



Northwest Mining Association

Issues Update – April 2010

NWMA Members:

As the 2010 mid-term election season gears up, NWMA is working on a plethora of legislative, regulatory and legal issues that affect the mining industry. Following is a brief summary and update of a few of these issues. As always, if you have questions or comments concerning any of these issues or want to join one of our committees, please contact us.

SAFETY

- Our thoughts and prayers remain with those touched by the tragic events that took place at the Upper Big Branch Mine in West Virginia. NWMA and our members are committed to an injury free workplace for all employees.
- NWMA and our Health & Safety Committee will closely monitor the impending legislative and regulatory focus on mine safety.

EARTHWORKS V. DEPARTMENT OF INTERIOR, et al.

Anti-mining groups consisting of Earthworks, High Country Citizens' Alliance, Great Basin Resource Watch, Save the Scenic Santa Ritas, and Western Shoshone Defense Project filed a complaint U.S. District Court for the District of Columbia challenging two BLM rulemakings: the "Locating, Recording, and Maintaining Mining Claims or Sites" (2003 Mill Site Rule) and the "Mining Claims Under the General Mining Laws" (2008 Mining Claim Rule). Both rules reaffirm longstanding departmental interpretations and policy regarding the rights to use and occupy public lands to explore for and develop locatable minerals.

This lawsuit seeks to use the judicial system to limit rights under the Mining Law to claims with a discovery of a valuable mineral deposit (valid claims). The Mining Law currently authorizes the use of federal lands open to mineral entry for all mineral exploration, processing and mining purposes and use reasonably incident thereto, regardless of claim validity status. If successful, Plaintiffs would achieve most of the land use restrictions proposed in the Rahall Mining Law bill (H.R. 699, *The Hardrock Mining and Reclamation Act of 2009*) and would significantly harm our members' interests. It is critical that the Federal Defendants prevail in this case.

Consequently, NWMA, in conjunction with the Alaska Miners Association (AMA), is seeking to intervene in the lawsuit to protect our members' interests. To date, the judge has not ruled on our

motion to intervene. Also seeking intervention in support of the Federal Defendants is the State of Alaska. The National Mining Association (NMA), Barrick North America, and Round Mountain Gold Corp. already have been granted intervention. If granted status as co-intervenors, NWMA and AMA will closely coordinate with the other mining industry interests. NWMA and AMA's intervention will enhance the mining industry's overall efforts to win this lawsuit by broadening the face of the industry to focus on the prospecting and exploration sectors of the industry and on small businesses.

NWMA is seeking financial support from its members to help cover the legal costs associated with NWMA's participation in this lawsuit. Recognizing the importance of this lawsuit to our members, the Executive Committee approved an initial expenditure of \$25,000 from the association's reserve account. A couple of NWMA's corporate members have already pledged \$25,000 each to support this effort, and NWMA is requesting pledges from other corporate and individual members.

MINING LAW REFORM

- NWMA has worked closely with NMA and other industry groups to oppose S. 796, introduced by Sen. Bingaman (D-NM), and H.R. 699, introduced by Rep. Rahall (D-WV). (both bills are entitled *The Hardrock Mining and Reclamation Act of 2009*), and *The Abandoned Mine Reclamation Act of 2009*, S. 140, introduced by Sen. Feinstein (D-CA).

NWMA submitted a [statement for the record](#) on behalf of our members at a February 2009 House Energy & Minerals Subcommittee hearing on H.R. 699.

S. 140 is essentially the royalty and AML provisions of H.R. 699 without the withdrawal provisions and the environmental title. It also imposes a .3% reclamation fee on all hardrock mining including mining on federal, state, tribal, local and private lands.

S. 796 and S. 140 had a legislative hearing in July in the Senate Energy & Natural Resources Committee, which NWMA staff attended. NWMA submitted a [statement for the record](#) for the hearing.

- In 2009, Reps. Doug Lamborn (R-CO) and Rob Bishop (R-UT) introduced two pieces of legislation on hardrock mining. The first, the "*Locatable Mineral Royalty and Reclamation Act*" (H.R. 3201) amends the Mining Law to provide additional security of tenure for mining claimants tied to the payment of the claims maintenance fee, a 2% net proceeds royalty and a fund for the cleanup of sites that were mined prior to modern mining's reclamation requirements. The bill would impose a \$25 annual claim fee to fund cleanup of abandoned mines (in addition to a \$125 claim maintenance fee); require the Secretaries of Interior and Energy to convene a uranium summit to develop recommendations to ensure access to uranium resources for private development; establish an Office of Economic Geology within the U.S. Geological Survey; and require

a recurring quantitative national minerals assessment of the mineral resources in the United States.

- NWMA continues to provide an on-the-ground voice for the junior mining company and exploration sectors of the U.S. mining industry to ensure that any revisions to the Mining Law do not overly burden exploration and development and that access to mineral deposits on public lands is protected. Our priorities include preventing unnecessary withdrawal of lands from mineral entry; retaining the right of self initiation and the current mining claim system; establishing an abandoned mine land fund to address historic abandoned mines; ensuring that one has the right to use and occupy a mining claim for purposes reasonably incident to mining from entry through closure; ensuring that any royalty or production payment is fair, both to the American public and the mining industry; and ensuring that claim location and maintenance fees remain reasonable and do not become an impediment to exploration.
- Although we remain ever watchful, it appears our efforts have paid off. Indications from Senate Majority Leader Harry Reid (D-NV) are there will be no movement of these Mining Law reform bills in the 111th Congress.

ABANDONED MINE LANDS (AML)

- The "*Cleanup of Inactive and Abandoned Mines Act*" (H.R. 3203), introduced by Reps. Lamborn and Bishop as a companion to H.R. 3201, provides Good Samaritan protection to address liability risks associated with the voluntary clean up of abandoned mine sites. This bill is virtually identical to the NWMA supported Good Samaritan legislation introduced by Senators Salazar and Allard in 2005.
- A Good Samaritan bill has been introduced in the Senate by Sen. Mark Udall (D-CO). *The Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2009* (S. 1777) would exempt groups that voluntarily clean up abandoned mine sites from liability under the Clean Water Act. However, no liability protection is provided under Superfund or any other environmental laws.

PERMITTING DELAYS

Several member companies are having their projects unnecessarily delayed by a requirement that all BLM *Federal Register* Notices be sent to the Washington DC office (WO) for review and approval before they are sent to the *Federal Register* for publication. This includes such routine procedures as Notices of Intent to Prepare an EIS and Notices of Availability. This is in contrast to the U.S. Forest Service, in which Forest Supervisors and Regional Foresters are permitted to send routine NEPA notices directly to the *Federal Register* without WO review and approval. BLM State Offices had that ability prior to 2001.

In December 2009, the Obama Administration issued an Instruction Memorandum (IM 2010-043) requiring all notices to go through a new and even more rigorous 7 to 9 step review process in the WO. Every EIS has three procedural notices and the new process is adding nine months to a year to what is already the most lengthy permitting process in the world, delaying job creation. NWMA worked to obtain letters from Members of Congress to Wilma Lewis, Department of Interior Assistant Secretary for Land & Minerals, asking her to return to the pre-2001 process. We were able to secure letters from the congressional delegations in Idaho and Wyoming as well as 10 members of the House Western Caucus.

In a [survey](#) conducted by NWMA member Behre Dolbear, the U.S. ranks last among mineral producing countries in terms of the time it takes to permit mining projects.

EDUCATION INITIATIVES

- NWMA recently became a client of the Reynolds School of Journalism at the University of Nevada to help us develop a comprehensive ad campaign. The students at UNR are helping us craft a message the younger generation will understand using communication platforms and tools of the 21st century. NWMA Trustee Leslie Olmstead deserves much credit and our gratitude for pursuing this incredible opportunity.
- NWMA has been working to educate the Administration, Members of Congress, the media and the public that mining is indispensable to energy independence and economic recovery; that historically mining has led the Nation out of recession and is poised to do it again; and that mining provides an economic stimulus package that doesn't require deficit spending or cost taxpayers a dime. The Obama Administration and this Congress has as a major priority a shift to renewable energy production. We are working hard to make them understand that without American minerals and metals, it is impossible to achieve their renewable energy goals.
- NWMA is working on an Academic Affairs Initiative under the leadership of Academic Liaison Committee chairman Hugh Miller of the Colorado School of Mines. The primary objective of this initiative is to assist academic programs in providing students with a positive educational experience that emphasizes the necessary knowledge and skills to be successful in the mining industry and to establish student chapters of NWMA. Please let us know if you wish to serve on this committee.
- We produced a 15-second television spot that emphasizes the critical importance of minerals and metals to alternative energy production. The spot has run on Spokane public television, with coverage in Washington, Oregon, Idaho, Montana, Alberta and British Columbia. To view the video, go to the [NWMA website](#) and it will run automatically. The video also is posted on NWMA's [YouTube](#) channel. This ad has received much positive feedback, and last summer the Colorado Mining Association co-branded the spot and it ran during telecast of the Colorado Rockies baseball games on Fox Sports.

- We also have developed some visual handouts that display the critical mineral and metal components to clean energy systems such as wind turbines, solar panels, nuclear power and hybrid vehicles. These handouts can be viewed on our [website](#).

CLIMATE CHANGE

- In what has become known as “Climategate”, a whistle blower or hacker downloaded and released more than a thousand emails and internal documents from the United Nation’s Intergovernmental Panel on Climate Change (IPCC) Climate Research Unit at the University of East Anglia in the UK. This facility, also known as Hadley, is the leading “global warming” research center and its scientists are the primary authors of the UN’s global warming research and temperature data for most modeling used at the international level for the IPCC, as well as cited here in the U.S. by agencies and White House officials. The released documents show more than a decade of:
 - Suppression of Data
 - Destruction of data subject to FOIA requests
 - Organized subversion of the peer-review process
 - Blacklisting of scientific journals for political reasons
 - Blatant scientific fraud and misrepresentation of data
 - Deceit of International and U.S. agencies for funding and grants
- Nevertheless, EPA has issued a final rule finding that greenhouse gas emissions (GHG) contribute to air pollution that may endanger public health and the environment. This action is the first step to regulating GHG’s under the Clean Air Act (CAA), triggering a cascade of programs that will impose strict regulations on a large segment of the American economy, including the mining industry. NWMA submitted [comments](#) on the proposed finding urging the EPA to not formalize the proposed endangerment finding and to defer further action on CAA regulation of GHG’s.

Despite the growing concerns regarding the science behind the endangerment finding, the EPA has issued the first proposals for regulating GHG’s under the Clean Air Act. As expected, the Auto Rule is the first proposal from EPA. The rule was finalized in March and is effective for the 2012 model year of automobiles (January 2, 2011). Unfortunately, due to the language and the structure of the CAA, EPA regulation of GHG’s for motor vehicles will trigger regulatory obligations for other sources of GHG’s under other provisions of the CAA.

The EPA is working on the Tailoring Rule, which is designed to limit the impacts of CAA regulatory requirements for GHG’s to large emission sources. Without this rule, there would be a logistical nightmare for the agency and government intervention into virtually every sector of the economy when GHG’s become regulated pollutants. Finalization of this rule is expected soon.

The EPA has finalized a rulemaking that mandates reporting of greenhouse gas emissions from many sectors of the economy. The rule impacts every aspect of the mining industry, as the reporting threshold is only 25,000 metric tons per year. Under the rule, monitoring requirements began January 1, 2010 with the filing of initial reports by March 31, 2011.

Now that EPA has made a formal endangerment finding, pressure is beginning to be felt in Congress to respond. With public opinion polls showing softening support for climate change regulations, Members of Congress are becoming increasingly nervous about being seen as passively letting unelected bureaucrats unilaterally determine and implement a federal regulatory regime. There is currently legislation pending in both Houses that would roll back EPA's actions.

Senators Lisa Murkowski (R-AK) and Blanche Lincoln (D-AR) have introduced a "resolution of disapproval" that would formally set aside the EPA endangerment finding. Murkowski/Lincoln have garnered 40 cosponsors for Senate Joint Resolution 26.

In the House, two separate bills have been introduced which would explicitly exclude greenhouse gas emissions from the Clean Air Act:

- H.R. 391 would amend the Clean Air Act to provide that GHG's are not subject to regulation under the CAA. Congresswoman Marsha Blackburn's (R-TN) legislation currently boasts 153 cosponsors.
- Congressman Earl Pomeroy (D-ND) has introduced the *Save Our Energy Jobs Act* (H.R. 4396) that would accomplish the same goals of H.R. 391, with 21 cosponsors.

The National Mining Association filed a petition on February 12 in the U.S. Circuit Court of Appeals for the D.C. Circuit challenging the endangerment finding.

At the NWMA annual meeting in Reno, Western Business Roundtable President and CEO Jim Sims was the featured speaker at the Industry Outlook Luncheon, where he led a spirited discussion concerning "Mining in a Climate Controlled World." Jim emphasized that we need to incentivize the production of renewable energy and the technology sectors to reduce emissions rather than making renewables more affordable by raising the cost of everything else through a cap and trade system.

- Last summer, the House of Representatives narrowly passed "*The American Clean Energy and Security Act of 2009*" (H.R. 2454) by a vote of 219-212. This legislation, introduced by Energy & Commerce Committee Chairman Henry Waxman (D-CA) and Energy & Environment Subcommittee Chairman Ed Markey (D-MA), includes mandatory domestic greenhouse gas emission (GHG) reduction targets and timetables and would institute a domestic cap-and-trade program for greenhouse gas emissions allowances. Climate change is not just a coal or fossil fuel issue. The legislation will dramatically impact hardrock mining operations by significantly increasing energy and operating costs. NWMA worked closely with NMA and the state mining associations to

generate grassroots opposition to the bill and made direct contacts with many Members of Congress.

Given the poor prospects for the Waxman-Markey bill in the Senate, Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joe Lieberman (I-CT) are working on a separate climate change proposal. Legislation is expected soon, and NWMA will closely monitor the bill and its contents.

CEQ GUIDANCE ON NEPA

The Council on Environmental Quality (CEQ) released three draft National Environmental Policy Act (NEPA) guidance documents for review and public comment, including the anticipated guidance on how federal agencies should incorporate climate change and greenhouse gas considerations into environmental reviews of federal actions. The other guidance documents relate to the monitoring of environmental mitigation commitments made during the NEPA process and clarification of the use of categorical exclusions.

While the guidance documents address discrete topics, certain themes are repeated throughout, such as: increased disclosure to the public of environmental impacts of major federal actions; increased opportunity for public participation and comment on NEPA procedures and documents; and increased scope of environmental analyses. NWMA submitted [comments](#) on the draft guidance on categorical exclusions earlier this month, and will be generating comments on the other two by their May 24 deadline.

FINANCIAL ASSURANCE

The U.S. District Court's decision in *Sierra Club, et al v Johnson* ordered the EPA to "close a loophole" under CERCLA §108(b) and identify the industries that will be subject to financial assurance requirements. EPA subsequently announced that hardrock mining facilities are their number one target for writing rules pursuant to CERCLA §108 (b) to require financial assurance. EPA intends to begin financial assurance rulemaking in early 2011. NWMA will participate in the rulemaking and oppose any potential financial assurance requirements under CERCLA §108(b).

The EPA has been trying to inject itself into the financial assurance arena for quite some time, and would require "worst case scenario" bonding. NWMA is working with our members and NMA to document that the mining industry is already covered by extensive environmental regulatory programs and financial assurance requirements which together ensure that modern mines do not become future Superfund sites.

EPA ENFORCEMENT PRIORITIES

The EPA requested public comment on 15 candidates for the national enforcement and compliance assurance priorities for fiscal years 2011-2013. Notably, the following proposed priority candidates directly impact the mining industry: mineral processing (a national priority since 2005); energy/mining resource extraction (a new priority candidate primarily targeting mountaintop mining); and wetlands (a new priority candidate). You can view the NWMA comments [here](#).

In March, the EPA finalized its enforcement priorities. The list of 15 priority candidates was pared down to 6 priority initiatives, including mineral processing and energy/mining resource extraction. The wetlands enforcement initiative was not finalized.

NORTHERN ARIZONA MINING ISSUES

- NWMA retained Mountain States Legal Foundation and intervened on behalf of its members in *Center for Biological Diversity v. Salazar*. This lawsuit sought to compel the Secretary of the Interior to withdraw more than 1 million acres from mineral entry. The area contains more than 40% of known U.S. uranium deposits. NWMA opposes the withdrawal and thorough intervention in the lawsuit sought to have the Federal Land Policy and Management Act's (FLPMA) emergency withdrawal regulations declared unconstitutional. The issues in this lawsuit were mooted when Secretary Salazar issued a segregation order on July 20, 2009 (see below). The plaintiffs and the federal defendants settled and the case was dismissed without prejudice.

NWMA worked with member companies to obtain a letter from Senator Hatch (R-UT) and former Arizona Senator Dennis DeConcini to Secretary Salazar opposing any withdrawal.

Secretary of the Interior Ken Salazar decided to segregate nearly 1 million acres of federal lands in the Arizona Strip for two years while the Department evaluates whether to withdraw these lands from new mining claims for an additional 20 years. NWMA submitted [comments](#) vigorously opposing the withdrawal. The proposed withdrawal initiated a period of study during which the effects of the withdrawal must be evaluated. At the direction of the Secretary, the U.S. Geological Survey (USGS) began a series of short-term studies designed to develop additional information about the possible effects of uranium mining on the natural resources of the region.

The USGS has released a [report](#) of their findings. One key element of that report is the analysis of historical water quality data from more than 1,000 water samples from 428 sites in northern Arizona showing that dissolved uranium concentrations in areas without mining were generally similar to those with active or reclaimed mines.

- In response to the segregation and proposed 20-year withdrawal, Rep. Trent Franks (R-AZ) is introducing legislation that would nullify the segregation and prohibit the Secretary of the Interior from withdrawing those public lands or National Forest System

lands from location and entry under the Mining Law. NWMA is working to secure co-sponsors for the legislation.

NATIONAL MONUMENT DESIGNATIONS

In February, an internal Department of the Interior (DOI) [memorandum](#) was discovered that outlined possible Department plans for additional monument designation, conservation designation, land acquisition or other action on public lands in eleven western states: Alaska, Arizona, California, Colorado, Montana, New Mexico, Nevada, Oregon, Utah, Wyoming and Washington.

The memorandum shows that the Obama Administration is considering designating more than a dozen new National Monuments under the Antiquities Act (Remember the Grand Staircase-Escalante National Monument designation in Utah by President Clinton that locked up one of the largest coal reserves in America), and is targeting thousands of acres of private land for potential acquisition by the federal government. The proposed designations and acquisitions could lock up at least 13 million acres of land without congressional approval.

NWMA last month sent a [letter](#) to the Administration expressing our opposition to locking up vast amounts of land and blocking access to mineral resources without public input. Letters of opposition also were sent by the Senate [Western Caucus](#) as well as Reps. [Doc Hastings](#)(R-WA), Ranking Member of the House Natural Resources Committee and Bishop (R-UT), Ranking Member of the Subcommittee on National Parks, Forests and Public Lands.

Reps. Hastings, Bishop and 14 other Members of Congress sent a letter to Interior Secretary Salazar in February requesting further information regarding the internal memorandum. After receiving no information or response, Reps. Hasting and Bishop introduced a Resolution of Inquiry (House Resolution 1254) which requires the Secretary to turn over to the House of Representatives the full “brainstorming” documents related to the National Monuments list. H.Res. 1254 is scheduled to be brought up for a vote in the House Natural Resources Committee April 28. NWMA initiated an action alert to garner additional co-sponsors of the resolution and a positive vote in the committee.

USFS PLANNING RULE

For the fourth time in the last 10 years, the USFS is going to take a run at revising its Planning Rule for guiding the forest planning process. The Clinton administration issued a new planning rule in 2000 replacing the 1982 rule. The Bush administration replaced the 2000 rule with a new rule in 2005 that was enjoined by a federal court. A 2008 rule issued in response to the injunction against the 2005 rule has also been enjoined.

The USFS announced its intent to prepare an EIS in conjunction with its plans to develop a new rule for the development and revision of land and resource management plans for the National

Forest System Lands, and solicited public comment on the scope of the EIS. NWMA submitted [comments](#) urging the USFS to strictly adhere to their statutory mandate.

WILDERNESS STUDY AREAS

The Forest Service is in the process of reviewing the policy for recommended wilderness areas. The agency is receiving dueling letters from House Democrats and Republicans on the issue. A group of House Democrats want the Forest Service to prohibit activities, such as motorized vehicle use, that would adversely affect the wilderness qualities in areas recommended to become wilderness. A group of House Republicans warn that would turn agency-recommended wilderness areas into de-facto wilderness and circumvents the power of Congress to designate wilderness. NWMA will closely follow this process as it evolves.

RARE EARTHS

- NWMA Trustee Mark Smith, CEO of Molycorp Minerals, LLC, testified at an oversight hearing of the Investigations and Oversight Subcommittee of the House Science Committee regarding the critical role rare earth minerals play in emerging technologies, including defense and green technologies, and the increasing supply challenges caused by diminished focus on U.S. production and rapid development in China. Here are links to his [oral](#) and [written](#) testimony.

During his testimony, Mr. Smith noted that China accounts for 97 percent of the world's rare earth supply and produces 80 percent of the rare earth magnets. He cautioned that our current dependence on China is undesirable, especially since China's internal demands could grow to a level that they are no longer willing to supply these resources to other countries. He laid out a series of actions the federal government could take to help boost rare earth production and technology manufacturing in the U.S., including increased federal loan guarantees that can help get projects like Molycorp's Mountain Pass mine in California started. NWMA sent a [letter](#) to Secretary of Energy Steven Chu supporting Molycorp's project.

- Rep. Mike Coffman (R-CO) introduced H.R. 4866 to reestablish a competitive domestic rare earths minerals production industry; a domestic rare earth processing, refining, purification and metals production industry; a domestic rare earths metals alloying industry; and a domestic rare earth based magnet production industry and supply chain in the United States. NWMA supports Rep. Coffman's efforts.

EQUAL ACCESS TO JUSTICE ACT

The Equal Access to Justice Act (EAJA) was established in 1980 to help provide citizens, small businesses and public interest groups with limited resources the means to legally challenge actions by the federal government by giving them the opportunity to recover attorney fees and

costs for such challenges. In the early years after the law's enactment, the government tracked how much money was being awarded and to whom. In 1995, those reporting requirements ended. In the years since, taxpayers have not been given any accounting on how these funds are being distributed. What was intended to be a tool to help protect the rights of citizens and groups of limited means has been distorted into a perpetual litigation engine for a number of major environmental organizations.

Bipartisan legislation has been introduced that would require a robust and consistently-applied system of disclosure which assures a public accounting of not only how much these subsidies cost taxpayers, but also who got the subsidies, and exactly what their impacts are in hampering job-creating projects. *The Open Equal Access to Justice Act of 2010* (H.R. 4717/S. 3122) would also authorize an audit of the last 15 years when EAJA operated with no oversight. The bill was introduced by Cynthia Lummis (R-WY) in the House and John Ensign (R-NV) in the Senate.

ENDANGERED SPECIES ACT

NWMA submitted [comments](#) on the U.S. Fish and Wildlife's proposed revised critical habitat designation for the bull trout. The proposed rule significantly increases the amount of habitat designated as critical, and affects land in Washington, Oregon, Idaho, Montana and Nevada.

WASHINGTON STATE

- NWMA fulfills the role of state mining association in Washington. In addition to NWMA staff work with the state agencies and elected officials, we have enlisted the services of contract lobbyist Toni McKinley to provide a full-time, on-the-ground presence for NWMA in Olympia during the legislative session. NWMA's Government Affairs Manager visited Olympia in conjunction with the Association of Washington Business Legislative Day and had productive discussions with legislators and state agency personnel.
- The Washington Legislature recently completed a special session in which they approved nearly \$1 billion in new taxes and fees to help close a \$2.8 billion budget gap. Although the increased taxes negatively impact all businesses in the state, including mining, the mining industry was not specifically targeted.
- NWMA is participating in a collaborative effort addressing the forest plan revision on the Colville National Forest. The collaborative effort has been convened by Congresswoman Cathy McMorris-Rodgers and Senator Maria Cantwell, in conjunction with the Forest Service. The goal of the collaborative is to come to an agreement locally on how to manage the 1.1 million acres of the Colville National Forest.

More information about many of these and other issues can be found on NWMA's website at www.nwma.org. The website is kept up-to-date with the latest news about issues affecting the domestic mining industry. NWMA has proven to be an **EFFECTIVE** and **RESPECTED** association working hard for you as we provide a much needed on-the-ground voice.

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