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REPORT
110–412

HARDROCK MINING AND RECLAMATION ACT OF 2007

OCTOBER 29, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2262]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2262) to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Hardrock Mining and Reclamation Act of 2007".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS AND REFERENCES.

(a) IN GENERAL.—As used in this Act:

(1) The term "affiliate" means with respect to any person, any of the following:

(A) Any person who controls, is controlled by, or is under common control with such person.

(B) Any partner of such person.

(C) Any person owning at least 10 percent of the voting shares of such person.

(2) The term "applicant" means any person applying for a permit under this Act or a modification to or a renewal of a permit under this Act.

(3) The term "beneficiation" means the crushing and grinding of locatable mineral ore and such processes as are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques.

(4) The term "casual use"—

(A) subject to subparagraphs (B) and (C), means mineral activities that do not ordinarily result in any disturbance of public lands and resources;

(B) includes collection of geochemical, rock, soil, or mineral specimens using handtools, hand panning, or nonmotorized sluicing; and

(C) does not include—

(i) the use of mechanized earth-moving equipment, suction dredging, or explosives;

(ii) the use of motor vehicles in areas closed to off-road vehicles;

(iii) the construction of roads or drill pads; and

(iv) the use of toxic or hazardous materials.

(5) The term "claim holder" means a person holding a mining claim, millsite claim, or tunnel site claim located under the general mining laws and maintained in compliance with such laws and this Act. Such term may include an agent of a claim holder.

(6) The term "control" means having the ability, directly or indirectly, to determine (without regard to whether exercised through one or more corporate

structures) the manner in which an entity conducts mineral activities, through any means, including without limitation, ownership interest, authority to commit the entity's real or financial assets, position as a director, officer, or partner of the entity, or contractual arrangement.

(7) The term "exploration"—

(A) subject to subparagraphs (B) and (C), means creating surface disturbance other than casual use, to evaluate the type, extent, quantity, or quality of minerals present;

(B) includes mineral activities associated with sampling, drilling, and analyzing locatable mineral values; and

(C) does not include extraction of mineral material for commercial use or sale.

(8) The term "Federal land" means any land, and any interest in land, that is owned by the United States and open to location of mining claims under the general mining laws and title II of this Act.

(9) The term "Indian lands" means lands held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(10) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term "locatable mineral"—

(A) subject to subparagraph (B), means any mineral, the legal and beneficial title to which remains in the United States and that is not subject to disposition under any of—

(i) the Mineral Leasing Act (30 U.S.C. 181 and following);

(ii) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 and following);

(iii) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following); or

(iv) the Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 and following); and

(B) does not include any mineral that is subject to a restriction against alienation imposed by the United States and is—

(i) held in trust by the United States for any Indian or Indian tribe, as defined in section 2 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101); or

(ii) owned by any Indian or Indian tribe, as defined in that section.

(12) The term "mineral activities" means any activity on a mining claim, millsite claim, or tunnel site claim for, related to, or incidental to, mineral exploration, mining, beneficiation, processing, or reclamation activities for any locatable mineral.

(13) The term "National Conservation System unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, or National Trails System, or a National Conservation Area, a National Recreation Area, a National Monument, or any unit of the National Wilderness Preservation System.

(14) The term "operator" means any person proposing or authorized by a permit issued under this Act to conduct mineral activities and any agent of such person.

(15) The term "person" means an individual, Indian tribe, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative, or other organization and any instrumentality of State or local government including any publicly owned utility or publicly owned corporation of State or local government.

(16) The term "processing" means processes downstream of beneficiation employed to prepare locatable mineral ore into the final marketable product, including but not limited to smelting and electrolytic refining.

(17) The term "Secretary" means the Secretary of the Interior, unless otherwise specified.

(18) The term "temporary cessation" means a halt in mine-related production activities for a continuous period of no longer than 5 years.

(19) The term "undue degradation" means irreparable harm to significant scientific, cultural, or environmental resources on public lands that cannot be effectively mitigated.

(b) TITLE II.—

(1) VALID EXISTING RIGHTS.—As used in title II, the term "valid existing rights" means a mining claim or millsite claim located on lands described in section 201(b), that—

(A) was properly located and maintained under this Act prior to and on the applicable date; or

(B)(i) was properly located and maintained under the general mining laws prior to the applicable date;

(ii) was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the applicable date, or satisfied the limitations under existing law for millsite claims; and

(iii) continues to be valid under this Act.

(2) APPLICABLE DATE.—As used in paragraph (1), the term "applicable date" means one of the following:

(A) For lands described in paragraph (1) of section 201(b), the date of the recommendation referred to in paragraph (1) of that section if such recommendation is made on or after the date of the enactment of this Act.

(B) For lands described in paragraph (1) of section 201(b), if the recommendation referred to in paragraph (1) of that section is made before the date of the enactment of this Act, the earlier of—

(i) the date of the enactment of this Act; or

(ii) the date of any withdrawal of such lands from mineral activities.

(C) For lands described in paragraph (3)(B) of section 201(b), the date of the enactment of this Act.

(D) For lands described in paragraph (3)(A) or (3)(C) of section 201(b), the date of the enactment of the amendment to the Wild and Scenic Rivers Act (16 U.S.C. 1271 and following) listing the river segment for study.

(E) For lands described in paragraph (3)(B) of section 201(b), the date of the determination of eligibility of such lands for inclusion in the Wild and Scenic River System.

(F) For lands described in paragraph (4) of section 201(b), the date of the withdrawal under other law.

(c) REFERENCES TO OTHER LAWS.—(1) Any reference in this Act to the term general mining laws is a reference to those Acts that generally comprise chapters 2, 12A, and 16, and sections 161 and 162, of title 30, United States Code.

(2) Any reference in this Act to the Act of July 23, 1955, is a reference to the Act entitled "An Act to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes" (30 U.S.C. 601 and following).

SEC. 3. APPLICATION RULES.

(a) IN GENERAL.—This Act applies to any mining claim, millsite claim, or tunnel site claim located under the general mining laws, before, on, or after the date of enactment of this Act, except as provided in subsection (b).

(b) PREEXISTING CLAIMS.—(1) Any unpatented mining claim or millsite claim located under the general mining laws before the date of enactment of this Act for which a plan of operation has not been approved or a notice filed prior to the date of enactment shall, upon the effective date of this Act, be subject to the requirements of this Act, except as provided in paragraphs (2) and (3).

(2)(A) If a plan of operations is approved for mineral activities on any claim or site referred to in paragraph (1) prior to the date of enactment of this Act but such operations have not commenced prior to the date of enactment of this Act—

(i) during the 10-year period beginning on the date of enactment of this Act, mineral activities at such claim or site shall be subject to such plan of operations;

(ii) during such 10-year period, modifications of any such plan may be made in accordance with the provisions of law applicable prior to the enactment of this Act if such modifications are deemed minor by the Secretary concerned; and

(iii) the operator shall bring such mineral activities into compliance with this Act by the end of such 10-year period.

(B) Where an application for modification of a plan of operations referred to in subparagraph (A)(ii) has been timely submitted and an approved plan expires prior to Secretarial action on the application, mineral activities and reclamation may continue in accordance with the terms of the expired plan until the Secretary makes an administrative decision on the application.

(c) FEDERAL LANDS SUBJECT TO EXISTING PERMIT.—(1) Any Federal land shall not be subject to the requirements of section 102 if the land is—

(A) subject to an operations permit; and

(B) producing valuable locatable minerals in commercial quantities prior to the date of enactment of this Act.

(2) Any Federal land added through a plan modification to an operations permit on Federal land that is submitted after the date of enactment of this Act shall be subject to the terms of section 102.

(d) APPLICATION OF ACT TO BENEFICIATION AND PROCESSING OF NON-FEDERAL MINERALS ON FEDERAL LANDS.—The provisions of this Act (including the environmental protection requirements of title III) shall apply in the same manner and to the same extent to mining claims, millsite claims, and tunnel site claims used for beneficiation or processing activities for any mineral without regard to whether or not the legal and beneficial title to the mineral is held by the United States. This subsection applies only to minerals that are locatable minerals or minerals that would be locatable minerals if the legal and beneficial title to such minerals were held by the United States.

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

SEC. 101. LIMITATION ON PATENTS.

(a) MINING CLAIMS.—

(1) DETERMINATIONS REQUIRED.—After the date of enactment of this Act, no patent shall be issued by the United States for any mining claim located under the general mining laws unless the Secretary determines that, for the claim concerned—

(A) a patent application was filed with the Secretary on or before September 30, 1994; and

(B) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims were fully complied with by that date.

(2) RIGHT TO PATENT.—If the Secretary makes the determinations referred to in subparagraphs (A) and (B) of paragraph (1) for any mining claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

(b) MILLSITE CLAIMS.—

(1) DETERMINATIONS REQUIRED.—After the date of enactment of this Act, no patent shall be issued by the United States for any millsite claim located under the general mining laws unless the Secretary determines that for the millsite concerned—

(A) a patent application for such land was filed with the Secretary on or before September 30, 1994; and

(B) all requirements applicable to such patent application were fully complied with by that date.

(2) RIGHT TO PATENT.—If the Secretary makes the determinations referred to in subparagraphs (A) and (B) of paragraph (1) for any millsite claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

SEC. 102. ROYALTY.

(a) RESERVATION OF ROYALTY.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subject to paragraph (3), production of all locatable minerals from any mining claim located under the general mining laws and maintained in compliance with this Act, or mineral concentrates or products derived from locatable minerals from any such mining claim, as the case may be, shall be subject to a royalty of 8 percent of the gross income from mining. The claim holder or any operator to whom the claim holder has assigned the obligation to make royalty payments under the claim and any person who controls such claim holder or operator shall be liable for payment of such royalties.

(2) ROYALTY FOR FEDERAL LANDS SUBJECT TO EXISTING PERMIT.—The royalty under paragraph (1) shall be 4 percent in the case of any Federal land that—

(A) is subject to an operations permit on the date of the enactment of this Act; and

(B) produces valuable locatable minerals in commercial quantities on the date of enactment of this Act.

(3) FEDERAL LAND ADDED TO EXISTING OPERATIONS PERMIT.—Any Federal land added through a plan modification to an operations permit on Federal land that is submitted after the date of enactment of this Act shall be subject to the royalty that applies to other Federal land that is subject to the operations permit before that submission under paragraph (1) or (2), as applicable.

(4) OTHER APPLICATION PROVISION NOT EFFECTIVE.—Section 3(c) of this Act shall have no force or effect.

(5) DEPOSIT.—Amounts received by the United States as royalties under this subsection shall be deposited into the account established under section 401.

(b) DUTIES OF CLAIM HOLDERS, OPERATORS, AND TRANSPORTERS.—(1) A person—

(A) who is required to make any royalty payment under this section shall make such payments to the United States at such times and in such manner as the Secretary may by rule prescribe; and

(B) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment that such person may have made of the obligation to make any royalty or other payment under a mining claim.

(2) Any person paying royalties under this section shall file a written instrument, together with the first royalty payment, affirming that such person is responsible for making proper payments for all amounts due for all time periods for which such person has a payment responsibility. Such responsibility for the periods referred to in the preceding sentence shall include any and all additional amounts billed by the Secretary and determined to be due by final agency or judicial action. Any person liable for royalty payments under this section who assigns any payment obligation shall remain jointly and severally liable for all royalty payments due for the claim for the period.

(3) A person conducting mineral activities shall—

(A) develop and comply with the site security provisions in the operations permit designed to protect from theft the locatable minerals, concentrates or products derived therefrom which are produced or stored on a mining claim, and such provisions shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances on mining claims; and

(B) not later than the 5th business day after production begins anywhere on a mining claim, or production resumes after more than 90 days after production was suspended, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(4) The Secretary may by rule require any person engaged in transporting a locatable mineral, concentrate, or product derived therefrom to carry on his or her person, in his or her vehicle, or in his or her immediate control, documentation showing, at a minimum, the amount, origin, and intended destination of the locatable mineral, concentrate, or product derived therefrom in such circumstances as the Secretary determines is appropriate.

(c) RECORDKEEPING AND REPORTING REQUIREMENTS.—(1) A claim holder, operator, or other person directly involved in developing, producing, processing, transporting, purchasing, or selling locatable minerals, concentrates, or products derived therefrom, subject to this Act, through the point of royalty computation shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with rules or orders under this section. Such records shall include, but not be limited to, periodic reports, records, documents, and other data. Such reports may also include, but not be limited to, pertinent technical and financial data relating to the quantity, quality, composition volume, weight, and assay of all minerals extracted from the mining claim. Upon the request of any officer or employee duly designated by the Secretary conducting an audit or investigation pursuant to this section, the appropriate records, reports, or information that may be required by this section shall be made available for inspection and duplication by such officer or employee. Failure by a claim holder, operator, or other person referred to in the first sentence to cooperate with such an audit, provide data required by the Secretary, or grant access to information may, at the discretion of the Secretary, result in involuntary forfeiture of the claim.

(2) Records required by the Secretary under this section shall be maintained for 7 years after release of financial assurance under section 306 unless the Secretary notifies the operator that the Secretary has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the operator of the obligation to maintain such records.

(d) AUDITS.—The Secretary is authorized to conduct such audits of all claim holders, operators, transporters, purchasers, processors, or other persons directly or indirectly involved in the production or sales of minerals covered by this Act, as the Sec-

retary deems necessary for the purposes of ensuring compliance with the requirements of this section. For purposes of performing such audits, the Secretary shall, at reasonable times and upon request, have access to, and may copy, all books, papers and other documents that relate to compliance with any provision of this section by any person.

(e) COOPERATIVE AGREEMENTS.—(1) The Secretary is authorized to enter into cooperative agreements with the Secretary of Agriculture to share information concerning the royalty management of locatable minerals, concentrates, or products derived therefrom, to carry out inspection, auditing, investigation, or enforcement (not including the collection of royalties, civil or criminal penalties, or other payments) activities under this section in cooperation with the Secretary, and to carry out any other activity described in this section.

(2) Except as provided in paragraph (3)(A) of this subsection (relating to trade secrets), and pursuant to a cooperative agreement, the Secretary of Agriculture shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of locatable minerals, concentrates, or products derived therefrom from claims on lands open to location under this Act.

(3) Trade secrets, proprietary, and other confidential information protected from disclosure under section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, shall be made available by the Secretary to other Federal agencies as necessary to assure compliance with this Act and other Federal laws. The Secretary, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and other Federal officials shall ensure that such information is provided protection in accordance with the requirements of that section.

(f) INTEREST AND SUBSTANTIAL UNDERREPORTING ASSESSMENTS.—(1) In the case of mining claims where royalty payments are not received by the Secretary on the date that such payments are due, the Secretary shall charge interest on such underpayments at the same interest rate as the rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1986. In the case of an underpayment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount.

(2) If there is any underreporting of royalty owed on production from a claim for any production month by any person liable for royalty payments under this section, the Secretary shall assess a penalty of not greater than 25 percent of the amount of that underreporting.

(3) For the purposes of this subsection, the term "underreporting" means the difference between the royalty on the value of the production that should have been reported and the royalty on the value of the production which was reported, if the value that should have been reported is greater than the value that was reported.

(4) The Secretary may waive or reduce the assessment provided in paragraph (2) of this subsection if the person liable for royalty payments under this section corrects the underreporting before the date such person receives notice from the Secretary that an underreporting may have occurred, or before 90 days after the date of the enactment of this section, whichever is later.

(5) The Secretary shall waive any portion of an assessment under paragraph (2) of this subsection attributable to that portion of the underreporting for which the person responsible for paying the royalty demonstrates that—

(A) such person had written authorization from the Secretary to report royalty on the value of the production on basis on which it was reported,

(B) such person had substantial authority for reporting royalty on the value of the production on the basis on which it was reported,

(C) such person previously had notified the Secretary, in such manner as the Secretary may by rule prescribe, of relevant reasons or facts affecting the royalty treatment of specific production which led to the underreporting, or

(D) such person meets any other exception which the Secretary may, by rule, establish.

(6) All penalties collected under this subsection shall be deposited in the Locatable Minerals Fund established under title IV.

(g) DELEGATION.—For the purposes of this section, the term "Secretary" means the Secretary of the Interior acting through the Director of the Minerals Management Service.

(h) EXPANDED ROYALTY OBLIGATIONS.—Each person liable for royalty payments under this section shall be jointly and severally liable for royalty on all locatable minerals, concentrates, or products derived therefrom lost or wasted from a mining claim located under the general mining laws and maintained in compliance with this Act when such loss or waste is due to negligence on the part of any person or due to the failure to comply with any rule, regulation, or order issued under this section.

(i) GROSS INCOME FROM MINING DEFINED.—For the purposes of this section, for any locatable mineral, the term "gross income from mining" has the same meaning as the term "gross income" in section 613(c) of the Internal Revenue Code of 1986.

(j) EFFECTIVE DATE.—The royalty under this section shall take effect with respect to the production of locatable minerals after the enactment of this Act, but any royalty payments attributable to production during the first 12 calendar months after the enactment of this Act shall be payable at the expiration of such 12-month period.

(k) FAILURE TO COMPLY WITH ROYALTY REQUIREMENTS.—Any person who fails to comply with the requirements of this section or any regulation or order issued to implement this section shall be liable for a civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1719) to the same extent as if the claim located under the general mining laws and maintained in compliance with this Act were a lease under that Act.

SEC. 103. HARDROCK MINING CLAIM MAINTENANCE FEE.

(a) FEE.—

(1) Except as provided in section 2511(e)(2) of the Energy Policy Act of 1992 (relating to oil shale claims), for each unpatented mining claim, mill or tunnel site on federally owned lands, whether located before, on, or after enactment of this Act, each claimant shall pay to the Secretary, on or before August 31 of each year, a claim maintenance fee of $150 per claim to hold such unpatented mining claim, mill or tunnel site for the assessment year beginning at noon on the next day, September 1. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28 et seq.) and the related filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a) and (c)).

(2)(A) The claim maintenance fee required under this subsection shall be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties—

(i) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(ii) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28 et seq.) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

(B) For purposes of subparagraph (A), with respect to any claimant, the term "all related parties" means—

(i) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the claimant; or

(ii) a person affiliated with the claimant, including—

(I) a person controlled by, controlling, or under common control with the claimant; or

(II) a subsidiary or parent company or corporation of the claimant.

(3)(A) The Secretary shall adjust the fees required by this subsection to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after the date of enactment of this Act, or more frequently if the Secretary determines an adjustment to be reasonable.

(B) The Secretary shall provide claimants notice of any adjustment made under this paragraph not later than July 1 of any year in which the adjustment is made.

(C) A fee adjustment under this paragraph shall begin to apply the calendar year following the calendar year in which it is made.

(4) Monies received under this subsection shall be deposited in the Locatable Minerals Fund established by this Act.

(b) LOCATION.—

(1) Notwithstanding any provision of law, for every unpatented mining claim, mill or tunnel site located after the date of enactment of this Act and before September 30, 1998, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay to the Secretary a location fee, in addition to the fee required by subsection (a) of $50 per claim.

(2) Moneys received under this subsection that are not otherwise allocated for the administration of the mining laws by the Department of the Interior shall be deposited in the Locatable Minerals Fund established by this Act.

(c) CO-OWNERSHIP.—The co-ownership provisions of the Mining Law of 1872 (30 U.S.C. 28 et seq.) will remain in effect except that the annual claim maintenance fee, where applicable, shall replace applicable assessment requirements and expenditures.

(d) FAILURE TO PAY.—Failure to pay the claim maintenance fee as required by subsection (a) shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.

(e) OTHER REQUIREMENTS.—

(1) Nothing in this section shall change or modify the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), or the requirements of section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) related to filings required by section 314(b), which remain in effect.

(2) Section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) is amended by inserting "or section 103(a) of the Hardrock Mining and Reclamation Act of 2007" after "Act of 1993,".

SEC. 104. EFFECT OF PAYMENTS FOR USE AND OCCUPANCY OF CLAIMS.

Timely payment of the claim maintenance fee required by section 103 of this Act or any related law relating to the use of Federal land, asserts the claimant's authority to use and occupy the Federal land concerned for prospecting and exploration, consistent with the requirements of this Act and other applicable law.

TITLE II—PROTECTION OF SPECIAL PLACES

SEC. 201. LANDS OPEN TO LOCATION.

(a) LANDS OPEN TO LOCATION.—Except as provided in subsection (b), mining claims may be located under the general mining laws only on such lands and interests as were open to the location of mining claims under the general mining laws immediately before the enactment of this Act.

(b) LANDS NOT OPEN TO LOCATION.—Notwithstanding any other provision of law and subject to valid existing rights, each of the following shall not be open to the location of mining claims under the general mining laws on or after the date of enactment of this Act:

(1) Wilderness study areas.

(2) Areas of critical environmental concern.

(3) Areas designated for inclusion in the National Wild and Scenic Rivers System pursuant to the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.), areas designated for potential addition to such system pursuant to section 5(a) of that Act (16 U.S.C. 1276(a)), and areas determined to be eligible for inclusion in such system pursuant to section 5(d) of such Act (16 U.S.C. 1276(d)).

(4) Any area identified in the set of inventoried roadless areas maps contained in the Forest Service Roadless Area Conservation Final Environmental Impact Statement, Volume 2, dated November 2000.

(c) EXISTING AUTHORITY NOT AFFECTED.—Nothing in this Act limits the authority granted the Secretary in section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) to withdraw public lands.

SEC. 202. WITHDRAWAL PETITIONS BY STATES, POLITICAL SUBDIVISIONS, AND INDIAN TRIBES.

(a) IN GENERAL.—Any State or political subdivision of a State or an Indian tribe may submit a petition to the Secretary for the withdrawal of a specific tract of Federal land from the operation of the general mining laws, in order to protect specific values identified in the petition that are important to the State or political subdivision or Indian tribe. Such values may include the value of a watershed to supply drinking water, wildlife habitat value, cultural or historic resources, or value for scenic vistas important to the local economy, and other similar values. In the case of an Indian tribe, the petition may also identify religious or cultural values that are important to the Indian tribe. The petition shall contain the information required by section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(b) CONSIDERATION OF PETITION.—The Secretary—

(1) shall solicit public comment on the petition;

(2) shall make a final decision on the petition within 180 days after receiving it; and

(3) shall grant the petition unless the Secretary makes and publishes in the Federal Register specific findings why a decision to grant the petition would be against the national interest.

TITLE III—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

SEC. 301. GENERAL STANDARD FOR HARDROCK MINING ON FEDERAL LAND.

Notwithstanding section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)), the first section of the Act of June 4, 1897 (chapter 2; 30 Stat. 36 16 U.S.C. 478), and the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.), and in accordance with this title and applicable law, unless expressly stated otherwise in this Act, the Secretary—

(1) shall ensure that mineral activities on any Federal land that is subject to a mining claim, millsite claim, or tunnel site claim is carefully controlled to prevent undue degradation of public lands and resources; and

(2) shall not grant permission to engage in mineral activities if the Secretary, after considering the evidence, makes and publishes in the Federal Register a determination that undue degradation would result from such activities.

SEC. 302. PERMITS.

(a) PERMITS REQUIRED.—No person may engage in mineral activities on Federal land that may cause a disturbance of surface resources, including but not limited to land, air, ground water and surface water, and fish and wildlife, unless—

(1) the claim was properly located under the general mining laws and maintained in compliance with such laws and this Act; and

(2) a permit was issued to such person under this title authorizing such activities.

(b) NEGLIGIBLE DISTURBANCE.—Notwithstanding subsection (a)(2), a permit under this title shall not be required for mineral activities that are a casual use of the Federal land.

(c) COORDINATION WITH NEPA PROCESS.—To the extent practicable, the Secretary and the Secretary of Agriculture shall conduct the permit processes under this Act in coordination with the timing and other requirements under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

SEC. 303. EXPLORATION PERMIT.

(a) AUTHORIZED EXPLORATION ACTIVITY.—Any claim holder may apply for an exploration permit for any mining claim authorizing the claim holder to remove a reasonable amount of the locatable minerals from the claim for analysis, study and testing. Such permit shall not authorize the claim holder to remove any mineral for sale nor to conduct any activities other than those required for exploration for locatable minerals and reclamation.

(b) PERMIT APPLICATION REQUIREMENTS.—An application for an exploration permit under this section shall be submitted in a manner satisfactory to the Secretary or, for National Forest System lands, the Secretary of Agriculture, and shall contain an exploration plan, a reclamation plan for the proposed exploration, and such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations.

(c) RECLAMATION PLAN REQUIREMENTS.—The reclamation plan required to be included in a permit application under subsection (b) shall include such provisions as may be jointly prescribed by the Secretary and the Secretary of Agriculture.

(d) PERMIT ISSUANCE OR DENIAL.—The Secretary, or for National Forest System lands, the Secretary of Agriculture, shall issue an exploration permit pursuant to an application under this section unless such Secretary makes any of the following determinations:

(1) The permit application, the exploration plan and reclamation plan are not complete and accurate.

(2) The applicant has not demonstrated that proposed reclamation can be accomplished.

(3) The proposed exploration activities and condition of the land after the completion of exploration activities and final reclamation would not conform with the land use plan applicable to the area subject to mineral activities.

(4) The area subject to the proposed permit is included within an area not open to location under section 201.

(5) The applicant has not demonstrated that the exploration plan and reclamation plan will be in compliance with the requirements of this Act and all other applicable Federal requirements, and any State requirements agreed to by the Secretary of the Interior (or Secretary of Agriculture, as appropriate).

(6) The applicant has not demonstrated that the requirements of section 306 (relating to financial assurance) will be met.

(7) The applicant is eligible to receive a permit under section 305.

(e) TERM OF PERMIT.—An exploration permit shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed exploration, and in no case for more than 10 years.

(f) PERMIT MODIFICATION.—During the term of an exploration permit the permit holder may submit an application to modify the permit. To approve a proposed modification to the permit, the Secretary concerned shall make the same determinations as are required in the case of an original permit, except that the Secretary and the Secretary of Agriculture may specify by joint rule the extent to which requirements for initial exploration permits under this section shall apply to applications to modify an exploration permit based on whether such modifications are deemed significant or minor.

(g) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS.—(1) No transfer, assignment, or sale of rights granted by a permit issued under this section shall be made without the prior written approval of the Secretary or for National Forest System lands, the Secretary of Agriculture.

(2) Such Secretary shall allow a person holding a permit to transfer, assign, or sell rights under the permit to a successor, if the Secretary finds, in writing, that the successor—

(A) is eligible to receive a permit in accordance with section 304(d);

(B) has submitted evidence of financial assurance satisfactory under section 306; and

(C) meets any other requirements specified by the Secretary.

(3) The successor in interest shall assume the liability and reclamation responsibilities established by the existing permit and shall conduct the mineral activities in full compliance with this Act, and the terms and conditions of the permit as in effect at the time of transfer, assignment, or sale.

(4) Each application for approval of a permit transfer, assignment, or sale pursuant to this subsection shall be accompanied by a fee payable to the Secretary of the Interior in such amount as may be established by such Secretary. Such amount shall be equal to the actual or anticipated cost to the Secretary or the Secretary of Agriculture, as appropriate, of reviewing and approving or disapproving such transfer, assignment, or sale, as determined by the Secretary of the Interior. All moneys received under this subsection shall be deposited in the Locatable Minerals Fund established under title IV of this Act.

SEC. 304. OPERATIONS PERMIT.

(a) OPERATIONS PERMIT.—(1) Any claim holder that is in compliance with the general mining laws and section 103 of this Act may apply to the Secretary, or for National Forest System lands, the Secretary of Agriculture, for an operations permit authorizing the claim holder to carry out mineral activities, other than casual use, on—

(A) any valid mining claim, valid millsite claim, or valid tunnel site claim; and

(B) such additional Federal land as the Secretary may determine is necessary to conduct the proposed mineral activities, if the operator obtains a right-of-way permit for use of such additional lands under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) and agrees to pay all fees required under that title for the permit under that title.

(2) If the Secretary decides to issue such permit, the permit shall include such terms and conditions as prescribed by such Secretary to carry out this title.

(b) PERMIT APPLICATION REQUIREMENTS.—An application for an operations permit under this section shall be submitted in a manner satisfactory to the Secretary concerned and shall contain site characterization data, an operations plan, a reclamation plan, monitoring plans, long-term maintenance plans, to the extent necessary, and such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations. If the proposed mineral activities will be carried out in conjunction with mineral activities on adjacent non-Federal lands, information on the location and nature of such operations may be required by the Secretary.

(c) PERMIT ISSUANCE OR DENIAL.—(1) After providing for public participation pursuant to subsection (i), the Secretary, or for National Forest System lands the Secretary of Agriculture, shall issue an operations permit if such Secretary makes each

of the following determinations in writing, and shall deny a permit if such Secretary finds that the application and applicant do not fully meet the following requirements:

(A) The permit application, including the site characterization data, operations plan, and reclamation plan, are complete and accurate and sufficient for developing a good understanding of the anticipated impacts of the mineral activities and the effectiveness of proposed mitigation and control.

(B) The applicant has demonstrated that the proposed reclamation in the operation and reclamation plan can be and is likely to be accomplished by the applicant and will not cause undue degradation.

(C) The condition of the land, including the fish and wildlife resources and habitat contained thereon, after the completion of mineral activities and final reclamation, will conform to the land use plan applicable to the area subject to mineral activities and are returned to a productive use.

(D) The area subject to the proposed plan is open to location for the types of mineral activities proposed.

(E) The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(F) The applicant will fully comply with the requirements of section 306 (relating to financial assurance) prior to the initiation of operations.

(G) Neither the applicant nor operator, nor any subsidiary, affiliate, or person controlled by or under common control with the applicant or operator, is ineligible to receive a permit under section 305.

(H) The reclamation plan demonstrates that 10 years following mine closure, no treatment of surface or ground water for carcinogens or toxins will be required to meet water quality standards at the point of discharge.

(2) With respect to any activities specified in the reclamation plan referred to in subsection (b) that constitutes a removal or remedial action under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following), the Secretary shall consult with the Administrator of the Environmental Protection Agency prior to the issuance of an operations permit. The Administrator shall ensure that the reclamation plan does not require activities that would increase the costs or likelihood of removal or remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following) or corrective actions under the Solid Waste Disposal Act (42 U.S.C. 6901 and following).

(d) TERM OF PERMIT; RENEWAL.—

(1) An operations permit—

(A) shall be for a term that is no longer than the shorter of—

(i) the period necessary to accomplish the proposed mineral activities subject to the permit; and

(ii) 20 years; and

(B) shall be renewed for an additional 20-year period if the operation is in compliance with the requirements of this Act and other applicable law.

(2) Failure by the operator to commence mineral activities within 2 years of the date scheduled in an operations permit shall require a modification of the permit if the Secretary concerned determines that modifications are necessary to comply with section 201.

(e) PERMIT MODIFICATION.—

(1) During the term of an operations permit the operator may submit an application to modify the permit (including the operations plan or reclamation plan, or both).

(2) The Secretary, or for National Forest System lands the Secretary of Agriculture, may, at any time, require reasonable modification to any operations plan or reclamation plan upon a determination that the requirements of this Act cannot be met if the plan is followed as approved. Such determination shall be based on a written finding and subject to public notice and hearing requirements established by the Secretary concerned.

(3) A permit modification is required before changes are made to the approved plan of operations, or if unanticipated events or conditions exist on the mine site, including in the case of—

(A) development of acid or toxic drainage;

(B) loss of springs or water supplies;

(C) water quantity, water quality, or other resulting water impacts that are significantly different than those predicted in the application;

(D) the need for long-term water treatment;

(E) significant reclamation difficulties or reclamation failure;

(F) the discovery of significant scientific, cultural, or biological resources that were not addressed in the original plan; or

(G) the discovery of hazards to public safety.

(f) TEMPORARY CESSATION OF OPERATIONS.—(1) An operator conducting mineral activities under an operations permit in effect under this title may not temporarily cease mineral activities for a period greater than 180 days unless the Secretary concerned has approved such temporary cessation or unless the temporary cessation is permitted under the original permit. Any operator temporarily ceasing mineral activities for a period greater than 90 days under an operations permit issued before the date of the enactment of this Act shall submit, before the expiration of such 90-day period, a complete application for temporary cessation of operations to the Secretary concerned for approval unless the temporary cessation is permitted under the original permit.

(2) An application for approval of temporary cessation of operations shall include such information required under subsection (b) and any other provisions prescribed by the Secretary concerned to minimize impacts on the environment. After receipt of a complete application for temporary cessation of operations such Secretary shall conduct an inspection of the area for which temporary cessation of operations has been requested.

(3) To approve an application for temporary cessation of operations, the Secretary concerned shall make each of the following determinations:

(A) A determination that the methods for securing surface facilities and restricting access to the permit area, or relevant portions thereof, will effectively ensure against hazards to the health and safety of the public and fish and wildlife.

(B) A determination that reclamation is in compliance with the approved reclamation plan, except in those areas specifically designated in the application for temporary cessation of operations for which a delay in meeting such standards is necessary to facilitate the resumption of operations.

(C) A determination that the amount of financial assurance filed with the permit application is sufficient to assure completion of the reclamation activities identified in the approved reclamation plan in the event of forfeiture.

(D) A determination that any outstanding notices of violation and cessation orders incurred in connection with the plan for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the Secretary concerned.

(g) PERMIT REVIEWS.—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall review each permit issued under this section every 10 years during the term of such permit, shall provide public notice of the permit review, and, based upon a written finding, such Secretary shall require the operator to take such actions as the Secretary deems necessary to assure that mineral activities conform to the permit, including adjustment of financial assurance requirements.

(h) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS.—(1) No transfer, assignment, or sale of rights granted by a permit under this section shall be made without the prior written approval of the Secretary, or for National Forest System lands the Secretary of Agriculture.

(2) The Secretary, or for National Forest System lands, the Secretary of Agriculture, may allow a person holding a permit to transfer, assign, or sell rights under the permit to a successor, if such Secretary finds, in writing, that the successor—

(A) has submitted information required and is eligible to receive a permit in accordance with section 305;

(B) has submitted evidence of financial assurance satisfactory under section 306; and

(C) meets any other requirements specified by such Secretary.

(3) The successor in interest shall assume the liability and reclamation responsibilities established by the existing permit and shall conduct the mineral activities in full compliance with this Act, and the terms and conditions of the permit as in effect at the time of transfer, assignment, or sale.

(4) Each application for approval of a permit transfer, assignment, or sale pursuant to this subsection shall be accompanied by a fee payable to the Secretary of the Interior, or for National Forest System lands, the Secretary of Agriculture, in such amount as may be established by such Secretary, or for National Forest System lands, by the Secretary of Agriculture. Such amount shall be equal to the actual or anticipated cost to the Secretary or, for National Forest System lands, to the Secretary of Agriculture, of reviewing and approving or disapproving such transfer, assignment, or sale, as determined by such Secretary. All moneys received under this subsection shall be deposited in the Locatable Minerals Fund established under title IV.

(i) PUBLIC PARTICIPATION.—The Secretary of the Interior and the Secretary of Agriculture shall jointly promulgate regulations to ensure transparency and public participation in permit decisions required under this Act, consistent with any requirements that apply to such decisions under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

SEC. 305. PERSONS INELIGIBLE FOR PERMITS.

(a) CURRENT VIOLATIONS.—Unless corrective action has been taken in accordance with subsection (c), no permit under this title shall be issued or transferred to an applicant if the applicant or any agent of the applicant, the operator (if different than the applicant) of the claim concerned, any claim holder (if different than the applicant) of the claim concerned, or any affiliate or officer or director of the applicant is currently in violation of any of the following:

(1) A provision of this Act or any regulation under this Act.

(2) An applicable State or Federal toxic substance, solid waste, air, water quality, or fish and wildlife conservation law or regulation at any site where mining, beneficiation, or processing activities are occurring or have occurred.

(3) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 and following) or any regulation implementing that Act at any site where surface coal mining operations have occurred or are occurring.

(b) SUSPENSION.—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall suspend an operations permit, in whole or in part, if such Secretary determines that any of the entities described in subsection (a) were in violation of any requirement listed in subsection (a) at the time the permit was issued.

(c) CORRECTION.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, may issue or reinstate a permit under this title if the applicant submits proof that the violation referred to in subsection (a) or (b) has been corrected or is in the process of being corrected to the satisfaction of such Secretary and the regulatory authority involved or if the applicant submits proof that the violator has filed and is presently pursuing, a direct administrative or judicial appeal to contest the existence of the violation. For purposes of this section, an appeal of any applicant's relationship to an affiliate shall not constitute a direct administrative or judicial appeal to contest the existence of the violation.

(2) Any permit which is issued or reinstated based upon proof submitted under this subsection shall be conditionally approved or conditionally reinstated, as the case may be. If the violation is not successfully abated or the violation is upheld on appeal, the permit shall be suspended or revoked.

(d) PATTERN OF WILLFUL VIOLATIONS.—No permit under this Act may be issued to any applicant if there is a demonstrated pattern of willful violations of the environmental protection requirements of this Act by the applicant, any affiliate of the applicant, or the operator or claim holder if different than the applicant.

SEC. 306. FINANCIAL ASSURANCE.

(a) FINANCIAL ASSURANCE REQUIRED.—(1) After a permit is issued under this title and before any exploration or operations begin under the permit, the operator shall file with the Secretary, or for National Forest System lands the Secretary of Agriculture, evidence of financial assurance payable to the United States. The financial assurance shall be provided in the form of a surety bond, a trust fund, letters of credits, government securities, certificates of deposit, cash, or an equivalent form approved by such Secretary.

(2) The financial assurance shall cover all lands within the initial permit area and all affected waters that may require restoration, treatment, or other management as a result of mineral activities, and shall be extended to cover all lands and waters added pursuant to any permit modification made under section 303(f) (relating to exploration permits) or section 304(e) (relating to operations permits), or affected by mineral activities.

(b) AMOUNT.—The amount of the financial assurance required under this section shall be sufficient to assure the completion of reclamation and restoration satisfying the requirements of this Act if the work were to be performed by the Secretary concerned in the event of forfeiture, including the construction and maintenance costs for any treatment facilities necessary to meet Federal and State environmental requirements. The calculation of such amount shall take into account the maximum level of financial exposure which shall arise during the mineral activity and administrative costs associated with a government agency reclaiming the site.

(c) DURATION.—The financial assurance required under this section shall be held for the duration of the mineral activities and for an additional period to cover the operator's responsibility for reclamation, restoration, and long-term maintenance, and effluent treatment as specified in subsection (g).

(d) ADJUSTMENTS.—The amount of the financial assurance and the terms of the acceptance of the assurance may be adjusted by the Secretary concerned from time to time as the area requiring coverage is increased or decreased, or where the costs of reclamation or treatment change, or pursuant to section 304(f) (relating to temporary cessation of operations), but the financial assurance shall otherwise be in compliance with this section. The Secretary concerned shall review the financial guarantee every 3 years and as part of the permit application review under section 304(c).

(e) RELEASE.—Upon request, and after notice and opportunity for public comment, and after inspection by the Secretary, or for National Forest System lands, the Secretary of Agriculture, such Secretary may, after consultation with the Administrator of the Environmental Protection Agency, release in whole or in part the financial assurance required under this section if the Secretary makes both of the following determinations:

(1) A determination that reclamation or restoration covered by the financial assurance has been accomplished as required by this Act.

(2) A determination that the terms and conditions of any other applicable Federal requirements, and State requirements applicable pursuant to cooperative agreements under section 308, have been fulfilled.

(f) RELEASE SCHEDULE.—The release referred to in subsection (e) shall be according to the following schedule:

(1) After the operator has completed any required backfilling, regrading, and drainage control of an area subject to mineral activities and covered by the financial assurance, and has commenced revegetation on the regraded areas subject to mineral activities in accordance with the approved plan, that portion of the total financial assurance secured for the area subject to mineral activities attributable to the completed activities may be released except that sufficient assurance must be retained to address other required reclamation and restoration needs and to assure the long-term success of the revegetation.

(2) After the operator has completed successfully all remaining mineral activities and reclamation activities and all requirements of the operations plan and the reclamation plan, and all other requirements of this Act have been fully met, the remaining portion of the financial assurance may be released.

During the period following release of the financial assurance as specified in paragraph (1), until the remaining portion of the financial assurance is released as provided in paragraph (2), the operator shall be required to comply with the permit issued under this title.

(g) EFFLUENT.—Notwithstanding section 307(b)(4), where any discharge or other water-related condition resulting from the mineral activities requires treatment in order to meet the applicable effluent limitations and water quality standards, the financial assurance shall include the estimated cost of maintaining such treatment for the projected period that will be needed after the cessation of mineral activities. The portion of the financial assurance attributable to such estimated cost of treatment shall not be released until the discharge has ceased for a period of 5 years, as determined by ongoing monitoring and testing, or, if the discharge continues, until the operator has met all applicable effluent limitations and water quality standards for 5 full years without treatment.

(h) ENVIRONMENTAL HAZARDS.—If the Secretary, or for National Forest System lands, the Secretary of Agriculture, determines, after final release of financial assurance, that an environmental hazard resulting from the mineral activities exists, or the terms and conditions of the explorations or operations permit of this Act were not fulfilled in fact at the time of release, such Secretary shall issue an order under section 506 requiring the claim holder or operator (or any person who controls the claim holder or operator) to correct the condition such that applicable laws and regulations and any conditions from the plan of operations are met.

SEC. 307. OPERATION AND RECLAMATION.

(a) GENERAL RULE.—(1) The operator shall restore lands subject to mineral activities carried out under a permit issued under this title to a condition capable of supporting—

(A) the uses which such lands were capable of supporting prior to surface disturbance by the operator, or

(B) other beneficial uses which conform to applicable land use plans as determined by the Secretary, or for National Forest System lands, the Secretary of Agriculture.

(2) Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities. In the case of a cessation of mineral activities beyond that provided for as a temporary cessation under this Act, reclamation activities shall begin immediately.

(b) OPERATION AND RECLAMATION STANDARDS.—The Secretary of the Interior and the Secretary of Agriculture shall jointly promulgate regulations that establish operation and reclamation standards for mineral activities permitted under this Act. The Secretaries may determine whether outcome-based performance standards or technology-based design standards are most appropriate. The regulations shall address the following:

(1) Segregation, protection, and replacement of topsoil or other suitable growth medium, and the prevention, where possible, of soil contamination.

(2) Maintenance of the stability of all surface areas.

(3) Control of sediments to prevent erosion and manage drainage.

(4) Minimization of the formation and migration of acidic, alkaline, metal-bearing, or other deleterious leachate.

(5) Reduction of the visual impact of mineral activities to the surrounding topography, including as necessary pit backfill.

(6) Establishment of a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area affected by mineral activities, and equal in extent of cover to the natural vegetation of the area.

(7) Design and maintenance of leach operations, impoundments, and excess waste according to standard engineering standards to achieve and maintain stability and reclamation of the site.

(8) Removal of structures and roads and sealing of drill holes.

(9) Restoration of, or mitigation for, fish and wildlife habitat disturbed by mineral activities.

(10) Preservation of cultural, paleontological, and cave resources.

(11) Prevention and suppression of fire in the area of mineral activities.

(c) SURFACE OR GROUNDWATER WITHDRAWALS.—The Secretary shall work with State and local governments with authority over the allocation and use of surface and groundwater in the area around the mine site as necessary to ensure that any surface or groundwater withdrawals made as a result of mining activities approved under this section do not cause undue degradation.

(d) SPECIAL RULE.—Reclamation activities for a mining claim that has been forfeited, relinquished, or lapsed, or a plan that has expired or been revoked or suspended, shall continue subject to review and approval by the Secretary, or for National Forest System lands the Secretary of Agriculture.

SEC. 308. STATE LAW AND REGULATION.

(a) STATE LAW.—(1) Any reclamation, land use, environmental, or public health protection standard or requirement in State law or regulation that meets or exceeds the requirements of this Act shall not be construed to be inconsistent with any such standard.

(2) Any bonding standard or requirement in State law or regulation that meets or exceeds the requirements of this Act shall not be construed to be inconsistent with such requirements.

(3) Any inspection standard or requirement in State law or regulation that meets or exceeds the requirements of this Act shall not be construed to be inconsistent with such requirements.

(b) APPLICABILITY OF OTHER STATE REQUIREMENTS.—(1) Nothing in this Act shall be construed as affecting any toxic substance, solid waste, or air or water quality, standard or requirement of any State, county, local, or tribal law or regulation, which may be applicable to mineral activities on lands subject to this Act.

(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, such person's interest in water resources affected by mineral activities on lands subject to this Act.

(c) COOPERATIVE AGREEMENTS.—(1) Any State may enter into a cooperative agreement with the Secretary, or for National Forest System lands the Secretary of Agriculture, for the purposes of such Secretary applying such standards and requirements referred to in subsection (a) and subsection (b) to mineral activities or reclamation on lands subject to this Act.

(2) In such instances where the proposed mineral activities would affect lands not subject to this Act in addition to lands subject to this Act, in order to approve a plan of operations the Secretary concerned shall enter into a cooperative agreement with the State that sets forth a common regulatory framework consistent with the requirements of this Act for the purposes of such plan of operations. Any such common regulatory framework shall not negate the authority of the Federal Government to independently inspect mines and operations and bring enforcement actions for violations.

(3) The Secretary concerned shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment and hearing.

(d) PRIOR AGREEMENTS.—Any cooperative agreement or such other understanding between the Secretary concerned and any State, or political subdivision thereof, relating to the management of mineral activities on lands subject to this Act that was in existence on the date of enactment of this Act may only continue in force until 1 year after the date of enactment of this Act. During such 1-year period, the State and the Secretary shall review the terms of the agreement and make changes that are necessary to be consistent with this Act.

SEC. 309. LIMITATION ON THE ISSUANCE OF PERMITS.

No permit shall be issued under this title that authorizes mineral activities that would impair the land or resources of the National Park System or a National Monument. For purposes of this section, the term "impair" shall include any diminution of the affected land including its scenic assets, its water resources, its air quality, and its acoustic qualities, or other changes that would impair a citizen's experience at the National Park or National Monument.

TITLE IV—MINING MITIGATION

Subtitle A—Locatable Minerals Fund

SEC. 401. ESTABLISHMENT OF FUND.

(a) ESTABLISHMENT.—There is established on the books of the Treasury of the United States a separate account to be known as the Locatable Minerals Fund (hereinafter in this subtitle referred to as the "Fund").

(b) INVESTMENT.—The Secretary shall notify the Secretary of the Treasury as to what portion of the Fund is not, in the Secretary's judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the Fund in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities.

SEC. 402. CONTENTS OF FUND.

The following amounts shall be credited to the Fund:

(1) All moneys collected pursuant to section 506 (relating to enforcement) and section 504 (relating to citizens suits).

(2) All permit fees and transfer fees received under section 304.

(3) All donations by persons, corporations, associations, and foundations for the purposes of this subtitle.

(4) All amounts deposited in the Fund under section 102 (relating to royalties and penalties for underreporting).

(5) All amounts received by the United States pursuant to section 101 from issuance of patents.

(6) All amounts received by the United States pursuant to section 103 as claim maintenance and location fees.

(7) All income on investments under section 401(b).

SEC. 403. SUBACCOUNTS.

There shall be in the Fund 2 subaccounts, as follows:

(1) The Hardrock Reclamation Account, which shall consist of ⅔ of the amounts credited to the Fund under section 402 and which shall be administered by the Secretary acting through the Director of the Office of Surface Mining and Enforcement.

(2) The Hardrock Community Impact Assistance Account, which shall consist of ⅓ of the amounts credited to the Fund under section 402 and which shall be administered by the Secretary acting through the Director of the Bureau of Land Management.

Subtitle B—Use of Hardrock Reclamation Account

SEC. 411. USE AND OBJECTIVES OF THE ACCOUNT.

(a) IN GENERAL.—The Secretary is authorized, subject to appropriations, to use moneys in the Hardrock Reclamation Account for the reclamation and restoration of land and water resources adversely affected by past mineral activities on lands the legal and beneficial title to which resides in the United States, land within the

exterior boundary of any national forest system unit, or other lands described in subsection (d) or section 412, including any of the following:

(1) Protecting public health and safety.

(2) Preventing, abating, treating, and controlling water pollution created by abandoned mine drainage.

(3) Reclaiming and restoring abandoned surface and underground mined areas.

(4) Reclaiming and restoring abandoned milling and processing areas.

(5) Backfilling, sealing, or otherwise controlling, abandoned underground mine entries.

(6) Revegetating land adversely affected by past mineral activities in order to prevent erosion and sedimentation, to enhance wildlife habitat, and for any other reclamation purpose.

(7) Controlling of surface subsidence due to abandoned underground mines.

(b) PRIORITIES.—Expenditures of moneys from the Hardrock Reclamation Account shall reflect the following priorities in the order stated:

(1) The protection of public health and safety, from extreme danger from the adverse effects of past mineral activities, especially as relates to surface water and groundwater contaminants.

(2) The protection of public health and safety, from the adverse effects of past mineral activities.

(3) The restoration of land, water, and fish and wildlife resources previously degraded by the adverse effects of past mineral activities.

(c) HABITAT.—Reclamation and restoration activities under this subtitle, particularly those identified under subsection (a)(4), shall include appropriate mitigation measures to provide for the continuation of any established habitat for wildlife in existence prior to the commencement of such activities.

(d) OTHER AFFECTED LANDS.—Where mineral exploration, mining, beneficiation, processing, or reclamation activities have been carried out with respect to any mineral which would be a locatable mineral if the legal and beneficial title to the mineral were in the United States, if such activities directly affect lands managed by the Bureau of Land Management as well as other lands and if the legal and beneficial title to more than 50 percent of the affected lands resides in the United States, the Secretary is authorized, subject to appropriations, to use moneys in the Hardrock Reclamation Account for reclamation and restoration under subsection (a) for all directly affected lands.

(e) RESPONSE OR REMOVAL ACTIONS.—Reclamation and restoration activities under this subtitle which constitute a removal or remedial action under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), shall be conducted with the concurrence of the Administrator of the Environmental Protection Agency. The Secretary and the Administrator shall enter into a Memorandum of Understanding to establish procedures for consultation, concurrence, training, exchange of technical expertise and joint activities under the appropriate circumstances, that provide assurances that reclamation or restoration activities under this subtitle shall not be conducted in a manner that increases the costs or likelihood of removal or remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following), and that avoid oversight by multiple agencies to the maximum extent practicable.

SEC. 412. ELIGIBLE LANDS AND WATERS.

(a) ELIGIBILITY.—Reclamation expenditures under this subtitle may only be made with respect to Federal lands or Indian lands or water resources that traverse or are contiguous to Federal lands or Indian lands where such lands or water resources have been affected by past mineral activities, including any of the following:

(1) Lands and water resources which were used for, or affected by, mineral activities and abandoned or left in an inadequate reclamation status before the effective date of this Act.

(2) Lands for which the Secretary makes a determination that there is no continuing reclamation responsibility of a claim holder, operator, or other person who abandoned the site prior to completion of required reclamation under State or other Federal laws.

(3) Lands for which it can be established that such lands do not contain locatable minerals which could economically be extracted through the reprocessing or remining of such lands, unless such considerations are in conflict with the priorities set forth under paragraphs (1) and (2) of section 302(b).

(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—The provisions of section 411(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(d)) shall apply to expenditures made from the Hardrock Reclamation Account.

(c) INVENTORY.—The Secretary shall prepare and maintain a publicly available inventory of abandoned locatable minerals mines on public lands and any abandoned mine on Indian lands that may be eligible for expenditures under this subtitle, and shall deliver a yearly report to the Congress on the progress in cleanup of such sites.

SEC. 413. EXPENDITURES.

Moneys available from the Hardrock Reclamation Account may be expended for the purposes specified in section 411 directly by the Director of the Office of Surface Mining Reclamation and Enforcement. The Director may also make such money available for such purposes to the Director of the Bureau of Land Management, the Chief of the United States Forest Service, the Director of the National Park Service, or Director of the United States Fish and Wildlife Service, to any other agency of the United States, to an Indian tribe, or to any public entity that volunteers to develop and implement, and that has the ability to carry out, all or a significant portion of a reclamation program under this subtitle.

SEC. 414. AUTHORIZATION OF APPROPRIATIONS.

Amounts credited to the Hardrock Reclamation Account are authorized to be appropriated for the purpose of this subtitle without fiscal year limitation.

Subtitle C—Use of Hardrock Community Impact Assistance Account

SEC. 421. USE AND OBJECTIVES OF THE ACCOUNT.

Amounts in the Hardrock Community Impact Assistance Account shall be available to the Secretary, subject to appropriations, to provide assistance for the planning, construction, and maintenance of public facilities and the provision of public services to States, political subdivisions and Indian tribes that are socially or economically impacted by mineral activities conducted under the general mining laws.

SEC. 422. ALLOCATION OF FUNDS.

Moneys deposited into the Hardrock Community Impact Assistance Account shall be allocated by the Secretary for purposes of section 421 among the States within the boundaries of which occurs production of locatable minerals from mining claims located under the general mining laws and maintained in compliance with this Act, or mineral concentrates or products derived from locatable minerals from mining claims located under the general mining laws and maintained in compliance with this Act, as the case may be, in proportion to the amount of such production in each such State.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Subtitle A—Administrative Provisions

SEC. 501. POLICY FUNCTIONS.

(a) MINERALS POLICY.—Section 101 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended—

(1) in the first sentence by inserting before the period at the end the following: "and to ensure that mineral extraction and processing not cause undue degradation of the natural and cultural resources of the public lands"; and

(2) by adding at the end thereof the following: "It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this section.".

(b) MINERAL DATA.—Section 5(e)(3) of the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1604(e)(3)) is amended by inserting before the period the following: ", except that for National Forest System lands the Secretary of Agriculture shall promptly initiate actions to improve the availability and analysis of mineral data in public land use decisionmaking".

SEC. 502. USER FEES.

(a) IN GENERAL.—The Secretary and the Secretary of Agriculture may each establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for the expenses incurred in administering such requirements. Fees may be assessed and collected under this

section only in such manner as may reasonably be expected to result in an aggregate amount of the fees collected during any fiscal year which does not exceed the aggregate amount of administrative expenses referred to in this section.

(b) ADJUSTMENT.—(1) The Secretary shall adjust the fees required by this section to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after the date of enactment of this Act, or more frequently if the Secretary determines an adjustment to be reasonable.

(2) The Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made.

(3) A fee adjustment under this subsection shall begin to apply the calendar year following the calendar year in which it is made.

SEC. 503. INSPECTION AND MONITORING.

(a) INSPECTIONS.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall make inspections of mineral activities so as to ensure compliance with the requirements of this Act.

(2) The Secretary concerned shall establish a frequency of inspections for mineral activities conducted under a permit issued under title III, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter or, two per calendar quarter in the case of a permit for which the Secretary concerned approves an application under section 304(f) (relating to temporary cessation of operations). After revegetation has been established in accordance with a reclamation plan, such Secretary shall conduct annually 2 complete inspections. Such Secretary shall have the discretion to modify the inspection frequency for mineral activities that are conducted on a seasonal basis. Inspections shall continue under this subsection until final release of financial assurance.

(3)(A) Any person who has reason to believe he or she is or may be adversely affected by mineral activities due to any violation of the requirements of a permit approved under this Act may request an inspection. The Secretary, or for National Forest System lands the Secretary of Agriculture, shall determine within 10 working days of receipt of the request whether the request states a reason to believe that a violation exists. If the person alleges and provides reason to believe that an imminent threat to the environment or danger to the health or safety of the public exists, the 10-day period shall be waived and the inspection shall be conducted immediately. When an inspection is conducted under this paragraph, the Secretary concerned shall notify the person requesting the inspection, and such person shall be allowed to accompany the Secretary concerned or the Secretary's authorized representative during the inspection. The Secretary shall not incur any liability for allowing such person to accompany an authorized representative. The identity of the person supplying information to the Secretary relating to a possible violation or imminent danger or harm shall remain confidential with the Secretary if so requested by that person, unless that person elects to accompany an authorized representative on the inspection.

(B) The Secretaries shall, by joint rule, establish procedures for the review of (i) any decision by an authorized representative not to inspect; or (ii) any refusal by such representative to ensure that remedial actions are taken with respect to any alleged violation. The Secretary concerned shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(b) MONITORING.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall require all operators to develop and maintain a monitoring and evaluation system that shall identify compliance with all requirements of a permit approved under this Act. The Secretary concerned may require additional monitoring to be conducted as necessary to assure compliance with the reclamation and other environmental standards of this Act. Such plan must be reviewed and approved by the Secretary and shall become a part of the explorations or operations permit.

(2) The operator shall file reports with the Secretary, or for National Forest System lands the Secretary of Agriculture, on a frequency determined by the Secretary concerned, on the results of the monitoring and evaluation process, except that if the monitoring and evaluation show a violation of the requirements of a permit approved under this Act, it shall be reported immediately to the Secretary concerned. The Secretary shall evaluate the reports submitted pursuant to this paragraph, and based on those reports and any necessary inspection shall take enforcement action pursuant to this section. Such reports shall be maintained by the operator and by the Secretary and shall be made available to the public.

(3) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall determine what information shall be reported by the operator pursu-

ant to paragraph (3). A failure to report as required by the Secretary concerned shall constitute a violation of this Act and subject the operator to enforcement action pursuant to section 506.

SEC. 504. CITIZENS SUITS.

(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action on his or her own behalf to compel compliance—

(1) against any person (including the Secretary or the Secretary of Agriculture) who is allged to be in violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or any term or condition of any permit issued under this Act; or

(2) against the Secretary or the Secretary of Agriculture where there is alleged a failure of such Secretary to perform any act or duty under this Act, or to promulgate any regulation under this Act, which is not within the discretion of the Secretary concerned.

The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties, including actions brought to apply any civil penalty under this Act. The district courts of the United States shall have jurisdiction to compel agency action unreasonably delayed, except that an action to compel agency action reviewable under section 505 may only be filed in a United States district court within the circuit in which such action would be reviewable under section 505.

(b) EXCEPTIONS.—(1) No action may be commenced under subsection (a) before the end of the 60-day period beginning on the date the plaintiff has given notice in writing of such alleged violation to the the alleged violator and the Secretary, or for National Forest System lands the Secretary of Agriculture, except that any such action may be brought immediately after such notification if the violation complained of constitutes an imminent threat to the environment or to the health or safety of the public.

(2) No action may be brought against any person other than the Secretary or the Secretary of Agriculture under subsection (a)(1) if such Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance.

(3) No action may be commenced under paragraph (2) of subsection (a) against either Secretary to review any rule promulgated by, or to any permit issued or denied by such Secretary if such rule or permit issuance or denial is judicially reviewable under section 505 or under any other provision of law at any time after such promulgation, issuance, or denial is final.

(c) VENUE.—Venue of all actions brought under this section shall be determined in accordance with section 1391 of title 28, United States Code.

(d) COSTS.—The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) SAVINGS CLAUSE.—Nothing in this section shall restrict any right which any person (or class of persons) may have under chapter 7 of title 5, United States Code, under this section, or under any other statute or common law to bring an action to seek any relief against the Secretary or the Secretary of Agriculture or against any other person, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law. Nothing in this section shall affect the jurisdiction of any court under any provision of title 28, United States Code, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law.

SEC. 505. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) REVIEW BY SECRETARY.—(1)(A) Any person issued a notice of violation or cessation order under section 506, or any person having an interest which is or may be adversely affected by such notice or order, may apply to the Secretary, or for National Forest System lands the Secretary of Agriculture, for review of the notice or order within 30 days after receipt thereof, or as the case may be, within 30 days after such notice or order is modified, vacated, or terminated.

(B) Any person who is subject to a penalty assessed under section 506 may apply to the Secretary concerned for review of the assessment within 45 days of notification of such penalty.

(C) Any person may apply to such Secretary for review of the decision within 30 days after it is made.

(D) Pending a review by the Secretary or resolution of an administrative appeal, final decisions (except enforcement actions under section 506) shall be stayed.

(2) The Secretary concerned shall provide an opportunity for a public hearing at the request of any party to the proceeding as specified in paragraph (1). The filing of an application for review under this subsection shall not operate as a stay of any order or notice issued under section 506.

(3) For any review proceeding under this subsection, the Secretary concerned shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying, or terminating the notice, order, or decision, or with respect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under section 506 the Secretary concerned shall issue the written decision within 30 days of the receipt of the application for review or within 30 days after the conclusion of any hearing referred to in paragraph (2), whichever is later, unless temporary relief has been granted by the Secretary concerned under paragraph (4).

(4) Pending completion of any review proceedings under this subsection, the applicant may file with the Secretary, or for National Forest System lands the Secretary of Agriculture, a written request that the Secretary grant temporary relief from any order issued under section 506 together with a detailed statement giving reasons for such relief. The Secretary concerned shall expeditiously issue an order or decision granting or denying such relief. The Secretary concerned may grant such relief under such conditions as he or she may prescribe only if such relief shall not adversely affect the health or safety of the public or cause imminent environmental harm to land, air, or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights under section 504 (relating to citizen suits).

(b) JUDICIAL REVIEW.—(1) Any final action by the Secretaries of the Interior and Agriculture in promulgating regulations to implement this Act, or any other final actions constituting rulemaking to implement this Act, shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the 60th day. Any such petition may be made by any person who commented or otherwise participated in the rulemaking or any person who may be adversely affected by the action of the Secretaries.

(2) Final agency action under this subsection, including such final action on those matters described under subsection (a), shall be subject to judicial review in accordance with paragraph (4) and pursuant to section 1391 of title 28, United States Code, on or before 60 days from the date of such final action. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights under section 504 (relating to citizens suits).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary or Secretaries concerned. The court may affirm or vacate any order or decision or may remand the proceedings to the Secretary or Secretaries for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary or Secretaries concerned.

(c) COSTS.—Whenever a proceeding occurs under subsection (a) or (b), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or Secretaries concerned or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, in the case of judicial review, or the Secretary or Secretaries concerned in the case of administrative proceedings, deems proper if it is determined that such party prevailed in whole or in part, achieving some success on the merits, and that such party made a substantial contribution to a full and fair determination of the issues.

SEC. 506. ENFORCEMENT.

(a) ORDERS.—(1) If the Secretary, or for National Forest System lands the Secretary of Agriculture, or an authorized representative of such Secretary, determines that any person is in violation of any environmental protection requirement under

title III or any regulation issued by the Secretaries to implement this Act, such Secretary or authorized representative shall issue to such person a notice of violation describing the violation and the corrective measures to be taken. The Secretary concerned, or the authorized representative of such Secretary, shall provide such person with a period of time not to exceed 30 days to abate the violation. Such period of time may be extended by the Secretary concerned upon a showing of good cause by such person. If, upon the expiration of time provided for such abatement, the Secretary concerned, or the authorized representative of such Secretary, finds that the violation has not been abated he or she shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary concerned, or the authorized representative of the Secretary concerned, determines that any condition or practice exists, or that any person is in violation of any requirement under a permit approved under this Act, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air, water, or fish or wildlife resources;

such Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice, or violation.

(3)(A) A cessation order pursuant to paragraphs (1) or (2) shall remain in effect until such Secretary, or authorized representative, determines that the condition, practice, or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order. The Secretary concerned shall require appropriate financial assurances to ensure that the abatement obligations are met.

(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated, or terminated by the Secretary concerned or an authorized representative of such Secretary. Any person to whom any such notice or order is issued shall be entitled to a hearing on the record.

(4) If, after 30 days of the date of the order referred to in paragraph (3)(A) the required abatement has not occurred, the Secretary concerned shall take such alternative enforcement action against the claim holder or operator (or any person who controls the claim holder or operator) as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action may include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement. Nothing in this paragraph shall preclude the Secretary, or for National Forest System lands the Secretary of Agriculture, from taking alternative enforcement action prior to the expiration of 30 days.

(5) If a claim holder or operator (or any person who controls the claim holder or operator) fails to abate a violation or defaults on the terms of the permit, the Secretary, or for National Forest System lands the Secretary of Agriculture, shall forfeit the financial assurance for the plan as necessary to ensure abatement and reclamation under this Act. The Secretary concerned may prescribe conditions under which a surety may perform reclamation in accordance with the approved plan in lieu of forfeiture.

(6) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall not cause forfeiture of the financial assurance while administrative or judicial review is pending.

(7) In the event of forfeiture, the claim holder, operator, or any affiliate thereof, as appropriate as determined by the Secretary by rule, shall be jointly and severally liable for any remaining reclamation obligations under this Act.

(b) COMPLIANCE.—The Secretary, or for National Forest System lands the Secretary of Agriculture, may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, or any other appropriate enforcement order, including the imposition of civil penalties, in the district court of the United States for the district in which the mineral activities are located whenever a person—

(1) violates, fails, or refuses to comply with any order issued by the Secretary concerned under subsection (a); or

(2) interferes with, hinders, or delays the Secretary concerned in carrying out an inspection under section 503.

Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under paragraph (1) shall continue in effect until the completion or final termination of all proceedings for review of such order unless the district court granting such relief sets it aside.

(c) DELEGATION.—Notwithstanding any other provision of law, the Secretary may utilize personnel of the Office of Surface Mining Reclamation and Enforcement to ensure compliance with the requirements of this Act.

(d) PENALTIES.—(1) Any person who fails to comply with any requirement of a permit approved under this Act or any regulation issued by the Secretaries to implement this Act shall be liable for a penalty of not more than $25,000 per violation. Each day of violation may be deemed a separate violation for purposes of penalty assessments.

(2) A person who fails to correct a violation for which a cessation order has been issued under subsection (a) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues.

(3) Whenever a corporation is in violation of a requirement of a permit approved under this Act or any regulation issued by the Secretaries to implement this Act or fails or refuses to comply with an order issued under subsection (a), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same penalties as may be imposed upon the person referred to in paragraph (1).

(e) SUSPENSIONS OR REVOCATIONS.—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall suspend or revoke a permit issued under title III, in whole or in part, if the operator—

(1) knowingly made or knowingly makes any false, inaccurate, or misleading material statement in any mining claim, notice of location, application, record, report, plan, or other document filed or required to be maintained under this Act;

(2) fails to abate a violation covered by a cessation order issued under subsection (a);

(3) fails to comply with an order of the Secretary concerned;

(4) refuses to permit an audit pursuant to this Act;

(5) fails to maintain an adequate financial assurance under section 306;

(6) fails to pay claim maintenance fees or other moneys due and owing under this Act; or

(7) with regard to plans conditionally approved under section 305(c)(2), fails to abate a violation to the satisfaction of the Secretary concerned, or if the validity of the violation is upheld on the appeal which formed the basis for the conditional approval.

(f) FALSE STATEMENTS; TAMPERING.—Any person who knowingly—

(1) makes any false material statement, representation, or certification in, or omits or conceals material information from, or unlawfully alters, any mining claim, notice of location, application, record, report, plan, or other documents filed or required to be maintained under this Act; or

(2) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained under this Act,

shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(g) KNOWING VIOLATIONS.—Any person who knowingly—

(1) engages in mineral activities without a permit required under title III, or

(2) violates any other requirement of a permit issued under this Act, or any condition or limitation thereof,

shall upon conviction be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after the first conviction of such person under this subsection, punishment shall be a fine of not less than $10,000 per day of violation, or by imprisonment of not more than 6 years, or both.

(h) KNOWING AND WILLFUL VIOLATIONS.—Any person who knowingly and willfully commits an act for which a civil penalty is provided in paragraph (1) of subsection (g) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

(i) DEFINITION.—For purposes of this section, the term "person" includes any officer, agent, or employee of a person.

SEC. 507. REGULATIONS.

The Secretary and the Secretary of Agriculture shall issue such regulations as are necessary to implement this Act. The regulations implementing title II, title III, title IV, and title V that affect the Forest Service shall be joint regulations issued by

both Secretaries, and shall be issued no later than 180 days after the date of enactment of this Act.

SEC. 508. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act, except as otherwise provided in this Act.

Subtitle B—Miscellaneous Provisions

SEC. 511. OIL SHALE CLAIMS SUBJECT TO SPECIAL RULES.

(a) APPLICATION OF SECTION 511.—Section 511 shall apply to oil shale claims referred to in section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102–486).

(b) AMENDMENT.—Section 2511(f) of the Energy Policy Act of 1992 (Public Law 102–486) is amended as follows:

(1) By striking "as prescribed by the Secretary".

(2) By inserting before the period the following: "in the same manner as if such claim was subject to title II and title III of the Hardrock Mining and Reclamation Act of 2007".

SEC. 512. PURCHASING POWER ADJUSTMENT.

The Secretary shall adjust all location fees, claim maintenance rates, penalty amounts, and other dollar amounts established in this Act for changes in the purchasing power of the dollar no less frequently than every 5 years following the date of enactment of this Act, employing the Consumer Price Index for All-Urban Consumers published by the Department of Labor as the basis for adjustment, and rounding according to the adjustment process of conditions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890).

SEC. 513. SAVINGS CLAUSE.

(a) SPECIAL APPLICATION OF MINING LAWS.—Nothing in this Act shall be construed as repealing or modifying any Federal law, regulation, order, or land use plan, in effect prior to the date of enactment of this Act that prohibits or restricts the application of the general mining laws, including laws that provide for special management criteria for operations under the general mining laws as in effect prior to the date of enactment of this Act, to the extent such laws provide for protection of natural and cultural resources and the environment greater than required under this Act, and any such prior law shall remain in force and effect with respect to claims located (or proposed to be located) or converted under this Act. Nothing in this Act shall be construed as applying to or limiting mineral investigations, studies, or other mineral activities conducted by any Federal or State agency acting in its governmental capacity pursuant to other authority. Nothing in this Act shall affect or limit any assessment, investigation, evaluation, or listing pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following), or the Solid Waste Disposal Act (42 U.S.C. 3251 and following).

(b) EFFECT ON OTHER FEDERAL LAWS.—The provisions of this Act shall supersede the general mining laws, except for those parts of the general mining laws respecting location of mining claims that are not expressly modified by this Act. Except for the general mining laws, nothing in this Act shall be construed as superseding, modifying, amending, or repealing any provision of Federal law not expressly superseded, modified, amended, or repealed by this Act. Nothing in this Act shall be construed as altering, affecting, amending, modifying, or changing, directly or indirectly, any law which refers to and provides authorities or responsibilities for, or is administered by, the Environmental Protection Agency or the Administrator of the Environmental Protection Agency, including the Federal Water Pollution Control Act, title XIV of the Public Health Service Act (the Safe Drinking Water Act), the Clean Air Act, the Pollution Prevention Act of 1990, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Food, Drug, and Cosmetic Act, the Motor Vehicle Information and Cost Savings Act, the Federal Hazardous Substances Act, the Endangered Species Act of 1973, the Atomic Energy Act, the Noise Control Act of 1972, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Ocean Dumping Act, the Environmental Research, Development, and Demonstration Authorization Act, the Pollution Prosecution Act of 1990, and the Federal Facilities Compliance Act of 1992, or any statute containing an amendment to any of such Acts. Nothing in this Act shall be construed as modifying or affecting any provision of the Native American Graves Protection and Repatriation Act (Public Law 101–601) or any provision

of the American Indian Religious Freedom Act (42 U.S.C. 1996), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

(c) PROTECTION OF CONSERVATION AREAS.—In order to protect the resources and values of National Conservation System units, the Secretary, as appropriate, shall utilize authority under this Act and other applicable law to the fullest extent necessary to prevent mineral activities that could have an adverse impact on the resources or values for which such units were established.

SEC. 514. AVAILABILITY OF PUBLIC RECORDS.

Copies of records, reports, inspection materials, or information obtained by the Secretary or the Secretary of Agriculture under this Act shall be made immediately available to the public, consistent with section 552 of title 5, United States Code, in central and sufficient locations in the county, multicounty, and State area of mineral activity or reclamation so that such items are conveniently available to residents in the area proposed or approved for mineral activities and on the Internet.

SEC. 515. MISCELLANEOUS POWERS.

(a) IN GENERAL.—In carrying out his or her duties under this Act, the Secretary, or for National Forest System lands the Secretary of Agriculture, may conduct any investigation, inspection, or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his or her duties.

(b) ANCILLARY POWERS.—In connection with any hearing, inquiry, investigation, or audit under this Act, the Secretary, or for National Forest System lands the Secretary of Agriculture, is authorized to take any of the following actions:

(1) Require, by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary concerned may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary.

(2) Administer oaths.

(3) Require by subpoena the attendance and testimony of witnesses and the production of all books, papers, records, documents, matter, and materials, as such Secretary may request.

(4) Order testimony to be taken by deposition before any person who is designated by such Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection.

(5) Pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(c) ENFORCEMENT.—In cases of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary concerned and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and produce documents before the Secretary concerned. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

(d) ENTRY AND ACCESS.—Without advance notice and upon presentation of appropriate credentials, the Secretary, or for National Forest System lands the Secretary of Agriculture, or any authorized representative thereof—

(1) shall have the right of entry to, upon, or through the site of any claim, mineral activities, or any premises in which any records required to be maintained under this Act are located;

(2) may at reasonable times, and without delay, have access to records, inspect any monitoring equipment, or review any method of operation required under this Act;

(3) may engage in any work and do all things necessary or expedient to implement and administer the provisions of this Act;

(4) may, on any mining claim located under the general mining laws and maintained in compliance with this Act, and without advance notice, stop and inspect any motorized form of transportation that such Secretary has probable cause to believe is carrying locatable minerals, concentrates, or products derived therefrom from a claim site for the purpose of determining whether the operator of such vehicle has documentation related to such locatable minerals, concentrates, or products derived therefrom as required by law, if such documentation is required under this Act; and

(5) may, if accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, stop and inspect any motorized form of transportation which is not on a claim site if he or she has probable cause to

believe such vehicle is carrying locatable minerals, concentrates, or products derived therefrom from a claim site on Federal lands or allocated to such claim site. Such inspection shall be for the purpose of determining whether the operator of such vehicle has the documentation required by law, if such documentation is required under this Act.

SEC. 516. MULTIPLE MINERAL DEVELOPMENT AND SURFACE RESOURCES.

The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), commonly known as the Multiple Minerals Development Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), shall apply to all mining claims located under the general mining laws and maintained in compliance with such laws and this Act.

SEC. 517. MINERAL MATERIALS.

(a) DETERMINATIONS.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) By inserting "(a)" before the first sentence.

(2) By inserting "mineral materials, including but not limited to" after "varieties of" in the first sentence.

(3) By striking "or cinders" and inserting in lieu thereof "cinders, and clay".

(4) By adding the following new subsection at the end thereof:

"(b)(1) Subject to valid existing rights, after the date of enactment of the Hardrock Mining and Reclamation Act of 2007, notwithstanding the reference to common varieties in subsection (a) and to the exception to such term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in such subsection, including the block pumice referred to in such subsection, shall be subject to disposal only under the terms and conditions of the Materials Act of 1947.

"(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material—

"(A) had and still has some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection;

"(B) was properly located and maintained under the general mining laws prior to the date of enactment of the Hardrock Mining and Reclamation Act of 2007;

"(C) was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws as in effect immediately prior to the date of enactment of the Hardrock Mining and Reclamation Act of 2007; and

"(D) that such claim continues to be valid under this Act.".

(b) MINERAL MATERIALS DISPOSAL CLARIFICATION.—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) by inserting "and mineral material" after "vegetative".

(2) In subsection (c) by inserting "and mineral material" after "vegetative".

(c) CONFORMING AMENDMENT.—Section 1 of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by striking "common varieties of" in the first sentence.

(d) SHORT TITLES.—

(1) SURFACE RESOURCES.—The Act of July 23, 1955, is amended by inserting after section 7 the following new section:

"SEC. 8. This Act may be cited as the 'Surface Resources Act of 1955'.".

(2) MINERAL MATERIALS.—The Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

"SEC. 5. This Act may be cited as the 'Materials Act of 1947'.".

(e) REPEALS.—(1) Subject to valid existing rights, the Act of August 4, 1892 (27 Stat. 348, 30 U.S.C. 161), commonly known as the Building Stone Act, is hereby repealed.

(2) Subject to valid existing rights, the Act of January 31, 1901 (30 U.S.C. 162), commonly known as the Saline Placer Act, is hereby repealed.

PURPOSE OF THE BILL

The purpose of H.R. 2262, the Hardrock Mining and Reclamation Act of 2007, is to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

BACKGROUND

For 135 years, the mining of hardrock minerals on public lands in the United States has been carried out under the Mining Law of 1872.

The Mining Law was written to promote mineral development in the age of the pick and shovel prospector. The Law permits citizens and businesses to freely prospect for hardrock minerals on those federal lands not withdrawn from mining. A prospector can file a claim (covering 20 acres) which gives him the right to explore, develop, mine, and sell minerals from the claim without paying the federal government royalties. A claim holder can obtain a patent (title) for the land and mineral rights after proving that an economically mineable "discovery" exists. The holder can also claim and patent non-mineral, non-contiguous lands to mill and process ore. Under the 1872 Mining Law, a claim can be acquired for $2.50 or $5.00 an acre depending on whether it is a lode or placer claim. After the patent has been granted, the claim becomes private property. Patenting is not required for operations on a mining claim or millsite.

While the 1872 Law originally applied to all minerals, over time many have been removed from its purview. Production of energy minerals such as oil, gas, and coal on federal lands is now managed under the Mineral Leasing Act of 1920, while "common variety" materials such as sand and gravel are sold under the authority of the Mineral Materials Act of 1955. Today, the 1872 Mining Law applies to a limited set of "locatable" or "hardrock" minerals such as gold, silver, copper, and uranium.

The Mining Law is administered by the Bureau of Land Management (BLM) within the Department of the Interior. Although reliable, current estimates of total acreage open and closed to mining claim location are not available, a 2004 Environmental Protection Agency report estimated that approximately 90% of the BLM's 264 million acres are open to mining as well as 80% of the 163 million acres managed by the Forest Service in the West.[1] (Legislation has closed or withdrawn some types of federal lands from new mining claims, including wilderness areas totaling approximately 108 million acres, as well as National Parks.) The number of claims on public lands typically fluctuates with mineral prices; in light of recent record highs for gold, uranium, and other minerals, in 2007 claims on public lands jumped 80% from 2003. As of July, there were 376,493 claims on public lands, according to the BLM. Nine of the top ten claimholders are companies, and the top ten claimholders own more than one-sixth of all claims.[2] "Small miners"—those holding 10 claims or fewer, total 27,600.[3]

The estimated value of U.S. metal mine production (excluding uranium) in 2006 was more than $23.5 billion, about 51% more than in 2005.[4] No data is available to determine how much of that mineral production occurs on private vs. public lands, though the majority likely occurs on private. Most mines are on a combination

[1] EPA 2004. "Cleaning Up the Nation's Waste Sites: Markets and Technology Trends," p. 11–7.

[2] Bureau of Land Management (BLM). 2007. Environmental Working Group analysis of Bureau of Land Management's LR2000 Database, July 2007 download.

[3] D. Lyons, BLM, Personal Communication (email); October 4, 2007.

[4] DOI/USGS 2007. Mineral Commodity Summaries 2007, p.7

of public and private lands, and are large in scale: according to U.S. Geological Survey (USGS), more than 99% of U.S. gold production comes from "major" operations mines that disturb more than 100 acres.[5]

Total production puts the United States among the world's largest producers of many important metals and minerals, including 10% of the world's gold, 8% of its copper, and 12.5% of its lead.[6] Nonetheless, the United States is net importer of some minerals mined under the 1872 Mining Law. For example, in 2006, 40% of copper consumed was imported, though the United States is a net exporter of gold. A 2007 National Research Council study on critical minerals emphasized that dependence on foreign sources of certain minerals is not in itself a cause for concern. The study further notes that specific minerals such as copper are essential to the economy in certain applications but should not be considered "critical" because there are ready substitutes and the risk of supply restrictions is low.[7]

After a lull in new mining and exploration in the 1990s (due to market conditions, more favorable operating possibilities, and discovery of higher grade ore prospects overseas), hardrock mining in the U.S. is on the upswing in response to some of the highest metal prices in the past 25 years—more than $700 an ounce for gold in 2007. Demand for newly mined minerals and uranium is fast-growing worldwide. The U.S. is a favorite place to mine on a global scale thanks to its policy and geological climate, according to the annual Frasier Institute survey of metals mining companies.[8] However, because of automation and other efficiency improvements, the U.S. produces more minerals with fewer people than it used to—about 35,000–40,000 are directly employed in metals mining, and perhaps another 131,000 indirectly employed.[9]

NEED FOR LEGISLATION

H.R. 2262 would substantially reform the governance of hardrock mining on public lands. Mounting concerns about giveaways of public lands and minerals, environmental protection, competing resource uses (such as recreation and wildlife habitat), and a legacy of 100,000 or more abandoned mines make a compelling case for comprehensive reform of the Mining Law of 1872.[10] The Mining Law has not changed to reflect modern mining technologies and processes or newer social values that question whether mineral extraction is the best use of the land. Six key economic and environmental issues require attention through reform:

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[5] USGS staff communication, 10/29/07.

[6] DOI/USGS 2007. Mineral Commodity Summaries 2007.

[7] National Research Council of the National Academies, 2007. Minerals, Critical Minerals, and the U.S. Economy. October.

[8] McMahon, F. and Melhem, A. 2007. "Fraser Institute Annual Survey of Mining Companies 2006/2007."

[9] National Mining Association 2006. See: http://www.nma.org/pdf/e__trends.pdf. Also, "The Economic Contributions of the Mining Industry in 2005," Analysis by Moore Economics/NMA, January 2007.

[10] The need for comprehensive Mining Law Reform twice led the House of Representatives to consider bills (introduced by Representative Rahall) in the 1990s; H.R. 322 passed the House 316–108 in November 1993.

PATENTS

The 1872 Mining Law allows claim holders on public land to obtain all the rights and interests to both the land and minerals by patenting the claims for $2.50 to $5.00 per acre, regardless of the location, the property's market value or other public uses. The federal government has patented more than 3.2 million acres of mining claims under the Hardrock Mining Act of 1872. The Act's patenting provision became an attractive means of acquiring title to land for a pittance for purposes other than mining—and reaping huge profits through private commercial development. The Government Accountability Office (GAO) recommended elimination of the patenting requirement in a 1989 analysis, in keeping with the Federal Land Management Policy Act's directives that public lands remain in federal ownership unless disposal is in the national interest, and that the government obtain a fair return for its resources.[11]

In response to concern about this multi-billion dollar "giveaway" of public land, beginning in 1994 and carried forward every year, Congress in annual appropriations bills has prohibited the Department from expending funds to accept new patent applications. Four hundred and five patents at a defined point in the application process were "grandfathered" in 1994. Since then, 198 patents covering 27,000 acres have been issued, with a total return to the government of approximately $112,000. There are still 32 grandfathered applications for patents remaining to be processed (the balance were withdrawn or contested).[12]

H.R. 2262 as amended permanently ends patenting, except for those valid claims pre-dating the 1994 moratorium. Proponents of the current "location patent" system argue that the security of tenure gained through patenting is a necessary incentive in light of the significant financial risks, substantial capital, and long timeframe involved in mineral development. However, there are other means of providing secure property rights to claimants, including assurance that those who pay required fees have the ability to use the claimed lands for mining and related purposes (see Section 104 of H.R. 2262 as amended).

FAIR RETURN FOR MINERAL RESOURCES ON PUBLIC LANDS

Under current law, the mining industry pays no royalty for public minerals. By comparison, virtually all other users of the public lands pay the government something for the resources they use or remove, and almost every other nation which allows mining on public lands imposes some form of royalty.

A well-designed royalty provides a reasonable return to the Treasury for minerals extracted from public lands and, in the case of H.R. 2262, will also fund abandoned mine reclamation. At the same time, a royalty must also allow a country's mining sector to be globally competitive. "Government take" is one of the most important criteria (along with geological potential and security of tenure) in the decision to mine in a country or region. Unlike many

[11] GAO. "Federal Land Management: The Mining Law of 1872 Needs Revision," March, 1989.
[12] BLM responses to Questions for the Record, Subcommittee on Energy and Mineral Resources hearing on October 2, 2007 entitled: "Royalties and Abandoned Mine Reclamation." Also, status report on patenting from the Department of the Interior, June 27, 2007.

other forms of investment, mines represent captive capital; they are long-lived and not portable, making them highly vulnerable to changes in national economic policy.

H.R. 2262 as amended would establish an 8% gross income royalty on new mining on public lands, and a 4% gross income royalty on mining from current operations. A gross income royalty is commonly called a "value based" royalty because it is based on a percentage of the value of the mineral commodity being extracted or sold. (A similar value-based royalty is the "net smelter return" royalty, which is levied on the amount of money which the smelter or refinery pays the mining operator for the mineral product, usually based on a spot or current price of the mineral, with deductions for costs associated with further processing, but no deductions for operating costs.) Another form of royalty considered for hardrock minerals is a "profit based" royalty, in which a measure of sales revenue is reduced by the deduction of certain production and costs to determine a "net profit" or "net income" subject to the royalty rate.

Under H.R. 2262, the royalty would be calculated based Section 613(c) of the Internal Revenue Code, which defines gross income as "the actual price for which the ore or mineral is sold where the taxpayer sells the ore or mineral as it emerges from the mine before application of any processes other than a mining process or any transportation, or after application of only mining processes, including mining transportation." Used for decades to calculate the depletion allowance (see below), this definition of gross income allows deductions for any costs of non-mining processes but does not allow for deductions for the costs of mining processes, to arrive at a price or value of the mineral as close to the mine mouth as possible.

Value based royalties such as a gross income royalty are used by the majority of states, private parties, and nations. Onshore oil and gas operations pay gross income royalties of 12.5%; coal produced from public lands is charged a royalty of 8% for underground operations and 12.5% for surface mining. Most states impose gross income or net smelter royalties on hardrock mining on state lands ranging from 2–10%. For hardrock minerals on acquired lands, Congress has established an ad-valorem royalty rate of 5%. In private arrangements between parties, rates range from 2–8% with an average of 5% based on value. Most countries impose a rate of 2–5% of gross income on hardrock minerals, though some are as high as 12%.[13] Those countries that do employ a profit based royalty usually set a rate higher than they would for a net smelter or gross value royalty; jurisdictions with a profit based system typically will assess at a rate in excess of 5%.[14]

Gross income royalties are relatively simple to calculate and easy to administer. They also are appropriate to the economic concept of a royalty as a factor payment, which implies that the payment should be based on the market value of the producer's output, rather than on market value minus the costs of maintaining it. A disadvantage of the gross income royalty is that the cost it imposes will be incurred regardless of profitability, and minerals prices are notoriously cyclical.

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[13] Testimony of Salvatore Lazzari before the Subcommittee on Energy and Mineral Resources, October 2, 2007. Also, Otto, J. et al 2006. Mining Royalties, World Bank.

[14] Otto, J et al. 2006. Mining Royalties, World Bank.

By comparison, however, a royalty based on profit or net income would allow a range of deductions, and, accordingly, more opportunities to "game the system." Nevada, for example, utilizes a "Net Proceeds of Mine Tax" (NPOMT), a form of net income royalty which is levied on all hardrock mining in the state. The NPOMT is based on the value of the mineral extracted minus the cost of extracting, processing, transporting and marketing the minerals, maintenance and repairs of all equipment and mining facilities, depreciation of capital costs, some insurance, "developmental work," and so forth.[15] Mines are then taxed on a sliding scale of 2–5% depending on the ratio of net proceeds to gross proceeds. In 2006, Nevada gold and silver mines paid a net proceeds tax of about $61 million on total mineral production worth about $5.1 billion.[16]

Profit based forms of royalties require a taxing authority with strong administrative capability. For such relatively complicated royalties, government regulatory departments must carry out labor-intensive audits of royalty returns, resulting in a significant number of often intractable disputes. "In general . . . governments tend to give too few resources to their royalty administration and collection functions," warned the World Bank's report on royalties in 2006. Legal costs from royalty audit disputes can be significant, and "this represents a further incentive for governments to select the less ambiguous unit-based and ad valorem [value based] royalty systems in preference to the more litigation-prone profit-based systems."[17]

Another drawback of such a net royalty includes potentially low return to the Treasury after "creative accounting" and multiple deductions. Past Congresses have faced this 'deductions' problem: in 1996, Republican legislators introduced a bill which would have implemented a 5% royalty on mineral "net proceeds," but the royalty provision was essentially nullified by a catalog of exemptions and deductions for both existing and prospective mines. The bill passed both the House and Senate, but the Congressional Budget Office concluded that the royalty provision would generate only diminutive returns to the public, and President Clinton ultimately vetoed an omnibus bill which included the reform legislation. An added problem with a net income or net profit royalty is that the revenue stream can vary widely from year to year, making it harder to guarantee a predictable revenue stream for reclamation.

Arguments that the gross income royalty of 8% proposed in H.R. 2262, as amended, would be among the highest royalty rates in the world ignore the offsetting special tax preferences which benefit the hardrock mining industry in the United States. Key among those preferences is the depletion allowance for mineral production. The depletion allowance allows a mining company to remove a set percentage of income from the amount that is taxed. Gold, silver, copper and iron ore, for example, qualify for a 15% depletion allowance, and sulfur, uranium, and lead for a 22% depletion allowance. Accordingly, the depletion allowance works like a "negative royalty" and will offset in part the royalty imposed by H.R. 2262. Very few nations have a depletion allowance for mineral production; in

[15] See Nevada Revised Statutes Chapter 362.120 and Nevada Administrative Code 362.030–362.070.
[16] Dobra, J. 2007. "Economic Overview of the Nevada Mining Industry," p. 1 and p. 21.
[17] Otto, J. et al 2006, p. 70.

a survey of about 30, including most major mining nations, the U.S. was one of only four countries to offer some type of depletion allowance.[18] (Most countries have rejected the idea of compensating industry for depleting the nation's ore resource, and realize that the allowance may ultimately subsidize exploration in a competing nation.)[19] The mining industry also is permitted to deduct rather than capitalize certain exploration and development costs, and can deduct the costs of mine closing and land reclamation in advance of actual closing and reclamation.

BALANCING MINERAL AND NON-MINERAL VALUES

The provisions of 1872 Mining Law which give preferential treatment (a "right to mine") over other uses, has made it very difficult to balance mineral and nonmineral values on public lands as required by the Federal Land Policy and Management Act (FLPMA) (43 USC 1701 et seq.). Section 1701(a)(8) of that law, for example, states that: "the public lands [shall] be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; that where appropriate, will preserve and protect certain lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use."[20]

Despite these directives, agency managers have limited authorities to disapprove of mining operations in sensitive areas or place strong conditions on such operations. Historically, mining has been considered a dominant use of the public domain lands which under all but the most extraordinary of circumstances was to be favored over competing uses, such as water supplies, in the event of a conflict. Due to the "right to mine" feature of the 1872 Mining Law, federal land managers have steadfastly maintained that unless an area is "withdrawn" from (closed to) mining under FLPMA, they cannot deny a claim holder's desire to develop a mine regardless of its potential impacts on other resources and values.

The impacts of 21st century mining on other resources and values can be substantial. Sportsmen have raised concerns that hardrock mining on public lands threatens fish and wildlife habitat; public lands contain more than 50% of the nation's blue-ribbon trout streams and 80% of the most critical habitat for elk, antelope, sage grouse, mule deer, salmon, steelhead, and countless other fish and wildlife species.[21] Like mining, hunting and angling is economically important in western states—generating $280 million in 2006 in Nevada alone, for example. Similarly, outdoor equipment manufacturers and recreation enthusiasts, from mountain bikers to skiers to hikers, have called for better balancing of mining and other public lands values. They note that Moab, Utah and the Alpine Loop area of Colorado typify places which are epicenters of

[18] James Otto, responses to Questions for the Record from the Subcommittee on Energy and Mineral Resources hearing on October 2, 2007 (provided October 9, 2007).

[19] James Otto, Testimony before the Subcommittee on Energy and Mineral Resources, October 2, 2007 hearing, and Questions for the Record (provided October 9, 2007).

[20] 43 U.S.C Sec. 1701(a)(8).

[21] National Wildlife Federation, Theodore Roosevelt Conservation Partnership, and Trout Unlimited letter to Members of Congress, October 15, 2007; data from "Gas and Oil Development on Public Lands by Trout Unlimited (2004), and U.S. Fish and Wildlife Service (http://www.fs.fed.us/biology/wildlife/elk.html)

human-powered recreation and generate millions in recreation and tourism dollars, but are also experiencing explosions in new mining claims.[22] Water is yet another area of growing conflict with mining: hardrock mining uses substantial quantities of water, lowers water tables, and creates effluent that can require treatment for a decade or more—threatening ground and surface water supplies for agriculture, wildlife, and communities in the West.

Sometimes the federal government has taken the costly step of protecting land and water by buying out claims; another avenue is to withdraw areas from mining. In light of the impact of mining on sensitive resources and the growing competition among resource values, there is evident need to protect additional critical areas from mining. Wilderness Study Areas, several categories of Wild and Scenic Rivers, areas designated under the Roadless Area Conservation Rule of 2001, and Areas of Critical Environmental Concern are among those areas with well-established non-mineral values which are still open to mining claims under current law. Withdrawing these additional areas to new mining claims is unlikely to have significant impact on the mining industry. Closing all categories of Wild and Scenic Rivers to mining will likely withdraw less than 2,000 additional acres.[23] Inventoried Roadless Areas cover 54 million acres, but in practice 37% are already de facto closed to, or managed as areas where mining is discouraged under land use plans. Nor does exploration and mining to date suggest that inventoried roadless areas are among the western lands still likely to harbor future mineral discoveries. A Library of Congress Congressional Cartography mapping project for Subcommittee on Energy and Mineral Resources staff overlaid major deposits of gold, silver, copper, molybdenum, and uranium with inventoried roadless areas and found that of the 55,140 deposits they mapped, only 5.6% overlapped with inventoried roadless areas.[24]

The Committee also identified the need to give government entities the ability to proactively request that federal lands near their communities be withdrawn from new mining claims. Under current law, state, local, and tribal governments have few avenues outside the land use planning process under the Federal Land Policy and Management Act of 1976 to protect lands and waters of high local value, such as those critical to drinking water supplies or tourism-based economies. For example, in Pima County, Arizona, the Board of Supervisors voted unanimously to oppose a copper mine in the Santa Rita Mountains, and the Board passed a resolution for all public land in the county to be withdrawn from mineral exploration. Concerns include the values of the mountains as a world biodiversity hotspot, scenic viewshed, important recreation area, and water source for the Cienega watershed, including high quality water for the fast-growing Tucson basin. Yet county opposition, under the current 1872 Mining Law, is not adequate to challenge a mine or limit new claim exploration. The advantage of a stronger local government role in putting areas off-limits to new claims,

[22] Outdoor Alliance letter to Representative Rahall and Representative Costa, October 12, 2007.

[23] Personal communication, American Rivers, October 2007.

[24] "Deposits of Minerals Subject to 1872 Mining Law and Inventoried Roadless Areas on National Forest System Lands." Map and analysis: Ginny Mason, Congressional Cartography, Library of Congress, 2007, based on data from Mineral Resources Data System, USGS and USDA, Forest Service.

even for mining claimants who hold valid existing rights, would be early awareness of likely state or local community opposition to a mine, and the ability to make (or avoid) investments accordingly—to minimize confrontation, avoid litigation or a protracted permitting process, or consider appropriate mitigation measures from early stages of development.

Perhaps the most fundamental reform needed to the Mining Law is clarification of the federal government's "right to say no" to proposed hardrock mines that threaten "irreparable damage" to the natural and cultural resources of the public lands. For all other uses of public lands—hunting, oil development, forest product proposals—the government has a responsibility to say no to reject such use if it would have devastating impacts, but the government lacks authority to exercise this responsibility for proposed mining operations.

The Clinton Administration issued regulations including such a provision (65 Fed. Reg. 69,998 (2000)) which were contested and upheld in court, but removed from mining regulations written by the Bush Administration (2001). H.R. 2262, as amended, includes that standard, using the well-established definition of "undue degradation" (see Sec. 3 and Sec. 301, below) to create a clear, nondiscretionary means of saying no to mining in extraordinary situations.

ENVIRONMENTAL AND RECLAMATION STANDARDS

The 1872 Mining Law contains no environmental or public health and safety provisions. Pursuant to the Federal Land Management Policy Act (FLPMA), the BLM has developed regulations and policies to address degradation of BLM land from hardrock operations (43 CFR 3809); the Forest Service has its own regulations (largely considered to be weaker) governing mining operations (36 CFR Part 228). Miners also are required to comply with a variety of other federal laws such as the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), and the National Environmental Policy Act (NEPA). However, there is no comprehensive federal law as is the case with coal, oil and gas development. Even with a slate of federal laws and state hardrock mining laws, there are major regulatory gaps. For example, these laws do not address adequacy of mine location, evaluate mining plans, set comprehensive environmental standards for mining and reclamation requirements, or protect groundwater from mining operations.

In the current vacuum of coherent environmental standards for permitting and oversight of mining, seemingly arbitrary regulatory decisions—and court cases—ensue. Different executive administrations have chosen to enforce regulations differently, making it difficult for companies to invest in exploration of an area with certainty that mining will be permitted. Statute-based environmental and reclamation standards should make the process of getting a mining permit more straightforward, with clarity and specificity in the process of reviewing the scope of the planned mine, contingencies which might be encountered, and, importantly, criteria that a land manager must review in order to grant a permit.

Yet Committee staff research also confirmed the progress that has been made in recent years in regard to federal and state regu-

lation of mining. Consequently, the task is to set an overall federal standard for hardrock mining on federal lands and a framework from which federal regulations would flow, without being redundant or overly prescriptive.

A key issue is whether national mining standards should be technology-based "design standards" or outcome-based "performance standards." To resolve the question, the Committee initially looked to the BLM's hardrock manual, which includes the following definitions:

- A "design standard" is a standard that "prescribes a specific technology of precise procedure to be followed for compliance."
- A "performance standard" is one that "prescribes the final results that must be achieved to obtain regulatory compliance."

Further research showed that the Clinton Administration initially proposed "3809" regulations which included a technology standard that would have applied to all the performance standards (e.g., the operator will achieve these performance standards using "most appropriate technology and practices") but Secretary Babbitt's final 2000 rule did not include the technology standard.

Most of the existing federal standards are performance standards and not technology-based. Therefore, the rules do not specify what equipment or practices an operator must use to move earth or plant seeds to achieve revegetation of the area, as long as it is accomplished and reaches the performance standard (including such details as seed mix, coverage, slope, etc.). As another example, in order to meet a dust control standard, BLM does not specify whether an operation should use large water trucks or small water trucks.

Additionally, several federal directives discourage the use of technology standards. According to a Executive Order 12866 on drafting effective regulations, "performance standards are generally preferred to a command-and-control design standard because they give regulated entities the flexibility to achieve the desired regulatory outcome in a most cost-effective way."[25] Another Clinton era review concluded: "Policymakers should reconsider the way 'best available technology'-based regulations are now developed and applied. Such regulations use agency established technology-based limits and use a technology to demonstrate that the limits are achievable. Even though these are performance-based requirements, they have a strong tendency to lock in the technology that is used to demonstrate achievability. To some extent, reliance on "best available technology"-based regulations impedes the development and introduction of innovative technologies."[26]

In some instances, technology standards are already required by Clean Water Act or Clean Air Act provisions. These standards have been further developed through a rulemaking process and are then applied by EPA or states with delegated programs under these laws. BLM should not be asked to second-guess the technology determinations in those permits and potentially come to a different conclusion about the appropriate technology for a particular site or facility.

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[25] OMB 1996. More Benefits, Fewer Burdens. (December).

[26] US EPA 1991. Permitting and Compliance Policy: Barriers to U.S. Environmental Technology Innovation, p. 39.

For those aspects of operations that do require specific technologies (i.e. acid rock drainage or cyanide management), BLM has promulgated regulations that are a combination of design and performance standards.[27] There are also guidance documents that provide additional details for implementing those design standards.

Finally, in hardrock mining, each mine differs greatly from one operation to the next so that reclamation plans must be done on a case-by-case basis; for example, the best technology that works for the large open pit at Nevada will not necessarily apply to a series of small beryllium mines in Utah, or to the big copper mines in Arizona. Therefore, the federal statute should provide a framework from which federal regulations and decisions will flow without micromanaging future site-specific land-based decisions.

Accordingly, to address the concerns and debate regarding the prescriptive operations and reclamation standards in H.R. 2262 as introduced, the bill, as amended, instead sets out a minimum list of environmental concerns which the Secretary must address with standards. These can be technology-based "design standards" or outcome-based "performance standards" depending on which may be appropriate to the environmental concern and goal. This revision conforms to the goal as stated above to provide a framework without micromanaging the agency's future site-specific decisions.

BONDING

Modern mines disturb thousands of acres and typically require water treatment for years, due to acid drainage and the use of toxic processing chemicals such as cyanide. In the past, companies might complete some limited reclamation, then walk away from the site, leaving the state or federal government to cope with long-term management challenges, particularly water contamination.

In response, many states and the federal government have enacted regulations that in some form require reclamation and closure plans to address problems associated with modern mining. For example, regulations established pursuant to FLPMA direct agencies to require financial assurances for reclaiming land disturbed by mining, if operators fail to do so. Under current hardrock mining regulations (Part 3809, January 20, 2001), all operations exceeding casual use conducted under a Notice or Plan of Operations are required to provide an acceptable financial guarantee to BLM prior to commencing operations.

However, a 2005 GAO report found that the BLM did not have a process for ensuring that adequate assurances are in place. In Arizona and California, for example, the GAO found that 15–74% of hardrock operations lacked adequate financial assurances. The results of a shortfall in assurances, cost estimates, and weak reclamation plans are significant: GAO found that since the BLM began requiring financial assurances, 48 operations had ceased and not been reclaimed, leaving a $136 million bill for the taxpayer.[28] Similarly, a 2003 report found that American taxpayers are today

[27] See Federal Register Volume 66, 2001 (3809.420(b)(11) and (12)).

[28] GAO 2005. "Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs." (GAO–05–377)

potentially liable for $1–12 billion in cleanup costs for hardrock mining sites.[29]

The Subcommittee on Energy and Minerals heard testimony on October 2, 2007 that the Bureau of Land Management has improved its financial assurances management in response to the GAO's report. However, there remains a need to guarantee that at the federal level, there is clear guidance for financial assurances, particularly those for long-term water treatment, and impetus for agencies to make oversight of assurances (including regular updates to address changing conditions) a priority.

An associated problem requiring policy attention relates to mine owners who have defaulted on environmental cleanup responsibilities multiple times, but are still eligible to carry out mine operations on public land under current law. Further, companies sometimes structure their assets through corporate subsidiaries, thwarting recovery of corporate guarantees after bankruptcy. Accordingly, H.R. 2262 does not include corporate guarantees as acceptable assurances, and the bill requires disclosure of operator's prior bond forfeitures and environmental compliance history. In keeping with the Surface Mining Control and Reclamation Act, H.R. 2262 as amended makes those operators with outstanding violations ineligible for permits.

ABANDONED MINE LANDS

The 1872 Mining Law includes no reclamation requirements. Despite regulations issued pursuant to the Federal Land Management Policy Act of 1976, which require operators to reclaim BLM land disturbed by their hardrock operations, some operators—often due to bankruptcy and inadequate bonding (see above)—have abandoned mines without reclamation.

The extent of the nation's hardrock abandoned mine land (AML) problem is clearly significant, though estimates vary by state and agency. As of 2007, the Bureau of Land Management and the U.S. Forest Service have identified (largely via field surveys) 47,000 abandoned mine sites on lands they manage. However, the total number of sites on federal land could be much higher, especially depending on how mine sites and features are defined and counted. Based on mineral records and partial inventories, estimates in 2004 ranged from 100,000–500,000 BLM sites and 25,000–35,000 Forest Service sites.[30]

Some AML sites are serious public safety hazards. At least eleven people have died and six people have been injured in abandoned mines in California in the past decade.[31] Nevada has more than 50,000 sites likely to pose physical safety hazards including shafts and adits at AML sites within a mile of population centers, campgrounds, backcountry byways, other recreation areas, historic sites, and off road vehicle use areas. Many western states are finding that rapid population growth and recreational use of public lands

[29] Kuipers, J. 2003. Putting a Price on Pollution. Mineral Policy Center and Center for Science in Public Participation. March.

[30] DOI/Forest Service. Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines, September 2007 and EPA 2004: "Cleaning Up the Nation's Waste Sites: Markets and Technology Trends."

[31] CA Department of Conservation/Office of Mine Reclamation 2007. Letter to Senator Feinstein. March.

juxtapose increasing numbers of people in areas with high densities of AML sites, elevating safety risks.

Other abandoned sites pose environmental hazards. The government estimates that old mines have contaminated 40% of all western river headwaters. Colorado, for example, has approximately 2,751 abandoned mine sites that have possible impacts on water quality in twenty watersheds. Common problems are acidic, metal-laden drainage from mine openings and dumps, mine wastes and mill tailings in stream channels, and erosion of mine wastes and mill tailings into waterways.

The EPA's Superfund list currently includes more than 80 hardrock abandoned mines or mine-related sites. Estimates in the late 1990s suggested that about 5% of the 25,000–35,000 abandoned mines on Forest Service lands will require cleanup under Superfund authorities. The BLM and Forest Service estimated that another 10% of the identified sites on federal lands will require water related cleanup under authorities other than Superfund.[32]

Some solutions are relatively simple, others complex, expensive, and impermanent. In some instances, the highest priority problems may be open shafts and adits that pose physical hazards to people and wildlife. These must be plugged, filled, secured or closed off. For environmental hazards, remediation can range from removing small piles of waste rock or tailings from a floodplain or reseeding a disturbed area, to removing transformers, machinery and buildings, stabilizing large waste piles, rerouting water flows, building new retention ponds, reinforcing old dams, managing toxic lagoons, removing or covering contaminated soils.

Reclamation is a problem with no cheap fix; hardrock abandoned mine cleanup could range from $20–54 billion, estimated the EPA's Superfund office in 2004, with about $3.5 billion related to Superfund designated sites. Nearly 60% of the mining sites listed on the Superfund National Priorities List are expected to require from 40 years to "perpetuity" for cleanup operations.

Expenditures fall far short of the need. Unlike coal mining, there is no single source of funding for the reclamation of abandoned hardrock mining lands. To remedy a particular site, the BLM and Forest Service may work with Federal, State, and private partners to apply for funding from programs including AML grants through SMCRA, CERCLA, and the Clean Water Act Grant Program. Nevada funds some of its program from industry fees of $1.50 per mining claim filing, and $20 per acre of permitted disturbance on public lands, generating about $315,000 a year. According to EPA, the total federal, state and private party outlays for mining site remediation have been averaging about $100–$150 million per year. At this rate, only 8–20% of all the cleanup work will be completed over the next 30 years.[33] Similarly, the Forest Service, with an annual budget of $15 million, projects it would take 370 years to complete an estimated $5.5 billion dollars of cleanup and safety mitiga-

[32] US EPA 2004 (Chapter 11) and BLM/FS report, Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines. September 2007, p. 2.

[33] U.S. EPA. "Cleaning Up the Nation's Waste Sites: Markets and Technology Trends," 2004 edition, p. 11–12.

tion work.[34] Some state reclamation cost estimates include just remediation, not restoration.

National and state inventories of sites require continued effort. The DOI Inspector General's Office has identified the need for the BLM to undertake some additional inventory work in high-population and high-use areas; the Forest Service, too, acknowledges the merits of continuing inventory. Some states have more thorough abandoned site inventories than others. Arizona, for example, has an inventory described as a "patchwork" of data of varying accuracy, and Alaska's and Washington's inventories are not complete.[35] California's Department of Conservation acknowledges that "the prioritization of AML sites for remediation will ultimately require a statewide inventory . . . at this time, state and federal agency staff have inventoried only about 2,500 of California's estimated 47,000 AML sites (5%)."[36]

One obstacle to clean up progress at some abandoned mine sites is the perception that, under the Clean Water Act or Superfund, if one acts to remediate a site, that person or entity will become financially liable for cleanup of all pollution associated with the site. Several bills introduced in the 109th Congress proposed different "Good Samaritan" exemptions from liability—some broad, others allowing various (and controversial) provisions for reprocessing of tailings and waste piles—but none have yet been introduced in the 110th Congress. "Good Samaritan" provisions are outside the jurisdiction of the Committee on Natural Resources; accordingly, they are not included in H.R. 2262 as amended.

COMMITTEE ACTION

H.R. 2262 was introduced by Natural Resources Committee Chairman Nick J. Rahall, II (D–WV) and Energy and Mineral Resources Subcommittee Chairman Jim Costa (D–CA) on May 10, 2007. The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. Three Subcommittee hearings were held on H.R. 2262 on July 26, 2007, August 21, 2007, and October 2, 2007. Preceding introduction of H.R. 2262, the Subcommittee on Energy and Mineral Resources and Subcommittee on National Parks, Forests, and Public Lands held a joint oversight hearing on the 1872 Mining Law and its impacts on national forests in Tucson, Arizona. Details of the hearings are as follows:

• February 24, 2007, Subcommittee on Energy and Mineral Resources and Subcommittee on National Parks, Forests and Public Lands field hearing: "Our National Forests at Risk: The 1872 Mining Law and its Impact on the Santa Rita Mountains of Arizona." This hearing highlighted the inability of the 1872 Mining Law to respond to a modern-day problem: metals mineral values compete with community concerns for other increasingly important values that Western public lands provide, including tourism and recre-

[34] U.S. Forest Service responses to Questions for the Record from the Subcommittee on Energy and Mineral Resources hearing on "Royalties and Abandoned Mine Reclamation," October 2, 2007.

[35] BLM 2006. "The Cooperative Conservation Based Strategic Plan for Abandoned Mine Lands Program," March, and "Cleaning Up Abandoned Mines: A Western Partnership," Western Governors' Association and National Mining Association.

[36] California Department of Conservation, Office of Mine Reclamation 2007. Letter to Senator Feinstein. March 30.

ation. Witnesses focused on the case of Augusta Resource Corporation, which is seeking a permit for an 800 acre open pit copper mine on private lands on the Rosemont Ranch with disposal of the mining waste on 3000 acres of the Coronado National Forest adjacent to the ranch, on claims issued pursuant to the 1872 Mining Law.

• July 26, 2007, Subcommittee on Energy and Mineral Resources legislative hearing on "H.R. 2262: The Hardrock Mining and Reclamation Act of 2007." This hearing provided an overview on the ways in which the 1872 Mining Law is overdue for reform. Witnesses from the tribal, environmental, taxpayer advocate, and sportsmen communities outlined the Law's economic and environmental shortcomings.

• August 21, 2007, Subcommittee on Energy and Mineral Resources legislative field hearing on "Nevada and H.R. 2262: Opportunities and Challenges in Reform of the 1872 Mining Law." Held in Elko, NV, this hearing focused on the importance of hardrock mining to communities and economies. Witnesses emphasized the need for a fair royalty, drew distinctions between the impact and processes entailed in mining exploration versus operations, and underscored the need for a strong national standard for mining that recognizes (rather than duplicates) existing law and regulations.

• October 2, 2007, Subcommittee on Energy and Mineral Resources legislative hearing on "H.R. 2262 Royalties and Abandoned Mine Reclamation." One panel, consisting of experts with extensive knowledge of royalties in the United States and internationally, focused on how to determine a fair and appropriate royalty, including: the advantages and disadvantages of gross income, net smelter, and net proceeds or profit types of royalties; royalty rates in other nations; and special tax preferences in the United States, including the depletion allowance. A second panel focused on the need for a royalty to address the hardrock abandoned mine problem in the Western United States. Witnesses from the EPA and Forest Service provided a sense of scope, status of agency inventory efforts, and reclamation costs.

On Thursday, October 18, 2007 and Tuesday, October 23, 2007, the Committee on Natural Resources met in open session to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged from further consideration of H.R. 2262.

Natural Resources Committee Chairman Nick J. Rahall II (D–WV) offered an amendment in the nature of a substitute to H.R. 2262. The following amendments were then offered to the amendment in the nature of a substitute:

Mr. DeFazio offered an amendment to amend Section 3(c) and Section 102, exempting from the royalty those who receive less than $250,000 in gross income from mining and imposing an 8% royalty on existing mining operations, which failed by voice vote.

Mr. Pearce offered an amendment to create a Minerals Reclamation Foundation, which was withdrawn.

Mr. Inslee offered an amendment to Section 104, clarifying the ability of mining claimants to use lands for mining and related purposes on the basis of the payment of the required maintenance fee, which was agreed to by voice vote.

Mr. Heller offered an amendment to Section 102, replacing the 8% gross income royalty with a 5% net proceeds royalty, which failed by a roll call vote of 10 yeas and 16 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned:

Meeting on: **Markup of 2262 - Heller #1 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 1 Total: Yeas: **10** Nays: **16**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, Gua		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA				Mr. Boren, OK	✔		
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN				Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR				*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT				Mr. Kennedy, RI			
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO				Mr. Kind, WI			
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ				Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR				Ms. Solis, CA			
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	10	16	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (1:50pm)

Mr. Sali offered an amendment to Section 102 to sunset the royalty after two years based on several economic indicators, which failed by a roll call vote of 9 yeas and 20 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned:

Meeting on: **Markup of 2262 - Sali.035 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 2 Total: Yeas: **9** Nays: **20**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, Gua		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA				Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN				Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI			
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO				Mr. Kind, WI			
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ				Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR				Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	9	20	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (1:53pm)

Mr. Hinchey offered an amendment to Section 102 to impose a 4% gross income royalty on Federal lands producing minerals as of the Act's enactment, which was agreed to by voice vote.

Mr. Gohmert offered an amendment to Section 304 to change the term of an operations permit, which failed by a roll call vote of 14 yeas and 16 nays, as follows:

***COMMITTEE ON NATURAL RESOURCES**
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned:

Meeting on: **Markup of 2262 - Gohmert - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 3 Total: Yeas: **14** Nays: **16**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Gua		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI				*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*			
Mr. Gilchrest, MD				Mr. Hinchey, NY			
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI				*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA			
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA				Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA			
Mr. Holt, NJ				Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	14	16	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:02pm)

Mr. Sali offered an amendment to Section 102 to exempt from the royalty any minerals used for alternative energy production, which failed by a roll call vote of 14 yeas and 20 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Sali.036 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 4 Total: Yeas: **14** Nays: **20**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Gua		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI				*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*			
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI				*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA			
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	14	20	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:05pm)

Mr. Grijalva offered an amendment to Section 202 to include Indian tribes, which was agreed to by a roll call vote of 37 yeas and 0 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Grijalva.070 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 5 Total: Yeas: **37** Nays: **0**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✔			*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam	✔		
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA	✔		
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK	✔		
Mr. Kildee, MI	✔			*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD	✔		
Mr. DeFazio, OR	✔			*Mr. Shuster, PA*			
Mr. Gilchrest, MD				Mr. Hinchey, NY	✔		
Mr. Faleomavaega, AS	✔			*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI	✔		
Mr. Abercrombie, HI	✔			*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI	✔		
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA	✔		
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA	✔		
Mrs. Christensen, VI	✔			*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO	✔		
Mrs. Napolitano, CA	✔			Mr. Baca, CA	✔		
Mr. Fortuño, PR	✔			Ms. Solis, CA	✔		
Mr. Holt, NJ	✔			Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC	✔		
Mr. Grijalva, AZ	✔						
				Total	37	0	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:10pm)

Mr. Pearce offered an amendment to requiring the Secretary of the Interior to make certain certifications before the Act can take effect, which failed by a roll call vote of 17 yeas and 21 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Pearce #6 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 6 Total: Yeas: 17 Nays: 21

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK	✔		
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI			
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✔		
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	17	21	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:26pm)

Mr. Heller offered an amendment to Section 411 to allocate 50% of the funds in the Hardrock Reclamation Account to states in proportion to production in each state, which failed by voice vote.

Mr. Sali offered an amendment to Section 102 exempting from the royalty any mineral used to prevent global warming, which failed by roll call vote of 17 yeas and 22 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Sali.037 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 7 Total: Yeas: 17 Nays: 22

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✔		
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	17	22	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:30pm)

Mrs. McMorris-Rodgers offered an amendment to strike Section 301 and other provisions in Title III, which failed by a roll call vote of 16 yeas and 23 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - McMorris Rodgers- amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 8 Total: Yeas: 16 Nays: 23

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✔		
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	16	23	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:31pm)

Mr. Lamborn offered an amendment to sections on permit and user fees, which failed by voice vote.

Mr. Holt and Mr. Inslee offered an amendment to Title III to deny permits which would impair the lands or resources of National Parks, which was agreed to by a roll call vote of 21 yeas and 18 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Holt and Inslee - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 9 Total: Yeas: 21 Nays: 18

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✔			*Mr. Jindal, LA*			
Mr. Young, AK		✔		Mrs. Bordallo, Guam	✔		
Mr. Miller, CA				*Mr. Gohmert, TX*		✔	
Mr. Saxton, NJ				Mr. Costa, CA	✔		
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA		✔		Mr. Boren, OK		✔	
Mr. Kildee, MI	✔			*Mr. Bishop, UT*			
Mr. Duncan, TN		✔		Mr. Sarbanes, MD	✔		
Mr. DeFazio, OR	✔			*Mr. Shuster, PA*		✔	
Mr. Gilchrest, MD				Mr. Hinchey, NY	✔		
Mr. Faleomavaega, AS	✔			*Mr. Heller, NV*		✔	
Mr. Cannon, UT		✔		Mr. Kennedy, RI	✔		
Mr. Abercrombie, HI	✔			*Mr. Sali, ID*		✔	
Mr. Tancredo, CO		✔		Mr. Kind, WI	✔		
Mr. Ortiz, TX				*Mr. Lamborn, CO*		✔	
Mr. Flake, AZ		✔		Mrs. Capps, CA	✔		
Mr. Pallone, NJ				*Ms. Fallin, OK*		✔	
Mr. Pearce, NM		✔		Mr. Inslee, WA	✔		
Mrs. Christensen, VI	✔			*Vacancy*			
Mr. Brown, SC		✔		Mr. Mark Udall, CO	✔		
Mrs. Napolitano, CA	✔			Mr. Baca, CA	✔		
Mr. Fortuño, PR		✔		Ms. Solis, CA	✔		
Mr. Holt, NJ	✔			Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA		✔		Mr. Shuler, NC	✔		
Mr. Grijalva, AZ	✔						
				Total	21	18	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:33pm)

Mr. Pearce offered an amendment to create a Mineral Commodity Information Administration, which failed by a roll call vote of 16 yeas and 23 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Pearce.086 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 10 Total: Yeas: 16 Nays: 23

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✔		
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	16	23	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:36pm)

Mr. Heller offered an amendment to facilitate sustainable development projects on former mining sites, which was withdrawn.

Mr. Sali offered an amendment to Title V to impose a 2% royalty on non-metallic minerals, which failed by a roll call vote of 17 yeas and 22 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 -Sali - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 11 Total: Yeas: 17 Nays: 22

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA				*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA	✔			Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✔		
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR	✔			Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	17	22	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (2:37pm)

Mr. Pearce offered an amendment tying the continuation in effect of the Act to U.S. gross domestic product, which failed by a voice vote.

Mr. Pearce offered an amendment to strike Section 505(b)(6) which was agreed to by voice vote.

Mr. Pearce offered an amendment to strike Title III which failed by a roll call vote of 12 yeas and 23 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Pearce #11 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 12 Total: Yeas: 12 Nays: 23

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA		✔		*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA				Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA			
Mr. Fortuño, PR				Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA				Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	12	23	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (3:16pm)

Mr. Sali offered an amendment to Section 201 to give states the ability to opt in or out of making certain categories of Federal lands off limits to mining, which failed by a roll call vote of 13 yeas and 24 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262 - Sali #45 - amendment to the amendment in the nature of a substitute.**

☒ Recorded Vote Vote # 13 Total: Yeas: 13 Nays: 24

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Jindal, LA*			
Mr. Young, AK	✔			Mrs. Bordallo, Guam		✔	
Mr. Miller, CA		✔		*Mr. Gohmert, TX*	✔		
Mr. Saxton, NJ				Mr. Costa, CA		✔	
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA				Mr. Boren, OK		✔	
Mr. Kildee, MI		✔		*Mr. Bishop, UT*			
Mr. Duncan, TN	✔			Mr. Sarbanes, MD		✔	
Mr. DeFazio, OR		✔		*Mr. Shuster, PA*	✔		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✔	
Mr. Faleomavaega, AS		✔		*Mr. Heller, NV*	✔		
Mr. Cannon, UT	✔			Mr. Kennedy, RI		✔	
Mr. Abercrombie, HI		✔		*Mr. Sali, ID*	✔		
Mr. Tancredo, CO	✔			Mr. Kind, WI		✔	
Mr. Ortiz, TX				*Mr. Lamborn, CO*	✔		
Mr. Flake, AZ	✔			Mrs. Capps, CA		✔	
Mr. Pallone, NJ				*Ms. Fallin, OK*			
Mr. Pearce, NM	✔			Mr. Inslee, WA		✔	
Mrs. Christensen, VI		✔		*Vacancy*			
Mr. Brown, SC	✔			Mr. Mark Udall, CO		✔	
Mrs. Napolitano, CA		✔		Mr. Baca, CA		✔	
Mr. Fortuño, PR				Ms. Solis, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mrs. McMorris Rodgers, WA	✔			Mr. Shuler, NC		✔	
Mr. Grijalva, AZ		✔					
				Total	13	24	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (3:21pm)

Mr. Pearce offered an amendment to encourage cleanup of inactive and abandoned mines through protections for "Good Samaritans" which was ruled out of order.

Mr. Cannon offered an amendment en bloc to Sections 304, 504, and 517 which failed by voice vote.

The Rahall amendment in the nature of a substitute, as amended, was adopted by a voice vote.

H.R. 2262, as amended, was then ordered favorably reported to the House of Representatives by a roll call vote of 23 yeas and 15 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: October 23, 2007 Convened: Adjourned

Meeting on: **Markup of 2262, as amended - Ordered reported to the House of Representatives by a roll call vote of 23 yeas and 15 nays.**

☒ Recorded Vote Vote # 14 Total: Yeas: 23 Nays: 15

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✔			*Mr. Jindal, LA*			
Mr. Young, AK		✔		Mrs. Bordallo, Guam	✔		
Mr. Miller, CA	✔			*Mr. Gohmert, TX*		✔	
Mr. Saxton, NJ				Mr. Costa, CA	✔		
Mr. Markey, MA				*Mr. Cole, OK*			
Mr. Gallegly, CA				Mr. Boren, OK		✔	
Mr. Kildee, MI	✔			*Mr. Bishop, UT*			
Mr. Duncan, TN		✔		Mr. Sarbanes, MD	✔		
Mr. DeFazio, OR	✔			*Mr. Shuster, PA*		✔	
Mr. Gilchrest, MD				Mr. Hinchey, NY	✔		
Mr. Faleomavaega, AS	✔			*Mr. Heller, NV*		✔	
Mr. Cannon, UT		✔		Mr. Kennedy, RI	✔		
Mr. Abercrombie, HI	✔			*Mr. Sali, ID*		✔	
Mr. Tancredo, CO		✔		Mr. Kind, WI	✔		
Mr. Ortiz, TX				*Mr. Lamborn, CO*		✔	
Mr. Flake, AZ		✔		Mrs. Capps, CA	✔		
Mr. Pallone, NJ				*Ms. Fallin, OK*		✔	
Mr. Pearce, NM		✔		Mr. Inslee, WA	✔		
Mrs. Christensen, VI	✔			*Vacancy*			
Mr. Brown, SC		✔		Mr. Mark Udall, CO	✔		
Mrs. Napolitano, CA	✔			Mr. Baca, CA	✔		
Mr. Fortuño, PR				Ms. Solis, CA	✔		
Mr. Holt, NJ	✔			Ms. Herseth Sandlin, SD	✔		
Mrs. McMorris Rodgers, WA		✔		Mr. Shuler, NC	✔		
Mr. Grijalva, AZ	✔						
				Total	23	15	

Markups - 1/3 to meet (16), 25 to report
October 29, 2007 (3:24pm)

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the legislation, the "Hardrock Mining and Reclamation Act of 2007."

Section 2. Definitions and references

This section defines affiliate, applicant, beneficiation, casual use, claim holder, control, exploration, Federal land, Indian lands, Indian tribe, locatable mineral, mineral activities, National Conservation System unit, operator, person, processing, Secretary, temporary cessation, undue degradation, valid existing rights, applicable date.

The Committee has included in the bill as amended, a definition of "undue degradation:" "undue degradation means irreparable harm to significant scientific, cultural or environmental resources on public lands that cannot be effectively mitigated." This definition is critical to the general standard for mineral activities established in Section 301, and uses the definition of "undue degradation" established in the 43 CFR Part 3809 (2000).

Section 3. Application rules

This section details when and how the Act applies to mining claims, millsite and tunnel site claims and operations. Section 3 declares that the Act's requirements apply immediately to unpatented mining, millsite and tunnel site claims for which no plan of operations has been approved or notice filed. Where plans of operations have been approved but mining has not commenced, operations have ten years to come into compliance with the Act (unlike the bill as introduced, which allowed five years). Where claims are used for beneficiation and processing of any locatable mineral—regardless of whether mined from public or private lands—the provisions of the Act apply.

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

Sec. 101. Limitation on patents

This section prohibits issuance of patents for vein, lode, placer, and millsite and tunnel site claims unless the application for a patent was filed with the Secretary on or before September 30, 1994 and other administrative requirements are met.

Sec. 102. Royalty

This section imposes a 8% gross income royalty on the production of hardrock minerals from mining claims on federal lands and dedicates the royalties to abandoned mine reclamation and community assistance. The Committee amended this section from the bill as introduced, to refer to the royalty as a "gross income" royalty rather than a "net smelter return" royalty. However, the royalty is still calculated on the value-based definition of "mining income" found in the Internal Revenue Code 613(c). This form of royalty keeps administration relatively simple. By comparison, the Committee rejected a "net profit" royalty because it would result in negligible returns to the taxpayer and would likely reduce royalty payments and would be susceptible to "creative accounting." The Committee

accepted an amendment on a voice vote to impose a 4% gross income royalty on all operations producing locatable minerals on Federal lands prior to and on the date of enactment of this Act. This section also sets forth administrative provisions for the payment of royalties, including record keeping and reporting. It gives the Secretary of the Interior the authority to conduct audits and investigations, and share information with other agencies. Penalties are imposed for underreporting.

Sec. 103. Claim maintenance fee and location fee

Currently the BLM collects a one-time $30 location fee and an annual $125 maintenance fee per claim through annual appropriations authority. The Committee amended the bill as introduced to provide a permanent authorization for collection of these fees in this section. In addition, the Committee increased the fees to $50 and $150 respectively. Exempted from the maintenance fee are those claimants who hold ten or fewer claims and meet specific mineral production, exploration, and surface disturbance requirements (a "small miner" fee exemption is current practice under 43 CFR Part 3835).

Section 104. Effect of payment or use and occupancy of claims

The Committee amended the bill as introduced to provide security of tenure to those who invest in mining exploration on public lands and discover valuable minerals. Specifically, H.R. 2262 would authorize claimants who pay annual maintenance fees to use and occupy claimed lands for prospecting and mineral exploration activities, subject to compliance with the requirements of the Act and applicable provisions of law. The Committee intends that timely payment of the annual claim maintenance fee will not convey property rights nor secure a right to mine. To the contrary, the provision requires such use and occupancy to comply with the requirements of the Act and applicable provisions of law. The Committee amended this section to clarify that the filing of the claim maintenance fee and compliance with the other claiming and filing requirements do not in any way mean that the subject claims are valid or that the claimant has a right to conduct mineral activities on the claims. Any authority to conduct mineral activities accrues only upon the claimant's receipt of an approved permit under Title III and compliance with all other applicable law. Therefore, while granting the claimants some security, the Committee intends that claimants will be required to meet the provisions of the Act, specifically the environmental and permitting requirements of Title III.

TITLE II—PROTECTION OF SPECIAL PLACES

Section 201. Lands open to location

This section identifies categories of Federal lands that will be closed to hardrock mining as of the enactment of the Act, including: lands recommended for wilderness designation or being managed as roadless areas; BLM Wilderness Study Areas and National Monuments; lands designated, eligible, or under study for inclusion in the Wild and Scenic River System; lands previously withdrawn under other law; Areas of Critical Environmental Concern; and areas identified in the Roadless Area Conservation Rule of 2001.

The Committee amended the bill to delete inclusion of sacred sites among lands closed to mineral entry, reflecting the concerns that the lack of a publicly-available list of sacred sites would make such a provision impossible to administer.

Section 202. State and county government withdrawal petitions

The Committee added this section in order to enable state, tribal and county governments the ability to petition for withdrawal from the general mining laws specific tracts of public lands which have high value to the state or county for reasons such as water supply, scenic vistas, fish and wildlife habitat or cultural resources. It provides a tool for balancing resource values and mineral development before industry makes a major investment in mine development. The Secretary is required to act on the petition within 180 days and must approve the petition unless it would not be in the national interest to do so.

TITLE III—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

Sec. 301. General standard for hardrock mining on public lands

This Section establishes a general standard for hardrock mining on public lands that requires mineral activities on Federal lands to be carefully controlled to prevent undue degradation of public lands and resources. It enables the Secretary to deny permission to mine if the activities will result in undue degradation that cannot be effectively mitigated. Compared to the bill as introduced, this is a simpler, though similar and equally strong, standard. The Committee intends that this section be read and applied within the context of the Clinton Administration's 43 CFR Part 3809 regulations, published in the Federal Register on November 21, 2000, which clearly defined "undue" degradation and asserted the Department of Interior's authority to say "no" to a proposed hardrock mine that would cause undue degradation that could not be effectively mitigated.

Section 301 overrides Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the first section of the Act of June 4, 1897 (chapter 2; 30 Stat. 36 16 U.S.C. 478) and the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.) and replaces the standards contained therein with the new standard that mineral activities must prevent undue degradation of public lands and resources.

The Committee intends that the new standard replace former policies that relied on interpretations of terms such as "unnecessary or undue degradation" that resulted in confusion and ambiguity. For example, the 2000 43 CFR 3809 final rule stated: "it is clear from the use of the conjunction 'or' that the Secretary has the authority to prevent 'degradation' that is necessary to mining, but undue or excessive. This policy was revoked by the Bush Administration on October 30, 2001 (Federal Register, Vol. 66, No. 210) on the argument that the word 'or' in this case should be read as 'and.' The Committee adoption of the phrase 'undue degradation' in this section eliminates any ambiguity."

The selection of the term "undue degradation" is not random. The Committee intends that mineral activities under the Act will

conform to the description of "undue degradation" set forth in the 2000 rules, which require that operations not result in substantial irreparable harm to significant resource values that cannot be effectively mitigated. The Committee anticipates the Secretary will deny a permit that cannot meet the "undue degradation" standard. The Committee intends that this provision be applied on a site-specific basis and that it would not necessarily preclude development of a large open pit mine. As such, a permit to mine could be denied only when:

- The public land resource values are significant at a particular location.
- Mining would cause substantial irreparable harm to the specific public land resource values that are significant at a particular location; i.e., a small amount of irreparable harm to a portion of the resource will not trigger the protection. The harm must be substantial.
- The harm cannot be effectively mitigated. If the harm can be mitigated, the permit would be approved.

The Committee intends that the Secretaries shall rely on the Council on Environmental Quality's government-wide definition of "mitigation" as it appears in 40 CFR 1508.20. An operator who must "mitigate" damage to wetlands or riparian areas, or who must take appropriate mitigation measures for a pit or other disturbance, would have to take mitigation measures, which includes the measures listed in the definition found in the above-referenced subpart.

Sec. 302. Permits

This section requires a permit for any mineral activity that will disturb surface resources. Mineral activities that cause only negligible disturbance or are a casual use of public lands (as defined in Sec. 1) are exempted from permit requirements. The Committee added language to this section to clarify that the Secretary should conduct the permitting process in coordination with the requirements of the National Environmental Policy Act (NEPA).

Sec. 303. Exploration permits

The Committee added this section in order to set forth a separate permitting process and requirements for exploration, recognizing that exploration does not disturb resources on the scale of a full mining operation and therefore should not require the same permitting process—a burden to agencies and industry and counterproductive to ensuring a strong domestic minerals program. Exploration permits may be approved if all the requirements of this Act and applicable law are met, including the duty to prevent undue degradation in Section 301.

Specifically, H.R. 2262, as amended, authorizes the Secretary to approve permits for exploration as long as specific application, reclamation, and financial assurance criteria are met. Permits are to be issued for terms no longer than 10 years. Proposed modifications of exploration permits require another review process. This section also sets forth requirements for transfer and sale of exploration permits.

Section 304. Operations permit

This section establishes that claimholders with valid claims can apply for operations permits for mining on mining, millsite, and tunnel site claims. This section also proscribes required elements of an application for an operations permit including plans for operations, reclamation, monitoring, and long-term maintenance. H.R. 2262, as amended, does not include a detailed list of information to be included in the permit application, because the Committee found that such information is required and will be provided during the NEPA process which will be conducted in concert with the consideration of the permit application.

Importantly, the Committee has given the Secretary the right to deny a permit if requirements of the Act cannot be met. Requirements include: demonstration that reclamation will meet the Act's "no undue degradation" standard (see Section 301) and the land, including fish and wildlife resources, can be returned to productive use; an assessment that the operations impacts (including cumulative impacts of mining on hydrology) will not cause undue degradation; compliance with financial assurance requirements; and a reclamation plan that demonstrates that 10 years after mine closure, discharge or effluent will not need treatment to meet water quality standards. The Committee extended the length of the operations permits from one 10-year term, with possible renewal, to a firm 20-year limit with opportunity for an automatic additional 20-year renewal assuming the operation is in compliance with the permit. The Secretaries are granted the authority to establish requirements for permit modification applications, and permit modification is required if changes are made to approved plans, or if unanticipated events occur, particularly those which jeopardize water quality and quantity. This section establishes a process for applications for temporary cessation of operations.

The Committee included a requirement in the bill as amended that the federal land manager conduct a general review of each operations permit every 10 years, as opposed to every 3 years in the bill as introduced. The purpose of this review is to ensure that the overall conduct of operations has not diverted in any significant way from the original plan of operations as approved by the Secretary. This review should ensure that as operations proceed, the operator's predictions regarding the nature of the ore and other minerals or impurities encountered, type of processing that works with ore, groundwater flow rates, directions and quality, and methods for heap leaching, design of drainage and impoundments have not changed significantly. This section also sets forth requirements for transfer and sale of permits. Secretaries are required to fully comply with public participation requirements under NEPA.

Unlike the bill as introduced, H.R. 2262, as amended, authorizes the Secretary to make additional Federal land available as necessary to permit mineral activities on mining claims. This new authority is necessary because the archaic terminology of the 1872 law requires that millsites, or lands used for processing or milling locatable minerals, shall be on non-mineral land and noncontiguous to the lode or placer on which a regular mining claim is located. The law, therefore, by implication requires that mining claims only be used for extracting ore, not processing; otherwise, they are vulnerable to a challenge on the lack of discovery of a valuable min-

eral. In practice these restrictions are routinely ignored. In fact, the BLM regulations expressly allow a mine permit to cover a specified area whether or not it is on or includes valid mining claims. Section 304 rectifies this situation by requiring that an operations permit may only be approved on federal land containing a valid mining claim, millsite claim, tunnel site claim, and such additional Federal lands that the Secretary grants a right-of-way permit under title V of FLPMA. In this way, the mining operator will be able to secure the additional space needed to conduct mineral activities while also ensuring that Federal lands are used in accordance with Federal law.

Sec. 305. Persons ineligible for permits

This section declares persons in violation of this Act, state or Federal conservation laws or regulations, or the Surface Mining Control and Reclamation Act and associated regulations to be ineligible for permits. This section mirrors comparable provisions of the Surface Mining Control and Reclamation Act (30 U.S.C. 1231).

Sec. 306. Financial assurances

This section seeks to prevent the already substantial problem of abandoned hardrock mines from growing when companies go bankrupt. A 2005 report by the General Accounting Office[37] (GAO) found that the BLM did not have a process for ensuring that adequate assurances, like bonds, are in place to cover reclamation costs for mines on public lands. This section requires operators to provide evidence of financial assurances sufficient to cover mine reclamation and restoration. The Secretary is authorized to adjust the amounts of the bonds or other assurances as size of area mined changes, or based on new information on reclamation or treatment costs. Financial assurances must be sufficient to assure reclamation by the Secretary in the event of forfeiture. A two-part release schedule for financial assurances is established: first, part of the assurances can be released after determination that operators have successfully regraded and revegetated the mine area. The second part can be released after confirmation that mine discharge has ceased for at least five years, or met water quality standards for five years without treatment.

The administration and several witnesses testified that BLM has substantially improved its financial assurance requirements and oversight since the GAO report was released. However, others—including a former BLM State Director—testified to the value of this section to ensure that financial assurance oversight remains an agency priority, and improvements continue, especially with regard to assurances that take into account the costs of long-term water treatment.

Sec. 307. Operation and reclamation

This section mandates that lands used for mining must be restored to a condition capable of supporting their prior uses, or to other beneficial uses which conform to applicable land use plans, such as fish and wildlife habitat, hunting, fishing and other forms

[37] GAO, 2005. "Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs." (GAO–05–377)

of recreation. The Committee amended the bill as introduced to delete the more prescriptive operations and reclamation standards included in the bill as introduced and instead directs Secretaries to jointly issue performance or technology-based standards to address eleven environmental concerns, such as (but not limited to) erosion control, vegetation cover, acid mine drainage, and restoration of fish and wildlife habitat. The Committee also added a provision to require the Secretary to work with state and local governments to minimize impacts on surface and ground water from mineral activities. Ongoing review of reclamation activities on forfeited claims and suspended operations permits is required.

The Committee adopted this less prescriptive approach in response to the 1999 National Research Council's report on hardrock mining which endorsed performance standards over technology standards.[38] Specifically, the National Research Council found that "Federal land management agencies" regulatory standards for mining should continue to focus on a clear statement of management goals rather than on defining inflexible, technically prescriptive 'standards." Simple 'one-size-fits-all' solutions are impractical because mining confronts too great an assortment of site specific technical, environmental, and social conditions. The requirements in H.R. 2262, as amended will provide the necessary and strong framework for regulating hardrock mining while also providing enough flexibility to ensure the appropriate outcomes.

Sec. 308. State law and regulation

This section declares that state standards for reclamation, bonding, inspection, and water or air quality which either meet or exceed federal standards are not inconsistent with this Act. The states and the Secretary can use cooperative agreements to govern surface management activities, but the federal government reserves the authority to inspect and enforce those mines which include private as well as public lands.

Sec. 309. Limitation on the issuance of permits

H.R. 2262, as amended, requires that no exploration or operations permit shall be issued under this Act if the mineral activities would impair the lands or resources of a National Park or National Monument. The bill, as amended, defines the term "impair" as including any diminution of the affected lands or resources including but not limited to scenic assets, water resources, air quality, acoustic qualities or other changes that would damage the lands or resources of a National Park or a National Monument.

TITLE IV—MINING MITIGATION

The substance of this title is unchanged in H.R. 2262, as amended; however, it has been reformatted for purposes of clarity.

SUBTITLE A—LOCATABLE MINERALS FUND

Sec. 401. Establishment of fund

This section establishes a "Locatable Minerals Fund."

[38] National Research Council, "Hardrock Mining on Federal Lands", National Academy Press, 1999.

Sec. 402. Contents of fund

This section directs to the Locatable Minerals Fund the following: royalties collected under Section 102, monies resulting from enforcement and citizen suits, donations, penalties, funds from issuance of remaining grandfathered permits, and any balance in the annual claim maintenance fees not otherwise applied to administration of the mining law program in the Department of the Interior.

Sec. 403. Subaccounts

This section directs 2/3 of the funding to the "Hardrock Reclamation Account" and 1/3 to the "Hardrock Community Impact Assistance Account."

SUBTITLE B—USE OF HARDROCK RECLAMATION ACCOUNT

Sec. 411—Use and objectives of the account

This section establishes that funds can be spent for reclamation on public lands used for mining, and on areas with mixed federal-nonfederal ownership, as long as half the lands are federal. The Secretary is directed to prioritize reclamation projects which protect public health and safety, particularly from water pollution, and for projects which restore wildlife habitat. Reclamation that is a removal or remedial action under Superfund must be conducted with the concurrence of the EPA.

Section 412. Eligible lands and waters

This Section mandates use of funds for reclamation of federal lands, Indian lands, or water resources that cross those lands, which have been affected by mining activities prior to this Act, for which there is no responsible party, and on which minerals cannot further be extracted economically by mining or reprocessing beyond negligible disturbance. The Secretary is directed to maintain an inventory of abandoned mines on Federal and Indian Lands and provide an annual report to Congress on status of cleanup.

Sec. 413. Expenditures

This section authorizes the Director of the Office of Surface Mining and Reclamation to make funds available to agency directors, tribes, or other public entities that are capable of undertaking reclamation programs.

Sec. 414. Authorization of appropriations

This section authorizes appropriation of funds without fiscal year limitation.

SUBTITLE C—USE OF HARDROCK COMMUNITY IMPACT ASSISTANCE ACCOUNT

Sec. 412. Use and objectives of the account

This Section directs fund to be used for planning, construction, and maintenance of public facilities and public services in states, political subdivisions, and tribes negative impacted by hardrock mining on public lands.

Sec. 422. Allocation of funds

This section allocates funds in proportion to the amount of mineral production under the general mining act in each state.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SUBTITLE A—ADMINISTRATIVE PROVISIONS

Sec. 501. Policy functions

This section adds to the purposes of Mining and Minerals Policy Act of 1970 "to ensure that mineral extraction and processing not cause undue degradation of the natural and cultural resources of the Federal lands." It also adds language to the National Materials and Minerals Policy, Research and Development Act of 1980 to "improve the availability of mineral data in Federal land use decisions."

Sec. 502. User fees

This section authorizes the Secretaries to establish and collect user fees to cover administrative costs of the requirements of the Act.

Sec. 503. Inspection and monitoring

This section establishes a minimum number of inspections of mineral activities per year, based on phase of operation. It gives citizens adversely affected by mineral activity violations the right to confidentially request inspections of sites. Operators are required to monitor compliance with their permit requirements, file reports with the Secretary, and make monitoring and evaluation reports available to the public.

Sec. 504. Citizen suits

This section authorizes citizen suits against any person, including the Secretaries, to enforce compliance. Plaintiffs must give operators notice in writing of the alleged violation and 60 days before civil actions can begin. The bill, as amended, mirrors comparable provisions of the Surface Mining Control and Reclamation Act (30 U.S.C. 1231).

Sec. 505. Administrative and judicial review

This section proscribes procedural guidelines for administrative review of agency actions. It provides for review of notice of violation within 30 days, review of penalties assessed within 45 days, and review of a decision within 30 days. It further provides for public hearings on violations, requires written decisions by the Secretary on findings within 30 days of review, and allows the Secretary to grant temporary relief from penalties or corrective measures.

Sec. 506. Enforcement

This section sets forth enforcement guidelines. 30 days are allowed for abatement of violations, unless there is an imminent threat to public heath or safety of the environment, in which case the operation is shut down and financial assurances forfeited pending judicial or administrative review. Civil and criminal penalties

are set for non-compliance, with caps for penalties at $25,000 per violation per day for failure to comply with environmental protection requirements. This section sets the minimum penalty for failing to cease operations when ordered at $1,000. Any agent of a corporation who knowingly facilitates a violation or refusal to cease operations is made culpable. The Secretary is empowered to suspend permits if mine operators [or owners] lie or violate terms of the Act or their permit. Fines are imposed for violations of monitoring agreements or falsifying monitoring information, for mining without a permit, or violating environmental protection requirements.

Sec. 507. Enforcement

This section requires Secretaries of Interior and Agriculture to promulgate regulations to implement the Act within 180 days of enactment of the Act.

Sec. 508. Effective date

This section establishes that the Act is effective on the date of enactment unless otherwise provided.

SUBTITLE B—MISCELLANEOUS PROVISIONS

Sec. 511. Oil shale claims subject to special rules

This section amends the reclamation requirement for certain oil shale claims and limited patents in the Energy Policy Act of 1992 to be consistent with the provisions in this Act.

Sec. 512. Purchasing power adjustment

This section requires Secretary to adjust all fees, penalties, and other charges at least every five years based on the Consumer Price Index.

Sec. 513. Savings clause

This section declares that laws, regulations, and land use plans with stronger requirements to protect natural and cultural resources than those in this Act remain in effect. This section also declares that no other Federal law is affected by this Act, except the general mining laws.

Sec. 514. Availability of public records

This section declares that all records, materials, and information must be made available to the public physically and via the Internet.

Sec. 515. Miscellaneous powers

This section authorizes the Secretaries of Interior and Agriculture to conduct investigations, inspections, and other inquiries. Secretaries have authority to issue subpoenas and order written testimony and depositions. District courts are authorized to require witness appearance and production of documents. Entry and access to facilities and records is authorized.

Sec. 516. Multiple mineral development and surface resources

This section applies the provisions of the Multiple Minerals Development Act (30 U.S.C. 524 and 526).

Sec. 517. Mineral materials

This section clarifies that all common minerals, such as clay, stone, pumice, and rock, are covered under the leasing and sale laws and are not to be treated as locatable minerals. This section removes the ability to claim mineral deposits of such minerals as locatable minerals under the mining laws if the mineral deposit had some property giving it a "distinct and special value" that had existed under the Surface Resources Act of 1955 (30 U.S.C. 611).

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill is to modify the requirements applicable to locatable minerals on public domain land, consistent with the principles of self-initiation of mining claims, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2262—Hardrock Mining and Reclamation Act of 2007

Summary: H.R. 2262 would reform programs related to mining hardrock minerals, such as gold, copper, and uranium, on federal land. CBO estimates that implementing the bill would increase discretionary spending by $16 million in 2008 and $267 million over the 2008–2012 period, assuming appropriation of the necessary amounts. We also estimate that enacting H.R. 2262 would reduce direct spending by $10 million in 2008, $206 million over the 2008–2012 period, and $382 million over the 2008–2017 period. Finally, we estimate that the bill would have no impact on revenues in 2008, but would increase them by $160 million over the 2009–2012 period, and $310 million over the 2009–2017 period.

H.R. 2262 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 2262 contains private-sector mandates, as defined in UMRA, that would affect certain holders or operators of mining claims on public land. The bill would impose a royalty on the production of hardrock minerals from those claims. The bill also would require persons paying royalties to comply with certain administrative procedures. CBO estimates that the cost of those mandates would fall below the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: For this estimate, CBO assumes that H.R. 2262 will be enacted early in 2008. The estimated budgetary impact of H.R. 2262 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2262

	By fiscal year, in millions of dollars—						
	2008	2009	2010	2011	2012	2008–2012	2008–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	25	151	94	88	83	441	n.a.
Estimated Outlays	16	46	52	69	84	267	n.a.
CHANGES IN DIRECT SPENDING							
Estimated Budget Authority	−10	−55	−51	−47	−43	−206	−382
Estimated Outlays	−10	−55	−51	−47	−43	−206	−382
CHANGES IN REVENUES							
Estimated Revenues	0	70	30	30	30	160	310

Note.—n.a. = not available.

Basis of estimate: H.R. 2262 would reform programs related to mining hardrock minerals on federal land. The bill would establish a new regulatory framework for administering permits to develop hardrock minerals. Key features of that framework would require miners to seek additional permits to explore for and develop mineral resources and meet certain standards related to reclamation of mined lands. The bill also would reauthorize and increase certain mining-related fees and impose a royalty on gross income from hardrock mining on federal land. Under current law, hardrock miners pay no royalties to the federal government. Under the bill, income from hardrock mining fees and royalties would be available,

subject to appropriation, to support reclamation programs and to provide assistance to certain state, local, and tribal governments. Finally, H.R. 2262 would modify procedures related to administrative and judicial review of mining activities, withdraw certain federal land from such activities, and establish procedures to allow local governments to petition for further withdrawals of federal land within their jurisdiction.

CBO estimates that implementing the bill would increase spending subject to appropriation, offsetting receipts (a credit against direct spending), and revenues. Effects of provisions estimated to have significant budgetary effects are described in the following sections.

Spending subject to appropriation

H.R. 2262 would authorize the appropriation of federal proceeds (including fees and royalties) from hardrock mining to restore public land where mining has occurred and to provide assistance to certain state, local, and tribal governments. (Estimates of such proceeds, which would affect direct spending and revenues, are described later in this estimate.) The bill also would make several changes to mining permits and the review of those permits that CBO expects would significantly increase federal costs to administer programs related to hardrock mining on federal land. In total, CBO estimates that implementing the legislation would increase discretionary spending by $16 million in 2008 and $267 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Spending of Proceeds from Hardrock Mining. As discussed in more detail in the following sections, H.R. 2262 would increase federal proceeds from hardrock mining. The bill also would establish the Locatable Minerals Fund, into which such proceeds would be deposited along with certain other mining-related fees and charges. Subject to appropriation, the bill would authorize the Secretary of the Interior to spend two-thirds of amounts in the proposed fund, including interest, to restore public land where mining has occurred. The bill would authorize appropriations of the remaining one-third of such funds for financial assistance to state, local, and tribal governments with federal mining lands within their jurisdictions.

Based on information from the Department of the Interior (DOI) and industry experts, CBO estimates that deposits to the proposed fund, including intragovernmental transfers of interest credited to unspent balances in the fund, would total $25 million in 2008 and $441 million over the 2008–2012 period. Assuming appropriation of the necessary amounts, we estimate that resulting spending would total $3 million in 2008 and $252 million over the 2008–2012 period. That estimate is based on historical spending patterns for similar activities.

Administrative Costs. Based on information from DOI regarding the department's costs to administer hardrock mining activities under current law, CBO estimates that implementing H.R. 2262 would increase the department's costs by about $15 million annually starting in 2008, particularly for costs related to new permitting requirements established under the bill.

H.R. 2262 would authorize the Secretary of the Interior to charge fees to offset those increased administrative costs. CBO expects, however, that it would take about one year for DOI to begin to collect such fees; therefore, we estimate that increased costs incurred during 2008 would not be offset, and we estimate that the agency would require additional net appropriations of $15 million to administer hardrock mining programs in that year. Starting in 2009, however, we estimate that DOI would collect fees sufficient to fully offset additional administrative costs incurred under H.R. 2262, requiring no further net appropriations beyond 2008. As a result, we estimate that administering proposed changes to hardrock mining programs under H.R. 2262 would increase net discretionary spending by $13 million in 2008 and $15 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Direct spending and revenues

CBO estimates that enacting H.R. 2262 would increase offsetting receipts from certain fees, thereby reducing direct spending. We also estimate that the bill would increase revenues by imposing a royalty on income generated from mining for hardrock minerals on federal land. Direct spending and revenue effects are presented in Table 2 and described in the following sections.

TABLE 2.—ESTIMATED DIRECT SPENDING AND REVENUE EFFECTS UNDER H.R. 2262

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	−10	−55	−51	−47	−43	−40	−37	−35	−33	−31	−206	−382
Estimated Outlays	−10	−55	−51	−47	−43	−40	−37	−35	−33	−31	−206	−382
CHANGES IN REVENUES												
Estimated Revenues	0	70	30	30	30	30	30	30	30	30	160	310

Offsetting Receipts from Location and Maintenance Fees. Under current law, hardrock miners pay certain fees to the Bureau of Land Management (BLM): a one-time location fee of $30 when recording a hardrock claim and annual maintenance fees of $125 per claim. According to BLM, location and maintenance fees—which are scheduled to expire after 2008—totaled roughly $50 million in 2007. Those fees are currently recorded in the budget as offsets to federal spending.

H.R. 2262 would permanently reauthorize location and maintenance fees. The bill also would increase those fees, respectively, to $50 and $150 per claim. Based on information from BLM about anticipated trends in the number of hardrock claims located and maintained each year, CBO estimates that the proposed higher fees would generate additional offsetting receipts totaling $10 million in 2008, $206 million over the 2009–2012 period, and $382 million over the 2009–2017 period. (As discussed previously, under H.R. 2262, those amounts would be deposited in the Locatable Minerals Fund, and any spending would be subject to appropriation.)

Revenues from Royalties: Under current law, hardrock miners do not pay royalties to the federal government. H.R. 2262 would establish a royalty on future production of hardrock minerals. In general, the royalty rate on production from existing claims would be 4 percent of gross income; the rate for new claims established pursuant to H.R. 2262 would be 8 percent.

Budgetary Treatment of Royalties. CBO believes that imposing royalties on miners with existing claims is an exercise of the government's sovereign power to levy compulsory fees. Governmental receipts from such fees are recorded in the budget as revenues. Royalties generated from new claims, however, would be considered voluntary, resulting from business-like transactions, and would be recorded in the budget as offsetting receipts.

Royalties from Existing Claims. CBO expects that, under H.R. 2262, royalties from existing claims would generate new revenues. Although general data on the value of hardrock minerals produced throughout the United States are available, estimates of the portion attributable to federal land—and gross income to firms with federal mining claims—are uncertain, particularly because companies are not currently required to report data related to production from federal land. However, based on information from BLM, the U.S. Geological Survey, and industry experts, CBO estimates that total income subject to the proposed royalty would average roughly $1 billion a year, with most of that income earned by gold producers, We further estimate that increased revenues under H.R. 2262, net of reductions to income and payroll taxes, would total $160 million over the 2009–2012 period and $310 million over the 2009–2017 period. Under H.R. 2262, royalties due on minerals produced during the first 12 months following enactment of the bill could be deferred until after that 12-month period; therefore, we anticipate that no royalties would be paid in 2008.

Royalties from New Claims. According to BLM and industry experts, after locating a mining claim, it typically takes at least 10 years to explore, develop, and produce commercial quantities of minerals that would generate federal royalties. Therefore, CBO expects that any new claims established over the 2008–2017 period

are unlikely to generate any significant federal royalties until after 2017.

Estimated impact on state, local, and tribal governments: H.R. 2262 contains no intergovernmental mandates as defined in UMRA. The bill would authorize assistance for planning, construction, and maintenance of public facilities and public services to state, local, and tribal governments in areas that have been affected by mineral activities.

It also would allow those governments to file petitions that would lead to limiting or ending mining activities on specific tracts of federal land. Petitions would have to outline specific resources and values that the jurisdiction intends to protect by limiting mining activities, including watersheds and drinking water supplies, wildlife habitats, cultural or historic resources, scenic areas, and, in the case of Indian tribes, religious and cultural values. Such petitions would have to be approved by the Secretary unless, within 180 days, the Secretary publishes findings that identify why complying with the petition would be contrary to the national interest.

Finally, the bill would authorize cooperative agreements between the federal government and states for implementing and enforcing mining regulations, particularly in cases where mineral activities would affect lands where federal and state jurisdiction overlap.

Estimated impact on the private sector: H.R. 2262 contains private-sector mandates, as defined in UMRA, that would affect certain holders or operators of mining claims on public land. The bill would impose a royalty on the production of hardrock minerals from mining claims that are on the date of enactment (1) subject to an operations permit and (2) producing hardrock minerals in commercial quantities. The royalty would be set at 4 percent of gross income from mining. Based on information from BLM, USGS, and industry experts, CBO estimates that the cost of that mandate would total about $200 million over the 2008–2012 period. In addition, the bill would require persons paying royalties to comply with certain administrative procedures. The cost of complying with the procedures would be minimal. Consequently, the aggregate cost to the private sector of the mandates in the bill would fall below the annual threshold established in UMRA ($131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Megan Carroll and Tyler Kruzich; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 2262 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 2324 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2324. MINING DISTRICT REGULATIONS BY MINERS: LOCATION, RECORDATION, AND AMOUNT OF WORK; MARKING OF LOCATION ON GROUND; RECORDS; ANNUAL LABOR OR IMPROVEMENTS ON CLAIMS PENDING ISSUE OF PATENT; CO-OWNER'S SUCCESSION IN INTEREST UPON DELINQUENCY IN CONTRIBUTING PROPORTION OF EXPENDITURES; TUNNEL AS LODE EXPENDITURE.

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May 1872, that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993, *or section 103(a) of the Hardrock Mining and Reclamation Act of 2007* and until a patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, $10 worth of labor shall be performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including

such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim.

* * * * * * *

MINING AND MINERALS POLICY ACT OF 1970

* * * * * * *

TITLE I—MINING POLICY

SEC. 101. The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities *and to ensure that mineral extraction and processing not cause undue degradation of the natural and cultural resources of the public lands*.

For the purpose of this Act "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this Act. *It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this section.*

* * * * * * *

SECTION 5 OF THE NATIONAL MATERIALS AND MINERALS POLICY, RESEARCH AND DEVELOPMENT ACT OF 1980

PROGRAM PLAN AND REPORT TO CONGRESS

SEC. 5. (a) * * *

* * * * * * *

(e) The Secretary of the Interior shall promptly initiate actions to—

(1) * * *

* * * * * * *

(3) improve the availability and analysis of mineral data in Federal land use decisionmaking*, except that for National Forest System lands the Secretary of Agriculture shall promptly*

initiate actions to improve the availability and analysis of mineral data in public land use decisionmaking.

* * * * * * *

SECTION 2511 OF THE ENERGY POLICY ACT OF 1992

SEC. 2511. OIL SHALE CLAIMS.

(a) * * *

* * * * * * *

(f) RECLAMATION.—In addition to other applicable requirements, any person who holds a limited patent or maintains a claim pursuant to this section shall be required to carry out reclamation [as prescribed by the Secretary] and to furnish a bond or other appropriate financial guarantee in an amount sufficient to ensure adequate reclamation of the lands to be disturbed by any aspect of the proposed mining activities *in the same manner as if such claim was subject to title II and title III of the Hardrock Mining and Reclamation Act of 2007.*

* * * * * * *

ACT OF JULY 23, 1955

AN ACT To amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes.

* * * * * * *

SEC. 3. *(a)* No deposit of common varieties of *mineral materials, including but not limited to* sand, stone, gravel, pumice, pumicite, [or cinders] *cinders, and clay* and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. "Petrified wood" as used in this Act means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter.

(b)(1) Subject to valid existing rights, after the date of enactment of the Hardrock Mining and Reclamation Act of 2007, notwithstanding the reference to common varieties in subsection (a) and to the exception to such term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in such subsection, including the block pumice referred to in such subsection, shall be subject to disposal only under the terms and conditions of the Materials Act of 1947.

(2) For purposes of paragraph (1), the term "valid existing rights" means that a mining claim located for any such mineral material—

(A) had and still has some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection;

(B) was properly located and maintained under the general mining laws prior to the date of enactment of the Hardrock Mining and Reclamation Act of 2007;

(C) was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws as in effect immediately prior to the date of enactment of the Hardrock Mining and Reclamation Act of 2007; and

(D) that such claim continues to be valid under this Act.

SEC. 4. (a) * * *

(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefore, to the right of the United States to manage and dispose of the vegetative *and mineral material* surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided further,* That nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eight meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefore, sever, remove, or use any vegetative *and mineral material* or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or re-

moval to provide clearance, shall be in accordance with sound principles of forest management.

* * * * * * *

SEC. 8. This Act may be cited as the "Surface Resources Act of 1955".

ACT OF JULY 31, 1947

(Public Law 80-291)

AN ACT To provide for the disposal of materials on the public lands of the United States.

SECTION 1. The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to [common varieties of] the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this Act, land described in the Acts of August 28, 1937 (50 Stat. 874), and of June 24, 1954 (68 Stat. 270), if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, the Act of June 28, 1934 (48 Stat. 1269), as amended, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation therefore, to be determined by the Secretary: *Provided, however,* That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this Act shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this Act, the word "Secretary" means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

* * * * * * *

SEC. 5. This Act may be cited as the "Materials Act of 1947".

ACT OF AUGUST 4, 1892

AN ACT To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: *Provided,* That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

[SEC. 2. That an act entitled "An act for the sale of timber lands in the State of California, Oregon, Nevada, and Washington Territory," approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory" where the same occur in the second and third lines of said act, and insert in lieu thereof the words, "public-land States," the purpose of this act being to make said act of June third, eighteen hundred and seventy-eight, applicable to all the public-land States.

[SEC. 3. That nothing in this act shall be construed to repeal section twenty-four of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one.]

ACT OF JANUARY 31, 1901

AN ACT Extending the mining laws to saline lands.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: *Provided,* That the same person shall not locate or enter more than one claim hereunder.]

DISSENTING VIEWS

We strongly oppose H.R. 2262, the "Hardrock Mining and Reclamation Act of 2007" because we believe it will decimate the remnants of an already sadly diminished domestic mining industry. It will export American jobs, good American jobs, to other nations, and make us more dependent on others for the materials necessary for our high tech future. H.R. 2262 leaves a grave legacy that threatens our long term economic and national security.

While the Committee Majority may be content to allow our mineral import deficit to grow [1], we believe that a domestic mining industry is one of the foundations of our economy and our military security. Indeed, China and India agree with us, as they are consuming huge amounts of energy and minerals which they are willing to secure from parts around the globe and with which they are fueling unprecedented economic growth. At current rates of relative economic growth, one or both of them will surpass the United States in economic output within two decades. Data from the World Trade Organization shows that China vaulted past America at the beginning of this year as an exporter and has since moved at lightning speed to eclipse Germany's once indomitable export machine. However, according to the Majority there is "no reason, no reason whatsoever, why 'good public land law' should be linked to the gross national product." [2]

The Majority's irreverence to establishing a balanced minerals policy that will help our country compete with these booming rivals became quite apparent during the legislative process. The legislative process was perfunctory at best. H.R. 2262 was drafted without any input from the Minority side of the aisle. Numerous requests from Members for additional hearings were denied. Regular order with a Subcommittee level markup was bypassed. The only opportunity for Minority input was at the Full Committee markup where almost all amendments from the Minority were rejected and deemed "dilatory" by the Committee Chairman. Those amendments may seem "dilatory" to the Committee Majority because they do not have hardrock mining in their Districts; however, many of us do. Those amendments were the only voice we had to protect the jobs and tax base in our Districts. If this is the "new direction" that was promised to America last November, America was misled.

We are unaware of any witness in the three legislative hearings held by the Subcommittee on Energy and Mineral Resources who testified that H.R. 2262 will increase domestic mining activity. Rather, several witnesses testified that H.R. 2262 will be dev-

[1] See Attachment 1.

[2] Response of Chairman Rahall, Full Committee Markup of H.R. 2262, Tuesday, October 23, 2007 to an amendment offered by Congressman Pearce stating that H.R. 2262 would expire if and when the United States does not have the number one gross domestic product in the world.

astating to our domestic production of minerals, will be crippling to our economy and will send more jobs overseas. We agree.

The problems with H.R. 2262 are extensive and pervasive; however, we wish to highlight in these Dissenting Views three of the most significant concerns raised during the hearings:

- Title I, 8% Gross Royalty;
- Title II, Land Withdrawal; and
- Title III, Mine Veto.

I. TITLE I, 8% GROSS ROYALTY

Under H.R. 2262, as reported, existing hardrock mines will be subject to a new 4% gross royalty. We are extremely concerned that this 4% royalty on existing mines constitutes a "taking" of private property rights under the Fifth Amendment of the Constitution and a breach of contract. The lands affected by this provision are in many cases, private. In many cases in the Western Government Land States, private mining lands adjoin government lands, but under this provision, the government would be extracting a royalty if government lands adjacent to the mine were necessary for any use by the mine. For those who understand agriculture, the analogy would be a proposal of a 4% gross royalty on all crops raised on lands that had been conveyed under the Homestead Act, under the false premise that the government was due such royalty because a farmer used public roads to get the crops to market. A "royalty" by definition is a payment made to an owner for the use of land or property belonging to the owner, assessed on the value of the produce derived. It has never been associated with ancillary uses. Under this bill, the Majority demands that an owner pay a royalty to the government for something the government does not own. While the Majority may feel that the government owns, or should own, everything, we do not. We believe our Founding Fathers did not intend for the government to own, or claim ownership of everything.

In addition, all new hardrock mines will be subject to an 8 percent gross royalty. The hearing record seems irrelevant to the Majority, as the objection to this extremely high tax was overwhelming. The following were statements made during the Subcommittee on Energy and Mineral Resources hearings, that appear to have fallen on deaf ears:

- "8% is excessive."—James Otto, Author of World Bank Mining Royalties publication (Washington, DC hearing 10/02/07).
- "I am only aware of a single royalty that is as high as the royalty proposed in the bill, just one in my 20 years of practice. An 8% royalty would really be ruinous. . . ."—James Cress, Attorney, Holme Roberts & Owen LLP (Washington, DC hearing 10/02/07).
- "I am particularly concerned about the potential impacts of the eight percent net smelter return royalty called for in the last legislation. . . . All the royalty costs will be absorbed by the mining companies, and this will be a direct adverse impact on the amount of mining tax revenues that flows to the State and to the Counties."—Elaine Burkdull Spencer, Elko County Economic Diversification Authority (Elko, Nevada field hearing 8/21/07).
- "We do not believe that this type of royalty fairly addresses the needs of the public or of the mining industry. To a large extent, as

you've heard, we have no control over price; therefore, it is impossible to pass on any additional cost. I bring to you for your consideration Nevada's model of the Nevada net proceeds of mine tax. This is a tax that has served the State and the industry very well since statehood, and we would be delighted to work with the Committee on how this Nevada model might be used to become, in a sense, essentially a production royalty or a production payment fee."—Russ Fields, Nevada Mining Association (Elko, Nevada field hearing 8/21/07).

• "What I would suggest is that if you are going to implement a royalty that actually you look to the states who are going to be impacted by the loss of their revenues. They're the one's that are going to come back to you and ask you to help them replace their industries that they've lost."—Walter Martin (Elko, Nevada field hearing 8/21/07).

H.R. 2262 was moved through the Committee with such haste that an economic analysis on the impact of an 8 percent gross royalty by any stakeholder, the Administration or Congress was not performed. Perhaps it was for good reason, as the three economic analyses performed on similar mining legislation in 1993 are instructive. Those economic analyses showed that there would be a huge loss of revenue to the government and a dramatic loss of jobs in the mining sector.

One hearing witness described a real world example that occurred in British Columbia in the 1970's when the province imposed a 2.5 percent gross royalty that increased to 5 percent in the second year. The witness stated that revenues collected from royalties on metal mines declined from $28.4 million in 1974 to $15 million in 1975. Exploration expenditures also decreased from $38 million in 1972 to $15.3 million in 1975. Ultimately, the royalty had a devastating impact on the mining industry, and British Columbia repealed the royalty in 1976.

Moreover, it has been intimated by proponents of this bill that they acknowledge the proposed royalty is so high that it would stop mining in the US, but that it will be "subject to negotiation" with the Senate. In other words, the proponents cynically admit that the legislation they are asking Members of Congress to vote for would kill a vitally important industry for our nation's future, but they are "gambling" with the Senate. Not only does this show a markedly callous and cynical disregard for the well-being of Americans dependent on mining for their livelihoods, it also represents an affront to the House of Representatives by asking elected Members to vote for a bill that they acknowledge will destroy an entire industry in order to improve their "bargaining power" with the Senate. The proponents are in sum, arguing that Members go on record to destroy an industry so that they can bargain for some changes. We strongly believe this Inside-the-Beltway cynicism and gamesmanship contributes to the current congressional approval ratings which have sunk to their lowest level. A bill should be able to pass the "red face test." The proponents admit theirs does not, yet ask other Members to trust them that they do not mean to destroy mining in America, even though the Committee record clearly shows that their bill will do just that.

The Majority is wrong when they say that the industry does not contribute to state and federal treasuries. The current taxation system on hardrock mining in the U.S. is similar to Canada's where special taxes or royalties are levied by the State and shared with the Counties where the mines are located. The Federal government receives revenues from the claim maintenance fees ($55 million in FY 2006), document processing fees, cost recovery rules and corporate and personal income taxes. These revenues from the claim maintenance fees, claim location fees and other monies collected through the cost recovery rule are not shared with the States or Counties where the mine is located. Compare this to the zero revenue received by the federal government from lands that produce nothing.

If a royalty were imposed, a more reasonable approach would be that advocated for by Congressman Heller, whose district encompasses roughly 99% of Nevada. Representative Heller offered an amendment outlining a royalty paradigm modeled after Nevada's successful state model. Nevada serves as a premiere laboratory for what royalty would work and what royalty would not. The Majority summarily dismissed Rep. Heller's tested-and-proven approach for their own 8 percent unprecedented and untested gross royalty.

II. TITLE II, LAND WITHDRAWAL

H.R. 2262 withdraws vast new categories of federal lands from mineral entry and development including roadless areas. Prohibiting economic activity on federal lands is detrimental to Western States. Federally held public lands account for as much as 86 percent of the land in certain Western states. These same states account for 75 percent of our nation's metals production. As such, access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry.

In addition, H.R. 2262 places a presumption in favor of withdrawing land unless the Secretary of the Interior can prove that it is in the "national interest" not to. While an individual mine may or may not rise to the level of a "national interest," domestic mining does. The minerals are where Mother Nature has placed them, and to have a presumption against developing them is bad mineral policy.

H.R. 2262's withdrawal language does not require a mineral survey to determine if any areas are prospective for mineral discovery. Even the Wilderness Act requires a mineral assessment prior to Congressional Wilderness Designation. As a result of these surveys, some areas were not included in Wilderness because of their mineral potential.

More than 400 million acres of federal land have already been withdrawn from mineral entry and set aside for either military or conservation purposes. To put this in perspective, only 6 million acres nationwide have been or are being mined. Approximately half of those 6 million acres have been reclaimed. This includes locatable minerals (the subject of H.R. 2262) coal, sand and gravel, and industrial minerals such as potash and trona.

Following are statements from the hearing that appear to have fallen on deaf ears.

• "Title II of the bill, protection of special places, renders millions of acres off limits to exploration and mining on which exploration and development are not currently prohibited. At the very least, no withdrawal should be made until an appropriate and careful study of the mineral resource potential has been completed. But really, better yet, these lands should remain open to exploration and mining. Please keep in mind that substantial land withdrawals have already occurred over the past decades, putting many millions of acres off limits to exploration and mining, including here in Nevada."—Ronald Parraat President, AuEx Ventures, Inc (Elko, Nevada field hearing 8/21/07).

• "The provision's closing enormous tracts of land to mining. Mining towns are traditionally against wholesale withdrawal from mineral entry. And traditionally, Congress has looked at those lands with high esthetic or environmental values on a case-by-case basis. I think that's a good policy, and I think that this Committee should take a good hard look at what may happen by withdrawing some 58 million acres of land from mineral entry."—John Hutchings, Eureka County Department of Natural Resources (Elko, Nevada field hearing 8/21/07).

III. TITLE III, MINE VETO

Several provisions in H.R. 2262 grant the Secretary the power to deny or "veto" proposed mining operations that will be in full compliance with all applicable environmental and reclamation standards. The veto can be done at anytime in the process even after significant investment has been made in construction of mine infrastructure. Such a veto is unprecedented for projects on federal lands.

A mine veto provision singles out the mining industry by preventing owners of mining claims the ability to exercise their rights secured by law. Other users of the public lands (i.e., timber industry, coal, oil and gas or other lessees) are not subject to such arbitrary denials. For these other industry lessees, once their right to be on the land has been acquired and all environmental requirements are met, projects move forward and are not subject to a veto.

An example of this mine veto authority is seen in the definition of "irreparable harm." H.R. 2262's new "irreparable harm" standard authorizes a mine veto nearly identical to the one rejected in 2001 due to the Bureau of Land Management's (BLM) projections of thousands of job losses and substantial adverse economic impacts. After a thorough public process, the BLM found "the requirement to avoid . . . irreparable harm to significant resource values which cannot be effectively mitigated has the greatest potential for affecting mining activities (both large and small). In some cases, this provision could preclude operations altogether." This new standard is a lawyer's dream of ambiguity leading to fighting about *whether* we mine instead of *how* we mine. Not one witness over the course of the three hearings held asked for this definition change and so it is not backed by any record.

Uncertainty created by the mine veto provisions will deter investment in domestic mining projects. Investors need to know that a mining project in the United States can obtain approval and pro-

ceed unimpeded as long as the operator complies with all relevant laws and regulations.

Ronald Parrat, President, AuEx Ventures, Inc., testifying at the Elko Field hearing summarized it best:

> H.R. 2262 eliminates the right under the current mining law to use and occupy public lands for mineral exploration and development. Instead, the bill empowers federal land managers with discretionary veto power to reject current applications for exploration and mining where mineral development is already allowed under current multiple use guidelines. The discretionary permitting process proposed in H.R. 2262 ignores the fundamental geological fact that commercial mineral deposits are rare occurrences. Mineral deposits cannot be moved. They need to be developed where they're found. And laws and regulations covering exploration and mining really must recognize and acknowledge this unique aspect.

Beyond the mine veto, the list of onerous provisions in Title III goes on. It should also be noted that Title III creates a whole new environmental permitting system for hardrock mines even though a comprehensive framework of state and federal laws and regulations governing this type of mining is already in place. Title III even puts in new "acoustic quality" buffers to prohibit mining near the National Park System or National Monuments. Under the definition of impair they include "scenic assets" and "acoustic qualities." There are existing operations within and close to National Parks and National Monuments that may be adversely affected by this provision.

IV. CONCLUSIONS

We firmly believe more hearings were necessary before H.R. 2262 was marked-up at the Natural Resources Committee, our request for additional hearings and citizens guidance was denied by the Majority. Our efforts to further evaluate H.R. 2262, its impact on our constituents and the security of our nation was expressed in a letter to the Committee Chairman on October 16, 2007. Western residents, local industry and the Republican Members who largely represent the mining region of our country, were left out of the drafting process of the bill and were relegated to bystander status as this bill was pushed through Committee.

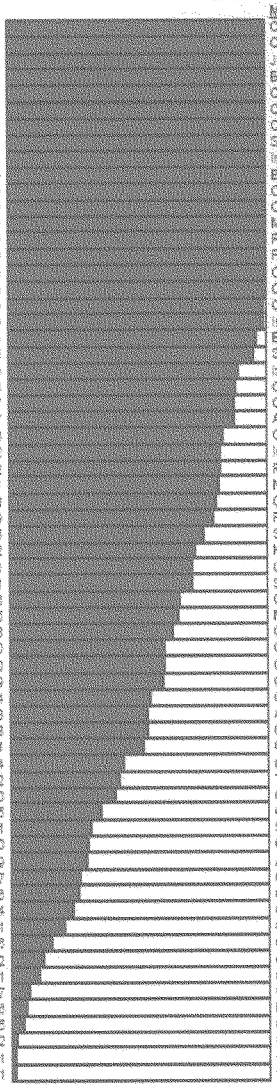
We very strongly believe that H.R. 2262 will harm domestic mining investment and will cause mines to close prematurely. We do not believe it will generate the expected revenues. Rather, it will force taxpayers to bare the burden of the increased federal bureaucracies needed to implement and administer the Act without an industry to monitor.

We believe that this Act will increase the United States' dependency on foreign sources of mined materials impacting our economy, balance of trade and national security. It will certainly adversely impact the rural mining communities in the West whose citizens working in the mines earn the best non-supervisory wages in the country. We believe that maintaining an industrial base in America—from raw materials to finished product is vitally important to

our economic survival and our national security. This bill fails to secure our national supply of minerals and leaves us vulnerable and dependent on unstable nations with little or no regard for their own environmental concerns and certainly no regard for the importance of protecting America's economy.

6

2006 U.S. NET IMPORT RELIANCE FOR SELECTED NONFUEL MINERAL MATERIALS



Commodity	Percent	Major import sources (2002-05)[1]
ARSENIC (trioxide)	100	China, Morocco, Mexico, Chile
ASBESTOS	100	Canada
BAUXITE and ALUMINA	100	Jamaica, Guinea, Australia, Brazil
COLUMBIUM (niobium)	100	Brazil, Canada, Estonia, Germany
FLUORSPAR	100	China, Mexico, South Africa, Mongolia
GRAPHITE (natural)	100	China, Mexico, Canada, Brazil
INDIUM	100	China, Canada, Japan, Russia
MANGANESE	100	South Africa, Gabon, Australia, China
MICA, sheet (natural)	100	India, Belgium, China, Brazil
QUARTZ CRYSTAL (industrial)	100	Brazil, Germany, Madagascar, Canada
RARE EARTHS	100	China, France, Japan, Russia
RUBIDIUM	100	Canada
STRONTIUM	100	Mexico, Germany
THALLIUM	100	Russia, Belgium
THORIUM	100	France
VANADIUM	100	Czech Republic, Swaziland, Canada, Austria
YTTRIUM	100	China, Japan, France, Austria
GALLIUM	99	China, Japan, Ukraine, Russia
GEMSTONES	99	Israel, India, Belgium, South Africa
BISMUTH	96	Belgium, Mexico, China, United Kingdom
PLATINUM	95	South Africa, United Kingdom, Germany, Canada
STONE (dimension)	89	Italy, Turkey, China, Mexico
ANTIMONY	88	China, Mexico, Belgium
RHENIUM	87	Chile, Germany
TANTALUM	87	Australia, Canada, China, Japan
BARITE	83	China, India
DIAMOND (natural industrial stone)	82	Ireland, Botswana, Ghana, Belgium
PALLADIUM	82	Russia, South Africa, United Kingdom, Belgium
COBALT	81	Norway, Russia, Finland, Canada
POTASH	80	Canada, Belarus, Russia, Germany
TIN	79	Peru, Bolivia, China, Indonesia
CHROMIUM	75	South Africa, Kazakhstan, Zimbabwe, Russia
TITANIUM (sponge)	72	Kazakhstan, Japan, Russia
IODINE	71	Chile, Japan
TITANIUM MINERAL CONCENTRATES	71	South Africa, Australia, Canada, Ukraine
TUNGSTEN	66	China, Canada, Germany, Portugal
SILVER	65	Mexico, Canada, Peru, Chile
ZINC	63	Canada, Mexico, Peru, Australia
NICKEL	60	Canada, Russia, Norway, Australia
SILICON (ferrosilicon)	60	China, Venezuela, Russia, Norway
PEAT	59	Canada
MAGNESIUM METAL	54	Canada, Russia, China, Israel
GARNET (industrial)	53	Australia, India, China, Canada
MAGNESIUM COMPOUNDS	53	China, Canada, Australia, Austria
DIAMOND (dust, grit and powder)	51	China, Ireland, Ukraine, Russia
ALUMINUM	44	Canada, Russia, Venezuela, Brazil
NITROGEN (fixed), AMMONIA	42	Trinidad and Tobago, Canada, Russia, Ukraine
COPPER	40	Chile, Canada, Peru, Mexico
PERLITE	35	Greece
VERMICULITE	31	South Africa, China
MICA, scrap and flake (natural)	30	Canada, China, India, Finland
CADMIUM	29	Australia, Canada, Belgium, Peru
GYPSUM	27	Canada, Mexico, Spain, Dominican Republic
SULFUR	26	Canada, Mexico, Venezuela
CEMENT	24	Canada, Thailand, China, Venezuela
IRON and STEEL	21	Canada, European Union, Mexico, Brazil
SALT	16	Canada, Chile, The Bahamas, Mexico
PUMICE	12	Greece, Italy, Turkey
TALC	11	China, Canada, France, Japan
IRON and STEEL SLAG	7	Canada, Italy, France, Japan
PHOSPHATE ROCK	6	Morocco
IRON ORE	5	Canada, Brazil, Chile, Australia
LEAD	2	Canada, Australia, China, Mexico
LIME	1	Canada, Mexico
SAND AND GRAVEL (construction)	1	Canada, Mexico, The Bahamas

[1]In descending order of import share

DON YOUNG.
MARY FALLIN.
STEVAN PEARCE.
CATHY MCMORRIS RODGERS.
DEAN HELLER.
JEFF FLAKE.
JOHN J. DUNCAN, Jr.
ELTON GALLEGLY.
CHRIS CANNON.
ROB BISHOP.
BILL SHUSTER.
BILL SALI.
LOUIE GOHMERT.
TOM TANCREDO.
HENRY E. BROWN, Jr.
DOUG LAMBORN.

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