

## Purpose of the “Small Miner Amendments to NDAA”

The current amendment “Division E—National Strategic and Critical Minerals Production” in the NDAA is fine for large-scale mining. The proposal of “30 months” for a lead agency to complete a review process is in line with large-scale mining projects.

However, this is wholly inappropriate for sole operators without employees, or those who hire only non-mining work personnel. These small operators are already suffering from excessive delays for small operations with a very small footprint. They cannot afford to hire an attorney to sue an agency under the Administrative Procedures Act when the agency fails to comply with the required time line. They also cannot afford to hire additional personnel just for paperwork compliance with agencies like the Mine Safety and Health Administration.

Our proposed amendments were reviewed by Legislative Council twice with House Resources. They were put through by Trent Franks, but that ground to a halt when he resigned.

I have been a 13-year member of the American Exploration and Mining Association (formerly the Northwest Mining Association), which represents large-scale miners. But through my publication, I also represent small-scale miners who are completely unrepresented except by folks like Clark Pearson of Public Lands for the People and me. We have over 2,000 endorsements for this specific language just over the past month.

Small miners are approximately 85% of the mining claimholders in California and across the West and are in dire need of regulatory relief. And many of them have been locked out of their mining claims or operations by obstructions put in place by agencies like the US Forest Service through Travel Management Plans.

The language in our “Small Miner Amendments to NDAA” **will also alleviate many of the problems with federal agencies failing to recognized RS 2477 routes and roads in states throughout the West. With our small addition/change in wording, our amendments will allow RS 2477 routes and roads to remain open wherever a mining claim or operation is present, and that road or route will be available to all users.**

Our “Small Miner Amendments to NDAA” are also in line with the following Executive Orders issued by President Trump:

13771	Reducing Regulation and Controlling Regulatory Costs	Jan 30, 2017
13777	Enforcing the Regulatory Reform Agenda	Feb 24, 2017
13790	Promoting Agriculture and Rural Prosperity in America	Apr 25, 2017
13817	A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals	Dec 20, 2017

Courts have made it clear they are looking to Congress for clarification on many of the issues we address in our “Small Miner Amendments to NDAA.”

Following are just two such cases where the courts ask for Congress to intervene on many of these issues:

- *California Coastal Commission, et al., v. Granite Rock Company* (480 US 572, 107 S Ct. 1419; 1987)

“In summary, it is fair to say that, commencing in 1872, Congress has created an almost impenetrable maze of arguably relevant legislation in no less than a half-dozen statutes, augmented by the regulations of two Departments of the Executive. There is little cause for wonder that the language of these statutes and regulations has generated considerable confusion. There is an evident need for Congress to enact a single, comprehensive statute for the regulation of federal lands.”

Having said this, it is at least clear that duplicative federal and state permit requirements create an intolerable conflict in decisionmaking. In view of the Property Clause of the Constitution, as well as common sense, federal authority must control with respect to land ‘belonging to the United States.’” —Justice Powell

- *US v. 9,947.71 Acres of Land* (220 F.Supp. 328; 1963)

“If the builders of such roads to property surrounded by the public domain had only a right thereto revocable at the will of the government, and had no property right to maintain and use them after the roads were once built, then the rights granted for development and settlement of the public domain, whether for mining, homesteading, townsite, mill sites, lumbering, or other uses, would have been a delusion and a cruel and empty vision, inasmuch as the claim would be lost by loss of access, as well as the investment therein, which in many cases of mines required large sums of money, before a return could be had.” —District Judge Peirson M. Hall

We will be returning to DC shortly and will be available for questions at your convenience.

Sincerely,

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# Small Miner Amendments to NDAA

## RECOGNITION OF THE LIMIT OF THE RIGHT OF SELF-INITIATION UNDER THE 1872 MINING ACT AND THE PERMISSIVE (PERMIT) SYSTEM FOR PURPOSES OF REGULATORY CERTAINTY

(submitted by Public Lands for the People)

### SECTION 101: REMOVING OVERLAPPING AND DUPLICATIVE AUTHORITIES

(a) 16 U.S.C. § 478 is amended by:

(i) Adding, after “such rules and regulations as may be prescribed by the Secretary of Agriculture,” the phrase “provided, however, that neither the Secretary of Agriculture nor the Secretary of Interior may prohibit, require a permit, or materially restrict motorized access to federal mining claims over historical, visibly-existing or previously-existing trails and roads, or the reasonable restoration or maintenance of such implied easements”.

(b) 30 U.S.C. § 612 is amended by:

(i) adding at the end of subsection 612(b): “Provided further, that no state or political subdivision of a state shall have authority to regulate any prospecting, mining or processing operations upon federal lands within the boundaries of a federal mining claim(s) without the consent of the owner or operator.”

(ii) Adding a new subsection 612(d) as follows:

“Any federal unpatented mining claimant may petition the Bureau of Land Management if any member of the public or any state or federal agency action endangers or materially interferes with prospecting, mining or processing operations or uses reasonably incident thereto.”

### SECTION 102. SMALL MINER EXEMPTION

30 U.S.C. § 803 is amended to add the following two items at the end of the section:

“Provided, however, that operations without any employees, or who hire other non-mining work personnel, are exempt from the provisions of this Chapter and any regulations promulgated thereunder.”