

## **Biden-Harris Administration Fundamental Principles for Domestic Mining Reform**

**February 22, 2022**

There is a growing need for responsibly sourced critical minerals to meet our climate, infrastructure, and global competitiveness goals. There is no single Federal agency with authority over domestic mining, and the legal framework for mining on Federal public lands was enacted in 1872 – 150 years ago – and does not provide for royalties or a comprehensive system to evaluate, permit, develop and reclaim mines. As the Biden-Harris Administration advances its critical minerals strategy, including expanding domestic production in a timely manner, we must ensure that our actions are conducted with strong environmental, sustainability, safety, Tribal consultation and community engagement standards so that the American public has confidence that the minerals and materials used in our electric vehicles, smartphones, solar panels and other technology are sourced under responsible social, environmental and labor standards and that the Administration wisely stewards our shared natural resources for Americans today and future generations.

1. **Establish Strong Responsible Mining Standards:** Regulatory and legislative mining reform should create a level playing field by establishing strong environmental, sustainability, worker, health and safety, Tribal consultation, and community engagement standards for mineral exploration and development so that Americans know that the minerals found in their cars, phones, and other products adhere to strong, responsible mining standards. This includes establishing specific up-to-date, financial assurance, operational, performance, and reclamation standards, which require protection of the environment during exploration, discovery, active mining, reclamation, and post-closure. These standards should also reduce the risk and consequences of legacy pollution, decrease the likelihood of catastrophic events, such as tailings impoundment failures and protect taxpayers against companies that go bankrupt and leave operations inadequately closed. In addition, efforts must also be in place to apply the standards to minerals from foreign sources, which may compete in the domestic market, to also include reliable traceability of the minerals and materials which enter the U.S. economy Efforts should ensure that mining jobs are good, family-sustaining, safe jobs.
2. **Secure a Sustainable Domestic Supply of Critical Minerals:** Domestic availability of critical minerals touches all points of the supply chain: resource, processing, manufacturing, use, and recycling. The clean energy transition will necessitate an overall 400-600 percent increase in global demand for key critical minerals like lithium, graphite, cobalt and nickel to meet our climate goals, and for some minerals the increase will be many times higher. Currently, the U.S. is reliant on Chinese imports for many of these minerals in processed form. To meet current and future demand, and to break our reliance on single sources while creating good jobs for American workers, mining reform should assure that a reliable and sustainable supply of critical minerals can be provided both through environmentally and socially responsible mining and processing projects and other sustainable sources, such as recycling and recovery from unconventional sources,

such as mine wastes including mine tailings, mine-influenced waters, and coal ash. Provisions for recovery and reprocessing of critical minerals must ensure existing selected and implemented remedies or reclamation measures are protected and recovery does not exacerbate existing site conditions.

3. **Prioritize Recycling, Reuse and Efficient Use of Critical Minerals:** The recycling, reuse and efficient use of existing mineral assets (wastes and recyclable materials) should be prioritized and commercially viable methods supported and promoted. The resources available from these sources should be assessed and relied upon, where possible, before developing new sources. This includes developing recycling programs; designing products that facilitate recycling at end-of-use; reprocessing mine waste, mine influenced waters, and ash material; and promoting other engineering and innovation advancements, such as reducing the quantity of inputs and identifying substitutes for critical minerals to reduce the need for new mining of raw minerals and reliance on unsustainable sources.
4. **Adopt Fair Royalties So Taxpayers Benefit:** Congress should establish a royalty for all minerals extracted from public land (e.g., coal and oil and gas<sup>1</sup>) in order to provide a fair return to taxpayers. Hardrock mining is the only extractive industry on U.S. public lands that does not pay a royalty; states and virtually all other countries charge royalties on hardrock mines. Proceeds from these royalties should be invested to prevent and mitigate adverse environmental and social impacts, to improve environmental and economic outcomes for underserved communities, improve permitting and compliance, advance efficient and clean mining and remediation technologies, and support Tribal Nations and Tribal communities impacted by development on public lands.
5. **Establish a Fully Funded Hardrock Mine Reclamation Program:** There are over 500,000 legacy mining sites in the western U.S. alone. Congress should establish a durable program to remediate legacy abandoned hardrock sites and mines and fund the work through reclamation fees, just as occurs with the coal industry and abandoned coal mines. These fees should support well-paying jobs to remediate the environmental impacts of abandoned mine sites and assist in community redevelopment. Congress should also provide legal certainty for Good Samaritans working to remediate legacy pollution, including providing for permits and, as appropriate, exemptions from or specialized provisions of environmental laws and regulations that may otherwise dissuade Good Samaritans from undertaking cleanup activities. This should include consideration of projects which may responsibly extract critical minerals from legacy mine wastes, thereby avoiding the need for additional greenfield mine development.
6. **Conduct Comprehensive Planning:** Like other uses of public lands, mining should be governed by comprehensive federal land-use assessments and planning. The right to

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<sup>1</sup> The royalty rate officially charged for oil, gas, and surface coal drilled or mined from U.S. public lands is 12.5 percent. A royalty rate of 8 percent is applied to subsurface coal mines.

explore and develop mineral resources on public lands not otherwise withdrawn from mining must be managed to ensure appropriate and sustainable use of public resources. Planning, assessment, mine approval and permitting decisions by federal agencies should be conducted in a timely, transparent, and sufficient manner to avoid, minimize, and mitigate for impacts generated by mining operations over the short and long term. In addition, any legislative reforms must ensure that environmental safeguards, such as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, and associated regulations, are not circumvented, repealed, or weakened for the purposes of mining, regardless of the importance of the targeted resource. Processes must also meet government to government responsibilities for consultation with Tribal nations.

7. **Provide Permitting Certainty:** There is no comprehensive law that provides clear and comprehensive direction for permitting hardrock mines. Indeed, the primary statute governing hardrock mining on public federal lands—the General Mining Law of 1872—is now 150 years old and has never been significantly revised. A new law covering mineral extraction or updates of existing mining regulations should provide clear, consistent standards and processes for mine exploration, operations, closure, and plan approvals on public land. Consistent with a whole-of-government approach, federal agencies will improve interagency cooperation and coordination during environmental review and permitting. This will be done in concert with project proponents, state, and local governments as well as Tribal Nations to improve permitting times, reduce conflicts with local communities, and improve environmental, social, and economic outcomes. Using transparency, such as the Project Permitting Dashboard, can provide real-time clarity for proponents, agencies, and the public.
8. **Protect Special Places:** Some areas must be off-limits to mining and protected from mining impacts. Our federal land managers, in consultation with other decision makers, must have discretion to reject projects that threaten sensitive ecosystems, tribal resources, and communities where pollution prevention and mitigation are not possible. Agencies should retain and use their authority to withdraw lands from mineral entry, where necessary.
9. **Solicit Community Input and Conduct Tribal Consultation:** There must be regular, meaningful and robust consultation with Tribal Nations. There must also be regular, robust, and meaningful project-level public engagement processes prior to any key decision-making. Planning must also allow upfront input from a broad set of stakeholders including local and state governments, workers, residents, and Environmental Justice communities about whether and under what conditions mining might occur.

10. **Utilize the Best Available Science and Data:** Any decisions on development should be guided by the extensive public and private data collected to map critical mineral resources, identify key fish and wildlife habitat, protect workers, protect community health and safety, and implement best practice avoidance and mitigation strategies. Agencies should, as appropriate work with Indigenous traditional ecological knowledge holders and Tribal Nations to assure that their knowledge and expertise are considered and included in the process. This data should also inform public engagement and Tribal consultation.
  
11. **Build Civil Service Expertise in Mining.** Federal agencies have lost mining expertise due to retirements and downsizing. Federal agencies should improve mining and material science expertise and fully resource agencies and offices, both through hiring and interagency coordination. This will ensure that agencies have sufficient qualified personnel and resources to accomplish resource assessments, environmental review, permitting, and consultations throughout these processes in an efficient and timely manner, as well as vigorously enforce our laws and regulations.