the Bureau of Land Management in lieu of conducting assessment work. Prior to the new law, assessment work on a group of contiguous claims could be performed on a single claim, as long as $100 worth of labor was performed for each of the total number of claims. The $100 per-claim maintenance fee imposed in the new law led to the abandonment of many claims and diminished mineral exploration that would have otherwise been conducted.

The adverse impacts of the Act of 1993 have been significant to the economies of virtually every rural county in Nevada that relies on mining as a major industry. The following is a summary of impacts:

- Exploratory drilling on unpatented mining claims has almost completely diminished. Mineral exploration helped create jobs in the community and provided revenue for local businesses.

COURTHOUSE, P.O. BOX 517, GOLDFIELD, NEVADA 89013

- The increased costs of mining claims have discouraged independent miners from moving into at risk communities such as Goldfield.

- The number of mining claims filed with the County has decreased dramatically. The Act of 1993 resulted in a sixty-percent reduction of claims filed in the County and a loss of revenue generated from those claims.

- Local businesses have lost revenue. Prior to the Act of 1993, mining companies would hire consultants to help assess their claims. These consultants would stay in local hotels, eat at local restaurants and fill their vehicles at local gas stations.

- Redistribution of funds from the maintenance fee does not benefit rural counties with low populations. The Bureau of Land Management provides a small fraction of the money it receives from mining companies to the State of Nevada. This money is redistributed to the counties based on population. The under-populated rural counties that host the mines see virtually no return, while counties with large populations and fewer mines receive a greater percentage.

While Esmeralda County considers the preservation of the environment important, the existing laws are more than adequate to protect it. The 1993 Act does not help the environment, but only proves detrimental to local economies.

We greatly appreciate your concern and assistance in addressing this important matter of public policy. Esmeralda County residents feel that by repealing the Act of 1993, the economic conditions of the County would be improved.

Sincerely,

Chairman Ben Viljoen
Esmeralda County Board of Commissioners

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

Mr. GIBBONS. Before we begin, I think it's important that we set the stage on what this hearing is about. This is an oversight hearing on the effect of mining claim fees on domestic exploration.

Personally, I have a problem with some of the rhetoric that's being used out there to portray everything about the mining industry in the worst possible light, while at the same time failing to acknowledge that mining provides a substantial benefit, both individually and to our society as a whole. Without mining, and the knowledge of how to use metals, we would still be living in the Stone Age.

World War II has been termed a "war of copper mines and steel mills". Using raw materials produced by miners, American industry was able to produce enough war materials for itself and our allies, and because of that, America became the arsenal of democracy and, in large part, the mining industry was able to produce raw materials in record amounts.

Much of the environmental damage from mining was done during this time when our ability to produce energy and metals for the war effort would determine our future as a free Nation. I think I would rather deal with this environmental damage than with the consequences of losing World War II.

As a result, I think our mining industry has been given a black eye. I think today's technology in mining is certainly vastly different than it was of yesterday, and hopefully we can enlighten the public and enlighten the Committee with your testimony here today, with regard to this very issue which has an effect on the United State' resources and its ability to maintain this country as the number one country in the world.

Mr. GIBBONS. With that, I would turn to my friend, Mr. Rahall, for any opening remarks he may have.

STATEMENT OF HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. Chairman, I just want to state at the outset that the title of this hearing, certainly, in my mind, does not suggest any intention to give this subject matter an objective overview or review. I mean, look at the title. "Effects of Mining Claim Fees on Domestic Exploration: Are They Worth It?" Obviously, that leads one to believe there is a predisposition toward these fees—not worth it, whatever "it" may be.

I simply wanted to point this out to set the stage here. In my view, one focus of this hearing should be on the beneficial effect that the mining claim holding fee has had on reducing speculation on public domain lands. Another focus should be on how the fee provides for at least some, albeit minimal, return to the American people for the use of their lands. But that is perhaps not going to be the case today.

This hearing apparently is intended to be a forum to disparage the fees on the basis of some relatively minor discrepancies in BLM's accounting for how it used fee receipts.

The fact of the matter is that the mining claim holding fee was first put into effect during Fiscal Year 1993, and was reauthorized by an appropriations bill through the end of this fiscal year.

It would seem to me that sufficient time has passed for the industry to become accustomed to this fee. And it would seem to me that paying this fee, instead of digging up $100 worth of dirt under the mining law's assessment work requirement, is a more efficient way to operate.

Now, I happen to think that the authorizing committees of Congress should do their job. That's this Committee. That's why I introduced H.R. 1085, to make this holding fee permanent.

Certainly, when you look at the Bush budget blueprint, it becomes apparent that many Interior Department programs are going to be squeezed—to probably put it mildly. Under that circumstance, I see no reason why the mining industry should notfinance a portion of the costs associated with administering the mining law program.

Further, I see no reason why this Committee, the authorizing committee, should not do its job and move this legislation, rather than sit idly by while the appropriators do our jobs for us.

Thank you.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick Rahall, Ranking Democrat, Committee on Resources

At the outset, I would note that the title of this hearing does not suggest any intention to give the subject matter an objective review. Titling this hearing—Effects of Mining Claim Fees on Domestic Exploration: Are They Worth It? obviously leads one to believe there is a predisposition toward these fees not worth it. . . . . whatever it may be.

I simply wanted to point this out to set the stage here. In my view, one focus of this hearing should be on the beneficial effect the mining claim holding fee has had on reducing speculation on public domain lands. Another focus should be on how the fee provides for at least some albeit minimal return to the American people for the use of these lands. But that is perhaps not going to be the case. This hearing apparently is intended to be a forum to disparage the fees on the basis of some relatively minor discrepancies in BLM's accounting for how it used fee receipts.

The fact of the matter is that the mining claim holding fee was first put into effect during Fiscal Year 1993, and was reauthorized by an appropriations bill through the end of this fiscal year. It would seem to me that sufficient time has passed for industry to have grown accustomed to this fee. And it would seem to me that paying this fee, instead of digging up $100 worth of dirt under the Mining Law's assessment work requirement, is a more efficient way to operate.

Now I happen to think that the authorizing committees of Congress should do their job. That is why I introduced H.R. 1085 to make this holding fee permanent. Certainly, when you look at the Bush Budget Blueprint, it becomes apparent that many Interior Department programs are going to be squeezed. Under that circumstance I see no reason why the mining industry should not finance a portion of the costs associated with administering the mining law program. And I see no reason why this Committee, the authorizing committee, should not do its job and move this legislation rather than stand idly by while the appropriators do our jobs for us.

Thank you.

Mr. GIBBONS. Thank you, Mr. Rahall.

Right now I would like to introduce the two witnesses that are on the panel before us. We have with us the Director of Financial Management and Assurance from the U.S. General Accounting Office, Linda Calbom, and Deputy Assistant Director, Minerals, Re-

alty and Resource Protection, U.S. Bureau of Land Management, Mr. Robert Anderson.

Miss Calbom, the floor is yours. Welcome.

STATEMENT OF LINDA M. CALBOM, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, U.S. GENERAL ACCOUNTING OFFICE

Ms. CALBOM. Thank you. Mr. Vice Chairman and members of the Subcommittee, I am happy to be here today to discuss certain cost charges made to the Bureau of Land Management Mining Law Administration Program. I will refer to the program as MLAP as I go through my short statement here.

We last reported on this program about a year ago, when we briefed Subcommittee staff on BLM's administration and use of mining maintenance fees. That work resulted in BLM undertaking a review of its contracts and services charged to MLAP to determine if improper charges of this nature had been made to the program.

In addition to that, the Subcommittee asked that we review labor charges to MLAP, which make up the bulk of the costs of the program, and also, to take a look at the methodology that BLM used in its review of MLAP charges for contracts and services. And finally, we determined whether BLM employees were aware of the sources of MLAP funding.

My statement today will focus on the results of our work in these three areas. There is a detailed discussion of our findings in our report that is actually being released today.

As far as our review of the labor charges, we performed a survey of BLM employees who charged labor to the program during the first 10 months of Fiscal Year 2000. This review covered nine administrative states and offices which reported obligations of over $23 million in Fiscal Year 2000. That's about 72 percent of the total obligations for the program.

As you can see from Chart 1 that we have here—hopefully you can see it. If not, those of you who can't, it's attached to the back of my statement. About half of the employees reported working and charging the same amount of time to the program, which is as it should be. However, almost 39 percent reported that they charged more time to the program than they actually worked, while only about 11 percent reported charging less time than actually worked.

These improper charges mean that BLM's financial records do not reflect the true cost of the program. They are also in direct conflict with BLM's policy, which stresses—and I will quote—"Charging work tasks, employee salaries, procurement or contract items, or equipment purchases to any subactivity other than the benefiting subactivity, violates the terms of the Appropriations Act." It's pretty clear.

Based on our survey sample, we estimated a net overcharge to the program of almost 11 percent for the 10-month period that we looked at, resulting in a potential overcharge of about $1.2 million for the nine offices included in our review. Our analysis of BLM records also showed that certain employees received bonuses and awards from MLAP funds for work unrelated to mining.

BLM's policy is that any bonuses and awards received as a result of labor performed should be charged to the subactivity that benefited from the labor, which makes sense. However, awards were given to individuals for tasks unrelated to MLAP operations, including assisting in the moving of a BLM office to a new facility, and as compensation for not using BLM's relocation service when selling a private residence as part of a lateral transfer.

As far as the review BLM did of its contracts and services, our earlier work had indicated some problems in this area. So BLM reviewed contracts and services over $1,500 that were charged to the program during fiscal years 1998 and 1999. We found that the methodology BLM used was appropriate and thorough, and that it did identify the majority of contracts and services improperly charged to the program during that time.

The contracts that were reviewed represented over $8 million, or almost 90 percent of the total contracts and services obligated to the program during that time period. Of that, BLM determined that about $716,000 in contracts and services should not have been charged to the program.

The improper payments, as shown in Chart 3 which we have here, included things such as $34,000 for janitorial services, which actually represented a full year's contract cost for these services in a field office that only was partially involved in MLAP; $30,000 for the appraisal of Federal coal leaseholds, which, of course, isn't included in the program; $25,000 for an attorney in an EEO settlement for an employee who had not worked on MLAP tasks; and $2,000 for a habitat survey of a threatened and endangered species of butterfly in an area with no active mining.

Although BLM has taken appropriate steps to correct these past improper charges of contracts and services to MLAP, it has not established specific procedures to prevent the recurrence of similar improper charges in the future.

Finally, as was requested, we asked in our survey whether BLM employees were aware of the source of MLAP funding. The short answer is no. Approximately 70 percent stated they were not aware of the source of the funding.

We made a number of recommendations in our report to address the issues I have discussed here today, but the bottom line is, until BLM makes some significant changes, there will continue to be a high likelihood of improper use of MLAP funds, and little reliance can be placed on the accuracy of reported MLAP cost information.

That concludes my statement, Mr. Vice Chairman.

[The prepared statement of Ms. Calbom follows:]

Statement of Linda M. Calbom, Director, Financial Management and Assurance, U.S. General Accounting Office

Madam Chairman and Members of the Subcommittee: I am pleased to be here today to discuss our review of certain charges made to the Bureau of Land Management's (BLM) Mining Law Administration Program (MLAP). Accurate cost information is crucial for proper program management and is especially important for MLAP since this program is partially funded through mining fees that the Congress has designated to be used only for mining law administration operations.

We last reported on this program a year ago when we briefed your office on BLM's administration and use of mining maintenance fees. That work resulted in BLM undertaking a review of its contracts and services charged to MLAP in the previous two fiscal years and identifying some improper charges to that program. Our prior

work also led to your request that we (1) review labor charges to MLAP during the first 10 months of Fiscal Year 2000, (2) review the methodology that BLM used in its review of MLAP charges for contracts and services during fiscal years 1998 and 1999 and evaluate its approach for correcting improper charges, and (3) determine whether BLM employees were aware of the sources of MLAP funding.

My statement will focus on the results of our work in these three areas. A detailed discussion of our findings is contained in our report Bureau of Land Management: Improper Charges Made to Mining Law Administration Program (GAO–01–356), which is being released today.

In brief, BLM employees we surveyed disclosed that many of the hours charged to MLAP during the first 10 months of Fiscal Year 2000 did not accurately reflect hours actually worked on MLAP. Based on our survey sample, we estimate a net overcharge of almost 11 percent for the 10 month audit period, resulting in a potential overcharge of about $1.2 million [1] for the nine BLM administrative states [2] and offices included in our review.

BLM's review of contracts and services over $1,500 that were charged to MLAP during fiscal years 1998 and 1999 employed a methodology that was appropriate and identified the majority of the contracts and services that were improperly charged to MLAP operations during that time period. Specifically, BLM determined that about $716, 000 in contracts and services should not have been charged to MLAP. Finally, in response to our survey, approximately 70 percent of BLM employees stated they were either not aware of the source of MLAP funding or did not know that the program is partially funded by fees collected from miners and designated for MLAP operations.

To address the weaknesses identified through our work, we have made recommendations to BLM intended to create more specific criteria and clearer policies related to the use of MLAP funds.

BACKGROUND

BLM's MLAP is responsible for managing the exploration and development of locatable minerals on public lands. Locatable minerals include the so-called ″hardrock minerals,″ such as copper, lead, gold, silver, and uranium. MLAP operations include activities such as:

- reviewing and approving plans and notices of mining operations,
- conducting inspections and enforcement to ensure compliance with the terms of plans and notices of operation and related state and local regulations, and
- identifying and eliminating cases of unauthorized occupancy of mining claims.

MLAP operations do not include work on nonlocatable or common variety minerals, such as sand or gravel, or oil and gas work.

The program is funded through mining fees and by appropriations to the extent that the fees are inadequate to fund the program. [3] Since 1993, mining fees have included an annual $100 mining maintenance fee on unpatented mining claims and sites and a $25 location fee on new claims and sites. The maintenance fees are collected in lieu of the annual $100 worth of labor or improvements (also called ″assessment work″) required by the Mining Law of 1872. The authorization for these fees expires on September 30, 2001.

SOME LABOR COSTS WERE IMPROPERLY CHARGED TO MLAP

Our survey of BLM employees showed that the number of hours charged to MLAP were not a reliable record of the number of hours actually worked on the program. According to employees, the number of hours charged to MLAP were often in excess of the number of hours worked on MLAP issues, or were charged for work unrelated

[1] Since this figure is derived from sample data, it is subject to sampling error. Taking this random variation due to sampling into account, we are 95 percent confident that the actual overcharge ranges between $0.6 and $1.9 million. This result offers assurance that a net overcharge for MLAP occurred for the survey period.

[2] Administrative states are BLM's administrative offices, which in some cases have jurisdiction over areas beyond the boundaries of the state named. Our work examined 9 of BLM's 18 administrative states and offices.

[3] BLM has general statutory authority to use receipts from mining fees for MLAP operations. Annual appropriations acts establish an amount of BLM's appropriation for Management of Land and Resources (MLR) to be used for MLAP operations. The appropriations acts require, however, that the mining fees that BLM collects be credited against the MLR appropriation until all MLR funds used for MLAP are ″repaid.″ To the extent that fees are insufficient to fully credit the MLR appropriation, the MLR appropriation absorbs the difference and therefore partially funds MLAP.

to mining. In addition, some employees received bonuses or awards from MLAP funds although they charged no hours to the program.

Our survey population consisted of BLM employees who charged labor hours to MLAP during the first 10 months of Fiscal Year 2000. The nine administrative states and offices included in our review reported MLAP obligations of over $23 million in Fiscal Year 2000, representing approximately 72 percent of total reported MLAP obligations. In this survey population, about one- half of the employees reported working and charging the same amount of time to the program. However, almost 39 percent reported that they charged more time to MLAP than was actually worked, while only about 11 percent reported charging less time to MLAP than was actually worked. These results are summarized in Attachment 1.

These improper charges to MLAP mean that BLM's financial records do not reflect the true cost of the program. They are also in conflict with BLM's policy, which stresses that ″Charging work tasks, employee salaries, procurement or contract items, or equipment purchases to any subactivity other than the benefiting subactivity violates the terms of the Appropriations Act.″ BLM's policy also emphasizes that "records of actual costs and accomplishments must be (as) accurate as possible." Based on our survey sample, we estimate a net overcharge to MLAP of almost 11 percent for the 10- month audit period, resulting in a potential overcharge of about $1.2 million for the nine BLM administrative states and offices included in our review.

Many employees reported that the improper charges to MLAP were driven by BLM's funding allocations[4] rather than the actual work performed. In other words, charges were improperly made to MLAP because that subactivity had funds available for obligation. Based on our survey, approximately 56 percent of the employees who charged more time than worked to MLAP said they did so because funds were available in that program. Employees also stated that they charged MLAP based on directions from their supervisor or a budget officer. Approximately 50 percent[5] of the employees who charged more time than worked to MLAP reported that they did so based on the directions of a supervisor or budget officer. Again, this is in direct conflict to BLM's policy that indicates charging a subactivity simply because ″money is available there″ is a violation of the appropriations act. These results are summarized in Attachment 2.

Of the employees who stated that they charged more time to MLAP than they actually worked, some reported charging time for such non- MLAP related tasks as processing applications to drill oil and gas wells; working on environmental remediation projects; doing recreation management; preparing mineral reports for land exchanges; and conducting work on common variety minerals, such as sand and gravel. BLM officials characterized these tasks as generally not appropriate for MLAP.

Our analysis of BLM records also showed that certain BLM employees received bonuses and awards from MLAP funds for work unrelated to mining. In clarifying BLM's policy, BLM's Director of Budget stated that any bonuses and awards received as a result of the labor performed should be charged to the subactivity that benefited from that labor. However, awards were given to individuals for tasks unrelated to MLAP operations,[6] such as assisting in the moving of a BLM office to a new facility and as compensation for not using BLM's relocation service when selling a private residence as part of a lateral transfer. When asked why such bonuses and awards had been charged to MLAP, BLM officials either could provide no explanation or stated that MLAP had been charged by mistake.

BLM EFFECTIVELY IDENTIFIED CONTRACTS AND SERVICES IMPROPERLY CHARGED TO MLAP BUT NEEDS ADDITIONAL PROCEDURES TO PREVENT RECURRENCE

BLM's review of contracts and services over $1,500 that were charged to MLAP during fiscal years 1998 and 1999 employed a methodology that was appropriate and thorough and identified the majority of the contracts and services improperly charged to MLAP operations during that time period. The contracts reviewed rep-

[4] OMB Circular A-34 defines allocation as one method of restricting Federal funds available for obligation. It is used broadly to include any subdivision of funds below the suballotment level, such as subdivisions made by agency financial plans or program operating plans, or other agency restrictions.

[5] Employees could provide more than one explanation, therefore the percentages listed above do not total to 100 percent.

[6] We also found individuals who received awards from MLAP funds for MLAP- related work, even though the hours and associated labor were not charged to MLAP. BLM officials stated that charging these awards to MLAP was appropriate and that the associated labor should also have been charged to the program. Not charging the associated labor costs to MLAP resulted in program costs being understated.

resented over $8 million, or almost 90 percent, of the contracts and services obligated to MLAP during that time period. BLM determined that about $716,000 in contracts and services should not have been charged to MLAP. The improper payments, as shown in Attachment 3, included:

- over $34,000 for janitorial services,
- $30,000 for the appraisal of Federal coal leaseholds,
- $25,000 for an attorney in an Equal Employment Opportunity settlement for an employee who had not worked on MLAP tasks, and
- $2,000 for a habitat survey of a threatened and endangered species of butterfly in an area with no active mining.

In addition, our review identified an additional $40,000 for two contracts and services that were improperly charged to MLAP. These contracts and services were for a cooperative agreement for geographic information system support and a biological survey. BLM officials agreed and stated that correcting adjustments would be made to the proper appropriation for the additional $40,000.

BLM prepared an instruction memorandum to provide guidance on correcting the contracts and services charges that were improperly charged to MLAP in fiscal years 1998 and 1999. BLM officials have told us that they are identifying the appropriations for fiscal years 1998 and 1999 that should have been charged for these costs and that there are sufficient funds to make the correcting adjustments of about $716,000.

Although BLM is taking the appropriate steps to correct these past improper charges of contracts and services to MLAP, it has not yet established specific procedures to prevent the recurrence of similar improper charges in the future. Until such procedures are established and implemented, there continues to be a high risk of improper use of MLAP funds for unrelated contracts and services.

MANY EMPLOYEES ARE UNAWARE OF SOURCE OF MLAP FUNDING

Finally, as requested, in our survey we asked BLM employees whether they were aware of the source of funding for MLAP. Approximately 70 percent of BLM employees who responded were either not aware of the source of MLAP funding or did not know that the program is partially funded by fees collected from miners and designated for MLAP operations.

CONCLUSIONS

In summary, the costs of some labor and a number of contracts and services were improperly charged to MLAP, resulting in other subactivities benefiting from funds intended for MLAP operations. Therefore, fewer funds have been available for actual MLAP operations. Although BLM has taken steps to make correcting adjustments for some of these improper charges, it has not established specific guidance or procedures to prevent improper charging of MLAP funds from recurring in the future. Until additional procedures for MLAP are developed and effectively implemented, the Congress and program managers can only place limited reliance on the accuracy of MLAP cost information.

RECOMMENDATIONS FOR EXECUTIVE ACTION

We have included in our report the following four actions that the Director of the Bureau of Land Management should take to address the issues I have discussed here today:

- make correcting adjustments for improper charges to appropriation accounts;
- remind employees that time charges and other obligations are to be made to the benefiting subactivity as stated in BLM's Fund Coding Handbook and develop a mechanism to test compliance;
- provide detailed guidance clarifying which tasks are chargeable to MLAP operations, such as those listed in the background section of our report; and
- conduct training on this guidance for all employees authorized to charge MLAP.

Madam Chairman, this concludes my statement. I would be happy to answer any questions that you or the Members of the Subcommittee may have.

Mr. GIBBONS. Thank you very much.

Mr. Anderson.

STATEMENT OF ROBERT ANDERSON, DEPUTY ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, ACCOMPANIED BY LARRY BENNA, BUDGET DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. ANDERSON. Thank you.

Madam Chairman and members of the Committee, I appreciate the opportunity to appear here today to discuss the Bureau of Land Management's operation of the Mining Law Administration Program and our use of the dedicated funds from the $100 claim maintenance fee and the $25 location fee.

I have with me today Larry Benna, who is our Budget Officer, just in case the budget comes up. Larry is directly behind me. Thank you, Larry, for coming.

At the request of the House and Senate authorizing committees, the General Accounting Office, GAO, conducted a review of BLM's use of the Mining Law Administration moneys in nine States and the BLM headquarters office. The GAO reported that in Fiscal Year 1998, $18.6 million, or approximately two-thirds of the $27.8 million expended in the mining law program, was spent on labor, while obligations for operations amounted to approximately $9.2 million. In examining the operational dollars spent by BLM in Fiscal Year 1998, GAO's report highlighted several contracts which appeared questionable.

In response to GAO's report, the Director of BLM promised quick remedial action to address any instances of improper contract charges to the Mining Law Administration Program. Thereafter, the BLM conducted an intensive in-house examination of all contracts in which over $1,500 was charged to the Mining Law Program. The BLM also expanded the scope of this review to include Fiscal Year 1999.

The BLM review disclosed that certain contract charges that should have been made to other programs were erroneously made to the mining law program. In response, the BLM subsequently refunded $716,000 of erroneous charges to the Mining Law Administration Program through internal budget adjustments. The identified contracts and services charges have been corrected and the use of the recovered mining law funds is being tracked and monitored.

Most recently, the GAO conducted a limited review of labor spending in the first 10 months of Fiscal Year 2000. The GAO surveyed a sample of 125 employees and asked for their understandings and recollections concerning how their time was charged last year. The GAO report estimated that, based on projections of this sampling, approximately $1.2 million in mining law administration funds were on BLM activities that did not directly relate to mining law administration.

We are firmly committed to improving cost accountability in the Mining Law Administration Program. We are making improvements in guiding and training our employees in the proper uses of mining law funding. In addition, we will focus on better methods of monitoring mining law funds.

We have already taken some steps in this direction. For example, prior to GAO's survey of labor charges, we initiated a survey of the mining law workload and the skill mixes in our field and state of-

fices. We will use the results of this survey to better align budget and staffing to correspond with the workload.

As the GAO found in its survey, a significant amount of miscoding of time resulted from field offices not having funding to match program workloads. Additionally, through a newly developed web-based Management Information System, the BLM now has access to workload and cost data on a current basis. As the agency becomes more familiar and proficient with the use of this data tool, our ability to monitor and track costs and obligations by program will be enhanced.

In response to the GAO's recommendations, we will issue by the end of April, 2001 additional instructions to our field offices on the types of work activities and operational expenses which may be charged to the mining law program.

The BLM appreciates the advice and assessment the GAO has given to our Mining Law Administration Program. We are committed to making improvements aimed at ensuring that Mining Law Administration funds are properly directed to the management of this program.

Madam Chairman, this concludes my prepared statement, and we would be happy to answer your questions.

[The prepared statement of Mr. Anderson follows:]

Statement of Bob Anderson, Deputy Assistant Director, Minerals, Realty and Resource Protection, Bureau of Land Management

Madame Chairman and members of the Committee, I appreciate the opportunity to appear here today to discuss the Bureau of Land Management's (BLM) operation of the mining law administration program and our use of the dedicated funds from the $100 claim maintenance fee and $25 location fee.

Through Interior Appropriation Acts, the BLM has been authorized since Fiscal Year 1993 to charge a $100 maintenance fee to mining claimants. This fee substitutes for an earlier requirement that mine claimants perform $100 worth of labor or make $100 worth of improvements, collectively referred to as assessment work, in order to maintain a claim under the General Mining Law of 1872. The BLM is authorized to retain the maintenance fee and use it to defray administration costs associated with operation of BLM's mining program. Those operators qualifying as small miners are exempt from the $100 holding fee, but continue to be required to perform $100 worth of assessment work annually.

At the request of the House and Senate authorizing committees, the General Accounting Office (GAO) conducted a review of BLM's use of the Mining Law Administration monies in nine states and the BLM headquarters office. The GAO reported that in Fiscal Year 1998, $18.6 million, or approximately two thirds of the $27.8 million expended in the mining law administration program, was spent on labor, while obligations for operations amounted to approximately $9.2 million. In examining the operational dollars spent by BLM in Fiscal Year 1998, GAO's report highlighted several contracts which appeared questionable.

In response to GAO's report, the Director of the BLM promised quick remedial action to address any instances of improper contract charges to the mining law administration program. Thereafter, the BLM conducted an intensive in-house examination of all contracts in which over $1,500 was charged to the mining law administration program. The BLM also expanded the scope of this review to include Fiscal Year 1999.

Our review revealed that most contracts were legitimately charged to mining law administration. For example, the GAO identified a contract for $3,500 to Hollywood Show Lights, which at first glance might raise questions. Hollywood Show Lights provides specialized lighting facilities and vehicles principally to the movie industry. However, further BLM clarification of the contract disclosed that Hollywood Show Lights provided staff and heavy equipment to the BLM for the removal of trash and material from an unauthorized use site on a mining claim in the Tick Canyon area of Los Angeles County. Upon review, both the BLM and the GAO determined this to have been a proper utilization of mining law administration funds.

The BLM review disclosed that certain contract charges that should have been made to other programs were erroneously made to the mining law administration program. In response, the BLM subsequently refunded $716,000 of erroneous charges to the mining law administration program through internal budget adjustments. The identified contracts/services charges have been corrected and use of the recovered mining law funds is being tracked and monitored.

Most recently, the GAO conducted a limited review of labor spending in the first 10 months of Fiscal Year 2000. The GAO surveyed a sample of 125 employees and asked for their understandings and recollections concerning how their time was charged last year. The GAO report estimated that, based on projections of this sampling, approximately $1.2 million in mining law administration funds were used on BLM activities that did not directly relate to mining law administration. In our February 2001 response to the GAO, we stated that we would attempt to make appropriate adjustments and restore the misdirected funds. However, unlike our review of contract expenditures, we believe it to be difficult, if not impossible, to reconstruct accurately all of our employees labor charges in order to identify where possible misdirection of labor costs may have occurred and should be adjusted. In addition to requiring a significant commitment of resources, this process would most likely result in questionable conclusions as corrective actions would necessarily rely on employees recollections of time spent doing work as much as a year ago. After discussions with the GAO which are scheduled to take place in the next two weeks, we intend to review the GAO's survey results and correct specific instances of miscoding in Fiscal Year 2000.

We are firmly committed to improving cost accountability in the mining law administration program. We are making improvements in guiding and training our employees in the proper uses of mining law administration program funding. In addition, we will focus on better methods of monitoring mining law administration funds. We have already taken some steps in this direction. For example, prior to GAO's survey of labor charges, we initiated a survey of the mining law administration workload and the skill mixes in our field and state offices. We will use the results of this survey to better align budget and staffing to correspond with workload. As the GAO found in its survey, a significant amount of miscoding of time resulted from field offices not having funding to match program workloads. Additionally, through a newly developed web- based Management Information System (MIS), the BLM now has access to workload and cost data on a current basis. As the agency becomes more familiar and proficient with the use of this data tool, our ability to monitor and track costs and obligations by program will be enhanced. The MIS will facilitate better and more intensive monitoring of expenditures.

In response to the GAO's recommendations, we will issue by the end of April, 2001, additional instructions to our field offices on the types of work activities and operational expenses which may be charged to the mining law administration program.

The BLM appreciates the advice and assessment the GAO has given to our mining law administration program. We are committed to making improvements aimed at ensuring that mining law administration funds are properly directed to the management of this Program.

Madame Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or the other members of the Committee may have.

Mr. GIBBONS. Thank you very much, Mr. Anderson. We will try to adhere to the five-minute rule for those of us who wish to question you during this period of time.

I'm going to defer my questioning to the Chairwoman of the Subcommittee, Mrs. Cubin from Wyoming, if she has any questions at this time.

[The prepared statement of Mrs. Cubin follows:]

Statement of The Honorable Barbara Cubin, Chairman, Subcommittee on Energy and Mineral Resources

The Subcommittee meets today, in our oversight capacity to review the Bureau of Land Management's handling of the mining law administration program supported by claim fees. Since 1993, hardrock mining claim holders have been required to annually pay $100 per lode claim, placer claim or millsite which they wish to hold for the following year. Holders of ten or fewer claims nationwide may elect to perform the traditional assessment work requirement rather than pay this fee.

This so-called holding fee will expire after the collection due this September 1st unless reauthorized. The current authorization is a product of an interior appropriations act rider from Fiscal Year 1999. Prior to this time the fee was levied upon miners via the 1993 budget reconciliation act, and initially it was a product of another appropriations bill.

A somewhat unusual aspect of the claim holding fee is that the BLM collects the funds from the miners but does not deposit them into the general treasury for later appropriation. Rather, the fees are an offset against what sums BLM is annually appropriated for Management of Land and Resources. Then, if the fee collection falls short of mining law administration program needs, the difference is to come from general funds.

Our first panel will testify as to the manner in which BLM has spent the holding fees collected expressly for the purpose of mining law administration. Last Congress, our Senate counterparts and I asked the General Accounting Office to review these expenditures. We wanted to know how well, or poorly, the BLM was doing toward insuring that expropriated dollars from the miners wasn't being spent on salaries, contracts and other program costs which should have been paid from appropriated dollars out of the general fund.

Lo and behold, the GAO's auditors learned what many had surmised—BLM personnel too often code their time and expenses to budget accounts deemed to be flush with cash. Like Willie Sutton who said that he robbed banks because that's where the money is , apparently some supervisors in BLM have elected to have folks code to mining law administration whether they worked in that area or not, because the funds were available.

While we should be no less concerned if appropriated dollars are misspent, the mis-expenditure of a fee collected directly for a specific purpose is especially worrisome to those paying the freight. How can Congress rationally debate reauthorization of this fee if we don't know how the BLM is actually spending the money? Likewise, the debate must consider the impacts of fee reauthorization upon our domestic industry and the economies of the rural communities which have supported public land minerals exploration over the decades.

Our second panel of witnesses today will address the issue of the large reduction of holding fees collected since the late 1980's. Initially the sum of holding fees collected was over $35 million per year, but the drastic fall-off in mining claims has diminished this total to barely $21 million last year. In the late 1980's, prior to this fee, BLM reported that some 1.2 million mining claims were of record in their data base. Now the figure is less than 250,000. Most likely multiple factors were at work to cause this result, but imposition of the holding is clearly a candidate for part of the blame.

I look forward to our distinguished panel enlightening us upon these issues.

Mrs. CUBIN. Mr. Chairman, I do have some questions.

My first question is for Mr. Anderson. I have in front of me the verdict of a trial that occurred in the United States District Court for the District of Wyoming. It's a sexual harassment case. The verdict just came in, for a million dollars awarded to the plaintiff, in a suit against the BLM.

I just want to make sure that none of that million dollars that is being awarded to the plaintiff come out of this fund. I just want to go on record in making sure that that doesn't happen. Can you give me any assurances that that won't happen?

Mr. ANDERSON. I'm glad I brought my budget guy today. Larry?

Mr. GIBBONS. For the record, if you do testify, please identify yourself with your name and your position.

Mr. BENNA. Good afternoon. My name is Larry Benna. I'm the Budget Director for the Bureau of Land Management. I appreciate the opportunity to be here.

In response to the question, again, as the document you have just came from the courts, I'm not intimately familiar with it. But I don't imagine we would charge things to that, but I will review that for the record and provide a detailed response.

Mrs. CUBIN. I appreciate that, although I can tell you that I'll bet, if you were asked prior to the GAO study, it would be hard to imagine some of the expenditures that came out of this fund would be made as they were made. So I will be watching, I guess, is what I need to say.

This is also to Mr. Anderson. There were nearly 760,000 active mining claims in early 1993, before the $100 claim maintenance fee was levied. This was dropped to just under 333,000 active claims in September of '94, which is a loss of 427,000 claims. As of September, 2000, there were almost 236,000 active mining claims, which translates to a loss of an additional 97,000 claims.

Do you think that the loss of any of these 663,000 active mining claims since this fee was imposed have had an impact on exploration levels in the United States?

Mr. ANDERSON. There may be some, but in our analysis of the metal prices, especially for gold, and the location of claims, we find there is a very close parallel in the comparison of metal prices and the number of claims that are staked in any given year, and also dropped in a given year.

Mrs. CUBIN. So it's not your testimony, is it, that the price of metals is the only reason that these claims have dropped? I can tell you from firsthand knowledge, I know that the fee has impeded exploration in the country.

Mr. ANDERSON. I'm sure there's merit to your opinion, Madam Chairman. Of course, the metals market—

Mrs. CUBIN. Certainly it's important as well, Mr. Anderson. I can see that.

Mr. ANDERSON. And the cost of doing business and the profit margin all have a role to play in this as well.

Mrs. CUBIN. Probably it's a multifaceted problem, including access as well, so I completely agree with your answer.

In prior years, did the fees that were collected fully fund the Mining Law Administration Program before the $100 fee was charged?

Mr. ANDERSON. Before the...?

Mrs. CUBIN. Oh, okay. The early years of the $100 holding fee, excuse me. Did it fully fund the Mining Law Administration Program?

Mr. ANDERSON. Yes.

Mrs. CUBIN. GAO states that most BLM employees that they interviewed were unaware of the funding sources. Given that this funding comes primarily from holding fees, don't you think that that is an important thing that employees should know, in keeping track of their time and expenses?

Mr. ANDERSON. We sure do, Madam Chairman. We have to do a better job in making sure that they know where this funding comes from, and also how to use this funding.

As mentioned in my testimony, we have already made an impact on our field offices, and also here in the Washington office, on how those funds are to be used. We have three memos that have gone out on various aspects of the program, and on coding, on the use of mining law funds. So I think there is a heightened awareness right now as we speak, and there will be more as we put out more guidance in the future.

Mrs. CUBIN. Thank you.

Mr. GIBBONS. Thank you very much, Mrs. Cubin.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

If the claim maintenance fee were revoked, where would the money to administer the mine law program, including approval of permits and enforcement of mining regulations, come from? If the maintenance fee were revoked, where would the money for everything else come from?

Mr. ANDERSON. We would have to ask the Congress to appropriate that money.

Mr. RAHALL. Okay. Do you expect President Bush to include a claim maintenance fee in his budget request?

Mr. ANDERSON. I would like to defer that question to our budget officer here.

Mr. BENNA. I had a strange feeling you would.

Mr. Rahall, with all due respect, perhaps we can respond to that after the President's budget has been released. It's due for release on April 9th. We are exercising some considerable caution about discussing that prior to the actual release of the budget. I think that would be my statement for now.

Mr. RAHALL. You can't be caught on the record then?

Mr. BENNA. No, sir.

Mr. RAHALL. Okay, thank you.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you.

Mr. Otter.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. Anderson, how many different programs like the Mining Law Administrative Program does the BLM have within its category of receipts?

Mr. ANDERSON. I'll let Larry Benna answer that question.

Mr. OTTER. Larry, you're getting double duty today.

Mr. BENNA. I guess it comes with the territory.

I don't think I can give you the actual number of specific accounts. I can provide that for the record. We do have other programs that are receipt-based. For example, we do operate a recreation program that is funded from recreation fees. We do have various other charges, like our range improvement fund is funded out of 50 percent of the grazing fees that are collected. We do also make several payments to states and countries that come from receipts that are generated from public land activities. We've got several other programs that we operate based on service charges—for example, processing rights of way. So it's fairly in-depth.

Mr. OTTER. Thank you. Perhaps I can cut to the quick here, then, or to the chase.

Is it the practice then of the BLM, in authorizing its expenditures from each of these funds, to assign a certain duty time or amount of time per employee, say, to grazing and recreation, to mining law? Is that the practice?

Mr. BENNA. I think our general practice is to instruct our employees to allocate funding based on the work that they're actually planning to do, and then we ask them to record their time and their cost based on the work they actually do perform.

Mr. OTTER. Great. Could you ballpark for me, then, the total funds that would come into BLM under all the programs that it has?

Mr. BENNA. You mean receipt funds?

Mr. OTTER. Yes, but not from general fund appropriations, but from fees, dues, recreational expenses, whatever.

Mr. BENNA. I think a ballpark number, again without having documents in front of me, in Fiscal Year 2000, I think we collected somewhere on the order of between $1.6 and $1.8 billion.

Mr. OTTER. One point six to one point eight billion.

Mr. BENNA. Yes, sir.

Mr. OTTER. Miss Calbom, when you were going through this audit, am I to believe that you only audited the mining administration fund?

Ms. CALBOM. Yes, that's correct.

Mr. OTTER. Have you any reason to believe that similar mistakes and misappropriations were made for this billion, six hundred? Have we any reason not to believe that there was likewise mistakes made in the misassignment of hours worked per program charged for that money, for a billion, eight hundred million?

Ms. CALBOM. It is certainly possible, given the findings that we had in looking at this program.

Mr. OTTER. Has the GAO looked at that?

Ms. CALBOM. We have not at this point, no.

Mr. OTTER. Okay. Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, Mr. Otter.

Mr. Inslee.

Mr. INSLEE. Thank you, Mr. Chair.

You know, we're going to a policy where citizens have to pay for parking their car on the side of the road going through the national forests, and have to be increasing fees to take their kids for a picnic in a national park, and have got to pay a fee to park in an area where you get out and go cross-country skiing. You have got to have a fee every time you turn around to walk through our national lands. And yet, I see people are proposing that hard rock miners should be able to essentially have a free rental to do explorations on land, with significant changes to the land, for free, when my citizens have to pay to walk their kid around, which doesn't do a darned thing to the park land or the forests.

They also want to transfer the cost of this maintenance expenditure from the miners, who stand to make a billion dollars a year, which is what is estimated they take out of public lands each year, they want to transfer the cost of that program, onto my citizens, who have to pay money for the mere purpose of walking their kid 20 feet from their parked car.

I just want to ask any of you three at the table, does that seem right to you?

Mr. ANDERSON. The 1872 mining law, of course, has been around for a long time. Not to raise another issue, but the mining law states that the land shall be free and open to exploration and development. Of course, that was 125 years ago.

There are merits on both sides. The real reason for assessment work was to prompt substantive work toward the discovery of a valuable mineral. That hasn't always occurred with assessment

work. In fact, there have been a few reports that say just the contrary, that miners would file their affidavits of assessment work but wouldn't do the work itself. So, in 1993, of course, Congress imposed this $100 fee, and I think it has been an advantage to the taxpayer in terms of helping administer these programs under the mining law.

That's a roundabout answer. I can't give you a yes or a no.

Mr. INSLEE. Well, I'll give you three options: Yes, no, or I prefer not to answer that question, as to what you truly believe.

Mr. ANDERSON. Well, I guess—

Mr. INSLEE. Any three is fine with me, as long as they're honest.

Mr. ANDERSON. I guess I would choose not to answer the question, with that—

Mr. INSLEE. I appreciate that.

Miss Calbom, how would you answer that question?

Ms. CALBOM. Well, what our work was focusing on was looking at the cost of the program and how well the costs are being accounted for. The original idea of charging the fee was that it was supposed to be a self-funding program. I guess our concern is that you can't tell whether it's a self-funding program or not if you don't know the true costs of the program.

You know, in making a determination, I don't know whether a fee should be charged or not, or how much it should be, but I do know that, when you're trying to determine that, you need to know the true cost of the program.

Mr. INSLEE. Is there any other activity that causes this potential substantial damage to the land that does not pay any fee for the right to use Federal lands? I am told oil and gas pays some royalty; I'm told kids pay to picnic on Federal lands. Is there any others, like hard rock mining, that do not?

Mr. ANDERSON. I can't think of any, no.

Mr. INSLEE. Madam Chair, I really hope that you—actually, Madam Chair is not in the chair at the moment, is she.

Mr. Chair, I hope you entertain Mr. Rahall's issue here for continuing this fee, because I really believe it was inappropriate to shift these costs to the general taxpayer, who is already getting charged for having picnics. I hope you seriously bring this to the Committee's attention. Thank you very much.

Mr. GIBBONS. Mr. Inslee, I would report that even the two industry witnesses that are going to testify here later today do not suggest the fee should be eliminated, so I would hope you will listen to what they have to say.

The purpose of this fee, of course, was not to stop exploration on land. The purpose of this fee was to assist the BLM with its administration of the mining laws and programs that are affected through the course of the 1872 mining law. So to suggest that the MLAP and the fee assessment was to substitute for exploration misstates the purpose and the character of the fee. It simply was an alternative that the Administration thought in 1993 was necessary to assist the BLM with their administration.

With that, let me turn to Miss Calbom and ask a question. In your testimony today, of course, you indicated that you surveyed some BLM employees. Who was included in this survey? Was it administrative? Did you question the administrative side of the BLM,

or was it simply the employees? And how did you carry out this survey?

Ms. CALBOM. What we did was we took a look at anyone who charged time to the program, so that would include supervisors, employees and—

Mr. GIBBONS. If I may interrupt you, and I apologize, did you look for specific authorizing authorities, whether it was written or otherwise, from the Administration, on how this time was to be charged or how this money was to be used in this whole process?

Ms. CALBOM. Oh, yes. These funds were clearly earmarked to be used just for MLAP operations.

Mr. GIBBONS. What I'm asking, though, were there directions given, directives given by the BLM, or through its management, as to how this money would be authorized and spent, or charged?

Ms. CALBOM. There were some directions given...if I may confer with my colleagues for a moment. [Conferring.]

The budget justification is probably the closest thing that describes the particular activities that should be charged to this program. That's one of the recommendations we make, that there needs to be better communication to the employees as far as what should be included. Because, back to your original question, what our survey showed was that a lot of people really didn't understand what was supposed to be included.

As far as how we did our survey, if you would like me to go ahead and answer that question, as I said, we identified individuals who charged time to the program. I believe there were about 744 individuals. We did a statistical sample of 125 individuals from that population, and then we sent out our survey ahead of time to them. We called them and actually interviewed them over the phone. We were actually able to reach all but nine people, and those people had either left BLM or were on extended sick leave. So we had a very good return rate on that survey.

Mr. GIBBONS. Let me ask a follow-up question.

Does the BLM have an obligation to reimburse the MLAP program under this misappropriation or misuse that you have identified?

Ms. CALBOM. It is, in fact, a purpose violation. I believe they have reimbursed the program for the contracts and services. I don't believe the labor portion has been reimbursed at this point.

Mr. GIBBONS. Do you know how much of the $716,000 outstanding amount is assessed only to labor?

Ms. CALBOM. The $716,000 related to the contracts and services, and that's the piece I think that was, in fact, reimbursed.

We had made a statistical estimate, which you can't go by exactly, but we estimated about $1.2 million in labor overcharges had occurred. But that was only for a 10-month period and it didn't include all the states and offices. And there was a range to that estimate as well. So—

Mr. GIBBONS. So this amount, the $1.2 million, could actually be extensive, if you went back to the time of the 1993 period through the period which you did your audit?

Ms. CALBOM. It certainly would likely be larger than that, yes.

Mr. GIBBONS. Mr. Anderson, do you wish to comment on the payback obligation of the labor cost?

Mr. ANDERSON. Let me just answer that, and maybe Larry can supplement it.

For the 125 employees that they interviewed, we plan to meet with the GAO in the upcoming weeks to determine, from the information they have—and we don't have that information yet—the names of the people who coded their time to the mining law fund. We plan to investigate this further to see if we can determine exactly when they charged their time through 1990, what, in fact, they should have charged their time to.

As to the other employees, out of the 700, the 500 or so, we do not plan to go back for those employees because it would be difficult to do so. We could certainly interview them, but after this time period, I'm not sure how well their memories might serve them as to where they spent their time. It might not be efficient to do that.

Mr. GIBBONS. Miss Calbom, one quick question, and then I'll turn it over for a second round.

Is your opinion that the misapplication of the time and/or use of the MLAP funds is a violation of statutory law?

Ms. CALBOM. I would have to turn to our legal counsel on that. [Conferring.]

As I did mention before—I guess I did know the answer—it is a purpose violation and it would violate the MLAP appropriation.

Mr. GIBBONS. So, Mr. Anderson, you do understand the importance of that violation?

Mr. ANDERSON. Yes, sir.

Mr. GIBBONS. And the requirement would then be you would have an obligation to correct it?

Mr. ANDERSON. Yes.

Mr. GIBBONS. I think my time is up. Mrs. Cubin, do you have more questions?

Mrs. CUBIN. No, Mr. Chairman.

Mr. GIBBONS. I think right now we would have only one remark, and that would be this Committee and the members of this Committee may have additional written questions which they would like to submit to you in writing. I would ask that you do answer them specifically and, once you have completed your answers, return them. We request that they be returned, once you receive them, within two weeks of receipt of those questions, if you can possibly comply with that time frame.

With that, we would like to excuse you and thank you for your testimony here before us today. We appreciate the time you have taken. Thank you.

With that, we would like to call up the next panel, Attorney-at-law Mr. J.P. Tangen, testifying on behalf of the Alaska Miners Association; Mr. Alan Septoff, Reform Campaign Director of the Mineral Policy Center; and Mr. Steve Craig, Vice President, Golden Phoenix Minerals, Inc.

Gentlemen, in order to get moving, I would ask that you look at our little timer that's in front of you. We try to keep our comments within a five-minute time frame. We are certainly not going to ask you to leave if you exceed that, but we would like to be reasonable. Both the Committee members and the witnesses that are around

you would appreciate some adherence to at least a proximal time of five minutes.

If you wish, this Committee, without objection, would receive your written testimony in the record and you may summarize, for your own convenience, your written testimony.

If that is understood by all, I would ask Mr. Tangen to begin. Welcome to the Committee. We look forward to your testimony.

STATEMENT OF J.P. TANGEN, DIRECTOR, ALASKA MINERS ASSOCIATION

Mr. TANGEN. Thank you, Mr. Chairman. I appreciate the opportunity to be here today. My name is J.P. Tangen, and I am appearing today before this Subcommittee on a topic that significantly affects the mining industry in Alaska.

I am here today as a director of the Alaska Miners Association. The Alaska Miners Association is an industry support organization of approximately 1,000 individual miners, engineers, scientists, and providers of goods and services to the mining industry in Alaska.

Our organization has been representing miners and associated interests in Alaska since territorial days and draws its heritage from the hearty souls who crossed the Chilkoot Trail and who mined the beaches of Nome a century ago.

The key ingredients of the Mining Law of 1872, and what has made it possible for Alaska's miners to persevere, are the twin concepts of self-initiation and security of tenure. Alaska miners know, or at least they did know until the mining law reform movement emerged, that all they needed to do was to go on to the vacant and unappropriated public domain, or Forest Service lands, and locate a claim. If they followed relatively simple rules, their title would be unassailable.

Further, by doing a modest amount of annual labor for the benefit of their claims, their tenure was secure forever. That labor could be measured in sweat equity and required little cash beyond that needed for a few barrels of diesel fuel. An old cat and a welding torch meant that the locator could prove up his claim. If it was as big as he hoped, and as rich as he dreamed, he could turn it over to a major mining company and live off the proceeds. If it was something less, he might be able to work it himself for wages, or slightly better. Or, if there was nothing there at all, he could move on to another, more promising site.

When, in 1992, FLPMA was amended to provide for rental payments in lieu of labor, the statutory framework changed. Rental payments are sometimes acceptable to major mining companies that have substantial financial resources upon which to draw, and can make decisions to hold or release large blocks of claims based upon a few drill holes, or perhaps a slightly better find on the far side of the world. For those of us committed to Alaska, however, neither abandoning a claim nor paying five dollars per acre, as the same may be escalated, is a satisfactory result.

The requirement for holding fees in lieu of annual labor on a mining claim in order to protect one's title has a pernicious aspect to it. Those fees serve to feed a large and growing bureaucracy performing tasks that appear to us to be of questionable necessity or objective value. It would be one thing if the fees were calculated

to result in an expanded industry, but no one pretends that this is the case. Since the fee's inception, the number of claims on BLM and Forest Service lands in Alaska has plummeted, as miners have sought minerals elsewhere. The anticipated revenue stream derived from these fees is a small fraction of what was hoped for. There is no evidence that over the past decade the fee structure has advanced the industry or the national interest in producing mineral commodities domestically. When coupled with the December 5, 1996 opinion of former Solicitor Leshy prescribing BLM's obligation under FLPMA to charge fees for a variety of governmental activities which ostensibly "benefit" the miner, it appears that this exercise is more motivated by the desire to stop mining than by the desire to protect the public interest.

A small seasonal placer operation on a remote Alaska creek cannot always afford a five-dollar-per-acre fee for simply holding a claim from one year to the next. A Federal mining claim is typically 20 acres. An acre is equal in size to a square 208 feet on a side. For the miner who holds more than ten claims, five dollars an acre can be a considerable amount of money for a relatively small amount of ground. This is especially true if he also has to pay for inspections and environmental impact statements, public hearings, validity determinations and more, as proposed under the new 3809 regulations recently released by the Clinton Administration. If these 3809 regulations survive, and if the BLM fees regulations now being circulated for comment survive, and if the rental payments regulations survive, the small miners of Alaska may not.

I wish to make it clear that the Alaska Miners Association is not unilaterally opposed to a holding fee in lieu of annual labor. In some instances, it may be an appropriate alternative. What we are opposed to is the size of the fee and its disposition. We believe that operators should have the option of performing labor to protect their holdings, even if the number of claims in which they have an interest exceeds ten. There is no apparent justification for an arbitrary limit of ten. Because the more obvious mineral deposits have often been developed, larger and lower grade occurrences are now being brought into production. Small operators are unduly stifled by a ten-claim limit.

The effect of these regulations ought to be to encourage exploration and, where warranted, development of valuable mineral deposits on Federal lands. The experience over the past 10 years has been to the contrary.

I appreciate the opportunity to testify, Mr. Chairman, and I will submit my entire testimony for the record.

[The prepared statement of Mr. Tangen follows:]

Statement of J. P. Tangen, Director, Alaska Miners Association

Good afternoon. My name is J. P. Tangen. I want to thank you for the opportunity to present testimony to the Subcommittee today on a topic that significantly affects the mining industry in Alaska. I am appearing here today as a director of the Alaska Miners Association. The Alaska Miners Association is an industry support organization of approximately 1,000 miners, engineers, scientists, and providers of goods and services to the mining industry in Alaska. Our organization has been representing miners and associated interests in Alaska since Territorial days and draws its heritage from those hearty souls who crossed the Chilkoot Trail and who mined the beaches of Nome a century ago.

HOLDING FEES AS A PART OF THE NATIONAL POLICY

The issue before the Subcommittee today is an excellent example of the problem we have with how our national mining policy is currently being implemented. We believe that the Minerals Policy Act of 1970 (30 U.S.C. 21a) articulately expresses what should be the national policy regarding mining. We believe this policy should be on an equal footing with the national environmental policy. We believe that the contribution which the mining industry has made to the United States over the past two hundred years is so significant that the industry should be protected and defended by Americans everywhere, rather than vilified for actions which predate the adoption of contemporary standards.

Beginning in 1989, the members of our association together with miners large and small across the United States came under attack when Senator Dale Bumpers introduced his first version of legislation to repeal the 1872 Mining Law. The Bumpers proposal included, among other things, payment of an annual rental fee as a substitute for the assessment work requirement. The following January, Representative Nick Joe Rahall introduced H.R. 3866 to reform the Mining Law of 1872. Rahall's bill contemplated payment of a rental fee and included a required amount of diligent expenditures or an additional payment in lieu of diligent development expenditures. At the end of the 1990 legislative session, the Senate Energy and Natural Resources Committee, as a part of the budget reconciliation process, nearly passed an annual $100 per claim holding fee on the holders of Federal mining claims.

In 1991, Rahall and Bumpers reintroduced their legislation. The Rahall bill once again would have required a rental fee and a diligent development expenditure or a payment in lieu of diligent development, while the Bumpers bill would have required a holding fee of $5 per acre, increasing by $5 every five years.

In 1992, the Bush administration's budget bill included a $100 per claim annual holding fee. Specifically, Amendment 18 to the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law No. 102–381) in one page [did away] with 120 years of law and judicial decisions concerning maintenance of unpatented mining claims. [7] A small miner exemption was included in the Act; however, due to the way it was interpreted by the BLM, many small miners were confused about its provisions and lost their claims.

The 1993 Omnibus Budget Reconciliation Act (Public Law No. 103–66) did not improve the situation. That Act was implemented by a set of regulations finalized on August 30, 1994 that extensively detailed the requirements to be imposed on mining operations. The Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (Public Law 105–277) changed the rules once again. The interim final rule that followed on August 27, 1999, clarified the small miner exemption. At last this exemption was made effective in protecting those operators with ten claims or less.

I would like to make two points today with regard to this specific amendment to the General Mining Law. First, we believe it negatively modifies the essence of the Mining Law of 1872 and second, it apparently does not accomplish what it was designed to do.

THE NATURE AND PURPOSE OF THE MINING LAW

We regard the mining law of 1872, as amended, to be an essential implementation of a fundamental American right. First and foremost, the law contributes to the free economy by enlarging the economic pie. Every time a miner recovers an ounce of gold or a pound of zinc from the public domain, he has made a contribution to the common wealth. That commodity, like the product of the farmer and the forester and the fisherman ultimately makes the world a better place. If that commodity finds its way into the economy as a gold contact on a computer motherboard or a galvanized nail for a new home, the world is improved thereby. Those professions that create such new wealth are unlike the stockbroker or the pipefitter. Without a constant supply of new commodities, the stockbroker would have no stock to broker and the pipefitter would have no pipes to fit. If an item cannot be grown, initially it has to be mined.

We are not insensitive to the concerns about the environment. But environmental demands have been a moving target for the past thirty-five years, and before that they were not on the national radar screen at all. If environmental standards ever come to repose, the mining industry will embrace them just as it has embraced the health and safety laws that once were a hot issue before environmentalism was in

[7] Hubbard, Randall E., Rental Fees, Assessment Work, and Maintenance Requirements for Unpatented Mining Claims Getting Simpler? 40 Rocky Mountain Mineral Law Institute 8–8 (1994)

vogue, and the wage and hour standards before that. The resolution of environmental issues in conjunction with mining activities should not demand killing the industry that produces necessary commodities, but encouraging it to flourish in a manner acceptable to all people.

Minerals are not evenly distributed across the face of the earth. They are concentrated in specific locations dictated by diverse geological factors. Outcroppings are rare. Even in a highly mineralized environment such as Alaska, the discovery of a valuable mineral deposit is laborious, costly, time-consuming and infrequent. Experienced and well-trained individual prospectors have an even chance with the best-financed major mining companies of making a significant new discovery.

It is the hope for a profit that drives exploration efforts. Venture capital is always hard to come by and with commodity prices generally depressed, as they have been during the past decade, other investment opportunities have siphoned off much of the funding that previously made exploration on Federal land in Alaska possible. Notably, mineral exploration on state and Native land in Alaska has not suffered the same fate over recent years because of the supportive attitude of the state toward mining. Of the four large mines currently operating in Alaska, two are on state land, one is on Native land and one is partly and Native land and partly on Federal land managed by the Forest Service. None are on land managed by the BLM. This dichotomy suggests that commodity prices and availability of capital alone are not dispositive of why miners are not exploring on Federal land.

SELF-INITIATION AND SECURITY OF TENURE

The key ingredients of the Mining Law of 1872, and what has made it possible for Alaska's miners to persevere, are the twin concepts of self-initiation and security of tenure. Alaska's miners know, or at least they did until the mining law reform movement emerged, that all they needed to do was go onto the vacant and unappropriated public domain (or Forest Service lands) and locate a claim. If they followed relatively simple rules, their title would be unassailable. Further, by doing a modest amount of annual labor for the benefit of their claims, their tenure was secure forever. That labor could be measured in sweat equity and required little cash beyond that needed for a few barrels of diesel fuel. An old cat and a welding torch meant that the locator could prove up his claim. If it was as big as he hoped and as rich as he dreamed, he could turn it over to a major mining company and live off the proceeds. If it was something less, he might be able to work it himself for wages or better. Or if there was nothing there at all, he could move on to another, more promising site.

When, in 1992, FLPMA was amended to provide for rental payments in lieu of labor, the statutory framework changed. Rental payments are sometimes acceptable to major mining companies that have substantial financial resources upon which to draw and which can make decisions to hold or release large blocks of claims based upon a few drill holes or perhaps a slightly better find on the far side of the world. For those of us committed to Alaska, however, neither abandoning a claim nor paying $5 per acre (as the same may be escalated) is a satisfactory result.

MINING AND THE ENVIRONMENT

We are not unmindful of the concerns raised by extreme environmentalists who worry about everything from chemical spills to interrupted wilderness experiences. For the most part, their public positions are irresponsible, exaggerated and misleading. Twenty-first century mining in Alaska is characterized by extensive reclamation and a commendable track record of safe operations, not only in terms of personnel, but also in terms of the environment. No significant activity occurs without difficulties, but for every such problem there is a reasonable remedy. Ironically, mining operations from a previous era when reclamation was not a standard are broadly deemed historical artifacts to be protected and preserved. From Skagway to Kennecott to Kantishna to Nome, Alaska's mining history is the stuff tourists pay to see and Park Rangers are quick to protect.

BUREAUCRATIC EXCESSES

The requirement for holding fees in lieu of annual labor on a mining claim in order to protect one's title has a pernicious aspect to it. Those fees serve to feed a large bureaucracy performing tasks that are of questionable necessity or objective value. It would be one thing if the fees were calculated to result in an expanded industry, but no one pretends that is the case. Since the fees inception the number of claims on BLM and Forest Service lands in Alaska has plummeted as miners

have sought minerals elsewhere.[8] The anticipated revenue stream derived from these fees is a small fraction of what was hoped for. There is no evidence that over the past decade that the fee structure has advanced the industry or the national interest in producing mineral commodities domestically. When coupled with the December 5, 1996, opinion of former Interior Solicitor Leshy prescribing BLM's obligation under FLPMA to charge fees for a variety of governmental activities which ostensibly benefit the miner, it appears that this exercise is more motivated by the desire to stop mining than by the desire to protect the public interest.

A small seasonal placer operation on a remote Alaska creek cannot always afford a $5.00 per acre fee for simply holding a claim from one year to the next. A Federal mining claim is typically 20 acres. An acre is equal in size to a square 208 feet on a side. For the miner who holds more than ten claims, $5.00 per acre can become a considerable amount of money for a relatively small amount of ground. This is especially true if he also has to pay for inspections and environmental impact statements and public hearings and validity determinations and more as proposed in the new 3809 regulations, recently released by the Clinton administration. If these 3809 regulations survive, and if the BLM fees regulations now being circulated for comment survive, and if the rental payments regulations survive, the small miners of Alaska may not.

Former Secretary Babbitt promoted the myth of miners ripping off the public interest by securing title to mineral lands for a token price. Most miners don't seek patent. Babbitt's statements belied more than the elements of a land purchase transaction. They implied, quite unfairly, that the extraction of minerals from the ground was an easy and remunerative process. No matter what the technique, whether by placer or by hardrock, whether by gravity or flotation, whether in the Brooks Range or on the Kenai, the act of recovering minerals from an unrelenting host is just plain hard work. If the miner in Alaska had to deal with nothing other than metallurgy and the elements, it would be a challenge. When regulation and oversight are thrown into the mix, the chore becomes a much heavier burden.

I wish to make it clear that the Alaska Miners Association is not unilaterally opposed to a holding fee in lieu of annual labor. In some instances it may be an appropriate alternative. What we are opposed to is the size of the fee and its disposition. We believe that operators should have the option of performing labor to protect their holdings, even if the number of claims they have an interest in exceed ten. There is no apparent justification for an arbitrary limit. Because the more obvious mineral deposits have often been developed, larger and lower grade occurrences are now being brought into production. Small operators are unduly stifled by a ten claim limit. The effect of these regulations ought to be to encourage exploration and, where warranted, development of valuable mineral deposits on Federal lands. The experience over the past 10 years has been to the contrary.

CONCLUSION

The Alaska Miners Association wants to be on the record in support of flexibility under the law. The payment of a fee in lieu of performing annual labor on Federal mining claims is acceptable as long as the fee is reasonable and an alternative. We are opposed to being forced into one avenue or the other. We believe that fees derived from mining operations ought to be used for the benefit of the industry to strengthen it, not weaken it. The contribution which the mining industry makes to our national prosperity is significant. Intemperate regulation is not in the public interest.

I cannot speak for miners in other states or locations, but over the years I have known and represented Alaska miners from Candle to Ketchikan and from Chicken to Cooper Landing. None have grown wealthy by mining commodities from Federal lands in Alaska. Mining in Alaska is not akin to pumping oil from Prudhoe Bay. Mining is labor intensive and frequently provides only bacon and beans for a family. It is hard but good work and provides a necessary benefit for all Americans, and perhaps all of the world. It deserves your protection.

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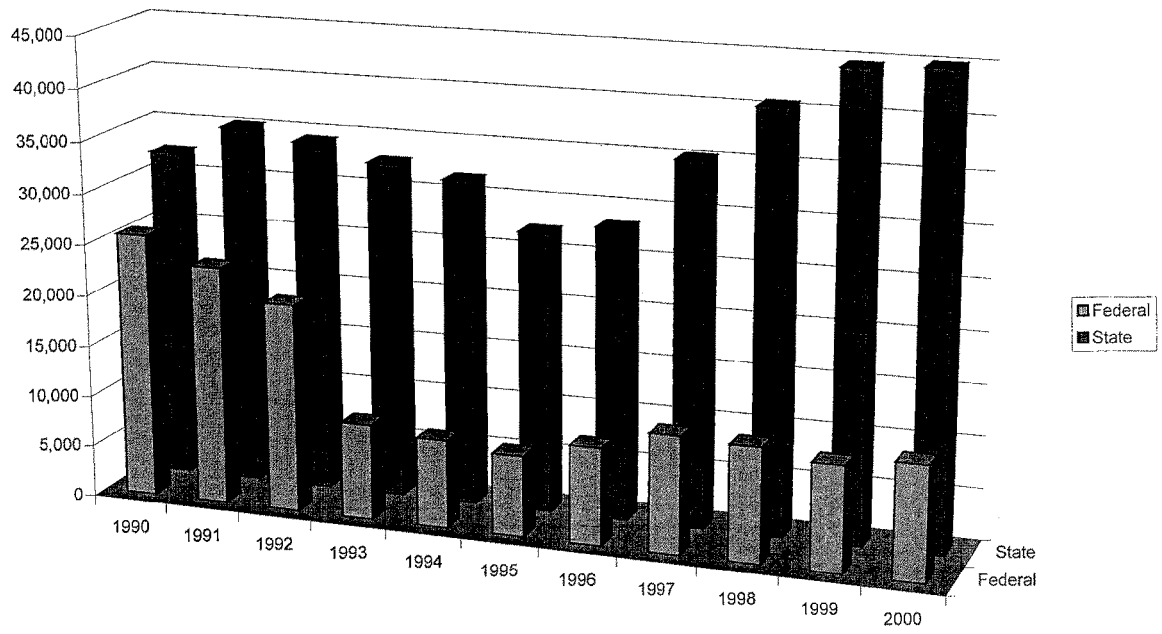
[8] See Attached Table.

Active Mining Claims - Alaska



Source: **Alaska's Mineral Industry 2000**, Alaska Division of Geological and Geophysical Surveys

Mr. GIBBONS. Thank you very much for your testimony. We will receive your full and complete written testimony into the record, without objection.

Mr. Septoff.

STATEMENT OF ALAN SEPTOFF, REFORM CAMPAIGN DIRECTOR, MINERAL POLICY CENTER

Mr. SEPTOFF. Good afternoon. I am Alan Septoff, Reform Campaign Director of the Mineral Policy Center. Thanks for inviting me to testify today.

MPC is an environmental organization dedicated to protecting communities and the environment from adverse impacts of mineral development.

So is the claim maintenance fee worth it? Although the invitation doesn't frame the question this way, I assume the complete question the hearing intends to ask is, "Is the claim maintenance fee worth it to the public?" In our opinion, unsurprisingly, the answer to that question is yes. It is yes because the fee's impact on exploration is relatively insignificant, it's yes because the fee cuts down on land fraud, and it's yes because it funds environmental regulations in the public interest.

To that end, MPC takes this opportunity to wholeheartedly endorse H.R. 1085, the Claim Maintenance Act of 2001, sponsored by Nick Rahall. It would make permanent the claim maintenance fee and the patenting moratorium.

Other issues aside, the claim maintenance fee is worth it simply because it's the only return that taxpayers receive for the disposition of their own minerals. Twenty-two million dollars per year isn't much, especially considering the BLM estimates that over one billion dollars in public minerals are mined each year, but it's more than nothing.

Let's take a look at the fee's impact on explorations. Some suggest that the claim maintenance fee forces the mining industry to look overseas to invest exploration dollars. A prominent international mining industry survey contradicts that view. Notwithstanding the claim maintenance fee, it has ranked the State of Nevada the most attractive climate for mineral investment in the world for the past three years running. It has also ranked Alaska in the top ten for investment climate three years running, as well.

The Nevada State Bureau of Minerals conducts an annual exploration survey, which provides some of the more credible evidence that the claim maintenance fee negatively impacts exploration. Let's take a closer look at it.

Perhaps most revealing, the 1999 survey shows that, even as worldwide spending on exploration decreased, exploration spending in the State of Nevada actually increased. Also, the same survey reveals that the claim maintenance fee has a relatively limited impact upon exploration investment. The Nevada survey asked respondents to rank the importance of 11 different factors influencing exploration investment. For small budget respondents, the impact of the claim maintenance fee ranked 8th most important out of 11 factors surveyed. For larger explorers, the impact of the claim maintenance fee on exploration investment ranked dead last.

Land speculation. The number of valid mining claims dropped in half the year the claim maintenance fee became effective. That drop can be interpreted in at least two ways. One, exploration activity decreased, and two, land speculation decreased. Anecdotal evidence, past GAO and CBO analysis, and President Bush Senior's 1991 budget proposal, indicate that speculation was at least as significant as exploration.

People are always looking for something for nothing, and without the claim maintenance fee, that's exactly what they get. Even with the claim maintenance fee, unscrupulous marketers try to sell information about staking mining claims as free land. By no means the only example, the addendum to my testimony that comes from the www.governmentland.com website serves to illustrate the problem.

The GAO verified the problem. In its 1990 report, "Unauthorized Activities Occurring on Hardrock Mining Claims", GAO surveyed 59 mining claims, on which 33 had unauthorized activities.

Also in 1990, the Congressional Budget Office predicted that a yearly claim holding fee would actually benefit mining activity because it would clear speculative use of mining claims, thus opening up land formerly closed to folks who actually intend to mine.

To that end, in 1991, President Bush's budget proposal included a claim maintenance fee along with an estimate that the fee would reduce the number of inactive claims by over 225,000 in the first year.

As the GAO identified, the claim maintenance fee funds most of the Mining Law Administration Program. MLAP includes the enforcement of the 3809 mining regulations, which among other things protects taxpayers from assuming the burden of environmental clean-up costs when mining companies default.

Especially in a new era, when proposed general appropriations for Interior-related budget items are declining, continuing a dedicating funding source for enforcement seems wise.

In closing, I would like to note two things. One, in 1990, the BLM and the Forest Service estimated that 80 percent of the 1.2 million claims then active weren't used for mining. Twenty percent of 1.2 million, the remainder, is 240,000, or just slightly more than the number of active claims today after the claim maintenance fee has been in effect.

Two, I would like to note that we find it interesting that the GAO report investigates only improper labor charges to MLAP. The GAO has a well-deserved reputation for nonpartisan analysis of all things Federally fiscal. Why wasn't the GAO requested to answer the question posed by this oversight hearing: "Is the claim maintenance fee worth it?" Perhaps it's because they have already given it: "We recommend the Federal Government require claim holders to pay the Federal Government an annual holding fee."

That concludes my comments, and I thank you for the opportunity to testify.

[The prepared statement of Mr. Septoff follows:]

Statement of Alan Septoff, Reform Campaign Director, Mineral Policy Center

Chairwoman Cubin, members of the Subcommittee. Good afternoon. My name is Alan Septoff I am Reform Campaign Director of Mineral Policy Center. Thank you

for inviting Mineral Policy Center to testify before this Subcommittee on the worthiness of the claim maintenance fee.

Mineral Policy Center (MPC) is an environmental organization dedicated to protecting the environment and communities from the adverse impacts of mineral development, and cleaning up pollution from past mining. Our national office, based in Washington D.C., provides support to citizens across the country and around the world. Our field offices in Colorado and Montana assist communities throughout the western United States concerned about the impact of mineral development in their backyards.

Hundreds of community groups and organizations with millions of members support our efforts to reform the 1872 Mining Law and improve public policy and industry practices related to mining.

MPC believes that responsible mining can and does occur on our public lands.

THE CLAIM MAINTENANCE FEE IS WORTH IT.

We believe the claim maintenance fee is definitely worth it. It protects the Nation's interest in our public lands in several different ways: it protects the public's financial interest in mineral resources; it protects the public's lands from fraudulent use; it protects the public's environmental interests by funding the enforcement of the BLM's surface management regulations.

To that end, Mineral Policy Center would like to take this opportunity to wholeheartedly endorse HR1085, the Claim Maintenance Act of 2001, sponsored by Resources ranking member Nick Rahall of West Virginia. It would make permanent the claim maintenance fee and the patenting moratorium. In one fell swoop it would end the biggest public land giveaway left on the books and ensure that dedicated funds exist to enforce mining regulations.

SUBSIDIES

Before I launch into the rest of my testimony, I would like to start with a reminder. The1872 Mining Law is still the law of the land when it comes to the disposition of publicly owned hardrock minerals on publicly owned lands. Aside from the claim maintenance fee and a nominal $25 initial claim location fee, the mining industry pays NOTHING to the owners of public minerals for the value of those minerals the taxpayers of the United States. This is in marked contrast to the royalties that the coal, oil and natural gas industries pay to taxpayers, and in marked contrast to the royalties that hardrock mining companies pay one another. Although it is true that the mining industry must invest considerable capital in order to extract and process minerals, so must a General Motors invest in capital before it can produce cars but GM still must pay to obtain the raw materials that go into its finished product.

Additionally, lest we forget, the 1872 Mining Law still allows valid mining claim holders to buy mineral bearing public lands for $5 per acre. Such purchases would be going on today if not for the patenting moratorium that must be renewed each year (excepting grandfathered claims). Hopefully, even an industry friendly President will see that it makes no sense to give away billions of dollars in mineral rich lands, and will choose to support the moratorium renewal this year. The total of these mineral giveaways? Since 1872, we estimate that the American taxpayer has essentially given away to the mining industry over $240 billion in mineral value and a land area the size of the state of Connecticut.

These giveaways are just part of the story, other mining industry subsidies still lurk out there such as the percentage depletion allowance: a double subsidy that allows mining companies to deduct the costs of mining a mineral deposit that they acquired without payment.

This subsidy litany is a long winded way of saying that, other reasons aside, the claim maintenance fee is worth it simply because it is the only return that taxpayers receive for the disposition of their own minerals. $22 million per year isn't much, considering the BLM estimates that the value of minerals annually taken from BLM-managed public land is in excess of $1 billion, but it's more than nothing.

CLAIM MAINTENANCE FEE -- IS IT WORTHWHILE?

It is undeniable that the number of valid claims on public lands dropped precipitously the year the claim maintenance fee became effective. It is undeniable that number of valid claims on public lands have remained below pre-claim maintenance fee levels ever since. Additionally, annual mineral industry surveys performed by the Nevada Division of Minerals indicate that the claim holding fee is one of the factors that limit exploration in Nevada. Let's take those three facts together at face

value, and assume that the claim maintenance fee does reduce exploration investment in the United States.

That assumption frees us to address the real question of this hearing: given the impacts of the claim maintenance fee, are those impacts worth it to the owners of the public minerals the American taxpayers. In our opinion, unsurprisingly, the answer to that question must be yes. Beyond the value of simply requiring the mining industry to pay SOMETHING for the minerals it extracts from public lands, we believe the claim maintenance fee's benefits exceed its costs to the PUBLIC for several reasons: (1) claim drops notwithstanding, recent mining industry surveys reveal that U.S. states are consistently among the most attractive sites for mining capital investment; (2) the claim maintenance fee significantly cuts down on land speculation and land fraud; (3) the claim maintenance fee is a dedicated source of funding for the enforcement of mining regulations in an era where land management budgets may be shrinking.

INVESTMENT ATTRACTIVENESS

Some have suggested that the claim maintenance fee forces the mining industry to look elsewhere to invest exploration dollars. A prominent international mining industry survey by the Fraser Institute [9] contradicts that view. Notwithstanding the claim maintenance fee, it has ranked the state of Nevada the most attractive climate for mineral investment in the world for three years running. It has ranked Alaska in the top ten for investment climate three years running as well.

The Nevada Bureau of Minerals exploration surveys [10], indicating that the claim maintenance fee negatively impacts exploration in the state, bear closer examination. Perhaps most revealing, the 1999 survey shows that even as worldwide spending on exploration decreased, exploration spending in the state of Nevada increased.

Second, the survey actually reveals that the claim maintenance fee has relatively limited impact upon exploration investment. The survey asked respondents to rank the importance of 11 different factors influencing exploration investment in Nevada. Included among those factors were geology (mineral potential), commodity prices, uncertainty about mining law reform, and claim maintenance fees. Responses were reported in three categories: respondents with an exploration budget greater than $1 million, respondents with an exploration budget less than $1 million and overall respondents. For all respondents, geology and commodity prices were the two most important factors affecting exploration investment. Interestingly, all respondents ranked uncertainty about mining law reform more important than the impact of claim maintenance fees. For small exploration budget respondents, the impact of the claim maintenance fee ranked 8th most important out of 11 factors. For large exploration budgets, the impact of the claim maintenance fee on exploration investment ranked dead last.

LAND SPECULATION & CLAIM VALIDITY

The immediate impact of the claim maintenance fee on the number of valid claims can be interpreted in two ways: (1) exploration activity decreased; (2) land speculation decreased. Anecdotal evidence, past GAO and Congressional Budget Office analysis, and President Bush Senior's 1991 budget proposal, would seem to indicate that the latter is at least as significant as the former.

People are always looking for something for nothing and without the claim maintenance fee, that's what they get. Even with the claim maintenance fee, unscrupulous marketers try to sell information about staking mining claims as free land only tangentially related to mineral development. By no means the only example, the attached printout from the website http://www.governmentland.com serves to illustrate the problem.

The GAO verified the problem. In its 1990 report, Unauthorized Activities Occurring on Hardrock Mining Claims, GAO surveyed 59 mining claims, on which 33 had unauthorized activities (residences).

In 1990, the CBO stated that a yearly claim holding fee would actually benefit mining activity, because it would clear inactive (speculative) claims, thus opening up land formerly closed to hardrock mining. [11]

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[9] Fraser Institute Annual Survey of Mining Companies 2000/2001

[10] State of Nevada, Commission of Mineral Resources, Division of Minerals, Nevada Exploration Survey 1999.

[11] As reported in GAO/RCED–90–111, page 7.

To that end, in 1991, President Bush's budget proposal included a claim maintenance fee along with an estimate that the fee would reduce the number inactive claims by over 225,000 in the first year. [12]

ENFORCEMENT OF ENVIRONMENTAL REGULATIONS

As the GAO identified, the claim maintenance fee funds most of the Mining Law Administration Program. The Mining Law Administration Program includes the enforcement the 3809 regulations. The 3809 regulations are responsible for, among other things, protecting taxpayers from assuming the burden of environmental cleanup costs when mining companies default. The Center for Science in Public Participation estimates potential taxpayer liability for cleanup at currently operating mines may exceed $1 billion. [13] Especially in an new era where proposed general appropriations for Interior-related budget items are in decline, continuing a dedicating funding source for enforcement of surface mining regulations seems wise.

MINING INDUSTRY POLITICAL BUDGET VS. CLAIM MAINTENANCE FEE WASTE

The GAO estimates that approximately $1.2 million, roughly 5 percent, of claim maintenance fee revenues are spent on BLM activity not related to the Mining Law Administration Program. Relative to other government programs and the private sector, we are unqualified to judge whether 5 percent is an egregious, typical, or low amount of resource misallocation.

We do know that the annual mining industry lobbying budget dwarfs $1.2 million. In 1998, the last year for which complete data is available, the Center for Responsive Politics reports that the mining industry spent $9.2 million on lobbyists and $3.8 million in donations to political candidates. Assuming the GAO misallocation estimate holds approximately true year to year, the mining industry spent ten times more, $13 million, than the misallocated portion of claim maintenance fee revenues. $13 million also constitutes approximately half of all claim maintenance fee revenues.

GAO REPORT

In closing, I would like to note that Mineral Policy Center finds it interesting that the General Accounting Office report investigates only improper labor charges to the Mining Law Administration Program. The GAO has a well-deserved reputation for nonpartisan analysis of all things Federally fiscal. Why wasn't GAO requested to answer the question posed by this oversight hearing: is the claim maintenance fee worth it? Perhaps it is because they have already given it: [we recommend the Federal Government] require claim holders to pay the Federal Government an annual holding fee in place of the annual work requirement. [14]

Thank you for the opportunity to testify.

Mr. GIBBONS. Thank you, Mr. Septoff.

We would like to welcome Mr. Craig from Nevada. We appreciate your being here, from Golden Phoenix Minerals. Mr. Craig.

STATEMENT OF STEVEN D. CRAIG, VICE PRESIDENT, GOLDEN PHOENIX MINERALS, INC.

Mr. CRAIG. Good afternoon, ladies and gentlemen, Mr. Chairman and members of the Subcommittee. My name is Steve Craig and

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[12] Ibid The right to mine under the 1872 Mining Law is only vested if you have a valid claim. According to case law, a claim is valid only if a prudent person could reasonably expect to mine the mineral deposit at a profit while complying with all applicable statutes and regulations. Unfortunately, in part due to expense and with certain exceptions, the Federal Government only checks the validity of mining claims if they are being patented. So, a claim holder doesn't have to prove they have found anything valuable to control a claim under the 1872 Mining Law. The claim maintenance fee serves as a rough, low-threshold proxy for a validity exam. If a claim holder doesn't think it's worth $100 per year to them, it probably doesn't contain a valuable mineral deposit or the reasonable prospect of a valuable mineral deposit. The claim maintenance fee is supposed to fund validity examinations, but the fee is inadequate to perform such exams on all claims staked.

[13] Hardrock Reclamation Bonding Practices in the Western United States, prepared by James Kuipers of Center for Science in Public Participation for the National Wildlife Federation, Feb. 2000.

[14] GAO/RCED–90–111, page 7.

I'm Vice President of Golden Phoenix Minerals, which is based in Reno, Nevada.

Golden Phoenix is a junior exploration and development company. I am a trained exploration geologist with 26 years of experience in all aspects of exploration.

When the $100 maintenance fee was authorized via rider in 1993, Congress thought this was a good way to reduce the environmental impact on public lands by eliminating the $100 per claim assessment work requirement. When the rider was passed, the western United States was experiencing a major gold exploration and mining boom. Unfortunately, Congress may not have been fully aware of the devastating impact the maintenance fees would have on the gold boom and all the people that made a living from it.

When the maintenance fee was enacted in 1993, the entire exploration community experienced shock and disbelief. Many individuals had hundreds of claims, and they couldn't afford to pay the BLM the $5,000, the $50,000, or more required to hold them. Larger companies could pay the new fees, but if they were not budgeted or some claims were considered to be of low potential, then they were dropped. Thousands of claims were dropped to save money.

This resulted in less money than was predicted for the government. As my chart on page 3 of my written testimony shows, the number of claims held in Nevada dropped from about 340,000 to under 150,000 claims. People could not afford to hold mining claims and explore them at the same time. Of the claims that had their maintenance fees paid, most were paid by large companies at the operating mines, or by small companies which had some cash. The $100 maintenance fee basically wiped out the individual prospector overnight, and most of the exploration conducted by companies.

Communities like Silver Peak, Eureka, Tonopah and Ely were literally devastated because the prospectors stopped coming to town to spend money. They stopped paying the county fees on their claims, which the counties used for different programs. They didn't buy gas, groceries, truck repairs or motel rooms. Stores closed, gas stations went out of business, and heavy equipment operators had to sell their equipment. Rural Nevada shut down. Thousands of people lost their jobs, including a lot of my friends.

The $100 maintenance fee has affected the way Golden Phoenix conducts its business. The company has two key employees, has very limited financial resources, and has typically struggled its entire existence. The company is also one of the very few left in Nevada that is attempting to find and develop ore bodies.

During the last three years, the $100 maintenance fee was constantly in the forefront of our planning. We had to save and scrimp to make those payments. If we failed to meet them, then we would lose the properties that contained drilled mineralization, and the company would be forced to shut down under bankruptcy.

We went through considerable stress over this. Essentially, the $100 maintenance fee was a double whammy. We needed to explore our properties, but we had to spend our money on maintenance fees just to keep the claims. During the last three years the company has dropped five of its properties because we could not pay the maintenance fees. The last filing year, we paid $45,400 to hold

our claims on our last two properties. Currently, our bank account is empty.

Since the $100 maintenance fee was instituted, the entire infrastructure of the exploration community has been eroded away. The attack on the mining industries during the Clinton years has been the "Perfect Storm", just like the movie. Many companies engaged in exploration have shut down or moved overseas, and we have lost hundreds of skilled people, foremost exploration geologists, self-educated prospectors, claim surveyors, assayers, drillers and technicians. We need a lifeline tossed to us, not an anchor.

In summary, the $100 maintenance fee has had a devastating effect on the mineral exploration industry. There has been a loss of a large number of jobs in the rural communities where exploration takes place, and less exploration has created the future loss of raw minerals for industrial America, the effect of which we have yet to feel.

I urge Congress to eliminate or significantly reduce the $100 claim maintenance fee and, by so doing, create opportunities for the discovery of additional mineral resources by the American prospector.

Mr. Chairman, this concludes my prepared remarks.

[The prepared statement of Mr. Craig follows:]

Statement of Steven D. Craig, Vice President, Golden Phoenix Minerals, Inc.

I am here today to tell you about the devastating effect the $100 per claim maintenance fee has had on individuals, rural communities, the mining industry, and the future supply of minerals to the United States.

BASICS OF MINING CLAIMS

The right to locate a mining claim on public lands administered by the Bureau of Land Management (BLM) or the United States Forest Service (USFS) is granted under the general mining law. Claims are self initiated by persons or companies who want to explore and develop the minerals under the claim. The surface and minerals continue to remain under the jurisdiction of the BLM or USFS.

A typical mining claim's maximum size is 600 feet wide and 1500 feet long and covers about 20 acres. A total of 32 claims will normally cover one square mile, or 640 acres. One mining claim usually does not cover an entire mineralized zone. Consequently, hundreds of claims may have to be staked to cover the zone and other potential undiscovered zones.

A mining claim is required to be filed with the county in which it is located, and in Nevada, costs $26.50 for the initial filing and another $5.50 annually. The same claim also has to be filed with the BLM, which requires a $100 maintenance fee and a one-time $35 filing fee for a total of $135. Then, every September 1 thereafter, the BLM collects a $100 maintenance fee to keep the claim valid. Non payment to the county or BLM invalidates the claim.

On an acre basis, the combined initial filing fees average $8.075 per acre, or $5,168 per square mile, thereafter it is $6.75 per acre or $4320 per square mile. For simple comparison, the annual geothermal leasing fees may be as low as $1.00 per acre or $640 per square mile, and oil and gas rental fees may be as low as $$1.50 per acre or $960 per square mile.

The county filing fees that are collected in Nevada are distributed to the county and to the Nevada Division of Minerals. The counties use the fees to fund the recordation and management of the claims. The Division of Minerals uses the filing fees to fund the state abandoned mine program. None of the fees collected by the BLM assist the counties or state, but go instead to the U. S. Treasury.

STAGES IN THE EXPLORATION AND MINING PROCESS

The reason the general mining law was developed was to give all citizens of the United States an opportunity to earn a good living and to supply the Nation with important metals. Back when the mining law was passed, the Nation needed gold

and silver, and it wanted to populate the wide-open spaces of the West. As time went by and as the Nation needed new supplies of different metals for its growth, the prospector was out looking for the metal that was in demand.

Now let me discuss the different stages of the exploration and mining process. Please be aware that if the first exploration stage is unsuccessful, then the other stages do not take place. Furthermore, extensive permitting and bonding is required by state and Federal agencies at every step in the process.

The first stage is grassroots exploration, or prospecting. Prospecting identifies mineralized areas, and if they have potential for a discovery, then they are acquired under the location rules of the general mining law. After the claims are located, the surface is further examined and the subsurface tested with drilling or trenching. The persons that usually do the initial prospecting and staking of mining claims are single individuals or persons employed by a company. The cost to stake mining claims usually average about $100 per claim and this is a direct cost to the locator, before the filing fees are paid.

The second stage is discovering a potential economic ore body and defining its size, grade and economic viability. A junior mining company usually does this step, but only if it has the financial resources. Major companies will also do this, but only after they have acquired the property from a prospector or a junior. The amount of money that may be spent during this phase is from $1 million to $10 million. Generally, a large portion of the money that is spent stays in the community, which is near the ore body.

The third stage is building the mine facilities and developing the ore deposit. The amount of construction investment ranges from $25 million to $200 million to build the mine, and with considerable risk. Again, a significant amount of this money stays in the communities it is spent. Only medium to large sized companies have the expertise and finances to complete this step.

The fourth stage is mining the orebody, which results in long term jobs, payback and profit for the company, and tax money to different government entities.

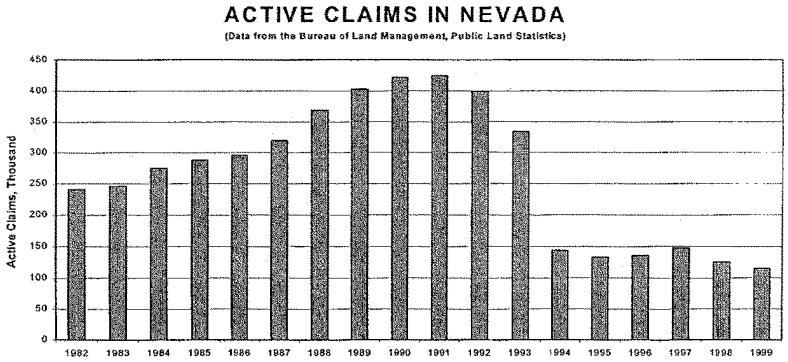
The fifth stage is closure and reclamation of the mine to the standards committed to in the original operating plan and which a reclamation performance bond guarantees. When completed, the land returns to its previous use, which in the West is usually range for wildlife or cattle. The amount of money spent during this phase ranges from $1 million to $20 million.

The timeframe for discovering and exploring for an economic deposit may be from three to 10 years. It may take another three to five years and $30 to $200 million of investment to develop a mine. Much of this money is spent locally to the benefit of nearby rural communities.

THE $100 FEE IN 1993

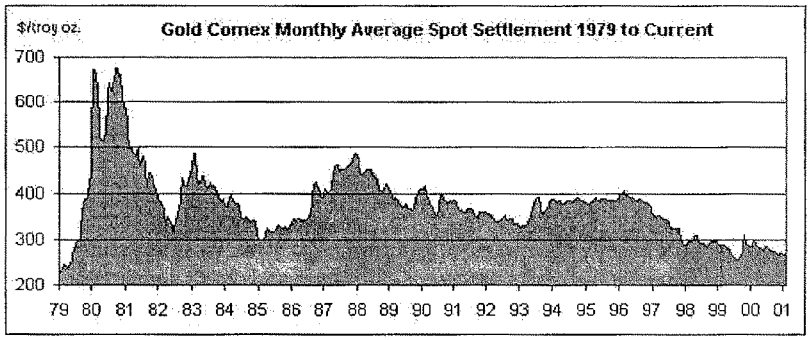
When the $100 maintenance fee and $25 filing fee (later increased to $35) were authorized via a rider in 1993, Congress thought this was a good way to reduce the environmental impact on public lands by eliminating the $100 per claim assessment work requirement. When the rider was passed, the Western United States was experiencing a major gold exploration and mining boom. Unfortunately, Congress may not have been fully aware of the overall five stages of exploration and mining process, as I described above. Nor was Congress able to predict the devastating impact the maintenance fees would have on the first stage of exploration to individuals, communities, mining companies, and the potential future well being of the United States.

The chart below shows the number of active claims on an annual basis in Nevada since 1982. Practically all of these claims were located over gold prospects and mines, while only a small number were located over copper, silver or lead-zinc prospects. The chart shows the impact the maintenance fee has had on Nevada since its passage in 1993. In the last three years, claim numbers continue to decline due this fee and low gold price.



GOLD PRICE HISTORY

The following chart shows the history of the gold price from 1979 to the present. At the time of the introduction of the maintenance fee, the gold price rose from about $330 per ounce to near $400 per ounce and remained at that level for several years. These data suggest a strong correlation between the decline in mining claims in 1993/1994 and the maintenance fee imposed on mining claim owners. The decline in claim numbers was not due to a decline in gold price.



THE FEE TAKES EFFECT

When the maintenance fee was enacted in 1993, the entire exploration community experienced shock and disbelief. Many individuals had hundreds of claims, and they couldn't afford to pay the BLM the $5000, $50,000, or more required to hold them. Larger companies could pay the new fees, but if the fees were not budgeted, or some claims were considered to be of low potential, then they dropped thousands of claims to save money. This resulted in less money to the government than had been predicted. As the chart shows, the number of claims held in Nevada dropped from about 350,000 to under 150,000 claims. People could not afford to hold mining claims while they explored them and with the hope that a large company might lease them. Of the claims that had their maintenance fees paid, most were retained by large companies at the operating mines or by small companies with some cash.

The $100 maintenance fee basically wiped out the individual prospector and most of the exploration conducted by companies. Essentially, the very first step in the exploration and mining process had literally been eliminated and the following steps in the mining process would not take place.

The "One Job Creates Seven Jobs" Rule John Dobra, a mineral economist at the University of Nevada-Reno, has studied the creation of other jobs in communities from just one mining job. He reports that for each employee of a mining company, seven more jobs are created in communities both near and far from the mining site. This job creation has tremendous economic implications to rural communities.

The same is true for prospectors and explorationists. When the $100 maintenance fee was instituted, the prospectors stopped going to the field to look for good min-

eralized areas. They stopped paying the county fees on their claims, and they didn't buy gas, groceries, truck repairs, sample bags, or motel rooms. They didn't contract bulldozers, backhoes or drill rigs. Assay labs didn't have samples to analyze. Basically, all the people that depended on the exploration activities of prospectors and geologists could no longer make a living.

Communities like Silver Peak, Eureka, Tonopah, and Ely were literally devastated because the prospectors stopped coming to town to spend money. Stores closed, gas stations went out of business, and heavy equipment operators sold their equipment. Rural Nevada shut down. Thousands of people lost their jobs, including a lot of my friends.

THE IMPACT TO GOLDEN PHOENIX, A JUNIOR EXPLORATION COMPANY

The $100 maintenance fee has affected the way Golden Phoenix Minerals has conducted its business. The company was incorporated in 1997, just when resource companies fell in disfavor with investors, tech stocks were looking to make a run on the markets, and the gold price was starting its decline to $250 per ounce. The company is a publicly traded junior company with two key employees, has very limited financial resources, and has typically struggled its entire existence. The company is also one of the very few left in Nevada that is attempting to find and develop ore bodies. We hope we can survive until better times come.

In the 1998 filing period, the company was in desperate times. Our money had run out, and we were just realizing that we would not be getting paychecks. We dropped four exploration properties for a total of 241 mining claims and saved $24,100. In the 1999 filing period, we dropped two more of the properties and reduced the other properties for a total of 190 claims. Our payment to the BLM that year was $48,700, which we got from some limited investor financing. We were living on our savings and hadn't seen a pay check for a year. In 2000, our finances were better, but we reduced our claim blocks again by another 33 claims, to save money. That year we paid $45,400 to the BLM.

During the last three years, the $100 maintenance fee was constantly in the forefront of our planning. We had to save and scrimp to make those payments. If we failed to meet them, then we would lose the properties that held drilled defined mineralization, and the company would be forced to shut down under bankruptcy. We went through considerable stress over this. In addition to paying the filing fees, we still spent any available money on the properties to explore them. Essentially, the $100 maintenance fee was a double whammy. We needed to explore our properties, but we had spent the money on the maintenance fees just to keep the claims.

This past December we became very excited about a new mineralized area that we had discovered, which had gold values of up to one ounce per ton. We contracted a land surveyor to locate 120 claims, which cost us over $12,000 in direct costs to complete. As it turned out, when it came time to file the claims, we didn't have the $19,380 required to file the claims in the county and BLM, and the claims are now invalid. We are out $12,000 plus the claims.

THE POTENTIAL LONG-TERM IMPACT ON THE UNITED STATES

The United States is the major economy in the world, and energy and raw materials allow it to enjoy high living standards. However, California is finding out that electricity does not come from a light switch. They will have to spend several years building power plants before that light switch is secure. The same goes for mining. We have shut the switch off and the country will suffer for it in the future. By taking away the incentive to find ore deposits in this country, the long-term viability and productivity of the mining industry will grind to a halt, and it is definitely grinding to a halt. Even though we can get some of our raw materials from foreign countries, this is not risk free, nor is it secure.

Since the $100 maintenance fee was instituted, the entire infrastructure of the exploration community has been eroded away. The attack on the exploration and mining industries during the Clinton years has been the Perfect Storm , just like the movie. Many small to medium sized mining companies engaged in exploration shut down or moved overseas, where the risk to operating was perceived to be less. We have lost hundreds of skilled people, foremost exploration geologists, self-educated prospectors, claim surveyors, assayers, drillers, and technicians. Most of these people now have other employment and may not come back even with changes in the laws and regulations.

The low price of gold, the legislative land withdrawals, the maintenance fee and ever tougher environmental regulations have all come together in the Perfect Storm to severely weaken the exploration industry. We need a lifeline, not an anchor. It may take awhile for exploration to recover.

PROPOSED ALTERNATIVES

What do we do about the $100 maintenance fee? The best thing we can do is to get rid of it. However, if getting rid of the $100 fee is not possible, the Committee could consider the following alternatives:

- Allow assessment work and permitting costs to be filed in lieu of the $100 maintenance fee.
- Reduce the maintenance fee to $20 per year, retain the one time $35 filing fee, and require the money be kept in the county of origin.
- If the fee is retained, then pro-rate the initial cost of filing so that only a full year requires $100, a half-year is $50 and so forth.

SUMMARY

The $100 maintenance fee has had a devastating effect on the mineral exploration industry, including individual prospectors, small companies, and major mining concerns. There has been the loss of a large number of jobs in the rural communities where exploration takes place. Less exploration has created the future loss of raw minerals for industrial America, the affect of which we have yet to feel. I urge Congress to eliminate or significantly reduce the $100 mining claim maintenance fee and, by doing so, create new opportunities for the discovery of the additional mineral resources by the American prospector.

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

Before I turn to Mrs. Cubin for questions, I do want to kind of clear up the record here.

It seems that there is some misinterpretation or misstatements out there, that since 1866 real or bona fide mining claimants have had the legal tools to overstake or "speculatively" hold mining claims and earn the right to mine the claimed area. Unfortunately, the holding fee isn't necessary to clear nonbona fide miners from this land. There are other legal tools to do that.

Also, I would say that it certainly is a disservice to say that the untrue statements of an unscrupulous person published is in any way a justification to say the mining claim fee is necessary. That is certainly not necessary as well.

With that, I would turn to Mrs. Cubin for her questions.

Mrs. CUBIN. Thank you, Mr. Chairman.

I think the major concern with the $100 fee is the effect that it has on the grassroots type miner and on the small companies. Certainly the big companies can afford to pay it.

It might come as a surprise to you, Mr. Septoff, that I agree with you and the GAO, that there ought to be some annual fee charged or, in lieu of that, a way to encourage exploration by the small miners, the grassroots people, as I will call them, without making it impossible for them to produce minerals that would benefit our country—maybe increase the number of claims that are exempt or start with a low fee for a few years and then drastically escalate the fee, so that we just don't have land tied up.

But as the Chairman said earlier, I don't think anyone is necessarily saying that we don't need something here, but I think we need to open the discussion and do something, not only to protect the smaller miners, which is laudable in and of itself, but also to have the minerals, as Mr. Craig stated, for the use of the country.

Having said that, I wanted to ask Mr. Craig, at the present time, how much of what I'm calling grassroots exploration and claim staking is going on in Nevada?

Mr. CRAIG. Well, I am pretty active in the exploration community in Nevada. That's what I did for 26 years. I keep track of a lot of activities, just because I like that as a hobby.

I would say that exploration has shut down. Where I'm getting most of that information is from my friend, Rob Berry, who handles land management services. He actually works with the BLM and even tells them how many active claims they have, because they've got so much going on they can't keep track of how many claims they have, so they have to go to a private industry person to get that information.

According to Rob, there's only been about 2,000 to 3,000 claims staked and filed since last September 1st.

Mrs. CUBIN. To put this in perspective, why there are so many claims, it's because the claims are 20 acres.

Mr. CRAIG. Yes, 20 acres.

Mrs. CUBIN. If you explore, exploring 20 acres for a one-man operation—Well, just put that 20 acres in perspective in terms of a small miner and a large miner, why you would have so many claims. I think that's one thing that people don't understand.

Why would you have so many claims that would cost you $45,000 a year?

Mr. CRAIG. Well, the best business practice for mining deposits—and notice I said "deposits". When you get to a mineralized area, there are always multiple deposits. There are many deposits. Often you don't know where they all are. So as part of the exploration process, you stake a lot of claims over prospective areas. And yes, it may seem like that's speculation, but that's what exploration is. You're speculating that you're going to find a deposit. So most of the time, large deposits occupy many claims.

Mrs. CUBIN. Mr. Tangen, you stated that the rental fee is especially hard on independent prospectors and junior companies. What do you mean by these terms, and why is rental so hard on these people?

Mr. TANGEN. As Mr. Craig indicated about junior companies or small companies, most new mineral discoveries are made by self-employed, independent prospectors, or small exploration companies, which are known as juniors, as opposed to large mining companies. These individuals and juniors are entrepreneurs, characterized by high skill, innovative, high energy, determination, et cetera, but with low financing.

For these companies, every dollar is carefully guarded and carefully spent. Every dollar that goes to pay rent is a dollar that's not available for exploration.

Dollars spent on exploration are often spent in rural areas, as Mr. Craig suggested, for gas, groceries, and provide far greater benefit than the same money going into the Federal treasury. Mining operations, in addition, come in a variety of sizes, have several phases. The earliest phase is prospecting and raw exploration.

The United States in general, and Alaska in particular, has not been completely prospected. Early phase exploration is frequently undertaken by so-called junior companies, who raise capital on the open market. This capital is extremely hard to come by, and every dollar that does not go directly into the ground—that is to say, in

this case, every dollar that is siphoned off by the government—is an additional dollar that has to be raised.

The point is that this money is hard to come by. And when it goes to the Federal Government, it doesn't beneficiate the property.

Mrs. CUBIN. With the Chairman's permission, one more question.

Just for the record, from your experience, if all three of you would like to answer, does the small miner exemption work, and why?

Mr. TANGEN. In Alaska you have a situation in which the small miner exemption has been made workable as a result of recent changes in the regulations. But we have a situation in which the sideboards on it are too small. The ten claims limit is beneath the number that is reasonable.

Mom and pop operations on a remote creek in Alaska would frequently have 30 or more claims. An exploration geologist, again as Mr. Craig has suggested, going out and finding a new prospect, might have no real handle on how big that deposit might be, so he could possibly locate a thousand claims or more.

The term "small miner" is probably a misconception. I think what we have is a situation in which we either have junior prospectors on the one hand, or small financial operators on the other. It shouldn't relate to the number of claims that they have.

Mr. SEPTOFF. We honestly don't know much about small miners, and part of that is because small miners, for the most part, are notice mines.

Mrs. CUBIN. Are what? Excuse me.

Mr. SEPTOFF. Notice mines. And BLM doesn't release information about notice mines publicly.

What we do know for a fact is that there are between 30-35,000 separate individuals holders of mining claims, and of those 30-35,000, between 25-30,000 fall under the small miner exemption.

Mrs. CUBIN. Mr. Craig?

Mr. CRAIG. I personally haven't dealt with the small miner exemption, so this is what I'm getting from my friends.

What I have been told is that there is so much confusion, especially from the BLM, about what their assessment work actually applies to and so forth, that they've thrown up their hands and they prefer to pay the $100, just so they can keep their claims active. There seems to be a lot of bureaucracy involved with how the small miner is treated by the BLM.

Mrs. CUBIN. Thank you, Mr. Chairman, and I thank the members of the panel.

Mr. GIBBONS. Thank you, Mrs. Cubin.

Gentlemen, I know there is an impact. It is also indicated from your statements on counties, et cetera. But my question is, when you go to determine information about a potential or existing mining claim, where do you get the information? Is it through the county or through the BLM now?

Mr. Tangen or Mr. Craig.

Mr. CRAIG. I can clearly say that, if I want to get good information quickly, I go to the county. BLM's accounting of mining claims is completely redundant. It's duplicated.

Mr. GIBBONS. So the expense of the BLM charging to have information about mining claims is duplicative to the effort of the county?

Mr. CRAIG. The county has been doing this for 130 years, and they've done a great job. I go there first.

Mr. GIBBONS. If you were to do a title search on a mining claim, where would you go?

Mr. CRAIG. I would go to the county. They have all the records.

Mr. GIBBONS. Does the county require it to be recorded in any way?

Mr. CRAIG. Yes. Yes, they do.

Mr. GIBBONS. Either Alaska or Nevada, I'm sure you could testify as to the overall impact. I heard in someone's statement—I believe it was Mr. Tangen. Did you talk about the impact on communities, or was it Mr. Craig?

Mr. TANGEN. I think both of us to some extent did.

Mr. GIBBONS. My thought is that, in your statements, are you proposing that this mining claim fee be adjusted? What suggestions would you give to us—and this is a question to all three of you—what suggestions would you give to us with regard to the mining claim fee? How should we look at adjusting it, if it's necessary to adjust, to accommodate the concerns that you have?

Mr. TANGEN. If I may, sir, let me start.

I have three significant, specific suggestions that I would urge you to make. First of all, I would urge you to lift the ten-claim limit, so that it's either open or it's a much larger number.

Second of all, I would urge that it be optional; that is to say, if the operator has the ability and desire to put the money into the ground, then that should be an offset, if not 100 percent, perhaps 75 percent or something like that.

The third point is to reduce the size of the amount. Again, the situation in which the $5 per acre amount is burdensome at this point in time, perhaps a lesser fee, perhaps half that or whatever, perhaps a graduated fee over time.

I should point out, for instance, that under the Alaska mining law, for mining on State land, in which there is three times as much land open to mining under State law than there is under Federal law in Alaska at this point in time, for the first 10 years the fee is set at one rate and then thereafter it is raised and raised a second time. So there are administrative alternatives to it.

Mr. GIBBONS. Mr. Septoff.

Mr. SEPTOFF. We certainly agree that the claim maintenance fee should be increased over time.

I don't know how the ten claim limit was set to begin with, so I can't really comment on that. What I can comment on, and would like to remind everybody, is that the claim maintenance fee applies to all claims, not just to small miners. When the claim maintenance fee went into effect, to begin with, it was supposed to be indexed for inflation. It started at $100 and it was supposed to be adjusted, I think every five years, for inflation. And it hasn't changed since. So we would think it should be indexed for inflation, which I believe would have it over $200 now, but I'm not quite sure.

Mr. GIBBONS. Mr. Craig?

Mr. CRAIG. Well, knowing how the government works, they don't want to give up any fees. But may I suggest we reduce the maintenance fee to something that is on par with something like geothermal leasing or coal and gas leasing. In Nevada—and I don't know what all the costs are, and I don't want to open up a bunch of issues here—but in Nevada, geothermal leases are a dollar an acre. That makes that $20 a claim. I think that's right on par with what the Federal Government is leasing land out for.

Another issue that I wanted to bring up is that if we wanted to stake claims today, on March 29th, we have 90 days to file those claims, and that puts us at June 29th, which means we would have to pay a $100 maintenance fee, plus the $35 filing fee and recording fee, $130 per claim, and then, one month later, two months later, we have to pay another $100 just to hold those claims. So that's why we're not going to see a lot of claims filed the rest of the year, because why pay rent on something for the amount of time that you've got. So that would be something else. If we're going to retain the fees, then at least prorate them to time.

Mr. GIBBONS. Thank you.

Mr. Tangen, in your testimony you talk about the number of claims that are in Alaska, public versus state land, or other non-Federal lands I should say.

What has been the experience of the number of mining claims filed since '93 on Federal versus non-Federal lands in Alaska? Do you have that information?

Mr. TANGEN. Yes, sir. Attached to my written testimony is a graph which displays the number of claims in Alaska, Federal claims and State claims. I know that you can't see it here, but the fact is that, in 1990, there were approximately 25,000 Federal claims and approximately, a little bit over 30,000 State claims.

Since that period of time, the number of Federal claims has fallen off dramatically, and then has held at a fairly low level, around the 11,000 claim level.

In the meantime, the number of State claims went down for a little while, as reflected by the commodity prices, I think, generally the price of gold. But since 1996, the number of claims on State and private land in Alaska has increased—and by private land, I'm essentially referring to land owned by Native Regional Corporations—until we have approximately 45,000 State of Alaska claims on State and private lands.

Mr. GIBBONS. So what you're saying is there's no parallel to the fact that metal prices have driven down all mining claims across the board, because non-Federal claims have risen, even though the metal prices have been down—

Mr. TANGEN. Absolutely. To a certain extent, the commodity prices had an impact, but that impact has now been factored into the business decisions. Mining claim locations have essentially been on the increase.

The attitude of the State of Alaska toward mining is substantially more friendly than the attitude of the Federal Government toward mining on Federal ground. In the past decade, especially the past half-dozen years, the burden that has been put on the miner in Alaska to go out and locate a mineral deposit on Federal ground has been onerous; whereas during that same period of time,

our Governor, a Democratic governor, has publicly and repeatedly announced that Alaska is open for business and has basically welcomed the mining industry on to State land and private land.

Mr. GIBBONS. Well, you're competing directly with Nevada, so I don't wish you well in that effort. But thank you very much.

[Laughter.]

Mr. TANGEN. Well, we don't hold a candle to Nevada. Don't misunderstand. Nevada has some very, very big operations, claims and companies.

Mr. GIBBONS. I'm only joking, of course.

Mr. Craig, in your 26 years of experience—and, of course, I have a similar background to yours, and some experience as well—but looking at the claim maintenance fee versus assessment fees, as they used to be charged, as assessment work used to be charged, not always, if a person holds a mining claim, is anything being extracted out of the ground? So the fact that it's called a fee for a billion dollar industry, or whatever—I mean, some people are holding these claims in expectation of having the opportunity to develop, explore and market their commodities.

Is it your experience that everyone who pays a fee is getting something out of that ground?

Mr. CRAIG. No. I think when someone pays the fee, they have the right to hold the claim for another year. The only way they're going to get anything out of the ground is if they can get some work done on that ground.

Mr. GIBBONS. And the fee itself doesn't necessarily prohibit exploration—

Mr. CRAIG. No, it doesn't prohibit.

Mr. GIBBONS. It doesn't stop disturbance.

Mr. CRAIG. But if you are going to get something out of that claim, you have to advance it somehow by doing work on it.

Mr. GIBBONS. All right.

Now, in your estimate, what hoops do you have to jump through to develop a mine?

Mr. CRAIG. Oh, tremendous hoops. This exploration-mining industry is the most regulated industry, I swear, in the United States. Just to get a drill hole done on a piece of—well, let me back up. Let me just start all over again.

Let me just talk about our Borealis property, where the property is under jurisdiction of the U.S. Forest Service. It had been mined previously by Echo Bay Minerals. There is 10 million tons of crushed, leached material on drill pads.

I put in a plan of operation to the U.S. Forest Service and it took six months for them to get back to me, and in the interim, to get back to me for the amount of bonding it would take to reclaim the disturbance I proposed, but they wanted us to do an archaeological survey on top of the leach pads, which I thought was a little out of line. And because I was going to use a buggy-mounted rig, where there's going to be no disturbance, they wanted a $20,000 exploration bond put down. That's when I said we're not going to disturb any land. We can explore without disturbing the land.

So I still haven't reached a consensus with the Forest Service on that.

Mr. GIBBONS. What is an estimated cost that it would take to get a gold mine into production today? Just kind of a ballpark average figure, starting from the day you would out on the ground today.

Mr. CRAIG. Okay. If we walked out on the ground today to do exploration, it would probably cost a couple of million, five to ten million dollars, just to do exploration and studies, drilling holes. If we wanted to build a mine, it would be anywhere from a minimum of $30 million all the way up to $200 million. And all of this is under tight scrutiny by the Federal Government, the State government, EPA, the Army Corps of Engineers. Permits have to be gotten, studies have to be done.

Also, that's another fallout of this whole decline in the exploration industry. Archaeologists are out of jobs now. These are the people who go out and study whole areas that were funded by mining companies. Things like that.

Now, obviously, once the mine is put into production, then there's mining that takes place, people have jobs, numerous Federal taxes are paid. This is where the Federal Government really scores big. A lot of taxes are paid. It's not a free ride. The government gets a lot of money out of a mine once it's put into production.

This $100 maintenance fee is a real problem up front. It seems fairly small to our friends who don't like mining, but where the government really comes out ahead is on all these taxes, income taxes and so forth.

Now, after the mine is exhausted, then it's still going to cost anywhere from one million to ten million to thirty million dollars of costs to reclaim the lands. Again, our requirements today are not like back in 1849, where we have all of these dirty pictures, you know, that show up in the press. The reclamation that's done today, especially in Nevada, is superb. You drive along I-80, drive by the Lone Tree Mine, Marigold Mine, you see round hills out there. You go, huh, that's kind of interesting. Now it looks very nice. There's grass on it, sometimes you see cows on it. It's been totally reclaimed.

So there is a lot of money that the mines generate over the years, and a lot of it goes to the Federal Government, and a lot of people get paid.

Mr. GIBBONS. So what you're saying is it's not a free ride. Simply because you go out there and stake a claim, it is not free ride to get the minerals out of the ground, whether it's gold, a precious commodity, or some other mineral, which may be beneficial to society, beneficial to the way we live today.

Mr. CRAIG. That's right.

Mr. GIBBONS. As I hear you, even from the smallest operation, it could cost anywhere from $30-40 million for the smallest operation, to $200 million and above for some of the larger operations, before they're able to begin to get a profit, or any income coming back to them from that operation, that mine, whichever they may have. So they've got to put out an investment.

Mr. CRAIG. It's all front end investment.

Mr. GIBBONS. Front end loaded, and in hopes of making it to a point where the commodity will pay back the cost of their investment.

Certainly I think all of us on this Committee can understand the value of mining. I mean, no one in this room, I would hope, would say that we don't need mining in this country, simply because everyone knows it takes 44,000 pounds of mined metals and minerals per person, per year, to create the quality of life that we have, including everything from health care all the way down to the vehicles we drive, and the telephones and anything else we communicate with is all done with mining.

With that, I have noticed we've kept you here now for two hours, maybe a little in excess. I do want to thank all three of you for, one, taking time out of your busy day to testify here today—you presented us with some valuable information, information and ideas—but I think it will be helpful for us as a Committee to make decisions about where we're going on this issue of a mining claim maintenance fee.

Certainly we have our work cut out for us, but we would also ask you that there may be members of this Committee who may wish, or the staff of the Committee itself, may wish to submit written questions to you, that we hope you would answer in the faith that they're given, to provide us with the necessary information to help us make our job a little easier.

[A statement submitted for the record by The Honorable Edward J. Markey follows:]

Statement by The Honorable Edward J. Markey, a Representative in Congress from the State of Massachusetts

Thank you, Mr. Chairman. Our public lands are our national treasure. They are wilderness areas of incomparable grandeur. They remind us of what our pioneering fathers first saw as they strode across this land. But for some special interests, our public lands represent our national treasure chest. For out of these lands they draw oil, wood, silver, and gold. And it is true these resources benefit our nation. But we are at a point in history where we have the capability to step back and think carefully about our use of these resources we must think about not just today's needs, but tomorrow's generations. What do we leave to our grandchildren?

As you know, I oppose the President's proposal to drill for oil in the Arctic National Wildlife Refuge. I cannot support allowing oil companies to rip into the pristine biological heart of the Refuge for a few drops of oil when we have technological substitutes at hand. But at least with the on-going oil extraction from public lands, the public gets a more reasonable return on the development. The American taxpayer receives 12.5 percent of the value of the oil extracted. The extraction of coal and natural gas also yield the same benefit. But with silver and gold, there is no such royalty. The mining enterprises move in, dig in, and pull out the jewels from the treasure chest, and the benefit to the owners of the land are these nominal fees that are the subject of our hearing today.

And at what cost to our future generations? Mining is not an inherently environmentally friendly venture. Cyanide, sulfuric acid, and heavy metals can be generated and spread across the land as a result of mining activities. The EPA says that mine wastes have polluted 12,000 miles of our nation's waterways and 180,000 acres of lakes and reservoirs. Uncontaminated soil can impact streams as well when the supporting vegetation is stripped away.

The Mining Act of 1872 was intended to encourage the development of the West. But this was passed back when Ulysses S. Grant was President and Robber Barons like Jay Gould, Jim Fiske, Andrew Carnegie and Cornelius Vanderbilt were calling the shots. We are long beyond the days of wooden-wheeled wagons rambling through the wilderness in search of buried treasure. Instead we have environmental degradation as the result of a billion-dollar-a-year industry on public lands. Are the mining fees worth it? At the very least, these fees represent a minimal offset to mining activities in our public lands.

Some of you may remember the old Bee Gees song, "The New York Mining Disaster of 1941,"

I keep straining my ears to hear a sound.

Maybe someone is digging underground, or have they given up and all gone home to bed, thinking those who once existed must be dead.

Today, we don't need to strain our ears to hear the sound of the mining industry digging on public grounds. They may hope we've given up and all gone home to bed, but mining reform is not yet dead.

I look forward to the testimony of today's witnesses.

With that, I want to thank you again, and will excuse you as witnesses. There are no other panels to be heard today, so I will once again thank everyone for attending and call this hearing to a close.

[Whereupon, at 4:08 p.m., the Subcommittee adjourned.]

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