November 19, 2024

The Honorable Pete Stauber
Chair, Subcommittee on Energy and Mineral Resources
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Stauber, Ranking Member Ocasio-Cortez, and Members of the House Natural Resources Energy and Mineral Resources Subcommittee:

Thank you for the opportunity to appear before the House Subcommittee on Energy and Mineral Resources to offer my opinion on the Crow Revenue Act (H.R. 8952), the Intergovernmental Critical Minerals Task Force Act (H.R. 7807), and the Critical Minerals Security Act of 2024.

I am the Deputy Director of the Montana Environmental Information Center (MEIC), a non-profit environmental advocate founded in 1973. MEIC has tens of thousands of members and supporters in Montana and across the United States. MEIC's organizational mission is to protect and restore the land, air, water, and life-sustaining climate of Montana, and advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations. Montana has a unique constitutional guarantee of a right to a clean and healthful environment for its people, and MEIC works to protect and enforce that right.

Through my work, I have gained unique insight into the permitting process for coal and hardrock mines in Montana. As a law student at the University of Montana, I focused on environmental and natural resources issues, and in particular energy production and mining. For the past fifteen years, I have been employed as both a lobbyist and attorney for MEIC and have focused on the legal and policy issues of mining and energy production in Montana. I represent MEIC and other parties in legal matters before state and federal courts, serve as a registered lobbyist during the Montana Legislature's biennial sessions, and work with both state and federal agencies in implementing policies and regulations on these matters. This experience has helped to inform my opinion on mining and energy development, both in Montana and across the West.

As a native Montanan, I share a common sentiment of caring for and valuing the land we call home. Montana is an important place for me personally. It is a place of abundant beauty and recreation that is unlike anywhere else that I have lived or traveled. Over the years, I have traveled extensively across Montana - to hunt, fish, camp, bike, boat, and drive, and have done so

in virtually every county in the state. I particularly enjoy visiting the vast acreage of federal land that we have in Montana. These places are some of the least populous places in the lower 48 and offer the opportunity for solace and escape from the daily grind of life.

Because these bills currently before the Subcommittee address two distinctly different issues, I will take them up separately below.

I. The Crow Revenue Act: H.R. 8952 (Rep. Zinke)

The mistitled "Crow Revenue Act" is legislation that would allow for the Signal Peak Mine to proceed with a major mine expansion and to mine federal coal without a required environmental review under the National Environmental Policy Act (NEPA). If such a review were to be conducted, it would fully disclose and characterize the impacts that mining and burning the coal will have on our climate. The mine has proven devastating to the Bull Mountains, a semi-arid, central Montana range that has traditionally been dependent upon cattle ranching for its local economy. As written, the Crow Revenue Act will not benefit the Crow Tribe, as the revenue sharing agreement applies to coal that does not have an active mine in its vicinity and will not be developed. Further, the legislation is not conditioned on the establishment of a revenue sharing agreement, and the details of such an agreement are unspecified and undetermined. Finally, the coal industry in the United States, and even across the world, is entering a permanent structural decline, and state, Federal, and Tribal governments should not plan for continued revenue from these operations to fund critical services and infrastructure.

The Bull Mountains mine is an underground, longwall coal mining operation north of Billings, Montana. The mine is owned by Signal Peak Energy, which is in turn owned by a consortium of companies with equal shares: utility FirstEnergy of Ohio, international commodities trader Gunvor, and Boich Companies. Over the past several years, Signal Peak has demonstrated itself to be a uniquely bad corporate actor that has not acted fairly towards the public or regulators.[1] Signal Peak recently pled guilty to lying to mine safety regulators about violations of worker and environmental safety standards. This conviction was part of a larger corruption investigation surrounding the mine that led to numerous convictions for embezzlement, money laundering, drug trafficking, and gun crimes. The steady stream of convictions related to misconduct from the Bull Mountains Mine continues, with reports of the former mine safety director admitting in federal court to lying about mine accidents. Signal Peak is presently on probation for its criminal convictions.

Signal Peak has been seeking an expansion of its operations at the Bull Mountains Mine that would dramatically increase the permitted reserves of the mine and, by volume, potentially create the largest underground coal mine in the United States. The climate implications of this

[1] Tabuchi, Hiroko. *A faked kidnapping and cocaine: A Montana Mine's Descent Into Chaos*. The New York Times, January 13, 2023. https://www.nytimes.com/2023/01/13/climate/signal-peak-mine-coal.html [Accessed Nov. 12, 2024].

massive expansion cannot be understated. The expansion of the mine would allow for an additional 176 million tons of coal to be mined. Based upon the carbon content of the coal, combustion would result in approximately 375 million tons of carbon pollution once the coal is burned, an amount greater than the annual emissions of all but 16 countries in the world today and nearly 8% of the annual total for carbon dioxide emissions in the United States.

The U.S. Office of Surface Mining (OSM) approved this expansion in 2015. However, in subsequent litigation brought by public interest watchdogs including MEIC, a court determined that the environmental impact statement under NEPA did not contain a sufficient analysis of the climate implications associated with the expansion. The litigation was subsequently remanded to federal district court, and Signal Peak was then prohibited from mining the federal coal until OSM reanalyzed and sufficiently considered the climate change implications of the expansion. Specifically, OSM was directed to characterize the impacts associated with approving an additional 375 million tons of greenhouse gas emissions, whether through the Social Cost of Greenhouse Gases or another science-based metric.

The Crow Revenue Act would allow Signal Peak to bypass the standard NEPA process currently being conducted in response to a court order and to immediately begin mining the federal coal. Under the Crow Revenue Act, Signal Peak would benefit immensely from a land privatization scheme involving federal land directly adjacent to the Bull Mountains Mine and private in-holdings on the Crow Reservation. The Act would transfer federally owned mineral and surface assets in the Bull Mountains (Signal Peak Tracts) to a private, family-held trust, the Hope Family Trust, in order to enable Signal Peak to avoid the laws that govern the mining of federally owned coal. In exchange, the Hope Family would relinquish to the Crow their 4,660 acres of mineral assets within the Crow Reservation (Hope Family Tracts). The agreement would *not* transfer the surface ownership rights of the lands within the Crow Reservation to the Crow Tribe. Along with the 4,530-acres of mineral assets to be privatized in the Bull Mountains, the Crow Revenue Act would trade away 940 acres of BLM surface lands in an already checkerboarded landscape - a major loss to the residents who hunt and recreate in an area where it is already difficult to access our public lands. The Bull Mountains produce some of the largest trophy elk in Montana and the range is a prized region for hunters from across the state. You can also find whitetail, mule deer, Merriam's turkeys, bobcats, and mountain lions in the Bulls. However, because the range is largely private, the public lands and access points are a critical aspect of preserving Montana's public lands hunting heritage in central Montana. The Crow Revenue Act would only further limit these opportunities by privatizing public lands.

Presumably, upon passage of the bill, the Hope Family Trust would lease its newly acquired mineral rights to the Signal Peak mine, although the bill is silent on this point. The bill does not mention the value of the royalty payments that the Hope Family would realize, and that information has not been made public.

More concerning, the bill contains a reference to a "Revenue Sharing Agreement" under Section 4, part (d). This section specifies that the Hope Family would potentially share in revenue derived from the development of the Hope Family Tracts, the lands located on the Crow

Reservation, "if those mineral interests are developed at a later date." Development of this coal, located on the Crow Reservation, is incredibly unlikely, as the coal is not located next to a currently active mine or necessary infrastructure and has not gone through the requisite permitting processes.

If the bill is amended to apply the Revenue Sharing Agreement to the Hope Family's newly acquired Signal Peak Tracts, it would still not address serious flaws in the Revenue Sharing Agreement. This is because the legislation does not require good-faith negotiations between the parties and a binding agreement within a specified period. Simply put, it does not provide an actual, legal guarantee of revenue for the Crow Tribe.[2] To date, no Revenue Sharing Agreement has been made publicly available.

As mentioned above, the dominant economic land use in the Bull Mountains is ranching. The Bull Mountains are semi-arid, with little available water resources. The limited water resources in the Bull Mountains, in particular groundwater-fed springs, are a critical resource for stock watering and ranching operations. In addition to ranchers, landowners also depend on springs and groundwater to subsist on their properties in the Bull Mountains. Signal Peak is an underground, longwall operation. As the mine progresses, the engineering allows the mine roof to collapse or subside as the longwall advances. This subsidence causes splitting and depression of the surface land above the mine and has repeatedly dewatered springs and wells and caused extensive fracturing of the land surface in the Bull Mountains. Signal Peak has not willingly or successfully replaced the water it has damaged, and on multiple occasions, the company has ended ranchers' leases (forcing them off the land) rather than reclaim damaged springs and wells. Approving the Crow Revenue Act will only exacerbate this issue, and seriously impact surface owners who have ranched and lived in the Bull Mountains for generations.

Finally, the coal industry in the United States is in a tailspin, and internationally there are clear signs that worldwide coal demand will flatline and begin a steady, structural decline within the next few years, in large part due to more affordable and cleaner energy sources coming online. State, Federal, and Tribal governments should not plan for continued, predictable revenue from these operations to fund critical services and infrastructure. Over the past decade, numerous examples have demonstrated that heavy reliance on revenue from coal mining has proven to be an unpredictable and problematic funding scheme for western states and even the Crow tribe. In April of this year, the Absaloka mine on the Crow Reservation shut its doors, as its only customer, the Sherburne County Generating Station in Becker, Minnesota planned for full retirement of its operation. There was no other market for the Absaloka mine's coal. This was a significant source of non-federal income and employment for the tribe. While royalty payments to the Crow Tribe from the Signal Peak Mine (assuming the bill is amended) may offer short-term funding solutions, the payments are unlikely to represent a long-term funding solution, and

[2] *See* Mike Hill and Alee Bird Hat: Daines' bill is misleading, Billings Gazette, July 27, 2024. https://billingsgazette.com/article_42079ed6-528e-58ce-93fc-d3337d784753.html. Op-ed. [Accessed on Nov. 12, 2024].

any abrupt end to those payments could cause disruptions for the Tribal government through a boom-and-bust scenario.

To conclude, the misnamed Crow Revenue Act should be rejected by this committee. As written, it will not provide revenue to the Crow Tribe, and even with amendments will likely not address the deficiencies in the concepts currently outlined in the Revenue Sharing Agreement section. What the legislation *will* authorize is for the mining of a very substantial amount of coal that will result in more GHG emissions than the single largest source of emissions in the United States and will do so without an actual analysis of its implications. The legislation will also allow for the Bull Mountains Mine to destroy essential springs and wells in a semi-arid region, force family ranchers off their land, and will privatize federal public lands for the benefit of private interests.

II. Intergovernmental Critical Minerals Task Force Act: H.R. 7807 (Rep. Obernolte) and Critical Minerals Security Act of 2024: H.R. 7662 (Rep. Houlahan)

H.R. 7807 creates an intergovernmental task force charged with recommending how we reduce our mineral reliance on foreign entities of concern while increasing sourcing from mining and recycling. H.R. 7662 requires reports to Congress on the locations and beneficial ownership of rare earth and other critical mineral deposits worldwide and studies for advanced mining and processing techniques. The goals of H.R. 7807 and H.R. 7662 have merit, such as addressing the materials needs for the clean energy transition and avoiding relationships with countries that have poor human rights track records. These bills should be careful not to narrowly view critical minerals sourcing to just mining, and instead consider the full range of alternative sources including reuse, repurposing, recycling, and unconventional feedstocks from mine tailings or acid mine drainage.

Neither H.R. 7662 or H.R. 7807 close the gaps in U.S. environmental standards or corporate due diligence requirements. Failure to align domestic standards with the European Union's due diligence will close off those markets to domestically produced products, rendering American mining and clean energy manufacturing industries less competitive. Due diligence processes de-risk mineral supply chains through company plans, investigation, avoidance, and mitigation of human rights and environmental violations. Due diligence can simultaneously help remove foreign entities of concern from our mineral supply chains and provide companies a premium for responsible sourcing.

Any attempt to incentivize domestic production of minerals must be accompanied with a reform of our outdated mining laws. With increased mining comes increased impacts to public health, the environment, and especially frontline communities. According to the Toxic Release Inventory, managed by the U.S. Environmental Protection Agency (EPA), metal mining already releases by far the largest volume of toxic constituents into our environment.[3], and more than

[3] United States Environmental Protection Agency. *Releases by Chemical and Industry*. TRI National Analysis. March, 2024. https://www.epa.gov/trinationalanalysis/releases-chemical-and-industry.

40% of headwaters in the U.S. have been polluted by mining. Even more concerning, compared to other kinds of hard-rock mining, rare earth element mines produce more toxic waste, the waste is often radioactive, and the waste often escapes beyond the fence line.[4] With this in mind, as well as the serious distinct impacts that metals mining has on our wildlife[5], air, and water, any evaluation of increased mining activity must be accompanied by input and consideration on the elimination and mitigation of its impacts.

If the goal is to domesticate more mining in the United States, then we need to first take a hard look at our mining safeguards. U.S. mining laws, and the laws and regulations of many states, are sorely out of date and in need of modernization. A recent report by the Interagency Working Group on Mining Laws, Regulations, a cross section of agency representatives, found that, in planning for an increase in domestic sourcing of minerals, " We must also learn from the lessons of the past and ensure that our actions do not come at the expense of human health or workplace safety; Tribal consultation or community engagement; or the air, water, and other crucial resources upon which we all depend."[6] Incorporating the considerations and concerns of frontline communities is especially important for critical minerals, as mineral resources are often located on or adjacent to Tribal Reservations. A recent analysis found that "97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt reserves and resources in the U.S. are located within 35 miles of Native American reservations."[7]

Most problematic, decisions over public lands mining in the United States continue to be driven by the General Mining Law of 1872, a 152-year-old law that has remained largely unchanged and does not account for the serious societal changes, increased population and its demands on public lands, and development of 21st century mining technology. Initial decisions on pursuing mineral development and mining are typically made without full guidance or consideration of the environmental and social impacts of the site in question, which often leads to contentious mining proposals and poorly sited mining projects.

Already, potential mining proposals in Montana for rare earth elements are drumming up extensive opposition from communities, who value certain landscapes for amenities beyond mining, such as the fishing and recreation industry, and access to clean water. The potential

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[4] Paul, Justin, Campbell, Gwenette. U.S. Environmental Protection Agency. Investigating Rare Earth Element Mine Development in EPA Region 8 and Potential Environmental Impacts (August 15, 2011). Available online: https://reviewboard.ca/upload/project_document/EA1011-001_Investigating_Rare_Earth_Element_Mine_Development_in_EPA_Region_8_and_Potential_Environmental_Impacts.PDF. Gramling, Carolyn. *Rare earth mining may be key to our renewable energy future. But at what cost? - We take you inside Mountain Pass, the only rare earth mine in the United States.* ScienceNews (January 11, 2023) https://www.sciencenews.org/article/rare-earth-mining-renewable-energy-future [Accessed Nov. 14, 2024.

[5] University of Cambridge. "Thousands of birds and fish threatened by mining for clean energy transition, study finds." ScienceDaily. ScienceDaily, 26 July 2024. [www.sciencedaily.com/releases/2024/07/240726113419.html]. [Accessed Nov. 13, 2024].

[6] Biden-Harris Administration's Interagency Working Group on Mining Laws, Regulations, and Permitting, *Recommendations to Improve Mining on Public Lands* (September, 2023). https://www.doi.gov/sites/default/files/mriwg-report-final-508.pdf [Accessed Nov. 14, 2024].

[7] Block, Samuel. Mining Energy-Transition Metals: National Aims, Local Conflicts. MSCI, ESG Research (June 3, 2021). https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947 [Last accessed Nov. 14, 2024].

Sheep Creek mine at the headwaters of Montana's Bitterroot River is a prime example.[8] Poorly sited mining claims under the General Mining Law consistently make the press in Montana, most recently where a junior mining company took advantage of a 48-hour expiration of an administrative mineral withdrawal on land owned by the Bureau of Land Management (BLM) on the defunct Zortman-Landusky mine site to stake 10 claims. Zortman-Landusky is a poster child for poor mining in Montana that has poisoned a water source for the Fort Belknap Indian Community and cost the state and federal government approximately $80 million and counting in reclamation costs.[9] The Tribe has repeatedly voiced its opposition to further mining in the Little Rocky Mountains, but the General Mining Act does not allow for development to be steered away from this region.

A common misconception is that modernizing environmental and public health safeguards would render the U.S. less competitive relative to other locations in the mining and production of critical minerals. However, the opposite is true; peer nations are implementing high standards regarding due diligence and ESG in materials sourcing, and if we do not keep up, we risk losing access to those markets. For that reason, the legislation needs to codify the same human rights due diligence requirements and standards the Europeans now demand apply to minerals, batteries, and other products placed in the EU market. Failure to align the domestic mineral supply chain with these due diligence standards may close off EU markets to American minerals, risking our competitiveness.

Further, as supply chains continue to be established and the clean energy economy matures, governments and consumers are increasingly demanding that materials be sourced with environmental and human rights considerations in mind. Recognizing this, European Union partners have already embedded the United Nations Guiding Principles (UNGP) definitions of human rights due diligence and supportive frameworks from the Organization for Economic Co-operation and Development (OECD) into their mineral supply chain laws and regulations, notably the EU Battery Law. Under the law's due diligence requirements, companies are required to "identify, prevent, and address social and environmental risks linked to the sourcing, processing and trading of raw materials such as lithium, cobalt, nickel and natural graphite contained in their batteries."[10] Assuring that U.S. regulatory safeguards align with those existing efforts and regulations of our partner nations will not just assist in addressing environmental and human rights concerns, but will potentially open additional markets for critical minerals producers.

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[8] Boddy, Nathan. *Potential mine near Sheep Creek worries Bitterroot Valley residents: While companies exploring the area tout the potential for a multi-billion dollar operation, community members fear for the environment and their way of life.* Montana Free Press (July 18, 2023). https://montanafreepress.org/2023/07/18/potential-mine-near-sheep-creek-worries-bitterroot-valley-residents/ [Accessed on Nov. 13, 2024].

[9] Eggert, Amanda. *New mining claims at Zortman prompt push for investigation*. Montana Free Press, October 26, 2021. https://montanafreepress.org/2021/10/06/mine-claims-in-zortman-promp-call-for-investigation/ [Accessed on Nov. 13, 2024].

[10] European Commission. (August 2023). *Circular economy: New law on more sustainable, circular and safe batteries enters into force*. EU Environment Newsletter. https://environment.ec.europa.eu/news/new-law-more-sustainable-circular-and-safe-batteries-enters-force-2023-08-17_en [Accessed Nov. 13, 2024].

Due diligence requirements are not a sweeping or novel concept for the United States, but we have yet to codify our commitments into laws to ensure that companies are abiding by them. The US, as a member state of the Office for Economic Cooperation and Development, endorsed the OECD framework for due diligence known as the Guidelines for Multinational Enterprises on Responsible Business Conduct ("OECD Guidelines") in May 2011. The State Department is the lead agency responsible for implementing these guidelines through Agency activities and the U.S. government has further embedded them into other Agency plans through the National Action Plan on Responsible Business Conduct. These guidelines provide a ready to implement, 5-step framework, based on best practice and endorsed by governments globally, for companies to carry out sound risk management through effective human rights due diligence.

Compared to most ESG reporting frameworks, which focus on easily quantifiable risks and associated actions, OECD due diligence requires companies to identify the risks that are most salient and likely to occur. It pushes beyond risk identification, requiring companies to adapt their management systems and operations on the ground to mitigate them. It also supports operational sustainability through helping companies address harms effectively and efficiently when they do occur and instilling a culture of continuous improvement through emphasizing due diligence as an ongoing process.

The U.S. codifying our commitments into legal corporate due diligence requirements of the mining industry ensures that companies are undertaking the strongest, most effective form of risk management that responds to investor demands. A 2024 Earnst & Young report on the top 10 business risks and opportunities for mining and metals found that local community impacts are the number one ESG factor facing the most scrutiny from investors.[11] Investors know from cases like that of the Las Bambas Copper Mine in Peru, where community protests over social and environmental impacts shut down a mine for several weeks and caused financial losses of $9.5 million each day, that effective due diligence is core to a company's social license to operate, which is necessary for a project's sustainable output.[12] Requiring companies to undertake OECD-aligned due diligence is in the best interest of the U.S. in its efforts to build strong, reliable mineral supply chains.

Perhaps most important, the sourcing of critical minerals does not have to be entirely reliant upon greenfield mining. In fact, the United States is in the beginning stages of the development of circular supply chains for the reuse and recycling of critical minerals used for the clean energy transition. Additionally, by making products such as EV batteries more efficient, and longer lasting, we could reduce the total amount of primary or virgin materials.

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[11] Mitchell, Paul. *Top 10 risks and opportunities for mining and metals companies in 2025*. https://www.ey.com/en_us/insights/energy-resources/risks-opportunities [Accessed on Nov. 14, 2024].

[12] Business and Human Rights Resource Center, Peru: Indigenous communities protest against the modification of the Environmental Impact Assessment (EIA) of the Las Bambas mining project (Mar. 11, 2024) https://www.business-humanrights.org/en/latest-news/peru-indigenous-communities-protest-against-the-modification-of-the-environmental-impact-assessment-eia-of-the-las-bambas-mining-project/ [Accessed Nov. 14, 2024].

Planning and developing cities and urban areas with mass transit and density in mind can reduce our need for critical minerals. According to a report by the Climate and Community Institute and the University of California, Davis, such practices could "lower the demand for lithium between 18 and 66 percent." Further, considering smaller vehicles and transportation options, which in turn requires smaller batteries and less minerals, could see a "42% reduction" in lithium demand by 2050.[13]

Sourcing from already environmentally disturbed areas, such as legacy mines and waste repositories, may also offer an opportunity for increasing critical minerals production. Acidic waters emanating from Montana's abandoned mines have been documented to contain abundant rare earth elements, and researchers and the United States Department of Defense are investigating the potential for the environmental catastrophe that is the Berkeley Pit in Butte to offer the potential for sourcing elements.[14] Coal ash impoundments have also been identified as a potential source of rare earth elements, offering an opportunity to clean up and repurpose a legacy waste stream.

The above-mentioned alternatives are not half baked, delusional visions without backing. Quite the contrary, alternatives and efficiency gains in the battery industry have already had a major impact on the mineral demands for production of those products. Without technological developments and recycling solutions, over the past 10 years demand for lithium would have been 58% greater, nickel 127% greater, and cobalt 138% greater.[15] The United States is actively investing in battery reuse and recycling capacity, with facilities that have already been announced accounting for over 8,000 jobs.[16] As more EVs come off the road at the end of their useful life, these facilities will provide a valuable domestic source of critical minerals and affordable batteries.

As the United States continues to transition to cleaner, more affordable, and carbon-free sources of energy, there will undoubtedly be an associated, continued increase in demand for certain raw materials and metals necessary for the infrastructure and build-out of this new energy system. But in our race to clean up our energy system, we don't have to and shouldn't compromise clean water, public health, and the American people.

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[13] Thea Riofrancos, Alissa Kendall, Kristi K. Dayemo, Matthew Haugen, Kira McDonald, Batul Hassan, Margaret Slattery, and Xan Lillehei, "*Achieving Zero Emissions with More Mobility and Less Mining*," 2023, Climate and Community Project [http://www. climateandcommunity.org/more-mobility-less-mining].

[14] Adams, Duncan. *Berkeley Pit could yield value again*. Montana Standard, April 2, 2024. https://mtstandard.com/news/local/berkeley-pit-rare-earth-elements-montana-mining-association-defense/article_5b74fafe-f136-11ee-b50d-abcf9ea6f3a4.html [Accessed Nov. 13, 2024].

[15] Walter, Daan, Atkinson, Will, Mohanty, Sudeshna, Bond, Kingsmill, Gulli, Chiara,Lovins, Amory. *The Battery Mineral Loop: The path from extraction to circularity*. Rocky Mountain Institute. July, 2024.

[16] *See* National Renewable Energy Lab. (March, 2024). *Online NAATBatt Lithium-Ion Battery Supply Chain Database*. (Last updated Sept. 26, 2024). https://www.nrel.gov/transportation/li-ion-battery-supply-chain-database-online.html. [Accessed Nov. 14, 2024].

Thank you again for the opportunity to appear before the Committee. I wish the Committee well as it seeks to address the important issues that surround critical minerals development and coal mining on our nation's public lands.

Sincerely,

Derf L. Johnson