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Discussion-Opinion-Editorial

The Recent Mining Law Reforms in the US and Their Criticisms: The Context for the Rest of the Countries of the World

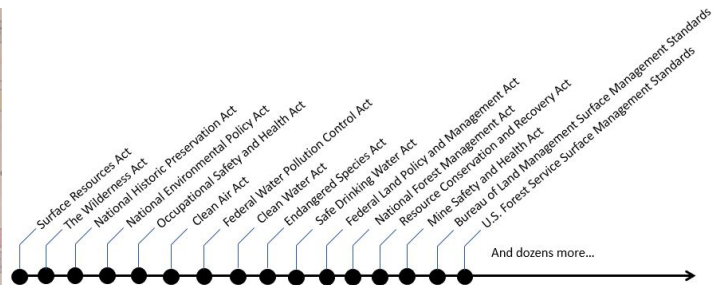
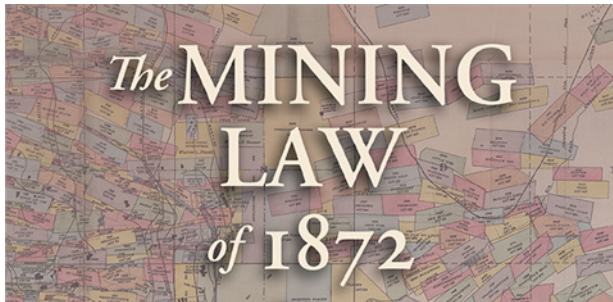
Introduction

After 150 years the General Mining Law of 1872 (Mining Law) of the USA the recent administration has embarked on reforming the law to promote the sustainable and responsible domestic production of minerals and to ensure a fair return to the taxpayer. The Mining Law was to encourage mineral exploration and development on Federal lands and the settlement of the West. The law allowed citizens to explore public lands for valuable minerals (such as gold, silver, and copper), to stake a claim if minerals could be extracted at a profit, and to patent the claim—gaining legal title to the land for a nominal cost—to encourage settlement. **The Congress in 1872 did not, however, account for the legacy of environmental degradation that mining would have on its surrounding communities, nor did it provide for royalties, or a comprehensive system to evaluate, permit, develop, and reclaim mines to ensure sustainable mining and**

healthy public lands for future generations. In short, it was very much legislation of its time that did not transcend into the future.

The U.S. mining industry, directly and indirectly, employs more than 1.5 million individuals paying in excess of \$95 billion in labour income. In 2017, domestic mining activity generated an estimated \$17 billion in federal, state and local taxes that supported direct, indirect and induced taxes of \$42 billion. The U.S. mining industry pays between 40 to 50 per cent of earnings in federal, state and local royalties, taxes and other fees to benefit the communities in which it works and the U.S. federal government. The Mining Law of 1872 – which governs prospecting and mining for minerals like gold, copper, silver and lithium – led the U.S. to become a global leader in the minerals mining, and helped advance innovations in energy, healthcare, manufacturing and defense technology. It is complemented by exhaustive modern federal and state environmental, ecological and

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The complementary laws combining with The Mining Law of 1872.

reclamation laws and regulations to ensure that operations fully protect public health and safety, the environment, and wildlife.

Preparation

The Current US administration wants to ensure that U.S. mining activity is sustainable, responsible, and efficient. Understanding that resilient supply chains are necessary to revitalize and rebuild domestic manufacturing capacity while maintaining America's competitive edge in research and development, in February 2021 the President issued Executive Order (EO) 14017, "America's Supply Chains." The EO directed a government-wide approach to assess the vulnerabilities in and strengthen the resilience of, critical supply chains of various goods, including critical and strategic minerals essential to the economic and national security of the United States.

The EO also initiated a 100-day supply chain review requirement, and the Administration published its findings in a report in June 2021 titled, "Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-based Growth." Following the 100-day supply chain review, the Department released an updated list of 50 critical minerals in February 2022 as required by the Energy Act of 2020.

While affirming the significant role critical minerals play in the US national security, economy, renewable energy development, and infrastructure, the review also made clear the need to reform the Mining Law to protect the environment, impacted communities, and Tribal Nations while strengthening and updating the permitting system to ensure certainty and timeliness of adjudication for project sponsors. The report noted: "We recommend that the government, working with the private sector and non-governmental stakeholders, encourage the development

and adoption of comprehensive sustainability standards for essential minerals, such as lithium, cobalt, nickel, copper, and other minerals. We further recommend establishing an interagency team with expertise in mine permitting and environmental law to identify gaps in statutes and regulations that may need to be updated to ensure new production meets strong environmental standards throughout the lifecycle of the project; ensure meaningful community consultation and consultation with Tribal Nations, respecting the government-to-government relationship, at all stages of the mining process; and examine opportunities to reduce time, cost, and risk of permitting without compromising these strong environmental and consultation benchmarks".

The Mining Reform and Criticisms

Not very surprisingly, the White House's push to secure supplies of minerals needed to build batteries, electric vehicles, wind turbines, solar panels, computers, and other key elements in the energy transition is mostly drawing skepticism from mining advocates. While the push for permitting clarity and certainty is certainly seen as welcome by some mining advocates, other elements of the White House plan, such as seeking royalties for hard rock mining, protecting "special places," and establishing "responsible mining standards," raised apprehensions. For example, one interpretation of President Joe Biden's principles for responsible mining call for «establishing specific up-to-date, financial assurance, operational, performance, and reclamation standards, which require protection of the environment during exploration, discovery, active mining, reclamation, and post-closure.» simply sounds like opening up a whole new round of debate over what is deemed "responsible" and how to define the term.

Context	Reform agenda	Criticisms
<p>Responsible Mining Standards</p>	<p>Regulatory and legislative mining reform should create a level playing field by establishing strong environmental, sustainability, worker, health and safety, Tribal consultation, and community engagement standards for mineral exploration and development. Americans should know that the minerals found in their cars, phones, and other products adhere to strong, responsible mining standards. This includes establishing specific up-to-date financial assurance, operational, performance, and reclamation standards that require protection of the environment during exploration, discovery, active mining, reclamation, and post-closure.</p> <p>These standards should also reduce the risk and consequences of legacy pollution, decrease the likelihood of catastrophic events, such as tailings impoundment failures, and protect taxpayers against companies that go bankrupt and leave operations inadequately closed. In addition, efforts must also be in place to apply the standards to minerals from foreign sources that may compete in the domestic market, by including reliable traceability of the minerals and materials that enter the U.S. economy.</p>	<p>In other words, “we are going to argue for a long time over what is responsible,” said one person of responsibility, who, prior to his current position, served as a natural resources economist for the White House Council of Economic Advisers. Echoing the White House’s 22 February fact sheet, the US Department of Interior said the same day it was establishing an Interagency Task Force that would be charged with making recommendations to the antiquated law, which it described as “a law that was born out of the California Gold Rush.”</p> <p>According to the Interior, this law allows mining companies to stake claims on the vast majority of public lands, regardless of potential conflicts with other uses. It also does not require royalties to be paid to the taxpayer for the extraction and sale of valuable minerals and does not include any financial assurance such as bonding to ensure environmental cleanup and site reclamation.</p> <p>In a September 2020 blog, the US Government Accountability Office found that “there are 872 authorized mining operations on about 1.3 million acres of federal land as of September 2018—most of which aren’t subject to royalties.”</p>
<p>Supply of Critical Minerals</p>	<p>Domestic availability of critical minerals touches all points of the supply chain: resource, processing, manufacturing, use, and recycling. The transition to clean energy is projected to create a 400 to 600 per cent increase in global demand for key critical minerals like lithium, graphite, cobalt, and nickel to meet our climate goals, and for some minerals, the increase in demand will be many times higher. The President is using all available tools, such as invoking the Defense Production Act, but more will need to be done to meet current and future demand and to break our reliance on foreign sources and provide good jobs for American workers. Mining reform should assure that a reliable supply of critical minerals can be provided both through environmentally and socially responsible mining and processing projects, and other sustainable sources, such as recycling and recovery from unconventional sources, including mine wastes, mine tailings, mine-influenced waters, and coal ash. Provisions for recovery and reprocessing of critical minerals must ensure existing selected and implemented remedies or reclamation measures are protected and recovery does not exacerbate existing site conditions.</p>	<p>“Today’s lengthy, costly, and inefficient permitting process makes it difficult for American businesses to invest in the extraction and processing of critical minerals in the United States,” Chris Smith, Ford Motor Co’s chief government affairs officer, wrote to the committee. Ford, which has lithium supply deals with Nevada’s iioneer and Utah’s Compass Minerals International Inc, asked for faster mine permitting, greater transparency in the review process and a boost to federal funding of geological mapping. Freeport-McMoRan Inc, the largest U.S. copper producer, recommended that the red metal be added to a list of minerals considered critical for the nation’s defense and economy. Nevada Senator Catherine Cortez Masto and Arizona Senator Mark Kelly signed a bipartisan letter to the committee asking for a more-streamlined mine permitting process. Proposed mines in Nevada from Lithium Americas Corp and Arizona from Rio Tinto Ltd have been under development for more than a decade.</p>

<p>Recycling, Reuse, and Efficient Use of Critical Minerals</p>	<p>The recycling, reuse, and efficient use of existing mineral assets (wastes and recyclable materials) should be prioritized, and commercially viable methods supported and promoted. The resources available from these sources should be assessed and relied upon, where possible, before developing new sources. This includes developing recycling programs; designing products that facilitate recycling at end-of-use; reprocessing mine waste, appropriate treatment of mine-influenced waters, and ash material; and promoting other engineering and innovation advancements, such as reducing the quantity of inputs and identifying substitutes for critical minerals to reduce the need for new mining of raw minerals and reliance on unsustainable sources.</p>	<p>“...the White House is sounding all the right words, but it is a different story altogether when you read between the lines. The National Mining Association (NMA), a trade group for US mining companies, questioned the White House’s efforts to reform the mining law as part of its push to boost the domestic minerals supply chain.” We would hope that the administration’s examination of minerals supply chain issues would focus on how to restore US mining’s competitiveness on the global stage, decrease our import reliance, and ensure that existing federal and state regulations are not duplicated,” NMA spokeswoman Ashley Burke said in a statement.</p> <p>Instead, Burke said, “the US mining industry has long said that it is open to a reasonable royalty, but it is important to understand what the mining law is—and what it isn’t.”</p> <p>Burke maintained that the only things secured by the White House efforts will be a duplication of robust environmental and financial assurance regulations that already exist on both the federal and state levels and a ramping up of import dependence and supply chain issues.</p>
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For more please read:

1. Mining Law Reform: Reforming the Mining Law of 1972, May 12, 2022.
2. “White House push to reform mining law draws skepticism from opponents, advocates” IHS Markit, S and P Global.