

**Testimony of  
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**On the “*National Strategic and Critical Minerals Production Act of 2015*”**  
**before the**  
**Subcommittee on Energy and Mineral Resources**  
**House Committee on Natural Resources**

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### **Introduction**

Chairman Lamborn, Ranking Member Lowenthal and members of the Committee, my name is Luke Russell and I am V.P External Affairs for Hecla Mining Company. Hecla Mining Company (NYSE:HL) is the oldest precious metals mining company in North America and was established in 1891 in northern Idaho's Silver Valley. We are the United States largest primary silver producer and third largest producer of lead and zinc. We currently have US operations and projects in Alaska, Idaho, Colorado and Nevada and just last week completed the acquisition of the Rock Creek project in Montana.

My experience includes more than 30 years in mine permitting, mine reclamation and environmental compliance in several western states including: Idaho, Alaska, Nevada, South Dakota, and now Montana. In addition I have permitted mines internationally in Chile, Argentina, New Zealand, Mexico and Bolivia. I have served as Trustee and past-President of the American Exploration & Mining Association. In addition to my industry experience I also have worked inside government serving as Remediation Manager with the Idaho Department of Environmental Quality.

In my experience, permitting a mine in the US is by far the most challenging. This is not due to a lower international standard of environmental requirements – the countries listed above have environmental standards that are at least as protective as the US standards. What these other countries have are permitting processes that are much more clearly defined and that have the expectation that a decision will be made within a given time frame. The US process is fraught with duplication, inefficiencies, a lack of reasonable time frames/sideboards, a lack of coordination among federal agencies and multiple, never-ending litigation. It is by far the most arduous and tortuous process in the world. While the rule of law generally favors the Americas, this long and uncertain process is no incentive to invest here.

Time is money and unnecessary delays and duplication in the permitting process strands capital and discourages long term investments in producing domestic minerals. Compare our exceedingly long permitting time with Chile, Canada and Australia where the average permitting time is between 2 and 3 years while incorporating essentially the same

environmental and engineering standards as the U.S. If land managers and environmental regulatory professionals in these countries can get the job done in 2 to 3 years, so can the U.S.

Demand for minerals is also increasing across the spectrum of modern technology from electronics and electrical systems applications, aerospace and defense, to the energy industry. For example, a modern computer chip contains more than half of the elements in the periodic table and even though they may be present in very small amounts, each is essential to function and performance.<sup>1</sup> My daughters would say their phone is strategic and critical to their way of life, and 40 key minerals in their smartphones includes tantalum, tungsten, copper, iron, nickel, aluminum, tin, silver, chromium, gold, and palladium and 9 separate rare earth elements.

Many of the uses of critical and strategic minerals overlap and converge in the field of renewable energy. Wind turbines would not be possible without mined materials. Just one turbine contains 335 tons of steel and almost 5 tons of copper. Similarly, solar panels cannot be made without mined materials like steel, copper, silicon, aluminum and the unique metal that we at Hecla produce, silver.

Silver has the highest electrical and thermal conductivity of all metals, and is the most reflective. These physical properties make it a highly valued industrial metal, especially when used in solar cells. Silver paste is actually a primary ingredient in 90% of the most common solar panels. Overall, the solar industry uses about 5% of the world's annual silver supply, or an estimated 52.4 million ounces. However, as demand for solar increases, especially in China, the demand for silver used in solar energy could double. As a result it is estimated the solar industry may use 100 million ounces of silver this year.<sup>2</sup>

The U.S. has become increasingly dependent on foreign sources of strategic and critical minerals and this vulnerability has serious national defense and economic consequences. According to the U.S. Geological Survey, the U.S. is more than 50% import reliant for 43 critical minerals (the U.S. is roughly 40% import reliant on crude oil) and 100% import reliant for 19 critical and strategic minerals despite having the third largest source of mineral wealth in the world. Our growing dependence on imports leaves many key domestic industries unnecessarily vulnerable to disruptions from extended, complex and fragile supply chains. The length of time it takes to secure permits in the US is a key reason behind this dependency on foreign sources.

### **Permitting Delay**

The U.S. has one of the longest permitting processes in the world for mining projects. A 2014 Behre Dolbear report ranking the 25 leading mining countries noted that permitting delays are the most significant risks to mining projects in the United States with an average 7-to 10-year period required before mine development can begin. Consequently, the U.S. lags in attracting

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<sup>1</sup> T.E Graedel, E.M Harper, N.T Nassar, and Barbara K. Reck: On the Materials Basis of Modern Society, School of Forestry and Environmental Studies, Center for Industrial Ecology, Yale University, October 2013.

<sup>2</sup> <http://www.usatoday.com/story/money/markets/2014/08/29/no-silver-no-solar/14756397/>

job-creating exploration dollars. The Metals Economics Group reports that the U.S., despite having significant mineral resources, attracts only 7% of total worldwide exploration dollars. In the mid-1990s, the U.S. attracted approximately 20% of worldwide exploration dollars.

Permitting delays and security of tenure issues are the major reasons why the U.S. share has dropped by two thirds.

To be clear, valid concerns about environmental protection need to be fully considered and addressed. At the same time, frivolous matters should not serve as an excuse to trap mining projects in a limbo of duplicative, unpredictable and endless review without a decision point. We should not confuse the length of the process with the rigor of review.

I would like to share a few examples of what I think are lengthy permitting processes I have been involved with.

### **Greens Creek – Alaska**

Hecla is one of the largest private employers in Southeast Alaska, and our Greens Creek Mine is responsible for approximately 415 permanent, full-time jobs. The mine near Juneau, Alaska started production in 1989 producing almost 200 million ounces of silver so far and will produce more than 100 million additional ounces over its remaining life. Over 7.8 million ounces of silver were produced last year and is projected to produce a similar amount this year. The mine has provided over  $\frac{3}{4}$  billion dollars in economic contributions to the SE Alaska economy in just over the last 5 years alone. It is one of the world's largest silver mines and produces gold, lead and zinc in important quantities as well. The mine has had an exemplary environmental record and is located, in part, in a national monument area devoted to the largest concentration of brown bears in the world.

With this history and a plan to only expand the existing tailings facility, one would expect the receipt of the permits to be done quickly. In 2010 Hecla submitted an application and the U.S Forest Service (USFS) commenced preparation of an environmental impact statement (EIS). Understanding how long permitting can take the application was submitted five years before construction had to begin to avoid shutting down the mine due to lack of tailings capacity. Interestingly, the NEPA process could not begin until approval was received from the Secretary of Agriculture's office in Washington DC. This step had not been required in any of the previous permitting efforts at the mine.

The final EIS was issued in the third quarter of 2013 and following appeals the ROD was finalized in December 2013. However, all the other required state and federal permits, chiefly the 404 permit from the Corps of Engineers, were not received until the first part of 2015 or about 5 years after original permit submission. The final EIS selected alternative approved only an 18 acre expansion of the 62 acre existing facility even though the company had proposed a 150 acre expansion. This decision allows only about 9-10 more years of mining. As the current reserves extend the mine life beyond this time, this chosen alternative will lead to additional time consuming, costly and unnecessary bureaucratic processes. Thus, the company is being

forced to already begin the planning process for its next permitting effort because of the long permitting lead times required.

### **Kensington Mine – Alaska**

Prior to working with Hecla, I worked with Coeur Mining which owns the near- by Kensington Mine in Southeast Alaska. Permitting of the Kensington mine started in 1988. In July of 1992, the USFS approved a Plan of Operations for the Kensington Gold Project – a 4 year permitting effort. The plan called for underground mining and surface facility construction for ore processing (via cyanidation) and other ancillary operations. The mine did not receive all federal permits due to regulatory process delay and did not proceed.

In 1994, the company submitted a revised plan of operation designed to reduce the environmental footprint and address water quality concerns and in August 1997, the USFS approved a revised Plan of Operations – an additional 3 years permitting effort. The plan still called for underground mining but changes to the tailings management system were proposed. While the required permits were obtained the price of gold had decreased and so the project economics were no longer favorable to commence construction.

In November 2001, the company submitted a plan amendment to the USFS for its approved 1998 Plan of Operations. The amendment again modified the proposed tailings management system. In December of 2004, the USFS finalized the Supplemental Environmental Impact Statement and issued the Record of Decision for the modified Kensington project.

In the first half of 2005, the other state and federal permits were obtained and construction commenced – another 4 year permitting effort. Permit appeals and litigation followed. The administrative appeal to the USFS was denied which then lead to a lawsuit filed with the District Court. Plaintiffs lost in District Court but an appeal to the 9<sup>th</sup> circuit led to a stay of construction in 2006 and more than 100 workers were idled. The 9<sup>th</sup> circuit then overturned the District Court. The case was then appealed to the US Supreme Court which heard the case in early 2009. In June of that year, the Court ruled 6-3 in favor of the agencies and the company was able to resume construction. The first gold production occurred in 2010.

The permitting process for the Kensington project lasted nearly 16 years. The final 4 year leg of the permitting process was then followed by a 4 year period of litigation. The permitting and litigation delay came at significant cost to the company and the community of Juneau due to uncertainty in the project and temporary loss of high paying jobs during the construction period.

### **Rock Creek – Montana**

Hecla recently acquired the Rock Creek project in Northwestern Montana. Rock Creek is the largest undeveloped copper -silver project in the US containing an estimated 220 million ounces of silver and over 2 billion pounds of copper. The project has a long permitting history dating back to the first application for a mining permit in 1987. Following a change in ownership of the

project the Forest Service and Montana Department of Environmental Quality (DEQ) jointly completed a FEIS and Record of Decision (ROD) in 2001. This was followed by several appeals and litigation. The Fish and Wildlife Service (FWS) withdrew its Biological Opinion (BO) in 2002 to settle a lawsuit causing the USFS to withdraw its part of the 2001 ROD. A new BO and ROD were issued in 2003. Once again numerous appeals and litigation were filed leading to a new BO in 2006 which was further supplemented in 2007. Additional litigation followed and in 2010 the US District Court confirmed the Biological Opinion but remanded the 2003 FEIS back on to the Forest Service on very narrow NEPA procedural issues for further action. Litigants appealed the BO decision to the Ninth Circuit Court which in 2012 confirmed the agencies decision.

Following the 2010 District Court decision the Kootenai National Forest commenced a Supplemental Environmental Impact Statement (SEIS) review to respond to the US District Court Decision on the very narrow remanded NEPA issues. Now, after 5 years the Forest Service has still not yet released a draft SEIS for public comment.

### **Why The Permitting Process Is So Slow**

In my experience, permitting delays are frequently caused by ineffective agency project management, unnecessary bureaucratic red tape, inefficient workforce issues within the Bureau of Land Management (BLM) and U.S. Forest Service (USFS), and multiple appeals and litigation.

Poor project management skills by federal agencies: The management of the multi-faceted aspects of NEPA for a mining project requires good project management skills. The ability to develop a work breakdown structure, schedule assigned responsibility and hold people accountable for deliverables. A successful project has consistency in management- a good project manager, who stays with the project.

Training on minerals and mining and NEPA process: Many federal agency resource professionals are experienced in grazing, timber and recreation, but are not informed on minerals and mining development. Additional training on the NEPA process and the role of lead agency is critical to improving the federal permitting process. The lead agency must lead; In many cases I have seen it defer to cooperating agencies or other stakeholder interests, instead of taking charge and leading the permitting process. H.R.1937 addresses this inefficiency without compromising environmental standards.

Fear of Litigation: We often hear BLM and USFS say they must make these documents legally "bullet proof". This makes all issues potentially significant which is counter to NEPA which clearly envisioned the lead agency following scoping would focus on those truly significant issues that could affect the environment (40 CFR 1502.2).

Litigation: Many mining projects "die from a 1000 cuts" through multiple appeals and litigation. The Rock Creek example illustrates how litigation can delay and string out project development.

Anti-mining groups have sued multiple times and continue to litigate on ESA and NEPA issues in separate litigation efforts. This legal process grinds down both the agencies that must defend their permitting decisions and the company's in hopes they will simply walk away from the project. While the company has millions of dollars and hundreds of high paying jobs at risk, project opponents risk nothing with a chance to profit significantly by recovering their attorney fees through the Equal Access to Justice Act (EAJA). H.R. 1937 addresses this inequity by providing that all issues must be litigated in one lawsuit.

Inefficient personnel system: Unfortunately, too often there are changes in management personnel during the project, changes in District Rangers, Forest Supervisors, BLM District Managers and with the Corps of Engineers all which leads to reeducation, reevaluations and loss of time in the permitting process. In addition, simply staffing a NEPA process can be difficult. For example, the Rare Earth Elements project in Wyoming required over 11 months to simply get an EIS project manager assigned to the project. Clearly a more efficient personnel system can be implemented to get people in place to manage projects. This factor is compounded by the fact that in the USFS performance reviews, promotions and raises do not include an employees' performance in managing mineral projects.

Federal Register Notice Delay: Substantial delays result from a BLM Instruction Memorandum (IM) issued on December 23, 2009 (IM 2010-043) requiring *all* Federal Register Notices be sent to the BLM Washington Office for review and approval prior to publication in the Federal Register. This IM also implemented a 12 to 14 step review and approval process that is taking approximately four months per Notice, prior to publication. Notices are required for intent to start the NEPA process and public scoping, for a draft EIS and the final EIS. This Federal Register notice process can add almost a year to the permitting timeline for a simple administrative notice filing. Prior to 2000, these routine notices were processed and published in 30 to 45 days.

### **How HR 1937 Can Help Improve A Broken System**

HR 1937 is well thought out legislation that will encourage and facilitate the domestic production of strategic and critical minerals without lessening the robust environmental standards of the United States. HR 1937 will address key issues behind the delay in the permitting process:

- **includes domestic mines that provide strategic and critical minerals within the scope of “infrastructure projects” as described in Executive Order 13604, the goal of which is to significantly reduce the review and permitting timeframes for infrastructure projects;**

Specifically the objective of this executive Order includes:

*Reviews and approvals of infrastructure projects can be delayed due to many factors beyond the control of the Federal Government, such as poor project design, incomplete applications, uncertain funding, or multiple reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.*

*To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays.<sup>3</sup>*

- **addresses permitting delays for strategic and critical mineral development by coordinating the actions of federal agencies to eliminate duplication, bureaucratic inefficiency and decade-long delays without compromising environmental protection; and,**
- **outlines the responsibilities of the lead permitting agency to ensure efficient permitting such as establishing binding timeframes, coordinating with other agencies, relying on existing data, establishing any required financial assurance and allowing case-by-case adoption of the functional equivalence doctrine in lieu of separate NEPA analysis;**

We encourage the federal agencies to consider the Alaska Large Mine permitting coordinator approach as an example of a state process that works to help streamline the permitting timeline while maintaining the integrity of the process. This provides a coordinated, efficient approach to mine permitting and oversight that benefits from multi-disciplinary expertise of team members to enable the public, agencies and applicant to view the project as whole. The large mine permitting coordinator participates in the NEPA scoping process, participates in public meeting and public hearings, and approves baseline data collection plans.

Attachment one illustrates how the large mine permitting approach in Alaska was designed to ensure the processes are done in parallel rather than in sequence.<sup>4</sup> As permitting requirements continue to evolve this process ensures all steps are completed but in a parallel manner that streamlines the process and reduces duplication and inconsistency. When we say streamline

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<sup>3</sup> <https://www.whitehouse.gov/the-press-office/2012/03/22/executive-order-improving-performance-federal-permitting-and-review-infr>

<sup>4</sup> [http://mric.jogmec.go.jp/kouenkai\\_index/2010/briefing\\_100721\\_3.pdf](http://mric.jogmec.go.jp/kouenkai_index/2010/briefing_100721_3.pdf)

permitting, it is these sort of administrative approaches that can greatly reduce the permitting timeframe with no impact on the quality of the evaluation. We are not advocating skipping of steps, but combining steps and doing things in parallel rather than in sequence. This is how effective NEPA project managers have completed the process in a shorter time frame.

- **Establishes clear timelines to complete the permitting process**

While my experience includes examples of very long permitting timelines, I have also been involved with, and seen, projects that have completed the NEPA process within the 30 month period proposed in this legislation. Some recent examples:

- The BLM completed an Environmental Assessment for an expansion for the Rochester Mine in Nevada in about 16 months. Key issues included groundwater quality and evaluation of a pit lake or pit backfill,
- The USFS completed an Environmental Assessment for the Mt. Hamilton Mine in Nevada in about 17 months. Key issues included geochemistry, reclamation and Sage Grouse,
- The BLM completed an EIS for the Pan Mine in Nevada in less than 2 years. Key issues were Sage Grouse and groundwater, and,
- The BLM completed an EIS for the Hycroft Mine in Nevada in less than 20 months. Key issues included quality and quantity, visual effects and cultural resource.

In establishing a firm timeline to complete the NEPA process the bill does not ask the permitting agencies to do something that has not already been demonstrated as achievable in the U.S. as well as major mineral producing countries Canada, Australia and Chile.

- **addresses the Department of Interior's bureaucratic *Federal Register* review process for NEPA notices by delegating processing of such notices back to state offices; and,**
- **aims to reduce delays posed by litigation over permitting decisions by requiring challenges to be filed within 60 days of the final agency action in a single challenge and eliminates the ability of project opponents to recover attorney fees through EAJA.**

## **Conclusion**

HR 1937 is legislation that will encourage and facilitate the domestic production of strategic and critical minerals without lessening the robust environmental standards of the United States. On behalf of Hecla Mining Company we appreciate the opportunity to testify here today and thank you for consideration of these comments.

**Attachment 1**

**Alaska Large Mine Environmental Permitting and Oversight Process.**

**July 21, 2010 JOGMEC Tokyo, Japan**

Slide #31

