

**POTENTIAL CHANGES  
TO THE  
1872 MINING LAW**

**ALASKA MINERS ASSOCIATION  
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# HR 2262 – The Hardrock Mining and Reclamation Act of 2007

- Introduced May 10, 2007 – on the 135<sup>th</sup> anniversary of the Mining Law
- 3 hearings: July and October in Washington DC; August in Elko NV
- Committee mark up on October 23
- Floor debate and vote on November 1
- Passed 244-166 with 3 Democrats voting no and 24 Republicans voting yes (Dave Reichert from Seattle was only western Republican to vote yes)

# Top 10 problems with HR 2262

1. 4% gross royalty on existing operations with commercial production; 8% gross royalty on all other claims (§ 102)
  - *Serious takings implications with respect to valid mining claims with a discovery of a valuable mineral deposit*
2. *Mine veto (§ 301(2); 304(c)(B))*
  - *Allows Secretary to deny an operations permit to a project that otherwise complies with all environmental laws & regulations if the Secretary determines that the operation will cause undue degradation to public lands & resources*

# Top 10 problems with HR 2262

- *Undue degradation defined as “irreparable harm to significant scientific ,cultural or environmental resources on public lands that cannot be effectively mitigated.” (§2(a)(19))*
- Definition based on former DOI Solicitor John Leshy’s Significant Irreparable Opinion taken from Secretary Babbitt’s 3809 regulations promulgated in 2000 and removed when Secretary Norton re-promulgated the 3809 regulations in 2001
- Creates significant uncertainty about ultimate project approval making it more difficult to attract investment capital

# Top 10 problems with HR 2262

3. Massive withdrawals from mineral entry (§201(b))
  - All Wilderness Study Areas
  - All Areas of Critical Environmental Concern
  - All Wild & Scenic Rivers; potential Wild & Scenic rivers (pursuant to the Wild & Scenic Rivers Act); rivers eligible for Wild & Scenic designation pursuant to the Act
  - 58.5 million acres identified in the Clinton Administration Roadless Rule
  - Plus *de facto* withdrawals by requiring compliance with applicable land use plan

# Top 10 problems with HR 2262

4. Withdrawal petitions by states, political subdivisions and Indian Tribes (§202)
  - To protect specific values that are important, including watersheds, scenic vistas, cultural, historic, wildlife habitat and similar values
  - Includes religious and cultural values for Indian Tribes (sacred sites)
  - Requires the Secretary to grant the withdrawal petition unless the Secretary finds that it is against the national interest to grant the petition

# Top 10 problems with HR 2262

5. No life of mine permits and uncertain permit renewals (§304(d))
  - 20 year permit with one 20 year renewal if in compliance with this Act
  - Mandatory review every 10 years (§304(g))
  - Quarterly inspections required (§503(a)(2))
  - Temporary cessation of operations may not exceed a continuous period of 5 years (§2 (18)); requires Secretary approval if exceeds 180 days and not permitted in original permit (§304(f))
  - Exploration permits limited to a maximum of 10 years (§303(f))

# Top 10 problems with HR 2262

6. New and duplicative environmental standards (Title III) that are vague, ambiguous and inconsistent with current federal and state environmental laws
  - Backfilling may be required (§307(b)(5))
  - Reclamation plan must demonstrate that 10 years following mine closure no treatment of surface or ground water will be required to meet with water quality standards at the point of discharge (§304(c)(H))

# Top 10 problems with HR 2262

7. Codifies the Leshy Ancillary Use Opinion by requiring a valid mining claim, valid millsite or valid tunnel site in order to have **any** rights under the Mining Law (§302(a)(1) & §304(a)(1)(A) & (B))
  - Must obtain permission from the Secretary and pay FMV for the use of those lands
  - No Mining Law rights to use claims without a discovery or unclaimed public land open to mineral entry

# Top 10 problems with HR 2262

8. Fails to provide security of title and tenure needed to attract investment capital
  - Eliminates the Mining Law's section 22 right to access, occupy, use, prospect, explore, discover, mine, process, reclaim (and uses reasonably incident thereto) federal lands open to mineral entry, with or without a claim
  - Makes the patent moratorium permanent as of September 30, 1994, without providing any replacement mechanism for security of tenure
    - Takings implications

# Top 10 problems with HR 2262

9. Buffer zones near National Parks and Monuments (§309) and National Conservation System Units (§513(c))
  - Shall deny permits that will impair (National Parks & Monuments) or adversely impact resources or values for which conservation unit was established
  - Includes wildlife, scenic assets, water resources, air quality, acoustic qualities and “other changes that would impair a citizen’s experience at a National Park or Monument”
  - National Conservation System unit defined to include Wilderness Areas, National Trails, National Wildlife Refuges, National Conservation Areas, National Recreation Areas, National Parks & Monuments & National Wild & Scenic Rivers
  - *De facto* withdrawals with possible takings implications

# Top 10 problems with HR 2262

## 10. Unnecessary & harsh enforcement mechanisms (§506)

- Assumes all miners are scofflaws (severe criminal penalties for knowingly violating the Act or conducting mineral activities without a permit)
- Broad citizen suit provisions (§504)
  - Adding even more delays to permitting time lines
  - Does not preclude citizen suits when an administrative enforcement action has been filed
- SMCRA-style applicant violator system (§305)
  - Broad definitions of “affiliate” and “control” (§2(a)(1) & (6))
  - Could bar permits for the most minor violations to which no notice of violation has been issued

# HR 2262 will:

- Eliminate the certainty and security of tenure required to invest in mineral exploration and mine development
- Increase America's reliance on foreign sources of minerals
- Severely weaken America's national and economic security
- Export tens of thousands of high paying family wage level jobs

# HR 2262 will:

- Bring about the economic destruction of rural communities
- Leave very little public land open to mineral entry
- Virtually eliminate exploration and mining on federal public lands
- Confiscate investments
- Take private property without just compensation
- Lead to hundreds of takings lawsuits

# The Senate

- July – Senator Larry Craig testifies at the House subcommittee hearing that he and Senator Reid believe HR 2262 is seriously flawed and it will not stand in the Senate
- August – Senator Reid testifies at the Elko NV field hearing and states:
  - Now is the time to update the Mining Law to achieve a balanced national minerals policy
  - Need to end the uncertainty this issue creates
  - New law must be a compromise that acknowledges effective environmental laws & reclamation requirements already exist

# The Senate

- There should be a fair royalty – but not the same as coal or oil & gas
- **Bill must address the needs and concerns of the prospector and small company**
- September – Senate Energy and Natural Resources Committee holds an informational hearing
- November – Chairman Bingaman and Ranking Member Domenici issue a joint statement on the importance of the domestic mining industry and the desire to work together to update and modernize the Mining Law

# The Senate

- Senator Domenici believes HR 2262 “would result in irreparable harm to America’s mining industry” and that “the Senate should start with a clean slate and draft legislation that will make reasonable changes to the Mining Law.”
- Senator Reid issues a statement that calls for a “constructive counterpoint to the Rahall-Costa bill” and states that he “cannot support many of the provisions in the House bill” and “believes “that the opportunity still exists for common sense reform.”
- Senator Obama declares his opposition to HR 2262 and states that it should be rewritten to reduce the economic impact on mining companies and jobs

# The Senate

- Several Democratic Senators have indicated they will follow Senator Reid's lead on mining law
- Senate Energy and Natural Resources Committee expected to take up Mining Law in January and write its own bill

# The Administration

- November 1 -- OMB issues strong Statement of Administration Policy in opposition to HR 2262 that includes a veto threat related to the takings implications of the bill
  - NWMA provided Minority staff (who in turn provided it to OMB) a legal memorandum prepared by a former DOI Deputy Solicitor concluding that applying a royalty to valid mining claims with a discovery of a valuable mineral deposit (including existing operations) would violate the 5<sup>th</sup> Amendment's protection against taking private property without just compensation

# The Industry

- Supports common sense, reasonable, constructive amendments to update and modernize the Mining Law
  - 5% net proceeds royalty on new projects
  - Provide security of title and tenure to ensure that miners have the right to occupy federal land open to mineral entry to conduct mineral activities from entry through closure
  - Recognize the comprehensive federal and state environmental laws and regulations that govern the mining industry
  - Direct royalty monies to state AML programs to address historic AMLs

# The Industry

- More unified than in the past
- Most everyone agrees that now is a good time, the right time, politically to try to resolve this issue to remove the cloud of uncertainty and ensure a strong and prosperous domestic mining industry
- But all agree **NOT AT ALL COSTS**

# NWMA's Involvement

- Retained Ron McMurray of the Livingston Group to represent NWMA in Washington DC
- I have made ten trips to Washington DC this year and NWMA held a fly-in in October, meeting with Senators Reid & Barrasso and Representatives Rahall, Costa, Young, Pearce, Sali, McMorris Rodgers, Heller, Salazar, the staffs of several other Members and both majority and minority staffs of the authorizing committees
- Strong relationship with senior DOI officials
- Participating in NMA's MPTF working group that is drafting legislative language industry can support – ensuring that all NWMA members from the prospector and smallest companies to the exploration and junior mining sector to the vendors and suppliers have a seat at the table and a voice in the outcome
- Increased involvement in the Senate

# Your involvement is needed

- Write/call your Senators – especially their state offices
  - Grassroots will play an important role in the ultimate outcome – mine opponents will be engaged . . . Will you?
- Write members of the Senate Energy & Natural Resources Committee
- Continue to work the House
  - Thank Members who supported us
  - Work Members to support the Senate bill if we get to Conference
- Ask you fellow employees, colleagues, customers, vendors and friends to get involved

# Your involvement is needed

- NWMA will make it easy for you to send letters utilizing our Grassroots Power Site which can be accessed from our website
- We will post talking points on our website
- We will circulate Action Alerts
- **PLEASE GET INVOLVED –  
AMERICA'S FUTURE IS AT STAKE**