Haddock-Barrick

United States Senate
Committee on Energy and Natural Resources

Hearing to Receive Testimony on Pending Legislation
S. 362, S. 544, S. 596, S. 714, S. 789, and S. 859

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Statement of Rich Haddock
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Chairman Lee, Ranking Member Heinrich, and Members of the Committee, thank you for inviting me to appear before you on behalf of Barrick Gold Corporation and give testimony on legislation pending before the Committee. I would also like to note the bipartisan nature of the Mining Regulatory Clarity Act, as I have testified on these issues at the request of Chairs of both parties, in this Congress and prior Congresses.

I have been a practicing lawyer for 40 years, 30 of those as in-house counsel at mining companies. Before retiring as Barrick's General Counsel in 2022, I worked for Barrick for 25 years in various legal roles, and also served as Barrick's global Vice-President of Environment for three years.

I continue to serve as a Senior Advisor to the company.

Barrick Gold Corporation

Barrick is the second largest gold producing company in the world and biggest gold producer in the United States. Barrick has gold and copper mining operations and exploration projects in North and South America, Asia, Africa, Papua New Guinea, and Saudi Arabia.

Most of our U.S. gold production comes from Nevada where we operate Nevada Gold Mines LLC, a joint venture of Barrick and the Newmont Corporation. Nevada Gold Mines is the largest gold-mining complex in the world, with more than 7,200 employees, and 2,000 full-time on-site contractors who employ thousands more people in Nevada and around the country. Barrick procures $5 billion in goods and services in the U.S. every year. We have been operating mines in Nevada for over 40 years and some of our employees are third-generation Barrick miners.

Barrick's annual U.S. payroll is approximately $1.2 billion; most of those jobs are in northern Nevada. These mining jobs pay average annual wages of $94,000 – higher than any other industry in Nevada. Barrick is the second largest employer in the state of Nevada, and

importantly, because these well-paying jobs are principally located in ***rural*** areas, they have an outsized influence on the local economies in which they are situated.

Promoting The Growth of Mining in the United States

Most of Nevada Gold Mines' operations take place on unpatented mining claims on public lands managed by the Bureau of Land Management. About 85% of the land in Nevada is owned and managed by the Federal Government, more than any other state. Other (mostly) western states also have millions of acres of federal land that contain mineral deposits, many yet to be discovered. It follows that the Federal Government has a central role to play in fostering and promoting the growth of mining in the United States. Through its policies and actions, the government can ensure that the domestic mining industry flourishes, or it can create conditions (or allow them to persist) that discourage developments of domestic sources of minerals.

For most of the last 40 years, a healthy domestic mining industry was not a priority for policymakers. U.S. businesses could source their minerals and refined mineral products anywhere in the world; they did not need to be mined or processed in the U.S. The reality is that the mining industry has largely become an international industry over that same time. In many cases it has been cheaper to import minerals than to find, mine, and process them in the U.S. Production of some critical minerals has become focused in just a few mines in politically unfriendly jurisdictions where total global demand could be met by a race to the bottom of the most inexpensive production – often as a result of lax environmental standards, terrible labor conditions, and in some cases government financial support.

Also, importantly to industry decision makers, the U.S. has become viewed as a politically difficult, if not high-risk, jurisdiction because of the long permitting timelines, followed by seemingly endless litigation, and the constant threat of legislative proposals to gut the U.S. Mining Law. The U.S. is really only a destination for the most well-funded of international miners and for the most obvious and highly prospective deposits. For smaller, low-margin metal projects, which includes many critical minerals, the added procedural costs and financial impact of delay are simply too expensive, making it risky to invest in the U.S.

Recent global events have renewed our focus as a nation on the value of domestic minerals production, including mining, smelting, and refining. There is bipartisan recognition that the U.S. needs to secure supply chains and its own healthy domestic mining industry. Barrick welcomes this shift in perspective. It is in the economic and national security interest of the U.S. to enact policies that will attract exploration and capital investment in U.S. mineral projects, not only for the high-paying jobs and community benefits, but because a thriving mining industry is needed to secure supply chains of the minerals needed for American industrial and defense uses. But there is much focused work to be done.

Stated simply, in enacting mining legislation intended to develop domestic sources of minerals, Congress must answer two questions: (1) what policies will attract additional exploration interest and capital investment in U.S. mineral projects? and (2) who will provide the expertise to operate the new mines and mineral processing facilities? Modern industrial mining is a complex

enterprise that relies on expertise and skilled labor using the most advanced technologies. Most of the metals mined today in the U.S. are gold, copper, or iron, but the engineers, metallurgists, chemists, geologists, environmental scientists, equipment operators, and others who work at these mines are also the people with the education, skills, and experience that will be needed to operate the domestic lithium and other important mineral mines of the future. It is also the case that many minerals vital to national security and technology needs are byproduct minerals. They are not mined as the primary mineral, but instead are found in small quantities with primary metals like gold, copper, iron, lead, zinc, nickel, and other more economically viable minerals. Germanium and gallium are example of such by-products. Because it is typically not profitable to recover these minerals, they remain with mine wastes instead of being recovered. U.S. mining policy must be cognizant of the entire industry ecosystem.

In one way or another, all but one of the bills before the Committee today seek to promote domestic mining or critical minerals supply chains. S. 596, S. 714, and S. 798 are aimed at advancing or improving current U.S. policies prioritizing secure mineral production, processing, and supply chains. S. 544 is absolutely essential to continued mining on federal lands because it would alleviate uncertainty and disruption caused by the *Rosemont* decision so obviously necessary surface facilities can at least be permitted. S. 362 addresses a specific coal mining project in Montana. I am not familiar with the details surrounding this project, and feel unqualified to express views on Barrick's behalf about that legislation.

In contrast to the other five bills, most of which are bipartisan, S. 859 represents a giant leap backward. This bill, if enacted, would serve only as a barrier to mining in the U.S. and drive mining investment out of the U.S. at the very moment there is bipartisan consensus that we must increase domestic production and shore up the U.S. mining industry.

From Barrick's perspective, the most urgent of the bills is S. 544, the Mining Regulatory Clarity Act. The bill addresses the disruptive impacts of what is known as the *Rosemont* decision from the Ninth Circuit Court of Appeals. *Rosemont* has created massive uncertainty and litigation risk, and added more delay to a permitting process that is already too long and expensive. *Rosemont* has disrupted mine permitting on Federal lands and, even as we sit here today, is being used by mining opponents in litigation to attack agency approvals of proposed mines and mine expansions. This includes mines that would produce lithium, needed for batteries, and antimony, needed for national defense. It is imperative that Congress act quickly to remedy this situation; S. 544 would accomplish that.

S. 544 – The Mining Regulatory Clarity Act

Barrick strongly supports S. 544. Additionally, Barrick greatly appreciates the efforts of this Committee, in this Congress, and in the 118th for advancing the legislation. We are grateful as well to members of the Committee – Senator Cortez Masto, Senator Risch, and Senator Murkowski – for sponsoring the legislation.

S. 544 would create a second type of "mill site" that can be used to locate activities that are "ancillary" but necessary to mining, such as storage of rock and overburden removed from the mine to allow access to the ore deposit. For clarity, I will refer to this new kind of mill site as a

"subsection (c) mill site" (because it would be added to existing law as a new subsection (c), in contrast to the existing mill site claim provision in subsection (a) of existing law).

How the subsection (c) mill site addresses the *Rosemont* problem[1] requires further explanation.

Background: The "*Rosemont*" court in 2019 vacated a plan of operations for the Rosemont copper mine in Arizona because the Forest Service failed to confirm the "validity" of mining claims before it approved the mining plan.[2] As had been standard practice for decades, the operator proposed to use the surface of some of its unpatented mining claims to store mine waste. The Forest Service, following standard procedures, including detailed NEPA analysis, and applying a settled interpretation of the Mining Law in place for over 100 years, approved the plan. However, by requiring the company to establish "validity" first – which means that each claim has to be shown to contain a valuable mineral before it can be used for any purpose– the court wreaked havoc on 100+ years of Mining Law interpretation and practice, and 40+ years of federal permitting and land management regulations. In the past, validity determinations have been required only in limited cases, such as when patenting claims, in disputes with the government or a rival claimant, or when federal lands are withdrawn from mineral entry – in other words, when there is some active question of validity that needs to be answered, as opposed to this case where the question really is "what novel arguments can be used to block mines?." The Mining Law has never required standard validity determinations for claims as a prerequisite of mining, even for claims from which the minerals are being removed under an agency approved plan of operations. *Rosemont*'s introduction of validity as a standard permitting requirement created a "Gordian Knot" in Mining Law practice that did not exist previously and that must be undone.

Senator Cortez Masto, the principal sponsor of S. 544, introduced similar legislation in the 118th Congress to address the *Rosemont* problem. That bill – S. 1281 – would have explicitly restored the pre-*Rosemont* interpretation of the Mining Law, essentially reversing *Rosemont* by removing the requirement to establish validity before using unpatented mining claims for ancillary activities. Concerns and objections were raised, and discussed before this Committee in late 2023, that S. 1281 (and its companion legislation in the House of Representatives) would open the door to mining in Wilderness Areas, in National Parks, and on other protected federal lands, and to nuisance claims that would impair other projects, such as solar energy. From my perspective these were neither legally meritorious nor practically real arguments, yet despite assurances and amendments intended to address and relieve these concerns, the opposition persisted. Senate Energy staff, coordinating with Senator Cortez Masto, initiated discussions with the mining industry and conservation organization representatives to explore other ways to

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[1] I testified in December 2023 and January 2024 before Senate and House Subcommittees about the *Rosemont* litigation and its potentially disastrous impacts on mine permitting. My written testimony described the *Rosemont* case and its impacts in detail. Rather than repeating that detail here, I recommend relevant portions of that written testimony and incorporate it here by reference. *See* Statement of Rich Haddock, Senior Advisor, Barrick Gold Corporation, Hearing to Receive Testimony on Pending Legislation, S. 1281 and S. 1742 Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, Forests, and Mining 4-14 (December 12, 2023); Statement of Rich Haddock, Senior Advisor, Barrick Gold Corporation, Hearing to Receive Testimony on Pending Legislation, H.R. 2925, H.R. 6862, H.R. 7003 and H.R. 7004, House of Representatives Committee on Natural Resources, Subcommittee on Energy and Mineral Resources 2-11 (January 31, 2024).

[2] Center for Biological Diversity v. U.S. Fish and Wildlife Service, 409 F. Supp. 3d 738 (D. Ariz. 2019), *aff'd* 33 F.3d 1202 (9th Cir. 2022).

resolve the problems caused by *Rosemont.* The result – the new subsection (c) mill site described above – was included in S. 4753, the Energy Permitting Reform Act of 2024, which this Committee advanced on a bipartisan basis. That same solution is now embodied in S. 544 as a stand-alone bill.[3]

Bill Provisions: The purpose of the bill is to provide federal land managers and mine operators with an alternative means to permit public lands uses that are reasonably incident to legitimate mining operations, including storage of mine waste rock and tailings in accordance with the definition of "operations" as used by federal land managers for decades. The legislation simply provides an alternative approach to permitting; it does not reverse or disturb the *Rosemont* holdings.

One of the most important provisions of this approach is that a subsection (c) mill site can only be located by an operator in connection with a mining plan of operations submitted to the Bureau of Land Management or U.S. Forest Service for review and approval. In other words, contrary to arguments raised by opponents, there is no pathway for these subsection (c) claims to be used to block other uses or create "nuisance claims", because they cannot be filed until an operator has a fully developed mining plan of operations and must be located within the plan of operations boundary.

When the plan is approved, the operator may use these new mill sites for any mine support facilities approved in the plan. The operator may locate, and the federal land manager may approve, the use of as many new mill sites as reasonably necessary to support operations within the plan of operations boundary. These new mill sites can be located on public land without regard to the mineral character of the land so the federal land manager need not investigate the mineral character of the land in connection with plan review and approval. Importantly, the current procedures and standards for plan review and approval under mining regulations adopted by BLM and the Forest Service remain in place without change. None of the substantive permitting or environmental requirements that mining operators must meet are changed by this legislation.

Other key provisions of S. 544 include:

- **Section 3** makes clear that this new type of mill site does not convey minerals to the locator/operator. A locator instead must claim minerals by locating lode claims or placer claims and would be required to comply with any requirements associated with such claims.

- **Section 4** limits the size of each subsection (c) mill site to 5 acres. The operator can locate as many subsection (c) mill sites as "reasonably necessary" to accommodate

[3] In Questions for the Record of the December 12, 2023 hearing referred to in Note 1, *supra*, I explained in detail how use of the original mill sites in the Mining Law (referred to herein for clarity as "subsection (a) millsites") is not a practical solution for the *Rosemont* problem. Responses of Rich Haddock, Senior Advisor, Barrick Gold Corporation, Questions for the Record of the December 12, 2023 Hearing of the Public Lands, Forests, and Mining Subcommittee 4-6 (January 12, 2024). Briefly, subsection (a) millsites can be located *near* mines, but cannot be on land that is "mineral in character." This and other limitations mean that subsection (a) mill sites often cannot accommodate necessary facilities such as roads, power lines, and mine waste structures.

approved ancillary facilities. Sections 5 and 6 provide that subsection (c) mill sites can be located over the same ground that the locator/operator holds or controls through the location of lode or placer claims without affecting the validity of the underlying lode or placer claims.

- **Section 7** provides that subsection (c) mill sites cannot be patented.

- **Section 8** is an extensive savings clause, developed in collaboration with conservation community representatives, that makes clear that this bill does not affect the government's ability to manage or control mining claims or mining operations on lands that have been withdrawn from location under the mining laws (such as National Parks) while confirming that the bill does not diminish any rights of a mining claimant under other law.

Importantly, subsection (c) mill sites would increase revenues to the United States. Currently, miners pay a maintenance fee of $200 per year for a lode claim. The draft legislation would impose an annual maintenance fee of $200 for each Subsection (c) mill site. Assuming the miner locates Subsection (c) mill sites ***and*** holds on to the underlying lode claim to continue mineral exploration, the miner would be paying $800 per year for four mill sites, plus $200 for the lode claim, for a total of $1000 per year for the area covered by the lode claim. The additional money would go into the Abandoned Hard Rock Mining Fund created by this bill to provide for the remediation of historical mining sites under the program created in the Infrastructure Investment and Jobs Act.

Finally, the draft legislation makes clear that nothing in the Act:

(1) would affect the government's ability to withdraw lands for any purpose, such as conservation or renewable energy,
(2) would resurrect rights in areas that have already been withdrawn, or
(3) would prevent or interfere with the government's regulation of withdrawn lands.

These last provisions should resolve any concerns raised by opponents about S. 1281 in the 118th Congress. S. 544 makes irreducibly clear that subsection (c) mill sites would in no way interfere with the U.S.'s ability to manage protected lands and exclude mining activity from them. It simply provides an alternative legal avenue for federal land managers to approve placement of ancillary features that does not require validity determinations and does not bring mine permitting to a standstill. All other permitting requirements remain. This bill addresses the *Rosemont* problem in a practical, narrowly-crafted and transparent way and we urge the Committee to advance the legislation as soon as possible.

Finally, as important as S. 544 is, it is only a start. *Rosemont* just made a broken system more broken. Comprehensive permitting reform, especially with regard to judicial review, remains crucial to any effort to increase domestic mining and we applaud the efforts of this Committee and the Committee on Environment and Public Works to fix that broken process.

The Critical Minerals Bills

Barrick applauds the efforts of Committee Members to continue building on existing U.S. policy to bring critical mineral mining and processing back to the U.S. and to develop secure supply chains in partnership with U.S. allies. These bills – assigning critical minerals responsibilities as they do to numerous agencies across the federal government – highlight the urgency and scope of the challenge, and underline the absence of a central hub for mineral location information and technology and policy development within the federal government. The Bureau of Mines, which was closed in 1996, once served many of these purposes. While I am not advocating reconstituting the Bureau as it previously existed and I realize that it is not the focus of this hearing, I do believe the challenge of securing domestic mineral supply chains requires some form of centralized effort to address and implement mineral policy and to be the repository of key information. Barrick stands ready to work with the Members of the Committee on solutions to address this issue in a comprehensive manner.

- **S. 596 – The Critical Minerals Future Act of 2025**

S. 596, sponsored by Senator Hickenlooper, would create a pilot program at the Department of Energy supporting at least three critical materials processing projects to be carried out in the U.S. using "innovative financial tools" such as price supports or price floors to attract private investment in domestic critical mineral projects. The bill properly recognizes the concerning reality that investors are reluctant to commit capital to materials mining and processing in the U.S. because of price instability, and market manipulation by China and other foreign actors, and focuses attention on what it will take to create a domestic supply chain. We support legislative solutions that strengthen the domestic supply chain and thank Senator Hickenlooper and his staff for their focus on this issue and for their engagement with industry.

- **S. 714 – The Critical Mineral Consistency Act of 2025**

S. 714, led by Chairman Lee and cosponsored by other members of this Committee, would amend the Energy Act of 2020 to create consistency between the list of "critical minerals" designated by the Secretary of the Interior and the list of "critical materials" maintained by the Secretary of Energy. This is common-sense legislation that has bipartisan sponsorship and received bipartisan support in the 118th Congress. Differences in lists create confusion over tax credits, availability of research funding, permitting, and other incentives in existing and law and future legislation. S. 714 would reduce uncertainty by incorporating all critical materials and critical minerals into one list maintained by the Secretary of the Interior. The Department of Energy's critical materials list already incorporates all minerals designated by DOI as critical. The legislation would fully synchronize the lists. To focus our national efforts, we support a single "living" list of the critical minerals that is responsive in real-time to our needs.

- **S. 798 – The Critical Minerals Security Act of 2025**

S. 798, sponsored by Senator Cornyn, would direct an ambitious knowledge-gathering initiative to learn about the location and control of critical minerals worldwide. It addresses the real problem of global competitors hostile to the U.S. securing mineral supply chains through various methods. Barrick supports the goal of ensuring that the U.S. is as resource-savvy as our global

competitors. We support further development of our national knowledge base about mineral resources, especially of domestic sources of minerals.

S. 859 – The Mining Waste, Fraud, and Abuse Prevention Act of 2025

S. 859, sponsored by Senator Lujan, is similar to S. 1742, the Clean Energy Minerals Reform Act, introduced in the 118th Congress by Ranking Member Heinrich. Barrick appreciates some nuanced aspects of S. 859 but cannot support the bill. To Barrick, the most important element of S. 859 is that it recognizes and retains the core principles of the Mining Law: self-initiation and security of tenure. Barrick also appreciates that, unlike past Mining Law reform proposals, S. 859 does not attempt to insert separate environmental provisions into the law. The bill recognizes that, like every other industry in the U.S., the mining industry must already comply with all federal, state (and sometimes tribal and local) environmental and historic/cultural protection laws and regulations.

We have many concerns with the bill which are too detailed to be fully listed here, but some of the most problematic issues are:[4]

- **Claim Maintenance Fee Provisions.**

S. 859 addresses the existing claim maintenance and location fee system. Barrick does not believe this system needs to be included into this new legislation, particularly in the manner proposed. S. 859 incorporates some parts of the existing regulatory language but not others, which would introduce confusion in an otherwise well-understood program.

- **Royalty and Fees.**

Royalties: Barrick has long supported the imposition of a reasonable net royalty, but is opposed to the imposition of a gross royalty as proposed by S. 859. The proposed gross royalty ignores that different hardrock ores are of different qualities and require different kinds of extraction techniques and, more importantly, bespoke processing facilities to make them into the end metal product. Hardrock geologic deposits are incredibly metallurgically complex. Often different ore bodies carrying the same commodity (such as copper or gold for example) require completely different processing facilities (i.e., "mills") to convert the raw ore into a commodity product that can be sold. For example, one gold mine might require a $150 million mill while another might require an entirely different $1.5 billion mill to produce the same amount of gold. Creating such bespoke processing facilities is an enormously expensive and complex undertaking, requiring

[4] I submitted testimony on S. 1742 in December 2023. Rather than repeating that information in detail here, I recommend relevant portions of that written testimony and incorporate it here by reference. *See* Statement of Rich Haddock, Senior Advisor, Barrick Gold Corporation, Hearing to Receive Testimony on Pending Legislation, S. 1281 and S. 1742 Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, Forests, and Mining 14-21 (December 12, 2023).

hundreds of millions of dollars and sometimes billions of dollars in engineering, pilot mill design and construction, full-scale mill design and construction, and commissioning. A gross royalty is a tax burden on all that massive capital investment. Rather than assessing the royalty on the value of what the miner separates from the ground, which is the value of what the U.S. brings to the enterprise, the proposed royalty is assessed at the end of a very capital-intensive refining process. It is akin to assessing the oil & gas royalty on gasoline instead of on crude oil.

Barrick believes the federal government should receive compensation for its minerals. But Barrick also believes firmly that it is short-sighted and bad policy to focus on just the royalty, which is only one aspect of the government's "take." Governments around the world choose the manner in which they take a share of mineral production for the nationally owned resource. In doing so developed countries employ two basic levers: taxes (including fees and duties), and royalties. In deciding what is an appropriate share for the government to receive, Congress should be looking at "total government take," the sum of all levers. Also, in our federal system, Congress cannot ignore taxation at the state level. State taxes, like Nevada's net proceeds tax (which is a large tax that operates like a net royalty), are part of government take, and affect project economics just as federal taxes and royalties do. As I have testified before, the U.S. total "take" compares reasonably to other developed mineral-producing nations such as Canada and Australia.[5]

Fees: In addition to the gross royalty discussed above, S. 859 would require a land use fee of four times the amount of the claim maintenance fee (in addition to the claim maintenance fee), and a reclamation fee of between 1% and 3% of the gross value of mine production. Importantly, the reclamation fee as proposed is just additional gross royalty and is proposed to apply to hardrock mining everywhere within the United States, including on private and state lands, not just Federal lands. Combined with the primary gross royalty, location fees, and claim maintenance fees, these additional fees will impose a significant and unworkable cost burden on U.S. hardrock mines. As we have illustrated in the past,[6] the cumulative effect of these royalties and fees, along with federal and state taxes, would mean a total U.S. government take of two-thirds of the value of an operation, which destroys any potential investment. As Congress considers Mining Law amendments and the imposition of royalties and fees, it must remember that the overall goal is to grow the domestic mining industry, which creates jobs and tax revenue, and the minerals the country will need in the coming decades.

- **Exploration Permits**

S. 859's new exploration permit requirement is unnecessary to protect sensitive resources, would discourage exploration, not advance it, and would place a massive burden on federal land

[5] Barrick appeared before the full Committee in a hearing on October 5, 2021, and submitted testimony and responses to written questions that explained in detail the policy and economic underpinnings of our position on royalties. Barrick also addressed our position more specifically in relation the proposals in this bill as embodied in S. 1742. Rather than repeating those arguments in this limited space, we recommend those materials and incorporate them here by reference. *See* Responses of Rich Haddock, General Counsel of Barrick Gold Corporation, Questions for the Record of the October 5, 2021 Hearing of the Senate Energy and Natural Resources Committee to Examine and Consider Updates to the Mining Law of 1872 2-10, 18-19, 20-22 26-31, 32-35 (October 29, 2021) and Note 4, *supra*.

[6] Note 5, *supra.*

managers. The current system of notice-level activities and permit-level activities should be retained.

- **"Undue Degradation".**

Another most troubling concern is the bill's definition of "undue degradation," which is a *sub rosa* amendment of the Federal Land Policy and Management Act (FLPMA) Section 302(b)'s "unnecessary or undue degradation" standard. The definition would displace decades of administrative and judicial interpretation of FLPMA by grafting into it the "substantial irreparable harm" standard that mining opponents have sought for decades. Section 306(c) of the bill then finishes the job by declaring that the Secretaries must withhold permission for any mineral activity that will result in undue degradation – the "mine veto."

Barrick cannot support this radical and unwarranted change to FLPMA and the Mining Law. It is simply unreasonable to expect any mining company to invest the time and money that it takes to find, engineer, and permit a mining operation knowing that it can have the investment wiped out at the end of the process.

In sum, Barrick cannot support S. 859 and asks that the Committee refrain from advancing it. As always, however, Barrick remains committed to working with Members of Congress to establish an appropriate net royalty regime that puts the myth that federal land miners pay nothing to rest once and for all.

<u>Conclusion</u>

Again, Barrick reiterates that advancing S. 544 is urgent and sends an important message that our nation is serious about mineral production. Barrick welcomes the opportunity to work with Committee Members on these and other issues.