

February 1, 2017

The Honorable Donald J. Trump
President of the United States of America
1600 Pennsylvania Avenue, NW
Washington, DC 20500

**RE: American Jobs, Mining, and
Military Readiness**

Dear Mr. President:

We would like to offer our sincere congratulations on becoming the 45th President of the United States of America. It is refreshing to see how much you have accomplished in only a few weeks and we look forward to what you have in store for America.

We are writing to you as the Minerals and Mining Advisory Council (MMAC), a group representing thousands of miners in traditional Mining Districts spread across twenty-one states.

A 2010 report by the US Geological Survey (last updated in 2016) declared we are dependent on foreign governments, including many who are not our friends, for approximately 92% of our critical metals and minerals. Reliable American sources of rare-earth minerals and strategic critical minerals and metals is a matter of National Security.

Access routes have been blocked off by the Forest Service and others. Millions of acres of public lands, including those with valuable minerals and metals, have been designated for study, wilderness, national monuments, habitat, wind or solar power, and more.

There has been an ongoing effort by miners and Mining Districts throughout America to provide constructive comments and recommendations based on sound science and best management practices to the Forest Service, Bureau of Land Management, Environmental Protection Agency, and additional federal agencies during the rulemaking process. However, our comments and recommendations are ignored while those in charge continue with their own obstructionist agenda.

As you know from experience, this conflict also arises when dealing with various state agencies and unelected boards.

American miners and our military are in need of your assistance to restore the balance of power. Tens of thousands of miners—coal miners, gold miners, and rare-earth miners—are waiting and ready to get back to work and put America first.



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At one time miners and Mining Districts in the United States of America were on a level playing field with federal agencies. Mining Districts have been around since the mid-1800s and there are literally thousands of Mining Districts across America. Some members of Congress are unaware that Mining Districts are congressionally ratified entities that were included in the 1872 Mining Law and are still active today, though their authority has been largely ignored.

Virtually anywhere a valuable mineral, metal, or rare-earth deposit has been found, a Mining District was created. They provided self-governance and successfully worked alongside federal agencies for many years. Conflicts arose when the federal government began shifting some of the oversight responsibilities to various agencies at the federal and state level and traditional Mining Districts were intentionally left out of the loop.

Over the past two years we have met and worked with miners in Mining Districts across America to find out what miners need to get back to work. We also met with individual members of Congress and several committee members, including the House Committee on Natural Resources and the Armed Services Committee, on our proposals to fix this urgent need for our military readiness. Additional help from Myron Ebell and General John F. Kelly associates was much appreciated. While we have garnered much support and have made significant progress, it has been a painfully slow process.

We urge you to consider the following materials and to consider an Executive Order to put American miners back to work, reopen closed areas and access routes, re-establish federal recognition of traditional Mining Districts, and keep our military supplied with the strategic critical metals and minerals they need to remain the best in the world.

We are in Washington, DC, from February 4 through February 10, 2017. We would be honored to meet with you and your staff during this time and we welcome any questions, thoughts or concerns you might have regarding this important matter.

Respectfully,

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Scott Harn
Editor/Publisher
ICMJ's Prospecting and Mining Journal

Clark Pearson (Ex National Advisor)
Legal Researcher
MMAC National Advisor

Att: Draft Executive Order, written by MMAC Legal Researcher Clark Pearson, mirrors former President Ronald Reagan's 1988 EO 12630.

Executive Order _____

Governmental Actions and Interference With Constitutionally Protected Mining
Property Rights

Dated _____

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard to National Security and the basic raw material needs of the Nation and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose. (a) A reliable source of rare earth minerals and strategic critical minerals and metals is a national security objective, pursuant to 10 U.S.C. § 2501(a)(9). The United States has become up to 92% dependent upon foreign sources of rare earth minerals and strategic and critical minerals and metals, a market, which is dominated by Chinese and third world producers that the United States has in world dominating quantities. In spite of possessing potentially vast domestic supplies of rare earth(s), minerals and strategic critical minerals and metals, extraction of such metals and minerals is prohibitively obstructed and destroyed by the over regulation and conflicting land designations upon mining properties and the access roads, pathways, and trails leading to these mining sites. The ability to access and extract rare earth minerals and strategic critical minerals and metals from these mining sites would directly secure materials for the supply chain feeding the defense industrial base and advance a national security interest set forth in 10 U.S.C. § 2501. Before and In a time of war, the Department of Defense should ensure that access to domestic resource is guaranteed to avoid interruption for the defense industrial base.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected Mining Rights codified under 30 U.S.C. § 22-54. Executive departments and agencies should review their actions carefully to prevent unnecessary material interference as provided by 30 U.S.C. § 612(b) and should account in decision-making for those actions that are subordinate statutory mandate without national security imperatives.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on Mining Rights resulting from governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments, local Mining

Districts and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance and Unanticipated Takings of Mining Rights to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than _____, and shall be disseminated to all units of each Executive department and agency no later than _____.

Sec. 2. Definitions. For the purpose of this Order: (a) "Policies that have Mining Rights implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect an undue material interference, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on the exercise of Mining Rights, or that require dedications or exactions from these private mine owners of their mineral estates. "Policies that have Mining Rights implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of mining property;

(2) Studies or similar efforts or planning activities;

(3) Communications between Federal agencies, local Mining Districts or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regarding mining property regardless of whether such communications are initiated by a Federal agency, local Mining District or department or are undertaken in response to an invitation by the State or local authority;

(4) The placement of military facilities or military activities involving the use of Federal property alone; or

(5) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Mining Property (claimants) refers to all patented and unpatented mining property owners protected by the Just Compensation Clause of the Fifth Amendment (Takings); Including a U.S. citizen or U.S. Corporation who/which owns the mineral rights pursuant to the U.S. Mining laws on a tract of public or federal land, recognized under 30 U.S.C. §§ 22 - 54.

(c) Mining District refers to the local independently organized governing authorities, recognized by the Department of the Interior through a Memorandum of Understanding (MOU) with the Bureau of Land Management (BLM), for the future joint and exclusive minerals and mining management on the public and federal lands of the United States, recognized under 30 U.S.C. § 22; subject to other federal and state laws the local Mining Districts determine, do not unreasonably materially interfere with mining claimants right to possess, explore, prospect, develop and extract, pursuant to 30 U.S.C. § 612(b).

(d) Minerals & Mining Advisory Council (MMAC) Recognize MMAC, as the principal U.S. based company for certifying and coordinating traditional Mining

Districts within the United States for the purpose of Federal recognition. MMAC is responsible for assisting the Mining Districts in all matters pertaining to the proper administration; maintenance of the Mining District, and population of the mineral and metal reserve database (Federal and private mineral inventory) maintained in the U.S. Geographic Information System (GIS).

(e) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific mining property, of Federal governmental actions physically invading or occupying mining property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

- (1) Actions in which the power of eminent domain is formally exercised;
- (2) Studies or similar efforts or planning activities;
- (3) Communications between Federal agencies, local mining Districts or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating mining property regardless of whether such communications are initiated by a Federal agency, local Mining District or department or are undertaken in response to an invitation by the State or local authority;
- (4) The placement of military facilities or military activities involving the use of Federal property alone; or
- (5) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

Sec. 3. General Principles. In formulating or implementing policies that have mining property implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the mining property owner.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of the mining property, and regulations imposed on mining property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same mining property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which mining property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of mining property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of mining property should be scrutinized to avoid undue or unplanned burdens on the mining owner.

Sec. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have mining property implications:

(a) When an Executive department or agency requires a mining party to obtain a permit in order to undertake a specific use of, or action with respect to, mining property, any conditions imposed by the granting of a permit shall:

- (1) Serve the same purpose that would have been served by a prohibition of the use or action; and
- (2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of mining property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of mining property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating mining property use for the protection of public health or safety, the Executive department or agency involved shall coordinate with the local Mining District, as no federal agency regulation shall have force and effect without the written consent of the local Mining District.

Sec. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the mining property implications of proposed regulatory actions and address the merits of those actions in light of the identified mining property implications, if any, in all required submissions made to the Office of Management and Budget. Significant mining property implications should also be identified and discussed in notices of proposed rule-making and messages

transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the mining property issues.

(c) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sec. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

President _____
THE WHITE HOUSE,
Dated _____

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