

Committee on Resources

Subcommittee on Energy & Mineral Resources

Witness Statement

Cesar Hernandez
Field Representative
Representing: Cabinet Resource Group & Montana Wilderness Association
The Cabinet Resource Group

Good morning Chairman and members of the committee,

I am Cesar Hernandez, a 27.5 year resident of NW Montana, landowner, father of 3, Vietnam Veteran and conservationist.

In that time I have worked as a miner, mill worker, logger, carpenter and log crafter. I have been through good economic times and weathered many more lean times and know the tradeoffs required to make living in that part of the state. The primary ingredient that has kept me living at the toes of these mountains has been the quality of life and the opportunity to raise my (3)children in a clean environment.

As a small prospector/miner I battled the US Forest Service for 8 years from 1972-1980 over the right to live and work on mining claims filed under the provisions of the 1872 Mining Law. At the same time that I was being outspent, out litigated and overwhelmed in a successful government effort to remove me from my mining claims; the very same agency (USFS) was accommodating one of the nations oldest and largest mining companies (ASARCO) in its quest to develop a mineral complex within the Cabinet Mountains of the Clark Fork River Valley.

In 1976 I had the pleasure of outmaneuvering ASARCO (American Smelting and Refining Corporation) for the possession of an identified 43,000,000 ton copper/silver ore body in the Cabinet Mountains. As the president of Northwest Citizens for Wilderness Mining Company Inc.(NWCFCWMC). I can tell you that in 1980 Chevron Resources offered NWCFCMC \$3,000,000 for the development rights to these claims. Since then NWCFCWMC has spent over \$100,000 maintaining and defending these claims from contenders such as Asarco, US Borax, Far West Resources and lessor knowns.

The 1872 mining law was crafted in a time when the fledgling US Government was seeking to promote industrial development and settlement of the West; mission accomplished! However as with many other legislative largesse bestowed from the American common it beckons to abuse and, over-exploitation. And that is what I would like to speak to today.

Outside of the Bill of Rights and the Constitution there are very few legislative articles/mandates that have not undergone major scrutiny or change with time. The 1872 Mining Law, law of the land for the last 127 years is one. Protected by an extremely powerful invested and concentrated industry, this law has effectively allowed the transfer of vast amounts of public wealth for next to nothing. Until recently the mining industry, an entity as resourceful and powerful as the tobacco industry has held this law as a sacred tenet and right.

As time has seen the passing of 1872, so time has also seen the passing of the pick and shovel miner. Today, multi-national corporations beholden only to themselves use the 1872 Mining Law as a free path to the wealth of the public domain. As the image and the participants in mining have grown so have the impacts associated with the process of extracting minerals from rock. Today, mines that dwarf the imagination and the protective mechanisms and resources of state regulatory agencies are the norm. And ore bodies supporting minuscule amounts of metal and heretofore considered uneconomical to the pick and shovel miner are now mined. The latter only because of the inherent subsidies (mineralized land for \$5 acre) of the 1872 law and the mineral depletion allowance. More subtle public subsidies such as mixing zones, airshed variances, wildlife displacement and repeated violations of worker health and safety are seldom acknowledged as such.

Since 1978 I have followed the entry of Asarco into my community within the Cabinet Mountains along the Clark Fork River Valley. Their development of a 52,000,000 ton copper-silver deposit in the Revett formation was heralded as a boost to the local economy. However, unemployment actually rose during the time they operated the Troy Project mine as an oversupply of people seeking employment moved into the area. Local government and school districts benefitted for a decade long period from the increased revenue tax base. However, the 300% employee turnover in just twelve years of operation bespeaks a different message. This was convincingly demonstrated during the year (?) that the United Mine Workers successfully organized the Troy mine workforce, only to see their endeavors deviously thwarted, their union broken and the wages reduced. In some cases miners became eligible for food stamps.

The legacy of the Troy mine has been equally detrimental to the environment. Residual heavy metals from the mine and tailings impoundment leakage, have reduced Lake Creek's once blue ribbon trout fishery into just one more water quality limited stream on the states 303d TMDL list. Monitoring wells and the water quality program the State of Montana assured local citizenry would protect area waters was abandoned within three years of permitting. In response to citizen demands the Asarco and the state cobbled together a monitoring program that determines nothing. A citizen lawsuit filed by the Cabinet Resource Group (CRG) under the Clean Water Act in 1997, cited lack of a Montana Pollution Discharge Elimination System (MPDES) permit for the Troy mine. The lawsuit was conditionally settled by allowing CRG to drill and monitor 10 groundwater wells at the Troy tailings impoundment and another 10 at the tailings impoundment site for the proposed Rock Creek mine. It is unfortunate that it has required repeated efforts by concerned citizens to get the State of Montana to investigate or mandate remediation for spills and leakages to air, land or waters.

It wasn't until 1997, years after the mine closed that the State was made aware of ore concentrate spillage at Asarco's downtown Troy, MT rail load out facility. Copper lead concentrations as high as 2000 times the EPA recommended limit were discovered by citizens in areas frequented and passed through by school children. A self regulated clean-up approved by the State with no followup compliance monitoring. The Troy mine with approximately 11,000,000 tons (2.5 yrs.) of reserves is on operational standby.

As of this date the State approved reclamation plan for Troy is not being followed and ASARCO has indicated they will not be following it. State regulators have thus far failed to correct this oversight or live up to their mandated responsibilities.

Spurred by rising silver prices (\$30-50 per oz.) in the 1980's, the mining industry conducted an intensive mineral exploration of the Revett formation in the lower Clark Fork River valley. Approximately 5-7 ore deposits were located and delineated by companies such as Asarco, U.S Borax, Phelps Dodge, Meridian and Santa Fe mining company.

The Cabinet Mountains Wilderness (CMW), one of ten legislated under the 1964 Wilderness Act is underlain by portions of the Revett formation. Both Asarco and U.S Borax located major world class (136,000,000 tons) ore deposits within the portions of the CMW. In 1984 Asarco proposed developing the Rock Creek mine near Noxon, MT, and in 1988 Noranda proposed developing the Montanore property purchased from U.S Borax in the Libby Creek drainage.

Development of each of these mines would entail drilling twin 16,000 foot tunnels from outside the Wilderness Boundary into the CMW. Mining would be done in the room and pillar method. This would leave a cavernous underground opening 4000 feet wide, 16,000 feet long and anywhere from 50-200 feet high. The overburden roof of this cavern would be supported by hundreds of 75 foot square rock pillars. In some places the ore zone approaches within 100 feet of the surface. The CMW is located in a class III earthquake zone and surface subsidence is a real possibility. Additionally, wilderness lakes are threatened with dewatering via faults, fissures or human miscalculation. Approximately 14 lbs. of copper and 2oz. Of silver will be yielded for every ton of rock mined. The remaining 1986 lbs. of waste rock will be transported 7 miles via slurry pipeline and stored in a tailings that will lie 1/4 mile from the Clark Fork River. This tailing impoundment will cover 350 acres and stand over 325 feet tall. 3,000,000 gallons of treated wastewater will be discharged into the Clark Fork River daily. This treated wastewater discharge will contain over

1100 lbs. of sediments, nitrates and heavy metals and will go on for at least 30 and maybe as long as 50 years.

The Lower Clark Fork River travels 25 miles from Rock Creek at Noxon and discharges into Lake Pend Oreille. Lake Pend Oreille is known as the Crown Jewel of Inland Empire (WA/ID/MT) lakes and classified a Special Resource Water by the Idaho legislature. NO degradation is allowed into special resource waters. While the Governor of Idaho does not appear to be too concerned with interstate pollution, the same cannot be said for his constituents in Sandpoint, ID. Sandpoint's economic viability is intrinsically tied to the fate of Lake Pend Oreille. Sandpoint is a well aware of the mining related problems its sister Lake Coeur d' Alene 39 miles to the south is faced with. The hundred year legacy of mining in the Silver Valley (superfund site) has deposited 72,000,000 tons of heavy metals (mostly lead and zinc) at the bottom of Lake Coeur d'Alene. These heavy metals have mobilized in water and are now found as far as 50 miles downstream in Spokane, WA.

Aggressively pursuing a permit for their Montanore mine Noranda was able to secure a State operating permit by 1992. However, their process not without controversy when Noranda was caught violating state water quality criteria stated in their exploration permit. The State of Montana knew of this ongoing violation for over 18 months and did nothing. Responding to the threat of a citizens lawsuit under provisions of the Clean Water Act, the state reluctantly acted citing Noranda and forcing closure of the 14,000 ft. exploratory adit. Noranda pled nolo contendere and paid a fine of \$157,000. Legal issues and low metals prices since 1992 have precluded Noranda developing the Montanore mine.

Meanwhile, ASARCO playing off their 12 year operating history at the Troy mine, procrastinated in their permitting process, doing inadequate baseline studies, continually changed their proposed operating plan or proposed untested technologies. This delayed the permitting process. An agency of the State of Montana determined to permit the proposed Rock Creek mine engaged in the irreputable practice of changing some data and had to issue 22 pages or errata in the Supplemental EIS. This also delayed the permitting and raised the suspicious ire of many in the locally affected populace. To date the EPA has reservations about

permitting this mine and has recommended that only an exploration permit be granted. Making final permit approval conditional to further testing in rock mechanics, acid rock generating potential and other concerns. A Record of Decision on the proposed Rock Creek mine may possibly occur in December of this year. Either way, the proposal is not a done deal, and the fight has yet to begin

Highest and Best use

Just because minerals are found where they are found is insufficient reason to develop a mine. There are places, (The Lincoln Memorial, The White House, the Grand Canyon, Gettysburg) society for reasons of its own has decided are inviolate to development. The Cabinet Mountains Wilderness is such a place in many peoples estimation. There are also qualities that society has decided to protect for reasons of health, the public welfare or for their own intrinsic value. These protections are embodied and codified as laws such as the Clean Air and Water Acts, and the Endangered Species Act. That they have a more recent lineage than the 1872 Mining Law makes them no less important, or of secondary use. In fact, their evolvement as laws of the land demonstrate the concern that society posts as it recognizes shortfalls, loopholes and inadequacies in other laws. This fact should be acknowledged by the Congress, the mining industry and the government agencies responsible for permitting and regulation. The 1872 Mining Law has no inherent right to be construed as the highest and best use of the land.

Bonding

Broken dreams and poisoned streams at Butte, MT, Summitville, CO, and Zortman-Landusky, MT stand as mute testimony to the fallacy of mining as the highest and best use of the land. They also represent the financial burden that is heaped upon the citizen taxpayer when inadequate bonding requirements are established by states eager to get the jobs and tax revenue; but reluctant to burden the supposed golden goose with fiscal responsibility for its actions. The people, the public of this nation deserve better.

Lest anyone forget, the Upper Clark Fork River is home to the former Anaconda Company's Butte mine complex. This largest of all superfund sites contains more miles of polluted land and riverine habitat than any other place in the county. Superfund clean-up has been ongoing for more than a decade and the largest hazard, water filled mile deep Berkley Pit has yet to be remediated. The State of Montana recently approved a partial 215 million natural resource damage settlement with the current owners, Atlantic Richfield Corporation (ARCO). The settlement required 15 million dollars of public money and countless years to litigate. Additionally, the settlement overlooks the approximately 6.5,000,000 million cubic yards of metals laden sediments deposited behind the Milltown dam near Missoula, MT. This inadvertent tailings deposition resulted from the random working of natures process. A natural but massive ice flow event during the winter of 1996 resulted in the scouring of millions of tons of metals from behind the Milltown dam. USGS calculations estimate that over 1,000,000 lbs. of copper, lead, arsenic and zinc were mobilized and dispersed throughout the river.

Most of the Clark Fork River is listed as an impaired waterbody. Cities and towns along the river have invested over \$40,000,000 to remediate nitrate and metals deposition to the river from municipal waste systems. The proposed Rock Creek mine will redeposit the entire load that citizen taxpayer dollars have remediated from their own discharges.

Royalties

The government has seen fit to institute competitive procedures that insure a reasonably equitable return to

the public for use of public resources. Oil, gas and coal companies bid for the rights to develop their resources off of public lands. Timber companies must bid for trees off the national forests. Yet in this day and age the mining industry is one of the few if not singular entities that receives its raw materials for nothing. The lament that it requires vast amounts of capital to locate and develop a mine is just that; lame. It costs a tremendous amount of money to drill underneath the ocean, develop new medicine; or any host of other products. Yet those companies do not receive their materials for free. Only the mining industry maintains that right within the 1872 Mining law. Take for example the case of Asarco's proposed Rock Creek mine. For the required \$5 per acre fee 99-20 acre lode claims, or \$9900 total, Asarco receives an orebody valued minimally at 2 Billion dollars. Even if it requires half that amount to develop the mine, pay for equipment, services, wages, property taxes and the like, the net return to Asarco is a staggering amount. Similarly, the Noranda Montanore mine with an orebody value exceeding 2 billion dollars would transfer out of the public domain for the minuscule amount of \$200. It is long past time that the mining industry shoulder its fair responsibility in returning something besides superfund sites to the public domain.

Federal oversight, permitting

Devolution of government has been a catchword of the last decade signifying, the return of, powers to the states (state rights), and getting government off peoples backs. However, in many instances this supposedly benign transfer of authority has been but an opportunity for an evolving international corporate structure to supplant government regulation. Large, sparsely populated states such as Montana are not adequately staffed or equipped to scrutinize some of the complex emerging technologies and issues deriving from mineral exploration and development. Regulation and enforcement has been and continues to be an area of weakness for state governments such as Montana.

As I spoke of earlier in my testimony, 20 plus years of local citizen watch dogging/ activism in the mining field have irrevocably convinced me that without federal oversight in mine permitting and compliance, the public risks numerous superfund site into the future.

In retrospect and with 27 years of personal knowledge of mining activity in the Clark River Valley I can safely say the 1872 Mining Law is akin to the rusted down, bumper dragging, smoke belching, valve clattering, muffler popping wrecks we have for the most part effectively removed from our nations roads. The 1872 Mining law is a wreck no longer waiting to happen, but a wreck staring us day by day in the face. This wreck is visible across the landscapes and communities of America as abandoned mines and superfund sites. And where it once served us well, it is now in need of replacement. Replacement mind you, not repair. Repair is the damage control the mining industry has proffered as sham reform and the recently legislated amendment Sen. Gorton sponsored in the Kosovo/Mitch emergency appropriation. Repair is SB 1292 permanently revoking the mine claim to millsite ratio.

This disingenuous attempt by the mining industry to strip from the 1872 Mining law the most simple constraint is indicative of what the original law was crafted to support; the small citizen miner.

It is time for Congress to do the right thing. It is time to bring the law of mining in the public domain into sync with the perspective, the wishes and other laws of the American people. Thank you.

#