



KATIE SWEENEY  
*General Counsel*

July 24, 2017

Mr. James Ray  
Senior Advisor for Infrastructure  
U.S. Department of Transportation  
1200 New Jersey Ave. SE, Room W12-140  
Washington, DC. 20590-0001

RE: Transportation Infrastructure: Notice of Review, Guidance, and Regulation  
Docket No. DOT-OST-2017-0057 (June 8, 2017)

Dear Mr. Ray:

The National Mining Association (NMA)<sup>1</sup> appreciates the opportunity to provide comments on the Department of Transportation's (DOT) Notice of Review published on June 8, 2017 (82 Fed. Reg. 26734) regarding regulatory and administrative burdens that impede transportation infrastructure projects. Specifically, the Notice of Review requests that affected stakeholders identify requirements that the department imposes through rules, or interpretations found in policy statements or guidance, that unjustifiably delay or prevent completion of surface, maritime, and aviation transportation infrastructure projects.

DOT does not regulate mining in the U.S. but the department should use this opportunity to acknowledge that metals and minerals are the building blocks of our nation's infrastructure and the U.S. mining industry is the source of raw materials necessary to make surface, maritime, and aviation transportation infrastructure projects possible. As the front end of the supply chain for domestic manufactured products critical to these infrastructure projects, NMA requests that DOT review how permitting and regulatory burdens on the hardrock mining industry impact such projects and provide recommendations for improvements.

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<sup>1</sup> NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry.

The focus on infrastructure projects by DOT and the administration are justified by the crumbling nature of our nation's infrastructure. Consensus among the experts is that our infrastructure is in a dangerous state of disrepair. Just a few months ago, the American Society of Civil Engineers (ASCE) issued its "report card" on the condition and performance of American infrastructure.<sup>2</sup> The grade for U.S infrastructure: a disappointing and disturbing D+. There is no question that we cannot repair our infrastructure without key raw materials. There is a very serious question, however, about where those materials will come from if we fail to pursue proactive policies that promote domestic mining.

In his regulatory relief remarks at the DOT on June 9, President Trump said that "one of the biggest obstacles" to creating infrastructure "is the painfully slow, costly, and time-consuming process of getting permits and approvals to build." He went on to say that "many, many projects are long gone because they couldn't get permits and there was no reason for it."<sup>3</sup> While his remarks were made in reference to transportation infrastructure projects, the same circumstances plague the hardrock mining industry, which is burdened by inefficient and duplicative permitting processes lasting, on average, seven to 10 years. President Trump's initiative to rebuild America's declining infrastructure is poised to spur activity throughout the economy but without domestically sourced metals and minerals to drive it forward, it's success will be stunted, leading to unjustifiably longer supply chains and drawn-out timeframes that lead to increased infrastructure project costs, and in turn, fewer projects.

At a March 21 hearing before the House Natural Resources Energy and Mineral Resources Subcommittee that examined the importance of domestically sourced raw materials for infrastructure projects, Subcommittee Chairman Paul Gosar (R-Ariz.) correctly noted that "expedited permitting regimes for infrastructure projects will have little to no effect if the mines that supply materials to those projects do not share the same accelerated process."<sup>4</sup> He further emphasized that "sourcing raw materials domestically keeps costs down, creates both direct and indirect jobs, reduces the holistic impact of mining by minimizing transportation costs, and keeps the dollars invested in American infrastructure in the United States." And sourcing those materials at home provides the added benefit of allowing the mining industry to continue to be a key economic driver.

The value added to America's gross domestic product (GDP) by major industries consuming mineral materials is \$2.78 trillion – nearly 15 percent of U.S. GDP.<sup>5</sup> The importance of a secure supply of raw minerals and metals to a successful infrastructure sector is indisputable. As such, and given the fact that many of the

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<sup>2</sup> ASCE, *2017 Report Card for America's Infrastructure* available at <http://www.infrastructurereportcard.org/making-the-grade>

<sup>3</sup> <https://www.whitehouse.gov/the-press-office/2017/06/09/remarks-president-trump-regulatory-relief>

<sup>4</sup> <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401672>

<sup>5</sup> USGS, *Mineral Commodity Summaries* (2017).

impediments impacting the success of infrastructure projects similarly impede the permitting process for domestic mining operations, the DOT should include hurdles to domestic mine permitting in its review.

### **Minerals are Essential to Transportation Infrastructure**

Whether it is the six billion tons of steel found in the U.S. National Highway System; the molybdenum used to harden steel for large-scale building projects; the zinc coatings that protect steel from corrosion; the kyanite that insulates power and phone lines; or the copper trolley wire that keeps urban transit, subways, and trains moving – all share a common need for raw minerals and metals. Importantly today’s product applications and future technologies rely on combinations of a variety of different minerals—not just single commodities. As new applications are found, markets for mineral commodities will expand considerably along with demand, leading to better and more advanced final products. Rare earths elements are a prime example of how once relatively obscure minerals become critical due to ever-evolving technological and manufacturing applications.

In 2014, SNL Metals & Mining (SNL) examined the extent to which mining contributes to the domestic manufacturing industry, which in turn is critically important to support the needs of infrastructure development and industrial applications. The study, *U.S. Mines to Market*, found that a gross structural mismatch between domestic minerals supply and demand creates an obstacle to continued growth in the manufacturing industry. In addition, the study highlighted a trend referred to as re-shoring in which manufacturing activity returns to the U.S. This activity is being driven by manufacturers desire to reduce the risks in their supply chains, which are highly complex, fragmented and multilayered, often extending to more than seven tiers of suppliers for any given product. As such, manufacturers are keenly interested in securing access to domestic minerals. However, despite our nation’s abundant mineral wealth, we are becoming increasingly reliant on foreign sources of minerals to meet the needs of domestic manufacturers. Today less than half of the mineral needs of U.S. manufacturing are met from domestically mined resources.

Unfortunately, our nation’s mismatched import reliance is in direct conflict with President Trump’s Executive Order on “Buy American.”<sup>6</sup> “Buy American” should consider the raw minerals and metals used to rebuild our infrastructure and support U.S. manufacturing. This is an issue highlighted by a March 28 hearing before the Senate Energy and Natural Resources Committee entitled, “The United States’ Increasing dependence on Foreign Sources of Minerals and Opportunities to Rebuild and Improve the Supply Chain in the United States.” Witnesses testified about the U.S.’ alarming reliance on foreign sources of metals and minerals, the debilitating impacts of our duplicative and

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<sup>6</sup> <https://www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american>

inefficient permitting system, and the immediate need to improve these processes in order to create a safer and more secure supply chain for domestic manufactures.<sup>7</sup>

### **Impact of U.S. Reliance on Foreign Sources of Minerals**

According to the most recent U.S. Geological Survey (USGS) *Mineral Commodity Summaries*<sup>8</sup>, the U.S. is now greater than 50 percent reliant upon foreign countries such as China for 30 different metals and minerals – and 100 percent for an additional 20 minerals. That is half of the naturally occurring elements on the periodic table and an all-time high. This information was first gathered by USGS in 1978, and at that time, the U.S. was only 100 percent import reliant on seven mineral commodities, and more than 50 percent import reliant for 25 mineral commodities.

Import reliance offers a very basic, threshold metric for diagnosing supply chain vulnerability. The level of risk may vary on a case-by-case basis for individual commodities, depending on where they are coming from and what they are being used for. When domestic manufacturers source materials overseas, there is always potential for supply chain vulnerabilities. Take for example, the confluence of world events in 2014 impacting the availability of palladium, a metal used in catalytic converters to reduce automobile emissions, bulk-chemical production, and petroleum refining. According to the USGS, at that time, the U.S. was 60 percent reliant on foreign sources of palladium. Approximately 33 percent came from Russia and another 28 percent from South Africa. Given the U.S.' and other countries' reliance on these sources, it was no wonder that palladium prices spiked and supply concerns grew with the news of possible Russian sanctions in response to military intervention in Ukraine which coincided with an extended strike by 75,000 mine workers in South Africa. World events can very quickly alter the ability of domestic manufacturers to access critical metals and minerals.

Even excluding unanticipated geopolitical events, competition for minerals will become increasingly fierce to meet the demand driven by growth in global population and the rise of new economies. A 2012 KPMG report, which looked at sustainability “megaforces” that will impact “each and every business” over the next 20 years, found that access to minerals and metals will be of greater concern.<sup>9</sup> The report predicts by 2030 that 83 billion tons of minerals, metals and biomass will be extracted from the earth, or 55 percent more than in 2010. The study authors conclude: “the message is

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<sup>7</sup> See, e.g., testimony of Alf Barrios, Chief Executive Officer, Rio Tinto Aluminum; Dr. Chris Hinde, Director, S&P Global Market Intelligence; Dr. Roderick Eggert, Colorado School of Mines  
<https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=71944BB9-2A99-4C4C-94F8-709B9D194592>

<sup>8</sup> [USGS Mineral Commodity Summaries 2017](#)

<sup>9</sup> 2012 KPMG Report – [Expect the Unexpected: Building business value in a changing world](#)

clear; over the next 20 years, demand for material resources will soar while supplies will become increasingly difficult to obtain.”

Understanding the existing trend of increased import-reliance, in combination with authoritative predictions of scarcity, makes clear that the time has come to take steps to improve U.S. resource security through increased domestic production. As the Rand Corporation warns a failure to do so could have profound impacts on future growth, particularly for the manufacturing sector:

While the United States has extensive mineral resources, and is a leading materials producer, a high percentage of many materials critical to U.S. manufacturing are imported, sometimes from a country that has the dominant share of a material’s global production and export. In this situation, U.S. manufacturers are vulnerable to export restrictions that limit their access to these materials and that can result in two-tier pricing, under which domestic manufacturers in the producing country have access to materials at lower prices than those charged for exports, thereby hindering the international competitiveness of U.S. manufacturers and creating pressure to move manufacturing away from the U.S. and into the producing country.<sup>10</sup>

The Rand Study also notes a potential ripple effect on U.S. innovation:

The U.S. science and technology base that support manufactured products was built on and depends upon the presence of U.S. manufacturers producing these products from raw and semi-finished materials. Prolonged disruption in the supply of raw and semi-finished materials required by these manufacturers could put the science and technology base in jeopardy, which would further reduce U.S. innovation capability and competitiveness in the development of new, higher-performance products.<sup>11</sup>

Often overlooked is the reality that many metals and minerals are not only critical to manufacturing in their own right, but in many cases, they serve as “gateway elements to other technology metals critical to innovation. In other words, many high-tech metals are not the targets of primary mining projects, but rather by-products of recovered from the mining of other metals and minerals.<sup>12</sup> Copper for example serves as the gateway to molybdenum, rhenium, selenium and tellurium. Zinc is a gateway metal to indium and germanium. These specialty metals and minerals are often byproducts of refining other metals and minerals and are essential for super-alloys, electrical components, and fiber optics, to mention just a few applications that are important to transportation infrastructure.

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<sup>10</sup> 2013 Rand Study – [Critical Materials: Present Danger to U.S. Manufacturing, p. ix](#)

<sup>11</sup> Id. at p. 1.

<sup>12</sup> See Daniel McGroarty & Sandra Wirtz, Gateway Metals and the Foundations of American Technology, p. 4 (American Resources Policy Network, Sept. 2012).

The U.S. has been slow to develop policies that ensure secure access to the minerals required to supply domestic manufacturers and for economic growth generally. At the same time, countries around the world have increasingly recognized the connection between minerals and economic growth and have developed strategies to ensure access to the minerals that help them compete globally. For example, the European Union's (EU) "Raw Materials Initiative," is designed to ensure a sustainable supply of raw materials to increase European industrial competitiveness. As part of that initiative, the EU maintains and routinely updates a list of critical raw materials, which includes various minerals and metals, while duly emphasizing that even those minerals not "classified" as critical must not be neglected.<sup>13</sup> A balanced policy incentivizes and removes obstacles to new mining activities to support the availability of the metals and minerals for the European economy.

In a similar vein, China, the world's largest consumer of many mineral commodities like copper, zinc and iron ore, is giving special attention to its "resource security" by making global investments to ensure access to supply. China's "go global" strategy includes investment of \$390 billion in outbound direct investments in the mining sector.<sup>14</sup> Unfortunately, U.S. policies fail to recognize the importance of domestic minerals manufacturing as an economic driver or as the source of raw materials used by domestic manufacturers.

### **Permitting Delays are the Primary Impediment to the Domestic Mining Industry's Ability to Provide Raw Materials for U.S. Manufacturers and Infrastructure Projects**

An outdated, inefficient permitting system presents a major barrier to the domestic mining sector's ability to perform to its full potential. The U.S. has one of the longest permitting processes in the world for mining projects. The current permitting process is plagued by uncertainties and delays arising from duplication among federal and state agencies, the absence of firm timelines for completing environmental assessments and failures in coordination of responsibilities between various agencies. In the U.S., necessary government authorizations now take an average of seven to 10 years to secure, placing the U.S. at a competitive disadvantage in attracting investment for mineral development.

Sadly, this is not a new problem, and it is getting worse. Authorities ranging from the National Academy of Sciences to the Departments of Energy and Defense to

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<sup>13</sup> 2014 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *On the review of the list of critical raw materials for the EU and the implementation of the Raw Materials Initiative* (available at [http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/crm-communication\\_en.pdf](http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/crm-communication_en.pdf)).

<sup>14</sup> Congressional Research Service, *China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress*, March 20, 2015 (available at <http://fas.org/sgp/crs/row/R43864.pdf>).



international mining consulting firms have identified permitting delays as among the most significant risks and impediments to mining projects in the United States.<sup>15</sup> Most recently, the U.S. Government Accountability Office linked the need to streamline the mine permitting process to mitigate supply risks.<sup>16</sup> And these permitting delays have real consequences.

A 2015 study,<sup>17</sup> *Permitting, Economic Value and Mining in the United States*, shows how delays in the U.S. mine permitting process can diminish the value of a minerals project. On average, a domestic mining project can lose a third of its value as it waits for the numerous permits needed to begin production, and the longer the wait the greater the chance the mine will no longer be worth the *investment*. In short, lengthy delays in permit reviews compromise the commercial viability of mining projects by increasing costs, reducing the net present value of investments and impairing financing – in much the same way delays impact the viability of transportation infrastructure projects. The efficiency and predictability of the permitting process matters in decisions about where to invest.

To attract investment dollars for mining projects, the U.S. needs to provide more certainty in permitting timeframes similar to other major mining countries such as Canada and Australia. Australia and Canada have modernized their permitting regimes so that the required permits can generally be obtained in two to three years. Importantly, Canada and Australia are known for their rigorous environmental requirements for mining, including environmental reviews similar to those required by the U.S. National Environmental Policy Act (NEPA). Canada and Australia illustrate that permitting efficiencies can be achieved without sacrificing environmental protection.

The delays that plague the U.S. permitting process also play a role in the reduced investment in U.S. mining projects. A recent S&P Global report<sup>18</sup> highlighted that the downturn in U.S. exploration activities reflects a diminished appetite and ability to prospect for new mineral resources in the U.S. Nearly two decades ago, the U.S. attracted almost 20 percent of the world's mining investment. According to S&P's report, in 2016 the U.S. attracted only 7 percent while Canada and Australia attracted 14 and 13 percent respectively. Last year, the U.S. showed the sharpest pullback in exploration, with its budgets falling more than 30%.

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<sup>15</sup> See National Resources Council, *Hardrock Mining on Federal Lands*, National Academy Press (1999); U.S. Department of Energy, *Critical Materials Strategy* (Dec. 2010); U.S. Geological Survey USGS, *the Principal Rare Earth Elements Deposits of the United States—A Summary of Domestic Deposits and a Global Perspective*, 2010; Behre Dolbear, *Where Not to Invest* (2015).

<sup>16</sup> GAO Report 16-699, *Advanced Technologies: Strengthened Federal Approach Needed to Help Identify and Mitigate Supply Risks for Critical Raw Materials*, Dec. 2016

<sup>17</sup> [Permitting, Economic Value and Mining in the United States](#)

<sup>18</sup> [Worldwide Mining Exploration Trends Report](#)

Understanding the critical permitting issue facing domestic mining industry, Senate Energy and Natural Resources Chairman Lisa Murkowski (R-Alaska) recently introduced the Energy and Natural Resources Act of 2017 ([S. 1460](#)). This legislation would allow mining projects to be eligible for consideration as a covered project under Section 41001(6)(A) of the Fixing America's Surface Transportation Act (the FAST Act), which provides additional efficiencies in the federal permitting process for major infrastructure and other capital-intensive projects by better coordination and deadline-setting for permitting decisions. While this legislation is a step in the right direction, it's incumbent upon the DOT and other federal agencies to identify regulations and policies that needlessly delay or prevent mineral resource development from occurring, further jeopardizing the viability of downstream investments such as manufacturing and infrastructure projects.

### **The U.S. Needs a More Efficient Permitting Timeframe to Realize the Domestic Mining Industry's Potential to Supply U.S. Manufacturers and Infrastructure Projects**

Clearly, the efficiency and predictability of the permitting process matters in decisions about where to invest. To address supply chain vulnerability and import dependence, we need to proactively address these permitting delays. This concern extends beyond those in the domestic mining industry. A 2014 survey of 400 C-suite manufacturing executives found 95 percent of executives are worried that the lag in the permitting process for new mines has a serious impact on their competitiveness.<sup>19</sup> And more recently broader public support has been voiced for policies that enable the use of domestic minerals for infrastructure. A new poll conducted reveals that 71 percent of voters support using domestically-sourced materials for infrastructure projects, and that 65 percent support enacting policies such as shorter mine permitting timeframes for mineral mines in order to ensure timely access to important minerals and metals needed for these projects.<sup>20</sup>

Only by addressing our permitting delays can we capitalize on our nation's mineral wealth. The U.S. is blessed with a world class mineral resource base with an estimated value of \$6.2 trillion. The U.S. remains highly prospective, from a geological point of view, with an abundant and diverse mineral potential. According to the U.S. Geological Survey, when it comes to copper, silver, zinc and other key mineral commodities, what is left to be discovered in the U.S. is almost as much as what has already been found.<sup>21</sup> Moreover, with continuing and never-ending advances in science and technology, miners in the U.S. exemplify best practices with respect to productivity, sustainability and safety.<sup>22</sup>

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<sup>19</sup> Edelman Berland Survey September 2014, U.S. Manufacturing Executives; MOE: ±4.87%

<sup>20</sup> [NMA Domestic Minerals Poll](#).

<sup>21</sup> USGS, *Geology and Nonfuel Mineral Deposits of the United States*, Open File Rep. 2005-1294A, p. 64 (2005).

<sup>22</sup> SNL Metals & Mining, *U.S. Mines to Market*, p. 4 (2014).



Solving the permitting problem will also allow the domestic mining industry to contribute even more to the already significant contributions to our economy, society, and quality of life. The value added by major industries that consume the \$74.6 billion of minerals produced in the U.S. is an estimated \$2.78 trillion (2016). Mining's direct and indirect economic contribution includes nearly 2 million jobs with wage and benefits well above the state average for the industrial sector. In addition, domestic mining generates \$44 billion in tax payments to federal, state and local governments.

The overarching objectives for streamlining the permitting system for mining should be:

- Minimizing delays;
- Setting and adhering to timelines and schedules for completion of the permitting process;
- Tracking progress and providing for accountability;
- Avoiding duplicative reviews; and
- Implementing concurrent reviews rather than sequentially to expedite the process.

These concepts are very similar to those raised in the various "Red Books" that DOT has published over the years relating to how to improve the permitting processes for infrastructure projects. For example, the latest 2015 Red Book, "Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects," focuses on how NEPA can provide a framework for meeting other environmental review requirements, such as those under the Endangered Species Act of 1973 (ESA) and the National Historic Preservation Act of 1966 (NHPA). By increasing the use of review synchronization, more effective and efficient environmental reviews are anticipated that could result in projects with reduced impacts to the environment as well as savings of time and money.

However, as it stands, federal regulatory requirements can provide a hindrance to streamlining the process and are often used as a weapon against infrastructure and mining projects. A March 28 hearing before the House Natural Resources Subcommittee on Oversight and Investigations explored the issue of ESA consultation impediments to economic and infrastructure development. At the hearing, Subcommittee Chairman Raul Labrador (R-Idaho) discussed the significant impacts of "Section 7" consultation as a requirement for the building of roads, water facilities, and even mines, which often delays and add expenses for much-needed projects.<sup>23</sup>

Many of the DOT Red Book recommendations for using best practices in the permitting process are reflected in the regulations from the Council on Environmental Quality on making the NEPA process more efficient. CEQ's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, collection of suggested alternatives and other comments early through scoping, cooperation among

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<sup>23</sup> <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401724>

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agencies, and consultation with applicants during project planning process. See e.g., 40 CFR 1501.7 (Scoping); 1501.8 (Time limits); 1502.20 (Tiering); and 1506.2 (Elimination of duplication). DOT's report should recommend that agencies treat these best practices as mandatory rather than as merely advisory. This can be accomplished easily by revising agency NEPA guidance to more clearly align with these best practices.

In addition, DOT should recommend that the Department of the Interior (DOI) immediately rescind its policy related to review of *Federal Register* notices related to NEPA. This agency "clearance process" needlessly adds months to the permit process for mining projects on federal lands as it requires at least 14 separate layers of departmental review of notices developed by state BLM offices. The impact of these delays is significant as most mining operations require at least three of these notices per project. As the clearance process routinely takes four months or longer per notice, this policy adds approximately a year of review time for project approvals.

Further, DOI has never adequately explained the need for this review process and it does not appear to result in substantive changes to the submitted documents. In fact, in the mining industry's experience, the review process has never resulted in a final product that differed substantively from what was submitted by the state BLM offices. DOI should rescind this policy and return to the previous process where *Federal Register* notices could be submitted directly by BLM state offices without stopping at DOI for additional reviews.

## **Other Impediments Preventing the Domestic Mining Industry's Ability to Supply the Domestic Manufacturing Sector**

### Access to Minerals

While the lack of inclusive U.S. policies for mineral development and costly, duplicative permitting processes have a significant impact on domestic manufacturers ability to get the raw metals and minerals they need when they need them, another issue that is equally important is general access to the minerals, which are primarily located on federal lands.

The federal government manages 632 million acres of public land in the U.S. Access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry as these lands historically have, and will continue to, provide a large share of the metals and hardrock minerals produced in this country. Twelve western states are the source of much of our nation's mineral endowment and federal lands comprise almost 40 percent of the land area in those states. Half of that is either off-limits or under restrictions for mineral development. Unknown amounts of resources on adjacent state and private lands are also sterilized because of federal land restrictions.

While mining is not appropriate on all federal lands, withdrawals from mining activities should not occur without more informed decisions regarding the mineral potential of the underlying lands. Section 204 of the Federal Land Policy and Management Act governs withdrawals of federal lands and does require mineral assessment of lands proposed to be withdrawn and that any withdrawals should be reviewed periodically to determine if the restrictions continue to be appropriate. Too frequently these assessments are cursory in nature, relying only on existing, often quite dated, information and rarely are they reviewed. Other times, the withdrawals are simply not justified by any policy rationale. A recent example is DOI's proposed withdrawal of 10 million acres of federal lands in the western U.S.

The withdrawal would be the largest ever in the history of the Federal Land Policy and Management Act (FLPMA). The department maintains the withdrawal is necessary to conserve sage grouse and its habitat. Mining, however, is not even considered a major threat to the bird or its habitat as evidenced by the department's own supporting documents, which instead point to wildfires and invasive species as the greatest threats. The draft Environmental Impact Statement for the withdrawal candidly acknowledges that even under the No Action alternative, the reasonable foreseeable acreage disturbance associated with mining activities is estimated to be less than 0.1% of the total withdrawn area.

Another proposed withdrawal in Northern Minnesota was clearly motivated by politics rather than science as the previous administration sought to preclude any future mineral exploration or development without evaluating any specific mine permit. The area, known as the Duluth Complex, is a world class mineral deposit containing copper, nickel and precious metals. The withdrawal was proposed just days before President Obama left office and would have disastrous impacts on the already fragile economy of Northern Minnesotans who stood to gain thousands of potential mining jobs, billions of dollars in future investment, and billions in future revenues for the state's education system.

To remove a significant impediment to the ability of the domestic mining industry to provide a secure supply of minerals and metals to the domestic manufacturing industry, DOT should recommend that DOI issues a policy that ensure all proposed withdrawals comply with FLPMA, including FLPMA's mandate that Congress must weigh in on all withdrawals of more than 5,000 acres. Clearly, FLPMA sec. 204(c) provides for such a role for Congress. While that provision is unconstitutional in its implementation, the intent of the act is clear. It is uncontroverted that had Congress known it was not able to reject large-scale withdrawals by concurrent resolution, it would not have enacted the section as written and would not have granted the authority to withdraw more than 5,000 acres. DOI needs to clarify that the department will adhere to this congressional mandate.

U.S. Environmental Protection Agency's Unnecessary and Duplicative Financial Assurance Requirements for Mining Projects

Producers of domestic minerals and metals operate within a complex and comprehensive framework of state and federal laws and regulations that address every aspect of modern mining from exploration to development, operation, reclamation, closure and post-closure. This framework is designed to minimize environmental impacts and prevent harmful releases. Additionally, mining companies commit tens to hundreds of millions of dollars to ensure that money is set aside to properly close sites and in the unlikely event of a release, to monitor and remediate any long-term environmental issues.

Despite this comprehensive framework of laws and regulations, the U.S. Environmental Protection Agency (EPA) is currently engaged in a rulemaking process to implement a suite of unprecedented, duplicative, and economically burdensome financial assurance requirements under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or also known as Superfund). Pursuant to this law, EPA was required more than 30 years ago to identify "high risk" industry sectors, assess their risk of future hazardous substance releases, estimate the cost of cleanup of those releases, and require companies to set aside capital to guarantee that it can pay for any necessary cleanup. Seven years ago, EPA identified the hardrock mining industry as the first in line for such a regulation, followed by the chemical manufacturing, oil and gas, and electric utility sectors.

Protecting the public and ensuring that taxpayer money is not used for environmental cleanups is a respectable goal. However, EPA ignores the fact that during its 30 years of inaction, state and federal programs have evolved to address the same risks EPA is now targeting and ensure functionally equivalent protections to the public and the environment. A duplicative federal program under EPA's control would effectively displace these successful programs.

Furthermore, repeatedly the agency ignored state and federal government agencies with expertise in regulating the mining industry, summarily dismissing their concerns over preemption and duplication instead of engaging in a robust discussion and analysis of programs that have evolved over the last 30 years. Most importantly, throughout its rulemaking process, EPA failed to make the requisite finding that modern mining facilities actually pose a risk of becoming future Superfund sites that would require expenditure of public funds for cleanup costs. As such, this rule is simply not justified and the regulatory burdens it will impose could jeopardize the viability of the domestic mining industry. Overall, EPA estimates that the rule will require facilities to secure approximately \$7.1 billion in new financial responsibility obligations. Using EPA's own numbers, the rule comes with a \$171 million annual price tag to industry compared to potential annual savings for the government of approximately \$15.5 million in liability.

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Given the fatal flaws in the rulemaking, DOT should recommend that EPA initiate a review of the proposed rule, undertake a robust examination of existing state and federal programs, and determine that these programs render the rulemaking unnecessary.

## **Conclusion**

NMA urges DOT to expand the scope of its review and evaluate recommendations outside the traditional jurisdiction of the Office of the Secretary of Transportation (OST) to include the mining sector, which serves as the front-end of the supply chain for all surface, maritime, and aviation transportation infrastructure projects. The permitting and other regulatory reforms we recommend are not exclusive to the domestic mining industry and will help ensure more secure supplies of minerals and metals are available to grow and sustain our diverse network of transportation infrastructure while creating high-wage jobs across multiple industries.

If you have any questions regarding these comments, please contact me at [ksweeney@nma.org](mailto:ksweeney@nma.org) or 202/463-2627.

Sincerely,

A handwritten signature in cursive script that reads "Katie Sweeney".

Katie Sweeney

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