Hearing to Examine and Consider Updates

To The Mining Law of 1872

Committee on Energy and Natural Resources

U.S. Senate

October 5, 2021

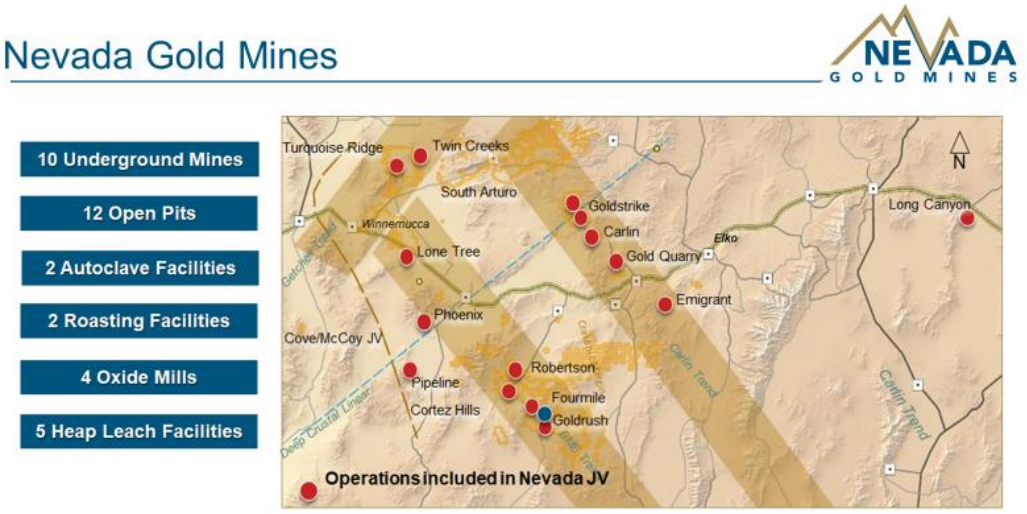
Statement of Rich Haddock

General Counsel, Barrick Gold Corporation

Chairman Manchin, Senator Barrasso, Senator Cortez-Masto and members of the Committee. Thank you for inviting me to appear before you today to talk about the U.S. Mining Law.

My name is Rich Haddock. I am General Counsel of Barrick Gold Corporation. Barrick is the second largest gold producing company in the world and the biggest gold producer in the United States. Barrick has gold and copper mining operations and projects in 13 countries in North and South America, Africa, Papua New Guinea and Saudi Arabia.

Most of our US gold production comes from Nevada. We operate Nevada Gold Mines, a joint venture of Barrick and the Newmont Corporation. Nevada Gold Mines is the largest gold-mining complex in the world with more than 7,000 employees and 4,000 contractors, who employ thousands more people, in Nevada and around the country. These jobs pay average wages of $94,000 – higher than any other industry in Nevada.



About 85% of Nevada is owned and managed by the Federal Government, the most of any state. Most of our operations take place on unpatented mining claims under the approval of the federal Bureau of Land Management. Dominant federal ownership makes the mining law more important to Nevada than any other state.

I have worked for Barrick for 24 years and have been an in-house lawyer in the gold mining industry for 29 of the 37 years that I have been practicing law. I also spent three years as the global Vice President of Environment for Barrick. I am familiar with almost every aspect of our Nevada and other US operations, and with the long-running debate about the 1872 Mining Law.

The Mining Law

I have participated directly and through trade organizations—the Nevada Mining Association and the National Mining Association—in the debate over proposed changes to the 1872 Mining Law. As a long-time mining lawyer, I can tell you that the Mining Law has survived so long for a simple reason: because it works. The Mining Law is a land tenure law governing the acquisition of mineral rights on federal lands, and the relationships between claimholders and the United States as paramount title holder. It also governs the relationships between competing claimants. The Mining Law still does these jobs very well.

But while it works, we recognize that the Mining Law is not perfect, and that the law could be updated. One of the Mining Law's original purposes – settlement of the West – is certainly no longer a reason for the Law's existence. However, its other main purpose – supplying valuable minerals for the nation – is more relevant than ever. It is important that any reform of the Mining Law be consistent with the United States' need for stable domestic supplies of critical minerals, including gold.

Barrick has consistently supported changes in the Mining Law – including the imposition of a reasonable net royalty – since the Senate's last serious effort to reform the law in the 1990s. In fact, Barrick and other miners supported a net royalty that was included in a 1995 budget reconciliation package passed by Congress, but vetoed on other grounds by President Clinton. If not for that veto, we would not be having this conversation today.

We welcome the conversation about royalties and other updates to the Mining Law. However, when talking about reform, there are two aspects of the current Mining Law that are absolutely essential to preserve. One is what we call "**self-initiation"-** the right of the explorer to identify the land they want to explore, based on ever-evolving understanding of geology and new technologies. The second is **"security of tenure"**- the ability to hold the area with confidence and explore long enough to determine whether it contains a viable mineral deposit or not, and if justified, to develop it into a mine. These features are essential because they determine whether the hardrock mining industry will be able to thrive in the United States in the future.

Our position today is simple, and consistent with the mining law principles of the National Mining Association, which are attached. We support legislation imposing a reasonable prospective net royalty and an additional claim fee earmarked for reclamation and remediation of abandoned mine lands.

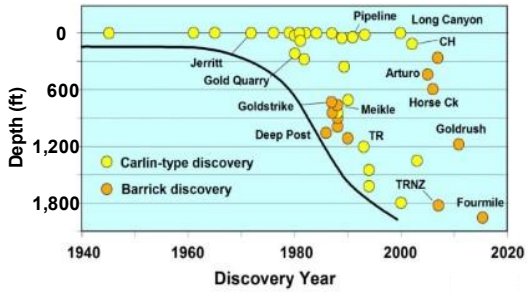
Self-Initiation

Hard rock metal mines are not just discovered, as was more commonly the case in the 19th Century. They are literally *made* by extensive investment of drilling and processing technologies and the application of human knowledge to a complex multi-faceted problem of geology, chemistry, and engineering. The very foundation of the exploration business is being able to choose where you are going to look for commercial deposits of minerals: that's the concept of self-initiation. A miner's competitive advantage comes from targeting the best available ground

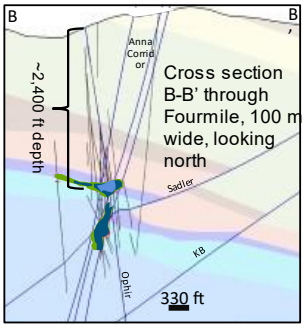
based on superior geologic knowledge and application of the best (and ever evolving) exploration and processing technologies.

Looking for the Needle in the Haystack

Deposits are getting deeper and harder to find

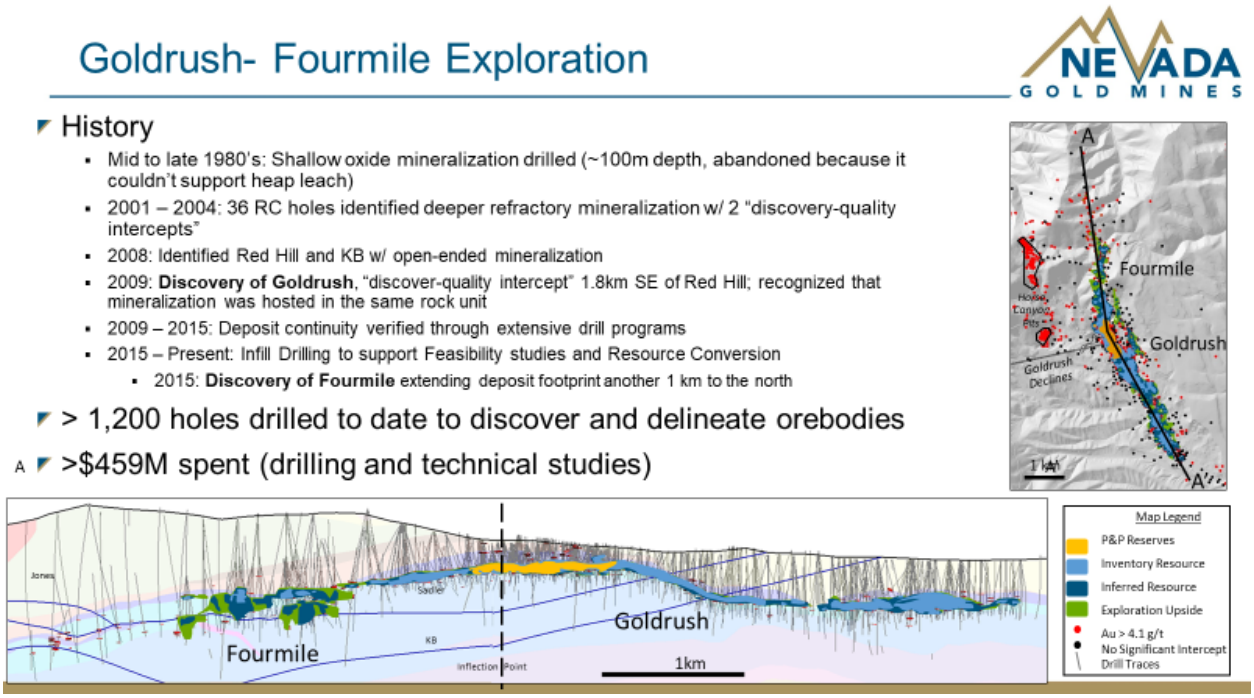


Deposits have compact footprints



Fourmile deposit footprint is 3,000 ft long, and mineralization is 30 -200 ft thick.

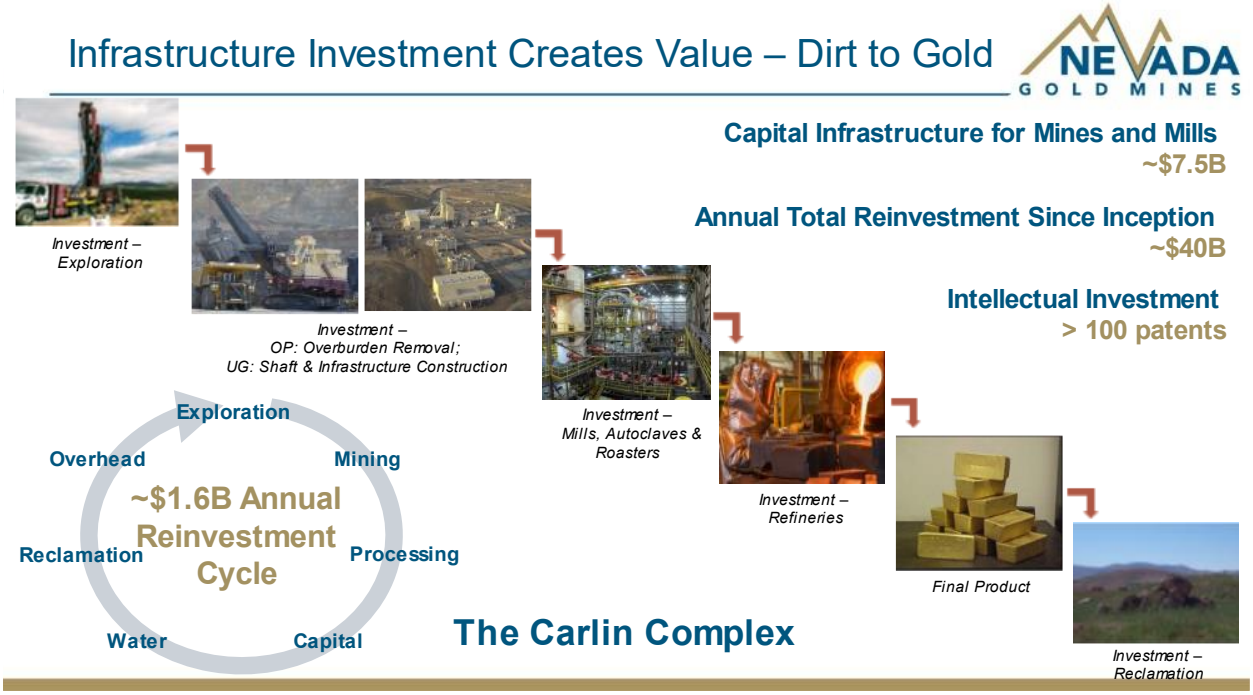
Commercial deposits, in the U.S. and around the world, are getting deeper and harder to find, and the time between discoveries is lengthening. Our Fourmile exploration project in Nevada is a good example of this. As depicted above, that deposit is over 2000 feet below ground surface, meaning that every drill hole costs between $500,000 and $1 million. On the right-hand side of the figure above, a small yellow shape is superimposed to represent the size of the surface footprint of the Fourmile deposit—it is 3000’ x 650’. The mineralized rock, or “ore body,” is an irregular shape inside of the surface footprint, that is half a mile deep and between 30 feet and 200 feet wide. Orebodies like these are very difficult and expensive to find. And federal and state governments are not investing the resources to find them. If miners don’t find them, they will not be found. This is why self-initiation remains so important to the modern Mining Law.



Tenure

It takes years – often decades – and hundreds of millions of dollars to turn a successful exploration target into a mine. Nevada Gold Mines' Goldrush project is a good example. Goldrush was originally identified as prospective through drilling in the mid-1980s, but not pursued at that time. In the early 2000s, based on better knowledge and better drilling and other technology, we found true ore grade mineralization. Now, in 2021, over $459 million, 1200 drillholes, and extensive environmental studies later, Nevada Gold Mines has applied for a permit from the BLM to mine this deep ore body and is looking forward to initial production in 2023. This mine would not have happened without the provisions in the Mining Law that allow miners to hold claims securely while they explore, and sometimes to retreat and reassess to justify the continued investment in exploration and

development.



Open pits require a huge investment in pre-stripping to reach the ore deposit. Open pits are engineered facilities designed to reach the ore while removing the minimum safe amount of barren rock. For underground mines, the miner has to build the shafts, the underground access and surface infrastructure. As an example, the new third shaft at Nevada Gold Mines' Turquoise Ridge mine is nearing completion at a cost of about $300 million.

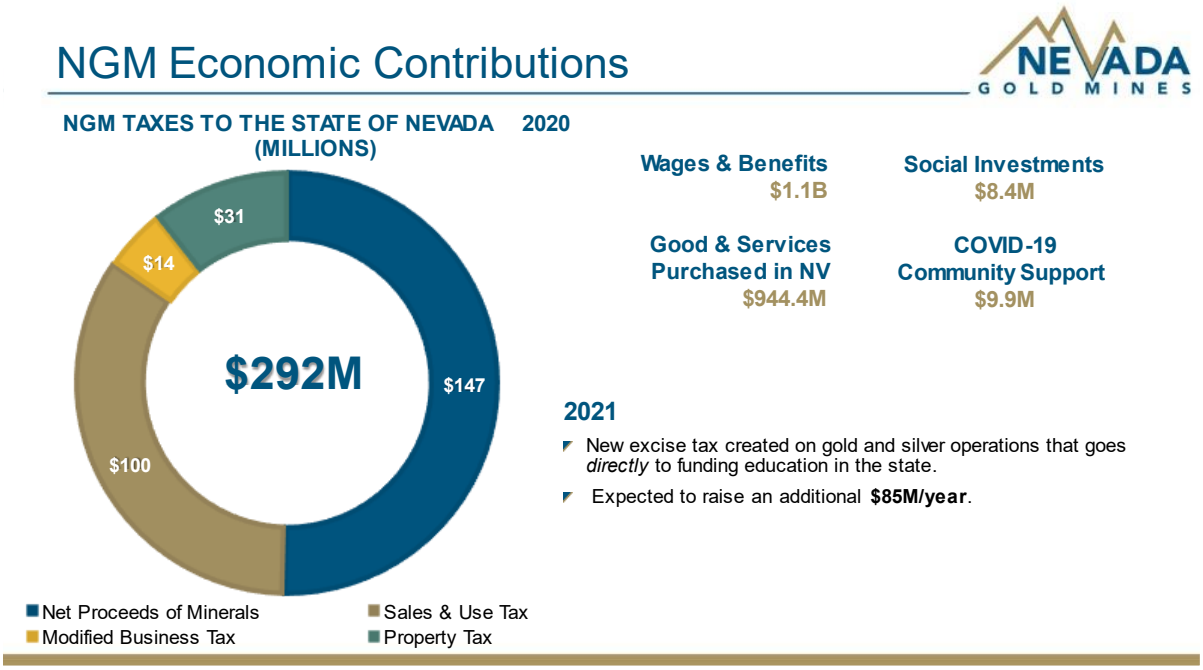
Even after removing ore from the ground, it still takes hundreds of millions of dollars of investment and technology to make a saleable product. Recovering the gold requires mills and special processing facilities, in our case called autoclaves and roasters, that are custom-designed for the specific ore. It would cost at least a billion dollars to replace any of our rosters or autoclaves. At the Nevada Gold Mines' Carlin complex in Nevada, the initial investment in the mills, roasters, autoclaves and mines was about $7.5 billion. Every year we continue to incur costs in operating and maintaining the facilities and equipment necessary to produce gold. Those expenditures have totaled $40 billion over the life of the Carlin Complex so far. Without the security of tenure that is afforded by the Mining Law, no company could or would put that much money at risk.

Royalty

As noted above, Barrick has long supported a prospective and reasonable net proceeds royalty for minerals produced from federal lands. Most important is the nature of the royalty. Barrick supports a net proceeds royalty because it will provide substantial royalty revenue to the U.S. government while allowing mineral production to continue during periods of low metals prices.

In the past, Congress has considered two types of royalties: gross and net. The subject of royalties is complex and there are numerous versions of gross and net royalties. But in simple terms, a "gross" royalty requires that an operator pay a percentage on the gross income derived from a particular mining claim or at a particular mine, before any cost deductions. For example, if a mine's total income from product sales in a given year was $100 million and the gross royalty rate was 4%, the miner would pay $4 million in royalties. Alternatively, a "net" royalty or a "net proceeds" royalty allows the operator to make certain deductions from total income before the royalty is calculated. Those deductions typically include the actual costs of extracting, transporting, processing, or refining the mineral, including wages and related labor expenses, equipment, fuel and other cost components. Deductions also typically include the costs of mine development, environmental studies and compliance, and reclamation and closure. The Nevada Net Proceeds tax, which generated over $200 million for the state in 2020, is an example of a net royalty.

For a number of important policy reasons, a net royalty is preferable to a royalty on gross income. First, it is important that Congress consider any royalty in the context of the entire tax contribution from the industry.

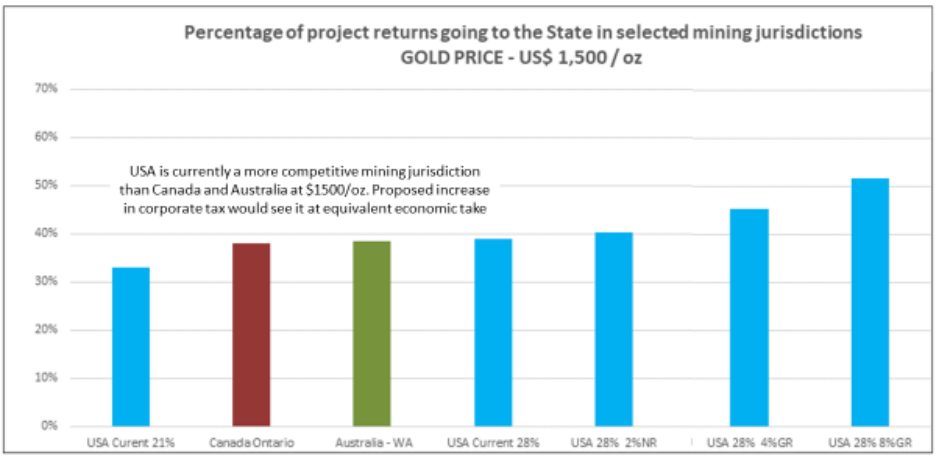


Even without a royalty, mining is a substantial taxpayer. In Nevada, we are the 12th largest industry, but we pay the second highest amount in state taxes as a percentage of revenue. As the chart above illustrates, in 2020 we paid $292 million in state taxes. In addition, in the last Nevada legislative session, the mining industry supported a bi-partisan effort to increase its net proceeds of mines tax by another 60% by creating a new excise tax earmarked for education.

Comparison of Total US "Take" to Other Developed Countries

Percentage of returns going to the government
Gold Price : US$ 1,500/oz

BARRICK



To evaluate the impacts of a federal royalty on the total industry tax burden, we created a "synthetic stand-alone gold mine" comparison of the tax regimes in the United States, Canada and Australia. If we assume a federal income tax rate of 28 percent (we realize corporate income tax rates are a moving target right now), at $1,500/oz. gold (near the long-term consensus gold price), Canada, Australia and the U.S. have a similar total tax burden of about 38 to 39%, when all other state and provincial taxes are taken into account. A 2 percent net royalty, such as that proposed in the National Mining Association principles (attached), increases the U.S. share (state and federal) to about 41 percent. At the higher 8% gross royalty rate proposed by the House of Representatives, the U.S. total tax take exceeds 50%. If the gold price drops, as it inevitably will (the gold price in 2015 was about 40% lower than it is today), a gross royalty dramatically impacts the viability of the operation, giving the U.S. about 2/3 of the take, significantly narrowing the range in which it can be profitable. If the U.S. tax and royalty combined take reaches even 50%, the US is then taking a similar share as many developing nations, and given the much higher labor costs and much longer timelines from discovery to production because of permitting in the U.S., mines located in the United States become drastically uncompetitive compared with other jurisdictions. Under those conditions, it is inevitable that exploration and development investments will be redirected to those other jurisdictions.

Why Hardrock Minerals are Different From Other Commodities

A hardrock royalty is not a cost that can be passed on to the buyer. Hardrock miners are "price takers"—metal prices are fixed daily by the global market. This is in sharp contrast to coal, which is often cited as a model for federal hardrock royalties. With coal, the royalty is typically passed on to the power plant that buys the coal, who in turn recovers that royalty from electricity rate payers. In effect the coal royalty becomes a user tax on everybody. In contrast, in the case of a royalty on gold or other hard rock minerals where prices are set in global markets, the burden of a royalty falls solely on the miner.

Disadvantages of a Gross Royalty

As a cost, any royalty on a mineral deposit will reduce the amount of ore by making marginal ore uneconomic. A gross royalty is, however, particularly regressive for hardrock minerals. It shrinks the resource by making more marginal mineralization uneconomic to mine. In this way, a gross royalty eliminates a return on this marginal mineralization for the federal and state governments, and eliminates jobs unnecessarily early. More mines will close early, less product will be available for commerce, and less tax revenues will be generated.

Instead of benefitting all stakeholders by generating the maximum production and return from each deposit, a gross royalty dramatically "shrinks the pie" that generates the return. Because of the huge investments that are necessary to bring a hardrock mine online, a gross royalty affects hardrock mining uniquely. Rather than taxing the raw ore, the gross royalty becomes a tax on the value that is added by the miner through the use of investment to create the product at the mine mouth.

Further, a gross royalty increases the risk of (and disincentivizes) capital investment because as the available return is reduced, the risk of investing significant capital into a project becomes higher, especially given expected fluctuations in the prices of gold and other minerals. Thus, mineralization gets left in the ground and generates no return, either for the miner or the government.

Finally, a gross royalty picks winners and losers because the deposits that have high enough grade can better absorb a gross royalty, while a lower grade or marginal deposit, which would otherwise still generate taxes, jobs and materials, becomes uneconomic.

Advantages of a Net Royalty

In contrast, a net royalty allows the miner to recoup capital investments through the inevitable commodity price cycles. A net royalty normalizes for ore grade because certain costs are covered, and in this way some more marginal mines can still survive and provide necessary materials and employment. The mine life is extended because the miner can afford to mine and process marginal ore.

A net royalty allows the industry to survive the inevitable dips in the commodities cycles while giving the United States the benefit of the peaks in the cycles. In other words, when revenues are low due to the price (which is out of the miner's control), operations would pay less, allowing them to reduce costs and maintain production and employment during tough times. Conversely, when net revenues are high, the royalty revenue returned to the government is higher. When looked at this way, the industry and the government win in both cases: (1) preserved employment, tax revenues, product output, and some returns in cycle troughs; and (2) higher returns and employment in cycle peaks.

Conclusion

Thank you for your time. I am happy to answer any questions or submit additional materials if requested.

Principles for Royalty from Hardrock Mineral Production on Federal Lands

New Royalty

- ROYALTY: Impose a **PROSPECTIVE, NET** royalty in range of **2** percent.

- DEDUCTIONS/CREDITS: Allow deduction of costs and charges (including depreciation and amortization) attributable to permitting, baseline studies, extraction, processing and transportation, and taxes – similar to other federal royalty structures – to ensure **royalty is imposed on profits**. Allow claims maintenance and occupancy fees to be credited against royalty amount owed.

- SMALL MINER EXCLUSION: Not applicable when net value of production from mining claims subject to the royalty is less than $500,000.

- WAIVER, SUSPENSION OR REDUCTION: Allow Secretary of the Interior to waive, suspend, or reduce the royalty – similar to other federal royalty structures – to promote development or keep a mine successfully operating.

Increased and New Fees

- CLAIMS MAINTENANCE FEE: **Increase fee** to raise funds – presumably for abandoned mine land cleanup – since new royalty will create limited revenue in early post-enactment years. Provide a waiver from claims maintenance fee for claimholders with 10 or fewer claims.

  OCCUPANCY/USE FEE: Impose **new fee** to raise funds – presumably for abandoned mine land cleanup – since new royalty will create limited revenue in early post-enactment years.

- PREVENTING DOUBLE-DIP: Sunset new and increased fees after 10 years or allow operations to credit the payments of such fees against amounts owed in royalties.

NMA estimates that new and increased fees could generate approximately $100 million per year. These could be directed towards increased funding of AML.

Competitive Domestic Supply Chains

- SECURITY OF TENURE: Provide security of tenure by tying it to the payment of claims maintenance fees in order to provide certainty regarding operators' ability to access federal lands for mineral production.

- PERMITTING EFFECIEINCIES: Include provisions to reduce permitting delays. Unenacted bipartisan permitting provisions of S.1317 (116th Congress) may provide a guide for this Congress.