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Honorable Jeff Bingaman
Chair, Senate Committee on Energy and Natural Resources
Washington D.C., 20510 -6150

RE: Reform Mining Law of 1872

Dear Senator Bingaman:

Here is my input by question, as requested.

1. *Should this legislation provide for new environmental standards for hardrock mineral activities? If so, what should those standards be and what transition rules would be appropriate for their implementation?*

Answer: The Reform Bill should not contain environmental standards for hardrock mineral activities. There already exists a myriad of federal, state and local statutes, rules and regulations and required authorizations which place strict environmental criteria on mining activities. For example, the Clean Water Act regulates stormwater and discharges from mines and related facilities as well as dredge and fill activities. The Resource Conservation and Recovery Act, Clean Air Act and Superfund to mention a few regulate mining and protect the environment. Moreover, each state has its own set of statutes and regulations which “mirror” these federal requirements.

Kensington, for example, has over 50 individual state and federal permits. This does not include the local City and Borough Allowable Use Permit, grading and building permits, communications and transport authorizations. The project has a Plan of Operations, Monitoring and Mitigation Plans, a Reclamation Plan, a Spill Contingency Plan and a Transportation Mitigation Plan. All of these incorporate environmental best management practices. They are required by existing laws and regulations, which are often already duplicative and overlapping. No new regulations are needed in any Mining Law Reform Act.

2. *Should the legislation designate categories of land not available for location and entry? If so, what categories should be designated?*

Answer: Legislation already exists that accomplishes this objective. The legislation includes the Alaska Native Claims Settlement Act and Alaska National Interest Lands Conservation Act legislation which establish

Wilderness and Wild & Scenic Rivers, National Monuments, National Wildlife Refuges and others. These existing laws are more than adequate to accomplish such an objectives.

3. *Should the legislation address situations where mining claims should not be developed due to environmental or other concerns? If so, how should this be addressed?*

Answer: The National Environmental Policy Act already accomplishes this objective. NEPA requires that mining claims located on federal lands must be evaluated for environmental and socio-economic impacts of developing that land prior to authorization of use by the administering agency. These evaluations are thorough and exhaustive. They address both adverse and beneficial impacts, as well as cumulative effects. In the case of Kensington, three of these studies were conducted at a combined costs of over \$30 million. These required over 20 years of investigation and analysis, utilized highly qualified an even world renown scientists and engineers, and also involved separate risk analyses prepared by third-party (outside) experts. These NEPA-required evaluations further require that the applicant avoid, minimize and/or mitigate environmental impacts especially for sensitive areas. Examples include wetlands, streamside areas, wetlands, historic sites and others.

4. *What additional financial assurances, if any, should be required for mining operations?*

Answer: There should be no additional financial assurances required by this legislation. Federal agencies like the Bureau of Land Management and US Forest Service already require “full cost” bonding. These costs are typically prepared by qualified third-party consultants. They address the costs of reclamation, plus administration, plus regular updating, plus escalation factors. The agencies presume that a third-party will also conduct the reclamation activities. Any additional financial assurances would be duplicative and unnecessary, as most states also require full cost bonding, which already duplicates federal requirements for state, private and Native-owned land. Examples include: Alaska (ADNR), Nevada (NDEP) and Idaho (IDL and IDEQ).

5. *What type of additional enforcement and compliance provisions, if any, are needed?*

Answer: No additional enforcement and compliance provisions are needed in any Mining Law Reform. Current enforcement is by USFS, BLM, EPA and Corps of Engineers. State enforcement in Alaska, as an example, is also provided by Alaska Department of Natural Resources, Alaska Department of Environmental Conservation and Alaska Department of Fish & Game. Further, most other states have similar oversight roles of enforcement. MSHA also administers the Mine Safety and Health Act.

6. *Other Comments:* I am going to suggest an alternate way to conduct mining reform but first I am going to outline the benefits of mining to the Juneau Community along with a description of the problems experienced by one of the most

studied and responsible mining development projects in North America, the Kensington Gold Mine.

The mining industry has brought a great many benefits to the Juneau municipality and our citizens. This is especially true of the good paying jobs mining has provided for our aboriginal population of Alaska Natives. In addition to the Alaska Natives, Samoans, Filipinos, Vietnamese, Black Americans and returning veterans have all enjoyed recent employment as a result of our local mining industry. This is significant when you consider that adult Alaska Natives currently experience a 62% unemployment rate in Southeast Alaska.¹ The mining industry pays an average wage of \$70,000 per year plus health and retirement benefits. By contrast, in spite of Juneau being the home of state government, the average Juneau salary is \$41,000 per year.

Juneau has two mines, Greens Creek and the Kensington Gold Mine.

Greens Creek is an operating silver lead zinc copper mine located on nearby Admiralty Island. It has been operating in this Wilderness and National Monument since 1988. It employs 260 people with a payroll and benefits worth 23 million dollars per year to the Juneau economy. It pays an average of \$900,000 per year in property taxes and is a consistent contributor to local non-profit organizations and community activities. Greens Creek employees and family members volunteer for many community activities including the arts, youth activities and local government such as the Planning Commission or ad hoc City Commissions. In short they are the types of citizens every municipality wants.

The Kensington, owned and operated by Coeur Alaska, is a nearly fully constructed gold mine located 45 miles northwest of Juneau. It is awaiting a final round of permit review for a new tailings facility as a result of 11th hour litigation brought by environmental groups. It is in heart of the ancestral grounds of the Tlingit Tribes of Northern Lynn Canal and the Tlingit People are among its most staunch supporters. It has been in permitting and development since 1987 and it employed up to 410 people during construction from 2005 to 2007 at a cost to date of \$238 million. It is expected to operate for about ten years with a work force of 200 people and payroll and benefits worth 18 million dollars per year. It will pay an estimated \$1,450,000 per year in property taxes. Approximately 170 direct and indirect support jobs are expected. The mine will purchase an estimated 9.3 million per year in local goods and services and generate approximately \$450,000 in sales taxes. Kensington will become Juneau's second largest private industry employer and Juneau's largest taxpayer.

The Kensington Gold Mine is also a consistent contributor to local non-profit organizations and a supporter of community activities. Kensington employees, family members and contractors also volunteer for many community activities including the arts, youth activities and ad hoc City Commissions. They also are the types of citizens every municipality wants.

The Kensington enjoys broad based local support from the City Government, local minority populations, civil rights groups, non-profits, state and federal employees and many other citizens and organizations of Juneau and Southeast Alaska. This support was earned through comprehensive community outreach and affirmative action programs to “Build Relationships of Trust” with the stakeholders of the Kensington Gold Mine area. The outreach and affirmative action programs are described in the attached document entitled “Community and Alaska Native Outreach”. A partial list of Kensington supporters is attached entitled “Kensington Gold Mine Supporters”.

Also attached are two official Economic Surveys conducted on behalf of the City and Borough of Juneau. The first is entitled “2006 Economic Indicators” the second is “2007 Economic Indicators”. Both surveys were conducted by the Juneau Economic Development Council through a contract with a professional socio-economic survey firm, The McDowell Group. They are scientific and representative of the community.

The surveys show the economic value of the wages and taxes to the City and Borough of Juneau. The surveys also show the high level of citizen support the Kensington Gold Mine has in the Juneau Community. The 2006 survey shows that 76% of the households in Juneau think the Kensington is important to very important to Juneau’s economy.

The Kensington is viewed as important to very important for a variety of reasons. But it is not a case of trading pollution for jobs. The overwhelming majority of Citizens of the community think that the Kensington has received rigorous review by the state, federal and local agencies and that the Kensington Operator, Coeur Alaska, has used the community input to more than meet the criteria for simply permitting the mine. In short the community and the City and Borough Assembly believe that Coeur Alaska has more than adequate safeguards for protecting the environment while operating and beyond.

Part of the reason the Kensington is viewed as so important is that a large part of Southeast Alaska is in economic and population decline. The loss of timber industry jobs, changes to the commercial fishing industry and the high cost of fossil fuel energy in rural Alaska have all contributed to the economic stagnation, severe unemployment and underemployment that affect rural Alaskans, primarily Alaska Natives. These Alaska Natives come to Juneau seeking employment but lack the vocational training skills needed for most employment. Coeur Alaska, through partnerships with the BBC Human Resource Development Corporation and the State of Alaska Department of Labor, University of Alaska Southeast, Central Council of Tlingit and Haida Indian Tribes of Alaska and local labor organizations has successfully recruited and trained a large number of Alaska Natives, other minority group members and other Alaska residents for the jobs at the Kensington Gold

Mine. It is the most successful private industry, completely voluntary, affirmative action project in Alaska history.

The opening of the mine is jeopardized by an 11th hour litigation brought by Lynn Canal Conservation, Sierra Club Juneau Chapter and Southeast Alaska Conservation Council. To summarize, the environmental groups filed litigation over a regulatory definition of waste and lost in Alaska's Federal District Court. They promptly appealed and were successful in having the case removed from the Alaska District Court to the Ninth Circuit Court of Appeals where they obtained an opinion that the operating plan was flawed due to the definition of waste used by the Ninth Circuit Court of Appeals three judge panel. (Ironically, a different three judge panel of the Ninth Circuit Court of Appeals recently reached a different opinion in a similar case upholding the Rock Creek Mine also located in Alaska.)

The immediate result of this litigation by the environmental groups was that hundreds of Alaska Natives and other Alaska residents already employed or waiting for the job training and the opening of the Kensington lost their jobs or the opportunity for job training and jobs when the mine opens.

A severe public reaction and loss of popular support forced the environmental groups to offer to work with Coeur Alaska to develop a tailings disposal plan and an amended operating plan that they would support and help to permit. The amended operating plan has been developed by Coeur Alaska but it remains to be seen if the environmental groups will honor their public commitments to help facilitate the review and permitting of the amended mine plan. In the meantime the hundreds of unemployed people seeking job training for the Kensington jobs now face an uncertain future. There is simply no other long term family wage job available in the region and the permitting for an amended operation plan could take up to two years if the environmental groups try to obstruct the project further.

The negative public reaction was a surprise to the environmental groups but it should not have been. They did not pay heed to the public surveys showing overwhelming support for the Kensington, nor did they pay attention to the amicus briefs or intervenor status motions filed by numerous parties such as the City and Borough of Juneau, the State of Alaska and non-profit groups such as the Southeast Conference, a regional economic development organization representing legislators, tribes, cities, non-profits and private industry. All of these organizations or individuals believe in the integrity of the federal, state and local agency reviews used for the Kensington permits. They also overwhelmingly believe that the environmental groups true purpose was simply to prevent mining, not to protect the environment.

It is this type of activity by environmental extremists without regard for the integrity of the federal, state and local permitting process or the needs and rights of their neighbors that prompts my suggestion for meaningful mining reform. To best serve the public, the environment, the judicial system and the economy, mining reform

should be to streamline, rationalize and simplify what has become a Byzantine and unnecessarily complex process.

Federal laws for clean water and clean air and reclamation are more than adequate to protect the environment. State laws mirror the federal laws and processes. In my experience municipal governments feel overwhelmed by the complexity and poorly understood mining permit process and they think they need to duplicate the entire Environmental Impact Statement process. That is not necessary.

What municipal governments can do is to participate fully in the federal-state study and mine permit review processes. They should provide the input they know best such as local socio-economic concerns. In mine permitting, municipalities should focus on traditional municipal responsibilities such as lights, dust, traffic, noise control and zoning requirements. In addition the municipalities can form strategic partnerships with the mining industry, labor, non-profit, state and university job training programs to identify, recruit, train and dispatch local citizens interested in good paying jobs so that their citizens can obtain those jobs if the mine is approved.

If the Senate Committee on Energy and Natural Resources is interested in detailed information as to how to simply, rationalize and streamline the current mine permitting process, my colleagues in the environmental and mining industries will gladly assist a prompt and comprehensive review in the interests of the common good.

Thank you for this opportunity to comment.

Respectfully,

BBC Human Resource Development Corporation
Randy Wanamaker, Executive Director

1 These December 31, 2007 unemployment figures are provided by the Central Council of Tlingit and Haida Indian Tribes of Alaska TANF Program. The Tlingit and Haida Tribe has 26,000 members.

The following are part of this written testimony.

This letter, 1872 mining law amendment comments
Wanamaker Profile
BBC Legislative Layout
Community and Alaska Native Outreach
2006 Economic Indicators
2007 Economic Indicators
Kensington Social License
Kensington Gold Mine Supporters