

**Statement of
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*“Digging Deeper: Ensuring Safety and Security in the Critical Mineral Supply Chain”***

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Chairman Fallon, Ranking Member Bush, and Members of the Subcommittee, thank you for the opportunity to provide testimony on the Biden-Harris administration’s commitment to a whole-of-government effort to update our mining policies, reform the General Mining Law of 1872 (Mining Law), strengthen permitting efficiency, and promote the sustainable and responsible domestic mining, processing, and recycling of critical minerals.

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 more effectively steward our public lands and resources. However, much of the mining on our nation’s public lands continues to be governed by a deeply outdated law passed shortly after the Civil War, creating significant management challenges and inefficiencies. 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 has concluded that fundamental reform of the Mining Law of 1872 is necessary to provide an adequate structural framework and remove impediments to a robust, environmentally, and socially responsible domestic mining industry.

The Administration understands that in order to strengthen the domestic mineral supply chain, with robust environmental protection and stakeholder engagement, we need to overhaul how we approach mining on Federal land. The Department is committed to working with Congress, the mining industry, Tribes, mining communities, workers and unions, and environmental and community organizations as well, to consider reforms that provide certainty and stability for the industry, strengthen domestic mineral supply chains, advance environmental sustainability, foster early and meaningful community engagement, and ensure a fair return to taxpayers.

Laws Governing Mining on Federal Lands

Since its enactment in 1872, the Mining Law has shaped domestic mineral production on Federal lands. Initially, the Mining Law allowed for the development of nearly all mineral resources with no return to the taxpayer. 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, 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, however, almost all hardrock minerals on Federal Land remain subject to disposition under the Reconstruction-era Mining Law. Significantly, the Mining Law also applies to the critical minerals that are needed to support our modern economy and fuel our transition to renewable energy— minerals like graphite, lithium, and cobalt. Moreover, the Mining Law does not provide for royalties on hardrock minerals, meaning the taxpayer does not receive a return for the production of these resources from public lands.

Management of Mining Under the Mining Law

Lands that are open to exploration and the location of new mining claims under the Mining Law include BLM-managed public domain lands, National Forest System lands reserved from the public domain and managed by the United States Forest Service (USFS), and certain split-estate lands where the mineral estate is reserved to the United States while the land surface is owned by Tribal, State, or private entities. Additionally, there are also some mining claims on National Park System and National Wildlife Refuge System lands.

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 on public lands occurs 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, the National Environmental Policy 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.

Under FLPMA, the BLM is responsible for administering mining claims on all Federal lands, regardless of surface ownership or management, while the relevant surface management agency generally oversees mineral exploration, development, and reclamation. 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. Since 1976, more than 4 million unpatented mining claims have been filed, covering more than 23.8 million acres of federally managed lands. In FY 2023, the BLM collected a total of almost \$95 million in fees associated with nearly 627,815 active mining claims on Federal lands. This is the highest number of active mining claims this century, an indication of significantly increased interest in mineral exploration and development on Federal Lands.

The Mining Law does not require reporting the type or 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 FY 2023, there were 509 active mining plans of operation and another 806 active mining notices on Federal Lands. The Department does not have an accurate account of

total production occurring on Federal lands, including for critical minerals, from these plans and notices.

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. In 2020, the Government Accountability Office reported that there are at least 532,652 abandoned hardrock mine features on lands under Forest Service, BLM, Park Service, or EPA jurisdiction, with the estimated reclamation costs running into the tens of billions, according to the Environmental Protection Agency. Unlike with coal, where companies pay a fee for each ton of coal mined that goes towards reclamation of legacy sites, there is no regular source of funding for reclaiming abandoned hardrock mines.

Reforming Mining on Public Lands

Since taking office, the Biden-Harris administration has outlined a whole-of-government approach to ensure that U.S. mining activity is responsible, and that mine permitting is 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, President Biden 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.*" Consistent with a recommendation of the 100-day review, on February 22, 2022, the Department announced the launch of an Interagency Working Group (IWG) comprised of experts in mine permitting, public engagement, and environmental law from across the Federal government. The IWG was charged with reviewing laws, regulations, policies, and permitting processes pertaining to hardrock mineral development. The IWG's efforts also addresses section 40206 of the Bipartisan Infrastructure Law (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 improve the timeliness of permitting activities for exploration and development of domestic critical minerals. In February 2022, the Department also released an updated list of 50 critical minerals, as required by the Energy Act of 2020.

IWG Report Findings

On September 12, 2023, the Biden-Harris administration released its final report from the IWG containing recommendations to reform and improve the way mining is conducted on public lands. The report provides more than 60 recommendations to Congress and Federal agencies, including recommendations for increasing public and Tribal engagement, making permitting processes more consistent and predictable for industry, ensuring a fair return to taxpayers, and protecting impacted communities and workers, as well as environmentally and culturally sensitive lands. The report also identifies reforms to revitalize Federal support for research into advanced, lower-impact mining and exploration technologies and methods, workforce

development, and the need for increased resources to address the legacy of abandoned and unreclaimed hardrock mining sites that continue to pollute land and water throughout the country. Finally, the report recommends moving to a leasing system, which could drive greater development of critical minerals in high value, low conflict areas.

As part of IWG's review, the Department considered input received during dozens of meetings — including with industry, states, stakeholders, and the public — multiple government-to-government consultations with Tribes, and a review of over 26,000 comments from the mining industry, state officials, Tribes, equipment manufacturers, academics, legal experts, environmental justice experts, the public, and more. These comments were carefully reviewed, and their input formed the foundation of the final report.

The report addresses several key policy considerations for domestic mineral production: first, demand for hardrock minerals, and critical minerals in particular, is growing at an exponential rate; second, the United States depends heavily on foreign nations—in some cases non-allied nations—to produce and refine many of the minerals that are in high demand and critical to our economic and national security; and third, efforts to address mineral supply chain challenges are complicated by the Reconstruction-era mining law promoting free access to minerals that are found on Federal land, which is inconsistent with how minerals are accessed in other modern jurisdictions. The rapid buildout of a clean energy economy is fueling a significant increase in demand for responsibly sourced critical minerals that power everything from consumer electronics to electric vehicle batteries. Recommendations from the IWG report will help ensure a sustainable and responsibly sourced domestic supply of minerals, which are key to meeting the nation's climate, infrastructure, and global competitiveness goals.

Recommendations from the IWG report aim to ensure a sustainable and responsibly sourced domestic supply of minerals, which are key to meeting the nation's climate, infrastructure, and global competitiveness goals. These recommendations, if adopted, could work in tandem with historic investments from the Bipartisan Infrastructure Law, the Inflation Reduction Act, and the Defense Production Act in critical minerals mining, processing, and recycling in the U.S., as well as diplomatic efforts to diversify international supply chains and ensure that China does not capture even more of the international market.

Conclusion

The IWG concluded that fundamental reform of the Mining Law of 1872 is necessary to achieve the best outcomes for communities and Tribes impacted by mining, as well as the mining industry, and to advance America's vital clean energy, climate, and manufacturing goals. The Report also outlined dozens of steps the Department can take within the Mining Law's antiquated framework to begin addressing some of the challenges of mineral development on Federal land. The Department looks forward to working with Congress and this Subcommittee to continue to build areas of consensus around potential reforms to our mining laws and regulations. I appreciate the opportunity to testify today and would be happy to answer any questions.