

Testimony of
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Senate Energy & Natural Resources Committee
Subcommittee on Public Lands, Forests, and Mining
S. 884, Small Miners Waiver Act
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Thank you for the opportunity to testify today on S. 884. In communities across the country, hardrock mining provides jobs, supports a diverse and vital economy, and brings important commodities to market that are essential to maintaining a high quality of life for all Americans. The public lands are a significant source of these mineral resources, and mineral development is an important land use within the Bureau of Land Management's (BLM's) multiple-use mandate. The Department of the Interior (Department) greatly appreciates the work of Chairman Murkowski and the Subcommittee in support of environmentally-responsible mineral development from the nation's public lands.

S. 884 would require the BLM to allow mining claimants a chance to "cure" their failure to meet certain required filing deadlines. The bill would also give private relief to a small number of mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM appreciates the sponsor's work on this legislation and supports S. 884's goal of providing flexibility to small miners who have missed their filing deadlines. The BLM would welcome the opportunity to work with the sponsor and the Subcommittee on language to clarify the legislation and promote accountability.

Background

The Omnibus Budget Reconciliation Act of 1993 (maintenance fee statute) established an annual maintenance fee for unpatented mining claims, mill sites, and tunnel sites. This annual maintenance fee is currently set by regulation at \$155 per lode mining claim or site and \$155 per every 20 acres or portion thereof for a placer claim. The maintenance fee statute also gave the Secretary of the Interior (Secretary) the discretion to waive the annual maintenance fee for certain "small miners" – mining claimants who hold 10 or fewer claims or sites.

Following the enactment of the maintenance fee statute, the Department promulgated regulations that exercised the Secretary's discretion to allow the maintenance fee waiver for "small miners." These regulations state that in order to qualify for the waiver under the maintenance fee statute, the mining claimant must, among other things, file a maintenance fee waiver certification that certifies he and all related parties hold 10 or fewer mining claims or sites. Under the original regulations, the deadline for filing the maintenance fee waiver certification for the upcoming assessment year was August 31, which was the same day as the statutory deadline for filing annual maintenance fees. When Congress changed the statutory annual maintenance fee deadline to September 1, the Department changed the deadline for maintenance fee waiver certifications to also be September 1 for the coming assessment year. The Secretary's decision to make the regulatory deadline for filing maintenance fee waiver certifications the same as the statutory deadline for paying annual mining claim maintenance fees took into consideration the statutory constraint that maintenance fee

waivers could not legally or practically be sought any later than the deadline for the maintenance fee itself.

Unlike mining claimants who pay the annual maintenance fee, mining claimants who file maintenance fee waiver certifications are not exempt from the annual filing requirements in section 314 of the Federal Land Policy and Management Act (FLPMA). As such, mining claimants who file maintenance fee waivers certifications must also submit an annual filing – either an affidavit that they have done sufficient work on their claim in lieu of the maintenance fee, or a notice of intention to hold – on or before December 30, following the submission of the waiver and after the close of the assessment year for which a waiver was sought. Failure to submit either the waiver certification or the required filing under FLPMA results in forfeiture or abandonment of the mining claim by operation of law.

When Congress amended the maintenance fee statute in 1998 to change the filing deadline from August 31 to September 1, as noted above, it also amended the maintenance fee statute to allow mining claimants seeking a maintenance fee waiver to cure a “defective” waiver certification. The amendment required the BLM to give mining claimants filing timely "defective" maintenance fee waiver certifications notice of the defect and 60 days from the receipt of written notice to “cure” that defect or pay the annual maintenance fee due for the applicable assessment year. Failure of the mining claimant to cure the defect results in the forfeiture of the mining claim.

S.884

S.884 would amend the maintenance fee statute to allow mining claimants an opportunity to "cure" a defective maintenance fee waiver certification for any reason, including if the claimant failed to timely file the waiver. As under the current statute, mining claimants would have 60 days from the receipt of written notice to correct that defect or pay the applicable maintenance fee. The bill would also provide the same 60-day cure period for an untimely annual filing under section 314(a) of FLPMA. S.884 would also give private relief to certain mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM has concerns with the bill as written and would like to opportunity to work with the sponsor to better achieve the bill’s goals.

Analysis

Altering Deadlines

The BLM generally supports the goals in Sec. 1(a) that would allow miners flexibility when filing the small miner fee waiver. As written, the BLM has concerns with the proposed legislation, as it would effectively eliminate the September 1 deadline in the maintenance fee statute as well as the annual filing deadlines in section 314(a) of FLPMA. Amending the maintenance fee statute and section 314 of FLPMA to make failure to timely file a curable defect would require the BLM to accept late filings after the deadline, no matter how late. This would shift the administrative review and notification to the BLM, increasing the cost of administering the mining law program. Further, it would enable a mining claimant to hold the mining claims or sites in suspense until the BLM is able to identify the deficiency and notify the mining claimant. This would effectively extend the applicable deadlines by removing any penalty for failing to comply in a timely manner. In an effort to limit the administrative burden, and hold miners accountable to timely pay the maintenance fee or file a timely maintenance fee waiver, the BLM would like to work with the sponsor on language to provide limitations on the number of times a small miner can have an untimely filing or perhaps institute a monetary fee associated with it.

Curing Defective Waivers

Under Sec. 1(a) of S. 884, if a mining claimant files either an untimely maintenance fee payment, an untimely maintenance fee waiver certification, or fails to make any filing at all, including a maintenance fee payment, the BLM would no longer be able to simply declare the mining claim or site void by operation of law, as authorized under the current maintenance fee statute since 1994. Rather, under this new provision, if any mining claimant fails to pay the annual maintenance fee or file a maintenance fee waiver certification by the deadline, the BLM would have to first determine whether each mining claimant qualifies as a “small miner” and, if so, would have to give notice and opportunity to cure – whether or not the mining claimant had any intention of paying the fee or filing a maintenance fee waiver certification. Moreover, because the BLM would have no way to determine if a mining claimant who qualified as a “small miner” had simply decided not to pay the fee or file the maintenance fee waiver certification and intentionally relinquish their mining claims, the BLM would have to send a "defect" notice to all such mining claimants who fail to either timely pay their maintenance fees or timely file a maintenance fee waiver certification and give them the opportunity to cure.

Similar considerations apply with respect to the provisions in S. 884 that allow mining claimants an opportunity to "cure" defective annual filings under section 314 of FLPMA. In addition, the amendments to FLPMA need clarification for other reasons. Section 1(a) of the proposed legislation purports to limit the opportunity to “cure” only to “an affidavit of annual labor” and only where “associated with the application.” However, section 1(c) amends section 314 of FLPMA to extend the opportunity to “cure” to all required annual filings under section 314(a), regardless of whether it is an affidavit of annual assessment work, and regardless of whether it is associated with a maintenance fee waiver certification. These provisions appear to be potentially contradictory, and we would like the opportunity to work with the sponsor to clarify these requirements.

Covered Claimholder

The mining claims described under Section 1(b) belonged to several different claimants in Alaska. Section 1(b) would give the mining claimants the opportunity to "cure" the defects that led to their mining claims being declared abandoned and void, consistent with the amendments to the maintenance fee statute and section 314 of FLPMA that are proposed here.

The first “covered claimholder” (for mining claims AA023149, AA023163, AA047913, AA047914, AA047915, AA047916, AA047917, AA047918, and AA047919) is from Girdwood, Alaska. The mining claimant held nine mining claims located in the Chugach National Forest in southeastern Alaska. The BLM determined these mining claims to be statutorily abandoned in January 2005 when the mining claimant failed to file annual assessment work documents in accordance with FLPMA, and the Interior Board of Land Appeals (IBLA) subsequently upheld the BLM's decision to declare these mining claims null and void.

Finally, as the legislation is currently written, the BLM could not verify the remaining mining claim serial numbers identified in the bill. We would like to work with the sponsor to ensure that the bill text accurately identifies the mining claim serial numbers associated with the “covered claimholders” to whom this bill is seeking to provide relief. The BLM would welcome the opportunity to work with the sponsor on ways the Department can better serve the hardrock mining community.

Conclusion

Thank you again for the opportunity to testify on S. 884. I would be glad to answer your questions.