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## **The Hardrock Mining and Reclamation Act of 2009 (S. 796) Top 10 Fatal Flaws Demonstrate Why this Bill is Bad for America**

“The Hardrock Mining and Reclamation Act of 2009” (S.796) has many fatal flaws that will create uncertainty for the mining industry, discourage investment in U.S. mining, impede economic recovery, lead to the loss of high-paying mining jobs bringing severe economic hardship to countless mining-dependant communities, and result in an increased reliance on foreign sources of minerals and metals.

While Senator Bingaman’s bill may appear to be a more moderate approach to updating the Mining Law than H.R. 699, a careful reading reveals that it is a “Trojan horse” that will create serious problems for the Nation if it becomes law. Here’s why:

- 1. Decimates security of land tenure by eliminating the rights to use and occupy public land for mineral purposes which will thwart exploration and development.**
  - Eliminating pre-discovery rights to enter, use and occupy public lands open to mineral entry creates intolerable uncertainty because exploration becomes a discretionary use of public land where permission to explore can be revoked at any stage. This loss of pre-discovery rights significantly increases the risks associated with mineral exploration and will lead to a substantial decline in mineral discoveries and future mineral production.
  - Eliminating the right to use and occupy non-mineral public lands for ancillary facilities such as processing facilities, unmineralized rock storage areas, roads, etc., and making these uses discretionary, also creates intolerable uncertainties which will thwart mine development.
  - Before substantial investments will be made to explore and develop mineral deposits, miners must know that their rights to enter, use and occupy public lands open to mineral entry are secure from entry through mine closure.
- 2. Eliminates notices for exploration, failing to recognize exploration’s limited surface disturbance and replaces notices with a burdensome exploration permitting process.**
  - The resulting downturn in exploration will lead to a dramatic decline in discoveries of new mineral deposits and will significantly reduce future domestic mineral production.
  - Conflicts with the recommendations of the National Research Council.
- 3. Vague and uncertain royalty provisions that leave the most critical details to a long and uncertain rulemaking process, including the exact amount of the royalty; the precise nature of deductions that are reasonably associated with beneficiation, processing and transportation; the standard to be used to determine the royalty rate; and who is responsible for payment of the royalty.**
  - The resulting economic uncertainty will inhibit or freeze investment until the rulemaking is complete and damage U.S. mining industry competitiveness in the global marketplace.
  - Assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.
  - Under the expanded royalty obligations, each person liable for royalty payments are to be jointly and severally liable for royalty on all locatable minerals lost or wasted, inviting the government to make economic decisions concerning mineral deposits that only a miner is capable of making.

- 4. Prohibits any person or related party from relocating a mining claim, millsite or tunnel site for 10 years after a claim or site is dropped or becomes null and void, regardless of the reason and provides no right to cure an oversight or error on the payment of the claim maintenance fee.**
  - Fails to recognize the cyclical nature of mineral prices and the economic and geological reasons for dropping and relocating claims.
  - Unnecessarily penalizes companies wanting to invest in domestic mineral exploration and production without any policy or on-the-ground justification.
  - Increases risks and costs associated with grassroots exploration and mining resulting in fewer new mineral discoveries and an increased reliance on foreign sources of minerals.
- 5. The unsuitability withdrawal provisions in the bill give federal land management agencies unprecedented broad authority to subjectively withdraw lands from mineral development. Incredibly, it leaves that decision to the discretion of the local land manager without considering the mineral potential of the lands or providing guidelines and standards to follow.**
  - Putting potentially mineralized lands off-limits to mining will increase the Nation's reliance on foreign minerals.
- 6. Mandates the Secretaries of Interior and Agriculture to jointly promulgate regulations to carry out the Act without guidelines or standards, potentially creating duplicative environmental regulations while ignoring the existing comprehensive framework of federal and state environmental laws that the National Research Council (NRC) found effective in protecting the environment from impacts of mining.**
  - New regulations in addition to requirements already applicable under the Federal Land Policy and Management Act or the National Forest Management Act will create confusion, uncertainty, and cause further permitting delays, making the U.S. less attractive to investors.
  - This is a solution in search of a problem.
- 7. Includes a very restrictive definition of "casual use." The definition "ordinarily result in no or negligible disturbance of federal land or resources" is very narrow and imprecisely defined, leaving the door open to a more restrictive definition by regulation.**
  - Allows the agencies to require a permit for virtually every activity adding tens of thousands of permit applications. There is no way the BLM or USFS could process the thousands of permits that would be required, causing greater permitting delays for all projects;
  - Implies that *all* prospecting and exploration activities are significant and will require an EA or EIS, adding delays, burdening the agencies' workload and increasing permitting costs without any corresponding environmental benefit.
- 8. Requires public notice and comment prior to the release of any financial assurance.**
  - Release should be based strictly on technical criteria, financial analysis and the reclamation plan as set forth in the mining permit;
  - If the reclamation work has been accepted by the agency, there is no legitimate matter on which public opinion should be considered.
- 9. Removes bentonite, high grade calcium carbonate deposits and other locatable industrial minerals from operation of the Mining Law, and potentially could remove uranium.**
  - Overrides several IBLA cases and the McClarty test for verifying distinct and special value.
  - Subjecting these minerals to agency discretion, highly restricted permits, and competitive sales under the Material Sales Act of 1947 will make it more difficult to attract investment and meet America's demand for these important minerals from domestic sources.
- 10. Repeals the General Mining Laws except for the provisions relating to location of mining claims not specifically modified by the Act.**
  - Repealing 137 years of interpretation and precedent is bad public policy, creating uncertainty and increasing the likelihood of unnecessary and costly litigation. The Mining Law needs surgical amendments to address recognized shortcomings, not a complete overhaul.
  - Throws the baby out with the bath water.