



Grijalva's Mining Law Bill will Destroy Private-Sector Investment in Developing the Nation's Mineral Resources and Increase our Reliance on Foreign Minerals

Mining Law Background: The 1872 Mining Law governs how U.S. citizens gain access to hardrock (also known as locatable) minerals like copper, gold, silver, zinc, lithium, cobalt, rare earths, nickel, and other minerals on federal lands. Locatable minerals are essential building blocks of our economy, infrastructure, technology, manufacturing, conventional and renewable energy, and national defense. In response to President Trump's Executive Order 13817, "*A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals*," the Secretary of Interior recently finalized a list of 35 critical minerals, most of which are locatable minerals governed by the Mining Law.

The Bureau of Land Management's (BLM's) statistics show that at the end of FY 2018, there were 399,658 mining claims distributed in 19 western states, with roughly half of these claims located in Nevada. Cumulatively, mining claims cover less than 12,500 square miles scattered throughout the west. Only a small fraction of claims contain mineral deposits that are economic to mine. As a rule of thumb, hardrock mining affects about 0.1 percent of the land with mining claims.

Since its enactment in 1872, Congress has made many important changes to the Mining Law including:

The Minerals Leasing Act – In 1920, Congress removed coal, petroleum, natural gas, phosphates, sodium, sulfur, and potassium from the law and established leasing programs for these resources in part because they have different geologic characteristics than locatable minerals;

The Federal Land Policy and Management Act – In 1976, Congress created an environmental protection mandate prohibiting unnecessary or undue degradation of lands subject to mineral activities, established a claims recordation requirement that documents where claims are located and who owns mining claims, and created special environmental protection measures for claims in wilderness study areas and in the California Desert Conservation Area;

1993 to Present – Starting in 1993, Congress has used the appropriations process to establish an annual fee, the Claims Maintenance Fee, for use of federal lands for mineral exploration and development purposes, and to continue a moratorium on patenting. Claimants currently pay \$155 per claim, which will increase in 2019 as the fee is adjusted every five years to reflect the CPI.

The Mining Law, as amended, invites U.S. citizens to make substantial investments of time, knowledge, and money to explore for minerals on federal lands with the hope of discovering a mineral deposit that can be developed into a mine. This process, known as "self-initiation" greatly benefits our Nation because it effectively leverages private investments that transform undeveloped federal land into mining operations that create jobs, pay taxes, and provide the minerals the country needs – at no expense whatsoever to U.S. taxpayers.

Because mineral deposits are rare and unique geologic phenomena, they are very difficult to find. Keeping lands open to exploration and development improves the odds of finding "the needle in the haystack" mineral deposit that can be developed into a mine. Conversely, withdrawing land from operation of the Mining Law and restricting the amount of land that can be explored diminishes the odds of discovery, interferes with the Mining Law's self-initiation process, and severely compromises the Nation's ability to capitalize on private-sector investments to discover and develop domestic mineral deposits. The Department of the Interior estimates that over 50 percent of federal land is *already* off limits to mining.



Chairman Grijalva's Bill will Harm the Nation by Dramatically Increasing our Reliance on Foreign Sources of Minerals

Eliminates mining claims and substitutes a minerals leasing system that will substantially chill private-sector investment in exploring for and developing minerals on federal land.

- Completely destroys self-initiation;
- Creates intolerable uncertainties about lease terms, conditions, and renewal policies;
- Gives federal land managers the discretionary authority to deny a permit or revoke a lease at any stage of a project;
- Creates prospecting permits with unrealistically short time limits to discover a mineral deposit that fail to recognize that discovering minerals can take a decade or longer;
- Changes current life-of-mine permits to an arbitrary 20-year lease that may be renewed for successive 10-year terms if the mine is in continuous production, which ignores how fluctuating mineral prices influence mine operations and temporary closures. Mining occurs during periods of favorable mineral prices but may have to temporarily cease when mineral prices fall.

Puts more land off-limits to mineral exploration and development inappropriately ignoring the Nation's need for domestic minerals and increasing our reliance on foreign minerals.

- Establishes suitability criteria that will prohibit mining on lands with water resources and other environmental characteristics that completely disregard the fact that mines can only be developed where minerals have been discovered and that impacts due to mining can be mitigated.

Creates onerous and impractical environmental standards designed to make mining difficult if not impossible

- Ignores the land management agencies' current environmental protection requirements for locatable minerals, which provide effective and comprehensive environmental protection that safeguard all aspects of the environment including water resources, wildlife, special status species, air quality, cultural resources, soils, vegetation, and visual resources.
- Disregards current financial assurance programs that guarantee mines will be reclaimed. For example, Nevada state regulators and federal agencies hold over \$2.8 billion in reclamation bonds for locatable mineral exploration and mining projects.
- Overlooks BLM and Forest Service mandates that mineral projects must prevent unnecessary or undue degradation/minimize adverse environmental impacts and that NEPA environmental reviews already analyze impacts; identify ways to eliminate, minimize, and mitigate impacts; and verify compliance with all applicable state and federal regulations.

Imposes a retroactive royalty on pre-existing claims that will expose the federal government to takings litigation and a confiscatory prospective royalty

- In *Union Oil Co. v Smith*, 249 U.S. 337, 348-349 (1919), the U.S. Supreme Court ruled that claim holders are entitled to extract and sell minerals "without paying any royalty to the United States as owner."
- The bill's prospective royalty does not consider existing state taxation and royalty requirements and third-party royalty agreements that typically burden mining claims or that mineral producers cannot pass on the royalty costs to mineral consumers.

Creates a Displaced Materials Fee for each ton of rock that must be moved to mine the orebody.

- This fee will render most if not all deposits uneconomic to develop, leaving minerals in the ground and further increasing our reliance on foreign minerals.