

February 28, 2023

Re: Energy and Mineral Resources Subcommittee Legislative Hearing

Dear Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the House Natural Resources Energy and Mineral Resources Subcommittee,

As your subcommittee considers Mr. Stauber's legislation, H.R. 209, *the Permitting for Mine Needs (PERMIT-MN) Act*, **we urge you oppose this bill** and instead prioritize efforts that would balance public health, community input, and the protection of watersheds, wildlife habitat, and cultural and historic resources on America's public lands and wildlife. **The PERMIT-MN Act would exacerbate deficiencies in the existing mining law and result in an unnecessary increase in mining on federal public lands and puts at risk irreplaceable protected lands, special places, endangered and sensitive wildlife, tribal sacred sites, and culturally significant sites.**

In particular, Section 8 of the legislation upends more than a century of practice by validating mining claims under the Mining Law of 1872 before the claimant has proven a mineral discovery. Currently, mining claims do not become valid just because the claimant says so: mining rights fully vest *only after* the miner discovers valuable minerals. Yet, under H.R. 209, a claimant would no longer need to actually prove they discovered valuable minerals. Instead, any person could "claim" mining rights on unwithdrawn public lands merely by grounding a stake, paying a fee, and filing some paperwork. **The PERMIT-MN Act would effectively lock out most other uses of public lands, prioritizing mining instead.**

**H.R. 209 rigs the legal system in favor of mining companies by reducing opportunities for communities to understand their government's mining decisions and to protect themselves from project impacts.** Some of those impacts occur, and others become foreseeable, during mining exploration. Yet Section 7 allows exploratory mining with no community notice and removes environmental review under the National Environmental Policy Act (NEPA). Worse, Section 10 restricts the ability of nearby communities and Tribal nations to protect their water, land, air, and sacred sites from toxic mining pollution by arbitrarily closing the courthouse door to legal challenges brought more than one year following the permit, license, and/or approval.

**We urge all members of Congress to oppose this legislation.**

*Improvements to the Mine Permitting Process*

We acknowledge that growing demand for certain materials may require new hardrock mines, including some on federal public lands. However, there are better ways to source minerals than

allowing entities to validate mine claims prior to the discovery of a mineral deposit or imposing arbitrary environmental review timelines. Necessary changes include those considered last Congress in the Clean Energy Minerals Reform Act of 2022. Converting to a leasing system for hardrock minerals, just like the one that oil and gas companies use today, would help provide certainty to the permitting process and result in more timely and socially acceptable decisions.

Congress has already invested significant time and resources into permitting reform for mining. The Inflation Reduction Act (IRA) included \$1 billion to support timely and effective environmental reviews across federal agencies, which should lead to better, more equitable outcomes, and help avoid litigation. Additionally, the Fiscal 2023 budget will help fund public lands management agencies to perform more thorough mining reviews.

These resources for mine permitting build upon those in the Infrastructure Investment in Jobs Act (IIJA). IIJA made permanent the Fixing America's Surface Transportation Act Permitting Council (Permitting Council), which, in January 2021, added hardrock mining as a covered sector. In November 2022, the Biden administration announced the Permitting Council will devote \$5 million in support of more meaningful consultations with federally recognized tribes in hardrock mine permitting.

IIJA also required the Interior Department to identify process improvements to hardrock mine permitting. A coalition of tribes, indigenous-led organizations, and conservation groups have also petitioned Interior for rules that, if finalized, would result in more timely decisions for hardrock mine permits without sacrificing necessary public input. In response to both, the administration convened the mining reform Interagency Working Group which should recommend mining rule improvements, consistent with the petition. These updates would also help lead to a fair hardrock mine permitting process, delivering more certainty to both claimants and impacted communities.

### *Mining Law Must Be Modernized, Centering Historically Impacted Communities*

Current mining law has allowed for the pollution of America's environment and waterways, placing additional unjust burdens on communities who have already borne the brunt of our nation's toxic mining legacy. Already, GAO estimates America is littered with hundreds of thousands of abandoned mines while the Environmental Protection Agency (EPA) estimates hardrock mines have polluted 40% of the headwaters of western U.S. watersheds and will cost taxpayers more than \$50 billion to clean up. Under current law, taxpayers are potentially liable for billions more in cleanup costs at currently operating mines—including treatment of water in perpetuity, risking the health of already threatened Western watersheds—because the legal requirements for mining companies to remediate lands and waters remain inadequate. **H.R. 209 does nothing to address the legacy of abandoned mines or promote remediation of American lands and waters.**

Mining companies have already left a lingering toxic legacy and enjoy generous access to minerals with insufficient environmental safeguards; all of which has led to severely negative consequences. A prime example of the ongoing toxic mining legacy is found in the Navajo Nation's experience with uranium mining, milling, and toxic pollution. The Navajo Nation is situated directly in America's uranium mining belt, and in the 1950's and 1960's fervent uranium development left residents with myriad health risks due to radiation exposure through polluted water and land. Today over 500 of these mines remain unremediated across the Navajo Nation, where they continue to impact residents' health. Navajo Nation residents are 67 times more likely to live without running water than other residents across the country—and many water sources on the Navajo Nation are contaminated as a result of uranium mining and milling operations. The Navajo Nation is not alone: past and ongoing impacts of uranium operations on Native communities are extensive.

The Pinyon Plain uranium mine (formerly called Canyon Mine) sits less than ten miles from the south rim of the Grand Canyon on the Kaibab National Forest and within the Red Butte Traditional Cultural Property, a sacred site to the Havasupai Tribe. The mine was permitted in the late 1980's, but nearly four decades later, the mine has yet to commence mining operations. However, under the permissive 1872 Mining Law, the mine is allowed to continue to occupy sacred tribal and public lands. The mine's owner has constructed a close to 1,500 foot deep mine shaft, which has exposed mineralized rock and pierced groundwater aquifers that overlie a deeper regional aquifer—all part of a complex, interconnected, and little-understood groundwater system that flows through karst and fractured rock. The overlain aquifer serves as the only water supply to the Havasupai's remote village of Supai, is the source of Havasu Creek, which flows through Supai, and is connected to an unknown number of seeps and springs inside of Grand Canyon National Park. The mine's existence has impacted the Havasupai Tribe's cultural practices and is viewed by the tribe as an existential threat.<sup>1</sup>

*Any Changes to Mine Permitting Must Explicitly Include Protections for America's Special Places*

Expanding mineral activities on federal public lands without modernizing our mining laws could threaten some of our nation's most treasured areas. Previous mine permitting proposals have sought to scale back protections for millions of acres of tribal sacred sites, culturally significant places, and iconic natural places. While mining is not permitted within the boundaries of National Parks, mining activities pollute the air and water that crosses the boundaries of protected lands. Insufficiently regulated mining in the name of clean energy development promotes a false choice by risking key lands that we need to conserve for our own health and

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<sup>1</sup> Silversmith, Shondiin. "Havasupai Tribe: Pinion (*sp*) Plain Uranium Mine Threatens Our Existence." *AZ Mirror*. June 28, 2022. <https://www.azmirror.com/2022/06/28/havasupai-tribe-pinion-plain-uranium-mine-threatens-our-existence/>

wellbeing. **We urge the committee to reject any legislation that puts important American lands, waters, and wildlife at risk of pollution and degradation.**

*Conclusion*

**We urge Members of the House Natural Resources Energy and Minerals Subcommittee to oppose the PERMIT-MN Act**, a bill that would exacerbate deficiencies in the existing mining law and result in an unnecessary increase in mining on federal public lands—risking irreplaceable protected lands, special places, tribal sacred sites, wildlife, and culturally significant sites.

Sincerely,

The Wilderness Society

Earthjustice

League of Conservation Voters

Sierra Club

Earthworks

Natural Resources Defense Council

Defenders of Wildlife

Conservation Lands Foundation

Center for Biological Diversity

Nuestra Tierra Conservation Project

Information Network for Responsible Mining

Cook Inletkeeper

Southern Utah Wilderness Alliance

Soda Mountain Wilderness Council

Citizens to Protect Smith Valley, NV

Grand Staircase Escalante Partners

Californians for Western Wilderness

Progressive Leadership Alliance of Nevada

Change the Chamber

Wilderness Workshop

New Mexico Interfaith Power and Light

Endangered Species Coalition

Multicultural Alliance for a Safe Environment

New Mexico Climate Justice

The Rachel Carson Council (RCC)

Friends of the Sonoran Desert

Black Hills Clean Water Alliance

Friends of the Earth

Winter Wildlands Alliance

Interfaith Power & Light

Conservation Northwest

Grand Canyon Trust

Environmental Protection Information Center

Western Environmental Law Center

Southern Utah Wilderness Alliance

Los Padres ForestWatch

Endangered Species Coalition

Hispanic Federation

Northeastern Minnesotans for Wilderness

Seven Circles Foundation

Bluewater Valley Downstream Alliance (BVDA)

Ocean Conservation Research

Earth Action, Inc.