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Senate Energy and Natural Resources Committee
Hearing on S. 796 and S. 140
Tuesday, July 14, 2009

On behalf of the Arizona Mining Reform Coalition, I appreciate the opportunity to express our views about S. 796 and S. 140. Several of our member groups have submitted their own testimony and we support and incorporate their testimony into ours.

The Arizona Mining Reform Coalition works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. We work to hold mining operations to the highest environmental and social standards to provide for the long term environmental, cultural, and economic health of Arizona. Members of the Coalition include: The Grand Canyon Chapter of the Sierra Club, EARTHWORKS, Save the Scenic Santa Ritas, The Dragoon Conservation Alliance, the Groundwater Awareness League, Concerned Citizens and Retired Miners Coalition, the Center for Biological Diversity, and the Sky Island Alliance.

Background

We commend Senator Bingaman and Senator Feinstein for their leadership in the long overdue and arduous process of reforming this anachronistic law. After 137 years, reform is long overdue. The 1872 Mining Law was passed in a time when the goal of the United States was to expand from coast to coast and to displace Native American nations especially in the West. That goal, right or wrong, has long since been fulfilled. Of all the major laws that govern the use of our nation's precious natural resources in the west, only the General Mining Law of 1872 remains unchanged. One of the most egregious wrongs of the 1872 Mining Law is the fact that anyone mining in the West may take hardrock minerals owned by the taxpayers and citizens of the Unites States for free. Timber companies pay for the ability to cut trees on public land. Ranchers pay for the ability to graze cattle on the western public lands. Oil and gas companies pay a royalty of between 8 and 12% for the ability to drill for oil and gas on our western public lands. Yet, after 137 years, mining companies from all over the world are still allowed to take a billion dollars worth of minerals from our public lands every year.

S. 796 and S. 140 are both significant and important attempts to correct this anachronism. We would like to see S. 140 incorporated, in its entirety into S. 796. This would be a strong bill that would protect our economic and national security while preserving our precious natural heritage.

In Arizona, there is no better example of why we need to reform the 1872 Mining Law than a proposal by Augusta Resources, a Canadian company who has never built or operated a mine in the 70 years they have been in existence. They have submitted a plan to build a mine in the Santa Rita Mountains just south of Tucson, Arizona. Called the Rosemont Mine proposal, they are planning an open pit copper mine in the heart of significant wildlife habitat and one of the prime areas that folks from Tucson come to recreate. The mine is proposed in the middle of one of the major watersheds the City of Tucson depends on for their water supply. There is massive public opposition to the mine proposal and virtually all elected officials in southern Arizona oppose the mine. Yet because of the 1872 Mining Law, it will be very difficult to stop this mine proposal. We urge the Committee to significantly reform the 1872

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Mining Law to stop the Rosemont and other ill conceived and inappropriate mine proposals. We certainly use copper and other minerals, but there are better ways to obtain these minerals than from the Rosemont proposal.

S. 796, the Hardrock Mining and Reclamation Act of 2009

On April 2, S. 796, Senator Bingaman (D-NM) introduced the Hardrock Mining and Reclamation Act of 2009, in the U.S. Senate. This bill is a modest proposal to update this century old law. While S. 796 does not go as far as the legislation that has been introduced in the House of Representatives (HR 699), and passed the House in the 110th Congress, the bill is a huge improvement over the status quo. While the Arizona Mining Reform Coalition would prefer that S. 796 looked much more like HR 699, we commend Senator Bingaman for starting the ball rolling and hope that the bill can be strengthened as it moves through the Senate.

Title I – Mining Claim Location

- Section 101 ends the patenting of mining claims and is consistent with HR 699.
- Section 102 raises the claim maintenance fees from $125 to $150 and the location fee for new claims from $30 to $50. The Secretary may adjust the claim maintenance fee every 5 years or more often if necessary to take into account inflation, using the Consumer Price Index.
- Section 103 defines limitations on mining claims.

We support these reforms in the Senate bill.

Title II – Royalties

- Section 201 sets a royalty rate of between 2 and 5% on the value of production for new mines only after transportation, beneficiation, and processing costs are deducted. The Secretary of the Interior is authorized to set the precise rate by regulation and the rate could vary based on the type of mineral.
- Section 202 would allow a mining company to ask the Secretary of the Interior to reduce or remove the royalty if the company can show "clear and convincing" evidence that mining would not occur without the reduction.

The Coalition supports the approach taken in the House bill. HR 699 establishes a royalty of 8% on new mines and 4% on existing mines and does not allow for exemptions or deductions from the gross value of the mineral extracted. The Senate bill, by contrast, would not provide a fair return to the federal treasury for mineral extraction on federal lands. We are particularly concerned about Section 202, because it provides a broad exemption for the mining companies to claim that they cannot afford to pay the American public for mineral development on federal lands.

Title III – mining activities

- Section 301 requires a permit to engage in mineral activities on public lands.
- Section 302 requires a permit for anyone who wants to explore for minerals, except casually in a way that does not use mechanical means or disturb the surface (while allowing for rockhounding, panning, and other casual uses without a permit).
- Section 302(d)(1)(A) requires the Secretary of the Interior to approve an exploration permit subject to compliance with mining and other laws. However, Section 302(d)(2) allows the Secretary to deny an exploration permit if mining or other laws cannot be met.
- Section 303 requires a permit for engaging in mineral activities and sets the terms for mineral activities on public lands (except casual use).
    - Mining operators would be required to avoid acid mine drainage (to the maximum extent practicable) but there is not a ban on the creation of acid mine drainage. While this section calls for a mining application to describe potential impacts to ground and surface water, it does not require hydrological balance or ban treatment in perpetuity as a condition for granting of a permit.

  - A mine permit can be denied if it violates mining or other applicable laws. Under this section a mine permit is good for 30 years and can be renewed.
  - This section also allows the collection of land use fees for the use of public lands by a mine. The fees would be collected yearly, but the bill does not state for how long. Fees, (including the claim maintenance fee) would be $37.50 per acre.
- Section 304 requires that an operator obtain some kind of financial assurance before developing minerals on federal lands.
  - The bill allows the possibility of corporate guarantees, which is weaker than existing policy for mineral development on federal lands. The Secretary may, according to the bill, allow incremental financial assurance instead of the entire amount up front.
  - This section requires public review of the bonding amount every 3 years over the life of the mine (expect in cases of incremental bonding where the review would be every year.)
  - A mining company may be required to set up a trust fund to fund long term or perpetual water treatment.
- Section 306 deals with operation and reclamation standards for mineral activities on federal lands. The bill requires that the mining company return land and water to pre-mining conditions or other beneficial uses (including the generation of renewable energy) after mining. This section requires the Secretary of Agriculture to create regulations that prevent unnecessary or undue degradation from mining on our national forests (the Secretary of Interior already has this obligation.)
- Section 307 establishes a process for the Secretary of the Interior to determine what lands should be available for mining. It requires the Secretaries of Interior and Agriculture to review most crucial public lands within 3 years and determine, subject to valid existing rights, tracts of land that should be withdrawn from mining. The Bill allows a Governor, Tribal leadership, or local governments to petition the Secretary for lands to be included in withdrawal, but unlike the House bill, puts the burden of proof on the petitioner rather than the Secretary.
- Section 309 requires that mines be inspected at least once a quarter.

- The Coalition recognizes that these provisions are an improvement over existing law, but they fall short of the kind of protection needed for communities in Arizona, and are not nearly as good as the House bill.
- We recommend:
  - A determination of the financial viability of a mining company be included as part of the permitting process.
  - A ban on any mine that causes acid mine drainage.
  - Permits for mines should only be for 20 years.
  - No mining should be allowed that cannot restore the hydrological balance after mining.
- The bill fails to mention the critical need for mines to maintain the regional water balance.
- The land use fees are insufficient to provide a decent return to the taxpayer for the permanent alteration of the land.
- We oppose the loophole allowing corporate guarantees and the use of incremental financial assurance. This provision would allow mining companies to alter federal lands without any insurance policy in place to protect the taxpayer from the liability for that damage.
- We are concerned that the federal land review ordered in Section 307 would lead to a lengthy administrative process similar to the RARE II review that took place on Federal lands in the 1970's. In that instance, federal lands managers failed to consider millions of acres of federal lands that should be protected for their wildland values, and subsequently these lands were damaged by overuse. We prefer the language in the House bill regarding the right of a Governor, Tribal Leader, or local government to petition for mineral withdrawal than this language.

Title IV Hardrock Minerals Reclamation Fund

Title IV establishes a fund for the cleanup of abandoned mine lands, sets up the structure of the Fund, and the dispersal of monies within the Fund for Abandoned mine cleanup.

- Section 403 requires all hard rock mines to pay into the Fund an annual reclamation fee of between 0.3 and 1.0% of the value of production after the deduction of transportation, beneficiation, and processing costs. The Secretary of the Interior would set the exact amount.

We like this title generally although we would like to see higher fees to put more money into the Fund for abandoned mine cleanup. As with the royalty amount in Section 201, the fee outlined in Section 403 allows so many deductions that a clever mine would pay nothing into the Fund.

Title V – Miscellaneous Provisions

This title is the "cleanup" title that adds everything else that did not fit elsewhere. The two main features here are:

- Section 504 eliminates a provision that allows certain uncommon varieties of minerals to be governed by the 1872 Mining Law and would shift the management of these minerals to the stricter leasing laws.
- Section 505 would require a review of uranium development on public lands that would be written by the National Academy of Sciences under an arrangement with the Secretary of Interior and the Secretary of Agriculture. The study would be completed within 18 months after this bill was made law and would make recommendations as to changes to Federal law and agency regulations to allow for the production of uranium while protecting public health and safety and the environment. The study would determine if uranium should be removed from operation under the 1872 Mining Law, what fees should be added to insure reclamation of new and abandoned sites, and whether additional lands should be withdrawn from uranium mining claims.

We support these provisions.

S. 140, the Abandoned Mine Reclamation Act of 2009

Senator Diane Feinstein (D-CA) introduced this bill on January 6, 2009.

What the bill does is to set up an Abandoned Mine Clean-up Fund that would be funded by new and current mines on public lands, by mine claim fees and by a reclamation fee on all mine whether on public or private lands.

We support this bill.

Title I – Mineral Exploration and Development

Section 101 sets up a royalty structure for new and existing mines on public lands. All new mines that have not been permitted before passage of this bill would pay a royalty of 8% on the gross income from mining. This is very similar to the new mine royalty provision in HR 699 (the Rahall Bill). All existing mines will pay a royalty of 4%, again similar to the Rahall Bill.

Section 102 raises the annual claim maintenance fee (currently at $140) to $300 per year. In addition, the claim location fee and the claim transfer fees are also raised. This section allows the Secretary of Interior to adjust these fees to reflect changes in the Consumer Price Index. The Secretary shall adjust the fees every 5 years or more frequently if needed.

Section 103 sets up a reclamation fee. This requires every operator of a Hardrock mine in the United States to pay a reclamation fee of 0.3% unless the annual income of the mine is less than $500,000.

Section 104 gives the owner of a mining claim authority to use the mining claim for prospecting and exploration if the claim maintenance fee is paid in a timely manner.

These changes are long overdue. For too the United States has given away its hardrock resources for free while enduring a huge clean-up burden that in many cases far outweighs the total economic benefit from the minerals mined. These fees and royalties are competitive and not overly burdensome

on the mining industry while creating a mechanism for putting Americans to work cleaning up a 137 year legacy of pollution and neglect. Since mining companies, like all Americans are in favor of environmental safeguards and cleaning up old pollution, one would think they would embrace these costs as the way of doing business in our new American economy.

Title II – Abandoned Mine Cleanup Fund

Section 201 sets up the fund and requires that monies in the fund be prudently invested while they are awaiting use.

Section 202 allows donations, royalties from Section 101, fees from Section 102, and the reclamation fees from section 103 to be deposited in the Fund.

Section 203 allows the Secretary of interior to use monies in the Fund to reclaim and restore land and water resources adversely affected by past mining activities on federal lands. It allows other land within the boundaries of any national forest system unit that is not federal land to also be cleaned up with Fund money. It allows lands managed by the BLM to be cleaned up using the Fund. In addition, it allows mines that are at least 50% located on public land to be cleaned up using the Fund.

Section 204 says which lands are eligible to use money from the Fund. Only abandoned mines that were not reclaimed before the enactment of this bill and for which no responsible mine owner or operator can be found.

Section 205 says that money in the Fund will be disbursed by the Director of the Office of Surface Mining Reclamation and Enforcement. The Director can spend the money directly or make it available to the BLM, the Forest Service, the Park Service, the US Fish and Wildlife Service, any other Federal agency, any Indian Tribe, to any other public entity has the ability of carry out a reclamation program.

This bill is silent on the question of the degree of clean up that is required or allowed. While we understand that the bill was meant to be a clean look at one piece of the reform "pie," some clarity to make sure that if funds are spent for clean up that the cleanup effort would meet the full requirements of all US environmental protection laws.

Title III – Effective date

Section 301 says that this Act will take effect immediately upon its being signed into law.

The sooner these provisions can take effect, the better!