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\(^1\) associated\(^2\) with hardrock mines including violence against women and girls,\(^3\) 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),\(^4\) respect Indigenous peoples’ right to Free, Prior, and Informed Consent,\(^5\) and earn and maintain a Social License to Operate.

According to the Government Accountability Office (GAO),\(^6\) 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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\(^2\) June Lorenzo, “Gendered Impacts of Jackpile Uranium Mining on Laguna Pueblo,” [https://repository.usfca.edu/cgi/viewcontent.cgi?article=1053&context=ijhre](https://repository.usfca.edu/cgi/viewcontent.cgi?article=1053&context=ijhre).


toxic waste that often must be managed effectively forever. Chronic seepage and sudden accidental releases to the environment 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 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. 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.

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. 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. 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.

8 See footnote 7.
9 See footnote 6.
10 See Fraser Institute, Annual Survey of Mining Companies (2021), Table 5 https://www.fraserinstitute.org/resource-file?mid=14573&fid=17568.
11 See IRA, §§ 23001, 40003, 50301-03, 60402, 60116, 60505.
13 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

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