



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 1, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2262 – Hardrock Mining and Reclamation Act of 2007

(Rep. Rahall (D) WV and 62 cosponsors)

The Administration supports the environmentally responsible development of hardrock minerals on public lands and would like to work with Congress to update the Mining Law, including the authorization of production payments and administrative penalties. The Administration also believes that any legislative solution must be accomplished in a way that provides a reasonable level of certainty to the industry while pursuing goals to protect our environment. The Administration believes that royalty provisions should be prospective, should avoid constitutional concerns, and should be set at a level that does not threaten the continued, reliable domestic mineral production on which this Nation relies.

The Administration strongly opposes H.R. 2262 because the bill imposes a royalty on claims where property rights already have been vested, could reduce the continued domestic production of hardrock minerals, restates and expands some environmental standards and permitting requirements that are unnecessary and redundant, and establishes new public participation standards rather than utilizing existing and well-established processes to engage the public. If H.R. 2262 were presented to the President in its current form, his senior advisors would recommend he veto the bill.

While the Administration supports the establishment of a production payment system, the Administration has serious concerns about the royalty structure provided in Title I of the bill. The royalty structure in H.R. 2262 will likely generate Takings Clause challenges because it fails to take into consideration property rights relating to properly maintained claims established prior to enactment of the bill. For any claimant who has a vested property interest prior to production, application of a royalty on production could result in a claim for a compensable taking under the Constitution.

In addition, Title I eliminates the issuance of patents for applications filed after September 30, 1994. Eliminating patenting authority has the potential to expand Federal liability by requiring that the Federal government retain ownership of all lands mined under the bill.

Title III restates and expands existing environmental standards and permitting requirements. The Administration finds some of these provisions unnecessary and redundant. For example, the non-impairment standard in Section 309 greatly expands the scope of existing environmental requirements and could result in an increase in litigation. Hardrock mining operators on public lands already are required to comply with a number of state and Federal statutes including the Clean Water Act, Clean Air Act, Endangered Species Act, Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), and National Historic Preservation

Act. The Administration believes that existing statutes and related regulations provide sufficient authority to regulate mining operations.

Through NEPA, FLPMA, and other land management statutes, Congress also established a role for members of the public and structured a process by which the public could provide input about proposed governmental actions. This structured process has served the government and the public well. Section 504 in Title V of H.R. 2262, by contrast, would give an individual the ability to unduly block Federal actions outside these well established public participation processes.

Finally, Section 506 should be revised to give the Department of the Interior and Department of Justice sufficient authority and flexibility to properly enforce the law.

The Administration looks forward to working with the Congress to address these and other concerns as the legislative process moves forward.

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