

**Statement of
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**House Natural Resources Committee
Subcommittee on Energy and Mineral Resources
Hearing on
“Reforming the Mining Law of 1872”**

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Chairman Lowenthal, Ranking Member Stauber, and Members of the Committee, thank you for the opportunity to provide testimony on President Biden’s vision for a whole-of-government effort to reform the General Mining Law of 1872 (Mining Law) and to promote the sustainable and responsible domestic production of minerals and to ensure a fair return to the taxpayer.

Tuesday marked the 150th anniversary of the Mining Law. At the time of its enactment, Congress designed the Mining Law to encourage mineral exploration and development on Federal lands and the settlement of the West. The law allowed citizens to explore public lands for valuable minerals (such as gold, silver, and copper), to stake a claim if minerals could be extracted at a profit, and to patent the claim—gaining legal title to the land for a nominal cost—to encourage settlement. Congress did not, however, account for the legacy of environmental degradation that mining would have on its surrounding communities, nor did it provide for royalties, or a comprehensive system to evaluate, permit, develop, and reclaim mines to ensure sustainable mining and healthy public lands for future generations. In short, it was very much legislation of its time.

Over the last 150 years, the management of our public lands—through the Department of the Interior (Department) and its Bureaus—has evolved to meet the needs of our nation and to serve as a steward of our public lands and resources. While we can recognize the historic and defining contribution that mining played in settling the West, we also must recognize the limits that exist today from relying on such an antiquated system. The Administration recognizes the important role mining will continue to play in the modern economy and the growing need for responsibly sourced critical minerals to meet our climate, infrastructure, and global competitiveness goals, but believes that the Mining Law of 1872 provides an inadequate structural framework and serves as an impediment to a robust, environmentally, and socially responsible, sustainable domestic mining industry.

We appreciate the work the Sponsor and the Committee have done to propose reforms to the Mining Law through H.R. 7580, the Clean Energy and Mineral Reforms Act. We look forward to continuing to work with Congress as the Administration undergoes its review of the Federal mining program and considers proposals for potential mining reforms.

Laws Governing Mining on Federal Lands

For almost 150 years, the Mining Law has allowed for domestic mineral production on Federal lands. Initially, the Mining Law provided disposal authority with no return to the taxpayer for development of nearly all mineral resources. In 1920, Congress enacted the Mineral Leasing Act (MLA), removing petroleum, natural gas and other hydrocarbons, as well as phosphates, sodium, sulfur, and potassium, from disposal under the Mining Law and creating a leasing-based system for these minerals. In 1947, the Materials Act removed “common varieties” of certain widespread minerals of common occurrence, such as sand and gravel, from disposal under the Mining Law and instead made them subject to sale or permit. Today, the minerals subject to disposal under the Mining Law include both metallic minerals, such as gold, silver, and copper, and various industrial minerals such as gypsum and bentonite.

While the MLA and the Materials Act established a process to provide the taxpayer with a financial return for those minerals that are disposed of through sale or lease, minerals managed under the Mining Law remain without similar consideration. Some fees are required, including one-time fees to record mining claims with the Bureau of Land Management (BLM) and a yearly maintenance fee unless certain waiver requirements are met. But the Mining Law does not require operators to report the quantity or type of minerals that are produced by their operations to the BLM and, most importantly, they pay no royalties to the U.S. government when they remove valuable mineral resources from public lands – in sharp contrast to royalty payments required for the extraction of oil, gas, coal, and other leasable minerals from public lands.

Management & Regulation of Mining Under the Mining Law

Management of mineral development under the Mining Law has evolved over time with the need to balance competing uses of public lands. Prior to 1981, there were no regulations in place to regulate prospecting, exploration, and mining activities under the Mining Law on BLM-administered public lands. The BLM’s surface management regulations promulgated under the Federal Land Policy and Management Act (FLPMA) in 1981 and revised in 2001 provide a framework to prevent unnecessary or undue degradation of public lands during mining and reclamation under the Mining Law. To ensure that mining operations on public lands occur in an environmentally-sound manner, operations must comply with other state and Federal laws, including the Clean Water Act, Clean Air Act, Endangered Species Act, Wilderness Act, and the National Historic Preservation Act. Certain exploration operations, known as notice-level operations, do not require Federal approval and therefore are not subject to the National Environmental Policy Act.

Per FLPMA, the BLM is responsible for recording and adjudicating mining claims made on Federal lands. The BLM is also responsible for conducting mineral examinations to determine if the mining claim is a valid existing right under the Mining Law. Additionally, the BLM administers the collection of the annual maintenance fee for each mining claim, as well as location fees for new mining claims. In FY 2020, the BLM collected a total of over \$65 million in fees associated with nearly 391,000 active mining claims on Federal lands.

The Mining Law does not require reporting the type and quantity of minerals produced on Federal lands to the Department. Therefore, the Department is only able to track notices or authorized plans. At the end of April 2022, there were 578 active mining plans of operation and

another 867 active mining notices on Federal lands. The Department does not have an accurate account of total production occurring on Federal lands, including critical minerals, from these plans and notices. The Department also notes that, as mentioned previously, the Mining Law does not require a royalty for the minerals produced on Federal lands; therefore, the public is not receiving a fair return for the development and use of these Federal resources.

FLPMA also requires the BLM to inventory abandoned mine sites on public lands and provides the authority to withdraw Federal lands from the operation of the Mining Law, subject to valid existing rights. Currently, there are over 24 million acres—just under 10 percent—of BLM-managed lands withdrawn from mineral entry.

Reclamation of Mining Operations Under the Mining Law

Reclamation of mineral development was not a requirement under the Mining Law when enacted 150 years ago. Pursuant to FLPMA, the BLM issued regulations in 1981, which were amended in 2001 and require notices and plans of operation to include detailed reclamation plans. These regulations also require operators to provide financial guarantees covering the full cost to reclaim mining operations. Additionally, the BLM's regulations allow the agency to require an operator to establish a trust fund or other funding mechanism to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining reclamation and maintenance requirements after a mine is closed. These regulations provide the BLM with a mechanism to provide for protection of the environment after mining has concluded.

In response to Government Accountability Office recommendations, BLM implemented a tracking system under which BLM certifies each fiscal year that the reclamation cost estimates for proposed and operating mines have been reviewed and are sufficient to cover the cost of reclamation. Currently, the BLM holds financial guarantees of \$3.3 billion which is held to fund the costs of reclamation of mining operations on BLM-managed public lands. Furthermore, the BLM continuously reviews reclamation bonding requirements.

Reforming Domestic Mining

Since taking office, President Biden has outlined a whole-of-government approach to ensure that U.S. mining activity is sustainable, responsible, and efficient. Understanding that resilient supply chains are necessary to revitalize and rebuild domestic manufacturing capacity while maintaining America's competitive edge in research and development, in February 2021 the President issued Executive Order (EO) 14017, "America's Supply Chains." The EO directed a government-wide approach to assess the vulnerabilities in, and strengthen the resilience of, critical supply chains of various goods, including critical and strategic minerals essential to the economic and national security of the United States.

The EO also initiated a 100-day supply chain review requirement, and the Administration published its findings in a report in June 2021 titled, "*Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-based Growth.*" Following the 100-day supply chain review, the Department released an updated list of 50 critical minerals in February 2022 as required by the Energy Act of 2020.

While affirming the significant role critical minerals play in our national security, economy, renewable energy development, and infrastructure, the review also made clear the need to reform the Mining Law to protect the environment, impacted communities, and Tribal Nations while strengthening and updating the permitting system to ensure certainty and timeliness of adjudication for project sponsors. The report noted: “We recommend that the government, working with private sector and non-governmental stakeholders, encourage the development and adoption of comprehensive sustainability standards for essential minerals, such as lithium, cobalt, nickel, copper, and other minerals. We further recommend establishing an interagency team with expertise in mine permitting and environmental law to identify gaps in statutes and regulations that may need to be updated to ensure new production meets strong environmental standards throughout the lifecycle of the project; ensure meaningful community consultation and consultation with Tribal Nations, respecting the government-to-government relationship, at all stages of the mining process; and examine opportunities to reduce time, cost, and risk of permitting without compromising these strong environmental and consultation benchmarks.”

Consistent with the recommendation of the 100-day review, on February 22, 2022, the Department announced the launch of a new interagency working group, comprised of experts in mine permitting and environmental law from across the Federal government, to review existing mining laws, regulations, and permitting processes. This working group will complement the effort outlined in the Bipartisan Infrastructure Law (BIL; Public Law 117-58), which requires the Department and the U.S. Department of Agriculture to submit a report to Congress identifying legislative and regulatory recommendations to increase timeliness of permitting activities for exploration and development of domestic critical minerals.

The working group will host extensive public input and comment sessions to ensure an inclusive process and will work with relevant agencies to initiate updates to mining regulations. These efforts began two days ago, on May 10th, the 150th anniversary of the signing of the Mining Law, with a productive and constructive meeting that brought together the mining industry, Tribes, states, environmental organizations, outdoor recreation groups, automobile manufacturers, labor unions, and legal experts with senior Administration officials to discuss the common benefits—for both industry and impacted communities—that can be obtained through mining reform. The working group looks forward to engaging with Members of Congress as well to consider your ideas and proposals, such as those in H.R. 7580, as it conducts its deliberations and develops recommendations.

Additionally, in February, the President also authorized the use of the Defense Production Act to support the responsible production of five critical minerals needed for large capacity batteries (lithium, cobalt, graphite, nickel and manganese). The authorization will help accelerate the transition to clean energy economy in the short-term. As the President said in remarks on Securing Critical Minerals for a Future Made in America, “As we build the economy, we’re going to build it around working Americans. That means making sure that labor is at the table, that Tribes and the people from the community are at the table from day one, and that environmental protections are paramount.” With this effort, the President has made clear his commitment to environmentally responsible and sustainable mining.

Fundamental Principles for Domestic Mining Reform

In concert with the announcement of the working group, the Administration released its “Fundamental Principles for Domestic Mining Reform” to identify the key values that will drive the efforts to update the country’s mining regulations, laws, and permitting processes. These principles, summarized below, are necessary to ensure that new production meets strong environmental and community and Tribal engagement standards during all stages of mine development, from initial exploration through reclamation, while improving the efficiency and outcomes of the permitting process.

Establish Strong Responsible Mining Standards

Regulatory and legislative mining reform should create a level playing field by establishing strong environmental, sustainability, worker, health and safety, Tribal consultation, and community engagement standards for mineral exploration and development. Americans should know that the minerals found in their cars, phones, and other products adhere to strong, responsible mining standards. This includes establishing specific up-to-date financial assurance, operational, performance, and reclamation standards that require protection of the environment during exploration, discovery, active mining, reclamation, and post-closure.

These standards should also reduce the risk and consequences of legacy pollution, decrease the likelihood of catastrophic events, such as tailings impoundment failures, and protect taxpayers against companies that go bankrupt and leave operations inadequately closed. In addition, efforts must also be in place to apply the standards to minerals from foreign sources that may compete in the domestic market, by including reliable traceability of the minerals and materials that enter the U.S. economy.

Secure a Sustainable Domestic Supply of Critical Minerals

Domestic availability of critical minerals touches all points of the supply chain: resource, processing, manufacturing, use, and recycling. The transition to clean energy is projected to create a 400 to 600 percent increase in global demand for key critical minerals like lithium, graphite, cobalt, and nickel to meet our climate goals, and for some minerals the increase in demand will be many times higher. Currently, the United States is reliant on Chinese imports for many of these minerals in processed form.

The President is using all available tools, such as invoking the Defense Production Act, but more will need to be done to meet current and future demand, and to break our reliance on foreign sources and provide good jobs for American workers. Mining reform should assure that a reliable supply of critical minerals can be provided both through environmentally and socially responsible mining and processing projects, and other sustainable sources, such as recycling and recovery from unconventional sources, including mine wastes, mine tailings, mine-influenced waters, and coal ash. Provisions for recovery and reprocessing of critical minerals must ensure existing selected and implemented remedies or reclamation measures are protected and recovery does not exacerbate existing site conditions.

Prioritize Recycling, Reuse, & Efficient Use of Critical Minerals

The recycling, reuse, and efficient use of existing mineral assets (wastes and recyclable materials) should be prioritized, and commercially viable methods supported and promoted. The

resources available from these sources should be assessed and relied upon, where possible, before developing new sources. This includes developing recycling programs; designing products that facilitate recycling at end-of-use; reprocessing mine waste, appropriate treatment of mine influenced waters, and ash material; and promoting other engineering and innovation advancements, such as reducing the quantity of inputs and identifying substitutes for critical minerals to reduce the need for new mining of raw minerals and reliance on unsustainable sources.

Provide Permitting Certainty

Any new law covering mineral extraction, or updates of existing mining regulations, should provide clear, consistent standards and processes for mine exploration, operations, closure, and plan approvals on public land. Consistent with a whole-of-government approach, Federal agencies will improve interagency cooperation and coordination during environmental review and permitting. This will be done in concert with project proponents, state and local governments, as well as Tribal Nations to improve permitting times, reduce conflicts with local communities, and improve environmental, social, and economic outcomes.

Adopt Fair Royalties So Taxpayers Benefit

The Administration urges Congress to establish a royalty for all minerals extracted from public land in order to provide a fair return to taxpayers. The Department notes that hardrock mining is the only extractive industry on U.S. public lands that does not pay a royalty, while states and virtually all other countries charge royalties on hardrock mines. Proceeds from these royalties should be invested to prevent and mitigate adverse environmental and social impacts, improve environmental and economic outcomes for underserved communities, improve permitting and compliance, advance efficient and clean mining and remediation technologies, and support Tribal Nations and Tribal communities impacted by development on public lands.

Establish a Fully Funded Hardrock Mine Reclamation Program

Reclamation of mineral development was not a requirement under the Mining Law when enacted 150 years ago. Consequently, there are over 500,000 legacy mining sites in the western United States alone. Congress should establish a durable program to fund the remediation of legacy abandoned hardrock mining sites through reclamation fees, just as occurs with the coal industry and abandoned coal mines. These fees should support well-paying jobs to remediate the environmental impacts of abandoned mine sites and assist in community redevelopment.

Additionally, legal certainty is needed for Good Samaritans working to remediate legacy pollution, including providing for permits and, as appropriate, exemptions from or specialized provisions of environmental laws and regulations that may otherwise dissuade Good Samaritans from undertaking cleanup activities. This should include consideration of projects that may responsibly extract critical minerals from legacy mine wastes, thereby avoiding the need for additional greenfield mine development.

Conduct Comprehensive Planning

Like other uses of public lands, mining should be governed by comprehensive Federal land-use assessments and planning. The right to explore and develop mineral resources on public lands not otherwise withdrawn from mining must be managed to ensure appropriate and sustainable

use of public resources. Planning, assessment, mine approval, and permitting decisions by Federal agencies should be conducted in a timely, transparent, and responsible manner to avoid, minimize, and mitigate for impacts generated by mining operations over the short and long term.

In addition, any legislative reforms must ensure that environmental review and safeguards, such as provided by the National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, and associated regulations, are not circumvented, repealed, or weakened for the purposes of mining, regardless of the importance of the targeted resource. Processes must also meet government-to-government responsibilities for consultation with Tribal Nations.

Protect Special Places

Some areas must be off-limits to mining and protected from mining impacts. Our federal land managers, in consultation with other decision makers, must have discretion to reject projects that threaten sensitive ecosystems, Tribal resources, and communities where pollution prevention and mitigation are not possible. Agencies should retain and use their authority to withdraw lands from mineral entry where necessary.

Solicit Community Input & Conduct Tribal Consultation

This Administration is committed to regular, meaningful, and robust consultation with Tribal Nations. This includes project-level public engagement processes prior to any key decision-making regarding mining. Land use planning processes must also allow upfront input from a broad set of stakeholders including local and state governments, workers, residents, and Environmental Justice communities about whether and under what conditions mining might occur.

Utilize the Best Available Science & Data

Any decisions on development should be guided by the extensive public and private data collected to map critical mineral resources, identify key fish and wildlife habitat, safeguard workers, protect community health and safety, and implement best practice avoidance and mitigation strategies. Agencies should, as appropriate, work with Indigenous traditional ecological knowledge holders and Tribal Nations to assure that their knowledge and expertise are considered and included in the process. This data should also inform public engagement and Tribal consultation.

Build Civil Service Expertise in Mining

The Department notes that in recent years Federal agencies have lost mining expertise due to retirements and downsizing. To achieve the Administration's goals to reform mining, Federal agencies need to rebuild expertise and fully staff agencies and offices, both through hiring and interagency coordination. This will ensure that agencies have sufficient qualified personnel and resources to accomplish resource assessments, environmental reviews, permitting, and consultations in an efficient and timely manner, as well as vigorously enforce our laws and regulations.

Conclusion

The Department looks forward to working with Congress and this Committee to continue to build areas of consensus around potential reforms to our mining laws. We recognize the need for environmentally and socially responsible and sustainably mined domestic production of mineral resources to help transition the country to a clean energy economy and to meet national security objectives. I appreciate the opportunity to testify today and would be happy to answer any question.