

Committee on Resources

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HOUSE COMMITTEE ON RESOURCES

SUBCOMMITTEE ON ENERGY & MINERAL RESOURCES

FIELD HEARING: "RESPONSIBLE DOMESTIC RESOURCE DEVELOPMENT AND ECONOMIC STABILITY
– THE ROLE OF THE HARD ROCK MINING INDUSTRY"

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Madam Chairman and Members of the Subcommittee, thank you for the opportunity to participate in this hearing and to respond to issues regarding responsible domestic resource development, economic stability, and the role of the hard rock mining industry. The Bureau of Land Management (BLM) is keenly aware of the challenges facing the mining industry today. We all agree that there are compelling reasons to encourage investment that supports development of our mineral resources.

3809 Regulations

I would first like to discuss the BLM's surface management regulations, also known as the 3809 Regulations. Under the previous administration, revised 3809 regulations were issued on November 21, 2000, and became effective January 20, 2001. That rule was subsequently revised in October 2001 to remove several provisions that were unnecessarily burdensome; these changes took effect on December 31, 2001. The overall purpose of the regulations continues to be the protection of our environment while providing for a reliable and affordable supply of minerals.

One important revision to the January 2001 regulations was the elimination of the "substantial irreparable harm" provision. We determined that BLM has other statutory and regulatory means to prevent irreparable harm to significant resources and, therefore, this provision was not needed.

The reference to "joint and several" liability was also removed. We recognized that neither the Federal Land Policy and Management Act nor the Mining Law expressly provided for joint and several liabilities. Therefore, BLM will rely on surety bonds and other financial guarantees to ensure against incomplete reclamation responsibilities.

A third substantive change to the January 2001 rule was the removal of a provision that established administrative civil penalties. Again, clear authority to impose such penalties was uncertain and appeared to require Congressional authorization.

An important change implemented in the January 2001 rule that has been retained is the bonding of exploration and mining operations on the public land. We believe that a strong financial guarantee process is necessary to ensure that taxpayers are not left paying for the costs of cleanup. All operations, including notice-level (5 acres or less) operations that will cause more than negligible disturbance, are now required to

have a bond or other form of acceptable financial guarantee that covers all anticipated reclamation costs. In addition, the new regulation disallows the use of new corporate guarantees, while honoring those in place prior to January 20, 2001. Increases to existing corporate guarantees and transfer of corporate guarantees to another operator are no longer allowed.

Bonding Task Force

The September 11, 2001 disaster-related losses, as well as the recent forfeitures of major corporations, have had a significant impact on the surety industry. Because of these losses, companies have become more cautious and are reducing their exposure to financial risks. These actions have had a direct impact on the mineral industry's ability to secure bonds. This problem is of particular concern to the Department of the Interior. A Bonding Task Force was established last year to review the availability of surety bonds or other mechanisms to meet Federal and Tribal financial assurance requirements for mineral extraction industries. The Task Force's charge was: 1) to gather information and statistics; 2) to evaluate the problem; 3) to determine its severity and scope; 4) to identify regulatory impediments that may make it difficult to obtain surety bonds; and 5) to make recommendations to the Secretary, as appropriate. The Task Force is in the process of evaluating all the comments received and exploring various administrative options. We anticipate the report will be completed soon and will be provided to the Secretary for her consideration.

In the interim, BLM is striving to assist the industry, where possible, in meeting requirements to provide financial guarantees for outstanding reclamation and other liabilities. In compliance with the bonding requirements of the January 2001 regulations, BLM adopted the policy that financial guarantees would not be required from "grandfathered" small notice-level (less than 5 acres) mining operations until 60 days after BLM formally notifies the operator of the required bond amount. This allows notice-level operators to continue to operate, pending BLM acceptance of the required financial guarantee. BLM is working with states to set up mechanisms, such as bond pools to assist small miners in obtaining coverage. Nevada is one of three states that currently employs state bond pools.

In an effort to deal with many of the uncertainties created by changes in the surety market, combined with the new regulatory requirements, BLM has been actively preparing internal guidance. At the local level, BLM has been working with state and local agencies to streamline the review and approval process for new operations. For example, BLM - Nevada has a cooperative agreement with the Nevada Division of Environmental Protection that allows the operator to make a single submission for a proposed operation to both agencies. In addition, the agreement provides for coordinated review and approval by both the BLM and the state agency of the submission. Several BLM state offices, including Nevada, have been working with states to simplify the reclamation cost estimating process. Colorado, Montana, Utah, and Nevada are all exploring opportunities for the state to take over implementation of certain aspects of the 3809 regulations.

In another area, the Congressionally-mandated Mineral Patent Program is nearing completion. The Bureau began this program on October 1, 1994, with 405 grandfathered applications. To date, we have made final decisions on 343 applications and have 67 applications more to complete. Of those 67 applications, 25 require fieldwork - that is, performing on-site mineral examinations. We expect the fieldwork to be completed by October 2003. The remaining applications are in various stages of review by the BLM and the Office of the Solicitor. We anticipate that all adjudication actions will be completed by October 2004.

One area of great interest is the pending review of the 1997 Solicitor's "Mill Site" opinion, which outlines the number and use of mill sites. The BLM is aware of the potential for this opinion to place constraints on large mining operations and associated support facilities, such as mills, waste rock disposal, tailings ponds, and transportation facilities. The 1997 opinion is currently under review by the Office of the Solicitor.

Hard Rock Mineral Resources in Nevada

As BLM State Director in Nevada, the remainder of my testimony will focus on BLM's mineral activities on public lands in Nevada. Today, Nevada ranks 1st in the Nation and 3rd in the world in the production of gold. Nevada is also the Nation's leading producer of barite, lithium carbonate, and mined magnesite, and a significant contributor to other important hard rock minerals. Public lands in Nevada play a significant role in providing minerals to our Nation. Mining has enriched our Nation by creating jobs, stimulating manufacturing, delivering energy, and expanding our economy. The benefits of hard rock mining accrue on a local as well as National scale. For example, in February 2002, the Board of County of Commissioners of Elko County, Nevada, in response to the Department's pending rulemaking to revise the 3809 regulations, stated, "this

activity [hard rock mining] generates substantial economic benefit to our County consisting of direct mining and mineral exploration jobs, indirect jobs associated with other businesses in the County, property taxes, and other community support from the mining industry.”

Mining is the second largest industry in Nevada, and BLM employees in the state have workloads to prove it. BLM Nevada annually records more than 50 percent of the new mining claims in the Nation and maintains nearly half of the Bureau's active recorded mining claims. There are currently 105,465 active mining claims on public lands in Nevada.

Based on the number of active Notices and Plans of Operations in Nevada, we have 50 percent of the Bureau's National total in the surface management program. We have 321 approved Plans of Operations on public lands in Nevada. In addition, there are 353 active Notice operations and 1,733 recently expired Notices. In cooperation with the state, BLM manages \$465 million in financial guarantees for active Notices and Plans of Operations. \$220,000,000 of those financial guarantees are in the form of grandfathered corporate guarantees.

The boom and bust cycle of mining is well known in Nevada. Through the 1980s and 1990s, the state saw a boom in gold and silver mining, although there was a slight downturn in the latter part of the 1990s and early 2000. Presently, Nevada is experiencing renewed activity in claim staking, exploration, and several new mines being proposed for development. Claim staking has increased nearly three-fold over the previous two years with a corresponding increase in exploration Plans and Notices. At the same time, it is evident that the boom cycle of the 1980s has matured. Several mines are now in closure and several more are in their final years of operation. However, the BLM's workload has not decreased. We are actively involved with mine closures, bonding (for both Plans and Notices), mine bankruptcies, abandoned mine closures, as well as new Plans for exploration and mine development.

Mining activities in Nevada requiring a plan of operation also require a permit from the State of Nevada, Division of Environmental Protection. BLM Nevada and the state agencies work together to provide the industry with a joint permitting and bonding process. A staff position, funded in part by industry fees paid through the State of Nevada, and in part by BLM, serves as a liaison with the state's Division of Environmental Protection. The BLM in Nevada, the state, and EPA are developing new guidelines for mine closures. BLM has also developed guidelines for bonding, re-vegetation, water modeling and risk assessment for new mining plans. This guidance is intended to clarify the process for all parties and hopefully expedite the review and approval process.

In the last three years, the state and the BLM have mitigated safety hazards on more than 900 abandoned mined sites. For example, BLM is partnering with the Nevada Mining Association and the Nevada Division of Minerals in backfilling mining sites. To protect public health and safety, sites near urban areas, such as Las Vegas, are given priority. Almost 80 sites have been cleared for closure in Clark County.

Good stewardship is exemplified by the mining industry in Nevada through their efforts in reclamation. There were 13 nominees from Nevada for the 2003 National Reclamation and Sustainable Mineral Development awards. Nominees included individual operators and the Nevada Mining Association. The nominations of individual operators focused on their successful site reclamation efforts. The Nevada Mining Association has routinely been recognized for its very active involvement with the BLM and the state to reclaim abandoned mine sites that have hazardous open shafts and other public safety concerns. With a rapidly growing population and increasing demand for recreation on public land, reclaiming and securing abandoned mine land sites around campgrounds, off-highway racecourses, hiking trails, and popular recreation areas is a priority.

Conclusion

Madam Chairman, BLM is committed to Secretary Norton's 4C's guiding principles of Communication, Consultation, and Cooperation -- all in the service of Conservation, as we pursue our mission to be good stewards of our Nation's public lands and work cooperatively with Nevada's mining industry.

Thank you for the opportunity to testify before you today. I welcome any questions the Subcommittee may have.