



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources Republican Staff; Ashley Nichols (Ashley.Nichols@mail.house.gov) (251-656-8498) and Rebecca Konolige (Rebecca.Konolige@mail.house.gov) (914-217-8728)
Date: July 23, 2021
Subject: Oversight Hearing titled “The Toxic Legacy of the Mining Law of 1872”

The Subcommittee on Energy and Mineral Resources will hold an oversight hearing titled “The Toxic Legacy of the Mining Law of 1872” on **Tuesday, July 27, 2021, at 10:00 a.m. EDT**. This is a hybrid hearing with both WebEx and in-person options for Member attendance.

Member offices are requested to notify Ashley Nichols no later than Monday, July 26, 2021, at 12:00 p.m. EDT, if their Member intends to participate. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- “Hardrock” is an umbrella term for non-fuel, locatable minerals including but not limited to critical minerals. Hardrock mining is regulated by the General Mining Law of 1872¹, which Committee Democrats and others have attempted to redesign for decades.
- At a time when dozens of critical minerals and other commodities are on the brink of a major surge in demand, our policy aim should be incentivizing responsible domestic mining, not worsening our reliance on minerals imported from China and other nations without strong environmental and labor standards.

¹ Sess. 2, ch. 152, 17 Stat. 91–96

- Hardrock mining generates billions of dollars in federal, state, and local taxes,² in addition to the annual claim maintenance fees paid into the Treasury.³
- Despite arguments to the contrary, federal land is not “given away” to mining operators and the modern American mining industry follows some of the strictest environmental and safety standards in the world.
- There are major differences between hardrock mining and other extractive industries, and these differences need to be held paramount in any discussions about the Mining Law. Specifically, a conversion into a leasing system, combined with the assessment of high royalties, as contemplated by Democrats, would be detrimental to the industry and our national security.
- While this is an oversight hearing, Chairman Grijalva’s longstanding Mining Law “reform” legislation⁴ has typically included a high royalty on both existing and new hardrock mines, changing the mining claims system into a leasing system, and creating an abandoned mine land (AML) reclamation program. The current iteration of this bill is expected to also have strong emphasis on tribal consultation and so-called “special places.”
- Committee Democrats will likely argue there is a need to generate a “fair return to the taxpayer” from hardrock mining on federal lands as well as reclaim abandoned mines.

II. WITNESSES

- **Ms. Debra Struhsacker**, Environmental Permitting & Government Relations Consultant and Co-founder and Director, Women’s Mining Coalition [*Republican Witness*]
- **Mr. Jim Cress**, Counsel, Bryan Cave Leighton Paisner [*Republican Witness*]
- **Mr. Samuel Penney**, Chairman of the Nez Perce Tribal Executive Committee
- **Ms. Kathy Bancroft**, Tribal Historic Preservation Officer, Lone Pine Paiute–Shoshone Reservation
- **Mr. Paolo Natali**, Principal, Climate Intelligence, RMI
- **Ms. Lauren Duncan**, Abandoned Mine Restoration Project Manager, Trout Unlimited and Member of the Colorado Mined Land Reclamation Board

III. BACKGROUND

Domestic hardrock mining provides essential metals and materials used across sectors, including virtually all high-tech equipment such as smartphones and laptops. Importantly, this list also

² National Mining Association. Report. “The Economic Contributions of U.S. Mining, 2019.” February 2021. https://nma.org/wp-content/uploads/2018/09/Economic_Contributions_of_Mining_2019.pdf

³ Bureau of Land Management. “Mining Claim Fees.” <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/fees>

⁴ H.R. 2579 in the 116th Congress

includes wind and solar energy technologies, electric vehicles, and battery storage. We simply cannot have renewable energy development without minerals. Despite substantial domestic reserves, the great majority of our nation’s supply of critical minerals and other mined resources comes from abroad, China in particular. Should there be a break in relations with China or other foreign suppliers, our nation could face severe shortages. Moreover, since the U.S. has some of the best environmental and human labor standards in the world, it is preferable – as well as safer for the supply chain – to maximize domestic production.

Comparison to Other Extractive Industries

Unlike “leasable” minerals such as oil, gas, and coal, hardrock resources (or “locatable” minerals) do not have a traditional leasing structure. Instead, the General Mining Law of 1872 enables the public to explore for and develop mineral resources on federal land.⁵ Unlike other resources, mineral rights are established through mining claims, and maintained by an initial location fee and annual claim maintenance fees.⁶ The lack of a traditional leasing system is often mischaracterized as an unfair advantage for mining companies and lost revenue for the taxpayer. However, this interpretation shows a major misunderstanding of the hardrock mining industry, its business model, and its singular challenges.

First, unlike minerals such as coal which occur in large “seams,” hardrock minerals are sparsely scattered across a given area.⁷ It routinely takes hundreds of millions of dollars in upfront capital costs for exploration, plus almost a decade of permitting and environmental review under the National Environmental Policy Act (42 U.S.C. 4321) and other statutes, before production can even begin.⁸ This timeline does not account for potential litigation, which is now routine for major mining projects. In contrast, permitting timeframes in countries like Canada and Australia average 2-3 years.⁹ It can easily take over a decade and \$1 billion before an American mining project produces any resources.¹⁰ Switching to a traditional leasing system, where the presence of economic quantities of minerals cannot be guaranteed, and production may not even begin in the first 10-year period, would be nearly impossible circumstances in which to run a sound business operation.

Second, even after an economic discovery is made, the product is far from ready for market. Unlike coal, oil, or gas, which are close to a saleable state when they come out of the ground, hardrock minerals must go through a lengthy and expensive refining process. And due to decades of unfriendly regulations, the U.S. no longer has the refining capacity for the majority of these

⁵ Bureau of Land Management. Fact Sheet, “Locatable Minerals (Hardrock and Placer Mining).”

<https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals>

⁶ Bureau of Land Management. Fact Sheet, “Mining Claim Fees.” <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/fees>

⁷ Briefing from the National Mining Association. March 2019.

⁸ Briefing from the National Mining Association. March 2019.

⁹ SNL Metals & Mining, “*Permitting, Economic Value and Mining in the United States*,” June 2015. https://nma.org/wp-content/uploads/2016/09/SNL_Permitting_Delay_Report-Online.pdf.

¹⁰ Briefing from the National Mining Association. March 2019.

resources.¹¹ Instead, operators must ship their ore overseas to be refined and processed – mostly in China – before the product is ready for sale. This step adds even more time and expense to an already extremely long and costly project.

Yet another complication is the broad variety of commodities within this industry. The term “hardrock” covers a large, disparate variety of non-fuel mineral resources, including precious metals, rare earths, zinc, lead, tellurium, and many others. All of these have different levels of rarity with fluctuating commodity prices (e.g. gold). Only 35 of these minerals are currently designated by the Department of the Interior as a “critical mineral,” but many more are expected to play a vital role in the growth of renewable energy technologies. Setting an arbitrary royalty rate without accounting for these factors is not an appropriate way to get a “fair return” from hardrock operators. In fact, it is more likely to drive them out of business or overseas.

Concerns Regarding Abandoned Hardrock Mines

Another criticism of the General Mining Law and hardrock mining today is the lack of a federal mechanism to clean up abandoned mines. There are thousands, possibly hundreds of thousands, of hazardous abandoned hardrock sites across the country, and states cannot afford to remediate them alone.¹² Many of these sites are located on or near tribal lands.¹³

One solution is so-called the “Good Samaritan” legislation,¹⁴ which allows non-governmental third parties to assist in AML cleanup. While Democrats have historically supported this idea in theory, legislation has not yet made it through the House. There has also been an argument for many years that a remediation fund, like that for abandoned coal mines, should be created for hardrock, presumably funded by a fee on active mining. However, if the real aim is to decrease the number of abandoned hardrock mine sites, then putting a high royalty on the industry is not an effective way to accomplish this. A large royalty would simply create a huge incentive for companies to move their operations abroad, or at least onto private or state lands. This would leave the hardrock AML problem relatively unchanged, but the United States could lose much of its domestic hardrock production in the attempt.

Recent Administrative Action on Supply Chains

On February 24, 2021, the Biden Administration issued Executive Order 14017 on America’s Supply Chains, which highlighted the need for a stable domestic supply of critical minerals.¹⁵ This Administration has repeatedly emphasized expanding renewable energy in pursuit of its ambitious net-zero emissions goals. Massive investment in the domestic production of many critical mineral commodities will be required if the Administration is serious about reaching their

¹¹ U.S. Geological Survey. “Draft Critical Mineral List—Summary of Methodology and Background Information—U.S. Geological Survey Technical Input Document in Response to Secretarial Order No. 3359.” 2018. <https://pubs.usgs.gov/of/2018/1021/ofr20181021.pdf>

¹² U.S. Bureau of Land Management, official website on abandoned mines. <https://abandonedmines.gov/>.

¹³ U.S. Environmental Protection Agency. “Navajo Nation: Cleaning Up Abandoned Uranium Mines.” <https://www.epa.gov/navajo-nation-uranium-cleanup/abandoned-mines-cleanup>

¹⁴ S.3727 in the 115th Congress

¹⁵ E.O. 14017. February 24, 2021.

targets, namely, a fully net-zero economy by 2050.¹⁶ The Administration acknowledged this reality in its 100-day report following E.O. 14017, which stressed the importance of minerals including copper, nickel, lithium, cobalt, and many others to reach the Administration’s net-zero objectives.¹⁷

Another major concern around mineral supply chains is the global reliance on countries with low environmental and labor standards for these products. Part of this challenge is a simple function of geology and geography— for instance, concerns have been raised over the use of child labor in the Democratic Republic of the Congo,¹⁸ a nation which also possesses the world’s largest cobalt reserves¹⁹ – but it can be mitigated through policy here in the United States. It is morally obligatory to take the mining conditions of source countries into account as the U.S. scales up mineral-intensive technologies like electric vehicles. The Administration has signaled a willingness to address this issue,²⁰ banning the solar panel component polysilicon originating from Xinjiang, a Chinese province notorious for the slave labor and torture of Uyghurs.²¹ Unfortunately, unacceptable worker and environmental standards are present in multiple mineral-rich countries.

Mineral supply chains are large and multifaceted. The United States faces numerous challenges in securing our domestic supply, including a major lack of refining and processing capacity. This will take time to meaningfully improve. That said, all mineral production begins with extraction, and mining policy is one aspect of the supply chain we can control. To meet our future economic and energy security needs, our nation should seek to make domestic mining as efficient and reliable as possible. Any legislation that handicaps that goal would set our country back at a critical moment.

¹⁶ The White House. “FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies.” April 22, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

¹⁷ The White House. Report. BUILDING RESILIENT SUPPLY CHAINS, REVITALIZING AMERICAN MANUFACTURING, AND FOSTERING BROAD-BASED GROWTH. June 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>

¹⁸ Amnesty International. Is My Phone Powered by Child Labour? <https://www.amnesty.org/en/latest/campaigns/2016/06/drc-cobalt-child-labour/>

¹⁹ U.S. Geological Survey. Mineral Commodity Summaries 2020. Cobalt Data Sheet. <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020-cobalt.pdf>

²⁰ Davis, Bob. “Biden to Deter Forced Labor With Ban on China’s Solar-Panel Materials.” Wall Street Journal. June 24, 2021. <https://www.wsj.com/articles/biden-to-deter-forced-labor-with-ban-on-chinas-solar-panel-material-11624501427>

²¹ Chang, Ailsa; Sirianni, Anna; Jarenwattananon, Patrick. “Accounts of Torture From Uyghur Muslims In China.” NPR. June 10, 2021. <https://www.npr.org/2021/06/10/1005263835/new-report-details-firsthand-accounts-of-torture-from-uyghur-muslims-in-china>