Written Testimony of Autumn Hanna
Vice President of Taxpayers for Common Sense
United States Senate Committee on Energy and Natural Resources
October 5, 2021

Good morning Chairman Manchin, Ranking Member Barrasso and members of the committee. My name is Autumn Hanna and I am vice president of Taxpayers for Common Sense, a national non-partisan budget watchdog. I am pleased to be here today to discuss the General Mining Law of 1872 and its long-overdue need for reform.

Founded in 1995, Taxpayers for Common Sense's mission is to promote and protect the taxpayer interest, advocating for fairness and transparency across the federal government. We prioritize rooting out waste, fraud, and abuse of taxpayer dollars.

At TCS, we believe that public lands are taxpayer assets, and should be managed in a way that preserves their value, ensures a fair return from private interests using them for profit, and avoids future liability. The 1872 mining law fails by all of these standards.

I started my career with Taxpayers for Common Sense more than two decades ago and hardrock mining was one of the first issues brought to my attention by our co-founder Jill Lancelot. She had been advocating for reform of the law since the early 1980s, working closely with both Republicans and Democrats. I then had the opportunity in the mid-2000s to advocate for 1872 mining reform when a bill, led by former House Natural Resources Chairman Nick Rahall (D-WV) was introduced in the House. It passed with strong bipartisan support.

The reason there has been broad support is because the 1872 Mining Law is so egregious by today's standards. Though it governs some of the most precious hard-rock minerals - such as gold, silver, copper, and platinum - and though those minerals belong to the American public, it entitles the industry to take them free of charge. The law also entitles large multinational corporations to take full title to mineral-rich lands for no more than $5.00 an acre. This has led to a massive giveaway of hundreds of billions of dollars in minerals.

Hardrock Mining has Changed

Over the years, the face of hardrock mining across America has changed dramatically—from the pickaxe and shovel, to now heavily mechanized large-scale operations. Yet despite these changes, the law that governs mining in the U.S. has not been updated in more than a century. Under the 149-year-old General Mining Law, valuable taxpayer lands and minerals are virtually given away to international mining conglomerates.

The total value of minerals mined on public land and the foregone revenue for taxpayers from not charging a royalty is unknown because insufficient data is collected by the federal government. In this case ignorance is not bliss, it is costly. The Department of the Interior (DOI) does not track the quantity or value of all hardrock minerals extracted from federal land. However, based on limited data from the state of Nevada and regions in Colorado, DOI was able to estimate that the dollar-value of hardrock mineral production on land it manages was $5.3 billion in FY2019.[1]

[1] Department of Interior, "Economic Contributions Report – Fiscal Year 2019,"

Under the General Mining Law of 1872, the Department of the Interior's Bureau of Land Management charges companies a set of fees for establishing and maintaining a mineral claim. These fees include a minimal location fee, a one-time processing fee, and a maintenance fee for individuals or companies with more than 10 claims. However, companies are not charged for the value of these resources through a royalty rate.

Other extractive industries such as oil, gas, and coal pay royalties for the resources they extract from public lands and waters. The hardrock mining industry should not be any different. Mining companies must compensate taxpayers for extracting these resources and provide an adequate revenue stream to restore our public lands.

Giveaway of Federal Land Must Permanently End

Under the Mining Law of 1872, a claimant can "patent" or purchase a mining claim for either $2.50 or $5.00 per acre. The public is prohibited from charging market value for land subject to a claim. Just to put that in perspective, the 2021 purchasing power of $5.00 from 1872 is just 20 cents.[2]

Beginning in Fiscal Year 1995, Congress began enacting one-year patent moratoriums. Patent applications then in the pipeline have been grandfathered, but new patents have not been issued since. However, continuing the decade-long practice of one-year extensions makes little sense for the mining industry or taxpayers. TCS published a fact sheet in 2006 and documented that since 1867, taxpayers have given away 3,264,252 acres of public land to foreign and domestic hardrock mining companies for a pittance.[3] In 1986, 17,000 acres of land was sold for $42,500 under patent, and the patent holders sold these lands to oil and gas companies for $37 million just a few weeks later.[4] In 1988, an inactive claim of 160 acres near the Keystone, Colorado ski resort was patented for $2.5 per acre or $400 total and was later sold for $11,000 per acre or $484,000 total. These are only some of the many examples of abuse of the patent system. The Government Accountability Office reviewed 20 patents issued since 1970, all of which were patented for less than $4,500 but estimated to be worth $13.8 to $47.9 million in 1988.[5]

The one-year patent moratorium was last extended in the FY2021 Omnibus, but taxpayers could continue to lose valuable land with more than 200 patent applications still pending from before 1995.[6] At any time Congress could fail to extend the moratorium which would cost taxpayers dearly. Transfer of public lands to the private sector at bargain basement prices should be stopped permanently.

Reforms Must End Royalty-Free Extraction

The United States retains title to minerals mined as a result of a claim on federal lands, yet taxpayers receive no compensation whatsoever from their production. Continuing the current practice of simply

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[2] Federal Reserve Bank of Minneapolis, Consumer Price Index, 1800 - , https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1800-

[3] TCS, 1872 Mining Law Patenting Fact Sheet, Jun 2006, https://www.taxpayer.net/article/1872-mining-law-patenting-fact-sheet/#_edn2

[4] GAO, Federal Land Management: The Mining Law of 1872 Needs Revision, RCED-89-72, Mar 10, 1989. https://www.gao.gov/products/rced-89-72

[5] Ibid.

[6] Congressional Research Service, "Mineral Royalties on Federal Lands: Issues for Congress," Jan 19, 2015

giving away these minerals royalty free is irresponsible stewardship of some of our most valuable federal assets.

The oil and gas industry generally pays 12.5 percent in royalties on what they extract from onshore federal lands. States also routinely require payment for mining on their lands. Taxpayers for Common Sense would like to see Congress pass a gross income royalty for hard rock minerals that is commensurate with other extractive industries and applies to all hardrock production – current and future. There are other ways to apply a royalty, but a gross income royalty will be the most transparent, the most easily administrable, and least likely to be gamed or avoided.

But first let me discuss some of the options Congress has to start generating a return to taxpayers from development of hardrock minerals on federal lands.[7] Some states charge a set amount per unit of production of specified minerals. For example, above a certain production threshold Colorado assesses a severance tax of $0.05 per ton of molybdenum. More commonly, a government agency will collect a set percentage of extracted minerals' value to reflect the public's ownership interest that was reserved in exchange for granting development rights to the miner. As a percentage, a royalty would generate a return for taxpayers proportional to the mineral value, automatically increasing when prices are high and decreasing when prices are low.

When establishing a royalty, Congress must determine its rate and the value to which it will be applied. A royalty on *gross revenue* (or *gross income*) applies the royalty rate to whatever the mining company collects when selling the extracted minerals. In this case, the minerals' value is determined using the actual sales price or published reference prices. Alternatively, royalties can be imposed on the minerals' value after certain costs have been deducted.

A *net smelter returns* royalty collects a set percentage of the minerals' value after transportation and/or processing costs are deducted. The royalty imposed on federal oil, natural gas, and coal production generally fits within the net smelter category because producers are allowed to deduct transportation and processing costs. A *net profit* (or *net proceeds*) royalty collects a percent of the minerals' value after either a portion or all of the mining company's costs are deducted.

In general, TCS has serious concerns about proposals to use a net revenue or net profits royalty, because they offer too much opportunity for gamesmanship when calculating which costs are deductible. The accounting can also be cumbersome to report and audit. For example, the State of Nevada allows 13 broad categories of deductions for its net proceeds of minerals severance tax.[8] A net profits royalty also violates principles of horizontal equity. More efficient miners with few costs end up paying more in royalties than less efficient operators for producing the same mineral value. That isn't fair to other miners and is not fair to taxpayers. Taxpayers should not be rewarding inefficiency.

A royalty based on gross income will be the easiest system to administer for the federal government and will require the least complex enforcement systems. Past proposals have referenced the definition of "gross income" set by Internal Revenue Service regulation, which is well established and simple.[9]

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[7] See: GAO, "Hardrock Mining: Updated Information on State Royalties and Taxes," Jul 16, 2019
[8] See Nevada Revised Statutes 362.120
[9] 26 CFR 1.61

Lastly, setting a royalty rate need not preclude flexibility in its administration. Setting mineral-specific rates could account for variations in the costs of their extraction.

Publicly available data on hardrock mines is limited. But in analyzing just five mines that produced roughly 80-85 percent of federal gold in the state of Nevada in 2018 we found that an 8 percent royalty on gross income would have generated more than $300 million in revenue and the companies would have still reported combined profits of nearly $1 billion.

For comparison, an 8 percent royalty on profits (net income) would have generated only $102 million and would require much more complex administration. And that was without any creative – but legal – bookkeeping that might have occurred after a net income royalty was established.

Companies may have smaller margins for non-gold mining, but provisions could be included that would provide some flexibility like setting specific or minimum royalty rates for *certain* locatable minerals within the range of 5 to 8 percent. Other safeguards could be put in place like providing discretion for the Department of Interior to provide royalty relief with public notification of any rate reductions.

Applying a royalty to hardrock mining could provide taxpayers up to $5 billion in new revenue over the next 10 years, depending on the royalty rate applied.[10]

2018 Accounting for the Largest Nevada Gold Mines on Federal Land

$, millions

Owner	Mine	Gold production (oz)	Revenue	Cost of Sales	Profit	8% royalty	Profit (post royalty)
Kinross Gold	Bald Mountain	284,359	$404	$274	$130	$32	$98
Kinross Gold	Round Mountain	375,741	$484	$329	$155	$39	$117
Barrick	Cortez	1,264,838	$1,589	$828	$761	$127	$634
Newmont	Carlin	926,789	$1,173	$1,002	$171	$94	$77
Newmont	Long Canyon	170,205	$215	$148	$67	$17	$50
	Total	3,021,932	$3,865	$2,580	$1,284	$309	$975

High Costs of Reclamation Must Be Addressed

Reclamation of mines was not a consideration 150 years ago, but due to the lack of reclamation requirements in the General Mining Law of 1872, the Western States are littered with the hazardous remnants of hardrock mining from decades past. Federal agencies have catalogued more than 140,000 abandoned hardrock mine features and estimated there are potentially 390,000 more that have not been identified, all of which are left to taxpayers to clean up at exorbitant cost.[11] The Environmental Protection Agency (EPA) reported that the 25 most expensive mines cost $50 million to $583 million per site and take many years to clean up. From FY 2008 to FY 2017, the Forest Service, Bureau of Land

[10] CBO, "Cost Estimate: H.R. 2579, Hardrock Leasing and Reclamation Act of 2019," p. 5 – an 8% royalty on existing claims and 12.5% royalty on new leases would generate average royalty receipts of $500 million per year.
[11] GAO, Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors That Limit Efforts to Address Hazards, GAO-20-238, Mar 2020. https://www.gao.gov/products/gao-20-238

Management, National Park Service, EPA and Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) spent a total of $2.9 billion addressing these abandoned hardrock mines, or $287 million on average per year.

To address these cleanup liabilities, proposals to require operation and reclamation plans, and restrict mining in areas where the risk of an expensive cleanup is too great is a good place to start. Authorizing the Department of the Interior to assess a reclamation fee would also be prudent and align with the treatment of other extractive industries' liabilities. When establishing a reclamation fee and fund, Congress should consider enabling a portion of the revenue generated by fees and royalties to be deposited in the General Treasury, once liabilities at the time of enactment have been discharged. Mining fees and royalties collected should also be primarily directed towards the highest priority cleanup sites: ones with the greatest public safety concerns or highest risks for further environmental damage, rather than directed to states with the largest current production and/or historical production, especially given the lack of production data on federal lands. This is a common sense triage approach to prioritize taxpayer investment where it can not only do the greatest good, but also mitigate the greatest harm.

The Public Wants Reform

The public overwhelmingly supports reforming the 1872 mining law. According to a survey we commissioned in early 2020, 83 percent of likely voters agreed landowners (in this case taxpayers) should receive royalties where valuable minerals are found on their properties. The nationwide survey of 1,000 likely voters was conducted between May 8-12, 2020, by the polling firm American Viewpoint.

Overall, 69 percent of voters surveyed said they favor updating the law, with strong support across all party affiliations: 67 percent of Republicans, 72 percent of Independents and 73 percent of Democrats. I don't have to tell you how rare it is to find such across the political spectrum support for a public policy change. But it is not surprising because the survey found that voters responded most to the principle of fairness as a reason for updating the mining law. After learning that private developers of oil, gas, coal, and basic mineral materials like sand, gravel, and stone must compensate taxpayers for the value of these resources through a royalty or direct purchase contract, voters overwhelmingly agreed that it is unfair hardrock minerals can be extracted and sold without any compensation to federal taxpayers.

Conclusion

I am optimistic that we can have real reform of this anachronistic law. Unlike many fiercely partisan issues, reasonable people from both sides of the aisle and even the industry itself, know we must update the policies that govern hardrock mining.

The case is clear. No business would set a price for land and stick with it for 150 years, despite changing market conditions. No one thinks simply giving away valuable minerals for nothing makes fiscal sense. And no companies should be allowed to leave toxic messes on our land and avoid the tab for cleanup. Taxpayers deserve better. I look forward to working with the committee to make reform, at long last, a reality.