WOMEN'S MINING COALITION

H.R. 7580: Proposed Legislation in Search of Problems

Mining Law Reform: Three Decades Later

H.R. 7580: The Clean Energy Minerals Reform Act

According to the April 2022 Fact Sheet from House Natural Resources Committee Chair Raúl Grijalva, the Mining Law of 1872 is in need of significant reform. We disagree.[1]

- The Mining Law of 1872 has been amended and updated by Congress multiple times, with each amendment carefully retaining the fundamental security of land-tenure principles necessary for hardrock mineral exploration and development on western public domain lands. Moving from a claims-based system to a leasing system would decimate security of tenure, disincentivize mineral exploration and development, and increase our reliance on foreign minerals.
- The U.S. mining industry is the safest and cleanest in the world with the most stringent environmental and safety standards of any mineral producing country.
- Mineral policies must recognize that mineral deposits are rare, hard to find, located where they occur naturally and cannot be moved.

H.R. 7580 will NOT achieve its major objectives to:

Modernize Mine Planning:
This Act directs the federal government to determine which lands have potential for economic mineral development and open them to leasing, potentially eliminating development of other lands with more promising deposits. The time and acreage constraints in the leasing system proposed are unworkable given the geology of hardrock mineral deposits. The leasing system makes it impracticable to develop a modern mine with best management practices which optimize ore extraction and minimize environmental, cultural, and social issues.

H.R. 7580 will thwart the administration's push for critical and important minerals to be mined in the U.S., discourage exploration and development of mineral resources on public lands, and exacerbate our dependency on mineral imports.

- H.R. 7580 replicates the existing leasing system for hardrock minerals on acquired lands, which has failed miserably, and only generated $8.7 million in FY 2018.

Make Industry Clean Up Their Abandoned Mine Lands:
This Act establishes a reclamation fund with funding from a limited revenue stream which will not be effective in moving clean-up efforts forward. Good Samaritan legislation is required to provide protection from cradle-to-grave liability imposed by the Clean Water Act and the Superfund. For more than twenty years, industry has worked with Trout Unlimited, other conservation groups and Members of Congress to enact Good Samaritan legislation with bipartisan support. If Congress is serious about cleaning up abandoned mines, it must enact Good Samaritan legislation.

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[1]Testimony of Debra W. Struhsacker On behalf of The Women's Mining Coalition, Subcommittee on Energy and Mineral Resources Committee on Natural Resources U.S. House of Representatives May 12, 2022 https://naturalresources.house.gov/imo/media/doc/Testimony%20-%20Struhsacker%20-%20EMR%20Leg%20Hrg%20-%205.12.22.pdf

- The abandoned mine lands problem is finite because environmental protection and bonding requirements for modern mines guarantee that today's mines will not become tomorrow's AMLs for two reasons. First, modern mines are designed, built, operated, and closed using state-of-the-art environmental safeguards that minimize the potential for environmental problems to develop after mining is completed. Second, federal and state regulators have adequate reclamation bond monies in the event a mine operator goes bankrupt or fails to perform the necessary reclamation.

Set Clear Environmental & Reclamation Standards:
This Act does not add any clear standards to the existing laws and regulations that govern the surface management of modern mines. It creates confusion by duplicating the standards and regulations set out in other legislation. The Title III environmental standards and permitting processes are intended to advance the overarching purpose of H.R. 7580 to reduce mining.

- Compliance with all applicable state and federal environmental laws and regulations is already required by BLM's and the Forest Service's hardrock mining regulations at 43 CFR 3809 (BLM) and 36 CFR 228A (USFS).
- The performance track record of modern, highly regulated mines as documented in EPA's 2018 CERCLA 108(b) rulemaking clearly demonstrates that Title III of H.R. 7580, "Environmental Considerations of Mineral Exploration and Development" is completely unnecessary to ensure that future mines are safe for the environment.
    - The unworkable environmental standards and duplicative permitting process for mineral exploration and operations will guarantee mineral production will decline and foreign mineral reliance will increase.
    - Title III imposes a new zero-impact environmental performance standard that will be impossible for mining projects (or any other public land uses) to meet.
    - Creates a complex regulatory review that adds another layer of bureaucracy designed to make mineral projects more difficult to permit and develop. Existing regulations address all stages of mining operations from initial exploration activities, through mining and production, and final reclamation and closure activities.
- Reclamation is a key aspect of initial mine-planning. Under existing regulations, reclamation bonds must be placed before any disturbance is created.

Ensure a Fair Return for Taxpayers:
This Act imposes a royalty that does not account for expenditures required to bring ore from its natural state embedded within host rock, transport it to processing facilities and produce a sellable product that manufacturing industries and consumers can use, adding an economic burden that will inhibit development of much needed critical raw materials. The gross royalty of not less than 12.5% proposed in H.R. 7580 would make all proposed mining operations uneconomic such that they would never commence production, and hence, produce no minerals for our supply chains or revenue to the federal government.

- The minimum 8% royalty for existing operations proposed in the Act would expose the federal government to 5th Amendment Takings liability in the billions of dollars.
- The mining industry has supported a *reasonable,* prospective royalty rate for decades, based on net proceeds as opposed to gross proceeds.

Require Meaningful Tribal Consultation:
This Act does not add any consultation provisions or substantively change existing provisions to provide Tribes with the resources and incentive to engage in meaningful consultation.

- Tribal consultation is already a requirement under existing law
- H.R. 7580 proposes nothing that enhances the consultation process, but only adds unnecessary and duplicative steps to the process

Protect Special Places:
This Act significantly expands lands which are closed to entry and location and thus off limits to exploration, development and production.

- More than 50% of federal lands are already closed to mining through designations such as Wilderness, Wilderness Study Areas, National Monuments, Wild & Scenic Rivers, and other designations.
- Mines can only be built where economically viable mineral deposits are located. Protecting more lands from mining will exacerbate our Nation's dependency on foreign sources for critical minerals.

The Clean Energy Minerals Reform Act (HR 7580) as proposed will:

- Decimate security of tenure by eliminating self-initiation and location as the method of securing land for mineral exploration and development. and replacing it with a discretionary leasing system that is proven to be unworkable for hardrock minerals on acquired lands.
- Expose the federal government to significant 5th Amendment Takings liability by requiring conversion of all existing mining claims to the new lease system within 10 years.
- Reduce private sector investment in mineral exploration by giving the federal government the authority to decide which lands will be available for mineral prospecting and leasing.
- Stymie the discovery of new critical mineral deposits by limiting the time available to six years to explore for minerals on public lands.
- Thwart new mine development by limiting the acreage available to a company or individual for use in developing mining projects.
- Impose a confiscatory Gross Proceeds Royalty of not less than 12.5% on new mining operations and a minimum 8% royalty on existing mines
- Expose the federal government to substantial 5th Amendment Takings liability by applying a royalty to existing mines.
- Duplicate environmental and surface management provisions for permitting exploration and mining with unnecessary and unworkable requirements.
- Eliminate security of tenure by providing the Secretary with discretionary "mine veto" authority at any time and at any stage of exploration and mine development.
- Duplicate tribal consultation requirements during permit application and review.
- Duplicate financial assurance requirements for exploration and mining projects.
- Require development of a new bureaucracy to oversee leasing, determine suitability of land for mineral activity, and administer and collect royalties.
- Reduce investment in domestic critical minerals exploration and thus increase our reliance on foreign sources of minerals.

The General Mining Laws on public lands, as amended, can continue to work well in the modern age of mining

H.R. 7580 would not accomplish any meaningful reform to the Mining Law of 1872. It would serve only to disrupt a long-established process that has served the U.S. well and make the U.S. more dependent on foreign sources of critical minerals.

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