



**Testimony for the Record  
offered by the National Mining Association**

**U.S. House of Representatives  
Natural Resources Subcommittee on Energy and Mineral Resources**

**“Legislative Hearing on H.R. 2925, H.R. 6862, H.R. 7003 and H.R. 7004”**

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America’s mining industry supplies the essential materials necessary for every sector of our economy – from technology and healthcare to energy, transportation, infrastructure and national security. The National Mining Association (NMA) is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources.

We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of more than 280 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers. The NMA appreciates the opportunity to offer written testimony on behalf of the mineral and hardrock mining industry in support of H.R. 2925 – the Mining Regulatory Clarity Act of 2023 – and H.R. 6862, which would amend the Fixing America’s Surface Transportation (FAST) Act to include certain mineral production activities as a covered project.

## Introduction

Despite being home to vast mineral reserves, the U.S. is facing unprecedented and precarious mineral supply chain challenges. Our import reliance has been a well-documented and increasingly problematic issue for decades and has now become a crisis, exacerbated by pandemic and war-related supply chain challenges, and exponentially increasing mineral demands due to the rapid electrification of our economy. As documented by the U.S. Geological Survey (USGS), the U.S. reached record mineral import reliance in 2022 as imports made up more than one-half of the U.S. apparent consumption for 51 nonfuel mineral commodities – up from 2021, when only 47 commodities met that metric.<sup>1</sup> USGS numbers for 2023 are expected any day with this upward mineral import trend likely to continue.

There is recognition by some within the Biden-Harris administration of the immense challenge we now face and the importance of domestic mining to nearly every piece of the President’s agenda. Several of the administration’s early executive actions, including its comprehensive supply chain review, made clear the inherent vulnerabilities of our overreliance on mineral imports, the need for domestic mining support and lack of domestic processing and refining capabilities. Despite the rhetoric from the administration about the need to address the minerals challenge, actions have not lived up to the words.<sup>2</sup> There can be no mineral and supply chain security —

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<sup>1</sup> U.S. Geological Survey, 2023 Commodity Summary, available at <https://pubs.er.usgs.gov/publication/mcs2023>.

<sup>2</sup> The administration recently memorialized its policy recommendations with the Sept. 12, 2023, release of the White House Interagency Working Group (IWG) on Mining Regulations, Laws, and Permitting released its report, “Recommendations to Improve Mining on Public Lands.” The NMA strongly disagrees with the report’s overarching conclusion that fundamental reform of the Mining Law is necessary to

no meeting the enormous mineral demand at our doorstep — without fundamental recognition that we need more domestic mining and the policies to achieve it.

Solutions to meet anticipated mineral demand, while simultaneously rebuilding our domestic supply chains, must be comprehensive. Friend-shoring of our minerals supply, however, cannot come in place of the essential work of standing up production and these supply chains at home. Regulatory certainty must be the cornerstone of minerals policies to enable the ramping up of domestic production and processing under our rigorous environmental and safety standards.

The NMA appreciates the opportunity to discuss the importance of regulatory certainty in the context of the legislation that is the subject of this hearing. The NMA strongly supports the bipartisan Mining Regulatory Clarity Act of 2023 (H.R. 2925) to restore long-standing interpretations of the Mining Law upheld by the U.S. Court of Appeals for the Ninth Circuit’s fundamentally flawed decision in *Center for Biological Diversity v. U.S. Fish & Wildlife Service (Rosemont Decision)*. Additionally, the NMA strongly supports H.R. 6862, which prohibits the Federal Permitting Improvement Steering Council from finalizing, implementing or enforcing its proposed rule titled “Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act” (88 Fed. Reg. 65350; September 22, 2023). These bills restore regulatory certainty to strengthen the domestic mining industry and improve investor confidence.

## Ever-increasing Demand for Minerals

The most mineral intensive moment in human history is upon us and the U.S. is woefully unprepared. Looking solely at demand coming from the electric vehicle market: the Energy Transitions Commission estimates up to 250 new mines may be required by 2030.<sup>3</sup> Benchmark Minerals says we will need 384 new mines by 2035.<sup>4</sup> The Fraser Institute recently said 388 new mines must be built by 2030.<sup>5</sup> It’s clearly not a question of if we must mine, but where? The “where” matters because producing minerals here at home, as opposed to the administration’s proposals to partner with countries such as Congo and Zambia, ensures mining will be conducted in accordance with the world’s most stringent environmental, labor and safety regulations, while simultaneously creating high-paying American jobs.

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achieve the best outcomes. The NMA’s comments to the IWG are available at <https://www.regulations.gov/comment/DOI-2022-0003-26954>. A recent NMA op-ed, the Biden mining policy train wreck, outlines concerns regarding many of the key policy recommendations is available at [https://elkodaily.com/opinion/column/commentary-the-biden-mining-policy-train-wreck/article\\_3036f00e-80c5-11ee-bc20-1bade970ae33.html](https://elkodaily.com/opinion/column/commentary-the-biden-mining-policy-train-wreck/article_3036f00e-80c5-11ee-bc20-1bade970ae33.html). These NMA concerns apply equally to provisions of S. 1742 that are similar to the IWG policy recommendations.

<sup>3</sup> Energy Transitions Commission, “Material and Resource Requirements for the Energy Transition,” July 2023; [https://www.energy-transitions.org/wp-content/uploads/2023/07/ETC-Material-and-Resource-Requirements-ExecSummary\\_vF.pdf](https://www.energy-transitions.org/wp-content/uploads/2023/07/ETC-Material-and-Resource-Requirements-ExecSummary_vF.pdf)

<sup>4</sup> <https://source.benchmarkminerals.com/article/more-than-300-new-mines-required-to-meet-battery-demand-by-2035>.

<sup>5</sup> Fraser Institute, “Failure to Charge: A Critical Look at Canada’s EV Policy,” Nov. 2023; <https://www.fraserinstitute.org/sites/default/files/can-metal-mining-match-the-speed-of-planned-electric-vehicle-transition.pdf>.

The Biden administration has articulated a desire to scale back U.S. reliance on Chinese minerals. In April 2023, President Biden’s national security adviser, Jake Sullivan, warned that “clean-energy supply chains are at risk of being weaponized in the same way as oil in the 1970s, or natural gas in Europe in 2022.”<sup>6</sup> In his remarks, he specifically mentioned concerns about minerals that form “the backbone of the clean-energy future.”<sup>7</sup> His concerns were a foretelling of future actions. In July 2023, China announced restrictions on the export of gallium and germanium, minerals integral to semiconductors, solar panels and missile systems. The U.S. is currently 100 percent reliant on China for these critical commodities. As accurately described by *The Wall Street Journal*, the action was “more than a trade salvo. It was a reminder of China’s dominant hold over the world’s mineral resources—and a warning of its willingness to use them in its escalating rivalry with the U.S.”<sup>8</sup> The July restrictions were followed by an October 2023 announcement by China setting export restrictions on graphite, a move Geoffrey Pyatt, Assistant Secretary of State for Energy Resources, called a “wake-up call” that reflects both the dangers and urgency the U.S. faces in ramping up critical mineral supply chains to meet its climate goals.”<sup>9</sup>

China’s willingness to employ such tactics for decades, has led to skyrocketing prices for many minerals and has required a drawdown of limited stockpiles that will last two to three months at most.<sup>10</sup> A former U.S. Trade Representative for China notes that China’s past retaliation patterns are the best clues for predicting what to expect next, and their most effective passive option would be an export suspension of key inputs that would “inflict direct, reciprocal pain.”<sup>11</sup>

China’s dominance in mineral production and processing will take focused and durable policies to overcome. As the primary producer and/or supplier of mineral commodities listed as essential to U.S. economic and national security,<sup>12</sup> China controls more than 80-90 percent of global rare earth element production, nearly 90

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<sup>6</sup> Remarks by National Security Advisor Jake Sullivan on Renewing American Economic Leadership at the Brookings Institution, April 27, 2023. Available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/>.

<sup>7</sup> Id.

<sup>8</sup> Jon Emont, Wall Street Journal, China Controls Minerals That Run the World—and It Just Fired a Warning Shot at U.S., July 11, 2023. Available at <https://www.wsj.com/articles/china-controls-minerals-that-run-the-worldand-just-fired-a-warning-shot-at-u-s-5961d77b>.

<sup>9</sup> E&E Greenwire, “State Dept. official: China’s graphite restriction a ‘wake-up call’.” November 2, 2023. Available at <https://subscriber.politicopro.com/article/eenews/2023/11/02/state-dept-official-chinas-graphite-restriction-a-wake-up-call-00125003>.

<sup>10</sup> Reuters, “China gallium, germanium export curbs kick in; wait for permits starts.” August 1, 2023. Available at <https://www.reuters.com/markets/commodities/chinas-controls-take-effect-wait-gallium-germanium-export-permits-begins-2023-08-01/>.

<sup>11</sup> The Hill, “China’s retaliation playbook can’t meet the US export control challenge,” October 20, 2022; <https://thehill.com/opinion/international/3697077-chinas-retaliation-playbook-cant-meet-the-us-export-control-challenge/>

<sup>12</sup> Notably this reliance comes despite existing U.S. resources. In the 2022 Mineral Commodity Summaries, the USGS indicated the U.S. had an estimated 48 million metric tons (mt) of copper that can be mined and processed economically, 69 million mt of cobalt, 340 million mt of nickel and 750 million mt of lithium. Regardless, in 2021, the U.S. imported 48 percent of U.S. consumption of nickel, 76 percent of cobalt, 45 percent of copper, and more than 25 percent of lithium.

percent of global mineral processing capabilities, as well as the market prices for rare earth elements at each step of the process. China also refines 68 percent of the world's cobalt, 65 percent of nickel, and 60 percent of battery grade lithium needed for electric vehicle batteries and energy technologies. Goldman Sachs Research also estimates the extent of the vertically integrated nature of China's dominance, with 65 percent of battery components, 71 percent of battery cells, and 57 percent of the world's electric vehicles being made in China.<sup>13</sup>

Notably, China's strong supply chain position does not result from an inherent geographic advantage in reserves for most materials, but rather from heavy non-market activities and government subsidization of mining, processing and manufacturing industries and excesses capacity. With its much longer planning horizon, China has pursued its "Going Global" strategy since the late 1990s, which involves deployment of significant direct investments across the globe to secure mineral supply chains.<sup>14, 15</sup>

The Biden administration's electrification and national security objectives must begin with domestic mining. They cannot be achieved by outsourcing our mineral supply chains to countries like China, Russia and the Democratic Republic of Congo, all of which have far less environmental, safety and labor oversight, or in some cases none. Unfortunately, we only increase our dependence on these and other sources for our minerals needs when we stand in the way of opportunities to enact meaningful policies, instead choosing policies that limit or completely block responsible domestic mineral development.

The U.S. has all the ingredients necessary to counter China's global mineral dominance. However, the wrong policies are creating substantial setbacks to attaining such dominance. Today's legislation, the Mining Regulatory Clarity Act and H.R. 6862, are necessary help ensure U.S. minerals policy provides the necessary regulatory certainty to support responsible domestic mining.

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<sup>13</sup> Goldman Sachs, "Resource realism: The geopolitics of critical mineral supply chains," Sept. 2023. <https://www.goldmansachs.com/intelligence/pages/resource-realism-the-geopolitics-of-critical-mineral-supply-chains.html>

<sup>14</sup> Humphries, Marc. Congressional Research Service, "China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress," March 20, 2015. <http://fas.org/sqp/crs/row/R43864.pdf>.

<sup>15</sup> See also, USGS 2020 Investigation of U.S. Foreign Reliance on Critical Minerals (There are instances where the mineral deposit or mining and mineral processing operation of a commodity is partially or completely owned and (or) controlled by foreign companies with strong ties to their governments. For example, Chinese firms have purchased equity stake in lithium deposits and operations in Australia and Chile, niobium operations in Brazil, a rare earth deposit in Greenland, and cobalt operations in the D.R. Congo, Papua New Guinea, and Zambia (S&P Global Market Intelligence, 2020). Investigating China's investment in cobalt assets worldwide, Gulley and others (2019) found that when taking into account Chinese companies' ownership in foreign assets on an equity-share basis, China's share of global cobalt production increases from 2 to 14 percent for cobalt mine materials and from 11 to 33 percent for cobalt intermediate materials (figure 6). Furthermore, if the Chinese companies' equity shares of the production from these assets are assumed to be as secure as its domestic production, then these acquisitions have the effect of reducing China's NIR from 97 percent to an adjusted 68 percent, thereby reducing China's exposure to supply disruptions (Gulley and others, 2019.) p. 8.

## Destabilizing The Mining Law

### Backdrop: Rosemont Project and Subsequent Litigation

The decade-long Rosemont permitting process began in 2008 when it submitted a mining plan of operations and was subsequently followed by a draft environmental impact statement (EIS) in 2011 and a final EIS in late 2013. The U.S. Forest Service issued a final record of decision in 2017, but final approval was delayed until Rosemont received a Clean Water Act section 404 permit in 2019. The approved plan of operations included authorization to place waste rock on surrounding unpatented claims as a “use reasonably incident” to its operations.

### Years of Litigation

Several environmental groups challenged the approval of the Rosemont project, including the placement of waste rock on the unpatented claims. The Rosemont litigation was a strategic assault on the Mining Law in an attempt to make it wholly unworkable, knowing that the economic viability of a mine depends upon the ability to use surrounding lands for activities incidental to mining, known as ancillary use activities. In 2019, the United States District Court for the District of Arizona issued a fundamentally flawed decision vacating the Forest Service’s record of decision supporting the agency’s approval of Rosemont plan of operations.<sup>16</sup> The decision conflicted with more than a century of legal precedent, including numerous U.S. Supreme Court decisions, related to the Mining Law. The District Court’s reversal focused on the failure of the Forest Service to confirm that the mining claims underlying proposed waste rock and tailings storage facilities were valid before approving the plan.<sup>17</sup> In doing so, the court misconstrued existing legal precedent regarding rights conveyed by the Mining Law to owners of unpatented claims and the ability to use surface resources to further the development of those claims.

The district court decision was appealed and in May 2022, the United States Court of Appeals for the Ninth Circuit (9<sup>th</sup> Circuit) affirmed the underlying decision on slightly different grounds. The narrow and unprecedented reading of the Mining Law and U.S. Forest Service 36 C.F.R. §228 Subpart A regulations, severely restricts the Forest Service’s ability to approve ancillary use activities incidental to mining operations.

The environmental groups involved in the Rosemont litigation have tried to further leverage the Rosemont decision to prevent other mining projects from moving forward nationwide. For example, they challenged the Lithium America’s Thacker Pass project arguing the Rosemont decision rationale applied to Bureau of Land Management (BLM) authorizations as well as Forest Service. The U.S. District Court for the District of Nevada agreed but remanded the Thacker Pass permit back to the agency instead of invalidating it.<sup>18</sup> The Mount Hope molybdenum mine suffered a similar fate later in

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<sup>16</sup> *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 409 F. Supp. 3d 738 (D. Ariz. 2019).

<sup>17</sup> *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 33 F.3d 1202 (9<sup>th</sup> Cir. 2022).

<sup>18</sup> *Bartell Ranch LLC v. McCullough*, No. 321CV00080MMDCLB, 2023 WL 1782343, (D. Nev. Feb. 6, 2023)



2023. These same groups have submitted comments on numerous other projects arguing they are unlawful under the Rosemont decision.

## The Mining Regulatory Clarity Act (H.R. 2925)

The bipartisan legislation introduced in April 2023 by Representatives Mark Amodei (R-Nev.) and Mary Peltola (D-Alaska) reinstates much needed clarity in the face of the Rosemont decision. The legislation returns to the workable framework that existed prior to the fundamentally flawed Rosemont ruling, ensuring the fundamental ability to conduct responsible mining activities on federal lands.<sup>19</sup> The legislation is a durable solution, vastly superior to what can be achieved through the May 2023 Solicitor's Opinion<sup>20</sup> issued by the Department of the Interior, especially considering courts' increasing reluctance to provide the appropriate deference to such opinions.

### What H.R. 2925 Does Not Affect

Contrary to allegations of the bill's detractors, the legislation simply codifies the prior framework that existed before the Rosemont ruling – nothing more, nothing less. It provides no additional rights or allowable actions for a claim holder than what has existed, and worked, for decades before. It ensures a claim holder shall have the right to use, occupy and conduct operations with or without discovery of a valuable mineral deposit, which is the longstanding method utilized by BLM to evaluate proposed operations.

- **The legislation does not lock up federal lands:** The legislation does not change the requirements that a mining claim actually be used for mining purposes. A claim holder cannot simply ground a stake to mark a claim, pay a fee and file paperwork to lock up lands for purposes unrelated to mining as this would result in immediate suspension pursuant to BLM regulations.<sup>21</sup> All standards for conducting mining operations under existing BLM regulations remain in effect as does the Mining Law's "good faith" doctrine. Pursuant to the doctrine, any claim located in "bad faith," or with no intention to extract minerals is void.<sup>22</sup> Activities must be reasonably incident, constitute substantially regular work, be reasonably calculated to lead to the extraction and beneficiation of minerals, as verified by BLM official.

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<sup>19</sup> See, definition of operations at [36 CFR 228.3](#) which is mirrored in the legislation.

<sup>20</sup> Department of the Interior, Office of the Solicitor, Use of Mining Claims for Mine Waste Deposition, and Rescission of M-37012 and M-37057, May 16, 2023. The NMA believes the opinion undermines regulatory certainty by raising more questions than it answers, offering unworkable solutions and undercutting well-understood and lawful interpretations of the Mining Law.

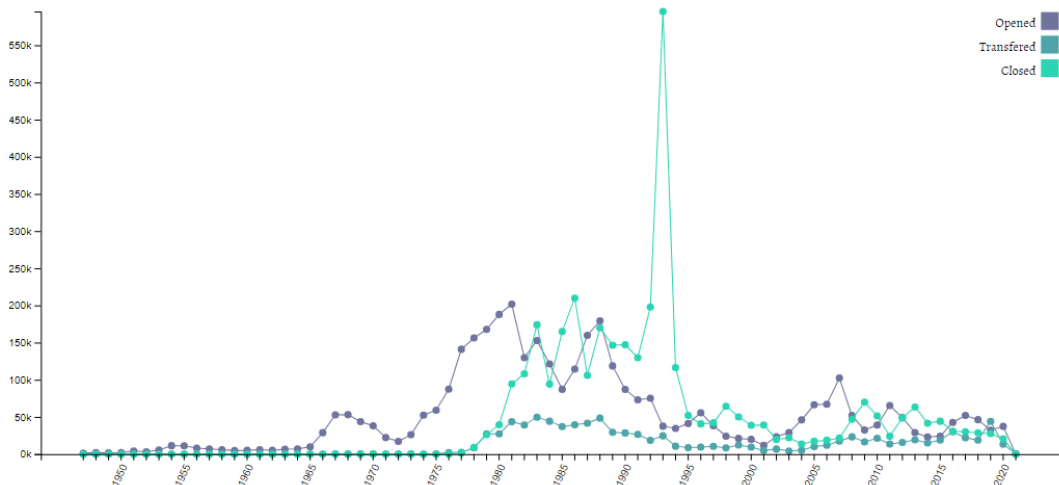
<sup>21</sup> See, use and occupancy regulations under the Mining Law at [43 CFR § 3715.0-1](#), [43 CFR § 3715.2](#), and [43 CFR § 3715.7-1](#)

<sup>22</sup> See, generally, *U.S. v. Bagwell*, 961 F.2d 1450 (9<sup>th</sup> Cir. 1992) (The department can move forward to eject a claimant acting in bad faith without first contesting the claims) and *U.S. v. Nogueira*, 403 F.2d 816 (9<sup>th</sup> Cir. 1968)(A claim made in bad faith is void even if it is supported by a discovery).

Further, BLM data listing the amount of mining claims opened, closed or transferred demonstrates that since 1947 a steady and proportionate number of new claims are opened and closed each year.<sup>23</sup>

### Annual The United States Mining Claim Trends

Annual breakdown of The United States mining claim records between 2021 and 1947.



- The legislation is complemented by exhaustive local, state, and federal environmental, cultural resource, reclamation, and financial assurance laws and regulations to ensure responsible operations:** Activities on BLM and Forest Service lands must meet all applicable laws and regulations. Under the Federal Land Policy and Management Act (FLPMA) section 302(b), activities must be conducted to prevent “unnecessary or undue degradation,” which requires compliance with applicable federal and state laws related to environmental protection and protection of cultural resources.<sup>24</sup> Furthermore, the standard is self-updating: the inherent nature of the standard allows for continual improvement. As federal and state laws are strengthened, so is the standard. Importantly, state environmental regulations of general applicability apply on federal lands and are not preempted by the General Mining Law or other federal laws.<sup>25</sup>
- The Mining Regulatory Clarity Act would not change access to public lands for recreation or conservation.** Under existing law, the public has “the conditional right to cross mining claims or sites for recreational and other purposes and to access federal lands beyond these boundaries.” Nor does the legislation reopen lands already placed off-limits to mining through congressional or administrative action, including wilderness, national parks,

<sup>23</sup> Bureau of Land Management claim listings data. Available at <https://thediggings.com/usa/trends#table-annual-actions>. Note: a data outlier occurred in 1993 after the claims maintenance fee was implemented.

<sup>24</sup> Bureau of Land Management, “The Federal Land Policy and Management Act of 1976, as amended.” Available at [https://www.blm.gov/sites/default/files/AboutUs\\_LawsandRegs\\_FLPMA.pdf](https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf)

<sup>25</sup> *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987).



wildlife refuges, recreation areas and wild and scenic rivers. In summary, the legislation does not change or expand rights to locate or use mining claims in areas that have been withdrawn from mineral entry, administratively or by Congress.

- **Renewable energy projects on public lands will not be impacted.** In April 2013, the BLM published a final rule, “Segregation of Lands—Renewable Energy,” that allows the BLM to segregate public lands within a solar or wind application area from the operation of the public land laws, including the Mining Law, by publication of a Federal Register notice. The BLM uses this temporary segregation authority to preserve its ability to approve, with modifications, or deny proposed energy generation right-of-way (ROW), and to facilitate the orderly administration of the public lands, subject to valid existing rights.<sup>26</sup> Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice of intent may be allowed with the approval of an authorized officer of the BLM during the segregation period. The BLM has exercised this authority at least 10 times in the last year.
- **The legislation does not undermine the rights of tribes.** The legislation does not speak to the rights of tribes, communities, or any stakeholders so it does not lessen any obligations under existing local, state, and federal regulations.
- **The legislation does not affect the existing BLM regulations that mandate validity determinations.** H.R. 2925 does not affect the existing BLM regulations that mandate validity determinations prior to approval of a mine plan of operations on lands that have been segregated or withdrawn from appropriation under the Mining Law.<sup>27</sup> To the extent there are remaining concerns about the application of this provision to withdrawn lands, the NMA believes a simple savings clause could be added to further clarify that nothing in H.R. 2925 affects the existing validity determination requirement for claims on segregated or withdrawn lands.

## To amend the FAST Act To Include Certain Mineral Production Activities as a Covered Project (H.R. 6862)

H.R. 6862 respond to a misguided September 2023 proposed rule<sup>28</sup> from the Federal Permitting Improvement Steering Council (FPISC) to amend its existing regulations to limit application of the FAST-41 permitting process to projects that involve primary or byproduct production of “critical minerals” as defined by the U.S. Geological Survey.

<sup>26</sup> Federal Register, “Segregation of Lands—Renewable Energy,” (78 Fed. Reg. 25204, Apr. 13, 2013). Available at <https://www.federalregister.gov/documents/2013/04/30/2013-10087/segregation-of-lands-renewable-energy>

<sup>27</sup> 43 C.F.R. 3809.100, What special provisions apply to operations on segregated or withdrawn lands?

<sup>28</sup> Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act; <https://www.govinfo.gov/content/pkg/FR-2023-09-22/pdf/2023-20270.pdf>

This legislation, introduced by Representatives Doug Lamborn (R-Colo.) and Blake Moore (R-Utah), ensures that all mining projects, without bias, are eligible to utilize the permitting efficiencies provided by the FPISC permitting dashboard. The legislation also corrects the Biden Administration's shortsighted departure from FPISC's unanimous 2020 vote to add all mining as a covered sector to the list of covered sectors eligible for the FPISC permitting process and the subsequent rulemaking that codified that vote.

### Background: 2020 FPISC Vote and Proposal to Add Mining as a FAST41 Covered Sector

On January 15, 2020, the FPISC unanimously voted to include mining as a covered sector, a fact oddly omitted from the supplementary information section of the 2023 proposal. The press release accompanying the vote emphasized:

Minerals and metals are integral to many infrastructure projects and play a vital role in reducing our reliance on foreign sources of minerals for national and economic security, including expansion of U.S. production of renewable energy in wind turbines, solar panels and energy storage batteries. The development of non-energy mining operations routinely involves construction of a variety of infrastructure from buildings, roads and pipelines to electricity generation and wastewater treatment facilities.<sup>29</sup>

The Council's 2020 vote clearly recognized that mining projects involve the complex permitting processes that the Act was designed to facilitate. The NMA applauded mining's inclusion as a means to ensure timely access to raw materials made available through domestic mining. The decision was important enough that later in 2020, FPISC proposed a rule to codify that vote.<sup>30</sup>

The 2020 proposed rule specifically acknowledged that the complexity of permitting for major mining projects noting such projects can involve the construction of significant infrastructure, substantial investment, and, in certain circumstances, necessitate extensive Federal review and authorization. Accordingly, FPISC concluded that like other covered sectors, mining projects that satisfy the other requirements of 42 U.S.C. 4370m(6) could benefit from the enhanced interagency coordination and permitting timeline predictability provided by FAST-41 coverage.

Importantly, by designating all mining as a FAST-41 sector in the 2020 proposal, the Council chose not to pick winners and losers among potentially qualified mining projects. Broadly, the proposed designation included "mining on and off federally managed lands, mining of federally managed and non-federally managed minerals, and mining of any mineral, ore, or raw material extracted from the ground, regardless

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<sup>29</sup> Permitting Dashboard, "Press Release: Federal Permitting Improvement Steering Council adds New Mining Sector," Jan. 15, 2020. <https://web.archive.org/web/20200715234325/https://www.permits.performance.gov/about/news/new-sectors-fast-41>

<sup>30</sup> 85 Fed. Reg. 75998 (Nov. 27, 2020)

of whether such mineral, ore, or raw material is used for energy production, manufacturing, or any other purpose.”<sup>31</sup>

## January 2021 FPISC Final Rule

To finalize the 2020 proposed rule, the Council had to once again vote on the appropriateness of the including mining as a FAST-41 covered sector. That vote took place on Jan. 4, 2021 and a majority of the Council voted in favor of the proposal, with no votes against the proposal.<sup>32</sup> Consequently, on Jan. 8, the FPISC promulgated the final rule, codifying, without changes, the 2020 proposed addition of mining as a covered sector.<sup>33</sup> The final rule appropriately recognized:

Mining is an appropriate FAST-41 sector precisely because mining projects can be complex and diverse, and can necessitate extensive and coordinated Federal and state environmental review and decision making. The more complex the permitting path, the more likely it is that a project will be able to benefit from the enhanced interagency coordination, transparency, and predictability that FAST-41 coverage provides.<sup>34</sup>

## 2023 FPISC Proposed Rule Inexplicably Reverses Course

The September 2023 proposed rule is a sudden and arbitrary departure from FPISC’s 2020 vote and 2021 final rule to add all mining as a covered sector eligible for the FPISC permitting process. This recent narrowing of eligible projects is contrary to both the administration’s infrastructure objectives and the will of Congress and hamstringing the already limited activity by the Council, which to date has accepted only one mining project to the program.<sup>35</sup>

By limiting the type of mining projects eligible for the FPISC permitting process, the Biden Administration is wrongfully denying timeliness, efficiency, predictability and transparency to mining projects while continuing to call for more responsible and ethical mineral supply chains. This is little more than a shallow attempt to placate

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<sup>31</sup> 85 Fed. Reg. at 76000.

<sup>32</sup> As articulated in the final rule, the Executive Director as well as Council members representing the Nuclear Regulatory Commission, Advisory Council on Historic Preservation, Department of Commerce, Department of Energy, Environmental Protection Agency, Army Corps of Engineers, Department of the Interior, Department of Agriculture, Department of Transportation, Department of Defense, and Department of Homeland Security, and the Chairman of CEQ voted in favor of the proposal. The Permitting Council member representing the Department of Housing and Urban Development and the Director of OMB abstained from the vote. The Permitting Council member representing the Federal Energy Regulatory Commission did not vote. See, final rule 86 Fed. Reg. 1281, at 1282.

<sup>33</sup> FPISC Final Rule, Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act, 86 Fed. Reg. 1281, Jan. 8, 2021.

<sup>34</sup> Id. at 1283.

<sup>35</sup> South32, “Hermosa confirmed as the first FAST-41 mining project,” <https://www.south32.net/news-media/latest-news/hermosa-confirmed-as-the-first-fast-41-mining-project>. May 2023.

critics of any type of mining in the United States, which has globally leading environmental, health, and safety standards, while continuing to increase our nation's mineral import reliance from geopolitical incumbents with little oversight of their mineral extraction.

## Conclusion

What we are seeing is an explosion in mineral demand colliding with a geopolitical arms-race for development and control of integrated mineral supply chains. Matching the speed and scale of this rising demand requires the U.S. to recognize that mineral policy is now energy, climate and national security policy. To compete, we need access to our vast mineral resources and a permitting regime that enables the mining sector to respond to market signals and meet demand. Additional improvements to the permitting process should remain a high priority given the data provided by Dr. Daniel Yergin of S&P Global in testimony delivered in September 2023.<sup>36</sup> He shared global data on 127 mines across the world that began production between 2002 and 2023, which demonstrated that a major new resource discovery today would not become a productive mine until 2040 at the earliest. He cautioned against overzealous attempts to source minerals primarily from allied countries while blocking domestic projects, noting that our allies are experiencing similar supply constraints, so availability is not guaranteed.

The right policies to support domestic mineral production and our supply chains must be forward-looking rather than regressive or the U.S. mineral supply chain – from mining through smelting and processing – will remain a shell of our true domestic potential. Promoting regulatory certainty doesn't mean that laws and regulations never change or that we aren't always seeking improvements. The NMA's members are committed to continuous environmental improvements, and routinely review developments across the globe for potential incorporation into their own operations.

The NMA applauds the work of this committee and strongly supports the Mining Regulatory Clarity Act of 2023 (HR. 2925) and H.R. 6862. These pieces of legislation seek thoughtful and durable solutions to address our nation's disjointed minerals policy and prioritize domestic mineral security. Further, the regulatory certainty provided in these bills will enable responsible access to federal lands for mineral development and ease our nation's bureaucratic paralysis to provide for greater economic competitiveness and growth.

The NMA appreciates the opportunity to provide this testimony to the subcommittee and looks forward to working with Congress and the administration to support meaningful actions to increase the responsible domestic mineral supply chains for generations to come.

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<sup>36</sup> Senate Energy and Natural Resources Committee: [Hearing to Examine Opportunities to Counter the People's Republic of China's Control of Critical Mineral Supply Chains](#). Sept. 28, 2023