

**TESTIMONY OF
MARK REY
UNDER SECRETARY
NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS OF THE
HOUSE NATURAL RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
June 5, 2008**

CONCERNING:

**H.R. 5583 – Grand Canyon Watersheds Protection Act of 2008, and
H.R. 3702 - Montana Cemetery Act of 2007**

Mr. Chairman and Members of the Committee, thank you for giving me the opportunity to present the views of the Administration on H.R. 5583, the Grand Canyon Watersheds Protection Act of 2008 and H.R. 3702, the Montana Cemetery Act of 2007. I will address each bill separately.

H.R. 5583 – Grand Canyon Watersheds Protection Act of 2008

H.R. 5583 would withdraw a total of 1,068,908 acres of National Forest System (NFS) land administered as part of the Tusayan Ranger District of the Kaibab National Forest and public land managed by the Bureau of Land Management (BLM) from all forms of entry, appropriation, and disposal under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing, geothermal leasing, and mineral material laws. The lands that would be withdrawn are located in the vicinity of Grand Canyon National Park.

The Administration does not believe withdrawal of this area is necessary. Existing law, including the Clean Air Act, the Clean Water Act, the Federal Land Policy and Management Act, the National Environmental Policy Act, Forest Service and Bureau of Land Management policy, and the Kaibab National Forest Land Management Plan, as well as applicable state and local permitting requirements, provide sufficient direction for the protection of resources while providing for multiple use of the area. We continue to work together with our federal partners and other interested parties to ensure that the cumulative effects of mining do not degrade the park's resources.

The Administration shares the belief that the values of Grand Canyon National Park must be protected and recognizes the concerns of those who fear that mining within its vicinity might degrade those resources. However, we believe that there exists, without the enactment of further legislation, the protections in place to ensure the park is protected while allowing the development of critical domestic mineral resources.

We oppose Section 2(a)(1) which withdraws the lands identified from all forms of entry, appropriation, and disposal under the public land laws. This would prohibit any exchanges, sales, or other disposals of the land within the withdrawn area and could have serious implications for land tenure adjustments in the area. For example, the BLM regularly transfers land at low or no

cost to local governmental entities and to nonprofits for purposes such as schools, fire houses and ball fields under the auspices of the Recreation and Public Purposes Act (R&PP). Under H.R. 5583, BLM would be prohibited from making such transfers.

We oppose Section 2(a)(2), which withdraws the lands identified from location, entry, and patent under the mining laws. This would prohibit the filing of any new mining claims on the lands identified in the legislation. Section 2(b) would protect valid existing rights. Approximately 8,500 mining claims have already been filed in the portion of the proposed withdrawal under the BLM's management and 2,100 claims have already been filed in the portion of the proposed withdrawal under the Forest Service's management.

Under the BLM's 3809 regulations, existing mining claims on lands which are subsequently withdrawn require a validity examination before exploration or mining operation can commence. Thus, given the scope of withdrawals under H.R. 5583, the BLM would need to complete validity exams on a large number of claims within the withdrawal area before exploration and mining operations on these claims could proceed. This undertaking would be time consuming and would severely strain the BLM workforce in Arizona. It is important to note that a withdrawal under H.R. 5583 would not prohibit operations under existing notices or plans and preexisting exploratory and mining operations would continue. Only new mining claims for uranium or any other minerals subject to the mining laws (for example, gold or copper) would be prohibited.

We oppose section 2(a)(3) of the bill. The provisions in this section would withdraw the identified lands from the mineral leasing, geothermal leasing and mineral materials laws, and preclude the extraction of salable minerals such as sand and gravel as well as other materials utilized in the construction and maintenance of BLM, Forest Service, and local government roads and facilities. Maintaining roads and facilities is necessary to ensure proper conditions and safety for the public and BLM and Forest Service employees. This withdrawal would prohibit the use of locally obtainable mineral materials for public purposes, including recreation access, that are consistent with the management of the national forests and BLM-managed public land. Replacement of these gravel sources would be at greatly increased economic and environmental costs, as such materials may need to be transported over greater distances from alternative sources.

Forest Service and Bureau of Land Management Administration of the United States Mining Laws

The United States Mining Laws confer a statutory right to the public to enter upon open NFS lands reserved from the public domain to search for and develop locatable minerals and engage in activities reasonably incident for such uses. However, pursuant to the Organic Administration Act of 1897, the Forest Service can adopt regulations governing those operations providing that the regulations do not prohibit the public from prospecting, developing, or mining valuable deposits of locatable minerals. The Forest Service adopted such regulations governing locatable mineral operation that affect the surface of NFS lands in 1974. Those regulations, which were re-designated in 1981 as 36 CFR part 228, subpart A, were judicially upheld as a permissible exercise of the Forest Service's authority conferred by the Organic Administration Act to regulate locatable mineral operations authorized by the United States mining laws.

Operations covered by the Forest Service regulations include all prospecting, exploration, development, mining production and processing of locatable minerals and all uses reasonably

incident thereto on NFS lands regardless of whether such operations take place within or outside the boundaries of a mining claim. The regulations require that all locatable mineral operations must be conducted to minimize, prevent or mitigate adverse environmental impacts to surface resources, including impacts to surrounding lands under the jurisdiction of other federal agencies. At the earliest practical time miners are required to reclaim NFS lands on which locatable mineral operations are conducted.

All miners whose proposed operations might cause significant disturbance of surface resources are required to submit a notice of intent to conduct operations to the Forest Service. All miners whose proposed operations will likely cause significant disturbance of surface resources must submit and obtain Forest Service approval of a plan of operations. In evaluating a proposed plan of operation, the Forest Service considers the environmental impacts of the proposed mineral operation through the NEPA process, including any cumulative impacts associated with the plan and whether the proposed operation represents part of a well-planned, logically sequenced mineral operation.

Locatable mineral exploration and development on NFS Lands authorized by the United States mining laws must also comply with other applicable federal and state laws, regulations and rules. This includes federal environmental statutes that protect surface and ground water, air, cultural resources, threatened and endangered wildlife, as well as those which regulate transport, storage, use and disposal of fuel, chemicals and other hazardous materials. Reasonable conditions, which are required to ensure that environmental impacts to surface resources are minimized without impermissibly interfering with the proposed operations, are set forth in an approved plan of operations.

The Forest Service Minerals Program Policy states that the Forest Service will “foster and encourage private enterprise in the development of economically sound and stable industries, and in the orderly and economic development of domestic resources to help assure satisfaction of industry, security, and environmental needs.”

The BLM manages mining operations on public lands under the 1872 Mining Law and the Federal Land Policy and Management Act (FLPMA). Other state and Federal laws also play a critical role in ensuring that hardrock mining operations on public lands occur in an environmentally sound manner. Although the 1872 Mining Law itself is over 100 years old, statutory requirements to comply with state and Federal Laws, such as the Clean Water Act; Clean Air Act; Endangered Species Act; National Environmental Policy Act (NEPA); Wilderness Act; and National Historic Preservation Act, ensure that mining operations meet today's cultural and environmental needs. The BLM has accomplished this through the principles of sustainable development, promulgation of surface management regulations, issuance of policy guidance, and implementation of an active program to remediate abandoned mine lands.

BLM's surface management regulations were issued under the authority of FLPMA in 1981 and amended in 2000 and 2001. The regulations provide a sound framework to prevent unnecessary or undue degradation of public lands during hardrock mining and reclamation.

Under the regulations, all mining and milling activities are conducted under a plan of operations approved by the BLM, and following environmental analysis under NEPA. The BLM must disapprove any mining operation that would cause unnecessary or undue degradation of the public lands. In accordance with applicable laws, regulations and policies, the BLM is working to assure

that mineral development is completed in a way that protects the environment in the State of Arizona, and is sensitive to any potential impacts upon Grand Canyon National Park.

The NEPA process, which includes full public input and involvement, is a critical element to decision-making under the BLM's surface management regulations. Each NEPA analysis must address the economic, cultural, and environmental consequences to the residents in the immediate vicinity of the proposed action. If warranted, the NEPA analysis will also address potential impacts that extend beyond the immediate area of the proposed plan of operations. Each NEPA analysis would account for the cumulative impacts of all the operations that precede the subject proposal while anticipating the impacts of operations yet to be proposed.

Mining on the Kaibab National Forest

Most of that portion of the Kaibab National Forest that lies north of Grand Canyon National Park was designated as Grand Canyon Game Preserve in 1906. The United States Court of Appeals for the Ninth Circuit has held that the proclamation authorizing the establishment of the Preserve implicitly withdrew its lands from the operation of the United States mining laws (*Pathfinder Mines Inc. v. Hodel*, 811 F.2d 1288 (9th Cir. 1987)). Consequently, mining activity cannot occur on the Grand Canyon Game Preserve.

In contrast, the portion of the Kaibab National Forest south of Grand Canyon National Park has a long history of mining. Mining, especially for copper, became important in the late 1800s. Eventually, however, the costs for mining and transporting the ore far exceeded the value of the mineral, and most mines closed around the turn of the 20th century. The Orphan Mine, which is within the present Grand Canyon National Park boundary, was originally mined for copper and other metals in the early 1900s. The Anita Mine on the Kaibab National Forest is a historic remnant of the copper mining era, and is now eligible for inclusion on the National Register of Historic Places. Quarrying for cinders, sandstone and limestone became prominent after the turn of the 20th century.

During the 1950s, uranium deposits were discovered at the site of the Orphan Mine and on the Tusayan Ranger District. The U.S. Geological Survey began studying uranium deposits of the area and produced maps identifying favorable locations where uranium might be found. One uranium mine site, Canyon Mine, was developed in the late 1980s on the Tusayan Ranger District, but it never actually went into operation. Over the last several years the price of uranium has increased and there is renewed interest in exploration, especially on the Tusayan Ranger District. Currently there are approximately 2,100 existing mining claims, mostly located for uranium, on the Tusayan Ranger District. However none are currently in production.

Kaibab National Forest Land Management Plan

The Kaibab National Forest Land Management Plan (LMP) was approved in 1987 and amended in 1996. The Kaibab National Forest is in the process of revising its Land Management Plan and expects to complete the revision in 2009. Current management direction for minerals in the LMP is to administer the law and regulations to minimize adverse surface resource impacts and support sound energy and minerals exploration and development.

The LMP identifies management areas which have potential for uranium discovery. Management direction for these areas requires protection of the surface resources and other environmental values, such as habitat for threatened and endangered and sensitive plant and animal species, recreation sites and facilities, heritage resources, and scenery. The Administration does not believe withdrawal of this area is necessary. Existing law, Forest Service policy, and the LMP provide sufficient direction for the protection of resources while providing for multiple use of the area.

There are several reasons for the Department of Agriculture's belief that withdrawal of the lands included within the Tusayan Ranger District is unnecessary to protect federal lands, including lands within Grand Canyon National Park, from the effects of mineral exploration and development. Several of these reasons relate to the history of mineral exploration and development on these lands.

The Tusayan Ranger District has been extensively explored in past decades; currently there are approximately 2,100 mining claims on the District. Of course, these 2,100 mining claims and any previously abandoned mining claims also could have been developed and mined under the laws applicable to such operations. Yet, over the course of the last half century, only one mine, the Canyon Mine, has been developed in the area and that mine never actually went into operation.

All exploration, development or mining of locatable minerals which may take place in the future on the Tusayan Ranger District will be subject to the requirements discussed above to prevent or minimize any adverse environmental effects of those operations. All locatable mineral operations on NFS land are subject to 36 CFR part 228, subpart A with its procedures for Forest Service review of such operations and requirements for minimizing the environmental impacts of those operations. Locatable mineral operations also are subject to National Environmental Policy Act of 1969 (NEPA) and other procedural requirements mandating that the Forest Service consider and disclose the environmental effects of locatable mineral operations. Locatable mineral operations also must comply with a host of substantive statutory and regulatory environmental requirements.

H.R. 3702 - Montana Cemetery Act of 2007

This legislation directs the Secretary to convey for no consideration, all right, title, and interest in 10 acres of land within the Beaverhead-Deerlodge National Forests to Jefferson County, Montana, to continue its use as a cemetery. The Department of Agriculture is supportive of H.R. 3702, but would recommend that this bill provide consideration to the Federal government for the conveyance.

The parcel to be conveyed to Jefferson County is currently being used for cemetery purposes but a special use authorization has never been issued for this purpose. The 10-acre conveyance will provide a sufficient amount of land to accommodate all known grave sites and any additional sites that may be outside of the concentration of known sites. In addition the conveyance is of adequate size to include the cemetery parking lot so that it will be located on private property. The parcel to be conveyed is a National Register eligible property that contributes to the significance of the Elkhorn town site and the Elkhorn historic mining district. The bill provides for the continued protection of the historic and cultural values associated with the site, but does not exempt the Forest Service from its obligations to comply with the National Historic Preservation Act, or any other law at the time of the transfer.

We are concerned about conveying public land to other jurisdictions without any form of consideration. The Department of Agriculture does not object to making the Federal land available for use as a cemetery, but requests that the conveyance of the public land estate include consideration for the market value of the property and for the administrative costs associated with the conveyance. The Department of Agriculture does not support the reversion of the lands back to the Secretary should this bill be enacted.

This concludes my statement, I would be happy to answer any questions that you may have.