Committee on Resources
Subcommittee on Energy & Mineral Resources

Statement

PRESENTATION OF STUART A. SANDERSON
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TO THE HOUSE COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
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I. INTRODUCTION

My name is Stuart A. Sanderson and I am the President and Chief Operating Officer of the Colorado Mining Association (CMA). CMA is an industry association, founded in 1876 and incorporated in 1897, whose 800 members include individuals and organizations involved in the exploration, development, production and refinement of coal, metals, agricultural and industrial minerals within Colorado and throughout the United States. CMA also represents individuals and firms who provide services and supplies to this industry, including electric utilities, manufacturers of mining equipment, consulting, engineering, law, finance and accounting firms. Our members include Fortune 500 companies as well as small, sole proprietorships. Individual citizens of Colorado as well as 31 other states comprise the vast majority of our membership. In fact, I would ask for those who have appeared here today in support of the mining industry's position to please stand.

II. IMPORTANCE OF MINING TO COLORADO Mining is an important industry in Colorado. According to the Colorado Geological Survey (CGS), mineral and mineral fuel activity in Colorado has a direct value of more than $2.7 billion. Mining of coal and non-fuel minerals (gold, silver, lead, zinc, molybdenum, uranium, gypsum, limestone, sand, gravel and other aggregates) directly contributed more than $1 billion to Colorado's economy. See, Colorado Geological Survey Report, *Colorado Mineral and Mineral Fuel Activity, 1998* at 1. Yet these figures only tell part of the story. The Western Economic Analysis Center studied both the direct and indirect contributions of mining nationwide, concluding that mining's total positive economic impact in Colorado exceeded $7.7 billion. See, G. F. Leaming, *Mining and The American Economy* (1997), at 29. Overall, mining's contribution is estimated at nearly $524 billion nationwide.

According to the Colorado Department of Labor and Employment, miners are the highest paid industrial workers in Colorado, with average annual wages estimated at nearly $60,000. *Colorado Mineral and Mineral Fuel Activity, 1998,* at 2. Mining employment is about 5,500 statewide, but produces jobs in the overall economy of 77,300. *Mining and The American Economy* at 29. Our industry provides an extremely important source of revenue for rural economies in Colorado. Mining companies are often the single greatest source of property and severance tax revenues in these counties. See, University of Colorado, *1995 Business Outlook Forum,* at 10-11. According to the Leaming study, mining in Colorado produces more

than $61 million in direct revenue gains to the federal government, as well as nearly $74 million in direct gains to the state. This money is used to build schools, finance avalanche prevention efforts, and support a variety of local and state governmental functions.

Mining is good for Colorado, but its future is threatened by a barrage of land use policies designed to end mineral exploration and development on public lands. The federal government and the Clinton Administration have declared vast areas off-limits to mining, through land withdrawals of unprecedented size and scope, by amendments to the hardrock mining regulations that would duplicate and indeed weaken the very effective state programs already in place, and policies such as the Interior Solicitor's millsite opinion that would render the mining law unworkable. Other speakers today will delve into the technical, legal and policy flaws underlying these various rules and policies. My purpose in appearing before you today is to provide an overview of the daunting economic and regulatory challenges facing this industry, and to request your intervention in stopping the ill-advised Administration policies that will, if unchecked, destroy the future of mining and the many benefits it brings to our society.

In so doing, CMA will point to the industry's positive environmental achievements, and offer suggestions on how federal land use policies and laws may be changed to enhance environmental protections. If the Administration means what it says about the protecting the environment, then I suggest that it follow the recommendations of the National Academy of Sciences (NAS) to put its own house in order by improving the way in which it implements the array of laws and regulations already on the books that govern mining and environmental protection. And, it should, consistent with the NAS's recommendations, work with Congress to enact a meaningful Good Samaritan exemption to the Clean Water Act, one that would not preclude mining companies or their affiliates from participating in cleanups of abandoned mines.

III. THE CHALLENGE CONFRONTING THE MINING INDUSTRY

Although the value of mineral production in Colorado and other states has increased in recent years, the future of mineral exploration and development in this country remains uncertain, as the Fraser Institute (an independent Canadian economic and social research and educational organization) concluded in a recent survey of mining companies operating in North America. See, *The Fraser Institute Survey of Mining Companies Operating in North America 1998/1999*. The Institute's findings are revealing. While "more than 50 per cent of mining companies surveyed indicate an increase in worldwide exploration budgets over the past five years," the survey reported, "most indicate a reduction in the proportion spent in Canada and the United States." id. at 11. What accounts for this exodus from the United States? The survey respondents (representatives of senior and junior mining companies) reported that "increasingly onerous regulations, uncertainty about land use, higher levels of taxation...are more likely to deter companies from looking for new projects than they are to shut down existing operations," although the impact on existing projects is also significant.

Colorado is one of the most mineral rich states in this nation. Our clean coal provides 95% of the state's electricity; our state is home to the largest primary molybdenum mine in the world and the most productive gold mine in Colorado's modern history. Rich limestone deposits locatable under the mining laws that are helping to pave Colorado's sidewalks and fuel economic growth and prosperity along the Front Range. Gypsum mined in Colorado is used in the manufacture of wallboard for residential and commercial construction . Other deposits, such as marble, were used to construct our most cherished national monuments, including the Lincoln Memorial and the Tomb of The Unknown Soldier. All mines, however, will eventually reach the end of their useful lives; thus, new exploration remains the life's blood of this industry. Yet new mineral exploration is down substantially from historic levels - and government regulation

is a primary reason for this decline.

In rating the state of Colorado's overall investment attractiveness for mining, the Fraser Institute gave the state a total rating of only 24 out of a possible 100 points. While a majority of respondents found that the state's mineral potential either encourages or is not a deterrent to exploration, Colorado was viewed as one of the worst states from the standpoint of uncertainty in the administration of regulatory programs and duplication/inconsistencies in regulation.

IV. THE 3809 REGULATIONS WILL CURTAIL MINERAL EXPLORATION IN COLORADO AND THE UNITED STATES. THE NATIONAL ACADEMY OF SCIENCES HAS CONCLUDED THAT SWEEPING CHANGES TO THE FEDERAL REGULATORY PROGRAMS ARE UNNECESSARY.

The Fraser Institute survey may not tell us how to solve all of the industry's problems, but it provides compelling indications of what the mining industry does not need - and that is additional layers of federal regulation and bureaucracy that will do nothing to enhance environmental protections, but will only serve to drive mining companies off public lands. Yet the Interior Department rulemakings and policies will accomplish precisely this result.

The Bureau of Land Management's sweeping proposed revisions to the regulations found at 43 C.F.R. Part 3809 governing hardrock mining on public lands are the first example of Administration policy run amok. These revisions, would, among other things, put in place redundant and prescriptive new requirements for environmental management of hardrock mining operations. The changes being contemplated would not only duplicate the very effective and mature state programs now in place in Colorado and other mining states; they would establish inconsistent regulatory programs for hardrock mining operations that disturb both private and federal land surface.

In light of these concerns about the possible impact of the Administration's attempt to administratively rewrite the General Mining Laws, the Congress directed the National Research Council (NRC), the office within the NAS whose purpose is to advise the federal government on science and technology, to assess the adequacy of the regulatory framework for hardrock mining on federal lands. This included a review of the 3809 rules and the regulations of the United States Forest Service at 36 C.F.R. Part 228. Following extensive hearings, this 13 member panel of independent scientific experts essentially found no basis for extensive changes to existing state or federal regulatory programs. "Existing regulations are generally well coordinated, although some changes are necessary," the NRC concluded. In lieu of recommending general and sweeping revisions to the hardrock mining regulations, the NRC identified very specific, discrete and limited gaps in the existing regulatory standards in need of change.

The NRC found, ironically, that the greatest benefit would result if the Interior Department and the Forest Service would put their own houses in order first through "improvements in the implementation of existing regulations," which the NRC found "present the greatest opportunity for environmental protection and the efficiency of the regulatory process." NRC Report at 5-6. The full recommendation states as follows:

"Federal land management agencies already have at their disposal an array of statutes and regulations that for the most part assure environmentally responsible resource development, but these tools are unevenly and sometimes inexpertly applied." NRC Report at 93.

The NRC further recommended that BLM and the Forest Service "review the adequacy of existing staff and

resources devoted to regulating mining operations." Given these uncertainties about the adequacy and experience level of the staff assigned responsibility for reviewing plans of operations and otherwise implementing the mining regulatory framework on public lands, it would be foolhardy for these agencies to adopt yet even more burdensome, prescriptive and complex rules of the type set forth in the proposed 3809 revisions.

At field hearings held by the NRC committee on March 9, 1999, the Colorado Mining Association provided extensive testimony in support of the adequacy of existing regulatory programs in Colorado, all of which is summarized in my testimony before the NRC Committee. See, "Statement of Stuart A. Sanderson, President, Colorado Mining Association, to the National Research Council Committee on Hardrock Mining on Public Lands."

The point of my testimony before the NRC was simple: "If it ain't broke, don't fix it." That is clearly the conclusion that any objective, scientific based inquiry into Colorado's mineral statutes will reveal. Even the proponents of a radical overhaul of the federal rules at 43 CFR 3809 concede that Colorado's program is working well. In his statement to the same committee of February 16, the president of the Mineral Policy Center (MPC) conceded that Colorado had responded to the Summitville mine abandonment by "improving its mining regulations." MPC further stated that "Colorado requires mandatory reclamation." See, Statement of Stephen D'Esposito dated February 16, 1999.

The Summitville mine abandonment prompted a reexamination of the laws of Colorado relating to the conduct of mineral activities, and legislative amendments to strengthen these laws (to be later discussed) that were explicitly designed to avoid future Summitville-like occurrences. The failure at Summitville occurred as a result of deficiencies in state law, not because of problems with the federal regulatory program. In fact, the Summitville mine included areas not even subject to the 3809 regulations. The suggestion that BLM should now amend the 3809 rules nearly seven years after the Summitville abandonment is an empty solution that will accomplish nothing. The state has already taken the required corrective action.

A simple review of the federal laws and regulations demonstrates that they are adequate to meet the task of regulating the mining industry in Colorado. The Federal Land Policy and Management Act of 1976, as implemented by the rules at 43 CFR Part 3809, require that "operations include adequate and responsible measures to prevent unnecessary and undue degradation of the Federal lands and to provide for reasonable reclamation." 43 CFR 3809.0-6. The rules further provide that all operations, "whether casual, under a notice, or by a plan of operations, shall be reclaimed as required by this title." Section 3809.1-1. Unnecessary and undue degradation includes the following: 1) the creation of surface disturbance greater than what would normally result if accomplished by a prudent operator; 2) failure to initiate and complete reasonable mitigation measures, including reclamation; and 3) failure to comply with applicable environmental statutes and regulations. Section 3809.0-5(k). The federal rules further require the posting of reclamation bonds for most operations (except for casual use, see, 3809.1-9) and contain explicit requirements for protection of the environment.

The environmental protection requirements, as set forth in section 3809.2-2, require compliance not only with the applicable state mined land reclamation law, but with numerous federal laws designed to protect air and water resources, fish and wildlife habitat, cultural resources, as well as standards governing the disposal of solid and hazardous waste. The failure to comply with these laws constitutes a breach of the unnecessary and undue degradation standard. The interaction between these provisions and state law provides more than sufficient protection.

Colorado, like many other states, has entered into an approved cooperative agreement with the BLM, which authorizes the state to assume the lead role in administering and enforcing regulatory programs for locatable minerals on public lands. The regulations wisely recognize that federal rules will not "preempt state laws or regulations relating to the conduct of operations or reclamation on federal lands under the mining laws." 43 CFR at 3809.3-1(a). Keep in mind that the exploration, development and mining of locatable minerals in Colorado, as in other states, takes place on both federal lands subject to the BLM regulations and on lands transferred to private ownership through mineral patent. It makes sense to have one, not many masters, enforcing these regulatory programs.

There is no question that Colorado's laws are adequate and that state coordination with the BLM ensures that mining operations are subject to fair and efficient regulation. Mining operations in Colorado must comply with the Colorado Mined Land Reclamation Act, which requires "persons involved in mining operations to reclaim lands affected by such operations...conserve natural resources, aid in the protection wildlife and aquatic resources...and protect and promote the health, safety and general welfare of the people of this state." C.R.S. Section 34-32-102(1). To accomplish these goals, the Act sets forth a comprehensive regulatory program of permitting and bonding requirements, environmental performance standards governing the conduct of mineral operations, and reclamation requirements. Operators in Colorado are required to obtain reclamation permits, and all virtually all disturbances are subject to bonding requirements. CRS Section 34-32-109, 117. Detailed provisions govern the submission of reclamation permits, including requirements to explain the type of reclamation proposed to be implemented by the operator and how restoration and reclamation of the land will be achieved. CRS 34-32-112. Every operator to whom a permit is issued must perform the reclamation prescribed in the plan approved by the Division of Minerals and Geology, the state regulatory agency. CRS Section 34-32-116 (6). That law further requires the operator, among other things, to comply with the following standards:

- create a final topography appropriate to the final selected land use;
- handle acid-forming material in a manner that will protect the drainage system from pollution;
- dispose of refuse properly;
- where revegetation is required, to revegetate lands in such a way as to establish a diverse, effective and long-lasting vegetative cover;
- segregate topsoil as required;
- minimize disturbances to the prevailing hydrologic balance; and
- take actions to stabilize the site, control erosion, and protect offsite areas

  CRS 34-32-116(6)(7).

The MLRA further requires operators to post appropriate financial warranties to secure the reclamation obligation. These must be in the form of a surety bond backed by appropriate corporate surety, a letter of credit or certificate of deposit, or a deed of trust in real property. Self-bonding is permitted in accordance with extremely strict standards modeled, in part, on federal rules adopted pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). CRS 34-32-117(3)(f). The Mined Land Reclamation Board has the authority to monitor each bond and to take reasonable measures to assure the continued

adequacy of financial warranties.

The Summitville mine abandonment in late 1992 resulted, in part, from the state's lack of authority to require that the mine operator demonstrate that facilities used to protect the environment and water resources from acidic or toxic materials function as they were designed. The operator was also not required to post an adequate performance bond to ensure that sufficient assets would be available to complete reclamation in the event of site abandonment. As a result, the General Assembly enacted Senate Bill 93-247, which resulted in the enactment of necessary reforms to prevent the recurrence of future Summitville type incidents.

The new law creates a new category of mining operation that will be subject to heightened environmental scrutiny, the Designated Mining Operation (DMO). DMO's are defined by statute as any mining operations "at which toxic or acidic chemicals used in extractive metallurgical processing are present on site or acid or toxic forming materials will be exposed or disturbed as a result of mining operations." CRS 34-32-112.5. Operations that utilize cyanide heap leaching technologies are classified as DMO's. Such operations are required to submit an environmental protection plan for approval. CRS 34-32-116.5. Hardrock metal mining rule 7.3.2(2) requires that certified verification by a professional engineer or other appropriately qualified professional to confirm that liners, leach pads, or other structures are constructed in accordance with design plans approved by the DMG.

The bonding requirements were also tightened considerably in the aftermath of Summitville. Section 34-32-117 CRS removed caps or limits on performance bonds and broadened the MLRB's discretionary authority in accepting financial sureties.

The state of Colorado has developed a mature and effective program for the regulation of mining activity. The NRC report only recognizes that, for the most part, the states, not the federal government, must be able to develop solutions that are appropriate to the geology, physical and other conditions that affect mining operations within their borders.

V. INTERIOR SOLICITOR JOHN LESHY'S OPINION WILL CURTAIL FUTURE MINERAL DEVELOPMENT IN THE UNITED STATES

The November 7, 1998 opinion by Solicitor John Leshy entitled "Limitations on Patenting Millsites Under the Mining Law of 1872," Solicitor's Opinion M-36988, effectively modifies over 100 years of settled law and precedent by asserting that the millsite provisions in the General Mining Laws somehow only allow one five acre millsite to be located and patented for each mining claim or site. The BLM's proposed regulations would make this provision even more restrictive, by limiting the claimant's right to locate only one five acre millsite per "20 acre parcel of patented or unpatented placer or lode mining claims associated with that millsite land, regardless of the number of lode or placer claims located in the 20 acre parcel." See, proposed 43 C.F.R. 3832.32, 64 FR at 47037 (August 27, 1999).

The effect of this opinion has been devastating. The Crown Jewel Project in Washington was denied authorization to mine based upon the Solicitor's startling reversal of existing legal interpretations. While others testifying before the committee today will expose the glaring flaws in his analysis in greater detail, I can only say that this opinion will singlehandedly stop significant new mineral development from ever occurring in Colorado, and will likely bring to a screeching halt several new projects and mine expansions underway in Colorado.

There is no environmental or legal basis for concluding that such a limitation should be placed on millsite development. The limitation on millsite claim development is neither compelled by environmental nor by any sound policy rationale. Every mine in Colorado and in other states is subject to a comprehensive state and federal environmental review to ensure compliance with the more than 36 federal laws and regulations, not to mention state regulatory programs, before receiving permit approval.

Although the NRC report did not address the millsite provisions directly, the NRC's findings implicitly contradict any environmental justification for modifying the 100 year old interpretation of the millsite provisions. I repeat the NRC's findings: "Federal land management agencies already have at their disposal an array of statutes and regulations that for the most part assure environmentally responsible resource development." NRC Report at 93.

VI. OTHER ADMINISTRATION POLICIES WOULD EXCLUDE ANY TYPE OF MINERAL EXPLORATION, NO MATTER HOW LIMITED, ON PUBLIC LANDS

There is an old saying in the mining industry: "Minerals are where you find them." The NRC report concluded that "while the area of federal land available to hardrock mining in the western states is enormous, the surface area actually physically disturbed by active mining is small in comparison." The BLM, the NRC further reported, is responsible for 260 million acres of land in the western United States, yet mining affects only ".06%" of this acreage. This is because only 0.01% of the Earth's crust contains economically viable mineral deposits. NRC Report at 1-2. We submit that the threat from mining is small relative to vast acreage that will remain undeveloped. Less than half of the 623 million acres of federal land managed by the government is open to mineral entry, and the available acreage open to mineral exploration is fast diminishing.

Legislation recently introduced by Rep. Diana DeGette, H.R. 829, would designate vast areas within the state as wilderness and goes well beyond the recommendations of the Bureau of Land Management's (BLM) 1998 reinventory of western slope areas. Of particular concern is the apparent conflict between H. R. 829 and BLM's decision as both pertain to the Yampa River area located south of Craig, Colorado, the pre-eminent coal mining region in the state. Following extensive study, BLM concluded that this area did not possess wilderness characteristics.

The designation of the Yampa River tract (as called for by the bill) would adversely impact ongoing coal mining operations in an area of northwest Colorado that accounts for nearly two-thirds of the state's coal production. CMA has expressed its concerns to Rep. DeGette and will continue to work with the Colorado congressional delegation on this legislation.

Even more recently, President Clinton announced his intention to permanently "protect" about 40 million acres of national forest land from development of any kind, including mining. The announcement will affect large areas within Colorado and could foreclose expansions of existing mines. While purporting to protect existing mining rights, the decision, in truth, will foreclose any type of mineral entry for future development. Given the relatively small impact that mining has on the public domain lands, we believe that there are better alternatives to the President's action that would ensure protection of such areas. There is no indication that the Administration has even considered the impact that this decision would have upon the extractive industries or the economy of the state. Shouldn't these areas first be subject to a detailed inventory to determine the presence of valuable mineral deposits before taking further action to forever declare these areas off-limits to mineral development?

VII. THE ADMINISTRATION SHOULD WORK TO SECURE THE ENACTMENT OF LAWS THAT ENCOURAGE GOOD SAMARITAN CLEANUPS OF ABANDONED MINES, CONSISTENT WITH THE NATIONAL ACADEMY OF SCIENCES RECOMMENDATIONS

The mining industry has been working, largely without success, for the past three years to persuade Congress to introduce legislation to encourage the Good Samaritan cleanups of abandoned mine sites under the Clean Water Act. The Administration, Congress, federal agencies, the mining industry and the general public all have an interest in addressing the impacts of abandoned mines. Yet legislation currently being considered excludes the private sector from playing any role in curing this problem. Thus, only taxpayer funded Good Samaritan cleanups would be allowed.

Anti-mining groups naturally oppose allowing mining companies to participate in these projects and have insisted on broad language that would exclude virtually anyone connected in any way with a particular site from ever participating as a Good Samaritan, even if that person had no liability for a discharge or violation of the Clean Water Act. This position is nonsensical, and would exclude persons with the most expertise and knowledge about mining and reclamation from engaging in these remediation efforts. The position is also contrary to the NRC's report, which concluded that the absence of a Good Samaritan provision in existing environmental laws was a major "gap" in need of correction. The NRC report found that "current regulations discourage reclamation of abandoned mine sites by new mine operators," as follows:

> New mineral deposits are commonly found at the sites of earlier mines. Even though the operator of a new mine might volunteer to clean up previous degradation, the long-term liability acquired under current regulations can be significant. As a result, non-taxpayer supported reclamation opportunities are missed...

Recommendation: Existing environmental laws and regulations should be modified to allow and promote the cleanup of abandoned mine sites in or adjacent to new mine areas without causing mine operators to incur additional environmental liabilities. NRC Report at 8.

In a September 28, 1999 letter to Rep. Tom Tancredo and other members of Congress, Greg Walcher, Executive Director of the Colorado Department of Natural Resources, submitted a resolution adopted by the Colorado Minerals Energy Geology Policy Advisory Board (MEGA Board) encouraging legislative revisions that would allow private parties to participate in Good Samaritan projects, except for those entities which have "pre-existing Clean Water Act liability for the site in question." We urge Congress to adopt this approach and encourage the broadest range of participation in addressing the problems presented by abandoned mines.

VIII. THE MINING INDUSTRY'S ENVIRONMENTAL ACHIEVEMENTS

The Mineral Policy Center (MPC) and other anti-mining groups present a misleading picture of mining's environmental record. These groups often come to hearings armed with "dirty pictures" in an attempt to prejudice the hearing tribunal with anecdotal evidence of mine failures. The most recent salvo by the MPC, entitled "Six Mines - Six Mishaps," is yet another example of this attempt to mislead policymakers. We submit that these groups should clean up their own act. And, in an effort to present a far more accurate picture of mining's environmental record, CMA submits the National Mining Association's report "Mining and Our Environment." This document records the many environmental achievements of mining companies. These efforts include the innovative remediation project at the Idarado Mine site in Ouray, Colorado, where the company applied a cap of native grasses over mine tailings in a successful effort to keep water away

from acid-leaching materials, thereby avoiding the need for treatment of acid mine drainage. This cleanup was accomplished for approximately $20 million, far less than the cost of performing government cleanups. Witness the Environmental Protection Agency's flawed and costly effort at Summitville, now in excess of $150 million.

Active mining operations in Colorado are required to meet stringent environmental standards that were strengthened in 1993 following the Summitville mine abandonment. Operations utilizing toxic chemicals or taking place in areas containing acid forming materials must meet very tough standards applicable to "Designated Mining Operations." Bonding and environmental requirements have been strengthened greatly. The Colorado program is mature and is working effectively for operations on private and federal lands.

Notwithstanding these improvements in Colorado laws and regulations, anti-mining groups have focused their attention on water quality violations alleged to have occurred on private, not public lands, at the San Luis Mine in Costilla County. If anything, the experience there shows that the laws are working. The company informed state regulators of discharges into the Rito Seco, none of which have been found to present any immediate human health, aquatic life, agricultural or recreational risks. The company has gone to extraordinary lengths to address the matter under the careful scrutiny of two state agencies and the Environmental Protection Agency (EPA). Most recent testing shows that most chemicals cannot even be detected, proving the success of the company's water treatment efforts.

IX. CONCLUSION

Mining is important to the economic well-being of all Coloradans. Yet the industry is threatened by policies designed to end mineral exploration and development activity on public lands. CMA urges the Congress to intervene and require the Secretary of the Interior to carefully study and report on the findings of the NRC report before adopting further changes to the 3809 regulations. We urge Congress to set aside the illegal opinion on millsites by the Solicitor. And we urge the Congress to enact legislation with meaningful provisions authorizing private sector initiated Good Samaritan cleanups under federal laws. Thank you for your time and attention.

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