

NATIONAL STRATEGIC AND CRITICAL MINERALS
PRODUCTION ACT OF 2013

JULY 8, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 761]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 761) to require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness, 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.

This Act may be cited as the “National Strategic and Critical Minerals Production Act of 2013”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The industrialization of China and India has driven demand for nonfuel mineral commodities, sparking a period of resource nationalism exemplified by China’s reduction in exports of rare-earth elements necessary for telecommunications, military technologies, healthcare technologies, and conventional and renewable energy technologies.

(2) The availability of minerals and mineral materials are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.

(3) The exploration, production, processing, use, and recycling of minerals contribute significantly to the economic well-being, security and general welfare of the Nation.

(4) The United States has vast mineral resources, but is becoming increasingly dependent upon foreign sources of these mineral materials, as demonstrated by the following:

(A) Twenty-five years ago the United States was dependent on foreign sources for 30 nonfuel mineral materials, 6 of which the United States imported 100 percent of the Nation's requirements, and for another 16 commodities the United States imported more than 60 percent of the Nation's needs.

(B) By 2011 the United States import dependence for nonfuel mineral materials had more than doubled from 30 to 67 commodities, 19 of which the United States imported 100 percent of the Nation's requirements, and for another 24 commodities, imported more than 50 percent of the Nation's needs.

(C) The United States share of worldwide mineral exploration dollars was 8 percent in 2011, down from 19 percent in the early 1990s.

(D) In the 2012 Ranking of Countries for Mining Investment, out of 25 major mining countries, the United States ranked last with Papua New Guinea in permitting delays, and towards the bottom regarding government take and social issues affecting mining.

SEC. 3. DEFINITIONS.

In this Act:

(1) STRATEGIC AND CRITICAL MINERALS.—The term “strategic and critical minerals” means minerals that are necessary—

(A) for national defense and national security requirements;

(B) for the Nation's energy infrastructure, including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production;

(C) to support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure; or

(D) for the Nation's economic security and balance of trade.

(2) AGENCY.—The term “agency” means any agency, department, or other unit of Federal, State, local, or tribal government, or Alaska Native Corporation.

(3) MINERAL EXPLORATION OR MINE PERMIT.—The term “mineral exploration or mine permit” includes plans of operation issued by the Bureau of Land Management and the Forest Service pursuant to 43 C.F.R. 3809 and 36 C.F.R. 228A or the authorities listed in 43 C.F.R. 3503.13, respectively.

TITLE I—DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC AND CRITICAL MINERALS

SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND CRITICAL MINERALS.

Domestic mines that will provide strategic and critical minerals shall be considered an “infrastructure project” as described in Presidential Order “Improving Performance of Federal Permitting and Review of Infrastructure Projects” dated March 22, 2012.

SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.

(a) IN GENERAL.—The lead agency with responsibility for issuing a mineral exploration or mine permit shall appoint a project lead who shall coordinate and consult with cooperating agencies and any other agency involved in the permitting process, project proponents and contractors to ensure that agencies minimize delays, set and adhere to timelines and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals.

(b) DETERMINATION UNDER NEPA.—To the extent that the National Environmental Policy Act of 1969 applies to any mineral exploration or mine permit, the lead agency with responsibility for issuing a mineral exploration or mine permit shall determine that the action to approve the exploration or mine permit does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 if the procedural and substantive safeguards of the permitting process alone, any applicable State permitting process alone, or a combination of the two processes to-

gether provide an adequate mechanism to ensure that environmental factors are taken into account.

(c) **COORDINATION ON PERMITTING PROCESS.**—The lead agency with responsibility for issuing a mineral exploration or mine permit shall enhance government coordination for the permitting process by avoiding duplicative reviews, minimizing paperwork and engaging other agencies and stakeholders early in the process. The lead agency shall consider the following best practices:

(1) Deferring to and relying upon baseline data, analyses and reviews performed by State agencies with jurisdiction over the proposed project.

(2) Conducting any consultations or reviews concurrently rather than sequentially to the extent practicable and when such concurrent review will expedite rather than delay a decision.

(d) **SCHEDULE FOR PERMITTING PROCESS.**—At the request of a project proponent, the lead agency, cooperating agencies and any other agencies involved with the mineral exploration or mine permitting process shall enter into an agreement with the project proponent that sets time limits for each part of the permitting process including the following:

(1) The decision on whether to prepare a document required under the National Environmental Policy Act of 1969.

(2) A determination of the scope of any document required under the National Environmental Policy Act of 1969.

(3) The scope of and schedule for the baseline studies required to prepare a document required under the National Environmental Policy Act of 1969.

(4) Preparation of any draft document required under the National Environmental Policy Act of 1969.

(5) Preparation of a final document required under the National Environmental Policy Act of 1969.

(6) Consultations required under applicable laws.

(7) Submission and review of any comments required under applicable law.

(8) Publication of any public notices required under applicable law.

(9) A final or any interim decisions.

(e) **TIME LIMIT FOR PERMITTING PROCESS.**—In no case should the total review process described in subsection (d) exceed 30 months unless agreed to by the signatories of the agreement.

(f) **LIMITATION ON ADDRESSING PUBLIC COMMENTS.**—The lead agency is not required to address agency or public comments that were not submitted during any public comment periods or consultation periods provided during the permitting process or as otherwise required by law.

(g) **FINANCIAL ASSURANCE.**—The lead agency will determine the amount of financial assurance for reclamation of a mineral exploration or mining site, which must cover the estimated cost if the lead agency were to contract with a third party to reclaim the operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal, State or tribal environmental standards.

(h) **APPLICATION TO EXISTING PERMIT APPLICATIONS.**—This section shall apply with respect to a mineral exploration or mine permit for which an application was submitted before the date of the enactment of this Act if the applicant for the permit submits a written request to the lead agency for the permit. The lead agency shall begin implementing this section with respect to such application within 30 days after receiving such written request.

(i) **STRATEGIC AND CRITICAL MINERALS WITHIN NATIONAL FORESTS.**—With respect to strategic and critical minerals within a federally administered unit of the National Forest System, the lead agency shall—

(1) exempt all areas of identified mineral resources in Land Use Designations, other than Non-Development Land Use Designations, in existence as of the date of the enactment of this Act from the procedures detailed at and all rules promulgated under part 294 of title 36, Code of Federal Regulations;

(2) apply such exemption to all additional routes and areas that the lead agency finds necessary to facilitate the construction, operation, maintenance, and restoration of the areas of identified mineral resources described in paragraph (1); and

(3) continue to apply such exemptions after approval of the Minerals Plan of Operations for the unit of the National Forest System.

SEC. 103. CONSERVATION OF THE RESOURCE.

In evaluating and issuing any mineral exploration or mine permit, the priority of the lead agency shall be to maximize the development of the mineral resource, while mitigating environmental impacts, so that more of the mineral resource can be brought to the market place.

SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EXPLORATION AND MINING PROJECTS.

(a) **PREPARATION OF FEDERAL NOTICES FOR MINERAL EXPLORATION AND MINE DEVELOPMENT PROJECTS.**—The preparation of Federal Register notices required by law associated with the issuance of a mineral exploration or mine permit shall be delegated to the organization level within the agency responsible for issuing the mineral exploration or mine permit. All Federal Register notices regarding official document availability, announcements of meetings, or notices of intent to undertake an action shall be originated and transmitted to the Federal Register from the office where documents are held, meetings are held, or the activity is initiated.

(b) **DEPARTMENTAL REVIEW OF FEDERAL REGISTER NOTICES FOR MINERAL EXPLORATION AND MINING PROJECTS.**—Absent any extraordinary circumstance or except as otherwise required by any Act of Congress, each Federal Register notice described in subsection (a) shall undergo any required reviews within the Department of the Interior or the Department of Agriculture and be published in its final form in the Federal Register no later than 30 days after its initial preparation.

TITLE II—JUDICIAL REVIEW OF AGENCY ACTIONS RELATING TO EXPLORATION AND MINE PERMITS

SEC. 201. DEFINITIONS FOR TITLE.

In this title the term “covered civil action” means a civil action against the Federal Government containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

SEC. 202. TIMELY FILINGS.

A covered civil action is barred unless filed no later than the end of the 60-day period beginning on the date of the final Federal agency action to which it relates.

SEC. 203. RIGHT TO INTERVENE.

The holder of any mineral exploration or mine permit may intervene as of right in any covered civil action by a person affecting rights or obligations of the permit holder under the permit.

SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE ACTION.

The court shall endeavor to hear and determine any covered civil action as expeditiously as possible.

SEC. 205. LIMITATION ON PROSPECTIVE RELIEF.

In a covered civil action, the court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation.

SEC. 206. LIMITATION ON ATTORNEYS' FEES.

Sections 504 of title 5, United States Code, and 2412 of title 28, United States Code (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for their attorneys' fees, expenses, and other court costs.

PURPOSE OF THE BILL

The purpose of H.R. 761 is to require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 761, the National Strategic and Critical Minerals Production Act of 2013, addresses the most significant roadblock to mineral exploration and development in the United States: permitting timelines. Currently the average timeframe for acquiring permits

for domestic mine development on federal lands takes seven to ten years. This needless delay puts the United States at a competitive disadvantage with other mineral-rich countries and leaves the U.S. more dependent on foreign sources of minerals and mined materials, including rare earth elements.

Through 2011 the U.S. was almost 100 percent dependent on China for rare earth elements, even though the U.S. has economic deposits of these mineral resources and at one time had the largest market share in the world.

H.R. 761 builds on successful highway legislation and Administrative guidance on permitting procedures for infrastructure and renewable energy projects by requiring the lead agency to coordinate and effectively communicate with all cooperating agencies, project proponents and other stakeholders. Furthermore, the bill eliminates duplicative analysis, provides for timely filings for litigants, and allows 30 months for the lead agency to prepare, consider and reach a decision on permitting for mine development.

In the three most recent Behre Dolbear's "Ranking of Countries for Mining Investment" reports, the United States ranks last with Papua New Guinea out of 25 major mining countries in permitting delays, and towards the bottom regarding government take and social issues affecting mining. According to Behre Dolbear, the United States has been last out of 25 major mining countries in permitting delays since 2005.

Mineral production is a key economic activity, supplying strategic and critical metals and minerals essential for agriculture, communication, technology, construction, health care, manufacturing, transportation, and the arts. More specifically, strategic metals and metal alloys are an integral component of aerospace, defense, and other critical infrastructure. Minerals are also necessary to satisfy the basic requirements of an individual's well-being: food, clothing, shelter, and a clean, healthy environment.

Mining of mineral resources creates tangible value, introducing new money into the nation's economic system. Additional tangible value is added to the raw mined product through manufacturing, construction, and other uses. Harvesting domestic mineral resources contributes to local economies, creates jobs, and benefits our nation's overall economic security.

According to the National Research Council, one of the primary advantages the United States possesses over its strongest industrial competitors is its domestic resource base. The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver, and zinc, and it still has substantial domestic reserves of these metals.

Yet U.S. mineral exploration stagnated or declined during most of the 1990s and 2000s while global mineral exploration trends were strongly positive. In the early 1990s, the U.S. received 20 percent of the worldwide mineral exploration budget; today it hovers around 8 percent. Without increased domestic exploration, significant declines in U.S. mineral production are unavoidable as present reserves are exhausted.

The lack of exploration expenditures and other factors described below has led to an increased import dependency for nonfuel mineral materials. For example, 25 years ago the United States was

dependent on foreign sources for 30 non-fuel mineral materials, six of which were entirely imported to meet the nation's requirements and another 16 of which were imported to meet more than 60 percent of the nation's needs.

By 2012, the U.S. import dependence for non-fuel mineral materials more than doubled from 30 to 61 commodities, with 17 commodities imported entirely to meet the Nation's requirements, and another 24 commodities required imports of more than 50 percent.

Working through the permitting process also became more cumbersome, as federal and state agencies with land management and regulatory responsibilities over mineral exploration and development projects worked at cross purposes to one another. Legal challenges to National Environmental Policy Act (NEPA) analyses by anti-mining groups also contributed to the delays and uncertainties in obtaining the necessary permits for exploration and development.

For example, a recent (July 2011) analysis of the time required for the Bureau of Land Management (BLM) to prepare NEPA Environmental Impact Statements (EIS) and Supplemental Environmental Impact Statements (SEIS) for mine expansion projects in Nevada, compiled by a mine permitting consultant using data from BLM EIS documents and district office websites, found that the average elapsed time for EIS documents for 11 projects was 53 months and the average elapsed time for SEIS documents for 6 projects was 27 months. These EIS and SEIS documents were for expansion of operations at existing active mine sites, not virgin mine project areas with little existing surface disturbance.

Currently the United States lacks a coherent national policy to assure domestic availability of minerals essential for national economic well-being, national security, and global economic competitiveness. The nation's dependence on China for rare-earth elements and rare metals, elements necessary for telecommunications, military technologies, health-care technologies, and conventional and renewable energy technologies, is the most prominent example. In March 2012, the United States joined with Japan and the European Union to file a complaint with the World Trade Organization over China's policy of restricting exports of these important mineral resources, resources that we have in economic quantities in our own country.

H.R. 761 deliberately contains a broad definition of "strategic and critical minerals" to allow for the greatest flexibility over time.

In 2006, prior to the world-wide economic downturn, there was great concern over the future availability of platinum group metals and copper. At the time, projections in demand for copper indicated that by 2016 30 large-scale copper deposits would have to come on line to meet world-wide demand; at the time there were not enough copper deposits in the permitting pipeline to make up for the projected demand curve.

The economic downturn in 2008 and the delayed economic recovery have pushed the 2016 copper supply-demand threshold further into the future.

Even sand and gravel and other construction mineral materials can be in short supply or not available, as the United States Geological Survey discovered in 2009 during the "Great California Shakeout," the first simulated major earthquake emergency re-

sponse exercise conducted in Southern California. In its assessment of the scope of damage and the materials needed for reconstruction, the agency discovered there were not enough sand and gravel and other construction materials available in the region to meet the affected area's reconstruction needs.

In the current mineral commodity market environment, most people are focused on rare earths and China's restriction on the exports of those metals. Consequently, they want to restrict the definition of "strategic and critical minerals" to only include rare earths and a small number of other commodities. However, any mineral commodity can be in short supply at any given time, and the United States needs to have the flexibility to allow for access to and development of those commodities that occur in economic quantities in this country.

Finally, the President has recognized the problems associated with long permitting time-frames for infrastructure and renewable energy projects and has issued guidance documents requiring coordination and timely processing of permits to be issued by federal agencies with regulatory responsibilities for the project proponents to be able to begin construction in a timely manner. This legislation builds on this precedent set by the Administration by applying the principles outlined in the guidance documents to mineral exploration and development projects.

COMMITTEE ACTION

H.R. 761 was introduced on February 15, 2013, by Congressman Mark Amodei (R-NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. In addition, the bill was referred to the Committee on the Judiciary. On March 21, 2013, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On May 15, 2013, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Amodei offered an amendment designated #1 to the bill; the amendment was adopted by voice vote. Congressman Rush Holt (D-NJ) offered an amendment designated .001 to the bill; the amendment was not adopted by a roll call vote of 16 to 18, as follows:

Committee on Natural Resources
U.S. House of Representatives
113th Congress

Date: May 15, 2013

Recorded Vote #: 1

Meeting on / Amendment on: **H.R. 761 - Holt.001**, Not agreed to by vote of 16 yeas and 18 nays

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA, Chairman		X		Mr. Duncan, SC		X	
<i>Mr. Markey, MA, Ranking</i>				<i>Ms. Hanabusa, HI</i>	X		
Mr. Young, AK				Mr. Tipton, CO		X	
<i>Mr. Defazio, OR</i>	X			<i>Mr. Cardenas, CA</i>	X		
Mr. Gohmert, TX				Mr. Gosar, AZ		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
Mr. Bishop, UT		X		Mr. Labrador, ID		X	
<i>Mr. Pallone, NJ</i>	X			<i>Mr. Huffman, CA</i>	X		
Mr. Lamborn, CO		X		Mr. Southerland, FL		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
Mr. Wittman, VA				Mr. Flores, TX		X	
<i>Mr. Holt, NJ</i>	X			<i>Ms. Shea-Porter, NH</i>	X		
Mr. Broun, GA				Mr. Runyan, NJ		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
Mr. Fleming, LA		X		Mr. Amodei, NV		X	
<i>Ms. Bordallo, GU</i>				<i>Mr. Garcia, FL</i>	X		
Mr. McClintock, CA		X		Mr. Mullin, OK		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>	X		
Mr. Thompson, PA		X		Mr. Stewart, UT			
<i>Mr. Sablan, CNMI</i>	X			Mr. Daines, MT			
Ms. Lummis, WY		X		Mr. Cramer, ND		X	
<i>Ms. Tsongas, MA</i>	X			Mr. LaMalfa, CA			
Mr. Benishek, MI		X					
<i>Mr. Pierluisi, PR</i>							
				TOTALS	16	18	

Congressman Rush Holt (D-NJ) offered an amendment designated .002 to the bill; the amendment was not adopted by a roll call vote of 18 to 23, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: May 15, 2013

Recorded Vote #: 2

Meeting on / Amendment on: H.R. 761 - Holt.002, Not agreed to by vote of 18 yeas and 23 nays

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA, Chairman		X		Mr. Duncan, SC		X	
<i>Mr. Markey, MA, Ranking</i>				<i>Ms. Hanabusa, HI</i>	X		
Mr. Young, AK		X		Mr. Tipton, CO		X	
<i>Mr. Defazio, OR</i>	X			<i>Mr. Cardenas, CA</i>	X		
Mr. Gohmert, TX				Mr. Gosar, AZ		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>	X		
Mr. Bishop, UT		X		Mr. Labrador, ID		X	
<i>Mr. Pallone, NJ</i>	X			<i>Mr. Huffman, CA</i>	X		
Mr. Lamborn, CO		X		Mr. Southerland, FL		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
Mr. Wittman, VA		X		Mr. Flores, TX		X	
<i>Mr. Holt, NJ</i>	X			<i>Ms. Shea-Porter, NH</i>	X		
Mr. Broun, GA				Mr. Runyan, NJ		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
Mr. Fleming, LA		X		Mr. Amodei, NV		X	
<i>Ms. Bordallo, GU</i>	X			<i>Mr. Garcia, FL</i>	X		
Mr. McClintock, CA		X		Mr. Mullin, OK		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>	X		
Mr. Thompson, PA		X		Mr. Stewart, UT		X	
<i>Mr. Sablan, CNMI</i>	X			Mr. Daines, MT		X	
Ms. Lummis, WY		X		Mr. Cramer, ND		X	
<i>Ms. Tsongas, MA</i>	X			Mr. LaMalfa, CA		X	
Mr. Benishek, MI		X					
<i>Mr. Pierluisi, PR</i>							
				TOTALS	18	23	

No further amendments were offered and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 24 to 17, as follows:

Committee on Natural Resources
U.S. House of Representatives
113th Congress

Date: May 15, 2013

Recorded Vote #: 3

Meeting on / Amendment on: **H.R. 761** - To adopt and favorably report the bill to the House, as amended,
agreed to by a vote of 24 yeas to 17 nays

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA, Chairman	X			Mr. Duncan, SC	X		
<i>Mr. Markey, MA, Ranking</i>				<i>Ms. Hanabusa, HI</i>		X	
Mr. Young, AK	X			Mr. Tipton, CO	X		
<i>Mr. Defazio, OR</i>		X		<i>Mr. Cardenas, CA</i>		X	
Mr. Gohmert, TX				Mr. Gosar, AZ	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>		X	
Mr. Bishop, UT	X			Mr. Labrador, ID	X		
<i>Mr. Pallone, NJ</i>		X		<i>Mr. Huffman, CA</i>		X	
Mr. Lamborn, CO	X			Mr. Southerland, FL	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>		X	
Mr. Wittman, VA	X			Mr. Flores, TX	X		
<i>Mr. Holt, NJ</i>		X		<i>Ms. Shea-Porter, NH</i>		X	
Mr. Broun, GA				Mr. Runyan, NJ	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
Mr. Fleming, LA	X			Mr. Amodei, NV	X		
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>		X	
Mr. McClintock, CA	X			Mr. Mullin, OK	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>		X	
Mr. Thompson, PA	X			Mr. Stewart, UT	X		
<i>Mr. Sablan, CNMI</i>		X		Mr. Daines, MT	X		
Ms. Lummis, WY	X			Mr. Cramer, ND	X		
<i>Ms. Tsongas, MA</i>		X		Mr. LaMalfa, CA	X		
Mr. Benishek, MI	X						
<i>Mr. Pierluisi, PR</i>							
				TOTALS	24	17	

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.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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. 761—National Strategic and Critical Minerals Production Act of 2013

CBO estimates that implementing H.R. 761 would have no significant impact on the federal budget. Enacting the bill could reduce mandatory payments for attorneys' fees over the 2014–2023 period; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be minimal. Enacting the bill would not affect revenues.

The bill would require the Bureau of Land Management (BLM) and the Forest Service to take certain actions aimed at streamlining the process for obtaining permits to extract minerals from federal lands. Based on information from the affected agencies, CBO estimates that the streamlining provisions would have no significant budgetary effect because those agencies are performing most of those activities under current law. The bill also would direct the agencies to expedite the publishing of notices in the Federal Register related to mineral exploration and mining projects. Based on information provided by BLM, CBO estimates that implementing that provision would cost less than \$300,000 a year, assuming availability of appropriated funds. Those funds would be used to hire additional employees to allow the affected agencies to meet the timelines established in the bill.

Finally, H.R. 761 would exempt lawsuits that affect mineral exploration or mining permits on federal lands from the Equal Access to Justice Act. That act requires the U.S. Treasury to pay the attorneys' fees for certain plaintiffs who prevail in court proceedings against the federal government. Over the 2003–2012 period, total payments made on behalf of BLM and the Forest Service from the Judgment Fund of the U.S. Treasury to cover attorneys' fees under that act averaged about \$1 million a year. Based on information from the Government Accountability Office, the Treasury Department, and the affected land management agencies, CBO estimates that only a small portion of that amount was paid to plaintiffs who prevailed in cases that affected mineral exploration or mining per-

mits. We estimate that enacting H.R. 761 would reduce direct spending by less than \$50,000 a year over the 2014–2023 period.

H.R. 761 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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. CBO estimates that implementing H.R. 761 would have no significant impact on the federal budget.

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, as ordered reported, is to require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

LETTER EXCHANGES

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, DC, June 28, 2013.

Hon. DOC HASTINGS,
Chairman, Committee on Natural Resources,
Washington, DC.

DEAR CHAIRMAN HASTINGS, I am writing with respect to H.R. 761, the "National Strategic and Critical Minerals Production Act of 2013," which the Committee on Natural Resources reported favorably. As a result of your having consulted with us on provisions in H.R. 761 that fall within the rule X jurisdiction of the Committee on the Judiciary, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 761 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 761, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during Floor consideration of H.R. 761.

Sincerely,

BOB GOODLATTE,
Chairman.

COMMITTEE ON NATURAL RESOURCES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 3, 2013.

Hon. BOB GOODLATTE,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 761, the "National Strategic and Critical Minerals Production Act of 2013." As you know, the Committee on Natural Resources ordered reported the bill, as amended, on May 15, 2013. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on the Judiciary will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 761 at this time, the Committee on the Judiciary does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased

to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as in the Congressional Record during floor consideration, to memorialize our understanding.

Thank you for your cooperation.

Sincerely,

DOC HASTINGS,
Chairman.

DISSENTING VIEWS

We oppose H.R. 761 because despite its title, this legislation has absolutely nothing to do with the development of rare earths and other strategic minerals. This Republican bill hands yet another giveaway to the mining industry by dramatically reshaping how we permit virtually all mining on public lands and by gutting key protections for local communities, our water and our environment.

This bill is so broadly drafted that it would reduce or eliminate proper review under the National Environmental Policy Act (NEPA) for nearly all types of mines on public lands. It would short-circuit proper review of mines for minerals such as gold, silver, copper and uranium; mines for minerals that are not remotely critical and strategic, such as sand or gravel; even coal mines on public lands could potentially enjoy the giveaways in this bill.

The Interior Department has stated that “This legislation would remove many of the environmental safeguards for almost all types of hardrock mines on public lands, bypass evaluation of potential impacts under NEPA, and limit public involvement in agency decision-making.”

This legislation is so controversial the Senate refused to consider it last Congress. H.R. 761 as reported out of the Committee is virtually unchanged from the last Congress and will likely suffer the same fate.

The Majority’s claims with respect to mining permit delays are unfounded. As of last year, the average time it takes to approve a plan of operations for a hardrock mine has actually decreased under the Obama Administration compared to the Bush Administration. Despite industry claims, according to the Interior Department “it takes on average four years to approve a mining plan of operations for a large mine (more than 1,000 acres) on public lands.” As of last year, the Obama Administration had approved 82 percent of hardrock mines within three years. This bill is about preventing proper environmental review for the small number of mines that are potentially significantly damaging to public health or our water or environment and where additional review is therefore warranted.

H.R. 761 also threatens hunting, fishing, grazing and conservation by elevating mining above all other uses of our public lands. Indeed, the Interior Department has testified before the Committee that “H.R. 761 includes numerous provisions that circumvent sound Federal decision-making and existing law calling for the multiple uses of public lands.”

The Majority rejected an amendment offered by Energy and Mineral Resources Subcommittee Ranking Member Holt (D-NJ) that would have narrowed the scope of the bill to only apply to minerals that are, in fact, critical and strategic. An amendment from Ranking Member Holt to update our antiquated mining law to require

gold, silver, and uranium mines to pay a royalty and use that revenue to clean up abandoned mines in the West was also voted down by the Majority.

Democrats believe that we should finally update the Mining Law of 1872 to ensure that mining companies are not able to extract valuable minerals that belong to the American people for free. Democrats also believe that we should update this law to assist local communities in Western states with the cleanup and remediation of the hundreds of thousands of toxic abandoned mines in these states. Unfortunately, this Republican legislation does nothing to close these egregious loopholes that large, multinational mining companies enjoy when mining on our public lands and instead provides even more giveaways and handouts to this industry.

EDWARD J. MARKEY,
*Ranking Democratic Member,
Natural Resources
Committee.*

RUSH D. HOLT,
*Ranking Member, Subcommittee
on Energy & Mineral
Resources.*

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