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

Written Testimony of
Joe Dee Sphar
Director of Natural Resources
NZ Corporation
On
H.R. 1913
Before the
Subcommittee on Energy and Mineral Resources
House Committee on Resources
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INTRODUCTION. Madame Chairwoman and Members of the Subcommittee on Energy and Mineral Resources, my name is Joe Sphar. I am the Director of Natural Resources for the NZ Corporation. Thank you for this opportunity to testify on H.R. 1913. This legislation is very important to the NZ Corporation which currently holds some 67,710 acres of mineral rights within the Acoma Indian Reservation. These are rights originally granted to NZ's predecessor company by the United States but which cannot be developed without great conflict with a sovereign Indian nation. H.R. 1913 provides a practical solution that addresses the concerns and rights of NZ, as well as the concerns and rights of the Pueblo of Acoma.

ORIGIN NZ'S SEVERED MINERAL ESTATE. NZ Corporation ("NZ"), f.k.a. New Mexico and Arizona Land Company, owns some 67,710 acres of mineral rights within the Acoma Reservation in Cibola County, New Mexico. NZ is a publicly traded company incorporated in the Territory of Arizona in 1908. Ultimately, NZ's mineral title traces to a Federal Charter of 1866 to the Atlantic & Pacific Railroad (Ch. 278, 14 Stat. 292) which

provided a land grant from the public domain as an inducement to build a railroad and telegraph line along the 35th Parallel. Portions of this great transcontinental rail line from the Rio Grande to the Colorado River were subsequently built across what are now the states of New Mexico and Arizona. Accordingly, NZ's parent corporation, the St. Louis & San Francisco Railway Company, was granted some 1.2 million acres in fee, including the subject acreage, for its part in the completed railroad construction near Acoma. Title to this railroad mineral estate is well established in law. (For a summary see Thomas E. Root, Railroad Land Grants from Canals to Transcontinentals, National Resources Law Section, American Bar Association Monograph Series, 1988).

During the early part of the 20th Century, a more socially sensitive and better informed Federal Government recognized the Acoma's traditional use and aboriginal occupancy of a much wider area in what is now Cibola County, New Mexico. However, much of this area had already been taken out of public domain status and deeded to the railroad parent of New Mexico and Arizona Land Company. In 1936, the Federal Government was able to purchase the conflicted lands from NZ. However, the purchase for reasons not presently known to NZ did not include the mineral rights, which were explicitly excluded along with access rights for exploration and development of the reserved mineral estate.

CONFLICTED RIGHTS. Railroad land grants were made in a checkerboard pattern to insure that the Government lands would appreciate along with the newly created private railroad lands. Without passing judgement on the merits of the original plan, a secondary result throughout the western United States has been a management gridlock. Moreover, on a subsequently created Indian Reservation, the question of Native American sovereignty is brought to fore. From NZ's view, a virtual taking resulted with the creation of the Acoma Reservation. The BIA policy is to always defer to Native American oversight. The inequity in this was acutely demonstrated in the mid-1970s when an oil company (CITGO) attempted for several years to explore at Acoma for oil and natural gas. The concept of deep drilling into the Earth (with all that this portends for Acoma spirituality) and the potential for desecration of secret religious sites on the surface was basically foreign and frightening to the religious leaders of Acoma society. The Acoma's refused all of Citgo's overtures to allow access to the NZ minerals and or lease the Acoma mineral estate checkerboarded with NZ's minerals. Then the Acomas unsuccessfully sued NZ for the minerals. (Pueblo de Acoma v. New Mex. & Az. Land Co., et al, U.S. District Court No. 82-155, JB, 1983). While affirming its title, NZ's access to the mineral estate remains effectively blocked by a wall of sovereignty. Yet, the Acoma people lack full sovereignty over their aboriginal lands.

PETITION TO CORRECT THIS ERROR OF HISTORY. Not long after the lawsuit ended, NZ and the Acomas agreed to work together to redress their mutual problems. Clearly, their problems were created by the Federal Government in conflicting land grants. NZ has worked with four Governors of Acoma Pueblo on this topic over the years. Under the active leadership of several Acoma Governors, the Pueblo of Acoma is now petitioning the Congress to correct this error of history and make their aboriginal lands whole. Whether this movement is driven by desire for future mineral development, to attain final security for the tradition places and sacred sites or simply as a matter of justice is not known to NZ. One can reasonably assume all three motivations.

VALUATION OF THE MINERAL ESTATE. Internal valuations of the mineral estate range from a minimum of $15 per acre to $25 per acre. This appraisal is based largely upon comparable Company dispositions of large and small mineral parcels in New Mexico and Arizona. It is also cognizant of the regionally better geologic prospects for petroleum on the subject mineral estate. The Company's extensive wildcat drilling on the Sierra Lucero to the east has proven that oil and gas is present in the area and may have been trapped in economic accumulations in superior reservoir rocks on the structurally higher flank of the Zuni Mountains as represented in large portions of the topic Acoma minerals.

Even in the absence of producing or defined mineral deposits, mineral rights are valuable and valued for their potential to create future wealth. This potential is commonly marketable even before discovery as mineral explorers typically pay bonuses and other leasehold payments to mineral right owners. This opportunity has been basically denied to both NZ and the Acoma because of the inherent conflicts of split estate ownership on lands in reservations status (basically beyond the reach of Federal Courts). The potential for future income, both leasehold and actual (royalty income, for example) may be considered a speculative value residing in all mineral rights. Moreover, mineral rights are recognized as a real property right and the prospect of future exploration may engender a nuisance value from the view of the surface estate owner. In the case at hand, the geology is enhancing to the speculative value and the extraordinary religious tie of the surface owner to the land makes the nuisance factor highly salient. As to comparable sales, NZ has traded, sold or exchanged nearly 200,000 acres of mineral rights with the Federal Government in support of National Parks and Wilderness Areas. Prices ranged up to $27.40 acre (see accompanying Chart hereafter).

Just over ten years ago and just west of the Acoma Reservation, NZ relinquished some 119,000 acres to accommodate the El Malpais wilderness. NZ accepted $10 per acre (1989-90 dollars) for these minerals which are rather obviously of inferior petroleum

potential. At the same time and by reference to geologic variables, NZ received $27.40 per acre for some 2240 mineral acres to accommodate the expansion of the Chaco Canyon National Park. The difference here from the $10 price for El Malpais was not so much the size of the transaction as the recognizable better potential for petroleum discovery on the Chaco minerals. Similarly, NZ received $15 per acre in trade value from the Government for its 57,000 acres of checkerboard minerals in Mohave County, Arizona in 1987. The price here was partly determined by the regional potential for gold discovery (speculative value).

Finally, NZ has for many years running been routinely selling mineral rights to its 40 acre recreational lot buyers for $25 per acre. A large number of such sales have been generated at this price, whether motivated by speculation or nuisance is not certain. Just last year, NZ sold one section (640 acres) in Cibola County for $30 per acre to a company hoping to site a business there.

Thus, when looking at either the speculative value or the real property, nuisance value the Company concludes that the mineral value for the 67,710 acres of fee minerals ranges from $15-25 per acre, or from a minimum of $1 million to $1.7 million. NZ would expect and presumably accept an independent mineral appraisal. Commercial appraisers have approximated the cost of such appraisal at $25,000. NZ would accept an equal value of BLM land from their excess lands list in the Cibola County or even elsewhere in New Mexico

DISPOSITIONS OF NZ FEE MINERALS

EAR	NZ ACRES	BASIS OF TRADE	AREA
1987	17,000	ACRE FOR ACRE	EL MALPAIS
1988	57,000	$15/ACRE TRADE REAL ESTATE	MOJAVE TRACT/ 142 @ LK. HAVASU
1989	40, 000	$10/ACRE CASH	EL MALPAIS
1990	16,000	ACRE FOR ACRE	EL MALPAIS

1990	62,000	$10/ACRE TRADE REAL ESTATE	EL MALPAIS 305 @ LAS CRUCES
1990	2,240	$27.40/ACRE CASH	CHACO CANYON
n addition, NZ has made some 40 sales of small mineral lots (40 to 640 acres each) to individuals at prices ranging from $25 to $50/acre.			

CONCLUSION. In the interests of equity and fairness, to both NZ and Acoma, I strongly urge this Committee to support passage of H.R. 1913. Thank you for this opportunity to testify on this important legislation.

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