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FEDERAL PUBLIC LAND STAKEHOLDERS
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In Reference: Rebuttal and Objection to Desert Renewable Energy Conservation Plan (DRECP)

MMAC, MMAC Members, Miners and Mining Districts have not been included as Stakeholders, Coordinated with Kern County, Inyo County, Riverside County, San Bernardino County and any others affected from DRECP. In accordance with Executive Order #13817 Federal Lands must maintain Multiple Use with NO Mineral Closure or Exclusion of Certain Affiliate Mines. Attached are past electronic signatures and

responses on behalf of miners to be incorporated by reference. Further, all complaints registered in the prior DRECP hearings are to be INCORPORATED BY REFERENCE. Attached please find electronic responses from past DRECP and WEMO public comments from Kern County, objecting to the DRECP and WEMO process.

Mineral and Mining Advisory Council hereby states for the record that the DRECP process is incomplete and has deliberately ignored Mining Districts, to include all Mining District maps and Mineral Assessment Maps. This was true both in the prior DRECP scoping meetings, public hearings, as presented to the Desert Advisory Council (DAC), to include current DRECP scoping and public hearings. When presented with this information during the past and present scoping meetings, public comments, and hearings, BLM has refused to take corrective actions, in violation of Federal Mining Law and civil rights 30 U.S.C. § 21 (a), 30 U.S.C. § 22-54, 30 U.S.C. § 612(b), National Environmental Policy Act, and many other Federal and Supreme Court cases. The full force of government agencies are restricting access and use of federal lands to US citizens and materially interfering by moratorium or refusing to process applications or permits and/or coordinating with Mining Districts as Federal Land Stakeholders. (Miners own the mineral rights if they are mining the land.)

There is a failure of government of agencies to recognize and yield to mining as the dominant and primary use on federal lands, by DRECP on 10.8 million acres just in San Bernardino county and 22 million acres to include all other counties in Southern California.

Rebuttal to the DRECP plan:

All MMAC Assisted Mining Districts and MMAC Members do not want the DRECP for the following reasons listed herein. The spirit and letters from past “no-votes” (Nays) on this DRECP subject are still in force from the miners and/or mining districts and we hereby incorporate by reference any and all previous DRECP objections and complaints filed in the previous DRECP Scoping, Hearing and Public Comment periods filed with the California Energy Commission and Bureau of Land Management.

In rebuttal to the BLM believing that Mining Districts do not exist and that the Mining Districts are not the first Congressionally approved Land Use Designations: We hereby notify the BLM that Mining Districts *do* exist and you cannot place another Land Use Designation that will overlay and replace the primary designation without Congressional approval, to include the approval and concurrence of the Mining Districts. The Mining Districts exist; therefore DRECP designations cannot overlay and replace the Mining Districts.

1. The Rand Mining District of California in the county of Kern is only one example of thousands of mining districts that still exist and for the Rand Mining District there was a filed amendment in the county of Kern in February 1972 stating several facts for the Rand Mining District. This has gone on for many, many years with thousands of mining districts. The West Mojave Plan cannot overlay a pre

existing land designation either and miners and mining districts do not vote for or condone the illegal sue and settle agreement forced on the West Mojave's.

2. The California Resource Code (PRC) in 1953 grandfathered preexisting mining districts, but no new ones could be added.

Under PRC DIVISION 3.5. MINES AND MINING [3900 - 3985] (*Division 3.5 added by Stats. 1988, Ch. 259, Sec. 11.*)

CHAPTER 1. Manner of Locating Mining Claims, Tunnel Rights, and Millsites [3900-3924] (*Chapter 1 added by Stats. 1988, Ch. 259, Sec. 11.*)

This chapter does not in any manner affect or abolish any mining district or the rules and regulations thereof within the state.

3. Next, for mining districts to “cease to exist” they must be dissolved according to CHAPTER 1. Manner of Locating Mining Claims, Tunnel Rights, and Millsites [3900 -3924] (Chapter 1 added by Stats). Whenever any mining district in this state, organized or created under the laws of the United States, is dissolved, the officers or custodians of the records of the mining district shall deposit with the county recorder of the county, in which the district is located, all records of location notices or other documents affecting titles to mining claims in the mining district, shown by the records of the district. Now the counties under federal and state law must accept changes, addendums et:all to the mining districts of which they are not doing.

BLM has stated that the second item they are hanging their hat on is under 30 USC 22 the last sentence of, “so far as the same are applicable and not inconsistent with the laws of the United States.” Now what BLM is not focusing on and fails to recognize is that the rest of the codes and laws also state, “as long as material interference is not present and a hindrance to mining.”

Mining District (short) Legal Authorities and AnalysisSM©

For purposes of brevity, this short discussion on the legal authority and analysis of the United States Mining Districts will not encompass the history and failure of the lease system in favor of the very successful location system presently reflected in the U. S. Mining Law (codified at 30 U.S.C. §§ (21a) & (22–54). Individuals are encouraged to read: “The Mining Law of 1872: A Legal and Historical Analysis”, published originally by the National Legal Center for the Public Interest available in the Library of Congress. Republication was granted to Joe Martori, founder of the Minerals & Mining Advisory Council® and is presently available through: www.mmacusa.org

One of the earliest United States Supreme Court decisions discussing the legal authorities and the Congressional recognition of the Mining Districts under the U.S. Mining law was *St. Louis Smelting Co. v. Kemp*, 104 U.S. 636 (1881) where the court stated: “*The rules and regulations originally established in California have in their general features been adopted throughout all the mining regions of the United States. They were so wisely framed and were so just and fair in their operation that they have not to any great extent been interfered with by legislation, either state or national. In the first mining statute, passed July 9, 1866, they received the recognition and sanction of Congress, as they had previously the legislative and judicial approval of the States and Territories in which mines of gold and silver were*

found.”

The legal definition of a Mining District was recognized in *U.S. v. Smith, 11 F. 487 (1882)*, “The phrase ‘mining district’ is well known, and means a section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which gold or silver or both are found in paying quantities, and which is worked therefor, under rules and regulations prescribed by the miners therein, as the White Pine, the Humbolt, etc. This term, and the thing signified by it, are also recognized by the United States Statutes. Sections 2319, 2324, Rev. St.; Copp, U.S. Min. Lands, 471. There is no method of proceeding known to the law by which a district of country can be prospected, surveyed, and established, or declared to be a ‘mineral district.’ The ordinary surveys of the public lands do not include any examination or exploration of them for mineral deposits, the surveyor being only required ‘to note in his field book the true situation of all mines, salt licks, salt springs, and mill-sites which come to his knowledge.’ Sub. 7, Sec. 2395, Rev. St.”

Later in *Del Monte Mining & Milling Co v. Last Chance Mining & Milling Co, 171 U.S. 55 (1898)*. The court discussed that before the 1866 lode law and before the more refined 1872 Mining law “that there was no general legislation on the part of congress, the fact of explorers searching the public domain for mines, and their possessory rights to the mines by them discovered, was generally recognized, and the rules and customs of miners in any particular district were enforced as valid. As said by this court in *Sparrow v. Stron, 3 Wall. 97, 104*: ‘We know, also, that the territorial legislature has recognized by statute the validity and binding force of the rules, regulations, and customs of the mining districts. And we cannot shut our eyes to the public history, which informs us that under this legislation, and not only without interference by the national government, but under its implied sanction, vast mining interests have grown up employing many millions of capital, and contributing largely to the prosperity and improvement of the whole country.’ See, also, *Forbes v. Gracey, 94 U. S. 762*; *Jennison v. Kirk, 98 U. S. 453-459*; *Broder v. Water Co., 101 U. S. 274-276*; *Manuel v. Wulff, 152 U. S. 505-510, 14 Sup. Ct. 651*; *Black v. Mining Co., 163 U. S. 445, 449, 16 Sup. Ct. 1101.*”

The court went on and stated: “The Act of 1866 was, however, as we have said, the first general legislation in respect to the disposal of mines. The first section provided: ‘That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.” (Emphasis added.)

In analysis of the last sentence, “...and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States” reflects the Mining District authority to make rules and regulations that shall not be in conflict with Congressional enactments of law. Of importance is the fact Congress does not command that the rules and regulations from the Mining District or the power that they exercise be *consistent with* other federal agency regulations. Although, like the power of the Mining Districts to issue rules and regulations to carry out their authority granted or mandated by Congress, no agency or the like, shall make regulations in contradiction to the clear intent and language of Congress and shall not be entitled to deference by the courts.

Mining Districts are the private regulatory authority granted by Congress recognized to regulate the mineral lands held by the United States and for the disposal to citizens of the United States, by means of development and potentially perfected by patent. Among other priorities, the Dept. of Interior since its inception in 1789 has always concurrently had a role in managing the mineral estates of the United States. See: *Best v. Humboldt*, 371 U.S. 334 (1963) “*The Department of Interior has plenary authority over administration of public lands, including mineral lands, and it has broad authority to issue regulations concerning them.* 5 U.S.C.A. § 485; 30 U.S.C.A. § 22; 43

U.S.C.A. §§ 2, 1201.” While the Dept. of Interior may have plenary authority over the administration of public lands, including mineral lands, that authority is not exclusive. See: *U.S. v. Backlund*, 2014WL5033202(C.A.9

(Or)) “...Congress granted the Forest Service broad authority to regulate access to mining claims on National

Forest Service lands.”), cert. denied, 133 S.Ct. 1464 (2013); *United States v. Richardson*, 599 F.2d 290, 295 (9th Cir.1979) (upholding the Department of Agriculture’s authority to regulate unpatented mining in national forests)”.

In 1955 under the Multiple Surface Use Act codified at 30 U.S.C. § 612(b), Congress directed that: “*Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto...*”

No mention is made to Mining Districts in the above enactment. Prior to 1955, mineral deposits were legally described in relation to Mining Districts (*U.S. v. Smith, supra*). To this author’s knowledge, no court has ruled on the subject addressing “...(except mineral deposits subject to location under the mining laws of the United States)

...” statement within the 1955 Act itself. Instead, the courts have interpreted this section of the 1955 Act in terms of undue material interference by the public or the surface management agency itself. This was best illustrated in the Shoemaker case (110 IBLA 39) in 1989 where the court said: “*Federal management must yield to mining as the dominant and primary use. The terms ‘endanger’ and ‘materially interfere’ used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there is no evidence that such action endangers the claimant’s operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use. Like ‘other surface resources,’ the terms ‘endanger’ and ‘materially interfere’ are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state: This language, carefully developed, emphasizes the committee’s insistence that this legislation not have the effect of modifying longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be*

vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent lands, so long as and to the extent that these activities do not endanger or materially interfere with mining, or related operations or activities on the mining claim. H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474,2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9."The court went on to say:

"The change made by the Surface Resources Act was to create in the United States explicit authority to manage and dispose of the vegetative surface resources and to manage other surface resources. 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, *supra* at 365-66, 92 I.D. at 216-17.

Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto. 30 U.S.C. § 612(b) (1982); see *United States v. Curtis-Nevada Mines, Inc.*, 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the dominant and primary use, the mineral locator having a first and full right to use the surface and surface resources." See also *U.S. v. Lex*, 300

F. Supp. 2d 951 (2003): "As a result of the Multiple Use Act, owners of unpatented mining claims must comply with government regulation of the surface of their claims, so long as that regulation does not materially interfere with prospecting or mining operations."

The original documented rules, regulations and customs of miners (local rules and regulation bylaws) in their respective Mining Districts were also federally recognized in the United States Census in 1880 and is available online at the mmacusa.org website by clicking on "Mining Districts", then clicking on "Mining Laws 1880 Census" in order to download the documents. These local bylaws are actively being undated to be consistent with existing Congressional enactments within each local Mining District.

In summary, it is this authors opinion that although mining claimants have the legal authority to issue rules and regulations in the context of organized traditional Mining Districts, many miners insist that in the 21st Century all they wish to perform is customary arbitration (through a elected local Mining District board) to determine the reasonable applicability of today's agency regulations that have been misapplied or applied in an onerous fashion that unduly materially interfere. The net benefit of having the miners role clarified in modern times through legislation will save the

federal government and the private sector millions of dollars annually in litigation costs and delays, provide regulatory predictability that encourages investments domestically, enable a reliable source of domestically mined rare earth minerals and metals for military needs as well as economic security needs, and provide good paying jobs while still protecting the environment.

Now lets bring the current laws into play;

Multiple Use Lands, Symbiotic Relations and Conflict Resolutions©

In 1969 Congress declared under the National Environmental Policy Act (NEPA) that: "The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated **to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.**"

The following year in 1970 Congress declared under the National Minerals Policy Act: "The Congress declares that it is the continuing policy of the Federal Government in the national interest **to foster and encourage** private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities."

Then under the 1976 Federal Land Management & Policy Act (FLPMA). The Congress declares that it is the policy of the United States that--

- (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;
- (2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected

through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;...

I will stop right there and repeat the last sentence as it is rather important. "Public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act". 1976 marked a year in which land management started to get rather complicated namely for one reason. The BLM and the Forest Service failed to consider that "Mining Districts" already occupied the public lands and were previous designations of specific uses. Species habitat under the Endangered Species Act and the "areas of critical environmental concern" that FLPMA enables, have now overlaid on top of prime mineral reserves within Mining Districts. Is it any wonder we now have conflicts and clashes in our national priorities?

In layman's terms you cannot place a new Land Use Designation over the first pre-existing Land Use Designation of a mining district without congressional approval and the approval and concurrence of the mining district. No DRECP! No WEMO! No Management areas! No Study areas! No Scenic areas! No Buffer zones! No Wilderness areas!

Mining Districts and the mineral claims they embrace are specific uses of the land. Congress gave us a solution to conflicts that may arise in the event of competing use of the lands in the 1955 Multiple – Surface Use Act. It was best said in the Shoemaker case (110 IBLA 39) in 1989 where the court said: **"Federal management must yield to mining as the dominant and primary use.** The terms "endanger" and "materially interfere" used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there is no evidence that such action endangers the claimant's operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use. Like "other surface resources," the terms "endanger" and "materially interfere" are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state:

This language, carefully developed, emphasizes the committee's insistence that this legislation not have the effect of modifying longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent

lands, so long as and to the extent that these activities do not endanger or materially interfere with mining, or related operations or activities on the mining claim”.

H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9.

The court went on to say:

“The change made by the Surface Resources Act was to create in the United States explicit authority "to manage and dispose of the vegetative surface resources * * * and to manage other surface resources." 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, *supra* at 365-66, 92 I.D. at 216-17. Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b) (1982); see *United States v. Curtis-Nevada Mines, Inc.*, 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the "dominant and primary use," the mineral locator having a first and full right to use the surface and surface resources.”

So now that we have dispelled the notion that species habitat can dominate over a Mining District or mining claimant, does it mean that we should mine in a way that does not provide habitat? No. Webster’s defines “symbiosis” as: “the intimate association of two dissimilar organisms from which each organism benefits”. Remember that Congressional NEPA policy highlighted previously, where they said “...and maintain conditions under which man and nature can exist in productive harmony...” The automatic discrimination and exclusion of man from nature, like his access and use of the land, presupposes man as a destructive force for change, absent a relative hard look at the natural forces of change. Setting aside lands for non-use does not encourage wise use symbiotic tenets, which man has traditionally formed in its co-existence with nature. In the simplest terms, there are many people in our society that in growing up were never taught to play well with others in the same sandbox. This concept of playing well with others is embodied in the lion’s share of public land laws and its “multiple – use” principles. The 1964 Wilderness Act is the only law in the entire world that is not consistent with these multiple –use principles. The Wilderness Act presupposes man as a destructive force for change, regardless of any relative hard look at the natural forces of change.

Do wildlife species stakeholders have federal rights to the degree they hold a Constitutional Bill of Rights within a Mining District or mining claim? Technically no, but the Endangered Species Act does provide some guidance on lands not previously occupied for special uses. It is not uncommon for mining activities to create diversity in species’ habitat with land alterations, many of which are wildlife sanctuaries today. Agencies often deal with two competing objectives, exploitation vs. preservation. The balance can best be achieved by full participation by all stakeholders. Unfortunately, the

Mining Districts are not presently being represented within the BLM or Forest Service, but that can change and can be done under present law through a memorandum of understanding (MOU) with the Bureau of Land Management (BLM) and further clarified through the current draft Minerals and Mining Advisory Council (MMAC) Bill, “the Minerals and Mining Regulatory Reform Act – A Clear Path Respecting Mining Rights”. The Mining Districts can bring to the table customary conflict resolution through board arbitration to help solve problems and to provide the proper balance. An example of such could very well be incentive based mitigation that respects the symbiotic tenets man has traditionally formed in its co-existence with nature.

These are some of the facts, in the California, Arizona and Nevada Deserts

1. Solar fields concept:
 - a. Some of the largest contractors shopping in the California deserts for solar field construction are Spain, Portugal and Italy. Italy is Europe’s largest transmission line manufacturing source.
 - b. Income derived from these investments will be sent overseas to foreign corporations as profit.
 - c. Construction concepts are stalled out because transmission lines and easements are at capacity. New easements and transmission lines do not exist in some of California and western extreme desert locations.
2. Edison Power Company:
 - a. Transmission lines in the desert are at maximum scheduled capacity.
 - b. Large solar fields and/or wind farm electrical production will require new easements, transmission towers and transmission lines.
 - c. Edison Coordinated new easement construction possibilities with San Bernardino County Board of Supervisors and in-tandem & identified (5) potential sites that could be provided with transmission line construction by easement, without DRECP restricting all desert multiple land use on 22 million acres.
3. County of San Bernardino: Largest County in California – Mojave Desert.
 - a. This area is roughly from the San Bernardino Mountain Range to the Nevada State line.
 - b. San Bernardino County, California has prepared a resolution approving approximately (5) sites in the Mojave Desert region, in coordination with Edison Power Company, where new transmission line construction is feasible, for clean energy production. This includes either solar fields or wind turban farms. This is accomplished without DRECP closing down 10.8 million acres and by a blanket effect, terminating all multiple land use, with special emphasis on mining.
Special Note: Even now with this approval, the environmentalists have created a new “Buzzword,” “Protected Landscape.” Now nothing matters, not wildlife, plants, people, mining, clean energy, absolutely no U.S. Citizen is allowed to use federal lands for any reason. (No human allowed areas).

This is just one example, where (4) counties are affected in the western deserts of California. ie. Inyo, Kern, San Bernardino & Riverside Counties & equals a total of 22.million acres.

In conclusion;

MMAC, Members, Miners, and Mining Districts vote “NO” on the DRECP unless Mining Districts and Mineral Assessment Maps are recognized and excluded from the DRECP Land Use Designation – Amendments. Mining Districts have never been recognized in any of the Scoping Meetings or Public Hearings.

Per my (William Jensen) conference call with James Kenna, former California State Director of the Bureau of Land Management, and Congressman Cook’s office, James Kenna stated, “Mining Districts were NEVER supposed to be a part of the DRECP.” (see attached letter from Congressman Cook).

Respectfully,



William Jensen
Minerals and Mining Advisory Council