



# Elko County Board of Commissioners

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Dear Chairman Grijalva and members of the House Natural Resources Committee:

The Elko County Board of Commissioners is writing to express its outrage over the Clean Energy Minerals Reform Act of 2022 (H.R. 7580). Elko County and its neighbors in northern Nevada are home to some of the biggest gold mines in the world and this bill will demolish the local economies of the area and destroy its communities. Additionally, the Board of Commissioners strongly object to the fact that this bill, which will largely affect rural areas in the western United States, was written and introduced with virtually no input from stakeholders who will be impacted.

## **PROBLEMS WITH TITLE I**

### **Section 101: Closure to Entry and Location**

The problems with this bill are almost all represented by Section 101. Right from the start this bill proposes to close all federal land to entry and location under the general mining laws and replace those laws with the system outlined in the bill. The current system uses business-driven exploration, where companies can determine what minerals they will need. The proposed system imposes a new bureaucracy that will make these decisions based on land use plans that may be years of in some cases decades old. Instead of the current, proactive system based on the needs of industry the proposed system is entirely reactive.

### **Section 111: Protection of Special Places**

This section greatly expands the power of the executive branch to halt mining. Conversely, it also greatly increases the power of the executive branch to allow mining in areas where it previously was excluded. This section provides that “[n]o permit shall be issued under this Act that ... would impair the land or resources of a unit of a National Park System or a national monument.” It goes on to define “impair” as “any diminution of the affected land including wildlife, scenic assets, water resources, air quality, and acoustic properties, or other changes that would impair a citizen’s experience at the ... national monument.”

National Parks can only be created by Congress. But, national monuments are governed by the Antiquities Act, which provide that the president may, “in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.”<sup>1</sup>

There is no shortage of controversy any time a president uses their power to create a national monument, but it is generally recognized as being well within their authority. More disputed is the power of a president to reduce the size of a national monument. Recent challenges to President

Trump's shrinking of the Bears Ears Monument in Utah were rendered moot by President Biden's proclamation restoring it, so legal questions surrounding how far that executive authority extend are unsettled.

The plain language of the act give the executive branch broad discretion in establishing protected areas without input from Congress. The proposed legislation extends the impact of any establishment beyond its borders, and can limit mining activities in places not covered by any proclamation. Depending on how future court interpret the Antiquities Act, it could also allow a president to modify the borders of a national monument to reduce any effect or open more land to mining. This provision would create instability on lands that are already controversial.

### **Section 102: Limitation on Patents**

There has been a functional moratorium on patenting mining claims since 1994.<sup>2</sup> Keeping mining claims in the public domain in perpetuity means that remediation projects on public land, which are governed under Nevada state law already, have to go through a lengthy and costly NEPA analysis before they can be fully implemented. Allowing patents would shift the burden from the federal government to the owners of the land or to the state to carry out these projects, and allow the state to pursue the remedies it has under the law to offset the costs.

Formally codifying the existing moratorium would continue to shift the burden of failed reclamations onto taxpayers. The current scheme is nearing forty years of implementation and has accomplished none of its goals.

### **Section 103: Prospecting Licenses**

Section 103 proposes to require prospecting licenses for hardrock minerals. This would create a meaningless new process that will slow exploration for critical minerals. This process is also redundant to the ones created at the state level. Nevada Administrative Code Chapter 519A already governs when a permit for exploration is needed. Adding another layer of bureaucracy to that will just increase the time it takes to locate new mineral deposits, and make smaller domestic companies less competitive when it comes to exploration.

To ensure the process is as time-consuming as possible, this provision also requires any prospecting license to conform to the terms and conditions of an existing land use plan, or for the agency to analyze whether the area covered by the license is suitable for hardrock mining or other mineral activities. This would essentially require an analysis equivalent to an EIS, with all its potential for litigation and other challenges, to determine whether an area could support a hardrock mine before any minerals have even been located on it. Making exploration as expensive and time-consuming as possible is one of the best ways to ensure that the United States is consistently behind on the production of the minerals that keep our economy going and allow for domestic industrial production.

Nowhere in the draft of the bill is any requirement that these applications be processed within a certain amount of time, and no provision or appropriation for hiring new staff to process these applications in a timely manner. BLM and Forest Service field offices are nearly at capacity drafting NEPA documents for other projects, and forcing them to complete additional NEPA processes is just going to slow down these projects even more.

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<sup>2</sup> *Programs: Energy and minerals: Mining and minerals: Locatable materials: Patents: Bureau of Land Management*. Home. (n.d.). Retrieved April 29, 2022, from <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/patents>

## **Section 107: Royalty**

Aside from all the other problems with imposing another tax on a specific industry in addition to the regular taxes paid by companies operating in the United States, the proposed royalty system in this bill would disproportionately harm smaller domestic producers. By basing the formula for calculating royalties on gross income from mining rather than on net proceeds, it creates a much smaller margin for a company to survive.

## **Section 109: Hardrock Mining Claim Maintenance Fee**

Many of the problems in this bill come down to provisions that don't benefit either the country or the environment. This section, which imposes a fee for maintaining a hardrock mining claim in lieu of the assessment work required by the 1872 Mining Law, rewards wealth rather than labor. Although there is an exception for small miners, it still allows for companies large enough to afford the fee to simply pay the fee rather than develop and work on the claim. This allows them to keep the land claimed, while not producing anything from it. It doesn't increase the supply of critical minerals, it doesn't protect the environment, and it doesn't benefit anyone but the companies able to pay to maintain that claim.

## **Section 112: Suitability Determinations**

In determining whether lands are suitable for hardrock mining, this provision would require the Secretary to implement conditions on a proposed operation to prevent the degradation of any aquifer or aquifer recharge area. This work is already done by the Nevada State Engineer's office, which examines applications for dewatering permits to ensure the health and sustainability of the aquifer and to prevent any conflicts with existing water right holders.

## **PROBLEMS WITH TITLE II**

### **Section 201: Requirement for Consultation**

The procedure outlined in this section is reactive, and requires a consultation with affected tribes once an application has been filed. A proactive procedure would require a closed-door consultation with as many tribal stakeholders as possible to identify possible sacred sites and other areas of concern before an application is filed.

This section also allows for the agencies to skip consultation in times when there is a declared emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The scope of possible emergencies under this act includes drought.<sup>3</sup> Currently the western United States is in a 1,200 year drought.<sup>4</sup> This bill would allow nearly the whole western US to be considered an emergency area where consultation is not necessary.

## **PROBLEMS WITH TITLE III**

### **Section 306: Financial Assurance**

This provision just duplicates the state level reclamation requirements.

### **Section 504: Citizens Suits**

This provision creates a statutory cause of action to compel compliance with the terms of the Act available to any person, regardless of whether they can show a cognizable injury. The injury

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<sup>3</sup> 42 USCS § 5122

<sup>4</sup> Williams, A. P., Cook, B. I., & Smerdon, J. E. (2022). Rapid intensification of the emerging southwestern North American megadrought in 2020–2021. *Nature Climate Change*, 12(3), 232–234.

requirement is extremely basic, and easy to clear after the *Lujan v. Defenders of Wildlife* (504 US 555) decision.

Paragraph e of this provision also allows for the recovery of all litigation costs, including attorney fees, for a prevailing party. The inclusion of this provision risks making this bill into another revenue-generating machine for environmental groups whose only goal is to sustain their existence by conducting litigation at the taxpayers' expense.

**Conclusion:**

The provisions of this legislation fall into three categories: 1) New laws that don't fix any of the things wrong with the current system, 2) Redundant regulatory systems, and 3) Expansions of executive power that would destabilize many rural areas from administration to administration. This committee could, through consultation with affected stakeholders, take the opportunity to work to draft legislation to fix existing problems. But the bill as drafted doesn't address any of those problems, and goes on to create some new ones.