Committee on Resources

Subcommittee on Energy & Mineral Resources

Statement

TESTIMONY OF
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for
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Thank you for the opportunity to present written and oral testimony regarding the effect of federal mining fees and proposed federal mining policies and royalties on state and local revenues and the mining industry.

My name is Craig Haase. I am the Vice Chairman and Chief Legal Officer of Franco-Nevada Mining Corporation, Inc., located in Reno, Nevada. A relatively complete synopsis of my background and qualifications are listed in the Disclosure Requirement attached to my written testimony which has been submitted to the Subcommittee.

INTRODUCTION

Franco-Nevada Corporate Background. Franco-Nevada was incorporated in 1983 as a junior exploration company. In 1986, Franco-Nevada purchased all of the hardrock mineral interests of a Dallas-based oil company, amongst which were some unpatented mining claims and royalty interests in the Carlin Trend, a prolific gold belt in northeast Nevada. Shortly after this acquisition, American Barrick Resources, now Barrick Gold Corporation, discovered what has become known as the Goldstrike and Meikle Mines, which together will produce more than 30 million ounces of gold. In the 1986 Goldstrike acquisition, Franco-Nevada acquired net smelter return and net profit interest royalties in the production from these mines, and as a result decided to employ its expertise in the area of royalty acquisition and creation rather than directly in mining operations. This was a new business in those days, and even today there are only three or four companies engaged in this business.

Royalty Activities. Over the past 13 years, Franco-Nevada has acquired and created numerous royalties to the extent that our direct and royalty land interests in major mineral trends exceed 5 million acres in six countries. Although we initially obtained royalty positions from the prospectors who had originally generated them, we eventually began our current program of "financial engineering", meaning that we create royalties through various financial mechanisms which supply the necessary capital to complete

exploration projects or to construct the infrastructure necessary to carry on mining. Because of our financial expertise, we are acutely aware of the nuances of how royalties affect exploration and mining projects. Our royalties are primarily based on gold, but we also have interests in platinum group metals, base metals, and diamonds. Total precious metals resources currently held by Franco-Nevada stand at 22.4 million ounces. With a $3.25 billion market capitalization, Franco-Nevada is the fifth largest gold mining company in the world, and the largest mineral royalty company in the world.

Exploration Activities. In addition to specializing in royalty acquisition and creation, Franco-Nevada has continued to engage in significant exploration activities in North America and Australia. We currently own or control more than 5,800 unpatented mining claims, or approximately 117,220 acres, in the State of Nevada, all of which are being actively explored. We spend between $3 and $8 million annually on exploration programs in the U.S. Our exploration programs have for many years kept us actively involved with the Bureau of Land Management ("BLM") and the United States Forest Service ("Forest Service"). We are well acquainted and involved in the processes associated with locating and maintaining mining claims and permitting exploration activities from notice level to plan of operation level. Accordingly, because of our direct and significant financial interest in federal lands open to mining, we believe we have a direct interest in the outcome of all of the public policy mining issues being considered by Congress.

Mining Activities. In 1992, we began an exploration program near the historical mining town of Midas, in the northeast quadrant of Nevada. In 1994, we made an initial discovery of gold, and in 1995 expanded that discovery to include an ore reserve. Following further exploration and a successful feasibility study, construction began, and the Ken Snyder Mine, named after our discovering chief geologist, was commissioned and commenced full-scale production in the second quarter of 1999. Yes, seven years from initial exploration to production, and capital expenditures have exceeded $100 million. The Ken Snyder Mine includes reserves of 3.74 million ounces of gold equivalent (gold and silver) and resources of 8 million ounces. The Mine is currently scheduled to produce 250,000 ounces annually, giving it a current life of 15 to 30 years depending upon how much of the resource is converted to reserves. As a result of the Ken Snyder Mine operations, Franco-Nevada will pay about $500 million in local, state, and federal taxes over the life of the Mine.

Thus, Franco-Nevada engages in the three major aspects of mining: as an explorer, an operator, and a royalty holder.

ROYALTIES

Is There A Valid Economic Reason For A Federal Royalty On Hardrock Minerals? There has been a great deal of discussion over the past decade about the U.S. not receiving a royalty on production of hardrock minerals produced from federal lands. Proponents of a federal royalty argue that the government gets nothing for its hardrock minerals, but it should because it gets royalties on oil and gas produced from federal lands. Proponents also argue that the U.S. should receive the same royalty the private landowner receives. On close examination, these arguments favoring a federal hardrock mineral royalty lack a great deal of economic merit from the perspective of both miners and the federal government.

All Minerals Are Not Susceptible To The Same Cost and Production Burdens. A direct comparison between hardrock mineral production and oil and gas production is inappropriate because mining and oil and gas development are markedly different endeavors. In oil and gas situations, the period between commencement of drilling and commencement of production rarely exceeds a year or two. As noted above, it took seven years to develop the Ken Snyder Mine from the date exploration commenced to the date of

production. By today's standards, the Ken Snyder was permitted in nearly record time (due to the production facilities being on private land, which I will discuss later). In the case of the Crown Jewel Mine in Washington State, now famous in Congress because of the Solicitor's mill site opinion, the permitting stage alone has taken more than seven years. Another significant difference between oil and gas and mining is the level of capital required. The capital costs of drilling and producing oil and gas are essentially nominal compared to the costs of putting a hardrock mine in production (a few $ million vs. $50 million to more than a $ billion). In short, the time frame and the capital costs of oil and gas production are extremely conducive to paying a production royalty while still allowing the producer to earn a significant profit. Mining, on the other hand, is on a long timescale to production. Moreover, over the past two decades, copper and gold companies have realized an average profit of only about 5% from their mines - and that is without any governmental royalty. In short, the economics of hardrock mining make paying a royalty to the government a hindrance to the discovery and production of hardrock minerals.

The Government's Power To Tax. A private landowner obtains a royalty on production from his land as it is the only reward he receives for the depletion of those minerals. Unlike the private landowner, the government has the power to tax, which everyone knows it does aggressively. Corporate citizens pay tax on their net earnings at the rate of 34%, and the government has nothing at risk or in jeopardy. The private landowner, however, has the use of his land taken during the period of mining, and he generally does not have more than 420 million acres to work with as does the federal government. There is little doubt that private landowners, as well as royalty companies such as Franco-Nevada, would love the opportunity to obtain a *carried* royalty equal to 34% of the net profits of mining operations, but I am not aware of any instances where that kind of carried interest has been available.

Royalties As A Reward For Exploration And Development Work. Thirdly, in the western hardrock mining States, most mineral deposits are discovered at least partially on lands administered by the BLM or the Forest Service. Most mining companies do not make the initial discovery of minerals; rather, a prospector does, who tries to develop some basic information about the mineralization and then interest a mining company to explore and develop the deposit. The prospector's efforts usually take many years before a mining company starts to make any exploration or capital investment. Because he lacks sufficient capital or skill to develop the deposit himself, the reward to the prospector for his years of efforts is the retention of a royalty on production. The government, however, makes no investment of time or money in its land for mining purposes, and gives nothing to the mining company as the *quid pro quo* for the minerals produced. Nevertheless, the government will reap its taxes on the profits from mining. To add a royalty payable to the government would amount to nothing more than double dipping, to the jeopardy of the mining operation and those employed in the exploration and mining processes.

Government Royalties Are Economically Depressing. Fourthly, a federally imposed royalty would jeopardize a mining operation by reducing production. The amount of minerals which can be produced at a profit is directly related to the cost of producing those minerals. Thus, if the government were to extract a royalty, the cost burden on production will result in fewer low grade ounces being produced because the royalty cost will exceed the value of the lowest grade ounces otherwise available for production. As a result, fewer ounces are produced and the cost per ounce increases because there are fewer ounces over which to spread the fixed costs of production. This means the mining company makes a reduced profit, fewer people are employed, the mine has a shorter life, and ultimately corporate and individual income taxes payable to the government will be substantially reduced. Congress has previously been provided with numerous economic studies, prepared by highly qualified economists, supporting this premise. The tragic collateral effect of the imposition of a government royalty would be that many ounces of otherwise recoverable

minerals end up being left in the ground, made permanently uneconomic. This principle has been well recognized by most mining countries in the world, as most of them have eliminated the payment of royalties in favor of taxation, having discovered that government royalties depressed mineral exploration and development.

Conclusion. We would urge Congress not to impose any royalty on production of hardrock minerals from federal lands. We believe that the bottom line to the government from such a royalty will be less total revenue, and an increased reliance on foreign sources of the minerals we need to support our modern, technologically dependent society. The bottom line to the mining industry will be fewer mines developed, loss of production from mines that are developed, fewer jobs, and debilitation of otherwise economically mineable deposits. While many radical groups actually seek such a result, Congress should not be a party to something which will so poorly serve our national interests.

KEN SNYDER MINE PERMITTING EXPERIENCE

State versus Federal Permitting. As noted above, the Ken Snyder Mine was permitted in approximately 8½ months, primarily because nearly all of the permits required were from State, not federal, agencies. The Ken Snyder is an underground mine. The bulk of the ore body of the Ken Snyder Mine is between 400 and 1700 feet below the surface of federal land (beneath unpatented mining claims). Because of this, BLM's surface management regulations are not applicable to mining the ore, although they do pertain to all exploration or other activities on the surface of those mining claims. *All* of the infrastructure to treat the Ken Snyder ore is sited on private lands subject to state regulation. The State of Nevada has very stringent regulations pertaining to mining, including application and enforcement of federal environmental laws. As illustrated in Exhibit A, these regulations ensure protection of all environmental resources. Nevada's permitting regulations are comprehensive, outcome-based requirements in response to site-specific environmental conditions. These state regulations constitute a good example of the performance-based standards approach recommended in the recently released National Academy of Sciences study ("NAS Study") However, in contrast to the federal permitting process, the Nevada State permitting process is quite predictable and is timely performed by those charged with administering the regulations. Admittedly, Franco-Nevada decided to site its infrastructure on private lands for the purpose of avoiding the expensive and time consuming permitting process currently administered by the federal government. As a result, Franco-Nevada was able to devote resources to environmental enhancement measures and projects to benefit the local community that would otherwise have been tied up in the protracted federal permitting process. Contrast the Ken Snyder Mine experience, for example, with the federally controlled permitting processes applicable to the Crown Jewel Mine in Washington, where permitting has taken more than seven years and an act of Congress, and mining still has not been able to begin.

Facilitating Corporate Environmental Investments - The Ken Snyder Mine Example. Nevada's straightforward and timely permitting process facilitated Franco-Nevada's discretionary corporate environmental investment at Midas and the Ken Snyder Mine. The certainty of the substance of Nevada's regulatory requirements and the timeliness of their implementation allowed Franco-Nevada to plan with some level of confidence on the length of time required to secure permits for the mine. Moreover, as a result of the predictable nature of Nevada's permitting process, Franco-Nevada was able to devote more of its resources to working closely with the community and State regulators to identify measures to fine tune and enhance the project in ways to benefit the environment and the town of Midas. Examples of these discretionary environmental investments include:

- Good Samaritan reclamation of land disturbed by previous mining activities;

- Installing an INCO cyanide detoxification circuit, which, although not required for operations, guaranteed protection of the environment;
- Relocating the mill to avoid impacting a Native American site on Franco-Nevada private land (at a cost in excess of $1 million); and
- Rehabilitating the historic Midas Schoolhouse (now used as a museum and a community center).

None of these activities were the subject of regulatory requirements, but they enhanced the community in which the Mine and the company must operate for a long time into the future. They also allowed Franco-Nevada to gain credibility for its promises to the community.

Improving the Federal Permitting Process. It would not have been possible for us to make these environmental investments had our resources had been tied-up in a lengthy and expensive permitting process with an unpredictable schedule -- like the way the federal permitting process currently works. As found by the NAS Study, the current federal permitting process is not implemented in an efficient or productive manner. Moreover, the current administration has gone out of its way to make permitting exploration and mining activities on federal lands a political process, based on political science (not real science), and fraught with delays, uncertainty and enormous expense.

As an example of the nightmare that permitting a mine on federal land has become, one needs only to look at the National Environmental Policy Act ("NEPA") process. The NAS Study found that NEPA forms the backbone of the federal permitting process. It focuses permitting decisions on site-specific conditions and is the key to establishing an effective balance between mineral development and environmental protection. If the NAS study conclusions and recommendations regarding NEPA (see pp. 91-126 of the NAS Study) were implemented by the BLM and Forest Service, NEPA would foster a meaningful opportunity on how to make a proposed mine the best possible project for the community and the environment. Unfortunately, as currently administered by the BLM and Forest Service, the NEPA process represents a mammoth hurdle, and frequently a roadblock, that requires an enormous expenditure of federal and corporate resources that should be focused instead on local and site-specific issues. Some of the cost and delay stems from the agencies' practice to accord everyone equal standing, including outsiders with no expertise or direct stake in the decisions to be made. These outsiders, typically anti-mining activists, use the NEPA process as a powerful tool to thwart proposed projects. No doubt it is this current manner of implementation of federal regulations which has resulted in this Hearing. We respectfully but strongly urge the Committee to recommend to Congress to take whatever action it can (including incorporation of the conclusions and recommendations of the NAS Study into some sort of statutory format) to end the current Administration's actions and stonewalling under the NEPA process. The NAS Study findings confirm that the Administration's conduct is clearly thwarting mining on public lands. Implementation of the NAS Study recommendations would at least start to put an end to this problem.

THE SOLICITOR'S MILL SITE OPINION AND LAND EXCHANGES - A STORY OF MISREPRESENTATION

In November 1997, the Solicitor for the Department of Interior ("DOI") issued the now famous mill site opinion. There is little doubt that this opinion is part of DOI's stealth plan to change the General Mining Laws without Congressional intervention. The mill site opinion is designed to stop mining on public lands. There is simply no other basis for issuing an opinion which flies in the face of 125 years of statutory

interpretation by the public, the courts, and the DOI. I will not repeat the many "critiques" already presented to this Committee demonstrating the error of the Solicitor's way. But I do believe this Committee should be aware that, in defending his opinion, the Solicitor has provided Congress with misleading information about the impact the mill site opinion will have on the U.S. mining industry. I will describe several examples of this misrepresentation.

BLM's August 11, 1999 Report to Congress. Under date of August 11, 1999, the BLM delivered a report to Congress entitled "Detailing by state all past, present and pending mineral patent applications and Plans of Operations, that could be impacted by the Solicitor's Opinion of November 7, 1997". This report was provided to the House and Senate Committees on Appropriations to satisfy a directive contained in Section 3006 of the FY 1999 Supplemental Appropriations Bill (Public Law 106-31). In preparing this report, the Solicitor's office cleverly hid the real information Congress sought by lumping together all Plans of Operations and failing to discriminate between Plans for mining versus Plans for mineral exploration. The result is that the report shows that only a small fraction of the total number of active and pending Plans have excess mill site claims. However, this finding is based on selective distortion of the facts. The majority of Plans of Operations filed with the BLM or the Forest Service are for mineral exploration projects - not mining operations. This is especially true for the Forest Service because a Plan of Operations is required for any mineral exploration endeavor using mechanized equipment. Exploration stage projects rarely if ever have mill site claims associated with them because in the exploration phase the mineralization potential of the land is not known. As a result, there is no need for mill site claims, which are typically staked after valuable mineralization is discovered and non-mineralized areas needed for mineral processing facilities have been identified. By failing to discriminate between mining and mineral exploration Plans of Operation, the BLM's August 1999 report intentionally presents some misleading and irrelevant conclusions regarding the impact of the mill site opinion. For example, consider the information for Nevada shown in Table 1 on the following page.

In what appears to be a calculated strategy to avoid disclosing the real effect of the mill site opinion, the BLM's August 1999 report does not acknowledge how many of the 317 Active Plans in Nevada are for exploration projects that do not involve mill site claims, and how many are for actual mining operations, which do involve the use of mill site claims. It is likely that the number of active mining operation plans does not greatly exceed the 8 listed as affected by the Solicitor's mill site opinion. Unfortunately, the BLM does not provide this information, with the result that no meaningful conclusion can be drawn about how many active mining operations on federal lands in Nevada are actually adversely affected by the Solicitor's opinion. In short, the report to Congress intentionally omits the very information sought which is necessary to render a judgment on the effects of the opinion - this amounts to little more than nose-thumbing of Congress' directives.

Table 1

BLM and Forest Service Plans of Operation for Nevada

As Reported in the August 11, 1999 BLM Report to Congress

Federal Land Management Agency	Total Number of Active Plans of Operation	Total Number of Active Plans w/Excess Mill Site Acreage	Total Number of Pending Plans of Operation	Total Number Pending Plans w/Excess Mill Site Acreage
BLM	317	8	12	2
Forest Service	428	5	0	0

Total	745	13	12	2

At first glance it would appear that only 1/6th (two out of 12) of the Pending Plans of Operations shown in Table 1 are adversely affected by the Solicitor's opinion. However, the information shown in Table 2 which lists BLM Environmental Impact Statements (EIS) that are being prepared for Nevada mining projects reveals a contrary conclusion:

Table 2

BLM Environmental Impact Statements Being Prepared for Nevada Mines[1]

Company	Mine	BLM District	Anticipated EIS Schedule		
			Scoping	Draft EIS	Final EIS
Barrick Goldstrike	Betze	Elko	6/97	3/99	7/99
Battle Mountain Gold	Phoenix[2]	Battle Mtn.	2/95	7/99	11/99
Kinross Gold Corp.	Goldbanks	Winnemucca	12/96	on hold	on hold
Newmont & Barrick	Leeville	Elko	8/97	3/99	5/99
Newmont	South Area	Elko	early 98	4/99	6/99
Placer Dome, U.S.	S. Pipeline	Battle Mtn.	12/96	2/99	6/99
Rayrock/Glamis	Marigold	Winnemucca	10/98	7/99	10/99

[1] This table shows data from www.nv.blm.gov/Minerals/permitting/Prop_Mining_Ops.htm, last updated on 1/22/99.

[2] Delay due to company revision of project plans

The final EIS dates shown in Table 2 are information from a BLM webpage that was last updated in January 1999. If these dates are still accurate, EIS documents have been completed for five of the eight listed mines, suggesting that the BLM may have approved these projects by the August 1999 date on which the agency's Report to Congress was prepared. Assuming the Goldbanks project is still on hold, that leaves two mines, the Phoenix and Marigold Projects, pending approval as of August 1999. It would be very interesting to know whether these are the same two Nevada BLM Pending Plans of Operation shown in Table 1 in the column labeled "Total Number Pending Plans with Excess Mill Site Acreage". If so, the mill site opinion will impact 100% of the pending Plans of Operations for proposed mining projects. The only way to correct the misleading information and glaring deficiencies in the BLM's August 1999 report is for the BLM to prepare an objective and comprehensive analysis that answers the following questions and is supported by relevant baseline information:

(1) How many Plans of Operation currently on file with the BLM and the Forest Service are for (a) hardrock mining operations, (b) mineral exploration projects, and (c) small miner suction dredging placer operations?

(2) Of the Plans of Operations for hardrock mining operations (e.g., the subset of Plans most likely to involve mill site claims), how many approved and pending projects do not meet the lode to mill site claim ratio expressed in the Solicitor's Opinion?

(3) What percentage of hardrock mineral production from BLM- and Forest Service-administered public lands would be represented by approved and pending Plans of Operation that do not meet the mill site to lode claim ratio propounded by the Solicitor's Opinion?

(4) What percentage of the total U.S. hardrock mineral production would be represented by this group of hardrock mines?

Contrary to the Solicitor's Claims, Problems Created by the Mill Site Opinion Cannot Be Solved Through Land Exchanges. The Solicitor suggested in his mill site opinion and stated to Congress that his restrictions on the use of mill site claims can be easily solved if mining companies affected by his opinion would exchange private lands for federal lands. Franco-Nevada's recent experience in trying to secure a land exchange with the Solicitor demonstrates that his suggestion is illusory and less than candid.

What the Solicitor did not disclose to Congress is that sometime prior to 1997, DOI had adopted an unofficial moratorium on large value mineral land exchanges on a state-by-state basis. The moratorium prevented BLM State offices from processing such land exchanges pending adoption by the DOI of a policy defining the manner in which BLM land and mineral values may be maximized. Large value mineral land exchanges have been paralyzed since the adoption of this unofficial moratorium. As a result, Franco-Nevada and several other mining companies approached the Solicitor in January 1999 with several policy proposals intended to break the log jam. Given the requirement of the Federal Land Policy and Management Act of 1976 ("FLPMA") that offered and selected lands be exchanged at equal fair market value, the mining companies suggested a policy which would leave the parties free to negotiate the manner in which equality might be achieved. The alternatives proposed ranged from the reservation of royalty rights by the Government to a traditional "land for land" exchange at current fair market cash value free of any royalty.

Negotiations among the mining companies' representatives and the Solicitor's office produced a June 1999 agreement in principle as to the exchange policy to be implemented by the BLM. All parties understood that the Solicitor was committed to adopting the suggested flexible policy. Under that policy:

- the BLM would not require a retained royalty or other interest as a condition of an exchange;
- on proposed exchange lands on which a "discovery" is demonstrated, the BLM would continue to recognize a mining claimant's vested rights to minerals and discount the appraised value of those lands accordingly;
- on proposed exchange lands on which evidence of a "discovery" is not fully available, the BLM would include the value of the mineral estate for appraisal purposes; and
- the value of the mineral estate of the latter lands would be established by agreement between the parties on the basis of full cash value either in a traditional "land for land" exchange or through receipt by the BLM of lands of lesser value coupled with a retained royalty.

Given the parties' understanding, Franco-Nevada engaged appraisers to evaluate its selected mineral lands as well as lands designated as desirable by the BLM. Franco-Nevada also commenced purchase negotiations with the owners of the lands designated by the BLM. Additionally, at the request of the Elko office of the BLM, Franco-Nevada provided a summary of the proposed exchange to the BLM in order keep the BLM advised of the status of the exchange, as well as to reserve a position for the processing of the anticipated

exchange under the agency's current budget. However, in spite of the fact that Franco-Nevada's representatives were advised by the Associate Solicitor for Minerals that "the [Solicitor] wants this [the Franco-Nevada suggested exchange policy] to happen", the Solicitor has not authorized the Elko office of the BLM to resume processing large value mineral exchange proposals.

After several months of trying to discover the reason for this continuing log jam, Franco-Nevada was advised in late August that the Solicitor had done an about-face. The Solicitor's new position is that mineral lands received by the exchange proponent must be burdened with a requirement making them subject to any royalty or other burden which Congress *might enact at some time in the future*. This policy of the Solicitor denies finality to an exchange by leaving the exchange proponent subject to the vagaries of the legislative process. More importantly, however, it thwarts the ability of the parties to any mineral land exchange to establish the definitive "fair market value" necessary for any exchange process to go forward. In short, without a proponent succumbing to the Solicitor's demand for payment of an indeterminate price, there will be no mineral land exchanges. After all, who would buy a new house if the seller were free to come back at any time in the future and require payment of a higher price? The moral of this story is that the Solicitor was not candid with Congress when he stated that land exchanges offered a solution to the problems created by his mill site opinion.

STEALTH MINING LAW REFORM

Proposed 43 CFR §3809 Regulations and the NAS Study. More than a year ago, the BLM proposed new 3809 regulations which would have resulted in wholesale changes in the way in which mining and mineral exploration are regulated, and would constitute de facto changes to General Mining Laws. None of these proposed changes had received the blessing, or even input, from Congress. In an effort to prevent this stealth mining law reform, and to assure that the stated reasons for the changes had a scientific basis, Congress mandated that a study be undertaken by the National Academy of Sciences/National Research Council (NAS). That study was completed in September of this year, and reached several conclusions. The previously mentioned findings regarding NEPA are an example of the significant and important recommendations contained in this study.

The NAS Study is a valuable tool for Congress and all stakeholders interested in mining and the environment. The study is based on scientific research, comprehensive information, careful substantiation, and peer review. Indeed, the NAS Study notes at page 94 that "[s]uccessful environmental protection is based on sound science", not political science. The findings are accurate, useful, and balanced, and should guide future public policy discussions about mining and the environment. Congress, the BLM, and the Forest Service should take appropriate steps to act upon and implement the Study's sound recommendations.

The NAS Study presents the consensus recommendations from a highly qualified panel who conducted an evidence-based analysis, accepted testimony from a diverse group of experts at five public meetings, went on three field trips to a variety of mines and exploration sites, and held three public participation forums. The NAS Study provides a road map for making the current comprehensive and effective environmental regulatory regime work even better.

Two of the key findings of the NAS Study are: (1) "the overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated, but generally effective" (page 91-92); and (2) "improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection and the efficiency of the regulatory process" (page 93). In short, the NAS study found that the environment would do well if the BLM and Forest Service merely did

a better job of implementing the existing regulations. These findings are in marked contrast to the BLM's misguided and unnecessary proposal to radically change the 43 CFR §3809 regulations.

The following is a brief discussion of several additional important findings discussed in the NAS Study; Exhibit B provides supplemental information about the NAS Study.

- Streamline the permitting process: This would allow mining companies to devote more of their resources to discretionary environmental and community enhancement projects like we were able to do at the Ken Snyder Mine (which was essentially unencumbered by the 3809 regulations). Streamlining would also provide communities with more certainty and the improved ability to plan for the future. Most importantly, addressing the NEPA standing issue described above would relieve agency personnel from the obligation to devote critical resources to dealing with objections which are not factually based and which are generally intended to obstruct the process rather than resolve real issues.

- Require secure bonding instruments for all surface disturbing activities - no matter how small: Taxpayers should not be asked to assume any risk for reclaiming currently operated or future mines.

- Remove institutional and legal barriers that currently prevent mining companies from reclaiming and improving abandoned mine lands: Reasonable cleanup goals must be established based on scientific standards and facts, not the scare tactics and claims of radical groups who typically misrepresent problems at historic mines due to old, outmoded mining practices as examples of what will happen if new mines are developed.[(1)]

- Improve agency resources. Franco-Nevada's experience in working with the federal land management agencies has been that most of the staff does a reasonably good job with the limited time and resources they have. However, and all too frequently, many are asked to do jobs outside of their areas of expertise. Moreover, agency personnel receive little or no training in how to perform these tasks that typically involve a number of complex regulatory and technical issues. Unplanned but recurring emergencies like range fires consume agency resources and significantly detract from the agencies' abilities to administer programs like 3809 efficiently.

Proposed Rule Changes of August 27, 1999. The DOI published new proposed rules affecting locating, recording and maintaining mining claims and sites in the Federal Register on August 27, 1999. Although the DOI states that "the organizational changes in this proposed rule are not intended to make a significant change in the meaning of the regulations in any way" (64 F.R. No. 166 at 47026), nothing could be farther from the truth. At page 47029, the DOI states that the proposed rule (a) will not have an effect on the economy of more than $100 million, (b) does "not significantly change the substance of the current mining claim administration within the BLM", (c) "will not raise novel legal or policy issues because it makes no major substantive changes in the regulations", and (d) "will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act". At page 47030, the DOI states that "[i]n accordance with Executive Order 12630, the rule does not have takings implications." The most public instance of an attempt to implement the Solicitor's Mill Site Opinion (included in the proposed rule) is in the case of the Crown Jewel Mine, which resulted in the withdrawal of a Record of Decision. There clearly would have been substantial takings implications if the DOI's actions had not been reversed by Congress. These statements by the DOI are serious mis-characterizations of the impact of the proposed rule. Some of the proposed rules would dramatically change the General Mining Laws as well as the cost of mining. Some of the more outrageous changes are:

- §3832.12 (64 F.R. No. 166 at 47036) requires that location of mining claims must be by a metes and bounds description. 30 U.S.C. §28 requires that records of mining claims shall contain "such a description of the claim or claims located by reference to some natural object or permanent object as will identify the claim." Federal and state courts that have interpreted this language over the past 125 years do not support the proposed metes and bounds requirement: "The pioneer prospector, as a rule, is neither a lawyer nor a surveyor. Neither mathematical precision as to measurement nor technical accuracy of expression in the preparation of notices is either contemplated or required." 2 Lindley on Mines at 900 (3rd Ed. 1914). See also *United States v. Haskins*, 88 I.D. 925 (1981); *United States Boras & Chemical Corp.*, 98 IBLA 259 (1987); *Arley Taylor*, 90 IBLA 313 (1986); American Law of Mining 2d Edition, §33.09[3] (Aug. 1999). The proposed rule would essentially require a survey of the claim, the antithesis of the statutory and judicial requirements, and a requirement which would be extraordinarily costly.

- §3832.32 (64 F.R. No. 166 at 47037) introduces the Solicitor's mill site limitation based upon his mill site opinion; as this Committee has repeatedly heard, there is no legal precedent for this opinion and limitation.

- §3832.91 (64 F.R. No. 166 at 47038) provides that a mining claim may be amended only if it is oversized by 10% or less. This has never been the law, and there is no statutory support for this rule. The Supreme Court long ago settled the issue with the ruling that, absent fraud, only the excess portion of the claim is void. *Richmond Mining Co. v. Rose*, 114 U.S. 576 (1885); *Waskey v. Hammer*, 223 U.S. 85 (1885). "The courts uniformly hold that such a location [in excess of statutory limits], where it injures no one at the time it is made, is not unreasonably excessive, and where it has been made in good faith, is voidable only to the extent of the excess". 2 Lindley on Mines at 827 (3rd Ed. 1914); accord, *Melvin N. Berry*, 97 IBLA 359 (1987). The BLM appears to have ignored the law and arbitrarily chosen to make a rule that more than 10% is "unreasonably excessive". However, an error of 150 feet over a 1500 foot length in steep or vertically variable terrain is quite easy to make without the aid of a surveyor.

- §3833.21(b)(4) (64 F.R. No. 166 at 47038) states that a mining claim may not be amended to "enlarge the size of the mining claim or site". Again, this has never been the law pertaining to undersized mining claims. *Patsy A. Brings*, 119 IBLA 319 (1991). "There is no statute, law, rule, or regulation which prevents a locator of a mining claim from amending his location, and including additional vacant ground unclaimed by other parties...". 2 Lindley on Mines at 923-924 (3rd Ed. 1914). Such amendments are employed frequently in modern times when surveys of initial claim staking disclose substantially undersized claims.

- §3833.31 (64 F.R. No. 166 at 47039) provides that "Unpatented mining claims or sites are not subject to State community property laws". While there is an Interior Board of Land Appeals decision from 1972 which holds that the *United States* does not necessarily need to recognize a spouse unnamed in the locating documents as having any right to the mining claim (*Melvin McCormick*, 5 IBLA 382 (1972)), this does not mean that the mining claim "is not subject to State community property laws". Indeed, the courts dealing with community property issues in mining claims have consistently held that the named locator represents the community interests of both spouses to the same extent as if the spouse were a named locator. *See, e.g., Lichty et ux. v. Lewis et ux.*, 77 F.111 (9th Cir 1896). In short, there is simply no authority under which the DOI would have jurisdiction to terminate community

property rights as between spouses.

Franco-Nevada respectfully but strongly urges Congress to take whatever action is appropriate to prevent these proposed rules and other stealth mining law changes from taking effect. These proposed rules breach every premise of DOI's statement that they will not have an effect on the economy of more than $100 million, do "not significantly change the substance of the current mining claim administration within the BLM", "will not raise novel legal or policy issues because [they] make no major substantive changes in the regulations", and "will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act". DOI's claims would be laughable if it were not for the serious impact and chilling effect that the proposed rule would have on mining on federal lands.

We stress that we believe that Congress must rein in this unlawful and errant behavior of the DOI, and similar conduct by the Forest Service, and regain control of the legislative process. George Washington once said "Government is not reason; it is not eloquence; it is force! Like fire, it is a dangerous servant and a fearful master." We urge you to assert your authority to prevent the DOI and Forest Service from making our Government any more dangerous or fearful than it already is.

EXHIBITS

EXHIBIT A Chart showing environmental permits for the Ken Snyder Mine

EXHIBIT B Supplemental information about the NAS Study

Haase Testimony 102099.wpd/Trans

1. The famous Summitville mine is a perfect example of how things should not be done: the anti-mining media and radical organizations spread the rumor that cyanide and heavy metals from Summitville polluted and killed many miles of the Alamosa River and caused widespread pollution of a series of nearby rivers; however, when the EPA took over the site in 1992, cyanide was not leaving the site - rather it was collected in a drain and pumped back to the heap from which it leaked or was otherwise treated and neutralized; i.e., unintended discharges were being controlled. State studies demonstrated that the Summitville cyanide leaks were not the cause of any damages to the surrounding or downstream environment, but rather were the result of a naturally existing environment hostile to fish and plant life (thus the pre-mining historical reason for local creeks to be named "Alum" and "Bitter"). Summitville was "not an environmental disaster, at least not until the EPA took over the site and began a cleanup with about as much finesse as the Keystone Cops. The mining industry tried repeatedly to help, at no charge, and offered water treatment plants and expertise. But the EPA thumbed its nose and squandered huge sums of public funds pretending to clean up something when in fact it was exacerbating previous problems and creating new ones." NWMA Bulletin, July/August 1999, page 4.

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