Testimony of J. P. Tangen
Before the
Mining Subcommittee
of the
House Committee on Mining and the Environment
Concerning H.R. 2262
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Good Morning Mr. Chairman –

My name is J. P. Tangen; I am appearing hear today at the invitation of the subcommittee on behalf of the Alaska Miners Association.

The Alaska Miners Association is an organization of approximately 1,000 members consisting of a broad array of individuals, mining companies and supporting businesses.

Alaska hosts the largest amount of public land in the United States including the two largest National Forests.

Alaska also hosts five large operating lode mines and over 100 placer mines generally of a smaller, "mom and pop" size. Alaska boasts of the largest silver producing mine in North America and the largest producing zinc mine in the world. We also lay claim to what may become one of the largest copper properties in the world and several exploration projects with production potential well in excess of 1,000,000 Troy ounces.

Alaska mines and prospects are located on state land, private land and federal public land. Every operation in the state operates under intense scrutiny from federal and state agencies. In many instances, there is additional local oversight of the mining operations as well. Alaska has an active community of non-governmental organizations that monitor mining operations and aggressively use the courts and the media to advance their agenda.

Alaska has an excellent record for reclamation. Operations at Valdez Creek, Poker Flats, Illinois Creek, and numerous small placer gold mines have been properly cleaned-up following the completion of successful mining activities, and the affected areas has been restored to a landscape that makes the detection of the past mining operations literally impossible.

Likewise, Alaska is sensitive to local concerns. The A.J. Mine in Juneau was not reopened despite an extensive investment, primarily due to public opposition, and the Kensington Project, also in the Juneau area, remains in a pre-production mode because of intense public scrutiny for over twenty years.

Other mines in populated areas, on the other hand, such as the Fort Knox Mine in Fairbanks and the Rock Creek Project in Nome, while having been held to strict standards and careful evaluation, have been generally greeted with local acceptance.

In a word, there are many mining success stories in Alaska, and those stories embrace a history of nearly 150 years. Ours is a proud industry that has produced many of the commodities that America has demanded and required and has excellent prospects for doing so into the future.

Much of the land selected by the State pursuant to the Alaska Statehood Act and by Alaska Native Regional Corporations pursuant to the Alaska Native Claims Settlement Act was chosen because of its mineral potential. However, even after those large tracts were removed from the public domain and National Forests and after another 108 million acres were set aside for inclusion in National Parks, Preserves, Wildlife Refuges, Monuments, Wilderness and Wild and Scenic River System Areas, nearly fifty million acres of prospective land remains potentially available for mineral development. It is those fifty million acres that would be among the lands targeted by H.R.2262.

Although geologists believe that there are many opportunities to develop mines on federal lands in Alaska, the number of federal mining claims has diminished in recent years to only approximately 8,000. Prospectors and developers have demonstrated a preference to look to state and private land rather than to hassle with the federal government.

The attractive qualities of federal claims have been diminishing in recent years. Initially, a federal mining claim, whether placer or lode, was an attractive choice because of two cornerstone qualities: *self-initiation* and *security of tenure*. By self-initiation I mean that any qualified person, under the law, could locate a federal mining claim on vacant and unappropriated public land without a permit or prior governmental consent. By security of tenure, I mean that the locator would have prior rights against all the world, and under the statute, have the right to purchase the fee title to that land from the United States once their time, talent and effort established that minerals existed and were economically mineable. These basic rights will disappear if HR 2262 becomes law.

## HR 2622

Under HR 2262, instead of citizens having the right to go onto public lands and locate mining claims, the explorer would have to secure a permit, with attendant costs and delays, before conducting any mineral activities. Since a mining claim is not valid unless it contains a certain minimum amount of mineralization, and since ascertaining whether that minimum mineralization is present in a given location, meaningful exploration would require a permit.

Ironically, the issuance of a permit to conduct such mining activities appears to be dependent upon the applicant having knowledge about the property that he cannot gather

without having a permit in hand. In essence, this initial hurdle will bring an end to most exploration activity on public land.

## Patents

The bill terminates the possibility for issuing patents. Since the moratorium imposed by the United States Senate in 1994 and renewed each year since then in the Interior Appropriations Acts, new patent applications have not been processed by the Department of the Interior. In an environment of rising commodities prices, that in itself has not constituted a barrier to the location of federal mining claims; however, when combined with the stringent reporting requirements enacted by FLPMA, many federal claimants have lost their claims and their investment as the result of inadvertent clerical failures.

## Royalties

Concomitant with these two negative qualities, HR 2262 also would impose an overwhelmingly burdensome royalty on mining operations. This royalty, although called a "net smelter return" royalty, is defined to be a gross income royalty, which means that no deductions, not even those customary in the industry, would be allowed. This is analogous to taxing a bank on its deposits and or a grocery store on its total value of inventory. Generally, because mining is a labor intensive industry that employs local people in remote locations, the true benefit of a mining operation is that it brings jobs, goods and services to areas where such things are scarce, not that it can generate a revenue stream through royalties or taxes.

In addition, because there generally is a very long delay between initial exploration and the commencement of production, typically a decade or more passes before a return on investment is realized. It is only after a mine is permitted, construction is completed and production begins that the capital investment can be rewarded. A royalty based on gross production will unnecessarily delay payback and dilute the return on investment, making an operation less attractive than competitive investments. If the royalty is too high, it alone will make the project uneconomic.

Any royalty imposed on a mining operation should always be based on net profits and never on gross receipts. I understand that the State of Nevada has a net profits tax law that might be readily adaptable for federal use. Miners are not opposed to paying fair royalties and taxes, but are opposed to paying punitive royalties and taxes where there are no operating revenues available to satisfy the government's demands.

In another sense, however, the imposition of a royalty on mining operations in the United States is very bad public policy because American mines compete on a global market. Domestic production of commodities sold around the world directly reduces our adverse balance of trade. Production of metals and mineral products inside the United States benefit the nation; but, producers have to be competitive.

Mineral deposits are scattered around the globe in a pattern that is independent of political boundaries. Some governments are more solicitous of the health and welfare of their people and the environment than others. In the United States, where we have stringent health and safety laws, environmental and natural resource laws, and wage and hour laws to protect our workers and the environment, the per pound or per ounce cost of production is going to be higher than in places that do not impose or enforce such legal requirements.

America is a favored target for exploration because of government stability, but if the costs of production outweigh the risks of nationalization, for instance, then it follows that mining companies will migrate off-shore. In a very tangible sense, an excessive financial burden on domestic mining has two palpable consequences: 1.) mining companies will emigrate to places where the strictures are not so oppressive and; 2,) mining companies will be dissuaded from maximizing the return from a given deposit.

Inducing mining companies to move offshore engenders a cascade of problems. Where the operating standards are not as stringent as they are in the United States, wages may be lower, worker safety may be compromised, and the environment may be threatened.

This is not to imply that global mining companies are unscrupulous. On the contrary, the common experience is that once a global company establishes profitability in a third world nation, it becomes at risk for nationalization or aggressive efforts on the part of the host government to sequester as much of that profitability as possible. In such cases, it is the host country rather than the mining company that is externalizing the social costs. Working profitably in industrialized countries with sophisticated social mores, therefore, is good for the planet and the people on it. As a nation, we ought to be exporting our standards and not our mining industry.

To clarify the second point – mineral deposits are often concentrated in a central core with grades tapering out toward the periphery. Efficient operations recover as much as they profitably can. The higher the operating cost, the more likely that low grade material will be left behind. Royalties and taxes are an arbitrary operating cost; therefore, such royalties and taxes directly beget waste of the mineral resources on an area.

## The Demise of Self-Initiation

HR 2262 has a lengthy section specifying the requirements for a permit to conduct non-casual mining activities on federal public lands. These requirements are deliberately stacked to ensure that compliance is overwhelmingly burdensome financially, if not physically impossible.

To illustrate, under section 304(b) of the bill, the Secretary is *required* to suspend an operating permit if he determines that *any affiliate* of *any claimholder* is in violation of *any regulation* promulgated under this Act. In other words a sister company holding a

single mining claim in Arizona could be the cause of a major mine shutting down in Alaska simply because the Arizona affiliate committed a minor violation of a regulation. This is not discretionary, and under Section 504 providing for citizen suits any person may sue to compel the Secretary to suspend such a permit.

The bill specifies that a permit application must contain details in twenty-two information categories, including: violations of various environmental and mining laws by the applicant or an affiliate within the preceding five years; all forfeitures or revocations of any mining bonds or permits by an applicant or an affiliate; all permits ever issued under SMCRA or FLPMA; the type and method of mineral activities proposed; the anticipated starting and termination dates of each phase; maps; information on facilities; soils and vegetation; topography; water supply intakes and surface water bodies; biological resources; measures to exclude fish and wildlife; predisturbance monitoring of groundwater; an assessment of cumulative impacts on the hydrology; a description of the monitoring and reporting systems; accident contingency plans; compliance with any land use plans; cumulative impacts; evidence of financial assurance; site security; information on soils and geology; a copy of the applicant's required public notice; and such other environmental baseline data as the Secretary may require.

Any person who may be adversely affected by the proposed mineral activities may request a public hearing to be held near where the mineral activities are proposed. After a public hearing, the Secretary must formally determine whether the application is complete; whether the proposed reclamation is likely to be accomplished by the applicant; whether the land can be returned to a productive use; whether the area is open to location; whether the applicant has obtained all necessary Federal, State, and local permits; whether the cumulative impacts to human health, water resources, wildlife habitat, and other natural resources will not cause undue degradation; whether the applicant has given adequate financial assurance; whether there will be no undue degradation of natural or cultural resources; whether the applicant or any affiliate is ineligible to receive a permit; and whether ten years following mine closure, treatment of surface or ground water will be required. Permits cannot be issued for more than ten years at a time, must be reviewed every 3 years, and are subject to modification by the Secretary.

What was once a prime virtue of the federal mining law, under HR 2262 will now be completely eliminated and virtually no one would be well-advised to seek mining opportunities on federal public lands. There is nothing in Title III that that is needed to improve the safety or environmental quality of mining in the United States. This Title should not be enacted into law.

## Title V – Administrative Provisions

The “administrative provisions” set forth in Title V of HR 2262 provide an enforcement regimen that further deters mining activities on federal public lands. The provisions of Title V grant unusual and pervasive powers to the Secretary and the general public.

For instance, "[a]ny person who knowingly … engages in [an activity incidental to mineral exploration] without a permit required under title III … shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both." §506(g-h). The Secretary is granted the authority to issue and enforce cessation orders or "take such alternative enforcement action [without limitation] against the claim holder or operator (or any person who controls the claim holder or operator) as will most likely bring about abatement in the most expeditions manner possible."

Anyone, "without regard to … the citizenship of the parties" can commence a civil action "against any person" to compel compliance with any provision of this Act or any regulation promulgated under title III.

[A]ny authorized representative [of either the Secretary of Agriculture or the Interior] may … without advance notice, stop and inspect any motorized form of transportation that such Secretary has probable cause to believe is carrying locatable minerals … for the purpose of determining whether the operator of such vehicle has documentation …if such documentation is required under [§102(b)(4) of] this Act …."

These illustrations are not exhaustive. The draconian powers afforded the Secretaries put prospective claimholders at such risk and to such expense as to ensure that no one could conceivably justify seeking a permit under this bill as a reasonable business proposition.

## Special Places

In addition to the foregoing burdens which would be placed on the mining industry by this bill, virtually anyone could preclude a mineralized site from being developed by identifying it as a "special place" under the provisions of title II. Special places include lands recommended for wilderness designation; lands designated as wilderness study areas or National Monuments; lands in, under study for inclusion in, or eligible for inclusion in the National Wild and Scenic Rivers System; lands segregated from mineral entry; lands designated as Areas of Critical Environmental Concern; lands identified as sacred sites in accordance with Executive Order 13007; and lands identified in the Roadless Area Conservation rule of January 2001.

## Summary

**This bill, if enacted, would prevent all further mining and exploration and on federal public lands in the United States.** The steps necessary to get permission to engage in mineral activities are extensive, burdensome, unnecessary and very expensive. The risks, for even the slightest violation by affiliates remote from an operation of the most inconsequential regulation, include loss of all rights as well as possible fines and imprisonment. Even operating mines have only a maximum of three years to either close or bring themselves into full compliance. The rewards for successfully complying with the proposed law are severely curtailed through the imposition of a disproportionate gross royalty.

**From the perspective of the Alaska Miners Association, there is nothing positive included within this bill and we regard it as:**

Anti-Alaska, because a large percentage of the vacant and unappropriated public land in the United States is in Alaska and, to the extent that this bill adversely impacts the hardrock mining industry, it impacts Alaska the most;

Anti-small miner, because many of Alaska's miners are mom and pop placer operators and they cannot possibly afford the cost of compliance;

Anti-environment, because it will force operators to relocate their operations off-shore where there are not the same high standards of environmental protection as are found in the United States;

Anti-worker, because many prospects will not become mines and will not create new jobs in this country;

Anti-business, because mines in foreign countries will purchase equipment, supplies and services locally, by-passing U.S. suppliers;

Wasteful, because by charging a high gross royalty on mining operations, it will encourage operators to mine only the high-grade areas of a deposit and leave lower grade mineralized material in the ground;

A threat to the national security, because, by encouraging operators to relocate off-shore, domestic production of needed commodities will be eliminated or reduced, as is currently the case with oil and gas;

Causing the loss of high-paying mining jobs, because workers at major mines in the United States today often earn $50,000 per year or more while relocating mines off-shore will result in the loss of thousands of those mining jobs;

A risk to the health and safety of mineworkers, because miners in the United States benefit from stringent laws that protect their health and safety, while miners in other countries may not be able to get the benefit of such laws;

Unlikely to generate substantial revenue for the United States, because if mining operations move off-shore, they will not pay royalties, taxes or fees;

Creating three large, new bureaucracies, because the BLM will have to staff up to deal with the huge volume of additional paperwork created by applicants, all of which must be reviewed and adjudicated, the bill will require a significant new enforcement and inspection arm to oversee on the ground compliance, *and* the bill will require a separate new bureaucracy to adjudicate the royalty calculations;

Containing an unfair royalty requirement, because royalties are calculated on gross receipts;

Likely to foster litigation, because NGO's are encouraged to sue to enforce the statutory requirements; and

A violation of ANILCA's "no more" clause, because by making it possible to declare certain lands "special places" there is a risk that additional lands will be placed into a restricted land use status.

We respectfully request that this bill not be enacted.