Testimony of
Katie Sweeney
Executive Vice President & General Counsel
National Mining Association
before the
United States Senate
Committee on Energy Natural Resources

Full Committee to Examine and Consider Updates to The Mining Law Of 1872

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Good morning Chairman Manchin, Ranking Member Barrasso and members of the committee. I am Katie Sweeney, Executive Vice President and General Counsel of the National Mining Association (NMA). The NMA is the national trade association representing the producers of most of the nation's hardrock metals, coal, industrial and agricultural minerals; and, manufacturers of mining and mineral processing machinery, equipment and supplies. NMA members produce hardrock minerals and metals on private, state and federal lands throughout the United States.

Thank you for the opportunity to be here with you today to discuss such an important topic. I would like to extend a special thank you to Senator Catherine Cortez Masto, the new chair of the Public Lands, Forests, and Mining Subcommittee, for working with industry and organizing an important mining briefing and tour in Nevada spanning from Reno to Elko for the committee in August. The Mining Law is a critical tool in our nation's arsenal to help develop and support key sectors of the economy and aid in economic recovery. As the front end of the supply chain for manufacturing, energy and infrastructure, healthcare, national security, and many other sectors, mining is an essential industry that stands ready and willing to aid President Biden in his "Build Back Better" priorities. With a focus on mining more safely and environmentally responsibly than many of the countries that we are currently reliant upon for our mineral imports, made-in-America should also mean mined-in-America.

Ever-increasing Demand for Minerals

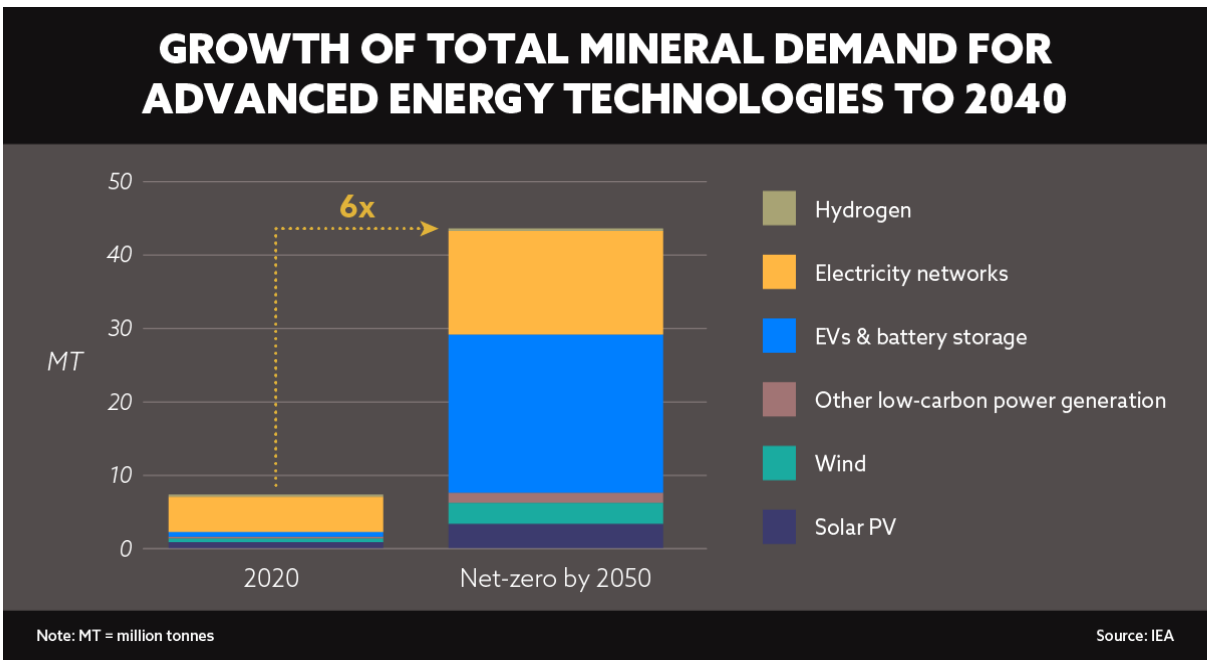
In 2020, even as COVID-19 impacted the landscape of our nation and caused so much harm in our communities, the mining industry employed an estimated 1.2 million jobs in all 50 states. Annual salaries for these workers – often in rural areas – averaged more than $81,000, well above the national average. Further, from 2019 – the most recent numbers available – domestic mining activity generated an estimated $18 billion in federal, state and local taxes that supported direct, indirect and induced taxes of $41 billion.

The mining industry provides the metals and minerals necessary for economic recovery and the growth, innovation and advancements that are necessary to meet the needs of tomorrow. This can only continue to be accomplished by making careful policy decisions today.

In 2017, the World Bank projected demand for targeted minerals would grow more than 1,000 percent due to the global focus on new energy technologies.[1] The World Bank's 2020 report predicted an astounding 500 percent increase in broad categories of mineral demand to feed the needs of emerging technologies.[2]

More recent estimates from the International Energy Agency (IEA) and others show those estimates may have been far too conservative and that demand for some minerals could grow by more than 40 times by 2040. According to IEA:

- Lithium demand is anticipated to grow by more than 40 times by 2040, followed by graphite, cobalt and nickel at around 20-25 times;
- Copper demand for grid infrastructure and electrification more than doubles by 2040;
- Demand for cobalt is expected to be anywhere from 6 to 30 times higher than today's levels; and
- Rare earth elements may see three to seven times higher demand in 2040 than today.[3]



Just as the world began to awaken to the impending exponential growth in demand, the pandemic unleashed a massive disruption of supply chains putting a renewed focus on

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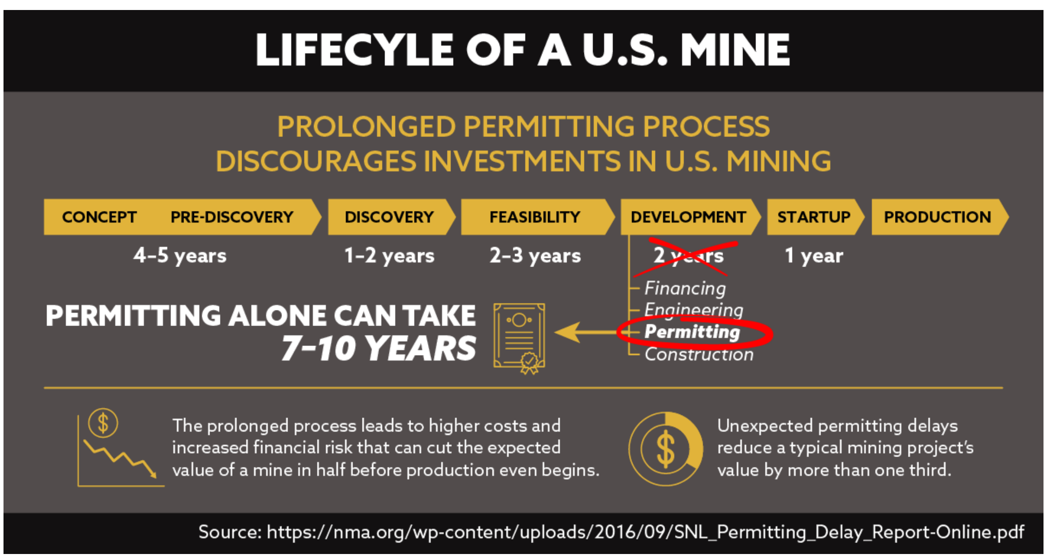
[1] https://documents.worldbank.org/en/publication/documents-reports/documentdetail/207371500386458722/the-growing-role-of-minerals-and-metals-for-a-low-carbon-future
[2] https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf
[3] https://iea.blob.core.windows.net/assets/24d5dfbb-a77a-4647-abcc-667867207f74/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf

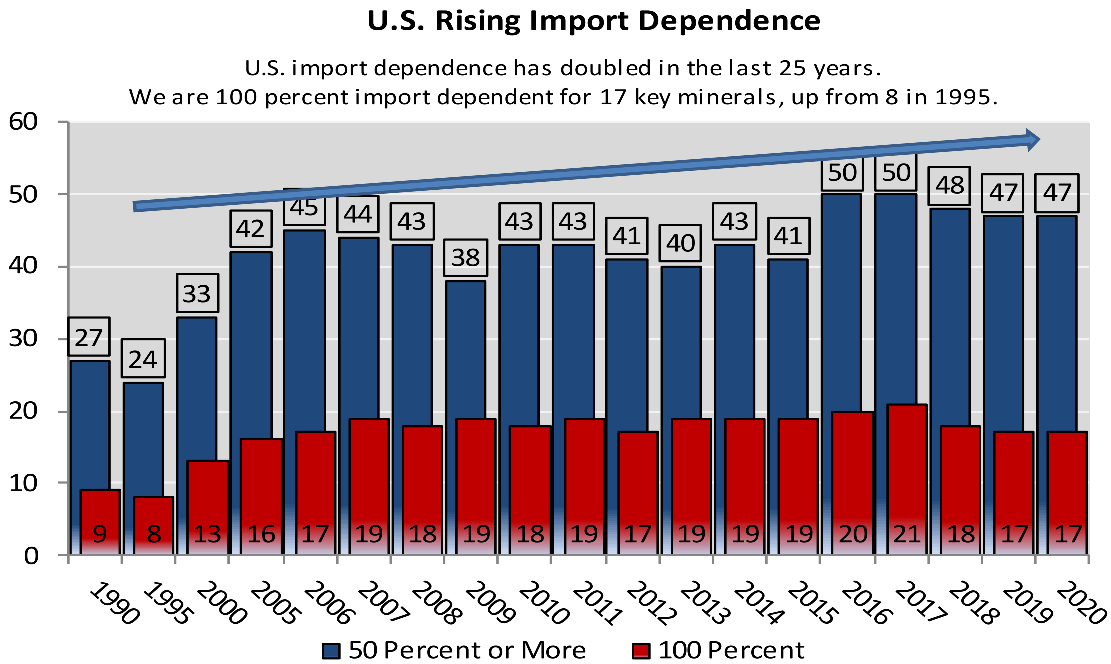
mineral supply chain risks. The Biden administration has acknowledged the importance of the mining industry to its goals through the January “Made in America” Executive Order’s acknowledgment that Made in America means Mined in America, and the American Supply Chains Executive Order expressing the need to secure our mineral supply chains. With over $6 trillion worth of mineral resources here in the United States, a highly trained and highly compensated workforce, and world-class environmental and safety standards, the U.S. mining industry can help the nation meet ever-increasing demand for minerals for electrification, infrastructure and manufacturing needs. And there is significant public support for using our own resources rather than increasing reliance on foreign sources. According to recent polling conducted by Morning Consult, 84 percent of Americans believe any “Made in America” agenda, such as the administration’s effort to win the electric vehicle revolution, should use domestically sourced minerals.

However, there is real room for improvement. To improve supply chain security, we must also have a robust domestic mineral supply chain. That includes more smelting, processing and refining capabilities in the U.S. necessary to claw back these essential processes from geopolitical adversaries like China, which controls more than 80 percent of global rare earth element production and significant mineral processing capabilities.

Nearly two decades ago, the U.S. attracted almost 20 percent of the world’s total mining investment. Unfortunately, in the time since, there has been a sharp decline in U.S. exploration investment. This is not due to lack of resources, but rather a lack of confidence in the U.S. as a viable mining jurisdiction in which to invest hundreds of millions of dollars in upfront costs due to duplicative, inefficient and costly permitting timeframes, making the U.S. more dependent on other countries for metals. It currently takes between seven to 10 years – or longer – to permit a mine in the U.S. In Canada and Australia, which have environmental standards comparable to the U.S., it takes two to three years to complete the same process.



The U.S. is increasingly vulnerable to supply chain disruptions and retaliation from geopolitical adversaries due to our ever-increasing reliance on imports for these essential resources. Less than half of the mineral needs of U.S. manufacturing are met by domestically produced minerals, which leaves our economy and national security at a strategic disadvantage. The U.S. Geological Survey's annual commodity summary reports that we now find ourselves entirely import dependent for 17 key mineral resources and more than 50 percent import dependent for an additional 29. Of the 35 mineral commodities listed as essential for U.S. economic and national security, China is the top producer or top supplier for 23 of them.[4]



Source: USGS Mineral Commodity Summaries 1991 -2021 editions

In order to further support new domestic production, a robust domestic supply chain that includes minerals and metals sourced, refined, processed and smelted within our borders, we need to build on the important work done by this committee. This committee has led the way in educating policymakers and the public on the role of mined materials as the front end of the supply chain for a modern way of life. Thank you for your leadership on these issues, especially your awareness of the impediments that stand in the way of securing our mineral supply chains such as the inefficient permitting processes that impair the industry's global competitiveness. This committee has been solution-oriented and has worked to take recent positive steps through both the bipartisan American Mineral Security Act and the Senate Infrastructure Legislation to improve permitting timeframes while maintaining the rigor of the reviews. These types of actions will attract investment, reshore essential supply chains and build the materials industrial base needed to underpin new technologies and innovation.

Current Reconciliation Process

Today's hearing addresses a very important topic – the examination and consideration of updates to the Mining Law. As the NMA sees it, we are at a crossroads; the direction we

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[4] https://www.usgs.gov/centers/nmic/mineral-commodity-summaries

take on Mining Law can either help secure domestic mineral supply chains or drive mining investments offshore.

The current legislation being considered through the budget reconciliation process in the U.S. House Representatives contains many policy changes detrimental to a healthy domestic mining industry. With so much in the balance, budget reconciliation legislation is not the right vehicle for this dialogue. There are numerous issues outside the scope of reconciliation that should be considered in tandem to changes to the Mining Law with good Samaritan cleanups and review of permitting regimes being prime examples. We welcome the opportunity to engage in a process not constrained by the vagaries and confines of reconciliation.

For more than a decade, we have seen legislative proposals reintroduced calling for a gross royalty on new and existing mining operations like those included in the U.S. House reconciliation legislation. These, in combination with a displaced material fee or dirt tax on the same material, would result in severe reduction of new operations and economic infeasibility to move forward on a project. For existing operations, a new gross royalty that was never accounted for in the mine plan of operation would erase profitability, potentially leading to an early mine closure.

If the new, punitive gross royalty and dirt tax proposals currently in the U.S. House reconciliation legislation are allowed to continue, no amount of permitting reforms will make the U.S. an attractive investment jurisdiction. The mining industry has long worked to engage with Congress in a bipartisan fashion to enact reasonable amendments to the Mining Law, including a royalty. The reconciliation process, however, is counterproductive to the careful and comprehensive negotiations on these issues if consensus is to be reached.

Mineral mining is unlike other natural resources production. The amount of processable material produced can be less than a percent or ounces of a ton of displaced material. That processable material must then go through many steps of being beneficiated, treated and smelted, including cracking the minerals to produce the metal. A tiny fraction of millions of tons of displaced material and rock, in addition to costly processing, ultimately produces a salable product.

Another key element to consider when discussing a federal royalty is that hardrock mining companies pay income and other federal state, and local taxes where they operate. This cumulatively makes up the total “government take” (royalties, taxes and other fees) paid by mining companies operating in the U.S. For many of our companies, the existing government take is close to 40 percent and sometimes more, nearing the top range of other competitive mining countries. Evaluating the impact of proposed gross royalties of 8 percent on new mining operations and 4 percent on existing operations spikes that number to over 50 percent, creating an uncompetitive situation for U.S. mining operations. Couple this with the significant operational costs paid by domestic mining companies, it is easy to see why a study by the World Bank cautioned against excessive royalty structures recommending:

> “When designing a tax system, policy makers should be aware of the cumulative effects taxes can have on mine economics and on potential levels of future investment…Nations should carefully weigh the immediate fiscal rewards to be

> gained from high levels of tax, including royalty, against the long-term benefits to be gained from a sustainable mining industry that will contribute to long-term development, infrastructure, and economic diversification."[5]

Regardless of royalty rate, any action by the federal government to diminish the economic value of an existing mining operation could very likely be seen as a destruction of property rights and would therefore expose the federal government to substantial liability risk as a taking.

Path Forward

The NMA is committed to the development of a fair, predictable and efficient national minerals policy through amendments to the Mining Law. We are ready and willing to have this discussion. Appropriate changes to the Mining Law provide an opportunity to decrease our dependence on foreign minerals, promote job creation, drive economic growth and new technologies. Our principles for amendments start with the preservation of self-initiation and the security of tenure. Self-initiation is critical to encourage the exploration activities that spur new mineral discoveries. Given the elusive nature of mineral deposits, discoveries cannot occur without widespread exploration. Such extensive exploration activities are required because concentrations of useful minerals rich enough to form ore deposits are rare phenomena. Commercially extractable concentrations form only where special physical and chemical conditions have favored their accumulation. Exploration geologists frequently cite the metric that at best approximately 1 out of 10,000 deposits has the chance of being transformed into an operating mine. Finding new resources and delineating their economic potential is critical to keeping the commodity pipeline flowing.

Without security of tenure or title, mining projects in the United States will not be able to attract the large capital investments needed to bring such projects to fruition. Security of tenure or title provides the necessary assurance to investors that a mining project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations.

The mining industry also supports a net, prospective royalty that appropriately takes into consideration market conditions and commodity cycles. We are committed to finding solutions to abandoned mine lands cleanup through dedicating royalties, as well as enacting good Samaritan legislation. While modern mining reclamation and financial assurance regulations will prevent new abandoned mines, the industry acknowledges that existence of legacy sites impairs its social license to operate and have to be addressed.

I believe there is a path forward in this committee that will satisfy all of our priorities and goals. The path will not be easy, but our shared desire to support domestic supply chains, create long lasting and good paying jobs, and spur sustained economic recovery and growth will enable us to work together on a legislative product that benefits the American taxpayers, our environment and our economy.

I urge you to join with the NMA, our member companies and the one million-strong hardrock mining workforce to help secure our nation's economic recovery and prosperity for years to come, without jeopardizing the mining foundation of our country.

[5] https://openknowledge.worldbank.org/handle/10986/7105

The U.S. House reconciliation legislation simply contains a series of punitive proposals which will sideline the U.S. mining industry. These excessive taxes and fees are the wrong path at the wrong time for our country. Instead of raising revenue and protecting land, this approach will lead to premature closure of existing mines and minimal interest in future U.S. mines, resulting in an unhealthy increased reliance on foreign sources of minerals from countries with far less stringent environmental and labor standards, a loss of high paying family-wage jobs, and severe economic hardship on mining-dependent rural communities.

Compromise is possible. The mining industry is open to reasonable royalties. Working together in a bipartisan way, we can assemble a package that recognizes the unique business of hardrock mining, we can come together on a solution that will help secure our nation's economic recovery and prosperity for years to come, without jeopardizing the mining foundation of our country.

I thank you for the opportunity to testify and would be pleased to answer any questions.