Critique of S. 796

On April 2, S. 796, the Hardrock Mining and Reclamation Act of 2009, was introduced in the U.S. Senate by Senator Bingaman (D-NM). This bill is a modest proposal to update this century old law. Compared with the legislation that has been introduced in the House of Representatives (HR 699), and passed the House in the 110th Congress, the Senate bill does not protect our public lands as well as the House version. The Arizona Mining Reform Coalition, while recognizing that the bill is a huge improvement over the status quo, does not support the Senate bill.

Title I – Mining Claim Location

- Section 101 ends the patenting of mining claims and is consistent with HR 699.
- Section 102 raises the claim maintenance fees from $125 to $150 and the location fee for new claims from $30 to $50. The Secretary may adjust the claim maintenance fee every 5 years or more often if necessary to take into account inflation, using the Consumer Price Index.
- Section 103 defines limitations on mining claims. The language states that: "If the claim holder cannot demonstrate to the Secretary that the mining claim, millsite, or tunnel site has been used exclusively for mineral activities, the Secretary shall declare the claim, millsite, or tunnel site null and void."

We support these reforms in the Senate bill.

Title II – Royalties

- Section 201 sets a royalty rate of between 2 and 5% on the value of production for new mines only after transportation, beneficiation, and processing costs are deducted. The Secretary of the Interior is authorized to set the precise rate by regulation and the rate could vary based on the type of mineral.
- Section 202 would allow a mining company to ask the Secretary of the Interior to reduce or remove the royalty if the company can show "clear and convincing" evidence that mining would not occur without the reduction.

The Coalition supports the approach taken in the House bill. HR 699 establishes a royalty of 8% on new mines and 4% on existing mines and does not allow for exemptions or deductions from the gross value of the mineral extracted. The Senate bill, by contrast, would not provide a fair return to the federal treasury for mineral extraction on federal lands. We are particularly concerned about Section 202, because it provides a broad exemption for the mining companies to claim that they cannot afford to pay the American public for mineral development on federal lands.

Title III – mining activities

- Section 301 requires a permit to engage in mineral activities on public lands.
- Section 302 requires a permit for any one who wants to explore for minerals, except casually in a way that does not use mechanical means or disturb the surface (while allowing for rockhounding, panning, and other casual uses without a permit).
- Section 302(d)(1)(A) requires the Secretary of the Interior to approve an exploration permit subject to compliance with mining and other laws. However, Section 302(d)(2) allows the Secretary to deny an exploration permit if mining or other laws cannot be met.
- Section 303 requires a permit for engaging in mineral activities and sets the terms for mineral activities on public lands (except casual use).
    - Mining operators would be required to avoid acid mine drainage (to the maximum extent practicable) but there is not a ban on the creation of acid mine drainage. While this section calls for a mining application to

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describe potential impacts to ground and surface water, it does not require hydrological balance or ban treatment in perpetuity as a condition for granting of a permit.
    - A mine permit can be denied if it violates mining or other applicable laws. Under this section a mine permit is good for 30 years and can be renewed.
    - This section also allows the collection of land use fees for the use of public lands by a mine. The fees would be collected yearly, but the bill does not state for how long. Fees, (including the claim maintenance fee) would be $37.50 per acre.
- Section 304 requires that an operator obtain some kind of financial assurance before developing minerals on federal lands.
    - The bill allows the possibility of corporate guarantees, which is weaker than existing policy for mineral development on federal lands. The Secretary may, according to the bill, allow incremental financial assurance instead of the entire amount up front.
    - This section requires public review of the bonding amount every 3 years over the life of the mine (expect in cases of incremental bonding where the review would be every year.)
    - A mining company may be required to set up a trust fund to fund long term or perpetual water treatment.
- Section 306 deals with operation and reclamation standards for mineral activities on federal lands. The bill requires that the mining company return land and water to pre-mining conditions or other beneficial uses (including the generation of renewable energy) after mining. This section requires the Secretary of Agriculture to create regulations that prevent unnecessary or undue degradation from mining on our national forests (the Secretary of Interior already has this obligation.)
- Section 307 establishes a process for the Secretary of the Interior to determine what lands should be available for mining. It requires the Secretaries of Interior and Agriculture to review most crucial public lands within 3 years and determine, subject to valid existing rights, tracts of land that should be withdrawn from mining. The Bill allows a Governor, Tribal leadership, or local governments to petition the Secretary for lands to be included in withdrawal, but unlike the House bill, puts the burden of proof on the petitioner rather than the Secretary.
- Section 309 requires that mines be inspected at least once a quarter.

- The Coalition recognizes that these provisions are an improvement over existing law, but they fall short of the kind of protection needed for communities in Arizona, and are not nearly as good as the House bill.
- We recommend:
    - A determination of the financial viability of a mining company be included as part of the permitting process.
    - A ban on any mine that causes acid mine drainage.
    - Permits for mines should only be for 20 years.
    - No mining should be allowed that cannot restore the hydrological balance after mining.
- The bill fails to mention the critical need for mines to maintain the regional water balance.
- The land use fees are insufficient to provide a decent return to the taxpayer for the permanent alteration of the land.
- We oppose the loophole allowing corporate guarantees and the use of incremental financial assurance. This provision would allow mining companies to alter federal lands without any insurance policy in place to protect the taxpayer from the liability for that damage.
- We are concerned that the federal land review ordered in Section 307 would lead to a lengthy administrative process similar to the RARE II review that took place on Federal lands in the 1970's. In that instance, federal lands managers failed to consider millions of acres of federal lands that should be protected for their wildland values, and subsequently these lands were damaged by overuse. We prefer the language in the House bill regarding the right of a Governor, Tribal Leader, or local government to petition for mineral withdrawal than this language.

Title IV Hardrock Minerals Reclamation Fund

Title IV establishes a fund for the cleanup of abandoned mine lands, sets up the structure of the Fund, and the dispersal of monies within the Fund for Abandoned mine cleanup.

- Section 403 requires all hard rock mines to pay into the Fund an annual reclamation fee of between .3 and 1.0% of the value of production after the deduction of transportation, beneficiation, and processing costs. The exact amount would be set by the Secretary of the Interior.

We like this title generally although we would like to see higher fees to put more money into the Fund for abandoned mine cleanup. As with the royalty amount in Section 201, the fee outlined in Section 403 allows so many deductions that a clever mine would pay nothing into the Fund.

Title V – Miscellaneous Provisions

This title is the "cleanup" title that adds everything else that didn't fit elsewhere. The two main features here are:

- Section 504 eliminates a provision that allows certain uncommon varieties of minerals to be governed by the 1872 Mining Law and would shift the management of these minerals to the stricter leasing laws.
- Section 505 would require a review of uranium development on public lands that would be written by the National Academy of Sciences under an arrangement with the Secretary of Interior and the Secretary of Agriculture. The study would be completed within 18 months after this bill was made law and would make recommendations as to changes to Federal law and agency regulations to allow for the production of uranium while protecting public health and safety and the environment. The study would determine if uranium should be removed from operation under the 1872 Mining Law, what fees should be added to insure reclamation of new and abandoned sites, and whether additional lands should be withdrawn from uranium mining claims.

We support these provisions.