Testimony of R. Timothy McCrum

Before the U.S. House of Representatives, Committee on Resources

Regarding H.R. 5155,

A Bill To Protect Sacred Native American Federal Lands

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I. Introduction and Overview

My name is Tim McCrum, and I am a partner with the law firm of Crowell & Moring LLP here in Washington, D.C., and counsel to Glamis Imperial Corporation, a subsidiary of Glamis Gold Ltd. Glamis Gold Ltd. is an intermediate-sized gold producer, traded on the New York Stock Exchange, with operating mines in Nevada, California, and Central America. For convenience, I'll refer to these affiliated companies simply as Glamis.

I'll begin my testimony today by stating that Native American traditional cultural values should be considered and protected in the management of federal lands. Moreover, Native American traditional cultural values have been considered and protected in federal land management decisions by the Executive Branch and the Congress for many years. However, the present bill, H.R. 5155, would radically change the manner in which Native American values are addressed, and it would do so in a manner which would thwart the principles of sound multiple use which have governed federal land management policy for decades.

First, the bill would create new administrative and legal mechanisms for Native American groups and their allies to impede virtually all development activities on federal lands, including mining, oil and gas production, geothermal energy projects, wind farms, and wireless telecommunications, to name just a few. Permitting these activities on federal lands is already a protracted and burdensome process. This bill would add major new obstacles to a wide range of activities which are authorized and encouraged by other federal laws and policies. I note that the judicial review provisions (in § 3(e)) authorizing relief including money damages against federal agencies and potentially federal officers are highly unusual.

Second, the bill would allow Native American groups to declare that any geographical area or feature is "sacred" by virtue of its alleged cultural or religious significance based on evidence which can include nothing more than oral history. Such claims would be highly subjective and virtually unverifiable. Indeed, the Interior Department under Secretary Bruce Babbitt in 2000 recognized the subjective and unverifiable nature of these allegations in the "3809" hardrock mining rulemaking which sought to establish an administrative "mine veto" power. In the final EIS on that rulemaking, dated October 2000, the Bureau of Land Management stated, in part, as follows: "religious significance, substantial irreparable harm, and effective mitigation are determined by those that hold those beliefs, not BLM. Analyzing the . . . impact . . . is further complicated by the fact that most Native American religions are based on . . . the concept that each individual determines what is significant for herself/himself." BLM, FEIS, v.1 at 126-27 (2000). Fortunately, that "mine veto" power was determined to be beyond Interior's legal authority in an Interior Solicitor 's Opinion issued by William Myers on October 23, 2001, and in subsequently amended rules, but H.R. 5155 would reopen this divisive issue for potentially all undertakings on federal lands.

As Chief Justice Marshall stated long ago in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), the "government of the United States has been emphatically termed a government of laws not of men." Yet, if H.R. 5155 is enacted, groups of individual Native Americans would have the authority to allege that vast portions of federal lands are sacred to their religious beliefs, and federal officials would be hard-pressed to find such subjective allegations without merit, especially where the bill provides that "[o]ral history shall be given no less weight than other evidence" and actions for money damages may be brought for alleged violations.

Third, if this bill is adopted and a new Native American "sacred site" veto power is created, the legislation and the resulting processes would be unconstitutional as an establishment of religion by the United States Government and, alternatively, as a taking of private property. The Government should avoid creating sanctuaries and monuments to particular religions and practices. And, it should avoid destroying private property and investments.

Several laws already in place provide for and reflect careful consideration of Native American values in federal land management. These include the National Historic Preservation Act, 16 U.S.C. § 470, the Native American Graves Repatriation Act, 25 U.S.C. § 300 *et seq*., the American Indian Religious Freedom Act, 42 U.S.C. § 1996, the Archaeological Resources Protection Act, 16 U.S.C. § 470aa, as well as many other site-specific laws establishing parks and wilderness areas, such as the 1994 California Desert Protection Act (discussed further below), and the land use planning and withdrawal authorities of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq*.

II. The Glamis Controversy

The controversy over the "Glamis Imperial Project," a proposed gold mine on federal lands near Indian Pass in Imperial County, California, was apparently the impetus for H.R. 5155, at least in part. Yet, a careful examination of the Glamis Imperial Project facts reveals the ill-advised nature of this legislation. The alleged "sacred site" around the Glamis Imperial Project is a prime example of how this proposed legislation could be used by Native American groups to thwart a wide range of development projects across the western United States.

A. Background Facts

In the late 1980's, Glamis discovered the valuable gold deposit that is now the Imperial Project in rural southeastern California, and has since spent nearly $15 million in exploration, feasibility analysis and permitting efforts to develop an open-pit gold mine that would produce an average of 130,000 ounces of gold per year employing over 100 individuals in high-wage jobs. This site is located in an historic gold-producing district, only seven miles from another operating gold mine and six miles from Glamis' own Picacho gold mine that was operated for over 20 years and successfully closed and reclaimed in 2002. *See Figure 1.*

After further mineral exploration in 1991, Glamis filed its original mining proposal with the Interior Department in 1994, and Native American consultations were conducted as required. Two cultural resource studies were undertaken to determine the nature, if any, of cultural resources at the site, the first in 1991 and the second in 1995. Not until a third cultural resource study was conducted in 1997 did assertions arise that the Imperial Project area was considered "sacred" to the Quechan tribe which has a reservation over 10 miles to the south. Yet, the same Quechan tribal historian participated in all three studies.

In 1999, the tribal historian testified before the Advisory Council on Historic Preservation that the site is part of a broad regional trail system running from Arizona to Los Angeles and south to Mexico, encompassing hundreds of square miles. There is no claim that tribal members ever occupied the project site for any substantial length of time, nor is it a burial site. The alleged sacred site is part of an asserted "Trail of Dreams" encompassing a broad region and many hundreds of square miles in southern California. *See Figure 2.* Both the Tribe's attorney and tribal members reiterated the broad scale of concern in testimony and in letters that are part of the record in this matter. For example, Mr. Lorey Cachora, the Quechan tribal historian, testified on March 11, 1999, as follows:

It is a region we are discussing. It just so happens that this area, Indian Pass, is right in the path of one of those regions . . . .[T]his trail follows west to the present town of Los Angeles, then down to San Juan Capistrano, then it goes into Catalina Island and trails into Mexico. To this point we don't know how deep into Mexico we went but . . . in this creation history it tells of the Amazon Parrot. So you can imagine how far they went.

Advisory Council on Historic Preservation, Hearing Transcript, pages 179-180 (March 11, 1999). Similarly, the Quechan Tribe's legal counsel, Courtney Coyle, stated in a letter to the BLM on January 29, 1999, that "Quechan sacred lands include the Indian Pass area and clearly encompass the proposed Imperial Project site, but also extend towards the north up to Blythe, towards the south connecting with Pilot Knob, towards the west and the Cargo Muchachos Mountains and east to the Colorado River and along portions of what is now western Arizona." The area described thus spanned hundreds of square miles comprising a major part of southern California.

It is significant that when BLM prepared its Indian Pass Management Plan in 1987, it noted that "there is no evidence that the area is used today by contemporary Native Americans." BLM, *Indian Pass ACEC Management Plan* § V (1987). Glamis has modified its mining plan and otherwise attempted to accommodate the Quechan concerns with mitigation, but has been told that no level of disturbance at the site is acceptable.

The Imperial Project is located on federal land that was open to mineral entry at the time Glamis acquired its mining claims. The area is within the California Desert Conservation Area and has been the subject of intense land use planning processes, the establishment of 7.7 million acres of park and wilderness areas pursuant to the California Desert Protection Act in 1994, and the creation of large protected areas outside the Imperial Project site to protect Native American cultural values. Following all of these land designations, the Imperial Project area remained open to mineral development and Glamis proceeded with its substantial investment in development.

On January 17, 2001, during his final week in office, former Interior Secretary Bruce Babbitt held a press conference and announced that he had denied the Imperial Project based on a novel legal opinion rendered by his Solicitor. On November 23, 2001, Interior Secretary Gail Norton rescinded the Babbitt denial based on the legal opinion of her Solicitor, rendered October 23, 2001, which held that Interior had no discretionary power to veto the mine proposal.

Glamis Gold has a duty to its shareholders to recover its investment in the Imperial Project and its expected return on that investment. That duty can be fulfilled by developing the mine or by an alternative arrangement of equal economic value, and the company is prepared to consider all reasonable alternatives. Glamis will not abandon its substantial investment and property interests.

Legislation that would further delay or prohibit the Imperial Project without compensation to Glamis would be grossly unfair to Glamis and its thousands of shareholders.

B. The 1994 California Desert Protection Act

Ironically, the Glamis Imperial Project controversy arose in an area where a major effort was made by the U.S. Government to address Native American cultural concerns. The California Desert Protection Act of 1994 provided permanent protections to vast lands of cultural significance to Native Americans. 108 Stat. 4471 (1994). This Act was the most significant federal public land legislation in the past two decades.

The Act established major new National Park lands and wilderness areas, and the congressional findings reveal that the purposes for which these lands were protected are quite similar to the general concerns being raised in connection with the landscapes affected by the Glamis Imperial Project. For example, the Congress found that the designated "desert wildlands display *unique scenic, historical, archeological* , environmental, ecological, wildlife, *cultural*, scientific, educational and recreational *values* . . . ." 108 Stat. at 4471 (emphasis added). Accordingly, Congress declared that " appropriate public lands in the California desert shall be included within the National Park System and the National Wilderness Preservation System in order to

(A) *preserve unrivaled scenic*, geologic, and wildlife values associated with these *unique natural landscapes*;

(B) perpetuate in their natural state significant and diverse ecosystems of the California desert;

(C) *protect and preserve historical and cultural values of the California desert associated with ancient Indian cultures* . . . ."

108 Stat. 4472 (emphasis added).

The lands set aside for preservation by the California Desert Protection Act included over 7.7 million acres, the largest wilderness area ever designated by Congress in the lower 48 states encompassing an area larger than the State of Maryland. *See Washington Post*, p.A-1 (Apr. 14, 1994). *Notably, the Imperial Project is not within the newly designated park lands and wilderness areas.* Two wilderness areas were designated near the Imperial Project specifically for Native American cultural purposes. They were the Indian Pass Wilderness, which encompasses over 34,000 acres, and the Picacho Peak Wilderness Area, which encompasses 7,700 acres. The House Natural Resources Committee Report (No. 103-498), dated May 10, 1994, specifically discussed the Native American cultural preservation purposes supporting these two

wilderness areas, and it notes that the Picacho Peak Wilderness "represents the former territory of the Quechan Coyote Clan and . . . [is] associated with a ritual collection area for hawk, eagle and owl feathers." House Report at 46.

The wilderness areas in the California Desert Protection Act were studied extensively by the BLM pursuant to the wilderness study review provisions of FLPMA, 43 U.S.C. § 1782. In addition, those studies were conducted by the BLM in coordination with land-use plans developed by BLM pursuant to the provisions of FLPMA dealing with the California Desert Conservation Area. 43 U.S.C. § 1781. In the 1980 California Desert Conservation Area Plan, prepared pursuant to FLPMA, the BLM heavily focused on Native American cultural values and stated that "these values will be considered in all CDCA land-use and management decisions." *Id.* at 26. BLM's stated goals were to "[a]chieve full consideration of Native American values in all land-use and management decisions." *Id*.

In the California Desert Protection Act, Congress acted on BLM's wilderness recommendations and took special steps to ensure that the designated wilderness areas of importance to Native Americans did not prevent traditional cultural and religious use of those lands. Accordingly, Congress provided the following special access provisions for Native Americans:

In recognition of the past use of the National Park System units and wilderness areas designed [sic] under this Act by Indian people for traditional cultural and religious purposes, the Secretary shall ensure access to such Park System units and wilderness areas by Indian people for such traditional cultural and religious purposes. In implementing this section, the Secretary upon the request of an Indian tribe or Indian religious community, shall temporarily close to the general public use of one or more specific portions of the Park System unit or wilderness area in order to protect the privacy of traditional cultural and religious activities in such areas by Indian people.

108 Stat. 4498.

The California Desert Protection Act contained another significant provision which reveals the unfairness of using sacred site allegations to block the Glamis Imperial Project. Section 103 of the Act stated: "Congress does not intend for the designation of wilderness areas in Section 102 of this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that non-wilderness activities or uses can be seen or heard from areas within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area." 108 Stat. 4481.

Through the California Desert Protection Act, the Congress settled in a significant and meaningful manner longstanding disputes between competing public land users and interests. Many millions of acres of public lands were permanently set aside for preservation purposes, including Native American cultural purposes. Other areas, including the Glamis Imperial Project lands, remained classified as multiple use public lands open to the federal mining laws and other management standards which permitted continued development. Glamis recognizes the legitimate interest of Native Americans in the California Desert Area, and we believe that those interests have been recognized and protected by Congress through the California Desert Protection Act of 1994. Glamis is willing to carry out additional mitigation measures at the Imperial Project site in further accommodation to Native American interests, but appropriate mitigation measures should be designed considering the enormous protections already provided by the Interior Department and the Congress in the California Desert Protection Act.

C. Mitigation Measures

Glamis did not conduct itself in a manner that was insensitive to Native American concerns once they arose in 1997. As Glamis became aware of the Native American cultural features that would be affected due to its mining plan, immediate steps were taken by Glamis to avoid potential disturbance of cultural features whenever possible. A wide variety of mitigation measures are available to address the cultural aspects of the Imperial Project site.

1. Avoidance by Project Redesign

As the BLM's second Draft EIS/EIR (1997) on the Imperial Project stated, "[s]ince November, 1996, substantial revisions have been made in the Proposed Action by the Applicant" (p.S-1). These revisions were made primarily to respond to cultural resource concerns. As explained in the December 1997 report by KEA Environmental, "Glamis Imperial has already modified the Project to reduce impacts." *See* KEA Environmental, "Where Trails Cross: Cultural Resources Inventory and Evaluation for the Imperial Project, Imperial County, California" at 307 (December 1997). Specifically, mine facilities were redesigned, moved or eliminated to avoid and preserve Quechan cultural features. Glamis reduced the heights of overburden stockpiles, eliminated an overburden stockpile, moved topsoil stockpiles, redirected haulage routes and altered the footprint of the processing leach pad to avoid cultural features. Glamis was and is committed to these measures notwithstanding that the alterations would substantially increase Glamis operating costs over the life of the project.

Notably, the most distinct and identifiable Native American cultural feature in the vicinity is the "Running Man" which is a rock formation approximately four feet by four feet. *See* Figure 3. Quechan tribal members have stated that this feature was built in the 1940s. *See* KEA at 286 (1997). It would not be disturbed as it lies approximately two miles outside the project area.

2. Wilderness Areas/Indian Pass ACEC Enhancement

Glamis also offered to relinquish its property interests in the Gavilan Wash mining claims that abut the Indian Pass Area of Critical Environmental Concern ("ACEC"), as designated by BLM in 1987, in immediate proximity of the Indian Pass and Picacho Peak Wilderness areas - where the "Running Man" feature is located. Drilling results have revealed the presence of notable mineralized values. To keep Gavilan wash open for mineral entry, Glamis actively participated in the congressional process leading to the 1994 California Desert Protection Act (discussed above) when the wilderness areas were created. This area contained 58 mining claims and totaled nearly 1,200 acres. Relinquishing these claims would increase protection of the Indian Pass ACEC and the congressionally-designated wilderness areas.

3. Cultural Feature Treatment Plans

Glamis also proposed that unavoidable cultural features would be mitigated through an Onsite Treatment Plan. This type of mitigation, consistent with accepted mitigation measures adopted throughout the federal public lands in the West, would procure, document, report and curate significant cultural features that would be affected by operations. The participation by a Quechan representative and the results obtained through this action could further preserve, display, make available for use and increase knowledge of their traditional cultural past. The details of the Onsite Treatment Plan and Data Recovery Recommendations were set forth in Chapters 8 and 9 of the 1997 KEA report.

The Indian Pass ACEC, as described in the 1987 BLM designation, is one of the focal points of the traditional Quechan presence in the area. An Offsite Treatment Plan of the Indian Pass ACEC, as designated

by BLM in 1987, is a possible mitigation measure which would further promote Quechan knowledge of their traditional past. This plan would involve funding a concentrated study of the ACEC to provide a better understanding of its significance. Glamis also offered funding to insure the Quechan have the means to be an active participant in the cultural mitigation plan. This proposal would fund a Quechan representative in the treatment plans previously mentioned.

4**. Cultural Land Bank**

Glamis has proposed a plan to the Quechan Tribe that would mitigate impacts to cultural features at the Imperial Project site by protecting traditional cultural tribal lands off the site. This suggestion could include establishing a "Cultural Land Bank", away from the Imperial Project site, but within acres formerly occupied by the Quechan. Glamis has identified some riparian lands along the Colorado River which are today in private ownership, but which may be of historical and cultural importance to the Tribe. Potentially, such lands could be acquired and conveyed to the Tribe for cultural resource enhancement purposes. Unfortunately, the Quechan Tribe has rejected all of these proposed mitigation measures.

III. <u>The Bill Would Constitute An Unlawful Establishment Of Religion.</u>

H.R. 5155 would create a new and unprecedented power in Native American groups to impede and potentially prohibit a wide range of development projects on federal lands such as the Glamis Imperial Project. Moreover, it would afford Native American groups virtually unfettered discretion to extract demands of all types as conditions for consent to projects, regardless of whether such conditions are in the public interest.

In addition to the adverse public policy implications of this legislation and the chaos that it would create over development projects across the western U.S. If this legislation were to be enacted, it would violate the U.S. Constitution, which prohibits the establishment of a religion by the Government. The express purpose of the legislation is to protect alleged Native American religious practices and sites.

Adoption of H.R. 5155 would violate the U.S. Constitution, which prohibits the establishment of a religion by the Government. The express and exclusive purpose of this legislation is to protect alleged Native American religious practices and sites, and this would constitute an unconstitutional establishment of religion as prohibited by the First Amendment of the U.S. Constitution. U.S. Const. amd . 1 ("Congress shall make no law respecting an establishment of religion . . ."). Consequently, H.R. 5155 should not be adopted.

The Government is prohibited under the U.S. Constitution from taking action based on such a clear motivation to promote and protect, and thereby endorse, religion. As the Ninth Circuit has explained, "[t]he Supreme Court has focused Establishment Clause analysis on whether governmental practice has the effect of endorsing religion." *Separation of Church and State Committee v. City of Eugene*, 93 F.3d 617, 619 (9th Cir. 1996) (holding that a cross in a city park represented an impermissible governmental endorsement even though the city contended it was a memorial in honor of veterans rather than a religious symbol). By determining that certain religious concerns should supercede mining and other development rights, H.R. 5155 would clearly have the effect of endorsing Native American religious beliefs and "demonstrate[s] a preference for one particular sect or creed" *Id.* Irrespective of whether California could claim additional purposes for H.R. 5155, "the practice . . . in fact conveys a message of endorsement . . ." *Id.*

The Supreme Court has repeatedly held that the Establishment Clause requires that "government may not

promote or affiliate itself with any religious doctrine or organizations . . . ." *County of Allegheny v. ACLU*, 492 U.S. 573, 590 (1989). This line of reasoning extends back to the Court's decision in *Everson v. Board of Education of Ewing*, where the Court stated that "[t]he establishment of religion clause of the First Amendment means that . . . [n]either a state [n]or the Federal Government . . . can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U.S. 1, 15-16 (1947). The prohibition contained in the Establishment Clause "precludes government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred." *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J., concurring). *See Larson v. Valente*, 456 U.S. 228, 224 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). "Whether the key word is 'endorsement,' 'favoritism,' or 'promotion,' the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from *appearing* to take a position on questions of religious belief . . . ." *County of Allegheny*, 492 U.S. at 594 (emphasis added).

Actions similar to H.R. 5155 have been found by courts to constitute unconstitutional establishments of religion. For example, in *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), the U.S. Supreme Court held that Indian tribes could not require the government to prohibit timber harvesting in National Forests in order to protect areas used for religious purposes:

[n]o disrespect for these [Indian religious] practices is implied when one notes that such beliefs could easily require *de facto* ownership of some rather spacious tracts of public property. *Even without anticipating future cases*, the diminution of the Government's property rights, and the concomitant subsidy of the Indian religion, would in this case be far from trivial: the District Court's order permanently forbade commercial timber harvesting, or the construction of a two-lane road, anywhere within an area covering a full 27 sections (*i.e.*, more than 17,000 acres) of public land.

485 U.S. at 453 (emphasis added). *See also Inupiat Community of Arctic Slope v. United States*, 548 F.Supp. 182 (D. Alaska 1982) (rejecting tribe's claim because "carried to its ultimate, their contention would result in the creation of a vast religious sanctuary"). The same would be true if H.R. 5155 is enacted and implemented.

Similarly, the U.S. Court of Appeals for the Tenth Circuit, in *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980), explained that administrative action taken to aid religious conduct on public lands would violate the establishment clause. *Id.* at 179 ("[I]ssuance of regulations to exclude tourists completely from the Monument for the avowed purpose of aiding plaintiffs' conduct of religious ceremonies would seem a clear violation of the Establishment Clause."). In *Badoni*, the court held that if either the purpose or primary effect of government action is "the advancement or inhibition of religion then the enactment exceeds the scope of the legislative power as circumscribed by the Constitution. *Id.* The text of H.R. 5155 makes clear that here there is not "a secular . . . purpose and a primary effect that neither advances nor inhibits religion." *Id.* Indeed, the bill's exclusive or primary purpose is to have a positive influence on the religious practices it seeks to protect and effects the purpose and priority given to the Native American religious beliefs at the expense of property interests of others.

IV. <u>The Bill Would Effect A "Taking" Of Private Property.</u>

Under the U.S. Constitution's Fifth Amendment, property owners have the right to use their property without unreasonable interference with or damage to the value of their property, and to be free from the taking of or damage to reasonable investment backed expectations in their property. For example, federal mining claims are constitutionally protected property interests (*see United States v.* Locke, 471 U.S. 84

(1985)), as are federal mineral leases. Yet, this legislation takes and damages individuals' property rights - to use their property according to existing investment backed expectations - without compensation.

H.R. 5155 would unconstitutionally infringe on property rights without compensation. Accordingly, it would expose the U.S. Treasury to substantialiabilities to compensate property owners for this interference. These conclusions are supported by many judicial cases over the past decade. *See, e.g., Lucas v. South Carolina, Coastal Council*, 505 U.S. 1003 (1992) (holding that denial of home development in coastal area was a takings subjecting state to over $1.2 million liability); *Whitney Benefits v. United States*, 926 F.2d 1169, 1178 (Fed. Cir. 1991) (holding a taking due to the prohibition in the Surface Mining Control and Reclamation Act on mining in alluvial valley floors and affirming the Claims Court's determination that the coal owner was entitled to over $60 million for the loss of its mineral reserves, plus prejudgment interest); *United Nuclear Corp. v. United States*, 912 F.2d 1432 (Fed. Cir. 1990) (holding a taking occurred when the Secretary of the Interior required approval from tribal council to approve a mining plan for Navajo reservation land when such approval had never been required; the government eventually settled with United Nuclear for $67.5 million for the taking of these uranium leases; *Stearns Co. v. United States*, --- Fed. Cl. ---, 2002 WL 2001280 (Fed. Cl. Aug. 5, 2002) (holding that a taking occurred through the operation of the federal Surface Mining Control and Reclamation Act, which "eliminated traditional property rights" of the plaintiff mineral estate owners); *see UNC Unit Gets Payment*, Wall St. J., Jan. 16, 1992, at A2); *Yuba Natural Resources v. United States*, 821 F.2d 638 (Fed. Cir. 1987) (holding government prohibition of mining based on erroneous interpretation of property rights was a temporary taking for which mineral owner was entitled to compensation for period in which government action blocked mining*); Del-Rio Drilling Programs v. United States*, 46 Fed. Cl. 683 (Fed. Cl. 2000) (holding that government's allowance of tribe to control physical access necessary to develop the oil and gas mineral leases which were located on Indian reservation amounted to a veto to access to property rights that was compensable as taking); *NRG Co. v. United States*, 24 Cl. Ct. 51 (Ct. Cl. 1991) (holding on summary judgment that government's cancellation of mineral prospecting permits would be deemed a taking).

H.R. 5155 would cause a substantial diminution in the value of mining property and the minerals which lie therein, and substantially interfere with reasonable investment backed expectations. Moreover, the takings liabilities would extend far beyond mining properties and include takings claims based on a wide variety of blocked development projects.

V. Conclusion

H.R. 5155 would introduce chaos across the western United States into the project review process, a process which is already cumbersome and expensive. The legislation would grant unprecedented power to Native American groups over virtually all major development projects on federal lands. Further, the proposed legislation would be unconstitutional and spawn extensive litigation, exposing the U.S. Treasury to significant liabilities.

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