Attachment 1: Background Statutory and Regulatory Basis

Coal, waste rock associated with coal mining, and coal ash are potentially significant untapped domestic sources of critical minerals designated by the Secretary of the Interior ((30 U.S.C. 1606) through the U.S. Geological Survey Critical Minerals List). While other critical minerals may be co-located with coal, significant interest is currently focused on rare earth elements. Coal and coal waste rock can contain rare earth elements, but the concentrations are usually too low to be of economic value to justify development for those minerals alone. These low concentrations facilitate a need to process rare earth elements from coal leases that are already being mined.

On public domain lands, all rare earth elements and most of the other critical minerals listed in 2025, except for phosphate and potash, are considered locatable minerals subject to disposal under the Mining Law of 1872 and the regulations governing operations under the Mining Law. However, coal is subject to disposal under the Mineral Leasing Act of 1920 (MLA) or the Mineral Leasing Act for Acquired Lands (MLAAL). As a result, there are significant differences between how the Bureau of Land Management (BLM) manages mining operations for rare earth elements and coal. For ease of discussion, references below to critical minerals means the entire critical mineral list except for phosphate and potash, including the rare earth elements.

The BLM's role in managing Federal coal is limited to leasing, lease management, and administration to ensure that the United States receives fair market value for the coal and that leases are developed for maximum economic recovery. Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Office of Surface Mining Reclamation and Enforcement (OSM) or an approved State program is responsible for issuing a permit authorizing the surface coal mining and reclamation operations[1] and for enforcement of that permit, including inspections. Under the MLA, for leased Federal coal, OSM is also responsible for recommending to the Assistant Secretary for Land and Minerals Management (ASLM) whether to approve, disapprove, or approve with conditions a mining plan, which includes reclamation. If a surface coal mining and reclamation operation subsequently submits an application to revise its SMCRA permit and that revision involves Federal lands, including leased Federal coal, OSM must also determine whether a mining plan modification is required, and, if so OSM will make a recommendation to the ASLM whether to approve, disapprove, or approve with condition that mining plan modification. Once Federal coal is leased, developed, and sold, the BLM has no authority to regulate use of coal or coal combustion byproducts.

The Multiple Mineral Development Act of 1954 (30 U.S.C. 524-526) and BLM's regulations at 43 CFR 3400.1 allow for the simultaneous development of a Federal tract for both locatable and leasable minerals. Under these authorities, both types of mineral development can occur on the same tract, provided they do not materially interfere with one another. There are no changes needed to BLM's regulations to allow coal producers to also develop critical minerals. If critical minerals are discovered during production on public domain lands and the coal lease holder

[1] The SMCRA definition of surface coal mining and reclamation operation is unique to SMCRA. *See* 30 U.S.C. 1291(27) & (28).

wants to develop those minerals, mining could be authorized under the Mining Law of 1872, as applicable, because the existence of a coal lease on a tract of land does not remove the subject lands from the operation under the Mining Law. If a coal lessee wants to develop critical minerals from the lands subject to the coal lease and the lands are subject to the Mining Law, any critical minerals found in those lands would be subject to disposal under the Mining Law and the Federal Land Policy and Management Act in accordance with 43 CFR Subpart 3809. If any mining claims are already located on the lands in question, the coal lessee may need to negotiate with the mining claimant to develop the critical minerals that are associated with coal development.

If the lands in question are acquired lands, the Mining Law generally does not apply. Generally, the MLAAL authorizes leasing of coal and certain minerals, which include, as relevant here, two critical minerals, potash and phosphate, but no rare earth elements. For certain types of acquired lands, including lands acquired under the Weeks Act and the Bankhead-Jones Farm Tenant Act, and others as listed in 43 CFR 3503.13, the BLM may dispose of those minerals through a hardrock lease under 43 CFR Part 3500. For certain types of land that have been acquired under specific acts that do not authorize mineral disposal, such as lands acquired for military purposes, BLM lacks the authority to authorize critical mineral development and disposal.

The issuance of a coal lease does not necessarily allow the coal lessee or operator to produce critical minerals for sale on the open market. The coal lease grants only rights to mine and sell the coal. Depending on how the operator plans to mine and sell the critical minerals, a hardrock lease or an approved plan of operation under the Mining Law may be necessary. For the few exceptional types of acquired lands mentioned above for which disposal authority does not exist, the BLM may have to deny an application to develop critical minerals until Congress takes action to provide BLM with the missing disposal authority.