

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

Testimony of Alan Septoff

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To The Subcommittee on Energy and Mineral Resources,

Committee on Resources,

U.S. House of Representatives

An Oversight Hearing on "Effect of Mining Claim Fees on Domestic Exploration: *Are They Worth It?*"

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Washington, D.C.

Introduction

Chairwoman Cubin, members of the Subcommittee. Good afternoon. My name is Alan Septoff--I am Reform Campaign Director of Mineral Policy Center. Thank you for inviting Mineral Policy Center to testify before this subcommittee on the worthiness of the claim maintenance fee.

Mineral Policy Center (MPC) is an environmental organization dedicated to protecting the environment and communities from the adverse impacts of mineral development, and cleaning up pollution from past mining. Our national office, based in Washington D.C., provides support to citizens across the country and around the world. Our field offices in Colorado and Montana assist communities throughout the western United States concerned about the impact of mineral development in their backyards.

Hundreds of community groups and organizations with millions of members support our efforts to reform the 1872 Mining Law and improve public policy and industry practices related to mining.

MPC believes that responsible mining can and does occur on our public lands.

The claim maintenance fee is "worth it."

We believe the claim maintenance fee is definitely "worth it." It protects the nation's interest in our public lands in several different ways: it protects the public's financial interest in mineral resources; it protects the public's lands from fraudulent use; it protects the public's environmental interests by funding the enforcement of the BLM's surface management regulations.

To that end, Mineral Policy Center would like to take this opportunity to wholeheartedly endorse HR1085, the Claim Maintenance Act of 2001, sponsored by Resources ranking member Nick Rahall of West Virginia. It would make permanent the claim maintenance fee and the patenting moratorium. In one fell swoop it would end the biggest public land giveaway left on the books and ensure that dedicated funds exist to enforce mining regulations.

Subsidies

Before I launch into the rest of my testimony, I would like to start with a reminder. The 1872 Mining Law is still the law of the land when it comes to the disposition of publicly owned hardrock minerals on publicly owned lands. Aside from the claim maintenance fee and a nominal \$25 initial claim location fee, the mining industry pays NOTHING to the owners of public minerals for the value of those minerals - the taxpayers of the United States. This is in marked contrast to the royalties that the coal, oil and natural gas industries pay to taxpayers, and in marked contrast to the royalties that hardrock mining companies pay one another. Although it is true that the mining industry must invest considerable capital in order to extract and process minerals, so must a General Motors invest in capital before it can produce cars - but GM still must pay to obtain the raw materials that go into its finished product.

Additionally, lest we forget, the 1872 Mining Law still allows valid mining claim holders to buy mineral bearing public lands for \$5 per acre. Such purchases would be going on today if not for the patenting moratorium that must be renewed each year (excepting grandfathered claims). Hopefully, even an industry friendly President will see that it makes no sense to give away billions of dollars in mineral rich lands, and will choose to support the moratorium renewal this year. The total of these mineral giveaways? Since 1872, we estimate that the American taxpayer has essentially given away to the mining industry over \$240 billion in mineral value and a land area the size of the state of Connecticut.

These giveaways are just part of the story, other mining industry subsidies still lurk out there - such as the percentage depletion allowance: a double subsidy that allows mining companies to deduct the costs of mining a mineral deposit that they acquired without payment.

This subsidy litany is a long winded way of saying that, other reasons aside, the claim maintenance fee is "worth it" simply because it is the only return that taxpayers receive for the disposition of their own minerals. \$22 million per year isn't much, considering the BLM estimates that the value of minerals annually taken from BLM-managed public land is in excess of \$1 billion, but it's more than nothing.

Claim Maintenance Fee - Is it Worthwhile?

It is undeniable that the number of valid claims on public lands dropped precipitously the year the claim maintenance fee became effective. It is undeniable that number of valid claims on public lands have remained below pre-claim maintenance fee levels ever since. Additionally, annual mineral industry surveys performed by the Nevada Division of Minerals indicate that the claim holding fee is one of the factors that limit exploration in Nevada. Let's take those three facts together at face value, and assume that the claim maintenance fee does reduce exploration investment in the United States.

That assumption frees us to address the real question of this hearing: given the impacts of the claim maintenance fee, are those impacts worth it to the owners of the public minerals - the American taxpayers. In our opinion, unsurprisingly, the answer to that question must be yes. Beyond the value of simply requiring the mining industry to pay SOMETHING for the minerals it extracts from public lands, we believe the claim maintenance fee's benefits exceed its costs to the PUBLIC for several reasons: (1) claim drops notwithstanding, recent mining industry surveys reveal that U.S. states are consistently among the most attractive sites for mining capital investment; (2) the claim maintenance fee significantly cuts down on land speculation and land fraud; (3) the claim maintenance fee is a dedicated source of funding for the enforcement of mining regulations in an era where land management budgets may be shrinking.

Investment Attractiveness

Some have suggested that the claim maintenance fee forces the mining industry to look elsewhere to invest exploration dollars. A prominent international mining industry survey by the Fraser Institute⁽¹⁾ contradicts that view. Notwithstanding the claim maintenance fee, it has ranked the state of Nevada the most attractive climate for mineral investment **in the world** for three years running. It has ranked Alaska in the top ten for investment climate three years running as well.

The Nevada Bureau of Minerals exploration surveys⁽²⁾, indicating that the claim maintenance fee negatively impacts exploration in the state, bear closer examination. Perhaps most revealing, the 1999 survey shows that even as worldwide spending on exploration decreased, exploration spending in the state of Nevada increased.

Second, the survey actually reveals that the claim maintenance fee has relatively limited impact upon exploration investment. The survey asked respondents to rank the importance of 11 different factors influencing exploration investment in Nevada. Included among those factors were geology (mineral potential), commodity prices, uncertainty about mining law reform, and claim maintenance fees. Responses were reported in 3 categories: respondents with an exploration budget greater than \$1 million, respondents with an exploration budget less than \$1 million and overall respondents. For all respondents, geology and commodity prices were the two most important factors affecting exploration investment. Interestingly, all respondents ranked uncertainty about mining law reform more important than the impact of claim maintenance fees. For small exploration budget respondents, the impact of the claim maintenance fee ranked 8th most important out of 11 factors. For large exploration budgets, the impact of the claim maintenance fee on exploration investment ranked dead last.

Land Speculation & Claim Validity

The immediate impact of the claim maintenance fee on the number of valid claims can be interpreted in two ways: (1) exploration activity decreased; (2) land speculation decreased. Anecdotal evidence, past GAO and Congressional Budget Office analysis, and President Bush Sr.'s 1991 budget proposal, would seem to indicate that the latter is at least as significant as the former.

People are always looking for something for nothing - and without the claim maintenance fee, that's what they get. Even with the claim maintenance fee, unscrupulous marketers try to sell information about staking mining claims as free land - only tangentially related to mineral development. By no means the only example, the attached printout from the website <http://www.governmentland.com> serves to illustrate the problem.

The GAO verified the problem. In its 1990 report, *Unauthorized Activities Occurring on Hardrock Mining Claims*, GAO surveyed 59 mining claims, on which 33 had unauthorized activities (residences).

In 1990, the CBO stated that a yearly claim holding fee would actually *benefit* mining activity, because it would clear inactive (speculative) claims, thus opening up land formerly closed to hardrock mining.⁽³⁾

To that end, in 1991, President Bush's budget proposal included a claim maintenance fee along with an estimate that the fee would reduce the number inactive claims by over 225,000 in the first year.⁽⁴⁾

The right to mine under the 1872 Mining Law is only vested if you have a valid claim. According to case

law, a claim is valid only if a prudent person could reasonably expect to mine the mineral deposit at a profit while complying with all applicable statutes and regulations. Unfortunately, in part due to expense and with certain exceptions, the federal government only checks the validity of mining claims if they are being patented. So, a claim holder doesn't have to prove they have found anything valuable to control a claim under the 1872 Mining Law. The claim maintenance fee serves as a rough, low-threshold proxy for a validity exam. If a claim holder doesn't think it's worth \$100 per year to them, it probably doesn't contain a valuable mineral deposit or the reasonable prospect of a valuable mineral deposit. The claim maintenance fee is supposed to fund validity examinations, but the fee is inadequate to perform such exams on all claims staked.

Enforcement of Environmental Regulations

As the GAO identified, the claim maintenance fee funds most of the Mining Law Administration Program. The Mining Law Administration Program includes the enforcement the 3809 regulations. The 3809 regulations are responsible for, among other things, protecting taxpayers from assuming the burden of environmental cleanup costs when mining companies default. The Center for Science in Public Participation estimates potential taxpayer liability for cleanup at currently operating mines may exceed \$1 billion.⁽⁵⁾ Especially in an new era where proposed general appropriations for Interior-related budget items are in decline, continuing a dedicating funding source for enforcement of surface mining regulations seems wise.

Mining Industry Political Budget vs. Claim Maintenance Fee Waste

The GAO estimates that approximately \$1.2 million, roughly 5%, of claim maintenance fee revenues are spent on BLM activity not related to the Mining Law Administration Program. Relative to other government programs and the private sector, we are unqualified to judge whether 5% is an egregious, typical, or low amount of resource misallocation.

We do know that the annual mining industry lobbying budget dwarfs \$1.2 million. In 1998, the last year for which complete data is available, the Center for Responsive Politics reports that the mining industry spent \$9.2 million on lobbyists and \$3.8 million in donations to political candidates. Assuming the GAO misallocation estimate holds approximately true year to year, the mining industry spent ten times more, \$13 million, than the misallocated portion of claim maintenance fee revenues. \$13 million also constitutes approximately half of all claim maintenance fee revenues.

GAO Report

In closing, I would like to note that Mineral Policy Center finds it interesting that the General Accounting Office report investigates only improper labor charges to the Mining Law Administration Program. The GAO has a well-deserved reputation for nonpartisan analysis of all things federally fiscal. Why wasn't GAO requested to answer the question posed by this oversight hearing: is the claim maintenance fee "worth it?" Perhaps it is because they have already given it: "[we recommend the federal government] require claim holders to pay the federal government an annual holding fee in place of the annual work requirement."⁽⁶⁾

Thank you for the opportunity to testify.

1. ¹ *Fraser Institute Annual Survey of Mining Companies 2000/2001*

2. ² State of Nevada, Commission of Mineral Resources, Division of Minerals, *Nevada Exploration Survey 1999*.

3. ³ As reported in GAO/RCED-90-111, page 7.

4. ⁴ *Ibid*

5. ⁵ ***Hardrock Reclamation Bonding Practices in the Western United States***, prepared by James Kuipers of Center for Science in Public Participation for the National Wildlife Federation, Feb 2000.

6. ⁶ GAO/RCED-90-111, page 7.

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