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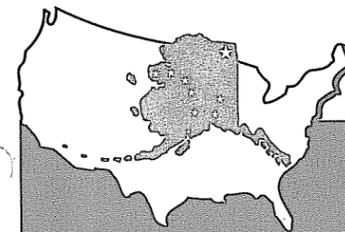
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## Resource Review

April 1993

A monthly publication of the Resource Development Council, Inc.

# Mining Law reform

*Bumpers, Rahall bills would bring American industry to its knees*

Legislation to repeal the federal Mining Law of 1872 is advancing in the U.S. House and Senate, despite warnings by top mining executives and independent economists that it could cost the federal government millions of dollars in lost revenue and as many as 30,000 jobs in mining and related industries.

"The economic consequences of H.R. 322 would be staggering," Douglas C. Yearly, Chairman of Phelps Dodge Corporation, said in testimony last month before the House Subcommittee on Energy and Mineral Resources, which is considering H.R. 322, (Continued to page 4)

**Craig introduces new bill in Senate to reform Mining Law**

*Legislation offers "honest and fair" answers*

Senator Larry Craig (R-ID) has introduced new legislation that would amend the Mining Law of 1872, but retain the existing claim location and patent system under the law.

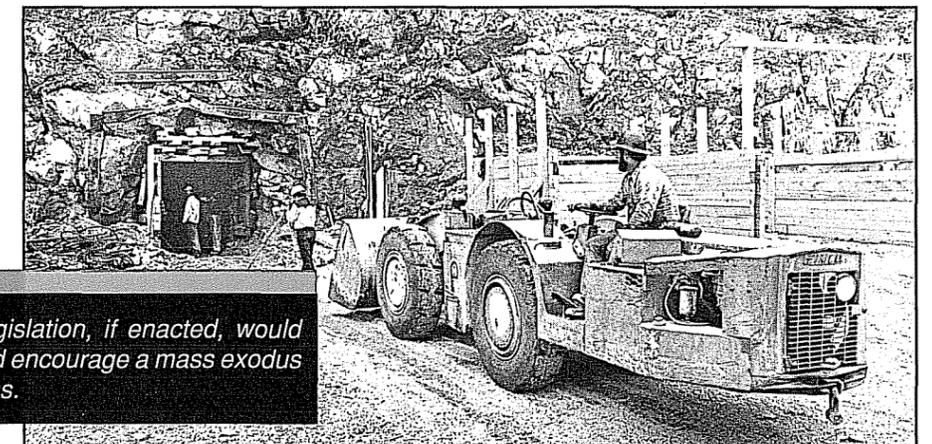
Cosponsored by five other Republican senators, including Alaska's Frank Murkowski, S. 775, the Hardrock Mining Reform Act of 1993, was introduced in the Senate April 5. Craig said the bill offers "an honest and fair legislative answer to the numerous concerns that had been raised pertaining to the current mining law." Craig stated his full support for the bill which he claims will keep mining jobs in America.

The new legislation includes a 2 percent net royalty as opposed to an 8 percent gross royalty on production called for in other legislation.

(Continued to page 3)

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*Bumpers and Rahall legislation, if enacted, would derail plans for new mines and encourage a mass exodus of exploration dollars overseas.*

Fjord Photo, Ketchikan

## AMEREF: A vital partnership in education

Recognizing that education doesn't operate in isolation, educators and industry have formed a partnership in the Alaska Minerals and Energy Resource Education Fund (AMEREF) to help students learn about Alaska's minerals and energy resources. AMEREF was established in 1982 and during the past ten years it has provided the Alaska Resource Kit: Minerals and Energy to private and public schools throughout Alaska. It has become a very important and effective program on resource education.

With enrollment increasing, the need for funds and personal involvement in AMEREF grows daily. When calculating your budget and planning for estate contributions, please consider making an investment in Alaska through AMEREF.

AMEREF recently received contributions in the memory of Peggy MacFarland and Tom Pittman. AMEREF wishes to express its gratitude for the generosity of Cole MacFarland, Rita Sholton and Mr. and Mrs. Richard Orr.

For additional information, please call Carl Portman at 276-0700.

## RDC board to join miners in Juneau



### Message from the Executive Director

by  
Becky L. Gay

In April, members of the RDC Board of Directors are meeting in Juneau in conjunction with the Alaska Miners Association convention.

RDC is very supportive of the mining industry, evidenced by its close working relationship with AMA and its new management of AMEREF. RDC is very active in a multitude of issues affecting mining, including the Mining Law, RS2477s, transportation corridors, inholder access, land management plans, wetlands and the Clean Water Act. Its legislative agenda and the strong representation of mineral "types" on the RDC board are further evidence of RDC's commitment to a strong minerals industry in Alaska.

Put plainly, RDC has a strong history working mining issues on behalf of its membership. But you can be sure, RDC doesn't focus all its effort on legislative or administrative matters.

RDC's main work for the mining sector, as well as other producing sectors, is educational. This month's newsletter is just one example of the public education effort RDC generates on the often misunderstood, sometimes maligned, mining sector. That's why RDC jumped at the chance to help AMEREF continue its vital work. Integrating resource education into curriculums at every level of learning is a mission for all of us, including RDC.

Carl Portman, RDC Communications Director, handles AMEREF matters and will be making presentations on AMEREF

activities during the Juneau trip. Please take the time to check out the AMEREF booth and buy a few raffle tickets for the good cause!

While in Juneau, RDC board members will meet with legislators to discuss issues of interest and concern as the legislature enters its final days. Before the legislature adjourns early, RDC is urging foremost that there is a **mental health lands settlement**.

RDC supports legislative action to fix the problem, rather than a judicial approach. A settlement which includes some original trust land, a long-term funding mechanism for mental health programs and removes the cloud of title from other lands, including hypothecated lands, proposed substitute lands (PSLs) and the so-called "moms and pops" is paramount.

RDC supports the concept of **exploration licensing**, also known as large block leasing, to augment the present oil and gas competitive leasing program. With regard to **ANWR education and advocacy**, RDC supports legislative action to open the 1002 study area lands for oil and gas exploration and development, work to stop Wilderness designation and funding to educate and lobby at the national, state and local level.

RDC supports **exploration incentives** such as tax credits for eligible wells and geophysical work in under-explored areas. RDC supports continuation of the **Alaska Minerals Commission**. RDC believes in a healthy coal industry and supports an **Alaska coal policy** to clarify the official state position on coal development.

These are just some of the subjects which RDC will be discussing as the adjournment package becomes more defined.

I urge all RDC members who can to attend Conference Juneau and meet with legislators and each other to reinforce RDC's ongoing efforts to make Alaska a better place to do business and have a future in resource development. See you there!

The Resource Development Council (RDC) is Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in an orderly manner and to create a broad-based, diversified economy while protecting and enhancing the environment.

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Writer & Editor  
Carl Portman

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## Overhaul of Mining Law likely this year

(Continued from page 5)

"The miner creates new wealth, creates jobs in America, pays income taxes, property taxes, and permit fees," Borell said. "He buys equipment and supplies so others pay taxes and he provides domestic metals to the manufacturing industry which helps our balance of payments and reduces the trade deficit as compared to buying the metals from other countries."

What the administration and Congress need to do is find ways to encourage exploration investment and creation of new jobs in the U.S., Borell said. "America could be a net exporter of nearly all metals, however, ill-conceived initiatives are forcing the mineral industry to leave the country just as they forced much of the oil industry to leave. At the same time, other countries are changing their laws to encourage outside investment and mineral development."

Royalties on the gross value of production are not common abroad. Bolivia, Chile and Mexico have recently eliminated royalties. Likewise, most private lease arrangements specify some sort of profit-sharing arrangement in lieu of a royalty on gross production. The reason for this shift is that royalties are considered bad public policy and bad business practice.

In 1974, British Columbia instituted a 2.5 percent gross royalty that virtually killed what had been a thriving and diverse industry. It took many years after the royalty was repealed for the industry to recover, but it has yet to return to its pre-royalty level.

Over the past three years, there has been a steady flow of exploration investment out of the U.S. and into Latin America, Indonesia and Russia. With massive revisions looming over the Mining Law, that flow could turn into a mass exodus of investment dollars out of the country. And with exploration occurring elsewhere, new mines will be built elsewhere.

The Rahall measure enjoys popular support in the House, where it is expected to be approved later this spring. However, there are obstacles in the Senate to the enactment of a comprehensive reform bill.

Preservationists are pressuring the Clinton administration to place its support squarely behind the efforts of Reps. George Miller, Rahall and Sen. Bumpers in order to boost the chances of reform legislation. However, the administration claims it will be flexible in dealing with the issue. Democratic senators from the West recently voiced concern to Clinton that his policies and the pro-

posed reforms to the Mining Law would harm the West more than other regions of the country. Clinton reportedly told the senators he would not want to do anything that would cost jobs since his long-term goal is to create jobs.

Meanwhile, mining companies, small independents and western public land groups, such as RDC, the National Inholders Association and People for the West, are redoubling efforts to build strong grassroots support in defense of the Mining Law. Chuck Cushman of the National Inholders Association said there is a chance for a reasonable reform law, but only through strong grassroots support.

While consensus on the issue appears far off, Democrat and Republican leaders of the Senate Energy and Natural Resources Committee called for taking the issue to a Senate and House conference committee where both sides could cut a deal behind closed doors.

"There is no question a bill will pass," said Borell. "It's a matter of what it's going to look like." *Editor's Note: The AMA is urging Alaskans to help build grassroots support on the Mining Law issue by contacting friends and business associates in California, Oregon, Idaho, Montana, Utah, New Mexico, Colorado, South Dakota and states east of the Mississippi. RDC members are urged to participate in this program. For details, call 276-0347.*

### What are the dangers of restricting mineral exploration?

North America produces more metal and mineral products today than any other region of similar size. Domestic demand for minerals continue at an astonishing rate. Sales of metals and minerals, and the competitive products manufactured from them are an important source of export income for the United States. If mineral exploration is severely restricted or if unreasonable burdens are placed on mining so as to make investment unattractive, the number of new mineral finds will dwindle, damaging the economy and the ability of America to provide minerals for its own use.

### Is the Mining Law current enough to serve a modern industry?

Yes. The Mining Law of today is much different than the original law adopted in 1872. Over the course of its long existence, the Mining Law has evolved through a series of substantial legislative, judicial and administrative modifications. More than 37 statutes have been enacted that either directly amend the original Mining Law or apply to operations conducted under it. This evolution of the original Mining Law demonstrates that the statute has the flexibility to accommodate modern public land management.

### Does the Mining Law take the environment into consideration?

Environmental laws enacted in the past two decades have had a profound effect upon activities under the Mining Law and provide a good example of the flexibility inherent in the Mining Law and how it adapts to changing circumstances. Activities under the Mining Law are subject to a variety of environmental requirements, including federal, state and local laws.

# The Mining Law: Facts and Answers

## What is the Mining Law?

The Mining Law is a mineral acquisition statute designed to promote exploration and development of minerals on public lands. The Mining Law permits an individual or corporation to enter the public domain lands, except those that have been closed to mineral entry, to explore for minerals.

## What minerals are affected by the Mining Law?

The Mining Law is generally considered to cover locatable minerals that are found on public lands such as gold, silver, cinnabar, lead, zinc, tin and copper. As a general rule, all valuable metallic mineral deposits are locatable, along with a large group of nonmetallic minerals. The law does not include leasable and saleable minerals such as oil, gas, coal, oil shale, sodium, potassium, phosphate and common varieties of sand, stone and gravel.

## How does a miner stake a claim under the Mining Law?

Under the law, an explorer may stake a claim, which is a valid property interest. Although title remains in the federal government, an unpatented claim gives an exclusive right of possession for mining purposes only. To maintain an unpatented claim, the Mining Law requires an annual \$100 per claim rental payment. A mineral discovery with a reasonable prospect of success is the prime requisite for the establishment of a valid claim.

## How does a miner obtain title to claimed land?

Before a miner can patent the claim, he must first prove a mineral discovery on the claim. Such action demands a very specific, time-consuming, exacting and expensive process. To obtain title to land covered by a mining claim, the claim holder must apply to BLM for the patent. If the claim holder has met all legal requirements and BLM validates the discovery, the patent is issued.

## How much public land has been patented by miners?

Since 1872, only 3 million acres of public land have gone into private ownership under patent. By comparison, 288 million acres of public lands have been converted to private ownership as agricultural homesteads and 94 million acres of public lands were given as land grants to the railroads.

## Why is access to public land so important to mining?

In order for the United States to remain a viable world leader and to ensure that American citizens continue to enjoy a high standard of living, the public domain must remain available for mineral exploration. Access to public lands is of critical importance to maintaining an assured domestic supply of strategic and critical minerals in the future.

## Where are minerals found?

Mineral resources are developed only where they exist as small, isolated geologic quirks of nature. The minerals industry must constantly seek out increasingly scarce new supplies to replenish those that are consumed. Only a very small percentage of prospects develop into producing mines. In order to develop one mine, it is sometimes necessary to explore as many as 10,000 mineral prospects. To mine a discovered orebody, there is no alternative location for the site.

## Why do miners need secure land tenure?

In today's competitive global environment, banks are reluctant to lend capital unless a mining company has secure rights to develop a discovery. The financially risky nature of mineral exploration and development is why miners need secure tenure — the assurance that they can continue mining without fear of losing their right to extract minerals from deposits on public lands after extensive investments in time and money.

## What happens when a mineral discovery is made?

Once a true discovery is made and the patent is granted, the claim is subject to commercial development in compliance with federal, state and local environmental laws.

(Continued to page 7)



## Thoughts from the President

by Paul S. Glavinovich

# Mining Law and the economy

At the request of several Western senators, President Bill Clinton has withdrawn his proposal for a 12.5 percent gross royalty on locatable minerals that was included in his current budget plan. The President's action provides some additional time for the mining industry to continue its effort to educate Congress on the economic implications of the proposed legislation, H.R. 322 and S.B. 257.

Both of these bills include an 8 percent gross royalty, plus extremely complex land management language that would make it impossible for all but the financially strongest mining corporation to continue exploration upon the public lands. It is a given in the industry that most ore deposits are found by small exploration syndicates or individuals; these groups would virtually be eliminated. The specifics of the proposed legislation and the effects that it will have upon the U.S. mining industry are the subject of the lead article of this Resource Review.

The assertion that the U.S. mining industry will seek opportunities offshore is not idle speculation, it's now happening as industry moves its exploration dollars to Mexico and South America. The political stability of the U.S. that had historically attracted the large capital investment requisite to new mine development is beginning to fade. President Clinton and Vice President Al Gore have publicly embraced the Bumpers and Rahall legislation and Secretary of the Interior Bruce Babbitt recently spoke against the "privatization" of the

## New mining bill offered in Washington, D.C.

(Continued from page 1)

"Even at 2 percent, Craig's bill will cost the mining industry millions of dollars," said Bob Webster, Special Assistant to the President of the American Mining Congress. "Definitely there is a sting and bite to this bill, but it represents a preferred approach in terms of patenting and reclamation issues," Webster said. "It doesn't have everything we want, but its concepts offer better solutions than Bumpers bill."

The Craig legislation provides for payment of fair market value for the surface of lands patented under the Mining Law. It also assures mined lands are reclaimed in concert with state and local reclamation authorities. In addition, it estab-

## World-wide mining royalty and tax comparison

Compares major mining countries on each continent

Country	Metal-mining royalties	Corp. income tax
Mexico	Royalties abolished in 1991	35%
Canada	No royalties	45%
Argentina	Royalties being cut to 3%	30%
Bolivia	No royalties for new mines	30%
Brazil	0.2% to 3% paid to states	30-35%
Chile	No royalties	35%
Indonesia	Negotiable, 1 to 2%	35%
Philippines	5%, to be cut to 2% by pending bill	35%
New Guinea	1.25%	35% +
Zimbabwe	No royalties	42.5%
Ghana	3% to 12%	45% +
USA	8%	34% + state

(Public lands, under proposed death-of-mining bills)

Ranking of USA - Worse than New Guinea, tied with Ghana

Compiled by Dr. Fred Barnard, Mining Evaluation Profiles

mining industry. Such public policy is in stark contrast to that of other countries with a mineral endowment that are actively seeking mining investment and have either abolished any royalty to the government or substantially reduced such payments.

Dr. Fred Barnard recently compared the royalty and tax structure of twelve countries that have a major mining industry. He concludes from his review that the United States, under Rahall or Bumpers, would be tied with Ghana as the nation with the highest royalty and tax structure imposed on mining. Barnard's comparison addresses only royalty, he does not compare the onerous land management and environmental tenets of the proposed federal legislation that will immediately provide a strong disincentive to the exploration industry.

In one of my earlier columns (June 1992), I made the statement, "If Congress passes a new mining act along the line of the Bumpers and Rahall bills, the effect of such legislation will not affect the general public for at least ten years or until the ore from America's current producing mines is exhausted. At that time, however, there will be no new deposits in the mineral pipeline and the U.S. may look forward to being a hostage to foreign sources for our metals, not unlike the situation that we face today with petroleum products." I would love to be wrong.

lishes a hardrock reclamation program for abandoned mines.

The legislation also requires a plan of operation for all but minimal disturbances. The plan must follow state and federal environmental laws, and there are penalty provisions included in the legislation.

The new legislation establishes a royalty of 2 percent on net value of minerals measured at the mouth of the mine — minus costs of mining, exploration, development and processing expenses. S. 775 also sets up a \$25 location fee for each claim and a \$100 annual claim maintenance fee with a small miner exemption.

# Staggering consequences

## Mining Law reform could deliver lethal blow to American mines

(Continued from cover)

the Minerals Exploration and Development Act of 1993. Yearly is Vice Chairman of the American Mining Congress.

"Any revenue raising measures or changes to our costs or our ability to mine on public lands must be carefully weighed against the potential negative impacts on the economy of this country," Yearly said. "Increasing costs in the United States or eliminating access to federal lands will lead to less U.S. production, more imports, fewer jobs and an increased trade deficit."

H.R. 322 is sponsored by U.S. Representative Nick Rahall (D-WVa). Senator Dale Bumpers (D-Ark) is sponsoring nearly identical legislation, S. 257, in the Senate.

Among other things, the bills would:

- Continue the \$100 claim rental fee, increasing it over time.
- Establish an 8% gross royalty on all production.
- Eliminate patenting
- Institute a new claim filing and recording system.
- Encourage citizen suits against projects
- Duplicate existing environmental laws.

At front and center of the new legislation is the imposition of a gross royalty on all mineral production, even though Congress has already imposed a claim rental fee for two years that is estimated to raise as much as \$55 million annually. However, economic analysis of proposed royalties on

hardrock minerals mined from public lands show a large net revenue loss to the federal treasury.

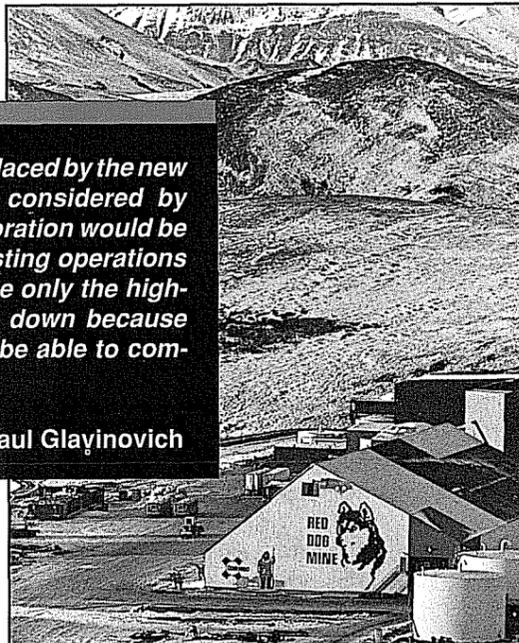
In testimony before a Senate panel on March 16, representatives from the Congressional Budget Office said estimates of royalty revenue are inflated because the Clinton administration and Congress failed to take into account declines in the industry the tax would bring. And a Washington-based economist said that the royalty, by causing mining companies to fold and jobs to be lost, actually would cost the federal government more than it would raise, when lost corporate and individual income tax revenues are considered.

Washington economist Michael Evans said the 8 percent royalty sought in legislation would cost 17,800 jobs and reduce net revenue to the Treasury

**"If the Mining Law is replaced by the new legislation now being considered by Congress, mining exploration would be driven abroad, and existing operations would be forced to mine only the highest-grade ores or shut down because they simply would not be able to compete."**

Paul Glavinovich

Photo for Cominco by Myron Wright

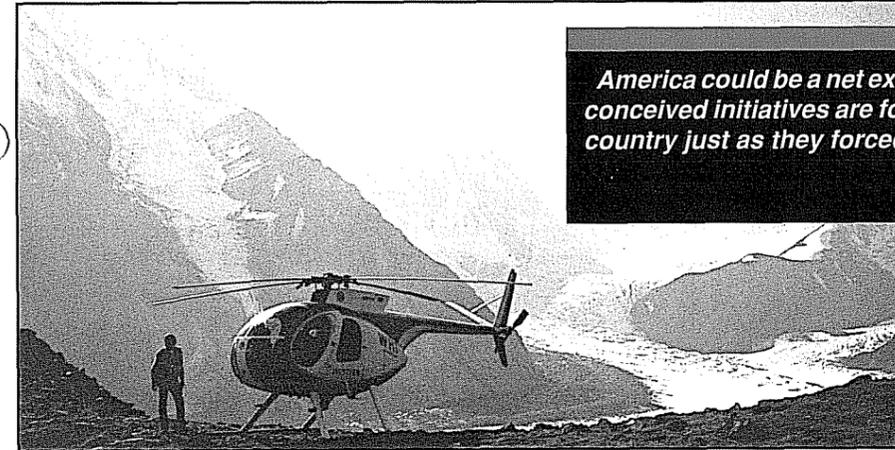


**"It is a gross misrepresentation of fact to say that all the miner has to do is stake a claim and pay \$2.50 per acre. The patent fee is really more of an administrative transfer fee which represents a minuscule part of the total expenditures required. Before a miner can patent the claim, he must first prove the claim to federal standards, an action which demands a very specific, time consuming, exacting, arduous and expensive procedure."**

Paul Glavinovich

**America could be a net exporter of nearly all metals, however, ill-conceived initiatives are forcing the mineral industry to leave the country just as they forced much of the oil industry to leave."**

Steve Borell



by \$505 million a year by 2004. An earlier independent study by the accounting firm of Coopers & Lybrand and the law firm of Davis, Graham & Stubbs showed that a 5 percent royalty proposal in previous legislation would have cost between 10,000 and 30,000 jobs and millions of dollars of lost revenue to the Treasury.

The legislation holds staggering consequences for a fragile Alaska mining industry which is struggling to cope with heavy regulations and other cost controls. Mining officials in the 49th state fear the legislation, if enacted, would bring the industry to its knees and derail plans for new mines. They warn it would also kill future exploration of the state's rich mineral belts, precluding development of new mines.

"If the Mining Law is replaced by the new legislation now being considered by Congress, mining exploration would be driven abroad, and existing operations would be forced to mine only the highest-grade ores or shut down because they simply would not be able to compete," warned Paul Glavinovich, President of the Resource Development Council.

Glavinovich, a geologist who has worked in the minerals industry for over 27 years, noted that mines in Alaska and elsewhere operate under extremely tight margins. He pointed out that metal prices are determined on the international market and new costs cannot be passed on to the customer. If a mine loses money because of the added costs brought on by the new legislation, it must close.

Opponents of the Mining Law claim patenting of mineral resources cost the

miner only \$2.50 per acre, and that the law does not include environmental protection standards. Glavinovich, however, pointed out the Mining Law was never meant to be an environmental law, of which there are now dozens, including the federal National Environmental Protection Act, the Clean Water Act, the Clean Air Act and various state reclamation laws which the miner must meet. He also said it is a gross misrepresentation of fact to say that all the miner has to do is stake the claim and pay \$2.50 per acre.

"The patent fee is really more of an administrative transfer fee which represents a minuscule part of the total expenditures required," Glavinovich explained. "Before a miner can patent the claim, he must first prove the claim to federal standards, an action which demands a very specific, time consuming, exacting, arduous and expensive procedure. As a result, the costs of patenting can often be very high."

In Alaska it can easily cost several thousand dollars an acre to patent a claim. In one case, it cost \$2.2 million to patent 20 claims, running \$5,500 an acre. Because of land management restrictions, that deposit is still not in production. In another Alaska venture, the cost to patent 32 lode claims totaling 647 acres was over \$11 million, equating to \$16,699 per acre. That project is also not yet in production due to permitting delays and commodity prices.

The key principle of the 1872 Mining Law allows citizens the right to enter public lands, explore for minerals, and upon discovery, perfect ownership of the mining location. The result is that private citizens and companies are now

willing to expend large amounts of time and money to explore for minerals on public lands at no cost to the government.

This is the same approach America uses with inventions. The person who spends their time and money and discovers what was previously an unknown product or process gains an equity right to future use of that product or process. For minerals, the person that expends their time and money and discovers what was previously an unknown mineral deposit gains an equity interest in that mineral deposit.

The Rahall and Bumpers legislation would deprive the successful miner of the opportunity to own the minerals and have a secure tenure or title.

"The bills being considered by Congress would forever destroy the principles of the Mining Law and replace it with a system in which only large corporations could assume the risks and participate," said Steve Borell, Executive Director of the Alaska Miners Association. "The independent prospector and geologist would be history."

Secretary of Interior Bruce Babbitt predicts the overhaul of the Mining Law will be completed later this year. In congressional hearings on the legislation last month, Babbitt expressed a desire to have comprehensive reform in 1993. He supported the broad thrust of H.R. 322 and urged Congress to enact legislation as soon as possible to require new patents to pay a royalty interest for any production that occurs. Another option, he said, could include a severance tax on production from any mineral deposit that was "patented out of federal ownership in recent years."

Borell disagrees with Babbitt's view of mining not providing a fair return to the government.

(Continued to page 7)