

Testimony submitted to the:

**HOUSE COMMITTEE ON NATURAL RESOURCES
Subcommittee on Energy and Mineral Resources**

“HR 2262, the Hardrock Mining and Reclamation Act of 2007”

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Submitted by:

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Chairman Costa, and members of the Subcommittee, thank you for the opportunity to speak today. It is an honor to address this committee. My name is Tony Dean. I’m a sportsman, a conservationist, the producer and host of a radio and television talk show on the Great Outdoors, and a resident of South Dakota. I am also a member of Sportsmen United for Sensible Mining, a campaign led by the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation. I am here on behalf of the millions of hunters and anglers, fish and wildlife professionals and others who recreate on and enjoy our public lands to address the urgent need for reform of the General Mining Law of 1872.

The Mining Law of 1872 is an antiquated statute that allows mining companies to take valuable hardrock minerals from our public lands without paying any royalties to taxpayers – often while degrading water quality, destroying fish and wildlife habitat, and limiting recreation opportunities. The law also offers up our cherished public lands for forced sales to mining companies for as little as \$2.50 to \$5 per acre.

The Mining Law of 1872 contains no requirements for protection of natural resources, such as water quality and wildlife habitat, and has resulted in a monumental legacy of environmental degradation. Many current and abandoned hard rock mines are sources of acid mine drainage and toxic pollutants such as cyanide, arsenic, mercury and lead. According to the EPA, 12,000 miles of streams and 180,000 acres of lakes and reservoirs have been polluted by mine waste and at least 40 percent of the headwaters of western rivers and streams are degraded from mineral activities. There are more than 500,000 abandoned hard rock mines in the U.S. Many cause extreme environmental degradation and are hazardous to public safety. An increasing number of mines will require water quality treatment in perpetuity. It is time that Congress addressed the enduring legacy of hard rock mining’s impacts on our nation’s fish and wildlife and other natural resources.

Signed into law by President Ulysses S. Grant, the Mining Law of 1872 was intended to attract settlers and prospectors to the frontier to open the West. Historically, mining played an important role in the social and economic well-being of many communities,

and it was vital in the development and settlement of the western United States. Today, the West has been settled and is home to many of the fastest growing cities in the country. Mining companies currently enjoy record prices for gold of nearly \$700 per ounce. Times have changed, and now – after 135 years -- it's time to update this archaic legislation.

That is why the Theodore Roosevelt Conservation Partnership, Trout Unlimited and the National Wildlife Federation launched the Sportsmen United for Sensible Mining campaign yesterday. I have a letter with me today signed by several national hunting and fishing organizations calling for common sense reforms to hard rock mining law. I respectfully request that this letter be submitted for the record.

I had my own experience with a stream damaged by gold mining. I moved to South Dakota in 1968, and several years later, traveled to the Black Hills to fish trout. I came across Whitewood Creek near Lead and Deadwood and was astonished at its appearance. It was ugly, dishwater grey, and devoid of fish life. It was only after Homestake closed the mine, and the State of South Dakota initiated court action, did they accept their stewardship responsibilities and rehabilitate the creek. Today, Whitewood Creek runs clean and clear and supports a good population of wild brown trout. But why was it necessary to initiate court action to get a huge company to accept their stewardship responsibilities? I wondered at the time, how many other Whitewood Creeks existed across the Western United States. As it turns out, there are far too many.

For many years, Congress has considered reform of the General Mining Law of 1872. We urge you to take action on modernizing the 135 year old mining law this Congress, and we offer our assistance and support.

Keep Public Lands in Public Hands

One of the most important reasons to reform the Mining Law of 1872 is to “Keep Public Lands in Public Hands.” Public lands managed by the Bureau of Land Management (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, sage grouse, mule deer, salmon, steelhead, and countless other fish and wildlife species, as well as the nation's hunters and anglers, are similarly dependent on public lands.

America's hunters and anglers depend upon public lands and waters for habitat managed for the sustainability of fish and wildlife resources and open access to pursue their tradition of hunting and fishing. American families have enjoyed hunting, fishing and other forms of recreation on our public lands for generations.

More than 270 million acres of federal land are open to hardrock mining under the 1872 Mining Law, mostly in the Rocky Mountain West and Alaska. Because the 1872 Mining Law has not been meaningfully reformed, many of America's most treasured public lands are at risk -- important wildlife habitat and hunting areas, valuable fisheries, sensitive roadless areas and popular recreation sites.

Unfortunately more than three million acres of our public lands -- along with the extraordinary habitat they once provided -- have been practically given away to mining companies for as little as \$2.50 to \$5 per acre under the patenting provisions of the Mining Law of 1872. I applaud Chairman Costa and Chairman Rahall for introducing legislation in the form of HR 2262, the Hardrock Mining and Reclamation Act of 2007, which would prohibit the continued forced sale or "patenting" of public lands. Title I of this legislation eliminates the issuance of patents for vein, lode, placer and mill site claims.

Protection of Special Places and Crucial Wildlife Habitat

In addition to ending the forced sale of our public lands, the Hardrock Mining and Reclamation Act of 2007 protects special places on our public lands by declaring that certain types of lands shall not be open to the location of mining claims, subject to valid existing rights. Special places protected under Title II of this legislation include Wilderness lands, Wilderness Study Areas, Inventoried Roadless Areas, National Parks, Wild and Scenic Rivers and National Monuments and Areas of Critical Environmental Concern on BLM lands. I recommend that these protections be extended to National Wildlife Refuges as well, subject to valid existing rights. These special places include some of the best fish and wildlife habitats in the U.S. and many of them offer spectacular hunting and fishing opportunities. These areas are among the crown jewels of our public lands and should be off-limits to new mining.

Sportsmen simply want biologists and resource professionals of the BLM and the Forest Service to have the same authority to examine the potential impacts of mining in areas that are vital to fish, water, and wildlife resources, and to be able to deny a permit if those values would be compromised by mining activities. The U.S. Forest Service and Bureau of Land Management should have the authority to determine at both the site permitting level and during the planning process that areas with crucial fish and wildlife values are not compatible with mining. Resource professionals who know on the ground conditions the best should be able to maintain the status quo on public lands that harbor endangered species; crucial calving, lambing and winter range used by elk, mule deer, pronghorn, big horn sheep and other game species; sage grouse leks and buffers surrounding leks; and waters that are strongholds to imperiled native trout and salmon species.

Environmental Considerations and Multiple Use

The Mining Law of 1872 does not require protection of natural resources. Mining activities and their harmful impacts on water quality, wildlife habitat and other natural resources are governed only by a vague and weak patchwork of federal and state laws.

Sportsmen support strengthening protections for fish, wildlife and water resources against the adverse impacts of mining activities.

HR 2262 takes vitally important steps to address the environmental costs of hardrock mining and return balance to the management of our public lands by establishing environmental standards for mining activities. Title III ensures that the Secretary of the Interior shall require that all mineral activities on mining, millsite and tunnel claims shall “protect the environment, public health and public safety from undue environmental degradation.” Title III also requires that the Interior Secretary assure that all mineral activities are conducted in a manner that recognizes the value of such lands for other uses including recreation, wildlife habitat and water supply.

HR 2262 affirms the critical principal of multiple use management of BLM lands that is laid out in the Federal Land Policy and Management Act (FLPMA). FLPMA’s multiple use provision requires BLM to balance competing resource values to ensure that the public lands are managed in a manner that will best meet the present and future needs of the American people. FLPMA mandates that BLM manage for multiple uses in a manner that protects the quality of ecological, environmental, air, water and other values.

Unfortunately, the Mining Law of 1872 doesn’t allow for multiple use management and protecting ecological, environmental, air, water and other values. BLM has insisted that it must approve all mining activities on public lands, even when undue environmental degradation will result. Title III of HR 2262 firmly establishes that BLM must manage mineral activities in the context of multiple use and other values, including providing wildlife habitat, hunting, fishing and other forms of recreation. This much needed authority is not new, it simply aligns the 135 year old Mining Law with public land laws passed in the 1970s. For example, the Forest Service and BLM routinely deny grazing permits or timber sales because those activities could imperil water resources or compromise important fish and wildlife habitat. HR 2262 allows those agencies the right to deny a mining permit if mining will cause an unacceptable amount of environmental degradation.

This common-sense provision will allow federal resource professionals discretion to deny mining permits in areas of high fish and wildlife value such as the Ninemile Creek watershed about 30 miles west of Missoula. The Forest Service, Trout Unlimited and a lot of other groups have spent a lot of time and money on mining-related restoration in the watershed and are beginning to make some headway. Then several months ago, a miner purchased an old claim at the mouth of the creek to suction dredge from July to October of this year, in the very same stretch of creek that is being restored. Agency geologists say there is no chance he can make any money with the venture. But he will make a mess, add sediment to the creek, kill some fish and create a bunch of big holes in the stream channel - because he can. It happens time and time again. But the agency's hands are tied - if he submits a valid plan of operations, there is basically nothing they can do to stop him.

HR 2262 also requires that any active mining permits contain reclamation plans and evidence that companies have adequate financial resources to assure that reclamation will

take place. It requires that lands be restored to a condition capable of supporting their prior uses, including providing quality fish and wildlife habitat. The environmental framework established by Title III will help to prevent the long-lasting water quality contamination and other environmental problems that have resulted in a staggering backlog of challenging and costly mine cleanups. For example, just north of Boise, Mores Creek, a tributary to the Boise River, has been turned upside down by past mining activities. The area could and should support a recreation-based economy, but because the state and federal government have no resources to clean up the past damage and restore the area, the nearby communities suffer. The Zortman Landusky mine in Montana will generate acid mine drainage for thousands of years, and will likely require tens of millions of taxpayer dollars in long term water quality treatment.

Unfortunately the Zortman Landusky Mine, Whitewood Creek and Mores Creek are not isolated examples. Sportsmen across America have experienced the tragedy of dead streams and ruined wildlife habitat. The Stibnite mine on the Payette National Forest in southern Idaho pours lethal arsenic into the Salmon river, the Silver Butte mine in Oregon decimated 18 miles of Middle Creek, Rock Creek in Kentucky is a blue ribbon trout stream but is devoid of life in stretches due to coal mining, the mines in the Coeur D'Alene river basin in Idaho ruined thousands of acres of important wildlife habitat and miles of valuable fisheries. These examples are just the tip of the proverbial iceberg.

HR 2262 would help to prevent such environmental problems by establishing a solid environmental framework to regulate hardrock mining under a single, strong federal law.

Reclamation and Restoration of Fish and Wildlife Habitat

At least \$32 billion is estimated to be needed for clean-up costs to address the legacy of hard rock mining stemming from the more than one half million abandoned mines in the U.S. Of particular importance to sportsmen is the need for a reclamation fund to restore fish and wildlife habitats that are adversely affected by past mining activities. HR 2262 establishes an Abandoned Locatable Minerals Mine Reclamation Fund which would be funded by fees and royalties from active hardrock mining. Expenditures from this fund would be available for the restoration and reclamation of land and water resources.

Sportsmen support a fair royalty on the mining industry with the returns going to states to help restore fish and wildlife habitat and improve hunting and angling opportunities. Since 1977, the coal industry has contributed more than \$7 billion to recover lands affected by abandoned coal mines. Hunters and anglers in the West think it's time the hard rock mining industry contributed to the recovery of lands and waters damaged by mining. Unlike the coal, oil and gas industries, the hardrock mining industry currently pays no royalties on the taxpayer-owned minerals it mines on federal lands. It is estimated that the U.S. government has given away more than \$200 billion in mineral reserves through royalty-free mining and the give-away of our public lands.

I would recommend to the committee that a set amount from the Abandoned Locatable Mine Reclamation Fund be made available each year for restoring fish and wildlife resources. These funds should be made available to state fish and wildlife departments,

conservation organizations, and others to implement fish and wildlife habitat improvement projects associated with past mining.

Little restoration of abandoned hardrock mine lands occurs in the West today because there is little money available for clean-up, and because of liability concerns associated with handling mine waste. Sportsmen support “Good Samaritan” protections for communities and others that wish to conduct restoration activities and that have no connection to the abandoned mine waste. Sportsmen groups know how to work with local communities and states to clean up abandoned mines, but the status quo provides an enormous disincentive for action. For example, it took Trout Unlimited two years to secure permits to clean up several piles of abandoned mine waste in Utah’s American Fork Creek. The waste was harming a state-sensitive fish species, the Bonneville Cutthroat Trout. After two years of haggling with EPA over permits, it took Trout Unlimited about a month to conduct the clean-up. With the proper incentives, sportsmen and conservation organizations can provide a helping hand to address the much needed reclamation of abandoned hardrock mining sites.

Conclusion

Thank you, most sincerely, for this opportunity to express my views to the Committee. I applaud Chairmen Costa and Rahall for the introduction of HR 2262, and for addressing the urgent need for reforming the Mining Law of 1872. Sportsmen strongly support these efforts and we look forward to working with you to ensure that mining on public lands is modernized to the benefit of fish, wildlife, and water resources.