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

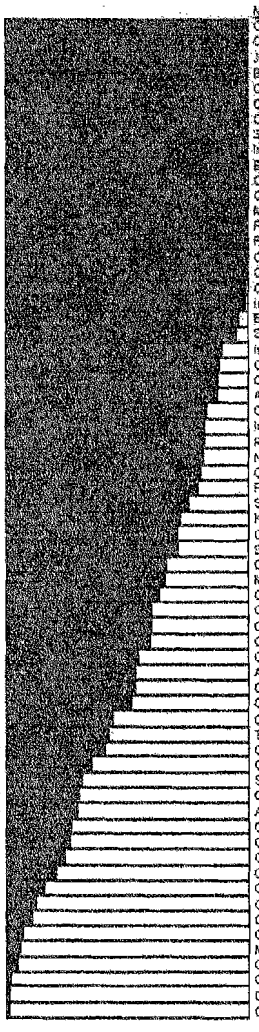
We firmly believe more hearings were necessary before H.R. 2262 was marked-up at the Natural Resources Committee, our request for additional hearings and citizens guidance was denied by the Majority. Our efforts to further evaluate H.R. 2262, its impact on our constituents and the security of our nation 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.

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	78	Peru, Bolivia, China, Indonesia
CHROMIUM	76	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	68	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	13	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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