

**STATEMENT OF ROBERT ABBEY
TO
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
FIELD HEARING: H.R. 2262, HARDROCK MINING AND RECLAMATION
ACT
ELKO, NEVADA
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My name is Bob Abbey and I appear before you today as a member of the public. I am not an expert in mining nor do I sit here today pretending to have answers to all the questions that should be addressed as part of any review of the General Mining Law of 1872. However, I do bring to this hearing 32 years of experience in public land management including eight years as the Bureau of Land Management's Nevada State Director, a role that I held with great pride prior to retiring from that agency in 2005.

Mr. Chairman and members of this Subcommittee, like many others, I thank you for the opportunity to participate in this hearing to offer comments pertaining to proposed changes to the General Mining Law. I compliment the members of this subcommittee and others within the Congress for your willingness to review an existing law which in this case, is 135 years old. I commend your efforts to amend this law in such a manner as to better reflect today's social, environmental, and economic realities.

As the BLM's Nevada State Director, I had the responsibility for providing direct oversight of the largest mining program administered by the BLM. Nevada's gold production by itself makes it the fourth largest producer of gold in the world. The BLM's Nevada State Office records almost half, if not more, of all the mining claims filed on public lands in the United States. While these are impressive statistics, I note that Nevada also leads the west in abandoned mine lands requiring remediation. With an estimated 300,000 abandoned mine lands features, of which 50,000 pose risks to human safety, regulatory agencies at both the state and federal levels have significant challenges in trying to mitigate such hazards. Through partnerships with the State of Nevada, the mining industry, and with a number of citizen volunteers, progress is being made in mitigating some of these risks.

Abandoned mine clean up and the mitigation of related public land hazards is a national issue however, and some have estimated that the cost to clean up these sites range from a low of \$12 billion to as high as \$72 billion. Regardless of the costs, much remains to be done to address abandoned mine sites and I am happy to read that you are proposing language in the draft legislation that will provide funding for clean up activities. Consistent with your goal of mitigating known hazards, I strongly recommend that this subcommittee entertain the possibility, if you haven't already done so, of including a "Good Samaritan" provision. Decreasing financial risks and liability for industry participants who volunteer their assistance in mitigating hazards associated with abandoned mines is needed and long overdue. I believe such a provision, if approved by

the Congress, can easily be managed to maintain the integrity and goals of the Comprehensive Environmental Response, Compensation, and Liability Act, better known as CERCLA.

The General Mining Law of 1872 that was passed by the Congress reflected the priorities of the nation at that time. Much has changed since the late 1872 and for that matter, since the passage of the Federal Land Policy and Management Act in 1976. Today, America's public lands are valued for much more than just commodity production and I feel it is beneficial to all for Congress to routinely review public land laws to determine their current relevance in addressing our national interests, public demands, and expectations.

I have gone on record many times stating that I am an advocate for responsible mining just as I am an advocate for responsible use by all public land stakeholders. I am a firm believer in BLM's multiple use mandate and I believe that appropriate public lands, not all public lands, should continue to be accessible for mineral extraction. The current law needs to be changed so that all resource values are given the same consideration when land management agencies are making resource allocations through their land use planning processes. Under the auspices of the General Mining Law of 1872, this has not been the case.

Existing mining laws and related regulations have been reviewed numerous times. Modifications have been made, primarily through regulatory reform, to address complex issues associated with implementing the General Mining Law. The last major effort which I am familiar with occurred in the late 1990s. At the request of Congress to the National Research Council an assessment was made regarding the adequacy of the regulatory framework for hardrock mining on federal lands. To conduct this study, the National Research Council appointed the Committee on Hardrock Mining on Federal Lands in January, 1999. A study was completed and the designated committee provided a summary of its findings and recommendations to the Congress and to the Departments of Agriculture and Interior. If the members of this subcommittee do not have a copy of this report, I suggest that your staff obtain one and become thoroughly familiar with its contents. While the report provided recommendations for regulatory changes, the Committee on Hardrock Mining also provided a good overview of the mining industry and the challenges faced by all as it relates to mining on public lands. I believe you will find that some of the proposed changes in that report might be better addressed through a change in law rather than through regulatory reform. The Good Samaritan clause which I noted above is just one example of a recommendation found in that report.

Some proposals for changing the current law will be easier to reach consensus on than others. But as a person with over 32 years of experience in public land management, I have found that there is much more commonality in our population's basic desires than differences. Most of us, including those who work in extraction industries, want clean water and air, and a healthy environment for plants, animals, and humans. We want productive and sustainable ecosystems. We want opportunities to use public lands for recreational pursuits and we want these lands managed in a manner that will help sustain our communities and local economies. In other words, we want our public lands to be

managed for multiple uses, recognizing that today these assets are valued as much for wilderness as they are for commodity production. This is the basic foundation that your subcommittee should build on when reviewing and amending any law affecting public land management.

I will quickly highlight some of these areas where I believe you will find general support for change and then use my remaining time to identify other issues which I hope you will take into consideration in future discussions.

While the specific amount of any royalty assessed for the production of mineral materials from our nation's public land will be subject to further debate, there is little doubt in my mind that most people and interest groups support the principle of collecting a fair and equitable royalty for the privilege of extracting minerals from the public's land. There is a general acceptance and strong public demand for holding companies doing business on public lands accountable for complying with specified environmental and health standards and for holding these same companies liable for short or long term damages which might occur from their commercial operations. Most people I have encountered feel that conveyance of public land tracts under the provision of any mining law should be at fair market value and not based on historic patent fees. Unlike some who might oppose mining under any circumstance, most Americans understand the benefits we derive from mining and these same people believe that with adequate safeguards, mining is a legitimate use on our public lands. People, especially those in the rural West, know the economic benefits that can be derived from mining operations and many support a strong and viable mining industry.

I recommend that the subcommittee evaluate the feasibility of using the Forest Service and BLM's land use planning processes as the mechanism for identifying the appropriateness of making available specific tracts of public lands for mining. Both agencies' planning processes are open to public scrutiny and input and include opportunities for state and local governments to participate as cooperating agencies. Mining claims could then be staked and development proposed on any public land deemed appropriate for such use as determined through a land use plan decision. Whether a mine would ever be built depends on a number of factors including having a sufficient mineral deposit that is economically feasible to mine. The agencies' final decision would be based on site specific analysis, much like is done today. Under this scenario the agency, with industry and public input, would have the opportunity to review any mining proposal as part of its overall multiple use mandates. The final decision would be based on science and other contributing factors but not on requirements found in an antiquated law.

The amount of land needed for mill sites and or other administrative support functions should be determined through the site specific analysis and not be subject to an arbitrary or self imposed requirement as now proposed in the draft language. The life of the mining plan and reclamation requirements should also be addressed as part of the initial analysis and I would hope that Congress would not place any requirements for subsequent reviews unless there is a proposed modification to the mining plan or

significant new information is obtained from monitoring. The exception to my recommendation would be the need to routinely review and update bonds to ensure full coverage for reclamation requirements. Consistent with BLM and Forest Service planning regulations, mining proponents or members of the public will have the opportunity to protest or appeal any agency decision which an individual or the industry proponent believe is flawed.

As part of your review, I also recommend that Congress entertain language to address the manner in which we manage for common versus uncommon variety of minerals. To the degree possible, I would propose that Congress insist that clays, sands, and/or other aggregate materials be made available as appropriate under a competitive sale procedure. Determining whether these materials are of common variety or not is a time consuming and workload intensive process. Incorporating a provision authorizing the affected land management agencies to sell these materials versus dealing with them in the same manner as precious metals would be an improvement over existing law.

As a former agency administrator, I hope that any change to the current law will provide some form of financial assistance or encouragement for prosecuting individuals engaged in mining fraud or scam operations. Given the demands placed on the Justice Department, prosecuting people engaged in mining scams is given little priority. As a result, innocent people are being taken advantage of by scam artists who are, in some cases, making substantial sums of money. If a source of funding were made available to the U.S. Attorney's office for investigations and prosecutions, then the number of scams might be substantially reduced and innocent people, many of whom are elderly, might be better protected.

Finally, whether you amend the General Mining Law or not, I believe there needs to be greater Congressional attention given to staffing the agencies with sufficient numbers of personnel as well as with the expertise needed to ensure appropriate reviews of mining proposals and the monitoring that is often required for approved operations. The agencies have been operating at an extreme disadvantage for quite some time when responding to their "on the ground" and administrative responsibilities. In many cases, agencies have relied quite heavily on contracted expertise for assistance. While using contractors to perform some of the mandatory reviews is not all bad, it is still important for BLM and Forest Service offices to have some of their own expertise when carrying out their public land and environmental compliance responsibilities. The subcommittee's intention to offset the cost of administering mining related programs through fees and/or cost recovery is commendable. However, the challenges of recruiting for quality personnel and scarce skills increase considerably when there is an uncertainty of reliable funding sources from year to year.

It is common for BLM offices to use mining engineers or geologists to respond to mining notices, review mining plans and prepare the related NEPA documents, respond to public comments, conduct inspections, take enforcement action on noncompliance, help in the writing of records of decisions, calculate appropriate bond amounts for approved operation, and assist the Office of the Solicitor and the U.S. Attorney's office in the

defense of matters which are litigated. These same employees are likely to be part of interdisciplinary planning teams as well as perform work in other programs, like oil, gas, or geothermal leasing and production. The reality is that most BLM field offices in Nevada and elsewhere in the rural West have only one mining engineer or geologist to do all of the above. The exception is those offices with heavy oil and gas workloads which usually have access to a number of mineral specialists. While the agency has generally done well in staffing up for its heavy oil and gas work, the same cannot be said for its hardrock mining program.

Mr. Chairman, this is the end of my prepared remarks and I would be happy to respond to any questions you or members of your subcommittee might have.