

August 30, 2022

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Bureau of Land Management  
Division of Solid Minerals  
1849 C Street NW, Room 5645  
Washington, DC 20240

**RE: Request for Information to Inform Interagency Working Group on Mining Regulations, Laws, and Permitting (Docket Number DOI-2022-0003)**

Please accept the following comments regarding the Department of Interior's (DOI) request for information to "develop recommendations for improving Federal hardrock mining regulations, laws, and permitting processes". The undersigned hunting, fishing, outdoor recreation, and public lands advocacy organizations represent hundreds of thousands of hunters, anglers and public land advocates nationwide who share in a collective belief that healthy public lands are essential for sustaining our hunting and angling traditions.

To be clear, we are not opposed to mining, including on public lands. Much progress has been made in the field of mining to minimize impacts from operations, including greater consideration of fish and wildlife habitat. But the track record of mining is not perfect, nor can it be expected to be perfect in the future. Numerous studies have documented negative impacts of mining on several species, including greater sage-grouse, mule deer and other big game animals, and native species of fish. The need to balance responsible mining with public land values, including quality hunting and fishing opportunities and clean water, is paramount and needed more than ever as our country and policymakers consider strategies to secure critical minerals necessary for clean energy technologies.

Thank you for considering the following recommendations in response to questions listed in the request for information.

***Are there areas that should be off-limits from mining, and if so, how should those be identified?***

First, we encourage the Department to revisit the definition of "unnecessary or undue degradation". A clear, objective and substantive standard should support Federal Land Policy and Management Act's definition of multiple use, including the "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment." Revisions to Bureau of Land Management and Forest Service mining regulations should support the ability for local land management professionals to deny permits that would cause unnecessary or undue degradation.

Second, although the General Mining Law does not allow for it, local land use management plans should provide suitability decisions for mining, just as these plans do for oil and gas operations, timber harvest, motorized travel, and other multiple uses. These decisions should take into account on-the-ground

conditions, consider other resource values (e.g., fish and wildlife populations and recreation), and be made as part of a transparent, public process that engages diverse stakeholders.

***What science and data should be included in any decisions to permit and develop mines?***

43 CFR § 3809.420(f) currently requires that an “operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.” First, we would remind DOI of the mitigation hierarchy and that avoidance of critical and sensitive habitats is the first – and almost always the best – step to prevent adverse impacts. Also, this performance standard should apply far more broadly than only threatened and endangered species.

Numerous fish and wildlife species are not listed, but have suffered significant populations declines, further exacerbated by the effects of climate change. Greater sage grouse and certain species of native trout and salmon are but a few examples. Moreover, migration corridors and habitat connectivity are critical components for wildlife, and a poorly placed mine in the migration corridor of big game animals like mule deer could have devastating impacts on populations as there is credible evidence to suggest migrations cannot be replicated somewhere else (i.e., they cannot be mitigated).

For these reasons, extending the performance standard under 43 CFR § 3809.420(f) to all species of greatest conservation need identified in state wildlife action plans, as well as any species or habitats state wildlife agencies or Tribes express concern for during consultations (e.g., crucial winter range for pronghorn), would better account for the need to prevent impacts to sensitive fish and wildlife species that may push them toward further population declines or ultimately a listing decision.

***How might the U.S. best support reclamation of existing AML sites including the development of meaningful good Samaritan proposals as well as remining and reprocessing of mine tailings and waste, where feasible?***

Abandoned hardrock mines are one of our country’s most polluting yet least addressed environmental problems. The EPA estimates that 40 percent of the watersheds in the western United States are contaminated by pollution from hardrock mines while the Government Accountability Office estimates that at least 33,000 abandoned hardrock mine sites that have degraded the environment. Superfund only addresses the worst sites while thousands of smaller abandoned mine sites continue to pollute our water and communities. Qualified organizations, state agencies and other parties stand ready to help tackle some of these mine cleanups and add to federal remediation horsepower, but they are prevented from doing so because two of our most important environmental laws – the Clean Water Act and CERCLA – treat those who want to clean up abandoned mine sites as if they themselves are polluters. This legal conundrum leaves numerous toxic sites that could be cleaned up to go on polluting with no end in sight.

Providing Good Samaritan parties with targeted, appropriate liability protections is essential to move forward with voluntary abandoned mines cleanups. Bipartisan legislation introduced in the 117<sup>th</sup> Congress, the *Good Samaritan Remediation of Abandoned Hardrock Mines Act* (S. 3571) would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine

cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement, environmental review, public hearings, and state and tribal consultation. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, the bill specifies that mining activities are strictly prohibited and that if a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be voided.

Lastly, S. 3571 includes an allowance for remediation projects to include reprocessing of abandoned mine waste, such as historic tailings piles. The bill explicitly states that any proceeds from the sale of reprocessed material must be used to pay for the project and reimburse federal agencies for oversight costs or go into an abandoned mine remediation fund. Importantly, it is possible to recover critical minerals from historic mine waste, meaning that Good Samaritan cleanups can not only improve the health of the environment but also help to shore up supply chains for critical minerals. Lastly, reprocessing materials can be used to reduce pyrite content of waste rock piles, thereby reducing the acid mine drainage generating potential of mine waste.

We urge the Biden Administration to support the *Good Samaritan Remediation of Abandoned Hardrock Mines Act* and help ensure its passage into law.

***If the U.S. were to place royalties on hardrock minerals produced from public domain lands...how should those revenues be allocated?***

Along with liability hurdles for Good Samaritan parties and state agencies, the other primary obstacle to addressing the abandoned mine crisis at scale is funding. Section 40704 of the *Infrastructure Investment and Jobs Act* (Public Law 117-58) directed the Department of the Interior to establish a program to “inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land.” However, unlike similar programs for the remediation of abandoned coal mines – which are funded by a fee on the production of coal -- there is no dedicated revenue source for the Section 40704 program and it relies on insufficient annual appropriations.

Should additional fees and/or royalties be placed on the production of hardrock minerals, revenues generated should be directed to the Section 40704 abandoned hardrock mine remediation program. Under the Section 40704 program, states and tribes are to receive 50 percent of the funding in the form of grants. Notably, the liability hurdles noted above apply to state agencies, limiting the effectiveness of this program and preventing these funds from being used to remediate abandoned mines that discharge acid mine drainage. For this reason, both funding and liability protections are necessary to address abandoned mines at scale.

**What improvements can be made to the mine permitting process without reducing opportunities for public input or limiting the comprehensiveness of environmental reviews?**

We support efforts to increase the efficiency of decision-making and environmental review. However, efficiency should not come at the expense of public participation, transparency, or rigorous scientific

analysis that ensures fully informed decisions. Without sufficient funding and qualified resource professionals, any efforts to speed up permitting processes is just a band-aid on a bigger problem. For instance, since 1995 the Forest Service has experienced nearly a 40 percent decline in non-fire personnel. That means fewer biologists, fewer engineers, fewer hydrologists, less community involvement, and fewer professionals to conduct timely, thorough environmental reviews of mining proposals. As domestic production of critical minerals increases, the funding and resources for agencies to be effective and efficient land managers will likewise need to increase.

## **Conclusion**

Any effort to update mining regulations should be undertaken with transparency, open dialogue and engagement with all affected stakeholders, and be grounded in science to ensure regulatory changes are warranted, durable and support both fish and wildlife conservation and the responsible production of critical minerals. If approached in this manner, we believe that the Department of the Interior can strike the appropriate balance between mineral development and conservation.

Sincerely,

- Backcountry Hunters & Anglers
- Boone and Crockett Club
- National Deer Association
- Theodore Roosevelt Conservation Partnership
- Trout Unlimited
- Wild Sheep Foundation
- Wildlife Forever