

November 30, 2022

The Honorable Chuck Schumer  
Senate Majority Leader  
Room S-221, United States Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Room H-232, United States Capitol  
Washington, D.C. 20515

Dear Speaker Pelosi, Leader Schumer, and Members of Congress,

On behalf of the undersigned, we strongly urge you to oppose the dirty permitting side deal: the Energy Independence and Security Act of 2022, or similar legislation, that limits the public's voice in mining decisions on federal public lands. Bills that weaken and truncate environmental reviews should not be attached to the National Defense Authorization Act (NDAA), the FY 23 budget, nor other must-pass legislation.

The dirty permitting side deal represents a profound step backwards in addressing historic environmental injustices and continued impacts to communities and the environment from mining and mineral processing. It represents little more than a long-standing wishlist for extractive industries that reduces community input, lessens scrutiny of potential impacts, and will result in less accountability when harm occurs. There is no way to mitigate the damage that would be done by this legislation.

The National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), the Clean Water Act (CWA) and other laws require federal agencies to study and disclose the environmental and cultural harm from agency decisions, receive public input, respond to that input, and select alternatives that best balance these considerations. Mining-impacted communities depend upon these laws to be informed about mining company proposals and to suggest alternatives to lessen the harm to communities, water and wildlife. This is especially important since most hardrock mining occurs under the extremely permissive General Mining Law of 1872—a 150 years old settler-colonial statute that fails to safeguard communities and the environment from today's industrial mining.

One of the many concerns with the dirty permitting side deal is that it allows the mining industry to tilt the scale of government decisions even more heavily in their favor. As written, a mining company could request that federal agencies elevate their own preferred mine plans during public review. Some mine proposals can get designated for special fast-track treatment allowing mining companies to select shorter comment periods that limit the scope and public's access to information and ability to meaningfully participate. Another provision could allow whole categories, like mining exploration or mineral processing projects, to be excluded from meaningful study.

Hardrock mining is inherently complex and may require water treatment in perpetuity. Legislating arbitrary limits for completing reviews undermines the government's obligation to prepare thorough environmental and cultural analyses. This can lead to poorly understood ramifications and uninformed decisions.

### **Valuing Indigenous Traditional Ecological Knowledge and the Lived Experiences of All Mining-Affected Communities**

Many hardrock mines affect people from all walks of life, especially those who live in extremely remote areas, with limited communication access, or who rely on seasonal subsistence or employment. Any of these factors can make it more difficult for impacted communities to devote the time necessary to meaningfully participate in agency processes. Many communities have a history of intergenerational trauma<sup>1</sup> associated<sup>2</sup> with hardrock mines including violence against women and girls,<sup>3</sup> especially Indigenous women in rural communities living close to mining activities. This violence is often committed by non-Indigenous men living in nearby "man camps." Indigenous peoples deserve an equal voice in federal mining decisions for mines located near their homes and waters, and on public lands. Incorporating the expertise of those most harmed helps federal agencies develop project alternatives that comply with reserved treaty rights, embrace Indigenous Traditional Ecological Knowledge (ITEK),<sup>4</sup> respect Indigenous peoples' right to Free, Prior, and Informed Consent,<sup>5</sup> and earn and maintain a Social License to Operate.

According to the Government Accountability Office (GAO),<sup>6</sup> the primary challenge agencies face when permitting mines stems from untimely or incomplete information provided by permit applicants. Information gaps are the primary cause of mine permitting delays and underscore the need for quality environmental reviews, rather than rushed ones. This is especially true for protecting cultural, historical, ecological, and tribal resources. Mines produce vast quantities of

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<sup>1</sup> U.S. Department of the Interior, "Secretary Haaland Takes Equity and Inclusion to the Next Level at SXSW," <https://www.doi.gov/pressreleases/secretary-haaland-takes-equity-and-inclusion-next-level-sxsw>.

<sup>2</sup> June Lorenzo, "Gendered Impacts of Jackpile Uranium Mining on Laguna Pueblo," <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1053&context=ijhre>.

<sup>3</sup> The National Congress of American Indians, "Resolution #ANC-22-007 TITLE: Supporting Indigenous Safety through Opposing Man-Camps for Thacker Pass," <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/1948.pdf>.

<sup>4</sup> The White House, "White House Commits to Elevating Indigenous Knowledge in Federal Policy Decisions," <https://www.whitehouse.gov/ostp/news-updates/2021/11/15/white-house-commits-to-elevating-indigenous-knowledge-in-federal-policy-decisions/>.

<sup>5</sup> Indigenous Rights and Resource Governance Research Group, "FPIC: The Right to Decide," <https://whatis.fpic.info/>.

<sup>6</sup> Government Accountability Office, "Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More," <https://www.gao.gov/products/gao-16-165>.

toxic waste that often must be managed effectively forever. Chronic seepage and sudden accidental releases to the environment<sup>7</sup> are the norm.

Mines vary in hydrology, geology, and engineering, requiring expert opinions across many technical disciplines, including ITEK. Mines produce vast quantities of toxic waste that often must be managed in perpetuity. Chronic seepage of toxic materials and sudden accidental releases especially into waterways<sup>8</sup> are the norm. Occasionally, experts can conduct reviews concurrently, in other cases, the results of one study may provide data needed for a subsequent review. Where reviews need to occur consecutively, imposed rigid timelines could undermine the quality of the science. All of this suggests the need for more rigorous and consistent mining regulation and review processes to reduce the damage and public costs imposed by mining—not processes that remove science and community input.

### **Recent Policy Solutions for Efficient Hardrock Mine Permitting Decisions**

Hardrock mine permitting is already prompt. Public lands agencies average two years to permit a hardrock mine, according to the GAO.<sup>9</sup> Applicants expect to receive the overwhelming majority (86%-100%) of their hardrock mine exploration permits within 18 months (at the latest), according to the Fraser Institute's annual survey data.<sup>10</sup>

To further increase efficiency in permitting, the Inflation Reduction Act (IRA) includes \$1 billion to support timely and effective environmental review across federal agencies, which should lead to better, more equitable outcomes and, accordingly, likely help avoid litigation.<sup>11</sup> Timely passage of a FY '23 budget, (free of poison pills like the Energy Independence and Security Act) will allow public lands management agencies to perform more thorough and prompt reviews. The Infrastructure Investment in Jobs Act (IIJA) requires the Interior Department to report to Congress (due this month), identifying improvements to mine permitting.<sup>12</sup> The Administration's mining reform Interagency Working Group should result in even more efficient decision making for hardrock mines by recommending better public lands mining rules, consistent with a petition from a coalition of Tribes, Indigenous-led organizations, and conservation groups.<sup>13</sup>

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<sup>7</sup> Earthworks, "Track Record: Montana Modern Hardrock Mining Water Quality Impacts and Reclamation Bonding," <https://earthworks.org/resources/mt-track-record-report/>.

<sup>8</sup> See footnote 7.

<sup>9</sup> See footnote 6.

<sup>10</sup> See Fraser Institute, Annual Survey of Mining Companies (2021), Table 5 <https://www.fraserinstitute.org/resource-file?nid=14573&fid=17568>.

<sup>11</sup> See IRA, §§ 23001, 40003, 50301-03, 60402, 60116, 60505.

<sup>12</sup> See IIJA Section 40206: Critical Minerals Supply chains and Reliability. See also, [87 Fed. Reg. 18811 \(March 31, 2022\)](#).

<sup>13</sup> The public lands mining rules for the Interior and Agriculture Departments are found at 43 U.S.C. § 3809 et seq. And 36 CFR part 228 et seq. respectively. The petition asks for new Interior rules that, if finalized, would grant more

Approaches like adequately staffing permitting agencies, providing needed resources, and promulgating modern rules will help achieve more efficient and thorough hardrock mine permitting decisions. Our government should value and empower the expertise of frontline Indigenous and non-Indigenous mining impacted communities. Congress should not pass any legislation that limits these voices in the hardrock mine permitting process.

### **Environmental Justice for All**

There is a right way to address NEPA and environmental justice concerns through passing legislation in normal order, not a side deal behind closed doors, to accomplish the protections and process needed to uplift communities and their concerns. These are found in the Environmental Justice for All Act and Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT Act) (HR 2021 and HR 3587). These bills, led by Reps. Grijalva and McEachin, strengthen the NEPA, the Civil Rights Act, and tribal consultation mechanisms to help ensure our government listens to frontline communities and empowers them to hold our government accountable. The Environmental Justice For All and the RESPECT Act would represent profoundly important steps toward repairing the systemic racism and environmental injustice already disproportionately impacting mining communities, especially Indigenous communities.

Sincerely,

350 Bay Area Action  
350Colorado  
350Hawaii  
7 Directions of Service  
Accelerate Neighborhood Climate Action  
Alaska Wilderness League  
Arizona Mining Reform Coalition  
Batani Foundation  
Biofuelwatch  
Black Warrior Riverkeeper  
Businesses for a Livable Climate  
Call to Action Colorado  
Capitol Heights Presbyterian  
CatholicNetwork US

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discretion to the Secretary to make sooner decisions for hardrock mines. See Docket ID DOI-2022-0003-14647 at <https://www.regulations.gov/document/DOI-2022-0003-14647>.

Center for Biological Diversity  
Citizen's Alliance for a Sustainable Englewood  
Citizens to Protect Smith Valley (Nevada)  
Climate Crisis Policy  
CO Businesses for a Livable Climate  
Coal River Mountain Watch  
Common Defense  
Community for Sustainable Energy  
Conservation Lands Foundation  
Conservation Northwest  
Cook Inletkeeper  
Copper Country Alliance  
Cultural Survival  
Denver DSA  
Earth Ethics, Inc.  
Earthjustice  
Earthworks  
Endangered Species Coalition  
Environmental Protection Information Center- EPIC  
For our unborn future generations rights to clean air, water and land to a higher quality of life.  
Friends of Buckingham  
Friends of the Boundary Waters Wilderness  
Friends of the Earth  
Fundacion Ecosur  
Gila Resources Information Project  
Great Basin Resource Watch  
Great Bear Foundation  
Great Old Broads for Wilderness -Northern San Juan chapter  
Greater New Orleans Housing Alliance  
Greater Park Hill Community  
GreenLatinos  
High Country Conservation Advocates  
Hispanic Federation  
Honor the Earth  
I-70 Citizens Advisory Group  
Idaho Rivers United  
Indigenous Environmental Network  
Indivisible Ambassadors  
Kalmiopsis Audubon Society  
Laguna Acoma Coalition For A Safe Environment

Larimer Alliance for Health, Safety, & the Environment  
LEAD Agency, Inc.  
Local Clean Energy Alliance  
Lone Pine Paiute-Shoshone Reservation  
Los Padres ForestWatch  
Lynn Canal Conservation  
Malach Consulting  
Maryknoll Office for Global Concerns  
Mayfair Park Neighborhood Association Board  
Mental Health & Inclusion Ministries  
Milwaukee Riverkeeper  
Mining Impact Coalition of Wisconsin  
Minnesota Center for Environmental Advocacy  
Minnesota Environmental Partnership  
Montana Environmental Information Center  
Montbello Neighborhood Improvement Association  
Mothers Out Front Colorado  
NC Climate Justice Collective  
New Mexico Sportsmen  
North Range Concerned Citizens  
Northeastern Minnesotans for Wilderness  
Northern Alaska Environmental Center  
Ocean Conservation Research  
OEARSE  
Okanogan Highlands Alliance  
Oregon Natural Desert Association  
Oregon Wild  
Oxfam America  
Patagonia Area Resource Alliance  
Peace and Freedom Party  
Powder River Basin Resource Council  
Progressive Leadership Alliance of Nevada (PLAN)  
Publish What You Pay - US  
Rachel Carson Council  
RapidShift Network  
Responsible Growth \* NE Washington  
Rio Grande Indivisible, NM  
Rivers Without Borders  
Save EPA (former employees)  
Save the Scenic Santa Ritas

Seven Circles Foundation  
Sheep Mountain Alliance  
Sierra Club  
Silver Valley Community Resource Center  
Small Business Alliance  
Southeast Alaska Conservation Council  
Southern Utah Wilderness Alliance  
Southwest Organization for Sustainability  
Spirit of the Sun, Inc.  
Sunnyside United Neighbors, inc (SUNI)  
System Change Not Climate Change  
Terra Advocati  
The Alliance for Appalachia  
The Green House Connection Center  
The Wilderness Society  
Tucson Audubon Society  
Turtle Island Restoration Network  
Unitarian Universalist Society: East  
Unite North Metro Denver  
Uranium Watch  
Vibrant Littleton  
Virginia Community Rights Network  
Virginia Environmental Justice Collaborative  
Virginia Interfaith Power & Light  
Wall of Women  
Waterkeeper Alliance  
WaterLegacy  
West End Revitalization Association WERA  
Western Mining Action Network Indigenous Caucus  
Western Slope Businesses for a Livable Climate  
Western Watersheds Project  
Wild Arizona  
WildEarth Guardians  
Wilwerding Consulting, also Co-Chair, Littleton Business Alliance  
Womxn from the Mountain  
Working for Racial Equity  
Yogaville Environmental Solutions