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Top Ten Problems with H.R. 699 Demonstrate Why this Bill is Bad for America

Representative Nick J Rahall introduced H.R. 699, “The Hardrock Mining and Reclamation Act of 2009,” on January 27, 2009. The sweeping changes in this bill are disaster in the making for the domestic mining industry and for America. H.R. 699 creates many uncertainties for the mining industry. But one thing is certain – this bill will create the following serious problems for the Nation if it becomes law:

- 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;
- 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;
- Mining-dependent rural communities will experience severe economic hardships;
- The federal government will be subject to substantial takings litigation.

The following are the 10 top reasons why H.R. 699 is bad for America:

- 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. Confiscates investments by empowering the Secretaries of Interior and Agriculture with discretionary authority to deny permits to projects that otherwise comply with all environmental laws and regulations.**
 - This creates significant uncertainty about ultimate project approval, making it more difficult to attract investment capital.
 - The discretionary authority in H.R. 699 replicates the mine veto provision in the 2000 Bureau of Land Management regulations that were withdrawn in 2001 because they conflict with the policy goals in FLPMA and BLM’s NEPA analysis concluded that such authority would result in “significant adverse effect to mining-dependent communities, including declines in social well-being due to potential for up to 75% decrease in some types of mining.”

- 3. Creates a new unrealistic and unworkable definition, “undue degradation,” that changes the current FLPMA standard of “unnecessary or undue degradation,” which recognizes that some degradation may be necessary (i.e., unavoidable) in order to mine.**
 - This undue degradation definition singles out hardrock mining compared to all other activities on public lands by imposing a higher, impractical, and unfair standard that precludes unavoidable degradation due to mining.
- 4. Empowers states, political sub-divisions, and Indian tribes to petition to withdraw public land from mineral entry, even after valuable minerals have been discovered.**
 - Requires granting the withdrawal petition unless the Secretary finds it is against the national interest to grant the petition, an almost impossible criterion to meet on a mine-by-mine basis.
- 5. Withdraws massive amounts of public land from mineral development without considering the mineral potential of these lands or their importance to meeting domestic needs for minerals.**
 - Putting potentially mineralized lands off-limits to mining will increase the Nation’s reliance on foreign minerals.
- 6. Imposes a 4% gross royalty on existing operations with commercial production and an 8% gross royalty on all other claims, subjecting the United States to significant takings litigation.**
 - 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.
 - The United States Supreme Court has ruled that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes which entitle claim holders to extract and sell minerals “without paying any royalty to the United States as owner.” *Union Oil Co. v Smith*, 249 U.S. 337, 348-349 (1919).
- 7. Contains a new, duplicative and unnecessary public review process and impractical, ambiguous, and unworkable environmental standards**
 - These changes are not needed or desirable. The current NEPA process and federal and state environmental standards are working well according to the 1999 National Research Council study which concluded that the existing federal and state regulatory schemes for hardrock mining were effective in protecting the environment.
- 8. Places arbitrary time limits on mines by eliminating life-of-mine permits.**
 - One maximum twenty year permit with the uncertain possibility of one twenty year renewal creates too much uncertainty making it difficult to attract the investment capital needed to build new mines and will cause premature mine closures, leaving minerals in the ground, wasting mineral resources and hurt local and state economies that depend on mining.
- 9. Eliminates notices for exploration, failing to recognize exploration’s limited surface disturbance and places an unrealistic ten year maximum on an exploration permit.**
 - 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.
- 10. Contains unnecessary and harsh enforcement mechanisms that treat miners like scofflaws.**
 - The severe criminal penalties for permit violations are unfair, unprecedented, and inappropriate for most situations and launches a vendetta against America’s miners.

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