

**MINING LAW REFORM:
WHAT IT MEANS TO YOUR RIGHT TO
EXPLORE & MINE
ON PUBLIC LANDS**

New Mexico Mining Association
2008 Annual Meeting
September 4, 2008

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Mining for a Minerals Dependent World

December 1 - 5, 2008

John Ascuaga's
Nugget Casino Resort
Gardens (Reno), Nevada

Northwest Mining Association's 114th Annual Meeting,
Exposition and Short Courses



HR 2262 – The Hardrock Mining and Reclamation Act of 2007

- Introduced May 10, 2007 – on the 135th 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)

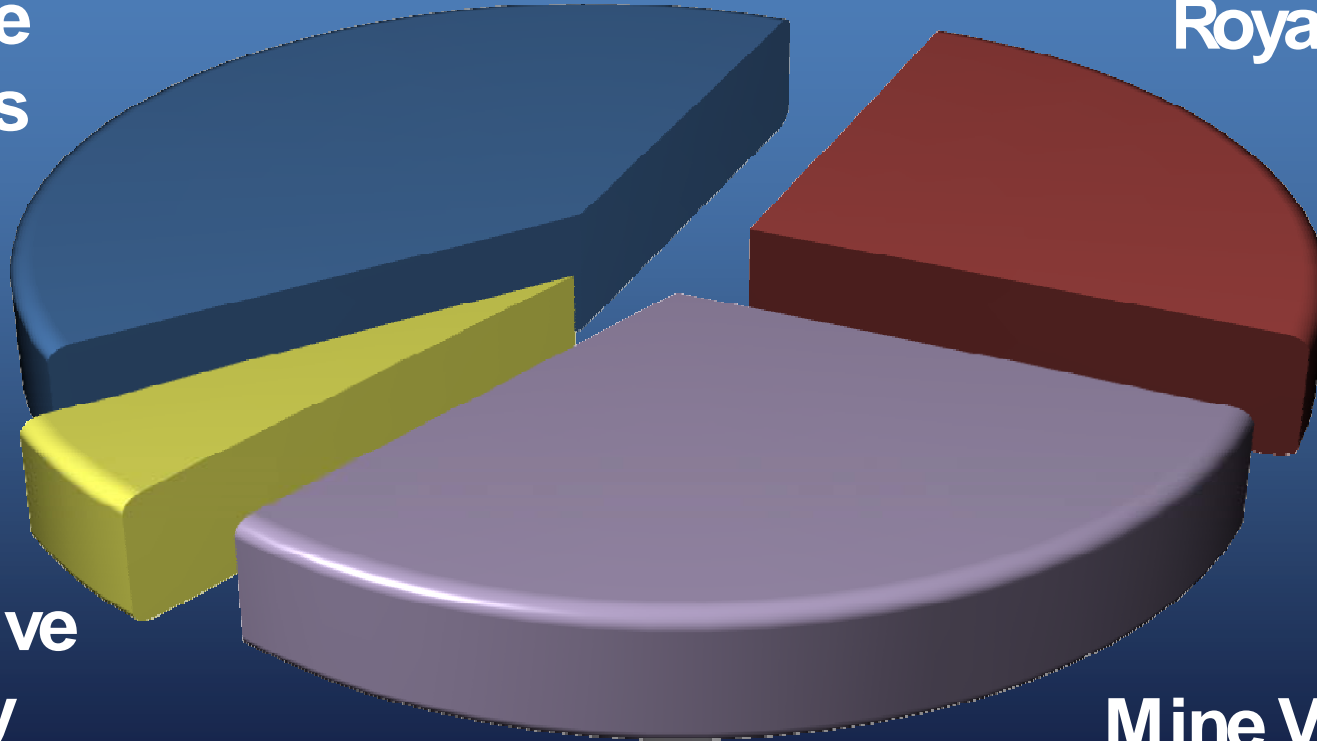
Here's What's Wrong with H.R. 2262

Eliminates
Land
Tenure
Rights

Retroactive
Royalty

Prospective
Royalty

Mine Veto
Provisions

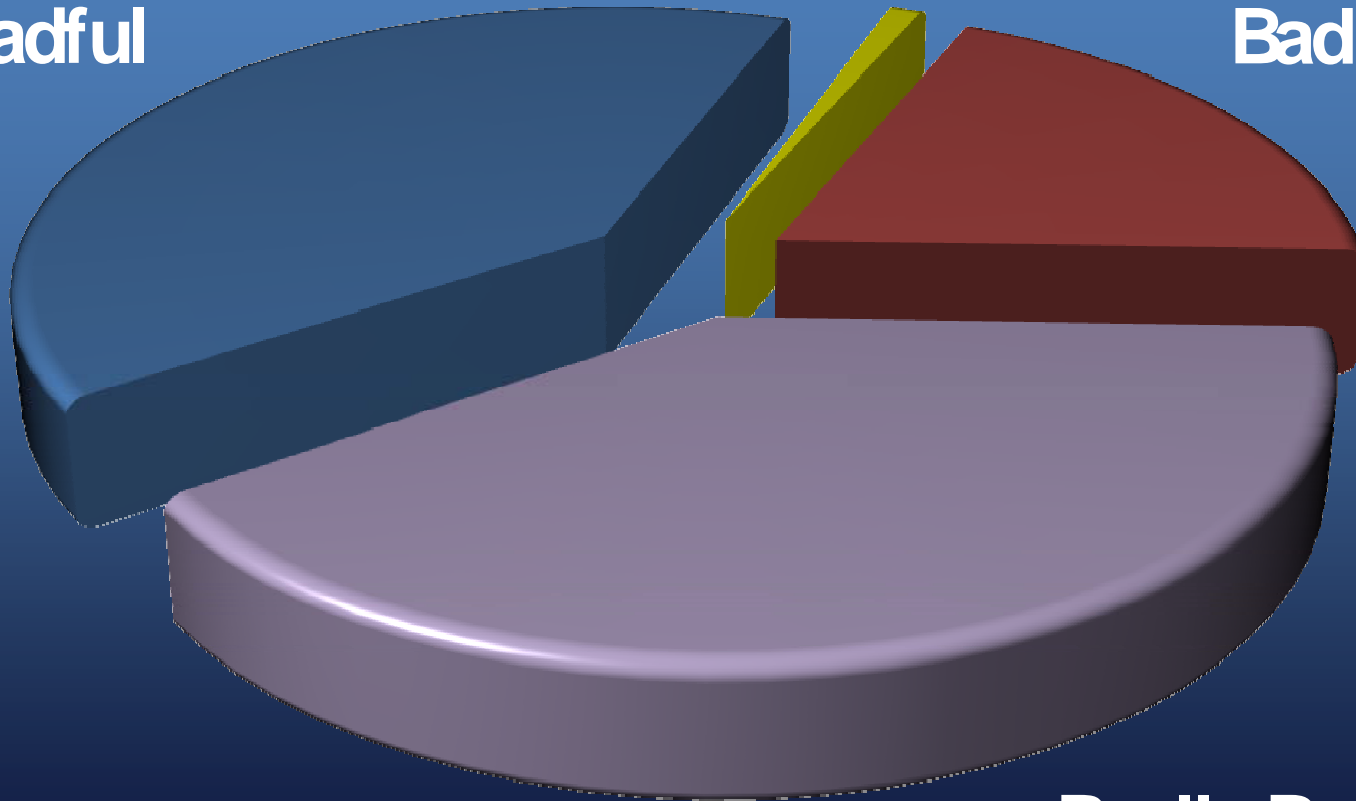


H.R. 2262 Misery Index

Simply
Dreadful

Potentially
Tolerable

Bad



Really Bad

Top 10 problems with HR 2262

1. *Mine veto #1 (§ 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*
 - *Undue degradation defined as “irreparable harm to significant scientific ,cultural or environmental resources on public lands that cannot be effectively mitigated.” (§2(a)(19))*

Top 10 problems with HR 2262

- Definition based on former DOI Solicitor John Leshy's Significant Irreparable Opinion taken from Secretary Babbitt's 3809 regulations issued in 2000 and removed when Secretary Norton re-issued 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

2. Mine Veto # 2 - 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

3. Mine Veto # 3 - Codifies the Leshy Ancillary Use Opinion by requiring a valid mining claim, valid mill site 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

4. Mine Veto # 4 - 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
 - Requires lands be open to location at the time the permit is issued
 - Makes the patent moratorium permanent as of September 30, 1994, without providing any replacement mechanism for security of tenure

Top 10 problems with HR 2262

5. Mine Veto # 5 - 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

6. 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

7. New and duplicative environmental standards (Title III) that are vague, ambiguous and inconsistent with current federal and state environmental laws (*solutions in search of problems*)
 - 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

8. 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*
- *Result in the premature closure of many existing mines*
- *Many mines in the development stage will not be built*

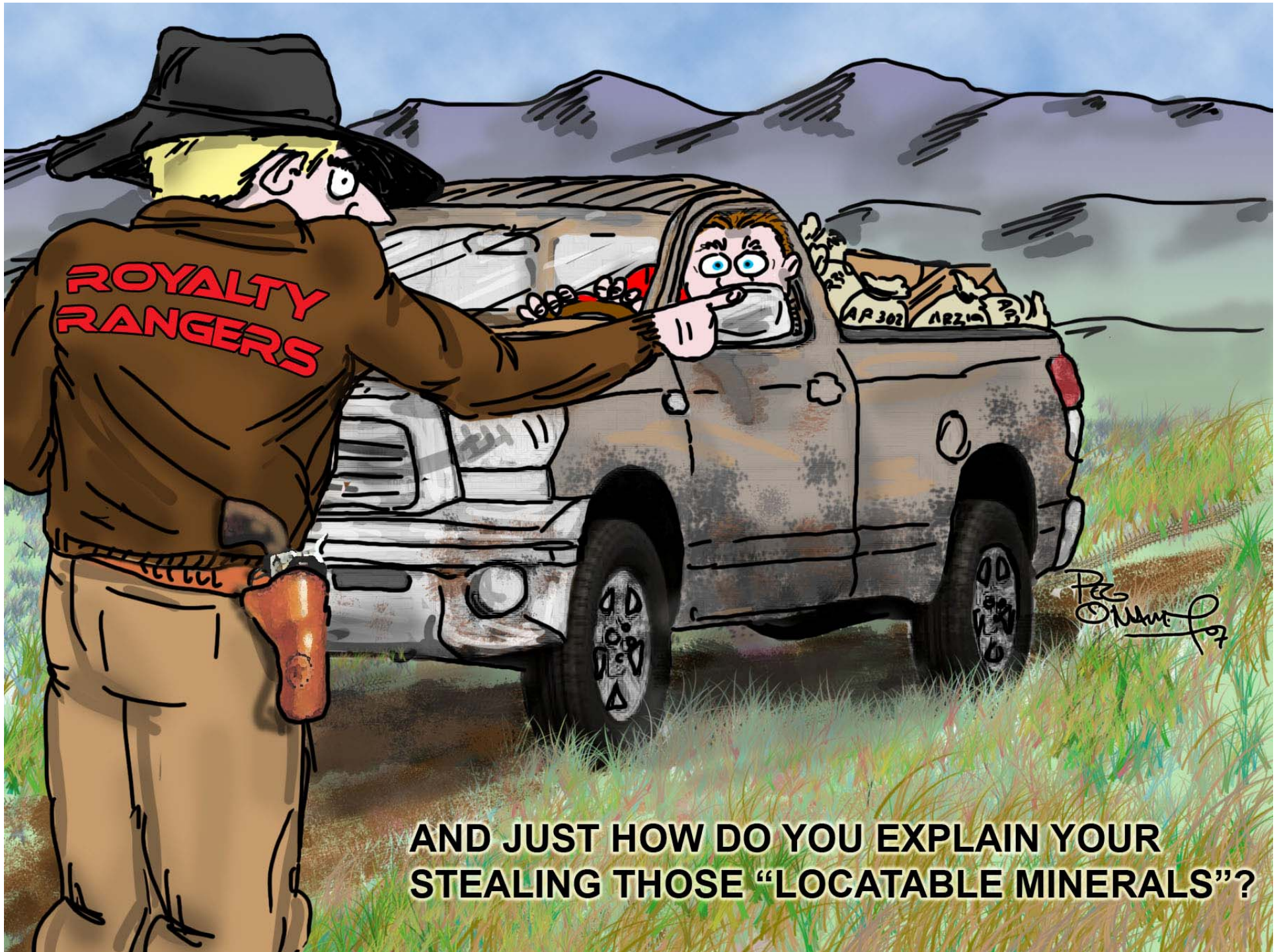
Top 10 problems with HR 2262

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



**AND JUST HOW DO YOU EXPLAIN YOUR
STEALING THOSE "LOCATABLE MINERALS"?**

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 weakening America's national and economic security
- Export tens of thousands of high paying family wage level jobs & bring about the economic destruction of rural communities

HR 2262 will:

- Leave very little public land open to mineral entry
- Virtually eliminate exploration and mining on federal public lands
- Confiscate investments (mine veto) and take private property without just compensation in violation of the 5th Amendment leading to hundreds of takings lawsuits

The Administration

- November 1 -- OMB issues strong Statement of Administration Policy (SAP) 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 Associate Solicitor concluding that applying a royalty to valid mining claims with a discovery of a valuable mineral deposit (including existing operations) would violate the 5th Amendment's protection against taking private property without just compensation

The Senate

- September
 - Senate Energy and Natural Resources Committee holds an informational hearing on Mining Law Reform
- 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
 - Senator Reid will oppose any attempt to impose a royalty on existing production
 - While in Nevada before the Presidential Primary, 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 (Is that his position today?)

The Senate

- January, 2008 – Senate holds oversight hearing on environmental standards and royalty issues
 - Sen. Bingaman states that Mining Law reform will require compromises on all sides
 - Sen. Domenici states that Mining Law reform includes only 3 issues:
 - A prospective net royalty;
 - Security of tenure to replace patenting;
 - An AML fund;
 - And any attempt to include environmental provisions are “solutions looking for problems.”
 - Sen. Salazar (D-CO) endorses Sen. Domenici’s approach to Mining Law reform and would add Good Samaritan provisions to AML

The Senate

- March 2008 – Senate holds oversight hearing on Uranium and AML issues.
 - NWMA Trustee and AML expert Debra Struhsacker testified on AML issues on behalf of NWMA
 - Committee staff and Sen. Reid's staff meet with representatives of the mining industry & environmental groups in an effort to write a Senate bill before Easter recess.
 - Effort stalls when environmental groups insist on a discretionary mine veto and decide that the political environment may be more favorable in 2009
 - Sen. Feinstein introduces S. 2750, The Abandoned Mine Reclamation Act of 2008
 - Essentially the Rahall bill without the environmental provisions, withdrawals and mine veto language
 - Includes higher claim fees and a .3% reclamation fee on all hardrock production
 - No hearings have been held

The Senate

- Sen. Cantwell (D-WA) issues statement supporting many of the provisions in H.R. 2262, circulates a “Dear Colleague” letter that attracts only 10 signatures and promises to introduce a bill
- **No Senate Committee action to date**

The Senate

- Major issues in discussions with Senate staff
 - Royalties
 - Gross v net
 - Amount
 - Transition—who pays
 - Elimination of patenting with a new security of tenure provision—tied to payment of claims maintenance fee
 - Environmental provisions
 - Earthworks and Pew continue to push, but less traction among Members and staff than previously
 - Mine Veto/Right to Say No
 - The deal killer

The Senate

- Abandoned Mine Cleanup
 - All about \$\$\$\$ for an AML Fund
 - Increase in Claims Maintenance Fee
 - Reclamation fee
- Other issues:
 - Uranium—locatable or leasable
 - Financial assurance requirements
 - Water quality & water quantity issues -- tie water quality to bond release

The Senate

– Other Issues (continued)

- Additional protections for National Parks & Monuments
- A process to determine which lands should be open to mineral entry
- Permit (possibly a 3809 or 228 Plan of Operation) and possible permit time limits (term plus as long as producing -- similar to oil & gas)

The Industry

- Supports common-sense, reasonable, and 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
 - Direct royalty monies to state AML programs to address historic AMLs
 - Recognize the comprehensive federal and state environmental laws and regulations that govern the mining industry

The Industry

- More unified than in the past
- Most everyone agreed that 2008 was/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 sixteen trips to Washington DC since May, 2007 meeting with Members and/or their staffs
- Testified on AML issues in the House & Senate
- Held two fly-ins (October 2007 and January 2008), meeting with Senators Reid, Bingaman, Craig, Tester & 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
- On the January fly-in, NWMA members met with 19 of the 23 offices of Senate members of the Energy and Natural Resources Committee
- Strong relationship with senior DOI officials

NWMA's Involvement

- 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 major producers to the vendors and suppliers have a seat at the table and a voice in the outcome
- Provided input to both majority and minority senate committee staff
- Continued involvement in Senate and House until we have a bill

Recent Developments

- Pew & Earthworks continue to push Mining Law Reform in the media
- Grand Canyon Watershed Protection Act (H.R. 5583) to withdraw AZ strip from mineral entry
- Grand Canyon Withdrawal Resolution by House Natural Resources Committee
 - Secretary Kempthorne has refused to comply
- July 21, 2008 GAO report on state royalties on hardrock mining and trends in mineral imports & exports
 - Shows multiple types of royalties & rates among the states

Recent Developments

- In July, Pew provides Senate Staff with a document entitled “Hardrock Mining in the West: The Pollution Persists”
 - An attempt to discredit NWMA’s testimony at the March 12 Senate hearing and NWMA’s white paper “The Environmental Provisions in the House Mining Law Bill (H.R. 2262) Are Solutions in Search of a Problem”
 - Alleges that serious environmental problems left by hardrock mining operations are not just problems of the past
 - However, all of the environmental problems cited by Pew are at mines developed prior to the enactment of modern environmental laws or during the infancy of mining regulations and bonding requirements

Recent Developments

- NWMA, after exhaustive research of each mine cited in the Pew document, prepared and provided to Senate Staff a rebuttal entitled “Hardrock Mining in the West: The Rest of the Story”
- Rebuttal demonstrates the inconvenient truth that the AML problem is about historic, pre-regulation mines and that today’s comprehensive environmental laws and regulations combined with current financial assurance requirements assure that today’s mines will not become tomorrow’s abandoned mines
- Rebuttal will be posted on NWMA’s website next week

Prospects for Further Action

- Most believe Mining Law Reform is dead for 2008
- Next Congress
 - Likely reintroduction and passage of something like H.R. 2262
 - Retirement of key Western Senators (Domenici; Craig; Allard) & possible defeat of Sen. Stevens
 - Two Udalls or Pearce & Schaffer?
 - Sen. Murkowski will be Ranking Member of Senate Energy & Natural Resources Committee
 - New Administration and Secretary of the Interior
 - Majority Leader Harry Reid is in cycle in 2010