Katie Sweeney, Reponses to Questions for the Record
House Energy and Commerce Subcommittee on Oversight and Investigations
May 21, 2025, Hearing on "Examining Ways to Enhance Our Domestic Critical Mineral Supply Chains"

Questions from the Honorable Buddy Carter (R-GA)

1. China dominates global critical mineral processing, refining nearly 80% of cobalt, over 60% of lithium, and more than 90% of rare-earth magnets. Even if the U.S. could source all needed raw materials domestically, we would still rely on China for refining. Fortunately, American companies like Phoenix Tailings are pioneering zero-waste, nonhazardous refining technologies to change that.

    a. How can the federal government better support domestic processors like Phoenix Tailings so that producers—such as the Jesup mine in Georgia's First District— can send their raw materials to be refined here in the U.S. instead of China?

The U.S. was once a major refiner and processor of the minerals critical to our national and economic security. In the post-World War II/Cold War era we ceded this leadership to China. There are numerous ways for the federal government to help rebuild our processing capabilities. Mechanisms include permitting reforms, rightsizing environmental regulations, trade remedies, and funding or other government incentives.

- **Permitting Improvements**

Background: One of the U.S.' biggest self-imposed policy bottlenecks is our outdated, inefficient and prolonged permitting system, which prevents the domestic mining and processing sector from performing to its full potential. The negative consequences of permit delays include exacerbation of growing dependence on mineral imports, inability to meet rising demand required, impairment of U.S. investment attractiveness, and impediments to additional economic contributions to federal, state and local coffers. Opening or expanding a processing facility in the U.S. typically involves multiple agencies and the navigation of tens or even hundreds of permitting processes at the local, state and federal levels. The U.S. has one of the longest permitting processes in the world for infrastructure projects like mineral processing facilities.

Recommendations: The National Mining Association (NMA) recommends the following to improve permitting efficiencies for mining and mineral processing projects:

- Agency regulations and policies should clearly articulate the appropriate scope of the effects analysis required by the National Environmental Policy Act (NEPA), as spelled out in Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. _____, 145 S. Ct. 1497 (2025);
- Agencies must adhere to new timelines, page limits and other provisions of the Fiscal Responsibility Act;
- Agencies should expand use of programmatic (generic) environmental impact statements and tiering to expedite permitting;
- Full implementation of the "One Federal Decision" framework described in Executive Order 13807 to make NEPA more efficient by requiring all federal agencies with a role to use a single integrated review process;
- Agencies must implement and enforce accountability mechanisms to ensure agency adherence to timelines, including cooperating agencies;
- Additional use of mechanisms such as the Fixing America's Surface Transportation Act (FAST-41) provisions to speed mining and mineral processing projects;
- Limitations on use of "new information" that appears after public comment on draft documents that is frequently misused to delay projects;
- Expanded use of applicant-provided environmental assessments (EA), environmental impact statements (EIS) documents and supporting studies to free agency resources for review of, rather than creation of, such materials to speed permitting processes; and
- Greater agency reliance on existing data where appropriate, rather than requiring duplicative fieldwork, and acceptance of environmental analyses conducted by states or tribes if those processes meet or exceed federal standards.

Judicial reform must go hand-in-hand with permitting reforms to prevent frivolous lawsuits used to delay infrastructure projects. The NMA recommends the following:

- Amend the six-year statute of limitations applicable to NEPA to require challenges to be brought within 120 days;
- Strengthen standing requirements to require a "direct and tangible harm to the individual" seeking to challenge a decision; and
- Deter frivolous lawsuits through the imposition of costs on litigants challenging projects by requiring posting of a bond upfront, payment of court costs or repayment of lost revenue if their case is not successful to discourage frivolous lawsuits.

- **Rightsizing Environmental Regulations**

Background: The mining and mineral processing industry is one of the most heavily regulated industries in the U.S. as it is subject to exhaustive federal and state environmental, ecological, reclamation, closure, and financial assurance laws and regulations to ensure that operations protect the environment, public health

and safety, and wildlife. More than three dozen major federal environmental laws govern operations, including NEPA, Clean Water Act, Clean Air Act, Endangered Species Act, National Historic Preservation Act, Safe Drinking Water Act; Toxic Substances Control Act; and the Resource Conservation and Recovery Act.

Recommendations: The federal agencies with authority over mining and mineral processing facilities should ensure that any new regulations or regulatory revisions do not impose unreasonable burdens on this already highly regulated industry without substantial evidence that any significant risks are not already addressed by existing state and federal programs. Furthermore, as directed by section 3 of EO 14154, Unleashing American Energy, agencies should undertake an immediately review of actions that potentially burden the development of critical minerals. The NMA recently responded to an April 2025, Office of Management and Budget's (OMB) request for information to support the administration's deregulatory agenda by identifying rules to rescind or replace "that stifle American businesses and American ingenuity," including regulations "that are unnecessary, unlawful, unduly burdensome, or unsound." The NMA's extensive comments identified nearly 40 regulations that impede the mining and/or minerals processing industry. These comments and recommended actions are available in the OMB docket for the information request.

- **Trade Mechanisms to Address Market Distortions**

Background: The United States' reliance on foreign processing of critical minerals creates excessive vulnerability from the distortive effects of unfair market practices of countries that exploit this weakness. The Government of China in particular, engages in non-market, non-competitive practices which destabilize critical minerals supply chains. China has provided subsidies to its domestic industries that have created significant challenges for U.S. producers. These subsidies take various forms, including direct financial support to domestic processing facilities, energy subsidies that lower electricity and operational costs, and tax incentives coupled with preferential loan programs. Consequently, foreign producers can export critical minerals and downstream products, at artificially low prices, making it increasingly difficult for U.S. manufacturers to compete in both domestic and international markets.

Furthermore, global overcapacity, particularly in China, has led to a surplus of critical minerals. This overproduction drives down global prices. Lower prices resulting from overcapacity may discourage investment in U.S. mining, smelting, and refining infrastructure, thereby increasing dependence on imports to meet future demand.

Recommendations: The federal government has a number of trade tools that can be utilized to send a signal that the U.S. is prepared to fully support U.S. and foreign investments into domestic critical minerals supply chains. For example, the government can utilize the World Trade Organization (WTO) and other avenues to

challenge unlawful or otherwise unfair trading practices of foreign countries, where appropriate, necessary, and applicable. Other tools that should be considered are:

- Section 201 of the Trade Expansion Act of 1962 – provides for safeguard actions in order to facilitate positive adjustment of U.S. domestic industry to import competition;
- Section 301 of the Trade Act of 1974 – used to enforce U.S. rights under bilateral and multilateral trade agreements, and to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce;
- Requested or self-initiated Trade Expansion Act of 1962 Section 232 and anti-dumping and countervailing duty (CVD) investigations.
- Expanded purview of the Committee on Foreign Investment in the United States to monitor and tract outbound investments in critical mineral supply chains for increased transparency of "foreign entities of concern."
- Filing of additional WTO trade dispute settlement cases. From 2009-2016, the U.S., with an international coalition of like-minded economies, filed three successful WTO cases against China in the raw materials sector. The federal government should re-establish its foreign connections to determine possible courses of action to address China's market distorting practices and subsidies.

- **Government Incentives**

Background: Federal investments and incentives are likely necessary to accelerate our efforts to break free of China's hold on the minerals supply chain. Executive Order 14241, Immediate Measures to Increase American Mineral Production, contains numerous provisions related to accelerating private and public capital investment in domestic mineral production projects, including use of the National Security Capital Forum, additional use of Defense Production Act funds, and leveraging of Export-Import Bank programs. More recently, Congress enacted, and President Trump signed, the One, Big, Beautiful Bill that provides significant funding to achieve the objectives of the EO. For example, the legislation includes:

- Expanded Department of Defense (DOD) funding for critical minerals supply chains, including $5 billion for investments in critical minerals supply chains and $500 million for loans, loan guarantees and technical assistance, for critical minerals and related industries and projects.
- Adds $1 billion for Defense Production Act funding of domestic mineral and energy infrastructure projects.
- Includes an additional $1 billion "for enabling the identification, leasing, development, production, processing, transportation, transmission, refining, and generation needed for energy and critical minerals.''

Recommendations: Bolstering investment in domestic processing and refining capacity is crucial as extraction and refining must scale together to create a secure supply chain. Increasing both primary and secondary refining and smelting capacity can be achieved through dedicated federal investment and an overhaul of

regulatory and permitting processes. The OBBB funds should be efficiently deployed to provide federal incentives such as grants, tax credits, preferred loans, loan guarantees, purchasing and offtake agreements, revolving funds, equity cost-sharing, R&D funding, and set-aside quotas for domestic consumption.

b. There are some small companies testing or deploying innovative methods of recycling critical minerals in the U.S., but they are not at commercial scale. How can these existing U.S. initiatives be scaled up?

Given the upfront capital costs of testing and proving new technologies, government incentives can play a key role in promoting innovation and supporting research and development. As discussed above, federal incentives may include grants, tax credits, preferred loans, loan guarantees, purchasing and offtake agreements, revolving funds, equity cost-sharing, R&D funding, and set-aside quotas for domestic consumption.

Questions from the Honorable Rick Allen (R-GA)

1. Based on your interactions with critical mineral mining companies, what are the top impediments to them either establishing a footprint in the U.S. or expanding their footprint?

NMA's members universally cite permit timeframes, delays and litigation as top impediments to investment in domestic projects.

a. How can we overcome or lessen the effects of those impediments?

A clear and predictable permitting and judicial framework is needed to support domestic mining projects. One of the U.S.' biggest self-imposed policy bottlenecks is our outdated, inefficient and prolonged permitting system, which prevents the domestic mining and processing sector from performing to its full potential. The negative consequences of permit delays include exacerbation of growing dependence on mineral imports, inability to meet rising demand required, impairment of U.S. investment attractiveness, and impediments to additional economic contributions to federal, state and local coffers. Opening or expanding a processing facility in the U.S. typically involves multiple agencies and the navigation of tens or even hundreds of permitting processes at the local, state and federal levels. The U.S. has one of the longest permitting processes in the world for infrastructure projects like mineral processing facilities.

The NMA recommends the following to improve permitting efficiencies for mining and mineral processing projects:

- Agency regulations and policies should clearly articulate the appropriate scope of the effects analysis required by the National Environmental Policy

Act (NEPA), as spelled out in Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. _____, 145 S. Ct. 1497 (2025);
- Agencies must adhere to new timelines, page limits and other provisions of the Fiscal Responsibility Act;
- Agencies should expand use of programmatic (generic) environmental impact statements and tiering to expedite permitting;
- Full implementation of the "One Federal Decision" framework described in Executive Order 13807 to make NEPA more efficient by requiring all federal agencies with a role to use a single integrated review process;
- Agencies must implement and enforce accountability mechanisms to ensure agency adherence to timelines, including cooperating agencies;
- Additional use of mechanisms such as the Fixing America's Surface Transportation Act (FAST-41) provisions to speed mining and mineral processing projects;
- Limitations on use of "new information" that appears after public comment on draft documents that is frequently misused to delay projects;
- Expanded use of applicant-provided environmental assessments (EA), environmental impact statements (EIS) documents and supporting studies to free agency resources for review of, rather than creation of, such materials to speed permitting processes; and
- Greater agency reliance on existing data where appropriate, rather than requiring duplicative fieldwork, and acceptance of environmental analyses conducted by states or tribes if those processes meet or exceed federal standards.

Judicial reform must go hand-in-hand with permitting reforms to prevent frivolous lawsuits used to delay infrastructure projects. The NMA recommends the following:
- Amend the six-year statute of limitations applicable to NEPA to require challenges to be brought within 120 days;
- Strengthen standing requirements to require a "direct and tangible harm to the individual" seeking to challenge a decision; and
- Deter frivolous lawsuits through the imposition of costs on litigants challenging projects by requiring posting of a bond upfront, payment of court costs or repayment of lost revenue if their case is not successful to discourage frivolous lawsuits.

b. Are these impediments the same or different for companies wishing to start or expand critical minerals mid- or downstream operations in the U.S.? If so, how can we overcome or lessen the effects of those impediments for the mid- and downstream operations?

The same permitting impediments can impact minerals companies at all stages of operations including mid- or downstream. In addition to the permitting efficiencies recommended above, government incentives may be necessary in some instances to support such operations. Such incentives may include grants, tax credits, preferred loans, loan guarantees, purchasing and offtake agreements, revolving funds, equity cost-sharing, R&D funding, and set-aside quotas for domestic consumption.