

Fact vs. Fiction: The Truth about Mining Law Amendments

PUNITIVE MINING LAW CHANGES WOULD HARM US INDUSTRY, INVESTMENT, ECONOMY

Proposed legislation: Imposes a 12.5 percent gross royalty on new mining operations and an 8 percent gross royalty on existing operations. It would also establish a 7 cent-per-ton tax on dirt, rock and other materials moved during the extraction process.

Punitive Royalty and Dirt Taxes Will Deter Mining on Federal Lands

Real-life impact: A 12.5 percent gross royalty would be among the highest royalties in the world. This punitive gross royalty, along with the "dirt tax," will erode the long-term certainty mining proponents' value in the U.S. and threaten the industry's long-term viability. Application of a royalty on existing operations also exposes the federal government to litigation under the U.S. Constitution's takings clause. As compared to a net royalty, a gross royalty inherently increases the risk of a given mining investment.

These new burdens also ignore the other taxes already imposed on mining companies operating in the U.S., including those on federal lands. In 2017, domestic mining activity generated an estimated \$17 billion in federal, state and local taxes that supported direct, indirect and induced taxes of \$42 billion. As various studies have shown, the total "government take" (royalties, taxes and other fees) for operations in the U.S. is in the 40 to 50 percent range, similar to other major mineral producing countries. These studies suggest that even a small federal royalty will push the U.S. beyond the upper limit of this range and thereby impair our global competitiveness, negatively impact employment and tax revenues, and drive mining activity off federal lands. Inevitably, such punitive measures would increase our reliance on foreign sources of minerals, which is already at a record high, creating additional supply chain vulnerabilities for the U.S. manufacturing, energy, infrastructure, and defense industrial sectors.

Existing Environmental and Financial Assurance Standards Are Strong

Proposed legislation: Requires highly prescriptive environmental standards and financial assurance requirements that duplicate and conflict with existing federal and state requirements.

Real-life impact: Concerns that modern mining operations are unregulated are unfounded. While the General Mining Law is not an environmental statute, mining operations are subject to exhaustive federal and state environmental, ecological and reclamation laws and regulations to ensure that operations fully protect public health and safety, the environment, and wildlife. Given the applicability of the National Environmental Protection Act, Endangered Species Act, Clean Water Act, Clean Air Act, National Historic Preservation Act and other statutes, including environmental standards in the text of the General Mining Law would provide no additional environmental benefit.

The environmental harms caused by legacy mines cannot be attributed to the General Mining Law's lack of environmental provisions. Rather, the history of mining in the U.S. dwarfs the relatively brief history of environmental laws and regulations that govern modern industrial activities including mining. Under today's comprehensive environmental standards, modern mining operations simply do not present the same risks as legacy sites. In cases of noncompliance, the federal land management agencies and state regulatory authorities have broad inspection and enforcement authority and the ability to suspend operations, revoke permits and seek criminal penalties.

To ensure mine sites are cleaned up in the event of bankruptcy or abandonment, before operations begin federal and state regulators require financial assurance equal to the cost that would be borne by these authorities if they had to contract with a third-party to conduct reclamation and cleanup, including any necessary long-term water treatment. As of 2017, federal and state land management agencies held approximately \$6 billion in financial assurances. The U.S. Environmental Protection Agency recently analyzed the need for additional financial responsibility requirements for hardrock mining facilities and concluded that modern management practices, modern environmental regulations and existing robust financial assurance requirements alleviate the need for new regulations.

Conversion to a Leasing System Undermines Regulatory Certainty

Proposed legislation: Converts the General Mining Law's current locatable minerals system into an unworkable leasing system that allows the federal land management agencies to use vague and subjective criteria to deny mining permits even if all environmental requirements are met. A leasing system would also impose artificial timeframes and acreage limitations on mining exploration and operations on federal lands.

Real-life impact: Hardrock mineral deposits in economic quantities are extremely rare, even harder to find, and much costlier to produce than more identifiable and contiguous oil, gas and coal deposits. The current locatable system incentivizes hardrock mineral exploration on federal lands by rewarding discoverers of valuable deposits the right to mine as long as all environmental and other regulatory requirements are satisfied. Exploration is a prerequisite for development of hardrock minerals on federal lands as such minerals are notoriously difficult to find. The proposed legislation represents a fundamental lack of understanding about basic geologic and economic differences between hardrock minerals and leasable fuel minerals, such as coal, oil and gas.

Not only will conversion to a leasing system remove incentives for mineral exploration on federal lands, the unprincipled denial authority and arbitrary timeframes will impair investment in mining projects on federal lands. Mining operations require long-term and substantial commitments of capital. As a result, financial and investment decisions are extremely sensitive to the stability of the relevant regulatory environment. As such, the transition to a system that includes arbitrary timeframes and size limitations will deter operations on federal lands. Changes to the federal land management agencies' authority regarding approvals and denials of mining projects will have a similar impact and are unnecessary.

Under the existing system, federal land management agencies have final say on if, and what, projects are approved on federal lands. If a proposed project fails to meet the respective agency's requirements for hardrock mining operations, an approval is not given. Additionally, the approvals cannot be given without meeting the National Environmental Policy Act review requirements and full consultation with all stakeholders including the general public, local communities, state regulators, Native American tribes and environmental groups.

Proposed legislation: Prohibits future mining on certain categories of federal lands.

Access to Federal Lands is Critical to Domestic Supply Chain Security

Real-life impact: Currently, new mining operations are already either restricted or banned on more than half of all federally-owned public lands. While mining is not appropriate on all federal lands, given the vast amount already closed to mining operations, caution should be exercised when determining whether additional lands should be placed off limits. Federal lands continue to account for a significant percentage of our nation's minerals production given that Western states with the largest proportion of federal lands provide approximately 75 percent of our domestic minerals. Unnecessarily restricting access to additional federal lands harms our nation's economic and national security. In most instances, the extreme step of banning new mining claims is unwarranted as existing laws, including environmental requirements and land use planning processes, are adequate to protect special areas.

Punitive Mining Law Amendments Will Not Fix the Abandoned Mine Land (AML) Situation

Proposed legislation: Establishes an AML fund with the royalty and dirt tax proceeds.

Real-life impact: The proposed legislation will not solve the challenging legacy AML situation in this country because its punitive proposals will deter mining on federal lands. Destroying the revenue base for modern mining will not make more money or resources available for addressing legacy sites. Improved coordination of existing federal and state AML funds and programs, and providing Good Samaritan liability protection, are practical solutions to further promote AML cleanups. Additionally, the mining industry is not opposed to a fair royalty on new mines on federal lands to fund AML cleanups as long as the royalty sustains a competitive environment for U.S. mines, the mining economy and the employment it supports, and is coupled with a timely and efficient permitting process.