



American Exploration & Mining Association

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June 20, 2023

Bryan Karchut
Forest Supervisor
Black Hills National Forest
1019 N. 5th St.
Custer, South Dakota 57730

Re: Notice of Application for Withdrawal of the Pactola Reservoir-Rapid Creek Watershed in South Dakota

Dear Mr. Karchut,

The American Exploration & Mining Association (AEMA) appreciates the opportunity to comment on the U.S. Forest Service (USFS) March 21, 2023 application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior withdraw 20,574 acres of National Forest System lands in Pennington, County South Dakota for 20 years. AEMA believes a withdrawal of this area is unnecessary and counterproductive, and we are vigorously opposed to the proposal.

Who We Are

The American Exploration & Mining Association (AEMA) is a 128-year-old, 1,400-member national trade association representing the minerals industry with members residing in 46 U.S. states, including South Dakota, 7 Canadian provinces or territories and ten other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations.

Our members take great pride in producing the metals and other important minerals America needs for national and economic security, as well as the materials people use in their everyday lives. We are proud of our members' contributions across the communities and regions where they operate, many of which are rural areas facing significant economic and social development challenges. Notably, the U.S. mining industry is the safest, most environmentally responsible

mining industry in the world. Our members have repeatedly demonstrated that mining and protecting the environment are compatible, as mineral producers make possible the development of society's basic needs and consistently minimize modern society's impacts on the environment.

A Mineral Withdrawal is Unnecessary

The purported purpose of the withdrawal would be to protect the cultural and natural resources of the Pactola Reservoir-Rapid Creek Watershed from the adverse impacts of minerals exploration and development. AEMA shares the belief that the values of the reservoir and watershed must be protected. However, AEMA firmly believes a mineral withdrawal is not necessary to protect those resources.

We believe there exists, without the proposed withdrawal, the protections and regulatory tools to ensure the watershed is protected while allowing the development of domestic mineral resources. Existing law, including the Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA), the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), South Dakota environmental laws and regulations, Forest Service and Bureau of Land Management surface management regulations and policies, as well as applicable state and local permitting and financial assurance requirements provide sufficient authorities and tools for the protection of all resources, while providing for multiple-use of the area.

The existing comprehensive framework of environmental laws, regulations and financial assurance requirements protect the environment, ensure public participation in the process, and ensure that modern mines are reclaimed and do not become tomorrow's abandoned mines.

A Withdrawal is Counter to Congressional Intent and our Nation's Needs

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. For example, the Mining and Minerals Policy Act (1970), the Federal Land Policy and Management Act (1976), the National Minerals, Materials Policy Research and Development Act (1980), the Energy Act (2020), the Infrastructure Investment and Jobs Act (2021), and most recently the Inflation Reduction Act (2022) all direct the Executive Branch agencies to respond to the Nation's need for domestic minerals.

For example, the proposed withdrawal violates the Mining and Minerals Policy Act of 1970, in which Congress clearly stated "that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs..."

Unfortunately, these Congressional directives have gone largely unheeded as more lands continue to be withdrawn from mineral entry and permitting timelines, costs, and risks have become intolerable. Our risky reliance on imported minerals is a direct result of five decades of

ignoring Congress' clear directives that minerals should be mined from public lands to help satisfy the Nation's need for minerals.

The Costs of Not Developing Minerals Must be Considered

The USFS and the BLM needs to consider the environmental and economic impacts of *not* developing the mineral resources in this area. Americans and the environment lose when we offshore our mineral requirements. It makes absolutely no sense to create mining jobs elsewhere and import minerals from countries with lower environmental and safety standards. President Biden's decarbonization aspirations demand that we minimize the carbon footprint of our minerals by getting them from domestic mines rather than creating the substantial carbon emissions to ship minerals from around the globe.

By keeping our existing mines operating and getting new mines in operation, the economic impact ripples out far and wide: to employees, mine suppliers, local economies and the downstream domestic industries we supply with our products. Not to mention the tax revenues mining generates for local, state and federal governments as a result of this economic activity. Few industries pack such an economic punch.

The economic and environmental impacts of not developing critical mineral resources constitutes a major federal action, and consequently should be, at a minimum, fully analyzed as part of an environmental impact statement for the withdrawal proposal.

Mineral Deposits are Rare

Mineral deposits are unique geologic phenomena. In a 1999 report, the National Research Council of the National Academy of Sciences recognized just how rare mineral deposits are: "Only a very small portion of Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places where economically viable deposits were formed and discovered." The Academy further noted that, on average, 1,000 mineral targets must be examined before discovering the deposit capable of becoming a mine. Every time we declare land off-limits to mining, we shrink the playing field and stack the odds higher against discovery.

According to the U.S Geological Survey's Mineral Commodity Summaries 2023, our country's import dependence for key mineral commodities has doubled over the past two decades, with the United States now 100% import reliant for 15 mineral commodities and greater than 50% import reliant for another 36, despite having tremendous mineral wealth. Our mineral dependency is at a record high, and it comes with serious consequences. Most recently, the COVID-19 pandemic and the Russian invasion of Ukraine laid bare the vulnerabilities that exist in critical U.S. supply chains including our reliance on imported minerals.

We Need a Reliable Domestic Mineral Supply Chain

There has been a lot of discussion within the Biden Administration and Congress on the need to secure domestic supply chains, and rightly so. Minerals and metals are the building blocks for

everything, from infrastructure and health care to national defense, clean energy and electric vehicles, necessitating a reliable domestic mineral supply chain.

In order to secure our supply chains, we must have access to search for and responsibly develop viable mineral deposits and be able to permit projects in a timely manner. Keeping lands open to exploration and development improves the odds of finding the “needle in the haystack” mineral deposit.

Unfortunately, already more than half of federal lands are off limits to mining. According to the Government Accountability Office, the federal government manages about 650 million acres, or 29 percent, of the 2.27 billion acres of land in the United States.¹ Former Department of Interior Solicitor, John Leshy (now a professor at the University of California Hastings College of Law), estimated in 2021 that of the approximate 650 million acres of public lands, roughly 400 million acres are set aside for conservation and preservation purposes and are functionally off-limits to mining.² Efforts to further restrict access such as this withdrawal proposal put American workers and the mining industry on the sideline when mineral demand is set to skyrocket to meet the Biden Administration’s green energy objectives.

The fact is, global mineral demand is skyrocketing. As noted in a report from the International Energy Agency (IEA), keeping global temperature rise to below 2 degrees Celsius above preindustrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition — reaching net zero globally by 2050 as the Biden Administration has called for— would require critical mineral inputs to increase sixfold by 2040.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Additionally, gold is used as an industrial metal in a broad range of applications, but demand is driven by the electronics sector which accounts for approximately 80% of gold used in technology, according to the World Gold Council. The metal is ubiquitous in most consumer electronics and automotive applications, where its chemical and physical properties combine to make it irreplaceable in many high-end devices. The trend of electrification is providing support for gold demand in the electronics sector, with most types of semiconductor chips using the metal either as a coating, or in the form of thin bonding wires. While electronics is by far the largest and most important source of demand, gold is found in a multitude of applications which have a direct impact on all of our lives.

President Biden has promised to convert the entire U.S. government fleet – about 640,000 vehicles by 2030 – to EVs. That plan alone could require a 12-fold increase in U.S. lithium production to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt - and that’s just

¹ GAO Letter report to Senator Tom Udall entitled “*Hardrock Mining: Availability of Selected Data Related to Mining on Federal Lands*,” May 16, 2019, available at: <https://www.gao.gov/assets/gao-19-435r.pdf>.

² John D. Leshy, *America’s Public Lands – A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021.

for the U.S. government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. It's time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives. We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent.

Recycling will play an important role in meeting increasing metal demand, but it will not be enough. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about ten percent of the minerals that will be needed. We simply need more mines.

Made in America must include "mined in America" and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

The Definition of Valid Existing Rights Should be Clarified

The USFS acknowledges in the *Federal Register* notice that the proposed withdrawal is subject to valid existing rights (VER). However, the USFS should further clarify that all rights pursuant to the Mining Law, including the access rights at 30 U.S.C. § 22 and in 16 U.S.C. § 478 are included in the definition of valid existing rights.

Furthermore, it should be clarified that for rights pursuant to the Mining Law and 16 U.S.C. § 478, a VER is not synonymous with a "valid claim" (i.e., a claim with a discovery of a valuable mineral deposit). Nor is validity of a claim a prerequisite to a VER. A valid claim is one kind of a VER. However, the universe of VERs under the Mining Law is much broader than a valid claim. Both 30 U.S.C. § 22 and 16 U.S.C. § 478 specifically establish rights of ingress and egress on public lands with or without a mining claim that are a VER.

AEMA suggests the following definition of valid existing rights be included:

Valid existing rights: Documented, legal rights or interests in the land that allow a person or entity to use said land for a specific purpose and that are still in effect. Such rights include but are not limited to fee title ownership, mineral rights pursuant to the Mining Law as amended, rights-of-way, easements, permits, and licenses. Such rights may have been reserved, acquired, leased, granted, permitted, or otherwise authorized over time. Although a valid mining claim is one type of a valid existing right, the term "valid existing right" is not synonymous with a valid claim. The Mining Law grants valid existing rights, including rights of ingress and egress (e.g., 30 U.S.C. § 22) as preserved by 43 U.S.C. § 1732(b), that apply to the public lands with or without a mining claim.

Conclusion

Mined products are key to the advanced, technological, and more healthful existence we all enjoy. Like food and water, minerals are essential, and it's more important than ever for the U.S. to responsibly utilize our own resources. Securing our domestic mineral supply chains is essential for our environment, our communities, and all Americans.

AEMA and our members oppose removing lands from mineral entry, but at the very least, every time a withdrawal or land use restriction is proposed to remove federal land from mineral entry, the decision makers should develop a full understanding of the land's mineral endowment.

In the United States, most hardrock mining takes place on federal land, after a lengthy and rigorous permitting process that involves local, state and federal regulatory agencies and many diverse stakeholders. Even after the mine begins operation, it must adhere to a myriad of environmental laws and regulations, and financial assurance instruments ensure that cleanup and restoration will take place when mining activities cease. However, mineral deposits are unique and rare. Unlike other economic development or infrastructure projects that have some flexibility in choosing where they are sited and can move accordingly - mineral deposits are where they are.

Shrinking the available land base where mineral exploration and mining are allowed reduces the number of future mineral discoveries that can become mines. This ultimately increases the Nation's reliance on foreign minerals and thwarts the country's goals to increase domestic production and become more mineral independent.

The BLM and the USFS have numerous tools in their respective "tool boxes" to protect the environment, prevent unnecessary or undue degradation, minimize or mitigate adverse environmental impacts, address cultural resource and threatened and endangered species issues and ensure compliance with all applicable Federal and state environmental laws and regulations. While a mineral withdrawal is one of those tools, it is, or at least should be, the tool of last resort. A mineral withdrawal is an extreme action and should be considered and used only when all other tools have failed to protect the environment. With respect to the proposed withdrawal, there is no evidence that the other tools in the "tool box," have failed to protect the environment and important resources. Thus, there is no justification for a mineral withdrawal.

For all the reasons stated above, the Secretary of the Interior should reject the withdrawal proposal.

Sincerely,



Mark Compton
Executive Director