Subcommittee on Energy and Mineral Resources
Doug Lamborn, Chairman
Hearing Memo

June 22, 2015

To: Natural Resources Committee Members

From: Majority Committee Staff

Subject: Legislative hearing on H.R. 1937 (Amodei) – the "*National Strategic and Critical Minerals Production Act of 2015"*

The Subcommittee will hold a legislative hearing on H.R. 1937, the "*National Strategic and Critical Minerals Production Act of 2015"*on Thursday, June 25, 2015, at 10:30a.m. in Room 1334 Longworth House Office Building.

Summary of the Bill

On Wednesday, April 22, 2015, Congressman Mark Amodei (NV-02) and 37 original co-sponsors introduced H.R. 1937, the "National Strategic and Critical Minerals Production Act of 2015" to require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States' economic and national security, and manufacturing competitiveness. The bill currently has 44 co-sponsors**.**

Witnesses Invited

Panel I

The Honorable Mark Amodei (R-NV)
Member of Congress

Panel II

Mr. Mark Fellows
SNL Metals & Mining, Metals Consulting
On behalf of the National Mining Association
London, UK

Mr. Luke Russell
Vice President, External Affairs
Hecla Mining Company
Coeur d'Alene, ID

Mr. Jeffery A. Green
President
J.A. Green & Company
Washington, D.C.

Mr. Sam Kalen (Minority Witness)
Winston S. Howard Distinguished Professor of Law
Co-Director, Center for Law & Energy Resources in the Rockies
University of Wyoming College of Law
Laramie, WY

Background

A version of the bill passed the House in both the 112th (H.R. 4402, July 12, 2012 256-160)[1] and 113th Congresses (H.R. 761, September 18, 2013, 246-178, and as part of H.R. 4 the "***Jobs for America Act***" on September 18, 2014, 253-163)[2].

Changes to H.R. 1937 from the previous versions of the legislation include updated findings and definitions, and revisions to the NEPA equivalence provision to ensure a robust environmental review if this process is determined to be appropriate by the lead agency. The legislation addresses one major problem facing domestic mining projects – **lengthy permitting timelines and delays** - an issue raised by witnesses at numerous hearings held in several Congresses. It's also an issue that has been identified in the "***Ranking of Countries for Mining Investment,"*** published annually by the Behre Dolbear Group[3] (mining industry advisors), as the most serious risk to mining projects in the United States.

In the 2012 and 2013 reports, the United States ranked last with Papua New Guinea (out of twenty-five major mining countries) in permitting delays. In 2014, the U.S. improved in its overall ranking however, the 7 to 10 year permitting timelines still presented the greatest risk to mining projects in the United States.[4]

There are no changes to the definition of ***'Strategic and Critical Minerals'*** which is written so it applies to the diversity of the Nation's mineral endowment. This is a deliberate policy decision to not pick winners and losers in the domestic mining industry. Critics of the legislation often raise the prospect that the bill, if passed, could apply to 'sand and gravel'

[1] https://www.congress.gov/bill/112th-congress/house-bill/4402/actions?q=%7B%22search%22%3A%5B%22%5C%22hr4402%5C%22%22%5D%7D
[2] https://www.congress.gov/bill/113th-congress/house-bill/761/related-bills?q=%7B%22search%22%3A%5B%22%5C%22hr761%5C%22%22%5D%7D
[3] http://www.dolbear.com/
[4] http://www.dolbear.com/news-resources/documents

operations or other types of mined construction materials as if these mundane everyday mined materials are not critical.

Yet every house, building, or infrastructure project such as a road, highway or bridge is dependent on these materials; society is dependent on these materials. In 2014 the value of these industrial minerals, including 'sand and gravel' was $46.1 billion whereas the value of metal mines production was $31 billion.[5] Furthermore the USGS assessment after the first 'Great California Shakeout' (a drill to practice behavior during a major earthquake and its aftermath) determined that there were not enough 'sand and gravel' deposits in Southern California to meet the reconstruction needs of the region.

Mining is a Critical Industry

Mineral production is a key economic activity, supplying strategic and critical metals and minerals essential for agriculture, communication, technology, construction, health care, manufacturing, transportation, and the arts. More specifically, strategic metals and metal alloys are an integral component of aerospace, defense, and other critical infrastructure. Minerals are also necessary to satisfy the basic requirements of an individual's well-being: food, clothing, shelter, and a clean healthy environment.

Mining of mineral resources creates tangible value, introducing new money into the Nation's economic system. Additional tangible value is added to the raw mined product through manufacturing, construction, and other uses. Harvesting domestic mineral resources contributes to local economies, creates jobs, and benefits our nation's overall economic security.

According to the National Research Council, one of the primary advantages the United States possesses over its strongest industrial competitors is its domestic resource base. The United States is among the world's largest producer of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver, and zinc; and it still has substantial domestic reserves of these metals. Yet U.S. mineral exploration stagnated or declined during most of the 1990's and 2000's while global mineral exploration trends were strongly positive.

In the early 1990s, the U.S. received 20 percent of the worldwide exploration budget, today it hovers around 7 percent.[6] Without increased domestic exploration, significant declines in U.S. mineral production are unavoidable as present reserves are exhausted.

The lack of exploration expenditures and other factors described below has led to an increased import dependency for non-fuel mineral materials. For example in 1986 the United States was dependent on foreign sources for 30 non-fuel mineral materials, 6 of which were

[5] http://minerals.usgs.gov/minerals/pubs/mcs/2015/mcs2015.pdf (pg. 7)
[6] SNL Metals & Mining, World Exploration Trends 2015 Special Report for the PDAC International Convention

entirely imported to meet the Nation's requirements and another 16 of which were imported to meet more than 60 percent of the Nation's needs.

By 2014, the U.S. import dependence for non-fuel mineral materials more than doubled from 30 to 64 commodities, 19 commodities were imported entirely to meet the Nation's requirements, and another 24 commodities required imports of more than 50 percent.[7]

Factors contributing to the decline in domestic mineral exploration activities and other downward trends in the domestic mining industry during the late 1990's are directly related to the regulatory and administrative changes made during that time period, including revisions to Bureau of Land Management's 3809 Regulations[8] and the Solicitor's Millsite Opinion.

Working through the permitting process also became more cumbersome, as federal and state agencies with land management and regulatory responsibilities over mineral exploration and development projects worked at cross purposes to one another. Legal challenges to Records of Decision by anti-mining groups also contributed to the delays and uncertainties in obtaining the necessary permits for exploration and development. As such, the United States averages 7 to 10 years for final approval.

Currently the United States lacks a coherent national policy to assure domestic availability of minerals essential for national economic well-being, national security, and global economic competitiveness.

The Nation's dependence on China for rare-earth elements and rare metals, elements necessary for telecommunications, military technologies, health-care technologies, and conventional and renewable energy technologies, is the most prominent example.

Finally, the President has recognized the problems associated with long permitting time frames for infrastructure and renewable energy projects and has issued guidance documents requiring coordination and timely processing of permits to be issued by federal agencies with regulatory responsibilities in order for the project proponents to be able to begin construction in a timely manner.[9] This legislation builds on this precedent set by the Administration by applying the principles outlined in the guidance documents to mineral exploration and development projects.

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[7] Ibid (pg. 6)
[8] http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/cfr/43_cfr_3809.html
[9] http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7636.pdf

Section by Section

Sec. 2. Findings.

Summary: The industrialization of developing nations has driven demand for non-fuel minerals necessary for telecommunications, military technologies, health-care technologies, and conventional and renewable energy technologies.

The availability of minerals and metals are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain;

In the 2014 Ranking of Countries for Mining Investment, found that the 7-10 year permitting delays posed the most significant risk to mining projects in the United States.

Sec. 3. Definitions.

Defines strategic and critical minerals as those that are necessary:

(a) For national defense and national security requirements;

(b) For the Nation's energy infrastructure including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production;

(c) To support domestic manufacturing, agriculture, housing, telecommunications, healthcare and transportation infrastructure; and

(d) For the Nation's economic security and balance of trade.

Title I – Development of Domestic Sources of Strategic and Critical Minerals

Sec. 101 Improving Development of Strategic and Critical Minerals.

States those domestic mines that provide strategic or critical minerals shall be treated as an "infrastructure project" as laid out in the Presidents Executive Order "Improving Performance of federal Permitting and Review of Infrastructure Projects" dated March 22, 1012.

Sec. 102. Responsibilities of the Lead Agency.

Outlines responsibilities for the lead agency responsible for issuing mineral exploration or mine permits:

- Lays out the responsibilities of the lead agency including the identification of a project lead who's responsibility is to coordinate with stakeholders, cooperating agencies and

project proponents in order to minimize delays, set and adhere to timelines and schedules for completion of reviews, establish clear permitting goals and to track progress in meeting those goals.

- Provides for some NEPA relief if the lead agency and/or state agency have procedural and substantive safeguards built into their permitting process to ensure that environmental safeguards are taken into account.
- Requires the lead agency to enhance government coordination on permitting and review by avoiding duplicative reviews, minimizing paperwork and engaging other agencies and stakeholders early in the process.
- A project proponent can request that the project lead enter into an agreement that lays out a timeline for permit review process. The review process cannot exceed more than 30 months unless the signatories to the agreement agree to an extension of time.
- The lead agency only has to address agency or public comments that were submitted during the public comment period.
- Restates current bonding requirements.

Sec. 103. Conservation of the Resource.

Contains a 'conservation of the resource' provision – the responsibility of the lead agency is to maximize the development of the resource, while mitigating for environmental impacts so that more of the mineral resources can be brought to the marketplace.

Sec. 104 Federal Register Process for Mineral Exploration and Mining Projects.

Reforms the process currently practiced by the Department of the Interior for placing and reviewing Federal Register notices for mineral exploration and mining projects that currently adds months and even years to the permitting process.

Title II – Judicial Review of agency Actions Relating to Exploration and Mining Permits.

Sec. 201. Definitions For Title.

For purposes of the title defines "covered civil action" containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

Sec. 202. Timely Filings

Provides a 60 day window for parties to file a civil action.

Sec. 203. Right to Intervene

The holder of any mineral exploration or mine permit may intervene as of right in any covered civil action by a person affecting rights or obligations of the permit holder under the permit.

Sec. 204 Expedition in Hearing and Determining the Action.

Requires the court to hear and determine any covered action as expeditiously as possible.

Sec. 205 Limitation on Prospective Relief.

Limits prospective relief unless the relief is narrowly drawn, is necessary to correct a violation of a legal requirement and is the least intrusive means to correct the violation.

Sec. 206. Limitation on Attorneys' Fees.

Civil actions under the Equal Access to Justice Act are not allowed and the Federal government cannot pay for attorney's fees, expenses or court costs.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. SECRETARIAL ORDER NOT AFFECTED.

For areas covered by Secretarial Order 3324, issued by the Secretary of the Interior on December 3, 2012, that addresses a long standing conflict between co-located potash and oil and gas leases in southeastern New Mexico.

Effect on Current Law

None

Cost

For H.R. 761 in the 113th Congress, CBO estimated that the legislation would have no appreciable impact on the budget.