



## FY'19 NDAA HR 5515 RIDER: DIVISION E, NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION ACT

**Masquerading as “strategic and critical minerals” policy, this rider limits public input and oversight for the nation’s largest toxic polluter, the hardrock mining industry.**

### Division E Subverts the Public’s Role in our Governments’ Mining Decisions

#### NEPA Waiver

This rider does away with the well established National Environmental Policy Act (NEPA) process for all existing and new hardrock mine projects on public lands, including National Forests.

#### Shifting Burden to States

Instead, under-resourced state agencies will shoulder greater administrative burdens for permitting and environmental reviews- costing them more money while facing strict deadlines.



*Photo 1: Nevada Senator William Stewart  
father of the General Mining Law of 1872*

#### Section 4804. Lead Agencies: NEPA Waiver, Shifting Burdens to States, Roadless Rule exemption

- Section 4804(b) NEPA determinations
  - a. General - **NEPA is satisfied** where the lead agency determines that the state or other agency can adequately address:
    - i. Environmental impact
    - ii. Adverse environmental effects
    - iii. Possible alternatives to permit issuance
    - iv. Relation between long and short term environmental uses and the maintenance and enhancement of long term productivity
    - v. Any irreversible and irretrievable commitment of resources (by the mining company) and
    - vi. Some kind of public participation
- Section 4804(c) Permit Coordination
  - a. In general, the lead agency coordinates in order to:
    - i. Avoid duplicative reviews
    - ii. Minimize paperwork and
    - iii. Engage stakeholders and other agencies early on
  - b. Considerations- The lead agency shall consider:



- i. Deferring to or relying on State agencies for reviews, baseline data, and analyses
  - ii. To the maximum extent practicable, consultations and reviews occur concurrently
- c. Memorandum of Agency Agreement- lead agencies may enter in to memoranda of agreement with project sponsors, states, or other jurisdictional agencies
- Section 4804(d) Schedule for permitting process
  - a. General- When the lead agency cannot decide between NEPA or an alternative, the *mining company may force a scheduling agreement with deadlines* for:
    - i. Whether to do an Environmental Impact Statement (EIS) or an Environmental Assessment (EA)
    - ii. If so, the scope of the EIS or EA
    - iii. Scope and schedule for any baseline studies
    - iv. Preparation of a draft EIS or EA
    - v. Preparation for final EIS or EA
    - vi. Schedule for consultations- presumably endangered species, tribal consultation, etc.
    - vii. Schedule for reviewing public comment
    - viii. Publication of notices
    - ix. Any other final decisions
- Section 4804(g) Roadless Rule Exemption- In applicable National Forests, the lead agency must allow roads through Roadless Areas for mining.
- Section 4804(h) Applies to Existing Permit Applications for hardrock mining on Bureau of Land Management (BLM) and Forest Service (USFS) lands, primarily in the Midwest and West.

## What Minerals are Critical?

Division E defines nearly **any** mineral dug from the ground as a “critical” including common minerals like sand and gravel.

**Section 4803. Defining “Strategic and critical minerals”** as minerals necessary for:

- National defense, national security, energy infrastructure including pipelines, refining, power generation and transmission, renewable energy production, domestic manufacturing, agriculture, housing, telecommunications, healthcare, transportation infrastructure, or the economy, security, and balance of trade in the United States

## Division E’s One-Size-Fits-All Mine Permitting Deadline

**Section 4804(d)(2).** Time for Permitting Prcess, unless otherwise agreed: 30 months

Speedier permitting does not improve the quality of agency decisions. Even so, a 2016 Government Accountability Office (GAO) report<sup>i</sup> concluded that permit applicants create most delays.

## Research, Recycling, and Alternative Sustainable Metal Sources

The free market, academia, and public sector have embraced research, recycling, and alternative sustainable metal sourcing. The Department of Defense (DOD) maintains a stockpile of critical minerals already. The Department of Energy (DOE) hosts a critical minerals lab. Division E takes us in the wrong direction. What we need is mining reform, not more pollution and disenfranchisement.

<sup>i</sup> <http://www.gao.gov/products/GAO-16-165>

