S. 796 THE HARDROCK MINING AND RECLAMATION ACT

S. 140 THE ABANDONED MINE RECLAMATION ACT OF 2009

Energy and Natural Resources Committee
United States Senate

Statement of the National Mining Association
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July 14, 2009

My name is Phil Baker, President and CEO of Hecla Mining Company. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before this committee on amending the mining law, which if not crafted with great foresight, will not only negatively impact the domestic mining industry, but also the economy and national security of the United States for many decades. I say this because the proposed changes will put an end to growth of a viable domestic mining industry, an industry that creates high paying jobs with good benefits and provides resources critical to national security. Mining also will play a pivotal role in America's transition to renewable energy as we produce needed resources.

The current law has been in effect for 137 years. What Congress does to change that law will have a lasting and far reaching impact, so I encourage the broadest and most thoughtful reflection as you move forward. Hecla,- established in 1891 in northern Idaho's Silver Valley—just 19 years after enactment of the Mining Law—is a particularly compelling example of the positive, long-term impact that hard rock mining has on the economy. We also tell the dramatic story of how mining has evolved into what it is today—a highly regulated, technologically advanced, and environmentally responsible industry. We are the oldest precious metals mining company in North America; the largest producer of silver in the U.S; second largest producer of zinc; and third largest producer of lead. We have operations and properties in four states all of which are represented on this committee – Alaska, Idaho, Colorado, and Washington.

For 118 years, Hecla has operated in more than twelve states from the east coast to the west. We operate on private property and on patented and unpatented claims on public lands. As a company, we operate with an environmental culture that is ingrained from the corporate level to individual site workers. We have invested millions of dollars in state-of-the-art environmental protection, remediation, and reclamation. We have won awards for this effort, including the 2007 Northwest Mining Association Excellence in Reclamation Award for Idaho's Grouse Creek Mining Project and the 2004 Nevada Governor's Excellence in Mining Award for the Rosebud Mining Project.

NMA has vast expertise and is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining companies.

The testimony that I bring is one of proactive change. NMA, Hecla, and all U.S. mining companies are here to encourage dialogue on the modernization of the existing mining law. We recognize that aspects of the existing system need to be changed to provide a fair return to the public from mining on public lands. There have been proposals for amending or "reforming" the mining law for many of the past twenty years. As we look at a world of increasing competition for minerals and metals needed to sustain economic growth and transition to a renewable and clean technology future, now is the time for thoughtful and reasonable amendments that will provide that fair return while preserving critically important land tenure rights provided by the current law.

Any changes to current mining law must focus on promoting and keeping mining jobs in the U.S. and diminishing the nation's reliance on foreign minerals while effectively protecting the environment and bringing fair return to the American public. Mining was one of the first industries to outsource jobs overseas as increasing exploration dollars and mine development moved to countries which embraced the economic and social benefits that come with mining development in a community. This reform needs to reverse the current trend of exploration, the first step in developing mines, from continuing to move outside the U.S. Today only 8 percent of all worldwide exploration dollars are spent in the U.S., which means fewer mines are developed. This paltry level of exploration investment will continue to

increase our reliance on foreign minerals, which will continue to negatively impact the domestic economy and national security. As we become even more dependent on foreign countries for mineral resources, fewer jobs will be created in the U.S., less tax revenue will be generated and the infrastructure and security of our country will be threatened, including the military, renewable energy infrastructure, and even our everyday lives.

MINING GENERATES GREAT AMERICAN JOBS

With more than 50,000 direct family-wage jobs with numerous benefits, including health care, that pay on average one-third higher than the U.S. industrial average and the ability to generate as many as four additional jobs elsewhere in the economy, U.S. mining provides more than vital resources for America—it can help rebuild America during these tough economic times. Minerals provide essential resources that modern society cannot live without. Minerals are the building blocks for every aspect of American commerce, including defense equipment, transportation systems, construction, telecommunications, electronics, medical research, renewable energy infrastructure and new energy technologies. The U.S. produces only half of the minerals that this nation uses in manufacturing. However, the more than $25 billion in metal mining products generates nearly $60 billion in economic output. More than $43 billion in nonmetallic mining generates more than $100 billion in economic output. Imagine the economic benefits if we produced all of our needed resources.

On a regional level in Alaska and Idaho, two key states where Hecla operates, mining plays a major role in the economies of rural communities as well as the states themselves. These two states have a total population of just more than 2.2 million people with about 684,000 in Alaska and 1.53 million in Idaho, which is less than 1 percent of the total population of the US. Both states have widely dispersed rural communities where high paying jobs with good benefits would otherwise be non-existent were it not for mining. These mining jobs also provide health, hospitalization and dental care insurance, achieving a fundamental goal the President has set for all Americans.

In Alaska, there are 3,500 jobs with a payroll of $245 million directly related to the many facets of mining from exploration to development of active mines. The impacts of the industry reach far into the economy with another 2,000 indirect jobs and payroll of $105 million. From 1981 until 2004 more than $3.0 billion has been invested in exploration and mine development. State and local governments also

reap the benefits of this industry. In Alaska, $105 million was paid to the state in royalties, user fees and tax revenue. Local municipalities and regional governments received $15.6 million, and Alaska Native Corporations received $212 million.

In Idaho in 2007, over 4,900 Idaho residents were directly employed by the mining and processing industry, which directly accounts for $250 million in direct wages. These workers produced $817 million of mineral value. The total direct impact of mining was $665 million and indirect impact was $542 million for a total impact from mining on Idaho economy of $1.2 billion. Direct and secondary economic activity generated a total of $88 million to state and local governments through taxes, royalties and fees.

Obviously, a healthy and vibrant domestic mining industry can make valuable contributions to the United States' economy as a whole. But for rural western communities, mining often is the mainstay of the local economy. Take, for example, Juneau, Alaska where Hecla's Greens Creek Mine is located. Juneau, the capital of Alaska, is a remote community with limited high paying job opportunities. Greens Creek is the largest private sector employer in Juneau.

Hecla's Greens Creek Mine, Juneau, Alaska:

- Employs an average of 308 personnel;
- Pays an average salary of $92,000 which is almost triple the local average of $35,000 in Juneau;
- Has a total annual payroll of $28.3 million;
- Supports 210 indirect jobs in Juneau with annual payroll of $5.3 million;
- Supports 318 indirect jobs state wide with annual payroll of $7.7 million;
- Spends $43 million statewide for vendor goods and services;
- Pays $1.5 million to the City and Borough of Juneau in real property, business property and sales tax;
- Contributes $50,000 annually to charitable organizations; and
- Pays employees for several hundred hours of volunteer time.

Greens Creek Mine employees:

- Pay $430,000 in property taxes;
- Provide Juneau School District with 192 students, which accounts for $664,000 in state funding;
- Donate more than $15,000 personal dollars to charity; and
- Donate greater than 4,000 volunteer hours to charity, schools and community.

In the community, a household opinion survey showed that:

- 78 percent think that Greens Creek has a positive impact on the community;
- 83 percent think that mining is important to Juneau's economy; and
- 64 percent feel that Greens Creek does a good job of protecting the environment while 27 percent said that they don't know. Only 9percent were negative.

In rural Shoshone County, Idaho where Hecla has operated since 1891, there are similar economic and social impacts.

Hecla's Lucky Friday Mine in rural Shoshone County, Idaho:

- Employs an average of 271 personnel;
- Pays an average salary of $64,575 which is more than double the local average of $27,000 in Shoshone County;
- Has a total annual payroll of $17.5 million;
- Provides 1 in 10 jobs in rural Shoshone County;
- Supports indirect employment of 378 personnel;
- Pays $11.6 million locally in vendor supplied good and services;
- Pays $3.8 million real property, business property and sales tax;
- Contributes $75,000 annually to charitable organizations; and
- Pays employees for several hundred hours of volunteer time

Lucky Friday Mine employees:

- Are active volunteers in community and school organizations;
- Provide the local school district with 175 students which accounts for about $615,000 in state funding; and
- Are active volunteers with local emergency response teams.

Creede Project in Mineral County, Colorado:

Hecla has an extensive exploration project in this historic mining district in Mineral County, located at the head of the San Luis Valley, which includes one of the poorest areas in Colorado. If the project comes to fruition, Hecla will bring high paying jobs with good benefits to an isolated community, as well a positive impact on local economies in the San Luis Valley of southern Colorado and northern and central New Mexico. Local impact includes goods and services from local suppliers as well as those in larger cities such as Albuquerque.

SILVER, A STRATEGIC METAL

As president of the largest silver producing company in the U.S., let me use silver as an example of the critical role minerals play in our society to promote our way of life and our national and economic security. How could our society function without silver?

Silver, our trademark metal, is a compelling example of a strategic metal for which we reliant on foreign sources. Silver, a unique metal, has the highest thermal and electrical conductivities and highest reflectivity of all metals. Silver is indispensible for all renewable energy technology. Solar photovoltaic cells rely on silver for efficient collection and concentration of electrical current. Hybrid cars and wind turbines also require silver for efficient electrical transmission

Silver, the king of electronics, is the standard for electrical conductivity against which all metals are compared. You hold silver in your hand every day, but on a grander scale, silver will play a vital role in updating our inefficient 100 year old national electric grid infrastructure.

Uses of Silver – Silver is a Critical Component of:

- Household electrical outlet: silver is a critical component for the outlets and your appliances to work;
- Common household appliances: microwaves, dishwashers, televisions, computers;
- Water purifiers: silver helps rid drinking water of bacteria, chlorine, lead and particulates;
- Energy saving windows: windows treated with silver reflect away almost 95 percent of the sun's rays;
- Batteries: especially small, lightweight batteries needed to power watches, cameras and other small electronic devices like cell phones and iPods;
- The strongest cast aluminum alloy known – used to protect C17 fighter jets and Apache helicopters;
- Solar panels: More than 90 percent require silver; and
- Medical advances: Silver nitrate has anti-bacterial properties that make operating rooms and hospitals safer.

The US is 60 percent import reliant on silver. How can that be? According to the U.S. Geological Survey, the United States is in the top five countries with significant silver reserves and resources. In 2008, approximately 1,120 tons of silver, with an estimated value of $570 million was produced in the US. Alaska continued as the leading

producer state followed by Nevada. Silver has critically important uses, and the United States has significant resources that are not being mined. Amendments to the Mining Law should focus on ways to reduce dependence on imported silver and many other mineral commodities

Silver is a metal that helps protect our armed forces and national security, potentially saves lives, and enhances our daily lives. Why do we rely on politically unstable countries to provide that—or any other – strategic metal?

The answer may partially be in the Behre Dolbear report *2009 Ranking of Countries for Mining Investment: Where "not to invest",* which is attached for the record. The report ranks the United States 5 out of 10 on the basis of the tax regime, citing the 35% corporate tax income tax as one of the highest in the world. In addition, the report also cites state levies and concerns of Congressional actions imposing additional mining specific taxes (royalties). With regard to permitting delays, the U.S ranks a 2 of 10 citing the lengthy 5 to 7 year period required before mine development can commence. The report notes that many companies prefer to take the risk of operating in a more politically unstable country, where mines can be brought on line in 18 months rather deal with the arduous and expensive five to seven year permitting process in the United States.

AMERICA'S ABILITY TO PROVIDE NEEDED RESOURCES

The U.S. can and should be more self-reliant for the minerals we need. Despite known reserves of 78 important mined minerals, the United States currently attracts only eight percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic resources.

The U.S. Geological Survey has documented that America now depends on imports for 100 percent of 18 minerals commodities. In addition, the U.S. is more than 50 percent import reliant on another 43 commodities. This increased import dependency makes our country vulnerable in troubling political times and is not in our national interest. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, loss of high paying jobs and vulnerability to possible supply disruptions due to political or military instability.

For example the metals and minerals used in hybrid cars, wind turbines and solar panels have high net import reliance, while the U.S. has unmined domestic reserves. The net import reliance of some of those important metals is as follows:

- Aluminum 100%
- Rare earths 100%
- Platinum 91%
- Cobalt 81%
- Zinc 73%
- Silver 60%
- Titanium 54%
- Copper 32%

These statistics raise important questions about where the Nation obtains strategic minerals. For example:

- *Should we create jobs and obtain rare earths from an environmentally responsible mine in California or rely on China for this strategic metal?*

- *Should create jobs and obtain cobalt from an environmentally responsible mine in Idaho or rely on politically unstable Congo, Tibet, or Siberia for this strategic metal?*

Our import reliance crisis was brought to the forefront when President Obama filed a complaint with the World Trade Organization accusing China of limiting exports of raw materials such as bauxite and zinc, which are critical for production of steel, aluminum and other products. By withholding these raw materials, China creates unfair preference for their own industries.

A July 2009 U.S. News and World Report article, which is attached for the record, speaks directly to the U.S. import reliance for metals. We are 100% dependent on China for rare earth metals, even though there are known deposits in California and Idaho. China recognizes the critical importance of rare earth minerals which are considered "the backbone of the Information Age" and in many applications there is no substitute. China has aggressively purchased control of mines in Brazil and Australia and is working to make control world supplies of rare earth metals. Their dominance goes back to a carefully thought out plan from 1992 with the mantra "The Middle East has Oil; we have rare earths." Currently China controls more than 90% of the world's rare earths.

The U.S. News and World Report notes that since 2002 Chinese exports of rare earth metals have dropped from 60,000 tons to an expected 2009 export of +30,000 tons. A 2008 Australian analyst, Dudley Kingsnorth, predicted that by 2012 China will retain all rare earth metals for their domestic consumption, effectively cutting off the world from this critical commodity while global demand continues to grow.

Meanwhile American industry and American consumers retain a myopic vision of the supply chain and do not understand that the loss of critical minerals, the fundamental construction materials, will send more American industries to the countries that produce necessary raw materials. Will this signal an end for American industries which require rare earth minerals for their products? Will we be buying all of our wind turbines, solar panels, hybrid cars, electronics and other durable goods from China?

Our over-reliance on foreign supplies is exacerbated by competition from surging economies such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are rapidly increasing; they are growing their economies by using the same mineral resources that we need to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources.

JUST HOW PROFITABLE IS AMERICAN MINING?

There is a misconception that hardrock mining, especially precious metals, is enormously profitable. Many equate the value of minerals extracted from the ground with actual profits of mining companies; however, that is far from the truth. Mining company profits are influenced by a number of cyclical factors, most notably the value of the commodity being mined.

Unlike durable goods industries, which can increase the price of their products to compensate for increased costs of raw materials, energy, and labor, world markets dictate the price of metals while the mining company must still struggle with the increased costs to operate. In other words, a copper mining company cannot unilaterally decide to sell its copper at $4.00 per pound when the spot rate is $1.60 per pound.

Just what does it take in time and capital investment to develop a mine in the United States? I'll use an example of a hypothetical mine

similar in size to Lucky Friday or Greens Creek. Larger mines potentially could have double or triple costs and longer time to bring the mine to production. The following are the steps and costs to find and develop a mine in the U.S.:

- Grass roots exploration and drilling to define mineral deposit
  - Multiple years of sampling and drilling
  - $5 million per year for drilling
- Calculate reserves and develop Plan of Operations
  - 2 to 4 years
  - Up to $3 million per year
- Submit Plan of Operations to Agencies and begin Environmental Impact Statement
  - 5 to 8 years
  - Develop EIS and submit for public comment
  - Review public comment and respond
  - Appeals period
  - Record of decision
  - Entire permitting process
  - Cost over 5 to 8 years $10 million
- Actual Mine Development
  - Construction 2 to 3 years depending on type and size of operation
  - Development costs in excess of $250 million
- **Total time and Costs before any ore is mined**
  - **Time up to 15 years**
  - **Total costs in excess of $300 million including such large capital investment items as:**
    - **Ore processing mill $25-50 million**
    - **Underground access shaft $250 million**

At this point a company has already invested more than $250 million on a project that could become non-economic should the commodity price drop soon after production begins. After the mine goes into production, daily operating costs including fuel, power, labor, maintenance, chemical, etc. quickly impact profits.

In addition to operating costs at the mine, a company will have other costs related to support facilities, on and off-site exploration, development, depreciation, environmental compliance and a host of other items. All the while commodity prices fluctuate on a daily basis while the company is trying to recoup its initial investment which may take another 5 to 6 years. In short, a modern mining company needs

to be prepared to invest several hundred million dollars for up to 20 years before the initial investment is recovered.

NMA SUPPORTS NET PROFIT ROYALTY FOR FAIR RETURN TO PUBLIC

NMA supports a fair return to the public through imposition of a royalty. The "key is to achieve a royalty that most mines can bear and still make reasonable profits." (Oct. 2, 2007, testimony of James Otto before the House Natural Resources Committee, attached for the record.) Since the imposition of a royalty has the potential to have significant economic consequences on existing and future mining operations, the type of royalty, the rate and its application to existing claims are all critical variables that must be considered. An 8 percent gross or Net Smelter Return (NSR) royalty, such as that contained in S140 does not properly balance a fair return to the public and the need to encourage the private investment required to develop mining operations and provide the resources needed by our economy. As described in a previous section, mining operations require long-term and substantial commitments of capital and years of development before investors realize positive cash flows. A royalty rate, that is the highest government-imposed rate in the world, will obviously impact return on investment, our ability to create good paying jobs here at home and our ability to meet more of our own needs for minerals. As noted by the World Bank:

> A mining country that relies on private firms to find and exploit its mineral resources must compete with other countries for investment. Its investment climate, which reflects how attractive the country is to domestic and foreign investors, depends ultimately on two considerations: first, the expected rate of return the country offers investors on their investments in domestic projects, and second, the level of risk associated with those projects.

Otto, James *et al.,* Mining Royalties: A Global Study of Their impact on Investors, Government, and Civil Society. World Bank, 2006, p. 183 (attached for the record).

The primary weakness of a gross or NSR royalty "is that low profit mines will have the same royalty basis as high profit mines, and this may impact them with regard to decisions about mine life, ore cut-off grade, and whether to continue operations when prices are low." (Oct.

2, 2007 Otto testimony) Because it is applied regardless of mine profitability, a gross or NSR royalty fails to take into account the cyclical and often volatile nature of commodity prices.

As demonstrated by extremes in highs and lows for commodity prices over the last couple years, the prices of hard rock minerals have historically been subject to great fluctuation. (See National Mining Association – Five year overview of select commodity prices, attached for the record.) The addition of a royalty can:

> turn a profitable mine into valueless rock with a sudden downturn in the market. Simply put, as commodity prices decrease the rate of return required to justify a mining investment increases more dramatically under a gross [or NSR] royalty than under a net [profits] royalty. Because the other costs of the mining operation are relatively fixed, the gross [or NSR] royalty takes a bigger bite out of the shrinking income pie as prices decrease.

Oct 2, 2007, testimony of James Cress before the House Natural Resources Committee. (attached for the record)

A gross or NSR royalty would require a mining company to continue paying a royalty even when it is operating at a loss, and that royalty could even cause the loss. No mine can be operated long at a loss. The result would be that some mines shut down prematurely, jobs would be lost, federal state and local taxes would not be paid, and suppliers of goods and services would suffer.

A net profit royalty, in contrast, does not cause mining operations to operate at a loss. A net royalty automatically reduces during periods of low prices and increases again when prices are higher, permitting mining operations to weather periods of low commodity prices and maximize the recovery of marginal ore during periods of high prices. Due to the cyclical nature of demand for mineral commodities, there have been and will always be periods of lower commodity prices. A net profits royalty provides the best incentive to explore for minerals on federal lands throughout economic cycles so that the nation's needs can continue to be met.

Because the commodities affected by the proposed legislation are sold on a world market, U.S. costs must be competitive to attract the investment needed to promote domestic mining. Obviously, the royalty will impact U.S. costs and, if not carefully crafted, will put U.S.

mining projects at a competitive disadvantage. A high gross or NSR royalty ignores the fact that:

> The United States corporate tax rate of 35% is virtually the highest corporate tax rate in the world. This, combined with many high state levies, provide a significant negative incentive for future investments. Its major trading partners continue to lower their rates putting American corporations in increasingly uncompetitive situations.
> Behre Dolbear, 2009 "Where Not to Invest.(attached)"

Because other extractive industries pay a royalty based on gross value for the product does not mean that gross royalty is appropriate for hardrock mining. In an article by Doug Silver *When Ignorance Meets Greed: Welcome to the New Mining Law,* (attached for the record), the author explains why the gross royalty imposed on coal mining will not work for hard rock mining.

> "It is rumored that the 8% figure targeted by congressional sponsors was likely derived from the royalty rate currently paid on federal coal lands (8% – 12% depending on the mining method). After all, if the coal boys can pay it, why can't the metal miners?
>
> The answer is simple. In a coal mine, one mines massive blocks of mineral, crushes them and perhaps washes the coal. Then the coal is loaded and shipped to the utilities. In excess of 75% of every ton mined is used in the finished product. It should also be noted that coal processing (washing) and associated transportation costs are allowed deductions in determining the coal royalty value. The newly proposed royalty rate for the Hardrock industry is based on gross income without any deductions.
>
> Metal mining is quite different from coal mining. Copper mines can have grades of less than 0.5% per ton and gold mines often grade less than 0.05 ounces gold per ton mined. They then have to be beneficiated and often treated with special chemicals or smelting to crack the minerals and liberate the metal. This is an expensive process in which only a tiny fraction of the initial tonnage produces a final salable product. The economic differential between coal and metals mines is enormous, but apparently Washington is unaware of these commercial issues."

NMA OBJECTIVES FOR MINING LAW REFORM

NMA is committed to the development of a fair, predictable and efficient national minerals policy through amendments to the Mining Law of 1872. Appropriate changes to the Mining Law provide an opportunity to decrease our dependence on foreign minerals, promote job creation, drive economic growth and transition to renewable energy. Appropriate changes also will be developed within the existing and effective federal and state environmental regulatory framework that already governs minerals projects on public lands. Because of these existing comprehensive and effective regulations, modern mining in the U.S. is a worldwide model of environmental stewardship and reclamation achievements.

Responsible amendment to the mining law should achieve the following objectives:

- **Utilize a Net Income Production Payment or Net Profits Royalty to Provide the Public Fair Compensation for Minerals Produced from New Mining Claims on Federal Lands**

    - Production payment base should be net of operating costs – not a gross or NSR royalty;

    - A net production payment is a better incentive for investment because it takes into consideration the costs to process ore into a marketable product and does not penalize operators during periods of low commodity prices;

    - A net production payment should be structured to recognize that most mining claims already are subject to an underlying private royalty burden and that the combination of federal and private royalties must not make mines unprofitable;

    - The net production payment should not diminish the revenue from state mineral taxes and severance taxes relied upon by state and local governments; and

    - The net production payment should take into consideration the total tax contribution of mining companies so as not to undermine investments in mine development.

- **Preserve the 30 U.S.C. Section 22 Rights of Self Initiation and Entry**

    - Preserve the Mining Law rights of self initiation and entry at 30 U.S.C. § 22 to enter and occupy public lands open to prospecting and exploration for locatable minerals and location of mining claims.

- **Provide for Secure Rights to Use and Occupy Federal Lands for Mineral Purposes (Security of Tenure)**

    - Certainty regarding the ability to use and occupy the land through the entire lifecycle of exploration, development, mining and reclamation from the time of claim location through mine reclamation is needed to attract private investment in mining activities on federal lands; and

    - Payment of the claims maintenance fee should be the sole mechanism that secures all rights to use and occupy federal lands for all mineral purposes throughout the entire life cycle of the project, including uses reasonably incident thereto pursuant to 30 U.S.C § 612 (a) and (b), both prior to and after discovery of a valuable mineral deposit.

- **Establish an Abandoned Mine Lands Clean-up Fund with the Revenues Generated from a Net Income Production Payment**

    - Currently abandoned mine programs are funded through state programs and congressional appropriations to federal and state agencies;

    - Funds should be coordinated with existing federal and state AML funds and programs; and

    - Good Samaritan liability protection is needed to encourage and promote voluntary clean-ups.

- **Recognize that the Existing Comprehensive Framework of Federal and State Environmental Laws Provides Comprehensive and Effective Regulation of All Aspects of Mining from Exploration through Mine Reclamation and Closure**

- Mining is one of the most regulated industries in the U.S. with numerous environmental laws and regulations, which are administered by multiple federal, state and local agencies;

- The numerous federal and state environmental laws and regulations that govern mining demand a high level of environmental protection and require financial assurance to guarantee reclamation;

- No new or different regulations, environmental performance standards or financial assurance requirements are needed; and

- According to a 1999 National Academy of Sciences report, *Hardrock Mining on Federal Lands* this existing environmental regulatory framework for mining is "generally effective" in protecting the environment. The discrete regulatory gaps that were identified in this study have been filled.

- **Recognize that the Existing Authorities for Closing or Declaring Unsuitable for Mining Those Federal Lands with Unique Characteristics or of Special Interest**

    - New authorities for protecting special lands are unnecessary as Congress has and continues to routinely use its ample existing authority to establish wilderness areas, national parks, wildlife refuges, recreation areas, and wild and scenic rivers that close lands to mining;

    - Congress also has granted additional authority to the Executive Branch to close federal lands to mining. The Antiquities Act authorizes the President to create national monuments to protect landmarks and objects of historic and scientific interest; and

    - Furthermore, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land withdrawal authority of the Federal Land Policy and Management Act.

The cornerstone of NMA's policy objectives is a predictable legal and regulatory framework to provide the long-term certainty and stability

needed to protect existing investments and to attract new capital necessary to maintain a healthy and sustainable domestic mining industry. The importance of the domestic mining industry to our economy, our renewable energy future, our way of life and our national security cannot be ignored. Indeed, it is economically and environmentally irresponsible for us to ignore the vast mineral resources we have within our nation's boundaries when our domestic needs are so great.

S. 796 AND S. 140 FAIL TO MEET THE NEEDS OF U.S. MINING

NMA is aware that Chairman Jeff Bingaman (D-N.M.) introduced S. 796 to stimulate dialogue, and as such, NMA is committed to working with the Chairman and the Senate Energy and Natural Resources Committee to enact reasonable amendments to the Mining Law. In addition Senator Dianne Feinstein has introduced S. 140 the "Abandoned Mine Reclamation Act of 2009". NMA cannot support S. 796, the "Hardrock Mining and Reclamation Act of 2009" or S. 140 the "Abandoned Mine Reclamation Act of 2009" as currently written for two reasons. First, provisions in the bills will increase our Nation's dependence on foreign minerals—an outcome that will weaken our defense and compromise our agenda to develop a renewable energy infrastructure and renewable sources of energy. Secondly, S. 796 adds regulatory uncertainty that will undermine U.S. competitiveness and threatens thousands of high-paying mining jobs and countless mining-dependent communities. America's families, communities and businesses cannot sustain higher energy costs, additional job losses and further weakening of our economy during these difficult times. However, NMA does support many of the concepts in the royalty provisions of S. 796, particularly those providing for deductions. But because of the shortcomings described below, NMA is not able to give its full support.

Likewise, S. 140's 4 percent gross royalty on mines with current commercial production and 8 percent gross on new mines will result in premature closure of existing mines and make future mines uneconomic, resulting in an unhealthy increased reliance on foreign sources of minerals, a loss of high paying family-wage jobs, and bring severe economic hardship on mining-dependent rural communities. Furthermore, assessing the royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.

- **Royalty Provisions of S. 796 Will Undermine Investment Because They Are Not Defined Adequately and Leave Most Critical Details to Future Rulemaking to Determine the Following:**

    - The exact amount of the royalty (a range of 2-5 percent to be decided by the Secretary of the Interior through regulations);

    - The precise nature of deductions that are reasonably associated with beneficiation, processing and transportation;

    - The standard to be used to determine the royalty rate; and

    - Whether the entity responsible for payment of the royalty is the operator (which is the simplest way for the government to administer) as opposed to owners, co-owners or underlying royalty owners.

- **The Reclamation Fee in S. 796 and S. 140 is Unnecessary in Light of Other Fees imposed and Creates Uncertainty**

    - The reclamation fee is unnecessary, is an additional burden on mining companies that does not take into consideration the total tax contribution of mining companies, and will undermine investments in mine development.

    - The reclamation fee would apply to production on non-federal as well as federal lands

    - As in the case of the royalty, there is no standard for the Secretary in determining the percentage (between 0.3 and 1 percent); and

    - There is no provision to credit the fee against the royalty.

- **S. 796 Fails to Clarify Rights to Provide Security Tenure Needed to Attract Investment**

    - S. 796 fails to clearly preserve self initiation and entry rights to go onto open public land and conduct mineral activities;

    - S. 796 fails to replace the security that was provided by patenting with explicit legislative language that grants

claimholders the right to use and occupy the land both prior to and after discovery of a valuable mineral deposit for all mineral activities authorized under the Mining Law throughout the entire life of the project; and

- S. 796 and S. 140 do not establish that claimants have rights against the United States and instead merely restate the common law doctrine that claimholder has the right to keep other claimants off his claim.

- **S. 796 Includes a New and Unnecessary Mechanism for Land Withdrawals**

  - S. 796 gives local federal land managers the broad discretionary authority to withdraw lands from the operation of the mining law established under FLPMA § 202(c), which does not require an evaluation of mineral potential.

  - S. 796 requires local federal land managers to conduct a complete review of numerous areas with potential special resource values-including more than 58.5 million acres in the 2000 Roadless Rule—for the purpose of identifying lands that should be withdrawn from mineral entry.

  - S. 796 authorizes withdrawals that do not have to comply with the withdrawal procedures and congressional approvals required by the Wilderness Act of 1964 and the Federal Land Policy and Management Act (FLPMA).

  - S. 796 has the potential to place substantial areas of mineral-rich federal lands off limits to mining without evaluating how these withdrawals will increase the Nation's dependency on foreign minerals or adversely affect the economy and America's transition to renewable energy sources and clean technologies.

- **S. 796 Requires New Environmental Provisions That Will Duplicate Existing Standards**

  - S. 796 directs the Secretaries of the Interior and Agriculture to jointly promulgate new environmental and reclamation standards for mineral activities on federal lands;

- The new regulations are duplicative of requirements already applicable under FLPMA or the National Forest Management Act; and

- There is no on-the-ground justification for creating a new regulatory structure for hardrock mining. The 1999 National Academy of Science study referenced above found the existing regulations to be comprehensive and effective.

- **S. 796 Creates An Inefficient Permitting Scheme for Exploration Activities**

  - The bill institutes an extensive new permitting scheme for exploration activities, even those that would impact fewer than five acres of land.

  - S. 796 eliminates the current practical regulatory scheme for initial exploration activities, such as road building and exploration drilling that create less than 5 acres of surface disturbance. These regulations currently provide for an expeditious review and approval of proposed initial exploration projects and require a reclamation bond to guarantee that exploration-related surface disturbances be fully reclaimed; and

  - S. 796 creates a more cumbersome permitting process for exploration activities, which will cause substantial delays for companies resulting in a slower pace of discovery and will place an increased administrative burden on surface land managers.

- **S. 796 removes critical non-metallic commodities such as uranium from "locatable" to "leasable" status**

  - Changing the status of uranium and other non-metallic minerals to leasable commodities will effectively cripple these industries.

    Uranium and other non metallic commodities should remain locatable minerals because they require exploration and development similar to metallic minerals;

  - Discovery, delineation and development activities typically require years of fact-finding including ground, aerial and

satellite reconnaissance; exploration drilling; environmental baseline data gathering; workforce hiring and training; mine and mill planning, design and construction; decommissioning and decontamination.

- Uranium ore requires additional extensive and expensive processing in the form of mining, crushing of the ore, separation and concentration of the U3O8.

Conclusion: Mining Creates Jobs

Two of the current administration's major priorities can be achieved with thoughtful modernization of the Mining Law: job creation and increased use of renewable energy sources. First, job creation related to mining will play a pivotal role in economy recovery. Second, mining produces strategic metals necessary for transition to renewable energy infrastructure for the United States. By keeping high paying mining jobs at home and producing those strategic metals, the U.S. will be positioned for a stable economic and renewable energy future. Just as we are trying to escape the downward spiral related to dependence on foreign oil, our goal, as a country, should also be to reduce dependence on foreign countries for strategic metals.

Across the U.S., mining has had a profound economic impact with generation of both direct and indirect jobs and economic output. In just nine western states, there are more than 35,000 direct metal mining jobs with a total payroll of more than $2.6 billion. That equates to an average wage of more than $74,000 per year plus benefits. The direct economic output in those 9 states is more than $17 billion. That is only the frame on a much larger economic picture which is composed of multiple indirect jobs, wages, tax revenues and social benefits.

The impact of all aspects of mining from exploration through production and reclamation ripples through the economy, especially in rural communities. Tax revenue is generated at federal, state and local levels. Indirect jobs are created. Schools benefit directly from increased enrollment and funding as well as from the generosity of mining companies in the area. Local communities develop stable infrastructure because of a healthy tax base. Community organizations that support arts, youth activities, senior citizens, recreation thrive in mining economy-based rural communities. At a time when unemployment is high and job creation is critical, mining can help drive a strong recovery by keeping jobs at home.

The United States needs a robust minerals production industry to help meet the needs of American consumers. The transition into green technology is 100% dependent on the availability of critical minerals, many of which have known reserves and can be mined in the United States. Unfortunately, America is ceding to others the responsibility for meeting our minerals needs. Increased import dependency created by lack of U.S. mineral development is not in our national interest and causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations and vulnerability to possible supply disruptions due to political or military instability. The U.S. mining industry has fully embraced the responsibility to conduct its operations in an environmentally and fiscally sound manner. It hopes and expects that Mining Law legislation will recognize and honor both this commitment and the industry's contribution to our national well-being.

NMA appreciates the opportunity to provide this testimony.

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