

ORAL TESTIMONY

County Commissioner Jim Starr

Gunnison County, Colorado

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

Committee on Natural Resources

Subcommittee on Energy and Mineral Resources

RE: 1872 Mining Law Reform

February 26, 2009

1. Good Morning.
2. First, let me start by thanking the Honorable Chairperson, Congressman Costa, and the members of the Subcommittee for this opportunity to testify regarding the Hardrock Mining and Reclamation Act of 2009.
3. I am Jim Starr. I am, and have been, a County Commissioner in Gunnison County, Colorado for the past 10 years. My comments today are not directed toward any specific project being considered by the Board of

County Commissioners of Gunnison County and should not be construed to be made in a quasi-judicial capacity.

4. Gunnison County is a rural Western Colorado county consisting of some 15, 000 persons and located 230 miles southwest of Denver. We encompass approximately 3,300 square miles and approximately 87% of our land is owned by the federal and state governments.

5. There are four points I intend to make:

- a. We recognize that hardrock minerals are valuable natural resources that should be extracted and put to beneficial use.
- b. It is undeniable that the 1872 Mining Law, and its particulars, are antiquated and in need of immediate and wholesale reform.
- c. The patent mechanism at the core of the 1872 Mining Law is not the appropriate mechanism, currently, to make federal lands available for private hardrock exploration and extraction;
- d. Any new mechanism must include robust presumptive protections so that exploration and operation in special areas (and negative impacts to special areas) cannot occur.

6. There is a preface to my presentation that is essential for me to state explicitly, and which will put my comments into context. First, my County and I recognize that hardrock minerals are valuable natural resources that

should be extracted and put to beneficial uses. Second, we recognize that there are impacts – positive, negative, environmental, social, economic and otherwise – caused by extraction of these resources. Third, it is only fair and prudent that a mechanism that Congress adopts to make federal lands available to private hardrock extraction explicitly include measures to ensure the negative impacts be avoided or minimized both by the federal government and the operators.

7. The timeliness of this much needed reform is evident. In 1872 when President Grant signed the legislation into law, the interior west was largely unsettled by people other than Native Americans and the federal government was doing everything in its power to encourage immigrant that settlement and to assist in the industrialization of our country. An acre of land could be, and still can be, claimed and eventually patented. This provides the claimholder with title to public land for as little as \$5.00 per acre, the current day cost of a gallon of milk. Today, the Rocky Mountain West is largely inhabited, hard rock mineral resources have been and are being developed throughout the world, and communities of all sizes have located near mineral resource areas in the West. In short, 127 years later, mineral extraction may no longer be the highest and best use for federal lands, many former mining communities have now developed economies which are

incompatible with industrialized mining, and water quantity and quality have become issues of utmost importance in the West.

8. I respectfully suggest that Congress carefully examine, first, whether the patent process itself remains a viable, healthy tool – or whether a different process to make federal lands available to private mineral extraction would better serve the country and still accomplish the mission. The patent process – which results in fee simple ownership of federal land by private owners – was a tool appropriate for 1872 – when the federal government was encouraging not only mineral exploration but also the wholesale settlement of the West. A similar tool of more than 100 years ago – Railroad Land Grants (e.g. the Pacific Railroad Act of 1862) had a similar impetus and is similarly currently outdated. These grants helped build transcontinental railroads – but resulted in millions of acres of federal land being divested and placed in private ownership. Would one do the same today to encourage the building of a private toll road? I suggest not.

9. There IS currently a tool available that results in federal encouragement of exploration and use of federal lands for mineral extraction – long term LEASING of federal lands for oil and gas exploration and operations. While this leasing regime has its own flaws, one thing that it does NOT do is transfer fee simple ownership of federal land to private

parties. A second benefit of a federal lease mechanism would be that the federal government will remain as a steward of its own land – enhancing its obligation and ability to protect those lands. A further benefit of a non-fee-simple patent transfer is avoidance of the unintended but realistic consequence of public land going into private but foreign ownership. I would respectfully request that Congress examine such a lease approach.

10. Section 202 of this legislation which allows for selective withdrawal of federal lands from entry must be retained and made an affirmative presumption. Rebutting this presumption should require a demonstration by clear and convincing evidence that there are no other locations where the desired minerals can be extracted. For instance municipal watersheds are critically sensitive areas that deserve the protection of such a presumption of withdrawal. Available, high quality water is already a rapidly dwindling resource in the arid West and the availability of this water will likely decrease because of climate change. We have long recognized that significant natural resources, such as our natural parks, must not be open for location and entry. Before it is too late, it is imperative that we now also recognize the local and national importance of protecting our municipal watersheds.

11. Accordingly, we respectfully request that Congress act as expeditiously as possible to consider these proposals and to pass House Resolution 699, including meaningful and workable withdrawal language.

Thank you.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY
RESOLUTION NO. 03-~~62~~63

A RESOLUTION CORRECTING THE ATTACHMENT TO GUNNISON COUNTY
RESOLUTION NO. 03-62, A RESOLUTION DESIGNATING THE NORTH FORK
VALLEY COAL RESOURCE SPECIAL AREA AND ADOPTING THE COAL
RESOURCE SPECIAL AREA COAL MINING REGULATIONS

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado previously adopted Gunnison County Resolution No. 03-62, A Resolution Designating the North Fork Valley Coal Resource Special Area and Adopting the Coal Resource Special Area Coal Mining Regulations (hereinafter "Resolution 03-62"); and

WHEREAS, the Resolution 03-62 which was recorded in the records of the Clerk and Recorder of Gunnison County, Colorado at reception number 536918 inadvertently contained the wrong document as an attachment (a document identified as "Draft BOCC changes - November 18, 2003"); and

WHEREAS, the Board desires to correct that error;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY that: Resolution 03-62 is corrected by the full deletion of the erroneous document (i.e. the document identified as "Draft BOCC Changes - November 18, 2003") with its Appendix and its replacement in full by the document attached hereto and incorporated herein (i.e. the document identified as "North Fork Valley Coal Resource Special Area Regulations - November 18, 2003" with its appendices A and B.)

Introduced by Commissioner Anderson, seconded by Commissioner Starr, and passed this 24th day of November, 2003

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

By Fred Field
Fred Field, Chairperson

By Jim Starr
Jim Starr, Commissioner

Perry Anderson, Commissioner

Attest
Kelly Balch
Deputy County Clerk



(Various nonpertinent sections of these regulations have been omitted to comply with the 10 page exhibit limit)

NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA

DIVISION 1: DESIGNATION

SECTION 1-101: SPECIAL GEOGRAPHIC AREA DESIGNATION.

The North Fork Valley Coal Resource Special Area (the "Coal Resource Special Area") has been designated by Gunnison County pursuant to Section 1-110 of the Gunnison County Land Use Resolution as a Special Geographic Area and is more fully described in Appendix A.

DIVISION 2: NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA COAL MINING REGULATIONS.

SECTION 1-201: PURPOSE OF COAL RESOURCE SPECIAL AREA COAL MINING REGULATIONS.

The general purpose of the Coal Resource Special Area Coal Mining Regulations ("Regulations") is to recognize the unique importance of coal mining within the Coal Resource Special Area. Gunnison County recognizes that:

1. Coal is a resource valuable to the United States, Colorado and Gunnison County that deserves to be extracted and put to use;
2. Extraction of that resource causes impacts;
3. Extraction of that resource is heavily regulated by the federal and state governments; and
4. Gunnison County has a legitimate role in reasonably regulating the extraction of that resource.

In addition, the purposes of these Regulations are as follows:

- A. **ENHANCE ABILITY TO MEET ENERGY NEEDS.** To enhance the ability of existing Coal Mining Operations within the Coal Resource Special Area to meet the energy needs of our region, state and country.
- B. **SIMPLIFY THE REGULATORY REVIEW PROCESS.** To exempt existing Coal Mining Operations from permit requirements and to provide a simplified and expedited regulatory review process that does not duplicate state or federal processes for the responsible expansion and enlargement of Coal Mining Operations within the Coal Resource Special Area.

- C. **PROTECT THE ENVIRONMENT; PUBLIC HEALTH, SAFETY AND WELFARE; PUBLIC SERVICES, FACILITIES AND PROPERTY.** To avoid or mitigate potential impacts to the environment, public services and facilities, property and public safety that are not addressed by other state or federal regulatory agencies with jurisdiction over Coal Mining Operations within the Coal Resource Special Area.

SECTION 1-202: ENFORCEMENT OF STATE AND FEDERAL PERMIT PROVISIONS.

Nothing in these Regulations shall be construed as authorizing Gunnison County to enforce compliance with state and federal environmental or land use law or regulation or permit requirement or conditions. However, Gunnison County reserves the right to seek enforcement of same.

SECTION 1-203: APPLICABILITY OF THESE REGULATIONS.

- A. **APPLICABLE TO COAL MINING OPERATIONS IN COAL RESOURCE SPECIAL AREA.** These Regulations shall apply to Coal Mining Operations within the North Fork Valley Coal Resource Special Area described in Appendix A.
- B. **RELATIONSHIP TO GUNNISON COUNTY LAND USE RESOLUTION.**
1. **COAL MINING WITHIN COAL RESOURCE SPECIAL AREA.** No provision of the Gunnison County Land Use Resolution shall apply to Coal Mining Operations within the Coal Resource Special Area unless otherwise specified herein.
 2. **COAL MINING OUTSIDE COAL RESOURCE SPECIAL AREA.** All provisions of the Gunnison County Land Use Resolution shall apply to Coal Mining Operations outside the Coal Resource Special Area.
- C. **EXEMPTION FROM COAL RESOURCE SPECIAL AREA PERMIT REQUIREMENTS AND STANDARDS.**
1. **EXISTING COAL MINING OPERATIONS.** Existing Coal Mining Operations within the Coal Resource Special Area that register with the County under Section 1-205 of these Regulations are exempt from the requirement to obtain a Coal Mining Permit under Section 1-207, the Standards

under Section 1-208 and the Financial Security under Section 1-209.

2. **METHANE VENTING INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION.** Coal mine methane venting and all infrastructure associated therewith from a mine that is in compliance with these Regulations and that is an integral and essential component of the coal mining operation shall not be subject to these Regulations or any other County regulations otherwise applicable to oil and gas drilling and production.
3. **EXPLORATION.** Coal exploration and all infrastructure associated therewith conducted under the grant of a federal coal lease or federal exploration permit, license or notice of intent to explore or written approval to explore, to confirm or establish coal reserves within the Coal Resources Special Area associated with Coal Mining Operations described in Section 1-203 C. 1. is exempt from the requirement to obtain a Coal Mining Permit under Section 1-207, the Standards under Section 1-208 and the Financial Security under Section 1-209.
4. **DECLARATORY RULING REGARDING EXEMPTIONS.**
 - a. **DECLARATION REQUEST.** Any coal operator may submit a written request to the Board of County Commissioners for a declaratory ruling as to whether proposed Coal Mining Operations of that Coal Operator fall within an exemption from these Regulations. A copy of the request shall also be submitted to the Planning Director.
 - b. **CONTENT OF REQUEST.** The request for declaratory ruling shall include a brief explanation of the proposed activity and the reasons why the proposed activity falls within an exemption under these Regulations.
 - c. **BOARD CONSIDERATION.** The Board shall consider the request for a declaratory ruling within 30 days of the date of the next regularly scheduled meeting of the Board. The person requesting the exemption may present information at the meeting.

- d. **DECLARATION OF EXEMPTION.** If the Board determines that the proposed Coal Mining Operations are exempt from these Regulations, it shall issue a declaration of exemption and no further review or approvals shall be required from the County for the extent of Coal Mining Operations described in the declaration of exemption.

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SECTION 1-207: COAL MINING PERMIT FOR EXPANSION OF COAL MINING OPERATIONS WITHIN THE COAL RESOURCE SPECIAL AREA

- A. **PERMIT REQUIRED FOR EXPANSION.** No person shall engage in the expansion of Coal Mining Operations within the Coal Resource Special Area after the effective date of these Regulations without first obtaining a Coal Mining Permit.
- B. **COAL MINING PERMIT APPLICATION SUBMITTAL REQUIREMENTS.**
 - 1. **WRITTEN DESCRIPTION.** The applicant shall submit a written description of the new or expanded mining operation together with a map showing the area within which the new mining operation or the expansion will occur.
 - 2. **CONCURRENT APPLICATIONS.** An applicant may apply concurrently to the County, and to state or federal permit agencies.
 - a. **INFORMATION SUBMITTED TO OTHER PERMITTING AGENCIES ACCEPTED AS SUBMITTAL.** To the maximum extent feasible, Gunnison County will accept information submitted within an application to the Colorado Division of Mineral and Geology and any other state or federal agency as part of related permit processes to satisfy the submittal requirements of these Regulations.
 - b. **CONCURRENT PROCESSING.** Gunnison County seeks to avoid duplicative regulatory controls or unnecessary delays. Therefore, processing of an application for a permit normally will proceed concurrently with the processing of other required

federal or state applications. However, final action of the application may not occur until a permit is issued by each other federal or state entity with applicable regulatory authority so that Gunnison County will have the benefit of the analysis and determinations by the other entity(s) in reaching its own decision. In order to facilitate the processes of each other federal or state entity with applicable regulatory authority, when an application for permit under these Regulations is received by Gunnison County, the Planning Director shall review the application and inform each other entity with regulatory authority and the applicant of the preliminary and known primary issues of concern to Gunnison County.

c. **CONSIDERATION OF STATE OR FEDERAL CONDITIONS.** Gunnison County shall consider the conditions of any related federal or state permit when processing an application for permit under these Regulations.

3. **IMPACT REPORT.** The applicant shall submit an impact report that describes how the new or expanded mining operation will comply with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area*.

4. **DOCUMENTATION OF TECHNICAL INFEASIBILITY WAIVER.** Documentation of the basis for any Technical Infeasibility Waiver from *Standards for Expansion of Coal Mining Operations Within North Fork Valley Coal Resource Special Area* that may be requested pursuant to Section 1-208 B. shall be submitted by the applicant.

C. **PLANNING DIRECTOR REVIEW OF COAL MINING PERMIT APPLICATION.**

1. **RECEIPT OF APPLICATION BY PLANNING DIRECTOR.** Within thirty (30) days of receipt of the Coal Mining Permit Application, the Planning Director shall determine whether the application is complete and ready for review based upon the provisions of these Regulations. If the Planning Director determines the application is not complete, the Planning Director, within said thirty (30) day period, shall send written notice to the applicant specifying the deficiencies. No further

action shall be taken on the application until the deficiencies have been remedied.

2. **PUBLIC NOTICE AND COMMENT.** Within fourteen (14) days of the Planning Director's completeness determination, the Planning Director shall publish a notice of the application in a newspaper of general circulation in Gunnison County and a newspaper of general circulation in Delta County. The period for public comment shall be fourteen (14) days from the date of first publication of the notices.
3. **COORDINATION WITH STATE AND FEDERAL AGENCIES.** In reviewing the application, the Planning Director shall consider permit and approval conditions imposed on the proposed Coal Mining Operations by state and federal regulatory agencies. Where an applicant has chosen to submit concurrent applications to the County and to state or federal agencies, the Planning Director shall discuss preliminary issues of concern with those agencies.
4. **REQUEST FOR REVIEW BY CONSULTANTS.** The Planning Director may obtain the professional analysis and recommendations of technical and legal consultants the Director deems appropriate and necessary to complete the review. The applicant shall be responsible for the reasonable cost of consultant reviews.
5. **DECISION.** The Planning Director shall review the application for a Coal Mining Permit and approve, approve with conditions or deny the application based upon compliance with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area*. Unless the Planning Director determines and so advises the applicant that significant issues exist and additional time will be necessary to complete the appropriate review, a decision on the application for a Coal Mining Permit shall be issued within fourteen (14) days after the close of the period for public comment.
6. **NOTICE OF DECISION.** Within one working day of the decision on the application for a Coal Mining Permit, the Planning Director shall notify in writing the applicant, the County Manager, the Board, the County Attorney, and the Delta County Planning Director of the decision to approve, approve with conditions or deny the application. Upon request, other interested parties may submit their name to

the Planning Director to be placed on a list of persons who will be notified of any decision on the application for a Coal Mining Permit.

D. RECONSIDERATION OF PLANNING DIRECTOR DECISION BY BOARD OF COUNTY COMMISSIONERS.

1. **CALL-UP BY THE BOARD.** Within fourteen (14) calendar days after receipt of the Notice of Decision, the Board may, at its discretion, decide to reconsider the Planning Director's Coal Mining Permit decision at the next regularly scheduled meeting of the Board for which proper notice can be accomplished.
2. **REQUEST FOR RECONSIDERATION.** Within seven (7) calendar days of the Notice of Decision the applicant or any aggrieved party may request that the Board reconsider the Planning Director's Coal Mining Permit decision at a public hearing scheduled no later than forty-five (45) days after receipt of the Notice of Decision.
3. **HEARING NOTICE.** No less than thirty (30) days prior to the date of the public hearing, written notice of the hearing shall be provided to the applicant, persons on the mailing list and property owners within 500 feet of the boundary of the Coal Resource Special Area, and shall be published one time in a newspaper of general circulation within Gunnison County and in Delta County.
4. **DECISION BY THE BOARD.** At the hearing, the Board may determine not to hear or if it does hear, may affirm, reverse and/or amend the Planning Director's Coal Mining Permit decision. The Board may consider the evidence that was before the Planning Director, and any additional evidence that may be presented to the Board regarding compliance with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area*.

- E. EFFECT OF PERMIT DECISION.** Once a Coal Mining Permit has been issued pursuant to these Regulations, the County shall not impose additional regulatory requirements on the Coal Mining Operations unless there is a material change in the Coal Mining Operation from what was approved by the County or the additional regulatory requirement is necessary for the immediate preservation of the public health and safety.

SECTION 1-302: MINE METHANE VENTING AND USE.

- A. METHANE VENTING INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION.** Coal mine methane venting from a mine that is in compliance with these Regulations and that is an integral and essential component of the coal mining operation shall not be subject to these Regulations or any other County regulations otherwise applicable to oil and gas drilling and production and such methane can be used by the Operator on-site.
- B. METHANE GAS PRODUCTION NOT INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION.** The production and distribution of methane gas subject to the approval of the Colorado Oil and Gas Conservation Commission shall be subject to all County regulations applicable to oil and gas production, drilling and distribution, and these Regulations shall not apply to such production, drilling and distribution.

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**SECTION 1-405: INTENT TO NOT DUPLICATE OTHER PERMIT
PROCESSES OR REQUIREMENTS.**

Gunnison County intends to avoid duplicative regulatory submittals or processes. Processing of applications for permits generally proceeds concurrently with other required state or federal agency permitting processes.

SECTION 1-406: RUNS WITH THE LAND.

Any Coal Mining Permit issued under these Regulations shall run with the land that is the subject of the Coal Mining Permit.

SECTION 1-407: NO PRECEDENT.

Neither the designation nor these Regulations, procedures or approvals hereunder shall be construed as a precedent for any other action.

DIVISION 5 VIOLATIONS AND ENFORCEMENT PROVISIONS

SECTION 1-501: VIOLATIONS AND ENFORCEMENT.

Failure to comply with any provision of these Regulations shall be deemed a violation of the *Gunnison County Land Use Resolution* and shall be subject to enforcement under Chapter 7 of the *Gunnison County Land Use Resolution*.

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APPENDIX A

The North Fork Valley Coal Resource Special Area is that area, within Gunnison County, known as the Somerset Coal Field which consists of lands shown on the United States Geological Survey (USGS) 7.5 Minute Quadrangle Maps for the Bowie, Somerset, Paonia Reservoir, Minnesota Pass and West Beckwith quadrangles.

All private lands contained within T13S, R89W, Sections 8, 9, and 16 are excluded from the designated North Fork Valley Coal Resource Special Area.

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