November 8, 2005

Dear Representative:

On behalf of our millions of members and supporters who are also your constituents, we respectfully urge you to oppose the budget reconciliation package soon to come before the House. The package is fraught with harmful provisions that could significantly damage our public lands in the Rocky Mountain states and throughout the West. The bill requires the Secretary of the Interior to sell public lands, including National Forests and BLM lands, that contain or once contained mineral deposits. This harmful provision would open hundreds of millions of acres of our most treasured public lands for sale to private development. Another provision throws open whole new areas of the public domain that can be claimed by mining companies without regard to the value of these lands for mining or other uses, effectively allowing mining companies to mine in protected areas without regard to the public benefit that is served.

The bill also significantly changes the new Energy Policy Act provisions for oil shale and tar sands. These sections deem a Programmatic EIS for commercial oil shale or tar sands leasing "adequate" under NEPA *even before it has been written,* and exempt the next decade's lease sales from further environmental review. These provisions also eliminate local input into whether oil shale leasing should occur and direct the leasing of 35% of federal oil shale bearing lands – up to 2.5 million acres – in the first lease sale. Further, they impose a low royalty on oil shale and tar sands production, prematurely giving costly concessions for this unproven and environmentally risky development.

Please consider the accompanying fact sheet outlining these harmful provisions in further detail and oppose final passage of the budget reconciliation package. Thank you for your attention to this matter and for your support in maintaining existing protections for the air, water and landscapes of our western lands.

Sincerely,

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Harmful Mining-Related Provisions in the House Resources Committee Reconciliation

Subtitle B - Mining

This section, among other things, requires the Secretary of the Interior to sell public lands, including National Forests, deemed to contain "mineral deposits" and "depleted mineral deposits."

Overview

Since 1994, Congress has banned the "patenting" or sale of federal lands containing hard rock mineral deposits. Subtitle B of the House Resources Committee's reconciliation bill would revive this practice by allowing mining companies and others to "patent" mining claims on public lands for $1,000 per acre. However, unlike the old 1872 Mining Law, which required claimants to prove that a valuable mineral existed in order to obtain a patent, the House Resources Committee language eliminates that requirement. The provision therefore would allow claimants to obtain fee title to millions of acres of mining claims. In addition, the language requires the Secretary of the Interior to sell BLM and National Forest lands containing "mineral deposits" for $1,000 per acre. It allows the mining industry to take title to public lands without regard for the value of the land for other uses and without full compensation to the federal treasury.

Section 6201 revises a long-standing requirement of mining law that requires a determination that an area "claimed" for mining actually has a valuable mineral deposit. This section allows mining companies to secure the right to mine and the right to purchase the property as soon as they file a claim with the Bureau of Land Management and pay a small fee.

Section 6202 eliminates the current Congressional ban on the outright sale or "patenting" of public lands to those who have staked claims. Under this section, mining claims of up to 20 acres could be bought outright by claimants for $1,000/acre or fair market value, whichever is greater. "Fair market value," under this language, includes only the value of the surface and therefore it has no consideration of the value of gold, silver and other minerals under the surface. Mineral resources contained in the land are conveyed to the claimant, with no royalty returned to the federal government.

This section also specifically prohibits any other fees or fair market value assessments to be applied to "prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto" – which would prohibit the government from levying any royalty or other fee on mining operations.

Section 6203 throws open whole new areas of the public domain that can be claimed by mining companies without regard to the value of these lands for mining or other uses. The provision allows

the Secretary to approve a plan of operations without a "mineral examination report" for proposed mines in areas withdrawn from mining by Congress or federal land management agencies if there are already patented or unpatented claims contiguous to such areas where mining activities have occurred. The main reason our public lands are withdrawn from mining activity is to sustain the outstanding resource values these lands support. This provision allows mining companies to mine in protected areas without regard to the public benefit that is served.

Section 6204 is yet another way to sell off our National heritage. This provision requires the Secretary of the Interior to sell claimed "mineral deposits" on public lands for $1,000 per acre. During mark-up on October 26, the House Resources Committee exempted some – but not all – national interest lands from this and other provisions of Subtitle B. The areas exempted included: National Park System units; National Wildlife Refuge System unit; designated Wilderness Areas; National Monuments; Wild and Scenic Rivers; National and Historic Trails; and National Conservation Areas. However, the Committee did not exempt millions of acres of sensitive public lands from mineral deposit sales. This section also allows anyone who holds mining claims or mill sites where mineral development has been performed, as authorized by law or regulation, to purchase those lands. It also absolves the government of any liability concerning lands that are made private by this section and allows the U.S. government to not disclose or investigate the condition of the property before it is conveyed.

Section 6206 orders the Secretary of the Interior to issue final regulations to implement this subtitle (Subtitle B – Miscellaneous Amendments Related to Mining) **within 180 days of the passing of this act.**

<u>Amendments to Mineral Leasing Act</u>

Section 6514 would establish a Federal Energy Natural Resources Enhancement Fund with revenues derived from sales, bonus bids and royalties from onshore and offshore gas, mineral, oil and other energy exploration and development. The Fund would be used to finance efforts of federal wildlife and natural resource agencies to deal with the impacts of energy development. By tying funding of these agencies to drilling, this section would create an inherent conflict between protection of wildlife habitats and other natural resources and agencies' needs to generate operating revenues.

Section 6519 is a stealth provision hidden in the "Ocean Energy Resources" subtitle when it clearly applies to *onshore* oil and gas exploration and development. It amends section 226(g) of the Mineral Leasing Act, which governs surface-disturbing activities proposed for onshore leases covering Department of Interior and National Forest lands.

Section 6519 establishes unrealistic timelines for federal agencies to review drill permit applications. It would re-open provisions of the recently enacted Energy Policy Act and require that the Bureau of Land Management "rush to judgment" in considering oil and gas drilling permits. Section 6519 appears to leave little or no room for agencies to receive input from state and local governments, sister agencies, Indian tribes, private landowners or the public. Congress should not act on section 6519 until the intent and effect of these provisions have been discussed by agency experts and other stakeholders at hearings.

6519 purports to limit environmental compliance to the laws applying on the date the lease was issued. Oil and gas companies would only be required to comply with laws and regulations in place when the lease was issued – not more current, protective measures. Because many oil and gas leases were issued decades ago, they lack many of the environmental protections that current leases contain.

6519 could create a management nightmare and slow processing of drilling permits because the same body of law and regulations would not apply to all leases. A strict interpretation of this provision could bar application of any of the new provisions of the Energy Policy Act of 2005 to leases that were entered before the Act was passed. The American public will not accept turning back the clock

by managing new drilling without the environmental protections or other reforms legislated by past Congresses.

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Subtitle D – Oil Shale

Section 6401 significantly changes the new Energy Policy Act provisions for oil shale and tar sands.

(1) It deems a Programmatic EIS for commercial oil shale or tar sands leasing "adequate" under NEPA *even before it has been written,* and exempts the next decade's lease sales from further environmental review.

Section 369 of the energy act directed the Interior Department to complete a Programmatic Environmental Impact Statement (EIS), analyzing the impacts of a commercial oil shale and tar sands leasing program, within 18 months of the bill's enactment**.** Section 6401(a) of the House bill declares that this Programmatic EIS "is deemed to provide adequate environmental analysis" for all oil shale and tar sands lease sales conducted for the next ten years. To date, the Interior Department has not even begun to develop this EIS. Because oil shale has the potential for significant impacts to the land, air, water, and communities affected, the new leasing program and individual lease sales must receive careful scrutiny and should not be given a ten-year pass from further environmental review.

(2) Eliminates local input into whether oil shale leasing should occur and directs the leasing of 35% of federal oil shale bearing lands – up to 2.5 million acres – in the first lease sale.

The Energy Policy Act of 2005 directed the Secretary to consult with Governors, local governments, Indian tribes, and the public, prior to developing an oil shale leasing program to determine the level of support and interest in the development of oil shale and tar sands resources. Section 6401(a) of the House bill eliminates this provision and directs the Secretary to offer for lease 35% of oil shale and tar sands bearing federal lands in Colorado, Utah, and Wyoming within a year of the agency's adoption of leasing regulations.

(3) Imposes a low royalty on oil shale and tar sands production.

Section 6401(c) of the House Resources Committee's reconciliation bill would cap the federal royalty rate at 3 percent of the gross value of production for the first ten years of production. Thereafter, royalties are capped at 6-9 percent. By contrast, the royalty generally charged for conventional oil and gas development on public lands is 12.5 percent, which has earned the federal government hundreds of millions of dollars over the years. Though the bill provides that 50 percent of royalty revenues are to be shared with affected states and municipalities, the royalty reduction measures in the bill needlessly take away revenues necessary for these local bodies to deal with the serious social and environmental costs of this new industry in their midst.

For more information, please contact:
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