Testimony Before
House Natural Resources Subcommittee on Energy and Mineral Resources
Hearing on H.R. 520, the National Strategic and Critical Minerals Act

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Introductory Statement

Chairman Gosar, Ranking Member Lowenthal and members of the Committee, I would like to sincerely thank you for inviting me to testify before you today on this very important issue. My name is Douglas Stiles and I am General Manager for Hecla Montana, a wholly owned subsidiary of Hecla Mining Company. My experience includes over 20 years of regulatory compliance, environmental management, and permitting within the mining and pipeline sectors. I currently work for Hecla Mining Company (NYSE: HL) which is the oldest precious metals mining company in North America, established in 1891 in northern Idaho's Silver Valley. We are the United States largest primary silver producer, third largest producer of lead and zinc, and a leading gold producer. We currently have U.S. operations and projects in Alaska, Idaho, Colorado, Nevada, and Montana. We appreciate this committee's attention and willingness to listen to various perspectives regarding the permitting of strategic and critical minerals projects.

In my experience, compared to other major mining jurisdictions, permitting a mine in the U.S. is by far the most challenging. This is not due to a lower international standard of environmental requirements – Canada, Australia, Chile, Germany just to name a few all have environmental standards that are at least as protective as the U.S. standards. What these other countries have are permitting processes that are much more clearly defined and that have the expectation that a decision will be made within a given time frame. The U.S. process is fraught with duplication, inefficiencies, a lack of reasonable time frames/sideboards, a lack of coordination among federal agencies and multiple, never-ending litigation. It is by far the most arduous and tortuous mine permitting process in the world. While the rule of law generally favors the Americas, this long and uncertain process creates disincentives to invest here.

The United States is Increasingly Dependent on Foreign Minerals for All Domestic Needs

As one of the world's largest consumers of minerals and metals, the U.S. has become increasingly dependent on foreign sources of minerals and this vulnerability has serious national defense and economic consequences. The United States is now import-dependent for 50 different metals and minerals – and 100 percent import-dependent for 21.[1] That's half of the naturally-occurring elements on the Periodic Table. According to the USGS, today we import about 33% of the copper we need and approximately 62% of the silver we need. This troubling trend line is exacerbated by the decrease in U.S. exploration activities that are a prerequisite to expanded or new operations necessary to increase domestic mineral supplies. Last year marked the fourth consecutive year of globally declining exploration expenditure, with the U.S. showing the sharpest pullback in exploration last year, with its budgets falling more than 30%.[2] As a result, the U.S. attracted only approximately 7

[1] USGS Mineral Commodity Summaries, 2018.
[2] S&P Global Market Intelligence, *Worldwide Mining Exploration Trends*, March 2017.

percent of the worldwide exploration budget in 2016, which is down from nearly 20% in the late 1990s.

Our growing dependence on imports leaves many key domestic industries unnecessarily vulnerable to disruptions from extended, complex and fragile supply chains. Just this week, the Wall Street Journal published an article detailing how Chinese companies are seeking to and successfully dominating the global cobalt supply chain[3] which is currently concentrated in Congo. Chinese firms currently produce 77% of refined cobalt chemicals, up from 67% in 2012, and soon could command more than 90% of the market. Additionally, this same article states that many U.S. and European companies "have grown wary of" cobalt suppliers from the Congo partly because some of the miners are children. Safety and environmental standards are nowhere to be found in many of the Congolese operations.

Fortunately, both the Administration and Congress have acknowledged the severity of the problem and indicated that infrastructure investment will be at the core of this year's economic agenda. However, the infrastructure crisis cannot be solved without the raw materials required for the priority projects. This is something Chairman Gosar correctly noted at a March 21 hearing in this Subcommittee last year, when he said that "expedited permitting regimes for infrastructure projects will have little to no effect if the mines that supply materials to those projects do not share the same accelerated process."[4]

Permitting Delays Are the Most Significant Impediment to Providing Additional Domestic Supplies of Minerals for Infrastructure Projects

The length of time it takes to secure permits in the U.S. is a key reason behind this dependency on foreign sources. The U.S. has one of the longest permitting processes in the developed world for mining projects. In the U.S., necessary government authorizations for new locatable, hard rock projects now take approximately 7 to 10 years to secure or even longer in our experience, placing the U.S. at a disadvantage in securing critical supplies of strategic minerals. Unnecessary delays and duplication in the permitting process strands capital and discourages long term investments in producing domestic minerals. Compare the exceedingly long permitting times here with Chile, Canada and Australia where the average permitting time is between 2 and 3 years; incorporating essentially the same environmental standards. If land managers and environmental regulatory professionals in these countries can get the job done in 2-3 years, so can the U.S. To be clear, valid concerns about environmental protection need to be fully considered and addressed. At the same time, we should not trap minerals projects in a limbo of duplicative, unpredictable and endless review without a decision point. We should not confuse the length of the process with the rigor of review.

Authorities ranging from the National Academy of Sciences to the Departments of Energy and Defense to international mining consulting firms have identified permitting delays as among the most significant risks and impediments to mining projects in the U.S.[5] Most recently, the U.S Government

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[3] Patterson, S. and Gold, R., There's a Global Race to Control Batteries – and China is Winning. *The Wall Street Journal.* 12 Feb. 2018.

[4] https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401672

[5] *See* National Resources Council*, Hardrock Mining on Federal Lands,* National Academy Press (1999); U.S. Department of Energy, *Critical Materials Strategy* (Dec. 2010); U.S. Geological Survey USGS, *the Principal Rare Earth Elements Deposits of*

Accountability Office (GAO) reported the "length of permitting process for new mines" as a significant factor in potentially limiting domestic production and highlighted the need to streamline the mine permitting process to mitigate supply risks[6].

In my experience, there are several key drivers behind the long permitting process – many of which are addressed by H.R. 520. I would like to share one example of what I believe is an excessively long permitting process.

The Rock Creek Project

The Rock Creek Project (Rock Creek) is a proposed underground copper/silver mine located in Sanders County, Montana. Rock Creek was first proposed by Asarco in 1986 with the filing of a Plan of Operations with the U.S. Forest Service (USFS). This disturbance footprint is less than 500 acres with most (300+ acres) occurring on private property located within an existing disturbance and utility corridor. As documented in the lengthy project administrative record, the project has **widespread** State and local support.

The ore body lies beneath the Cabinet Mountains Wilderness and was discovered prior to passage of the Wilderness Act of 1964. That Act provides the right to mine valid existing mining claims. The characteristics of the ore body are unique in that the host mineralization is quartzite or, after processing, beach sand, which means that acid mine drainage will not be an issue. Rock Creek also is unique in that another mine (the Troy Mine) located approximately 14 air miles away within the same ore body, was permitted, constructed, and operated for almost 30 years with no significant environmental impacts. In fact, water quality from the Troy Mine shows no evidence of acidification and the closure plan that was updated and approved by both State and Federal agencies (including the EPA) does not require active water treatment. As with almost any natural resource development project in the US, the Rock Creek project has been opposed by a collection of litigants almost since day one. The scope and footprint of the proposed project also has not changed substantially in the 30+year permitting process, as evidenced by the lengthy project record. In fact, the only substantial project changes occurred during completion of the initial Environmental Impact Statement (EIS) in the early 2000's resulting from agency requested modifications to lessen potential impacts. **Since that time, nothing has changed with respect to the project plan.**

The USFS and Montana Department of Environmental Quality (DEQ) jointly completed a FEIS and Record of Decision (ROD) in 2001. This was followed by several appeals and litigation. The U.S. Fish and Wildlife Service (FWS) withdrew its Biological Opinion (BO) in 2002 to settle a lawsuit causing the USFS to withdraw its part of the 2001 ROD. A new BO and a new ROD were issued in 2003. Numerous additional appeals were filed leading to a new BO in 2006 which was further supplemented in 2007. Additional litigation again followed and in 2010 the US District Court remanded the 2003 FEIS back on to the USFS on four NEPA procedural issues for further action and vacated the 2003 ROD.

In October 2017, the FWS completed its **5th Biological Opinion** for the Rock Creek project, all concluding no jeopardy. The agency has drafted 5 BO's due primarily to the extended permitting and litigation period for the project, which resulted in "new information". While the project description

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the United States—A Summary of Domestic Deposits and a Global Perspective, 2010; Behre Dolbear, *Where Not to Invest* (2015).

[6] GAO Report 16-699, *Advanced Technologies: Strengthened Federal Approach Needed to Help Identify and Mitigate Supply Risks for Critical Raw Materials,* Dec. 2016

has not changed, the project has been hampered by the need to repeat ESA consultation in spite of the exemplary plan for grizzly bear mitigation proposed some 20 years ago.

In fact, in 2011, the 9th Circuit Court of Appeals reviewed the 2007 biological opinion for Rock Creek. In their unanimous decision upholding the FWS decision, the 9th Circuit stated that the mitigation plan was so robust that the FWS concluded that it "*would in fact improve conditions over the long-term over the existing conditions, ultimately promoting the recovery of the [local] grizzly bear population.*" Getting to this point; however, required decades of Agency review including numerous delays and litigation – all for a project which has not significantly changed in description since the time of plan of operations submittal in 1986. Sadly, due to endless litigation and permitting delays little of this mitigation plan has been implemented on the ground. In addition, the local communities in desperate need of economic opportunity have also suffered.

In 2011, the USFS commenced development of a Supplemental Environmental Impact Statement (SEIS) in response to the U.S. District Court Decision issued in 2010. Unbelievably, this process is just now wrapping up - nearly 7 years later the Forest anticipates issuing its final ROD and FSEIS in early 2018. There is almost no doubt that additional litigation will follow this decision.

This highlights one of the key issues with the permitting/litigation /permitting cycle prevalent in almost all natural resource projects today – even when projects have been assessed, updating impact assessments for no other reason than the passage of time frequently result in extended permitting timeframes and fresh litigation fodder.

Causes of Permitting Delays

In my experience, permitting delays are frequently caused by ineffective project management, unnecessary bureaucratic red tape, inefficient workforce issues with the Bureau of Land Management (BLM) and USFS, and multiple appeals and litigation. Passage of H.R. 520 would go a long ways towards addressing the causes of permitting delay.

Lack of Lead Agency Coordination: Mining projects require a significant number of permits issued through multiple Agencies. A presentation prepared by the Alaska, Department of Natural Resources, Office of Project Management and Permitting[7] lists no less than **27** possible permits and authorizations through **13** different agencies required for large mines in Alaska. With so many permits and responsible agencies, it is critical that one lead agency assume permitting accountability to eliminate duplicative analysis and process. This is just one state in which Hecla operates. Consider the federal government's duplicative and arduous process layered over the top, it creates an unsustainable permitting process for project proponents.

Lack of firm timeframes or consequence for failure to adhere: Permitting agencies generally have the authority to impose and enforce timeframes for various environmental analyses or interagency consultations yet fail to establish them. In cases where timelines are established (such as ESA consultation) they are frequently not met with no consequences for failure.

Training on minerals and mining and NEPA process: Many resource professionals are experienced in grazing, timber and recreation, but are not informed on minerals and mining development. Additional training on the NEPA process and the role of lead agency is critical to improving the federal permitting

[7] Alaska Department of Natural Resources (2014). *The Process for Large Mine Permitting in Alaska* [PDF]. Retrieved from http://dnr.alaska.gov/mlw/mining/largemine/lmptprocess20151013_dnrwebsite_color6perpage.pdf

process. The lead agency must lead and in many cases I have seen it defer to cooperating agencies or other stakeholder interests, instead of taking charge and leading the permitting process. The failure to lead can be attributed back to the lack of strong project management skills within the Agencies.

Inefficient personnel system: Unfortunately, too often there are changes in management personnel during the project, changes in District Rangers, Forest Supervisors and BLM District Managers all which leads to reeducation, reevaluations and loss of time in the permitting process. For example, the Rare Earth Elements project in Wyoming required over 11 months to get an EIS project manager assigned to the project. Clearly a more efficient personnel system can be implemented to get people in place to manage projects. This factor is compounded by the fact that in the USFS performance reviews, promotions and raises do not include an employees' performance in managing mineral projects.

Litigation: We often hear BLM and USFS say they must make these documents bullet proof. This makes all issues potentially significant which is counter to NEPA which clearly envisioned the lead agency following scoping would focus on those truly significant issues that could affect the environment (40 CFR 1502.2).

Many mining projects "die from a 1000 cuts" through multiple appeals and litigation. The Rock Creek example illustrates how litigation is an effective strategy to delay and string out project development. Anti-mining groups have sued multiple times and continue to litigate on ESA and NEPA issues in separate litigation efforts.

Agency fear of litigation also forces voluminous EIS documents that routinely exceed several thousand pages as every conceivable issue is examined in excruciating detail. This was not the intent of NEPA statute and should not be the goal of any EIS. Not only do these tomes drive lengthy permitting timeframes, they also have the potential to dilute key potential effects as the critical few are lost in the sea of the marginal many.

Recommendation – Support passage of H.R. 520 and Litigation Reform

Understanding the critical permitting issue facing domestic mining industry, Congressman Mark E. Amodei introduced H.R. 520 designed to streamline the permitting process to develop domestic sources of minerals and mined materials. We strongly support this piece of important legislation. This legislation has passed House five times in the last three Congresses and enjoyed bi-partisan support. The legislation carefully addresses the deficiencies of the outdated U.S. permitting system without changing environmental and other protections afforded by current laws and regulations. The bill provides for efficient, timely and thorough permit reviews and incorporates best practices for coordination between state and federal agencies.

The one critical and consistent source of permitting delay not addressed by H.R. 520 is litigation reform. The current legal system rewards plaintiffs for litigating projects and adds years to the permitting process. This legal process grinds down both the agencies that must defend their permitting decisions and the company's in hopes they will simply walk away from the project. While the company has millions of dollars and hundreds of high paying jobs at risk, project opponents risk nothing with a chance to profit significantly by recovering their attorney fees through the Equal Access to Justice Act (EAJA). Furthermore, there is really no downside for any group that challenges a permit – even if they lose on all counts and are denied EAJA compensation, they are not required to compensate either the government or project proponents for the legal defense or project delay.

Since many of the serial litigant groups have large in-house legal staff supported by donated funds, their cost to litigate is relatively small while creating marketing material for additional fundraising. A "loser pays" approach on a count by count basis, among other common-sense legal reforms would go a long way towards limiting litigation to only legitimate issues of legal importance.

It's incumbent upon all the federal agencies to identify regulations and policies that needlessly delay or prevent mineral resource development from occurring, further jeopardizing the viability of downstream investments such as manufacturing and infrastructure projects.

Conclusion

Domestic mining is an important national economic driver. Mining's direct and indirect economic contribution includes nearly 2 million jobs with wage and benefits well above the state average for the industrial sector. In addition, domestic mining generates $46 billion in tax payments to federal, state and local governments.

Domestic mining is also critical to domestic production and manufacturing of next generation technologies. From cutting edge batteries to renewable energy production – all require more mined materials per unit of energy produced or stored. As the future unfolds, the U.S. needs to put itself into the global driver's seat by recognizing the strategic importance of the entire material supply chain.

Yet, much of our domestic mineral resources remain locked beneath our feet by an outdated and inefficient mining permitting system plagued by unnecessary delays and redundancies at the local, state and federal levels. To unlock this vast potential for the benefit of downstream infrastructure projects we urge Congress to work together on enabling policies that ensure timely and responsible access to U.S. mineral and metal resources. If we do not, and become increasingly marginalized as a supplier of these essential resources, the consequences are severe for our nation's global competitiveness as other countries have recognized the importance of mined materials to unlocking future industrial potential. The U.S. cannot be left in the rear-view mirror of this future by relying upon state-sponsored enterprises to supply U.S. manufacturing with the basic raw materials required to remain even remotely competitive on the future global landscape.

Thank you for the opportunity to testify today.