

# American Strength: America's Minerals.



## Mining Law Reform: Sensible Solutions

**Changes to the Mining Law of 1872** should ensure a fair, predictable and efficient legal and regulatory climate and should foster production of hardrock minerals that support high-wage jobs and make vital contributions to our economy.

### ROYALTY

**H.R. 699:** The "Hardrock Mining and Reclamation Act of 2007" proposes an 8 percent net smelter return (NSR) royalty on all future production of locatable minerals from federal lands.

**NMA:** NMA supports a net income production payment or royalty for minerals produced from new mining claims on federal lands.

**Background and Rationale:** An 8 percent NSR royalty does not appropriately balance the need to provide a fair return to the public with the need to foster domestic minerals mining. NSR is effectively a gross royalty since the Internal Revenue Service does not allow deductions for direct mining production costs. Various studies have concluded this type of royalty would result in significant job losses, substantial revenue losses to state and federal treasuries, mine closures and discouragement of new mines. For example, a 2006 World Bank report cautions against gross royalty approaches as compared to ability-to-pay or profit-based approaches: "Nations should carefully weigh the immediate fiscal rewards to be gained from... high levels of royalty, against the long-term benefits to be gained from a sustainable mining industry that will contribute to long-term development, infrastructure, and economic diversification."



*reclamation at a Colorado gold mine*

### ENVIRONMENTAL STANDARDS

**H.R. 699:** The bill contains highly prescriptive environmental standards that duplicate and sometimes conflict with existing state and federal environmental requirements.

**NMA:** NMA supports recognition of the existing comprehensive framework of federal and state environmental laws that regulate all aspects of mining from exploration through mine reclamation and closure. Additional legislation specific to minerals mining on federal lands would set up a parallel set of regulations that would further delay permitting with no environmental benefit. Further environmental standards or enforcement mechanisms are not needed.

**Background and Rationale:** The environmental impacts of mining on federal lands are already fully addressed by a comprehensive range of federal and state laws and regulations. These include, among others, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act, the Resource Conservation and Recovery Act, the Endangered Species Act, and the Bureau of Land Management and Forest Service surface management regulations for mining. According to the National Academy of Sciences panel of experts convened by Congress, this existing framework of mining regulations effectively protects the environment. The current regulations are comprehensive and focus on the same environmental issues that are delineated in H.R. 699, including: soils; stabilization; hydrologic balance; surface restoration; vegetation; excess waste; sealing; structures; cultural, paleontological and cave resources; road and structures; drill holes; leaching operations and impoundments; fire prevention and control; and temporary cessation of mining.

### SECURITY OF TITLE AND TENURE

**HR 699:** The bill would make permanent the congressional moratorium on patenting and create a new untested permit system with 10-year limits on permits.

**NMA:** NMA supports amendments that provide the certainty needed for private investment in mining activities on public lands by ensuring security of title and tenure from the time of location through mine reclamation and closure.

**Background and Rationale:** Mining operations require long-term and substantial commitments of capital. As a result, investment decisions are particularly sensitive to

the stability of the relevant regulatory environment. An untested permit system with 10-year permit limits does not provide sufficient stability or length of tenure to attract investments in domestic mining projects. Despite reserves of some 78 important mined minerals, the U.S. currently attracts only 8 percent of worldwide exploration dollars and has become increasingly reliant on foreign sources of minerals for products that are strategically important to our national and economic security.

Patenting was designed to provide the security of tenure necessary to encourage the private sector to engage in mineral activity on federal lands. If patenting is discontinued, it should be replaced by legislative provisions that provide greater security of tenure by clarifying existing rights applicable to surface and subsurface activities in advance of, as well as during, development and through reclamation.

### ABANDONED MINE LANDS (AML) FUND

**HR 699:** The bill would establish an AML fund for the reclamation and restoration of land and water resources adversely affected by past mineral activities on federal lands.

**NMA:** NMA supports the establishment of an AML clean-up fund financed by revenue generated from a net income production payment (see ROYALTY). NMA also supports coordination of existing federal and state AML funds and programs, and Good Samaritan liability protection to promote voluntary clean-ups.

### ACCESS TO PUBLIC LANDS

**HR 699:** The bill prohibits future mining on certain public lands, e.g., lands designated for wilderness, wilderness study areas, National Monuments, Wild and Scenic River Areas and lands under study for such, lands designated as Areas of Critical Environmental Concern, lands identified as sacred sites, and roadless areas. The bill may prompt a taking of property rights by not adequately protecting existing claimants in these areas.

**NMA:** Existing laws are adequate to protect special areas. NMA supports and agrees with the Bureau of Land Management Minerals Policy Statement that recognizes 1) that except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest and 2) that, with few exceptions, mineral exploration and development can occur concurrently or sequentially with other resource uses.

**Background and Rationale:** Public lands account for as much as 86 percent of the land area in certain Western states. These same states, rich in minerals, account for 75 percent of our nation's metals production. As such, access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry. Various laws ban mining on specified public lands. New closures of public land, based on vague and subjective criteria without congressional oversight, would arbitrarily impair mineral and economic development. For example, closing federal lands "identified as 'sacred sites'" in accordance with Executive Order 13007 is inappropriate, as the definition of sacred sites is inherently subjective. Such sites can include vast landscapes and mountain ranges encompassing hundreds of square miles.

Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. The Antiquities Act authorizes the president to create national monuments to protect landmarks and objects of historic and scientific interest. Finally, federal land management agencies are authorized to close public lands temporarily to mining pursuant to the Federal Land Policy and Management Act. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public lands.



testing water quality at a Nevada mine

### MORE INFORMATION

For further information about mining law reform visit [www.nma.org](http://www.nma.org).