

Testimony of Jeremy Harrell
ClearPath, Inc.
Chief Strategy Officer
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Congressional Field Hearing
“Critical Minerals Vital to American Independence”

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Good afternoon, Chairman Gosar and members of the Committee. My name is Jeremy Harrell, and I am the Chief Strategy Officer of ClearPath, a 501(c)(3) organization that develops and advances policies that accelerate innovations to reduce and remove global energy emissions. To further that mission, we educate and provide analysis to policymakers as well as collaborate with relevant industry partners to inform independent research and policy development.

Thank you for the opportunity to testify today and for holding this minerals-related hearing in the West. America’s energy demands are rapidly increasing. Some estimates say the U.S. will need to double the capacity of our bulk power system over the coming decades to meet expected energy demand. As a result, the International Energy Agency (IEA) predicts that demand for energy-related minerals like lithium, cobalt, graphite, and nickel could grow 20 to 40 times by 2040.¹

As global demand for critical minerals increases, the choice for policymakers is clear: the U.S. will either responsibly develop these resources here at home or continue to rely on foreign sources – resources prevalent in nations that, in many cases, pose human rights challenges, present national security risks, and/or enforce worse environmental standards.

It is difficult to overstate America’s dependence on foreign supply chains. According to the 2023 U.S. Geological Survey’s Mineral Commodities Summary, the U.S. was 100 percent net import reliant for 12 of the 50 individually listed critical minerals and was more than 50 percent net import reliant for an additional 31 critical mineral commodities.² Meanwhile, China was the leading producing nation for 30 of those same 50 critical minerals.³ A recent Aspen Institute report further underscored that rising demand for minerals will place major stress on global supply chains and undermine the ability of the U.S. to deploy more clean energy.⁴

Equally concerning, regardless of where the minerals are mined, China exerts dominant control over the refining process for a large majority of rare earth elements and has demonstrated a willingness to leverage its influence to pursue political objectives.⁵ This includes an announcement earlier this month to restrict the export of two key minerals related to the energy

¹ <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary>

² <https://pubs.er.usgs.gov/publication/mcs2023>

³ *ibid*

⁴ <https://www.aspeninstitute.org/wp-content/uploads/2023/06/Critical-Minerals-Report.pdf>

⁵ <https://chinapower.csis.org/china-rare-earths/>

supply chain.⁶ The concentration of mineral supply chains creates risks of disruption from political or environmental events, provides poor transparency and traceability, and sacrifices the expertise necessary for value-adding innovation and jobs.

Despite these dynamics, the U.S. struggles to permit projects to unlock these critical minerals. Recent data from Goldman Sachs shows that regulatory approvals for mines have fallen to the lowest level in a decade, coinciding with substantial demand growth for products that require them as inputs, like grid and transportation technologies.⁷

This Committee has rightly brought attention to the benefits of using domestic minerals over the first six months of this Congress. It put permitting reform front and center, passing the Lower Energy Costs Act as H.R.1 and successfully secured a handful of those provisions in the debt ceiling deal enacted through the Fiscal Responsibility Act.

This Committee has not taken its foot off the gas, recognizing that the inability to scale up the domestic production of American resources undercuts America's ability to deploy domestically abundant resources and compete on the world stage.

As policymakers continue to work towards bolstering American supply chains, reducing critical mineral dependence, and furthering sustainable economic growth, there are a handful of solutions Congress should consider. These initiatives would restore predictability, streamline litigation, and bolster private sector investments across the critical minerals supply chain.

Restore Predictability to the System

Never has the phrase “time is money” been more appropriate. Regulatory delays that can last nearly a decade are making projects more expensive. The projects most likely to be held up in permitting purgatory are those that offer the greatest benefits to the United States, including reduced energy costs, enhanced energy independence, increased economic opportunity, and lower global emissions. The current system is broken as the structures in place are overwhelmingly tilted toward those who seek to delay or block projects as opposed to those who seek to build.

Federal permitting reform must change the paradigm to one that expedites the approval process for projects that bring net benefits and comply with the legal requirements meant to ensure clean water and clean air.

First, we need to identify geographic areas for development where economic and environmental benefits of these projects should not be delayed by unnecessary bureaucracy. For example, replacing a retiring power plant with a zero-emissions advanced nuclear generator at an existing site or building a battery manufacturing facility on a brownfield site should not require a years long permitting process.

⁶ <https://www.wsj.com/articles/china-controls-minerals-that-run-the-worldand-just-fired-a-warning-shot-at-u-s-5961d77b>

⁷ <https://www.goldmansachs.com/insights/pages/gs-research/copper-is-the-new-oil/report.pdf>

A list of prequalified geographic areas could include previously disturbed locations, such as brownfield sites that are well categorized, and can utilize existing infrastructure. The environmental impacts to these locations related to energy deployment are minimal, and in many cases, these locations are in or near communities that need the redevelopment most urgently.

For mine projects specifically, a “place-based approach,” which pre-assesses areas, based on national needs, environmental factors, and community support, could alleviate permitting bottlenecks while also ensuring environmental compliance once operational.

In addition, Congress could consider ways to pair regulatory incentives with existing financial incentives, such as the “Opportunity Zones” and “Energy Communities,” which were established by Congress. Matching financial incentives with regulatory certainty will create a strong signal to project developers during the site selection process that choosing these areas is advantageous and will not be delayed by unnecessary bureaucracy. These types of reforms could go a long way towards shoring American manufacturing and creating jobs in areas that need them the most.

Second, federal action can no longer vacillate according to political whims, particularly when Congress has acted. Project developers need to be able to rely on regulatory certainty from one Administration to the next to bring a project from financing to construction. This need is most acute for projects that seek to unlock critical minerals.

Resolution Copper is one of the most prominent examples of America’s inability to permit mines. After a decade of objections by extreme environmental organizations and some Arizona Tribes to the proposed legislation authorizing a land exchange by the U.S. Forest Service, Congress explicitly authorized the project when the Southeast Arizona Land Exchange and Conservation Act was enacted into law with the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291). Once approved, the proposed mine is expected to become the largest copper mine in North America, capable of producing up to 25 percent of U.S. copper demand each year.⁸ The proposal received a final Environmental Impact Statement (EIS) in January 2021, only to have it unpublished by the Biden Administration two months later.⁹ The Administration is explicitly subverting Congressional intent with this project. These unnecessary delays precede a decade of construction before operations can begin, delaying the project timeline to at least two full decades from its inception.

In addition to these administrative roadblocks, the recent 9th circuit decision in the *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, more commonly referred to as the Rosemont decision, has placed new impediments on domestic mining operations.¹⁰ These new barriers will further stymie domestic production and jeopardize federal infrastructure investing to reshore domestic supply chains. House Republicans rightly prioritized this issue with their signature energy package H.R.1, the Lower Energy Costs Act. These necessary reforms have earned strong bipartisan support in the Senate as well.

⁸ <https://resolutioncopper.com/project-overview/>

⁹ <https://www.fs.usda.gov/detail/r3/home/?cid=FSEPRD858166>

¹⁰ <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/05/12/19-17585.pdf>

Even more recently, the Mountain Valley Pipeline saga further underscores the need for reform and the unpredictability of the U.S. system. Congress acted explicitly to clear the way construction of the pipeline by explicitly approving its permits in the Fiscal Responsibility Act. Unfortunately, just a few short weeks later, the 4th U.S. Circuit Court of Appeals issued two orders to temporarily freeze construction on the project. Even after Congressional action, the project may require Supreme Court intervention to finally resolve contentions.

This back and forth regulatory flux is far too common and must be addressed so that entrepreneurs know that they can move forward in a responsible manner.

Provide More Streamlined Litigation

Once a project is approved, any further legal challenges should be addressed as expeditiously as possible. Judicial review is the biggest wildcard in the current permitting system, and nearly every major permit reform proposal introduced by Republican and Democratic policymakers in the House and Senate includes at least modest provision to tackle this issue.

H.R.1 appropriately recognized judicial review as an area ripe for modernization and established new requirements for when permits are challenged. While this is a good start, we need to do more and should be looking at ways to ensure that we can resolve any legal disputes in less than one year.

Other proposals have injunctive relief, clarifications on standing, deadlines on the statute of limitations, and shifts of judicial jurisdiction. One proposal immediately elevates legal challenges under NEPA to the federal appellate court where the project is to be constructed or alternatively the DC Circuit. This would match the process already used under the Federal Power Act and Natural Gas Act to challenge agency decisions and would streamline the process in a meaningful way.

Any changes to judicial review must balance a plaintiff's right to have his or her day in court with the goal of reaching finality on a more predictable timeline. Like other forms of major infrastructure, critical minerals projects face additional challenges even after permits have been issued because of prolonged litigation. These delays increase uncertainty and raise project costs.

To remedy this, the paradigm should shift to a set strict timelines on the adjudication process for critical mineral permits. More specifically, Congress should limit legal challenges to plain and obvious errors applying the relevant natural resource and permitting laws. A specific scope and timeline for the review process will prevent the possibility of long delays and improve efficiency.

Further Allied Partnerships

Absent a clear, predictable, and streamlined American regulatory environment, the U.S. will continue to rely on critical minerals sourced from overseas. This includes countries that pose national security risks or those that lack basic environmental and human rights protections. The

choice should be clear: producing American resources here at home creates jobs, promotes innovation, increases energy security, and leads to better global environmental outcomes.

At the same time, we will not end our reliance on imports overnight. The U.S. must work with partner and allied countries to further diversify and secure critical mineral supply chains. While the current Administration has convened partnerships and multilateral mineral security dialogues with friendly nations such as Australia, Canada, Japan, South Korea and others to address these challenges, both the public and private sector need to move beyond dialogue to action. .

The U.S. should consider how to increase the quality of international markets for critical minerals commodities. Right now, the true price for many minerals is not publicly available, and some recent supposed shipments of critical minerals turned out to just be rocks. Modernizing and maturing the market integrity for critical minerals will lead to more reliable prices and more assurance for American firms.

Specific to nuclear power, a secure and robust nuclear fuel supply chain is critical to ensuring American families receive clean, affordable, and reliable energy from our nation's nuclear power plants. Approximately 95% of the uranium used in the U.S. today is imported, of which nearly 50% comes from Russia and Kazakhstan.¹¹ Because nuclear energy accounts for 1/5th of U.S. electricity production, this leaves 10% of total U.S. electricity vulnerable to these two countries.¹²

It is a national security imperative that the U.S. establish a secure and reliable supply of nuclear enrichment capabilities for itself and its allies. Reducing America's reliance on Russian fuel provides the market certainty required to incentivize domestic industry, build new capacity, and support our allies. On the sidelines of the April G7 minister meeting in Japan, Canada, France, Japan, the UK and U.S. entered into an agreement to leverage their civil nuclear power sectors to ensure a stable supply of nuclear fuel for existing and future reactors.¹³ The U.S. Congress should also act to further invest in more effective partnerships with U.S. allies.

There is an opportunity to expand bilateral and multilateral frameworks to establish diversified critical mineral supply chains and support the negotiation and passage of trade agreements among countries that meet American standards. It is important to note, however, that agreements must be in addition to, not a substitute for, maximizing domestic production.

Conclusion

The current permitting system unnecessarily stymies and broadly delays the highest impact projects from delivering benefits, projects needed for our economic, environmental, and global competitive future. It is imperative that Congress address both aspects of the permitting process to maximize public and private sector investments and put steel in the ground.

¹¹ <https://www.eia.gov/energyexplained/nuclear/where-our-uranium-comes-from.php>

¹² <https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php>

¹³ <https://www.energy.gov/articles/statement-civil-nuclear-fuel-cooperation-between-united-states-canada-france-japan-and>

ClearPath looks forward to working with this Committee to further American critical mineral independence. I look forward to today's discussion.