COMMITTEE ON
SCIENCE, SPACE, & TECHNOLOGY (/)
Lamar Smith, Chairman

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Dear EPA, stop acting like a bully and start following the rule of law

Aug 2, 2016 | In The News

By Rep. Lamar Smith

The Environmental Protection Agency's core mission is to protect human health and the environment. But little of EPA's proposed regulatory agenda would have any impact on the environment. That hasn't stopped the agency from imposing some of the most expensive and expansive regulations in its history.

Recent EPA rules will cost billions of dollars and place a heavy burden on American taxpayers. These egregious EPA rules will diminish the ability of businesses throughout the United States to compete globally.

EPA's political agenda is to rearrange the American economy, instituting "command and control" by the Obama administration.

The House Science Committee's investigations have revealed an EPA that intentionally chooses to ignore sound science. EPA cherry-picks the science that fits its agenda and ignores the science that does not support its position. When the science falls short of EPA's predetermined outcomes, the agency resorts to a propaganda campaign designed to mislead the public.

EPA has used suspect science, questionable legal interpretations, and flawed analysis to justify its unprecedented regulatory agenda.

A glaring example is the president's so-called Clean Power Plan. This plan is nothing more than a "power grab" to give the government more control over Americans' daily lives. The regulation stifles economic growth, destroys American jobs, and significantly increases energy prices. That means costs will rise – from electricity to gasoline to food, disproportionately hurting low income Americans.

The non-partisan Energy Information Administration at the U.S. Department of Energy has independently found that the Clean Power Plan will reduce economic growth, increase electricity costs, and result in almost 376,000 jobs lost over the next 15 years.

EPA's own data shows that this regulation would reduce sea level rise by only 1/100th of an inch, the thickness of three sheets of paper. The Clean Power Plan represents massive costs without significant benefits. In other words, it's all pain and no gain.

President Obama used this unconstitutional power grab as the cornerstone of his agenda at the Paris climate talks. The Paris Agreement is a bad deal for the American people that will shrink our economy without any recognizable benefits. Even if all 178 countries meet their promised reductions of carbon emissions for the next 85 years, that will reduce temperatures by only 1/6 of one degree Celsius!

The committee also has revealed troubling and illegal activities in EPA's promotion of the Waters of the U.S. rule. The committee found that the EPA engaged in inappropriate tactics to generate grassroots lobbying in support of this rule. This past December, the Government Accountability Organization (GAO) issued a legal opinion stating that EPA violated both the Anti-Lobbying and Antideficiency Acts.

Over the past year, several of EPA's major regulations have been halted by federal courts. These include the agency's efforts to stop the Pebble Mine, the controversial Waters of the U.S. rule, and the Clean Power Plan. These regulations are power grabs that trample on the constitutional rights of individuals and rely on suspect legal interpretations of the law.

As we head into the presidential election season, let's not forget our neighbors across the country who would be out of a job at the hands of the Obama administration's extreme climate agenda.

At a recent commencement speech at Vermont Law School, EPA Administrator Gina McCarthy stated, "[s]ometimes it feels like David and Goliath."

This is one thing she's absolutely right about – the American people are David, and the EPA is Goliath.

The EPA should stop acting like a bully, follow the rule of law, and allow science rather than politics to drive its regulatory agenda.

Congressman Lamar Smith represents the 21st district of Texas in the House of Representatives and is the chairman of the House Science, Space, and Technology Committee.

FOX News (http://www.foxnews.com/opinion/2016/08/02/rep-lamar-smith-dear-epa-stop-acting-like-bully-and-start-following-rule-law.html)

114th Congress

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CHAIRMAN

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Congress of the United States
House of Representatives

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February 22, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

The Committee on Science, Space, and Technology congratulates you on your confirmation as Administrator of the U.S. Environmental Protection Agency. As the Committee with primary jurisdiction over the science underpinning policy and regulatory decisions at EPA, we look forward to working with you to ensure that the agency's decision-making is based on sound and transparent science. In furthering this mandate, I would like to bring to your attention the rigorous oversight this Committee has conducted regarding the EPA's 2014 decision to preemptively use Section 404(c) of the Clean Water Act to limit the scope of the development of the Pebble Mine in Bristol Bay, Alaska before any permit applications were submitted for the project.[1] Based on this oversight, as well as President Trump's commitment to swift and lawful permitting decisions, the Committee urges you to rescind the 2014 decision and pursue the regular order of permitting for this and all projects that require permits under Section 404(c).

The Committee has determined that the preemptive action taken for the Pebble Mine Project was unprecedented under the Clean Water Act and was justified by a questionable scientific assessment that relied on predetermined conclusions developed by EPA officials.[2] In the course of Committee hearings, document reviews, interviews, and depositions, the Committee learned that EPA employees inappropriately assisted outside groups in petitioning the agency to change the way they operate and use Section 404(c) to stop this project.[3] Furthermore,

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[1] U.S. EPA, Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, July 2014, *available at* http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf.
[2] *Examining EPA's Predetermined Efforts to Block the Pebble Mine: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2015); *Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2016).
[3] *Id.*

the Committee determined that EPA officials charged with preparing the scientific assessment, which influenced the agency's final action, acted with bias and predetermined conclusions aimed to prevent this project and improperly expand EPA's authority under the Clean Water Act.[4]

Using Section 404(c) in this preemptive fashion is a de facto veto of this specific project and establishes a dangerous precedent of expansive federal agency powers that may be used in the future to prevent projects that would contribute positively to the American economy. The Committee recommends that the incoming Administration rescind the EPA's proposed determination to use Section 404(c) in a preemptive fashion for the Pebble Mine in Bristol Bay, Alaska. This simple action will allow a return to the long-established Clean Water Act permitting process and stop attempts by the EPA to improperly expand its authority. Moreover, it will create regulatory certainty for future development projects that will create jobs and contribute to the American economy. The Committee stands ready to provide you and your staff with any additional information you require on this matter to better inform your decision.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Joseph Brazauskas or Richard Yamada of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on Science, Space and Technology

[4] *Examining EPA's Predetermined Efforts to Block the Pebble Mine: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2015); *Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2016).

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Smith Recommends Administrator Pruitt Rescind Pebble Mine Decision

Feb 22, 2017 | Press Release

WASHINGTON- U.S. House Science, Space, and Technology Committee Chairman Lamar Smith (R-Texas) today sent a letter (https://science.house.gov/sites/republicans.science.house.gov/files/documents/02.22.17%20SST%20Letter%20to%20EPA%20Administrator% to Environmental Protection Agency (EPA) Administrator Scott Pruitt asking him to rescind the 2014 decision to preemptively use Section 404(c) of the Clean Water Act to limit the scope of the development of the Pebble Mine in Bristol Bay, Alaska before any permit applications were submitted for the project.

"The Committee recommends that the incoming Administration rescind the EPA's proposed determination to use Section 404(c) in a preemptive fashion for the Pebble Mine in Bristol Bay, Alaska. This simple action will allow a return to the long-established Clean Water Act permitting process and stop attempts by the EPA to improperly expand its authority. Moreover, it will create regulatory certainty for future development projects that will create jobs and contribute to the American economy," the letter states.

Through rigorous oversight including hearings, document reviews, interviews, and depositions, the committee determined that the preemptive action for the Pebble Mine was unprecedented under the Clean Water Act. This action was justified by a questionable scientific assessment that relied on predetermined conclusions developed by EPA officials. The committee also learned EPA employees colluded with Pebble Mine opponents to stop this project.

Today's letter can be found here (https://science.house.gov/sites/republicans.science.house.gov/files/documents/02.22.17%20SST%20Letter%20to%20EPA%20Administrator%

Background

In April 2016 (https://science.house.gov/news/press-releases/smith-epa-employees-colluded-pebble-mine-opponents) the Committee held a hearing (https://science.house.gov/legislation/hearings/full-committee-hearing-examining-epa-s-predetermined-efforts-block-pebble-mine) to examine EPA's predetermined efforts to block the Pebble Mine.

In November 2015 (https://science.house.gov/news/press-releases/smith-epa-collusion-block-pebble-mine-unprecedented-dangerous) the Committee held its initial hearing (https://science.house.gov/legislation/hearings/full-committee-hearing-examining-epa-s-predetermined-efforts-block-pebble-min-0) to examine EPA's predetermined efforts to block the Pebble Mine.

In October 2015 (https://science.house.gov/news/press-releases/smith-questions-epa-actions-pebble-mine-announces-hearing) Chairman Smith sent a letter (https://science.house.gov/sites/republicans.science.house.gov/files/documents/10.14.15%20-%20CLS%20to%20McCarthy%20Bristol%20Bay.pdf) to then EPA Administrator Gina McCarthy questioning EPA's apparent pre-determined conclusion to block the Pebble Mine before any science-based reports were produced or any formal permit applications were submitted.

In August 2013 (https://science.house.gov/news/press-releases/smith-epa-employees-colluded-pebble-mine-opponents) the Oversight Subcommittee held a hearing to examine potential overreach by the EPA in conducting a draft watershed assessment for the Bristol Bay area based on a hypothetical mining scenario.

115th Congress

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Smith Statement on Pebble Mine IG Report

Jan 13, 2016 | Press Release

Washington, D.C. – Science, Space, and Technology Committee Chairman Lamar Smith (R-Texas) today released the following statement after the Environmental Protection Agency's (EPA's) Office of Inspector General released its report (https://www.epa.gov/sites/production/files/2016-01/documents/20160113-16-p-0082.pdf) on actions by the agency to block the Pebble Mine in Alaska.

Chairman Smith: "The Inspector General's (IG) report on EPA's actions to block the Pebble Mine draws misleading conclusions without having all the facts. The IG itself admits that it was unable to obtain and review all relevant documents and was unable to interview a key subject about pertinent information the investigation had uncovered. It also appears that the IG failed to review a significant body of publically available information (https://www.washingtontimes.com/news/2015/nov/5/epa-email-trail-reveals-alaska-pebble-mine-plot/) brought to light by the Science Committee that demonstrates clear instances of bias and predetermination on the part of the EPA. The Science Committee will continue to investigate the actions of the EPA."

In November, the Committee held a hearing (/news/press-releases/smith-epa-

collusion-block-pebble-mine-unprecedented-dangerous) to review actions by the EPA to block the Pebble Mine from development before the project even applied for any permits. Witnesses at the hearing said that EPA did not rely on sound science in deciding to undertake a pre-emptive action to limit the Pebble Mine.

114th Congress

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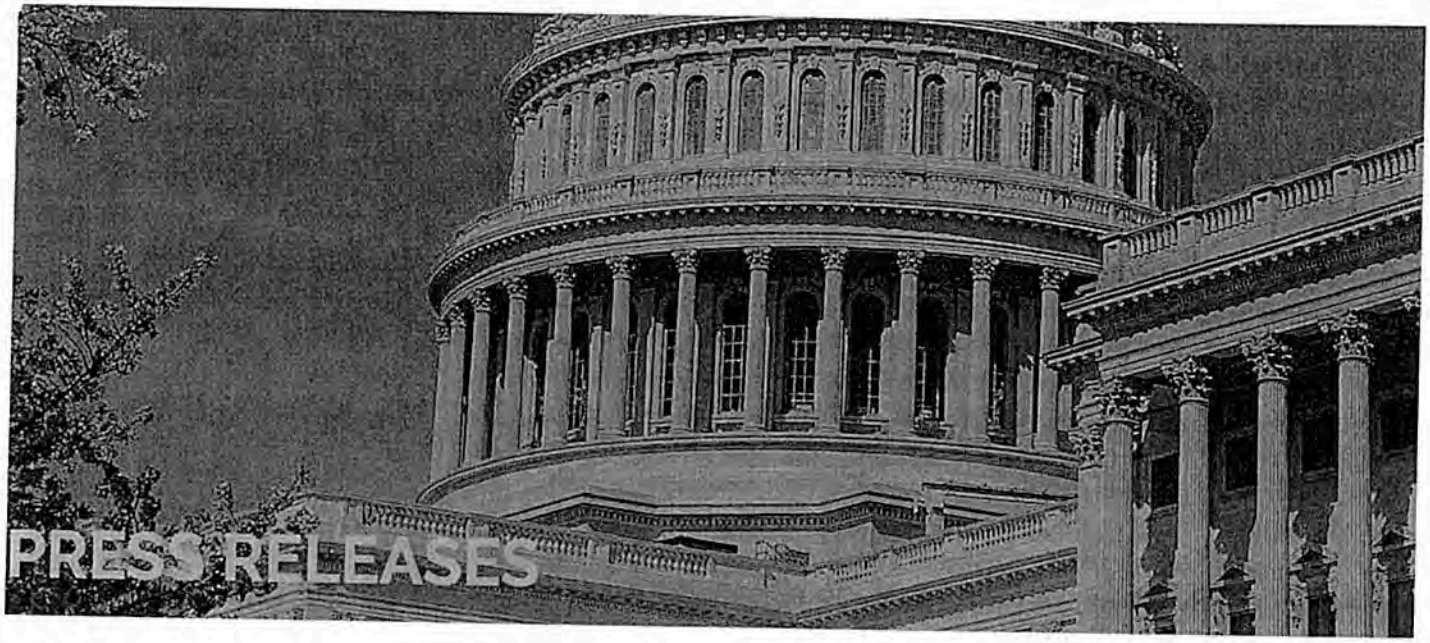


Caucus to EPA: Preemptive Project Veto a Tool of Tyranny

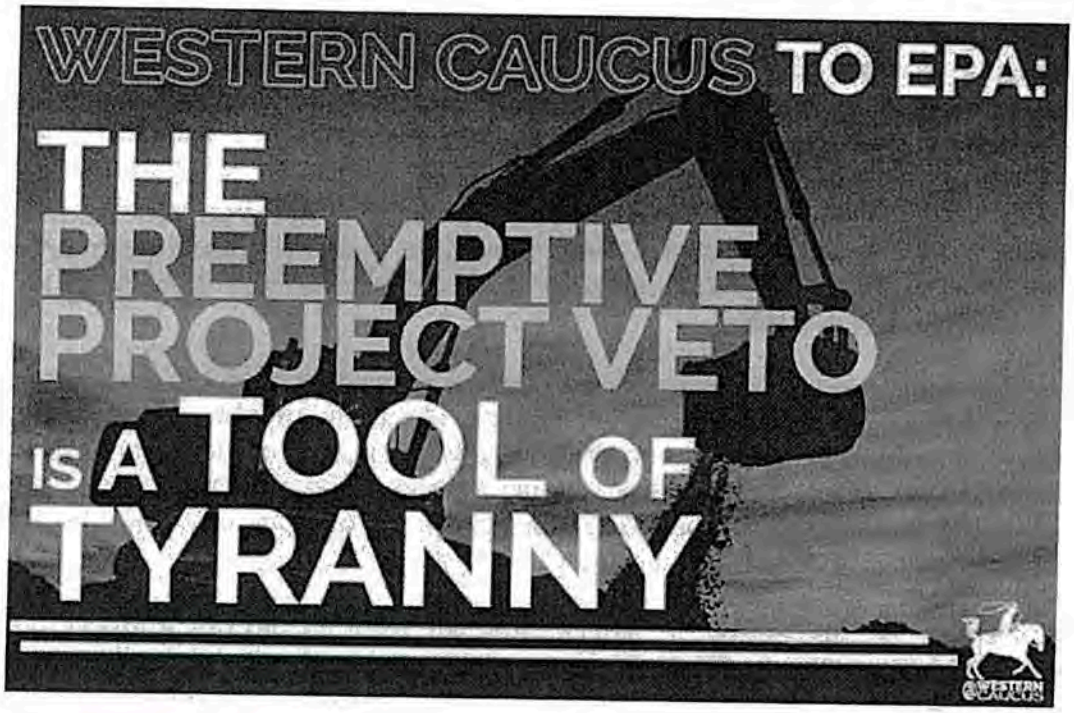
Washington, May 3, 2018 | 0 comments

For Immediate Release

Date: May 3, 2018

Contact: Tanner Hanson

Tanner.Hanson@mail.house.gov



WASHINGTON, D.C. – Today, Congressional Western Caucus Chairman **Paul A. Gosar D.D.S. (AZ-04)**, **House Committee on Science, Space and Technology Chairman Lamar Smith (TX-21)**, Western Caucus Members **Doug Lamborn (CO-05)** and **Bob Gibbs (OH-07)**, representatives for the **Competitive Enterprise Institute**, the **National Mining Association**, **Americans for Limited Government**, the **American Resources Policy Network**, the **Yavapai Cattle Growers Association** as well as the **Apache County Supervisor Doyel Shamley** released the following statements after the Caucus led a coalition of 18 Members of Congress and dozens of stakeholders requesting that EPA Administrator Scott Pruitt reverse a preemptive veto of the Pebble Mine project in Alaska:

Chairman Paul Gosar stated, "Administrator Pruitt knows what we think of his accomplishments in office, but we'll say it again: they're outstanding. The EPA under President Obama turned into an extra-constitutional legislator in its own right, issuing vast national edicts without statutory authority and requiring total compliance. When the Trump Administration and Administrator Pruitt came in, all that changed, and we have since seen the EPA bring its activity back within statutory boundaries in order to protect the environment through the use of science-based policies. The preemptive veto of the Pebble project in Alaska - a holdover of the Obama EPA - is the one glaring blemish staining Administrator Pruitt's record. This kind of power-grab has no place surviving into a Republican administration - not least because we know future Administrations would be glad to abuse such power in even more severe ways. Today, we've made a clear case for why allowing this unprecedented veto to go forward is an affront to due process, to stable capital markets and to the priorities of the Trump Administration. This is about process, not any particular project. Administrator Pruitt, projects shouldn't be vetoed before they have even been proposed. The Obama preemptive veto has to go."

House Science Committee Chairman Smith said, "Our government is based on the principles of due process and the rule of law. EPA's preemptive veto of the Pebble Mine in 2014 undermined both. The EPA, under new leadership and with a fresh perspective, has an opportunity to reverse the misguided decision and let the rigorous permitting process work. I strongly urge Administrator Pruitt to withdraw the proposed determination."

"Industries in the United States should be able to rely on a transparent, reliable regulatory and permit approval process to operate. EPA and other agencies must not have the ability to deny American companies administrative due process with preemptive veto authority. Allowing regulatory entities to tell a business not to even bother applying for a permit, before any scientific analysis can be completed, will have a chilling and dangerous effect on American entrepreneurship and stifle economic growth. That's why I introduced the Regulatory Certainty Act to prevent the EPA from filing preemptive vetoes under Section 404 of the Clean Water Act. I join my colleagues in urging the EPA to reverse course and prevent setting a precedent that could do terrible damage to the American economy," said **Congressman Gibbs**.

Congressman Lamborn stated, "Considering the fact that the United States is increasingly reliant on foreign sources of critical and strategic minerals, it would be detrimental to our nation's national and economic security to preemptively veto one of the largest undeveloped deposits of copper and gold resources in the world. Administrator Pruitt should withdraw the preemptive veto and allow the Environmental Impact Statement to proceed in order to restore due process, fairness, and regulatory stability surrounding mining projects in our nation."

Myron Ebell, Director for the Center for Energy and Environment at the Competitive Enterprise Institute stated, "The pre-emptive veto of the Pebble mine and of all other potential mining projects in the Bristol Bay watershed should be withdrawn immediately. It conflicts with the Trump administration's proposal to eliminate EPA's veto authority under section 404c of the Clean Water Act

entirely, and it sets a dangerous precedent. If one huge area of the country can be closed to natural resource development, what is to stop a future administration from arbitrarily closing off other areas—for example, the Mississippi River watershed?"

"There is no excuse for continuing this Obama administration dramatic expansion of power that threatens all resource development activity in future administrations. You can agree or disagree about the wisdom of the Pebble Mine development but those decisions should be reserved to the NPRM process and not preempted by shoddy political science that overrides the legally established approval process," said **Rick Manning, President of Americans for Limited Government**.

"This administration has been a leader in showing that the responsible development of our natural resources and environmental stewardship can coexist," said **Hal Quinn, President and CEO of the National Mining Association**. "Given the Pebble Mine Project's potential as one of the largest deposits of copper and gold in the world, our hope is that the EPA will withdraw the prior administration's preemptive, uninformed and improper veto of the project, allowing the project proposal to proceed through the appropriate review channels as intended under the National Environmental Policy Act."

"With the growing recognition that the U.S. is dangerously dependent on foreign supply for scores of critical minerals and metals, the need for a predictable permitting process has never been greater," said **Daniel McGroarty** of the **American Resources Policy Network**. "The pre-emptive veto of the Pebble Project casts a chilling effect over resource development in the U.S. As the letter says, to allow a pre-emptive veto to stand is 'contrary to the spirit of our environmental protection laws, to due process, and to basic fairness."

"For EPA not to allow due process flies in the face of our country's most important institutional principles. While the old saw of the squeaky wheel gets the most grease, we need to use the environmental and scientific studies that are mandated for environmental issues," said **Larry Parker, President of the Yavapai Cattle Growers Association**.

"We can no longer tolerate the damages done by bureaucrats who seek to rule our country via administrative fiat, undermining scientific based due process and the rule of law," said **Doyel Shamley, Apache County Supervisor**.

Background:

Today, May 3, 2018, the Western Caucus led 18 Members of Congress and dozens of stakeholders in sending a letter addressed to EPA Administrator Scott Pruitt respectfully requesting he proceed with his original statements and intention to withdraw the Obama Administration EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act.

Read the letter with all signers HERE. Be sure to also check out the Wall Street Journal Editorial Board's excellent piece concerning the precedent concerns arising from retaining the preemptive veto.

In particular, the letter responds to the EPA's decision to abruptly change course and opt not to withdraw the Obama Administration's preemptive veto of the project, contrary to Administrator Pruitt's prior stated commitment to do so.

The preemptive veto, initiated under Section 404(c) of the Clean Water Act, acts as an EPA "failsafe" set outside of the normal Army Corps of Engineers-facilitated NEPA process, along with its

requirement of an Environmental Impact Statement (EIS). This, despite that the NEPA EIS takes a full environmental, ecological and chemical inventory of the scope and likely effects of a project as proposed. NEPA EIS's are rigorous and comprehensive, and the eventual EIS for Pebble Mine will be able to accurately determine whether it poses adverse risks to the environment and habitat of Bristol Bay or not.

Rather than allow the EIS to proceed as normal for Pebble Mine, the EPA's actions set a damaging precedent wherein projects that have not enjoyed the scientific and other study required by law can be preempted and shut down by EPA. These actions are contrary to the spirit of our environmental protection laws, to due process, and to basic fairness.

For example, in the five trading days following the recent EPA decision, Pebble's parent company Northern Dynasty Minerals saw its stock fall 40%. This is the predictable market reaction to the EPA's unpredictability, which will wreak havoc in mining-related capital markets if regulatory certainty is not restored.

As such, the letter requests that Administrator Pruitt opt to scrap the preemptive veto in order to restore due process, fairness and regulatory stability surrounding all mining projects, prospective or proposed, in the United States. This issue only grows in importance in light of President Trump and Department of Interior Secretary Ryan Zinke having made clear our overriding need to reduce reliance of foreign importation of critical and strategic minerals as matters of national and economic security. At a time when domestic mining is critically important, providing regulatory certainty by following established processes is of utmost concern.

Current signers (18):
Amodei, Babin, Biggs, Rob Bishop, DesJarlais, Jeff Duncan, John Duncan, Gibbs, Gosar, LaMalfa, Lamborn, Marshall, McKinley, Mooney, Perry, Lamar Smith, Weber, Yoho

Endorsed by:
American Exploration & Mining Association, National Mining Association, Women's Mining Coalition, Competitive Enterprise Institute, Americans for Limited Government, Arizona Mining Association, Alaska Miners Association, American Resources Policy Network, Arizona Pork Council, Arizona Rock Products Association, AZ BASS Nation, Bass Federation-AZ, Hibbing Area Chamber of Commerce, Hudbay Rosemont Copper Project, Idaho Mining Association, MiningMinnesota, New Mexico Cattle Growers' Association, New Mexico Wool Growers Inc., Southern Arizona Business Coalition, SRT Outdoors, Sulphur Springs Valley Electric Cooperative, Utah Mining Association, Yavapai Cattle Growers Association, Arizona District 6 Senator Sylvia Allen, Apache County Supervisor Doyel Shamley and Yavapai County Supervisors Thomas Thurman and Rowle Simmons
Tags: Federal Land Management , American Energy Security, Economy and Jobs

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- **Caucus Kicks Off Bipartisan Endangered Species Act Modernization Package**
  Posted in Press Releases on July 12, 2018 | Preview »

- **President Trump Pardons Hammonds**
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