

Committee on Resources,

Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

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Witness Statement

WRITTEN TESTIMONY

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The Effect of Federal Mining Fees and Mining Policy Changes on
State and Local Revenues and the Mining Industry

Please note that the opinions expressed here are mine alone, and do not necessarily reflect the views of RS Investment Management.

Issues presented for my comment:

1) The effect of existing federal fees, such as claim maintenance fees, on exploration activity

The annual claim maintenance fee is intended to encourage continuing work progress to advance the understanding of the economic potential of the mining claim - to determine if economic returns are achievable. This fee is intended to discourage idle claims on federal lands, as idle claims could preclude beneficial advancement work by others.

The claim maintenance fee impacts the exploration process in both positive and negative ways. In a positive sense, I believe the fees were designed to encourage work to progress on the lands under claim, such that lands found not prospective would be dropped to avoid the fee. In a negative sense, beyond the ten-claim exemption, the fee does nothing to advance the understanding of the economic potential of the claim, and becomes a prohibitive expense - an expense that actually could prohibit the orderly examination of mineral potential.

The claim maintenance fee alone adds to excessive, non-work related costs that could result in the claims being dropped, and work stopped - only to be restarted by another prospector without the benefit of the results of the former work. This scenario could lead to unneeded disturbance. Mineral exploration is a demanding and frustrating effort: Diligence and persistence is required, and results are slow coming. Conclusions are slower still. Geology is never straightforward, nor is it predictable, and results of work must be compiled into a growing understanding of the prospectiveness of the claims. This could result in a geologically complex claim(s) being successively re-worked but never being adequately understood.

The claim maintenance fee can put a prohibitive cost on holding claims, a cost which might discourage adequate and beneficial work. Often, the work that is required to validate a prospect is too difficult and expensive for an individual to mount, requiring the involvement of a larger corporation. However, there has been a tendency over the past 5- to 10-years for fewer and fewer companies to be willing to fund grass-roots, or prospecting-type exploration work, relying instead on individual prospectors to locate mineral

ground. If mere holding fees become a disproportionate prospecting expense, the much-needed "grass roots" prospecting won't be done. In many instances, this could kill the incipient stages of mining-related jobs. So too, might this decline negate the need for much of the staffing of the oversight agencies (e.g., BLM).

One scenario that reveals this prohibitive expense is provided by the lengthy delay periods that can and do occur in the process of applying for and receiving permits for land disturbance work. During this period, holding costs can be prohibitive while the claimant awaits needed approval for work plans.

Mining is historically a low-return business. The industry typically averages low single-digits for return on capital employed (ROCE), well below their cost of capital - therefore, any increased burden on the operators will denigrate already poor returns for the industry, driving investors away and slowly killing the industry in the U.S. This will drive operators overseas, resulting in loss of jobs and tax base for communities and state and federal agencies.

Miners have long faced declining metals prices, and increasing costs - for equipment, materials and permitting / legal and environmental reclamation issues. This crimps operating margins, reducing the economic return. This negatively impacts the perceived value of and need for exploration, which has seen drastic downturns in activity throughout the U.S. This, again, will lead to fewer jobs, and less basic industry in the U.S., leading to increased imports of raw materials for producing refined products.

2) The potential effect that proposed mining fees, such as a federal royalty, would have on state revenues and mining operations.

The lack of a royalty on minerals mined from federal lands is a controversial issue long thrown in the face of mining protagonists, as purported evidence of the irrationality of the 1872 Mining Law. The concept of a royalty may seem like a fair participation for the federal or state government for mining done on public lands; however, a royalty can have a profound negative impact upon the internal rate of return from the series of cash flows a mining operation generates, as follows:

- a) A top-line, or revenue royalty is impacted only by the selling price of the commodity being recovered, and does not reflect the profitability (or lack thereof) for the mining project.
- b) Operating costs, including payroll, payroll taxes, equipment, energy and project financing costs, can and do vary over time (they typically escalate), and impact the operator only. The royalty holder is not impacted by either the fixed, or the changing variable costs. Thus, the revenue royalty holder has an unfair financial advantage over the operator, who has taken on all the financial risk to develop the project, and is completely burdened by all costs, and taxes.
- c) A revenue royalty has the net affect of reducing the value of the material recovered to the mining company. That is, a 5% revenue royalty effectively reduces the revenue from the material recovered to 95% of the in-ground value. This is the same affect as a 5% drop in mined grade, or 5% drop in metallurgical recovery. Thus, a royalty can reduce the life of a mining project resulting in loss of jobs, and tax base for the county, and state. A mining project with a revenue royalty will have a lower rate-of-return which could result in the project not receiving financing, and not being built.
- d) Typically, the operating margin is quite modest, and not sufficient to support the added burden of a royalty. Otherwise, economically viable projects might not be built.

3) The probable effects that the new 3809 regulations would have on the environment, state revenues and mining operations.

In my opinion, existing 43 CFR 3809 regulations promote environmentally responsible mining, and require sufficient and effective oversight by the BLM. Additional regulations will merely serve to add to the already extensive permitting process facing mine operators, and would likely dissuade some from pursuing mining in the U.S. This would obviously have strong negative affect on local communities and state economies that derive livelihood from mining. Environmentally, additional regulation is not needed - adequate checks-and-balances presently exist, and do not need to be improved upon. At most, better implementation of existing regulations would seem to fill the perceived regulatory gap, which could be aided by additional resources at oversight agencies.

4) The millsite opinion (Leshy, 1997) and its effect on the mining industry.

The millsite opinion issued during 1997 by Department of Interior Solicitor John Leshy is a very odd, in that it assumes a one-to-one relationship exists between mining-area disturbance and that area needed for facilities and mining spoil piles. However, there can be no assurance that such a relationship might exist. The reasons for this are many, only a few of which will be commented upon, as follows:

First, by volume, the recovered minerals constitute a very small percentage, of the earth mined. Thus, the processing and impoundment areas are necessarily outsized relative to the hardrock mining footprint. This makes the tying together of the two claim-types ill advised.

Second, the two claim types are of notably different shapes, and areas, with the hardrock mining claim being elongate for location over a lode, or vein-type deposit. A mill site claim is typically equilateral (square), intended for location on the valley floor adjacent to the lode(s). Mill sites are intended to host mining-related equipment, facilities and materials contained within environmentally secured areas. Attempting to tie the two differing areas to each other, is not logical.

Third, the need to contain mining-related facilities and spoils piles, while obvious, may in certain conditions or irregular terrain, necessitate land of differing area even for like-operations in more level settings. This variability could certainly hold for operations of different age, due in-part to changed operating parameters or even improved environmental requirements. This could not have been anticipated for, and obviates the call for a one-to-one relationship existing between the two claim types.

Further, the logic may follow, that if an operator were needing additional millsite acreage to comply with, for instance, discharge permit requirements, but the need would cause the operator to exceed the "Leshy 1997 millsite opinion" that operator might be inclined (perhaps even mandated) to locate additional lode claims merely to maintain the proposed "one-for-one" stipulation. Clearly, this is not the intent, and could tie-up locatable minerals that might be prospected by other parties.

Operators plan their facilities for long-term operation, to allow environmental security, and operational flexibility. The operator must anticipate the ultimate need, and prepare the necessary ground for the long-term use by the operation. Tying the millsites acreage to equal that of the lode claims could limit the flexibility of the operator, and might introduce unnecessary environmental risk, buy confining facilities into inadequate areas.

Concluding remarks

The continued attacks upon the mining law of 1872, and corrosion to the already weakened economics of mining in America, will continue the already established trend of pushing the industry overseas. The push of mining offshore is inevitable until such a time as we view mining as a necessary industry, in the strategic interest of the U.S. An industry that provides needed raw materials for a healthy and independent democracy, and as well provides much needed job diversity in an economy trending evermore toward providing only "service" industry. Mining is being, and can continue to be done in an environmentally responsible manner. We must look for ways to help, not hinder the industry. Investors are already few in number, and without a promising outlook for a healthy, viable industry, the mining industry will not be able to compete for, or attract capital.

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