

TESTIMONY OF

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SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

ON

REFORM OF THE MINING LAW OF 1872

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Mr. Chairman and Members of the Committee:

Thank you for inviting me here to testify today. My name is Mike Dombeck. I am a professor at the University of Wisconsin-Stevens Point. Formerly, I served as chief of the U.S. Forest Service and director of the Bureau of Land Management (BLM). I'm a former fishing guide, and still an avid hunter and fisherman. I'm pleased to present testimony on the need to reform the laws that govern mining of hard rock minerals from public lands on behalf of Trout Unlimited (TU), the National Wildlife Federation and the Theodore Roosevelt Conservation Partnership, organizations that represent millions of sportsmen and women, wildlife and fish professionals, and outdoor recreation-related businesses.

Mining is a legitimate use of public lands, but there are few laws more in need of an overhaul than the 1872 Mining Law. The 1872 Mining Law, signed into existence 135 years ago by President Ulysses Grant, is the most outdated natural resource law in the nation. Under the 1872 law, mining takes precedence over all other public land uses, including hunting and fishing. The

Secretary of the Interior must sell public land to mining companies, often foreign-owned, for as little as \$2.50 per acre. Furthermore, mining companies pay no royalties for hard rock minerals including; gold, copper and zinc that belong to all citizens. The price of uranium, gold and other heavy metals continues to drive companies to stake claims across the West. Mining claims dot millions of acres of public land across the West. Once claimed, it is nearly impossible to prohibit mining under the current framework of the 1872 Mining Law, no matter how serious the impacts might be.

The legacy of the 1872 Mining Law is extensive, and the damage from mining is still ongoing today. For example, the EPA estimates that 40 percent of western headwater streams are degraded by abandoned mines. The following are some examples of impacts to water and fish and wildlife habitat caused by specific mines in the recent past as well as threats from proposed mines.

- A Canadian mining company is pushing to develop a large, open pit, cyanide leach gold mine at the headwaters of the Boise River. The Boise River is responsible for more than 20 percent of the city's municipal water supply, as well as supplying critical wildlife and fish habitat, irrigation for agriculture and recreational opportunities. The Mayor of Boise has opposed the mine.
- One of five known grizzly bear populations in the lower 48 states as well as imperiled bull trout may be eliminated due to a proposed silver mine in the Cabinet Mountain Wilderness in northwestern Montana.
- In 1992, the Summitville mine in Colorado released a toxic brew including cyanide and acid mine drainage, killing all fish and wildlife in a 17 mile stretch of the Alamosa River. Cleanup costs at the now-Superfund site exceed \$150 million.
- Historic placer mining operations have affected Resurrection Creek in the Chugach National Forest, Alaska, by re-channeling the stream and separating it from its floodplain. These impacts degraded fish rearing and spawning habitat along the river, as well as adjacent wildlife riparian habitat for species like bears and eagles.
- The Beal Mountain Mine, located in the Beaverhead Deerlodge National Forest and operated from 1989 through 1998, has polluted valuable trout waters with cyanide, selenium and copper. Using more recent cyanide heap-leach technologies, the mining company promised that there would be no discharge of pollutants into receiving waters. The technologies failed and waters downstream have been contaminated with selenium and other heavy metals. The Forest Service and the Montana Department of Environmental Quality are working to contain the contamination which may have to be treated in perpetuity. With the mining company bankrupt, the taxpayers must pay the bill.

Professional resource managers at the Forest Service and BLM need to have the ability to make science-based decisions about where and when mining on public land should occur. Without this

discretion, professional land managers cannot maintain their commitments as stewards of the public trust.

Public lands managed by the BLM and the Forest Service harbor some of the most important fish and wildlife habitat and provide some of the finest hunting and angling opportunities in the country. For example, public lands contain well more than 50 percent of the nation's blue-ribbon trout streams and are strongholds for imperiled trout and salmon in the western United States. More than 80 percent of the most critical habitat for elk is found on lands managed by the Forest Service and the BLM, alone. Pronghorn antelope, sage grouse, mule deer, salmon and steelhead, and countless other fish and wildlife species are similarly dependent on public lands.

The national forests are a major source of water and of particular importance in the West. Forest Service and EPA scientists have determined that the national forests alone provide drinking water to more than 60 million people in 33 states.

Mr. Chairman, in your letter of invitation, you asked that I comment on five very important questions about the types of environmental reforms that may be needed to modernize this law so that its provisions protect fish and wildlife resources, and hunting and fishing. I will summarize my responses by providing you with the five major ways the law needs to be changed.

Any reform of the 1872 Mining Law should contain the following provisions:

- **A fair royalty from any minerals taken from public lands, a portion of which should be invested in an abandoned mine clean up fund.** Since 1977, royalties associated with coal mining have generated \$7.4 billion to help clean up abandoned mines and recover lands and waters and communities affected by coal mining. We need a similar fund for hard rock mining. And a sensible reform should include all mining operations, present and future. Almost every commodity developed off public lands – coal, wood fiber, oil, gas, and forage – has dedicated funding for mitigation of impacts and restoration measures. The only commodity that lacks such a dedicated fund is hard rock minerals. As a result, non-profit organizations such as TU, local communities, and state agencies, are dependent on cobbling funding from an array of private, state, and federal sources to get work done on the ground.
- **Affirm the values of fish and wildlife habitat, water resources, and hunting and fishing, on public lands and make it clear that mining should not be the dominant use of our federal lands.** Professional land managers that work for the Forest Service and BLM believe the 1872 Mining Law makes hard rock mining a dominant use of public lands. Mining reform legislation needs to reaffirm the doctrine of multiple-use and recognize the inherent value of public lands for other important uses and values, including hunting and fishing opportunities and fish and wildlife habitat. This is a major priority for sportsmen, land management agencies, and other users of public lands.
- **Agency managers should be given the discretion to make logical decisions based on land health about where to mine and where not to mine.** Special places with important fish and wildlife and water values such as wilderness areas, National Parks,

Fish and Wildlife Refuges, and inventoried roadless areas ought to be placed off-limits to mining entirely. Discretion ought to be afforded to managers on other lands to allow for balanced and reasoned decisions about ecological, social, and economic values. And on highly mineralized lands with low fish and wildlife values, and high levels of mining company investment, mining companies ought to have a higher degree of certainty that mining projects can proceed in accordance with other laws and regulations.

- **Funding and common-sense liability relief must be made available for would-be Good Samaritans and volunteers to clean up abandoned mines.** Abandoned mines are one of the single most important, least addressed environmental challenges in the nation. The geographic scope of the problem is staggering. EPA estimates that abandoned hard rock mines degrade nearly 40 percent of all western headwater streams. The enormity and scope of the problem have led to a collective sense of futility that has fostered inactivity in many places. Good Samaritans, who have no connection to the abandoned mine waste or interest in re-mining it for profit, should be provided with reclamation incentives and commonsense liability relief.
- **Finally, mining reform legislation should prohibit the patenting or sale of public lands.** The U.S. Government has practically given away more than three million acres of our public lands to mining companies through the practice of patenting. It is troublesome that anyone can stake a claim on public lands and then buy the land for as little as \$2.50 an acre. With the increase in the price of metals, so have the number of claims staked. For example, in Arizona, the number of claims filed in the state has risen 80 percent since 2003. Thousands of these claims are within five miles of the Grand Canyon National Park, a crown jewel of the American public but also prime wildlife habitat for mule deer.

This Committee, and the Senate, have a rare opportunity to improve this law. The House has passed a strong reform bill. Key Senators have expressed their willingness to explore changes to it. We urge you to carefully consider our recommendations, draft a good bill, and move it through the Senate as quickly as possible next year. Sportsmen and women around the nation, especially in the West, are counting on you to end the long stalemate and reform the 1872 Mining Law.

Thanks for the opportunity to testify. I'll be happy to try and answer any questions that you may have.