Hardrock Mining on Federal Lands

Energy and Natural Resources Committee
United States Senate

Statement of the National Mining Association
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Good morning, Mr. Chairman and members of the Committee. My name is William Cobb, and I am the Vice President of Environmental Services for Freeport McMoran Mining Company, part of Freeport McMoran Copper & Gold. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before the Committee on this issue of great importance to the domestic mining industry. NMA members support reform of the Mining Law and look forward to working with the Committee to try to resolve this issue during this Congress.

NMA is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining industry. Our association and our members, which employ or support 170,000 high-wage jobs, have a significant interest in the exploration for, and development of, minerals on federal lands. The public lands in the Western states are an important source of minerals, metal production and reserves for the nation's security and well-being. Mining on federal lands provides for high-wage employment, vitality of communities, and for the future of this critical industry.

Current Environmental Scheme

Mining on public lands is a pervasively regulated enterprise with a vast range of federal, state, and local environmental laws and regulations governing mineral exploration, development, operation, closure and reclamation. Under current law, companies that engage in hardrock mining and related activities on the public lands are subject to a comprehensive framework of federal and State environmental, ecological, and reclamation laws and regulations to ensure that operations are fully protective of public health and safety, the environment, and wildlife including:

- Specific mining environmental standards administered by the Bureau of Land Management and the Forest Service, the federal surface land management agencies, and supplemented by state laws;
- All major applicable federal environmental laws such as the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, Superfund, the Safe Drinking Water Act, the Toxic Substances Control Act and many others;
- Wildlife protection statutes administered by the Department of the Interior and/or States such as the Endangered Species Act.
- Comprehensive Western State laws and regulations dealing with the protection of groundwater quality and quantity, both for operations and closure, the management and disposal of solid waste, and the reclamation of mining sites, which typically focus on the establishment of post-mining habitat for wildlife.

As seen by the number of approvals and permits the typical mining operation on federal lands must obtain before commencing construction, mining is heavily and thoroughly regulated. Depending on a project's complexity, the environmental assessment and permitting process can take upwards of a decade to complete. Typical environmental permits and approvals include:

- A plan of operations from the BLM or Forest Service, requiring a reclamation plan, closure plan, and cultural resources plan. The plan of operations is scrutinized under the National Environmental Policy Act (NEPA), usually requiring the preparation of an environmental impact statement (EIS), which evaluates potential environmental impacts of the mining operation, assesses alternatives and requires the identification of mitigation measures to reduce potentially significant environmental impacts. The EIS process has evolved to address broader issues and many times it is known as the ESIA or Environmental and Social Impact Assessment.
- Air quality permits from EPA or state agencies with delegated programs under the Clean Air Act. The complexity of the air quality permits increases if there are substantial onsite processing facilities. All sites must have an approved fugitive dust control program.
- Water quality permits from EPA or state agencies with delegated programs under the Clean Water Act. Water quality permits can include discharge permits, stormwater management permits and section 404 permits. States also require permits to address potential impacts to ground water, both during operations and closure to protect the reasonably foreseeable beneficial uses of groundwater resources.
- Rights to use or consume water from appropriate state authorities
- Hazardous waste permits that govern storage, transportation and disposal of laboratory or processing wastes.
- Authorization under the National Historic Preservation Act if cultural or historic resources are present.
- Permits to construct tailings ponds or other impoundments.

These laws and regulations that govern mining on federal lands are "cradle to grave," covering virtually every aspect of mining from exploration through mine reclamation and closure. The National Academy of Sciences (NAS) reviewed the existing federal and state regulatory framework for hardrock mining and concluded that the existing laws were "generally effective" in ensuring environmental protection. *Hardrock Mining on Federal Lands,* National Academy of Sciences, National Academy Press, 1999, p. 89.

Since the NAS study was published, the federal land management agencies have acted to make this effective regulatory program even stronger. For example, BLM and the Forest Service have significantly strengthened their financial guarantee requirements. BLM's regulations now require financial guarantees for all mining and exploration disturbances, no matter how small, before activities can proceed. Both agencies require the financial guarantee to cover the full cost to reclaim the operation, as if the agencies were to contract with a third party to conduct reclamation. In addition, the agencies can now require the establishment of a trust fund or other funding mechanism to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining reclamation and maintenance requirements. State-specific regulations require the establishment of financial assurance using a variety of specified forms.

Furthermore, the agencies require periodic review of reclamation funding. BLM has implemented a tracking system under which BLM state directors are required to certify each fiscal year that the reclamation cost estimates for proposed and operating mines have been reviewed and are sufficient to cover the cost of reclamation. Similarly, the Forest Service requires annual review of financial assurances. The improvements in financial assurance requirements, combined with sustained environmental compliance, will ensure that the public will not ultimately become responsible for reclamation of mine sites on federal lands.

New Prescriptive Standards Are Unnecessary and Inappropriate

The existing comprehensive framework of federal and state environmental and cultural resources laws already regulates all aspects of mining from exploration through mine reclamation and closure. Additional federal regulation is unnecessary, duplicative and unreasonable.

Critics of the current regulatory framework often cite the lack of a single set of prescriptive standards for all mines as the impetus for new environmental regulations. Prescriptive standards lack the flexibility needed to address the wide array of site specific circumstances and mining sectors; in lay terms, a copper mine in Arizona has different operational and closure issues than a gold mine in Idaho. At least two studies conducted by the National Academy of Sciences have concluded that the establishment of a single federal regulatory regime for hardrock mining is unnecessary and ill-advised. See *Surface Coal Mining of Non-Coal Minerals* (1979); *Hardrock Mining on Federal Lands* (1999). Both studies cautioned against applying inflexible, technically prescriptive environmental standards because "simple 'one-

size-fits-all' solutions are impractical as mining confronts too great an assortment of site-specific technical, environmental, and social conditions." *Id.*

Existing Authorities Adequately Protect Special Places

Access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry. Federal lands account for as much as 86 percent of the land area in certain Western states. These same states, rich in minerals, account for 75 percent of our nation's metals production and will continue to provide a large share of the future metals and hardrock minerals produced in this country.

Efforts to amend the Mining Law must recognize existing authorities to close certain "special places" to mining activity. Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. Congress also has granted additional authority to the Executive Branch to close federal lands to mining. The Antiquities Act authorizes the president to create national monuments to protect landmarks and objects of historic and scientific interest. Finally, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land withdrawal authority of the Federal Land Policy and Management Act. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public lands. These existing laws and authorities are adequate to protect special areas. New closures of public land, based on vague and subjective criteria without congressional oversight, would arbitrarily impair domestic mineral and economic development.

In addition, the federal land management agencies have land use planning processes to identify natural or cultural resources or environmental and social sensitivities that require special consideration. These planning processes are used to identify areas that need to be withdrawn as well as any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the mining laws. Other mechanisms available to federal land management agencies for protecting valuable resources and sensitive areas include use of advisory guidelines to identify categories of resources or lands that deserve special consideration and the adoption of site-specific mitigation measures in a plan of operations to protect cultural values, riparian habitat, springs, seeps, and ephemeral streams that are not otherwise protected by specific laws.

Right to Deny Approval

With the existing tools available to protect special resources and environmentally sensitive areas, there is no need to provide additional federal authority to address where mining claims should be denied on federal lands due to environmental or other concerns. In particular, it is not necessary to give the Secretary of Interior the right to stop a mining project when all environmental and other legal requirements are met. Such authority is simply not needed to protect against

unnecessary or undue degradation as the federal land management agencies have other statutory and regulatory means of preventing irreparable harm to significant scientific, cultural, or environmental resource values. The Department of the Interior exercises case-by-case discretion to protect the environment from any unnecessary or undue degradation through the process of approving or rejecting individual mining plans of operations.

Not only is such federal authority unnecessary to protect the environment or special resources, providing such authority creates significant uncertainty regarding ultimate mining project approval. Mining projects will not be able to attract investments if there is no certainty that the project can obtain approval even when the operator complies with all relevant laws and regulations. Investors need to know that a mining project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations. Mining projects—from exploration to extraction to reclamation and closure—are time- and capital-intensive undertakings, requiring years of development before investors realize positive cash flows. Recently announced mining projects being contemplated both within and outside the United States, including Freeport McMoran's restart of its Climax Mine in Colorado, have ranged from hundreds of millions of dollars to multi-billion dollars. Uncertainty in the legal regime applicable to mining projects can chill the climate for capital investments in domestic mining projects and have serious consequences for our economic and national security. If the investments critical for bringing a mine to fruition tend to migrate toward projects planned in other countries, the United States will become even more reliant on foreign sources of minerals.

Growing Reliance on Foreign Sources of Minerals

Despite reserves of 78 important mined minerals, the United States currently attracts only eight percent of worldwide exploration dollars and Freeport McMoran's greenfield exploration budget is the same. As a result, our nation is becoming more dependent upon foreign sources to meet our country's strategic and critical metals and minerals requirements, even for minerals with adequate domestic resources. The 2007 U.S. Geological Survey Minerals Commodity Summaries reported that America now depends on imports from other countries for 100 percent of 17 mineral commodities and for more than 50 percent of 45 mineral commodities. This increased import dependency is not in our national interest particularly for commodities critical to pending strategic programs such as reducing greenhouse gas emissions or undertaking energy efficiency efforts. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, and vulnerability to possible supply disruptions due to political or military instability.

Our over-reliance on foreign supplies is exacerbated by competition from the surging economies of countries such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are ever-increasing; they are growing their economies by employing the same mineral resources that we used to build and maintain our

economy. As a result, there exists a much more competitive market for global mineral resources. Even now, some mineral resources that we need in our daily lives are no longer as readily available to the United States.

Conclusion

The U.S. mining industry has fully embraced the responsibility to conduct its operations in an environmentally and fiscally sound manner. For many mining companies, we have demonstrated this commitment through the implementation of environmental management systems, which are a method of improving overall environmental performance, environmental compliance, and closure and reclamation success. The industry hopes and expects that Mining Law legislation will recognize and honor both its commitments to continuous improvement in our environmental performance and the industry's contribution to our national well-being.

NMA appreciates the opportunity to provide this testimony.