American Exploration & Mining Association

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October 21, 2019

The Honorable Raúl Grijalva
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Rob Bishop
Ranking Member
House Natural Resources Committee
1329 Longworth House Office Building
Washington, D.C. 20515

The Honorable Alan Lowenthal
Chairman
House Natural Resources Subcommittee on
Energy and Minerals Resources
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Paul Gosar
Ranking Member
House Natural Resources Subcommittee on
Energy and Mineral Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Grijalva, Ranking Member Bishop, Chairman Lowenthal, and Ranking Member Gosar:

I write today to express our strong opposition to H.R. 2579, The Hardrock Leasing and Reclamation Act. The American Exploration & Mining Association (AEMA) supports surgical, common-sense amendments to the Mining Law. However, the sweeping changes in H.R. 2579 are a disaster in the making for the domestic mining industry and for America. The Hardrock Leasing and Reclamation Act creates many uncertainties for the mining industry, but one thing is certain - this legislation will create the following serious problems for the Nation if it becomes law:

- Mineral production on America's public lands will be severely curtailed;
- America's already extensive reliance on foreign sources of minerals will dramatically increase due to the significant reduction in domestic mineral production;
- America's national and economic security will be severely weakened as high paying family-wage jobs are exported and our Nation becomes more reliant on foreign sources of strategic and critical minerals;
- Mining-dependent rural communities will experience severe economic hardships;
- The federal government will no longer receive revenue from Claims Maintenance Fee, which in FY 2018 amounted to over $73 million;
- The cost of administering H.R. 2579 will far exceed any revenue raised; and
- The federal government will be subject to substantial takings litigation.

The 1872 Mining Law governs how U.S. citizens gain access to hardrock (also known as locatable) minerals like copper, gold, silver, zinc, lithium, cobalt, rare earths, nickel, and other minerals on federal lands open to mineral entry. Currently, less than 50% of all federally owned and managed lands are open to mineral entry. Locatable minerals are essential building blocks of our economy, infrastructure, technology, manufacturing, conventional and renewable energy, and national defense. In response to President Trump's Executive Order 13817, "*A Federal Strategy to Ensure Secure and Reliable Supplies*

of Critical Minerals," the Secretary of Interior recently finalized a list of 35 critical minerals, most of which are locatable minerals governed by the Mining Law.

The Bureau of Land Management's (BLM's) statistics show that at the end of FY 2018, there were 399,658 mining claims distributed in 19 western states, with roughly half of these claims located in Nevada. Cumulatively, mining claims cover less than 12,500 square miles scattered throughout the west. Only a small fraction of claims contain mineral deposits that are economic to mine. As a rule of thumb, hardrock mining affects about 0.1 percent of the land with mining claims.

The Mining law is not antiquated. Since its enactment in 1872, Congress has made many important changes to the Mining Law including:

The Minerals Leasing Act – In 1920, Congress removed coal, petroleum, natural gas, phosphates, sodium, sulfur, and potassium from the law and established leasing programs for these resources in part because they have different geologic characteristics than locatable minerals;

The Federal Land Policy and Management Act – In 1976, Congress created an environmental protection mandate prohibiting unnecessary or undue degradation of lands subject to mineral activities, established a claims recordation requirement that documents where claims are located and who owns mining claims, and created special environmental protection measures for claims in wilderness study areas and in the California Desert Conservation Area;

1993 to Present – Starting in 1993, Congress has used the appropriations process to establish an annual fee, the Claims Maintenance Fee, for use of federal lands for mineral exploration and development purposes, and to continue a moratorium on patenting. Claimants currently pay $165 per claim, which was just increased this year as the fee is adjusted every five years to reflect the CPI. These fees have raised significant revenue. According to BLM's most recently available statistics, in FY 2018, BLM received over $73 million in CMF and location fees. Since enactment of these fees in 1993, the federal government has collected over $1.2 billion.[1]

The Mining Law, as amended, invites U.S. citizens to make substantial investments of time, knowledge, and money to explore for minerals on federal lands with the hope of discovering a mineral deposit that can be developed into a mine. This process, known as "self-initiation," greatly benefits our Nation because it effectively leverages private investments that transform undeveloped federal land into mining operations that create jobs, pay taxes, and provide the minerals the country needs – at no expense whatsoever to U.S. taxpayers.

Because mineral deposits are rare and unique geologic phenomena, they are very difficult to find. In a 1999 report, the National Research Council of the National Academy of Sciences recognized just how rare economically viable mineral deposits are: "Only a very small portion of Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places where economically viable deposits were formed and discovered." *Hardrock Mining on Federal Lands,* National Research Council, National Academy Press, 1999, p. 2-3.

Keeping lands open to exploration and development improves the odds of finding "the needle in the haystack" mineral deposit that can be developed into a mine. Conversely, withdrawing land from operation of the Mining Law and restricting the amount of land that can be explored diminishes the odds of discovery, interferes with the Mining Law's self-initiation process, and severely compromises the Nation's ability to capitalize on private-sector investments to discover and develop domestic mineral deposits. The Department of the Interior estimates that over 50 percent of federal land is *already* off limits to mining.

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[1] https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf

H.R. 2579 eliminates mining claims and substitutes a minerals leasing system that will substantially chill, if not eliminate, private sector investment in exploring for and developing minerals on federal land. The legislation completely destroys self-initiation and creates intolerable uncertainties about lease terms, conditions and renewal policies. The bill creates prospecting permits with unrealistically short time limits to discover a mineral deposit that fail to recognize that discovering minerals can take a decade or longer. Current life-of-mine permits are changed to an arbitrary 20-year lease that may be renewed for successive 10-year terms if the mine is in continuous production, which ignores how fluctuating mineral prices influence mine operations and temporary closures.

H.R. 2579 ignores the federal land management agencies' current environmental protection requirements for locatable minerals, which provide effective and comprehensive environmental protection that safeguard all aspects of the environment including water resources, wildlife, special status species, air quality, cultural resources, soils, vegetation, and visual resources. It overlooks BLM and Forest Service mandates that mineral projects must prevent unnecessary or undue degradation/minimize adverse environmental impacts. BLM and the Forest Service must prepare NEPA environmental reviews prior to authorizing mineral projects that already analyze impacts; identify ways to eliminate, minimize, and mitigate impacts; and verify that proposed projects will comply with all applicable state and federal regulations.

The legislation also disregards current financial assurance programs that guarantee mines will be reclaimed. Over $6 billion of financial assurance is held to cover any costs of closure. The American people are not on the hook for and have not paid any money to clean a mine site permitted on federal lands since 1990. Today's comprehensive suite of federal and state environmental laws and regulations, combined with robust financial assurance requirements, ensure that new abandoned mines are not being created.

Finally, H.R. 2579 imposes a 12.5% royalty on new mining operations (the same amount as oil and natural gas) and an 8% royalty on existing operations. However, hardrock mining is fundamentally different than the totally unrelated oil and gas industry. As previously noted, unlike oil, natural gas, or coal, mineable deposits are extremely rare and hard to find. Currently, maybe one out of one thousand exploration projects ever become an operating mine. The proposed royalties and arbitrary fees will render any economic business models unworkable and will end future mining on federal lands, increase reliance on foreign minerals, and pose a threat to our Nation's national security.

It's important to note that previous leasing programs for locatable minerals were unsuccessful. Prior to enacting the 1872 Mining Law, Congress enacted a mineral leasing system during the first half of the nineteenth century, anticipating that the federal government would realize much of the economic benefit of minerals found on public lands. But President Polk reported to Congress in 1845 that the cost of government administration was more than four times the lease income, and the leasing system was abandoned. Congress subsequently enacted the current claims location and self-initiation program currently in place under the Mining Law.

Significantly, numerous U.S. Supreme Court decisions establish that the Mining Law creates private property rights to unpatented mining claims. Therefore, assessing a royalty on existing claims on which there has been investment in reliance on existing law would subject the United States to substantial takings claims in violation of the Fifth Amendment. Furthermore, the bill's prospective royalty does not consider existing state taxation and royalty requirements that typically burden mining claims or that, unlike coal, oil and gas producers, mineral producers cannot pass on the royalty costs to mineral consumers.

In conclusion, demand for minerals in our advanced society is increasing every day. Minerals are critical to developing the innovative technologies that will propel our economy, enable America to compete globally and improve our quality of life. They are the building blocks for the manufacturing, construction

and automotive industries, and are essential to growth in fields such as advanced energy and healthcare. Current efforts to transition to a "green energy" economy are not possible without a robust domestic mining industry to provide the required minerals and metals.

The Mining Law, as amended, has served this Nation well by providing a self-executing process to enter upon federal lands open to mineral entry to explore for, find, use and occupy those lands for all uses reasonably incident to prospecting, exploration, processing and mining. The Mining Law has provided the necessary framework and security of tenure or certainty required to attract mineral investment and take the risk to find that true needle-in-a-haystack, one-in-a-thousand economically viable mineral deposit.

The sweeping changes in H.R. 2579 will result in less mineral investment in the U.S., adversely impact private sector job creation, and exacerbate our dangerous reliance on foreign sources of critical and necessary minerals.

We strongly urge you to oppose H.R. 2579.

Thank you for your consideration. For a more detailed analysis of the legislation, we incorporate herein by reference the testimony of Robert D. Comer from the May 9, 2019 Subcommittee on Energy and Mineral Resources legislative hearing.

Sincerely,

Mark Compton
Executive Director