

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 29, 2022

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Biden,

We are writing to express deep concern about reports that the White House is considering using the Defense Production Act to increase domestic mining in response to Russia's war in Ukraine.¹ We urge you to reject this longstanding, ill-conceived request from the mining industry and instead focus your administration's work on improving regulations that protect public lands, clean water, and tribal communities from the harmful impacts of mining.

As we wrote Secretaries Haaland and Vilsack last year², hardrock mining policy on public lands is in desperate need of reform. While we share the administration's goal of improving sustainable sources of materials needed for our clean energy future, that does not mean we can risk permanent damage to sacred places, wilderness, recreation access, public health, and more. Hardrock mining is the number one source of toxic pollution in the U.S., yet the industry operates under the long-outdated Mining Law of 1872. More than seventy-five percent of all mines fail to meet water quality standards³ and the EPA has found that forty percent of all watersheds in the Western United States are contaminated by hardrock mine drainage.⁴

The Mining Law is a relic, irrelevant to modern mining but remains almost entirely unchanged since it was enacted nearly 150 years ago. Regulations issued by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) are also woefully inadequate given the scale of the damage caused by this industry. For example, neither the BLM nor the USFS regulations allow federal land managers to reject a mining plan of operations, there is no authority to assess civil penalties to bad actors, and there are no specific protections for surface water or groundwater resources.⁵ Any expansion of mining or expedited permitting for individual projects under these flawed legal frameworks risks even more damage to natural resources and environmental justice communities.

¹ Nausicaa Renner and Austin Ahlman. "Biden Administration Drafting Order To Invoke Defense Production Act for Green Energy Storage Technology." *The Intercept*, March 24, 2022. <https://theintercept.com/2022/03/24/biden-defense-production-act-green-energy/>.

² Letter to Secretary Debra Haaland and Secretary Thomas Vilsack, April 27, 2021.

³ Earthworks (2005), *Predicting Water Quality at Hardrock Mines*. https://www.ceaa-acee.gc.ca/050/documents_staticpost/cearef_3394/hearings/SM09.pdf

⁴ Environmental Protection Agency (2000), *Liquid Assets 2000: Americans Pay for Dirty Water*. <http://water.epa.gov/lawsregs/lawsguidance/cwa/economics/liquidassets/dirtywater.cfm>

⁵ See 43 CFR 3809 for BLM Regulations and 36 CFR 228 Subpart A for USFS Regulations

Using the Defense Production Act for the benefit of the mining industry is also completely unnecessary. Both Congress and your administration are already taking appropriate steps to improve supply chains for minerals that are essential for our clean energy future.

As required under your February 2021 Executive Order on Supply Chains, the Department of the Interior convened an interagency working group on mining reform. According to Interior, “the group, which will inform potential rulemaking efforts on mining, will help support President Biden’s vision for a whole-of-government effort to promote the sustainable and responsible domestic production of critical minerals.”⁶

Interior also issued the *Biden-Harris Administration’s Fundamental Principles for Domestic Mining Reform*, which includes a commitment to provide greater certainty to mining companies through improved “interagency cooperation and coordination during environmental review and permitting.”⁷ The Bipartisan Infrastructure Law included funding for a federal minerals research facility, improved geologic mapping programs, and millions of dollars for new critical minerals mining and recycling research and development projects. In fact, the Department of Energy (DOE) recently used the new law to launch a \$140 million demonstration project to turn waste left behind by coal mining into useful critical minerals and rare earth elements.⁸

The Energy Act of 2020, which was signed into law by the previous administration, authorized over \$700 million for DOE research and development, workforce development, and minerals production activities, among other provisions. The still-to-be finished Build Back Better legislation and the America COMPETES Act are two other significant opportunities to make new investments in clean energy and critical mineral supply chains that reduce reliance on foreign adversaries and create new American jobs.

We therefore urge you to forgo any action on critical minerals using the Defense Production Act and instead accelerate your administration’s work to strengthen permitting standards, develop alternatives to mining, and protect public health. With thoughtful planning and strengthened policies, your administration can ensure that domestic production of copper, lithium, and nickel does not negatively impact the sustainable use and enjoyment of our nation’s public lands, the quality of our natural resources, and the public health of our communities.

Sincerely,



Raúl M. Grijalva
Chair
House Committee on Natural Resources



Alan S. Lowenthal
Chair
Subcommittee on Energy and Mineral Resources

⁶ Press Release, U.S. Department of the Interior. February 22, 2022. <https://www.doi.gov/pressreleases/interior-department-launches-interagency-working-group-mining-reform>.

⁷ Biden-Harris Administration Fundamental Principles for Domestic Mining Reform. February 22, 2022. <https://www.doi.gov/sites/doi.gov/files/biden-harris-administration-fundamental-principles-for-domestic-mining-reform.pdf>.

⁸ Press Release, “DOE Launches \$140 million Program to Develop America’s First-of-a-Kind Critical Minerals Refinery.” February 14, 2022. <https://www.energy.gov/articles/doe-launches-140-million-program-develop-americas-first-kind-critical-minerals-refinery>.