NEVADA AND H.R. 2262: OPPORTUNITIES AND CHALLENGES IN REFORM OF THE 1872 MINING LAW: PART 2

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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LEGISLATIVE HEARING ON NEVADA AND H.R. 2262: OPPORTUNITIES AND CHALLENGES IN REFORM OF THE 1872 MINING LAW: PART 2

Tuesday, August 21, 2007
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Elko, Nevada

The Subcommittee met, pursuant to call, at 10:08 a.m., at the Western Folk Life Center, 501 Railroad Street, Elko, Nevada, Hon. Jim Costa [Chairman of the Subcommittee] Presiding.

Present: Representatives Costa and Heller.

STATEMENT OF THE HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COSTA. Good morning. It's good to be here in Elko, Nevada. And what a wonderful turnout we have this morning for the Subcommittee's hearing, the Subcommittee on Energy and Mineral Resources, a part of the Committee on Natural Resources of the House of Representatives, to be here in Elko, Nevada.

We have a number of opportunities to get firsthand testimony this morning on a very important issue, not only facing Nevada and the areas throughout northeastern Nevada, but also issues that are critical to the United States. And that is the reform of mining law and the challenges that we face in that effort. And so we came to the place where we thought we would get the best information, which is Elko, Nevada.

Let me first comply with a few housekeeping functions in terms of establishing some rules and our process, our procedures, so that everyone understands how a House committee, in the case of this Subcommittee, conducts its hearing so that we can all understand the process because I think it's important as we look at representative democracy in action that we understand what the rules are.

My name is Jim Costa. I'm Congressman Jim Costa from Fresno, California. I chair the Subcommittee on Energy and Mineral Resources. I'm in my second term of Congress. I represent an area that many of you, I suspect, are familiar with Fresno—Fresno, California. I go down to Bakersfield. I have some of the richest agricultural regions in the country, and you're looking at a third-generation farm kid from Fresno.

I still farm. As a matter of fact, I've got a number of my friends who come to Elko during the annual cowboy poetry event, and actually have friends who are involved in ranching here in northeastern Nevada.

So I have spent the last two days here, and, frankly, Senator Reid and Congressman Heller, I felt like I've been at home. And I want to thank all the nice people here in Elko and the area who have been so kind to us and to the staff over the last two days.

Let me first begin with the housekeeping functions, and we will get into the substance of our hearing.

This legislative hearing of the Subcommittee on Energy and Mineral Resources will now come to order.

The Subcommittee is meeting today to hear testimony on H.R. 2262, the Hardrock Mining and Reclamation Act of 2007.

Under Rule 4(g), the Chairman and Ranking Minority Member may make an opening statement, which I suspect we will do. And if any members have any other statements, they may be included in the record under unanimous consent.

At this moment, I will take under unanimous consent with Congressman Heller to ensure that all the privileges under the Committee are provided for Senator Reid, our colleague, who we are very honored to have here this morning.

Additionally, under Committee Rule 4(h), additional material for the record should be submitted by members or witnesses within ten days of the hearing.

We have two panels that have been chosen in conjunction and consensus with the minority and majority and, in a moment, we will hear from the witnesses on those two panels.

Their statements, I suspect, because we comply under the 5-minute rule, will be shorter than their written testimony. At least that's my hope. And we do try within some leeway to follow the 5-minute rule, and I want to urge that to all the witnesses who will be testifying. It is important that we get through their testimony in the five minutes.

For that purpose to work well, for those of you in the audience who are not familiar with it, we have a little device here that—I don't know who came up with it in Congress, but it's green, yellow, and red, and a lot of my—that's the green light. See everybody? That means that they've got five minutes to go, but it's not applying to me right now; OK, Holly?

Then the yellow light lets you know that you've got a minute left. Can we get the yellow light going there so everybody can see what it looks like?

Ms. WAGENET. It's a yellow light.

Mr. COSTA. OK. It's a yellow light. OK. It's a yellow light, OK. We'll take your word for it, Holly.

And then the red light, of course, means that the testimony needs to conclude, and I usually give a little leeway, but we do want to follow the order. We also want to obviously cooperate with the witnesses.

Because of today's format, the legislative hearing does not permit an opportunity to have everyone who would wish to testify have that opportunity. We would certainly like to do that, but, unfortu-

nately, I do need to get home and back to my district at some point in time. I think you can appreciate that.

We will, however, be opening the floor for half an hour, after concluding the two panels, for those who would like to make a statement. I would urge the following: First of all, the half an hour that we're going to have the open mike, we must have some reasonable limitations, and so I will subscribe to a two-minute rule for those who would like to make a statement.

Holly over here, again, in conjunction with Senator Reid's staff person, Neil, will take sign-in lists. And we're going to do our best with you. Obviously with half an hour for open mike and two-minute rule per speaker, the best we're going to be able to do is probably 14 or 15 people. So we'll try to be as Solomon-like as we possibly can, but I think it's important to allow this community, this wonderful community that represents so much of what is wonderful about our country, an opportunity to participate in what we call representative democracy. And this is—a legislative hearing is an important part of that representative democracy.

If you would like to submit further information, those of you who are not on the scheduled witnesses panels, we would certainly entertain any written testimony that you may have. Or you can e-mail your comments to the—for the record, to the e-mail address that's printed on the card. Obviously we'd like that as quickly as possible.

Now let me give you a few rules with regards to the press and those of you who have recording devices and cameras.

Photographs are allowed, but we request that you take good pictures of us. That's not hard, is it?

We request that you not use flashes, please, and do not impede the Committee's ability to see and talk to the witnesses. It can be disruptive, and that's not helpful.

A videotape is allowed only by credentialed press and others who have had preapproval for a videotape of the proceedings. So that's important for us to know. I assume staff, both Republican and Democratic staff, have clearance on the press and that's all been worked out, right? So we're good to go on that point.

I think that covers the housekeeping portions of what I was going to do, and now I have the privilege as the chair of this Subcommittee to make an opening statement, and I will do that at this time.

First of all, I want you to know that besides the challenge of looking at a law that's been in the books since 1872, that when Chairman Rahall decided to introduce this legislation, as he had once done previously, that I said, you know, I'm new to this. I took over the chairmanship in January of this year. I have a strong agricultural, water, and transportation background.

But I come to the issues of mining with fresh ears and eyes. And I hope you'll see that in a positive sense. So I want to really do my homework and get a chance to visit the facilities and to see the challenges that mining in America faces today.

Senator Reid, one of the great United States Senators in our country today and the Majority Leader of the Senate, called me and very kindly took me under his wing and said, "Jim, if you want to start to learn about the real challenges that mining faces, you

ought to come to Nevada, and we ought to try to arrange this to work at a time where it makes sense so you can better understand the breadth and the width and both the economic and the social impacts that mining contributes, not only to Nevada but throughout our country."

So, you know, I've been around a little bit. This isn't my first rodeo. And so I kindly took the advice of the senior Senator from Nevada, and I said, "That would be wonderful, Senator. Where do you suggest we hold the hearing?"

He said, "Elko, Nevada." And——

Senator REID. I tried to get him to come to Searchlight. He wouldn't.

Mr. COSTA. We thought there were more mining opportunities here. But, clearly, Elko today and historically has played such an important role, not only in Nevada but in our country. Let's think about it.

Historically it's been the focus of transportation, of ranching and mining. I'm a big student of American history. We know in the transportation sense, as folks migrated west for some of the initial mining that took place in California, the great Gold Rush, and prior to that, the various trails that came westward came through this part of Nevada.

The Donner Party, sadly, went around the Ruby Mountains, which delayed them in part, and of course they caught the storms at Donner Pass, and the rest, as we say, is history.

The Transcontinental Railroad, of course, 50 feet out from the door of the great Western Center here, really binds together the Nation from the West Coast to east coast. And yes, again, Elko was at the center of that effort that was taking place. Ranching and mining, of course, have been tremendous contributors to the economy.

I know a little bit about ranching. Unfortunately, that's not the subject of today's testimony. But the fact is that the ranching industry, not only in Nevada but throughout the West, is an important, and continues to be, a vital element of our economy and our way of life. And to be here at the Western Center where a lot of my friends come every year for the annual event is fun for me. So I want to take special note of the place that we're holding this hearing at today.

Finally, mining, of course, historically has been a part of all of that history for northeastern Nevada. And so, therefore, it doesn't take a rocket scientist to understand or to tell you what you already know, which is that 85 percent of all the U.S. gold production comes from Nevada. The proven reserves of millions of ounces of minerals are critical to our economy and other mineral elements that are contained in hardrock mining.

And frankly, you know, Senator Reid and Congressman Heller have made a big point of impressing upon us that, and that's why yesterday I spent a whole day visiting both the underground mine and open-pit mines and spending time with industry leaders talking about the challenges of mining in the 21st Century in America.

I mean, Nevada, if it were ranked as a country, previously had been third and now is fourth, with China having moved a little bit

ahead in terms of total gold production. But imagine that: Nevada is the fourth leading gold-producing area in the world.

Yesterday obviously we learned a lot, the staff and myself, about the importance of the productivity of mining and the reclamation efforts in Nevada.

In addition to that, as we look upon the 1872 Mining Law and we look at the challenges that Chairman Rahall is considering with regards to the reform, we need to know that—keep in mind what has changed. Mining has changed, of course, just as many other things have changed in 135 years.

The states have not sat idle. The State of Nevada, in the 1990s, began a very progressive reform and their own reclamation and mining law. And I think there are some very instructive things to learn from the changes that Nevadans have made in their own mining law.

Of course, there's no shortage of dispute about how to update it. I know we'll hear a lot of different thoughts about it here this morning.

I understand that there's going to be a rally this afternoon, and I'm sorry that I just couldn't be able to be here this afternoon to participate in that rally, but I'm sure that we'll get some good information as a result.

The ongoing debate, of course, is most important that we share four goals. These are the four goals that I want all the witnesses to keep in mind this morning when you testify.

Mining reclamation: How do we secure funds to clean up abandoned hardrock mines across the West? I think that is an important issue.

Two, a fair return: How do we sell the world to your fee production of hardrock minerals extracted from public lands, not private lands, but from public lands? Because at the end of the day, these public lands belong to all of America. They're a resource that we all are vested in. And are there ways if, in fact, we can address that in which communities that are partners in the mining can benefit from those funds?

Number three, environmental standards: Making sure that the Federal standards for hardrock mining sustained on our public lands for multiple use also take into account hunting, recreation, and water.

Water, I can tell you, coming from California, is the lifeblood of all of our lives. Without water, nothing can be possible. With water, we can produce a bountiful levy and production for all of mankind.

Certainly creating a stable and predictable and favorable environment for mining in the United States ought to be the final goal in any reform effort.

Today we have nine witnesses who will provide a lot of information. We're very fortunate to have the Majority Leader of the U.S. Senate, a leading voice in so many, so many different issues, and one whose wisdom and wise counsel I look toward as we tackle this issue.

Frankly, the end of the day, who is better to speak to the needs of Nevada but your representatives who are here, those here in the communities who are a part of this hearing, the miners, and everyone else who has an interest in this issue?

So as we begin, I want to finally comment on two areas. H.R. 2262 as proposed by Chairman Rahall, as he has told me and as he has told others in his press conference, is a starting point. Let's underline that: a starting point for the discussion.

As Chairman Rahall says, you gotta start somewhere. We know the bill can be improved. I believe it can be improved, and we're asking you this morning to help us figure that out.

Anyone who says to my colleagues that we don't care or we are not sensitive to your issues, I think, needs to come to Elko, Nevada and spend the time that we have here. Obviously, if we did not care and were not sensitive to your issues, we would not be here this morning.

I want you to know that I think it's critical that we keep the United States as one of the most desirable places in the world to mine. We want to balance the multiple uses on our public lands that do include mining, and, therefore, today, I am here to listen and to learn.

So let's start with a constructive dialog, and I will defer to my colleague who, today, is serving as the Ranking Member, one of our new talents from Nevada, but not new to Nevada, of course, but new to our Committee and our Subcommittee, and look forward to hearing his comments.

Congressman Heller.

STATEMENT OF THE HON. DEAN HELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. HELLER. Thank you very much, Mr. Chairman, and I want to thank everybody for being here. It's good to see a packed room, and it's a pleasure to see a lot of friends.

I want to thank the Chairman for holding this Committee meeting here in Elko County. It's good to see the enthusiasm and this community come together like this to be here this morning.

I want to welcome you not only to my district, but for a very critical portion of my district out here in Elko.

I appreciate that you took time from your very busy schedule. We get a month to work in our districts, and I have spent a little bit of time here in this month of August. Had some time in southern Nevada. Went down to Nellis Air Force Base, had some time. Spent some time at Yucca Mountain, spent some time in that area. We're here in Elko. Be back over Labor Day weekend.

You spend as much time in your district because you don't get a lot of time. To have the Chairman here, I certainly do appreciate you taking the time out to spend time with us.

I particularly want to thank Senator Reid for being here with us today. I know he's a very, very busy man, and what he's doing here today I think is very helpful for the direction that we're going here today. He and I share a real love for the State of Nevada, and I do appreciate his time and energy.

I'm very fortunate to be part of a delegation that works as closely as we do. And we spend time at least monthly in Senator Reid's office discussing the issues that are pertinent here to the State of Nevada, and I assure you that mining issues are as pertinent as any other issue that comes up in those meetings.

I want to give some sense of perspective as I begin, and I want to thank those in the leadership of this community that are here. We have Senator Rhoads with us.

Pleasure to have you with us.

Assemblyman Carpenter from the Legislature. I see Pete Goicoechea also with us, Assemblyman out of Eureka and other portions of the state. This isn't just about Elko.

I see Commissioner Fransway from Winnemucca that's with us. Pleasure to have him with us.

But all the county commissioners, city council members from this portion of the state, not just Elko County, but all around here.

But putting some sense of perspective, Elko County is the sixth largest county in the United States, consisting of 17,181 square miles, which is as big as five New England states plus the District of Columbia.

Here we see the best of the mining industry. Industry in Elko and all around Nevada are active participants in communities with strong sense of social responsibility and the high-paying mining jobs translated into better schools, community services, and infrastructure.

Nevada shares with California an important part of history because it was the local mining laws organized in the mining camps in northern California and Virginia City, Nevada, that form the foundation of our current mining laws.

At the time the western mining districts were in Nevada, the United States was without mining law. The mining law was not, as some people claimed, designed to lure people out to the West; they were already here.

The mining law was created to have one uniform law governing how the mineral resources of our nation were to be acquired and developed. This was and is still important because of the roll these resources play in our local, state, and Federal economies.

As we discuss mining laws, I think it's helpful to keep in mind that mineral deposits are rare. And due to the geologic forces that are responsible for creating them, they tend to cluster together along structural trends.

Yesterday, Chairman Costa and his staff, among others, had the opportunity to visit two mines, as he mentioned, on the famous Carlin Trend. Gold produced from this area has propelled the United States to the second or third largest producer of gold in the world, and most of that gold is mined from my district here in Nevada, 78 percent of the nation's gold produced right here in the State of Nevada, to be exact.

Mining in Nevada is the second largest industry and directly employees 11,000 people. Another 52,000 jobs are filled by the people providing goods and services to the mining industry. Again, most of this employment is in my district.

Other minerals and mining materials important to our society are also produced in Nevada: copper, silver, barite, and high-calcium lime.

Rapid growth and modernization in developing nations, such as China and India, have created a higher demand for many minerals and mineral commodities. Because of this increase in demand, pre-

viously discovered mineral deposits that could not possibly be developed are now being mined economically.

One such deposit supplement is the Mt. Hope molybdenum. I actually use that particular product. It is located in Eureka County. This mine is current in the permitting. It's currently in the permitting process. It's scheduled to start production in the mid-2010 era.

Molybdenum is a critical strategic mineral used primarily as an alloy agent in steel, stainless steel and pipelines. For example, I use it in chrome-moly. I use it in race cars. I build chassis for race cars, so chrome-moly is a critical product in putting those together. So molybdenum plays a very important part in that industry, but it's also primarily a cracking agent used to refine high-sulphur fuels and oil produced in low-sulphur products.

This material also has important military applications. Two examples are the use in armor and in bunker-busting bombs.

If H.R. 2262 were to pass, it would jeopardize the ability of the project owner to permit the mine and operate it at a profit. As you can imagine, this is a serious concern of mine.

As with energy, the U.S. is highly dependent on foreign sources of non-fuel minerals and is competing with China for these mineral resources.

For example, even though we have abundant domestic copper resources, we still import 40 percent of what we need. We import 100 percent of 17 of the minerals most important to our modern-day society and are between 75 to 99 percent import dependent upon 15 other non-fuel minerals.

My primary concern is that changes made to the mining laws should not serve to increase our dependence on foreign sources of the mineral resources our society depends on. We have to get our mineral resources from somewhere, and I believe we should get them from responsible domestic resources when possible.

It would be a shame if we made changes to the mining law that favored importing mineral resources from foreign countries while exporting the benefits.

I hope we can work together to improve opportunities for domestic mining while addressing some of the outstanding issues associated with the historic mining activities conducted prior to the creation of the strict environmental laws and regulations that govern mining activities today.

Now I had a saying here. I think it's said in this country from time to time that as agriculture goes, so goes the nation. And I would reflect that here in Nevada, we say that as mining goes, so goes the State of Nevada.

So I look forward to working together with the Chairman. And I'll yield the balance of my time. Thank you.

Mr. COSTA. Thank you very much, Congressman Heller, for your statements. You brought your fan club. I must urge the audience please to refrain from making comments, clearly, but second, any sort of cheering or other kinds of comments with regards to any of the witnesses. It's frowned upon and it's against the rules of the House, so—just to expedite it. Otherwise we can that save that for the rally this afternoon. Let's put it that way.

The next gentleman is one who has been a consistent, strong leader and an advocate on behalf of the citizens of Nevada, but

more importantly for our nation. I believe that he's the right person at the right time, for he has one of the most coveted leadership positions in our nation's Capitol, that being the Majority Leader of the U.S. Senate. And he has done that with the same sort of dedication, consistency, concern, and passion that he has provided the people of Nevada for leadership for decades.

So let me introduce the next witness, a gentleman who needs no introduction, the senior Senator, the Majority Leader of the U.S. Senate, Senator Harry Reid.

STATEMENT OF THE HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Mr. Chairman, thank you very much. I have great reverence for the House of Representatives, having served there. It is the embodiment of the wisdom of our Founding Fathers who set up this unique government that we have. We have a bicameral Legislature—the House and the Senate, each day of their existence, vying for power against the other. That's the way the Founding Fathers set it up. And it's been a miracle and it's an experiment that was still—is still ongoing, and I have great appreciation for the House of Representatives.

Loved my service in the House. That's where I met Nick Joe Rahall, Congressman from West Virginia, who is now Chairman of this full Committee. He and I have had conversations about mining. We have disagreed in the past vehemently, but we have dealt with each other as gentlemen. I have great respect for him. He's my friend.

And he came to my office to visit with me about his efforts to change the law, and I told him I'd be happy to work with him, and that's how I feel.

We're fortunate today to have Congressman Costa with us, the Chairman of the Subcommittee, early on second-term member of the House of Representatives, but he is a long-time member of the California State Legislature where he served with great distinction. He is a man who really understands the West and, of course, being our neighbor, State of California, we're happy to have him here.

I do recognize the history of the State of Nevada in mining. We are part of the history of the great Comstock—one of the two great events in mining and the early days of America—where the 49'ers discovered gold—they didn't discover it but they came there after it was discovered at Sutter's Mill and, of course, the Comstock.

But in recent decades, the focus of mining throughout the world has been on the Carlin Trend. Magnificent gold has been discovered that in some ways matches what has gone on in South Africa with their ability to have unlimited, it appears to some, ability to mine that gold. And not only have we found this trend, but unique way of getting gold from the rocks. So we recognize that we have a history in the State of Nevada that is significant worldwide.

I apologize for not wearing a coat, but I've been out at the California Interpretive Trail where we had a—a building is 80 percent completed. It's a wonderful facility, and we're very, very proud of that. I played a small role in allowing that to take place. One example of a public/private partnership.

I have, as everyone knows here, a background in mining. My father was a miner. As a little boy, I went down in the holes, as we called them, with him. And as I got a little older, I got—earlier on, Jim, what I would do is go down with my dad, which was against the law. You're not allowed in Nevada to work underground alone, so he solved that: He took me with him. Basically I went to keep him company.

There was a place kind of up above ground. But as a little boy, going underground in a mine was like going out and playing catch with your dad on the lawn. I wasn't afraid of anything. I had my own hard hat, my own carbide lamp.

As I got older, I could help. I could muck, and that was the best thing that I could do.

Some 400 miles from here, Searchlight, we joked about having the hearing there. You couldn't have the hearing there. Mining is almost nonexistent in Searchlight now. We have a situation where the mines were really big there for a dozen years, and that was it. But during the time that they were going well, it was the best mining camp in Nevada and one of the best in the country.

But it's not that way anymore. As we've learned in life, you can't go backwards. So Searchlight, even though there was a little bit of mining going on, that's not the industry there.

I so much appreciate Chairman Rahall arranging this meeting and you taking the time to be here. You don't have to do this. There are lots of other ways that you can spend your August recesses. There are many things in your congressional district that are important, but obviously you take your responsibility as the Chairman of this Subcommittee seriously. That's why you're here.

You could depend on staff to give you information of what's going on here. You could have briefings from the BLM and others about what's going on here, but I believe, and you as a legislator for many years recognize, that all of the lectures and movies and demonstrations away from the place where it actually happens are not as good as eyeballing what goes on here.

And I'm very happy that you've been able to see what we're doing out here underground and aboveground.

This beautiful corner of Nevada really does have an incredible history. For only 20 years we were a conduit for people to come to California, basically from 1840 through 1860. About 20 years. The California Trail came right through here. There's more than 600 miles of the California Trail in Nevada. More than 300,000 people came during that 20-year period of time to get to California.

This trail passes just a few blocks from here. Early cattle barons built fortunes in this beautiful area. Chinese laborers came through and left behind the Transcontinental Railroad.

Over time, Elko has been become famous as a place where people like Bing Crosby had their ranches, but it also was a cultural hub for Western and cowboy culture. The festival that takes place here early every year is now world famous. People come from all over to participate in the Cowboy Poetry Festival as it was first named, and now, of course, is many other things.

And I had the good fortune a number of years ago to be able to come here during one of these weeks and do a reading from my

book that was published that year about the history of Searchlight. So I have fond memories of coming here for that.

As you have already mentioned, Congressman, Mr. Chairman, Nevada also ranks among the richest gold regions in the world. We've processed in recent years nearly a hundred million ounces of gold in this area alone. An equal or greater amount is believed by geologists to be underground.

Since introduction of this mining law reform legislation in May, I've been asked repeatedly which parts of yours and Mr. Rahall's legislation do I agree with and what do I oppose.

My reply is—and I said this to the press earlier today—that we agree on the single most important issue. We agree reform is needed and that now is the right time to develop a reasonable and balanced national minerals policy.

The last serious attempts to update the 1872 Mining Law were made in the middle '80s and early '90s. It's one of the classic debates that have taken place in the history of the Senate. Took place between me and Dale Bumpers from Arkansas. He is one of the great orators in the history of Senate. And he may have had the oratorical skills, but I had the votes. And as a result of that, nothing was accomplished. Dale was unwilling to compromise. We were, he wasn't. And it was a result of that, actually nothing happened.

Mining industry was different then. At that time there were probably 30 mid-sized and large companies. Today, with consolidation taking place in mining, as it has in basically every industry in America, and, for example, in our gaming industry, now the majority of industry production comes from only a handful of operators.

One of the things, of course, we will look to as we work through this legislation is to make sure that we take good care of these large mining companies, but also make sure that we don't leave in the dust the smaller operators, the prospectors.

We have to make sure that we keep an eye out for them because, as much as I appreciate the great work done in the mining industry by these large companies and what they've done to help in the communities where they're located, I personally am more familiar with the small guys. That's what my dad always worked with, and that's all that existed. There were no big guys then. So we'll try to do a good job of protecting both.

During the intervening years since the Bumpers/Reid's debates, there's also been significant change in the environmental community. Some years spent in the political wilderness have, I think, made a number of us more pragmatic. It can't be labored one way. We've got to work together. And I believe that the increased involvement of sportsmen's groups in debates like this has helped us see a path forward.

So it's my hope, Mr. Chairman, that these changes on both sides of the reform effort will make it possible to build a sturdy compromise for an improved mining law.

And let me say that I do believe that finding good compromise is very important. Mining has a unique legislative history among our nation's extractive resources industries. Coal, oil, timber, and others have all seen major rewrites of the Federal laws under which they operate.

And some say the Mining Law of 1872 has remained largely intact. That's true in some sense, but remember, national laws passed, like Clean Water Act and Clean Air Act, have had a tremendous impact on mining. And so for people to say the 1872 Mining Law has changed, that's simply without basis.

The law was first crafted by one of my predecessors, William Stewart, Senator, and signed into law by the great Union General, Ulysses S. Grant.

What this has meant, this 1872 Mining Law, with not a lot of changes, has meant, in practical terms, as the industry has evolved and changed, Congress hasn't responded as they should have. We have, Congress has, instead allowed each passing Presidential Administration to develop the rules and regulations they see fit to guide the industry. So the mining industry has had no certainty. They never know what's going to happen.

Bruce Babbitt is a friend of mine. I like him very much, and he's been good to Nevada as it relates to water. But for mining, he was awful. And I've told him that to his face. He had people there that—John Leshy, I've said this, Professor Leshy—was a professor; now, thank goodness, is a professor, not involved in doing anything regarding mining.

He tried to destroy mining. Really. Did he didn't believe in it. He wanted it gone. And that has created uncertainty.

We have one Administration does one thing, another Administration does another thing. And Congress has an obligation to legislate. We can't have an industry this large that—an industry that creates a favorable balance of trade for us. We can't have an industry like this have the uncertainty that it does.

We saw the harmful consequences of this, Presidential by Presidential Administration, recently. After mining law reform efforts failed as late as 1994, the Administration found other ways to put restrictions on mining.

We all remember the Millsite Opinion of 1997, which I said publicly could have been written by somebody in the eighth grade rather than this professor. Revisions of the 3809 regulations that were propounded in January 2001, we remember those.

So all I recognize is that many people may see mining law reform as a threat to the industry and their livelihoods. I offer an alternative view. That view is that Nevada and all states that depend on mining will be better served by having a full and open debate in Congress about how to change the General Mining Law than if we shy away from the topics and let it be done by executive order by executive order.

By working together, we can fashion a mining law that provides real certainty in Elko's mining families, that keeps high-paying jobs in Nevada and around the West, and provides real environmental improvements, like improved bonding and a fair return for the use of public lands.

If we fail to find a steady compromise in these and other key issues, we leave the fate of the industry in the hands of each proceeding Administration.

So rather than crossing our fingers every four years and hoping that the newly elected President understands the West and understands the importance of mining, let's work together to guarantee

a bright future for mining families all over the West and in Nevada. And I think that's the way to go.

The mining industry, a long time ago, I say, Mr. Chairman, said: "We'll take a look at doing something about the royalty." We just have to recognize that mining royalties are much different than the coal royalties and oil and timber. So we're working with you. I believe there's a strong bipartisan group of Senators that are eager to work on this issue. We're watching your efforts in the House with great interest.

I appreciate my friend, Congressman Heller, being here. He is the Representative in Congress of rural Nevada, along with the two Senators. And we appreciate his interest in this—as having been the Secretary of State for the years that he was—and has seen the formation of companies dealing with mining. He's seen the good and bad with what's going on with some of the development of these companies. So I'm happy that he's here.

But especially you, Chairman Costa. Thank you very much for your willingness to take a look at this.

The greatness of our Congress is that people like you, people who have expertise in other areas, farming and ranching, are willing to take a look at other areas within the jurisdiction of your Subcommittee and make decisions on your own, not depending on staff or what press brief has been issued, but take a look at it yourself.

I'm grateful to you. I appreciate your friendship. And I will say in passing—we talked about this a little bit last night. When I served in Congress in the House, I was the only Democrat. And the California Congressional Delegation adopted me. Every Wednesday morning, I went to their meeting, chaired most of the time by Don Edwards.

And so they elected me the Secretary/Treasurer of the California Congressional Delegation. On my letterhead, two years after I was in the Senate, I was still the Secretary/Treasurer of the California Congressional Delegation. So I've got some friends over in the California Delegation.

Thank you very much.

Chairman, would you excuse me? I've got to head for Ely later today, and I think, if you wouldn't mind, I would like to be excused.

Mr. COSTA. Absolutely, Senator. But if you would pause for one moment to let me say, I take your words to heart. Clearly, they're done with not only conviction and the passion that I mentioned earlier, but with the wisdom and understanding to see the change and the transition that has taken place with the mining industry in Nevada and your knowledge over the years of mining throughout the country.

Let me make it clear to everybody here: I have never seen any piece of legislation that's successful if it's a one-House bill. It takes passage in both Houses of our Congress. As Senator Reid indicated earlier, the wisdom of our forefathers required a checks and balances, and that's part of the checks and balances.

So everyone should understand here today, in my opinion—and this is just my humble opinion—we will not be successful at the challenges of the reform in areas that I think there is consensus and there are opportunities to be gained unless we are able to work

out a compromise that has the imprimatur and the support of Senator Reid. Let's be very clear about that.

We can pass a one-House bill as happened in the early 1990s, but we won't make any of the reforms necessary, in which I think there is consensus, nor will we be able to advance the causes of the U.S. mining industry to ensure that in the 21st Century, it remains strong and viable in the world global markets.

So I look forward to working with you in a bipartisan fashion and members from the House and your members in the Senate. And hopefully in the 110th Congress, we can produce good legislative work product that reflects the changes that I think many believe is necessary, and at the same time protect the viability and the vitality of the American mining industry. So we look forward to working with you.

We will now begin with the first of our two panels as we excuse Senator Reid for other important meetings that he has today.

I would like to call the following to come forward at once. Beginning with Mr. Dan Randolph, Executive Director of the Great Basin Mine Watch, followed by Ms. Elaine Barkdull who is—Spence? I'm sorry, Spencer? Barkdull Spence? Did I get that right?

Ms. BARKDULL. Barkdull Spencer.

Mr. COSTA. Please come forward to the table. Director of the Elko County Economic Diversification Authority.

Mr. Bob Abbey, former director of the Nevada State Office of the Bureau of Land Management.

Mr. William Molini?

Mr. MOLINI. Molini.

Mr. COSTA. Molini, former director of the Nevada Department of Wildlife.

Before we begin with that testimony, I'll recognize my colleague, the gentleman from Nevada.

Mr. HELLER. Thank you very much, Mr. Chairman. With your permission, I'd like to submit to the record written comments from Governor Jim Gibbons. He was unable to be here today, but he did submit some records.

As is well known here in this room, Governor Gibbons has been a very strong advocate of the mining industry here, and I think it would be appropriate. So with your permission, I'd like to submit this for the record.

Mr. COSTA. Without objection, we'll submit Governor Gibbons' testimony, a written statement for the record.

As all of you know, I served in the House of Representatives with distinction, and I had an opportunity to serve with the Governor, and I am sorry he couldn't make it here today.

Let me repeat, as I said earlier on, and do it without a lot of disruption, please, but Holly has the sign-up sheets over there for those who, in that half an hour wanted to speak at the open mike. And we'll work that in conjunction.

But clearly, let me repeat again, because of my flight schedule, we only have time for a half an hour, and so I'm going to limit everybody's comments to two minutes. So we're going to have to be kind of Solomon-like. Clearly, not everybody will have a chance to speak, but hopefully we'll get a representative sample of the folks in northern Nevada, and we'll go from there.

Now, as we begin with our first witness, the Chair would recognize Ms. Barkdull to testify. Excuse me, I'm going out of order. Mr. Randolph.

I failed to mention when I went through the rules of the House and the green light and the yellow light and the red light, what has I'm sure been clear to everyone at this point, that rule doesn't apply to us. Sorry, but that's just the facts.

And so with that understood, we'll begin, and we'll get Holly at her desk here in a moment, Mr. Randolph, and she will activate the green light, and you have five minutes and we look forward to your testimony.

STATEMENT OF DAN RANDOLPH, EXECUTIVE DIRECTOR, GREAT BASIN MINE WATCH

Mr. RANDOLPH. I thank the Chair and Representative Heller for inviting me to testify as to this important matter. Also I thank you for coming out to Nevada, into the heart of mining country, to hear how we see this issue.

Great Basin Mine Watch is a nonprofit organization founded in 1994. Our mission is to protect the land, air, water, and wildlife of the Great Basin and the people and communities that depend on them from the adverse impacts of mining.

The question of if and how to reform the Mining Law of 1872 is of great importance throughout the western United States, but especially here in northern Nevada. While on a West-wide level, the mining industry is a minor player economically, in our area, it is clearly the largest industry.

We believe that the Hardrock Mining and Reclamation Act will bring necessary reforms that will help protect the people and lands of Nevada while helping this important industry thrive. We, therefore, are in support of H.R. 2262.

The need for mining reform is evident in Nevada. While mining practices have improved since the days of historic mining, modern mines still pose significant environmental and health consequences.

Nevada is the driest state in the union. Water quality and quantity are both critical to the future of the state.

I will discuss a few examples of modern mines which have caused environmental degradation. The Big Springs mine is drained by the North Fork Humboldt River and its tributaries. All of these waterways are on Nevada's 303d list of impaired waters due to mining activities. Data shows that the water downstream from the waste rock dump has over 20 times more sulfate than the upstream water, and these concentrations increased when mining began.

The disposal of heap leach drain down water is another long-term problem. The Sleeper Mine has heap leach drain down water which is very acidic and has up to ten times the allowable amount of other pollutants.

The Mule Canyon Mine provides a striking example of a modern pit leak problem. The predictions in the 1995 environmental impact statement have proved wrong. The South Pit is now expected to overflow the rim. As a result, a potentially serious water contamination situation has arisen since the pit lake has low pH and elevated levels of numerous pollutants.

A year 2000 U.S. Fish and Wildlife Service study of 12 pit lakes here in Nevada found that all the pit lakes contained at least one pollutant at concentrations that are potentially toxic to aquatic life or wildlife.

The next issue I'd like to discuss is dewatering our water quantity. Mine dewatering is a process of removing groundwater to keep mines from filling with water.

In 2000, the BLM published a study of dewatering from the Gold Strike, Gold Quarry, and other Carlin Trend mines showing that extensive drawdown would occur throughout the area, and base flow in about six streams would be decreased or eliminated. This reduction or elimination of springs and streams will have significant impact on wildlife.

Clearly, the current regulatory system is not working. While there are mines that do not pose serious threats to water resources, there are too many mines which have and continue to degrade waters of the state.

The lack of public confidence in the wisdom of many mine proposals is due to this history of failure which is tied to the lack of reform. Mine proposals that are well designed and managed need not fear having the public involved in the process.

The antiquated law giving mines a presumption of being the best use of an area is no longer necessary. This bill will provide the land management agencies with the ability to balance mining with other important uses of public land. Nevada's mining industry will remain strong.

The single most important reality of mining is that you can only mine where the minerals are. Nevada has an excellent base of experienced miners and mining professionals, and there's a well-developed infrastructure.

Last, it must be noted, it has a political climate that is favorable to the industry. Providing adequate protections for the future and alternate uses of the land will not change these basic realities. Nevada can be protected from the worst harms done by some mines and still have a healthy, productive mining industry.

The Mining Law of 1872 needs to be brought up to the 21st Century standards. Mining has changed since 1872. It can now be done responsibly.

H.R. 2262 will allow the industry to continue to thrive while protecting the long-term viability and health of Nevada and the United States.

Thank you again for the opportunity to discuss this important issue, and I look forward to your questions.

[The prepared statement of Mr. Randolph follows:]

Statement of Dan Randolph, Executive Director, Great Basin Mine Watch, Reno, Nevada

I thank the Chair and Subcommittee Members for inviting me to testify on this important matter. Also, I thank you for coming out to Nevada, to the heart of mining country, to hear how we in Nevada see this issue.

Great Basin Mine Watch is a non-profit organization, founded in 1994. Our mission is to protect the land, air, water and wildlife of the Great Basin and the people and communities that depend on them from the adverse impacts of mining. We have been involved with the federal land management agencies, the various state agencies with oversight of mining issues, and the mining industry extensively. I am here representing Great Basin Mine Watch. My statement will focus on Nevada issues.

The question of if and how to reform the Mining Law of 1872 is of great importance throughout the western states, but especially here in northern Nevada. While on a west-wide level, the mining industry may be relatively minor economically, in our area it is clearly the largest industry. We believe that the Hardrock Mining and Reclamation Act of 2007 would bring necessary reforms that will help protect the people and lands of Nevada, while helping this important industry thrive.

The Need for Reform

The need for mining reform is evident in Nevada. While mining practices have generally improved since the days of historic mining, modern mines (1976 or later) still pose significant environmental and health consequences. Great Basin Mine Watch will outline the most prominent of these that occur here in Nevada, which include mercury emissions, dewatering activities, long-term open pit management, and water resource degradation.

Mercury

Mercury is emitted into the air from processing equipment and sites at many precious metal mines. Mercury often occurs naturally in the rocks that are being mined for gold or silver.[1] In the latest EPA Toxics Release Inventory (TRI) released to the public in March 2007, Nevada precious mines reported releasing 4,682 pounds of mercury into the air.[2] Based on recent tests, and recent corporate revisions to TRI reports, the actual total may be much larger. This airborne mercury can be deposited near the mine site or be carried hundreds or even thousands of miles before settling.

Mercury not released to the air is either captured as by-product, and sold, or becomes part of the waste rock or tailings.[3] According to the 2005 TRI 3,567,801 pounds of mercury were stored on site at mines in Nevada. The 2005 TRI confirms that mercury that is emitted from gold mines in northern Nevada constitutes the largest source of mercury pollution in the region.[4]

Mercury is a highly toxic and highly mobile element. It is a neurotoxin associated with a variety of health ailments including loss of vision, loss of memory, temporary or permanent brain damage, tremors and deafness. Mercury is easily converted to organic methylmercury when it comes into contact with microorganisms. Methylmercury persists in biological systems causing accumulation up the food chain. Most mercury exposure in human comes from eating fish contaminated with methylmercury. Larger, older and predatory fish are more likely to contain larger amounts of mercury. As a result the EPA has made recommendations to limit the amount of fish that people consume especially pregnant women and young children. The effect of mercury poisoning can be particularly devastating while development of the nervous system is still occurring.

The Nevada State Health Division issued fish consumption advisories for six water bodies in the state in March 2007 in response to data gathered from samples of fish tissue with high levels of mercury. Some fish from other waters showed levels of mercury that according to EPA guidelines would support the release of additional fish consumption advisories.

Last year the State of Idaho issued fish consumption advisories for several water bodies. Idaho officials were concerned that the source of the mercury was mining activity of Northern Nevada.[5] This illustrates that the effects of mining are not isolated, that environmental contamination and ecosystem disruption have the potential to span states.

Mining in Nevada and other states releases a large amount of mercury into the environment. Companies allowed to mine on public lands need to be aware of how much mercury they are releasing, and plan for abatement of the circulation of mercury in the environment while the mining continues and after it ends. The provisions of the Hardrock Mining and Reclamation Act of 2007 would facilitate this practice.

Mercury can be isolated and used industrially, but at a minimum it must be contained and disposed of properly. Also mines must use the best emissions reduction technology that is available. Recently the Nevada Division of Environmental Protection began a mercury air emissions testing campaign to determine the types (species) of airborne mercury released from ore possessing equipment. The species of

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[1] Jones, Greg, and Glenn Miller; October 24, 2005, Mercury and Modern Gold Mining in Nevada.

[2] http://www.epa.gov/triexplorer/

[3] Jones and Miller, 2005.

[4] http://www.epa.gov/triexplorer/

[5] Barker, Rocky, November 5, 2005, The Idaho Statesman; High mercury levels found in Idaho reservoir.

mercury released is a large determining factor in how far the particles will travel before being deposited.

The tests revealed that in a few cases more mercury was being released than was reported by the mines in a voluntary program. But more to the point for the purpose of HR2262 it revealed that emission control technology being used are not as effective as they are engineered to be and that emissions are highly variable.

Mercury pollution is one of the most persistent problems that mining produces during operations and into the future. The problem needs to be addressed from the outset of any new mining operation. New legislation like HR2262 can help keep mercury pollution to a minimum through careful planning, engineering and consistent monitoring.

Water

Nevada is the driest state in the union. Water quality and quantity are both critical to the future of the state.

As many of the mines are in rural areas, away from the primary population centers, there used to be an "out of sight, out of mind" attitude towards the impacts of mining on the state's waters. However, that is clearly no longer the case. Currently, there are at least seven proposals before the State Engineer to allow trans-basin water transfers, from rural areas to the metropolitan areas. Some of these involve pumping groundwater in remote basins and piping it hundreds of miles.[6] Clearly, all water in the state is a resource that should be protected.

Water Quality

Great Basin Mine Watch will address three major water quality issues of modern mines with specific examples, which are: 1) pit lake consequences, 2) waste rock pile drainage, 3) heap leach seepage. All of these mines are modern mines that have been in operation since 1980.

Brief Background on Specific Mines Cited Here

Mule Canyon Mine: is an open pit gold mine located in the central portion of the Argenta Mining district, approximately 15 mines southeast of Battle Mountain Nevada and 10 miles west of Beowawe. The modern mining began in 1989 with the eventual creation of six pits with associated waste rock dumps, a heap leach facility, and a mill. Mining was completed in 2005, with activity in the South Pit ending in December 1999.

Big Springs Mine: is an open pit gold mine located along the North Fork Humboldt River at the north end of the Independence Range, Elko County Nevada. Mining of the disseminated gold deposits began in the late 1980s and stopped in 1993. Reclamation commenced in 1993 and has been declared complete. The mine also had a mill and tailings impoundment.

Sleeper Mine: is an open pit gold mine located in Desert Valley on the western flank of the Slumbering Hills in Humboldt County, Nevada, approximately 30 miles northwest of Winnemucca. Active mining was conducted between March 1986 and October 1997 with three open pits with associated waste rock piles, five heap leach pads with associated solution ponds, and a tailings facility.

Pit Lake Consequences

Modern mining often involves the displacement of large volumes of rock and ore. Particularly, with the use of heap leach cyanide gold extraction large open pit mining has proven cost effective. As a result lower grade gold ore is being pursued creating enormous opens pits often well below the regional water table. In order to mine the deep pits groundwater must be pumped to create a "cone of depression" in the water table to keep the pit dry (dewatering will be discussed later.)

Often when mining activities cease in the pit, and hence dewatering ceases, water begins filling in the pit forming a "pit lake." It is also common that rock exposed during mining in the pit has a "reactive" component, meaning that with exposure to air, water, and microbes it will undergo oxidation; typically elevating the levels of sulfate and Total Dissolved Solids in the pit lake. In historic mines this oxidation has caused severe acidification of water draining from the mine and into the ground and surface water, often called "acid mine drainage."[7] Therefore, reactive rock in a pit can cause the pit lake water to become acidic (low pH), which in turn tends

[6] Nevada Division of Water Resources, http://water.nv.gov/

[7] One such example of severe acid mine drainage is the Rio Tinto mine in Northeastern Nevada, which contaminates a portion of the Owyhee River. For further information see; Duckwater Reservation, Shoshone—Paiute Tribes, Rio Tinto Mine/Mill Reclamation Audit, February 2000.

to leach metals out of the rock in the pit further degrading the water making it unsuitable for humans and wildlife.

Once the pit lake water becomes degraded there exists the potential for this water to infiltrate and contaminate the groundwater. Measures to improve pit water such as adding lime to neutralize the acid can be effective in the short-term, but the pit water often degrades again over a period of years.[8] In order to maintain acceptable water quality treatment maybe required for hundreds of years as the exposed reactive rock is consumed. In effect, pit lakes can turn out to be site of perpetually contaminated water.

The Mule Canyon mine provides a striking example of a modern mine pit lake problem. The 1995 Environmental Impact Statement (EIS) for Mule Canyon predicted that only pit lakes would form in the South and West Pits. The South Pit lake was expected to be approximately 110 feet deep, and the West Pit with two "ponds" less than 20 feet deep. Seasonal temporary ponds were predicted in the other pits as well.[9] Pit lake water quality was predicted to be poor initially but in the very long-term (40 years after filling) improve substantially.[10] These water level predictions were considerably off the mark,[11] where all the pits currently have substantial pit lakes with the South Pit expected to overflow the rim.[12] As a result a potentially serious water contamination situation has arisen since the South Pit lake water is of poor quality with low pH, and elevated levels of Total Dissolved Solids, sulfate, magnesium, and manganese (over 10 times acceptable levels).[13] Newmont Mining Inc. has initiated interim procedures, and has proposed further interim procedures to evaporate the "excess" water to prevent contamination of surface drainages. It is not clear whether this degraded water may have already infiltrated into the groundwater. In general, this is a long-term problem with no current solution, since the source of acidification has not been identified and water levels continue to rise.

The Department of the Interior U.S. Fish and Wildlife Service in Nevada, concerned about contaminated pit lake water, has been examining the potential for pit lakes to impact wildlife. A preliminary study resulted in the following statement:

> "In 2000, the U.S. Fish and Wildlife Service identified 18 existing pit lakes in Nevada. Water quality data was obtained for 12 of the existing lakes. Of the pit lakes for which data was available, four were slightly acidic. All pit lakes for which water quality data was obtained contained at least one trace element at concentrations that are potentially toxic to aquatic life or wildlife. Aquatic life effect concentrations were exceeded for arsenic, cadmium, and chromium in 2 of the 12 pit lakes for which water quality data were available. Copper concentrations exceeded an aquatic life effect level in at least six pit lakes. Mercury was detected in four pit lakes. All concentrations exceeded aquatic life and wildlife effect concentrations. However, detection levels used for mercury in the remaining pit lakes were greater than wildlife effect concentrations. Selenium exceeded a wildlife effect concentration in six pit lakes. Zinc exceeded an aquatic life effect concentration in six pit lakes."[14]

The Big Springs mine also underscores concerns related to pit lakes. The 2005 SWX pit lake data shows elevated levels of Total Dissolved Solids, sulfate, manganese, and magnesium,[15] and seepage from this pit lake has been implicated in contributing to contamination of Sammy Creek, which feeds the North Fork Hum-

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[8] Nevada Department of Environmental Protection, "Hollister Mine Fact Sheet," permit number NEV0088022, January 16, 2007; Nevada Department of Environmental Protection, "Tonopah Mine Fact Sheet," permit number NEV0088029, January 16, 2007 and Equatorial Tonopah Inc., "Fourth Quarter 2006 Water Pollution Control Permit," NEV88029, January 8, 2007.

[9] US BLM, Final Mule Canyon Environmental Impact Statement, (NV-060 1793/3809 N64-92-001P, September 1996, pg 4-9.

[10] ibid, pg. 4-14.

[11] According to the EIS the water level in the South Pit would have only risen to about 5690 feet AMSL. Currently, the level is at the rim or about 5940 AMSL, so about 250 feet higher than predicted.

[12] US Bureau of Land Management, Environmental Assessment Mule Canyon Mine Interim Water Management Plan, NV063-EA07-084, June 2007.

[13] ibid, appendix B.

[14] US Fish and Wildlife Service, "Assessment of Wildlife Hazards Associated with Mine Pit Lakes," www.fws.gov/pacific/ecoservices/envicon/pim/reports/Reno/PitMines.htm.

[15] Nevada Department of Environmental Protection, Water Monitoring Report for 10/4/2005, Water Pollution control Permit #NEV87001.

boldt River.[16] Recently, July 10, 2007, the U.S. forest Service released a scoping notice regarding continue exploration in the Big Springs area. It notes that the pit lakes at Big Springs have drained, "In late October 2006, two lakes that had formed in existing mine pits (pit lakes) and the surrounding aquifer began draining. The pit lakes are now dry and the aquifer level has dropped about 150 feet below previous levels measured prior to October 2006. It is unknown where the aquifer is draining to or what the impacts, if any, would be to water quality and surface and groundwater resources."[17] To the extent that the lake water quality was poorer than that in the groundwater, draining the lakes into the groundwater would have degraded the groundwater. In general, contaminated pit lake water is a legacy of modern surface pit mining with varying potential to degrade the waters of Nevada.

Waste Rock Drainage

Enormous amounts of "waste rock," which surround ore bodies, are mounded in high piles called waste rock dumps, present potential water contamination problems. If these rock piles contain reactive rock, then water infiltrating through them from precipitation can become degraded, and if not captured contribute to groundwater contamination.

The Big Springs area (mine) is drained by the North Fork Humboldt River (NFHR) and its tributaries; including Dry Creek, Sammy Creek, and Water Canyon Creek. All of these waterways are on Nevada's 303d list of impaired waters.[18] The listing noted that the impairment was due to mining activities. Myers[19] conducted a detailed review of waterflow and constituent concentrations from the various monitoring stations located on the tributaries of the NFHR. His analysis provides clear evidence of contamination from waste rock dumps into these waterways. Particularly striking is the data for Sammy Creek, where sampling upstream from the waste rock dump shows sulfate concentration median of 8.16 milligrams per liter (mg/L) with a maximum of 24.30 mg/L, and downstream of the waste rock dump the sulfate concentration median measurement was 320.0 mg/L with a maximum of 557.0 mg/L. Myers used the sulfate concentrations as a trend marker[20] that showed an increasing trend in sulfate concentration as mining proceeded with a jump upward around 1990 when mining first began in earnest.

Myers concluded regarding waste rock seepage at Big Springs that:

> Analysis of monitoring data completed for this report and other studies have found that the tributaries to the NFHR that drain the Big Springs mine have added substantial sulfate and metals loading to the river. The most likely source of contamination is the waste rock that has been dumped in each of the tributaries; in all three drainages, the waste rock has been piled over the stream or on top of springs. The final closure plan indicates the lower Sammy Creek, Dry Canyon, and both Water Canyon dumps "were developed using the cross-valley method of construction" (IMC, 1996, page 14). These all had "[u]nder-dump drainage systems [which] were developed beneath the cross-valley type dumps through natural gravity segregation of waste rock that occurs during dumping operations. The under-dump drainage systems are intended to allow surface runoff from the contributing watersheds to flow through the base of the dumps" (IMC, 1996, page 14). This basically means that the dumps were designed to be within the drainages with coarser rock naturally segregating from the bulk of the rock during the dumping. They were designed to convey drainage water from above the dump through the dump and to downstream channels. There is no provision made to separate or segregate the drainage from the waste rock. It would be useful to identify whether this waste rock could leach high sulfate concentrations and some metals to the river. High sulfate would be caused by pyrite oxidation followed by carbonate neutralization; high sulfate but neutral pH and not high metals concentration would be the result. There are

[16] Myers, Tom, Expert Report, Nevada State Environmental Commission, Appeal hearing, Water Pollution control Permit Renewal, NEV0087001, Big Springs Mine, Technical Report 2005-07-GBMW, September 14, 2005, pg. 28.

[17] Notice of Intent for the Big Springs Environmental Impact Statement, Federal Register, vol. 72, No. 130, page 37182.

[18] Nevada Division of Environmental Protection Bureau of Water Quality Planning, "Nevada's 2004 303(d) Impaired Waters List," November 2005.

[19] reference 10.

[20] ibid, pg. 4; Myers connected trends in sulfate concentrations with Total Dissolved Solids (known to violate standards on the NFHR, and also to examine the hydrology of the basin, in general.

several studies that address the leaching from waste rock; this section reviews these studies.[21]

Solving the problem that generates the degraded water is often infeasible from the mine company's perspective, since it may require extensive excavation of the waste rock dump itself. The long-term solution is often the eventual disintegration of the reactive components within the waste rock dump. However, that "natural attenuation" could require many years and perhaps centuries.

Heap Leach Seepage

The third major long-term water contamination issue with modern mines is the fate of the heap-leach piles. These piles contain various grades of "depleted" ore, which in the case of gold mining have been leached with sodium cyanide solution to extract the microscopic gold. Once mining has discontinued the leach piles are rinsed until the "drain down" water (the water that is collected at the bottom of the pile after passing through the pile from the top) is of acceptable quality to begin active reclamation. The heap leach piles have liners underneath to catch the gold laden solution during extraction, so once the heaps are out of use the liners will continue to catch the drain down water for monitoring. The liners are considered a safeguard against future groundwater contamination assuming that they retain their integrity through the point when seepage water is no longer degraded. The liners collect seepage and convey it to a single point from which it discharges from under the heap. The disposal of this seepage is a long-term problem.

In March 2003, New Sleeper Gold LLC submitted a final Closure Plan to the Nevada Department of Environmental Protection and the Bureau of Land Management. In this closure plan, New Sleeper expressed the need for the heap leach ponds (into which the heap leach piles drain) to remain in place to serve as evapotranspiration basins[22] for the long-term seepage. The previous Reclamation Plan of 1993 required these ponds to be decommissioned, so the current proposal is to maintain the ponds in perpetuity. The reason for this is evident in the current water monitoring data for the Sleeper mine that shows the heap leach drain down water of very poor quality with pH's between 2 and 3, very acidic, and high levels of a number of constituents such as TOTAL DISSOLVED SOLIDS, sulfate, manganese (over 10 times the standard), selenium (about 10 times the standard), magnesium, etc.[23] If the ponds were reclaimed and the heap leach piles were effectively allowed to drain uncontrolled the resulting contamination of area water resources would be very high.[24] This puts the public in a untenable situation of either allowing potentially substantial water contamination or try to maintain a facility virtually forever.

In each of the cases outlined above, modern mines have created a situation that pose long-term environmental impacts, which to date do not have a clear solution. In the case of Mule Canyon early predictions led the public to believe that the pits would not create a potentially unmanageable situation. Environmental analyses often do not anticipate these problems, and sometimes are just wrong about the level of toxicity that will ultimately result from the various aspects of the mine. Kuipers and Maest have presented a detailed analysis of the predictability of water quality in hardrock mining.[25] Below are two comparison tables from this report.[26]

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[21] ibid, pp 14-15.

[22] An evapotranspiration basin is a partially vegetative field to where excess fluids are directed to eliminate the water by evaporation and plant transpiration; in this case with liners.

[23] New Sleeper Gold LLC, "Sleeper Mine Water control Permit #NEV50006; 2005 Annual Report." and "4th Quarter, 2006 report."

[24] US Bureau of Land Management, "Preliminary Environmental Assessment, Sleeper Closure Project," Winnemucca Field Office, October 2006.

[25] Kuipers, James R., Maest, A.S., MacHardy, K.A., and Lawson, G. 2006 Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements.

[26] ibid, pg 149 and pg 152.

Table 6.23. Florida Canyon, NV, Potential, Predicted and Actual Impacts

Resource	Source	Potential Impacts	Mitigation	Predicted Impacts	Actual Impacts
Groundwater	Leach Pads	1997 EIS: • Seepage from the heap leach facility. • Background water quality indicates natural exceedences.	1997 EIS: Facility design to prevent groundwater impacts (zero discharge with leak detection with pumpback of leaks if detected	1997 EIS: No impacts to groundwater predicted	WQ Monitoring: Contamination of groundwater with cyanide and other constituents noted and partially mitigated with leak pumpback system
	Waste Rock, Open Pit, or baseline conditions	1997 EIS: Water quality would be same as pre-mining (background water quality indicates natural exceedences).	1997 EIS: • Backfill pit to prevent formation of pit lake. • Segregation/disposal of PAG rock in the waste rock dumps	1997 EIS: No impacts to groundwater predicted.	WQ Monitoring: Exceedences of drinking water standards noted in various monitoring wells, which could be attributed to waste rock and open pit leachate or baseline conditions.

Table 6.24. Jerritt Canyon, NV, Potential, Predicted and Actual Impacts

Resource	Source	Potential Impacts	Mitigation	Predicted Impacts	Actual Impacts
Groundwater and Surface Water	Tailings	• 1980 EIS: No information provided for groundwater. Possibility of release of toxic materials to streams due to breakage of the tailings pipeline.	• 1980 EIS: Tailings located in headwaters of small water shed will protect water quality • 1980 EIS: Facility design to prevent groundwater impacts ○ Tailings disposal pond will be lined ○ Horizontal seepage controlled by embankment design.	• 1980 EIS: No impacts predicted • 1991 EA: Six pumpback wells are not effective at preventing migration of plume from impoundment	Water Quality Monitoring • 1991: Cyanide plume detected from tailings pond and seepage collection installed • 1993-2004: Groundwater monitoring wells downgradient of the tailing impoundment show exceedences for Cl and TDS consistently from 1993 –2004
	Waste Rock	• 1980 EIS: Minimum potential for some leaching of some heavy metals and other toxic subatances in the waste rock into surface and ground water • 1994 EIS: Groundwater and surface water quality may be affected by acid drainage and other constituents in waste rock	• 1980 EIS: No information provided • 1994 EIS: Waste rock mitigation include: ○ Segregation and blending of PAG waste rock. ○ 1994 EIS: Capping, contouring and drainage controls ○ 1994 EIS: Waste rock characterization and handling (segregation, cap, contour, drainage) program	• 1980 EIS: Minimum impacts predicted • 1994 EIS: No impacts to groundwater or surface water predicted	Water Quality Monitoring • 2001-2004: Surface monitoring shows a steady increase in TDS and SO_4 concentrations downstream from waste rock piles from 2001-2004 with most recent data indicating exceedences of standards by 10 times
	Open Pit	• 1980 EIS: No information • 1994 EIS: Groundwater and surface water quality may be affected by acid drainage and other constituents in pit walls	1980 EIS: Divert surface water flow around pit and groundwater from pit used for dust control or discharged	• 1980 EIS: No impacts predicted • 1994 EIS: No pit lakes predicted to form	

Notice that under the "Predicted Impacts" column in both examples no impacts are typically predicted, and under "Potential Impacts" many water quality issues are listed. In general, and this is concluded in the report, the various EIS analyses recognize that water quality may be compromised, but are overly optimistic in the effectiveness of the mitigating procedures, which is summarized by the authors, "...as with surface water, the predictions made about groundwater quality impacts without considering the effects of mitigation were somewhat more accurate than those made taking the effects of mitigation into account. Again, the ameliorating effect of mitigation on groundwater quality was overestimated in the majority of the case study mines."[27] Reform of the 1872 mining law needs to take into account the limitation of modeling used to predict the future environmental consequences of mines.

Mine Dewatering

Mine dewatering is the process of removing groundwater to keep mines from filling with water. In the Carlin Trend, the highest dewatering rate occurs at the Betze Pit. In 1998, it pumped approximately 100,000 af (acre-feet)[28]. In 2000, the BLM published a cumulative impacts analysis of this dewatering showing that extensive

[27] ibid, pg ES-8.

[28] One acre-foot is the volume of water sufficient to cover an acre of land to a depth of 1 foot, = 43,560 cubic feet, approximately 325,829 U.S. gallons (approximately 1233.48 cubic meters).

drawdown would occur throughout the area and that base flow in about six streams would be decreased or eliminated.[29]

The BLM predicted in 2000 that dewatering the Carlin Trend would remove approximately 2,000,000 acre-feet of water by 2018. By 2003, there had been 1,125,000 af pumped for from the Gold Quarry and Betze-Post mines.[30] Gold Quarry had pumped a little more than 210,000 af by 2003, therefore Betze-Post pumped about 910,000 af with peaks of 100,000 af/y in 1994 and 1998. Its rate has stabilized at about 45,000 af/y.[31]

The perennial yield of a groundwater basin is the amount of water which can be economically pumped annually without causing a permanently increasing drawdown. Regardless of the source, the dewatering has far exceeded and will continue to exceed the cumulative perennial yield of the Carlin Trend hydrologic basin. The dewatering pumpage of 2,000,000 af, if it is correct, will total approximately 51 years of the entire perennial yield for the six basins. The deficit above the perennial yield will be approximately 950,000 af. Total pumpage to date is 1,135,000 af which equals 37 years of the perennial yield in the basin and is a deficit of 595,000 af or about 20 years of the perennial yield.[32] Pumpage from 1992 to 2007 has totaled about three times that which would be allowed by the Nevada State Engineer if he followed Nevada water law of approving water rights applications up to the perennial yield of a basin.

Water levels near the Humboldt River have dropped up to ten feet in the carbonate and a lesser amount in the siltstone. This is not a huge amount, but is on the edge of the potentially expanding cone. The predictive groundwater model did not simulate this drawdown possibly because it had a boundary at the river which prevented the drawdown from being simulated.

The U.S. Geological Survey estimated substantial drawdown occurring northeast of Gold Quarry into the upper Maggie Creek basin; this drawdown extended far beyond the BLM's predicted ten-foot drawdown cone. Similarly, the U.S. Geological Survey plotted a 100-foot drawdown contour under Susie Creek and lower Maggie Creek outside of the predicted ten-foot drawdown.

Dewatering has caused significant deficits in the groundwater systems of at least six groundwater basins near the Carlin Trend. Because the local recharge is small compared to the perennial yield, there must naturally be a substantial amount of interbasin inflow. The source of this interbasin flow is yet unknown as is the impact of this flow. Clearly, the reduction or elimination of springs and streams will have a significant impact on wildlife, and potentially impact cultural practice as well,[33] but long-term impacts from dewatering are to date still unclear.

H.R. 2262 Reforms Are Necessary

Clearly, the current regulatory system is not working to protect the water resources put at risk from modern mines. While there are mines which do not pose serious threats to water resources, there are too many mines which have and continue to degrade waters of the state.

The need for the federal land management agencies to have the statutory obligation to ensure a mine will not cause long-term harm is necessary because the current system is clearly not working. The public land agencies are responsible for the proper stewardship of these lands, and they must have the ability and obligation to meet that responsibility.

Mining can be profitably conducted without causing long-term harm, and without leaving a legacy of polluted and dangerous landscapes. Every other type of industry that utilizes the public lands must ensure that they operate in such a manner prior to being allowed access to the public lands. Mining can and should be required to do the same.

Public Discussion of Land Use

One of the most controversial aspects of the proposed reforms is the repeal of the presumption that mining is the best use of an area. Many people fear that if mining

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[29] US Bureau of Land Management, Cumulative Impact Analysis of Dewatering and Water Management Operations for the Betze Project, South Operations Area Project Amendment, and Leeville Project, Elko Field Office, April 2000.

[30] Plume, R.W., 2005. "Changes in Ground-Water Levels in the Carlin Trend Area, North-Central Nevada, 1989—2003, Scientific Investigations Report" 2005-5075. U.S. Geological Survey.

[31] Myers, Tom, internal communication on a preliminary draft of "Review of Mine Dewatering on the Carlin Trend; Predictions and Reality," August 2007, Reno Nevadad.

[32] ibid.

[33] The Rock Creek drainage is within the hydrologic region of impact from dewatering of the Carlin-Trend analyzed in the BLM assessment (reference 29), and is of spiritual important to the Western Shoshone people.

loses this completely unique and antiquated status, it will be the end of the industry in the United States. The argument does not hold up on analysis, and the time for allowing public debate is long overdue.

What the proposed legislation would allow is public debate similar to that allowed by the laws governing the oil and gas, coal, and industrial minerals extractive industries. The assumption that public debate will result in denial of a mining proposal, implies that the consequences of the mine will be unacceptable. If, indeed, the consequences are similar to what has too often been the case with mines permitted under the current system, then that opposition is understandable and appropriate. If and when, however, the proposal seems unlikely to cause unacceptable harm, or if there are proper environmental safeguards in place to keep the consequences within acceptable bounds, the level of opposition is and will be moderated.

The lack of public confidence in the wisdom of many mine proposals is due to a history of failure, tied to the lack of reform of the regulatory system. Mine proposals that are well designed and managed need not fear having the public be involved in the process.

Nevada Will Continue to be a Mining State

Reform of the Mining Law is often seen as the death-knell of the mining industry.[34] That once current mines are closed, the industry will move completely to other countries. We believe this fear is greatly overstated and simply incorrect.

The single most important reality of mining is that you mine where the minerals are. The geology of Nevada is well known as very favorable for finding economic deposits of minerals.[35] This is reflected in its history, as well as the continued strong rate of exploration for new deposits.

The most recent information gathered from the mining industry by the Nevada Commission on Mineral Resources shows very strong and positive confidence in Nevada's mining future. The industry "reported employing 228 geologists in Nevada in 2006, up from the 190 reported for 2005. Projections for 2007 show an increase to 236 geologists."[36] "Respondents were asked whether they were optimistic, neutral, or pessimistic about domestic exploration. Overall, 60 percent of the respondents reported being optimistic, 28 percent were neutral, and 12 percent were pessimistic."[37]

Nevada has an excellent base of experienced miners and mining professionals, and there is a well developed mining infrastructure. Lastly, it must be noted, it has a political climate that is favorable to the industry.[38] All of these are well documented, and are reflected in Nevada consistently being recognize by the industry as the most favorable (or nearly so, this past year) jurisdiction in the world for mining by the industry itself.[39]

As the Nevada Bureau of Mines and Geology and the Nevada Division of Minerals put it, the top reason to explore in Nevada is "great geology and mineral potential", and they conclude that "Nevada is a really great place to explore for and mine gold."[40] (emphasis in original)

Providing adequate protections for the future and alternate uses of the land will not change this basic reality. Nevada can be protected from the worst harms done by some mines under the one hundred and thirty five year old Mining Law, and still have a healthy and productive mining industry.

Conclusions

The Mining Law of 1872 needs to be brought up to twenty first century standards. The unique status given to the mining industry by this antiquated law is no longer justified or necessary. The long-term and serious harms that are often the result of poor mine planning and management are no longer an acceptable trade for the benefits to the local economies and the precious metals themselves.

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[34] Statement of Ted Wilton, Spring Creek, Nevada 89815, Presented to the Energy and Mineral Resources Subcommittee of the U.S. House of Representatives Natural Resources Committee on H.R. 2262: The Hard Rock Mining and Reclamation Act of 2007 July 26, 2007, http://resourcescommittee.house.gov/images/Documents/20070726/testimony—wilton.pdf

[35] Doug Driesner and Alan R. Coyner, NEVADA EXPLORATION SURVEY 2006, Nevada COMMISSION ON MINERAL RESOURCES and DIVISION OF MINERALS, June, 2007, page 5

[36] Ibid., page 1.

[37] Ibid., page 7.

[38] Ibid.

[39] McMahon, Fred, and Anas Melhem; 2007; Fraser Institute Annual Survey of Mining Companies 2006/2007; http://www.fraserinstitute.ca/admin/books/files/Mining06rv2.pdf

[40] Price, Jonathan G., Alan R. Coyner, John Muntean, and Doug Driesner; 2006; Update on Production and Exploration Activity in Nevada.

Mining has changed since 1872, it now can be done responsibly. H.R. 2262 will allow the industry to continue to thrive, while protecting the long-term viability and health of Nevada and the United States.

Thank you, again, for the opportunity to discuss this important issue. I will answer any questions you may have.

Mr. COSTA. Thank you very much, Mr. Randolph, and thank you for staying within the five minutes allotted. Points from me, anyway.

The next witness is Ms. Barkdull Spencer, correct?

Ms. BARKDULL. Correct.

Mr. COSTA. And you are representing this morning the Elko County Economic Diversification Authority.

Ms. BARKDULL. That is also correct.

Mr. COSTA. Wonderful. Well, we look forward to your testimony today.

STATEMENT OF ELAINE BARKDULL SPENCER, DIRECTOR, ELKO COUNTY ECONOMIC DIVERSIFICATION AUTHORITY

Ms. BARKDULL. Thank you. Chairman Costa, Congressman Heller, thank you for this opportunity. My name is Elaine Barkdull Spencer. I am the Executive Director of the Elko County Economic Diversification Authority and also the former CEO of the Elko area Chamber of Commerce.

First of all, I would like to thank the Subcommittee for inviting me to participate in this public hearing on the Hardrock Mining and Reclamation Act of 2007. Most importantly, I would like to thank Senator Reid, although he's already left, for the many years of advocacy and leadership on mining law reform issues. Without his diligent efforts to stop unfair attacks on Nevada mining, it is unlikely that Nevada would even be a viable mining industry in the state to discuss with you today.

Mr. COSTA.His staff is here, and I'm sure the word will get passed on.

Ms. BARKDULL. Very good. I appreciate the opportunity to speak to you on the impacts of mining to local communities such as Elko County, the community that I represent.

In my position at the helm of ECEDA, I am very familiar with the impacts of mining on local businesses and the economies of mining communities. But my experience with mining is a lifelong one.

Like Senator Reid, I am a native Nevadan, and I have lived in more than a handful of the cities and towns in this great state. My family has lived in Nevada for several generations, and our heritage is directly related to mining.

My mother's family started in Nevada as prospectors and continued on through my teen years. My father worked as a heavy equipment operator for several mines throughout the state. To save money for college, I worked at a barite mine near Battle Mountain. I was actually a mucker behind one of those shovels.

Today I have two sons who work in mining. My oldest son is an electrician in a mine in Washington State. A Nevada mine helped pay for his college education and his electrical certification. He makes a very good living.

My younger son is only 25 years old. He was a mill supervisor for Round Mountain Gold near Tonopah, Nevada.

I am very proud of my sons and I'm very thankful to an industry that has offered so much opportunity to my family.

While I may have personal reasons for being an advocate of mining, as a community representative, I have a high respect for any industry that gives back to its community.

Mining represents a substantial asset to the State of Nevada. Last year, Nevada mines exported billions of dollars worth of precious minerals. Mines are the largest employers of at least six of Nevada's counties, and a typical miner can earn an average of $68,000 a year. The economic impacts of mining can easily be identified by the great-paying jobs and the local—and great benefits.

It also can be identified locally in the businesses by not only the support industry that you can see spread out through any mining community, but also the growing stores and retail bases, the places where the miners shop and the businesses themselves flourish.

Mining continually gives back to communities where they exist. Our local mines have contributed to city infrastructures, parks, and schools. Just recent contributions from the mines include a partnership with the community for a new community health clinic, major contributions to Great Basin College's infrastructure such as new facilities and specific training programs, plus many years of support for children's programs and special community needs.

In addition to the obvious economic impacts of mining, I would like to explain to you the role of mining, the role that mining plays in diversification efforts of communities.

Our local mines support ECEDA, the organization of which I work. We are a public-private partnership. We have representatives on our board that directly contribute and also participate in our diversification efforts.

Chairman Costa and members of Committee, I have read H.R. 2262, and I am concerned about what it will do to Nevada's economy. I am particularly concerned about the potential impacts of the eight percent net smelter return royalty called for in the last legislation.

For Nevada's gold miners, a net smelter return royalty is basically the equivalent of a gross royalty tax. And a gross royalty could create an enormous financial burden on the state's mining industry.

Since gold is traded on the commodities market, none of this additional financial burden can be added to the price of the gold that is sold. All the royalty costs will be absorbed by the mining companies, and this will be a direct adverse impact on the amount of mining tax revenues that flows to the state and to the counties.

Thank you.

[The prepared statement of Ms. Barkdull Spencer follows:]

Statement of Elaine Barkdull Spencer, Executive Director, Elko County Economic Diversification Authority

Mr. Chairman and Members of the Committee—

My name is Elaine Barkdull Spencer. I am the Executive Director of Elko County Economic Diversification Authority and the former CEO of the Elko Area Chamber of Commerce. First of all, I would like to thank the Subcommittee for inviting me to participate in this public hearing on the Hard Rock Mining and Reclamation Act

of 2007. Most importantly, I would like to thank Senator Reid for his many years of advocacy and leadership on mining law reform issues. Without his diligent efforts to stop unfair attacks on Nevada's mining industry, it is unlikely that Nevada would even have a viable mining industry to discuss with you today.

I appreciate the opportunity to speak on the impacts of mining on communities such as those I represent in Elko County. In my position at the helm of ECEDA, I am very familiar with the impacts of mining on local businesses and the economies of mining communities, but my experience with mining is a lifelong. I am a native Nevadan and have lived in more than a handful of the cities and towns in this great state. My family has lived in Nevada for generations and our heritage is directly related to mining. My mother's family started in Nevada as prospectors, my father worked as a heavy equipment operator for several mines throughout the state. To save money for college I worked for a barite mine near Battle Mountain. Today I have two sons who work in mining. My oldest son is an electrician at a mine in Washington. A Nevada mine helped to pay for his college education and his electrical certification. My younger son is only 25 years old and is a mill supervisor for Round Mountain Gold near Tonopah, Nevada. I am very proud of both my sons' accomplishments and I credit the mining industry for the opportunities they have offered my family. While I may have personal reasons for being an advocate for mining, as a community representative I have high respect for any industry that gives back to the community.

Mining represents a substantial asset to the State of Nevada. Last year Nevada mines exported billions of dollars worth of precious metals. Mines are the largest employers in at least six of Nevada's counties and the average miner can make an average of $68,000 a year. The economic impacts of mining can easily be identified by the thousands of great paying jobs they offer, the local goods and services utilized by the industry and their employees, plus the millions of dollars in net proceeds of mines taxes, sales taxes, employee taxes and numerous other taxes and fees that benefit this great State and the counties where mining occurs. This revenue is absolutely critical to the annual budgets of these rural counties.

Mining continually gives back to the communities were they exist. Our local mines have contributed city infrastructure, parks and schools. Recent contributions from the mines include a partnership with the community for the new community health clinic, major contributions to Great Basin College's infrastructure, new facilities and specific training programs, plus many years of support for communities' children's programs and special community needs.

In addition to the obvious economic benefits of mining, I would like to explain the role mining plays in the diversification efforts of mining communities. Our local mines support ECEDA (Elko County Economic Diversification Authority), a private-public partnership. Representatives serve on our Board and contribute to studies and programs. Most notably, mining companies have played a major role in developing sustainable communities and the job skills of the people that live in those communities. Because of mining, Elko County has become an attractive community to new types of industry. Our strong economy has allowed us to do long-term planning for the future. The expanded infrastructure and resources, including industrial parks, expanding housing developments and new retail growth are all due to mining.

Elko County is growing and thriving. Norman Crampton listed the City of Elko as the number-one "Best Small Town, in his 1993 book, the 100 Best Small Towns in America. This recognition was based on quality of life, good jobs, cost of living, good schools and high levels of public safety. The City of Elko wore this badge with pride and we contributed our advantages to the gold mining industry.

Chairman Costa and members of the Committee, I have read through H.R. 2262 and I am concerned about what it will do to Nevada's economy. I am particularly concerned about the potential impacts of the proposed 8% net smelter return royalty called for in the legislation. For Nevada's gold miners, a net smelter return royalty is basically the equivalent of a gross royalty, and a gross royalty would create an enormous financial burden on the State's mining industry. Since gold is traded on the commodities market, none of this additional financial burden can be added to the price of the gold that is sold. All of the royalty costs will have to be absorbed by the mining companies and this will have a direct adverse impact on the amount of mining tax revenue that flows to the State and to the counties. There will be less investment in mining, and fewer exploration and mining jobs. New projects will be shelved; expansion plans put on hold or cancelled entirely. Secondary impacts will be felt throughout the entire community. Mr. Chairman, you will hear more detail about the impacts of the proposed royalty in H.R. 2262 from Mr. Fields and Dr. Dobra later in this hearing. Having spoken with many of the miners in this community who are very familiar with the legislation before you today, I am con-

vinced that this bill will make mining in the United States less competitive. If the resources our country needs can no longer be affordably mined from our own land—they will be imported from more affordable locations in other countries. This would be a disservice to our country, a threat to the integrity of our strategic metals and minerals supply and a devastating blow to the rural economies of the Western United States, which depend on mining for their economic security.

We Nevadans are not mindless people that will allow unsafe mining practices and destruction of public lands. We demand the best for our communities, our state and our people. We believe our local mining industry goes above and beyond legal and regulatory requirements, embraces its responsibility as stewards of the public lands, and serves our community as thoughtful and generous corporate citizens. As a state we are fortunate to have an industry, such as mining, that will pay its employees well, provide exceptional benefits, and positively impact rural areas with opportunities and strong, sustainable economies. I come before you today to ask that you work with Nevada's senior Senator and our mining companies to develop a fair, reasonable and workable mining law reform package that will provide the long-term certainty and stability needed to protect existing investments and to attract new capital and not harm these communities which are so dependent on a healthy and sustainable mining industry. Mr. Chairman, the importance of mining to our national security, our economy and even our way of life is at stake in this debate.

Thank you again for the opportunity to speak today on behalf of Elko County's Economic Diversification Authority.

Mr. COSTA. Thank you. Thank you for, again, staying within the 5-minute rule. We appreciate that very much. And we look for the opportunity to ask you some questions when we complete the testimony of this panel.

The next witness that we have before us is Mr. Robert Abbey, former state director of the Bureau Land Management in Nevada. Mr. Abbey.

STATEMENT OF ROBERT ABBEY, FORMER DIRECTOR, NEVADA STATE OFFICE, BUREAU OF LAND MANAGEMENT

Mr. ABBEY. Thank you. My name is Bob Abbey, and I appear before you today as a member of the public. I'm not an expert in mining by any means, but I do bring to this hearing 32 years of experience in natural resources management, including eight years as the Bureau of Land Management's Nevada State Director before retiring in 2005.

In that role, I had the responsibility for providing direct oversight of the largest mining program administered by the BLM.

Mr. Chairman, Congressman Heller, I thank you for the opportunity to participate in this hearing, and I commend you both for your review of the General Mining Law of 1872 in context of today's social, environmental, and economic realities.

Due to time constraints, I'm going to deviate significantly from the testimony that I previously submitted, and I'm only going to highlight a few recommendations this morning that I hope you will consider in future deliberations.

I have stated numerous times that I am an advocate for responsible mining, just like I'm an advocate for responsible use by all public land stakeholders. I'm a proponent of the BLM's multiple use mandate, and I believe that appropriate public lands, but certainly not all public lands, should be accessible for mineral extraction.

The current law does need to be revised so that all resource values are given the same consideration when land management agencies are making resource allocations through their land use

planning processes. Under the auspices of the General Mining Law, this has not always been the case since some believe the existing law gives mining priorities over other management goals.

Mining laws and related regulations have been reviewed numerous times. Modifications have been made primarily through regulatory reform to address the many complex issues. At the direction of Congress to the National Research Council, an assessment was made in 1999 regarding the adequacy of the regulatory framework for hardrock mining on Federal lands.

A study was completed and a summary of the Research Council's findings and recommendations were submitted to the Congress at that time. If you will review the document that was submitted, I believe you will find that some of the proposed changes might be better addressed through a change in law rather than just through regulatory reform. A "Good Samaritan" clause is just one example where a change in the law may have a positive result and help them to clean up abandoned mine lands.

Throughout my career in public service, I have found that there's more commonality in citizens' desires than there are differences. Most of us want clean water and air; a healthy environment for plants, animals and humans. We want productive and sustainable ecosystems while managing our public lands in a manner that would enhance our overall quality of life and local communities.

We want our public lands to be managed for multiple uses, recognizing that, today, these assets are valuable as much for wilderness as they are for commodity production. This is a basic premise that your Committee should build on when reviewing and amending any law affecting public land management.

There's little doubt in my mind that most people support the principle of collecting a fair and equitable royalty for the privilege of extracting minerals from the public's land. There is a strong demand for holding companies doing business on the public's land accountable for complying with specified environmental and health standards.

Many people feel that the conveyance of public land tracts under the provision of any mining law should be at fair market value and not based on historic patent fees.

Unlike some who might oppose mining under any circumstance, most people that I have interacted with understand the benefits derived from responsible mining; and these same people believe that with adequate safeguards and proper enforcement, mining is a legitimate use of our public lands.

I recommend that the Committee require the use of the Forest Service and the BLM's land use planning processes as the formal mechanism for identifying the appropriateness of making available specifics tracts of public lands for mining.

Whether a mine would ever be built depends upon a number of factors, including having sufficient mineral deposit that is economically feasible to mine, but not based on the direction and goals of an antiquated law.

The amount of land needed for the mill sites should be determined through the site-specific analysis and not be subject to an arbitrary or self-imposed requirement as now included in the draft language. The life of the mining plan and reclamation require-

ments should also be addressed as part of the initial analysis. And I would hope that Congress would not place any requirements or subsequent reviews or analysis unless there is a proposed modification to the mining plant or significant new information is obtained from monitoring.

The exception to this, of course, would be the need to routinely review and update bonds to ensure full coverage for reclamation requirements.

I recommend that any change to the current law provides some form of financial assistance or encouragement for prosecuting individuals engaged in mining fraud or scam operations.

Given the demands placed on both the Justice and Interior Departments, the investigation and prosecution of people engaged in mining scams is given little priority. As a result, innocent people, many of whom are elderly, are being taken advantage of by scam artists.

Finally, whether you amend the General Mining Law or not, I believe there needs to be greater Congressional attention given to staffing the agencies with a sufficient number of people as well as with the expertise needed to ensure appropriate reviews of mining proposals and the monitoring that is often required for approved operations.

The agencies have been operating at an extreme disadvantage for quite some time when responding to their on-the-ground and administrative responsibilities. It is common for BLM offices to use mining engineers or geologists to respond to a multitude of demands. The reality is that most BLM field offices in Nevada and elsewhere in the rural West have only one mining engineer or geologist, and it's impossible for them to keep up with all the work that's required.

Thank you for the opportunity to provide comments.

[The prepared statement of Mr. Abbey follows:]

Statement of Robert Abbey

My name is Bob Abbey and I appear before you today as a member of the public. I am not an expert in mining nor do I sit here today pretending to have answers to all the questions that should be addressed as part of any review of the General Mining Law of 1872. However, I do bring to this hearing 32 years of experience in public land management including eight years as the Bureau of Land Management's Nevada State Director, a role that I held with great pride prior to retiring from that agency in 2005.

Mr. Chairman and members of this Subcommittee, like many others, I thank you for the opportunity to participate in this hearing to offer comments pertaining to proposed changes to the General Mining Law. I compliment the members of this subcommittee and others within the Congress for your willingness to review an existing law which in this case, is 135 years old. I commend your efforts to amend this law in such a manner as to better reflect today's social, environmental, and economic realities.

As the BLM's Nevada State Director, I had the responsibility for providing direct oversight of the largest mining program administered by the BLM. Nevada's gold production by itself makes it the fourth largest producer of gold in the world. The BLM's Nevada State Office records almost half, if not more, of all the mining claims filed on public lands in the United States. While these are impressive statistics, I note that Nevada also leads the west in abandoned mine lands requiring remediation. With an estimated 300,000 abandoned mine lands features, of which 50,000 pose risks to human safety, regulatory agencies at both the state and federal levels have significant challenges in trying to mitigate such hazards. Through partnerships with the State of Nevada, the mining industry, and with a number of citizen volunteers, progress is being made in mitigating some of these risks.

Abandoned mine clean up and the mitigation of related public land hazards is a national issue however, and some have estimated that the cost to clean up these sites range from a low of $12 billion to as high as $72 billion. Regardless of the costs, much remains to be done to address abandoned mine sites and I am happy to read that you are proposing language in the draft legislation that will provide funding for clean up activities. Consistent with your goal of mitigating known hazards, I strongly recommend that this subcommittee entertain the possibility, if you haven't already done so, of including a "Good Samaritan" provision. Decreasing financial risks and liability for industry participants who volunteer their assistance in mitigating hazards associated with abandoned mines is needed and long overdue. I believe such a provision, if approved by the Congress, can easily be managed to maintain the integrity and goals of the Comprehensive Environmental Response, Compensation, and Liability Act, better known as CERCLA.

The General Mining Law of 1872 that was passed by the Congress reflected the priorities of the nation at that time. Much has changed since the late 1872 and for that matter, since the passage of the Federal Land Policy and Management Act in 1976. Today, America's public lands are valued for much more than just commodity production and I feel it is beneficial to all for Congress to routinely review public land laws to determine their current relevance in addressing our national interests, public demands, and expectations.

I have gone on record many times stating that I am an advocate for responsible mining just as I am an advocate for responsible use by all public land stakeholders. I am a firm believer in BLM's multiple use mandate and I believe that appropriate public lands, not all public lands, should continue to be accessible for mineral extraction. The current law needs to be changed so that all resource values are given the same consideration when land management agencies are making resource allocations through their land use planning processes. Under the auspices of the General Mining Law of 1872, this has not been the case.

Existing mining laws and related regulations have been reviewed numerous times. Modifications have been made, primarily through regulatory reform, to address complex issues associated with implementing the General Mining Law. The last major effort which I am familiar with occurred in the late 1990s. At the request of Congress to the National Research Council an assessment was made regarding the adequacy of the regulatory framework for hardrock mining on federal lands. To conduct this study, the National Research Council appointed the Committee on Hardrock Mining on Federal Lands in January, 1999. A study was completed and the designated committee provided a summary of its findings and recommendations to the Congress and to the Departments of Agriculture and Interior. If the members of this subcommittee do not have a copy of this report, I suggest that your staff obtain one and become thoroughly familiar with its contents. While the report provided recommendations for regulatory changes, the Committee on Hardrock Mining also provided a good overview of the mining industry and the challenges faced by all as it relates to mining on public lands. I believe you will find that some of the proposed changes in that report might be better addressed through a change in law rather than through regulatory reform. The Good Samaritan clause which I noted above is just one example of a recommendation found in that report.

Some proposals for changing the current law will be easier to reach consensus on than others. But as a person with over 32 years of experience in public land management, I have found that there is much more commonality in our population's basic desires than differences. Most of us, including those who work in extraction industries, want clean water and air, and a healthy environment for plants, animals, and humans. We want productive and sustainable ecosystems. We want opportunities to use public lands for recreational pursuits and we want these lands managed in a manner that will help sustain our communities and local economies. In other words, we want our public lands to be managed for multiple uses, recognizing that today these assets are valued as much for wilderness as they are for commodity production. This is the basic foundation that your subcommittee should build on when reviewing and amending any law affecting public land management.

I will quickly highlight some of these areas where I believe you will find general support for change and then use my remaining time to identify other issues which I hope you will take into consideration in future discussions.

While the specific amount of any royalty assessed for the production of mineral materials from our nation's public land will be subject to further debate, there is little doubt in my mind that most people and interest groups support the principle of collecting a fair and equitable royalty for the privilege of extracting minerals from the public's land. There is a general acceptance and strong public demand for holding companies doing business on public lands accountable for complying with specified environmental and health standards and for holding these same companies lia-

ble for short or long term damages which might occur from their commercial operations. Most people I have encountered feel that conveyance of public land tracts under the provision of any mining law should be at fair market value and not based on historic patent fees. Unlike some who might oppose mining under any circumstance, most Americans understand the benefits we derive from mining and these same people believe that with adequate safeguards, mining is a legitimate use on our public lands. People, especially those in the rural West, know the economic benefits that can be derive from mining operations and many support a strong and viable mining industry.

I recommend that the subcommittee evaluate the feasibility of using the Forest Service and BLM's land use planning processes as the mechanism for identifying the appropriateness of making available specific tracts of public lands for mining. Both agencies' planning processes are open to public scrutiny and input and include opportunities for state and local governments to participate as cooperating agencies. Mining claims could then be staked and development proposed on any public land deemed appropriate for such use as determined through a land use plan decision. Whether a mine would ever be built depends on a number of factors including having a sufficient mineral deposit that is economically feasible to mine. The agencies' final decision would be based on site specific analysis, much like is done today. Under this scenario the agency, with industry and public input, would have the opportunity to review any mining proposal as part of its overall multiple use mandates. The final decision would be based on science and other contributing factors but not on requirements found in an antiquated law.

The amount of land needed for mill sites and or other administrative support functions should be determined through the site specific analysis and not be subject to an arbitrary or self imposed requirement as now proposed in the draft language. The life of the mining plan and reclamation requirements should also be addressed as part of the initial analysis and I would hope that Congress would not place any requirements for subsequent reviews unless there is a proposed modification to the mining plan or significant new information is obtained from monitoring. The exception to my recommendation would be the need to routinely review and update bonds to ensure full coverage for reclamation requirements. Consistent with BLM and Forest Service planning regulations, mining proponents or members of the public will have the opportunity to protest or appeal any agency decision which an individual or the industry proponent believe is flawed.

As part of your review, I also recommend that Congress entertain language to address the manner in which we manage for common versus uncommon variety of minerals. To the degree possible, I would propose that Congress insist that clays, sands, and/or other aggregate materials be made available as appropriate under a competitive sale procedure. Determining whether these materials are of common variety or not is a time consuming and workload intensive process. Incorporating a provision authorizing the affected land management agencies to sell these materials versus dealing with them in the same manner as precious metals would be an improvement over existing law.

As a former agency administrator, I hope that any change to the current law will provide some form of financial assistance or encouragement for prosecuting individuals engaged in mining fraud or scam operations. Given the demands placed on the Justice Department, prosecuting people engaged in mining scams is given little priority. As a result, innocent people are being taken advantage of by scam artists who are, in some cases, making substantial sums of money. If a source of funding were made available to the U.S. Attorney's office for investigations and prosecutions, then the number of scams might be substantially reduced and innocent people, many of whom are elderly, might be better protected.

Finally, whether you amend the General Mining Law or not, I believe there needs to be greater Congressional attention given to staffing the agencies with sufficient numbers of personnel as well as with the expertise needed to ensure appropriate reviews of mining proposals and the monitoring that is often required for approved operations. The agencies have been operating at an extreme disadvantage for quite some time when responding to their "on the ground" and administrative responsibilities. In many cases, agencies have relied quite heavily on contracted expertise for assistance. While using contractors to perform some of the mandatory reviews is not all bad, it is still important for BLM and Forest Service offices to have some of their own expertise when carrying out their public land and environmental compliance responsibilities. The subcommittee's intention to offset the cost of administering mining related programs through fees and/or cost recovery is commendable. However, the challenges of recruiting for quality personnel and scarce skills increase considerably when there is an uncertainty of reliable funding sources from year to year.

It is common for BLM offices to use mining engineers or geologists to respond to mining notices, review mining plans and prepare the related NEPA documents, respond to public comments, conduct inspections, take enforcement action on noncompliance, help in the writing of records of decisions, calculate appropriate bond amounts for approved operation, and assist the Office of the Solicitor and the U.S. Attorney's office in the defense of matters which are litigated. These same employees are likely to be part of interdisciplinary planning teams as well as perform work in other programs, like oil, gas, or geothermal leasing and production. The reality is that most BLM field offices in Nevada and elsewhere in the rural West have only one mining engineer or geologist to do all of the above. The exception is those offices with heavy oil and gas workloads which usually have access to a number of mineral specialists. While the agency has generally done well in staffing up for its heavy oil and gas work, the same cannot be said for its hardrock mining program.

Mr. Chairman, this is the end of my prepared remarks and I would be happy to respond to any questions you or members of your subcommittee might have.

Response to questions submitted for the record by Robert V. Abbey

1. **In your testimony, you noted that many of the mines that are being developed today will have some long-term impacts on water that will require treatment. You mentioned a mine approved while you were BLM State Director that will require extensive long term treatment facilities to be put in place.**
   - **Do you think the BLM should permit a hardrock mine that we know will require perpetual water treatment?**
   - **Are there provisions in H.R. 2262 which you think would help BLM address water quality and quantity issues from hardrock mining?**

I do not believe the BLM should permit a hardrock mine if the agency knows for certain at the time a mine is proposed that perpetual water treatment will be required. Having said this, I also know just how difficult it is to make a determination that the operation will actually require perpetual water treatment. The ore to be mined, the location of the mine site, and the proposed methods of mining are all taken into account in the agency's analysis of the proposal. While it is possible to make good assumptions based on this initial analysis and from evaluating the data generated through modeling, there is still some degree of uncertainty as to what the long term impacts might truly be. This is the reason that monitoring and possible adjustments to the mining plan are so important during the life of the mine operation.

Whenever an agency official approves a new mine, it is important that mitigation measures addressing possible impacts be included in the decision document. In the case of proposals where there is insufficient information to make long term predictions, the agency should require financial assurances from the proponent to provide for the full cost of any long term mitigation, including perpetual water treatment, if it is determined from monitoring that such action is required. This is precisely what the BLM required of Newmont when approving the Phoenix Mine in Lander County, Nevada. In this example, the BLM required Newmont to create a trust fund that would be the basis for funding any long term water treatment facility. I should note that due to recent proposed changes in the Phoenix Mine plan of operation the need for any perpetual water treatment program at that site will be greatly reduced if these changes are approved.

While H.R. 2262 proposes several actions which, if implemented, will help the BLM address water quality and quantity issues from hardrock mining, there are BLM and U.S. Forest Service regulations and policies already in place which accomplish the same goals. The passage of H.R. 2262 would make these provisions a matter of law and thereby provide assurance that existing policies and regulations would not be changed that could result in less stringent actions relating to water quality and quantity issues.

2. **You mentioned the importance of regular review and updating of bonds to ensure full coverage for reclamation; as you know, the Government Accountability Office in 2005 identified weaknesses at BLM in this area.**
   - **Do you think BLM's current regulations on financial assurances are adequate?**
   - **Do you think H.R. 2262's requirements for financial assurances will help ensure regular review and updates of bonds for mining on BLM lands across the west?**

- **Do you think there is a need to set forth clear rules about financial assurances for long-term water treatments as detailed in Section 305(g) of H.R. 2262?**

I do believe the BLM's current regulations on financial assurances are adequate. Unfortunately, there is a general lack of staff expertise to keep up with the work. Even in BLM offices where qualified staff might be located, competing workloads often times keep these offices from updating bonds when required.

The applicable provisions addressing this requirement in H.R. 2262 will increase the chances that BLM will give higher priority to updating bonds and hopefully, provide funding to hire the expertise needed to assure appropriate bonding for all mining on BLM administered lands. Without some provision of law, the BLM offices will continue to address this workload on a case by case basis.

Section 305(g) of H.R. 2262 will provide a general standard(s) for addressing long term water treatments which I don't believe exist today. During my tenure as the BLM Nevada State Director, our office was given little guidance or direction from the BLM's office in Washington, D.C. regarding long term water treatment facilities or requirements for addressing this need. We were left to develop our own requirements in order to move forward with proposals for new mines in Nevada.

Mr. COSTA. Thank you, Mr. Abbey. You went a little past there, but, as I said, I do try to be somewhat flexible, and we thank you for your testimony.

Mr. ABBEY. Thank you.

Mr. COSTA. Our next witness, actually, the last witness on this panel is Mr. William Molini.

Mr. MOLINI. That is correct.

Mr. COSTA. Former Director of the Nevada Department of Wildlife. Today I understand you're testifying on behalf the sportsmen and a representative of the Theodore Roosevelt Conservation Partnership organization; is that correct?

Mr. MOLINI. That's correct.

Mr. COSTA. All right. You've got five minutes.

STATEMENT OF WILLIAM MOLINI, FORMER DIRECTOR, NEVADA DEPARTMENT OF WILDLIFE

Mr. MOLINI. Chairman Costa, Congressman Heller, I really appreciate the opportunity to appear before you today and offer these comments.

My name is William Molini, and I am here today to represent the interests of hunters and anglers which are part of Sportsmen United for Sensible Mining, a campaign that's being led by the Theodore Roosevelt Conversation Partnership, Trout Unlimited, and the National Wildlife Federation.

I'm a third-generation Nevadan myself, and I spent some 30 years working for the Nevada Department of Wildlife, over 16 of those years as its Director. The primary purpose for my testimony today is to address the long-standing need for the reform of the General Mining Law of 1872.

Nevada has the highest percentage of public lands outside of any state except Alaska, most of these lands managed by the Bureau of Land Management and the U.S. Forest Service. These lands provide the primary habitat for over 600 species of fish and wildlife that reside in our state.

These same lands provide the major resource base for hardrock mining and minerals. And therefore, we have kind of an inherent situation for conflict between mineral extraction and maintenance and enhancement of fish and wildlife habitat.

These public lands in Nevada, for example, provide nearly all of the habitat for the three subspecies of bighorn sheep which we have here, and we're the only state that has all three subspecies in one single state. And that's the desert bighorn and California bighorn sheep and the Rocky Mountain bighorn sheep. Again, they live almost exclusively on public lands.

Public lands also provide a considerable habitat for pronghorn, mule deer, Rocky Mountain elk, and mountain lion in this state. They provide the primary habitat for most of our upland game like chukar and gray partridge and sage grouse.

The majority of the stream trout fisheries, including those for the threatened cutthroat trout, are found in public lands. Therefore, I think it's obvious that productive public lands are very important, not only to the sportsmen of Nevada, but to hunters and anglers, I think, across the country.

Mining is tightly linked with the history of Nevada, and that's been referred to before. Certainly, in the early history of the state, mining was the pivotal industry in settlement of the state. Mining is still a significant and important industry in Nevada with significant economic impact in many of the rural communities—Elko, Carlin, Eureka, Battle Mountain, Winnemucca.

Hunting and fishing also play major economic roles in the state. And according to the 2006 national hunting and fishing survey, hunting and fishing generated $280 million in revenue in the State of Nevada.

What I would like to relate to you is, during my tenure as Director of the Department of Wildlife, I spent a great deal of time working with the mining industry. And I think our agency and the mining industry established a very solid record of accomplishment in addressing the more urgent challenges that faced fish and wildlife.

As an example, with the resurgence of gold mining in the late '70s and early '80s, we encountered an unexpected loss of migratory birds as a result of sodium cyanide solution ponds. Working closely with the industry over time, we were able to resolve most of that conflict by requiring covering of the ponds with netting or by other means, and the industry complied.

I think it's fair to say in my experience that, especially at the larger gold mines, we're not only responsible but we're responsive, and we did have a positive working relationship.

On behalf of the Sportsmen United for Sensible Mining, we have come up with four tenets that we think should be included in any revision of the 1872 Mining Law, the first of those being a royalty, as has been discussed by others.

Sportsmen are used to paying for the management of wildlife and habitat improvement through license fees and excise taxes on hunting and fishing equipment, so we think it's appropriate for mining companies that derive significant benefit from public lands to pay a royalty to help with rehabilitation of wildlife habitats that have been impacted by mining.

Second, we look to strengthen protection for fish and wildlife and water resources from potential mining impacts by providing Federal land managers with clear legal and regulatory authority to assure adequate reclamation of mining sites.

The third tenet is to give Federal resource managers discretion to protect the highest-valued fish and wildlife habitats from mining use. And Title II of H.R. 2262 makes such provision with the exception of national wildlife refuges, which we think should be included.

Our final recommendation is that a reform of the Mining Law should provide Good Samaritans with reclamation incentives and commonsense liability.

Again, I'd like to thank you, Mr. Chairman and Congressman Heller, for holding this hearing here. We look forward to working with your Committee as you work to revise the Mining Law of 1872. And certainly we look forward to working with Senator Reid and the rest of the Nevada delegation.

Thank you.

[The prepared statement of Mr. Molini follows:]

Statement of William A. Molini, Sportsman and Representative of the Theodore Roosevelt Conservation Partnership

Chairman Costa and members of the Subcommittee, I greatly appreciate the opportunity to address the subcommittee today. My name is William Molini, and I am here today to represent the interests of hunters and anglers who are part of Sportsmen United for Sensible Mining, a campaign led by the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation. I am a third-generation Nevadan, and I worked for 30 years for the Nevada Department of Wildlife and served as the director of that agency for more than 16 years. I also served on the State of Nevada Environmental Commission for 16 years. I have been retired for several years, and, besides doing mostly volunteer work for the conservation of fish and wildlife, I spend a good deal of time enjoying hunting and fishing on the public lands and waters of Nevada. The primary purpose of my testimony today is to address the long-standing need for reform of the General Mining Law of 1872.

Nevada has the highest percentage of public lands of any state in the West except for Alaska, and these public lands, primarily managed by the U.S. Bureau of Land Management and the U.S. Forest Service, provide the vast majority of habitat for the more than 600 species of fish and wildlife that reside in our state. These same lands provide the major resource base for hard rock minerals and, therefore, for mining in Nevada. Thus, there is inherently the circumstance for conflict between mineral extraction and the maintenance of fish and wildlife habitat. These public lands constitute nearly all of the desert, Rocky Mountain and California bighorn sheep habitat in Nevada and provide a large majority of the habitat for pronghorn, mule deer, Rocky Mountain elk and mountain lion. They likewise support the primary populations of upland game, such as chukar, gray partridge and sage grouse. The majority of stream trout fisheries, including for the threatened Lahontan cutthrout trout, are found on public lands. About 90 percent of the state's big game and upland game hunting takes place on public lands, as does most of the stream trout fishing. Therefore, productive public lands are vitally important to Nevadan sportsmen. These lands also supply most of the water to our rivers, lakes and wetlands that accommodate considerable fishing and waterfowl hunting opportunities. Clearly the public lands of Nevada are very important to local sportsmen, as well as to hunters and anglers from across the country.

Mining is tightly linked with the history of Nevada, and for much of its early history it played a pivotal role in the settlement of the state. Mining continues to be an important industry in Nevada and one that has significant economic impact in several rural communities, such as Elko, Carlin, Eureka, Battle Mountain and Winnemucca. Hunting and fishing also play a major economic role in Nevada, generating more than $280 million in 2006. During my tenure as director of the Nevada Department of Wildlife, our agency had considerable interaction with the mining industry, and, over time, we developed a solid record of working together to address some of the more urgent challenges that faced wildlife because of mining activities. One of the most pressing in the early days of gold mining resurgence in Nevada (late 1970s and early 1980s) was the unexpected loss of migratory birds at sodium cyanide solution ponds. Working with the industry on various potential resolutions, we ultimately concluded that lethal ponds must be covered by mesh netting or other

means—and the industry complied. The industry further worked with us to develop legislation that provided for an assessment on the tonnage of ore mined that would help fund the Department's costs associated with mining activities; this program is still in place. However, while these assessment fees originally were adequate for the Department's need to address immediate mining impacts, they never were intended to address the long-term needs of wildlife, and, in fact, the revenue from these fees has decreased in recent years because of mine consolidation.

Certainly placing a major gold mine in important wildlife habitat has impacts on the habitat and associated wildlife. Some of these impacts, such as direct habitat loss and displacement of animals by mine activity, may be short term or long term, depending on the habitat type or the type of animal and its behavior, as well as the life of the mine. Whatever the case, considering the many variables, some negative impact will occur. Water quality may be the impact that is most persistent and challenging to address. We seek to help minimize these impacts through reform of the 1872 law. While many mining impacts can be mitigated to various degrees, some of the long-term impacts remain unknown.

The General Mining Law of 1872 may have served the country well in the early years of Western expansion, settlement and development, but clearly the West is a far different place today with its well-established agriculture, rapidly expanding urban populations, and the increasing demand for water resources and outdoor recreation. Sportsmen United for Sensible Mining strongly believes that it is time to reform the Mining Law of 1872 to better address the needs of today's society, and to that end we have developed guidelines as tenets that we ask to be included in any mining law reform and that are, for the most part, included in H.R. 2262.

The first guideline is to assess a royalty on any mineral mined from public lands to fund fish and wildlife conservation programs and abandoned mine reclamation. I already have covered the high value of public lands to wildlife and to sportsmen. Since sportsmen long have provided funding for wildlife management, habitat maintenance and improvement through license fees and excise taxes on fishing and hunting equipment, it seems appropriate to us that mining companies, which benefit significantly from public land resources and which impact fish and wildlife, should share in the cost of rehabilitating and improving fish and wildlife habitats. We believe that royalty payments should be collected into the federal treasury and then be reallocated to the state fish and wildlife agencies, conservation organizations and private entities for wildlife and habitat management and improvement purposes.

Our second guideline is to strengthen protection for fish, wildlife and water resources from the potential impacts of mining. We believe that federal land managers need clear legal and regulatory authority to assure adequate reclamation of mining sites. Even more importantly, we believe that the sale of public lands under the patenting provisions of the current law is particularly troubling for future management of public fish and wildlife habitat and for hunting and fishing access. We therefore request that the law be reformed to prohibit the patenting or sale of public lands.

Our third tenet proposed for this legislation is to give federal resource managers discretion to protect the highest-value fish and wildlife habitats from mining use. Such areas are critical to the future viability and sustainability of fish and wildlife on public lands, and we believe the only way to protect these critical areas are to preclude mining on them. Title II of H.R. 2262 makes such provisions with the exception of national wildlife refuges, which we believe should be included.

Our final recommended guideline is that a reformed mining law should provide "Good Samaritans" with reclamation incentives and common-sense liability. Companies and conservation organizations that have no connection to the abandoned mine waste or interest in re-mining the area should be allowed to return the land to other valid uses, following reclamation of the land to the extent feasible.

Again, I would like to thank the Subcommittee for this opportunity to present the position of sportsmen on reforming the Mining Law of 1872. We look forward to working with Chairman Costa, the Subcommittee and of course with Sen. Reid and the rest of the Nevada delegation in formulating appropriate mining law reform. I hope that this testimony has been helpful to the Subcommittee and that you will give the recommendations presented here careful consideration in your future deliberations.

Thank you.

Response to questions submitted for the record by William A. Molini

September 21, 2007
Congressman Jim Costa
US House of Representatives
Chairman, Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC 20515

Dear Chairman Costa,

Thank you again for the opportunity to testify at the Subcommittee on Energy and Mineral Resource Oversight Hearing on August 21, 2007 in Elko, NV and for the opportunity to respond to the Committee's question.

In the 1990's the Nevada Dept. of Wildlife (NDOW) worked with the mining industry in Nevada to try and resolve some of the most serious immediate impacts to wildlife from mining activity. The most immediate threat was the loss of migratory birds from contact with sodium cyanide ponds associated with gold mining. As a result of this cooperative work, the Dept. of Wildlife was able to get legislation requiring mining companies to get a permit to maintain such ponds. In association with this permit was a per mine assessment based on the tonnage of ore processed. This assessment was capped at $10,000 per mine for any tonnage of 1,500,000 tons or more. This assessment was designed to help defray the costs to NDOW for working with mines on the many and varied wildlife issues. In the mid to late 1990's this assessment fee was generating around $500,000 annually. My understanding is that in 2006 it produced only about $200,000 mainly because of mine consolidation. My concern in reference to the ponds is that we did get the money to reduce the threat but there was no laws requiring the mining companies to do so. That's why we need strong environmental protections in a federal law. The state acted because of the requirements of the Migratory Bird Treaty Act rather than from state mining law enforcement. I would rather see the problems be addressed up front—an ounce of prevention is worth a pound of cure.

I also have concerns about long term effects where there remains many unknowns about such things as acid mine drainage, ground and surface water quality and abandoned mine reclamation.

It seems only wise and prudent to have some funding through a trust fund or some other method with monies derived from a royalty to address such potential problems in the future. I believe that there will also be ample opportunities for fish and wildlife habitat enhancement in and around mine sites in the future where again having a source of funding for such work would certainly be highly beneficial for these resources, thereby mitigating the overall impact of mining.

In closing, there are not adequate regulatory provisions in place to insure fish and wildlife resources will not be adversely affected or adequate funding to address future wildlife needs and mine restoration.

Thank you again for the opportunity to answer your questions. Feel free to contact me.

Onward and Upward,

Willie Molini

Mr. COSTA. Yes, thank you very much, Mr. Molini. You went a little past the time, but we'll overlook that. Do appreciate your being here and your testimony.

Now we begin the opportunity, for members of the audience who haven't been to a Congressional hearing before, to allow the members of the Committee to ask questions of the panel. The way that we do this is, in this instance, we do limit ourselves to five minutes, and we have an opportunity to go to the witnesses.

I'll kind of be precise, and I may somewhat cut you short because I want answers to my questions because I only have five minutes. And then when I'm finished, Congressman Heller has five minutes. And we'll determine how many rounds we'll keep going with this panel, and then we'll start with the next panel.

So with that understood, let me begin with Mr. Randolph.

You indicated in your testimony about the impacts on water, and water is something that I'm familiar with in California because, as I said in my outset, water is the lifeblood of all of mankind in this world.

Why isn't the Clean Water Act sufficient to protect water resources in Nevada or elsewhere in the West?

Mr. RANDOLPH. The difficulty with mining is that once you open it up, it's very hard to put it back together. And the Clean Water—specifically to your question, the Clean Water Act specifically deals with surface water issues. A lot of what we're dealing with here in Nevada are groundwater issues because a lot of the mines don't have surface water adjacent to them.

Mr. COSTA. I understand that. I got a better sense of that yesterday during my tours.

Can you make a distinction or is it fair to make a distinction between current best management practices with some of the—and of course I toured what would be considered rural mines yesterday—versus the historic problems with some of those that have been abandoned and—

Mr. RANDOLPH. There's absolutely distinctions, but all of the examples that I used and all of the examples in my written testimony are mines that were permitted since 1980, actually the ones that I discussed today—actually, that's not true. The ones that you toured yesterday are prior to 1980, but I do think that they would consider themselves—we certainly do consider them modern mines, but there is a—

Mr. COSTA. There is a distinction.

Mr. RANDOLPH. There is a distinction, but unfortunately, there are modern mines which clearly are causing the current problem.

Mr. COSTA. Ms. Barkdull Spencer, given your work in the economic development area and the needs of rural counties, certainly we know these things are cyclical. And as Senator Reid indicated, Lighthouse, Nevada, that once used to be—Searchlight, I'm sorry. Searchlight, Nevada, I know better. But was once a booming mining area and no longer is. So what preparations are taking place here in Elko County 10, 20 years from today?

Ms. BARKDULL. Great question. As you will notice, Elko County Economic Diversification Authority is not a development authority. That's on purpose. My job specifically is diversification of the economy, meaning bringing more types of industry to this area that are not mining related. We are—we've become successful or are becoming more and more successful.

Probably my largest project that is most well known is Northeastern Nevada Regional Railport and Industrial Park.

Mr. COSTA. I read about that. Do you think there's a problem with the counties? This is a state issue really, I guess.

But in the case where many of the populations concentrated that work in the mines live actually in different counties than where the mines are located, and therefore the revenue benefits accrue in part to the county where the mines of course are located locally and not to necessarily where all of the workers live.

Is that a problem?

Ms. BARKDULL. It could be viewed as a problem, yes.

Mr. COSTA. Depends on which county you live in.

Ms. BARKDULL. Exactly. You are correct.

Mr. COSTA. Mr. Abbey, on the hardrock mines, getting back to the water issue, can you give us any scope of the estimated long-term treatment that's going to be required, water treatment or perpetual water treatment, based on the mining impacts?

Mr. ABBEY. Well, I think you would agree many of the mines that are being developed today will have some long-term impacts that will mean treatment facilities. I can give you—I can't quantify exactly how many or to what extent, but I am familiar with one mine that we approved on my watch that will require extensive long-term treatment facilities so that—

Mr. COSTA. So it has to be put in place.

Mr. ABBEY. It will have to be put in place.

Mr. COSTA. My time is running out. There's other questions that I have, but Mr. Molini, since you were, in your previous life, were the Director of Nevada Department of Wildlife, I was very interested to learn that in the 1990s, that a lot of the state law changed to provide greater protections for mining and the impacts of mining in Nevada, and I think there are some lessons to learn there.

Do you think those laws and regulations are adequate to protect fish and wildlife?

Mr. MOLINI. I think they were certainly adequate at the time to address the immediate short-term problems. I don't think they were ever in—well, not ever, but they weren't intended for some of the long-term problems.

And as you talk about water, I think there are long-term impacts that are yet unknown. But I'm certainly working with the industry, and they worked with us to develop legislation that provided for an assessment fee and industrial artificial pond permit, things that really didn't control it, that regulate the industry and cost them money that came back for wildlife needs. And it was very helpful.

Although with mine consolidation, that source of funding has decreased in the recent past, but it was certainly very helpful for the short-term immediate impacts that needed to be addressed, like these birds landing on—

Mr. COSTA. Like pond controls. We've had similar problems down toward me.

My time is expired, but let the record show that I asked the question with eight seconds left, and the answer took longer. So with that understood, I'd like to defer to the gentleman from Nevada, Congressman Heller.

Mr. HELLER. Thank you very much, Mr. Chairman.

It's a pleasure to have all of you here with us today.

If I can still call you Willie, I thought you—I thought I'd never see you testify in front of me again after—

Mr. MOLINI. You were hoping.

[Laughter.]

Mr. HELLER. I will tell you, you know I shared this with a lot of people here in this room, and you do too as an advocate of hunting and fishing. I guess there's not a lot of bow hunters here in the room today. I assume most of them are out doing what they do best.

But I wanted to ask you a question, Willie, and that is on the issue of H.R. 2262. Do you support that bill?

Mr. MOLINI. Well, I think there are provisions in it that we do support. We don't have a position on the amount of the royalty as an example, that sort of thing, but the basic tenets that I laid out for the most part are addressed in the bill. So—

Mr. HELLER. Well, my concern is that there would be a loss of some public lands if this particular bill passes. And if you're an advocate of hunting and fishing, it would be difficult to continue what you enjoy most if in fact you don't have access to some of the public lands that are out there.

Mr. MOLINI. And I maybe didn't make myself clear, Congressman Heller, in my earlier testimony because I was running out of time so I skipped over some stuff, but we definitely do not want to see the loss of public lands. Our position is that the provisions on patenting and turning public lands into private lands is—we do not support that and hope that those provisions would be modified.

Mr. HELLER. OK. You said you don't have a position on the royalty itself. I've never had a bighorn sheep tag. Love to get a bighorn sheep tag. I believe you may have. I will continue to apply, though.

But big game hunting, you can go by any mining claim that I've seen out there and you can see elk and deer and other big game that walk right across the stuff. I don't think that there's a real imbalance there between what wildlife does and what impact mining may have.

I guess my question for you: Have you ever had an impact, bighorn sheep hunting, where mining has had an impact on your quality of hunt?

Mr. MOLINI. Not personally that I'm aware of. I think there's potential, certainly, for impact in bighorn sheep habitat. I look at the Montana mountains and those California bighorns, pretty big populations, and it's ringed with mining claims. Now, what happens to those claims, whether they become active and what kinds of mines, that's all in the future.

But I think we've certainly witnessed mining impacts on mule deer populations here in Elko County. Particularly mule deer, but the companies have been good in reclamation, and I just don't know if that reclamation over the long term will do the job, but I think we've made progress.

Mr. HELLER. OK. Elaine, real quickly, diversification, what other industries have you seen move into Elko outside of mining?

Ms. BARKDULL. We have small manufacturing and it's actually the skills that we possess here in this area because of mining that has led to those new industries being attracted to us. And it is fabrication of metals and then full-on full-sized brand-name manufacturing. And it's not only because of the skill level, because of the new rail port and new industrial sites that we're starting to develop.

Mr. HELLER. I appreciate the work that you're doing here.

Mr. Randolph, I'm a little confused with your testimony. Are you advocating the Federal Government preempt Nevada's authority over its own water rights?

Mr. RANDOLPH. No, I am not. What I'm saying is that the public land agencies, that their primary responsibility for permitting land—the mines on public lands, they're the ones who are respon-

sible for habitat and that, therefore, they need the ability to carry out that responsibility.

Mr. HELLER. Mr. Chairman, I'll yield back.

Mr. COSTA. Thank you. Jeez, you still have 52 seconds.

Mr. HELLER. I'm making up for it.

Mr. COSTA. Right. Well, we appreciate that. The Chair appreciates that.

The witnesses here I think provide some helpful insight as to not only the current legislation that's before us but also ideas on how we might deal with some of the challenges as it relates to, not only individual states, but on any Federal law. So we want to thank you for your testimony.

We will follow up with questions with members of the panel. And I as I told you, we have a ten-day rule that we would like you to respond by, ten days from the time that we've asked you the questions.

So we very much appreciate your time and your testimony before the House Subcommittee, and we look forward to continuing to work with all of you as we try to fashion legislation that makes sense.

So thank you very much for your time. And we'll move on to the next panel.

The next group of folks that we have is Mr. Dean Rhoads, State Senator from Nevada, who is well known.

The next individual is Mr. Russ Fields, President of the Nevada Mining Association.

The third witness they have that we would like to come forward is Mr. Ronald Parratt, President of AuEx Ventures, Inc.

And our final witness for this panel is Mr. Jon Hutchings from Eureka County Department of Natural Resources.

And I believe we have all four of us—four of you, excuse me, seated, and hopefully you're comfortable. Get some water if you don't have any. And we'll begin with the gentleman who is no stranger to this to process, I assume, given his years of public service.

Mr. COSTA. Let's begin with The Honorable Dean Rhoads, Nevada State Senator.

STATEMENT OF THE HON. DEAN RHOADS, NEVADA STATE SENATOR

Mr. RHOADS. Thank you, Mr. Chairman.

Chairman Costa and Congressman Heller, my name is Dean Rhoads. I've been a Nevada State Senator since 1985, and also served in the State Assembly in the late 1970s and early 1980s.

I'm grateful for this opportunity to speak before you today, and I welcome you to northeastern Nevada where we treasure and respect our natural resources and appreciate a rather peaceful and quiet lifestyle.

I know, Mr. Chairman, with your vast experience as a state legislator in California for nearly 25 years, you can appreciate my position in representing the needs of the diverse constituency spread across thousands of miles. Indeed, my state senatorial district is the largest in the United States, outside of Alaska. Comprised of

over 73,000 square miles, it is larger than 34 states and represents about two-thirds of the land area in the State of Nevada.

Also, my legislative district is home to almost all of the active mining operations in the state. Many of my citizens are directly employed by the mining industry, and thousands more work for businesses that support critical mining activities.

As you know, Nevada is the nation's leading producer of precious metals, producing approximately 70 percent of the gold and 40 percent of silver.

The proposed legislation seeks to address current practices concerning the issuance of patents for certain mining operations, proposes an eight percent net smelter return royalty on all future production of minerals on Federal lands, limits and revises existing practices for mining permits, and changes standards for reclamation and bonding.

On the surface, these reforms seem logical, and we may be experiencing the best political climate in years to address these issues. However, I want to urge the Committee to tread carefully when considering such reforms.

First, we must ensure that any reforms to the 1872 Mining Law do not cause significant job losses within the mining industry, result in mine closures, or discourage future investment in or exploration for new mines.

One of the biggest concerns of my constituents in the mining industry is the proposed eight percent net smelter royalty on mineral production. As you may know, the State of Nevada already assesses a net proceeds of minerals and patented mine stacks, which is determined annually based on the actual production of minerals from all operating mines. Most of these proceeds benefit our local governments and rural schools.

I question the wisdom of imposing any additional tax on the mining industry, and especially one that does not allow the deductions for certain mining production costs.

According to the National Mining Association, many studies have shown that this type of royalty would result in job losses and substantial revenue losses to state and Federal treasuries and discourage mineral exploration.

Any reforms should protect existing strong and sensible state-level mining regulations and current mining regulations that already do a good job of protecting the environment and monitoring key mining activities.

For example, Nevada's mining regulations are well known for their comprehensive bonding and reclamation requirements, unmatched health and safety standards, widespread mine reporting and record-keeping mandates, and stringent permitting requirements.

Nevada also has a very active and successful abandoned mine lands program, and Nevada's Division of Environmental Protection recently established cutting-edge regulations regarding mercury emissions. In addition, the Legislature just passed legislation further supporting the functions of the Nevada Mercury Air Emissions Control Program.

Reform to the 1872 Mining Law should not allow the blanket closure of large tracts of Federal land for mining unless the closure

can be justified in the national interests. The BLM Minerals Policy Statement clearly states that mineral exploration and development can coexist with other resource uses.

While today's modern mining techniques have reduced the footprint on the landscape, many existing Federal laws and programs have already restricted mining on over half of all Federally owned public lands. In addition, such reform should guarantee and protect economic investment in mining.

Such reforms, referred to by the National Mining Association as security of title, are critical to ensuring that capital investment can occur at a mine throughout the life of the mine.

In conclusion, I would like to again thank you for making this trip to Elko County and the heart of American mining. Mining is very critical to our way of life here in the West. We appreciate your interests, and I also would like to submit for the record, Mr. Chairman, a comment from the General Mines, Incorporated—Idaho General Mines, Incorporated—on the Millennium Mine that Mr. Heller was talking about, for the record, for their suggestions and comments on the bill.

[The prepared statement of Mr. Rhoads follows:]

Statement of Dean A. Rhoads, Nevada State Senator, Rural Nevada Senatorial District

Chairman Costa and members of the Subcommittee, my name is Dean Rhoads. I have been a Nevada State Senator since 1985 and also served in the Nevada State Assembly in the late 1970s and early 1980s. I am grateful for this opportunity to speak before you today and I welcome you to northeastern Nevada, where we treasure and respect our natural resources and appreciate a rather peaceful and quiet lifestyle. I know, Mr. Chairman, with your vast experience as a state legislator in California for nearly 25 years, you can appreciate my position in representing the needs of a diverse constituency spread across thousands of miles.

Indeed, my State Senatorial district is the largest in the United States outside of Alaska. Comprised of over 73,000 square miles, it is larger than 34 states and represents about two-thirds of the land area in the State of Nevada. Also, my legislative district is home to almost all of the active mining operations in the State. Many of my constituents are directly employed by the mining industry and thousands more work for businesses that support critical mining activities. As you know, Nevada is the nation's leading producer of precious metals, producing approximately 70 percent of U.S. gold and over 40 percent of U.S. silver. From a broader perspective, it is important to remind the Subcommittee that mining benefits each American citizen who uses a motor vehicle, owns a computer or appliance, participates in sports, wears jewelry, and uses a telephone. Additionally, mining is a vital element to the nation's national defense. Given these impressive mining statistics, it is fitting that you are here today to discuss reforms to the General Mining Law of 1872 as proposed in House Resolution (H.R.) 2262.

This proposed legislation seeks to address current practices concerning the issuance of patents for certain mining operations, proposes an 8 percent "net smelter return" royalty on all future production of locatable minerals on federal lands, limits and revises existing practices for mining permits, and changes standards for reclamation and bonding. On the surface, these reforms seem logical and we may be experiencing the best political climate in years to address these issues. However, I want to urge the Committee to tread carefully when considering such reforms. First, we must ensure that any reforms to the 1872 mining law do not cause significant job losses within the mining industry, result in mine closures, or discourage future investment in or exploration for new mines.

One of the biggest concerns of my constituents and the mining industry is the proposed 8 percent net smelter royalty on mineral production. As you may know, the State of Nevada already assesses a "net proceeds of minerals and patented mines tax," which is determined annually based on the actual production of minerals from all operating mines. Most of these proceeds benefit our local governments and rural schools. I question the wisdom of imposing any additional tax on the mining industry, and especially one that does not allow deductions for direct mining production

costs. According to the National Mining Association, many studies have shown that this type of royalty would result in job losses and substantial revenue losses to state and federal treasuries and discourage mineral exploration.

Any reforms should protect existing strong and sensible state-level mining regulations and current federal mining regulations that already do a good job of protecting the environment and monitoring key mining activities. For example, Nevada's mining regulations are well-known for their comprehensive bonding and reclamation requirements, unmatched health and safety standards, widespread mine reporting and record keeping mandates, and stringent permitting requirements. Nevada also has a very active and successful abandoned mine lands program and Nevada's Division of Environmental Protection recently established cutting-edge regulations regarding mercury emissions. In addition, the Legislature just passed legislation further supporting the functions of the Nevada Mercury Air Emissions Control Program. I would encourage you and your staff to review Nevada's comprehensive set of statutes and administrative regulations concerning mining to assist in the Subcommittee's reform efforts. Copies of these laws and regulations have been provided to you today. (See Title 46 of the Nevada Revised Statutes and Chapters 512, 513, 517, and 519A of the Nevada Administrative Code.)

Reforms to the 1872 mining law should not allow the blanket closure of large tracts of federal land from mining unless the closure can be justified in the national interest. The Bureau of Land Management's Minerals Policy Statement clearly states that mineral exploration and development can coexist with other resource uses. While today's modern mining techniques have reduced the "footprint" on the landscape, many existing federal laws and programs have already restricted mining on over half of all federally owned public lands. In addition, reforms should guarantee and protect economic investment in mining. Such reforms, referred to by the National Mining Association as "Security of Title," are critical to ensuring that capital investment can occur at a mine throughout the life of the mine. Without these economic assurances, necessary long-term capital commitments may be jeopardized.

In conclusion, I would like to again thank you for making the trip to Elko County and the heart of American mining. Mining is critical to our economy and serves as the "lifeblood" for so many rural communities in the West. I urge you to consider the impacts that overzealous and widespread mining reform could have on our already economically fragile communities. I am sure you will agree that the possible unintended consequences of job losses and economic collapse are not the objective of mining reform. These are real possibilities for rural Nevada and the West if mining reforms are not fully debated and carefully analyzed.

As I noted earlier, today's political climate is ripe for some reform of the 1872 mining law. As policymakers, we should never reject efforts to improve upon current practices in any industry. However, we certainly should proceed with caution when enhancing such a strong framework of existing state and federal mining laws that protect the environment, rural communities, and the ever-important mining industry that contributes unselfishly to our rural schools and local governments and touches the lives of every American in many ways.

Thank you again for the generous opportunity to speak to you today.

Mr. COSTA. Without objection, we will enter those into the record. We thank you very much, Senator, for your very important testimony, and I look forward to asking you some questions when we get to that period in the panel. I do take your comments seriously. The first rule when we try to legislate is to do no harm.

Anyhow, our next witness is Mr. Russ Fields from the Nevada Mining Association.

STATEMENT OF RUSS FIELDS, PRESIDENT, NEVADA MINING ASSOCIATION

Mr. FIELDS. Good morning, Chairman Costa.

And thank you also, Congressman Heller. My own congressman, we really appreciate you being here in Elko.

On behalf of the Association, I thank you for this opportunity to offer our comments on H.R. 2262. We particularly appreciate, as others have said, that you have come to Elko to be here with us in a community that is most affected by the proposed legislation.

Mr. COSTA. We're pleased to be here.

Mr. FIELDS. Very good. I'd also like to thank Senator Reid for his comments earlier and his friendship and leadership.

With respect to working for responsible mining law reform, I, too, was there in the Dale Bumpers' days, and we've got no finer friend than Senator Harry Reid, and we do appreciate him so much. He's opposed changes that would significantly burden this industry and these communities in Nevada.

Thirty years ago, when I first testified before a Congressional Subcommittee, it was just down the highway here in a small town called Battle Mountain. At that time, the industry was firmly opposed to any changes to the General Mining Law. Today, the hardrock mining industry stands ready to work with Congress to arrive at some workable changes to the law, that will maintain the viability of the industry that is so critical to this state.

First I want to address the extensive environmental reclamation requirements in the bill. As the Subcommittee is already aware, under current law, companies must comply with an array of regulations and laws that govern mining activities on public lands with regard to the environment. These include the so-called 3809 regulations of the BLM, the Part 228 regulations of the Forest Service. Both of these imposed comprehensive environmental and reclamation and financial assurance requirements on mining activities.

You've heard already a little bit about the 1998 National Academy of Sciences, National Resource Council or NRC study that was done at the direction of Congress. It was there to assess the adequacy of the then-existing framework of regulations that govern mining and its ability to protect the environment.

After conducting its comprehensive review, the NRC concluded that the then-existing laws were generally effective in ensuring that mining operations provide mining-related environmental protection. Subsequently, in 2001, the BLM went forward and amended the 3809 regulations to make them even stronger and more comprehensive.

Mr. Chairman, as you heard yesterday, I believe, our state does impose comprehensive requirements related to the design, operation, closure, and reclamation of mining operations as well as wildlife protection at the hardrock mining facilities.

Nevada has also adopted comprehensive reclamation regulations designed to ensure that these lands are cared for and properly closed.

We believe that there is no need to graft onto the existing framework the requirements proposed by H.R. 2262. We think the existing framework will serve.

Royalty. This is extremely important. The bill proposes an eight percent net smelter return royalty, which is essentially a gross royalty. We do not believe that this type of royalty fairly addresses the needs of the public or of the mining industry.

To a large extent, as you've heard, we have no control over price. Therefore, it is impossible to pass on any additional cost.

I bring to you for your consideration Nevada's model of the Nevada net proceeds of mines tax. This is a tax that has served the State and the industry very well since statehood, and we would be delighted to work with the Committee on how this Nevada model

might be used to become, in a sense, essentially a production royalty or a production payment fee.

So with that, Mr. Chairman, I'll conclude and thank you again for the opportunity to appear here.

[The prepared statement of Mr. Fields follows:]

Statement of Russ Fields, President, Nevada Mining Association

Good morning, Mr. Chairman. I am Russ Fields, President of the Nevada Mining Association. On behalf of the association, I thank you for this opportunity to discuss our thoughts and concerns about the legislation you are considering, H.R. 2262. I particularly appreciate that you are bringing these hearings to the communities that would be most affected by the proposed Hardrock Mining and Reclamation Act.

If you will permit me to begin on a personal note, I'd like to take you back in time for a moment—thirty years or so, to be exact. I was just a couple of years out of college with a degree in geology from Nevada's Mackay School of Mines, and I was testifying on many of the same issues we are facing today before a congressional subcommittee in Battle Mountain, Nevada. The topic then was the Federal Public Lands Management Act, also known as the Organic Act. It had followed publication of a federal report on the nation's public lands, titled "One Third of the Nation's Land."

As you know, public lands in Nevada are somewhat more than one-third of the state's land—approximately 87 percent. Not surprisingly, public lands, and the uses to which those lands are put, are an important issue for all of us in Nevada.

More than 30 years have passed since my first congressional testimony. I'm no longer a newly minted geologist—indeed, I've recently announced my retirement. I've spent my entire career working in or around this industry, as an employee, as a state regulator, and most recently, as an advocate for the mining association.

In the past 30 years, I've seen almost as many changes in the industry as I've seen in myself. Like many industries, we've had our share of mergers and acquisitions. We've also seen environmental advances, production improvements, new mining exploration, and changes in mining regulation. Much of that regulation has been embraced or even driven by the industry itself—reclamation, hazardous materials handling, mine safety, and, most recently, mercury emissions. Thirty years ago, the industry was firmly opposed to any changes to the General Mining Law. Today, the hardrock mining industry stands ready to work with Congress on reasonable, workable amendments which will update the law but maintain the viability of an industry so critical to this community, this state and this nation.

Some things haven't changed in Nevada since 1977: We still take public lands issues very seriously. And we take our stewardship of those lands equally seriously.

Mr. Chairman, I know you have already heard, or will hear, the concerns of mining companies and other interested parties about the proposed Hardrock Mining and Reclamation Act. So, I am not going to offer an exhaustive analysis of the bill, but rather, would like to focus my comments on just a couple of items: First, the environmental and reclamation requirements; and second, the royalty provisions.

A. The Environmental and Reclamation Provisions of H.R. 2262 are Unnecessary

Let me first address the extensive environmental and reclamation requirements that would be imposed by H.R. 2262 on hardrock mining operations in Nevada and throughout the West. As the Subcommittee may be aware, under current law, companies that engage in hardrock mining and related activities on the public lands are already subject to numerous federal and State environmental, ecological, and reclamation laws and regulations to ensure that operations are fully protective of public health and safety, the environment, and wildlife. These include: (a) the so-called "3809 regulations" administered by Bureau of Land Management and the "Part 228 regulations" administered by the Forest Service that impose comprehensive environmental, reclamation and financial assurance requirements on mining companies; (b) all of the major federal environmental laws administered by the U.S. Environmental Protection Agency ("EPA") and/or delegated States (including NEPA, the Clean Air Act, the Clean Water Act, RCRA, CERCLA and EPCRA); (c) comprehensive Western State laws and regulations dealing with protection of groundwater and imposing requirements on the management and disposal of solid waste; and (d) wildlife protection statutes administered by the Department of the Interior and/or States (including the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle Protection Act).

In 1998—prior to BLM's 2001 amendments to the 3809 regulations to make them even stronger and more comprehensive—the National Academy of Sciences' National Research Council, at the direction of the Congress, assessed the adequacy of the then-existing regulatory framework for hardrock mining to assure environmental protection. After conducting a comprehensive review, the National Research Council concluded that the existing laws were "generally effective" in ensuring that mining operations provided "mining-related environmental protection." [1]

The National Research Council's conclusions certainly ring true in Nevada. Our State imposes comprehensive requirements relating to the design, operation, closure, reclamation, and wildlife protection at all hardrock mining facilities. Pursuant to Nevada's environmental regulations (which are applicable on public as well as private lands), in areas of the State where annual evaporation exceeds annual precipitation (which include almost all areas where hardrock mining takes place), facilities must achieve zero discharge to surface water. NAC §§445A.433(1)(a). Moreover, with minor exception, groundwater quality cannot be lowered below drinking water standards (including drinking water standards for heavy metals), and the concentration of weak-acid dissociable ("WAD") cyanide in groundwater cannot exceed 0.2 ppm. NAC §445A.424(1). Mining operations must draw up and implement a program to monitor the quality of all groundwater and surface water that may be affected by their operations. NAC §445A.440. If monitoring reveals that any constituent has been released into groundwater or surface water, the operator must conduct an evaluation, and if appropriate, undertake remedial measures. NAC §445A.441.

Land-based process components must comply with very stringent design standards, including standards dealing with engineered liners, leachate collection systems, and secondary containment systems. NAC §445A.434-435. There are also stringent rules regarding the treatment and monitoring of waste facilities and/or heaps at closure. See NAC §445A.430-.431.

Nevada has also enacted and successfully implemented a law specifically designed to protect wildlife from dangers posed by artificial ponds containing chemical substances, including cyanide-bearing ponds that are often located at gold mining facilities. See NRS §502.390. The law and its implementing regulations impose permit, fencing, cover, containment, chemical neutralization, and reporting requirements tailored to the specific artificial ponds operated by the permittee and require the permittee to take all measures necessary to preclude any wildlife death due to contact with the artificial pond. See NAC §502.460 et seq.

The State has also adopted comprehensive reclamation regulations designed to ensure that, after closure, lands used for mining operations are returned to a safe stable condition for productive post-mining use. The reclamation law and its implementing regulations specify, in some detail, the factors that must be addressed in a reclamation plan and that must be addressed by the regulators before approving that plan, to ensure that public health and safety and the environment are fully protected once mining operations have ceased.

The Nevada reclamation law and regulations also require the operator to estimate the cost of implementing the reclamation plan as if the plan would have to be completed by a federal or state agency, and then to post financial assurance to assure that adequate funds will be available at the end of mining activities to assure that reclamation can be completed in accordance with the plan. NAC §519A.350. Forms of financial assurance include trust funds, surety bonds, irrevocable letters of credit, insurance, and in some cases a corporate guarantee. A corporate guarantee cannot, however, be used to cover financial assurance for more than 75% of the cost of reclamation (NAC §519A.350(7)); but in any event, in order to obtain a corporate guarantee, the operator must satisfy very stringent financial tests and must submit to annual review of its finances, in order to assure that it continues to meet that test. Id., NAC §519A.382. The State has also set up a bond pool mechanism for smaller operators to obtain financial assurance for their mining operations. See NAC §519A.510 et seq.

The comprehensiveness of Nevada's regulatory programs have been recognized by the U.S. Environmental Protection Agency. In a 1997 report, the EPA praised the Nevada regulatory program applicable to gold mining facilities as "the most advanced cyanide mill tailings facility regulatory framework" in the nation. [2] This EPA report discusses in detail the "extensive set" of Nevada regulations that "govern the design, operation and closure of mining facilities" in the State and how these regulations "ensure" that the "design and operation of [each] facility is appropriate for the

[1] Hardrock Mining on Federal Lands, National Research Council, 89-90 (1999).

[2] U.S. Environmental Protection Agency, Office of Solid Waste, Nevada Gold Cyanide Mill Tailings Regulation §1.1 (1997).

physical, geological and hydrogeological conditions at the site."[3] Indeed, this EPA report concludes that, in virtually all respects, the Nevada regulations applicable to mining facilities are more protective of health and the environment then regulations that have been adopted by EPA for radioactive uranium and thorium mill tailings.[4] The conclusions in this EPA report are consistent with both the views of the National Research Council noted above and the views expressed in 1992 by EPA's Office of Pollution Prevention about the comprehensiveness of Nevada's regulatory programs.[5]

I should add that the mining industry has embraced—not fought—the enactment and implementation of these comprehensive environmental and reclamation laws and regulations. The reason is as I have said above: here in Nevada we take our stewardship of the public lands very seriously. For instance, in 1989, when Nevada passed the reclamation law, I was Executive Director of what was then the Nevada Department of Minerals. It shouldn't surprise anyone that I, as a state regulator, supported the measure. But it might surprise you to learn that representatives of major mining companies, as well as the director of the Nevada Mining Association, also testified in support. Back then, the director of the association had this to say:

> "Reclamation is not new to Nevada mining. We are proud of the reclamation that has been, and is being, accomplished...Indeed, reclamation must be considered to be an integral part of mining itself."

As president of the association now, I can repeat without hesitation my predecessor's comments about reclamation: It's not new to Nevada, we're proud of what we're doing and what we'll continue to do, and we consider reclamation integral to mining.

Given the industry's concern that public lands be adequately protected, you may ask why the Nevada Mining Association would oppose the environmental and reclamation provisions in H.R. 2262. The reason is straightforward.

In view of the comprehensive federal and State regulations that already adequately ensure environmental protection and adequate reclamation of hardrock mining facilities, the Nevada Mining Association believes that there is no need to now engraft onto existing programs a whole new set of environmental and reclamation prescriptive requirements, as H.R. 2262 would do, that focus on the same environmental issues that are already dealt with adequately under existing laws. As the National Academy of Sciences found, the existing laws and regulations are fully adequate to ensure protection in all of these areas. Those laws and regulations already focus on the same environmental issues that are addressed in H.R. 2262, including soils; stabilization; hydrological balances; surface restoration; vegetation; excess waste; sealing; structures; cultural, paleontological and cave resources; road and structures; drill holes; leaching operations and impoundments; and fire prevention and control. Moreover, the existing laws and regulations have a proven track record, and are familiar to both operators and regulators. There is simply no need to require mining operators, and regulators, to learn a whole new set of rules, and to limit their discretion in ways not limited by current law, by imposing "one size fits all" prescriptive standards, as H.R. 2262 would do in all of these areas.

B. A Net Smelter Return Royalty is Unfair and Will Lead to Mine Closures

The second issue I would like to discuss is the royalty provisions of H.R. 2262. The Bill proposes an eight percent net smelter return royalty on all future production of locatable minerals on federal lands. We at the Nevada Mining Association do not believe that this type of royalty fairly balances the need to provide a fair return to the public with the needs of the minerals industry. A net smelter return is effectively a gross royalty since the Internal Revenue Service does not allow deductions for direct mining costs. Various studies have concluded that this type of royalty would result in significant job losses, substantial revenue losses to State and federal treasuries, mine closures and discouragement of new mines.[6]

To a large extent, this is because in the hardrock mining industry, we have no control over price—ours is a commodity market. Accordingly, a gross royalty makes it very difficult to adjust to economic downturns, which, in turn, would make us susceptible to significant job losses and mine closures during difficult times. Obviously, the effects of mine closures and lack of new exploration and mine openings would also result in loss of state and federal tax revenues. In a rural area such as those

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[3] Id., Sections 2.1, 2.2.1.

[4] Id. Table 2-1 and accompanying chart.

[5] See U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Cyanidization Mining Initiative 30 (March 9, 1992) ("Nevada's regulations are considered to be among best and most comprehensive").

[6] See Otto, Mining Royalties: A Global Study of Their Impact on Investors, Government and Civil Society. Washington DC: World Bank, 2006 at 3.

in which most Nevada mining occurs, a mine closure is particularly devastating across all sectors of the economy—not just mining.

In contrast to a net smelter return royalty, a net income production payment based on production from new mining claims on public lands would provide the public with a fair return, but would also appropriately take into account the need to foster a strong domestic minerals industry. Such a payment could use a formula analogous to that used in the net proceeds of mine tax that has been in effect in Nevada since statehood. The net proceeds tax primarily funds the counties, cities, and school districts in which mining occurs, and that contribution is a significant one to these counties. In addition, the net proceeds tax provides millions of dollars every year to the state. Of course, this Subcommittee should not seek to impose a net proceeds tax on production, but rather, as noted above, a net income production payment or royalty, since the payment that should be required by any law approved by the Congress should only apply to production on public lands—not to all production in the State.

Moreover, the net income production payment should only apply to claims located after the enactment of the production payment or royalty provision. Such an approach will protect financial expectations and sunken investments and prevent "takings" litigation.

Thirty years ago, I first had the privilege of addressing a congressional subcommittee in our state. I believed then, and I believe now, that mining is good for this state. We are partners in our community and good stewards of the land. We have led the nation in reclamation. We provide jobs and revenues to our schools and local governments.

The Nevada Mining Association does not oppose the development of a fair, predictable, and efficient national minerals policy through amendments to the Mining Law of 1872. This association and its members stand ready to work with you to achieve this goal. But we strongly urge that, in developing that policy and those amendments, this subcommittee consider the long-standing and successful history of the net proceeds model and local regulation—both of which have enabled this industry and the communities in which it operates to thrive and contribute to this state's and the nation's welfare.

Mr. Chairman, it is an honor to present these views before you today.

Mr. COSTA. Thank you very much, Mr. Fields. And thank you for staying within your five minutes. We appreciate that. Couple questions I want to ask you when we get to that part of the panel.

But our next witness is Mr. Ronald Parratt?

Mr. PARRATT. That's correct.

Mr. COSTA. With AuEx; is that correct? AuEx.

Mr. PARRATT. Close enough.

Mr. COSTA. All right. Well, how do you pronounce it?

Mr. PARRATT. We pronounce it A-U-E-X Ventures.

Mr. COSTA. Oh, A-U-E-X Ventures. Well, very good. Please begin your testimony.

STATEMENT OF RONALD PARRATT, PRESIDENT, AuEx VENTURES, INC.

Mr. PARRATT. Thank you, Chairman Costa, Congressman Heller. My name is Ronald Parratt. I'm an exploration geologist and present CEO of a company named AuEx Ventures. We're a small, publicly-traded company that focuses on gold exploration here in Nevada.

I very much appreciate the opportunity to testify today and to summarize for you some of the ways in which H.R. 2262 will create serious impediments for mineral exploration and mine development on Federal lands.

Nevada, as you know, will bear the brunt of this bill because most Nevada exploration projects and many of our producing mines are located wholly or partially on public lands. The end result will

be potentially a serious economic downturn for Nevada's mining communities like Elko and even more reliance on foreign sources of minerals. As such, in my view, the current bill is contrary to the well-being of Nevada and our nation.

During the 30 years I've been an exploration geologist, I've worked all over the western U.S. on public lands, but most of it here in Nevada. I directly manage exploration programs and have spent or perhaps risked over $150 million to drill many thousands of holes and have evaluated hundreds of exploration projects that ultimately led to the development of only three mines.

Once a commercial deposit is found an additional investment of perhaps as little as $50 million to several hundred million dollars is typically required to build a mine and the related facilities. The entire process from exploration and development through mining construction and operation can easily take 6 to 10 years, and potentially more.

H.R. 2262 eliminates the right under the current mining law to use and occupy public lands for mineral exploration and development. Instead, the bill empowers Federal land managers with discretionary veto power to reject current applications for exploration and mining where mineral development is already allowed under current multiple use guidelines.

The discretionary permitting process proposed in H.R. 2262 ignores the fundamental geologic fact that commercial mineral deposits are rare occurrences.

Mineral deposits cannot be moved. They need to be developed where they're found. And laws and regulations covering exploration and mining really must recognize and acknowledge this unique aspect.

When I first started working here in Nevada in the late 1970s, there were no environmental regulations governing attainable mineral exploration. There were no permits, no reclamation bonds, and unfortunately no reclamation at all.

All that changed in 1981 when BLM's 3809 surface regulations for hardrock mining went into effect. These regulations implemented the Congressional mandate that mineral activities on public lands must be conducted in a manner that prevents unnecessary or undue degradation.

The BLM updated these regulations in 1993 and in 2001, and as a result, no disturbance can be created on public land until an approved permit and an acceptable reclamation bond are in place.

Our small company, for instance, has over $400,000 of cash that is in place covering bonds on eight projects. The regulatory controls, environmental protection mandates, reclamation bonding requirements that are already in place are appropriate for mineral exploration and mining on public lands, and I think are working well to guarantee that mineral activities are conducted in environmentally-sensitive ways.

Another serious problem with H.R. 2262 is that Title III creates a burdensome permitting process for early-stage exploration projects by eliminating notice-level operations. In its place, Title III establishes a single permitting process for all mineral activities from simply drilling a couple of holes to building a mine without

any consideration for the obvious and substantial differences in on-the-ground impacts of the two.

The environmental impacts associated with exploration are predictable and well understood. They're temporary and they can be easily reclaimed. They consist mainly of building primitive dirt access roads, leveling out an area for a drill site, and digging a sump to collect tons. All of these disturbances can be fully reclaimed once drilling projects are completed.

Title II of the bill, "Protection of Special Places," renders millions of acres off-limits to exploration and mining on which exploration and development are not currently prohibited.

At the very least, no withdrawal should be made until an appropriate and careful study of the mineral resource potential has been completed. But really, better yet, these lands should remain open to exploration and mining.

Please keep in mind that substantial land withdrawals have already occurred over the past decades, putting many millions of acres off limits to exploration and mining, including here in Nevada.

I think with that, I'll thank you for the opportunity to testify here today.

[The prepared statement of Mr. Parratt follows:]

Statement of Ronald L. Parratt, President and CEO, AuEx Ventures, Inc.

Introduction

Chairman Costa and members of the Subcommittee, my name is Ronald L. Parratt. I am an exploration geologist and President and CEO of AuEx Ventures, Inc. (AuEx), a small publicly-traded company that focuses on gold exploration here in Nevada. Prior to AuEx, I managed minerals exploration in Nevada for Santa Fe Pacific Gold and Homestake Mining Company for an aggregate of 24 years. I also serve as a member of the Nevada Commission on Mineral Resources. This seven member Commission is responsible for advising the Governor and the Legislature on matters involving mineral development, and directing policy and adopting regulations for the Nevada Division of Minerals. I was appointed to this Commission to represent the exploration segment of Nevada's mineral industry. Given the time constraints associated with preparing my written remarks, I am not speaking on behalf of the Mineral Resources Commission. However, the Commission is keenly interested in this legislative dialogue given the substantial problems H.R. 2262 would create for Nevada's mining industry and will respond to this bill separately.

I very much appreciate the opportunity to testify today and describe for you the many ways in which H.R. 2262 will create serious impediments for mineral exploration and mine development on federal lands. As the world's fourth largest gold producer, Nevada will bear the brunt of this bill because most Nevada exploration projects and producing mines are located wholly or partially on public lands and 87 percent of Nevada is federal land. But H.R. 2262 will impact more than just Nevada's gold mines. Nevada is blessed with many other important mineral resources such as silver, molybdenum, copper, tungsten, and barite. Exploration for these important minerals will also suffer dramatically. The end result will be a serious economic downturn for Nevada's mining communities like Elko. But the adverse effects of this bill will extend far beyond Nevada. H.R. 2262 will make the U.S. more reliant on foreign sources of the minerals we use every day and need for our way of life. As such, H.R. 2262 is contrary to the well being of Nevada and our Nation.

During my 30 years as an exploration geologist I have worked all over the western U.S. Nearly all of my work has been on western public lands, with most of it here in Nevada. My testimony is based on this experience and focuses on how H.R. 2262 will be especially problematic for exploration because it:

1. Increases the risks associated with mineral exploration and development on public lands by eliminating the current right to use and occupy public land for mineral activities;

2. Gives federal land managers discretionary authority to reject permits for exploration and mining on the basis of where a project is located—even if it can meet environmental protection criteria;
3. Eliminates the existing practical regulatory review process for exploration projects which cause limited disturbance that can be easily reclaimed and substitutes in its place a costly and cumbersome process that is overkill for exploration; and
4. Inappropriately withdraws millions of acres of public land from exploration and mining without due consideration for the resource potential of these areas or how placing these lands off-limits to mining will increase the Nation's reliance on foreign sources for the minerals we need to maintain our way of life.

Exploration and Mining are Risky and Expensive—There is No Free Gold

Exploration and mining are high-risk endeavors because mineral deposits are rare, hard to find, and expensive to develop. To illustrate this point, I would like to describe my own personal experiences to demonstrate the substantial risks and costs inherent in mineral exploration and mine development.

During my 30-year career, I have directly managed exploration programs that have spent well over $150 million to drill many thousands of holes which have evaluated hundreds of mineral exploration targets. This huge investment resulted in only three discoveries that were ultimately developed into producing mines—the Lone Tree, Trenton Canyon, and Rabbit Creek Mines, all of which are located in Humboldt County, Nevada about 85 miles west of where we are today. That process of exploration, discovery and development took nearly two decades of persistence to accomplish. These mines have employed many hundreds of people starting in the mid-1980s and continuing to the present and have been an important economic engine that has helped drive the economy of this region for many years.

Our company, AuEx which is now 4 years old, is actively exploring 17 targets involving public land in Nevada. We and our joint venture partners will spend close to $4.0 million this year to test these mineral targets. Of course we hope this investment will result in one or more mineable discoveries—but there is no guarantee this will happen. It will likely take more investment, several years of exploration and a lot of luck to be successful. Most exploration projects fail to find commercial mineralization.

I was told by a friend that a witnesses at an earlier hearing on this bill described mining companies taking what he called "free gold" from public lands. I hope that the exploration expenditure information that I have just mentioned convinces you that there is no free gold. It takes a substantial investment in exploration and development to find a mineable deposit. Once the deposit is found, an additional investment of from $50 million to several $100 millions is typically required to build the mine and related facilities. This entire exploration and mine development investment is made without knowing what mineral prices will be when the mine finally goes into production making fluctuations in metal prices an additional and substantial element of risk. The entire process from exploration and development through mine construction and operation can easily take 6 to 10 years and even more. Once again—there is no free gold. It takes many millions of dollars, a long time, and a fair measure of good luck to develop a profitable mine which will hopefully pay back that investment.

The Mining Law Must Accommodate the Substantial Risks Associated with Exploration and Mineral Development—Unfortunately H.R. 2262 Increases the Risks

I'm sure that H.R. 2262 will lead to a dramatic decline in mineral exploration on public lands because it adds land tenure and permitting risks to what is already a very risky endeavor. H.R. 2262 eliminates the right under the current Mining Law to use and occupy public lands for mineral exploration and development. Instead, H.R. 2262 empowers federal land managers with discretionary veto power to reject permit applications for exploration and mining on lands where mineral development is allowed consistent with multiple use principles.

This discretionary authority to deny permit applications would allow federal regulators to make a judgment about an important mineral deposit and the associated investment to find it. To make matters worse, in making this judgment, H.R. 2262 does not require regulators to consider the Nation's need for mineral resources or to determine whether the proposed exploration or mining project can be developed in an environmentally acceptable way that complies with all applicable environmental protection standards. Instead, at any stage of the exploration and mine development process, federal land managers would have the ability to deny permit applications. This deviates significantly from the present permitting process in which

applicants eventually can obtain permits to explore or mine once they prove the project will meet all environmental protection requirements and furnish an adequate bond to guarantee reclamation.

H.R. 2262 puts mineral dollars at risk every step along the way of the mining life cycle, from exploration to mining. This added uncertainty will dramatically reduce—if not eliminate—mineral exploration and development on public lands.

The discretionary permitting process proposed in H.R. 2262 ignores the fundamental geologic fact that mineral deposits only occur in specific and limited places as a result of special geologic conditions. Mineral deposits cannot be moved and must be developed where they are located. Laws and regulations governing mining must recognize and accommodate this unique aspect of mining—miners do not get to choose where mines are located. Unfortunately, H.R. 2262 ignores this essential geologic reality about exploration and mining.

Exploration and Mining Require Secure Possession of the Land—H.R. 2262 Eliminates Security of Land Tenure

Under the current law, locating and maintaining mining claims gives the claim holder the right to be on the land for the purpose of making a mineral discovery and, if a discovery is made, the right to develop the claim. This right starts at the very beginning stage of exploration, when claims are staked, and extends through exploration, deposit definition, mining, and reclamation. Because discovering and developing a mineral deposit takes many years, it is absolutely essential that this right endure throughout the entire mineral lifecycle from initial exploration to discovery, to mine development, to mineral production, and finally to reclamation and closure.

Starting in 1993, exploration and mining companies have had to pay the federal government for this right when Congress made a significant change to the Mining Law by requiring claim holders to pay fees for mining claims. These fees, including an initial claim location payment and an annual claims maintenance payment, are substantial. The current claim location fee is $30 per claim; the annual claims maintenance fee is $125. BLM also assesses a $15 processing fee and adjusts the location and claims maintenance fees every five years to reflect changes in the Consumer Price Index. Here in Nevada, claim owners also pay $8.50 per claim to the county in which the claim is located.

These fees are a substantial part of a company's mineral exploration budget. For example, AuEx controls approximately 2,000 mining claims for which we will pay just over $250,000 to BLM this year to keep these claims in good standing. These fees apply to all mining claims, at all stages of exploration and mineral development activities, regardless of whether the claim will eventually be mined or not. Fees are commonly paid in this manner for many years before a claim has any potential to become a paying mine.

Prior to 1993, this fee did not exist. Instead, miners performed on-the-ground work, called assessment work, to maintain their claims in good standing. Eliminating assessment work (except for small miners) and substituting the claims fee system was a substantial change to the Mining Law.

Today, rather than investing $250,000 of our company's resources this year in drilling or other on-the-ground work to advance our understanding of our mineral properties—as would have been the case prior to 1993—we give that money directly to the government. The payment of these fees should constitute a good-faith contract with the federal government that payment of all necessary fees guarantees claim owners like AuEx the right to use and occupy public land for the purpose of mineral exploration, development, and mining. This security of land tenure is absolutely essential to the future of exploration and mining on public lands. Without secure possession of our claims, exploration and mining will dramatically decline.

Unfortunately, H.R. 2262 does not provide security of land tenure. Instead, it creates substantial land tenure uncertainties that will lead to a dramatic decline in exploration—which will ensure that the pipeline of new discoveries will dry up. Without a steady stream of new discoveries, domestic production of the minerals America needs will decline and eventually stop altogether, leaving the Nation even more reliant than we are today on foreign sources of minerals.

The Environmental Title in H.R. 2262 is Unnecessary—FLPMA and the 3809 Regulations Already Changed the Mining Law by Adding Comprehensive and Effective Environmental Protection Mandates

The 1993 change to the Mining Law that established fee requirements for mining claims is not the only significant change to the Mining Law I have witnessed during that past 30 years. I have also experienced enormous changes in the way in which mineral exploration is conducted and regulated on public lands.

When I first started working here in Nevada in the late 1970s, there were no environmental regulations governing mineral exploration. No permits or reclamation bonds were required. If you needed to build a road or drill some exploration holes, you simply did so as soon as you could find an available contractor to do the work. Unfortunately, reclamation was not required.

All of that changed dramatically in 1981 when BLM's 43 C.F.R. Subpart 3809 surface management regulations for hardrock mining went into effect. These regulations implement the Congressional mandate in the Federal Land Policy and Management Act of 1976 (FLPMA) that mineral activities on public lands must be conducted in a manner that prevents unnecessary or undue degradation. BLM updated these regulations in 2001. No disturbance can be created on public land until an approved permit and an acceptable reclamation bond are in place.

As a result of the 3809 regulations, and the Nevada state reclamation statute enacted in 1989, mineral exploration today is highly regulated. Other states have enacted similar reclamation and bonding requirements.

Mining-industry critics often assert that the Mining Law contains no environmental protection requirements. This distortion fails to tell the whole story. FLPMA and the 3809 regulations dramatically changed how exploration and mining are conducted on public land, resulting in a significant de facto evolution of the Mining Law in response to modern environmental awareness and protection objectives.

Therefore, as this Subcommittee considers H.R. 2262, especially the environmental provisions in Title III, I would like to ask you to keep in mind how quickly and substantially the environmental regulatory requirements for exploration and mining have evolved. In a period of only 26 years, we have gone from no regulation to truly comprehensive regulation. From no bonding requirements to an effective bonding program in which BLM holds nearly $1 billion in reclamation bonds for hardrock mineral projects.

To put the bonding requirements into perspective, my company currently provides close to $400,000 in financial assurance (and these are cash deposits) to BLM to guarantee reclamation on eight of our Nevada exploration sites. BLM and state regulators—not AuEx—have determined that this is the appropriate bond amount based upon what it would cost these agencies to reclaim our sites. On average, our bonds require $3,000 to $4,000 or more of reclamation cost per acre of disturbance—substantially more than the value of typical outlying Nevada real estate. There should be no doubt that we are taking very good care of this land and are serious about our reclamation obligations.

The point I wish to emphasize here is that there is already a robust system in place to ensure reclamation and environmental protection at mineral exploration and development sites. The regulatory controls, environmental protection mandates, and reclamation bonding requirements that are already in place are appropriate for mineral exploration and mining on public lands, and are working well to guarantee that mineral activities are conducted in an environmentally sensitive way. There is no need to throw out the current system and substitute in its place the draconian changes proposed in Title III of H.R. 2262.

It should also be noted that reclamation bonding for initial exploration projects is a relatively new requirement. BLM started requiring bonds for exploration projects that disturb fewer than five acres in response to one of the recommendations in the Congressionally-funded National Research Council (NRC) study entitled "Hardrock Mining on Federal Lands" This 1999 study made the recommendation that bonds should be required for all exploration and mining activities that involve the use of motorized equipment off of existing roads.

BLM implemented this recommendation when it issued the revised 43 CFR 3809 regulations in 2001. This addition of bonding requirements for initial exploration project represents yet another significant change to operations under the Mining Law.

H.R. 2262 Creates a One-Size-Fits-All Permitting Process for Exploration and Mining that is Inappropriate for Initial Exploration Projects

Another serious problem with H.R. 2262 is that Title III creates a burdensome permitting process for initial exploration projects by eliminating Notice-level operations. In its place, Title III establishes a uniform permitting process for all mineral activities—from drilling a couple of holes to building a mine, without any consideration of the obvious and substantial differences in the on-the-ground impacts between the two.

The environmental impacts associated with exploration are predictable, well understood, temporary, and can be readily reclaimed. They consist mainly of building temporary and fairly primitive dirt access roads, leveling out an area for each drill site, and digging a sump to collect drilling fluids. All of these disturbances can be

fully reclaimed once the drilling project is completed. A hundred or more early-stage exploration projects are permitted now each year. Some photographs of exploration drilling and road building are included with this testimony to show the very limited nature of the surface disturbance impacts typically associated with exploration.

Section 302 of H.R. 2262 eliminates the current two-tiered permitting system in which initial exploration drilling programs are regulated under BLM's 3809.300 series regulations for Notice-level operations. A BLM-approved Notice allows the permit holder to disturb a maximum of five acres of public land, with the requirement that all disturbance must be bonded and must comply with the FLPMA environmental protection mandate at 43 U.S.C. § 1732(b) to prevent unnecessary or undue degradation. The 3809 environmental performance standards at 43 C.F.R. § 3809.420 implement this FLPMA mandate.

The Notice approval process typically takes about 30 days as BLM reviews a Notice application to evaluate whether there are any special on-the-ground issues that need to be protected, to verify that the proposed exploration work will not create unnecessary or undue degradation, and to make sure that a sufficient financial guarantee is being provided.

This relatively straightforward and streamlined permitting process is both appropriate and necessary for initial exploration projects. Because the nature of the impacts associated with this type of project are well understood, limited, and temporary, a more detailed and time consuming process would waste scarce agency resources and would cause unacceptable delays for exploration companies, without creating any environmental benefits. In light of the fact that initial exploration activities are already fully regulated and bonded, there is no justification for the dramatic changes proposed in H.R. 2262 to eliminate this efficient, practical, and cost-effective approach to regulating initial exploration projects.

Eliminating the notice-level permitting process is completely at odds with one of the recommendations in the above-mentioned 1999 NRC study on hardrock mining on federal lands. This study specifically recommends that the Forest Service adopt a procedure similar to BLM's notice process for efficiently reviewing and regulating exploration projects that disturb fewer than five acres. In discussing this recommendation, the NRC report states the following:

> "The objective of this recommendation is to allow exploration activities to be conducted quickly when minimal degradation is likely to occur. The Committee believes, that with reclamation bonds or other financial assurances in hand for land disturbance, exploration should be able to proceed expeditiously." (NRC, 1999, page 98.)

Keeping Lands Open to Exploration and Mining is Essential—H.R. 2262 Inappropriately Puts Millions of Acres Off-Limits to Exploration and Mining

As discussed above, mineral deposits are rare, hard to find, and once discovered, cannot be moved; they can only be developed where they are found. The 1999 NRC study explains this immutable fact of geology in the following way:

> "In contrast with most other industries, hardrock mining has few alternatives relative to location, because economic occurrences of minerals are geologically and geographically scarce. Only a very small portion of Earth's continental areas, certainly less than .01%, contains the economic portion of its non-fuel mineral endowment. Thus, one cannot arbitrarily decide to build a mine here or there, but rather one must discover and mine those few places where nature has hidden its minerals." (NRC, 1999, page 140.)

Title II of H.R. 2262, "Protection of Special Places," renders millions of acres off-limits to exploration and mining. At a minimum, it withdraws the 58.5 million acres identified in the Roadless Area Conservation Rule of January 2001, all lands that are currently being managed as Wilderness Study Areas, and several other land status categories on which exploration and development are not currently prohibited. From AuEx's perspective, it will mean that vast areas of the Humboldt-Toiyabe National Forest will suddenly become unavailable for exploration and mining. Because we have several properties on the Humboldt-Toiyabe National Forest, this provision concerns us very much. At the very least, no withdrawals should be made until an appropriate study of the mineral resource potential has been completed. Better yet, these lands should remain open to exploration and mining.

From a broader perspective, this categorical withdrawal should concern the American public because it will mean that presently unknown and undiscovered deposits of minerals that we need like gold, silver, copper, zinc, molybdenum, tungsten, etc. can never be explored for—let alone ever be developed. These deposits will never help the Country meet its needs for these minerals. This withdrawal will only serve to increase the Nation's reliance on foreign sources of minerals. Please remember

that substantial land withdrawals have already occurred over the past decades putting many millions of acres off-limits to mining, including land here in Nevada. The additional large land withdrawal proposed in H.R. 2262 is not good public policy for America.

Besides exacerbating the existing domestic mineral availability problem, this wholesale withdrawal is unnecessary to protect special places. Both Congress and the Executive Branch already have numerous mechanisms for withdrawing lands from operation of the Mining Law. The 1999 NRC study examines the administrative mechanisms that BLM and the Forest Service can use to protect special places and describes at least five mechanisms that federal land managers already have for protecting valuable resources and sensitive areas from mining.(NRC, 1999, pages 68-69.)

Exploring for Hardrock Minerals is Very Different from Oil, Gas and Coal

Throughout the long history of the legislative debate about changing the Mining Law, the question is often asked: "Why should hardrock minerals be treated differently than coal, or oil and gas?" The answer to this question is simple—they should be treated differently because they are substantially different. I would like to briefly discuss the differences between these natural resources from an exploration perspective.

As I described earlier, hundreds of holes must be drilled in order to discover and develop a hardrock mineral deposit. Moreover, once these holes are drilled and the mineral deposit is adequately defined to justify developing a mine, several $100 million of additional investment is typically required to build a mine. All this is expended before any return is generated from the project.

In marked contrast, in the case of oil and gas, one successful drill hole is potentially all that is needed to develop a producing resource. These holes are more expensive individually than the typical mineral exploration hole but the odds for success are higher. Once a discovery is made, the discovery hole can essentially become the oil and gas "mine" with a saleable product at the wellhead.

Coal is also very different from hardrock minerals. When coal companies bid on a federal coal lease, the existence of the coal deposit is already known and not in question. Coal companies don't bid on the right to explore for coal. They already know the coal is there. Rather, they are bidding on the right to mine the coal and produce a product directly out of the mine that is saleable with little or no processing.

There are many other differences between hardrock minerals, coal, and oil and gas that extend beyond exploration into the development and production stages. These differences are beyond the scope of my testimony which focuses on exploration so I will leave it to others to discuss them. However, as this Subcommittee considers H.R. 2262, I would ask you to keep in mind that the differences between these natural resources start at the exploration stage and must be thoroughly understood and carefully considered in order to develop a bill that is appropriate for hardrock minerals.

Conclusion

H.R. 2262 will be devastating for hardrock mining in America. This devastation will start at the very initial stages of mineral exploration, creating a ripple effect that will extend through development and mining. The decline in exploration that will result from this bill will translate into no new discoveries and subsequently no new mines on public land. This will lead to even greater dependence on foreign sources of mineral resources that make our economy work.

This is clearly not in the best interest of either the State of Nevada or of the American public. Our way of life demands readily available and affordable minerals to build our cars, bridges and other infrastructure, appliances, electronic equipment like computers and cell phones, power transmission facilities, and all of the other necessities, conveniences, and even luxuries of modern life that we are so lucky to enjoy in this country. H.R. 2262 would change all of that, making the U.S. much more reliant on foreign countries than we already are for essential minerals.

Reference Cited

Hardrock Mining on Federal Lands (1999), Committee on Hardrock Mining on Federal Lands, Committee on Earth Resources, Board on Earth Sciences and Resources, Commission on Geosciences, Environment, and Resources, National Research Council.

[NOTE: Photographs of exploration drilling and road building have been retained in the Committee's official files.]

Mr. COSTA. We thank you for your testimony and we think that it is important to make distinctions between the size and scope of mining efforts taking place, and I think your testimony attempted to focus on that. And we'll look forward to the Q&A portion.

Our next witness, last on this panel, but certainly not the least, is Mr. Jon Hutchings who is representing the Eureka County Department of Natural Resources. And since by way of the previous panel, the question that I asked with regards to local sharing of local county revenue sources, I suspect I know how you would weigh on the answer on that question since we—I won't ask you that question.

Mr. HUTCHINGS. You can try me out.

Mr. COSTA. Anyway, we're looking forward to your testimony, Mr. Hutchings.

STATEMENT OF JON HUTCHINGS, EUREKA COUNTY DEPARTMENT OF NATURAL RESOURCES

Mr. HUTCHINGS. Thank you, Chairman Costa, Congressman Heller. For the record, my name is Jon Hutchings. I'm the Natural Resources Manager for Eureka County, Nevada. And actually today is my last hurrah in that capacity as principal advocate for the community. In natural resources issues, I have about 17 years of experience dealing with both technical and policy concerns of natural resources management. And I think that experience will provide a solid backdrop for addressing H.R. 2262 in a fashion that balances the economic needs of rural mining communities with those of our human and natural environment.

Of course, the boom and bust cycle that has shaped the custom and culture of western mining communities for the last 150 years certainly have impacts to our rural communities, and those are evident in the empty buildings in Goldfield and some of the glory day stories that you see in the walking tours and those sorts of things.

Unfortunately the social transitions that accompany this economic model impose a tremendous strain on the fabric of contemporary rural life. In other words, the booms and busts have not gone away. In fact, given the magnitude of the present boom and its influence on our western mining economies, we can expect that the next bust will deliver a greater blow to a greater number of Americans than has ever been experienced in the past. And I think that's something to stop and think about.

As host to the largest gold deposit in the continental United States, northern Nevada is squarely in the middle of these economic circumstances. Our communities have an enormous amount to gain from the mining industry, but we're also poised to suffer major correction in population and employment and revenues, social services, all of those things that mining provides.

Our quest as local governments is to apply the resources that are available to us by geographic fate and by the vitality of the mining industry itself to temper those inevitable changes in our economic future. And it's really from that perspective that I wish to address the proposed changes to the 1872 Mining Law.

I have no reason to doubt that the mining communities, the mining industry, their state and Federal partners can make great progress toward a sustainable economic and social and environ-

mental conditions in the rural West if we pursue this effort collaboratively and with a progressive agenda. And I believe it's the responsible role of any mining law revision to honor that precept, and this should certainly be the aim of H.R. 2262 as this discussion goes forward.

To that end, I wish to contemplate three provisions of the present bill that I believe will unquestionably diminish the role that communities play in mining-related decisions. That's really the take-home message here—what the unintended consequences of some of these provisions might be and in order for the dialogue going forward to get around that and end up with a win-win situation for the communities.

First of all, Title I provisions requiring net smelter return royalty. Like most Americans, I personally only have a passing interest about how the government extracts tax revenues from the industry, mining or otherwise.

As long as the revenues are sufficient to offset the burden that mining places on the community and as long as the cost to the industry doesn't somehow unfairly limit future investments so that there can be thereabout mining exploration and development by mid-tier companies, as long as those two things are in place, I think most everybody is happy.

That said, I think that the proposed royalty will, as it's written today, will cause revenues to be shifted from the active mineral-producing communities where the likelihood of the future impact is greatest and end up sequestered in higher levels of government. And I think that ultimately will take away from the revenue stream that offsets the burden that mining places on local communities.

The provision is closing enormous tracts of land to mining. Mining towns are traditionally against wholesale withdrawal from mineral entry. And traditionally, Congress has looked at those lands with high esthetic or environmental values on a case-by-case basis. I think that's a good policy, and I think that this Committee should take a good, hard look at what may happen by withdrawing some 58 million acres of land from mineral entry.

Title III provisions, eliminating life-of-mine permits and duplicating existing permitting requirements. From my perspective, these are probably the most onerous on local governments and local communities because they drastically increase the burden on local government while offering little or no improvement over the status quo.

And I think the likelihood is that the uncertainty that this additional burden will place on those communities will result in less involvement by those affected, rather than more.

So I applaud you again for addressing this extremely important bill in this community that's acutely affected by your decisions and thank you for the opportunity to testify.

[The prepared statement of Mr. Hutchings follows:]

Statement of Jon Hutchings, Natural Resources Manager, Eureka County Department of Natural Resources

August 15, 2007

Honorable Jim Costa, Chairman
Subcommittee on Energy and Mineral Resources
1114 Longworth, HOB
Washington, D.C. 20515

Dear Congressman Costa,

This letter contains my prepared testimony for your legislative field hearing on H.R.2262, the Hardrock Mining and Reclamation Act of 2007. In the way of introduction, my name is Jon Hutchings; I represent Eureka County, Nevada as Director of the Eureka County Department of Natural Resources. Until very recently, I served as principal advocate for the community, negotiating the myriad of renewable and non-renewable resource issues facing rural Nevada. I have seventeen years of experience dealing with both technical and policy concerns of natural resource management. Besides my tenure with Eureka County, my experience includes five years as a co-principal investigator for the Idaho Water Resources Institute and four years as a research soil scientist at the University of Idaho. I hold a Ph.D. in Soil Science and an M.S. in hydrogeology from the University of Idaho. I am a Certified Professional Soil Scientist, serve as Vice President of the Nevada Water Resources Association, and served on the Secretary of Interior's Northeastern Great Basin Resource Advisory Council. My training and work experience provide a solid backdrop for addressing H.R. 2262 in a fashion that balances economic needs with those of our human and natural environment.

Boom and bust cycles have shaped the custom and culture of western mining communities for some 150 years (see Attachment 1, Gold Production, 1835-2005). The impacts of boom and bust are evident in the empty buildings and glory day stories touted in walking tours and museums of historic mining districts across the west. Unfortunately, the social transitions that accompany this economic model impose a tremendous strain on the fabric of contemporary rural life. Recent examples of this struggle include Lead, North Dakota, which is presently struggling with closure of the longest operating (1876-2003) mine in the United States and Ely, Nevada, which is presently recovering from the 1978 and 1997 closures of its vast copper mines. Given the magnitude of the present boom and its influence on western mining economies, we can expect that the next bust will deliver a greater blow to a greater number of Americans than has ever been experienced in the past.

As host to the largest gold deposits in the continental United States, Northern Nevada is squarely in the middle of these economic circumstances. Our communities have an enormous amount to gain from the mining industry, but are poised to suffer a major correction in population, employment, revenues, social services, and other amenities that have come with increased mining activity. Our quest is to apply the resources availed us by geographic fate and by the vitality of the mining industry to temper the inevitable changes in our economic future. It is from that perspective that I wish to address proposed changes to the 1872 Mining Law. I have no reason to doubt that mining communities, the mining industry, and their State and Federal partners can make great progress toward sustainable economic, social, and environmental conditions in the rural west if we pursue a collaborative and progressive agenda. The responsible role of any mining law revision must honor this precept and, I believe, this should be the aim of H.R. 2262. To that end I wish to contemplate three provisions of the present bill that will unquestionably diminish the role that communities play in mining-related decisions.

Title I provisions requiring a net smelter return royalty. Like most Americans, I have only passing concern about how government exacts tax revenues from the mining industry. As long as revenues are sufficient to offset the burden that mining places on communities and the cost to the industry does not unfairly limit future investment, I am happy. That said, I believe that the proposed royalty will cause revenues to be shifted from active mineral producing communities where the likelihood of future impacts is greatest, to be sequestered in higher levels of government. An example of this phenomenon is the transfer of coal mining revenues away from producing states like Wyoming to cover the costs of closing less productive and environmentally challenged operations in the East. The outcome is inevitable. Local mining communities in Nevada will be hobbled in their ability to offset the additional health, safety and welfare burdens that mines place on local government. In addition, it is likely that Federal gross proceeds payments will be offset by a) reduced direct contributions to local communities and b) reductions in state Net Proceeds of Minerals tax payments. I ask that the Committee diligently research and

address the unintended consequences that the proposed royalty will have on those communities most directly affected by mining activity.

Title II provisions closing enormous tracts of land to mining. Mining counties are against wholesale withdrawal of lands from mineral entry. Traditionally, Congress has looked at lands with high esthetic or environmental values on a case-by-case basis, fully analyzing the costs and benefits of withdrawal. The present proposal contemplates withdrawing 58M acres from entry with little or no consideration of economic impacts to the communities that depend on those lands. I am particularly concerned about withdrawal of Wilderness Study Areas. The Bureau of Land Management has followed its Congressional mandate to recommend an appropriate management scheme for these lands (as either Wilderness or not). Congress has never acted on the recommendations, so has not determined whether the lands are suitable for the level of protection afforded by mineral withdrawal. Wholesale withdrawal of lands from mineral entry will directly impact local mining communities by damping mineral exploration and reducing the pipeline of viable future projects, greatly exacerbating the next bust. I ask that the Committee honor the thoughtful research- and analysis-based approach to land withdrawals that has been employed in the past.

Title III provisions eliminating life-of-mine permits and duplicating existing permitting requirements. From my perspective, these provisions are most onerous for communities, because they drastically increase the burden on local government while offering little or no improvement over the status quo. Many arguments against this provision focus on the idea that financial markets will find the additional uncertainty too risky to underwrite. I would like the proponents of the provision to consider the impact of that uncertainty on mining communities. Already, local governments are hard-pressed to sustain effective engagement in the complicated process of permitting mines. For Eureka County that means signing onto the NEPA process as a Cooperating Agency, organizing and supporting a standing volunteer NEPA Committee and diverting staff and elected officials to the cause. Even in today's permitting environment many of these projects end up being nonstarters. Imposing a greater permitting burden and more uncertainty in the outcome without clear benefit will surely prompt less involvement by the public most at risk. I ask that the Committee do everything in its power to fully understand the scope of existing environmental regulations before mandating more. In the same vein, I ask that you reconsider the benefits of term permits. This provision will result in another under-funded mandate for those who administer these permits, cause a backlog of permits akin to the USFS and BLM grazing permit renewals, and discourage involvement in permitting by affected communities.

As a spokesman for local government, I applaud you for addressing this extremely important bill in a community that is acutely affected by your decisions. I ask that that this Committee, together with the State of Nevada, Nevada's mining counties, the mining industry, and the affected public commit to continued dialog on these issues to ensure that mining in America remains a viable and responsible contributor to our community.

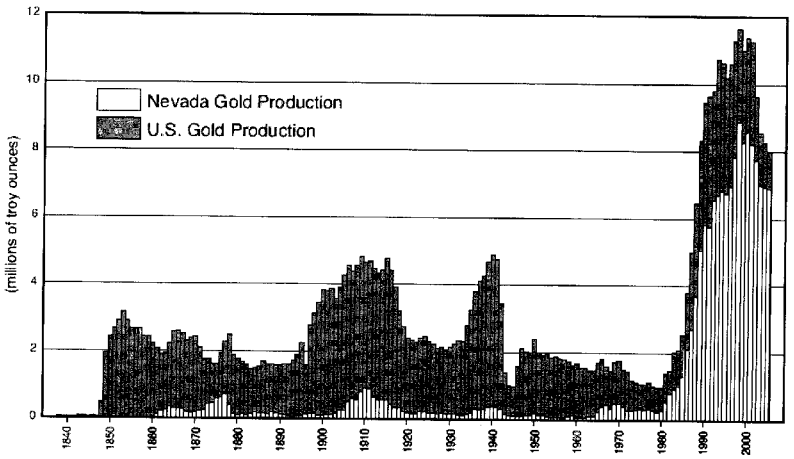
Respectfully,

/s/ Jon Hutchings

Jon Hutchings,
Natural Resources Manager

cc: Board of Eureka County Commissioners
Nevada Association of Counties
Nevada Mining Association
Northwest Mining Association

Attachment 1



United States and Nevada gold production from 1835 through 2005. Data from U.S. Gold Industry 1998 (NBMG Special Publication 25) by J.L. Dobra and from the U.S. Geological Survey.

Mr. COSTA. Thank you very much, Mr. Hutchings. You said this is your last hurrah. Where are you going?

Mr. HUTCHINGS. I am moving to northwestern Washington State to take a job there.

Mr. COSTA. I see. Well, we wish you well.

Mr. HUTCHINGS. Thank you.

Mr. COSTA. Let me begin with my questions of Senator Rhoads. First of all, I want to commend your efforts. I know how respected you are in the Nevada State Legislature. With the reform of the Nevada law beginning in the 1990s and, probably at a separate time, I'd like to get more understanding of how that all came together. Certainly the bonding retirements you talk about, as I learned yesterday, I think are very progressive and forward-thinking.

As it relates to the changes you made in the Nevada law, do you believe that it suffices or is sufficient today as it relates to the two issues of abandoned mines and mercury recovery?

Mr. RHOADS. You know, I think we made great strides in that. Maybe Russ could probably answer it better than I could.

But as far as the reclamation of old mine sites, we could take you to places that they've done a reclamation project that looks like a golf course. They do a tremendous job in different places. And 20 years ago, you never saw that happening, but today's world, you see it a lot.

Mr. COSTA. But you're playing catch-up in essence.

Mr. RHOADS. Oh, I'm sure we are.

Mr. COSTA. Mr. Fields, as it relates to the comments, as you stated, the testimony you gave back in the early 1990s when this legislation was last before the Congress, you testified in 1999 about the

impacts of the fees and royalties and that the holding fee you thought had an impact in 1993.

If we look by today's measurements, though, the fee is still in place and exploration is up, way up. State claims are up by 55 percent over the last four years. I suspect that reflects the price of gold.

But it would suggest to me, though, that the mining industry is driven more by the price of minerals than fees, not withstanding the fact that fees do have an impact.

What do you think of the long-term impact of the claim on the holding fee in Nevada since its implementation in the last 15 years?

Mr. FIELDS. Well, in the last 15 years we've seen—let's see. In 1993, I think the total number of claims that were in the state and recorded on the books was roughly 200,000 claims. And now, right after the new holding fee was imposed, they fell to about 100,000 claims. Today we have about 165,000.

These are rough numbers, but you're absolutely right. The price of metal certainly has a——

Mr. COSTA. I think that's the driving force.

Mr. FIELDS.—direct impact as to how much activity is out there.

Mr. COSTA. My time is going. I need to be mindful of that.

Mr. Parratt, you talked, as others did, about that smelter royalty impact or fee. It's my understanding, and, you know, I'm learning, but that it is an arrangement that is used between companies as they negotiate.

If it works for them, or companies, why wouldn't it work in terms of Federal practice as proposed in the legislation?

Mr. PARRATT. Sure. I'll make two comments. Number one, an eight percent royalty would be a deal breaker in business.

Mr. COSTA. OK. Well, pick another number. I'm just talking about the concept.

Mr. PARRATT. Well, in concept it would be good, except during times when prices are high, of course, the income would be better. During times when metal prices are low, you're still paying that royalty. It becomes kind of punitive. It would be better if it's a net profits-based royalty like the Nevada tax, whereby when companies are in trouble——

Mr. COSTA. Enough said. I'm mindful of my time.

The Administration—you know, Senator Reid, I think made a good point about should we or should we not reform. And I think the National Mining Association and others that have testified here today come in good faith and say, you know, we want to work together on this.

Don't you—do you have any fear that we'll continue to be impacted from Administration to Administration? I mean, you may have a friendly Administration; you may have an Administration that's not so friendly as they try to, by executive order, to de facto make changes in the law.

Are you concerned about that?

Mr. PARRATT. Certainly I'm concerned about it.

Mr. COSTA. So you think maybe if we could come to an agreement on some reform, that might make sense.

Mr. PARRATT. Sure.

Mr. COSTA. OK. I've got 20 seconds left here, so I'm going to defer to my colleague and the gentleman who represents this area, Congressman Heller.

Mr. HELLER. Thank you very much, Mr. Chairman. Thanks again for everybody for being here. I thought we were going to have one short-timer; in fact, we have two now. So I will try to catch you guys before you turn off the clock here.

But, Senator Rhoads, it's great to have you here. The size of your district, as you mentioned, is quite big. Mine's 110,000 square miles. I don't know if you've calculated yours yet, but I have a good reason to believe that both mining and that side of the district can get along just fine.

But you know, let's just get to the brass tacks of this. Bottom line, this is a tax increase. Any way you want to say it, it's an eight percent royalty, gross royalty tax increase. That's if this bill goes through.

I know the Chairman has said, and I have no reason not to believe him, that this is a starting point.

Mr. RHOADS. Sure.

Mr. HELLER. Eight percent gross royalty tax on mining. What's your views.

Mr. RHOADS. Well, eight percent, nobody can stand that. I don't know any mining spokesman that would support it, but they're willing to look at some type of royalty.

You know, in today's world, they find a mining area that's got potential promise, and they can prove that it's got gold on it, they can buy it for $2.50 an acre. The mining companies are willing to pay fair market value, and I'm sure they're willing to discuss it back and forth. And like the Chairman, he indicated if we don't do something, by executive order, it's going to happen, so we better do something.

Mr. HELLER. Thank you, Senator. Thank you very much for being here.

Short-timer Russ, you know, you've got a lot of experience. I want you to real quickly tell me—I think Senator Reid had a net proceeds tax several years ago in Congress.

Can you tell us what happened to that bill?

Mr. FIELDS. It made it through Congress and it was eventually vetoed by the President.

Mr. HELLER. Because of that provision or other——

Mr. FIELDS. The entire package.

Mr. HELLER. The entire package. You know, I sit in Congress. I know I'm brand new, but we had a health bill and that included a tax increase. We had an energy bill that included a tax increase. We had an agricultural bill that included a tax increase. Now we've got a mining bill that includes a tax increase.

What would this tax increase—have you done any analysis with your industry on what this tax increase, what kind of impact it would have?

Mr. FIELDS. Well, I haven't, but the mining industry in Nevada, probably about 30 percent or so of the production comes from public lands. Last year the value of the revenue of all of that production was roughly $4 billion.

So, you know, we're talking about, let's say, $1.5 billion of revenue. If you apply the eight percent to that, that's a very large amount of money.

And unfortunately, the way Nevada's net proceeds and mines tax is arranged, the amount of royalty paid to the Federal Government would be deductible for net proceeds of mines tax purposes, resulting in a reduction in tax payments from the industry to the State of Nevada and to these local communities.

Mr. HELLER. I appreciate your input.

Mr. Parratt, what would happen to your company if this bill in its current form would pass?

Mr. PARRATT. Well, we have initial interests in Argentina. We have interests in Spain. And I think it's going to drive companies like ours out, frankly. I just don't see any other alternative. It's going to be very difficult to continue to operate and explore and develop mineral resources here with what we're seeing.

Mr. HELLER. Mr. Hutchings, your experience sending money to the Federal Government and getting it back.

Mr. HUTCHINGS. Enough said. It's a difficult prospect, and the bottom line is the amount of revenues, local governments, when the rubber hits the road, that's where we service local communities in the first instance, and I think that is where the revenues need to stay. We will lose direct investment back to those communities. Elko will lose net proceeds revenues back to the State and back to other county governments. That's it.

Mr. HELLER. Thank you. Thank you for your time.

I yield back.

Mr. COSTA. OK, thank you very much.

Just a couple thoughts as we begin to shift over to the open mike.

Senator Rhoads, you and I share a common interest in agriculture. And I wonder, we haven't really spoken about it very much this morning, about the compatibility of the agriculture interests here in Nevada and I suspect elsewhere when it comes to mining. I've got a number of folks from my district that actually are actively involved in the cattle business here in northern Nevada.

How would you describe the relationship thus far between the cattle operations and the mining industry, the impacts on water and feed?

Mr. RHOADS. Very good question and you probably asked the right person because we have a ranch about 50 miles from here, right in the heart of all the mining companies. We have mining companies on three different sides of us. We have Newmont on one side, Barrick on another side, and De Villa and the Western States Minerals on the other side.

Mr. COSTA. I think I saw some of your operation yesterday.

Mr. RHOADS. Yes. So we get along very good with them. We get into problems, they'll haul water for us. They're very prompt when our cattle get away; they'll call us, whatever. But they're very good neighbors and we get along very well.

Mr. COSTA. So you haven't seen any impacts as it relates to the water quality issues we've talked about.

Mr. RHOADS. No way. No way. They even haul water for us in one place there when we get in a bind. They've done a good job.

Mr. COSTA. All right, very good. Any other questions?

Mr. HELLER. No questions.

Mr. COSTA. OK. What I'd like to do at this point in time before we have the open mike, and we've got about 14 people that have signed in, or something like that number, is have a five-minute break, because our clerk recorders here who have been very attentive and focused have not had a break. And I suspect what my colleague and I do here is far easier in terms of asking questions than the focus that they have to provide.

So why don't we give them a five-minute break to let their fingers rest for a moment. And the Committee will recess, and then we'll begin.

Let me give the first list of witnesses here that we have on the open mike. Mr. Pete Goicoechea from the Nevada Assembly. Mr. Goicoechea, we'll look forward to hearing your testimony in five minutes. Again, two minutes for that. Followed by Sheri Eklund-Brown. Is that correct? And then Richard [sic] Buchanan with the American Institute of Professional Geologists. And then Mr. Richard Redfern with which mining corporation?

Mr. REDFERN. Mexivada.

Mr. COSTA. Mexivada. OK. Got it. So Mexivada Mining Corporation.

So we'll begin with those four, and I'll give the list of those who have signed up.

So, Pete, you're in the batter's box, and we'll begin in five minutes. Thank you very much.

[Recess.]

Mr. COSTA. All right. The Subcommittee on Energy and Minerals will now come back into order following our recess.

Couple more housekeeping items before we begin with our witnesses who have signed up to testify under the open mike phase of this hearing. We have outside, for those of you who have not seen them, please take advantage of comment cards. And we are interested in your comments, so please fill them out.

And we have also set up, for those of you who are on the Information Super Highway—I just got from the onramp onto the slow lane in the last couple years. But for those of you who are on the Internet and like to e-mail, we have a new e-mail address as it relates to the efforts of this legislation. It's called energyandminerals@mail.house.gov.

So that's energyandminerals@mail.house.gov. It's listed on the comments cards, so pick up those comment cards on the way out. It's another way of weighing in on your views and your thoughts as it relates to not just the legislation but the hearing and our focus.

And then finally, for those of you who thought this hearing this morning has been absolutely captivating, riveting, and worthy of seeing it a second time, we have on the Natural Resources Committee Web site the ability to access that. And again, that's on http://resourcescommittee.house.gov. But it's the Natural Resources Committee website. So you can get it there and see it again, for those of you who have literally nothing else to do and are bored silly. OK.

Now we've got the open mike period for the next half hour, and then I'm going to have to run and catch the airport.

Let me just say again that the folks here and Congressman Heller, northeastern Nevada, and I suspect all of Nevada, but I just feel a kindred spirit to folks who live in rural areas because that's how I grew up. And actually I still farm. Much of my district is rural, from Fresno to Bakersfield. It's an important part of the San Joaquin Valley.

You have made me feel at home, and you've been very kind to our Committee and our staff. And we thank you, we thank all of you for that.

We've had some great Basque food. We have a number of good Basque restaurants in the valley, and they're certainly just as good here. And I want it known that I've enjoyed it very much, both last night and the night previously.

Speaking of Basque, why don't we have the Assemblyman who represents a good Basque constituency from the State Assembly, Pete—

Mr. GOICOECHEA. Goicoechea.

Mr. COSTA. Goicoechea. Good Basque name.

Mr. GOICOECHEA. Thank you.

Mr. COSTA. Before it starts, Holly, the two-minute rule. It starts on green, yellow is one minute, and of course, the red, your two minutes are done.

STATEMENT OF THE HON. PETE GOICOECHEA, ASSEMBLYMAN, STATE OF NEVADA

Mr. GOICOECHEA. The button has started. Thank you, Chairman Costa, members of the Committee. For the record, I am Assemblyman Pete Goicoechea. I am out of my district so I will welcome you to northeastern Nevada.

I can understand the movement to want to amend and change the 1872 Mining Law, and I agree we do need to facilitate the permitting process. However, eight percent of the net would be a huge hit. It will impact Nevada's existing tax structure, but the other side that I think it will curtail—exploration, and that is critical, and the mine service industry, as it affects all these small rural communities.

Maybe the mine payroll is one issue, and you could have the mine payroll here in, say, Elko County, but then when you move into Lander County, the mine service industry and that exploration is a big part of it.

Having been in public service for the last 22 years, I was a County Commissioner, and now with the State Legislature, I can assure you, there is tremendous oversight provided by the State of Nevada, the Federal agencies, and even local government.

And I'm down to one minute.

We need to be cautious as we move ahead with the amendments and changes. One size doesn't fit all. It doesn't matter what industry we're in. And any of these changes we put in place, let's make sure they are flexible.

Thank you.

Mr. COSTA. Well, thank you very much for your testimony. I want you to know, as a former state legislator for 24 years, I firmly

believe that one size does not fit all. Having been a past president of the National Conference of State Legislatures and we've had meetings throughout the country, I suspect you participated in Legislatures around the country, and I believe states are the laboratories of democracy, which is why I'm very interested in further understanding the changes you've made in Nevada state law.

So we commend you for your efforts and for your wise counsel.

Mr. GOICOECHEA. Thank you.

Mr. COSTA. Thank you.

Mr. COSTA. Our next witness is Sheri Eklund-Brown. Did I get that correct?

Ms. EKLUND-BROWN. No.

Mr. COSTA. OK. Well, could you please correct me?

And our next witness on my list here is Kelvin Buchanan and then Richard Redfern.

Your proper pronunciation?

STATEMENT OF SHERI EKLUND-BROWN, ELKO COUNTY COMMISSIONER

Ms. EKLUND-BROWN. I'm Sheri Eklund-Brown. I'm here representing the Elko County Commission. This is my district, and I welcome you to Elko.

Mr. COSTA. You have a lovely district, and thank you so much.

Ms. EKLUND-BROWN. Thank you. And we appreciate so much your coming out here, Chairman Costa, Congressman Heller, and making the attempt to understand public land issues, mining issues, the industry.

Too often your comrades in Congress do not do that. They rely on their aides who probably do not come out, and too many public land decisions are made without knowledge and with the bias that is with the lobbying effort back in Washington. We appreciate this effort to come out.

And I am encouraged by the comments that I've heard that there is a willingness to amend H.R. 2262, and I'm very encouraged by that.

As you know, we are historically a county that is infamous for defending our private property rights, public rights. We'll do it again. We'll come to Washington and lobby if we need to.

We have forged a new direction in our relationships with Federal agencies, and have great ones with all of them. And Bob Abbey was very correct in that they're underfunded, largely because of the war. A lot of our realty efforts can't go forward, based on the funding amounts.

But when we say that Nevada has a love affair with mining, it's true, but in Elko County, we have a marriage with mining. It's true. We have a marriage. And look at the public that's turned out. And thank you all for responding. It's a packed house. It's great. It shows you the kind of support that we have here.

And our request to you is to allow mining—the mining industry to be at the table to amend this bill and not exclude them. It's legislation without representation, and that's, you know, not the American way.

Mr. COSTA. Well, we're not going to do that. And County Commissioner, thank you very much for your comments. I do know that this is the home of the Sagebrush Rebellion. And so——

Ms. EKLUND-BROWN. We can get our shovel and muck it out anytime.

Mr. COSTA. Not needed to point that out, but I appreciate the sincerity in which you make your comments. I think you point out quite correctly that there is insufficient funding for the Bureau of Land Management and a number of other agencies to do their proper work, and it's for a combination of reasons. And that's one of the things we're looking at.

But we—this legislation, I've never seen any—I've been involved in this business or work for a long time. I've never seen any bill upon introduction that ever continued that way through its entire process. And, you know, it's always a work in progress. And we cannot do this successfully unless we get the input. That's why we're here.

And as I said in my earlier comments, if we're not able to reach some sort of a consensus with folks from Nevada, with Senator Reid and Congressman Heller and others, we're not going to be able to successfully implement, I think, some of the changes that many of us believe is necessary.

Ms. EKLUND-BROWN. Well, I think everyone here thinks the time is right, the atmosphere is right, and let's do it before we—every four years we live in fear here——

Mr. COSTA. Right.

Ms. EKLUND-BROWN. Because of a new Administration.

Mr. COSTA. Absolutely. I hear you.

Ms. EKLUND-BROWN. Thank you.

Mr. COSTA. Our next witness, Kelvin Buchanan, American Institute of Professional Geologists.

STATEMENT OF KELVIN BUCHANAN, AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

Mr. BUCHANAN. Thank you, Chairman Costa and Congressman Heller. My name is Kelvin Buchanan. I'm President of the American Institute of Professional Geologists. We certify geologists as to their competence and personal integrity. In fact, to Congressman Heller's immediate right is one of our members.

Mr. COSTA. She wore her T-shirt yesterday, so I'm well aware of it.

Mr. BUCHANAN. As a professional geological organization, we rely on the universities in the western U.S. to provide us with members. In the period 1995 through 1997, when various bills were being promulgated in Congress, coupled with that was a downturn in the commodities interests, and our organization has a paucity of members between the ages of 35 and 45.

It is only in the last four years that we have actually seen some response and some new students at our universities, specifically the University of Arizona where their economic chair was in jeopardy of being defunded, and at the University of Nevada where our School of Mines almost disappeared.

We have many student chapters across the country. I would like to bring up one thing that Senator Reid said which is that people

go into geology because there's jobs. There's jobs because there is a confidence in the industry or industries that they will work in.

And there are several things in H.R. 2262, as Senator Reid pointed out, which are going to make the industry less confident going ahead. It's not just the change of Administration. It's also what the bureaucracy can do. So we would really encourage you to take a close look at that.

Thank you very much for your time.

Mr. COSTA. Thank you very much, Kelvin. We appreciate your comments. And I think from a point of maintaining institutional stability, to have some of the best and the brightest in our young people pursue this professional career, your points are well taken.

Next, Mr. Richard Redfern. Richard, where are you? You're having a little gathering this afternoon and I'm going to miss it. Are you going to have food and all that good stuff or music? What kind of rally are you having?

Mr. REDFERN. Well, it's probably just water and soft drinks but——

Mr. COSTA. As long as I'm not missing any good Basque food.

You've got two minutes.

STATEMENT OF RICHARD REDFERN, PRESIDENT, MEXIVADA MINING CORPORATION

Mr. REDFERN. Thank you, Congressman, and thank you, Mr. Chairman, for allowing the public to speak. You're very kind.

My name is Richard Redfern, and I'm the President—I'm an Exploration Geologist and President of Mexivada Mining Corporation, which is a three-year-old publicly listed junior mineral exploration firm that is exploring for gold, silver, and molybdenum.

The future of the metals mining industry in the western United States is partly dependent on the ability of prospectors and junior mineral exploration companies to search for new deposits of minerals on public lands.

Certain of the proposed regulatory structures in H.R. 2262 would make it much more difficult to conduct exploration on public lands for us, reducing the probability of replacing those needed to provide metals that the country needs and the high-paying jobs to people that do—that America needs also.

Please look out for the needs of prospectors and small exploration companies when you're revising the Mining Law because it's—I feel it's very important to the future.

Then point number two: As we think about how H.R. 2262 would hurt this community, we need to broaden our focus and recognize that harsh, unfair mining laws, conceivably like those proposed in H.R. 2262, could have long-lasting international repercussions.

Several of us here have mineral exploration projects around the world, including places like black Africa, where jobless local people view the United States as kind of a shining beacon of hope, and they think, maybe we can aspire to have good jobs and a nice lifestyle like our American friends.

But if we implement harsh, economically unfair mining laws, countries around the world may adopt similar forms of them, spreading problems worldwide and making it more difficult to find minerals all over the world.

So let's do it right the first time. Construct and put into place mining laws that are fair and workable to all parties in the mining and mineral exploration communities.

Thank you, sir.

Mr. COSTA. Your points are well taken. Richard, do me a favor this afternoon at the rally. Please convey to those who are there that I wished I could be there. Unfortunately my flight does not allow it. And in all sincerity, as I hope you have a sense of today, we're very interested in people's comments and their participation. We wouldn't be here today if we weren't.

So please indicate to folks that I'm always—I believe that good ideas come from all over the country, and certainly one of the reasons we came here was to get some more good ideas.

So your efforts and those who are part of the effort this afternoon will be we welcomed. That information that I gave you, those cards and other stuff, please provide the input because we'll look forward to doing that, working with your local Congressman and Senator Reid and others to see how we can form good, commonsense legislation.

Mr. REDFERN. We want to work with you.

Mr. COSTA. You can use that as a direct quote: "Good, commonsense legislation."

Mr. REDFERN. Absolutely. We want to work with you. All the junior companies, individual prospectors. Let us help.

Mr. COSTA. Thank you.

Our next witness that I have here is Mr. Robert Schafer, Great Basin Gold. You said you wanted to make some comments, and I said, "Is your name on there?" And you said, "Absolutely." It's right here.

STATEMENT OF ROBERT SCHAFER, GREAT BASIN GOLD

Mr. SCHAFER. Thank you very kindly, Mr. Chairman, Congressman. I appreciate the opportunity to have a chance to address you.

As you know, times have changed, the mining industry has changed, technology has changed, and the mining industry is ready for constructive updating of the mining law.

There's a couple of points I just would like to make regarding some of the prior testimony today and one of my own comments. One is the royalty definition that's applied in the bill proposed by Congressman Rahall is very, very different from the definition of a royalty used in our mining business. It's a gross royalty on overall revenues. The net smelter return royalty used in the mining industry is a net smelter royalty which is gross revenues minus operating costs.

Second, in that same area, royalties are used as bartering tools between companies, but they're down in the neighborhood of two and three percent. Five percent was used 20, 25 years ago, was found to be untenable between companies, and it had to be reduced back to the two or three percent to make the operations potentially viable.

Mr. COSTA. But it is a process that has worked.

Mr. SCHAFER. It has worked, but you have to use the proper definition of the royalty.

The second item is, when it comes time for you to negotiate through the weavings and changes in this bill, when it comes time to resolve a point, err on the side of conservatism. Just don't allow unintended consequences. If a mistake is made, it would impact our country for decades because this mining—the industry is not an on and off switch. When we have a downturn in the mining cycle, it requires nearly a decade to recruit the professionals to make it happen and another decade to get the pipeline of discoveries back on stream again. And then add another decade to build the mine; you're 30 years behind by the time that all occurs.

That's all I'd like to say.

Mr. COSTA. Thank you very much. I appreciate that.

Mr. COSTA. Our next witness is Ralph Sacrison, Sacrison Engineering. And then following Ralph—I want to make it so people can kind of work their way over to the mike.

Winthrop Rowe with Snowstorm, LLC. Might want to work your way over there.

Is it Rolph or Ralph?

Mr. SACRISON. Ralph Sacrison.

Mr. COSTA. You're on.

STATEMENT OF RALPH SACRISON, SACRISON ENGINEERING

Mr. SACRISON. Chairman Costa and Congressman Heller, thank you for coming and allowing this opportunity.

It does not necessarily need stressing, but there is still a five- or seven-to-one multiplier from agriculture and mining industries to the general economy. And I'd like to stress and ask that we keep that in mind in terms of the potential negative impact on the industry.

If we simply consider the thousands of people working in those two industries in the country versus 300 million in population, it reasonably well bears out those ratios, emphasizes them actually.

The other point I'd like to make as a small businessman is the impression that many have left you that the industry is almost exclusively multinational conglomerates is not necessarily the case. There are a number of small businesses affected throughout the world by this industry.

The land impacts are minuscule. If you simply consider the amount of terrain in the Nation that has been paved, it is thousands of times greater than all mining impacts to date in this Nation. And again, beware the unintended consequences.

I do have to get my bifocals, Dr. Liparelli. The regulatory consequences of the eight percent royalty could be devastating. Please bear in mind that the accumulated fiscal and environmental regulations have virtually driven all of our refineries offshore. The consequences of driving the mines offshore will be as devastating.

Mr. COSTA. Thank you very much. I appreciate your comments.

And then following that, we have Eric——

Mr. LAUHA. Lauha, L-A-U-H-A.

Mr. COSTA. Yes, 25 years in Elko Mining. Is that you? I think so.

Following Eric, we have Thom Seal and David Knight.

STATEMENT OF WINTHROP ROWE, SNOWSTORM, LLC

Mr. ROWE. My name is Winthrop Rowe. I manage a small company called Snowstorm, LLC. We own about a thousand claims just north of Twin Creeks. We've spent about $7 million over the last eight years, and we are probably going to spend a couple more million in the next year.

One of the four partners in Snowstorm, LLC is a company called Discovery Dynamics. That's my private company, and it started with the savings account of my wife and myself. And I just want to bring up an issue called risk. If H.R. 2262 were on the deck eight years ago when I started this company, I wouldn't have done it. Nor would my partners invest right now with this royalty standing out because that's the margin we're looking for. So if we make a discovery, we can sell it to a mining company; we can get our return from investment and risk.

So there's the "P" word—perception. So on the investment for the mining industry to be able to go forward, to take the risk, as Ron Parratt brought out, that you take the risk and then can see a discovery through to actual production. And if the perception is that that can't be done, then it's back to South America or other places that I've worked in second- or third-world countries.

So the concept called "risk" is important. And this bill, as proposed, would hinder people from taking those risks.

And just to mention, how many people in this room are drilling a 3,000-foot hole right now? As we speak, I have a drill hole going below that depth, and that's what these junior companies are doing. We're taking the risk. We're taking the risk. And so we're filling the niche that isn't missing in our industry right now, but we wouldn't take that risk if we couldn't move forward.

So thank you very much.

Mr. COSTA. Thank you very much, Winthrop, for staying within you time and thank you for your comments. There's a total facility out there of interested parties that participate in mining in the U.S., and you're very good to reflect that and to point that out.

Eric, you're next.

And then followed by Eric is Thom Seal and David Knight, I believe.

Come over there to the mike. Go ahead, please.

STATEMENT OF ERIC LAUHA, ELKO RESIDENT

Mr. LAUHA. OK. For the record, my name is Eric Lauha, L-A-U-H-A. I'm an Elko resident for over 25 years. I worked for several of the larger mining companies, as well as the smaller exploration companies.

And I wanted to follow up on one of the key points that Congressman Heller made on point four of maintaining a viable mining industry. There's one implication of this that I think is very important. It's not just the local issue as far as just jobs. I think it's a national security issue.

And the reason for this is the perception among a lot of people, especially, we feel, east of the Mississippi River, is that mining is no longer a necessary industry and that it's obsolete and outdated. And as many of the previous speakers have mentioned, we've been

outsourcing a lot of our expertise and a lot of mining companies and mining individuals have gone overseas to work in other areas.

If we were to face a national emergency in this country where our foreign sources are affected and we could no longer get those metals, we're going to have to rely on our own sources and expertise. And a viable mining industry is very important because you have a pool of experienced and well-trained geologists and engineers that could quickly step into a situation.

For instance, a lot of us work in the gold industry. We could quickly go over to working finding strategic minerals that would be very essential in a sense, you know, protecting this country.

So I think it's very important that we maintain a viable mining industry so that we have that expertise in case of an emergency.

And a perfect example is during World War II, the auto industry and a lot of our industries that were already in place were turned, making tanks, making planes, and getting ready to fight Nazi Germany and Japan. So we've got to maintain our viable mining industry to be ready for that kind of a national emergency.

Thank you.

Mr. COSTA. Thank you very much.

Our next witness is Thom Seal.

STATEMENT OF THOM SEAL

Mr. SEAL. Thank you, Chairman Costa——

Mr. COSTA. Thank you.

Mr. SEAL.—and Representative Heller for this opportunity to make a few comments about H.R. 2262. I'd like to address some of the goals that were put out earlier in this Committee, and one about reclamation.

Regarding the old mines, it appears to me the best way is to use the mining companies' expertise and the technology to reclaim the old mines. What we need is an incentive, either a tax break, Good Samaritan opportunities there. And it also gives the mining companies an opportunity to show their good stewardship of the land.

In regard to fair returns, I agree that the resources of the United States are owned by the people, and I think that the companies of their U.S. base should be given a break regarding that because they pay a lot of income taxes in this country and have a tier step up for the foreign companies, so they pay a larger margin of these royalties if it's imposed. That way, it would be kept within the United States.

And also an exemption for small mining. I agree with Senator Reid that we need to protect the prospector and the small mining industries.

In regard to the environmental aspect, I think the current laws and regulations are working very well and they're very balanced and they've evolved a lot over the years.

And regarding favorable mining, I've observed it takes up to ten years to get a mine permit started, and a lot of the small mining operators that are getting environmental assessments and permits, they're backlogged for many years to try to get this accomplished.

So I agree with Mr. Abbey from the BLM that we need more resources so we can push the permits through, the faster we get the public comment and keep mining a viable industry.

In conclusion, the Fraser Institute says Nevada is the number one place in the world to invest in mining industries regarding all the regulations and the permitting and the resources.

Thank you very much for this opportunity.

Mr. COSTA. Thank you. Thank you for your patience.

David Knight, I believe, is the next individual that we have. And following David, we have Jim Collins, small miner. And Walter Martin is who I have among those. So you might want to work your way there.

David.

STATEMENT OF DAVID KNIGHT, CARLIN TREND MINING SERVICES

Mr. KNIGHT. Thank you very much, Mr. Chairman. My wife and I own a small business called Carlin Trend Mining Services here. We provide employees and mining supplies to the industry. Over half of our clients are juniors or individuals.

I am very worried that a two percent or an eight percent NSR will really affect them quite a bit. If they can't make a living, we're not going to be able to make a living.

And I would ask the Committee to think about not doing anything retroactive. We all have an economic plan. If we do something—if we grandfather in, many of my clients have already done their feasibility studies, and the mines will be uneconomic at the eight percent NSR.

So I would ask you guys to consider not to do anything retroactive with that.

Mr. COSTA. All right. Thank you very much. I appreciate your testimony. Like your shirt.

[Laughter.]

Mr. KNIGHT. We were told it was a private meeting so I just threw something on.

Mr. COSTA. Oh, not true. I don't hold those kind of meetings. But I've got a few shirts like that. That's why I like it.

Mr. COSTA. Mr. Jim Collins, I believe, is next, small miner.

STATEMENT OF JIM COLLINS, SMALL MINER

Mr. COLLINS. Hi. My name is Jim Collins. Thank you for the opportunity to address this assembly.

Mr. COSTA. Thank you for being here. This is all part of our practice of democracy, your opportunity to testify.

Mr. COLLINS. Thank you.

As a small miner, if H.R. 2262 is enacted, I'm out of business because I do not have the expertise or the financial resources to meet all of the requirements.

My thrust is in plaster mining, and I didn't know that this is—this was going to cover plaster mining until I read the entire context of this bill.

I thank you for letting me address this assembly.

Mr. COSTA. How long have you been mining?

Mr. COLLINS. About 40 years.

Mr. COSTA. So all over Nevada?

Mr. COLLINS. Basically I started in South Dakota. I moved in Colorado, Wyoming, and Idaho. And now all of my claims are here in Nevada.

Mr. COSTA. You're following the gold.

Mr. COLLINS. Yeah. Thank you.

Mr. COSTA. Thank you very much. I appreciate your comments. Walter Martin, geologist; is that correct?

Mr. MARTIN. That's correct.

Mr. COSTA. Mr. Martin, you're up.

STATEMENT OF WALTER MARTIN, GEOLOGIST

Mr. MARTIN. Chairman Costa, Congressman Heller, thank you very much for letting me speak today.

I would echo the statements of Russ Fields regarding the royalties. What I would suggest is that if you are going to implement a royalty, that actually you look to the states who are going to be impacted by the loss of their revenues. They're the ones that are going to come back to you and ask you to help them replace their industries that they've lost.

What we need probably is to structure a mineral severance tax as opposed to a royalty. And probably, Congressman Heller, you can probably give your insights on that and how useful it's been for Nevada. So that's probably the best way to approach this.

The problems that we face also with the loss of or the closure of the minerals industry in the United States is that we would—we have—we will have to depend upon third-world nations to supply us with our raw materials if that industry closes here.

Now, we only have to look to the statements by President Chavez of Venezuela as to why they should be compelled to sell their resources to the United States unless it's at a significant price. That's not necessary as long as we keep our own industry open.

And so I would ask that you actually keep those items in mind when you're actually changing these.

Thank you.

Mr. COSTA. Thank you very much, Walter. I appreciate that. I think you make some good points. I think many of us are concerned in the global economy that we live in today, that we maintain our ability to chart our own course. It's just not with regards to minerals but energy and agriculture and the like.

Mr. MARTIN. Well said, yes.

Mr. COSTA. So I share that concern.

Our last witness who we were going back and forth on as to whether or not we would allow you to speak, only because you came to Washington and you had a chance to testify there. But since I am in a generous mood—and please don't make me miss my plane—we will give you two minutes. You are last, certainly not least. We did appreciate you coming back to Washington to testify, and you're on. Two minutes.

STATEMENT OF TED WILTON

Mr. WILTON. Thanks, Mr. Chairman, Congressman Heller.

I'd like to make a comment about one specific issue that was brought up both in Washington and here. And that's the interaction between the mining industry and sportsmen and fishermen.

I would urge the Committee to take a careful look at the cooperative activities between the mining industry, the Nevada Division of Wildlife, other state and Federal agencies.

We heard a comment this morning about the water quality in the North Fork of the Humboldt River as it related to the Big Springs Mine. There's two sides to all stories, and this is one that I'd urge you to take a careful look at. The North Fork of the Humboldt River is habitat for the Lahontan cutthroat trout, which is a threatened species under the Endangered Species Act. And through the cooperative arrangement between the Forest Service and the mining company that originally developed Big Springs Mine, the habitat was greatly improved. And in fact, the population of the Lahontan cutthroat trout increased dramatically from the time that that mine was originally proposed and when it was closed down.

I think that it's worth us taking a careful look at how we can develop these partnerships between the companies and agencies rather than just having absolutes in the law.

Mr. COSTA. Well, I think your points are well taken. I was interested to learn yesterday by one of our noted Bureau of Land Management biologists who has, I understand, a very wonderful reputation. And she told me of her work on some of these partnerships with some of the mining interests on the cutthroat trout in the headwaters and the ability to maintain those. So I was interested to learn that—just wish I had the time to go up there and see those trout.

The fact is that I believe—I've been a long believer in public-private partnerships. I think those partnerships oftentimes are really uniquely American and keys to a lot of successes.

So I thank you for your testimony.

Mr. WILTON. Thank you, Chairman.

Mr. COSTA. All right. Well, this winds up the hearing, ladies and gentlemen. Let me tell you that I appreciate and I know Congressman Heller appreciates your participation. I'll allow him an opportunity to make some closing comments, as long as he doesn't make me miss my plane. And then I'll close the hearing.

Mr. HELLER. Thank you very much, Mr. Chairman. I just want to take a moment to thank you for taking time out of your busy schedule. Again, it's been said several times by both myself and Senator Reid that it is an honor to have you here in Elko County, to have you spend this kind of time and energy and realize the complexity of the issue. And the individuals who spoke here today, I think, expressed those complexities of the issues that are at hand.

I want to thank everybody that's here today. I want to thank the companies who represented, the individuals, the patience that you have shown. I want to thank all of those who have testified also today.

This is clearly a critical part of this process, and being here in Elko County will go a long way to implementing a bill that hopefully we can all live with. So thank you very much.

Those of you who are going to be at the rally at 2 o'clock, I'll see you there. Thank you.

Mr. COSTA. Congressman Heller, I want to thank you for your good work. You've hit the ground running in Washington and your

participation in the Committee and the Subcommittee. We look forward to your continued counsel and input as we try to fashion legislation that makes sense.

And let me just close by saying, once again, I hope you really get a sense of what I've had, a wonderful two days here. And I think that all the things you hear about in Elko County and the preservation of the past and your focus on the present and the future really reflects on all the good citizens here.

Today, you have participated in what we like to think is so good about our country and our democracy. It's participatory democracy. Participatory democracy works in—we are representatives, but it's a two-way street. It happens when the citizens participate and then we interact. That's what we've done here today.

So I thank you for your efforts and for your desire to ensure that this process works.

So with that understood, I've got to say some words here in closing to stay within the constraints of the House rules.

If there's no further business before the Subcommittee, then the Chairman would like to thank everybody, as I've just done, our Subcommittee and witnesses; the staff that worked very hard, both the Republican and Democratic staff members;; our reporter clerks; and all of those who have testified. We really appreciate it. We will continue to work on this effort.

The Subcommittee now stands adjourned.

[Whereupon, at 1:04 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by the Arizona Conservation Partnership, Native American Advisory Committee, follows:]

Arizona Conservation Partnership
Native American Advisory Committee

June 22, 2007

The Honorable Rick Renzi
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Renzi:

We thank you for supporting the ban on uranium mining on Navajo territory and for your work in Congress to limit uranium mining activities and protect our water. We are not only concerned about mining on Navajo land but also on lands near our Tribal lands. Please continue to help us by co-sponsoring H.R. 2262, the 1872 Mining Law Reform bill.

As you know, the Navajo Nation has fought an ongoing battle against uranium mining on our land for over fifty years and the impact is still being felt today.

Our land is dotted with contaminated tailings and hundreds of abandoned mines that have not been cleaned up. Our people have inhaled radioactive dust from the waste piles, drank contaminated water from abandoned pit mines and watered our herds with contaminated water. Our children have played in piles of mill tailings and spent mines. Our people suffer from high cancer rates and respiratory problems – cancer rates among Navajo teenagers living near mine tailings are 17 times that of the national average.

There has been a rush over the past five years to claim metals on public lands. Many of the claims are near such national treasures as the Grand Canyon and tribal lands. And, despite the ban on uranium mining on Navajo land, the mining industry is back, staking claims, buying mineral rights and applying for permits on the edge of Navajo land. They have made no secret of their desire to mine within the reservation also.

The Mining Law Reform bill will help us in many ways. It makes it a priority to protect special places like sacred sites. It sets strong public health, environmental and cleanup standards. It creates an abandoned mine fund and it insures that our voices are heard and valued when mining decisions are made.

Again, we sincerely thank you for your past support. As you have said, "...Rather than providing subsidies to the uranium industry, the federal government must focus on fulfilling its responsibility to assist individuals who have lingering health problems from past uranium exposure... I support the Navajo Nation's Resolution banning uranium mining on Navajo land...We must work to stop the threat of uranium exposure before it infects our future generations." Please co-sponsor H.R. 2262.

Respectfully yours,

Lorenzo Bedoni, Member
N.N. Tribal Council – Hardrock Chapter

Theodore Allen, Activist
Lukachukai Chapter

Gerri Harrison
Advisor to the Navajo Tribal Council

Jack Jackson, Jr., Dir. of Comm. Rel.
AeroCare Medical Transport

Willie Begay, Member
N.N. Tribal Council – Kayenta

Zane James
N.N. Board of Elections, Chinle Agency

Johnny Naize, Member
N.N. Tribal Council–Tselani-Cottonwood

Wesley Begay, President
N.N. Tribal Council-Tsaile-Wheatfield

Leslie Dele, Member
N.N. Tribal Council – Tonalea

David Rico, Member
N.N. Tribal Council – Torreon

Katherine Arviso
Apache County Treasurer
Member, N.N. Board of Education

Marjorie Dodge, Presidential
Presidential Appointee/Member
N.N. Board of Education

Jack C. Jackson, Sr.
Former State Senator

Andy R. Ayze, Member
N.N. Tribal Council – Many Farms

David L. Tom, Member
N.N. Tribal Council - Beclabito

Leonard Anthony, Member
N.N. Tribal Council - Shiprock

Kevin White, Program Director
OSSMT

Ervin M. Keeswood, Member
Tribal Council - Hogback

Omer Begay, Member
N.N. Tribal Council – Wide River, Cornfields

Peter MacDonald, former Chairman
Navajo Nation Tribal Council

Jennifer Dee-Laughter, Secretary-Treasurer
TeecNosPos Chapter

Raymond Maxx, Member
N.N. Tribal Council – Tuba City

J. Begay, Member, N.N. Board of Education, Chinle Agency

[Comments submitted for the record by Nigel Bain, General Manager, Queenstake Resources USA, Inc., follow:]

Comments on H.R. 2262, "The Hardrock Mining and Reclamation Act of 2007

Proposed House Bill #2262, the Hardrock Mining and Reclamation Act of 2007, contains several provisions that would be harmful to the hardrock mining industry in the United States. I will focus on one of those provisions, the 8% net smelter royalty, as it relates to the Jerritt Canyon Mine in Elko County, Nevada.

In September of 2006 the Jerritt Canyon Mine laid off 45 employees to reduce its costs and avoid closure. Since that time the company and its employees have labored hard to change the mine's fortunes. The first two quarters of 2007 have been successful and have begun to generate cash flow that is being used to rebuild the property.

While the worldwide gold price has more than doubled from $275 per ounce in 2001 to $650 in 2007, and is at historic highs, the real margin of all USA mines has not fared as well.

While I cannot speak for other mining companies, the following are the cost escalations seen at the Jerritt Canyon Mine:

	2001 price	2007 price	Escalation
#2 Diesel fuel	$1.01	$2.98	195%
150-ton Haul Truck Tires	$7500 each	$33,000	340%
Gold Price	$275 per ounce	$660 per ounce	140%

These are but three of the worst key cost increases but it is easy to see why that the margin that mines have is not as much as the public would like to believe.

The proposed legislation would require an 8% net smelter royalty, which is essentially a gross royalty tax. Based on our current costs, the Jerritt Canyon Mine would not be able to absorb this additional tax. As shown above, our current margin is only 16%, which would be cur below normal investment standards by an 8% royalty.

Jerritt Canyon Mine is Elko County's largest mining employer, and as such provides numerous financial benefits to the county by virtue of the taxes paid, the salaries paid to its employees, and the money spent locally on goods and services. Nevada, is very polarized between rural and urban areas, and is very fortunate that the rural counties with mining operations are financially independent of the two urban areas of the state. If H.R. 2262 is approved as it is currently written, the results could be disastrous for the hardrock mining industry in the United States, as well as for the communities in which mining operations play a large role in the local economy.

Sincerely,
Mr. Nigel Bain
General Manager
Queenstake Resources USA, Inc.
A subsidiary of Yukon-Nevada Gold Corporation
HC 31 Box 78
Elko, NV 89801
775-738-5006, est. 101
nbain@jerritt.com

[Comments submitted for the record by Teresa A. Conner, Manager, Environmental Resources Department, Queenstake Resources USA, Inc., follow:]

Comments on H.R. 2262, "The Hardrock Mining and Reclamation Act of 2007"

Proposed House Bill #2262, the Hardrock Mining and Reclamation Act of 2007, contains several provisions that would be detrimental to the hardrock mining industry in the United States. I believe most people in the hardrock mining industry agree that the Mining Law of 1872 is in need of reform; but that reform needs to be reasonable, such that the mining industry remains viable and that numerous unintended consequences that could result if this legislation is passed as written, are not realized.

Several of the provisions contained within this proposed legislation, namely the many environmental provisions, are duplicative of existing laws and regulations. The hardrock mining industry is already regulated under federal laws including the Clean Air Act, and the Clean Water Act, and a multitude of various state laws. For example, in the State of Nevada, reclamation laws (which also include bond provisions) were enacted in 1989. All mining operations are required to submit a reclamation plan to the State and to post a reclamation bond that covers the cost of that reclamation. Sections 306 and 305 of the proposed legislation would also require, respectively, reclamation of the project area and the posting of a bond for the project. The current Bureau of Land Management and U.S. Forest Service regulations also require reclamation and a reclamation bond. Why then is it necessary to duplicate existing requirements within the proposed requirements of this legislation?

Another onerous provision of this proposed legislation is the limitation of access to public lands and thus limited access to mineral resources on public lands. By creating de facto wilderness areas, as this legislation would do, we would be severely impacting our ability to provide many critical minerals to the nation. As access to public land is limited, our reliance on mineral resources from other nations will increase. Considering the instability of several nations that are potentially the sole source of certain minerals, the logic of this approach is lacking.

Another aspect of this proposed legislation that would prove highly detrimental to the hardrock mining industry would be the 8% net smelter return royalty. Despite the fact that many metals prices are at all time highs, the commodities that we utilize in the mining process have also increased significantly, making profit margins much smaller than is generally realized. Adding another 8% cost on top of our current costs would in many cases, force mines out of business, ours included. In the case of new mines, it would impose another cost which may not be borne by the mineral deposit, the end result being that the mine never opens. This is certainly one of the key provisions in this proposed legislation that would have disastrous consequences for the hardrock mining industry if it were to be approved as

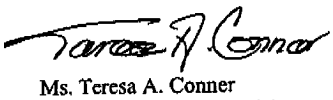
Regarding permits, the proposed legislation contains a couple of revisions that would be problematic for most mining companies. One example is that under Section 303, Part (e) there is the provision for a permit renewal, but "*...only with respect to operations on areas within the boundaries of the existing permit as issued.*" This would effectively

disallow a permit to be renewed that would expand the mineral resources to be mined and therefore the permit boundary. Most operations are in a continuous exploration mode to do exactly that, *i.e.* to expand their resource base and by default, often their project boundary. This provision would effectively halt a mining project once it has mined the resource within its' original project boundary, regardless of the mineral potential outside that boundary. A second provision in this proposed legislation under Section 303 provides that a permit would be "opened up" for public review every three years. This would result in a level of uncertainty for most mining companies and investors that is unacceptable.

Finally, even though the majority of the mining industry concurs that the Mining Law of 1872 should be reformed, it must be accomplished in manner that preserves the hardrock mining industry intact, allows continued access to public lands for mineral exploration and development, does not duplicate already existing laws and regulations, and does not place onerous requirements on an already highly regulated industry.

Thank you for the opportunity to comment on this important legislation.

Sincerely,



Ms. Teresa A. Conner
Manager, Environmental Resources Department
Queenstake Resources USA, Inc.
A subsidiary of Yukon-Nevada Gold Corporation

HC 31 Box 78
Elko, NV 89801
775-738-5006, ext. 292
tconner@jerritt.com

[Comments submitted for the record by Cole Deringer, P.E., Mining Engineer, Elko, Nevada, follow:]

NRD Energy Comments

From: Cole Deringer [cderinger@frontiernet.net]
Sent: Wednesday, August 29, 2007 11:54 AM
To: NRD Energy Comments
Subject: HR 2262 comments.doc

Cole Deringer, P.E.
Mining Engineer
1691 Winchester
PO Box 6394
Elko, NV 89801
775-934-2253 cderinger@frontiernet.net

Thank you for taking the time to have a field hearing in Elko, NV on HR 2262 Hard Rock Mining and Reclamation Act of 2007. I would like to submit the following comments for the record:

1. The royalty as it is currently written in the bill would be detrimental to our economy and result in a net loss of revenue to the Federal Government when the existing payroll and income taxes are considered. An 8% tax on gross revenue is excessive would result in many small and medium sized companies closing, and the larger companies exporting mining jobs over seas thereby increasing our dependence on the importation of foreign materials and goods.

   The royalty in its current form would reduce tax monies going to the state and county levels where the impacts from the mining are felt the most and monies are needed to offset those impacts.

   There are many small operators, rock clubs, mineral clubs, and other small claim holders that actively utilize the current mining law to work their claims for enjoyment as well as to make a living. I feel that there needs to be a small miner exemption or reduced royalty rate for small miners and claim holders.

2. There needs to be a "Good Citizen" clause that would allow mining companies, NGO's, State, and local governments to under take abandon mined cleanup while limiting their liability and risk associated with the clean up of abandoned mines.

3. The bill should include a "Brownfields" clause in the regulation to encourage entrepreneurs to undertake abandoned mine cleanups while limiting their environmental risk. I know of several mining companies that have worked with the federal agencies, state, and local governments during closure to find alternative uses for the mine infrastructure, administration offices, warehouses, and maintenance shops. In my role as a mining engineer, I have been approached by business men who were evaluating the possibility of establishing wind farms for alternative power generation on reclaimed or abandoned mine lands. A sound "Brownfields" provision in the law would help encourage the growth of these new businesses while promoting the cleanup and "recycling" of abandoned mine lands.

4. The provisions for withdrawing large blocks of land mineral exploration are unnecessary as these concerns are currently being handled on a case by case basis during the NEPA process and public comments. These should be handled on a case by case basis so each site can be judged on its own unique merits instead withdrawing large blocks of land from mineral exploration.

[A letter submitted for the record by The Honorable Jim Gibbons, Governor, State of Nevada, follows:]

Office of the Governor

JIM GIBBONS
GOVERNOR

August 14, 2007

Honorable Jim Costa
Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Honorable Steve Pearce
Ranking Member
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Costa and Ranking Member Pearce:

As Governor of the State of Nevada, a geologist, and the most recent past Chairman of the House Resources Subcommittee on Energy and Mineral Resources, I feel it is my responsibility to communicate to the Subcommittee my serious concerns with H.R. 2262. I appreciate the opportunity to express my view and respectfully request that my comments be entered into the record of the Subcommittee's field hearing in Elko, Nevada this month.

As you know, Nevada is the top gold-producing state in the nation, producing 78% of our nation's gold and 12% of the world's gold, ranking us fourth internationally, behind only South Africa, Australia, and China. After gaming, mining is Nevada's largest industry and directly provides over 11,000 jobs across this great state, with an additional 52,000 jobs related to providing goods and services to the industry. The mining companies located in Nevada not only provide jobs, but they provide communities with needed resources such as parks, schools, medical facilities, and homes.

It is important to point out that mining does not just affect those who live in mining communities. It affects every single one of us everyday of our lives. Minerals produced in Nevada are used in medicines and in medical, dental, and laboratory equipment. They are used in batteries, cell phones, and computers. They help deliver water to your house and food to your family. Before we do anything to restrict this vital industry, it is important to understand the impact that mining has on our society.

The mining industry is one of the bedrocks of this state. H.R. 2262 would seriously hamper this vital industry's ability to compete and employ, thereby negatively affecting the revenue streams necessary to fund local, county, and state governments.

101 N. Carson Street • Carson City, Nevada 89701 • Telephone: (775) 684-5670 • Fax: (775) 684-5683
555 E. Washington Avenue, Suite 5100 • Las Vegas, Nevada 89101 • Telephone: (702) 486-2500 • Fax: (702) 486-2505

There are many problems with H.R. 2262, but I will list the most onerous ones here:

- As federal public lands account for nearly 85% of the land area in Nevada, the restriction of mineral exploration and development on these lands is a serious concern. By withdrawing millions of acres of Nevada land and redesignating them as "sacred sites" or "roadless areas," this bill would decimate the mining industry and could lead to severely curtailed mining activity or the closure of existing mines.

- The unnecessary or undue degradation standard has worked well to protect our environment at mine sites. To replace this standard with what would effectively be a discretionary mine veto authority by the Interior Secretary would deter mining companies from spending the millions of dollars needed to locate, explore, and develop mineral deposits.

- As most Nevada mining operations take place on a combination of public and private land, the requirements for compliance with applicable land use plans, zoning laws, and a new set of unreasonable regulations for the public portion of these properties will create an avalanche of citizen lawsuits and "takings" litigation.

- Even though the National Research Council's (NRC) 1999 study of hardrock mining practices found the framework of mining regulations in place at that time effectively protected the environment, H.R. 2262 attempts to impose new environmental standards that are vague and ambiguous. These new proposed standards are inconsistent with current federal and state environmental laws and are recipe for disaster.

- The elimination of life of mine permits and the limitation of mining permits to a maximum of ten years with no guarantee of receiving one more ten year renewal creates major problems. Mining is, by its very nature, a long-term activity. Nevada's premier mineral deposits have life-of-mine expectancies of well over twenty years. If permit time frames are shortened, there is the very real possibly that valuable deposits will be left in the ground, which would present a serious economic loss. The financial community would be very reluctant to provide any capital investment if there is not some guarantee that a mine can remain permitted for the life of the project.

- Finally, H.R. 2262 proposes to enact an 8% net smelter return royalty, which is, in reality, an 8% tax on gross proceeds. While the Nevada Net Proceeds of Minerals Tax is structured in a way as to be responsive to changing metal prices, the royalty proposed in H.R. 2262 is not. For example, in 2005 miners paid roughly $32 million from gold produced on Nevada's public and private lands. By way of contrast, since about 30% of the gold produced in Nevada comes from public lands, a federal 8% gross royalty on production from public lands would have resulted in a payment to the U.S. Treasury in 2005 of approximately $88 million. A federal royalty should be structured to minimize adverse economic impacts to state and local governments.

I want to thank you and the Members of this Committee for holding this hearing in Nevada to explore the implications of H.R. 2262. As you and your colleagues press forward on mining law reform, I would urge you to study this proposal very carefully and to recognize the negative impacts it would have as

Honorable Jim Costa and Honorable Steve Pearce
August 14, 2007
Page 3

currently written. I believe that we would be well served by updating our nation's mining law, but the bill in its current form will do irreparable harm to the mining industry and to the State of Nevada. I urge you to use the Committee markup process as an opportunity to make the changes necessary to H.R. 2262 to ensure a healthy domestic mining industry well into the future.

Sincerely,

Jim Gibbons
Governor

[A letter submitted for the record by Lee "Pat" Gochnour, President, Gochnour & Associates, Inc., follows:]

GOCHNOUR & ASSOCIATES, INC.

O. Box 4430
arker, CO 80134

Tel (720) 851-2900
Fax (303) 840-9054
E-mail: lpgochnour@att.net

August 19, 2007

The Honorable Jim Costa
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 2262 – Environmental Laws Governing Hardrock Mining

Dear Chairman Costa:

I am a mineral industry environmental consultant who specializes in obtaining authorizations and permits for the hardrock mining industry. I had hoped to send this letter to you earlier this summer. Fortunately for me and members of the general public, I have been working on obtaining permits and assisting with compliance with rules, regulations and laws on the federal, state and local levels.

I understand through conversations with many of my constituents that there were several witnesses who erroneously testified or implied at the July 26, 2007, Energy and Mineral Resources Subcommittee Mining Law hearing on H.R. 2262, that there are no or inadequate environmental laws governing hard rock mining. If this were the case, then my entire 27 years in the mining business never really happened and the receding hair line on my forehead really is hereditary. Here all along I thought it was the result of dealing with agencies and the general public in trying to make sure my clients answered all the necessary questions imposed, that they collected all of the necessary environmental baseline data needed to design, operate and close a project and ensure compliance with a myriad of regulations and permits that included, but were not limited to:

- The National Environmental Policy Act of 1969;
- The Federal Land Policy and Management Act of 1976;
- The Clean Air Act;
- The Clean Water Act;
- The Endangered Species Act;
- The Migratory Bird Treaty Act;
- The Bald Eagle Protection Act;
- Native American and Public Consultations;
- The National Historic Preservation Act of 1966
- The Resource Conservation and Recovery Act;
- The 43 C.F.R. Subpart 3809 regulations and bonding requirements governing hardrock mining on BLM-managed lands;

- The 36 C.F.R. Part 228 Subpart A regulations and bonding requirements governing hardrock mining on National Forest System lands;
- Road Use Permits;
- Right of Way Permits;
- Special Use Permits;
- National Pollution Discharge Elimination Permits;
- Dredge and Fill Permits;
- State reclamation permits and bonding requirements;
- State groundwater protection permits governing the design, operation, and closure of mines;
- Water Rights Authorizations;
- Public Drinking System Authorizations;
- Planning and Zoning Approvals;
- Building Permits;

(I could go on, but this would not be a wise/environmentally ethical use of paper).

A brief review of many of the above referenced requirements would lead most common sense thinking individuals to agree that mining today is a highly regulated industry. Those of us that work with mining companies and individuals in the mining industry also recognize that modern mines adhere to comprehensive and effective environmental protection requirements.

I find it quite humorous and disingenuous that those who testified that there are no regulations or that the ones in place are inadequate in governing the mining industry. Many of these individuals and organizations are also the ones who claim that our industry has left the United States to pursue mineral opportunities in other countries to get out of having to comply with difficult regulations.

Based on my experience, I know that securing the necessary permits to construct, operate and close a mine is a time-consuming and expensive process that takes many years and millions of dollars to complete. Once a mine is permitted, companies then spend a great deal of time and money on environmental monitoring and reporting to ensure that their operations comply with the many environmental protection requirements contained in regulations and issued permits.

Companies also post financial assurance(s) to ensure that approved/planned reclamation takes place. Where logistically possible, reclamation activities begin concurrently with operations. When mining is completed, companies continue spending millions of dollars reclaiming mine sites in compliance with the requirement to achieve productive post-mining land uses.

I hope that as you and your colleagues on the House Subcommittee on Energy and Mineral Resources contemplate H.R. 2262 you will take into consideration the effective and extensive statutory and regulatory framework that already ensures environmental protection at hardrock mines. There is no need to duplicate this framework in legislation to update the Mining Law.

I very much appreciate the opportunity to provide this information and would be happy to answer any questions.

Sincerely,

Lee "Pat" Gochnour

Lee "Pat" Gochnour, President
Gochnour & Associates, Inc.

cc: The Honorable Nick J. Rahall II
The Honorable Don Young
The Honorable Stevan Pearce
The Honorable Harry Reid
The Honorable Larry Craig

[A statement submitted for the record by Joseph P. Hebert, Vice President of Exploration, Minerals Gold Corp., follows:]

Thank you for the recent opportunity to attend the field hearing on HR 2262 regarding Mining Law Reform hosted here in Elko, Nevada. I offer the following comments for review:

The Hardrock Mining and Reclamation act of 2007 (H.R. 2262) as currently written is effectively a punitive measure against the U.S. mining and exploration industry that will result in the shutting down or curtailment of metals exploration and existing mining operations, and prevent the startup of new mines in the United States. H.R. 2262 is not a fair and balanced bill and is a poor starting point for negotiations in the House and Senate.

The 8% NSR gross royalty in the bill is excessive and will severely impact mine profitability and negatively impact the incentive for metals exploration in the US, resulting in a substantial loss of high paying jobs directly and indirectly related to mining in rural communities throughout Nevada and the west. In contrast to a draconian gross royalty, a "Nevada Style" net proceeds payment would be a more appropriate way to provide the American public a fair return from mining on public lands.

Provisions of the bill that dictate the periodic review and renewal of operating permits over three and ten year periods will bring into question project tenure and thus will substantially elevate perceived risk in the investment community making it more difficult for mining and exploration companies to raise capital for their business activities.

Existing state and federal regulations are already successfully mitigating the environmental and cultural impacts of exploration and mining. Regulatory provisions within H.R.2262 will add an additional time consuming, costly, complex, and ultimately unnecessary level of regulatory measures to an existing system of rules and regulations that already work very well.

Mining companies recognize that some reform and refinement of the General Mining Law may be necessary and they and the people and communities to be negatively impacted should have a voice in revisions to the Law. H.R. 2262 as currently written does not make revision to the mining law prudently or in the best interest of the American public.

In Summary, H.R. 2262 will have a profound detrimental effect on the U.S. mining industry, increase the U.S. reliance on foreign imports for metals, and institute an onerous and ultimately self-defeating tax increase due to a diminution of the revenue source, and eliminate thousands of jobs and businesses in rural communities in Nevada and across the West. Revisions to the General Mining Law should encourage and not work to eliminate responsible mining.

Thank you,

Joseph P Hebert
Vice President of Exploration
Miranda Gold Corp
310 Silver St
Elko NV 89801

[Handwritten comments submitted for the record by employees of Queenstake Resources follow:]

COMMENT CARD
Subcommittee on Energy and Mineral Resources
August 21, 2007 Elko, Nevada
If you would like to address the Subcommittee on the issue of
"H.R. 2262 The Hardrock Mining and Reclamation Act of 2007"
please fill out the following and return to the Clerk's table
or send your comments via email
energyandminerals@mail.house.gov

☒ I wish to submit comments for the record:

I think that the 8% royalty Tax is way to High. I also think that the changes in permitting is un fair. I feel that if H.R. 2262 is passed as written it would cause a hardship on local & state economy.

Please Print:
Name: Bernerd R. Persons
Organization: Jerrett Canyon Mine Title: Miner
Address: 1050 Connolly Dr. #26
City: Elko, State: NV. Zip: 89801
Phone Number: 775-778-0384

COMMENT CARD
Subcommittee on Energy and Mineral Resources
August 21, 2007 Elko, Nevada
If you would like to address the Subcommittee on the issue of
"H.R. 2262 The Hardrock Mining and Reclamation Act of 2007"
please fill out the following and return to the Clerk's table
or send your comments via email
energyandminerals@mail.house.gov

☑ I wish to submit comments for the record:

I think if The "H.R." 2262 Bill was to pass the way it is written, it would force Smaller Companyds to lay off or shut down, And The larger Company's would Relocate out side of The United States.
Many Company's Have only a 8% to 10% profit To work with To stay operating

Please Print:
Name: Dale Cosper
Organization: Queen Stake Resourses Title: U/G Supervisor
Address: P.O. Box 5797
City: Elko State: NV. Zip: 89802
Phone Number: (775) 738-7589

COMMENT CARD

Subcommittee on Energy and Mineral Resources
August 21, 2007 Elko, Nevada
If you would like to address the Subcommittee on the issue of
"H.R. 2262 The Hardrock Mining and Reclamation Act of 2007"
please fill out the following and return to the Clerk's table
or send your comments via email
energyandminerals@mail.house.gov

☒ I wish to submit comments for the record:
the 8% tax will Force Mines to lay off Hard working people who want Nothing more than the opportunity to work and make a living for themselves and thier families,

Please Print:
Name: Chris Hood
Organization: Queenstake Resources Title: u/g Miner
Address: 762 Holiday Dr.
City: Spring Creek State: NV Zip: 89815
Phone Number: 775-778-3655

COMMENT CARD

Subcommittee on Energy and Mineral Resources
August 21, 2007 Elko, Nevada
If you would like to address the Subcommittee on the issue of "H.R. 2262 The Hardrock Mining and Reclamation Act of 2007" please fill out the following and return to the Clerk's table **or** send your comments via email

energyandminerals@mail.house.gov

☑ I wish to submit comments for the record:

I truly do not believe the people trying to pass Act H.R. 2262 have every idea what it would do to the US economy. These Gold company do not have to stay here. More than likely they will pick up and leave if they half to pay an R.R. royalty. If they think we pay taxes now just wait until we half to pay for all our minerals for another country. The miners already pay enough just to be where they are.

Thank you

Please Print:
Name: Brian Schmidt
Organization: Queen Stake Title: Under Ground Miner
Address: 384 Valley bend Dr
City: Spring Creek State: NV Zip: 89815
Phone Number: 775-777-3307

COMMENT CARD

Subcommittee on Energy and Mineral Resources
August 21, 2007 Elko, Nevada
If you would like to address the Subcommittee on the issue of
"H.R. 2262 The Hardrock Mining and Reclamation Act of 2007"
please fill out the following and return to the Clerk's table
or send your comments via email
energyandminerals@mail.house.gov

☑ I wish to submit comments for the record:

The only real impact this will have is to drive up the price of gold - therefore the consumer. Does the individuals rallying this have special interest - investments?
Many small companies will be affected by this and closing the market to only Global Companies. Many workers & economy ~~will be~~ could be effected.

Please Print:
Name: Schwab, Michael
Organization: QueenStake Title: underground operator
Address: 1380 Jennings Crt.
City: Elko State: NV Zip: 89801
Phone Number: (775) 753-7252

[A letter submitted for the record by R. Bruce Kennedy, Vice President-General Manager, Robinson Nevada Mining Company, follows:]

Robinson Nevada Mining Company

A Subsidiary of quadra

August 15, 2007

Nick J. Rahall II
2307 Rayburn House Office Bldg.
Washington DC 20515-4803

Dear Mr. Rahall;

I am writing to you in relation to the proposed Hardrock Mining and Reclamation Act of 2007. I am a mining professional who has also worked for the BLM, so I am quite familiar with the existing regulatory requirements for mining. There are a number of items contemplated in the Act that are not acceptable.

The concept of having an operating permit that is limited to 10 years is simply insane given the current environmental requirements and review. For example; the company I work for has spent 14 years in trying to start up a mine adjacent to other mining activities. With an operating permit good for only ten years, mining would never occur because it is impossible to get through the environmental requirements and review in that time period.

The USGS has released their Mineral Commodities Survey, you should review it. You will be shocked on the number and quantities of foreign reliance on mineral supplies that the US is subject to. The USA needs a strong minerals production capability just as much as it needs domestic energy sources. Do not make our country suffer from lack of minerals by subjecting Hardrock mining to OPEC type restrictions that have caused our country to suffer for energy.

The USA currently has coal and gas leases and royalties based on USGS research on those particular mineral commodities. There is no such research on hard rock minerals, and therefore a royalty (for services rendered, ore reserves, capital investment, etc.) has no legal basis. You should consider some sort of net proceeds tax that could float with the variable metals prices.

The Mining Law of 1872 is constantly assailed as not providing environmental protection. A review of that law indicates that it was established to provide a system of administering ownership and orderly transfer of lands for development of mineral resources. It has no more to do with environmental protection than does the Constitution, which is not being assailed because it does not provide environmental protection. Both the Mining Law of 1872 and the US Constitution are living documents due to the fact that new requirements and legislation take effect. That does not mean that you throw them out. Take a look at the various permit applications, 43CFR3809 regulations and requirements of any mine and then tell me that there is no environmental protection. I would suggest that if you desire to change this mining law, then you should also

Robinson Nevada Mining Company, 4232 West White Pine County Road 44, P.O. Box 382, Ruth, Nevada 89319
Telephone (775) 289-7000 – Facsimile (775) 289-7103, 7349 or 7104
A Delaware Corporation – Filed in Nevada

consider reversing some of the earlier mining laws that granted private ownership of lands in Arkansas, Michigan and other States for mining purposes.

The existing environmental requirements are quite stringent for mines. If you desire to improve that system, consider the recommendations of the National Resource Council study performed in 1999, titled "Hardrock Mining on Federal Lands". This government funded study made several specific recommendations that could be implemented.

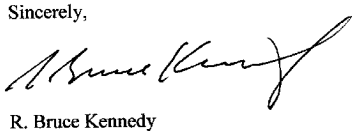
As a former BLM employee, I know that the issue of abandoned mine lands is a hot topic. However, did you know that up until the passage of FLMPA, that there was a requirement to maintain the mine workings intact as evidence of ownership? In other words, most of the old mine workings current status can be traced back to government requirements. I work for a 3 year old company that inherited a property that has been in operation for +140 years. We are trying to remediate many existing issues with conflicting requirements from State and Federal agencies with no recognition of our efforts nor coordination for a logical work plan. Efforts to provide incentives for reclamation of historic issues would work much better than punitive efforts on existing and compliant operations.

Clearly, the US mining industry is facing challenges due to critical employee shortages and foreign competition. The US needs a strong and stable supply of minerals to continue to develop a stable economy. The Hardrock Mining and Reclamation Act of 2007 is not the solution, it is punitive legislation looking for a problem that does not currently exist.

I urge you to <u>not</u> support this legislation.

Thank you,

Sincerely,



R. Bruce Kennedy
VP-General Manager

[Comments submitted for the record by Steven R. Koehler, Senior Geologist, Miranda Gold Corp., follow:]

NRD Energy Comments

From: Steve Koehler [madkoehler@frontiernet.net]
Sent: Wednesday, August 29, 2007 8:38 PM
To: NRD Energy Comments
Subject: H.R. 2262

Honorable Sir or Madam;

Hello, my name is Steven Koehler. I am a certified professional geologist with 18 successful years experience in the western United States gold exploration business. My employment in the mining and exploration business has afforded me the opportunity to work with stellar geoscience professionals from around the world, and knowledgeable professionals with the Bureau of Land Management and U.S. Forest Service. My career choice, along with being continuously employed, has allowed my family the ability to pay our taxes, accumulate savings and live debt free.

I am writing to speak out against the Hardrock Mining and Reclamation Act of 2007 (H.R. 2262) as it is currently written. I believe the language in H.R. 2262 will negatively impact the career choices and standard of living of: my friends and professional colleagues in the mining/exploration community and individuals holding jobs directly/indirectly associated with hardrock mining. H.R. 2262 is a punitive measure against the U.S. mining and exploration industry that will result in the curtailment or suspension of metals exploration and existing mining operations, and/or prevent the startup of new mines in the United States. It is my opinion that this initiative will weaken the United States as a world leader and cause unnecessary economic hardships to its citizens. Currently, the U.S. is having challenges dealing with higher prices and risky supplies for petroleum products. Imagine what will happen if this is the case for metals! The dependance on foreign suppliers for metals will place the United States at the mercy of third world nations for our natural resource needs. US citizens will pay more for groceries, utilities, vehicles and their homes if natural resources are not mined in the United States. Look around you and make a mental list of all the items you personally use on a daily basis that require metals to function properly (vehicle, house, roads/bridges, appliances, computer/internet, TV, jewelry, dental work/medicine, ...). Without metals and natural resources to meet current demand, the standard of living in the U.S. would drop significantly. Is this the economic future we want to leave the next generation?

H.R. 2262 is a step in the wrong direction for the well-being of our nation. The bill is not a fair and balanced document and it is a poor starting point for negotiations in the House and Senate. Some points of issue include:

- The 8% NSR gross royalty in the bill is excessive and will severely impact mine profitability and negatively impact the incentive for metals exploration in the United States. This royalty will result in a substantial loss of high paying jobs related to mining in rural communities throughout the western United States. In contrast to a draconian gross royalty, a "Nevada style" net proceeds payment would be a more appropriate way to provide the American public a fair return from mining on public lands. In fact, mining companies and employees are already adding value and a fair return to the tax base and GDP of the United States, without a 8% gross royalty.
- Provisions of the bill that dictate the periodic review and renewal of operating permits over three and ten year periods. The review and application for permit renewal will bring into question project tenure. This process will elevate risk in the investment community. Additional risk will make it more difficult for mining and exploration companies to raise capital for their business activities. Metals mining and exploration are inherently risky, please don't add more risk and uncertainty to the mining business or the United States economy.
- Existing state and federal regulations are successfully mitigating environmental and cultural impacts of exploration and mining. Regulatory provisions within H.R.2262 will add an additional

time consuming, costly and unnecessary level of regulation to an existing system of rules and regulations that work well.

In Summary, H.R. 2262 will: have a detrimental effect on the U.S. mining industry and our economy, increase our reliance on foreign imports for metals, institute an onerous and self-defeating tax increase due to a diminution of the revenue source, eliminate thousands of jobs across the western U.S., and will introduce additional economic risks to the United States. Revisions to the General Mining Law should encourage, not eliminate, responsible mining. Please, do not endorse the Hardrock Mining and Reclamation Act of 2007 (H.R. 2262) as it is currently written.

Sincerely,
Steven R. Koehler

Steven R. Koehler BSc, PGeo
Senior Geologist
Miranda Gold Corp.
310 Silver Street
Elko, NV 89801

775.738.1877 office
775.778.0768 fax
307.899.0207 cell
madkoehler@frontiernet.net

[A statement submitted for the record by Walter Martin, Geologist, follows:]

Statement submitted for the record by Walter Martin, Geologist

Chairman Costa,

Thank you for the opportunity to extend my remarks in further support of my oral testimony given in Elko, Nevada on August 21, 2007 before the House Subcommittee on Energy and Mineral Resources. My name is Walter Martin. I am a geologist with bachelor's and master's degrees of science in geology. I have more than 25 years of professional experience in minerals exploration and mining in the United States, and hold current mining claims that would be impacted adversely by H.R. 2262.

The General Mining Law implemented by Act of Congress in 1872 has been modified more than 50 times since its inception, by and through Congressional actions and administrative, or policy, modifications by various Federal agencies. This body of law has served the United States well. The replacement, rather than amendment, of the General Mining Law, especially with an unproved system, is imprudent. And mining is a prudent business for our nation. I urge this Committee to retain the General Mining Law, amending it where necessary, in the great tradition of our legislative process.

With that, I submit the following comments on H.R. 2262:

Section 101. Limitation on patents.

The right to guaranteed long-term land tenure is essential in order to secure the substantial capital required to construct modern mining operations. The limitation on patents section appears to terminate future secure tenure rights for mining operations on Federal lands. The capital source used by most mining companies, investment banking firms, require a stable land tenure position for a proposed mine in order to finance the tens to hundreds of millions of dollars needed to construct a modern minerals mine-and-mill operation in the United States. If patenting as presented in the current General Mining Law is not palatable, then provision in any revision of that law to allow sale of surface rights at market value needs to be enacted in order to provide a reasonable certainty to the banking community that the mining operations that have been financed will be able to continue operating and thereby repay invested capital at a market-consistent rate of return. The funds from such sales should be directed towards payment of general and administrative costs of monitoring minerals mining on Federal lands.

Section 102. Royalty.

The royalty provision specified in H.R.2262 Sec. 102 (a)(l) of 8 percent of the net smelter return (NSR) is too onerous for metals mining operations. Commonly, the royalties paid to claimants are no greater than 3 percent NSR. Even so, royalties of this magnitude are paid only to claimants like myself who have invested intellec-

tual, physical and financial efforts to identify and acquire locatable minerals that have potential to be economically recoverable. As such they have met discovery requirements, staked the mineralized area and have met at least the minimum financial and legal requirements to secure valid tenure to this ground. No provision is made in H.R. 2262 to establish any such identification and sequestering of valuable minerals by the Federal government to match current minimum industry standards for royalty provision. The Federal government's current role as a non-participating landowner would garner commonly no more than a 1 percent NSR (i.e., a 5 percent net proceeds interest). Basically, the 8 percent NSR proposed in this bill equates to 40 percent net proceeds interest. This amount could be available in a modern industry production agreement, but only to a fully participating minority interest party. This type of agreement requires weighted financial and technical participation by the minority party at every turn, or it suffers substantial subsequent dilution with each failed cash call, typically to a cellar value of approximately 5 percent net proceeds interest with a capped end value. No provisions exist in H.R. 2262 to provide participation by the Federal government in mining projects that would meet modern global industry standards to warrant payment of such a large royalty income.

Many States hosting metallic and non-metallic mining operations impose a severance tax on minerals production. Excessive additional royalties by the Federal government on mineral production on Federal lands will reduce the incomes of those States, whether by loss of industry or by loss of net income to the operations. In setting a successful Federal royalty, the most prudent track is to look at the States whose programs depend most on their mineral severance tax—they will be the most impacted and the first applicants for Federal relief funds in the event of loss of revenues due to Federal actions. Nevada, for example, has a 5 percent net proceeds tax on mineral production that contributes tens of millions of dollars annually to the State's general fund. Nevada would suffer severe adverse financial impacts if the proposed non-participating 8 percent royalty in H.R. 2262 were imposed on mining operations on Federal lands in Nevada. A Federal severance-based payment for extraction of minerals on Federal lands that is similar to Nevada's will least impact those States that depend on revenues from their respective mining severance taxes, yet will provide a long-term revenue stream to fund mining-related Federal programs. I urge the Committee to revise this bill or the General Mining Law to adopt Nevada's severance tax in lieu of H.R.2262's proposed 40 percent non-participating net proceeds interest.

Section 201. Lands open to location.

Mineral deposits that contain economically recoverable products are rare events geologically. The denial of mineral entry upon Federal grounds that have been selected for wilderness or wilderness study designation but not acted upon by Congress has long been a poor use of public resources. In abeyance of NEPA requirements, a dismaying number of such areas have not been characterized adequately (or at all) for mineral resource potential by qualified professionals. The tenet that wilderness selection is in the best public interest overlooks the highest and best return to the Federal government for land use. Wilderness areas cost the Federal government at least $30 for every $1 returned. No wars have ever been fought, nor human life lost, over wilderness. In contrast, mining, an example of competent multiple natural resource use, costs the Federal government a maximum of $1 for every $10 returned. Resource wars have been waged between nations throughout the millennia of human civilization, with staggering loss of human life. The denial of mineral entry to land that is improperly characterized as to its non-mineral character is a deplorable waste of natural, and potentially war-torn human, resources. I therefore urge the Committee to require stringent mineral evaluation of proposed wilderness withdrawals by qualified professionals, with payment for such activities to be made from 20 percent of the requested 5 percent net proceeds severance funds outlined in the previous section.

Title III. Environmental Considerations of Mineral Exploration and Development.

The current provisions of the Federal Land Management and Policy Act, the National Environmental Policy Act; the Clean Air Act; the Clean Water Act; 43 CFR 3809; 36 CFR 228; the Endangered Species Act; and practiced policies of the U.S. Bureau of Land Management and U.S. Forest Service are more than adequate to ensure ongoing protection of the environment and human health both during and after cessation of mining on Federal lands. Many States have their own requirements for environmental and health protection that must be met during and after mining operations, frequently in cooperation with Federal agencies by and through Memoranda of Understanding. Nevada, for example, has implemented competent

regulatory oversight through its Department of Environmental Protection's Bureau of Mining Regulation and Reclamation (http://wjywj1dep.nv.gov/bmrrA3miTO1.htm) that ensures environmental protection both during and after cessation of mining operations. In recognition of successfully established cooperative relations between States and Federal agencies, I urge that the Committee maintain the current practice in these matters, and that it therefore remove this section of H.R. 2262 from the bill, or in contemplated revision of the General Mining Law, not include the redundant legislation inherent by this section.

Title IV. Mining Mitigation.

Various States with mining and milling operations have implemented their own Abandoned Mine Land reclamation programs (AML). These AML programs are paid for by and through fees and mineral severance taxes. Nevada again is an excellent example of a State with such a program. Rather than create redundant efforts, the Committee is urged to consider supplementing State-based programs with matching Federal funds and provide service assistance only when requested. These programs should be funded by and through 60 percent of the requested 5 percent net proceeds severance funds outlined previously in comments on section 102.

Title V. Administrative and Miscellaneous Provisions.

Various Federal agencies' field offices already levy cost recovery fees and processing fees for land use. It is unclear what needs to be changed from current practice, if anything. Adequate penalties for malfeasance as "bad faith" operators are likewise in place elsewhere within Federal regulations and codes. Similarly, all entities conducting advanced minerals development activities on Federal lands are required to file action plans of one sort or another, as well as to bond these activities for reclamation costs. Notification of affected stakeholders, too, is required under Federal law (NEPA) for all but the most minuscule of minerals-related activities. Redundant legislative efforts by the Committee are unnecessary on these various matters.

Citizens' suits are particularly objectionable. Citizens as well as all other entities are given more than adequate opportunity during the NEPA process and under enforcement provisions of existing State and Federal environmental regulations to register their various objections re: mining and milling operations. It is untenable to think that Congress would enact or even consider legislation that would allow a single individual of unspecified qualifications to estop a fully bonded active mining and milling operation by simple whim. In addition, various existing provisions for legal action can already be implemented by persons with implied knowledge of malfeasance, including but not limited to professional monitoring by licensing entities (e.g., Federal and State Bar associations; State Boards of Engineers; State Boards of Geologists), qui tarn actions, and complaints to the Criminal Investigation Division of the Bureau of Land Management. Reporting and pursuit of action against felonious malfeasance appears to be required, for example, by 18 USC 4 (misprisionment codification). There is no need for a citizen's suit provision to be included in any revision of the General Mining Law given the abundance and adequacy of existing forums for registering personal resistance to land development and for reporting malfeasance on public lands.

Uncommon variety mineral materials currently are locatable. These unique materials form the essence of research and development efforts in the solution of various highly specialized industrial and civil development problems, including wastewater treatment; unique building materials; specialty filtration materials for medical treatment; specialty heat resistant materials for the national space program; fillers and extenders for specialty paints and plastics, including those used by the defense industries; and numerous other applications. Without the certainty of long-term land tenure provided by the General Mining Law, the research and development of new technological uses for these mineral materials are not likely to continue in the United States.

In addition, the development of new uses for uncommon variety minerals requires substantial lead-time to convince end markets to use the new materials. Manufacturers require proof of guaranteed long-term supply of the products before they will capitalize a new production line. The acquisition by proposed sale of uncommon variety minerals on Federal lands, as opposed to current acquisition by location, is not adequate to provide this assurance. Common variety sales contracts are issued at the whim of the Managers of the Field Offices of the pertinent managing Federal agencies, giving neither assurance of access nor continuity of material supply for manufacturers. A Federal common variety sales contract is often set up for 3- to 5-year terms, much too short a time for manufacturers to be comfortable with use of the new product. The proposed changes in H.R. 2262 do not provide for any ex-

tended lead time for product research and development, nor lead time for market development, nor extended contract times that would assure manufacturers of reliable supply of minerals products (20 year terms would be needed). This part of the modern mining laws work well for the United States; why try to change this? I urge the Committee to reject the proposed rescission of locatable uncommon variety mineral materials in any revision of the General Mining Law.

Conclusion of Witness.

The General Mining Law, as amended, has worked well for the United States. With the modest changes to it of fair-market sales of surface rights at mines, and a Federal 5 percent net proceeds interest that funds abandoned mine land reclamation and competent evaluation of mineral potential of Federal lands proposed for withdrawal, the General Mining Law will continue to work well for the United States into the next century. Thank you again, Mr. Chairman, for allowing me the opportunity to provide my insights to viable revisions and amendments to the General Mining Law. I appreciate your interest in this matter.

[A letter submitted for the record by John J. Renas, GIS Analyst, Spring Creek, Nevada, follows:]

NRD Energy Comments

From: John Renas [jren3@hotmail.com]
Sent: Wednesday, August 29, 2007 10:33 AM
To: NRD Energy Comments
Cc: jren3@hotmail.com
Subject: Comments on H.R. 2262, The Hardrock Mining and Reclamation Act of 2007

Dear Subcommittee Members,

I wish to submit comments for the record in regards to the Subcommittee on Energy and Mineral Resources hearing held in Elko, Nevada August 21, 2007.

My family, I and my community depend heavily on the exploration and development of mineral resources here in Nevada. If H.R. 2262 were allowed to become law, it would most definitely devastate our rural communities. I've seen what happens when mineral resource development suffers. I lived in Spring Creek, Nevada during the last bust cycle when gold dropped to $250.00 per ounce. After multiple operations laid people off, one out of every four houses were repossessed because people could no longer pay for them and there were no jobs whatsoever. Another 25% of the houses in the community were for sale but there were few if any buyers. Occasionally there would be a sale for 1/3 or less of what the seller owed on the home. If H.R. 2262 were to become law, there is no guarantee that the prices of the mined commodities will remain at the current levels. If gold were to drop to $375.00 and ounce tomorrow, we'd all be looking for jobs because our operating costs have increased by some 100% from 2002.

I am counting on the Subcommittee to make an honest representation of the people in the rural communities of America, and our nation overall. Keep in mind that if mining is reduced in this country, we will be at the mercy of other countries to supply the goods we require. Everything you wear, the car you drive, to the house you live contains or is produced on equipment made up of minerals. For example, the clothes you wear were seamed and stitched on machines which are made up wholly of mined minerals, primarily iron, nickel and aluminum. So please think about what such a devastating law would do to our country as a whole. We are already overwhelmingly in the grips of China and the Middle East. We need not hurt ourselves more.

Sincerely,

John J. Renas
GIS Analyst
137 Flora Court
Spring Creek, Nevada 89815
(775) 777-9683
Jren3@hotmail.com

[Comments submitted for the record by Ralph R. Sacrison, P.E., Sacrison Engineering, Elko, Nevada, follow:]

August 30, 2007

Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth HOB
Washington, DC 20515

Re: Hearing on Mining Law Reform, H.R. 2262, Elko, NV

Chairman Jim Costa
Eni F.H. Faleomavaega
Solomon P. Ortiz
Rush D. Holt
Dan Boren
Maurice D. Hinchey
Patrick J. Kennedy
Hilda L. Solis
Nick J. Rahall, II (ex officio)

Stevan Pearce
Bobby Jindal
Louie Gohmert
Bill Shuster
Dean Heller
Bill Sali
Don Young (ex officio)

Distinguished Representatives:

Thank you for the opportunity to address you in this matter, and manner. Chairman Costa and Representative Heller, thank you for the opportunity you afforded the community of Elko and the Great Basin through the hearing on August 21. I admire you for the professional and American courtesy you extended to Senate Majority Leader Harry Reid in welcoming him on the dais.

As a single parent and small businessman, my children are in large dependent on a robust mineral economy. Since they are young, and my daughter has special needs, it needs to be locally robust. I present my concerns also as a third generation mining professional, with thirty-one years experience across several states and countries.

My foremost concern with the current wording of H.R. 2262 is the tendency to fulfill the law of unintended consequences. I ask that you consider that deeply. Like agriculture, mining generates a number of jobs beyond those directly employed in the industry. The multiplier is approximately five jobs created to support one mining position. That fundamental is supported by the fact that less than 50,000 hardrock mining jobs provide the economic and literal foundation for our nation of 300 million.

Please consider that this economic multiplier works in both growing and receding economies. An 8% net smelter return royalty (Title I) essentially is confiscatory. What industries or professions can sustain that magnitude of burden and still have an actual profit margin? The induced loss of employment will extend far beyond the rare and often small mining communities.

The Canadian Province of British Columbia provides an example of a political entity which devastated its own vibrant industry by, yes, goring the golden goose. The province has since moderated its levies and policies, and joined the rest of Canada in robust mineral and economic development. Since we no longer

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have a U.S. Bureau of Mines, consult the Fraser Institute in Canada or the National Mining Association or Minerals Information Institute here in the States for relevant statistics and other examples.

Given the international nature of mineral commodities, what firms even would need to absorb that royalty cost? Perhaps it is telling that the multinational conglomerates were not present at the hearing on August 21. A studied review of their balance sheets will indicate the extent to which they are positioned abroad. They could shift production to avoid the more onerous aspects of H.R. 2262 with relative efficiency. Unless the House of Representatives intends to export more jobs and industries to other countries, please speak with Representative Heller about a net proceeds payment.

The ten year limit on operating permits (Title III) is financially unsound for mineral investment. Though cash flows in hardrock mining can be substantial, the payback periods often are concomitant. Domestic mining investment has been relatively soft over the last twenty years, and this will further reduce both that and international investment in domestic properties.

The environmental and other administrative provisions (Titles III, IV, and V) are blunt and misguided instruments at best. Many aspects already are achieved through the Clean Air Act, Clean Water Act, the Environmental Protection Act and the procedures and regulations of various agencies such as the Bureau of Land Management and the Forest Service.

Please bear in mind that all mining to date in our country's history has impacted less than 0.25% of our land. Our total paved area, only roads and parking lots, is estimated at 1.64%. That is almost seven times as much areal environmental impact as mines. Oh, and since 1974, approximately one-third of that mining-disturbed land (0.08% of the total land mass) has been reclaimed.

If you can't grow it, hunt it, or fish it, you must mine it. That is a fundamental character of civilization. It perhaps is even more true in our technological societies which rely so heavily on advanced materials, most of which are either metal- or petroleum-sourced, either in character or through their manufacturing process.

We are well in hand at sustaining our civilization with current regulations and taxation. Before you levy more burden on this industry, consider the course the energy industry has taken in moving refineries offshore. As you know, to an extent that evolution has come back to haunt the average American in the guise of recent fuel prices.

Mining is an industry which requires very long lead times. Whether in education and development of employees or exploration and development of properties, time and knowledge are fundamental. America already has lost many mining employees and opportunities to foreign competition. Please do not pass H.R. 2262 as written, as that will accelerate our industrial and infrastructure deterioration. Recovery from that will be long, further hindered by this bill.

Cordially,

Ralph R. Sacrison, P.E.

[Comments submitted for the record by Thom Seal, P.E., Ph.D., Mining-Mineral Process Engineer, Elko, Nevada, follow:]

Thom Seal, Ph.D., P.E.
Mining-Mineral Process Engineer
P.O. Box 6415
Elko, Nevada 58902
Thom.Seal@Newmont .com
August 25, 2007

Subcommittee on Energy and Mineral Resources
Comments on "H.R. 2262 The Hardrock Mining and Reclamation Act of 2007."
e-mail at: energyandminerals@mial.house.gov

Subject: Submit comments for the record on H.R. 2262.

I thank you for the opportunity to submit comments on the modification of the General Mining Law of 1872 via HR 2262. I did testify before the August 21, 2007 Subcommittee on Energy and Mineral Resources in Elko, NV. I have been mining for nearly 30 years, from small shovel and pick operations to the world's largest gold mining company. I am a Professional Engineer-Nevada #15921, Mining Engineering-Mineral Processing, and have earned a Ph.D. in Mining Engineering-Metallurgy. I have professional associations with the Society of Mining, Metallurgy, and Exploration Inc. (SME) and the Eastern Oregon Mining Association (EOMA).

It is important to recognize that mining in the USA is at a crossroads for future viability. Foreign competition has impacted the industry. Metals are sold internationally and their price is based on supply and demand not national royalty. The United States of America needs a source of strategic minerals. Currently mining and mineral processing is challenged with increasing mining costs and the lack of future professionals and mechanisms for developing new competitive technologies. I hope a revision to the mining laws will provide support for mining and mineral process education.

The mineral industry today faces extensive delays in complying with a mound of federal, state and local regulations, often administered differently from one location to another. The industry needs the support of the US government to encourage the mineral development, because our society and lifestyles depend on these natural resources. Mining permit uncertainty and delays reduce the incentives for mineral development, which must be addressed with any mining law modification. The vital mining area in NE Nevada could end up with only mining history like Searchlight NV.

Without mining reform to support and encourage the mineral industry, there is no reason to modify the 1872 Mining Law via HR 2262.

Thank You,

Thom Seal, P.E., Ph.D.
Mining-Mineral Process Engineer

[A statement and letter submitted for the record by Ben Shelly, Vice President, Navajo Nation, follow:]

Statement submitted for the record by The Honorable Ben Shelly, Vice President, Navajo Nation

Mr. Chairman and Distinguished Subcommittee Members,

Yá'át'ééh abíní. Yinishyé Ben Shelly. Good morning. My name is Ben Shelly and I am the Vice President of the Navajo Nation. The Navajo Nation extends into the states of Utah, Arizona and New Mexico, covering over 27,000 square miles of un-

paralleled beauty. Diné Bikéyah, or Navajoland, is larger than 10 of the 50 states in America.

The Navajo Nation has fought on ongoing battle against uranium mining on our land for over fifty years and the impact is still being felt today. We are not only concerned about mining on Navajo land but also on lands near our Tribal lands.

Our land is dotted with contaminated tailings and hundreds of abandoned mines that have not been cleaned up. Our people have inhaled radioactive dust from the waste piles, drank contaminated water from abandoned pit mines and watered our herds with contaminated water. Our children have played in piles of mill tailings and spent mines. Our people suffer from high cancer rates and respiratory problems—cancer rates among Navajo teenagers living near mine tailings are 17 times that of the national average.

There has been a rush over the past five years to claim metals on public lands. Many of the claims are near such national treasures as the Grand Canyon and tribal lands. And, despite the ban on uranium mining on Navajo land, the mining industry is back, staking claims, buying mineral rights and applying for permits on the edge of Navajo land. They have made no secret of their desire to mine within the reservation also.

H.R. 2262, the Mining Law Reform bill, will help Tribal Nations in many ways. It makes it a priority to protect special places like sacred sites. It sets strong public health, environmental and cleanup standards. It creates an abandoned mine fund and it insures that our voices are heard and valued when mining decisions are made.

I have joined numerous Navajo Nation Tribal officials and community leaders in calling upon our own Congressman, Rick Renzi, to assist in passing this important legislation. With your permission, I'd like to include copies of our letters to him here for the record.

We are today calling upon your Subcommittee to move quickly on H.R. 2262 so the outdated and unfair mining law can be reformed at long last.

Thank you for giving me the opportunity to submit this statement today.

June 25, 2007

The Honorable Rick Renzi
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Renzi:

The Navajo Nation greatly appreciates your support on uranium mining issues. Our work is not done.

For many, many years now we have dealt with the harmful impact of mining and abandoned mines on Navajo land, water and wildlife and on the health and safety of our people. As we look to the future, we are fearful of even more problems if the outdated 1872 law governing metal mining is not changed and strengthened. I hope you will co-sponsor H.R. 2262 to make the mining law current.

Metal claims on public lands have increased substantially in the past five years. There are claims near the Grand Canyon and tribal lands. Even with the Navajo Nation's uranium ban, the industry is staking claims, buying mineral rights and applying for permits on the edge of Navajo land and would still like to mine on the reservation also.

The Mining Law Reform bill includes many good provisions: it restricts new mining claims on lands identified as sacred sites; it includes strong public health, environmental and cleanup standards; it sets up special funds for the cleanup of abandoned mines and for assistance to communities impacted by mines; and, it makes sure Native American voices are heard and valued when mining decisions are made.

Continuing to apply 1872 standards to an industry which has such an impact on sacred land, water and people today makes no sense and it's unfair. Powerful interests are reaping all of the benefits of our precious resources while the powerless suffer the consequences.

Again, I thank you for the courage to stand with us and against such powerful interests in the past. Please do so again and co-sponsor the 1872 Mining Law Reform bill.

Respectfully,

/s/ Ben Shelly

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