

**Statement of Henri Bisson  
Deputy Director, Bureau of Land Management  
U.S. Department of the Interior**

**Oversight Hearing: Mining Law Reform  
Senate Committee on Energy and Natural Resources**

**January 24, 2008**

Thank you for the opportunity to participate in this oversight hearing on Mining Law reform and to share with you current information on the Bureau of Land Management's (BLM) hardrock mining program on Federal lands, including the various statutes and regulations that govern this program.

**The 1872 Mining Law, the Federal Land Policy and Management Act, Environmental Statutes and other Applicable Laws**

For over 135 years, the 1872 Mining Law has served to assure a reliable and affordable domestic supply of minerals—gold, silver, copper, lead, zinc, and uranium—critical to our economy and national security. The 1872 Mining Law also promoted the settlement of the western United States by providing an opportunity for any citizen of the United States to explore the available public domain lands for valuable mineral deposits, stake a claim, and, if the mineral deposit could be mined, removed, and marketed at a profit, patent the claim. Patenting results in the claimant acquiring ownership not only of the mineral resources, but also of the lands containing these mineral deposits at the statutory price of \$2.50 or \$5.00 per acre. A moratorium has been in place since 1994 on BLM's processing of new patent applications.

By 1976, when the Federal Land Policy and Management Act (FLPMA) was enacted, settlement of the West was no longer the primary force driving federal land and resource management policies. FLPMA provides that the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands. Today, these provisions and the multiple use mandates of FLPMA are implemented alongside the 1872 Mining Law.

Other state and Federal laws also play a critical role in ensuring that hardrock mining operations on public lands occur in an environmentally sound manner. Although the 1872 Mining Law itself is over 100 years old, statutory requirements to comply with state and Federal Laws, such as the Clean Water Act; Clean Air Act; Endangered Species Act; National Environmental Policy Act (NEPA); Wilderness Act; and National Historic Preservation Act, ensure that mining operations meet today's cultural and environmental needs.

Mineral withdrawals provide a vital tool to protect special areas. Millions of acres of Federal land have been withdrawn from mineral entry through either statute or policy. Withdrawn areas include Federally-designated wilderness areas, national parks, national wildlife refuges, and many other specially-designated areas. In addition, through the public NEPA process, and compliance with other environmental laws, mining operators review alternatives to their processes, providing an opportunity to employ new methods and technologies.

### **BLM's Management and Regulation of Mining**

Consistent with the statutes discussed earlier in this testimony, BLM offers the opportunity for responsible development that serves the economic, social, and environmental interests of the

Nation. The BLM has accomplished this through the principles of sustainable development, promulgation of surface management regulations, issuance of policy guidance, and implementation of an active program to remediate abandoned mine lands.

Sustainable development is the basis for a policy framework that ensures that minerals and metals are produced, used, and recycled properly. In the context of mining, the United States joined 193 other nations in 2002 in signing the Sustainable Development Plan of Implementation applicable to mineral resources.

BLM's surface management regulations were issued under the authority of FLPMA in 1981 and amended in 2000 and 2001. The regulations provide a sound framework to prevent unnecessary or undue degradation of public lands during hardrock mining and reclamation.

A congressionally-mandated study conducted by the National Research Council (NRC) Board on Earth Sciences and Resources examined the environmental and reclamation requirements relating to mining of locatable minerals on public lands and the adequacy of those requirements to prevent unnecessary or undue degradation of public lands. The NRC Report, "Hardrock Mining on Federal Lands (1999)" provided 16 recommendations, including nine recommendations for the BLM's surface management regulations. The 2000 and 2001 revisions to BLM's surface management regulations incorporated all nine of those recommendations.

Under the regulations, all mining and milling activities are conducted under a plan of operations approved by the BLM, and following environmental analysis under NEPA. The BLM must

disapprove any mining operation that would cause unnecessary or undue degradation of the public lands. A mining operator, as well as an exploration operator (exceeding casual use), must provide financial guarantees covering the full cost to reclaim the operation. BLM may require an operator to establish 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 after a mine is closed. In response to previous GAO recommendations, the 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. Currently, the BLM holds financial guarantees in excess of \$900 million to cover the costs of reclamation of mining operations on BLM-managed public lands.

BLM policy guidance reinforces the surface management regulations. Originally set out in 1984, the internal policy was last updated by the BLM Director in 2006. This policy guidance emphasizes that mineral exploration and development can occur concurrently or sequentially with other resource uses. The policy promotes balancing environmental, social, and economic needs while practicing environmental stewardship and promoting stakeholder participation.

These efforts include:

- reviewing and processing notices and plans of operations to prevent unnecessary or undue degradation;
- requiring financial assurances to provide for reclamation of the land; and

- considering alternative forms of reclamation after a mine is closed such as using the land for landfills, wind farms, biomass facilities and other industrial uses, in order to attract partnerships to utilize the existing mine infrastructure for a future economic opportunity.

We believe that the existing statutes and related regulations provide sufficient authority to regulate mining operations when properly monitored and enforced by state and Federal regulatory agencies. However, we recognize historic mining practices have had adverse consequences on natural resources and the environment. The current regulations are designed to avoid a recurrence of that history.

Abandoned Mine Lands, a legacy of past practices, are addressed through an active program. This year, the Forest Service and the BLM are celebrating 10 years of success with the hardrock abandoned mine lands program. The program seeks to mitigate hazards present at abandoned mines; restore watersheds for natural resources; and protect public health and safety, recreation, fish and wildlife. Between 2000 and 2007, the BLM has inventoried 5,500 sites and remediated physical safety hazards at more than 3,000 sites. The BLM has also restored water quality at over 280 sites through 2003 and on more than 3,000 acres between 2004 and 2007.

Addressing abandoned mine lands is a challenge and the BLM will continue its efforts to do this important work.

## **Mining's Importance to the United States**

We often take for granted the availability of gold, silver, copper, lead zinc and other minerals and their contribution to the quality of life we enjoy in this country. In 2006, the total value from domestic metals production was approximately \$23.5 billion. Computers and cell phones, toothpaste and cosmetics, medicines, cars, sporting equipment, and appliances that make our homes safe, convenient, and comfortable—none of these would exist without the types of minerals discovered and developed under the 1872 Mining Law. These minerals, and the capability to produce them domestically, are also vital to the United States' economic and domestic security.

As much as we enjoy these conveniences, it is the mineral products used in areas such as agricultural production, communication, transportation, technology, and national defense that make a truly profound contribution to our way of life. The phenomenal advance of culture, science and technology remains dependent on mineral resources. In an example that is close to home for Americans, the automobiles most of us drive every day contain nearly 50 pounds of copper, and the newly popularized hybrid vehicles require even more – about 75 pounds for each car, by some estimates. Most vehicle manufacturers specify that the copper used be “new” copper.

Metal mining is an international business, with purchasing and sales conducted through the London Metals Exchange, the New York Commodities Exchange and secondary exchanges. Metal marketing operates within a free market system, in which the price is determined by what a willing buyer and a willing seller agree upon. The international prices for the metals are fixed

daily on the exchanges, and costs of production control the economics of particular companies. If operating and capital costs reach a certain point compared to the prevailing market price, the mining company may cease production until costs go down or the price goes up.

Mining companies that are affected by these global markets in turn impact small communities throughout the West where employment opportunities are often limited. By some estimates, for every direct job in mining, three supporting jobs are created. Producers must buy fuel, pipes, wire, and other industrial products, and these requirements are often contracted out to local fuel distributors, hardware suppliers, and related businesses. Producers pay Federal, state, and local income and property taxes.

### **Conclusion**

The Administration supports the environmentally responsible development of hardrock minerals on public lands and would like to work with Congress to update the Mining Law, including the authorization of production payments and administrative penalties. The Administration also believes that any legislative solution must be accomplished in a way that provides a reasonable level of certainty to the industry while pursuing goals to protect our environment. We appreciate your expressed interest in taking a fresh look at hardrock mining law reform and we look forward to working with Congress, industry, the environmental community, and other interested parties as you move forward with this effort. Thank you for the opportunity to testify. I will be glad to answer any questions.