Committee on Resources

Subcommittee on Energy & Minerals Resources

Witness Testimony

TESTIMONY OF
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PRESIDENT AND CHIEF EXECUTIVE OFFICER
THE DOE RUN COMPANY
Before the
ENERGY AND MINERALS RESOURCES SUBCOMMITTEE
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Madam Chairman, Members of the Committee, my name is Jeffrey L. Zelms. I am the President and Chief Executive Officer of The Doe Run Company. I would like to begin this testimony with a brief overview of the problem and then provide background on Doe Run's mining activities and the importance of mining on public lands in Missouri. I will then describe the threats to our mining operations from new policies of the Department of the Interior and will conclude with recommendations for this Committee to pursue.

OVERVIEW OF THE PROBLEM

Doe Run is well-acquainted with the effort of the Department of the Interior (DOI) to foreclose mining opportunities on public lands. For over 40 years, Doe Run, and its predecessor St. Joe Minerals Corporation, has been involved in mineral exploration and development in the Mark Twain National Forest in Missouri. Mining is one of the leading multiple use activities in the Forest, recognized and provided for under the U.S. Forest Service (USFS) Land and Resources Management Plan.

Despite this long history and established basis under the management plan of the responsible agency -- USFS -- we suddenly find our prospect for future mining activity, if not our existing operations, at risk of termination based on the single-minded goal of an agency with no role in the Mark Twain -- the National Park Service (NPS). NPS has taken it upon itself to seek to transform the Mark Twain into a mining-free zone.

NPS has done this on the basis of hypothetical, if not illusory, threats to the Ozark National Scenic Riverways (ONSR) miles away from mining activities inside the National Forest.

As I will discuss later in my testimony, NPS has been aided in this quest by a new legal interpretation of an old law by the Department of the Interior's (DOI) Solicitor. I believe that this interpretation, although less understood than other recent mining opinions, could well have a greater effect on more users of the public lands in this country. This new interpretation, if left to stand, will greatly expand

the power of NPS over a wide range of multiple use activities on public lands. It will, in effect, allow NPS to veto virtually any resource utilization activity that the Secretary of the Interior plays a role in authorizing so long as there is any potential risk to any unit of the National Park System.

This result is all the more disturbing because the mining activity at issue in our case was the mere issuance of prospecting permits. No environmental risk was present. Doe Run conceded it would not assert any property right or right to a lease vested by the permits. Doe Run also agreed that a full EIS would be prepared before lease issuance. Still DOI forged ahead with its goal of shutting down future mining in the Mark Twain and without any consultation with Congress. Unless Doe Run agreed to concede for all time the NPS right to veto a lease or mine plan, our permits would have been denied based on a one-sided record developed by NPS. Rather than allow DOI to create this precedent, we withdrew our prospecting permits.

Needless to say, this development is of concern to a wide spectrum of resource users who rely upon multiple use lands to produce commodities that are of great value to the American economy. Through my testimony, I ask this Committee to take a hard look at this attack on mining and multiple use of public lands. I also ask you to carry out the measures necessary to restore balance to federal land management policy.

MINING ON MISSOURI PUBLIC LANDS

Doe Run's primary mining activity in Missouri is the recovery of lead along with copper and zinc. Lead is an important mineral for the United States domestic economy. It is the metal used in automobile batteries which are recycled at a rate in excess of 98%. Lead also provides x-ray shielding, is used in electronics, and for other numerous safe uses.

Lead mining has a long history in Missouri, dating to the 1850's. All of this mining now takes place in the "Viburnum Trend" or "New Lead Belt." This 40-mile long mineralized zone has been in production since the late 1950's, and it produces over 90% of the domestic primary lead supply. At present, there are 8 underground mines and six mills in the Trend. The mineralization in the Trend is the continuation of that found in older former mining areas to the east. In addition, there are two primary lead smelters in Missouri fed by lead concentrates from these mines.

One need only look at some of the key economic factors at play in mining in the Mark Twain to appreciate why this multiple use activity should not only be allowed to continue, it should be promoted. For example, in the last ten years, Doe Run alone has: 1) supplied 10,000 person-years of direct employment; 2) paid $450 million in payroll; 3) paid $49 million in taxes in Missouri; 4) paid $34 million in federal royalties; 5) produced 45 million tons of ore; and 6) produced 2.2 million tons of lead. Twenty-five percent of the federal royalties go to the State of Missouri to support public education and the remainder goes to the Mark Twain for its maintenance and operations.

While all of these positive contributions were being made over many years, we forged excellent working relationships with USFS and the mineral management agency, the Bureau of Land Management (BLM). Through this ongoing, consultative management approach, Doe Run has, until last year, been able to work with the responsible federal agencies to ensure that these highly valuable mineral-related activities can continue and expand without responsible environmental management. Our track record is testimony to the success of this effort.

However, NPS has continuously objected to our activities, and has elected to work with environmental groups who oppose our activities and to seek controversy rather than consensus, dispute rather than dialogue.

Exploration for additional ore bodies in areas geologically similar to existing mining locations is, of

course, part of the normal operations related to mineral utilization. As ore reserves in an active mining area decrease, this exploratory work becomes increasingly important. If the benefits cited above are to continue, we must know if the resource exists. To find this out, we need to prospect. This prospecting activity -- which involves the drilling of core sample holes only a few inches in diameter and the temporary disturbance of a very small drill site -- has been conducted time and again in the Mark Twain -- over 6,000 such holes since 1952 and over 300 in the very area that NPS now objects to. No party seriously claims these activities cause any environmental impact of concern.

Apparently concerned that Doe Run's prospecting would show that a valuable resource existed and that mining could continue in the Mark Twain as it has for decades, multiple use opponents -- including NPS -- sought ways to block our program at every step in the process. One such approach was to argue -- against the views of BLM, USFS, and us -- that the issuance of a prospecting permit would compel the issuance of a lease and that full-scale mining would necessarily result from the issuance of a simple prospecting permit. If the permit is issued, NPS and others argued, a mine would result without any additional opportunity for agency review and consideration of environmental impacts. Their arguments are patently incorrect but, nevertheless, set the stage for the involvement of DOI policy officials and the issuance of the Solicitor's opinion.

NPS VETO OVER MULTIPLE USE ACTIVITIES

NPS prevailed in getting its legal issue addressed. The Solicitor concluded that NPS might be right on the property rights theory, and as a result DOI should consider the impacts of full-scale mining at the prospecting permit stage. Doe Run immediately took this issue off the table, however, by agreeing to waive whatever property rights it may be entitled to. This was no major concession for us, however, because we all along agreed with USFS and BLM that no such rights resulted from the mere issuance of a prospecting permit. We also agreed to an EIS prior to lease issuance, one that would have to consider the impacts of full-scale mining and the costs of mitigation to eliminate any threat to the Ozark National Scenic Riverways (ONSR). In this manner, we completely resolved the issue that NPS and other opponents of mining had set forth.

Apparently, this was not good enough for DOI. Doe Run also was to become the "test case" for DOI's new interpretation of 16 U.S.C. section 1a-1, a law enacted in 1978 as part of the expansion of the Redwoods National Park.

This provision reads:

> **"The authorization of activities shall be construed and the protection, management, and the administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."**

Although DOI had many opportunities to interpret this provision in the past to apply to activities occurring outside parks that could impact the resources inside such units, it had always declined to do so (including recently in connection with the New World Mine outside of Yellowstone National Park). Apparently, DOI saw Doe Run and the Mark Twain as an opportunity to apply its new theory.

Under the Solicitor's new interpretation, as set forth in an April 16, 1998 memorandum, the Secretary must balance the potential impact to the park against the degree to which the multiple use activity has been "directly and specifically provided for by Congress." In the case of Doe Run's activities, the Solicitor concluded that because a lease would be required after a prospecting permit was issued and there was a theoretical possibility that mining on the leased lands could cause an adverse impact to the ONSR, the first part of this balancing test weighed solely in favor of permit denial. He then

concluded that, under the second part of the balancing test, mining was in no way provided for in the Mark Twain. Hence, the writing was on the wall -- Doe Run would always lose under the Solicitor's test.

Doe Run made it clear it did not agree with this interpretation. But we also made it clear that we had no reason to fight this fight -- we just wanted to prospect. So we agreed to let DOI maintain this view and assert that section 1a-1 applied to our activities. We even agreed to accept the proposition that section 1a-1 applied to activities outside of parks, although we consider that conclusion to be wrong. But DOI also insisted that we stipulate in the permit itself that mining was in no way "provided for" in the Mark Twain. Of course, this was a position we could not agree to. It was wrong as a matter of law. Mining is specifically and affirmatively authorized on the Mark Twain and Weeks Law acquired lands in 16 U.S.C. § 520. Mining is also provided for under other statues governing management of national forest lands and laws directing the Secretary of the Interior to encourage and support mineral exploration and development, including the Mining and Mineral Policies Act of 1970, as amended. The DOI position would seriously stack the deck against lease issuance. As explained in greater detail in the letter to Secretary Babbitt I have recently sent, and which is enclosed as an exhibit to this testimony, Doe Run therefore was compelled to withdraw its prospecting permit applications.

Although this step prevented us from moving forward with exploration, it also apparently pulled the rug out from underneath the effort of those who sought to shut down mining in the Mark Twain. The NPS and environmental groups, have now written to Secretary Babbitt asking him to withdraw these lands from mining. The requests are broad enough to potentially effect even existing mining operations. When the Missouri delegation wrote to the Secretary to express their objection to such action, the Secretary responded, in effect, he will do whatever he wants.

As a result, the public would be denied the right to know what mineral wealth underlies Mark Twain lands. It then follows the public could be denied significant future federal royalties, jobs, public schools support, financial support for the National Forest, tax benefits, and a secure domestic source of an important mineral.

Of even greater concern is the potential application of the DOI view of section 1a-1 to other multiple use activities. Although DOI may argue that the Doe Run situation is unique, there is no escaping the fact that the laws that govern most other multiple use activities on public lands are no different than the mining law at issue in our case. Simply compare 16 U.S.C. § 520, the law construed by the Solicitor as governing our mining in the Mark Twain, with other federal laws such as the Mineral Leasing Act of 1920, Mineral Materials Act of 1947, Federal Land Policy and Management Act, the Multiple Use-Sustained Yield Act, the National Forest Management Act, and the Taylor Grazing Act. When this is done, it will become clear that any activities authorized by these laws would also not be considered under the solicitors opinion to have been "directly and specifically provided for" under section 1a-1. Hence, if virtually any activity involved would have any potential to impact a park -- even in as remote and speculative a way as our prospecting activity would -- then the Secretary would be compelled to prohibit that action under this new section 1a-1 test. It does not take a crystal ball to foresee how this position will be used by opponents of resource development and other activities as a tactical weapon to turn multiple use lands into a single purpose, de facto conservation system units.

REQUESTED ACTION

In closing, I will put DOI's treatment of our prospecting permit in its proper perspective. No doubt, DOI will claim, as it has since we withdrew our applications, that it had to take the steps it did to protect the federal government from a huge claim for property rights compensation and to ensure that the ONSR would not be harmed by mining.

Neither assertion is valid. Doe Run was not seeking to open a new mine. Nor were we seeking a lease that could lead to a mine. We simply were attempting to explore federal lands to determine if they contained mineral resources of sufficient value to justify proceeding with the request for a lease. We agreed to every stipulation DOI requested to separate exploration from leasing, including a waiver of property rights. All potential impacts on the ONSR and other environmental values would have been identified and reviewed. Any mitigation to avoid those impacts would have been considered and required of us, as appropriate. If those measures made the mine uneconomic, the lease would not result.

Clearly, this issue is NOT about the threat of mining to the ONSR. And it is NOT about a raid on the U.S. Treasury to pay for property rights. Instead, as the record of our prospecting permit applications exposes, it is about the attempt of DOI to shut down future mining in yet another location on public lands set aside for multiple use. And it IS about DOI's attempt to establish a sweeping new precedent that will give National Park System values and purposes precedence over a host of resource utilization activities -- not just mining -- even on the very lands set aside for such uses.

If DOI is truly interested in fair and balanced management of the entire federal estate, it would have allowed us to explore, subject to the kind of stipulations I just identified. After such exploration, Doe Run and the federal government would know the nature, extent, and value of the royalty-producing minerals in the Mark Twain. Such information also would allow for a realistic assessment of whether a mine is realistic and where it should be located, thereby making it possible to conduct a meaningful environmental review. Then a truly informed decision could be made whether to allow future mining -- a decision that would weigh the value of the resource against the potential environmental impacts.

Rather than opt for this common sense approach, DOI has insisted that even before this information is gathered, Doe Run must accept an unprecedented -- and highly questionable -- legal theory. In doing so, DOI is holding for ransom, at a price no rationale resource user would pay, the key to information that is in furtherance of the public interest about the value of Mark Twain minerals.

All we request is the right to undertake low impact mineral exploration. I hope that this Committee will help us to achieve this result.

Mr. Chairman, members of the Committee, in the other body, Sen. Harry Reid of Nevada, on July 27, 1999, made the following statement on the floor.

Secretary Bruce Babbitt is only going to be Secretary of the Interior for another year and a half. He is not willing to go through the legislative process. What he wants to do is legislate at the Department of Interior, down at 16th Street or 14th Street, wherever it is. He is legislating down there, and he has admitted it.

Secretary Babbitt has indicated he is proud of his procedure and proud of the way he is doing it. This is what he has said; ". . . We've switched the rules of the game. We're not trying to do anything legislatively."

Here is what else he says; " One of the hardest things to divine is the intent of Congress because most of the time . . . legislation is put together usually in a kind of a House/Senate kind of thing where it's [a bunch of] munchkins . . ."

The munchkins, Mr. President, are you and me. He may not like that, but I think rather than taking an appointment from the President, he should do as the First Lady and run for the Senate and see if he can get it changed faster.

Our country is set up with three separate but equal branches of Government. The executive branch of

Government does not have the right to legislate. It is as simple as that. What has been done in this instance is legislating. That is wrong.

What we are doing--and that is what this debate is all about--is not changing anything. We are putting it back the way it was before he wrote this opinion--he did not write it; some lawyer in his office wrote it--overturning a law of more than 100 years.

All these pictures are not the issue at point. I do not think any of my colleagues will agree that President Clinton or any of his Cabinet officers or anybody in the executive branch of Government have the legal ability to write laws. That is our responsibility, and that is what this debate is about today.

Mr. Chairman, the executive branch's interpretation of 16 U.S.C. §1a-1 is a thinly veiled attempt to frustrate Congress's intent when it created multiple use lands. This interpretation threatens every user of federal use lands. It puts all of us in the position of being subject to an interpretation that is without boundaries and leaves executive branch decision-making outside of the process of public debate.

I would ask this Committee to take up this struggle. I would ask this Committee to draw a bright line and say that without Congressional consultation the executive branch should not attempt to usurp Congressional powers. I would ask this Committee to conduct additional hearings into this matter to see how its application could devastate public land use and investigate this interpretation. Come to Missouri and let us show you that we are an environmentally conscious company that is trying to do the right thing for this nation, our state and the environment.

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