Committee on Resources,

Subcommittee on Energy & Mineral Resources

energy - - Rep. Barbara Cubin, Chairman
U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

Introduction

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

Holding Fees as a Part of the National Policy

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

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

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

In 1992, the Bush administration's budget bill included a $100 per claim annual holding fee. Specifically, Amendment 18 to the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law No. 102-381) "in one page [did away] with 120 years of law and judicial decisions concerning maintenance of unpatented mining claims."(1) A small miner exemption was included in the Act; however, due to the way it was interpreted by the BLM, many small miners were confused about its provisions and lost their claims.

The 1993 Omnibus Budget Reconciliation Act (Public Law No. 103-66) did not improve the situation. That Act was implemented by a set of regulations finalized on August 30, 1994 that extensively detailed the requirements to be imposed on mining operations. The Interior and Related Agencies Appropriation Act for

Fiscal Year 1999 (Public Law 105-277) changed the rules once again. The interim final rule that followed on August 27, 1999, clarified the small miner exemption. At last this exemption was made effective in protecting those operators with ten claims or less.

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

The Nature and Purpose of the Mining Law

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

We are not insensitive to the concerns about the environment. But environmental demands have been a moving target for the past thirty-five years, and before that they were not on the national radar screen at all. If environmental standards ever come to repose, the mining industry will embrace them just as it has embraced the health and safety laws that once were a hot issue before environmentalism was in vogue, and the wage and hour standards before that. The resolution of environmental issues in conjunction with mining activities should not demand killing the industry that produces necessary commodities, but encouraging it to flourish in a manner acceptable to all people.

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

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

Self-Initiation and Security of Tenure

The key ingredients of the Mining Law of 1872, and what has made it possible for Alaska's miners to persevere, are the twin concepts of self-initiation and security of tenure. Alaska's miners know, or at least they did until the mining law reform movement emerged, that all they needed to do was go onto the vacant and unappropriated public domain (or Forest Service lands) and locate a claim. If they followed relatively simple rules, their title would be unassailable. Further, by doing a modest amount of annual labor for the benefit of their claims, their tenure was secure forever. That labor could be measured in sweat equity and required little cash beyond that needed for a few barrels of diesel fuel. An old cat and a welding torch meant

that the locator could prove up his claim. If it was as big as he hoped and as rich as he dreamed, he could turn it over to a major mining company and live off the proceeds. If it was something less, he might be able to work it himself for wages or better. Or if there was nothing there at all, he could move on to another, more promising site.

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

Mining and the Environment

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

Bureaucratic Excesses

The requirement for holding fees in lieu of annual labor on a mining claim in order to protect one's title has a pernicious aspect to it. Those fees serve to feed a large bureaucracy performing tasks that are of questionable necessity or objective value. It would be one thing if the fees were calculated to result in an expanded industry, but no one pretends that is the case. Since the fees' inception the number of claims on BLM and Forest Service lands in Alaska has plummeted as miners have sought minerals elsewhere.[(2)] The anticipated revenue stream derived from these fees is a small fraction of what was hoped for. There is no evidence that over the past decade that the fee structure has advanced the industry or the national interest in producing mineral commodities domestically. When coupled with the December 5, 1996, opinion of former Interior Solicitor Leshy prescribing BLM's obligation under FLPMA to charge fees for a variety of governmental activities which ostensibly "benefit" the miner, it appears that this exercise is more motivated by the desire to stop mining than by the desire to protect the public interest.

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

Former Secretary Babbitt promoted the myth of miners ripping off the public interest by securing title to mineral lands for a token price. Most miners don't seek patent. Babbitt's statements belied more than the elements of a land purchase transaction. They implied, quite unfairly, that the extraction of minerals from the ground was an easy and remunerative process. No matter what the technique, whether by placer or by hardrock, whether by gravity or flotation, whether in the Brooks Range or on the Kenai, the act of

recovering minerals from an unrelenting host is just plain hard work. If the miner in Alaska had to deal with nothing other than metallurgy and the elements, it would be a challenge. When regulation and oversight are thrown into the mix, the chore becomes a much heavier burden.

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

Conclusion

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

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

1. [1] Hubbard, Randall E., "Rental Fees, Assessment Work, and Maintenance Requirements for Unpatented Mining Claims - Getting Simpler?" 40 Rocky Mountain Mineral Law Institute 8-8 (1994)

2. [2] See Attached Table.

# # #