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Sustainable Development Opportunities in Mining Communities
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Presented by

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Introduction

My name is Debra Struhsacker. I am Vice President of U.S. Governmental and Regulatory Affairs for Kinross Gold, U.S.A, Inc. (Kinross) I very much appreciate the opportunity to present written and oral testimony to the House Subcommittee on Energy and Mineral Resources to describe the public benefits that would result from privatizing mining claims.

I have over 25 years of experience working on mining, natural resource development, and environmental issues in the west. I started out my career as a geologist specializing in geothermal resource development and precious metals exploration. Since 1986, I have worked on a number of environmental, regulatory, public policy, and community relations issues affecting the hardrock mining industry.

Kinross. is the fourth-largest gold mining company in North America and the seventh-largest gold producer worldwide. Our U.S. headquarters are located in Reno, Nevada. In the U.S., we operate mines in Nevada, Alaska, and Washington. We are also reclaiming mines in California, Idaho, Montana, Colorado, and South Carolina.

Here in Nevada, we operate the Round Mountain Gold Mine in Nye County. This mine is a joint venture with Barrick Gold Corporation and employs roughly 650 Nevadans. The mine is expected to produce about 734,000 ounces of gold in 2004. We recently received the prestigious BLM Hardrock Mineral Environmental Award for the outstanding reclamation work we did at our Manhattan Mine located just south of Round Mountain.

My testimony focuses on the public- and private-sector benefits associated with increased private ownership of mining claims, and explains why the current patent moratorium does not serve the public's interests. I will describe Kinross' current efforts to develop a wind energy project at our DeLamar Mine in southwestern Idaho. Finally, I will present a case history of the permitting efforts for a mine developed solely on private land in Nevada. This case history demonstrates how the timely and predictable state permitting process (compared to the lengthy NEPA process for projects on federal land) enabled the company to make a number of discretionary environmental investments that went above and beyond regulatory requirements.

Executive Summary

- Privatization of mining claims (e.g., obtaining title to public land either through the traditional mineral patenting process, via a land exchange, or through a direct sale) benefits the public because it facilitates future redevelopment of mined properties into commercial projects that can continue to provide jobs and tax revenues for mining communities. Privatization thus enables sustainable development.

- Privatization creates strong incentives for landowners to plan for productive post-mining land uses and to manage mining properties as long-term assets in ways that facilitate future economic uses of the lands.

- Private ownership means landowners – not taxpayers, are responsible for cleaning up environmental problems if any should develop in the future at former mine sites.

- Mines represent a unique opportunity in Nevada and elsewhere throughout the west to capitalize upon mining infrastructure such as the power lines, substations, and roads for the development of renewable energy projects following mine closure. Mines on private land with suitable renewable energy resources are particularly favorable sites for renewable energy projects because permitting these projects is easier than for energy projects on public land.

- Current policies preventing or impeding privatization (e.g., the patent moratorium and complex land exchange and direct sale procedures) do not serve the public's interests because they create a number of legal and regulatory barriers that thwart sustainable, productive uses of the land following mining.

- In particular, the federal reclamation regulations that mandate removal of transmission lines and project infrastructure during reclamation create unnecessary barriers to sustainable development.

- New policies are needed to facilitate leaving these facilities in place so they can be re-used for a variety of post-mining purposes and to encourage management of mine sites as properties with long-term value that extends well beyond the life of the mine.

Patenting Overview

The General Mining Law (30 U.S.C. §§ 21 et seq.) gives claimants the right to locate mining claims, explore for minerals with the purpose of making a discovery, and develop and process mineral deposits on federal land. In the past, mining claimants had the opportunity to patent (obtain title to) their claims if they could prove the claims contained a valid discovery of a valuable mineral deposit (30 U.S.C. § 29). However, since 1993, Congress has enacted a patent moratorium in conjunction with Interior Department appropriation bills. Currently, the only ways to obtain title to the land is to do a land exchange or to purchase the land from the federal government. Executing a successful land exchange or direct sale is a time-consuming and complex process that is sometimes politically controversial. This leaves mining claimants with extremely limited and sometimes nonexistent opportunities to gain title to the lands they mine.

Although the General Mining Law establishes that holders of unpatented mining claims have the right to occupy public land in order to explore for and develop the claim, the Multiple Surface Use Act (30 U.S.C.§ 612) limits this right to exploration, mining and mineral-related uses. This right thus terminates when mining is completed and the site is reclaimed. Unlike patented claims which the private landowner can use for a variety of post-mining commercial enterprises such as ranches, industrial parks, renewable energy facilities, recreational attractions, etc., unpatented claims must be reclaimed to satisfy current federal land use objectives to return the land to as many pre-mining uses as feasible. In most cases these approved uses include traditional multiple uses such as open space, wildlife habitat, recreation (e.g., hiking, hunting, fishing, etc.), and in some cases livestock grazing and timber harvesting. Current reclamation regulations require miners to remove all infrastructure, thus forgoing any future benefits that could result from ongoing use of project roads, utilities, buildings, and other facilities. The requirement to remove power infrastructure such as transmission lines and substations is particularly problematic. A revised policy that would allow power facilities to remain on site following mining could stimulate the conversion of some mine sites into conventional fuels and/or renewable energy power generating facilities.

Under the current patent moratorium scenario, mining companies thus have what amounts to a temporary license to use the land for mining and mineral processing activities. Private-sector, post-mining projects that could provide jobs for people previously employed by the mine, and generate a continuous stream of tax revenues cannot be authorized under the Mining Law. Thus, sustainable use of the mined area is difficult if not impossible. Absent any prospect for post-mining commercial development, a boom and bust cycle appears to be a predictable, if not inevitable, outcome of mining today on federal land. Unless the affected communities are successful in attracting other industries while the mine is still operating, sustainable development is difficult to achieve.

It should also be noted that risk capital and project financing is considerably more difficult to obtain for projects on public land than for projects where the mining company owns the land. Securing financing for projects on public land is like seeking a mortgage for a house on land that you do not (and cannot) own. Thus, the patent moratorium chills investment in mining, which translates into fewer jobs, reduced economic activity, and less revenue for local communities, states, and the federal government.

The Politics of Patenting

Patenting is one of the most challenging aspects of the legislative debate about changing the General Mining Law. Much of the controversy surrounding legislative proposals to amend this law revolves around patenting. Many industry critics portray patenting as a giveaway of federal land that provides mining companies with a title to valuable federal land, alleging the public gets nothing in return. Proponents of abolishing patenting point to commercial developments like Aspen, Colorado, where many years ago, private developers bought mining patents for a pittance and this land was eventually turned into highly profitable non-mining investments. They claim this practice cheats the public and the government out of the wealth created from this land.

Although the historical circumstances of how these claims were patented may be problematic for some, sites like Aspen, Colorado stand as striking examples of how private-sector development of patented mining claims has achieved highly productive sustainable uses of land that was once in the public domain. There can be little doubt that these so-called "public rip-offs" have contributed enormously to the economy; generated numerous jobs; paid substantial local, state, and federal taxes; and produced thriving tourist attractions based on their natural beauty and recreational opportunities.

In response to criticism about patenting, the mining industry has offered to change the patenting process to include a requirement to pay fair-market value for the land. Yet, despite the industry's support for a fair market value patent, there remains a stigma against patenting. Some Congressional leaders, who otherwise support mining, have in the past called for a reverter patent that could invalidate private ownership of a patented claim if the claim is developed for non-mining purposes. Presumably, the reverter concept is an attempt to counter industry critic's concerns about non-mining uses of patented mining claims.

A reverter patent is completely inconsistent with the objective of achieving post-mining sustainable development. For this reason, future mining law legislative discussions should not include a reverter patent.

Patenting Promotes Sustainable Development

Although the opportunities to diversify rural economies are greater in today's world of interstate highways and e-commerce than they were in the past, the severe restrictions currently placed on post-mining uses of federal land (i.e., unpatented claims) makes sustaining a strong economy following mining unnecessarily difficult. Privatization is one way to avoid a serious economic decline following mining because the infrastructure developed on patented claims could remain in place after mining, and could be used to support redevelopment of the land. Post-mining commercial use of previously mined lands could be a long-term source of jobs and tax revenues, and thus could represent a win-win for all parties involved: the land owner/developer, the public, and the government. This

commercial, beneficial use of the land following mining would result in sustainable development and help mining communities thrive after mines are closed and reclaimed.

Increasing the private land base in rural counties in Nevada and elsewhere in the west would be a highly desirable outcome from the privatization of mining claims. The Nevada public land laws that authorize federal purchase of environmentally sensitive lands creates special challenges for rural Nevada counties. Federalizing these private lands shrinks the private land base in rural counties. Policies to encourage privatization of mining lands would help offset this loss of private lands in rural Nevada, would restore the tax base, and spur economic growth.

Private Ownership Minimizes Concerns about Future Public Liabilities

The federal and state land management and environmental laws enacted in the past 35 years have created a number of environmental protection requirements, regulatory restrictions, and reclamation obligations that apply to mines developed on both federal and private lands. As a result, modern mines practice environmental stewardship regardless of land status.

Yet despite the significant environmental controls on today's mines, the public remains concerned about the potential for future taxpayer liability for environmental problems caused by mining. The temporary use of unpatented mining claims by mining companies exacerbates these concerns, creates opposition to mining, and has led regulators to require trust funds to pay for long-term monitoring and management of mine sites. Privatization could address all of these issues.

The environmental problems and safety hazards associated with old, abandoned mines is one of the main reasons the public continues to have concerns about the potential for today's mines to become tomorrow's environmental problems. By definition, an "abandoned mine" is a site with no private owner of record, typically on public land managed by a federal, state, or local government agency. Abandoned mines on public lands comprise a very significant portion of the universe of problematic old mine sites at which there is no identifiable and/or solvent private landowner that can be compelled to reclaim the site. The public is left with the financial burden of cleaning up these abandoned sites.

Privatization is a way to minimize public concerns about the potential for future liabilities associated with mining because land ownership creates an economic imperative for the owner to be a good steward of the environment. Securing title to the land includes the commitment to manage the land as a long-term, private property asset, in a manner that can enable future, productive use of the land. Moreover, if an environmental liability develops following mine closure, the private landowner – not the taxpayer, would be the responsible party. Thus, private ownership of mined lands diminishes the potential for future public liability because the private landowner clearly retains long-term responsibility for maintaining the land in compliance with applicable state and federal environment requirements.

Overview of Benefits Associated with Renewable Energy Redevelopment Projects at Closed Mines

Some mine sites in Nevada and elsewhere may be suitable for brownfields-style renewable energy redevelopment endeavors following mine closure. The transmission lines and substations originally built to connect mines to the regional power transmission grid could be converted to transmit power generated from a variety of renewable energy sources such as wind, solar, geothermal, and biomass renewable energy projects back to the transmission system. Additionally, mines located near rail transport facilities or natural gas pipelines may also be suitable for redevelopment into coal, natural gas, or hybrid electrical power generating sites.

Transmission infrastructure costs and potential public concerns associated with building new transmission lines have been identified as significant barriers to developing renewable energy resources in Nevada and elsewhere. Using the

existing power lines that currently connect mines to the power transmission system might be one way to address these barriers, and could be an effective way to stimulate renewable energy development. It may be possible to co-locate some renewable energy projects with existing transmission lines at soon-to-be closed mines. Although this may not be practical for most geothermal projects, which are constrained by the location of geothermal resources, it may be feasible for other renewable energy projects using wind, solar, and biomass resources.

Additionally, the redevelopment of previously disturbed lands at mines into energy generating facilities would increase energy production without creating the new, large surface disturbances typically required for renewable and conventional energy development projects. Re-using the pre-existing disturbance footprint at a mine for wind turbines, solar panels, etc. could help minimize public concerns about visual impacts and the amount of land needed for renewable energy projects, and could potentially increase public support renewable energy projects.

Wind Energy Project Development at Kinross' DeLamar Mine

Kinross DeLamar Mining Company (Kinross) is an example of one company that is considering developing a renewable energy project at a closed mine. Kinross is evaluating the feasibility of developing a wind-powered electrical generating facility at the DeLamar Mine in Owhyee County, ID. This mine is located approximately 65 miles southwest of Boise, Idaho in the Owhyee Mountains. The DeLamar operation includes several open-pit mines that produced gold and silver between 1978 and 1999. Kinross is currently reclaiming this site.

As part of the ongoing reclamation and closure activities at the DeLamar Mine, Kinross is working with a wind energy development company to assess the wind resource at this site. As currently envisioned, wind turbines will be located on private land that Kinross owns or controls. Assuming the wind resource proves to be adequate to warrant development of a commercial wind-powered electrical generating system, the project will re-use the existing transmission lines, substation, roads, and other facilities that were constructed to support mining.

In evaluating the feasibility of this wind energy project, Kinross had to choose between developing the very high-grade wind resource located along the ridge top within the DeLamar Project Area, or focusing initially on the less robust wind resource at a lower elevation on private land. Kinross decided to start the wind energy project on private land even though it means developing a lower grade resource. We made this decision for a couple of reasons. Firstly, placing wind turbines on the ridge top necessitates constructing transmission lines on BLM-administered lands. This would trigger the NEPA process and delay the project for at least a year or two due to the need to prepare an Environmental Impact Statement. Secondly, securing private financing is much more difficult for projects developed on federal land. The banking and investment communities and wind energy developers are less enthusiastic about projects on public land because the developer does not own or control the land. Eventually, the wind energy developer may install wind turbines on the ridge top. However, all parties felt it would be best to confine the initial project to private land.

Case History of the Permitting Process and Environmental Controls for a Mine on Private Land

Some mining industry critics argue that privatizing mining claims will result in a reduced level of environmental protection compared to mines on federal land. I would like to offer a case history of the Ken Snyder Mine in Elko County, Nevada to refute this unfounded assertion.

The Ken Snyder Mine is an underground gold and silver mine located near the town of Midas, Nevada. Newmont Mining Corporation is the owner and operator of this mine. However, Franco-Nevada Mining Corporation, Inc. (Franco-Nevada) originally discovered the Ken Snyder Mine in 1994. Franco-Nevada permitted the mine and started commercial-scale production in 1999. Because all project components were confined to private land subject only to state regulation, Franco-Nevada was able to secure all required permits for the underground mine, mill, tailings

disposal facility, and project infrastructure in a record 8-1/2 months. During this time, I served as Franco-Nevada's environmental consultant and was responsible for permitting the mine.

State versus Federal Permitting

The absence of a federal role in the permitting process for the Ken Snyder Mine is indeed unusual for a mine in Nevada where private land, especially in the rural counties, is at a premium. Because there was no federal jurisdiction, the NEPA process was not applicable and a time-consuming Environmental Impact Statement (EIS) was not required. This saved substantial time. An EIS takes a minimum of 18 to 24 months to prepare assuming the process goes quickly and smoothly. Unfortunately it is not uncommon for an EIS to take several years or more to complete.

The point that needs to be emphasized is that the NEPA process would not have added any meaningful environmental improvements to the Ken Snyder Mine. This mine was built with the same environmental safeguards that would have been required had there been federal regulatory involvement.

The environmental controls employed at the Ken Snyder Mine reflect Nevada's very stringent regulations for mining and reclamation. These regulations ensure protection of all environmental resources and apply and enforce federal environmental laws. Nevada's 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 1999 National Academy of Sciences study entitled "*Hardrock Mining on Federal Lands*". In contrast to the federal permitting process, the Nevada State permitting process is much more predictable and performed in a timelier manner than the time-consuming NEPA process.

Admittedly, Franco-Nevada decided to site its project facilities on private lands for the purpose of avoiding the expensive, time-consuming, and unpredictable NEPA process. 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.

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 the Ken Snyder Mine and the nearby community of Midas, Nevada. 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 regarding 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 included the following:

- Performing 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;
- Adding an extra measure of wildlife protection by placing plastic balls in the tailings impoundment to discourage birds from landing even though the tailings effluent was detoxified to safe levels;
- 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 Ken Snyder Mine operates for a long time into the future. They also allowed Franco-Nevada to gain credibility for its promises to the community. Franco-Nevada could not have made these environmental investments had their 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.

Faster Permitting Benefits the Public

In addition to the obvious benefits to mining companies, an expedited and predictable permitting process, such as that described for the Ken Snyder Mine, creates substantial economic benefits for local and state governments and area merchants. With a faster permitting schedule, the jobs needed for project construction and operation become a reality sooner and on a fairly reliable schedule. These jobs create a revenue stream and increase the overall economic activity in the region near the mine. The workers pay taxes and buy goods and services in nearby communities. Additionally, a predictable permitting schedule facilitates planning between community leaders, elected officials, and the project proponent to address fiscal and socioeconomic impacts associated with a new or expanded workforce.

Conclusions

There are many public benefits associated with privatizing mining claims. Private ownership of mining claims would enhance sustainable development and limit public liability following mining on federal land. The current regulatory and legislative impediments to privatization are not in the public's best interests. Major policy and legislative changes are needed to facilitate privatization as a way to encourage sustainable development following mining. These changes include the following:

- Lifting the current patent moratorium;
- Amending the Mining Law to include a fair market value patent without a reverter;
- Streamlining the administrative and legislative land exchange and direct sale processes; and
- Shortening the timeline for preparing NEPA documents as a way to stimulate discretionary corporate environmental investments.