



Mr. Chairman, my name is Roger Featherstone. I am the Southwest Circuit Rider for EARTHWORKS. I cover Arizona, California, Colorado, Nevada, New Mexico, and Utah from my office based in Tucson. I would like to start by thanking Chairman Grijalva and Chairman Costa for holding this important hearing.

EARTHWORKS is a non-profit, non-partisan, environmental organization dedicated to protecting communities and the environment. Our national office provides support to citizens across the country and around the world. Our field offices in Arizona, Montana and Colorado assist communities throughout the western United States concerned about the impact of mineral development in their backyards. EARTHWORKS supports responsible mining policies and practices: responsible mining policies that give taxpayers a fair return for valuable land and mineral assets, and that eliminate government subsidies to mine on public lands; responsible mining policies that require mining companies meet adequate environmental protection standards; and responsible mining policies that recognize that on some public lands there are resources, and other uses, that may be more valuable than mining, including the protection of environmentally significant areas.

EARTHWORKS (formerly known as the Mineral Policy Center) has been working to reform hardrock mining policies and practices in the United States since we were founded nearly 20 years ago. While this is a long time, it's not nearly as long as the major statute regulating hardrock mining on our public lands has been on the books. The General Mining Law was signed by President Ulysses S. Grant almost 135 years ago. Over the last two decades, EARTHWORKS has testified before Congress numerous times on the need for mining law reform and I am pleased to have the opportunity to do so again at this Field Hearing.

One hundred and thirty-five years is too long. It is time to reform the 1872 Mining Law, a relic of a bygone era – when mining was a pick and shovel affair, when the frontier was still open and “Manifest Destiny” was this country’s creed. A product of its time, the mining law was written to encourage the development of the mining industry, and the settlement of the West.

Today, the prospector’s pan has given way to giant earth-moving machines that can literally crumble mountains and dig pits the size of small cities. Prospecting by hand for copper has given way to the use of lethal chemicals such as sulfuric acid that leach microscopic flecks of ore from massive piles of pulverized rock. Today’s prospectors are multinational corporations and their mine sites occupy many thousands of acres of our public land.

Under the federal government’s current interpretation, the 1872 Mining Law elevates mining as the highest and best use for public lands. As such, federal land managers give preference to mining over all other land uses – from recreation to clean water to hunting. This leaves places

like the Santa Rita Mountains and countless critical watersheds, cherished recreation areas and vital wildlife corridors across the West in danger from mineral development.

The mining companies argue that there are technical and engineering solutions to many of the environmental problems that mining can cause, but technical solutions are only part of the answer. They are not enough to fully address the broader environmental, economic, social, and cultural issues that this subcommittee, and all members of Congress, must grapple with.

It is one thing to design a safe and efficient mine, it is quite another to design public policy that results in good decisions about the use of public land and resources. Good public policy must provide a basis for weighing environmental, social, economic, and cultural issues, as well as technical issues. The experience in the Santa Ritas illustrates the need to reform the Mining Law of 1872.

The Scenic Santa Ritas: Not the Place for a Mine

Mining companies have used the 1872 Mining Law to threaten the Santa Rita Mountains in the past, and citizens of southern Arizona have twice rejected an open pit copper mine in the area as a bad idea. In 1970, the Anaconda Copper Company proposed a land exchange to obtain public land in the Santa Rita Mountains for a copper mine. Through a series of mergers and name changes, the proposal was resurfaced by ASARCO in 1995.

EARTHWORKS assisted the local citizens group, Save the Scenic Santa Ritas, and others in fighting the ASARCO proposal a decade ago because it was a bad deal for the land, the community, and the economy. What was true in 1998 when ASARCO withdrew their proposal is even truer today.

The Santa Rita Mountains are important for bird watching, hiking, picnicking, off-road vehicle use and many other forms of recreation. Tucsonans flock to the Santa Rita Mountains to escape the hustle and bustle of the city and the summer heat.

Pima County has worked hard to bring a wide variety of stakeholders together to create the Sonoran Desert Conservation Plan to protect critical open space south of Tucson. The Rosemont Mine is proposed within the Plan's conservation area and is incompatible with the plan's goals.

The mining industry has been using provisions of the Mining Law to take the copper resource out of the public trust. Over the years, nearly 2,000 acres of public lands have been patented under the 1872 Mining Law by the succession of companies attempting to mine the Rosemont Ranch area.

Now, Augusta Resource Corporation (Augusta), a small Canadian mining company who has never operated a mine, has submitted a Plan of Operation to the U.S. Forest Service to open a large copper mine (Rosemont Ranch) in the Santa Rita Mountains south of Tucson.

Potential Impacts to the Rosemont Valley from Open Pit Mining

Air Quality: The area currently has excellent air quality. Citizens of Green Valley or Winkelman can graphically demonstrate what dust blowing from tailings and waste piles have done to their communities. Prevailing winds would blow dust from a mine at Rosemont Ranch toward major new residential developments east of the Tucson basin. Air quality in the National Forest and surrounding residential areas would be degraded by both dust and truck exhaust associated with mine operations.

Noise: The impact from daily blasting at the proposed mine would be the equivalent of daily sonic booms to nearby residences, wildlife and recreational users in the National Forest.

Scenic Vistas: Highway 83 (which would become the major access route for any mine) is one of Arizona's few designated scenic byways. The current view to motorists is of grasslands, rolling hills dotted with oak trees, and the dramatic ridge line of the Santa Rita Mountains. The proposed mine would be visible from State Highway 83 for 3 miles out of the 24-mile trip from I-10 to Sonoita. This 3-mile segment includes an overlook and is one of the most scenic sections of the highway.

Traffic Hazards: Highway 83 was not designed to service large scale industry. Tourist traffic, commuters, bicyclists, and school buses would share the narrow and winding road with mine traffic, including ore trucks and vehicles carrying heavy construction equipment and explosives for blasting.

Property Values: The lands surrounding the proposed mine have experienced a rapid increase in new residential development including high dollar ranchettes. Sonoita Valley is currently a weekend tourist destination. A large nearby mine could disrupt the local economy and create a boom-bust economy typical of western towns adjacent to large mining operations.

Recreation: As recreational uses of the Rosemont Valley increase, open space becomes more valuable. Loss of public land from a large mine would decrease the quality of recreational experiences and create possible conflicts between recreationists and growing subdivisions. Mountain bikers, birders, hikers, off-highway vehicles, bicyclists, and hunters all currently enjoy the Santa Rita Mountains but would likely find a large open pit mine in the area incompatible with their activities.

Wildlife and Wildlife Habitat: Well established wildlife movement corridors would be disrupted by an open pit mine. This would potentially impact endangered, threatened, and candidate species, in addition to priority vulnerable species or species of special concern.

According to the Arizona Game and Fish Department, 10 Priority Vulnerable species are known to occur in the Rosemont Ranch area: the Pima Pineapple Cactus (*Coryphantha scheeri robustispina*) and the Lesser Long-nosed bat (*Leptonycteris curasoae yerbabuena*), which are endangered; the Mexican Long-tongued Bat (*Choeronycteris mexicana*), the Western Red Bat (*Lasiurus blossevillii*), the Chiricahua Leopard Frog (*Rana chiricahuensis*), which are threatened;

the Lowland Leopard Frog (*Rana yavapaiensis*), the Yellow-billed Cuckoo (*Coccyzus americanus*), which is a candidate for listing as a threatened or endangered species, the Giant Spotted Whiptail Lizard (*Cnemidophorus burti stictogrammus*), the Rufous-winged Sparrow (*Aimophila carpalis*), and the Bell's Vireo (*Vireo bellii*).

Economics: Since the early 1970's the mining industry's contribution to Pima County's economy has diminished considerably while jobs dependant on a clean and healthy environment have increased. For example, in 1970 the mining industry employed 6,972 people in Pima County. By 2000, the number of mine employees in the County had dwindled to 2,476. In contrast, in 2001, 8,541 people were employed in Pima and Santa Cruz Counties in the recreation industry. Possible economic benefits from new large mines in the Santa Ritas would be offset by the negative impacts to tourism-related businesses dependent on the area's scenic beauty. Any possible economic benefit from the proposed mine could be temporary given the normal boom-bust cycle of major metal mines in the western US.

Water: Leaching of tailings piles or waste dumps, and leaks from other facilities are common occurrences at mine sites. This could result in the release of toxic materials into ground and surface waters draining into nearby riparian areas such as Davidson Canyon. Not only is a loss in water quality a potential problem from this mine proposal, so is a reduction in water quantity. It is likely that a large open-pit mine would dewater the surrounding watershed.

The potential for water contamination is of particular concern in light of groundbreaking research released last year. In a pair of reports, *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements*, and *Predicting Water Quality at Hardrock Mines: Methods and Models, Uncertainties, and State-of-the-Art*, authors Jim Kuipers P.E. and Ann Maest PhD revealed that 76% of studied mines breach water quality standards, despite predicting compliance during the mine permitting process. These reports highlight the obvious: because mine proposals MUST predict compliance with water quality standards in order to be permitted, they always do – no matter the proximity to water resources, no matter the potential for leaching of toxic contaminants.

Permanent Protection for the Santa Ritas

The long term solution to protect the Santa Rita Mountains is comprehensive reform of the 1872 Mining Law. However, the Santa Ritas are in need of protection while full reform is debated. EARTHWORKS urges the U.S. Congress and/or the U.S. Secretary of the Interior to permanently withdraw federal public lands in the Santa Rita Mountains from mineral entry and to do so as soon as possible to preserve the status quo for all time.

Moreover, EARTHWORKS favors a legislative solution that withdraws all of the federal public lands in the Santa Rita Mountains as well as federal public land to the south into Santa Cruz County from mineral development. It is clear that the citizens of Pima and Santa Cruz Counties have spoken about the need for protecting the Santa Rita Mountains from irresponsible mining proposals. Throughout this issue, one theme continues to ring true: so long as public lands of special concern are not placed permanently off-limits, the public, decision-makers, and mining

companies will chew up a lot of time, money, and energy fighting over the inevitable proposals to mine the area that recur again and again.

Real Reform of the 1872 Mining Law

Comprehensive reform of hardrock mining law in the United States must include provisions that protect special places from irresponsible mining. Reform of the mining law must give land managers the ability to deny a mine proposal if there are other important resource values that could be damaged by a mining operation. Mining Law reform should balance mineral development with other land values in the following ways:

1. Wilderness study areas, lands recommended for wilderness designation, lands managed as roadless areas, lands in the Wild and Scenic River System or recommended for such, lands administratively withdrawn or segregated, lands surrounding National Conservation Areas, lands proposed as roadless areas, and sacred sites all should be off-limits to mineral exploration and development. In addition, important lands such as those included in Pima County's Sonoran Desert Conservation Plan should also be off-limits to mineral entry.
2. When a mine is proposed, land management agencies should review the land involved to ensure that it is an appropriate use of the land, given the other competing demands for the public lands resources.
3. Land managers need the authority to deny mine permits if an irresponsibly designed mine is proposed on public lands or outstanding resource values are at risk.

Under current law, environmental standards written specifically for mining are weak or non-existent. For example, the Clean Water Act does not protect groundwater from mining pollution and lacks a definition of how to reclaim a mine. Relating specifically to the Santa Rita Mountains, there are no protections against a mine permanently altering the water table surrounding the mine.

Comprehensive reform should balance the demands for minerals with the public's demand for the long term use of the land by:

1. Preventing significant, permanent and irreparable damage to our public lands. If a proposed mine would cause significant, permanent and irreparable damage, the Secretary of the Interior should deny the mining operation.
2. Ensuring adequate reclamation. A reclaimed mine site should be restored so that it can sustain either pre-mining uses, or uses conforming to the applicable land use plan.
3. Safeguarding surface and ground water during and after mining. Operations should minimize damage to surface and groundwater resources, and restore pre-mining hydrological conditions.

Comprehensive reform needs to protect the American taxpayer. The 1872 Mining Law still allows multinational mining companies to buy (patent) mineral bearing public land for less than \$5.00 per acre – although the annually renewed patenting moratorium has stopped new patents since 1995. It is important to note that the private land where Augusta would like to dig its open

pit at one time was public land, but was sold by the federal government for \$5.00 an acre under the Mining Law.

Under the 1872 Mining Law, mining interests have enabled an area roughly equivalent in size to the state of Connecticut containing mineral values exceeding \$245 billion to be patented. Reform of the 1872 Mining Law needs to bring an end to this practice and keep these resources in the public domain.

Current law allows extraction of public minerals from federal public lands without payment to taxpayers. A royalty needs to be established on the removal of minerals from public lands. BLM estimates that \$982 million in hardrock minerals were taken from public lands in 2000. Industry paid no royalty for those minerals. Coal, oil and natural gas extractors pay between 8% and 12.5%. A similar return to the American public for minerals taken from public lands is reasonable for hardrock mining companies to pay as well.

The Interior Department mining regulations contain provisions enacted in 2003 that require mining companies to post bonds to cover the full costs of mine clean ups. However, the regulation no longer provides clean up standards. Without such standards, it is unclear exactly what such reclamation bonds will pay for, and taxpayers may still be exposed to liability in the future. Reclamation bonds should be paid in cash, up front and in an amount that would fully cover third party reclamation costs. The recent bankruptcy of ASARCO is a painful reminder of the danger of not having adequate and liquid reclamation bonds.

Comprehensive reform needs to recognize the ongoing social and environmental costs of abandoned mines and create a mechanism to clean up the mining industry's historic messes. EARTHWORKS estimates that there are more than 500,000 abandoned hardrock mines in the United States that will cost between \$32 and \$72 billion dollars to reclaim. Currently there is no funding source for abandoned hardrock mine reclamation. True reform needs to include a fund mechanism and a process for reclaiming abandoned mines. For example, all revenues from royalties and fees could go to an Abandoned Mine Lands (AML) fund. The cost of processing permits should be paid by the mining industry. Priorities should be set to ensure public health and safety from surface and groundwater pollution; general public health and safety; and the restoration of land, water, fish and wildlife resources.

Finally, comprehensive mining law reform requires substantially better industry oversight, including the following concepts:

- The Secretary of the Interior should use all legal powers available to prevent mining in protected areas.
- Failure of a mining company to address a violation should require the Secretary of the Interior to stop operations causing the violation.
- Regular inspections should be permitted without advance notice. They should occur at least once per quarter. The public should be allowed to request an inspection.
- Violators should be fined an amount that would deter large international corporations from further violations.
- Citizen suits should be permitted.

- Operators that currently violate laws should not receive new permits. Past law-breakers should only receive a permit if their past violations are not part of a willful pattern of abuses.

EARTHWORKS encourages the Natural Resources Committee to introduce, debate and pass an 1872 Mining Law Reform bill that contains all of the points mentioned above. EARTHWORKS further encourages the Natural Resources Committee to introduce, debate and pass a bill to withdraw the remaining federal public land in the Santa Rita Mountains from mineral entry.

Passage of a comprehensive reform bill can help ensure that future generations will enjoy the wonders of the Santa Rita Mountains that we in southern Arizona now have available, and that other outstanding values of the public lands will remain for generations to come.

Respectively submitted,

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