



American Exploration &
Mining Association
EST. 1895

16201 E. Indiana Ave., Suite 32801
Spokane Valley, WA 99216
(509)624-1158 - www.miningamerica.org

May 11, 2022

The Honorable Raúl Grijalva
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Bruce Westerman
Ranking Member
House Natural Resources Committee
1329 Longworth House Office Building
Washington, D.C. 20515

The Honorable Alan Lowenthal
Chairman
House Natural Resources Subcommittee on
Energy and Minerals Resources
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Pete Stauber
Ranking Member
House Natural Resources Subcommittee on
Energy and Mineral Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Re: AEMA Statement for the Record for the May 12, 2022 House Natural Resources Subcommittee on Energy and Minerals Resources Hearing on H.R. 7580

Dear Chairman Grijalva, Ranking Member Westerman, Chairman Lowenthal and Ranking Member Stauber,

I write today to express our strong opposition to H.R. 7580, The Clean Energy Minerals Reform Act. The American Exploration & Mining Association (AEMA) supports surgical, common-sense amendments to the Mining Law. However, the sweeping changes in H.R. 7580 are a disaster in the making for the domestic mining industry and for America. The Clean Energy Minerals Reform Act creates many uncertainties for the mining industry, but one thing is certain - this legislation will create the following serious problems for the Nation if it becomes law:

- Mineral production on America's public lands will be severely curtailed;
- America's already extensive reliance on foreign sources of minerals will dramatically increase due to the significant reduction in domestic mineral production;
- The clean energy transition and carbon emission reduction goals will be rendered impossible to meet;
- America's national and economic security will be severely weakened as high paying family-wage jobs are exported and our Nation becomes more reliant on foreign sources of strategic and critical minerals;
- Mining-dependent rural communities will experience severe economic hardships;
- The federal government will no longer receive revenue from Claims Maintenance Fees, which in FY 2020 amounted to nearly \$70 million;
- The cost of administering H.R. 7580 will far exceed any revenue raised; and
- The federal government will be subject to substantial takings litigation.

We Need a Reliable Domestic Mineral Supply Chain

Events like the COVID-19 pandemic, the freakish Texas storm, and the war in Ukraine and the resulting sanctions on Russia have exposed the United States' supply chain vulnerabilities, highlighting the importance of an abundant and affordable supply of domestic minerals for America's future.

The fact is, global mineral demand is skyrocketing. As noted in a report from the International Energy Agency, keeping global temperature rise to below 2 degrees Celsius above preindustrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition — reaching net zero globally by 2050 as the Biden Administration has called for— would require critical mineral inputs to increase sixfold by 2040.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Approximately 40% of the gold now produced is used in electronics and computer chips that are needed for clean energy technologies to meet carbon emission reduction objectives to address climate change.

A recent Reuters article noted that President Biden has promised to convert the entire U.S. government fleet – about 640,000 vehicles by 2030 – to EVs. That plan alone could require a 12-fold increase in U.S. lithium production—to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt - and that’s just for the U.S. government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the U.S. being increasingly dependent on foreign sources of strategic and critical minerals. It’s time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives. We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent.

In September 2016, the Government Accountability Office (“GAO”) published a report entitled “Strengthened Federal Approach Needed to Help Identify and Mitigate Supply Risks for Critical Raw Materials.” This report evaluated “certain metals, minerals, and other “critical” raw materials [that] play an important role in the production of advanced technologies across a range of industrial sectors and defense applications.” The GAO report found several limitations in the scope of federal critical mineral programs that are inconsistent with the directives in the National Materials and Minerals Policy, Research and Development Act of 1980. (30 U.S.C. §§ 1602 – 1605), hereinafter referred to as the 1980 Act.

In the 1980 Act, Congress found:

“the United States lacks a coherent national materials policy and a coordinated program to assure the availability of materials critical for national economic well- being, national defense, and industrial production, including interstate commerce and foreign trade.” (30 U.S.C. § 1601(7)).

In response to this finding, Congress declared:

“...it is the continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resource conservation, and social needs.” (30 U.S.C. § 1602)

Relying on adversaries and allies for the minerals needed for U.S. manufacturing has created our currently unsustainable dependence on foreign countries for minerals. The most recent USGS *Mineral Commodity*

Summaries published in 2022 indicates that the U.S. is now import-dependent for 47 different metals and minerals, and 100 percent import-dependent for 17 of those. Stated differently, the U.S. now imports the majority of 47 different minerals, half of the naturally-occurring elements on the Periodic Table, most of which can be mined in the U.S.

As important as recycling is, it cannot meet this burgeoning mineral demand. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about ten percent of the minerals that will be needed.

Made in America must include "mined in America" and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

The General Mining Law Works Well

The General Mining Law of 1872, as amended, governs how U.S. citizens may gain access to hardrock minerals (also known as locatable minerals) on federal lands. Locatable minerals are essential building blocks of our economy, providing the foundation for infrastructure, technology, manufacturing, conventional and renewable energy, electric vehicles, and national defense. No modern city, home, factory, computer, telephone, train, car, airplane, or national defense system has ever been built or can be built without minerals.

The Mining Law, as amended, invites U.S. citizens to make substantial investments of time, knowledge, and money to explore for minerals on federal lands with the hope of discovering a mineral deposit that can be developed into a mine. This process, known as "self-initiation," greatly benefits our Nation because it effectively leverages private investments that transform undeveloped federal land into mining operations that create jobs, pay taxes, and provide the minerals the country needs – at no risk or expense whatsoever to U.S. taxpayers.

It has always been Congress' intent that the law must support and encourage mining on public lands. Although Congress has amended the Mining Law and developed other laws pertaining to public lands management since 1872, the purpose of the Mining Law has not changed. Congress has repeatedly preserved the foundational rights under Section 22 of the Mining Law that authorize citizens to enter, use, and occupy public lands to explore for minerals and to develop mines.

The "self-initiation" process is essential. It allows U.S. citizens to enter federal lands open to operation of the Mining Law, and to locate mining claims on lands that may have favorable geologic conditions for finding a mineral deposit. Once the claim is located, the claim owner can use the surface of a mining claim for mineral exploration and development purposes, and all uses reasonably incident to mining, so long as the claim owner complies with the surface management regulations and other environmental protection requirements.

Self-initiation is especially critical to the prospecting and early-stage mineral exploration phases of the mining lifecycle when geologists continually test and refine their mineral target concepts and exploration techniques. Because exploration is an iterative process that uses new information to vector towards mineralized zones, the ability to expand a claim block based on new information is critically important. The 1 in 1,000 odds of making a discovery are akin to looking for the proverbial needle in the haystack and drive the need to preserve self-initiation to facilitate locating additional claims on lands with potentially favorable geology in response to the on-the-ground realities of exploring for rare mineral deposits that are very difficult to find.

The Mining Law is Not Antiquated

A frequent criticism of the Mining Law is that its purpose was to spur settlement and development of the American West. Now that this has been accomplished, the law is no longer needed, so the argument goes. This fundamentally misunderstands the purpose of the law, and the context in which it was passed.

Between the famous California Gold Rush in 1849 and the enactment of the Mining Law in 1872, numerous gold rushes occurred in the United States. While some prospectors traveled from one boomtown to the next, bringing experience and knowledge many arrived with no background in mining. There was little in the way of federal law governing establishment or adjudication of mining claims, or the transfer or mineral rights. Practice and custom varied from one mining camp to another. Congress responded with the Mining Law, which has proven remarkably resilient.

Since its enactment in 1872, Congress has made many important changes to the Mining Law including:

The Minerals Leasing Act – In 1920, Congress removed coal, petroleum, natural gas, phosphates, sodium, sulfur, and potassium from the law and established leasing programs for these resources in part because they have different geologic characteristics than locatable minerals;

The Federal Land Policy and Management Act (FLPMA) – In 1976, Congress created an environmental protection mandate prohibiting unnecessary or undue degradation of lands subject to mineral activities, established a claims recordation requirement that documents where claims are located and who owns mining claims, and created special environmental protection measures for claims in wilderness study areas and in the California Desert Conservation Area;

1993 to Present – Starting in 1993, Congress has used the appropriations process to establish an annual fee, the Claims Maintenance Fee, for use of federal lands for mineral exploration and development purposes, and to continue a moratorium on patenting. Claimants currently pay \$165 per claim, and the fee is adjusted every five years to reflect the Consumer Price Index. These fees have raised significant revenue. According to BLM's most recently available statistics, in FY 2020, BLM received nearly \$70 million in CMF and location fees. Less than \$40 million of that was retained for administration of the Mining Law program; the remainder going to the general Treasury. Since enactment of these fees in 1993, the federal government has collected approximately \$1.3 billion. By making timely payment of this fee, claimants secure the right to use and occupy federal lands, subject to compliance with the 43 CFR 3809 and 36 CFR 228A surface management regulations and all other applicable state and federal environmental protection regulations.

A statutory mandate exists to encourage and facilitate the private development of the minerals our society needs. When Congress enacted the Mining and Minerals Policy Act of 1970, it declared that “it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.” (30 U.S.C. § 21a). The mineral directives in this Act apply to BLM-administered public lands and National Forest System lands. These are compatible objectives that operate to encourage deployment of privately-funded, domestic mineral production while protecting the environment.

Congress made other important changes to the Mining Law when it enacted FLPMA in 1976. Among other things, FLPMA mandated a claim filing and recordation system to give BLM a mechanism to rid the federal lands of stale mining claims and created an environmental protection mandate prohibiting unnecessary or undue degradation (UUD) of public lands subject to mineral activities. When mining critics assert the

Mining Law needs to be changed because it does not include environmental protection requirements, they are ignoring how FLPMA significantly changed the Mining Law by inserting the UUD environmental performance standard, which specifically applies to mineral exploration and mining projects.

In 1980, BLM finalized the 43 CFR 3809 surface management regulations for locatable minerals to implement the FLPMA UUD mandate. The stated purpose of these regulations is to “[p]revent unnecessary or undue degradation of public lands by operations authorized by the mining laws [and to] establish procedures and standards to ensure that operators and mining claimants meet this responsibility... and reclaim disturbed areas.” (43 CFR § 3809.1) The UUD provisions in the 43 CFR 3809 regulations contain explicit directives that mineral activities must comply with all applicable state and federal regulations to protect the environment and cultural resources and satisfy a long list of environmental performance standards. Prior to commencing mineral activities on public lands, project proponents must provide BLM with financial assurance (reclamation bonds) to guarantee that lands affected by exploration and mining will be properly reclaimed.

The laws governing National Forest System lands are similarly protective. In 1976, Congress enacted the National Forest Management Act, which mandates a land use planning process that ensures mineral resource development is given proper consideration consistent with the mandate in the Mining and Minerals Policy Act of 1970 while minimizing resource conflicts and balancing environmental concerns.

The Forest Service’s 36 CFR 228 Subpart A surface management regulations for locatable minerals include environmental protection measures that require operators of mineral exploration and mining projects to minimize adverse impacts on National Forest surface resources where feasible (36 CFR § 228.8). Like the BLM, the Forest Service’s surface management regulations provide comprehensive and effective environmental protection at mineral projects on National Forest System lands including requirements for financial assurance before activities can commence.

The Claims Maintenance Fee (CMF), which has been continued in annual appropriations measures since 1992, gives BLM a powerful land management tool that accomplishes several important objectives. First, it provides real-time information about where claims are located, who owns the claims, and whether the claims remain in good standing. Claims for which the fee is not paid by the August 31 fee payment deadline are categorically voided. Secondly, the substitution of a fee for the on-the-ground assessment work requirement has virtually eliminated unnecessary ground- disturbances associated with performing the annual assessment work that was previously required to maintain a claim in good standing. The fee has thus significantly reduced the environmental impact of mineral exploration activity. Third, the fee raises sufficient revenue to fund the Department of the Interior’s Mining Law program, with leftover revenue that currently goes to the general Treasury. AEMA supports use of CMF revenue in excess of that required to fund the Mining Law program to fund abandoned mine land remediation.

The 1920 Mineral Leasing Act, FLPMA, and the annual Claims Maintenance Fee are examples of how Congress has continually updated the Mining Law since its enactment in response to evolving land management requirements, and clearly demonstrate that the law is not antiquated.

To the contrary, the Law as amended serves the country well. If the Law is amended in the future, the changes should be surgical and tailored to respond to specific land management objectives, recognizing the need, and the statutory mandate, to satisfy the Nation’s demand for minerals.

The Federal Leasing System Does Not Work for Hardrock Minerals

The U.S. currently has a process for leasing federal hardrock minerals on acquired lands that clearly does not work. While many of those lands are highly prospective for hardrock minerals, they fail to attract a lot

of interest, as the risk is untenable for many reasons. Unrealistic areal and temporal constraints in the federal leasing system impede exploration, are incompatible with hardrock mining timelines, and do not provide adequate security of tenure.

The 20-year primary term lease is a serious barrier to mineral investment because it is not unusual for mines to operate for many decades. Without the assurance that a mine can continue to operate longer than 20 years, companies will be very reluctant to invest the hundreds of millions and sometimes billions of dollars needed to develop a mine.

Leasing works in many other countries because those countries create leases that provide for access in an expedient manner, provide predictable economics, and have provisions for self-initiation and security of tenure. Essentially, those countries encourage mineral development.

Leasing works on State Trust lands, such as in Utah, because the underlying purposes of the Utah leasing program on the State's trust lands is to encourage mineral exploration and development to generate royalties for the trust land beneficiaries, primarily the Utah education system. Again, those leases can be quickly entered into, have predictability to mitigate risk, provide security of tenure and streamlined permitting requirements.

The lease terms and logistics in the current federal leasing system impede exploration and development. Investment in mineral exploration will become even riskier and less attractive if an arbitrary and unrealistic term limit is imposed on what is already a very high-risk endeavor. Converting to a leasing system puts at risk a company's entire exploration investment and creates uncertainty that will completely chill mineral exploration and development in the U.S. Companies will not be able to justify to their shareholders expenditures of the tens to hundreds of millions of dollars required to discover a valuable mineral deposit if there is no guarantee that they will have the right to develop those minerals.

Conversion to a uniform federal leasing system in the U.S. modeled after the existing federal hardrock minerals leasing program for acquired lands puts self-initiation and security of tenure at risk, essentially destroying the U.S. mineral economy as companies are forced to look elsewhere.

Hardrock Minerals are Geologically Unique

Creating a one-size-fits-all leasing process fails to recognize the significant geologic differences between oil, gas, coal and hardrock mineral deposits that make a uniform hardrock leasing program untenable. Oil and gas are fluid minerals that occur in well understood sedimentary basins where geophysical surveys that do not disturb the surface can identify oil and gas targets with a high likelihood of success. Once an oil or gas well is drilled, it can readily be transformed into a production well, usually in a matter of days.

In contrast, hardrock mineral deposits are solid minerals that occur in areas with much more complex geology and typically have unique geologic, geochemical, and metallurgical characteristics that distinguish them from other similar mineral deposits. Defining a hardrock mineral deposit requires extensive exploration and development drilling over many years, sometimes decades. Once drilling has sufficiently defined the deposit to support a decision to develop a mine, huge investments are required to build the mine and processing facilities.

Because mineral deposits are rare and unique geologic phenomena, they are very difficult to find. In a 1999 report, the National Research Council of the National Academy of Sciences recognized just how rare economically viable mineral deposits are: "Only a very small portion of Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places

where economically viable deposits were formed and discovered.” *Hardrock Mining on Federal Lands*, National Research Council, National Academy Press, 1999, p. 2-3.

Sound public policies governing mineral exploration and development must consider these basic geologic principles. Current law does not confer an “exalted status” for locatable minerals. It does, however, consider the geologic reality that mines can only be developed where minerals are located and have been discovered.

Keeping lands open to exploration and development improves the odds of finding “the needle in the haystack” mineral deposit that can be developed into a mine. Conversely, withdrawing land from operation of the Mining Law and restricting the amount of land that can be explored diminishes the odds of discovery, interferes with the Mining Law’s self-initiation process, and severely compromises the Nation’s ability to capitalize on private-sector investments to discover and develop domestic mineral deposits.

Changes to the Mining Law that are not responsive to this geologic reality will substantially chill investment in mineral exploration and mining, impede the development of the Nation’s mineral resources, and increase our reliance on foreign minerals – including renewable energy minerals.

Comprehensive Environmental Protections Are Working

Federal land management agencies’ current environmental protection requirements for locatable minerals provide effective and comprehensive environmental protection that safeguard all aspects of the environment including water resources, wildlife, special status species, air quality, cultural resources, soils, vegetation, and visual resources.

Surface management regulations govern how mineral activities must be conducted on public lands to minimize environmental impacts. Both the U.S. Bureau of Land Management and the U.S. Forest Service have specific regulations for locatable mineral activities that have been in effect for decades. These regulations, in conjunction with state environmental laws and regulations, establish environmental performance standards and reclamation bonding requirements to protect the environment and guarantee mineral projects will be reclaimed when exploration and mining have been completed.

The American people are not on the hook for and have not paid any money to clean a mine site permitted on federal lands since 1990. Today’s comprehensive suite of federal and state environmental laws and regulations, combined with robust financial assurance requirements, ensure that new abandoned mines are not being created. BLM, U.S. Forest Service and the states currently hold more than \$6 billion in financial assurance, and federal law requires both BLM and the Forest Service to periodically revisit the bonds they hold for individual projects, to make sure they are adequate.

The BLM and Forest Service must prepare NEPA environmental reviews prior to authorizing mineral projects that already analyze impacts, identify ways to eliminate, minimize, and mitigate impacts, and verify that proposed projects will comply with all applicable state and federal regulations.

The BLM, Forest Service, EPA, and state regulatory agencies have the authority to say no to mining if there are doubts that the project can meet specific environmental protection regulatory requirements. During the permitting process, regulators can require project proponents to go back to the drawing board to redesign a project to address concerns about environmental impacts.

Numerous other federal environmental statutes also govern mining, including but not limited to the Endangered Species Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation Act, Archaeological Resources Protection Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

The current system achieves the appropriate balance between mine development and environmental protection. There is no exalted status for mining. Rather, a rigorous demonstration is required to show that all aspects of the environment at a proposed mine will be protected.

Fifth Amendment Takings Issues

Policies or legislation that eliminate or diminish property rights established under the Mining Law expose the federal government to substantial takings litigation under the Fifth Amendment of the U.S. Constitution.¹ The owners of the nearly 400,000 currently active mining claims and mill sites could become potential takings claim plaintiffs if Congress enacts legislation that triggers the Fifth Amendment. This constitutional protection has been consistently applied to mining claim owners and their rights obtained under the Mining Law - including pre-discovery rights. As a general rule, actual takings are compensable whether the government appropriates only a portion of the privately held interests, or the entire bundle of rights. Compensation costs incurred by the United States could be considerable, if a taking or partial taking does occur. The federal government could face potential liability damages, not only for private interests in the roughly 400,000 unpatented mining claims currently on record, but also for affected private lands where operations cover both federal and checkerboarded private sections, private inholdings, or areas where patented and unpatented mining claims are intermixed.

In this case, a blanket seizure of private property rights is clearly not in the public's interest. Besides exposing the federal government to substantial takings litigation, this extinguishment of private property rights will destroy the economic engines that sustain rural mining communities. Forced mine closures will kill high-paying mining jobs, deprive states and local communities of the tax revenues and other substantial economic benefits that the mines generate, increase the country's reliance on foreign minerals, and render our decarbonization goals impossible.

Royalty

Modeling a hardrock royalty after the coal, oil, and gas royalty programs is unworkable due to the substantially different geologic characteristics of those commodities compared to hardrock minerals.

Unlike oil and gas and coal operations, the raw minerals produced during mining are not marketable as found in place, in the ground. Hardrock minerals must undergo costly processing steps to produce a product that can be sold. The costs an operator must incur to produce a salable product from raw minerals should be deducted from the royalty base on which a federal royalty is calculated.

Furthermore, a prospective royalty must consider existing state taxation and royalty requirements that typically burden mining claims. Moreover, unlike coal, oil and gas producers, mineral producers cannot pass on the royalty costs to mineral consumers.

As noted above, numerous U.S. Supreme Court decisions establish that the Mining Law creates private property rights to unpatented mining claims. Therefore, assessing a royalty on existing claims on which there has been investment in reliance on existing law would subject the United States to substantial takings claims in violation of the Fifth Amendment.

Good Samaritan Legislation is Needed to Effectively Address Abandoned Mine Lands

For more than two decades, the mining industry has been seeking legislation to enable Good Samaritan reclamation of abandoned mine lands (AMLs). Liability provisions in both the Clean Water Act (CWA)

¹ See attached McIntosh & Cook, American Exploration & Mining Association, *Mining Law Fifth Amendment Takings Analysis*, July 2021, in support of this section.

and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) currently obstruct Good Samaritans from cleaning up AML sites. These liability concerns affect numerous stakeholders – local communities, conservation groups like Trout Unlimited, and mining companies alike.

Although there is widespread interest in addressing the AML problem, CWA and CERCLA liability concerns remain serious obstacles. Good Samaritan legislation is clearly needed to facilitate reclamation of AML sites where water quality issues exist. AEMA supports S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act, to create a pilot project program to begin addressing this problem.

Maintaining a viable hardrock mining industry is an essential component of addressing the AML issue. Some historic, pre-regulation mine sites still contain mineral resources that could be developed into a modern mine by a new mining company that was not involved with the previous mining activities. Modern mining at an historic site creates an important opportunity to integrate the cleanup and remediation of historic, un-reclaimed mine features into a modern mine designed to protect the environment and achieve conservation objectives.

Considerations for Improvement

The U.S. minerals industry operates in a highly competitive global environment. The search for new mineral deposits occurs around the globe. Major mining companies operate internationally and weigh many factors in determining whether the potential return on mineral investment is worth the geologic, economic, and political risk.

There can be no question that mining creates new wealth and provides high paying jobs with an indirect job multiplier more than twice the national average. As mining companies weigh the geology/mineral potential, economic and political risk, they will invest in mineral development where they can obtain access to the land, access to regulatory approvals, access to capital, and access to the resources necessary to build and operate the mine such as people, water, and energy.

If the U.S. is going to compete in this global mineral environment, it must adopt policies that guarantee access to lands with mineral deposits, must provide a competitive tax regime, and must reduce permitting delays.

With the increasing global demand for minerals, we need more domestic mining, not less. AEMA offers the following suggestions to attract mineral investment and the responsible production of the minerals our society requires:

- Improve/expedite the mineral permitting process. The process (especially NEPA) doesn't accommodate small, simple projects very well because the agencies use a one-size-fits-all template.
- Establish strict time limits on legal challenges to Records of Decision and permits. Require all challenges to be brought in one lawsuit. Require mining opponents challenging a project to post a bond to cover costs and delays in the event the challenge fails. Deny mining opponents the ability to recover attorney fees from the Equal Access to Justice Act.
- Use programmatic NEPA documents to approve exploration drilling projects that comply with surface management regulations and use Best Management Practices.
- Develop a Notice of Intent process for Forest Service lands similar to that currently in the BLM's 3809 regulations for initial exploration drilling that impacts less than 5 acres.

- Keep lands open to mineral exploration and development. Currently, more than 50 percent of federal land is off limits to mining and exploration, so we also encourage DOI to update 43 C.F.R. 2310 regulations, which would limit mineral withdrawals to 5,000 acres unless affected state governors give consent.
- Evaluate lands currently off-limits to mineral exploration and development for their critical mineral potential and evaluate surgical development of these lands to reduce the Nation's reliance on foreign critical minerals.
- Develop a primacy/delegation program for the states to take the lead in surface management regulations and financial assurance.
- Encourage and expedite the development of host minerals that produce critical mineral byproducts.
- Improve minerals staffing at BLM and Forest Service by increasing the number of trained minerals staff.

Specific Problems with H.R. 7580

H.R. 7580 eliminates mining claims and substitutes a minerals leasing system that will substantially chill, if not eliminate, private sector investment in exploring for and developing minerals on federal land. The legislation completely destroys self-initiation and creates intolerable uncertainties about lease terms, conditions and renewal policies. The bill creates prospecting permits with unrealistically short time limits to discover a mineral deposit that fail to recognize that discovering minerals can take a decade or longer. Current life-of-mine permits are changed to an arbitrary 20-year lease that may be renewed for successive 10-year terms if the mine is in continuous production, which ignores how fluctuating mineral prices influence mine operations and temporary closures.

H.R. 7580 ignores the federal land management agencies' current environmental protection requirements for locatable minerals, which provide effective and comprehensive environmental protection that safeguard all aspects of the environment including water resources, wildlife, special status species, air quality, cultural resources, soils, vegetation, and visual resources. It overlooks BLM and Forest Service mandates that mineral projects must prevent unnecessary or undue degradation/minimize adverse environmental impacts. BLM and the Forest Service must prepare NEPA environmental reviews prior to authorizing mineral projects that already analyze impacts; identify ways to eliminate, minimize, and mitigate impacts; and verify that proposed projects will comply with all applicable state and federal regulations.

The legislation also disregards current financial assurance programs that guarantee mines will be reclaimed. Over \$6 billion of financial assurance is held to cover any costs of closure. The American people are not on the hook for and have not paid any money to clean a mine site permitted on federal lands since 1990. Today's comprehensive suite of federal and state environmental laws and regulations, combined with robust financial assurance requirements, ensure that new abandoned mines are not being created.

Finally, H.R. 7580 imposes a 12.5% royalty on new mining operations (the same amount as oil and natural gas) and an 8% royalty on existing operations. However, hardrock mining is fundamentally different than the totally unrelated oil and gas industry. As previously noted, unlike oil, natural gas, or coal, mineable deposits are extremely rare and hard to find. Currently, maybe one out of one thousand exploration projects ever become an operating mine. The proposed royalties and arbitrary fees will render

any economic business models unworkable and will end future mining on federal lands, increase reliance on foreign minerals, and pose a threat to our Nation's national security.

It's important to note that previous leasing programs for locatable minerals were unsuccessful. Prior to enacting the 1872 Mining Law, Congress enacted a mineral leasing system during the first half of the nineteenth century, anticipating that the federal government would realize much of the economic benefit of minerals found on public lands. But President Polk reported to Congress in 1845 that the cost of government administration was more than four times the lease income, and the leasing system was abandoned. Congress subsequently enacted the current claims location and self-initiation program currently in place under the Mining Law.

Significantly, numerous U.S. Supreme Court decisions establish that the Mining Law creates private property rights to unpatented mining claims. Therefore, assessing a royalty on existing claims on which there has been investment in reliance on existing law would subject the United States to substantial takings claims in violation of the Fifth Amendment. Furthermore, the bill's prospective royalty does not consider existing state taxation and royalty requirements that typically burden mining claims or that, unlike coal, oil and gas producers, mineral producers cannot pass on the royalty costs to mineral consumers.

Conclusion

Demand for minerals in our advanced society is increasing every day. Minerals are critical to developing the innovative technologies that will propel our economy, enable America to compete globally and improve our quality of life. They are the building blocks for the manufacturing, construction, and automotive industries, and are essential to growth in fields such as advanced energy and healthcare. Current efforts to transition to a "green energy" economy are not possible without a robust domestic mining industry to provide the required minerals and metals.

Our mineral import reliance must be addressed. Americans and the environment lose when we offshore our mineral requirements. It makes no sense to create mining jobs elsewhere and import minerals from countries, often adversaries like China and Russia, with inferior environmental protection and worker health and safety standards. President Biden's decarbonization aspirations demand that we minimize the carbon footprint of our minerals by getting them from domestic mines rather than creating the substantial carbon emissions to ship minerals from around the globe.

Mining makes every aspect of our lives possible. Most people never think about the pivotal role mining plays in their lifestyle and standard of living, but mined products are key to the advanced, technological, comfortable, and more healthful existence we enjoy. Like food and water, energy and minerals are essential. We are fortunate that America is blessed with a rich mineral endowment, and it is more important than ever to responsibly utilize our own mineral resources. In fact, it is a national imperative.

It is therefore imperative that lands with important mineral deposits remain accessible to responsible mineral exploration and development and that federal and state permitting processes can be completed in a timely manner.

The Mining Law, as amended, has served this Nation well by providing the necessary framework and security of tenure, or certainty, required to attract mineral investment and take the risk to find that true needle-in-a-haystack, one-in-a-thousand economically viable mineral deposit.

By keeping our existing mines operating and getting new mines in operation, the economic impact ripples out far and wide: to employees, mine suppliers, local economies, and the downstream domestic industries

we supply with our products. Not to mention the tax revenues we generate for local, state, and federal governments as a result of this economic activity. Few industries pack such an economic punch.

Addressing climate change, creating union jobs, and pushing “Buy American” requirements are pillars of the Biden Administration’s priorities. The U.S. mining industry is the foundation upon which those pillars stand. Conversely, the sweeping changes in H.R. 7580 will result in less mineral investment in the U.S., adversely impact private sector job creation, and exacerbate our dangerous reliance on foreign sources of critical and necessary minerals.

We look forward to continuing to work with you to ensure America has a secure and affordable supply of the minerals and metals needed for our modern society. Unfortunately, H.R 7580 will do just the opposite, so we strongly urge you to oppose the legislation.

Sincerely,

A handwritten signature in black ink that reads "Mark D. Compton". The signature is written in a cursive style with a large, stylized initial "M".

Mark Compton
Executive Director