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Comments to Inform the Interagency Working Group on Mining Regulations, Laws, and Permitting

Taxpayers for Common Sense (TCS) provides the following comments to the Interagency Working Group on Mining and the Department of the Interior, "Request for Information to Inform Interagency Working Group on Mining Regulations, Laws, and Permitting." TCS is a national nonpartisan budget watchdog that has been working on behalf of the nation's taxpayers since 1995. TCS works to ensure taxpayers receive a fair return on all resources extracted or developed on federal lands and waters. This includes oil, gas, coal, hardrock minerals, wind, solar, and timber. TCS also works to ensure that federal energy policy does not create short or long-term liabilities for taxpayers.

TCS is pleased the Department of the Interior (DOI) is moving forward in accordance with Executive Order 14017 and the subsequent White House review recommending the Department of the Interior create an interagency team to review hardrock mining policies to identify gaps and needed updates to regulations and statutes. TCS also supports additional actions by the DOI to pursue a rulemaking and, as directed by section 40206 of the Infrastructure Investment and Jobs Act, to submit a report to Congress identifying measures that would increase the timeliness of permitting activities related to critical mineral exploration and development, identifying options to ensure adequate staffing for critical mineral-related activities, and reporting on the federal permitting review process.

TCS's mission is to promote and protect the taxpayer interest, advocating for fairness and transparency across the federal government. Public lands are taxpayer assets and should be managed in a way that preserves their value, ensures a fair return from private interests using them for profit, and avoids future liabilities. Current hardrock mining policies, including the General Mining Law of 1872, fail to uphold these standards by allowing large multinational corporations to mine precious hardrock minerals without adequately compensating the American public, often leaving toxic messes behind. From our 2001 joint report with the Mineral Policy Center on the mounting taxpayer liabilities created by outdated bonding requirements to our work supporting former House Natural Resources Chairman Nick Rahall (D-WV)'s bipartisan Hardrock Mining and Reclamation Act in 2007, TCS has advocated for needed reforms for decades. TCS continues to sound the alarm to policymakers and the Administration on the need for mining reform. TCS offers an important taxpayer perspective on hardrock mining and we have been called to testify before Congress on this issue multiple times, most recently before the Senate Energy and Natural Resources Committee in 2021.

TCS urges the Interagency Working Group (IWG) to recommend an update to the rules and regulations that govern hardrock mining, including urging Congress to overhaul the 1872 Mining Law. Congress enacted the General Mining Law of 1872 to encourage new settlement and economic development in the West. The law allows any citizen to claim the rights to extract and sell valuable minerals found on federal lands not otherwise closed to mining without paying a royalty. Over time, Congress instituted

separate systems for managing the development of specific resources on federal lands, including energy resources like oil, gas, and coal, and basic mineral materials like sand, gravel, and stone. Private interests are now required to compensate taxpayers for the value of these resources, through a royalty or direct purchase contract.

The hardrock minerals not covered by subsequent laws, known as "locatable minerals," however, are still subject to the 1872 Mining Law and therefore are not charged a royalty. There is no comprehensive list or definition, but these minerals include gold, silver, copper, uranium, lead, zinc, barite, molybdenum, and fluorspar, among others.

Unlike the lease process governing most mineral extraction on federal lands, extraction of these hardrock or locatable minerals is conducted under the claim patent system. Under the General Mining Law of 1872, a claimant can "patent" or purchase a mining claim for either $2.50 or $5.00 per acre. In FY 1995, Congress began enacting one-year patent moratoriums. Patent applications that were in the pipeline have been grandfathered, but new patents have not been issued since then. One-year patent moratoriums continue to be passed on an annual basis. Continuing the decade-long practice of one-year extensions makes little sense for the mining industry or taxpayers and patenting should be permanently repealed.

Hardrock minerals are also not assessed royalties and claimholders do not pay rents to taxpayers for land not currently in production. Taxpayers are not compensated for the value of the resources extracted. Instead, the General Mining Law of 1872 imposes minor fees for establishing and maintaining a mineral claim, regardless of the value of minerals being extracted from a given claim. This policy allows mining corporations to extract billions of dollars in valuable, taxpayer resources for cheap. For example, in 1994, American Barrick purchased 1,950 acres of Nevada federal land that contained an estimated $10 billion in gold, yet taxpayers only received $9,765 in compensation.[1]

The Current Claim-Patent System Is Broken

The General Mining Law of 1872 allows mining companies to decide in what particular area to stake a claim, even when other stakeholders may view that there are better uses for that area. Federal agencies do not have the discretion to decide where mining activities take place on lands that are open to mining, which gives mining priority over other uses of the land. For example, a 2021 report by the Government Accountability Office (GAO) noted "a proposed copper and silver mine in western Montana would threaten grizzly bear and bull trout—threatened species protected under the Endangered Species Act—and areas sacred to the Confederated Salish and Kootenai Tribes."[2] Allowing mining activities in sensitive areas that will create future environmental and financial liabilities creates unnecessary risks for taxpayers. Under the location system established by the General Mining Law, the Bureau of Land Management (BLM) is not given authority to determine where mining can occur and thereby cannot fulfill its mission of multiple uses and sustained yield. Several pieces of proposed legislation have sought to reform the patent system, the most recent of which, H.R.7580, the Clean Energy Minerals Reform Act of 2022, would have established a leasing and permitting system. The Interagency Working Group should review options and alternatives to the current claim-patent system.

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[1] S. HRG. 110–339, Reform of The Mining Law Of 1872: Hearing before the Committee on Energy and Natural Resources United States Senate, 110th Cong. Testimony of Ryan Alexander. January 24, 2008. https://www.congress.gov/110/chrg/CHRG-110shrg41574/CHRG-110shrg41574.pdf

[2] GAO, GAO-21-299, Federal Land Management: Key Differences and Stakeholder Views of the Federal Systems Used to Manage Hardrock Mining. Jul 26, 2021

A Hardrock Royalty and Fees Can Provide a Steady Revenue Stream that Can be Used for Reclamation
The General Mining Law of 1872, as well as outdated rules and regulations, has led to dramatic taxpayer losses and significant revenue shortfalls for other priorities like reclamation.

The BLM charges a set of fees for establishing and maintaining a mineral claim but does not recover the value of the extracted minerals. These fees include a minimal location fee currently set at $40/claim, a one-time processing fee of $20/claim, and a maintenance fee charged to individuals or companies with 11 or more claims currently set at $165/claim, or $165/20 acres for placer claims. According to the DOI, $686 million in mineral fees have been collected from FY2012 – 2021.

The DOI does not track the quantity or value of hardrock minerals extracted from federal lands, rendering it impossible to estimate the total value of minerals taken from taxpayers without compensation. In 1999, the Congressional Budget Office (CBO) estimated that the current gross value of hardrock mineral production on federal lands was $650 million annually.[3] In 2007, this estimate was increased to $1 billion annually.[4] By 2020, the CBO estimated the total annual income from hardrock mineral production was between $5 billion and $7 billion annually.[5] Imposing a royalty on hardrock minerals produced on federal lands could generate receipts of hundreds of thousands of dollars every year.

We can further estimate lost revenue from the lack of a royalty by using limited production data available on gold produced on federal lands in Nevada. From FY 2012 – 2021, at least 850 metric tons of gold, worth approximately $38.4 billion, was extracted from federal lands in Nevada alone.[6] Taxpayers received nothing from the sale of this gold. Had a royalty of just five percent been imposed, the DOI could have collected nearly $2 billion on behalf of taxpayers over this ten-year period. Taxpayers deserve to be compensated for the valuable mineral resources extracted from federal land and revenues from a hardrock royalty can be used to cover reclamation shortfall. TCS urges the IWG to consider options to direct a portion of revenues from the application of a royalty or other other fees to reclamation.

The Royalty Structure Must be Simple, Straightforward, and Leave No Room for Gamesmanship
Over the years, several legislative reform proposals have been introduced in Congress that would have enacted a federal royalty, raised fees, and addressed mine reclamation. Proposed royalty rates generally ranged from 4 percent to 12.5 percent. TCS has supported rates in this range with preference for rates between 8 percent and 12.5 percent, which is more in line with rates applied to coal mining operations. We have also considered royalties by mineral, phased in approaches, and different rates for new and existing mines, although we prefer a simple, straightforward rate that leaves less opportunity for confusion and gamesmanship.

[3] CBO, "Maintaining Budgetary Discipline: Spending and Revenue Options." p. 73. April 1, 1999
[4] CBO, "Cost Estimate: H.R. 2262, Hardrock Mining and Reclamation Act of 2007." p. 5. October 29,2007
[5] CBO, "Cost Estimate: H.R. 2579, Hardrock Leasing and Reclamation Act of 2019," p. 5. July 27, 2020
[6] Gold production on federal lands in Nevada from 2012 to 2019 estimated by the Department of the Interior Economic Report. 2020 and 2021 production number estimated using Nevada Division of Minerals Annual Status and Production Reports.

As important as the rate is the type of royalty. In general, TCS has serious concerns about proposals to use a net revenue or net profits royalty because they offer too much opportunity for gamesmanship when calculating which costs are deductible. The accounting can also be cumbersome to report and audit. For example, the State of Nevada allows 13 broad categories of deductions for its net proceeds of minerals severance tax.[8] A net profits royalty also violates principles of horizontal equity. More efficient miners with few costs end up paying more in royalties than less efficient operators for producing the same mineral value. That isn't fair to other miners and is not fair to taxpayers. Taxpayers should not be rewarding inefficiency. A royalty based on gross income (or gross revenue) will be the easiest system to administer for the federal government and will require the least complex enforcement systems.

It is also important to impose a royalty not just on new mining operations but on existing ones as well. According to the CBO, imposing payments on mine operators with existing claims is an exercise of the government's sovereign power to levy compulsory fees.[7] Imposing a royalty on new operations might take more than a decade to see any revenue stream while a royalty on existing operations can provide a steady revenue that can address current reclamation liabilities whenever reform is implemented.

The House Budget Committee print of the reconciliation bill released in September 2021 included a royalty structure that applied to both new and existing mineral production. The bill would have enacted an 8 percent gross income royalty on future mining claims and a 4 percent gross income royalty on existing claims, with an exception for producers with a gross income from mineral production less than $100,000. The reconciliation bill also would have increased the maintenance fee from $165/claim to $200/claim and from $165/20 acres to $200/20 acres for placer claims. TCS supported the inclusion of hardrock mining in the reconciliation bill. Increases in fees and royalty rates should be included in the IWG review to ensure taxpayers receive a fair return.

TCS also supports reforms to implement other fees including a land use or rental fee and a reclamation fee. The Clean Energy Minerals Reform Act of 2022, S.4083 and H.R.7580, propose different variations of these two types of fees. For a land use fee, S.4083 proposes a $40/acre fee for new operations and land additions to existing operations and H.R.7580 proposes a $10/acre fee for new and existing operations, which would be credited against any royalties accrued for that year. Both fee structures compensate taxpayers for the continued use of public land. For a reclamation fee, S.4083 proposes a 1 percent to 3 percent fee on the gross value of new and existing production and H.R.7580 proposes a fee of 7 cents per ton of displaced material. The 7 cents per ton of displaced material reclamation fee was also included in the House Budget version of H.R.5376. TCS urges the IWG to consider a gross income royalty in line with other extractive industries, as well as other fees to ensure taxpayers get a fair return for the hardrock resources we collectively own.

Cleanup Liabilities Should Not be Shouldered by Taxpayers.

Abandoned mine lands are often hazardous and sometimes toxic. Modern mines employ mineral-extraction processes that use millions of pounds of toxic chemicals such as cyanide to extract metals from crushed ore. As a result, significant surface water and groundwater impacts are common. Remedying the environmental damage, in addition to physical safety hazards, caused by these massive operations can cost tens of millions of dollars, and sometimes hundreds of millions of dollars, per mine. For example, the Midnite mine, an inactive former uranium mine in Washington, is estimated to have

[7] CBO, "Cost Estimate: H.R. 2579, Hardrock Leasing and Reclamation Act of 2019," p. 5. July 27, 2020

reclamation costs of $205 million, although the true cost may be higher.[8] The DOI, Environmental Protection Agency (EPA), and other federal agencies reclaim these sites to mitigate threats to human health and safety. In 2020, the GAO identified 140,000 abandoned hardrock mines on federal land, but officials estimate there could be another 390,000 abandoned mine features that have not been counted yet.[9] The GAO also reported that four federal agencies spent $2.9 billion to reclaim abandoned hardrock mines on federal lands between 2008 and 2017. That work addressed only a fraction of sites in need of reclamation, and, through these agencies, taxpayers continue to spend hundreds of millions of dollars a year to clean up liabilities created by the hardrock mining industry.

Furthermore, less than half of the $2.9 billion spent was reimbursed by private parties like former mine owners, meaning taxpayers picked up the rest of the tab, or $1.9 billion, which could have been covered by the mining industry had a royalty of 5 percent been charged. Instead, federal agencies have spent and will continue to spend billions of dollars to reclaim hardrock mine sites on federal land that have been abandoned.

Recent passed legislation has chosen to invest in mine reclamation without a revenue source, spending billions of taxpayer dollars. P.L. 117-58, the Infrastructure Investment and Jobs Act (IIJA), authorized (but did not appropriate) $3 billion for abandoned hardrock mine reclamation. And in the FY 2023 President's Budget, $62.2 million was requested for Abandoned Mine Lands (AML) and Hazardous Materials Management to address abandoned hardrock mines on BLM lands. This spending could be avoided with just a modest 5 percent gross royalty on hardrock minerals, which would provide an adequate revenue stream to pay for reclamation without having taxpayers foot the bill.

TCS supports legislative reform proposals that seek to establish royalty revenue, as well as revenue from other proposed fees, to help address hardrock mine reclamation budget shortfalls. The proposed Clean Energy Minerals Reform Act of 2022, both S.4083 and H.R.7580, would use the revenue from royalties, reclamation fees, and land use fees to reclaim abandoned mines on federal land through a Hardrock Mining Reclamation Fund, as authorized by the IIJA. TCS supports creating a fund for hardrock mine reclamation that ensures the burden of reclamation is rightfully placed with mining corporations rather than taxpayers.

The General Mining Law of 1872 provided only a skeletal structure for federal management of hardrock mining and did not include provisions requiring the cleanup of federal lands after mining activities cease. The DOI adopted regulations in 1981 to impose reclamation requirements on mine operators, but they failed to prevent further mine abandonments and have struggled to secure adequate financial assurances to guarantee future reclamation. In 2019, the GAO found that the BLM held more than $3 billion in financial assurances, which was $11 million less than the reclamation costs estimated by the BLM.[10] This shortfall, if not addressed timely and properly, might become future liabilities for taxpayers.

Reclamation bonds, secured by a mine owner before mining begins, are intended to provide regulatory authorities with sufficient assets to clean up a mine if the operator fails to do so. Although the BLM does

[8] U.S. Department of Energy, "Defense-Related Uranium Mines Cost and Feasibility Topic Report." June 2014 https://www.energy.gov/sites/prod/files/2017/07/f35/S10859_Cost.pdf

[9] GAO, GAO-20-23B. Information on Number of Mines, Expenditures, and Factors That Limit Efforts to Address Hazards. March 11, 2020.

[10] GAO, GAO-19-436R. Hardrock Mining: BLM and Forest Service Hold Billions in Financial Assurances, but More Readily Available Information Could Assist with Monitoring. Oct 18, 2019.

monitor whether financial assurances are adequate, inadequacies are not addressed in timely manner because operators fail to comply with increased bond amounts promptly, among other reasons. In 2019, the Government Accountability Office[11] recommended the BLM to identify all instances in which a corrective action plan is needed to address deficiencies like inadequate bonding amounts, late reviews, and missing data. The status of the recommendation still remains open and has not been fully addressed. The IWG should take all necessary steps to ensure adequate bond amounts to protect taxpayers from future reclamation liabilities.

Additionally, the IWG should recommend the EPA use its existing authorities to propose requirements under 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the demonstration, maintenance, and release of financial responsibility of hardrock mines. Any proposed rule should hold the hardrock mining industry accountable and ensure the burden of mine reclamation is not shifted to taxpayers.

The Need for Increased Production of Critical Minerals Does Not Negate the Need for Mining Reform
Critical minerals are defined by law as non-fuel minerals or mineral materials essential to the economic or national security of the U.S. and which have a supply chain vulnerable to disruption. It is important to note that although hardrock minerals are often conflated with critical minerals, not all hardrock minerals are considered critical by the U.S. Geological Survey (USGS) 2022 List of Critical Minerals. Critical minerals are only a small subset of hardrock minerals. Copper, feldspar, gold, lead, molybdenum, platinum, etc., are hardrock minerals that are considered non-critical. Some non-critical hardrock minerals, like gold, are extremely profitable and abundant in the U.S. From 1990 to 2019, the U.S. was a net exporter of gold every year except for 2004.[12] According to the USGS, the U.S. was also a net exporter of iron and steel scrap, iron ore, molybdenum, zirconium concentrates, and other hardrock minerals in 2019.[13]

Moreover, Congress has already made considerable investments in critical minerals. In the Energy Act of 2020, passed as Division Z of the Consolidated Appropriations Act of 2021, Congress authorized more than $800 million to support critical minerals innovation, recycling, and supply chain research, as well as other capacities. The IIJA increased authorization for programs already established by the Energy Act of 2020 as well as created new programs. More than $1.2 billion was authorized to programs like Critical Minerals Mining and Recycling Research, Rare Earth Mineral Security, Recycling, Innovation, Efficiency and Alternatives, Critical Materials Supply Chain Research Facility, etc. More recently, P.L. 117-169, the Inflation Reduction Act, has tied domestic production of critical minerals to new and expanded tax credits like the Clean Vehicle Credit, Advanced Energy Project Credit, and Advanced Manufacturing Production Credit. These are all incentives to boost critical mineral production and expand the green technology industry.

While growth in this sector is good for taxpayers, the need for increased production of critical minerals does not negate the need for reform to hardrock mining. And as demand for critical minerals increases, their prices in the global market and producer's profitability will likely increase as well. This will only make these industries more able to bear the collection of a reasonable royalty. Policies governing the production of critical minerals on federal lands should ensure a fair return for taxpayers from private

[11] GAO, GAO-19-436R. Hardrock Mining: BLM and Forest Service Hold Billions in Financial Assurances, but More Readily Available Information Could Assist with Monitoring. Oct 18, 2019.
[12] GAO, GAO-19-434R. Hardrock Mining: Trends in U.S. Reliance on Imports for Selected Minerals. May 30, 2019.
[13] U.S. Geological Survey, "Mineral Commodity Summaries 2020." 2020. https://doi.org/10.3133/mcs2020

interests using them for profit and avoid future taxpayer liabilities. This goal is not at odds with ensuring critical minerals production.

To aid in the increased demand for critical minerals, the IWG should recommend Congress and the Administration continue efforts to improve critical mineral recycling and recovery. Critical mineral recycling, the extraction or recovery of critical minerals from batteries that are recycled, is an opportunity to extend the economic impact of important minerals. And critical mineral recovery, extracting byproduct mineral commodities that would otherwise be wasted in the production of another mineral, would better capture valuable taxpayer resources. TCS recommends the IWG review processes that can increase critical mineral production while also serving in the taxpayers' best interest and ensuring a fair return on our shared natural resources.

Tracking Data on the Quantity and Value of Hardrock Production Will Improve Transparency

TCS strongly urges the IWG to seek increased transparency in the federal hardrock mining program. The BLM does not currently track the quantity or value of hardrock minerals extracted from federal land. As owners of federal land and water and the resources they contain, taxpayers deserve to know what is being developed, by whom, what we're getting for the resources, what effects production operations have on local communities, and if liabilities connected to development are adequately covered by financial assurances.

There are reasons to make this data available to the public beyond the abstract value of more transparency. Revenues from the collection of royalties represent one of the largest non-tax income sources for the federal government. Currently, it impossible to know the exact taxpayer revenue lost from outdated hardrock mining policies. Fair and accurate collection is necessary to ensure taxpayers are receiving what they are owed. The IWG should take steps to improve transparency so that the American public gets a fair return for its valuable natural resources.

Conclusion

TCS applauds the IWG's solicitation of public input in its review of hardrock mining permitting and oversight on federal lands. There is a large amount of work to be done that can benefit both industry and taxpayers alike, but taxpayers need a seat at the table.

The General Mining Law of 1872 has cost taxpayers tens of billions of dollars in lost revenue and billions more in mine reclamation spending. The hardrock mineral industry, unlike other mineral and energy industries, pays no royalty to the federal government for the privilege of extracting resources from federal lands. Without reform, mining companies will continue profiting from the precious metals and other hardrock minerals removed from federal lands at taxpayer's expense. We urge the IWG to recommend reforms to hardrocking mining that address the problems with the claim-patent system, the lack of a fair royalty, and ensure policies do not continue to pass hardrock mine reclamation costs on to taxpayers. Additionally, TCS urges the IWG to examine ways to improve the tracking and collection of hardrock production data to increase transparency. We need responsible mining practices in the U.S. and the IWG is an important step in that process. Thank you for considering these comments. We look forward to continuing to work with the IWG to bring hardrock mining into the 21st century.