



H.R. 3534, *The Consolidated Land, Energy, and Aquatic Resources Act of 2009*

Natural Resources Committee
United States House of Representatives

Statement of the National Mining Association
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My name is Dennis Stover, Executive Vice President of Uranium One, Americas. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before this committee to discuss the negative impacts of removing uranium from the auspices of the Mining Law and making it leasable under the Mineral Leasing Act (MLA).

NMA has vast expertise and is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining companies.

Uranium One, Inc. is the seventh largest uranium mining company in the world and is Canadian based, listed on the Toronto stock exchange. I am responsible for our activities in the United States with offices in Edmond, Oklahoma; Casper, Wyoming; Corpus Christi, Texas, Denver Colorado; as well as Kanab and Moab, Utah. We are licensing three new ISR uranium mines, two in Wyoming and one in Texas. In addition, we are reactivating a wholly owned conventional uranium mill in Utah. We control uranium exploration and development properties in Arizona, Colorado, Nevada, Oregon, Utah, Wyoming and Texas. With the exception of Texas, much of these mineral rights are tied to federal lands. As a point of information, in

August of this year, we paid about \$1.4 million to the U.S. Bureau of Land Management (BLM) in maintenance fees for nearly 10,000 unpatented mining claims. The vast majority of these holdings are exploration properties that will require extensive exploration expenditures over several years to test and then confirm the presence of economic quantities of uranium. Once confirmation is achieved, only then will we begin the multi-year licensing and permitting process that leads to construction and operation of commercial mining facilities. All the while, claim maintenance fees will continue to flow to the BLM.

Making uranium leasable will not only negatively impact the domestic uranium mining industry, but also the economy and national security of the United States. I say this because the proposed change will put an end to growth of a viable domestic uranium mining industry, an industry that creates high paying jobs with good benefits and provides resources critical to meeting our nation's goals of decreasing our reliance on foreign sources of energy and drastically reducing green house gas emissions.

Uranium is different from minerals under the Minerals Leasing Act (MLA)

A common argument in favor of leasing uranium under the MLA is that uranium is a fuel mineral and, therefore, should be governed like other fossil fuels such as coal, oil and gas under the MLA. This assumption ignores the fact that uranium is a metal. Its geology and geochemistry are totally different from that of the fossil fuels.

Unlike oil gas and coal, the discovery potential for uranium remains vast. As such, more exploration for uranium is required to find commercial developable deposits than for oil and gas and coal. Furthermore, uranium requires significant processing prior to having a marketable product. Oil and gas are much more readily marketable after being mined. For example, crude oil is sold in local and international markets, and the price of the product that comes out of the ground is generally readily ascertainable at the well. Gas is also often sold at the well head, in some cases without any processing. Upon initial extraction, uranium itself has no real economic value – considerable upfront investment and ongoing operating expense must be incurred to turn it into a marketable product.

Uranium is no different than other hardrock mining

In fact, uranium, as a metallic mineral, is much more akin to other hardrock minerals governed by the Mining Law than fossil fuels under the MLA. Extraction of uranium on federal lands is conducted similarly to extraction for other hardrock minerals governed by the Mining Law, involving advanced mining activities rather than traditional extraction techniques for fossil fuels such as oil and gas or coal. Oil and gas and coal are relatively plentiful, and occur over relatively large areas where found. Hardrock minerals are scarce and occur in small concentrations, and must be discovered by expending considerable money pursuing elusive prospecting clues. Once a prospect is identified, development commences at considerable cost, with the capital and labor intensiveness of large coal mines, but without the geologic or metallurgical certainty of coal mines nor the economic certainty and incentive of long-term coal sales contracts, which are not customary for most hardrock minerals. The combination of price volatility and the variations in the concentration and the chemical and geological characteristics of hardrock minerals, such as uranium, within an ore body can turn a profitable mine into valueless rock with a sudden downturn in the market.

It is for these reasons that the Mining Law provides an incentive for those who take substantial financial risk to develop a mineral deposit. To encourage mineral development, the Mining Law is uniquely self-executing in that a citizen may enter upon much of the public lands and explore for minerals. 30 U.S.C. § 22. Thus, the Mining Law allows the right of self initiation and those who explore for and discover a valid claim, obtain the right to develop that claim as long as they meet all applicable statutory and regulatory requirements. Since mining is a capital-intensive process that often takes years of development before minerals are produced, claimants need to have certainty that they will be able to bring a project to fruition.

The fact that the Department of Energy (DOE) currently administers a uranium leasing program on federal lands does not weigh in favor of a leasing system for all federal uranium. These leases address a relatively small area of withdrawn federal lands, containing 1.5 percent of **proven** domestic uranium reserves. The regulations governing this program are found at 10 C.F.R. Part 760. These regulations provide for competitive lease sales, royalty payments, environmental controls and performance requirements. Similar to oil and gas and coal under the MLA, the DOE leasing program involves known reserves discovered

during the “massive” exploration drilling program undertaken by the U.S. Geological Survey and the Atomic Energy Commission during the 1950s.¹ Therefore, lessees have sufficient information about the potential rewards prior to bidding on the lease and committing to the expensive process of developing the uranium. Even so, when domestic annual uranium production peaked in 1980 at 43.7 million pounds, production from the DOE leased tracts (at 1.1 million pounds) represented about 2.5 percent of the total. (source: DOE/EA-1535, page 1-4)

H.R. 3534’s leasing system will decrease U.S. exploration and development of uranium resources and increase reliance on foreign sources

By introducing great uncertainty regarding the lands ultimately available for uranium exploration and development, a leasing system will only serve to increase the United States’ reliance on foreign sources of uranium. Under H.R. 3534, there is no guarantee that any uranium on federal lands will ever be leased as the decision to offer lands for leasing is completely in the Secretary of the Interior’s discretion. Further uncertainty is created by the exploration license provisions of the legislation. An exploration license, even if the licensee discovers a commercial uranium deposit, confers no rights upon the licensee that discovers the claim. By failing to provide some type of preference right to mine the uranium to the discoverer and instituting a 12.5 percent royalty on new uranium production, the proposed system removes all incentives for exploration for uranium on federal lands and will result in decreased domestic uranium production.

Leasing system not needed to address lack of royalty

Another oft-used argument for converting uranium to the MLA is that under the MLA, a royalty would be imposed for production on federal lands. However, a leasing system is not needed to address the lack of a fair return from uranium production from federal lands. For the last decade, the mining industry has fully supported the payment of a reasonable net proceeds type royalty from production on federal lands through amendments to the Mining Law.

¹ See statement of David W. Geiser, Deputy Director for Legacy Management, U.S. Department of Energy, before the Senate Energy and Natural Resources Committee, March 12, 2008.

Regulatory certainty is needed to encourage uranium development

The United States currently consumes about 56 million pounds of uranium each year, yet only produces 4.5 million pounds. The U.S. has the world's largest fleet of reactors (now 104), which operate at the world's highest average capacity factor and produce 20 percent of our country's electricity. In fact, America's nuclear reactors now produce more electricity than ever before. And the U.S. has one of the world's largest resource bases of uranium.

Despite the size of its nuclear fleet, however, the U.S. produces less than 10 percent of its own uranium and imports more than 90 percent of what we need to operate our reactors. The price for uranium has recently climbed to an historic high, and yet new U.S. production is still lagging, at least in part because of uncertainty over the regulatory environment for new production.

Uranium mining projects require a long lead time, are capital intensive and high risk. Thus, regulatory certainty is critical in obtaining the financing necessary to encourage the private sector to invest in uranium development on federal lands. Investors need to know that a uranium project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations. Due to their time- and capital-intensive nature, uranium projects require years of development before investors realize positive cash flows. Failure to provide certainty in the applicable legal regime will chill the climate for capital investments in uranium mining, to the detriment of this nation. Investments critical for bringing such projects to fruition will migrate toward projects planned in countries that offer predictable regulatory climates that correspond to the long-term nature of such operations. It is noteworthy that many of these foreign countries have regulatory regimes at least as prescriptive and stringent as those within the United States.

If the U.S. cannot offer a stable regulatory climate, we will become even more reliant on imports of foreign uranium to meet our growing domestic energy demands. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, and vulnerability to possible supply disruptions due to political or military instability.

H.R. 3534 fails to protect valid existing rights and constitutes a violation of the takings clause

H.R. 3534 does not contain provisions to protect existing uranium mining claims that were located under the Mining Law. While the bill does require the secretary to issue a lease for uranium claims that can show a valid discovery as of the date of enactment, it extinguishes the claim (and the claimants' rights under the Mining Law) by converting it to a lease. The legislation fails to include some type of valid existing rights (VER) language to protect pre-existing property rights from being impaired by subsequently enacted policy changes. VER clauses are commonplace in federal land-use statutes. Over the past century, Congress and the executive branch have used the same or a substantively similar phrase in more than 100 statutes and proclamations to preserve the *status quo ante* by protecting property interests that otherwise would be adversely affected by subsequently enacted federal laws. By failing to take into consideration property rights relating to properly maintained claims established prior to enactment of the bill, the legislation will likely generate claims for a compensable taking under the Takings Clause of the Constitution.

More than 100 years of legal precedent clearly indicates that a mining claim supported by a discovery is a property interest.² The courts have recognized that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes, which entitle claim holders to extract and sell minerals without paying any royalties to the government. For more than 135 years, this law has not required the owner of a valid unpatented mining claim to pay any royalty to the United States for the right to possess and use the land for mining purposes or to extract and sell minerals therefrom. Thus, extinguishing the mining claims for valid existing uranium claims and subjecting existing claims to a royalty of 6.25 percent on the value of the uranium produced under the lease constitutes a Fifth Amendment taking without payment of just compensation by allocating to the government a cost-free share of production and extinguishing the claimant's unencumbered, exclusive property right to possess and enjoy its mining claims.

²See e.g., Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963) and Union Oil Co. v. Smith, 249 U.S. 337, 348-349 (1919)

Conclusion

At a time when energy costs are rising and all available sources of energy must be utilized to meet increased demand, erecting barriers to the development of resources to provide such energy is simply bad public policy.