Statement of
Jamie E. Connell
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U.S. Department of the Interior
Bureau of Land Management

Before the
U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources

Legislative Hearing on
H.R. 697, Three Kids Mine Remediation and Reclamation Act

March 21, 2013

Introduction

Thank you for the opportunity to testify on H.R. 697, the Three Kids Mine Remediation and Reclamation Act. During the past five years, the Bureau of Land Management (BLM) has worked with Nevada governmental entities in search of administrative remedies to the problems posed by the abandoned Three Kids Mine, in Henderson, Nevada. The BLM supports H.R. 697, which provides legislative solutions to the issues surrounding the Three Kids Mine area and clears the way for its eventual development.

Background

The Three Kids Mine is an abandoned manganese mine and mill site located along the south side of Lake Mead Drive, across the highway from Lake Las Vegas, in Henderson, Nevada. The mine and mill operated from 1917 through 1961 on 314 acres of private land, in part providing steel-strengthening manganese to the defense industry and contributing to the United States' efforts in World War I and II. Federal manganese reserves were stored in the area from the late 1950s through 2003.

H.R. 697 would direct that 948 acres of the public lands adjacent to the private site be conveyed to the Henderson Redevelopment Agency, bringing the total size of the project area to 1,262 acres. Of the 948 acres of public lands, 146 acres are contaminated and will require mine reclamation and environmental remediation. The most severe contamination appears to be on the 314 private acres where the mine and mill were located. No viable former operator or responsible party has been identified to remediate and reclaim the abandoned mine and mill site. Today, the site's deep open pits, large volumes of mine overburden and tailings, mill facility ruins, and solid waste disposal areas pose significant risks to public health, safety and the environment. The Nevada Division of Environmental Protection (NDEP) identified the Three Kids Mine site as a high priority for the implementation of a comprehensive environmental investigation, remediation, and reclamation program.

Representatives of the BLM, the Bureau of Reclamation, and the Department of the Interior Solicitor's Office have worked with the City of Henderson and representatives of developer Lakemoor Canyon, LLC, to find solutions to the complex challenges this site presents. Discussions have focused on overlapping Federal agency jurisdictions, land management designations and other resource issues, Resource Management Plan amendments, future liability, and an important utility corridor that traverses the site.

H.R. 697

H.R. 697 would designate the combined 314 acres of private land and 948 acres of public land as the 1,262-acre "Three Kids Mine Project Site" and provide for the conveyance of the public lands to the Henderson Redevelopment Agency. The legislation also provides that fair market value for the Federal lands to be conveyed should be determined through standard appraisal practices, and that, subsequent to that determination, the Secretary should determine the "reasonable approximate estimation of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site." That cost would then be deducted from the fair market value of the public land to be conveyed. The Henderson Redevelopment Agency would pay the adjusted fair market value of the conveyed land, if any, and the Federal government would be released from "any and all liabilities or claims of any kind arising from the presence, release, or threat of release of any hazardous substance, pollutant, contaminant, petroleum product (or derivative of a petroleum product of any kind), solid waste, mine materials or mining related features" at the site in existence on or before the date of the conveyance.

While the BLM has not established a range for the cost of cleanup, a proponent of the transaction, Lakemoor Canyon, LLC, estimates the cost of remediating the public and private lands at between $300 million and $1.3 billion. While it is possible that the cost of remediating and reclaiming the entire project area might exceed the fair market value of the Federal land to be conveyed, the cost of the transaction will only be known after the Secretary completes the appraisal and remediation cost estimate process as outlined in the legislation.

The BLM supports innovative proposals to address the cleanup of the Three Kids Mine, and we support this proposal to transfer the entire 948 acres of public land to the Henderson Redevelopment Agency at fair market value, subject to valid existing rights. However, the BLM recognizes that the transfer would include a small portion of the River Mountains ACEC, and we would like to discuss with the committee opportunities to mitigate that loss.

Conclusion

Thank you for inviting the Administration to testify on H.R. 697. The Three Kids Mine problem needs to be resolved, and we look forward to working toward a solution that protects the environment and serves the public interest. I would be happy to answer your questions.

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Before the
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Legislative Hearing on
H.R. 761, National Strategic and Critical Minerals Production Act
H.R. 1063, National Strategic and Critical Minerals Policy Act
March 21, 2013

Introduction

Thank you for the opportunity to testify for the Department of the Interior on two bills pertaining to the development of strategic and critical mineral resources on our Nation's public lands: H.R. 761, the National Strategic and Critical Minerals Production Act, and H.R. 1063, National Strategic and Critical Minerals Policy Act. These bills seek to expedite the development of strategic, critical and rare earth minerals on public lands managed by the Departments of the Interior and of Agriculture. This statement addresses the provisions relevant to the Department of the Interior.

The Department shares the Committee's interest in identifying opportunities for increasing efficiencies in the development of rare earth elements and other critical mineral resources on our nation's public lands consistent with environmental protection and public involvement in agency decision-making. We also encourage finding ways to make permitting less complex, costly, and time-consuming. The Bureau of Land Management (BLM) would like to work with the Committee to further these shared goals.

The Department has concerns with these two bills. Public involvement in review of mining proposals and the formulation of alternatives – critical components of BLM's multiple-use management of public lands – would be constrained under H.R. 761, and therefore, the Department opposes H.R. 761. While the Department supports the goals of H.R. 1063, we have concerns and would like to work with the Committee to address them. The Department looks forward to continuing a dialogue with the Congress on these important matters.

Background

The BLM administers over 245 million surface acres of public land located in the 12 Western states, including Alaska, as well as 700 million acres of sub-surface mineral estate throughout the nation. The public lands not only produce commodities, but also offer hunting, angling, and other recreational opportunities that help provide economic stability and growth for local and regional communities. Under its multiple-use mandate, BLM is working with local communities, tribes, state regulators, industry, and other Federal agencies to promote

environmentally responsible development of mineral resources on Federal and Indian lands with a fair return to the American people.

The BLM manages mineral development under a number of different authorities, including the Federal Land Policy and Management Act, the Mineral Leasing Act of 1920, the Materials Act of 1947, and the Mining Law of 1872. Each of these authorities, along with BLM regulations and guidance, provides a legal framework for the development of minerals.

Global manufacturing demand for critical mineral commodities, including rare earth elements (REE), is on the rise, with increasing applications in consumer products such as renewable energy technology, computers, automobiles, aircraft, and other advanced technology products. While no REE are being mined on public lands at this time, some portions of the Federal mineral estate hold potential for REE development and deposits are being evaluated in three areas: the Bear Lodge Project in northeast Wyoming; the Bokan Mountain/Dotson Zone in southeastern Alaska; and potential expansion onto public lands of Molycorp's Mountain Pass exploration operations in California.

H.R. 761, National Strategic and Critical Minerals Production Act

The stated purpose of H.R. 761, the National Strategic and Critical Minerals Production Act of 2013, is to increase the flow of critical and strategic minerals to the U.S. manufacturing sector by expediting the critical mineral exploration and mine permitting process on public lands managed by the Departments of the Interior and Agriculture. However, H.R. 761 is drafted in such a manner as to cover virtually all hard rock mining on federal lands. H.R. 761 includes numerous provisions that circumvent sound Federal decision-making and existing law calling for the multiple uses of public lands, including public involvement, the application of the National Environmental Policy Act (NEPA), the management of permit applications, the review of *Federal Register* notices for such projects, and the handling by the courts of civil actions arising from disputes over mine proposals. The bill's provisions also could apply retroactively to an application for a mineral exploration or mine permit that is pending at the time of the bill's enactment, upon the request of the applicant to the lead agency. The legislation defines critical and strategic mineral mines as "infrastructure projects" so that they will fall under the March 22, 2012, Executive Order "Improving Performance of Federal Permitting and Review of Infrastructure Projects."

While the Department strongly supports the development of rare earth elements and other critical minerals, it strongly opposes H.R. 761. This legislation would remove many of the environmental safeguards for almost all types of hardrock mines on public lands, bypass evaluation of potential impacts under NEPA, and limit public involvement in agency decision-making.

Additionally, H.R. 761 lacks clarity on a number of issues, including how the rights of surface owners in split estate situations might be affected in an expedited review process. It is also unclear how Section 103, which requires maximizing recoverable resources while mitigating environmental impacts, would affect the Department's authority under the Federal Land Policy and Management Act to prevent "undue and unnecessary degradation of the public lands." H.R. 761 also does not discuss the consequences of missing the 30-month deadline on permitting

decisions and how state permitting authorities relate to this timeline. The provision allowing for retroactive application of the bill to permit applications could have the effect of requiring the BLM or another agency to abandon in-progress environmental reviews of proposed actions.

Some of the bill's provisions also duplicate actions the BLM has already implemented, including the formulation of memoranda of understanding among agencies and proponents, the concurrent gathering and review of data, and the appointment of project leads who are assigned to a project through completion.

Finally, the Department of the Interior defers to the Department of Justice regarding the provisions of H.R. 761 (Title II) pertaining to judicial review procedures.

H.R. 1063, National Strategic and Critical Minerals Policy Act

H.R. 1063 requires the Secretary of the Interior—through the BLM and the U.S. Geological Survey—to assess the capability of the United States to meet the demands for minerals essential to manufacturing competitiveness and economic and national security. It requires the Secretary, in consultation with the Secretary of Agriculture, to produce a report to Congress within 180 days of enactment that includes an inventory of the non-fossil-fuel mineral potential of lands under the jurisdiction of the BLM and the U.S. Forest Service. The report must identify anticipated mineral requirements for the U.S. manufacturing sector, current sources of these minerals, implications of shortages, timelines for mineral development projects on public lands, and the cost of litigation. In addition, the report must include an assessment of the Federal workforce and its ability to meet the challenges of the critical minerals issue. The report must also include an inventory of rare earth element potential on Federal lands, impediments and restrictions to exploration or development, and recommendations to reduce such impediments. Finally, the bill directs the USGS to conduct national and global assessments of critical mineral resources.

H.R. 1063 requires far-reaching analysis of vast amounts of data spanning the jurisdictions of the Departments of the Interior, Agriculture, Defense, Commerce, and Justice, as well as the Office of Personnel Management. While we share the goals of H.R. 1063, it would entail much more than producing a report, likely requiring the development and implementation of data tracking systems and an ongoing commitment of staff resources to gather, input, analyze, and update the data. The administrative time and cost of this work would exceed the 180 days and $1 million authorized by the legislation. Regarding the national and global assessments of critical minerals, we note that these activities are already authorized by existing USGS authorities. These studies would require substantial resources and, absent authorized appropriations, would significantly impact other program mission activities.

We would like to work with the Committee and the other affected Departments to further the goals of the bill taking into account time and resource considerations. We would also like to work with the Committee to provide clarification on some provisions of the bills, such as the minerals under consideration and the designation of impediments and restrictions.

Thank you for the opportunity to testify on H.R. 761 and H.R. 1063. I will be glad to respond to questions.

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Before the
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Legislative Hearing on
H.R. 767, Oil and Gas Pilot Project Offices

March 21, 2013

Introduction

Thank you for the opportunity to testify on H.R. 767, which would amend the Energy Policy Act of 2005 to modify the Federal Permit Streamlining Pilot Project. The bill would expand the Federal Permit Streamlining Pilot Project to include all of the field offices within the jurisdiction of the BLM's Montana/Dakotas State Office. The BLM supports the goal of H.R. 767 to better conform the pilot office authority to current permitting demands. However, the BLM would like to work with the sponsor and the Committee on clarifying amendments as well as language that would provide additional flexibilities nationwide to utilize the pilot office authority to respond as permitting demands shift over time.

Background

Section 365 of the Energy Policy Act of 2005 established the Federal Permit Streamlining Pilot Project with the intent to improve the efficiency of processing oil and gas use authorizations and environmental stewardship on Federal lands. It designated seven pilot project offices: Miles City, Montana; Buffalo and Rawlins, Wyoming; Vernal, Utah; Grand Junction/Glenwood Springs, Colorado; and Farmington and Carlsbad, New Mexico.

Section 365 also established the Permit Processing Improvement Fund, an account of approximately $18 million annually, to support the pilot project for 10 years. Specifically, it directed 50 percent of the income derived from Federal onshore oil and gas lease rental payments outside of Alaska to the Fund. For FY 2006 through FY 2015, the section made the Fund available to the Secretary of the Interior for expenditure without further appropriation to enhance coordination and processing of oil and gas use authorizations on Federal land under the jurisdiction of the designated pilot project offices.

In addition to the BLM, Section 365 authorized the Secretary to transfer monies from the Permit Processing Improvement Fund as necessary to the Fish and Wildlife Service, the Bureau of Indian Affairs, the Forest Service, the Environmental Protection Agency, the Army Corps of

Engineers, and the states of Wyoming, Montana, Colorado, Utah, and New Mexico. It also prohibited the BLM from establishing cost recovery fees for processing applications for oil and gas permits to drill. The President's 2013 budget proposed to repeal this fee prohibition. In lieu of the budget proposal, we note that the Congress has implemented permit fees through appropriations language for the last several years.

The agencies involved in the pilot project have made significant progress in a number of areas. Additional resources, such as personnel devoted to processing oil and gas use authorizations, have enabled the various bureaus and agencies to increase the pace of permitting and completing environmental reviews, particularly given the complex resource issues we face. The time taken for interagency consultations has been reduced due to improved communication and through programmatic streamlining efforts, which have been used in multiple projects and permits.

Also, the BLM has increased inspection and enforcement capability as a result of the hiring of additional skilled specialists in the pilot project offices. The increase in inspections has led to better compliance by the industry and a reduction in major violations due to the increased number of inspectors in the field. Increasing the number of inspectors has allowed the BLM to identify issues early; intervene in nascent violation situations; and improve interim reclamation work on lands disturbed by oil and gas operations. The pilot project offices are also better staffed to help new industry permitting specialists understand the BLM's requirements for obtaining an oil and gas use authorization.

H.R. 767

H.R. 767 would substitute the BLM's Montana/Dakotas State Office for the current pilot project office in Miles City, Montana, with the goal of broadening the geographic scope of the pilot project authority. This broadened geographic scope would allow BLM to better allocate some resources based on current permitting demands and new exploration and development of oil and gas fields and plays. For example, this flexibility would be especially useful for processing permits received in the North Dakota Field Office in Dickinson, North Dakota, which received 701 applications for permits to drill (APDs) in FY 2012, compared to 147 APDs received in FY 2009.

In addition, the BLM would like to work with the sponsor and the Committee on language that would allow greater flexibilities nationwide to adjust permitting resources based on demand. There are many BLM field offices that are not part of the pilot project, but are receiving hundreds of APDs per year. Of the 10 field offices that received the most APDs during FY 2012, only five are currently designated as pilot project offices. For example, in FY 2012, the Pinedale Field Office in Pinedale, Wyoming, received 325 APDs; the Bakersfield Field Office in Bakersfield, California, received 286 APDs; and the Oklahoma Field Office in Tulsa, Oklahoma, received 157 APDs. Although these offices have received high volumes of APDs, none are currently designated as pilot project offices, and none would be designated as such under the bill. At the same time, some of the currently designated pilot project offices have received relatively few APDs in recent years; for example, the Grand Junction Field Office received only 47 APDs in FY 2012.

Conclusion

Thank you for the opportunity to provide testimony on H.R. 767. I would be happy to answer any questions you may have.

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Before the
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Legislative Hearing on
H.R. 957, American Soda Ash Competitiveness Act

March 21, 2013

Introduction

Thank you for the opportunity to testify on H.R. 957, the American Soda Ash Competitiveness Act. This bill would reinstate for five years the royalty rate reduction provided for under the Soda Ash Royalty Rate Reduction Act of 2006, which expired in October 2011. The BLM cannot support H.R. 957.

Background

Soda ash is one of several products derived from sodium minerals mined on public lands and is used in many common products, including glass, pulp, detergents, and baking soda. The mineral trona is a naturally occurring mixture of sodium carbonate, sodium bicarbonate, and water. Soda ash may be either natural or synthetic. It can be extracted from mined natural trona deposits, or it can be manufactured synthetically. Synthetic soda ash production began in this country in the 1880s and increased as the demand for soda ash increased. In the early 1950s, the modern natural soda ash industry began in the Green River Basin of Wyoming, home of the world's largest known natural deposit of trona, where soda ash, or "sodium carbonate," is refined from trona mined at depths of between 800 and 1,600 feet below the surface.

In 2012, the U.S. soda ash industry consisted of five companies that mine and mill soda ash, four of which operate five plants in Wyoming. One company in California produces soda ash from sodium-carbonate rich brines. At the end of FY 2012, there were 86 Federal sodium leases covering 111,185 acres in Wyoming, California, Colorado, Arizona, and New Mexico. Sixty-three of these Federal sodium leases were located in Wyoming. The soda ash industry is a substantial contributor to the gross domestic product of the United States, with the total value of domestic soda ash produced in 2012 being about $1.6 billion and the industry supplying over 2,200 direct jobs. Soda ash is also a key ingredient in many diversified products, including flat glass used by the automobile and construction industries.

Soda Ash Royalty Rate Reduction Act

In 2006, Congress passed the Soda Ash Royalty Rate Reduction Act (2006 Act), which reduced the Federal royalty rate for soda ash to 2 percent. Before the 2006 Act went into effect, the BLM was charging royalty rates of 6 and 8 percent. The BLM established these rates based on a 1996 study to examine the fair market value in the sodium industry in Wyoming. The study reviewed many comparable state and private leases and found that fair market value in Wyoming appeared to be somewhat higher than the 5 percent being charged by the BLM previously. As a result of the study, the BLM determined that the royalty rate for all then-existing leases would be increased from 5 to 6 percent at the lease renewal date. The BLM, based on the study, also determined that the royalty rate on all new leases would be 8 percent. In the Green River Basin at that time, the royalty rate on most private land was 8 percent and 5 percent on State lands.

Report to Congress

As mandated by the 2006 Act, the BLM reported to Congress in the fall of 2011 on the impact of the reduction over the previous five years, in the "U.S. Department of the Interior Report to Congress: The Soda Ash Royalty Reduction Act of 2006." The report found that the 2006 Act resulted in a substantial loss of royalty revenues to the Federal government and the states which exceeded congressional estimates at the time of enactment. It also stated that the royalty rate reduction did not appear to have contributed in a significant way to the creation of new jobs within the industry, to increased exports, or to a notable increase in capital expenditures to enhance production. Furthermore, the report found that the royalty rate reduction appeared to have influenced a shift of production away from state leases and private lands and onto Federal leases, and that, with regard to global competitiveness, U.S. production remained stable.

H.R. 957

H.R. 957 would reinstate for five years the 2 percent royalty rate for soda ash which expired in October 2011. Specifically, the bill would apply an across-the-board reduction in the royalty rate on soda ash leases from an average of 5.6 percent to 2 percent. In FY 2012, the soda ash industry paid over $47 million in royalty for production from Federal lands. If the royalty rate had been reduced to 2 percent during FY 2012, the royalty revenue for that year would have been approximately $17 million, a reduction of about $30 million. Furthermore, the bill could be subject to the Statutory Pay-As-You-Go Act of 2010.

H.R. 957 would waive the requirements of section 102 (a)(9) of the Federal Land Policy Management Act of 1976 (FLPMA) and the terms of any applicable leases. Section 102 (a)(9) of FLPMA states that it is the policy of the United States to receive fair market value for the use of public lands and their resources unless otherwise provided by statute. For these reasons and for the reasons outlined in the Department's 2011 report, the BLM cannot support H.R. 957.

Conclusion

Thank you for the opportunity to provide testimony on H.R. 957. I would be happy to answer any questions you may have.

Statement for the Record
of the
U.S. Department of the Interior
before the
House Natural Resources Committee,
Subcommittee on Energy and Minerals
on
H.R. 981
March 21, 2013

Thank you for the opportunity to present the Department of the Interior's views on H.R. 981, directing the Secretary of the Interior, acting through the Director of the U.S. Geological Survey (USGS), to conduct a global assessment of rare earth element resources. The Department supports the goals of this bill, although we note that the activities called for in H.R. 981 are within the scope of existing Department of the Interior authorities.

The USGS is responsible for conducting research and collecting data on a wide variety of fuel and nonfuel mineral resources, including rare earth elements (REE). For nonfuel minerals, research is conducted to understand the geologic processes of concentrated known mineral resources at specific localities in the Earth's crust and to estimate (or assess) quantities, qualities, and areas of undiscovered mineral resources, or potential future supply. USGS scientists also conduct research on the interactions of mineral resources with the environment, both natural and as a result of resource extraction, to better predict the degree of impact that resource development may have on human and ecosystem health. USGS mineral commodity specialists collect, analyze, and disseminate data and information that document current production and consumption for about 100 mineral commodities, both domestically and internationally for 180 countries. This full spectrum of mineral resource science allows for a comprehensive understanding of the complete life cycle of mineral resources and materials – resource formation, discovery, production, consumption, use, recycling, and reuse – and allows for an understanding of environmental issues of concern throughout the life cycle.

Global demand for critical mineral commodities is on the rise with increasing applications in consumer products, computers, automobiles, aircraft, and other advanced technology products. Much of this demand growth is driven by new technologies that increase energy efficiency and decrease reliance on fossil fuels. In 2010, the USGS completed an inventory of known domestic rare-earth reserves and resources (Long and others, 2010). The report documents 28 deposits and includes information on the location, exploration status, past production, and estimated resources. The report also includes an overview of known global rare-earth resources and discusses the reliability of alternative foreign sources of rare earths. Known U.S. deposits of REE comprise about 13 percent of the global reserve of REE and are located on a mix of public

(BLM and USFS) and private lands in 14 States. The primary U.S. source for REE is the Mountain Pass mine in California, operated by Molycorp Minerals, a Colorado-based company. Advanced exploration projects for new REE deposits are underway at Bokan Mountain, AK and Bear Lodge, WY. In 2011, USGS released two additional REE reports, "China's Rare-Earth Industry" (Tse, 2011) and "Rare Earth Elements – End Use and Recyclability" (Goonan, 2011).

The logical next steps are to (1) update a global inventory of rare earth resources published by the USGS in 2002 (Orris and Grauch, 2002), (2) review principal REE deposits outside of China and evaluate their geologic, economic, and development potential, and (3) conduct a comprehensive assessment of undiscovered REE resources. H.R. 981, the RARE Act of 2013, outlines a reasonable approach to properly assess the global endowment of REE resources, to identify potential future supplies of REE resources, and to better understand future potential sources of REE needed for United States industry.

The USGS maintains a workforce of geoscientists (geologists, geochemist, geophysicists, and resource specialists) with expertise in critical minerals and materials, including REE. The USGS continuously collects, analyzes, and disseminates data and information on domestic and global REE reserves and resources, production, consumption, and use. This information is published annually in the USGS Mineral Commodity Summaries (USGS, 2013) and includes a description of current events, trends, and issues related to REE supply and demand.

The USGS stands ready to fulfill its role as the sole federal provider of unbiased mineral resource research on known REE resources, assessment of undiscovered REE resources, and information on domestic and global production and consumption of REE resources for use in global REE supply chain analysis. We note, however, that the activities called for in H.R. 981 are already authorized by existing authorities. Any study conducted to fulfill the objectives of the bill will require substantial resources that, without additional support, would significantly impact other program mission activities.

Thank you for the opportunity to present the views of the Department on H.R. 981.

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