

December 1, 2005

Janet Napolitano
State of Arizona

The Honorable Judd Gregg
Chairman
Senate Budget Committee
624 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kent Conrad
Ranking Member
Senate Budget Committee
624 Dirksen Senate Office Building
Washington, DC 20510

Brian Schweitzer
State of Montana

Dear Senators Gregg and Conrad:

Bill Richardson
State of New Mexico

We are writing to express our strong concerns with the House Mining Subtitle included in Deficit Reduction Act of 2005, which recently passed the House of Representatives. To reduce the federal deficit in the fashion crafted in this subtitle is to compromise the very intent of the budget reconciliation effort in a manner that threatens many of the West's special places including, for example, the Ironwood Forest National Monument in Arizona. In addition, it undermines local planning and the ability of the average citizen to enjoy the public domain.

Ted Kulongoski
State of Oregon

The budget reconciliation process has implicated many programs which are important to Western states. From rural health care to important agricultural stewardship provisions, the West stands to lose needed federal programs. In the face of these untenable cuts, the ill-conceived House Mining Subtitle provides equally untenable revenues. Unfortunately, the sale and patent provisions of the subtitle will net only paltry, short-term revenues and will serve to compromise the otherwise healthy stream of federal and state mineral royalties. In achieving only anemic gains to the federal treasury, the subtitle has the potential to permanently impact the surface landscape.

Christine Gregoire
State of Washington

Dave Freudenthal
State of Wyoming

The sale of "valid existing claims" within our national parks and other withdrawn lands alone serves to compromise the integrity of these areas that were reserved precisely to pre-empt such commercialization. These provisions, together with the potential sale of millions of acres of federal lands in the West will only complicate local community efforts to plan for future development and growth. Finally, with the privatization of public lands, the already constricted paths of public access will become even more constrained.

Of itself, the provisions of section 6202 of the House Mining Subtitle, which essentially allows for the patent, or sale, of both existing and new hard rock mining claims, is problematic. Functionally, 6 million acres of public land could be on the selling block if one considers the application of the section to existing claims alone. Existing claims include lands within our wilderness and national parks systems, and these areas are subject to the provisions included in this title. With the potential for new hard rock claims to be patented, untold other millions of acres could be up for sale. Even so, the language of section 6204 is still more disconcerting.

The federal and Western state treasuries have benefited greatly in recent years from increasing oil, gas and coal development. In 2004, the federal government and states split roughly \$2 billion in federal mineral royalties from such development. Traditionally, such royalties would not be of concern in the context of revisions to the Mining Law of 1872. However, in the wake of the changes contemplated in the House Mining Subtitle, Wyoming and other federal mineral royalty-dependent states, together with the federal government, have reason for concern.

Under section 6204 of the House Mining Subtitle, federal lands could be sold to “facilitate sustainable economic development.” While this language alone conjures visions of the recently released *Kelo v. City of New London* case, which upheld the use of eminent domain for “economic development,” section 6204 appears to be even more sinister in its intent. To this end, the language of the section allows for the sale of any land “contiguous to patented or unpatented mining claims or mill sites where mineral development, including mining, have been conducted as authorized by law or regulation and on which mineral development work has been performed.” With the broad definition for “mineral development work,” nearly any mineral-related activity qualifies such parcels for the sale provisions of section 6204. More striking, though, is the fact that these lands can be sold *even if no minerals exist on the land*. Thus, essentially if you stake a claim on *any* federal land not otherwise withdrawn (for a national park or national monument for example), survey the land, build a road or do something that has some connection to mining, you can not only purchase the staked federal land, but also any federal parcel contiguous to the staked land. As a local example, in Wyoming’s prolific gas fields on the Pinedale Anticline, one could stake a mining claim in the middle of the Jonah Field, not find any hard rock minerals as usually would be required under the 1872 Mining Law, build a road, and purchase not only the surface, but also the subsurface under the provisions of section 6204 of the House Mining Subtitle.

As mentioned previously, the sale of such properties as the Jonah Field, and no doubt all other lucrative oil, gas or coal fields currently situated on federal lands, would have a devastating effect on not only the federal government’s bottom line, but also that of the states. This is especially true when one considers that the House Mining Subtitle is only anticipated to net \$158 million over the course of the next five years, or about \$32 million per year – when, as discussed above, the federal mineral royalties currently generated on federal lands, most of which would probably be sold under section 6204, total more than \$2 billion annually. Even assuming that the

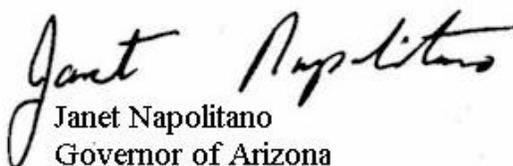
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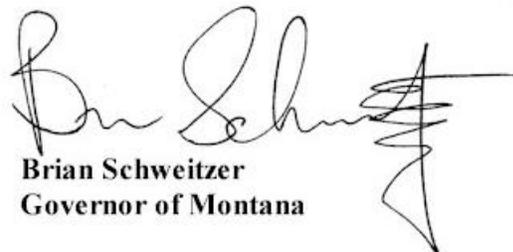
sale of such lands was somehow reasonable in the context of the loss of federal mineral royalties, which is nearly impossible, the "\$158 million over five years" figure seems astoundingly low, considering the likely valuation of such lands under a fair market value scenario. And it would be considered low, under a *true* sense of fair market value. Unfortunately, the House Mining Subtitle even skews this basic concept by expressly forbidding the consideration of the value of the mineral estate when calculating the "fair market value." (See section 6204 (e).) It seems that the House Mining Subtitle has taken the concept of deficit reduction and turned it on its head.

Beyond these seemingly absurd economics lays an issue which is almost more charged: access. In the West, those private lands that had historically been accessible by the average hunter, angler and outdoorsman are increasingly becoming closed to public access. As a result, the public lands have become essential to sportsmen and women. With the provisions of both sections 6202 and 6204, these public lands could be lost by the public to private ownership. With the liberal sale provisions of the House Mining Subtitle, pristine national forest and other public lands could be sold to developers. Specifically, as many as 6 million acres of public land could be sold under section 6202 and, with it, the public access that so many rely on. Even worse, section 6204 would open many millions of acres to privatization. In addition to the loss of access, wildlife habitat would no doubt be compromised under a regime where the 35-acre ranchette dominates the previously public domain. If there is any doubt, keep in mind that even under the *more conservative* provisions of the existing Mining Law of 1872, resorts, lodges, private homes and even a brothel were constructed. We have little doubt that under the more liberal auspices of the House Mining Subtitle that these previously egregious examples of breaches in the public trust will seem tame.

Therefore, we urge you to remove the House Mining Subtitle from the Deficit Reduction Act of 2005 and to once again reaffirm your commitment to the West by extending the patenting moratorium established in 1994. Theodore Roosevelt once said, "The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, not impaired, in value." In terms of both qualitative and quantitative impairment of value, certainly the House Mining Subtitle fails the late president's test of good public policy.

Best regards,

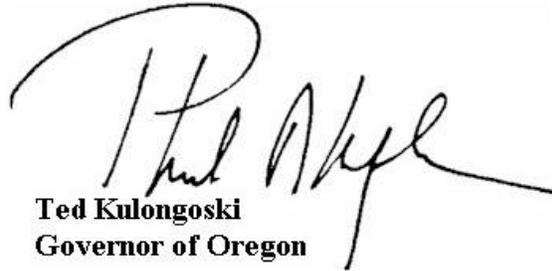

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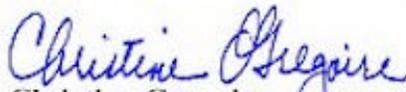
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