H.R. ___ Section-by-Section
Clean Energy Minerals Reform Act
Ranking Member Raúl Grijalva

Summary

Hardrock mining is the number one source of toxic pollution in the U.S., yet the industry operates under the long-outdated Mining Law of 1872. The law is a relic, irrelevant to modern mining, and remains almost entirely unchanged since it was enacted nearly 150 years ago. Minerals like copper, lithium, and nickel are essential for our clean energy future. However, that does not mean we can risk permanent damage to sacred places, wilderness, recreation access, or public health.

Ranking Member Grijalva's legislation creates a more sustainable mining future that protects special places, respects tribal consultation, and protects public health as we look for more domestic sources of minerals to build clean energy technologies. The *Clean Energy Minerals Reform Act* would make the following comprehensive changes to the 1872 Mining Law:

- Establish a 12.5 percent royalty on new mining operations and an 8 percent royalty on existing operations, except for miners with less than $50,000 in mining income.
- Create a new revenue-sharing system that directs 25 percent of all royalties and fees paid by the mining industry to the state where the mining activity is located. The remaining 75 percent goes to the Hardrock Mine Reclamation Program established by the Infrastructure Investments and Jobs Act to reclaim and restore abandoned mines.
- Establish strong reclamation standards and bonding requirements.
- End the outdated claim-staking and patenting system that gives miners unfettered access to nearly all public land in the United States and create a modern leasing system.
- Require meaningful tribal consultation for potential mining projects.
- Eliminate the exalted status that mining currently enjoys on public lands, leveling the playing field with all other uses of public lands–such as grazing, hunting, and energy development–allowing it to be managed through existing land-use planning processes.
- Make special lands off-limits to hardrock mining.

Changes from the 118th Congress include updates to Title II, bringing this section in line with President Biden's Memorandum on Uniform Standards for Tribal Consultation[1] and technical changes from the Bureau of Land Management.

Title I – Mineral Leasing, Exploration, and Development

Title I ends the archaic mining claim system that has been largely unchanged since 1872. No new mining claims would be allowed, and the ability to patent public land would be eliminated unless the patent application was submitted before September 30, 1994 (there has been an appropriations moratorium on BLM processing new patent applications since October 1, 1994).

[1] White House. (2022, November 30). Memorandum on Uniform Standards for Tribal Consultation. https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/

In its place would be a permitting and leasing system, much like what exists for oil, gas, coal, and numerous other minerals on public land. Miners would apply for prospecting licenses, giving them the exclusive right to explore for specified minerals for two years on up to 2,560 acres of land open to hardrock mining under a land-use plan, with a rental of $10 per acre per year. Licenses could be extended for up to four years, provided the miner is diligently exploring. If a valuable deposit is found, the miner would be eligible for a non-competitive 20-year lease with a rental of $10 per year and a royalty of not less than 12.5 percent of the gross value of production. No surface disturbing activity would be allowed without exploration or operation permits issued under Title II.

Small miners – people holding less than ten mining claims, or no more than 200 acres under lease, and commercial income from mining of less than $50,000 per year – could obtain a Small Miners Lease. Small Miners Leases provide the exclusive right to prospect for hardrock minerals for three years, renewable for additional 3-year periods with no limit. Rentals are $5 per acre per year for the first three years, then $10 per acre per year for all subsequent renewals, and no royalty would be charged on commercial production.

Title I also creates a process for converting existing non-producing claims to leases, with most claims having ten years to show a valuable mineral deposit and converting to a lease before expiring, but only three years for claims located on withdrawn land. Claims that haven't been converted to leases would be subject to additional fees. Title I directs the Secretary of the Interior to undertake a rule-making process, with accompanying public input, to decide how producing mining claims will be converted to non-competitive mining leases.

Areas with valuable mineral deposits not covered by a permit, license, or lease may only be leased in the future through a competitive process and only if the Secretary determines that such lands are suitable for mineral activities.

This title also protects National Parks and National Monuments by prohibiting any mining activities that would impair them in any way. It prohibits all hardrock mining activity in Native American sacred sites, Wilderness Study Areas, Areas of Critical Environmental Concern, Wild and Scenic Rivers, and Roadless Areas identified in the Forest Service Roadless Area Conservation EIS of 2000.

Of the royalties, rents, fees, and other money raised in Title I, 75 percent goes to the Hardrock Mine Reclamation Program, and the other 25 percent goes to the state where the mining activity is located.

Title II – Consultation Procedure

Title II requires federal government agencies to conduct meaningful, timely consultation with Indian Tribes following the procedures of the President's Memorandum of Uniform Standards for Tribal Consultation, issued on November 30, 2022.[2]

[2] White House. (2022, November 30). Memorandum on Uniform Standards for Tribal Consultation. https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/

Though tribal consultation is required in other statutes and regulations, the process has historically varied from agency to agency. Moreover, agencies often decide on a course of action, then "notify" tribes rather than consulting with them. This title provides tribes with the opportunity to be a part of the decision-making and implementation process. Promoting meaningful and effective consultation processes will reduce project delays, help avoid legal battles, and help fulfill the Federal government's legal obligations to Indian tribes.

Title II also requires consultation with Indian tribes concerning all mining activities that would affect any part of any Federal land that shares a border with Indian country.

Title III – Environmental Considerations of Mineral Exploration and Development

Title III establishes environmental standards for mining activities on public lands and requires the Secretary of the Interior to ensure that mining activities prevent the undue degradation of public lands and resources.

This title requires that all mining operations on public lands be conducted under either an exploration or operations permit. An exploration permit would be for a term of no longer than ten years, cover activities that would not result in the sale of minerals, and require the submission of a reclamation plan. Operations permits would have a more stringent review process and require submitting plans for reclamation, monitoring, and long-term maintenance. Operations permits would be for a 20-year term, with the option to renew the permit for an operational mine every 10 years for as long as the mine’s lease is valid.

Permit applicants must provide financial assurances sufficient to assure the completion of all reclamation and restoration work, including the cost of long-term treatment facilities, in the event of forfeiture. Mining companies must restore lands to a condition capable of supporting prior uses or to other beneficial uses conforming to the applicable land use plans.

Title IV – Abandoned Hardrock Mine Reclamation

Title IV directs all royalties under the Act, a new 7-cents-per-ton fee on displaced materials from hardrock mining, and other smaller funding sources to the Abandoned Hardrock Mine Reclamation Program. The bulk of the funding would come from the displaced material fee, estimated to raise approximately $200 million annually.

Funds in the Abandoned Hardrock Mine Reclamation Program, established by Section 40704 of the Infrastructure Investment and Jobs Act, will be used to clean up abandoned hardrock mines on federal, state, tribal, and private lands.

Title V – Administrative Provisions

Title V establishes a comprehensive inspection, monitoring, and enforcement system for hardrock mining, sets civil and criminal penalties for noncompliance, proscribes administrative and judicial review guidelines, and authorizes citizen suits, among other provisions.

This title also requires mining operations on Federal or Indian lands to provide data on the quantity and value of mineral production to the Secretary of the Interior and Congress. Currently, federal agencies do not collect this data; this title increases transparency and accountability for mining operations on Federal and Indian lands. This data will be made publicly available in accordance with the Freedom of Information Act.