

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

U.S. House of Representatives

Committee on Resources

Subcommittee on Energy and Mineral Resources

Field Hearing in Reno, Nevada on April 20, 2001:

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

Statement of David Gaskin, Bureau Chief

Bureau of Mining Regulation and Reclamation

Nevada Division of Environmental Protection

Madam/Mr. Chairman and members of the Subcommittee, my name is David Gaskin, and I am Chief of the Bureau of Mining Regulation and Reclamation, with the Nevada Division of Environmental Protection (NDEP). The mission of my bureau is to ensure that waters of the State are not degraded by mining operations, and to ensure that land disturbed by exploration and mining are properly reclaimed and returned to a productive post-mining land use. Our jurisdiction extends to all private and public land in the State.

As you are well aware, the majority of mining operations in Nevada involve public land to some extent. In the course of regulating mining activities in the State, NDEP must work closely with the federal land managers: USDA Forest Service and the Bureau of Land Management. We try hard to work together as fellow regulators, and we even provide funding for a federal liaison position. This person works half the time in our office and half the time in the State Office of the BLM, and endeavors to enhance cooperation and communication between our agencies. Our reclamation regulations were crafted to be consistent with BLM=s 3809 regulations, and we strive to avoid duplication and conflict with the federal agencies. Nevertheless, there are many challenges posed by this joint regulatory arrangement.

The State of Nevada has closely monitored BLM=s efforts to rewrite the 3809 regulations. We commented extensively regarding problems we saw with the proposed changes during the review and revision process. We worked closely with the Western Governors= Association and the National Academy of Sciences in an attempt to keep BLM focused on areas that warranted change, and areas that fall clearly under BLM=s regulatory authority. I=m sorry to say that we were unsuccessful, and finally the State of Nevada was forced to resort to legal action when the administrative process to prevent implementation of the new regulations

failed.

Our lawsuit contains three major points: 1) The new 3809 regulations are contrary to law because they violate the statutory requirement that they be not inconsistent with the recommendations of the NRC Report; 2) The new regulations are in excess of BLM's statutory authority under the Federal Land Policy Management Act, especially in allowing BLM to disapprove a mining plan of operations if the agency determines that it would result in a substantial irreparable harm, even though the operation would comply with all federal and state environmental and reclamation requirements; and 3) BLM violated key procedural requirements under NEPA and other federal administrative requirements during the revision process.

Throughout this lengthy process, states including Nevada have questioned repeatedly the need for sweeping reform of the existing regulations. Our position has been that selective regulatory reform, combined with enhanced utilization of existing authority would be a much more preferable and effective course of action. The National Research Council (NRC) of the National Academy of Sciences, with the support of many states and Congress, provided expert and impartial analysis of the effectiveness of the existing federal regulatory framework. The NRC developed specific recommendations for the coordination of federal and state regulations to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation.

During the 3809 revision process, a great deal of contention arose over the interpretation of a consistency with the NRC recommendations, and over the proper scope and content of revision. The position of the State of Nevada is that the revised version of the 3809 regulations is not consistent with the findings and recommendations of the NRC. Due to the fundamental and extensive changes made to 3809 to reach the final version, it would be extremely difficult and impractical to modify the new regulations to achieve consistency. Even if BLM were to propose new regulations in accordance with Alternative 5 in the EIS, there are a number of critical issues that would cause conflict and would need to be resolved prior to promulgation of a final rule. These conflicts are due to differences in interpretation of the NRC Report.

Therefore, the State of Nevada is recommending that BLM suspend the final regulations published on November 21, 2000, and reinstate the rules that were in place on January 19, 2001. Once the previous version is reinstated, the State of Nevada would be pleased to work with BLM and other stakeholders to develop selective modifications to address the NRC recommendations.

At the State regulatory level, we are facing many of the same problems and challenges that BLM is struggling to deal with. Increasing uncertainty in environmental requirements and continued low metals prices have led to severe stress on the security and resources of mining operators. At the same time, this stress provides an opportunity to detect weaknesses and correct problems in our regulatory system. Over the past couple of years, we have made significant regulatory changes at the state level to address recent concerns. We revised our regulations to allow us to require financial assurance for process fluid stabilization, not just physical reclamation. We established an Interim Fluid Management Trust Fund to address urgent fluid issues in the event of abandonment of mining operations. We are currently in the process of reevaluating and revising our policy on corporate guarantees, to prevent undue financial risk to the State and to the public. This is not an extremely pleasant time for many of us, but I am hopeful that we will emerge from this stressful period with a much better regulatory system than we had five years ago.

The NRC Report emphasized that the existing regulatory system is generally effective, and the best way to improve the system is to make better use of existing authority while making selective changes where needed. Through the recent proposal to suspend the new 3809 regulations, the new Administration in

Washington has sent us the message that they will listen and consider seriously our concerns and recommendations. Working together as fellow stakeholders, with open communication and cooperation we can develop rules which avoid duplication, conflict and needless adverse impacts. We will work with BLM to devise a regulatory system which works in concert with state, local and other federal agencies to protect the environment while allowing responsible development of our natural resources. Thank you.

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