

S. HRG. 118–281

**OPPORTUNITIES FOR CONGRESS TO
REFORM THE PERMITTING PROCESS
FOR ENERGY AND MINERAL PROJECTS**

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
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FIRST SESSION

MAY 11, 2023



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THURSDAY, MAY 11, 2023

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Joe Manchin III, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOE MANCHIN III, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. Today we are going to continue our conversation about the opportunities for and the need to reform the permitting process for all types of energy projects. We have talked with the Secretaries of Energy and Interior and the FERC Commissioners about this important topic over the last several weeks. But this effort to improve our permitting process really took off last summer, when I secured a commitment from the President and Democratic Congressional Leadership to support permitting reform and bring a bill up for a vote, and we did. After working with a small bipartisan group of members, making some adjustments to incorporate feedback from Republicans that both sides could accept, the Senate voted on the resulting legislation in December of last year.

Forty Democrats and seven Republicans supported that bill, which sets permitting deadlines for energy and mineral projects, expedites litigation, requires different agencies to coordinate on reviews, ensures that we get two billion cubic feet per day of natural gas into the market through the Mountain Valley Pipeline, and much more. This is the only comprehensive energy permitting reform legislation that has received bipartisan support in the Senate. It received support from a majority of members on this Committee and both the Chairman and Ranking Member of the Environment and Public Works Committee. I reintroduced that bill last week to kick-start bipartisan negotiations again this Congress because we absolutely need to get permitting reform done for the good of our country. Is the bill perfect? Absolutely not. Could we go further? Of course. But I was the only Democrat on record supporting the majority of the provisions that Republicans are pushing that weren't included in our compromise legislation.

But to get legislation through the Senate, we have got to get 60 votes. That is the process. We can't let the perfect—or the politics—

be the enemy of the good and continue to live with an outdated permitting process that kills much-needed projects across the spectrum. Whether you are more inclined towards renewables or fossil, towards pipelines or transmission lines, you can't get anything done unless we can do it in a timely fashion. And we desperately need to get permitting reform done for our country to maintain its status as the leader of the free world. So I am happy that there is a strong bipartisan interest in permitting reform in this Committee and this Congress. We all know that to build an energy system fit for the 21st century, we will need to ensure our permitting agencies are conducting effective reviews focused on the most important issues, getting to decisions much faster, and put a stop to this endless second-guessing of those decisions in court.

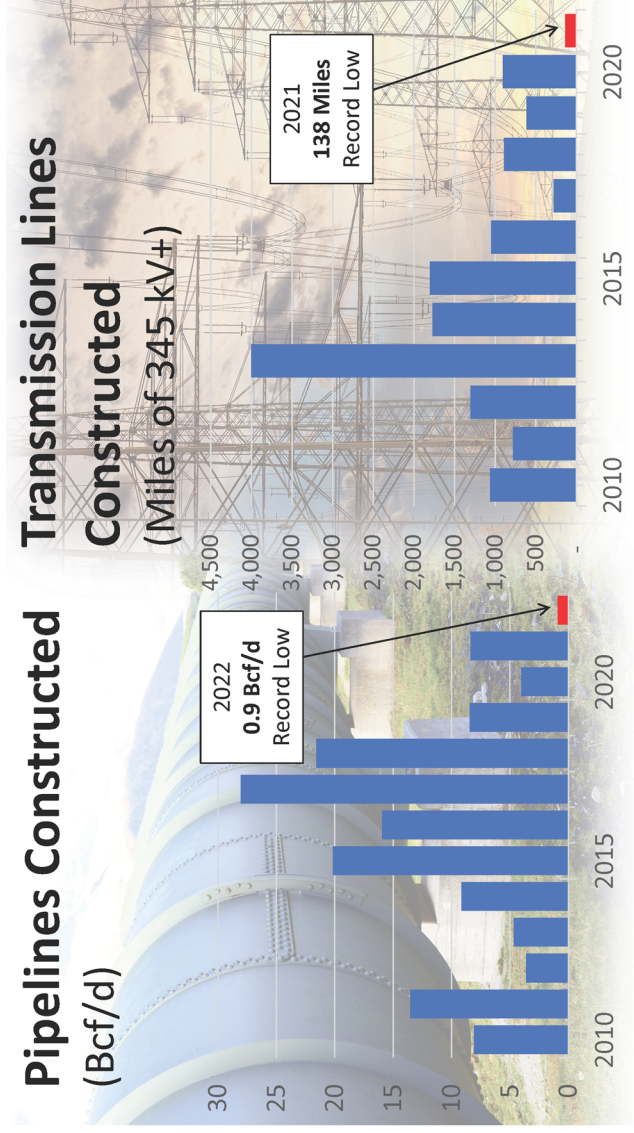
Now, I am a believer in an all-of-the-above energy policy, which is what Congress has consistently reaffirmed as American energy policy through the Energy Act of 2020, the Bipartisan Infrastructure Law, and the Inflation Reduction Act. We know that we will need to produce and transport more energy than ever in the coming decades, and that is energy of all types. The Energy Information Administration indicates that the demand for our fossil energy—oil, gas, and coal—will increasingly be driven by our allies and trading partners who want a reliable supplier able to produce cleaner than anywhere else. So this means we will need to build pipelines, export terminals, and more energy transportation infrastructure, or our partners may have to source their fuel from other countries that do not share our democratic or environmental values. I think the only thing you need to look at is the Ukraine War.

As all four FERC Commissioners told us last week, we cannot eliminate coal today or in the near future if we want to have a reliable electric grid system. We also need to mine and process minerals here in the United States if we are actually serious about lessening our current dependence on China for energy technologies. If we do not, this dependence will get worse. I have been clear that I do not agree with the Administration's effort to push an accelerated climate agenda in a way that puts our transportation sector and some components of our energy sector in the hands of China. As the superpower of the world, with abundant natural resources and a strong workforce, there is no reason that we should be asking others to do what we won't do for ourselves. But producing the American energy that we need—and the world needs—is nearly impossible with our current permitting system. For example, it takes decades to permit a new mine. It is a failure, and it is setting us up to rely on countries who are hostile to our way of life. You know we have a broken system when getting a domestic mine permitted in less than ten years is like winning the lottery, but it takes less than a year to begin importing products full of critical minerals mined in a way much more harmful to the environment or processed in China.

The Mountain Valley Pipeline has been undergoing permitting litigation for more than eight years. That includes eight NEPA reviews and nine court cases in the Fourth Circuit. Siting, permitting, litigation, and decision-making on how to pay for long-distance, high-voltage transmission lines tie up these projects for over a decade, if they ever get built. These challenges threaten the reli-

ability of our grid system. Some reforms will help all sectors, such as setting and enforcing deadlines, expediting litigation, et cetera. Some will require sector-specific fixes, but no energy sector is immune to permitting roadblocks, despite every Administration and Congress in recent memory and every sector of the energy industry identifying permitting reform as a vital need. The problem is getting worse, not better. As shown in the chart behind me, we are slowing down in building both pipelines and transmission lines. According to the Energy Information Administration, in 2022, we had the lowest amount of FERC-regulated natural gas pipeline infrastructure built since EIA began tracking in 1995.

[The chart referred to follows:]



2022: Lowest Year on Record for Pipelines
2021: Lowest Year on Record for
Transmission

The CHAIRMAN. And the story is the same on transmission. In 2021, we built the fewest miles of high-voltage transmission in any year going back to 2010. We all know it's possible to do better than five, ten, or fifteen-year timelines without bypassing important environmental protections and community input. Our allies in Australia and Canada have permitting processes designed to finish in three years or less. And in Europe, which has a reputation for being even more difficult to build in than in the U.S., the weaponization of energy by Russia forced them to realize that they have a problem. Recently, the EU has rolled out new targets for timelines—nine months to two years for energy, manufacturing, and minerals projects. I repeat, nine months to up to two years maximum for energy, manufacturing, and minerals projects.

Our Committee has a real responsibility to address energy and minerals permitting reform. It's the agencies under our jurisdiction doing most of the permitting for these projects. Over 80 percent of NEPA Environmental Impact Statements (EISs) for energy and minerals projects are completed by agencies under this Committee's jurisdiction—and that is almost half of the EISs done across the entire Federal Government. Environmental Impact Statements are extremely cumbersome and take an awfully long time, and are the most intensive form of NEPA reviews intended for major projects with the potential for significant impacts. They take 4.5 years on average, and often several years beyond that. So the agencies our Committee oversees are responsible for a large portion of the Federal Government's most significant and time-consuming environmental reviews. Members of this Committee have a wide range of views regarding what the future of American energy should look like, but no matter what you want to build, it simply takes too long.

This is why the bill that I introduced and 47 bipartisan senators voted for last year would set enforceable timelines for agencies to complete reviews, limit the length of these reviews, and require agencies to coordinate on one government-wide, simultaneous review of multiple, uncoordinated reviews. It would accelerate the court process for energy projects by requiring courts to set these cases for expedited review, and it would shorten deadlines to bring lawsuits from six years to less than six months. This will provide certainty that if agencies approve a project, it will not then get delayed by endless litigation, and the bill would also make sure agencies spend most of the time on the most important reviews by ensuring that simple projects are not subject to drawn-out reviews.

I was pleased to see similar ideas in the bills recently introduced by my Republican colleagues and my Ranking Member, Senator Barrasso. On electric transmission, our bill recognizes that states have primary authority to site and allocate the cost for transmission projects. But we made reasonable improvements to FERC's authority to step in in cases where states cannot reach agreement after one year, so that long-distance, interstate transmission that is in the national interest and needed for the reliability of our nation's grid can still move forward. And I have heard my Republican friends' concerns about how costs are allocated, so we put language in there to make sure that only those who actually see electric ben-

efits in their states would be required to pay, and that is going to be proportional.

By the way, even the oil and gas industry agrees that electric transmission reforms are a central part of comprehensive permitting packages. Six of the leading oil and gas trade groups sent us a letter this morning outlining their top priorities and acknowledging the importance of pairing transmission reforms with steps like improving NEPA and judicial reforms. So it's time for us to all roll up our sleeves and do our jobs. As the Chairman of the Committee, I am committed to continuing to convene my colleagues for open dialogue and negotiations. At this point, we had the legislation I filed that received bipartisan support, the House and Senate Republican proposals, and Senator Carper's forthcoming proposal on the table.

Now, just as we did with the Bipartisan Infrastructure bill, we all need to sit down and negotiate in good faith. We need to take our names off the bill and go back to a bipartisan permitting reform bill. That is the only way that we can take politics out of this. It's not me. It's not John. It's not any of our colleagues. It's getting permitting done for the sake of our country. So I will do everything I can to make that happen. And make no mistake, actually getting something done will require a lot of compromise and prioritization. Many ideas that are prioritized for some senators are strongly opposed by others. We need to respect that in a civil manner. But we can't let the perfect be the enemy of the good. This is our time to do this.

I am grateful to our witnesses who have joined us today to help discuss what this Committee's priorities should be for permitting reform. They represent a diverse group of interests who all stand to gain from common-sense, bipartisan energy permitting reform.

With that, I turn to my friend, Senator John Barrasso, for his opening remarks.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

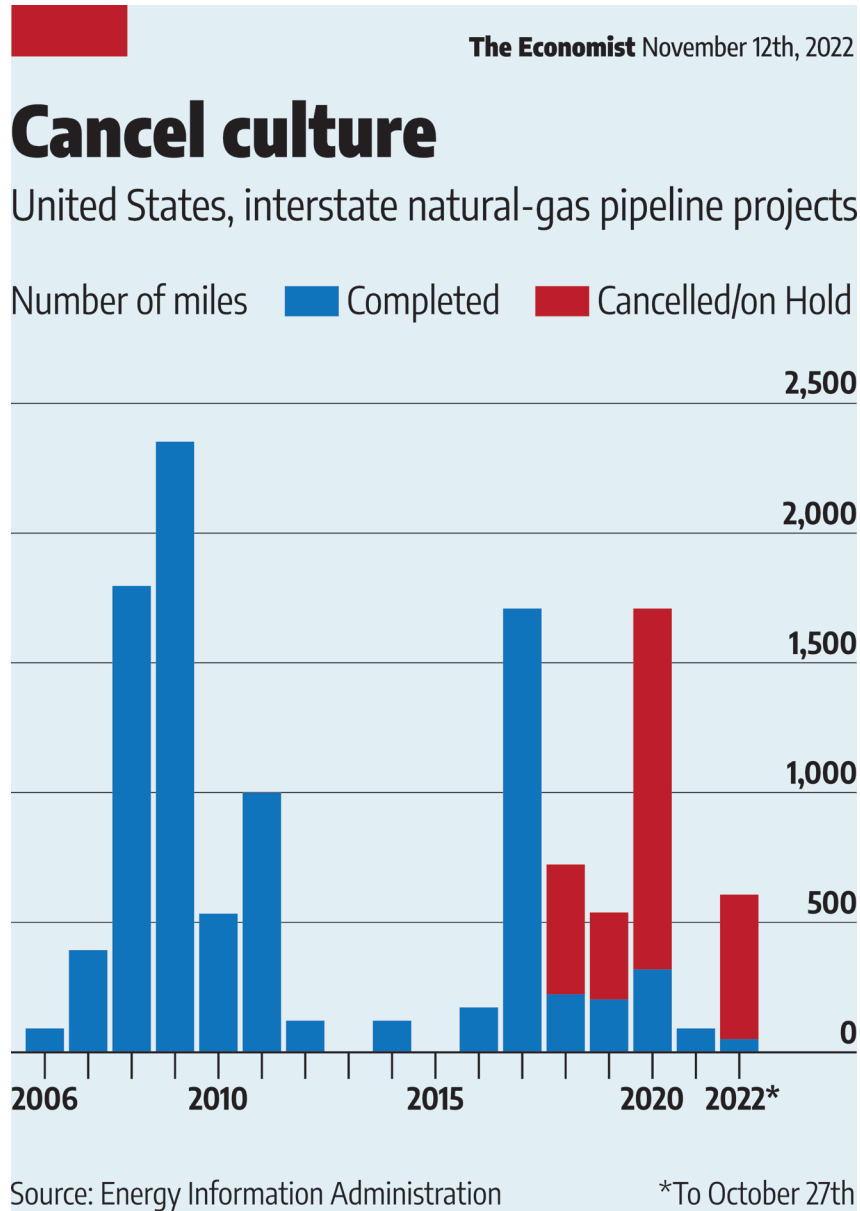
Senator BARRASSO. Well, thanks so much, Mr. Chairman, for your very thoughtful remarks. Thanks for holding the hearing today.

You know, I think back 13 years ago, 2010, nearly two years after President Obama signed his economic stimulus bill into law, he seemed to be shocked to discover something that every project developer already knew, and that is, he said, "There seems to be no such thing as shovel-ready projects." And that is because it can take almost forever to get a federal permit. In the 13 years since President Obama's comment, things have not really gotten any better, and under the Biden Administration, in my opinion, and in many opinions, they have gotten a lot worse. Our federal permitting process moves in slow motion—too often, no motion at all. Even if a project makes it through the thicket of red tape, it can expect to face years of costly litigation after the permitting process. The more time it takes, the more money it costs, the more the likelihood that a developer is just going to pull the plug and not proceed with the project. That means that investments aren't made.

It means jobs do not materialize. It means new energy and mineral production just does not occur.

Late last year, the Economist published this chart.

[The chart referred to follows:]



Senator BARRASSO. And it shows that for the past several years, more miles of interstate natural gas pipelines have been canceled than have been built. More miles canceled than have been built. And as a country we have become better at canceling than at building. The result is what you would expect—higher prices, abandoned projects, and stubborn inflation. And it is an absolute disgrace. So last week, Senator Capito and I introduced legislation to expedite the permitting process while preserving environmental safeguards. The House has passed comprehensive permitting reform. Chairman Manchin has also reintroduced his bill from last year, so there is no shortage of ideas. That makes it all the more important to debate these ideas and move legislation through regular order. I am glad, Mr. Chairman, you are committed to doing that because we have to get it right.

Getting it right means adhering to some fundamental principles. First, the legislation must benefit the entire country, not a narrow range of special interests, favored technologies, or a limited group of projects. Reforms must apply equally to all energy sources, traditional and alternative. Second, it must include enforceable timelines to ensure environmental reviews do not drag on for years. Third, it must place limitations on legal challenges to prevent endless litigation intended to kill projects. And finally, it must stop the executive branch from hijacking the permitting process to advance its own narrow and frequently extreme agenda. No longer should the Biden Administration get away with reinterpreting legislative language to frustrate the will of Congress. Our amendments must leave no ambiguity in what the law requires.

The bills that Senator Capito and I introduced last week meet these criteria. My bill, the Spur Permitting of Underdeveloped Resources—the SPUR Act—is co-sponsored by every member of this Committee on Energy that are Republicans. Our bill will revitalize America’s energy sector, lower costs for families, and reduce our dependency on China and on Russia. It will hold the Secretary of the Interior to her legal obligations on oil, natural gas, and coal leasing on federal lands. No longer should this or any other administration be able to deny, defy, and disregard the law. Our bill will ensure access to minerals essential for renewable and for battery technologies. The United States and Wyoming, my home state in particular, are blessed with large deposits of minerals. Responsible use of these resources enhances our national security.

Lastly, Mr. Chairman, our bill will provide companies a more predictable permitting process for pipelines, for liquefied natural gas export facilities, and electric transmission lines. Mr. Chairman, we can’t let this opportunity pass without enacting anything less than comprehensive reform. Now, I believe we can pass bipartisan legislation that unleashes American energy and American mineral production that creates good-paying jobs, that lowers consumer prices, and boosts our national security. So today’s hearing, Mr. Chairman, is an important step in that direction.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

And now, we are going to hear from our panel.

We have Mr. Jason Grumet, President and CEO of the American Clean Power Association.

We have Ms. Elizabeth Shuler, President of the American Federation of Labor and Congress of Industrial Organizations.

We have Mr. Rich Nolan, President and CEO of the National Mining Association.

And we have Mr. Paul Ulrich, Vice President of Jonah Energy and a member of the Wyoming Energy Authority Board of Directors.

It's great to have all of you here.

And Mr. Grumet, we will start with you first.

**STATEMENT OF JASON GRUMET, CEO,
AMERICAN CLEAN POWER ASSOCIATION**

Mr. GRUMET. Well, thank you, Mr. Chairman, it is really an honor to be here with you and Senator Barrasso and this entire Committee, and of course, the colleagues here at this panel.

I am Jason Grumet. I am the CEO of the American Clean Power Association. Our 800 companies provide utility-scale clean power from all forms and also spend a tremendous amount of time and resources investing in battery storage and transmission—when we are allowed to build it. I should also note, Mr. Chairman, that the largest producers of clean power in this country also often have commercial interests in oil resources, natural gas, nuclear, and a wide variety of energy sources. So we come to you with a big tent. I have already apologized to your staff for the 20 pages of detailed testimony we submitted. With your indulgence, if I breathe a couple times, I may transgress on the red light by 90 seconds or so. So just a little self-awareness up front.

The CHAIRMAN. Do your best.

Mr. GRUMET. Mr. Chairman, we have seen what this nation can do when innovation, investment, and our world's greatest workforce is supported with rational, sound public policy. In 2005 and 2007, this Committee led landmark pieces of legislation that reclaimed America's role as an energy superpower, improved public health, and dramatically reduced greenhouse gas emissions. I believe we are on the precipice of another breakthrough, where we can combine the strength of traditional energy resources with massive deployment of renewable power and storage—if we can simply get out of our way and build it. So despite differences and occasional rancor, I think your two opening statements, Mr. Chairman and Mr. Ranking Member, demonstrated that we are in fact coalescing around a shared vision, and that is a vision that prizes innovation and investment over regulation and deprivation.

I would comment to you and to Senator Murkowski that I think fondly about the many, many times you invited me to testify here, probably between about 2005 and 2015, where I profoundly failed to convince you and your colleagues of the benefits of carbon pricing as the anchor of American energy policy. And I credit you and this Committee with the 2020 Energy Act, which set forth a true imagination of an all-of-the-above innovation policy. I also note, Senator Barrasso, the pleasure I had testifying before you and Senator Carper in 2020 on, I believe it was the American Transportation Innovation Act, and my favorite hearing title ever—"Better, Faster, Cheaper, Smarter, and Stronger: Infrastructure Development Opportunities to Drive Economic Recovery and Resiliency."

So you didn't bury the lead. But what you did at that hearing, along with your colleagues, was talk about the critical importance of permit reform and the ways in which that would also improve environmental quality.

So I believe that these efforts, three years ago, enabled the bipartisan breakthrough on the infrastructure bill as well as the transition from regulation to innovation that has guided the IRA and our conversation here today, and so, the breakthrough. Now that we actually have line of sight to better, to cleaner, to cheaper, to smarter, and stronger, we of course want it faster. So what I would like to do now is say a few words about some proposals around NEPA reform as well as transmission siting, and building that, I think, can actually move us in that direction.

So first on NEPA—we support the series of proposals that have kind of anchored the House and Senate legislation, Senators Manchin, Barrasso, Capito, as well as H.R. 1, as well as what the Administration put forward yesterday. Fundamentally, it includes time limits on NEPA actions, elimination of duplicative reviews, and giving lead federal agencies actual authority to drive the process. We also share your view and commitment that none of these changes will undermine bedrock protections in our environmental laws. And while NEPA reform is necessary, it is unfortunately not sufficient, and so, I want to close by discussing the imperative to strengthen and expand our electric grid.

Now, this is a topic where Congress and ACP's diverse membership have both struggled to build consensus. And so, I want to offer some ideas that hopefully will stir the pot in a constructive direction. The data is overwhelming that absent strengthened and expanded transmission capacity, we are going to fall short of achieving our climate, our economic, and our security goals. Recent years have also demonstrated and made us painfully aware that our inability to transfer power between regions can literally be a matter of life and death in emergency situations. So over the past several months, we have challenged ACP's "big tent" membership to confront our internal differences over permitting, planning, and paying, and have provided a discussion framework, which we attached to the back of our testimony.

And I will say a word about interstate siting and then cost allocation.

In 17 years, the backstop authority enabling federal action to permit projects of national significance has been used successfully exactly never. And if it were employed, it would take a decade or longer to site and permit a long-distance line. So today, we are proposing reforms that can ensure timely action while respecting the role the states still play in this process. Our proposal would reduce the time required to permit this limited number of interstate lines from a decade to between three and four years, and ensure that this to-date unused authority would serve the purpose Congress intended. I need to note that while supporting these reforms, many ACP members believe that providing FERC with plenary authority to directly permit these high-impact lines would be a more direct and efficient path to increase grid reliance and low-cost, clean power.

On cost allocation, while FERC Order No. 1000 created a workable approach for the lines that exist within a region, the process for planning for transmission that spans more than one region is unworkable. It subjects project developers to an impossible triple hurdle, requiring separate approvals by each region and then a “co-ordinated, interregional approval process,” which is literally designed to fail because different regions apply different evaluation metrics and have no obligation or incentive to consider full project benefits. If this is hard to envision, I would like to think of it as the efficiency of the United Nations, just take away the translators.

Finally, Mr. Chairman, the proposal we are offering for consideration provides a system that is designed to succeed by obligating regions to jointly evaluate these lines following a set of criteria established by FERC, so the true benefits of these lines will be, in fact, appreciated and not ignored. Now, in the last 24 hours, some friends and even some ACP family have criticized our proposal, arguing that even a well-designed path forward will fall victim to parochial interests. Others have embraced the pragmatism of the approach, while suggesting that more is needed. For example, adding a minimum transfer capacity requirement. And still, others believe that even this approach inappropriately transgresses upon state and federal prerogative. So I am not aware of a single one of my 800 members who believe we are proposing a perfect solution, but everyone recognizes the status quo is harming our national interest, and are eager to accelerate constructive debate.

In closing, Mr. Chairman, all energy technologies have weaknesses. I am convinced that if we combine the collective strength of the diverse array of energy resources in this country, we can create a new energy economy by mid-century that addresses our economic security and climate imperatives. At the end of the day, this process has to do two things. First, the solution needs to work. It has to be meaningful. And second, it needs to pass. ACP is eager to work with this Committee to come up with a practical consensus that can open the next chapter of America’s energy dominance.

I appreciate the time.

[The prepared statement of Mr. Grumet follows:]



**Written Statement of Jason Grumet
Chief Executive Officer, American Clean Power Association
Before the Senate Committee on Energy & Natural Resources
May 11, 2023**

Chairman Manchin, Ranking Member Barrasso, and members of the Senate Committee on Energy & Natural Resources, thank you for the invitation to testify at today's hearing. My name is Jason Grumet, and I am the Chief Executive Officer for the American Clean Power Association (ACP). ACP represents nearly 800 companies focused on deploying utility-scale clean energy. We unite the power of solar, onshore and offshore wind, storage, green hydrogen and transmission developers, along with manufacturers and construction companies, owners and operators, utilities, and corporate purchasers of clean energy.

A Unique Opportunity for Meaningful Progress

In 2005 and 2007, this Committee came together to pass landmark legislation that improved our security, strengthened our economy, and protected public health and the environment. The 2005 Energy Policy Act and 2007 Energy Independence and Security Act created a framework for private sector innovation and investment that reclaimed our nation's role as an energy superpower while achieving significant improvements in public health and reductions in greenhouse gas emissions. Our nation is on the precipice of another breakthrough in domestic energy production. This opportunity combines continued strength in traditional energy production with the massive deployment of a wide range of clean and renewable energy production and storage technologies.

The challenge we face today is a system of regulations and procedures that are preventing the private sector from modernizing our energy production and distribution systems. While the topic of permitting reform is freighted with years of missteps, half measures and partisan perspectives, there is good reason to believe that this Congress can develop the consensus needed to achieve our economic, security, and climate goals.

Despite an array of substantive policy differences and some occasional rancor, our nation is coalescing around a shared vision for energy policy that embraces our vast and diverse resource base, America's unique capacity for technology innovation, and our well organized and powerful capital markets. While partisan sparks still fly over climate change, a quiet consensus has emerged over the last several years that prioritizes innovation and investment over regulation and deprivation. Instead of divisive debates over carbon taxes or regulatory efforts to limit production, we are debating constructive questions about how to scale new energy technologies, hire hundreds of thousands of workers, and strengthen American manufacturing.

A key inflection point in building this consensus was the work this Committee did to pass the Energy Act of 2020 by combining bipartisan bills together in an "all of the above," agenda to



promote clean, secure domestic energy. This direction was reinforced by the bipartisan Infrastructure Investment and Jobs Act (IIJA), which made significant investments in clean energy innovation hubs designed to accelerate the scaling of new energy technologies and also by the Inflation Reduction Act, which has brought massive private capital forward to accelerate the deployment of a wide range of clean, secure domestic energy.

Clean power has become a significant part of our nation's energy mix. Approximately 15 percent of our nation's power comes from wind and solar and today there is enough wind, solar, and battery storage installed across the United States to power more than 59 million homes. The industry provides 443,000 good-paying American jobs and delivers over \$2.8 billion each year in state and local taxes and landowner lease payments. In just the last nine months, 46 new clean energy manufacturing facilities and over \$150 billion in domestic utility-scale clean energy investments have been announced. These future projects will be located across the country and will create an estimated 18,000 new American jobs and \$4.4 billion in savings for over 24 million customers served by utilities building out and procuring more clean power.

All energy technologies have weaknesses, but if we combine their strengths, we can create a new energy economy by mid-century that addresses our economic, security, and climate imperatives. This is the shared vision that is uniting the American Clean Power Association with colleagues at the American Petroleum Institute, the Interstate Natural Gas Association, the Nuclear Energy Institute, and a wide array of climate advocates in support of a more efficient process to permit the construction of new energy systems.

ACP Recommendations

There are two critical steps to unleashing America's diverse energy resources. First, we must speed up the federal permitting processes for all energy infrastructure in support of our nation's security and climate imperatives. Second, we must enable and encourage the buildout of high-impact transmission lines that will allow us to strengthen grid reliability, increase resiliency to extreme weather events, and capture the benefits of low-cost clean power. As discussed below, ACP believes Congress can improve the efficiency and predictability of federal environmental permitting while maintaining the integrity of our bedrock environmental laws.

We appreciate the work that this Committee and Congress have done — through the Energy Act of 2020 and the IIJA — to improve the current permitting process, such as providing more dollars for federal agency staff to process permits. But no amount of additional staff can fix the inefficient and unnecessary bureaucratic and regulatory structures that bog down energy innovation. It often takes more than a decade to permit high-capacity transmission lines, with the federal environmental review process alone taking more than seven years to complete.

Without permitting reform, the United States will not come close to meeting its energy goals, including the potential to unlock more than \$3 trillion in clean energy investments over the next decade. The good news is that we don't need to reinvent whole new processes nor erode our



bedrock environmental laws to achieve our goals. ACP members are aligned around a series of reforms to the NEPA permitting process that I will describe later in this testimony. The bulk of my testimony, however, will focus on the imperative to strengthen and expand our nation's electric grid which is a topic that has historically divided both Congress and ACP's diverse membership.

Unlocking High-Impact Transmission Lines to Connect the Current Balkanized Grid

The solution to our nation's transmission challenge is easy to describe, but hard to achieve. We must stitch together America's balkanized power grids and regions with a relatively small number of high-capacity lines. While this challenge is less daunting than building a new electric transmission grid, incentivizing broad regional and national interests in a regulatory structure designed to prioritize state and local interests raises complex political, ideological, and economic issues that have frustrated recent attempts to strengthen our nation's power grid.

Over the past several months, we have challenged ACP's "big tent" membership to confront our internal differences to shape a collective position on energy permitting and transmission reform that can gain bipartisan and broad stakeholder support. Today, I want to share ACP's "Discussion Framework" to ensure America's grid can meet the needs of the 21st century. We offer this framework to help further a constructive debate and achieve an actionable legislative consensus.

The framework is summarized below and attached at the end of this document (Attachment 1). Like any negotiated outcome, some ACP companies have reservations about elements of the framework while others would like to see additional ideas added to the structure. We welcome the opportunity to engage with other energy associations, thought leaders, and policy makers as we continue to explore and refine these ideas.

ACP Discussion Framework — Defining the Need

The United States electrical grid is often referred to as the "largest machine ever made." This "machine" was built across the United States over the course of the 20th century. While the notion of the electrical grid as a single "machine" that provides power to every American is compelling, in reality, the physical infrastructure still in place today dates back to the 1950s and 1960s.

Decades of neglect has resulted in an outdated, inefficient, and unreliable power system. The United States currently experiences more blackouts than any other developed country. Moreover, estimates indicate we'll need to expand our transmission system 60 percent by 2030



to meet growing demand.¹ Absent significant process improvements and increased private sector investment, the risk of system outages will only increase.

Cost-effectively decarbonizing the United States electric grid, enhancing the nation's energy independence, increasing reliability and resilience, and driving economic growth cannot be done without building high-impact transmission lines that can carry large amounts of energy from one region to another. Unfortunately, the current balkanized grid makes it impossible to deliver power on an interregional basis.²

The ability to transfer power between regions is enormously important in emergency situations. Recent events have driven home that the lack of connections with other regions of the country can have disastrous consequences. High-stress events like Winter Storm Elliot — the extreme cold snap that blitzed much of the nation at the end of last year — or Winter Storm Uri in 2021, which led to over 210 deaths, caused almost 70 percent of Texans to lose power and 50 percent to lose water, and cost at least \$80 billion — are becoming increasingly frequent. These weather patterns are much larger than our current fragmented grids leaving major portions of the country to fend for themselves when disaster strikes. Absent more interregional capacity, it is not possible to mount the coordinated response needed to future-proof our vital power supply system.

Transmission is also critical to addressing climate change. A recent report estimates that over 80 percent of potential emissions reductions could be lost if transmission expansion is constrained to its current development pace.³ Recent analysis suggests that interregional transmission expansion would also more than pay for itself by providing up to \$180 billion in net benefits and lower energy costs for families.⁴ Studies of interregional transmission routinely find benefit-cost ratios as high as 2.5⁵ demonstrating the high price our nation is paying under the current

¹ REPEAT Project, Electricity Transmission is Key to Unlock the Full Potential of the Inflation Reduction Act, available at https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf.

² Today, there are 12 different transmission planning regions, all of which except for the Electric Reliability Council of Texas are under the jurisdiction of the Federal Energy Regulatory Commission. Yet, only six of them are full Regional Transmission Organizations — sometimes referred to as Independent System Operators — with the mandate and authority to conduct transmission planning for their region. The remaining five planning regions in the West and Southeast are much more loose associations of dozens of vertically integrated utilities, which tend to plan transmission mostly with just their own local territories (or balancing authorities) in mind.

³ *Id.*

⁴ Brattle Group, The Benefits of New Regional Transmission Planning Entities in the U.S. West And Southeast Regions, available at <https://www.brattle.com/wp-content/uploads/2022/03/The-Benefits-of-Interregional-Transmission-Grid-Planning-for-the-21st-Century.pdf>.

⁵ NREL, Interconnections Seam Study, available at [Interconnections Seam Study](#).



balkanized regime.⁶ Indeed, investing in clean energy has been shown to directly reduce household energy costs by an average of \$500 per year.⁷

By relieving grid congestion and promoting more efficient grid planning and operation, new interregional transmission presents an all-of-the-above opportunity for the full energy-generating portfolio of clean energy, fossil, and nuclear resources of the United States. Despite the near consensus that the benefits and value of expanding interregional transmission capabilities exceed costs, virtually no major interregional transmission projects have been planned and built in the United States over the last decade. In fact, in recent decades, the interregional electric grid infrastructure of North America, and of the United States in particular, has stagnated. Since 2014, the total capacity of planned or newly constructed large-scale interregional transmission in North America has amounted to less than 1/3 that of South America, 1/6 that of Europe, and 1/30 that of China.⁸

Our national economic competitiveness and security demand that our decision-making processes must evolve to meet current needs. Below we outline ACP's recommendations to spur permitting of interstate transmission and fixes to the planning and cost allocation for interregional lines.

Interstate Siting and Permitting Reform

The limited role that Congress granted the federal government to ensure transmission in the national interest has proven to be entirely ineffective. While there appears to be broad agreement around desired national direction, current legislative and regulatory incentives are not aligned to achieve this national interest. If adopted, the process improvements identified in ACP's Discussion Framework are designed to reduce the federal transmission permitting process time by more than half — from almost a decade to less than three years — and breathe life back into this provision while preserving the states' role and providing for a robust review. *See* Chart, Transmission Permitting Reform (detailing the timeline under the current process versus ACP's proposed process improvements).

⁶ For instance, while the grid operators for the Midwest and the Plains states, over the same time period, the Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP), respectively, which have substantial connections to each other as well as to other regions, experienced a "handful of short duration" outages during Winter Storm Uri, the grid operator for Texas, the Electric Reliability Council of Texas (ERCOT), experienced capacity outages that averaged 34,000 MW for two consecutive days. More than 4.5 million people lost power, some for up to four days, while temperatures were below freezing—and hundreds died as a result. ERCOT has just two DC transmission tie lines to the Eastern Interconnection and imported only 800 MW of power throughout the week. MISO's imports, meanwhile, peaked at 13,000 MW.

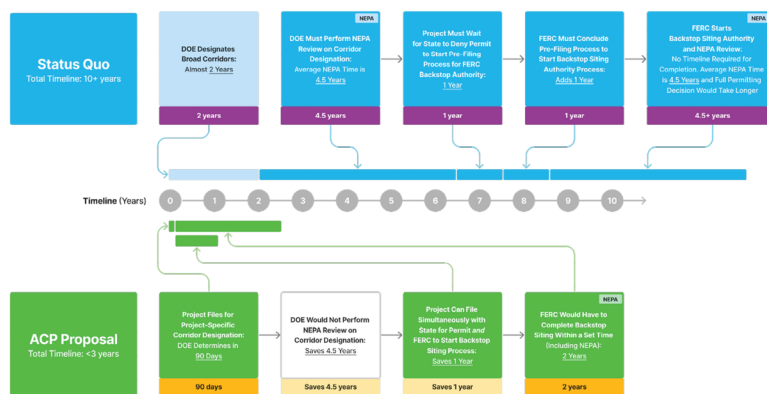
⁷ Center for American Progress, Clean Energy Will Lower Household Energy Costs, *available at* <https://www.americanprogress.org/article/clean-energy-will-lower-household-energy-costs/>.

⁸ Hickenlooper, BIG WIRES Act, at 2.



Transmission Permitting Reform

Expediting the Existing "Backstop" Siting Authority for Interstate High-Impact Lines in National Interest Transmission Corridors without Sacrificing Full Environmental Review



Prior to the Energy Policy Act of 2005 (EPA 2005), states had sole authority over transmission siting. Almost a century ago, Congress gave the Federal Energy Regulatory Commission (FERC) authority over transmission rates and facilities, but preserved state authority over siting. At that time (and for decades thereafter), generation resources were typically located near load centers. Today, generation is more often than not located large distances from demand, requiring transmission providers to obtain approval from each state (and in some states, each county) they traverse.

Crucially, state law often directs state and local decisionmakers to consider only the interests of in-state residents and businesses in issuing permits for interstate lines. In other words, lines that serve regional and national interests are essentially subject to a test that only considers parochial interests. In fact, a single stakeholder in a state process can stand in the way of a project getting developed that stretches hundreds of miles, even though all the other states that the line crosses have approved it.



In the EPAct 2005, Congress vested the federal government with limited siting authority of high-voltage interstate transmission lines.⁹ Specifically, Congress provided the Department of Energy (DOE) and FERC the authority, under certain limited circumstances, to site transmission projects in the national interest.¹⁰ This statutory provision gives DOE power to designate “national interest electric transmission corridors.” Once DOE has established one or more such corridors, FERC can issue permits for the construction of transmission facilities within the corridors if it makes certain findings. The IJA clarified FERC’s authority so that it can use its “backstop” siting authority, among other things, if a state has not approved the application within a year.¹¹

Unfortunately, not a single line has been permitted in the almost two decades that backstop siting authority has been on the books. Under the current process, FERC will issue a permit only after DOE has completed its corridor designation, effectively requiring two separate consultations, two separate NEPA reviews, and two separate agency processes before a new transmission project can move forward. In fact, if a project were to attempt to go through the whole process, it would likely take almost a decade and could be subject to a serious challenge at the end of the process — due to vagueness in the statutory authority. It is therefore not surprising that the well-intended EPAct 2005 provisions have not achieved the desired effect.

Our nation’s convoluted federal transmission authority stands in sharp contrast with the expansive and exclusive federal authority to site interstate natural gas pipelines. Congress granted FERC’s predecessor-agency exclusive authority to site interstate natural gas pipelines, and developers benefit greatly from the consolidated federal approval process that has resulted. Not surprisingly, over the past decade, the United States has built more than 10,000 miles of new natural gas interstate pipelines per year, compared to an average of just 1,800 new miles of electric transmission lines (a 5.5x difference).¹²

Many suggest that providing FERC similar plenary authority for interstate transmission lines would be the most direct and efficient way to increase grid resilience and expand low-cost clean generation. The Discussion Framework we are sharing today offers another pathway Congress can consider to accomplish these same critical objectives by substantially reforming the existing backstop authority. Under our proposal, the integrity of the process would be preserved as only redundant and inefficient steps would be removed. Further, the expedited authority would be

⁹ Congress determined that new federal authority was needed to help overcome state “[s]iting challenge” for transmission.” 1 S. REP. NO. 109-78, at 8 (2005) (statement of Sen. Pete Domenici, Chairman of the Senate Committee on Energy and Natural Resources). In another statement, Domenici said that the act would “streamline the permitting of siting for transmission lines to assure [sic] adequate transmission.” 150 CONG. REC. S3732 (daily ed. Apr. 5, 2004) (statement of Sen. Domenici).

¹⁰ The Infrastructure Investment Jobs Act (IJA) clarified FERC’s FPA so that FERC can use its backstop permit authority where a state has not made a determination on an application by the one-year date.

¹¹ The IJA also expanded DOE’s authority to designate national interest electric transmission corridors in areas currently experiencing or that are expected to experience transmission capacity constraints or congestion.

¹² York Dispatch, Clean energy Permitting Reform, *available at* <https://www.yorkdispatch.com/story/opinion/contributors/2023/01/11/clean-energy-permitting-reform-needed-for-pa-to-boost-economy-protect-climate-and-burn-less-coal/69798464007/>.



limited to just a handful of lines that are deemed of significant national interest due to their size and impact.

The ACP Discussion Framework proposes the following reforms:

I. Congress Should Codify an Applicant-Driven Process:

The current process relies upon DOE to proactively undertake a corridor study and then designate broad transmission corridors. On the single occasion in 2007 when DOE designated corridors, they covered entire states, unnecessarily increasing state opposition to them. It took about two years just to get to the proposed designation.

- **ACP's Discussion Framework** proposes that Congress explicitly grant DOE authority to consider project-specific transmission corridors at the request of applicants, rather than only considering projects that are in DOE-initiated corridors. DOE has asserted such authority, but the statute is vague, so developers are wary of being the first one to use it and potentially be subject to litigation absent clarification in statute.

Under this approach, a project applicant would submit a proposal to DOE for the purpose of establishing a corridor consistent with the proposed project's footprint. Eligibility for this expedited backstop siting authority would remain limited to lines that are deemed in the national interest, based on the existing criteria, and to those that meet additional voltage and megawatt size limitations to ensure the lines are high impact. This reform would cut at least a couple of years off the existing backstop siting authority process.

II. Congress Should Require Contemporaneous State and FERC Review:

Under the status quo, a developer seeking backstop siting authority must allow the state a year to make its decision on its project before starting the pre-filing process at FERC. This delay is due to the fact that FERC currently provides states a full year to process an application without any intervening federal proceedings. FERC is currently taking comment on a proposal to eliminate this one-year delay.¹³

- **ACP's Discussion Framework** proposes Congress codify FERC's proposed policy for simultaneous state and FERC review. This would continue to recognize the primacy of the states' role in siting transmission infrastructure but would help remove a year off the backstop siting authority process, as the FERC pre-filing process takes that long and would likely be completed by the time a state made its decision on whether to permit a line, saving a year in the overall permitting process.

¹³ FERC, Applications for Permits to Site Interstate Electric Transmission Facilities, Notice of Proposed Rulemaking, available at <https://www.ferc.gov/media/e-1-rm22-7-000>.



III. Congress Should Mandate a Single Federal Environmental Review for the Applicant-Driven Process:

At present, there is a requirement for DOE and FERC to conduct separate environmental reviews on a project seeking backstop authority. DOE must perform an environmental review of any corridor designation, and FERC must do an environmental review of any line therein that seeks backstop authority. The average timeline for a full environmental review, which would likely be required at both stages, is four and half years.¹⁴ Thus, requiring this review to be undertaken twice for a transmission project could result in a wait time of almost a decade for the environmental analysis alone.

- **ACP's Discussion Framework** proposes that Congress direct that only a single federal environmental review would be used for applicant submissions. Because the proposed location of the corridor in an applicant driven process would be coextensive with the footprint of the transmission line itself, the environmental impacts of the project could be fully analyzed during FERC's consideration of backstop authority for a line, making the currently required earlier review by DOE duplicative and unnecessary. FERC's NEPA review would serve as a single environmental review and form the basis for all decisions on the proposed line. This reform would cut off at least a couple of years of the existing backstop siting authority.

IV. Congress Should Impose Timelines on the Corridor Designation and Backstop Siting Process:

The current backstop siting authority does not have timelines in which the corridor designation must be performed by DOE or with respect to when FERC must issue a permit under the backstop siting authority.

- **ACP's Discussion Framework** proposes that Congress apply timelines to the corridor designation and backstop siting authority decisions. DOE would be required to make the initial national interest determination in 90 days as this straightforward determination merely initiates the process. A single federal environmental review would be led by FERC, which would set milestones for cooperating agencies, and require completion of the siting and permitting process within two years unless an applicant independently sought a delay. As such, the entire length of the federal permitting process would take less than three years.

Interregional Planning & Cost Allocation Reform

FERC's seminal 2011 rule on transmission planning and cost allocation, Order No. 1000, attempted to address both regional and interregional lines. While FERC created a workable

¹⁴ Council for Environmental Quality, Environmental Impact Statement Timelines, *available at* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf.



process for regional lines, no significant interregional transmission project has been approved through the Order No. 1000-driven process. This fact, combined with the numerous studies finding that such projects would yield significant benefits if built, demonstrates the need for a new approach. See Chart, Interregional Transmission: Improving Transmission and Cost Allocation (depicting the status quo for interregional planning and cost allocation compared to ACP's proposed improvements).

Interregional Transmission: Improving Planning and Cost Allocation

Today, regions only "coordinate" on planning and paying for interregional transmission. Without a joint model to evaluate interregional transmission lines, it's no surprise that **not a single meaningful interregional project has cleared the Federal Energy Regulatory Commission's (FERC) planning and cost allocation processes.**

Simple improvements to existing processes can address this issue.

	Processes Joint vs. Coordinated	Planning Consolidated vs. Separate	Paying Varying vs. Standardized
Status Quo No meaningful interregional projects have cleared FERC's planning and cost allocation processes.	COORDINATED FERC's Order No. 1000 merely requires regions to coordinate on interregional planning. In practice, "coordination" has meant that regions simply evaluate these projects using their regional process – which does not fully consider the broad benefits these projects can provide. This "coordination" process has yielded no significant interregional projects in the past decade.	SEPARATE Interregional projects must be approved by each region they cross, with their own criteria – and also through a combined evaluation. This is the "triple hurdle" – separate evaluations by each region using their own practices and metrics. 	VARYING Each region crossed by a transmission line uses its own methods to determine if the project is more cost effective and efficient than regional alternatives, and typically doesn't take into consideration broader benefits. Interregional projects never make it to cost allocation due to misaligned or different methodology in each region.
ACP Proposal Compels regions to conduct timely joint evaluations of interregional transmission lines.	JOINT PROCESS Congress would require FERC to conduct a rulemaking that requires a true joint process for interregional transmission planning and cost allocation.	CONSOLIDATED Neighboring regions must adopt a single process for evaluating interregional transmission lines. Lines cannot be subsequently reassessed by a planning region.	STANDARDIZED As part of a single process, regions would use common criteria to evaluate costs and benefits. This criteria would automatically move projects forward to cost allocation if projects are more cost effective, efficient and benefits clearly outweigh costs.

Improvements: By having Congress instruct FERC to review Order No. 1000 and mandate joint planning procedures for neighboring regions, a significant barrier to interregional line development would be eliminated.



While FERC's Order No. 1000 encouraged interregional planning and cost allocation, it did not require it. The rule requires neighboring transmission planning regions to establish procedures to coordinate planning and cost allocation, but it does not mandate a true *joint* process or evaluation of interregional solutions and their benefits. The result has been little, if any, forward momentum on interregional lines as planning organizations focus their project assessment on existing region-specific criteria without adequate consideration of interregional benefits.

Without a mandated joint consideration of interregional projects and the economic, reliability, operational, and public policy benefits these projects provide, it is no wonder that interregional projects are rarely found to be more efficient or cost effective than regional alternatives. The current process subjects interregional projects to an impossible "triple hurdle," requiring



approvals in the interregional planning process and two separate and independent regional reviews.

In addition, under current regulatory practice, for an interregional project to get cost allocation, every region affected by the project must select the relevant portion of that project for regional cost allocation rather than designating a single interregional cost methodology for the entire project. Congress must direct FERC to require the regions to create a mutually agreed upon single process for planning and allocating cost for interregional lines. Without such a process, these critically important interregional projects will not move forward.

Lastly, Order No. 1000 presents another impediment to the development of interregional lines by failing to provide a clear path for non-incumbent utility transmission developers to seek cost allocation, even though such business models have often taken the lead in developing interregional transmission.

To address these issues, ACP's Discussion Framework proposes the following reforms to interregional planning and cost allocation.

- I. **Congress Should Require FERC to Issue a Rulemaking Mandating Joint Interregional Planning and Cost Allocation between Neighboring Regions:**
 - **ACP's Discussion Framework** proposes that Congress require FERC to issue a final rule within a year requiring planning regions to create a formal procedure with their neighboring regions for the identification and evaluation of interregional facilities. Neighboring regions would then submit compliance filings proposing regional variations, providing the flexibility to determine how they comply with the interregional planning and cost allocation requirements as long as they adhere to FERC's existing planning and cost principles, as well as the additional joint planning and cost allocation requirements discussed below. If regions do not timely submit an acceptable compliance filing with joint planning and cost allocation procedures, FERC would impose its default rule.
- II. **Congress Should Require Joint Interregional Planning Reforms:**
 - **ACP's Discussion Framework** proposes that Congress explicitly require true, joint interregional planning, specifying that approved lines in the process may not be subsequently reassessed by a planning region once they reach a material stage of development — removing the triple hurdle. The joint plan would be required to use compatible benefits metrics and study approaches between neighboring regions in approving interregional projects and mandate that these metrics seek to maximize net benefits on an interregional (not regional) basis. In other words, the proposal would require neighboring regions to harmonize their interregional planning processes to ensure synchronization in viewing lines that cross their seams. Aligning the interregional approval processes in this manner would help address the challenge



these projects face in being subject to different metrics and approval standards in the different planning regions from which they must obtain approval.

III. Congress Should Require Joint Interregional Cost Allocation Reforms:

- **ACP's Discussion Framework** proposes that Congress require planning regions to develop with their neighboring regions a single cost allocation methodology for interregional lines. This would require a common interregional cost allocation method across neighboring regions for new interregional transmission facilities. Further, the developer of an interregional line would be able to file at FERC for cost recovery and cost allocation upon a showing that: (1) the benefits outweigh the costs of the project (ratio must exceed 1.00), based on the broad range of direct and quantifiable benefits of the line across all regions; and (2) the line is more efficient and cost-effective solution for regional needs than regional alternatives or non-transmission solutions. Costs would be allocated to regions consistent with existing FERC precedent, including the requirement that costs must be roughly commensurate with overall benefits.

IV. Congress Should Allow for Incumbent and Non-Incumbent Models to Participate in Interregional Planning and Cost Allocation:

- **ACP's Discussion Framework** proposes that Congress provide a directive that all transmission developers of interregional facilities, regardless of business model (e.g., incumbent, merchant, or independent), would be able to seek cost recovery and allocation at FERC — but must participate in the interregional planning process to do so.

National Environmental Protection Act Reform

Recognizing that NEPA does not fall under the jurisdiction of this Committee, it is still imperative to address the challenges associated with the federal environmental review process for energy infrastructure.

ACP believes that it is possible to implement changes to the permitting process that make project approvals more efficient, predictable, and coordinated without sacrificing the intent and purpose of those environmental statutes. Successful deployment of wind, solar, storage, hydrogen, and transmission projects require a predictable, timely, and cost-effective permitting framework. However, the current process is anything but. It takes an energy generation project — such as a new solar or wind farm an average of four and half years to complete necessary NEPA reviews. Transmission project environmental reviews take an average of six years.¹⁵

¹⁵ See *supra* note 14.



These delays are largely due to procedural inefficiencies in implementation rather than problems with the law itself. Because projects are typically not allowed to move forward until a NEPA review is finalized, delays create uncertainty and raise costs for project developers — creating a chilling effect on the development of vital energy infrastructure projects. While waiting for reviews to be finalized in order to begin construction, developers must continue to pay loans, meet other financial obligations, and purchase and store materials. There are also lost opportunity costs — money invested in a project waiting to break ground could be invested somewhere else, creating employment opportunities and affordable power.

These delays have ripple effects throughout the economy — throwing off project timelines, domestic supply chains, and the indirect jobs and economic activity that would otherwise occur. That is why ACP has been and will continue to be a strong advocate for commonsense NEPA reforms that will expedite permitting timelines, increase transparency and accountability, and promote best practices while reducing duplication and bureaucratic red tape. To that end, ACP has supported constructive elements in various legislative proposals that would address these procedural inefficiencies, including specific NEPA provisions in Chairman Manchin’s Building American Energy Security Act, H.R. 1, and Senator Capito’s RESTART Act.

ACP supports the following NEPA reforms that are addressed in these bills:

- The designation of a lead agency for NEPA review to ensure greater coordination across agencies, to avoid duplication and to reduce the number of environmental documents produced.
- A time limit of 2 years for an environmental impact statement (EIS) and 1 year for an environmental analysis (EA) to ensure the timely completion of environmental reviews.
- Allowing project sponsors to prepare an EIS or EA, while still requiring the lead agency to independently evaluate the document for adoption.
- Limiting “major federal actions” to prevent review of projects that are not on federal lands, that have no or minimal federal funding, and for which the federal agency cannot control the outcome of the project.
- The inclusion of additional Categorical Exclusions.
- The requirement to utilize previously completed EISs and EAs if the action is substantially similar, and the effects of the proposed action are substantially similar to those analyzed in the previous reviews.

ACP also recommends reforms that would:

- Codify a default timeline of 30 days from the date of application for a Cost Recovery Agreement and not more than 180 days for the issuance of a Notice of Intent for the EIS



from the time of receipt, in order to prevent up front delays to the NEPA process after an application has been filed.

- Codify the requirement that outstanding authorizations required for project construction be issued no later than 180 days after the issuance of a Record of Decision (ROD) or a finding of no significant impact, with exceptions established for authorizations that require a level of engineering detail that is incompatible with the stage of design development during the NEPA process.

Public Lands Permitting Reform

In 2015, less than 1,000 megawatts (MW) of solar photovoltaic and 220 MW of onshore wind projects have been deployed on public lands.¹⁶ In the same period, 42,900 MW of utility-scale photovoltaic and 64,900 MW of onshore wind was built across the country on private lands.¹⁷ This is the case even though public lands have the potential to host tens of thousands more megawatts of clean energy.

Enacting the NEPA reforms outlined above is critical to unleashing clean energy on public lands.

In addition, ACP recommends:

- Revising the Bureau of Land Management's (BLM) competitive leasing rule to make developing clean energy on public lands more attractive. A revised rule should address the fact that the existing overly burdensome costs of developing clean energy on public lands serves as one of the main barriers to tapping the potential that public lands hold for deploying these resources.
- Passing the Public Land Renewable Energy Development Act (PLREDA), that would expedite the permitting process for wind, solar, and energy storage development on federal lands and increase the production of these clean energy resources on public lands, including: a revenue sharing mechanism that would ensure a fair return for states, counties, conservation, and taxpayers; the same procedures for "priority" lands and newly named "development" lands (i.e., lands that are not "priority" lands nor "exclusion areas"), with incentives established for priority lands; a new designation of "development" lands that are neither priority lands nor within exclusion areas; and a process that ensures that development lands are processed on parity with priority areas.
- Strengthening Renewable Energy Coordination Office (RECO) authority to ensure faster approval of renewable energy projects on BLM lands.

¹⁶ Bureau of Land Management. Wind Energy Rights-of-Way (ROW) on Public Lands. May 2021, *available at* https://www.blm.gov/sites/blm.gov/files/docs/2021-05/PROJECT%20LIST%20WIND_May2021.pdf.

¹⁷ ACP, Clean Power IQ. Data, *available at* <https://cleanpoweriq.cleanpower.org>.



- Passing an increased renewable permitting target for public lands as it recently did for federal lands in the Energy Act of 2020.

Offshore Wind Permitting Reforms

Some of the biggest challenges for offshore wind are project delays and unnecessary project reductions due to federal permitting. Offshore wind projects are invariably sited on federal waters (as that is where the best resources are). Therefore, virtually all offshore wind projects must go through the unnecessary lengthy federal permitting process, as well NEPA reviews. Offshore projects must also comply with more than a dozen cooperating and consulting agencies and require reviews and approvals under at least ten distinct federal statutes. This broad federal review has led to significant delays in offshore wind deployment.

ACP recommends that:

- Congress should pass an offshore wind permitting target for federal waters.
- Congress should make the following changes to Outer Continental Shelf Lands Act to facilitate offshore wind permitting:
 - Optimize the factors in 43 U.S.C. 1337(p)(4) to provide clarity and additional legal protections for leasing and permitting of offshore renewable energy.
 - Clarify that the National Oceanic and Atmospheric Administration has the authority to issue offshore rights of way for transmission within national marine sanctuaries for projects that are located outside of the boundaries of the sanctuary, provided they are not determined to be incompatible with the purpose of the marine sanctuaries. This would ensure that certain offshore wind projects are not boxed out of sending their power to the shore.
 - Create parity in judicial review for offshore wind and oil and gas projects by allowing United States Courts of Appeals to have original jurisdiction over approvals of offshore wind plans. This would limit the ability of opponents of offshore wind to engage in endless appeals.
 - Clarify that the construction and operation of offshore renewable energy projects does not require Clean Air Act permits in light of their long-term air emission reductions. This would align the air permitting requirements for offshore wind energy with onshore wind.



Conclusion

Our nation is at an inflection point. We have the energy resources to power a secure and clean economy. We have the skilled workforce to manufacture and operate exciting new energy production and storage solutions, and private sector capital poised to modernize and scale new energy infrastructure. What we lack is an efficient regulatory structure to guide and manage this tremendous opportunity. Developing the legislative consensus to speed the clean energy transition has been elusive, but we have never before had support from a coalition with this breadth of aligned interest or shared sense of urgency.

Progress on permitting reform has been held back by a perception that more efficient processes would advance an energy system that is inconsistent with the environmental imperatives of climate change. We now can see clearly that these inefficient systems are the major barrier to achieving our climate, security, and economic goals.

We are encouraged by the various legislative proposals from both sides of the aisle and the partnership forming across energy technologies with the common goal of passing reasonable permitting reform. There is no political coalition or constituency that can move forward legislation that is focused principally on fossil energy. There is equally no possibility of moving legislation forward that only seeks to apply process improvements to new clean energy technologies. The truth is that we need to work together to find a solution that can advance all competitive energy sources that are consistent with our climate and security national imperatives.

We are also encouraged by the growing realization that we must increase transmission capacity to move electric power between regions. From providing more low-cost clean power to increasing grid resilience to protecting regions from extended disaster driven outages, new transmission is the key.

We believe that ACP's Discussion Framework offers a pragmatic set of ideas that can advance this critical discussion. We urge this Committee and Congress to embrace the fierce urgency of pragmatism and lead the way.



**Attachment 1:
ACP Discussion Framework
High-Impact Transmission Lines in the National Interest:
Planning, Siting & Cost Allocation**

Purpose and Context

The current permitting, planning and cost allocation processes for high-impact power lines are essentially broken and presents a huge barrier to delivering clean energy. In fact, not a single line has ever been sited under the existing backstop siting authority and no real interregional projects have ever been developed under the existing interregional planning and cost allocation processes. The American Clean Power Association (ACP) represents companies on all sides of this issue (utilities, IPPs, and independent transmission developers) but all have the common purpose of deploying more clean energy. This Discussion Framework represents an effort among ACP members to overcome our differences and chart a path forward on policies that are necessary to unlock our shared deployment goals for clean energy. **Like any negotiated outcome, some ACP companies have reservations about elements of this framework while others would like to see the proposed structure augmented with additional ideas. We are offering this framework to accelerate the constructive debate that must occur to achieve an actionable legislative consensus. In the coming weeks, ACP welcomes the opportunity to engage with other energy associations, thought leaders, and policy makers as we continue to explore and refine these ideas.**

I. Designation of High-Impact Facilities in the National Interest

- a. *Applicant-driven process*: Transmission developers can directly submit an application to DOE to have high-impact transmission lines (AC or DC and overhead, underground, or submarine) be deemed National Interest Transmission Electric Corridors (NIETC), consistent with the existing criteria in section 216 of the Federal Power Act and the additional limitations below:
 - i. **Existing criteria** for determining whether to designate —
 - 1. The economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;
 - 2. Economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy;
 - 3. A diversification of supply is warranted;
 - 4. The energy independence or energy security of the United States would be served by the designation;
 - 5. The designation would be in the interest of national energy policy;
 - 6. The designation would enhance national defense and homeland security;



7. The designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid; and

8. The designation —

- a) Maximizes existing rights-of-way; and
- b) Avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and
- c) The designation would result in a reduction in the cost to purchase electric energy for consumers.

- ii. **Additional limitations** for being deemed a high-impact line eligible for special siting authority in section II —

1. Transmission capacity of not less than 750 megawatts;
2. Capable of transmitting electricity at a voltage of not less than 345 kilovolts; and
3. Crosses at least two states or one state and the outer continental shelf.

- b. **No NEPA for designation:** Preparation of an environmental document would not be required for the designation of high-impact lines deemed in the national interest.

- c. **Milestone:** DOE would be required to make a decision on the designation within 90 days from the date of application for an applicant-driven project.

II. **Expediting Existing Siting & Permitting Authority for High-Impact Facilities in the National Interest**

- a. **Application process for backstop siting authority:** If the criteria in section (I) above are met, a transmission developer may apply directly to states and FERC for siting authority at the same time.

- i. **Simultaneous review:**

1. The state application and FERC siting proceedings would run contemporaneously and the latter could begin upon an application being submitted for NIETC designation.
2. The DOE NIETC designation and FERC siting proceedings would run contemporaneously.

- ii. **Certificate issuance:** After an opportunity for notice and an opportunity for hearing, FERC would be able to issue a certificate if it finds, consistent with the criteria in the existing backstop siting process (section 216):

1. A state in which a high-impact transmission line is to be constructed or modified had not approved the siting of the line within a year from the time the state application was submitted.

- iii. **Environmental review:**



1. **One document:** Only one environmental document would be prepared on the line (*i.e.*, FERC would incorporate any environmental review performed by DOE for the NIETC designation).
2. **Avoid duplicate reviews:** FERC would coordinate with and incorporate the review performed by a state to the maximum extent practicable.
3. **Milestones:**
 - a) FERC would act as the lead agency for all environmental reviews related to high-impact lines in the national interest and set milestones for cooperating agencies.
 - b) FERC, as well as the other federal participating agencies, would be required to complete the permitting process within two years unless an applicant independently sought a delay.
4. **Community Engagement:** The siting process should allow for a pre-application consultation with stakeholders in affected communities, including notice and engagement with stakeholders and affected communities.
 - a) **Funding Mechanism:** Potential funding mechanisms (such as revenue sharing) to offset impacted communities from a line should be considered.
 - b) **Cost Recovery:** Developers should be allowed to seek cost recovery in FERC transmission rates for community benefit payments to jurisdictions impacted by a project.

III. Fixing the Existing Interregional Planning and Cost Allocation Process

- a. **Interregional planning and cost allocation rulemakings:** Direct FERC to issue a rulemaking on interregional planning and cost allocation within 180 days and finalize the rule no later than one year.
 - i. **“Interregional facilities”** defined consistent with FERC’s current definition: spanning two or more FERC Order No. 1000 planning regions.
 1. Developers of interregional facilities, regardless of business model (*e.g.*, incumbent/merchant/independent), should be able to seek cost recovery and allocation at FERC but must participate in the interregional planning process and cannot then recover costs directly from customers for the line absent selection in the planning process.
- b. **Interregional Planning Requirements**
 - i. Rule would require planning regions to create with their neighboring regions a formal procedure for the identification and joint evaluation of interregional facilities.



- ii. **Planning requirements:** Rule would set forth a *pro forma* tariff but allow regions to propose variations in subsequent compliance filings that adhere to the following principles:
 - a) The synchronization of planning processes in neighboring regions.
 - b) Regions must adopt a consistent timeline and common metrics — including benefits, needs, and input assumptions.
 - c) Projects must be selected to meet identified interregional needs through a single, coordinated assessment.
 - d) Regions must account for full electricity system benefits, including improved reliability, enhanced resilience to extreme weather, reduced congestion, reduced power losses, greater carrying capacity, reduced planning and operating reserve requirements, and improved access to generation.
 - e) Approved lines may not be subsequently reassessed by a planning region once they reach a material stage of construction.
 - f) Interregional plans must be completed within three years of enactment and updated not less frequently than once every three years.
- iii. **Cost Allocation Requirements:** Rule would require planning regions to develop with their neighboring regions a single cost allocation methodology for interregional lines.
 - 1. **Cost Recovery:** The developer of an interregional line could file at FERC for cost recovery and cost allocation upon a showing:
 - a) The benefits outweigh the costs of the project (ratio must exceed 1.00) based on the broad range of direct and quantifiable benefits of the line across all regions; and
 - b) The line is more efficient/cost-effective solution for regional needs than regional lines or non-transmission solutions.
 - i. The developer would be barred from recovering costs directly from customers absent selection of the project in the interregional planning process.
 - 2. **Cost Allocation Principles:** Costs would be allocated to regions consistent with existing FERC precedent, including:
 - a) Costs must be roughly commensurate with overall benefits;
 - b) No costs allocated to those who receive no benefits; and
 - c) Consider the broad range of direct and quantifiable benefits (e.g., reliability, economic, public policy).

IV. ROFR

- a. Nothing in section III of this Discussion Framework is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to the ownership of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.

The CHAIRMAN. You only went over 120 seconds, not 90.

Mr. GRUMET. I tried.

The CHAIRMAN. It was great, a great opening.

Mr. Nolan, you will be next.

**STATEMENT OF RICH NOLAN, PRESIDENT AND CEO,
NATIONAL MINING ASSOCIATION**

Mr. NOLAN. Good morning, Mr. Chairman, Ranking Member Barrasso, and members of the Committee, it is a pleasure to be here. I will endeavor to stick with the time limit.

The CHAIRMAN. Thank you.

Mr. NOLAN. We will see how it goes.

The National Mining Association appreciates the opportunity to discuss the urgent need to strengthen our domestic supply chains, to secure American energy resources, and to protect reliable electricity generation. Domestic mining conducted under world-leading environmental safety and labor standards is essential to virtually every supply chain, and the right policies are needed to unlock our full potential from resources—not overseas, but right here at home. Uranium and coal, which provide 40 percent of the nation's electricity, are key sources of baseload power—generation that is available 24 hours a day, seven days a week. Copper, cobalt, lithium, and silver are essential components to EV batteries and the electrification of the economy. Seventy percent of the world's steel requires metallurgical coal for its production, and it takes 100 metric tons of met coal to build a wind turbine. Barite and moly support oil and gas production. In short, a strong domestic mining industry makes America's energy security possible.

The mining industry is also a source of high-paying, stable, and often unionized jobs that provide generous benefits. We directly employ more than 475,000 people who make an average wage of \$85,000 a year. These direct jobs support an additional 800,000 indirect jobs. Each year, our industry generates more than \$119 billion in revenues for the U.S. economy, paying more than \$18 billion in federal, state, and local taxes. Last year, federal coal production produced over \$576 million in revenue for federal and state governments. Demand for mined materials is expanding exponentially, but we have not seen corresponding actions to support increased production of these critical mined materials. Instead, we have deepened our reliance on foreign sources of mined materials. And in 2022, the U.S. reached its highest level of mineral import reliance. We are more dependent now than ever on China, Russia, and other countries for mined materials we should be sourcing right here at home.

Each new announcement of a blocked domestic mine locks in our competitive weakness and weakens our national security. Without permitting reform, we will be watching the global competition for minerals and energy control from the sidelines. Providing additional funding or tax incentives for programs that will never be approved by our government does nothing. It takes an average of ten years to permit a new mine, one of the longest permitting timelines in the world. As Mining Subcommittee Chair Cortez Masto has long said, "We can protect the environment and still do the mining that is necessary." However, our unwieldy and needlessly complex

permitting process can trap promising mining projects in the limbo of duplicative and endless costly reviews. On federal lands, U.S. coal producers are experiencing a moratorium on leasing for thermal coal and delays in granting metallurgical coal leases. Thermal coal producers are feeling the impact of federal regulation, issued at a rate that experts, such as FERC, warn threatens our grid reliability. Chairman Manchin has consistently stated there is an overwhelming bipartisan recognition that our current permitting system is not working. NMA firmly agrees.

This Congress has a unique opportunity to enact meaningful permitting legislation. The American Energy Security Act, the SPUR Act, and the RESTART Act are common-sense solutions. These bills prioritize development and certainty to mining communities, companies, and manufacturers and investors. Establishing lead agencies, coordinating state and federal processes, improving the timeliness of reviews, and maintaining mineral access and shoring up the reliability of the electric grid are all essential. We have abundant mineral and coal resources right here at home, and the U.S. mining industry stands ready to supply our country with a full range of mined materials needed to move our nation forward.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Nolan follows:]



**Testimony of
Rich Nolan
President & CEO
National Mining Association
before the
United States Senate
Energy & Natural Resources Committee**

**Hearing to Examine Opportunities for Congress to Reform the
Permitting Process for Energy and Mineral Projects**

May 11, 2023

Good morning members of the committee. I am Rich Nolan, President and Chief Executive Officer of the National Mining Association (NMA). America's mining industry supplies the essential materials necessary for nearly every sector of our economy – reliable electricity generation, new technologies, healthcare, transportation, steel making and critical infrastructure, and national security. The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of more than 275 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers.

Ever-increasing Demand For Minerals

There is widespread recognition that we are entering the most mineral and metal intensive era in human history. Consequently, the right policies to secure new domestic mineral production and our supply chains are more important than ever.

The international competition for minerals will be fierce. The European Union (EU) has unveiled its "REPowerEU Plan."¹ The United Kingdom (UK) released its

¹ Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, {SWD(2022)

"Resilience for the future: The UK's critical minerals strategy."² In December, Canada released its "Canadian Critical Minerals Strategy," a generational "plan to position Canada as the global supplier of choice for critical minerals and the clean technologies they enable."³ China moved much earlier and more quickly to address the risks to its mineral supply chains in 1999, when the Chinese government announced its aggressive "go global" campaign to secure raw materials.⁴

Many public analyses evaluate the demand for minerals for new technologies and energy generation. The International Energy Agency (IEA) issued a cautionary report about risks related to the mineral supply chains required for energy generation transitions.⁵ IEA and others estimate 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 six to 30 times higher than today's levels; and
- Rare earth elements may see three to seven times higher demand in 2040 than today.⁶

230 final}, May 18, 2022. https://eur-lex.europa.eu/resource.html?uri=cellar:fc930f14-d7ae-11ec-a95f-01aa75ed71a1.0001.02/DOC_1&format=PDF.

² Department for Business, Energy and Industrial Strategy, "Resilience for the future: The UK's critical minerals strategy," 22 July 2022. <https://www.gov.uk/government/publications/uk-critical-mineral-strategy/resilience-for-the-future-the-uks-critical-minerals-strategy>

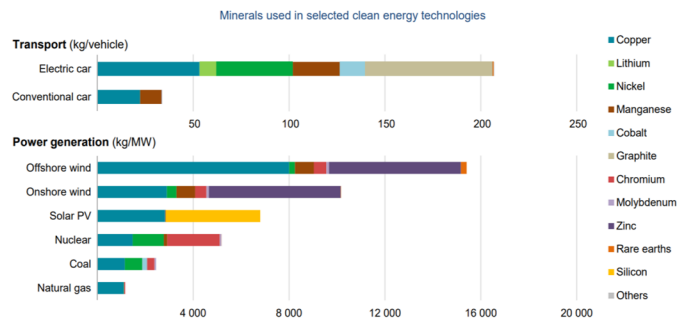
³ Natural Resources Canada News Release, "Countries Commit to the Sustainable Development and Sourcing of Critical Minerals," Dec. 12, 2022. <https://www.canada.ca/en/natural-resources-canada/news/2022/12/countries-commit-to-the-sustainable-development-and-sourcing-of-critical-minerals.html>

⁴ CRS, "China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress," R43864, March 20, 2015, p. 2. <https://crsreports.congress.gov/product/pdf/R/R43864/6>

⁵ International Energy Agency, "The Role of Critical World Energy Outlook Special Report Minerals in Clean Energy Transitions," May 2021.

⁶ Id at pp.8-10

The rapid deployment of clean energy technologies as part of energy transitions implies a significant increase in demand for minerals



Notes: kg = kilogramme; MW = megawatt. Steel and aluminium not included. See Chapter 1 and Annex for details on the assumptions and methodologies. IEA. All rights reserved.

Other major reports have echoed the findings of the IEA. Wood Mackenzie, the World Bank,⁷ the Wilson Center⁸ and others outline staggering demand increases. According to Wood Mackenzie:

- Demand for copper and aluminum is anticipated to increase by a third by 2040.
- Nickel demand will grow by two-thirds, and cobalt and lithium by 200 percent and 600 percent, respectively.⁹

Matching the speed and scale of this rising demand requires a permitting regime that enables the mining sector to respond to market signals; current U.S. permitting timelines do not.

As the IEA concluded in a July 2022 battery supply chain report:

"Governments must leverage private investment in sustainable mining *and ensure clear and rapid permitting procedures* to avoid potential supply bottlenecks."¹⁰ (Emphasis added.)

⁷ World Bank Group, "Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition," 2020. <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

⁸ D. Wood, A. Helfgott, M. D'Amico, and E. Romanin, Woodrow Wilson International Center for Scholars, "The Mosaic Approach: a Multidimensional Strategy for Strengthening America's Critical Minerals Supply Chain," Oct. 12, 2021, https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/critical_minerals_supply_report.pdf.

⁹ Gavin Montgomery, Wood Mackenzie, "COP26: Why battery raw materials are a highly-charged topic: Aggressive EV uptake is needed to meet a 2° C target, but metals supply will struggle to meet demand." 13 October 2021, <https://www.woodmac.com/news/opinion/cop26-why-battery-raw-materials-are-a-highly-charged-topic/>

¹⁰ IEA, "Global Supply Chains of EV Batteries," July 2022. <https://www.iea.org/reports/global-supply-chains-of-ev-batteries>.

Examples of Impacts Down the Supply Chain

End users of minerals are now more acutely aware of the challenge of securing mineral supply chains, a development perhaps most pronounced by the automotive sector as it transitions to an electric vehicles (EVs) future. Over the last few years, many of the major U.S. car makers have made ambitious announcements about their EV plans. General Motors has announced it will invest \$35 billion in electric and autonomous vehicle product development until 2025 and that it will phase out petrol and diesel cars by 2035. Volkswagen wants half of its vehicle sales to be electric by 2030 and nearly 100 percent electric sales by 2040. Audi will launch fully electric models only from 2026 and aims for all car sales to be electric by 2030.¹¹

EVs, however, are far more mineral intensive than traditional combustion engine vehicles. Automakers have been seeking solutions to meet the supply challenge, including inking deals directly with NMA member mining companies. For example, Tesla addressed its concern about obtaining the nickel for its EVs by entering into an agreement with Talon Metals to buy quantities of nickel directly from a mine the company is building in Minnesota. Ioneer has signed an agreement with the Ford Motor Company to supply lithium from its Rhyolite Ridge lithium-boron project in Nevada.¹² General Motors announced it was investing \$650 million in Lithium Americas to secure access to production from its Nevada operations, which it estimates will contribute to one million EVs annually.¹³ For this deal, GM was one of more than 50 automakers and companies competing for a secure supply of minerals from Lithium Americas.¹⁴

At the same time, automakers are calling for acceleration of domestic mining. The Alliance for Automotive Innovation (Alliance) wrote President Biden two years ago expressing concerns that “neither the current trajectory of consumer adoption of EVs, nor existing levels of federal support for supply- and demand-side policies, is sufficient to meet our goal of a net-zero carbon transportation future.”¹⁵ One of the specific policy recommendations offered by the Alliance is to promote national security and economic security enhancements through the development of U.S.-based supplies of critical minerals (extraction, processing and recycling), battery and fuel cell manufacturing, and other critical components, including semiconductors.¹⁶ In 2021, Jim Farley, President and CEO of Ford Motor Co. said:

¹¹ van Halm, I. and Mullan, C., Feb. 14, 2022, “Booming EV sales challenge critical mineral supply chains,” *Energy Monitor* <https://www.energymonitor.ai/sectors/transport/booming-ev-sales-challenge-mineral-supply-chains>

¹² *PR Newswire*, “Ioneer Signs Binding Lithium Offtake Agreement with Ford,” July 21, 2022

¹³ Lithium Americas General Motors Transaction Announcement, January 31, 2023, <https://www.lithiumamericas.com/news/lithium-americas-provides-general-motors-transaction-details-and-update-on-construction-plan-for-thacker-pass>. Cecilia Jamasmie, January 31, 2023, “GM invests \$650m in Lithium Americas to develop Thacker Pass mine” www.mining.com, <https://www.mining.com/gm-lithium-americas-to-jointly-develop-thacker-pass-mine-in-nevada/>

¹⁴ The Electric, “The New ‘Elephants’—GM Grabs the Biggest Lithium Deposit in the U.S.,” Feb. 2, 2023. <https://subscriptions.theinformation.com/newsletters/the-electric/archive/the-electric-the-new-elephants-gm-grabs-the-biggest-lithium-deposit-in-the-u-s>

¹⁵ Alliance for Automotive Innovation letter to President Biden, March 29, 2021. <https://www.autosinnovate.org/posts/communications/Auto%20Industry%20EV%20Policy%20Letter%20to%20President%20Biden%20March%2029%202021.pdf>

¹⁶ *Id.* at 4.

We have to bring battery production here, but the supply chain has to go all the way to the mines. . . So are we going to import lithium and pull cobalt from nation-states that have child labor and all sorts of corruption or all we going to get serious about mining?" . . . We have to solve these things, and we don't have much time."¹⁷

Demand Cannot Be Met Without New Mining

Automakers are simply one stakeholder group that acknowledge the role of domestic mining in securing our supply chains. In May 2021, the White House rebutted reporting from *Reuters* claiming that President Biden will primarily rely on ally countries to supply the bulk of the metals needed to build EVs. In its clarification, the White House noted that the reporting incorrectly characterizes the Biden-Harris administration's approach:

President Biden is focused on seizing the electric vehicle (EV) market, sourcing and manufacturing the supply chain here in America, and creating good-paying, union jobs. Building American-made EVs and shipping them around the world will include leveraging American-made parts and resources. This includes responsibly pursuing, developing, and mining critical minerals and materials used for EV batteries. As we strengthen our supply chains, we will pursue strong environmental standards and broad, rigorous consultations with local and indigenous communities to support a responsible, fair, and sustainable EV industry.¹⁸

The Department of Energy recently echoed the importance of domestic sourcing, calling the development of a U.S. supply chain for these materials "a national priority as the country works toward energy independence."¹⁹ Working with our allies to build these supply chains is smart but that must complement the essential work of standing up the mineral production required for these supply chains at home; it cannot come in place of it. The State Department's Mineral Security Partnership reportedly funding 16 solely international mining projects while we continue to debate needed permitting improvements domestic production is not a balanced mineral production policy.

Recent withdrawal decisions locking up more than 225,000 acres in federal Forest Service lands in Minnesota from mining for two decades after also withdrawing long held federal leases from projects in the same areas known for some of the nation's largest reserves of nickel, cobalt, copper, platinum, and palladium could

¹⁷ Jim Farley remarks, Detroit Homecoming VIII, Live-streamed interview with Mary Kramer (director of the annual event). Sept. 25, 2021. <https://detroithomecoming.com/livestream-events/>

¹⁸Statement from Ali Zaidi, Deputy National Climate Advisor, Reuters, Epoch Times etc.: https://www.theepochtimes.com/white-house-denies-report-that-biden-looks-overseas-for-electric-vehicle-metals_3832373.html?welcomeuser=1

¹⁹ U.S. Dept. of Energy Press Release available at <https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-ioneer-rhyolite-ridge-advance-domestic-production>, January 13, 2023.

only be described at best as short sighted and at worst self-sabotage.²⁰ This action and the potential congressional action disapproving of the administration's action is the focus of a congressional legislative hearing today as well.²¹

Current Permitting Process Discourages Investment in U.S. Mining

With over \$6 trillion worth of mineral resources here in the United States, a highly trained and highly compensated workforce, and world-class environmental, labor, and safety standards, the U.S. mining industry is essential to helping the nation meet ever-increasing demand for minerals for infrastructure and manufacturing needs.

Permitting delays have been, and continue to be, one of the most significant risks to meeting domestic mineral production goals. As the permitting process for important projects across the U.S. drags on, geopolitical rivals are taking advantage of our bureaucratic inertia. Opening or expanding a mine in the U.S. typically involves multiple agencies and the navigation of tens or even hundreds of permitting processes at the local, state and federal levels, with little transparency into status, delays arising from duplication among federal and state agencies, an absence of firm timelines for completing environmental assessments, and failures in coordination of responsibilities between various agencies. Necessary government authorizations now take an average of seven to 10 years to secure – one of the longest permitting processes in the world for mining projects – a time period that is completely out of step with the dramatic increases in minerals production that will be needed in the coming decades to keep up new technologies, infrastructure, manufacturing and even with the administration's own energy and supply chain goals.

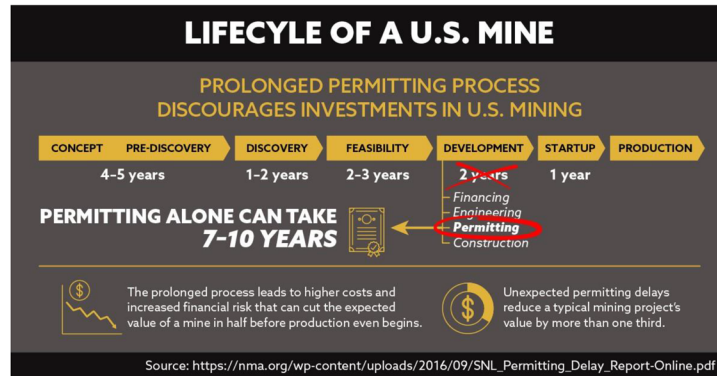
There is real room for improvement. To improve supply chain security, we must also have a robust domestic mineral supply chain. That includes more smelting, processing and refining capabilities in the U.S. necessary to claw back these essential processes from geopolitical adversaries like China, which controls more than 80 percent of global rare earth element production, nearly 90 percent of global mineral processing capabilities as well as the market prices for rare earth elements at each step of the process.

In the U.S., necessary government authorizations place the U.S. at a competitive disadvantage in attracting investment for mineral development. By comparison, permitting in Australia and Canada, which have similar environmental standards and practices as the U.S., take between two and three years. The NMA believes that valid concerns about environmental protection should be fully considered and addressed but permitting processes should not serve as an excuse to trap mining projects in a limbo of duplicative, unpredictable, endless and costly review without

²⁰ Wall Street Journal, "Biden's Green-Energy Mineral Lockup. The feds block mining that is essential for making EV batteries" January 29, 2023, <https://www.wsj.com/articles/biden-administration-mining-duluth-complex-minnesota-superior-national-forest-deb-haaland-electric-vehicles-11674860178>.

²¹ U.S House Natural Resources Committee, Energy and Mineral Resources Subcommittee, [Legislative Hearing on H. Con. Res. 34 and H.R. 1, "Superior National Forest Restoration Act."](#) May 11, 2023.

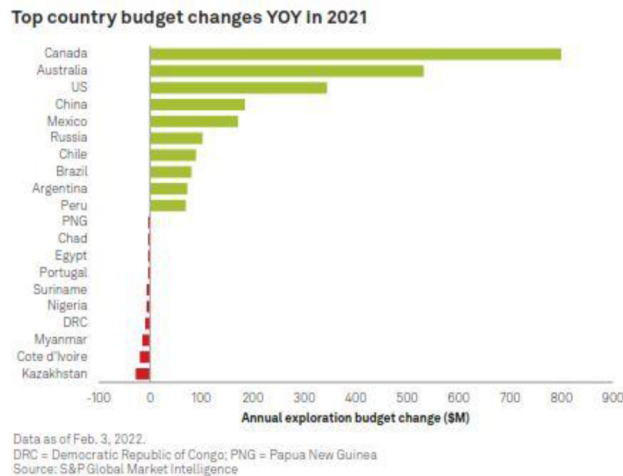
a decision point. Moreover, there is little evidence that such delays yield commensurate environmental benefits. The length of the permit process should not be confused with the rigor of review. Ironically, it takes about two years to build a new battery gigafactory, but it takes at least eight years (sometimes more than 10) to permit and build a new lithium mine.²²



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 minerals. In its most recent report of global investment in mining exploration and production, S&P Global consistently ranks Canada and Australia as by far the most favored regions for mining investment.²³

²² Comments of Dr. Qichao Hu, founder and CEO of Massachusetts-based battery maker SES, in an interview with Charged, <https://chargedevs.com/features/the-raw-materials-crunch-how-bad-how-long-how-to-solve-it/#:~:text=Qichao%20Hu%2C%20founder%20and%20CEO.build%20a%20new%20lithium%20mine.%E2%80%9D, Spring 2022.>

²³ S&P Global Market Intelligence, [World Exploration Trends](#), April 2022, p. 13.



Although mining investment in some parts of the U.S. remains high, the Fraser Institute releases annual investment surveys among mining companies regarding the areas of the world in which those companies look to invest, in part based on the certainty of the regulatory environment. The following is an excerpt from last year's report:

The United States' median investment attractiveness score declined ... The median policy perception index (PPI) score for the United States, however, declined significantly—by almost 13 points—and is no longer the top-ranked region *based on policy alone*. This year, all US states saw a deterioration in their PPI scores. Minnesota (-19.9 points), Idaho (-16.4 points), and New Mexico (-15.0 points) saw the largest PPI score declines.²⁴ (Emphasis added.)

The latest survey, released only last week, reports the same status with only modest improvements:

The United States' median investment attractiveness score increased this year by 0.9 points.²⁵

Current Permitting Process Encourages Foreign Dependence

The U.S. is increasingly vulnerable to supply chain disruptions and retaliation from geopolitical adversaries due to our ever-increasing reliance on imports for

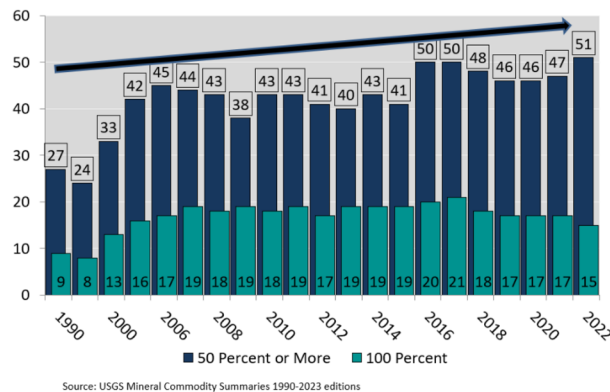
²⁴ Fraser Institute, Annual Survey of Mining Companies 2021, April 12, 2022 <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2021.pdf>, pp. 29-31.

²⁵ Fraser Institute, Annual Survey of Mining Companies 2022, May 4, 2023 <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf>, pp. 28-31.

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 (USGS) annual commodity summary released in January makes some key findings:

- Last year, imports made up more than one-half of the U.S. apparent consumption for 51 nonfuel mineral commodities, and the United States was 100 percent net import reliant for 15 of those.
- Of the 50 mineral commodities identified in the "2022 Final List of Critical Minerals," the United States was 100 percent net import reliant for 12, and an additional 31 critical mineral commodities (including 14 lanthanides, which are listed under rare earths) had a net import reliance greater than 50 percent of apparent consumption.
- Underscoring the vulnerability of U.S. mineral supply chains, China was the leading source of mineral commodities with a greater than 50 percent import reliance providing 26, with significant imports of other essential commodities also coming from Russia.
- The estimated value of U.S. metal mine production in 2022 was \$34.7 billion, six percent lower than the revised value in 2021. In 2022, the capacity utilization for the metals mining industry was 61 percent, less than the 63 percent capacity utilization in 2021.²⁶

U.S. Mineral Import Reliance



Currently, China is the leading producer and/or supplier of 66 percent of mineral commodities listed as essential to U.S. economic and national security including

²⁶ U.S. Geological Survey, January 2023 Commodity Summary, <https://pubs.er.usgs.gov/publication/mcs2023>

lithium, rare earths and other battery metals.²⁷ According to USGS, production concentration has increased markedly over the past few decades for many mineral commodities with the most notable global shift being the increasing production of mineral commodities in China.²⁸ China's share of global mineral production and processing has grown markedly since 1990 for many mineral commodities, including aluminum, bismuth, refined cobalt, gallium, lead, magnesite, magnesium metal, mercury, REEs, silicon, steel (raw), titanium, vanadium and zinc. According to the USGS criticality methodology, "of the 54 mineral commodities evaluated, China was the leading producer of at least one stage of the supply chain for 35 commodities."²⁹

It was not always this way, and it does not have to be our future. As explained in an opinion piece published in *The Hill*:

In the 1980s, the U.S. was the mineral capital of the world. Since then, China has developed a juggernaut battery supply chain industry. The industry is centered around chemical processing of battery materials, backed by substantial government funding and coordination. These subsidies led to a wave of outsourcing by American companies across industries from semiconductors to steel. In addition, China has spent the last two decades investing in the mining industry abroad, including major investments and mineral rights in Australia, Africa, Asia and South America. This has led to an overreliance on China — and in turn vulnerable supply chains and a lost economic opportunity at home.³⁰

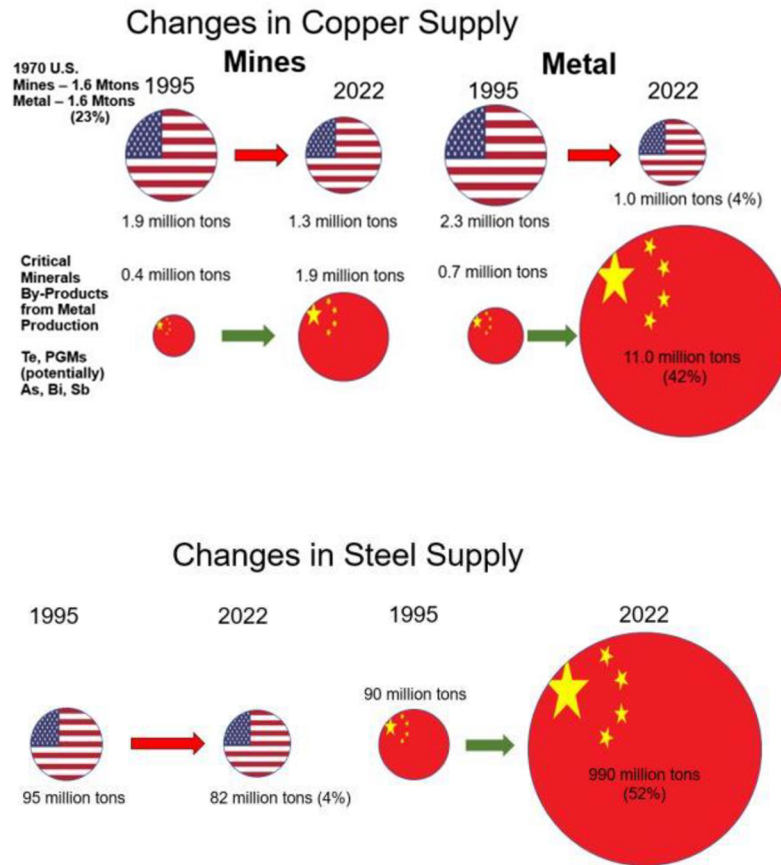
The following data from the mining engineering program at the University of Missouri of Science and Technology provides an important snapshot of the history of domestic supply chain issues impacting the mining and processing from 1995 to last year of two widely used industrial metals:

²⁷ Notably this reliance comes despite existing U.S. resources. In the 2022 Mineral Commodity Summaries, the USGS indicated the U.S. had an estimated 48 million metric tons (mt) of copper that can be mined and processed economically, 69 million mt of cobalt, 340 million mt of nickel and 750 million mt of lithium. Regardless, in 2021, the U.S. imported 48 percent of U.S. consumption of nickel, 76 percent of cobalt, 45 percent of copper, and more than 25 percent of lithium.

²⁸ Nassar, N.T., Alonso, E., and Brainard, J.L., 2020, Investigation of U.S. Foreign Reliance on Critical Minerals—U.S. Geological Survey Technical Input Document in Response to Executive Order No. 13953 Signed September 30, 2020 (Ver. 1.1, December 7, 2020): U.S. Geological Survey Open-File Report 2020–1127, p. 4. <https://pubs.usgs.gov/of/2020/1127/ofr20201127.pdf>

²⁹ USGS 2023 Methodology, <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023.pdf>, p. 7.

³⁰ Ellen Hughes-Cromwick, Ph.D. 2022. "How the U.S. Can Secure a Resilient Electric Vehicle Battery Supply Chain." *The Hill*. June 8, 2022. <https://thehill.com/opinion/energy-environment/3516265-how-the-us-can-secure-a-resilient-electric-vehicle-battery-supply-chain/>.



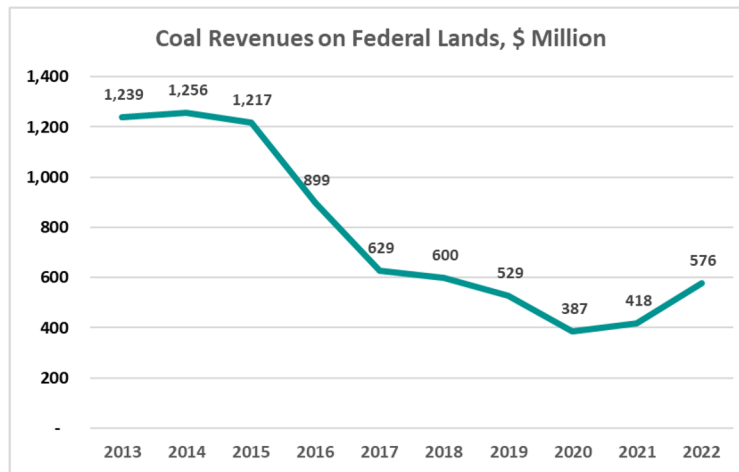
Source: Testimony of Dr. M Moats, University of Missouri of Science and Technology, Feb. 2023³¹

Federal Coal Leasing Program

The Federal Coal Leasing Program has been a national energy and economic success story. Over the last decade, the program produced approximately 3.3 billion tons of coal and resulted in \$7.7 billion in revenue collections by the federal

³¹ U.S. House Committee on Natural Resources Subcommittee on Oversight and Investigations, "Dependence on Foreign Adversaries: America's Critical Minerals Crisis," Testimony Dr. M. Moats, Professor and Department Chair of Materials Science and Engineering, Missouri University of Science and Technology, https://naturalresources.house.gov/uploadedfiles/testimony_moats.pdf, February, 9, 2023.

government. It has provided hundreds of millions of dollars of state and local revenue per year, while also providing a low cost, reliable source of energy for all Americans and material for steel manufacturing. In 2022 alone, the royalties, bonus payments, and rent payments from coal produced on federal land amount to over \$576 million. Consequently, delays in awarding leases under the program or a moratorium on new production deprives economic development, job creation and retention, federal revenues, and threatens electricity reliability and U.S. competitiveness in building critical infrastructure.



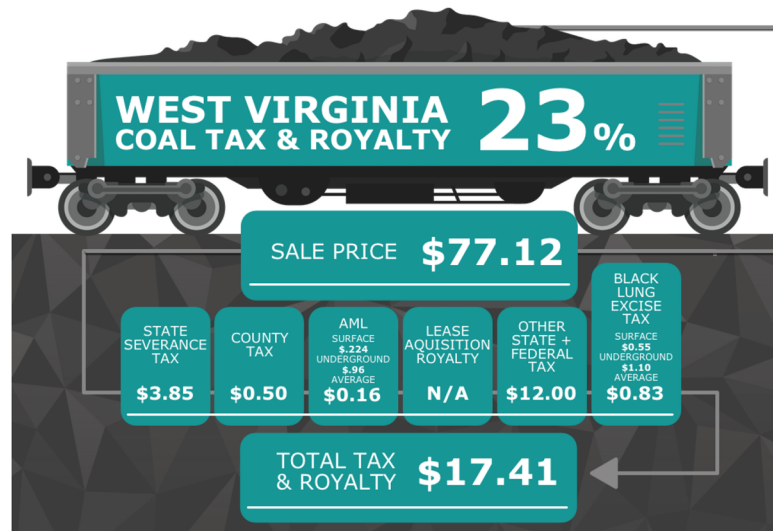
Total coal production through the Federal Coal Leasing Program remains significant. The Department of Interior's Office of Natural Resources Revenue and the Department of Energy's Energy Information Administration reported that of 594.6 million short tons of total coal production in the United States in 2022, 270.2 million short tons was produced on federal lands amounting to 45 percent of total production of both thermal and metallurgical coal.³²

The following data from key coal producing states including federal coal producing states under the Federal Coal Leasing Program, demonstrates coal producers' significant contributions in total tax and royalty liability to federal, state, or local governments from each ton of coal production³³:

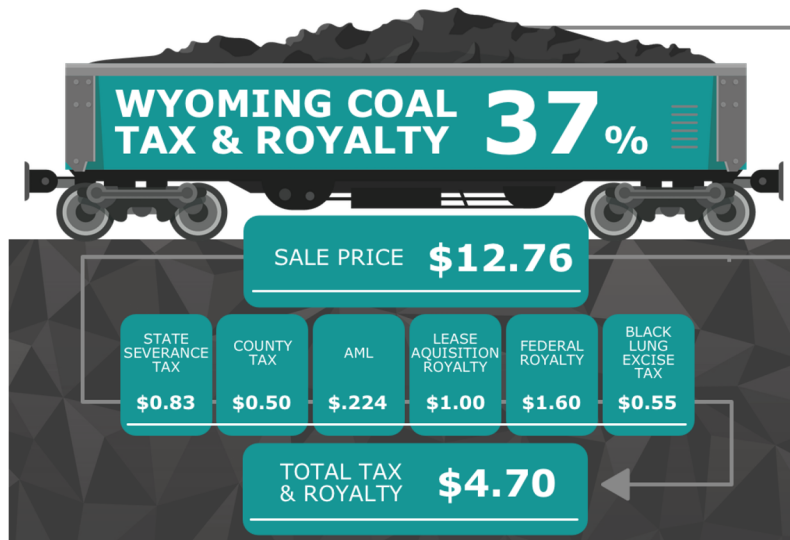
³² See, U.S. Department of Interior Natural Resources Revenue Data at <https://revenue.data.doi.gov/query-data/?dataType=Production>, and U.S. Department of Energy Monthly Energy Review, <https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf>, April 2023, p. 119.

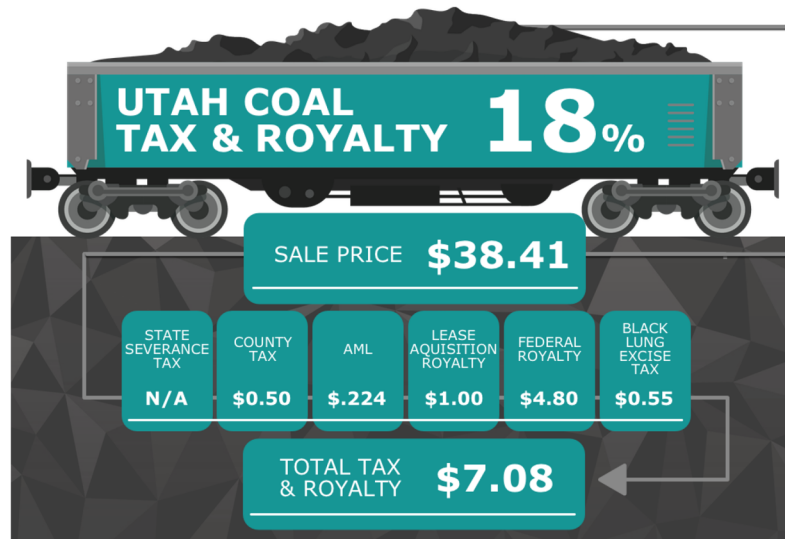
³³ Energy Information Administration, Annual Coal Report, <https://www.eia.gov/coal/annual/>, October 2022, taken from Table 28.

West Virginia

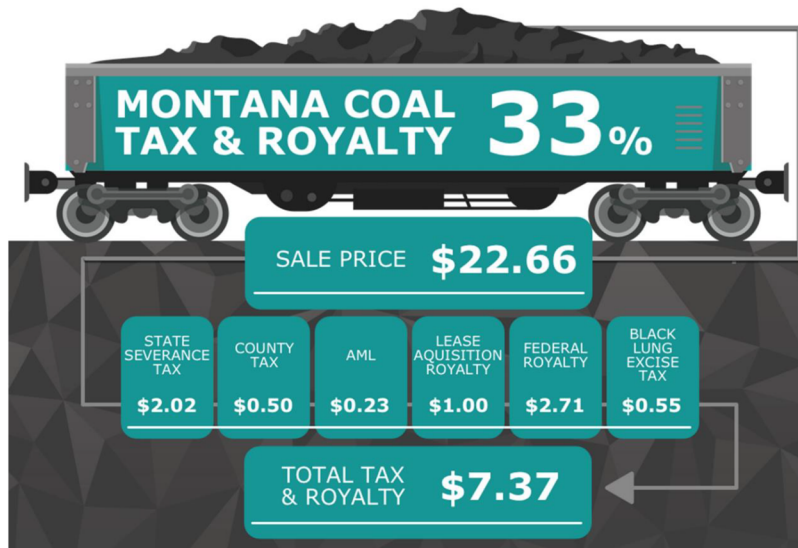


Wyoming



Utah**New Mexico**

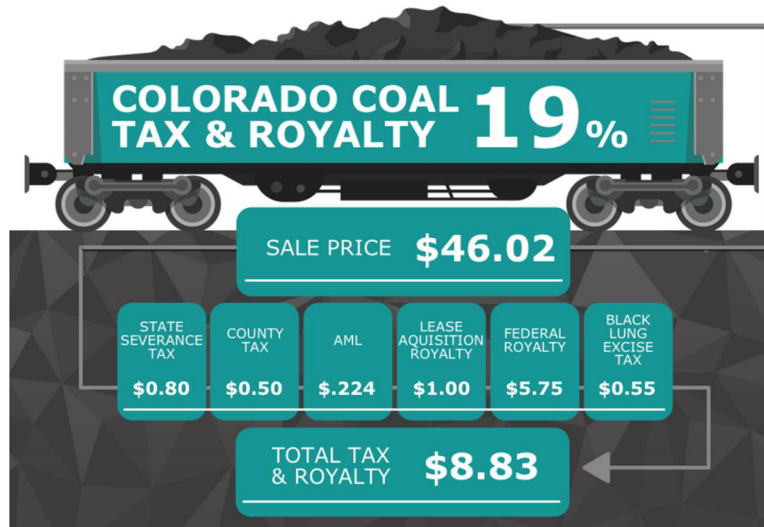
Montana



North Dakota



Colorado



Thermal coal production on federal land has been caught in a policy back and forth depending on the occupant of the White House. In 2016, former U.S. Department of the Interior (DOI), Secretary Sally Jewell issued Secretarial Order 3388 imposing a three-year moratorium on further coal lease sales, with exceptions for metallurgical coal production and certain exceptions for thermal coal production, pending completion of a programmatic environmental impact statement (PEIS). After a change in presidential administrations, former DOI Secretary Ryan Zinke issued Secretarial Order 3348, that revoked the Order 3388, terminated the ongoing PEIS, and directed Bureau of Land Management (BLM) to resume issuing coal leases. Litigation immediately challenged Order 3348, and after another change in presidential administrations, DOI Secretary Deb Haaland issued Secretarial Order 3398 to revoke Order 3348 and update the policies of the Department concerning the Federal Coal Leasing Program.

In August 2022, the U.S. District Court for the District of Montana took the extraordinary step of issuing an order reinstating the moratorium established by former Secretary Sally Jewell in Order 3388.³⁴ The order imposes an indefinite nationwide injunction against federal thermal coal leasing with some exceptions until the BLM completes an analysis under the National Environmental Policy Act of the 2017 revocation of the moratorium.

³⁴ See, U.S. District Court of Montana Order in 4:17-cv-00030-BMM, August 12, 2022

On May 1, 2023, the DOI announced a notice of intent to receive public comment on the issues that should be included in the scope of BLM's PEIS to analyze the potential environmental effects from maintaining or revoking the Jewell moratorium.³⁵ Clarification to simply withdraw the original Order 3388 and allow the Department of the Interior to perform its lawful functions to implement the Federal Coal Leasing Program is critically important.

Protecting Electric Grid Security

As Chairman Manchin stated at an Energy and Natural Resources Committee hearing only last week, "whether it's EPA's effluent limitations guidelines, the mercury air toxic standard, the interstate ozone transport rule, power plant CO₂ regulations, or others – the potential reliability impacts of these combined regulations are staggering."³⁶

Currently, the policies driving a transition of the electricity grid are not balanced with an acknowledgement of what is needed to ensure reliable and affordable electricity especially in challenging weather events. This is an issue which grid operators have been warning of for years. At the same Energy and Natural Resources Committee hearing last week that included all four U.S. Federal Energy Regulatory Commissioners, Chairman Willie Phillips, answered a question from Senator Hoeven about the need for dispatchable energy generation, "I am extremely concerned about the pace of retirements we are seeing of generators which are needed for reliability on our system. NERC and the grid operators have warned us about this."

Americans and American businesses will continue to pay increasingly more for electricity that is less and less reliable. Even worse, current federal regulations are unilaterally making these decisions for the states – 20 states use coal for approximately a quarter of their electricity generation, and half of those states use coal for half or much more of their electricity generation.

In fact, in 2022, as many as 40 planned coal plant retirements were postponed or scrapped largely due to acute grid reliability challenges where utilities and grid operators have made it clear closing plants would be reckless.³⁷ The U.S. coal fleet continues to play an outsized role in providing dispatchable fuel diversity, fuel security and ramping up power supply during periods of surging demand when other sources of power cannot.

In February 2023, PJM Interconnection, the grid operator for the nation's largest electricity market, projected it will lose 40 GW of generating capacity by 2030 – 21% of the market's existing capacity – with only 31 GW of additions in the same

³⁵ [Notice of Intent To Prepare an Environmental Impact Statement To Analyze the Potential Environmental Effects From Maintaining Secretary Jewell's Coal Leasing Moratorium](#), 88 Fed. Reg. 26588, May 1, 2023

³⁶ U.S. Senate Committee on Energy and Natural Resources, [Full Committee Hearing to Conduct Oversight of FERC](#), May 4, 2023.

³⁷ Will Wade, "[Dozens of US Coal Plant Closures Delayed as Green Energy Shift Slows](#)," Bloomberg, Nov. 1, 2022

period. Of the 40 GW of projected losses, PJM expects 25 GW in retirements due to “policy driven” decisions meaning EPA regulations and state mandates. PJM reported, “For the first time in recent history, PJM could face decreasing reserve margins should these trends continue. The amount of generation retirements appears to be more certain than the timely arrival of replacement generation resources and demand response, given that the quantity of retirements is codified in various policy objectives.”³⁸

What Are Grid Operators and Regulators Saying?

- John Moura, North American Electric Reliability Corporation (NERC), director of reliability assessment and performance analysis, 2022: “Just to say it for the fourth or fifth time: Managing the pace of our generation retirements and our resource changes to ensure we have enough energy and essential services is an absolute necessity.”³⁹
- National Rural Electric Cooperative Association CEO Jim Matheson, 2023: “I mean, does anyone at the EPA think about reliability when they’re talking about making new rules? We all know the answer to that.”⁴⁰
- NERC CEO Jim Robb, 2022: “We need to retain the existing resources as long as we don’t have an alternative. That’s the issue...My first bit of advice is to... manage the pace of change. The second bit of advice we give is don’t underinvest in bridge fuel or the bridge issues to get us from where we are to where we want to go.”⁴¹
- FERC Commissioner Mark Christie, 2023: “The United States is heading for a reliability crisis. I do not use the term ‘crisis’ for melodrama, but because it is an accurate description of what we are facing. In summary, the core problem is this: Dispatchable generating resources are retiring far too quickly and in quantities that threaten our ability to keep the lights on. The problem generally is not the addition of intermittent resources, primarily wind and solar, but the far too rapid subtraction of dispatchable resources, especially coal and gas.”⁴²
- FERC Commissioner James Danly, 2023: “We know that there is a looming resource adequacy crisis. Our market operators have been explicitly telling us as much for years. Both MISO and ISO-NE have warned about upcoming scarcity and PJM, the nation’s largest wholesale market, and the one that

³⁸ PLM Interconnected, “[Energy Transition in PJM: Resource Retirements, Replacements & Risks](#),” Feb. 24, 2023, p.3.

³⁹ Robert Walton, “[Most of US electric grid faces risk of resource shortfall through 2027, NERC finds](#),” Dec. 16, 2022

⁴⁰ [Jim Matheson remarks](#), United States Energy Association, Jan. 27, 2023.

⁴¹ “[Grid Transformation: NERC’s CEO Concerned](#),” Fortnightly Magazine, September 2022.

⁴² U.S. Senate Energy and Natural Resources Committee, U.S. Senate Committee on Energy and Natural Resources, Full Committee Hearing to Conduct Oversight of FERC, May 4, 2023.

serves Washington, D.C., has recently raised the alarm about impending shortfalls.⁴³

In response to a question from Chairman Manchin at the end of the FERC oversight hearing last week asking, "Can the grid eliminate coal and maintain a reliable system" all commissioners replied similarly:

- Chairman Phillips answered, "It would not."
- Commissioner Danly answered, "No. Coal is required...and it would be impossible to replace it."
- Commissioner Clements answered, "Right now, today, no."
- Commissioner Christie answered, "We need to keep coal generation available for the foreseeable future."⁴⁴

Empowering the grid reliability experts from the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation (NERC) to the regional independent system operators like the Midcontinent System Operator (MISO) and PJM to have a new critical statutory authority to pause and postpone regulatory actions throughout the federal government that threaten electricity reliability is a key and needed check and balance at this important time for the health of our grid.

What Are The Solutions?

This Congress has a unique opportunity to enact meaningful permitting and energy legislation.

The American Energy Security Act, the Spur Permitting of Underdeveloped Resources (SPUR) Act, and the Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency (RESTART) Act set lead agencies to coordinate the permitting process; improve the timeliness of the permitting process through enforceable environmental review and judicial deadlines; maintain access to mineralized federal lands unless specifically withdrawn by Congress; maintain decades of essential mining regulatory practice to not only ensure U.S. competitiveness but to prevent impediments to domestic production; provides more certainty to timing of legal reviews; support a domestic uranium industry for critical nuclear energy production; provide new needed regulatory certainty to the Federal Coal Leasing Program allowing new leasing and lease renewals; and protect the security of our electric grid relying on the Federal and unlocks innovation by not supporting prescriptive policies.

These policy recommendations are commonsense changes that would provide regulatory certainty to investors that the U.S. seeks to attract on a global scale in the mineral supply chain. Instead of only pursuing mineral supplies from foreign sources or exporting domestically extracted materials for further refinement, processing and smelting, the NMA supports improvements in the permitting process that would secure the entirety of the U.S. supply chain, lessen

⁴³ *Id.*

⁴⁴ *Id.*

vulnerabilities from outside sources, including geopolitical impacts. The NMA supports needed clarity for U.S. thermal coal markets and regulatory balance to support critical electricity reliability.

Conclusion

The U.S. is at a mining crossroads. Mineral demand is soaring, but our policies are both lagging and impeding production. We must encourage more domestic mining and processing to meet future demand and ensure that the materials required for everything from infrastructure to electrification are readily available from inside our own borders.

The CHAIRMAN. Thank you, sir.
And now, we will go to President Shuler.

STATEMENT OF ELIZABETH H. SHULER, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Ms. SHULER. Thank you, Chairman Manchin, Ranking Member Barrasso, and members of the Committee, for the chance to speak to you today on this very important topic. I am bringing the voices of 12.5 million working people with me into the room today, 60 different unions across every sector of the economy, here with me as part of the AFL-CIO.

Permitting reform is a top priority for the AFL-CIO. Every job in every part of the energy sector and the manufacturing sector depends on permitting and siting—mining of critical minerals that we need for the transition, electricity transmission which is key to expanding renewable energy, pipelines, and other infrastructure that we need for hydrogen and CCS, manufacturing, power generation, especially wind, solar, and nuclear.

Thanks to the Biden Administration and this Congress, we have a historic opportunity to create more than a million good union jobs, make our infrastructure world-leading, and set our country on track for secure domestic supply chains in mining, energy, and manufacturing. The Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act are that opportunity. They set us on a path toward a clean energy, high-tech economy. Permitting reform is absolutely necessary to realize the full job creation and emissions reduction potential of these three bills. Full implementation of the IRA alone will create more than a million new jobs and bring down emissions across the economy. But without permitting reform, job creation will be more modest and emissions could actually go up.

So let me give you an example of how delays in permitting can affect job creation and emissions. The TransWest express transmission project is a \$3 billion transmission line. Once built, it will add 3,000 megawatts of transmission capacity across four states to ship more renewable power to areas of high demand in the West. Construction will create approximately 700 International Brotherhood of Electrical Workers jobs alone. It took 18 years for this project to get final approval. Eighteen years of additional costs for the developers and 18 years of lost economic opportunities for workers during this period. I mentioned construction and manufacturing, but I want to point out that this issue affects all of us, every worker and every American. Do we want our children to be able to drink clean water, hold off the worst impacts of climate change, rebuild our roads, our bridges, our crumbling infrastructure, set up our economy to win for the next 100 years? I think that answer is yes. All of that requires us acting with urgency and justice.

And if I can leave you with one thought today, it is that we can do both. We can make this process more effective and efficient. We can make sure that good union jobs lift up black workers, brown workers, vulnerable communities, Americans who have been left behind for far too long. When things move too slowly, when projects

take over a decade to permit, we all get hurt. Fewer good-paying union jobs, fewer opportunities for workers of color, and progress on union jobs and clean energy that is just too slow for communities that desperately need change. I want to be very clear: that does not come at the expense of the rights of states, tribes, communities, or other stakeholders to have an effective voice in the process or to formally intervene. Public participation is key. It is a key feature of the permitting process. So we urge Congress to preserve it while also significantly improving the efficiency of the process.

But I can say unequivocally, on behalf of the labor movement, we need three things. We need, number one, certainty. We need to know when a final decision will be made and that it is, in fact, final. That certainty is what allows companies to make commitments to suppliers, to contractors, and workers. It is how communities can really believe that investment and jobs are coming. The second thing, we need speed. We need to deploy a full range of clean energy technology much faster than we ever have, and this requires more transmission and more critical minerals so we can have secure, domestic supply chains and not depend on China. And third, we need consistency, as much as possible. We are looking for a standardized process that can apply to all forms of permitting for all technologies. So the bottom line here is that we have a once-in-a-generation opportunity right now, thanks to the IIJA and the IRA, that you and the Biden Administration worked so hard to get through. We can protect ourselves from the climate crisis, bring justice to workers and communities, create more than a million new, good union jobs, and set our entire country up for success, and American workers are ready to do our part.

Thank you so much.

[The prepared statement of Ms. Shuler follows:]

AFL-CIO

**Written Testimony of Elizabeth H. Shuler
President, AFL-CIO**

Before the

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

**Hearing on Opportunities for Congress to Reform the Permitting Process for
Energy and Mineral Projects**

May 11, 2023

Thank you, Chairman Manchin, Ranking Member Barrasso, and members of the Committee for the chance to speak today on this very important topic.

I'm Liz Shuler, President of the AFL-CIO. I'm proud to be here on behalf of the 12.5 million workers we represent, across 60 different unions.

Permitting reform is a top priority for the AFL-CIO and all of our members in mining, manufacturing and construction. Every job in every part of the clean energy economy depends on permitting and siting – mining of critical minerals that we need for the transition, electricity transmission which is key to expanding renewable energy, pipelines and other infrastructure that we need for hydrogen and CCS, manufacturing, and power generation, especially wind, solar and nuclear.

The issue of permitting reform is particularly important for our members in sectors directly linked to what we make and build in this nation. These are big sectors.

According to the latest Bureau of Labor Statistics data for April of 2023, the construction sector employs 7.8 million workers and the manufacturing sector employs 12.9 million workers. Both these sectors have very high employment multipliers. Total employment in both sectors is affected by how fast we can permit and build new infrastructure and the factories that supply the goods for the infrastructure.

Offshore wind provides a great example of how building projects support our economy. The International Renewable Energy Agency (IRENA) estimates that 1 gigawatt of

offshore wind capacity requires 4.2 million person-days of work. That includes supply chain employment generated by a very substantial bill of materials, all of which must be mined, processed and manufactured. IRENA estimates that 1 gigawatt of offshore wind requires 440 tons of steel, 415 tons of copper, 310 tons of lead, 79 tons of cast iron, to name just the most used materials. The United States has a 51 gigawatt offshore wind development pipeline. This is just one industry, but it all hinges on timely permitting to give investors the certainty to fund projects and keep them moving.

Thanks to the Biden Administration and this Congress, we have a historic opportunity to create millions of good union jobs, make our infrastructure world-leading and resilient to climate impacts, and set our country on track for secure, domestic supply chains in mining, energy, and manufacturing.

The Bipartisan Infrastructure Law (IIJA), the CHIPS and Science Act, and the Inflation Reduction Act (IRA) are those opportunities. They set us on a path towards a clean energy, high tech economy.

Permitting reform is absolutely necessary to realize the full job creation and emissions reduction potential of these three bills. Full implementation of the IRA and IIJA will create more than a million new jobs (1.5 million new jobs in 2030; 9 million new job years over ten years). According to a report by the Congressional Research Service, implementing the IRA also will bring down emissions across the economy 32-40% by

2030 relative to 2005 levels. But without permitting reform, job creation will be more modest, and emissions could actually go up.

Let me give you a couple of examples of how delays in permitting affects economic opportunities for workers, clean energy, and even national security.

The Trans-West Express Transmission Project, a \$3 billion transmission line. Once built, it will add 3,000 megawatts of transmission capacity across four states to ship more renewable power to areas of high demand in the West. It is absolutely key for ensuring stable electricity supply and expanding clean energy. Construction will create approximately 700 International Brotherhood of Electrical Workers (IBEW) jobs.

It took 18 years for this project to get final approval. 18 years of additional costs for the developers and 18 years of lost economic opportunities for workers during this period.

Let me give you another example. We all know that semiconductors are essential to the US economy, yet until now we have depended on other countries to provide them. The bipartisan CHIPS and Science Act aims to do something about it. We're going to build a domestic semiconductor industry so that this essential part of US supply chains is secure.

Micron is a US producer of semiconductors. It has a facility in Boise, Idaho, and is planning to build another facility for mass production in New York. Micron needs to

expand its Boise facility to produce new semiconductor prototypes for mass production in New York. The permitting for that expansion, of an existing facility, is being held up.

What are the consequences of that delay? If Micron can't expand the Boise facility, it can't build the prototypes we need. And if it can't build the prototypes, the new facility in New York isn't going to get built. And that means that these semiconductors, which are used in a wide range of industries from auto to energy to defense, will not get to the U.S. market.

There's a union contract for the New York facility and there are negotiations about a union contract for the expansion in Boise. But without a permit for that expansion those union jobs won't happen either.

So far I have focused on mining, on construction, on energy, on manufacturing — sectors where we have many members, and sectors directly affected by permitting. But I want to point out that this issue affects all of us.

Every worker and every American.

Do we want to see our children drink clean water?

Do we want to hold off the worst impacts of climate change?

Do we want to rebuild our roads, our bridges, our crumbling infrastructure?

Do we want to set up our economy to win for the next hundred years?

All of that requires us acting with urgency and acting with justice.

And if I can leave you with one thought today, it's that: **We can do both.**

We can make this process more effective and efficient. And we can make sure that good union jobs lift up Black workers, Brown workers, vulnerable communities ... Americans who have been left behind for way too long. Those two goals go hand in hand.

They go hand in hand because today's and tomorrow's clean energy workforce is going to have more young workers, more black and brown workers, and more women. That's what our research tells us and that's what we see in our training programs.

The union movement is ready for this moment. We are working to drive racial and gender justice through pre-apprenticeships, apprenticeships, and training. We want to expand the skilled and trained, union workforce for this clean energy economy. This is core union business.

Let me give you a couple of examples. Building Pathways is a pre apprenticeship program that the Boston Building Trades Council started in 2011. Over the last 12 years, people of color were 90% of this pre-apprenticeship program's enrollees, while 43% were women. The program placed 80% of participants in apprenticeships or industry employment.

And in Augusta, Georgia, the Building Trades Council has run a Helmets to Hardhats program for the Vogtle Electric Generating Plant with a similar story. This is a program for military veterans that helps them to train for good paying, skilled jobs in construction. More than half of the program's graduates are people of color, and just under a third are women.

When things move too slowly — when projects take over a *decade* to permit — we all get hurt.

Fewer good-paying, union jobs. Fewer opportunities for workers of color. And progress on union jobs and clean energy that is just *too slow* for communities that desperately need change.

So as a labor movement, we are deeply invested in finding ways to make the permitting process more efficient, more effective, and more fair.

I want to be very clear: That does not come at the expense of the rights of states, tribes, communities or other stakeholders to have an effective voice in the process or to formally intervene. Public participation is a key feature of the permitting process, and we urge Congress to preserve it while also significantly improving the efficiency of the process.

But I can say unequivocally, on behalf of the labor movement, we need three things.

We need certainty. We need to know when a final decision will be made, and that it is, in fact, final. That certainty is what allows investors to make commitments to companies and companies to make commitments to suppliers, contractors, and employees. It is what sends a market signal to training programs to invest in capacity or to become versed in a new technology. It is how communities can really believe that investment and jobs are coming.

We need speed. We need to deploy the full range of clean energy technology much faster than we ever have. That requires more electrical transmission, more steel, copper and aluminum, new infrastructure for hydrogen and carbon capture and storage to bring down emissions. It certainly requires more critical minerals, so we can have secure domestic supply chains and not depend on China. There are lots of examples of projects that took too long, and perhaps many ways to solve the problem, but the bottom line is that to meet our goals we have to go faster and build more projects.

And we need consistency. Of course, some details will vary by project type — whether we're talking about electricity transmission or clean water. And some projects are critical infrastructure and nationally significant, and will need to be prioritized. But as much as possible, we're looking for a standardized process that can apply to all forms of permitting, for all technologies.

In short, we want progress. Progress that allows projects to get built and that continues to protect the rights of tribes, communities, and workers.

The bottom line is: We have a once-in-a-generation opportunity right now, thanks to the IIJA and the IRA that the Biden Administration worked so hard to get through.

We can protect ourselves from the climate crisis, bring justice to workers and communities, create millions of new good union jobs, and set our entire country up for success.

American workers are ready to do our part. Thank you.

The CHAIRMAN. Thank you.

Now, Senator Barrasso.

Senator BARRASSO. Well, thank you, Mr. Chairman.

I would like to introduce Mr. Paul Ulrich, who is here as one of our witnesses for today's hearing. Paul, thanks for traveling in from Pinedale, Wyoming to be with us here in the nation's capital. Paul is on the Board of Directors, and is the former President of the Wyoming Energy Authority, which leads our state's energy strategy. Paul is also Vice President of Government and Regulatory Affairs at Jonah Energy, one of the largest natural gas producers in Wyoming. Paul has worked in the oil and natural gas sector for almost 25 years. He is an expert on operating on federal lands. Before his career in the energy sector, Paul was an intelligence specialist in the United States Navy.

We are deeply grateful for your service to the country and to the State of Wyoming as well as for an opportunity to hear from you today. Please proceed.

STATEMENT OF PAUL ULRICH, VICE PRESIDENT, JONAH ENERGY; MEMBER, WYOMING ENERGY AUTHORITY BOARD OF DIRECTORS

Mr. ULRICH. Thank you, Chairman Manchin, and a special thank you to my U.S. Senator, Ranking Member Barrasso, for the invitation to speak. I really appreciate it.

Jonah Energy is an oil and gas exploration and production company, and we operate, as the good Senator said, in the Jonah and Pinedale fields up in Wyoming. Our business is producing natural gas in an environmentally responsible manner, and I think that is critical. I am really immensely proud to be part of a team at Jonah Energy with that shared vision, providing some of the nation's cleanest natural gas, all on federal lands. The Wyoming Energy Authority is responsible for advancing our diverse energy strategy—all-of-the-above—in Wyoming, and empowering our nation with our goal in Wyoming of a net-zero energy mix down the line. Clean natural gas projects, wind projects, CO₂ sequestration, pipelines, and believe it or not, even wildlife conservation efforts are severely limited by unacceptably long review times, endless litigation, and ever-changing regulations.

Today, Congress has an opportunity to lead our nation into a cleaner and a lower-carbon economy through meaningful permit reform. The world needs affordable and reliable energy, and those needs are growing. I think it is important that we also acknowledge that all energy sources have an environmental impact, and stop the bias against hydrocarbons. It is important to recognize the work being done to provide natural gas that is produced in a less impactful way, and we get better and better and better every day. We must address permitting and litigation challenges that continue to hamper our ability to progress both domestically and globally. We must also enhance our LNG export capacity in order to provide our low-emission American natural gas to the world. States in the west with a large amount of public land are at a decided disadvantage to other parts of the country. Leasing, environmental reviews, permitting, and ultimately any source of energy development can take years, if not decades longer than on private land.

Some examples—the Chokecherry and Sierra Madre Wind Energy Project—12 years of NEPA permitting. TransWest was just discussed. That is critical new infrastructure from Wyoming—and Wyoming wind—to deliver renewable resources to California, Nevada, and Arizona, nearly 15 years of NEPA permitting alone. In the past 15 years, the timeframes for environmental analysis on oil and gas projects range from 6 to 10, 12 years. The average time to process an APD to drill a well has increased by 124 percent from 2018 to 2022, averaging 271 days. The effects of litigation on federal and oil and gas permitting in Wyoming are also significant. Several lawsuits challenge lease sales in Wyoming as well as lease sales in other states held between 2015 and 2020. The bottom line is, the effect of these cases is that the BLM isn't approving drilling permits or any other action on 2.1 million acres of oil and gas leases in Wyoming today, and will not be for the foreseeable future. For most of these acres, BLM is effectively self-enjoining itself from approving development. This is new and unprecedented and has effectively halted any development on valid, existing rights, with no end in sight.

Mr. Chairman, Ranking Member—supply matters. With the additional natural gas pipelines, we can develop a market for low-emission American natural gas that will support global climate goals through export as LNG and also support our allies' growing need for a reliable source of energy. And we can build this infrastructure that enhances our existing natural gas backbone and provides for the potential of green hydrogen and ammonia export.

So recommendations: enact meaningful leasing and permitting reform; amend, strengthen, and protect our foundational energy statutes; limit or eliminate the ability of agencies to enact moratoriums or other administrative roadblocks; and as always, adhere to enforceable deadlines and strengthen our mandate of multiple use; expedite judicial review periods; limit venue shopping; enact a reasonable statute of limitations; and certainly require agencies to rigorously defend their decisions in a timely manner. And obviously, Mr. Chairman, Ranking Member, we want to prioritize and accelerate approval for new interstate natural gas pipelines, LNG terminals, and related infrastructure.

In closing, Wyoming resources support our national strength and our security in a fundamental way. We are also leading efforts to significantly reduce environmental impacts from all sources of energy. We can and must work together to achieve meaningful permitting reform. It is necessary to achieve our full potential of energy reliability and security, as honestly, we in Wyoming, and we in this nation, lead the globe in a cleaner energy evolution.

Thank you, Mr. Chairman. Thank you, Ranking Member.

[The prepared statement of Mr. Ulrich follows:]

Written Testimony

U.S. Senate Committee on Energy and Natural Resources

Thursday, May 11, 2023

Energy Permitting Oversight Hearing

Paul Ulrich

Jonah Energy LLC, Vice President

Wyoming Energy Authority, Board of Directors

Introduction

Mr. Chairman,

I, Paul Ulrich, provide the following written testimony for the above noted hearing. I am Vice President-Government and Regulatory Affairs for Jonah Energy LLC. I also serve on the Board of Directors for the Wyoming Energy Authority.

I have worked in the energy industry for almost 25 years and focused on regulatory, permitting and environmental issues. I have led development and implementation of several large-scale oil and gas projects, transmission projects and worked on hundreds of permitting issues, involving the National Environmental Policy Act (NEPA), in my career. I have also led numerous initiatives on reducing development impacts through emissions reduction efforts, conservation of wildlife habitat, and protection of our water resources.

Jonah Energy is an oil and gas exploration and development company operating in the Jonah and Pinedale Fields of Wyoming and focus on producing natural gas in an environmentally responsible manner.

Jonah Energy produces 623 trillion equivalent BTU's per day, enough to power 3.1 Million Teslas, 15.5 billion iPhones or Switzerland.

I am immensely proud to be part of a team at Jonah Energy with a shared vision of providing some of the nation's cleanest natural gas. We are also demonstrating that vision globally.

Jonah Energy strongly believes in the role of natural gas in meeting current and future global energy demand and providing clean, reliable domestic energy. We further believe this can be accomplished while continuing to reduce emissions to address climate goals. Jonah and the State of Wyoming also support a diverse energy mix with continued measures to reduce all energy impacts. All energy sources have environmental impacts and permitting reform is necessary to help us all achieve the full potential of a cleaner energy future.

Clean natural gas projects, wind projects, CO2 sequestration pipelines and even wildlife conservation efforts are severely limited by unacceptably long review timeframes, endless litigation and ever-changing regulations.

Today, Congress has the opportunity to lead our nation into a cleaner and low carbon economy through meaningful permitting reform.

At Jonah, part of our formula is consistently exceeding regulatory requirements, embracing reasonable, forward-thinking permitting reform and implementing industry leading voluntary measures. We do all of this on Federal lands.

We invest in new science to reduce and avoid impacts to sensitive wildlife species and enhance our reclamation success. We employ numerous voluntary measures to limit development in sensitive habitat, enhance overall habitat and protect migratory corridors.

For the past decade we've taken steps to reduce, measure and report emissions. We've reduced our methane emissions per unit of natural gas produced 68% over the past three years alone. Differentiated, or low emission, natural gas is produced with significant control measures to reduce leak rates to negligible.

Jonah was the first U.S.-based company to sign on to the United Nations Environment Programme's Oil and Gas Methane Partnership 2.0 ("OGMP 2.0") and has since been followed by a number of leading independents. OGMP 2.0 signatories now represent 30%+ of the world's natural gas value chain.

Jonah was also the first U.S.-based company to achieve the Gold Standard of OGMP 2.0, which is the highest, most comprehensive level of emissions reporting.

The International Methane Emissions Observatory ("IMEO") is the independent third-party auditor for OGMP 2.0 standards.

Why Jonah has taken these steps matters. We believe that we all are part of the solution. A demonstrably cleaner source of natural gas ensures reliability and carbon reduction both domestic and globally. As consumption and production is expected to grow, so does the need for the cleanest supply of natural gas to meet customer expectations and climate goals.

We take it so seriously that our compensation is in part based on emission reductions and other environmental metrics.

In Wyoming, at the Wyoming Energy Authority, our North Star is clear: empowering our Nation with a net-zero energy mix. We cannot achieve our goals without permitting reform.

Wyoming produces 13 times more energy than we consume, and we are the second-largest net energy supplier among the states, after Texas.

Federal lands in Wyoming contain world-class energy and mineral resources that are crucial to Wyoming's economy and the nation. Overall, federal land surface ownership in Wyoming is over 30 million acres and 48.1% of Wyoming's total. The Bureau of Land Management (BLM) alone administers more than 17.5 million acres of public lands and 40.7 million acres or two-third's of the entire mineral estate in Wyoming.

Wyoming has been the top coal-producing state since 1986, accounting for about two-fifths of all coal mined in the United States in 2020. The state holds nearly two-fifths of U.S. coal reserves at producing mines.

Wyoming was the eighth-largest crude oil-producing state in the nation in 2021, accounting for slightly more than 2% of U.S. total crude oil output and the ninth-largest natural gas producer accounting for about 3% of U.S. marketed gas production. Our mineral reserves are strong and will allow Wyoming to continue to power the nation.

Our renewal resources are also strong and growing. Wind power in Wyoming has more than doubled since 2019 and accounted for 19% of the state's electricity net generation in 2021. The amount of installed wind power-generating capacity in the state nearly doubled to just over 3,000 megawatts during 2020 and 2021.

Our energy evolution requires continued investment in our foundational energy sources of natural gas, oil and coal with a focus on deep emission reductions through low emission natural gas, carbon capture, utilization, and sequestration (CCUS) and other decarbonizing efforts. We have poured the foundation for advanced nuclear technology and are actively engaged in developing a hydrogen economy.

The vehicle for our evolution is the Wyoming Energy Authority.

Wyoming energy powers our country and we foster an environment in which innovators, researchers, developers and stakeholders can collaborate, gather support and act as one cohesive voice.

The creation of the WEA was driven by the need to diversify and expand the Wyoming economy through improvements in the state's electric and energy transmission infrastructure. The WEA is tasked with facilitating Wyoming's production, development and transmission of energy and associated natural resources. Our tools include authority to finance, construct, develop, acquire, maintain and operate energy transmission facilities, advanced technology facilities for natural resources associated with energy, carbon dioxide capture and transportation infrastructure, distribution facilities and related supporting infrastructure.

Wyoming is poised to continue to be a major player in our country's energy future. Permitting reform could accelerate our net-zero goals significantly in Wyoming and across the nation.

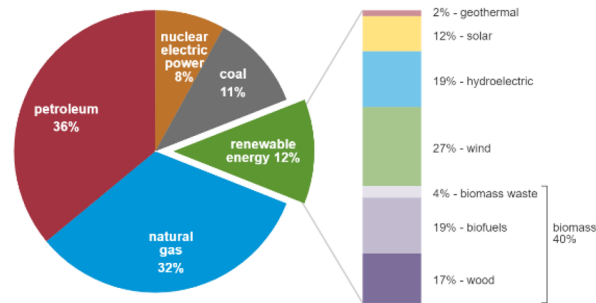
The Current Landscape

The world needs affordable and reliable energy. Over the last 150 years, we have grown accustomed to many comforts in modern life and through this time period hydrocarbons have been the primary source for our energy systems. Even today with rapid innovation and more diverse energy sources, hydrocarbons largely power our daily lives.

U.S. primary energy consumption by energy source, 2021

total = 97.33 quadrillion
British thermal units (Btu)

total = 12.16 quadrillion Btu



Data source: U.S. Energy Information Administration, *Monthly Energy Review*, Table 1.3 and 10.1, April 2022, preliminary data
Note: Sum of components may not equal 100% because of independent rounding.

Our energy needs are also growing. In fact, the Energy Information Administration (EIA) expects U.S. energy consumption from natural gas to increase 37% between 2020 and 2050 and dry gas production increase by 12% in 2030, 18% by 2040, and 27% by 2050.

It is not enough to simply provide energy, however, and we are focusing on cleaner energy for us and our future generations, our collective goals for a healthier natural world and to meet climate goals.

So how do we address the increased and ever-increasing energy demand while meeting the need for clean energy?

We must acknowledge that all energy sources have an environmental impact and stop the bias against hydrocarbons. It is important to recognize the work being done to provide natural gas that is produced in a less impactful way.

We have almost 100 years of natural gas reserves, existing robust infrastructure and even with the additional costs of responsible production, it is less expensive and more reliable than alternatives.

Our collective ability to strengthen the domestic natural gas supply responsibly will lead to long-term economic sustainability of the Rocky Mountain region and our sovereign tribal nations.

We must address permitting and litigation challenges that continue to hamper our ability to progress both domestic and globally. We must also enhance our liquefied natural gas (LNG) export capacity in order to provide low-emission American natural gas to the world. A cleaner natural gas supply will support global climate goals, accelerate global decarbonization, reduce transboundary air pollution into the United States, and strengthen our Asian and European allies.

The Need for Permitting Reform

While oil and natural gas production in the United States has increased dramatically over the last several years, the growth has occurred predominantly on private and state lands while federal lands have lagged far behind. States in the West with large amounts of public land are at a decided disadvantage compared to other parts of the country. Leasing, environmental reviews, permitting and ultimately development can take years if not decades longer than on private land. Competition for capital and resources often mean projects take a back seat to other more efficient development on private land.

Permitting and litigation obstacles on federal lands are not limited to oil and gas projects. All of Wyoming's diverse energy sources realize the impact. These impacts discourage capital investment and limit job creation and economic growth, particularly in rural communities.

There are numerous examples of impactful energy development projects in Wyoming that have faced extremely long completion timelines or the project proponent has cancelled the project after significant delays.

The Chokecherry/Sierra Madre Wind Project Right of Way application was submitted in January 2008. The Record of Decision (ROD) was signed in December 2012. However, the signing of the ROD did not give them the ability to develop, as four additional environmental assessments were required to analyze successive phases of the project. The last decision was issued in February 2020, for a cumulative 12 years of NEPA permitting.

The TransWest Express Transmission Project is critical new infrastructure that will deliver electricity generated by renewable resources in Wyoming to California, Nevada and Arizona. The project will provide much-needed zero-carbon electricity to millions of homes and businesses every year and will strengthen the power grid that serves the Western United States.

The project's Right of Way application was submitted in December 2008. The decision was signed in December 2016. However, they were not allowed to begin construction until they received their Notice to Proceed in April 2023. Nearly 15 years of NEPA permitting.

This timeline is not unique to this project. If you look at all of the major new transmission lines underway in the West, including three new interstate power lines intersecting Wyoming, all have BLM NEPA timelines in excess of a decade.

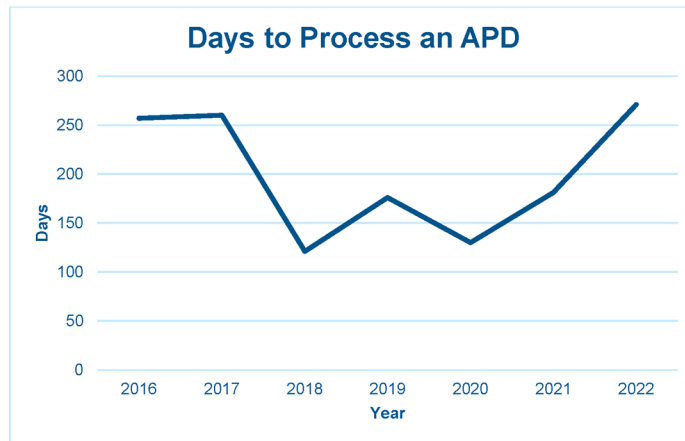
The BLM Rock Springs Field Office's Resource Management Plan Notice of Intent was published in February 2011. Twelve years later, the Record of Decision has still not been signed.

The most recent oil and gas project in Wyoming, the Converse County oil and gas project, took 6.6 years to complete and is now facing legal challenges.

In the past 15 years the timeframes for environmental analysis on oil and gas projects range from 6 to 10 years to complete.

Project	Wells	Status
Moxa Arch Infill Project	5,161	Initiated in Oct 2005, canceled by operator in Oct 2013 after 8 years
Beaver Creek Coal Bed Natural Gas Development Project	228 wells	Initiated in July 2008, cancelled by operator in 2013 after 5.3 years
LaBarge Platform Project	838	Initiated in April 2011, cancelled by operators in 2015 after 5.6 years
Continental Divide-Creston EIS	8,950	Initiated in March 2006, final decision by the BLM in September 2016 after almost 10 years
Normally Pressured Lance Natural Gas Development Project	3,500	Initiated in April 2011, Rod in September 2018 after 7.5 years
Moneta Divide Oil & Gas Development Project	3,100	Initiated in January 2013, Rod in August 2020 after 7.5 years
Converse County	5,000	Initiated May 2014, ROD Dec 2020 after 6.6 years

Finally, the time to process Applications for Permit to Drill increased by 124 Percent From 2018 to 2022.



The costs of delaying NEPA decisions and extending timeframes for the approval of energy projects not only affect federal and state governments but also affect local communities, energy industry job seekers and ultimately individual energy consumers.

The Case for Litigation Reform

The effects of litigation on federal oil and gas permitting in Wyoming are significant. BLM has halted approvals of drilling permits in response to lawsuits brought by activist environmental nongovernment organizations:

Western Watersheds Project, No. 18cv187 (D. Idaho);
 Montana Wildlife Federation, No. 18cv69 (D. Mont.); and
 WildEarth Guardians, Nos. 16cv1724, 20cv56, 21cv175 (D.D.C.).

Collectively, these lawsuits challenge 18 lease sales in Wyoming, as well as lease sales in other states, held between 2015 and 2020. Some lease sales are subject to multiple lawsuits.

Of the 18 challenged sales in Wyoming, seven sales are subject to a court order preventing BLM from approving development on the sold leases.

The courts in the Western Watersheds Project and Montana Wildlife Federation cases have ordered cancellation of leases sold at four sales: the December 2017, March 2018, June 2018, and September 2018 sales. These orders have been appealed to the Ninth Circuit, which has not issued a decision in the appeals. The courts have suspended leases sold at these four sales pending appeal.

The court in the Western Watersheds Project case has ordered suspension of leases sold at three other sales: the February, June, and September 2017 sales. The court found that BLM did not adequately analyze impacts of leasing on the greater sage-grouse.

The remaining 11 lease sales, those challenged in the Western Watersheds Project and Montana Wildlife Federation cases, are not subject to any order directing cancellation or suspension of the leases or enjoining BLM from approving drilling permits. BLM is not approving drilling permits on these leases because of the potential that the courts may cancel them leases in subsequent phases of the litigation. These subsequent phases of litigation likely will take at least a year to complete.

The lease sales challenged in the WildEarth Guardians case have been remanded back to BLM so that it can complete additional analysis of the greenhouse gas impacts of leasing. The WildEarth Guardians court did not suspend these leases or enjoin BLM from approving drilling permits on them. BLM is not approving drilling permits on these leases while it prepares additional analysis of greenhouse gas impacts. BLM requested remand in July 2021 to prepare this analysis, but nearly two years later the state office has not yet completed it.

Cumulatively, the effect of these cases is that BLM is not approving drilling permits or any other action on 2,150,844 acres of oil and gas leases in Wyoming for the foreseeable future. For most of these acres, BLM is effectively self-enjoining itself from approving development. This is new and unprecedented policy.

This issue has no end in sight. For those leases subject to multiple lawsuits, BLM's correction of a deficiency identified in one lawsuit would not correct the deficiency in another lawsuit. BLM has not identified the point at which it will issue permits for the leases subject to the Western Watersheds Project and Montana Wildlife Federation litigation.

The Potential of Rockies LNG Exports

Supply Matters.

Wyoming has led the nation in environmental protections while balancing the need to provide clean, sustainable energy development for well over a decade. We have a long track record of balancing major conservation efforts while preserving jobs, tax revenue and our quality of life.

In fact, Wyoming has a significantly lower methane emission intensity from production than any other producing area based on the Burns and Gruber 2021 Study.

The rest of the Rockies is following suit. Carbon footprint and methane intensity is lower for dry Rockies gas than other basins.

Potential recoverable resources for the Rocky Mountain region were 502 trillion cubic feet, or nearly 17% of U.S. Total. U.S. Tribal Nations hold almost 10% of the known oil and gas reserves in the U.S.

Additional interstate natural gas pipelines are needed. If we prioritize updating our infrastructure and unlocking North America's Pacific Coast as an export route to Asia for natural gas produced in the American West we can enhance economic development opportunities for Tribal Nations and rural communities.

We can develop a market for low-emission American natural gas that will support global climate goals through export as liquified natural gas. A cleaner natural gas supply will accelerate global decarbonization and increased LNG capacity will also support our allies' growing need for a reliable source of energy.

We can also build for the future. We can develop new infrastructure that enhances our existing natural gas backbone and provides for the potential of green hydrogen and ammonia export.

Recommendations

Enact Meaningful Leasing and Permit Reform

- Amend, strengthen and protect our foundational energy statutes to reflect congressional intent is critical.
- Limit or eliminate the ability of agencies to enact moratoriums or other administrative roadblocks and require agencies to adhere to enforceable deadlines for lease sales, environmental reviews, and permits.
- Strengthen the multiple use mandate of our public lands.

Enact Effective Litigation Reform

- Expedite judicial review periods, limit venue shopping, enact reasonable statute of limitations for court challenges and enforced schedules and deadlines for cases and remands.
- Require agencies to rigorously defend in a timely manner their decisions. Informal or unwritten voluntary stays of action should be eliminated.

Expedite Pipeline and LNG Infrastructure

- Prioritize and accelerate approval for new interstate natural gas pipelines, LNG export terminals, and related infrastructure that supports export capacity to our allies.
- Encourage investment in projects that bridge a path to a cleaner future through building for low-emission natural gas, hydrogen and ammonia.
- Recognize that Rockies LNG is a key solution for energy security, economic development and decarbonization.

Conclusion

Affordable and reliable energy is the backbone of a strong economy. Low electric bills mean more money in family pockets. It makes a difference in quality of life from heat to groceries, from the light switch to the refrigerator. It is integral to our daily life. The energy produced in Wyoming moves across the country, heating homes and running vehicles. Wyoming energy is domestic energy — created in America, used in America. It employs Americans in energy, manufacturing, retail and technology.

Wyoming resources support our national strength and security in a fundamental way. We are also leading efforts to significantly reduce environmental impacts from all sources of energy.

We can and must work together to achieve meaningful permitting reform. It is necessary to achieve our full potential of energy reliability and security as we lead the globe in a cleaner energy evolution.

Our Partnerships

Jonah is a member of the following associations and initiatives:

Petroleum Association of Wyoming
 American Exploration and Production Council
 International Methane Emission Observatory Oil and Gas Methane Partnership 2.0
 One Future
 Western States and Tribal Nations Natural Gas Initiative

The CHAIRMAN. Thank you all for your testimony. I appreciate it very much. I am going to ask very quick questions because we only have a limited time.

Have you all seen an uptick in the last year or two since we have passed pieces of monumental legislation—Bipartisan Infrastructure, IRA—have you seen more investments, more activity, more desire to do more in America than ever before, or have you not?

Mr. GRUMET. Mr. Chairman, uptick would be an understatement. There has been a surge of activity in just the last nine months. Private sector capital, \$150 billion of announced investment in clean energy. Forty-seven domestic manufacturing facilities between September and April. Eleven more since we put this—we can't put the report out monthly anymore. We have to update it weekly. So there is an incredible opportunity, but I have to say, as you pointed out, it's going to get harder, not easier, unless we open up the space.

The CHAIRMAN. Well, we all know that there will be a lot of money that will be stranded and never get out the door because we ran out of time and the time element to do the things to be done and we will still be trying to figure out how to permit and nobody will be happy.

Mr. Nolan, real quick.

Mr. NOLAN. Absolutely. We have seen a rush—a gold rush, as a matter of fact, in some battery materials investments in mines in the United States. However, the permitting juggernaut is proving to be extremely difficult. I believe we learned just yesterday that only, really, two mines have been approved, the rest have been some exploration work—

The CHAIRMAN. So you are seeing the uptick, basically in renewables, but not the aggressiveness as far as the uptick in fossil?

Mr. NOLAN. Correct.

The CHAIRMAN. Ms. Shuler.

Ms. SHULER. I would say yes. We are talking a lot at the national level about the opportunity coming our way and trying to ramp-up training and workforce readiness and looking at that talent pipeline that is going to be needed. But I will say, you know, we have heard promises before from the Federal Government, and workers are, you know—the best way that we can show them that this is different is to get the shovels in the ground and get the projects moving. Make it a reality.

The CHAIRMAN. Mr. Ulrich.

Mr. ULRICH. Mr. Chairman, the desire is there. Certainly, in Wyoming, we are in an all-of-the-above state. We are eager, ready, willing, and able to get to work producing some of the cleanest energy, whether it be natural gas, coal, wind, et cetera.

The CHAIRMAN. Well, let me just say this—the people have to understand—the IRA legislation was done in a balanced way. We have to have the horsepower to run the country for today with the investments to develop and mature the technologies for tomorrow. And right now, they are having a hard time, you follow me? One wants more of this. One wants less of this. One wants more of this or less of this. We tied them together so that you are not going to be able to put wind or solar anywhere unless we are extracting the resources that we have to in a balanced way for the ten-year period that we all agree that we need to stabilize the grid.

So I would ask all of you, not right now, I could ask you to rapid fire, but I want you to think about this. Before we end this Committee hearing, I want you to put your top three impediments, whether it be for renewables, whether it be for gas, oil, and coal, whatever. What are the top three impediments that you think need to be—your highest priorities—that need to be changed in a permitting bill?

What we have is, we have different variations of permitting. We have things in Senator Barrasso's bill that we agree on and maybe have challenges we do not agree on. We have things in our bill—they agree or don't agree. We are going to figure out what is a bipartisan bill that all of us can agree on and come out of this Committee. And that is what will give us the momentum we are going to need to make this happen. So your input is going to be absolutely, unbelievably helpful for us to get through this maze. And as we do it, and I will just say for the Committee's sake, we are intending to get this bill and have a bill on the floor before we have a recess this summer. That is pretty aggressive. We are going to get it done. We are going to get it done. It is imperative, and we lead the rest of the world.

So with that, I have, let me see. I had another question. And just, I just want to throw this out to you real quickly, Mr. Nolan, on hardrock mining—nothing has been changed for years. No, I can't believe it. I come from the mining industry and understand mining very well. We pay for everything. They pay for nothing. There's no royalties. There's no nothing. There's no bonding for tailings and this and that. If we are going to do mining reform, don't you think it should be done across the board, so everyone is treated fair?

[Laughter.]

Mr. NOLAN. Thank you for the question, Mr. Chairman. I will attempt an answer.

We are happy to work with the Committee in a bipartisan way—

The CHAIRMAN. That is all we can ask for.

Mr. NOLAN [continuing]. To improve the process of mining in this country to make sure we are globally competitive—

The CHAIRMAN. What we are saying is, basically, simply this—when we are mining, we have our waste from our mining. It should be done and disposed of in a proper way and reclaimed properly. You should have a bond that basically says you will do it, and in case you go bankrupt, that bond is sufficient to cover what you didn't do. And if you are mining, extracting resources that we, the people of America, own under BLM lands, shouldn't you pay some royalty, the same you would pay for a private owner?

Mr. NOLAN. Happy to work with you, sir.

The CHAIRMAN. Okay.

I don't think that was a good question, was it? That was just pretty much a statement I have been trying to make. I am sorry I had to use you for my prop, okay?

Mr. NOLAN. Appreciate it.

The CHAIRMAN. With that, I am going to turn to my Ranking Member, Senator Barrasso.

Senator BARRASSO. Thanks, Mr. Chairman.

Mr. Ulrich, you know, your testimony described a number of obstacles to developing oil and gas on federal lands at home in Wyoming. One of the most significant is uncertainty around the Bureau of Land Management, their lease sales. Since President Biden took office, the Bureau has defied the law and held only, what, one lease sale in the last nine quarters? So almost two years. What changes to the Bureau's leasing process would be most effective in providing some certainty for producers going forward?

Mr. ULRICH. Mr. Chairman, Ranking Member Barrasso, first things first—actually holding quarterly lease sales and adhering to that mandate would be critical. Also, a very significant issue with the entire NEPA process is layer upon layer upon layer of NEPA analysis. If we had up-to-date, effective, and timely resource management plans to address all of our resources and expedite lands that should and should not be leased, that would be very effective as well.

Senator BARRASSO. So before the Bureau can hold an oil and gas lease sale, it needs to conduct multiple rounds of environmental analysis. The reviews determine which lands are open to be leased and under what conditions. Before the Bureau can approve drilling permits on these leases, it conducts further rounds of environmental analysis. Can you talk about this duplicative process and the protracted environmental review process in terms of oil and gas production on federal lands and explain how Congress can help fix this broken process?

Mr. ULRICH. Mr. Chairman, Ranking Member Barrasso, the process is laborious to say the least. Clearly, prior to lands being leased, there is an environmental review. Prior to that, there are overreaching resource management plans on federal lands that are set in place to guide development and conservation and all other environmental resources for a very long period of time. Once you get a lease, you either go through an EA or a five- to ten-year process for an EIS. After that, typically, you will have to go down to an APD level where you might need to get an environmental assessment and other impact analysis as well.

So Mr. Chairman, you can see the challenge. If we had stronger, more effective resource management plans and we could tier from those resource management plans and tier from one solid set of environmental reviews, and process quickly with hard deadlines, you could save an enormous amount of time throughout the entire process.

Senator BARRASSO. Thank you.

Mr. Nolan, the Biden Administration wants to have a “carbon-free electric grid by 2035 and a net-zero carbon economy by 2050.” It plans to reach this goal through the widespread adoption of electric vehicles and solar and wind electric generation. Electric vehicles use over six times more minerals than vehicles with internal combustion engines. Solar panels require roughly five times more minerals than natural gas generation per megawatt-hour. Offshore wind requires roughly 12 times more minerals than natural gas generation per megawatt-hour. So under the current permitting laws, is there any way in the world to meet the President's goals without dramatically increasing America's dependence on China and on Russia?

Mr. NOLAN. Thank you for the question, Senator.

Global investment in U.S. mining has dropped in half over the past 20 years. Industry surveys on where to invest continue to report that the U.S. has lost attractiveness due to the uncertainty in the permitting process and the regulatory and legal environment and tort system. So I would say, you know, the Chinese started this process of investments from mining, both at home and overseas, as well as standing up a robust processing and smelting platform in China. So they are 20 years ahead of us, and it is now time for us to catch up if we are going to meet the needs of electrification of the economy and the EVs.

Senator BARRASSO. So how critically important is access to federal lands right here in the United States for future mineral production in this country if you are going to want to meet these goals that the Administration has come up with?

Mr. NOLAN. Incredibly important. The minerals are where they are. We don't get to decide that. There are certain areas that we have to look out for and be very careful with, and we are. We have the highest labor/environmental standards in the world here at home. So your point is well taken.

Senator BARRASSO. Mr. Grumet, do you disagree with anything that Mr. Nolan just said?

Mr. GRUMET. I appreciate the opportunity, Senator. No—we agree both with the frame of your question and Mr. Nolan's answer. And I think that fundamentally our only opportunity, not just to achieve our climate goals, but our security goals, is going to require significant investments in infrastructure, in mining, in production, in manufacturing. And I think that is good news for the country.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Now we have Senator King.

Senator KING. Thank you, Mr. Chairman.

As I listen to this discussion, I can't help but be reminded of an incident in the Old Testament that isn't widely known. When God came to Moses and said, "Moses, I have good news and bad news." Moses said, "What's the good news, God?" God said, "I am going to enable you to part the waters of the Red Sea and let my people go free. Then the parted waters of the Red Sea will recommence and bury Pharaoh's army." Moses said, "That's wonderful, God. What's the bad news?" God said, "You prepare the environmental impact statement."

[Laughter.]

Senator KING. I think it's important, as I listen to the discussion here today, no one, not a single witness and no one at this dais has talked about lowering environmental standards. I have not heard a word about that. When I was Governor of Maine, my mantra was the highest environmental standards in the country and the most timely and predictable permitting process. Those two things are not inconsistent, and the outline of what we are discussing here today, it seems to me, is pretty clear—deadlines, some limitation on the length of time that litigation takes, one-stop shopping so that there

is a rational process that's not serial, but parallel. The outline is pretty clear.

I come at this as a person who has been involved in the environmental movement for 40 years. In order to achieve our environmental goals, we have to build things. You cannot love EVs and hate lithium mines. This is a national security issue as well as an environmental issue. Eighty-seven percent of the lithium today in use in EV batteries, the processed lithium comes from China. That is a national security issue. It is also—we are talking about environmental issues—Bill McKibben had a very important article just a week ago in *Mother Jones*. The name of the article is, "Yes in Our Backyards." And he talks about his evolution as an environmental leader that started from blocking things in the 60's and 70's and realizing that in order to achieve an environmental future, whether it is transmission or mining critical minerals, in order to achieve a green energy future, we have to build things. And so I welcome the testimony that you all have provided today. The 18 years for the transmission line is a perfect example.

Whenever my staff tells me it's going to take a couple of years to do something—I will share this with you—I always remind them that Eisenhower retook Europe in 11 months. That was a pretty daunting task. And I believe that what we need to do is talk about whether it should be two years or three years or what it should be, and also shorten the time limit to file litigation, as the Chairman said, the litigation should be on a fast-track docket. Not to deny people their voice, but to be sure that they speak up in a timely way because we cannot achieve the environmental goals that many of us share without permitting reform.

So one specific question—Mr. Grumet, the Federal Permitting Council—I am worried about the future of that. Do you see that as a useful organization? Could they be the wrangler here that could help us to move this process forward?

Mr. GRUMET. Thank you, Senator King.

I think FPISC, the Permitting Council, has actually proven shockingly effective, right? I think if you look at things like, I guess it was the SunZia line, a big power line that had been stuck for about 15 years. There were a lot of DOD concerns. It got put on the dashboard and it got done in two years. So I think bringing that kind of focus, you know, you manage what you measure. And so, I think we have joked that at times we have had challenges when it comes to science, and sometimes we are having challenges when it comes to math, right? We need to have actual limitations to ensure that we get these projects built.

I think what the Administration released yesterday also confirms this idea that a two-year expectation, regardless of the number of agencies involved, is appropriate. So I think FPISC having authority to drive that process forward makes a lot of sense.

Senator KING. What about shortening the time period for litigation from years to months?

Mr. GRUMET. I don't think we have a formal position on judicial reform, but I will note that no deadlines, which basically allows a six-year window to challenge a process, seems a little unnecessary. I think that the FAST Act, which moved that deadline to two years for transportation projects seems like a constructive direction. I

know Senator Manchin's legislation has even stricter—so I can't give you a month, but 72 is probably too many.

Senator KING. I think one of the things that is important to realize here is that we are all talking about projects that get delayed or take a long time, and it's a lengthy and cumbersome process. What we don't know are all the projects that never even get to the stage of being proposed, the opportunity cost, if you will, because if a utility or a developer or a mining company is contemplating a project, one of their considerations is how long will it take and how much will it cost before I can actually start to realize any return on the investment.

So I think, Mr. Chairman, this is an important hearing. I appreciate your bringing it forward, and as a card-carrying environmentalist, I look forward to working with you to solve this problem. Thank you.

The CHAIRMAN. You are a pragmatist.

Anyway, we have Senator Hyde-Smith next.

Senator HYDE-SMITH. Thank you, Mr. Chairman.

We are certainly at a critical moment in time with permitting reform, and I am from Mississippi. For the past two years, we have seen the negative effects of permitting delays on domestic energy production, and consequently, the high energy prices paid by American families and American industry, American businesses. But for issues such as offshore oil and gas leasing, to NEPA reform and on-shore electric transmission, permitting should be streamlined to get us back on track to becoming energy independent.

Mr. Grumet, with respect to transmission facilities, there are proposals under consideration that would limit a state's role in these projects that are deemed by the Federal Government to be of national interest. What roles do you believe states should have in planning electric transmission projects, and do you think it's appropriate to reduce or eliminate the state's ability to participate in that planning, especially if the customers they represent will be required to pay for a portion of the project's cost?

Mr. GRUMET. So Senator, that is the crucible of the question, and there are about 17 pages of my testimony that I will now try to summarize in about 45 seconds. The current system does not work. Fundamentally broken. We have a balkanized power grid that is isolating communities of the country from one another, and that is why when we have tragedies like we saw with Winter Storm Uri, people are dying because we do not have connections between the different power grids. So the key to making our nation stronger, cleaner, and more secure, is to connect those regions together. And so the question we have to ask is, well, why is it not happening? It's not happening because the current processes don't create any incentive for the different regions to work together.

And so, the status quo does not work. Moving to a direct federal preemption, I think, is going to be very hard to convince this Committee to agree to. So we have proposed what we think are some pretty thoughtful process steps that would maintain the state's role, both in permitting and also in the efforts to connect these regions, but put some process behind it that is rational. So on siting, instead of having to wait for the states to move forward, we can use the backstop authority that was already put into law, give

states the chance to move forward with that permitting, but have the Federal Government have a response if states fail to act. It's not taking them out of the process, it's just requiring them to work within the process.

On the issue of cost allocation, which is more complicated, we believe that the regions have a role to play, but we believe that they have to play that role. They can't rope-a-dope the nation into energy insecurity. And so, we think there is a way forward that does not either accept the dysfunctional status quo or accept what I think people fear is an over-federalization, and it's time for the Congress to, I think, dig in and find those solutions.

Senator HYDE-SMITH. In your opinion, how should transmission planners determine whether an electric transmission project is a high-impact transmission project or of national interest?

Mr. GRUMET. So I think that the criteria that were set out in EPAct, I think, and reinforced by IIJA, and I think Senator Manchin adds to that, we can get a list of what we think are the criteria to understand what a national interest project looks like, but that does not dictate approval. I think once you are in that process, then what the states need to do is look, in a coordinated way, at the benefits within their own borders and then also at the regional benefits that both the United States and regions would benefit from with those connections, but they should be the regular ways we look at the benefits of power. It should be economic. These are not trying to figure out a kind of woke national agenda. It is basically providing economic development, jobs, safety, security, resilience, reliability. They should use the system that they are working through right now, but they actually have to speak the same language.

Right now, there is no incentive for any region to think about the full benefits of a project. And as a result, the whole country is suffering.

Senator HYDE-SMITH. Well, should promoters of these projects, should they be required to show that the projects resolve a specific, identified customer need?

Mr. GRUMET. Every one of these projects has to be justified based on the benefits to customers being greater than the costs. There is absolutely no reason to move forward with a project that does not do that. But we have to recognize that there are benefits greater than what you are paying per kilowatt-hour. It is a benefit for your lights not to go out. It is a benefit for your region to be able to be saved with power if you have a terrible storm. It's a benefit for you to have the capacity to bring new industries into your region. It's a benefit to have low-cost power brought to you from other parts of the country.

So I think as long as we have an honest conversation, anchored in economic benefits, we can make the decisions that protect all of our shareholders and consumers.

Senator HYDE-SMITH. Thank you for your answer.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Next, we have Senator Kelly.

Senator KELLY. Thank you, Mr. Chairman, and thank you to all of you for being here today.

Let me start with Jason—Mr. Grumet. As you may know, I supported the efforts to permanently reauthorize the FAST-41 permitting process, which, I think, is a really critical tool that helps large projects navigate the federal permitting process, and it's especially critical that the federal permitting process does not needlessly delay projects that could help us secure the domestic supply of critical minerals that help us fight climate change.

So earlier this year—there is a project called the South32 Hermosa Critical Minerals Project, which will become the first mining project added to the country's FAST-41 process. And the Hermosa project is a proposed zinc and manganese mining and processing operation in Santa Cruz County, Arizona, near the U.S.-Mexico border, and demand for manganese for the battery sector is predicted to increase at the fastest rate of any of the industry's key metals. And this Hermosa project is the only advanced mine development project in the nation that can produce two federally designated critical minerals, making it essential for securing the country's domestic supply of critical minerals. You know, making the rigorous environmental review and permitting process for this type of project more transparent, timely, and predictable is going to help us establish the country as a responsible producer of critical minerals and renewable energy.

So Mr. Grumet, how does the expansion of the program into mine approval benefit the clean power sector, and will it strengthen our supply chain with American resources?

Mr. GRUMET. Senator Kelly, I appreciate the question. I appreciate your leadership on FAST-41, and to the core of my testimony that the nation is coalescing now around a shared vision, I bet that Mr. Nolan and I would answer this question exactly the same. Fundamentally, our capacity to address our economic, climate, and security needs requires more mining, particularly of critical minerals. We cannot achieve our goals for electrification of transportation and we cannot achieve our goals for battery storage, which is necessary to provide resiliency for our intermittent renewable resources, without projects just like the Hermosa Project. FAST-41 works. You put the spotlight on something and the government responds.

And so, if it works for a power line, if it works for a solar facility, if it works, you know, for an offshore wind farm, it should work for mining. And so I think we fundamentally support that all-of-the-above competition, but it has to be a competition towards national goals. So we would like every single technology and all of the resources and infrastructure that support those technologies to have the same federal support, but we have to recognize that we have open mines, not empty mines, to achieve security, economic resilience, and climate imperatives.

Senator KELLY. And how much time does the FAST-41 program typically save?

Mr. GRUMET. Two years has become, I think, the kind of default idea of how you can run rigorous NEPA processes, bring in community involvement, and come up with a decision.

Senator KELLY. Okay.

And then, what can we do to work with states to incentivize them to participate in FAST-41 to keep these projects on track?

Mr. GRUMET. So you know, at the end of the day, it all comes down to federalism. And I think we obviously have to provide encouragement for states to want to be part of that federal process. And the idea around revenue recycling, where some of the resources from the permit applications are brought back into the states, I think, is a very smart way to move forward. Also, early consultation. It is always good to talk to people at the front end, whether that is a state regulator, whether that is the environmental justice community, whether that is a local farmer or landowner. So I think with revenue recycling and with efforts that bring the voices to the front of the process, and then with demonstrated success, I think you are going to see states much more eager to be part of those solutions.

Senator KELLY. Well, thank you.

And in my remaining time I want to just ask Ms. Shuler, I am sure you are aware of the Navajo generating stations, the situation here and the closure in 2019, and this is associated with the Kayenta mine project and it is, you know, it did provide very high-paying jobs in an area that has high unemployment. So how is permitting reform connected to well-paying jobs in communities that may already have, you know, some issue with a transition like the closure of a power station?

Ms. SHULER. Absolutely, and some of those folks were union members. So I am familiar with that situation. And I think this is what we are talking about as older energy assets are phased out, closed. We need to have the promise of good union high-wage, high-road jobs available. It is what people keep calling "just transition." But we have yet to see a truly just transition. And so that is why the investments that are coming, IRA in particular, have such promise for places like the Navajo Nation, where there are special incentives that can be targeted in places that are already primed and ready to go. And we want to make sure that there are good, high-wage standards attached to these incentives so that, indeed, they do produce, you know, this apples to apples kind of—if you are leaving a good high-wage job, you don't want to land in a job that is actually going to be a dead-end job. So that is why it's so important to get those right.

Senator KELLY. Thank you, Ms. Shuler.

The CHAIRMAN. Thank you, Senator.

Now we have Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you to the panel. Thank you for sharing your views, your comments on the importance of the priority of permitting reform. You know, you feel like you have reached that sweet spot when everybody is talking about permitting reform for all of the right reasons. And so I think this puts us at a good place to actually, hopefully, get something done.

I want to take us back just a couple of years ago because it's not like we have been sitting on our hands when it comes to permitting. We were able to put in place what I consider some common-sense mineral permitting reforms in the Bipartisan Infrastructure Law. We kind of pulled this from the American Mineral Security Act that I was able to work on with the Chairman here. It was cer-

tainly a first step. Maybe it was too small, but what we were trying to do was to give the Administration some new tools to work with.

Let me direct this to you, Mr. Nolan. Have you seen any meaningful steps that the Administration has taken to utilize its new authorities under the Bipartisan Infrastructure Law, and is there more that we can be doing out there? I recognize what we are talking about today is all of the follow-on that we need to do, but are there things that we have actually put into law that perhaps we have not amped up or ramped up enough?

Mr. NOLAN. Well, first off, I want to commend you, Senator Murkowski, for all your historical work on permitting reform and the legislation that passed as part of the Infrastructure Act, working with the Chairman. Unfortunately, the Congressionally mandated report about improvements that could be made to our mining process was due under statute to the Congress on November 15th of 2022. So we are still waiting for that analysis, and that would be very helpful to the process before us again here today. Instead, the Interior has wrapped that—

Senator MURKOWSKI. We need to urge them along on that report then.

Mr. NOLAN. Yes. They have wrapped that, complying with that important provision to the Interagency Working Group on Mining Laws, Regulations, and Permitting, and that is really not what the directive was from this Committee. So there is a little frustration. It has been six months now since they missed the deadline, and we would love to see that come forward so we can get going.

Senator MURKOWSKI. Okay. That is a good heads-up for us.

I am going to put this out to all of you. We've got four, essentially, primary bills here in the Senate that would work to reform permitting. You've got the House-passed bill. You've got Chairman Manchin's measure. You have Ranking Member Barrasso's SPUR Act, and then you have Ranking Member Capito's RESTART. So, great to have four good bills. I think they provide a lot of good ideas and good opportunities to really move us forward. But we all know around here you are not going to get anywhere if you've got four bills and everybody is kind of jockeying for position, or I want to have mine over somebody else's. So I think we are going to have to figure out what this actually looks like.

So I was going to frame the question as how can we all get on the same page with permitting reform with the things that have to be in it? Maybe the most important thing to think about is what can't be in it. In other words, you know, there may be some things that we are seeing in other areas that we are looking at and saying, this is not going to be helpful to us. Is there anything out there that you are looking at when we are thinking about permitting reform, and you are saying from our perspective, whether from a workforce perspective, from a clean, renewable, or from a mining perspective, that this shouldn't just, shouldn't be part of the deal? So I am going to ask you to think what shouldn't be in rather than what should be.

Anybody have any comments there?

You are all smiling like "I don't want to talk."

Mr. GRUMET. Senator, I think we all understand where the commonality is, right?

Senator MURKOWSKI. Right.

Mr. GRUMET. It's about time limits. It's about avoiding duplication. It's about making sure that we have a process to pay for things, particularly transmission. You could turn the dials too far on any one of those issues. Those all, though, are the three legs of the stool. And I think we all, in different ways, said the same thing, which is that you can do it in two years, and you can do it in two years without transgressing on good process, while making it possible for states and localities and tribes and communities to be part of that process.

And so I think our argument is just take the win.

Senator MURKOWSKI. Don't dial it too hard. Okay, yes.

Anybody? Anything else?

Mr. Nolan.

Mr. NOLAN. Yes, I think what Jason said is spot-on. There is obviously a massive consensus coming together here that I think we can all build on. There are things that we all want, but maybe that does not come this time around. Now, the miners are very patient, but we would love to see this advance and of course, first, do no harm. There are suggestions about turning the mining platform into a leasing system, which would be very devastating to the industry.

Senator MURKOWSKI. Yes.

From a workforce perspective?

Ms. SHULER. Yes, I would agree with what Jason said about turning the dials too far in one direction. I mean, we definitely still need that, you know, the ability for communities and states and tribes to participate, but we want strict timelines because we need to get things built. So do something. That would be what the workers would say is, get something moving through Congress so that we can get more projects unleashed and have this promise of good jobs become a reality.

Senator MURKOWSKI. Good.

Mr. Ulrich.

Mr. ULRICH. Mr. Chairman, Senator, very simply, please don't add another layer of bureaucracy throughout any of these measures. Obviously, protecting our foundational energy statutes and making changes there is important, but what has gotten us to the situation we are in today is too much, too much, too much. We have a great opportunity to modernize and really create efficient permitting processes.

Senator MURKOWSKI. Good. Thank you. Thank you, all.

The CHAIRMAN. Thank you.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman, and thank you to the panel for being here.

Hydropower makes up one-third of the renewable energy generated in the United States and two-thirds in my state, so there is no way, in my opinion, that we can reach our net-zero emission reduction goals without maintaining our existing hydroelectric generating capacity. I see already Mr. Grumet nodding there. Not only that, but hydro's ability to provide a firm, dispatchable power, which is needed most—a key ingredient when you are talking about intermittent power. So it's just the baseload of baseloads, in

my opinion. However, current licenses for over 450 hydro facilities, including pumped storage projects, will expire in 2035. That is 17 gigawatts of clean energy in jeopardy. In my state alone, there are 18 facilities whose licenses expire in 2035, representing 1.3 gigawatts of capacity.

So I understand that right now, on average, relicensing hydro facilities takes seven years. Now, I say, Mr. Chairman, my colleague Larry Craig and I worked on this, and at the time, we thought the average was more than ten years. We did a hydro relicensing bill, but I guess we shaved off three years. So now let's see what we can do given that we have these urgent needs to do even more.

Yesterday, Senator Daines and I introduced a comprehensive hydro relicensing reform bill. It is supported by the National Hydropower Association, the National Congress of American Indians, both Democrat and Republican FERC Commissioners, American Rivers, and utilities like Seattle Light. It would streamline the permitting process, increase tribal engagement and oversight, expedite low-impact projects, consider future climate impacts, promote healthy habits, and coordinate the federal decision.

Mr. Grumet or Ms. Shuler, do you agree that baseload power is a key ingredient to the grid's future, and would you support legislation such as I just described in being part of the permitting reform process?

Mr. GRUMET. Clean, non-carbon baseload power is essential. Hydro is kind of the unsung hero of our clean energy system right now and we really appreciate your leadership, as I know our colleagues do in the Hydro Association. The scope and scale of the challenge is profound. We cannot lose any non-carbon power, and that is the same for hydro, for nuclear, for the renewables industry. I think the legislation that you have proposed, which also focuses a lot on hydro and pumped storage, is going to be essential to maintaining reliability. So I think the Clean Power Association very much supports your efforts and those of Senator Daines.

Senator CANTWELL. Thank you.

And Ms. Shuler, if I could add, do you also support—I know you are going to answer that question—but do you also support adding more needed transmission capacity, because I think in the underlying H.R. 1, they don't address transmitting, permitting reform, and this, too, is a big component of what we need to do. I say this because I am so proud that you, as the first AFL-CIO woman chair, but you come from an electricity background, from Portland General Electric, I think, right? So I think this is a subject you know well.

Ms. SHULER. Yes, and growing up in the shadow of the Bonneville Dam and being very familiar with hydro in the Northwest and the workforce that it takes to maintain the system and the frustration that we see when we can't get transmission expanded and make sure our supply is affordable and reliable. So I would just say, to echo your concerns, you know, having 30 percent of our renewable energy supply come from hydro, we need to protect it. We need to do better. We need to speed up the process. So we absolutely agree with your assessment. And just knowing that these hydro plants need to be periodically relicensed, right? And I think it's 450 dams with 17 gigawatts of clean power that need to be reli-

censed by 2035, as I think you said. So we need to do better, and we support that.

Senator CANTWELL. And transmission reform. Should transmission permitting as part of this reform bill be considered as well?

Ms. SHULER. Yes, exactly.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Daines.

Senator DAINES. Chairman Manchin, thank you.

The National Environmental Policy Act's current regulations impose significant time and significant cost burdens with an environmental impact statement, adding an average now of over \$4 million to each project, and taking four and a half years to complete. For hardrock mining, it routinely takes now over ten years and a billion dollars in startup capital before a company produces any product in America. And that is if they ever get through the permitting process. More often than not, we've got a situation where projects, like the Libby Exploration Project that used to be Montanore, it is in Northwestern Montana—they have been in an endless cycle of permitting and litigation now for 34 years. It is going to be producing minerals and metals that are needed for the future renewable energy economy. There is no end in sight.

This forces us to depend on countries like China and the Democratic Republic of Congo for critical minerals and materials. Permitting reform is needed now and it needs to be comprehensive. It needs to include forestry reforms to prevent unnecessary delays from endangering our forests and hydropower reforms so we can continue to use and benefit from this clean, low-cost energy source. Next week, we are taking up my bipartisan Ninth Circuit Cottonwood fix and passing it in Committee. This needs to be part of permitting.

Yesterday, Senator Cantwell and I introduced the Community and Hydropower Improvement Act. That was a year in the making. This bill is the largest hydropower bill in two decades, and I thank Senator Cantwell for being a great partner. Two Senators from the northwestern part of the United States that understand the importance of hydropower. It streamlines——

Senator WYDEN. I would like to join you both.

Senator CANTWELL. Yes.

Senator DAINES. We would love to have you.

Senator WYDEN. Thank you.

Senator DAINES. It streamlines——

The CHAIRMAN. Without any discussion there, we are going to add Senator Wyden.

[Laughter.]

Senator DAINES. Thank you, Mr. Chairman.

It streamlines the permitting and licensing process. It increases tribal consultation and balances stream and species protection with increased support of hydropower production. You know, hydropower produces a third of all renewable energy and over six percent of all electricity in the United States. This bipartisan permitting bill must be included in any package that comes before the U.S. Senate.

Mr. Grumet, pumped hydropower storage is the largest and most valuable storage solution for intermittent wind and solar. The Community and Hydropower Improvement Act makes many permitting challenges, including creating an expedited three-year process for pumped storage. Can you speak about the need to include hydropower reform in the permitting discussion, and specifically the importance of expediting pumped storage?

Mr. GRUMET. Well, thank you, Senator Daines. I think, you know, broadly, as I shared with Senator Cantwell, it is hard to imagine a solution that addresses our security, economic, and climate challenges by mid-century that does not have a significant reliance on continued hydropower. We certainly cannot move backward. And pumped storage is now an essential component of that transition because, as you point out, it's essential to make sure that the grid is reliable while we have increasing amounts of wind and solar. We are also very optimistic about efforts underway with battery technology. And so, we think the combination of pumped hydro and the tremendous growth in battery storage is going to provide that kind of resilience.

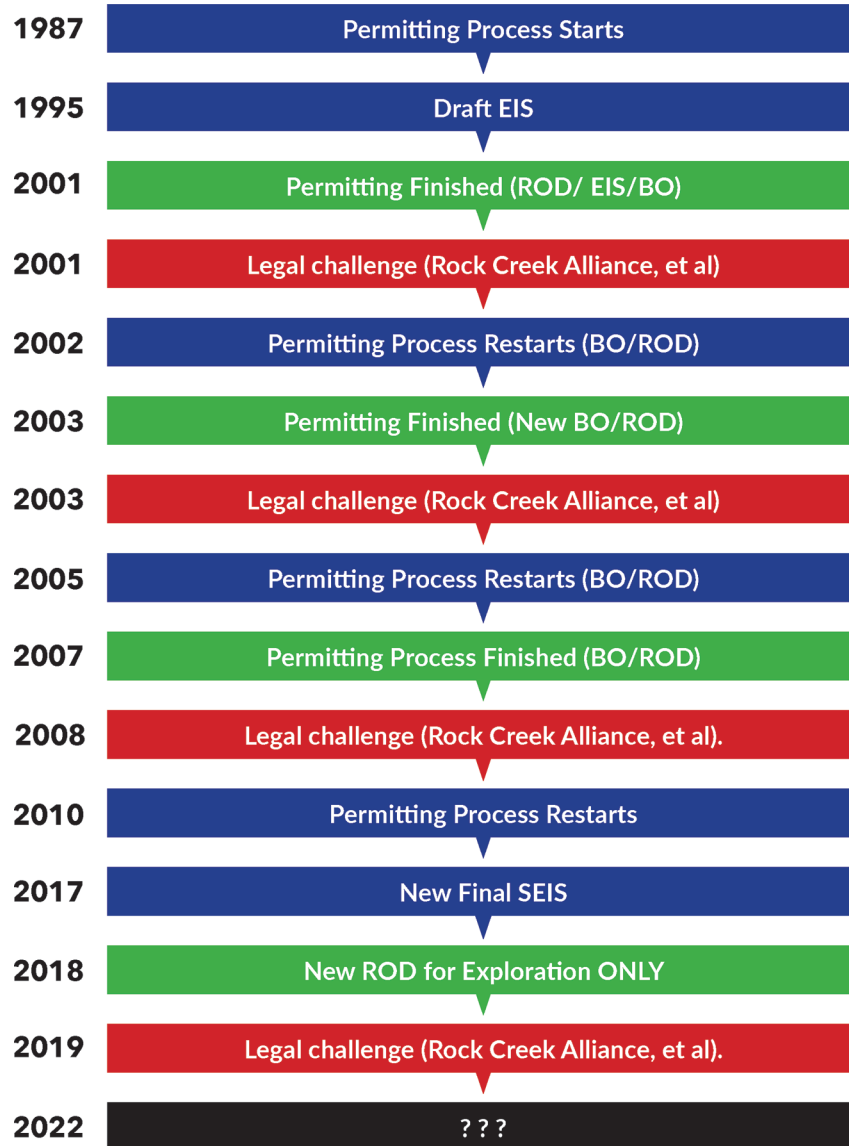
And I think in terms of permitting, the timelines, maybe just to take this more broadly, you know, the challenge we have had over permitting is that some people have seen it as a way to slow things down because they felt like what we were building was not consistent with our national needs. What has changed, and I give this Committee the credit for making this happen, is now we all have a vision of what success looks like. Hydro is part of that success. Hardrock mining is part of that success. Onshore wind, offshore wind, battery storage. And now that we all have line of sight toward success, I think we all want to come together and get things done. And I think two years has kind of landed as that reasonable space to make these decisions in a way that involves communities and respects outcomes and actually delivers for the American people.

Senator DAINES. Thanks for those thoughtful comments.

Mr. Nolan, permitting reform without litigation reform, in this Senator's opinion, is pointless. It doesn't matter how long it takes to get a permit if that permit is going to be endlessly litigated by a radical outside group. And Montana mines are not alone. The litigation cycle is a problem across the United States. I bring in this chart of the Rock Creek timeline to remind my colleagues of the problem. That chart starts in 1987. I used to work for Procter and Gamble. I used to make things like shampoo. That is lather, rinse, repeat, right there. Over and over and over again. That started in 1987. And here we are in 2023.

[The chart referred to follows:]

Rock Creek Permitting Timeline



Senator DAINES. Mr. Nolan, how can we fix the litigation problem, and do you agree we need to have this at the forefront of our discussions?

Mr. NOLAN. Senator Daines, thanks for the question. I believe you are spot-on. It currently takes seven to ten years to get through the permitting process alone, and with your example aside, on average it is another three to five years of litigation. Now, we are not saying that challenges and the right of the people to make their point should be eliminated, but that challenge should be within scope and targeted to substantial matters and up-front so that the project can be adjusted and public concerns addressed. So I fully agree that without legal reform and judicial reform in this package, the permitting process improvements are going to have a very limited impact.

Senator DAINES. Yes, and I am over time, but I am very concerned that we could spike the ball with a great permitting reform bill, get it passed, and then find out we are at the mercies of this continuous litigation cycle here and obstruct these projects in court.

The CHAIRMAN. Thank you, Senator. Thank you.

Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman, and it's wonderful to have Elizabeth Shuler in the house. She and I have known each other since I was co-director of the Oregon Gray Panthers, the senior citizens group. She was coming up in the labor movement. We are so proud that she holds this position. It's just wonderful to have you here today, point one.

Point number two, and then I've got a question.

June 2012 was a really big time in the debate about energy policy. I want Chairman Manchin to hear this in case I make a mistake in history. Chairman Manchin invited Senator Murkowski and I to come to West Virginia to take a tour of all of the energy sources and kind of talk about where we were going. So I spent a lot of time thinking about the issue and we started talking to Chairman Manchin's staff. This was over a decade ago. And we saw a variety of sources and I spent a lot of time boning up on some of the things that Chairman Manchin was talking about. And he was very interested in the concept of technological neutrality. That is now the permanent position of the United States with respect to energy policy. Everybody's in. Technological neutrality really grew out of those meetings that we started in June 2012.

Then we said we are going to have a private-sector-built system—not just going to have a full array of choices, but it's going to be built around the private sector. And then, because I read a bunch of Chairman Manchin's speeches, I said we are going to have a coalition. We are going to have to bring together Democrats and Republicans, as Chairman Manchin talks about. I said, and I held my breath, we also ought to say the more you reduce carbon emissions, the bigger your tax savings. And I was pretty junior on the Senate Finance Committee and I certainly was not thinking about being the Chair in the next ten minutes. But Chairman Manchin said then, and he was not the Chairman of the Committee, that is something that rewards people in the private sector.

And so, for ten years we nurtured that concept along—private sector, technologically neutral, reward in the private sector people

who reduce carbon emissions. And now, we have seen, this is the biggest investment in climate, and as Chairman Manchin has always talked about, a sensible energy policy for the future. It brings together both sides. And I just put it in the context of energy security and climate, making a beginning at tackling climate.

So now, we face the question of what comes next. And I am very troubled about the fact that after we made all that progress over ten years, we still get held up in red tape and bureaucracy for solar and wind and geothermal, which is, as President Shuler knows, a big deal in our part of the world. And Chairman Manchin and I talked about that back then, and I have supported this effort for permitting reform. And I think the question I would like to ask you, Ms. Shuler, is what is the extra benefit your members get from permitting reform, because it strikes me, we have all been kind of talking around that, but you always speak the language of working families and working people. So I would like you to kind of spell out for the Committee, representing Oregon and the country as it relates to working families, what is the extra plus that your members get from the kind of efforts we are making on permitting reform?

Ms. SHULER. Well, and thank you, Senator, and to you, Mr. Chairman, and all of you really thinking about workers and making this a worker-centered issue, because often worker's perspectives are left behind, especially when we are talking about changes in the energy industry. And I earlier had mentioned this notion of just transition. Everyone talks about it, but we need to make it a reality. And if we cannot get these projects built, workers get frustrated. They lose hope. They see the potential, but they don't see the actual jobs manifesting themselves in their communities. And so I think it's a "both/and." We can do permitting reform and speed up these processes and we can continue to make sure we are hearing from the right perspectives—workers included—who live in communities where these changes are taking place. But we need to do it with speed. We need to do it with certainty. And we also know that it takes time to train workers to get prepared for these jobs.

And so if we have certainty, developers are actually going to be attracting investment. And so work will then be certain and then we can start training workers to make sure that we have good, high-quality jobs for the future.

Senator WYDEN. Well said, and my time is up. Going all the way back to those conversations that began in June 2012, we always said that the needs of workers and energy security and a sensible climate policy, these were not mutually exclusive. We could have all three with the right kind of policy. We are now started in that direction.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I just want to clarify one thing. The whole purpose of the IRA is energy security. This Administration has been unable to use the word energy security, all they use is climate, and I have corrected them, and I will continue to correct them. It's energy security. We can't run this country without the horsepower of clean fossil. We can't do it. And we are not going to basically put our grid system and the reliability in jeopardy.

With that, we can walk and chew gum. And that is what we have been saying from day one. We can invest in the technology of the future that we are all going to need and mature that, but we are not going to eliminate something before we have something to replace it with. And if you don't like what we are doing and you think we are doing something wrong by having fossil and clean technology, go look at Europe, look at what happened. We are not going to repeat that mistake.

Senator Hawley.

Senator HAWLEY. Thank you very much, Mr. Chairman. Thanks to the witnesses for being here.

Ms. Shuler, I want to start with you and talk a little bit about permitting reform for mining critical minerals, but before I get to that, I just want to say, thank you to you and to the rail workers that you represent for their work in transporting much of this nation's critical energy supply. And I just want to reiterate that I think that the deal, so-called, that the rail workers were forced to accept at the hand of this Congress last year where they were not given one additional sick day—one—that they were requesting, is frankly outrageous. So I voted against it. I would have amended it to include the sick days that the rail workers were looking for and I think, frankly, the idea that the rail workers of this country who risk their safety in many cases, day in and day out, and certainly put their health on the line to provide for their families and do so much for our energy sector and could not have one additional sick day while probably half of the Federal Government still isn't showing up to work because they are afraid they might get sick is just, frankly, outrageous. So thank you for your advocacy on their behalf.

Let me ask you about mining critical minerals here in the United States. You are the president of a trade association that represents labor unions. Can you give us just a thumbnail sketch, and I apologize if you have already been asked this, but can you give us a thumbnail sketch of some of the protections that domestic workers here in the United States get for mining projects? Then talk to us about the labor protections that we have in this country to help keep them safe.

Ms. SHULER. Well, as you know, the mining industry is one of the most union-dense industries. We have safety protections because of the fact that it is highly unionized, and we have been able to negotiate, over time, very strong protections in their union contracts.

Senator HAWLEY. So let's talk about where much of the world's critical mineral supply comes from if it's outside of the United States, and that is Chinese mines and the Democratic Republic of the Congo. And I bet you are aware of the labor conditions there in the Democratic Republic of the Congo. For instance, it has been recently reported that about 40,000 children are working in the mines in the southern Democratic Republic of the Congo. A recent NPR article called those labor conditions "modern day slavery." Would you agree with me that our labor protections in this country are a heck of a lot better—they may not be perfect—but they are a heck of a lot better than labor protections in the Democratic Republic of the Congo, if they exist at all?

Ms. SHULER. Yes, and that is why we need a more robust domestic supply chain.

Senator HAWLEY. You have made my point for me. I could not agree with you more. And this is why I have to say I don't understand this Administration's decision to sign an agreement just last month to fund critical mining projects in the Congo while at the same time they are denying permits for domestic mining here in this country. And I had the chance to talk with the Secretary of the Interior about this just the other day. In that connection—can I just ask you, maybe, for your personal opinion? Do you think that we have too many good-paying union jobs in this country, too many good-paying blue-collar jobs?

Ms. SHULER. I think that is rhetorical, right?

Senator HAWLEY. I would hope so. I would hope so, but I am asking—

Ms. SHULER. You never have too many good-paying union jobs.

Senator HAWLEY. Thank you. Yes, thank you.

Well, I am asking because when I raised this issue, specifically as it relates to opening up more mines in this country with our protections, creating more good-paying jobs in this country, the Secretary of the Interior told me last month—she pointed out to me that, well, there are 1.9 jobs for every American in the country, so there are a lot of jobs. And right now, you know, we've got too many jobs. I just think that that is outrageous. I just think it's totally outrageous. We need more good-paying jobs in this country, which is why we need realistic, serious permitting reform that will make those jobs available, secure our critical supply chains, and get our workers back to work.

Thank you for the work you are doing in that respect.

In my few remaining minutes here—seconds rather.

[Laughter.]

Senator HAWLEY. The Chairman, already—I have hardly been on this Committee, and already I have a bad reputation with the Chairman.

The CHAIRMAN. No, not bad.

Senator HAWLEY. Yes, all right. I am going to try to stay within my bounds.

Mr. Grumet, let me just ask you about the Grain Belt Express. Are you familiar with this transmission project called the Grain Belt Express?

Mr. GRUMET. Yes.

Senator HAWLEY. A company called Invenergy, as you know then, has been trying to build. It's a wind energy transmission project that runs across my state, Missouri, and also Kansas and Illinois. It has been subject to multiple steps of approval process in the State of Missouri, and I am sure in the neighboring states, but I am more familiar with Missouri. These are state-level agencies. My question to you is, do you think that states ought to have the authority in transmission projects like this to review and grant approval or not?

Mr. GRUMET. So now, I am not going to get you in trouble by answering your question, right, Mr. Chairman?

So absolutely, the states have a role and have to have a role. But that role has to be guided with the same kind of deliberate national

interests that we have been talking about. When Congress passed EPAct in 2005 and said that there were transmission interests that were in the national interest, it recognized that we are one nation, that electricity moves very quickly, covers far distances, and we have to be able to bring that larger vision so that we actually protect ourselves as a nation and as a community. So I think it is not a yes or no. It is not an either/or. The current system is not working to protect the State of Missouri or the State of Texas or the State of Vermont because we are balkanized. The answer is not federalization. We have proposed a number of specific reforms that we think can find the right way to balance those two things so that we actually have an electric grid that does protect our population, keeps the lights on, keeps businesses humming, and provides clean power.

Senator HAWLEY. I would agree with you that the answer is not federalization. And I will just say that I think it's vital that we allow state agencies that are responsive to farmers and ranchers in the state to be able to review and have a say in this process and not just be ramrodded and railroaded, if you like, by something—

Mr. GRUMET. I bet we could come up with a set of criteria that would make us all feel pretty good.

Senator HAWLEY. I hope so.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Hickenlooper.

Senator HICKENLOOPER. Thank you, Mr. Chair, and thank you all for being here and for all your efforts and service.

Mr. Grumet, global clean energy development trends have flipped in the last decade and really not in a good way for the United States. A lot of us are very concerned that the United States and the European Union are in a race with the People's Republic of China on clean energy, and we are not coming out as well as one would have expected, even in the recent past. One example, last year China installed more rooftop solar than any other country, installed rooftop solar, utility-grade wind and utility-grade solar, all combined. I know your organization is watching the renewable development around our geopolitical peer rivals abroad. How did this change happen, and what can we do to reverse it?

Mr. GRUMET. Thank you for the question, Senator. I think it's worth reflecting—we spent the beginning of this conversation talking about permitting and transmission, and now we are talking about the third fundamental challenge to success, which is supply chain. You are absolutely right that 20 years ago we started to cede authority to China. Well, the goal of the permanent normalization of trade relations was that it was going to open their markets to ours and it was going to reform their human rights. It fundamentally failed. So now, game-on. It's time for America to start fighting back and bringing these resources back to this country.

The only way that is going to happen though, is if our government works with our industry. So for the last several years, we have been dealing with, basically, punitive tariffs, thinking that the way we are going to support American companies is by somehow punishing them for trying to build domestic manufacturing. I think there is a huge opportunity now with the incentives for ad-

vanced manufacturing that are coming out of recent Congressional efforts to bring those companies back. Just in the last nine months, we have had 30 new domestic solar manufacturers announced in this country—30, right? In nine months. Almost one a week. That is the trend that we have to continue, but that is only going to continue with partnership, and we also have to be realistic. You can't turn off 20 years of a vicious cycle in 15 days. We are going to have to acknowledge that a dramatic amount of infrastructure and intellectual property is no longer in this country.

Senator HICKENLOOPER. Right.

Mr. GRUMET. And we are going to have to work to bring it back.

Senator HICKENLOOPER. Appreciate that. Thank you.

Ms. Shuler, in your written testimony you talked about the TransWest line that is being built in Wyoming. As the former Governor in the state just to the south of Wyoming, I am fully aware that part of that line goes through northwestern Colorado, and that it took 18 years. Finally, it looks like we are going to get it done. As someone who has a child, an infant at home, that child is going to be in college by the time someone can do a similar process to permit a single transmission line.

Can you speak to the opportunity for America's labor force that building a large-scale transmission line like this, what it means, what it represents, and what we leave on the table when our federal policy does not allow this to happen?

Ms. SHULER. Yes, I mean, transmission is central. It's critically important to everything we want to do in this country, especially with all these investments coming down the pike. And so, shortening the siting process is absolutely critical. And we all know, as Jason was saying, that we need lots of different forms of supply coming into our system and they are often generated long distances away from where the load centers are. So that's why it's so essential that we turn our attention to this and we do it urgently. The other thing, from a worker perspective, I mentioned this earlier, is this notion of making sure we have the skilled workforce to handle it. Transmission is complicated, right? It's—you don't just make a power lineman overnight. And especially in the higher end of the spectrum on high-voltage transmission.

So we need that certainty to be able to plan for the trajectory of the talent pipeline that we are going to need. And so, I think that permitting reform piece is going to unlock a lot of opportunity for workers of the future.

Senator HICKENLOOPER. All right, well, thank you. And I don't have enough time for other answers, but I will leave you with a question because it applies to each one of you, and you have all talked about this, whether talking about transmission lines or natural gas pipelines, or talking about opening mines—the workforce challenges are apparent for every one of you. And I think we—I would love at some point, by this same group, to be able to talk about where these kids are going to come from. How do we get to them soon enough and allow them the opportunity to see which trade, which profession, which career they would be happiest in and then make sure they get the training in real time, because I think that is going to come down over these next few years as being one of the single most fundamental challenges and obstacles

in front of us in terms of achieving what each of you have been talking about.

So file that away. I will put it in as a written question.

Mr. GRUMET. Liz and I have a plan. We will stop by.

[Laughter.]

Senator HICKENLOOPER. Perfect.

I yield back to the Chair.

The CHAIRMAN. Oh, thank you. Well, you have always been kind on your time. I appreciate it.

Senator, it's so good to see you. Senator Hoeven, hi. You're up. Sorry, you're up. Go for it.

Senator HOEVEN. Well, thank you, Mr. Chairman. Thanks for holding the hearing today. I ask unanimous consent to enter into the record a letter from the National Rural Electric Cooperative Association, dated May 8, 2023, regarding the Association's principles for permitting reform.

I ask for UC.

The CHAIRMAN. Without objection.

Senator HOEVEN. Thank you, Mr. Chairman.

[The letter referred to follows:]



Jim Matheson
Chief Executive Officer

May 8, 2023

The Honorable Charles Schumer
Senate Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader Schumer and Minority Leader McConnell,

On behalf of America's Electric Cooperatives, thank you for your efforts to streamline the federal infrastructure permitting process. As we strive to meet our consumer-members' expectations in the coming years, while maintaining reliable and affordable electric service, electric cooperatives will need to build significant amounts of new electric transmission and generation capacity of all types.

Many of these projects electric co-ops will undertake will need to navigate federal, state, and local siting and permitting processes. For major generation and transmission projects, this will likely include a National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS). Unfortunately, as just one indicator of the headwinds we currently face, it takes an average of 4.5 years to complete an EIS and issue a permitting decision. One quarter of EISs take more than 6 years. Congress must modernize the federal infrastructure permitting process to allow us to address this challenge in a timely and cost-effective way.

As you conduct hearings and draft legislation to modernize the federal infrastructure permitting process, please consider these principles which will be essential to any effective solution:

- **Firm time limits for environmental reviews.** The NEPA permitting process takes too long. To maintain reliable and affordable energy and build the infrastructure we need for the future, the process must be efficient and predictably completed within two years. That should be enough time to conduct a rigorous review and while providing project certainty.
- **Greater applicant involvement in the process.** Electric co-ops are owned by the customers they serve. Co-ops know the specific details of their projects and the unique needs and challenges facing their communities. Greater involvement by those proposing the infrastructure projects can provide agencies with information they need to facilitate more efficient and effective reviews in a timely manner.
- **More efficient reviews for recurring small projects we already know have minimal environmental impacts.** For example, electric co-ops spend significant time managing the vegetation that grows around power lines to maintain reliability and prevent wildfires. Those vegetation management efforts take place every day across the country. Electric co-ops should not have to navigate a lengthy, bureaucratic process for actions where both co-ops and the agency already know the benefits are high and the impacts are low.

- **Limit lengthy, costly litigation that can delay projects indefinitely.** According to the U.S. Department of Justice, NEPA is one of the most frequently litigated environmental statutes. Litigation can result in excessive paperwork and unnecessary delays—holding up projects that communities badly need. Reforms should be made to limit unnecessary litigation.
- **Ensure transmission permitting and siting improvements reflect co-op and community needs.** The electric grid needs more electric grid transmission capacity to meet expected growth in the coming decades. But policies aimed at incentivizing additional transmission capacity need to adhere to three key principles. 1.) It must not expand Federal Energy Regulatory Commission (FERC) authority over electric cooperatives, 2.) It must allocate the costs of building new transmission or modifying existing facilities only to those who receive tangible and quantifiable benefits. 3.) It must ultimately serve the national interest of maintaining the reliability and affordability of the electric grid.

Electric cooperatives are committed to maintaining an affordable and reliable grid that meets our consumer-members' needs for the years to come. We are eager to work with you to improve the federal permitting process and solve these significant challenges.

Sincerely,



Jim Matheson

Most North Dakotans are served by rural electric cooperatives, which are non-profit entities whose mission is to provide reliable electric service to rural customers at the lowest possible cost. At last week's hearing with the FERC Commissioners, Senator Lee raised concerns over proposals that would socialize the cost of large transmission lines and potentially force ratepayers in states to pay more for electricity without any benefits. In the letter, the NRECA emphasizes that any changes to the transmission, permitting, and siting process should ensure that any costs are only allocated to "those who receive tangible and quantifiable benefits." I share these concerns raised by the rural electric cooperatives. North Dakotans should not be forced to pay for transmission lines that simply benefit other states and not North Dakota as well.

With that, Mr. Ulrich, I've got a bill we call the BLM Mineral Spacing Act, and essentially what it says is that if the Federal Government owns no surface acres and a minority of the mineral acres then it should not be a requirement that they are involved in the permitting process so that the state can go ahead and permit it and not have to do federal permitting as well.

Would you agree with that, and would that help us produce more energy for this great nation?

Mr. ULRICH. Yes, Senator, I am not familiar with your bill, but with the concept, absolutely. Those are challenges we have in the eastern parts of the State of Wyoming, where a federal agency has a minority of interest in the lease hold, if any, but there is a federal nexus. Thus, what should be a very simple arrangement between the private landowners and mineral owners and the operator becomes very complicated, costly, and timely, in the tune of years, for a permitting process, which is completely unnecessary.

So Senator, yes, without understanding, clearly, the language of the bill, I love the philosophy.

Senator HOEVEN. Yes, right on.

So Mr. Nolan, rare-earth elements. So yes, in lignite coal, which we have in our state, the lignite contains high concentrations of rare-earth elements, and that is true even as in relation to other types of coal. Our North Dakota Geological Survey has released a series of studies examining locations of potential resources, and the University of North Dakota is researching how to more efficiently and affordably extract these rare-earth elements from lignite coal. Do you agree that leveraging coal-derived, rare-earth, and critical minerals is needed to address the supply chain disruptions and lessen our reliance on China?

Mr. NOLAN. Thank you for that question, Senator Hoeven. Absolutely, we need all mineral sources we can find. The forecast for future demand from world resources demanding minerals, whether it's lithium or cobalt or rare-earth elements, is going to explode exponentially. So we need all sources, including rare-earth elements from coal and lignite.

Senator HOEVEN. Okay

How do we improve the technology so that we can commercialize this and do it in a commercially viable way and sync that up with how we are utilizing this coal to produce low-cost electricity? We are capturing the CO₂ with these new technologies. And then if we can come back and capture these rare-earth elements, it seems like

a triple win for the citizens of this country rather than getting our energy from somebody else, right?

So how do we do that? What are your ideas to help—

Mr. NOLAN. I mean, it's a challenge of getting it to scale. The amount and the size of those elements in the geology is very small, so you really have to move a lot of earth to get to it, and then it's really important to re-shore our processing capabilities so we don't have to—

Senator HOEVEN. Okay now you have identified the challenge. I appreciate that. I would rather have you identify a solution.

Mr. NOLAN. We have to invest in the processing of those rare-earth elements here at home so we are not shipping them to China and coming back.

Senator HOEVEN. What does that mean, invest in processing?

Mr. NOLAN. Standing up the facilities that can actually take the raw rare-earths, break them apart into their elements, so they are marketable.

Senator HOEVEN. So when Chairman Manchin comes to you and says, what is the single best thing he could do to get this done, you would tell him to do what? And I know he would certainly respect your advice on this.

Mr. NOLAN. Well, he has done a tremendous amount of work in this space already and has invested a heck of a lot of federal resources in the technology.

Senator HOEVEN. So it's the R&D?

Mr. NOLAN. It's really how we get it to scale, which I believe was your question.

Senator HOEVEN. Yes.

Mr. NOLAN. And that is to build an industry that can take the raw material and process it here, not overseas.

Senator HOEVEN. And is that a function of R&D, or what is it?

Mr. NOLAN. It's R&D. It's FEED. It's capital investment. It's permits.

Senator HOEVEN. Okay. Thank you very much.

Mr. NOLAN. Absolutely.

Senator HOEVEN. Thank you, Mr. Chair.

The CHAIRMAN. Thank you, sir.

And now we have, finally, the great Senator from Nevada, the senior Senator from Nevada, Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you to the Chairman. Thank you to the panelists. It has been an incredible discussion today, a bipartisan discussion. I think there is room for agreement that I have heard on several areas here today.

Many of you know Nevada. It is the growing nexus for our clean energy and critical mineral future because it really is the only state in the United States that encompasses nearly every facet of the critical mineral advanced battery economy, from the mining of the critical mineral deposits, to the research and development, to the processing and manufacturing, and finally, to the recycling operations, all done with union labor. And so this really is a great opportunity where we can all work together as we take the necessary steps to address climate change. We have to do so in a fashion that makes America more productive, secure, and self-sufficient. That is what I have heard today. And I agree with it.

At the very basic level, this means we must produce minerals in the United States and not solely rely on foreign sources. I believe we can do this in a way that incorporates robust engagement with all stakeholders and still looks to protect the environment. Does anybody disagree with that on the panel?

Everybody is shaking their head “no.”

Correct, because I think there is that opportunity. Thank you.

Mr. Nolan, let me start with you. The Administration, the Biden Administration, has repeatedly referenced the importance of domestically sourced critical minerals, noting that, and I quote “critical minerals provide the building blocks for many modern technologies, like batteries, electric vehicles, wind turbines, and solar panels, and are essential to our national security and economic prosperity. Global demand for these critical minerals is set to skyrocket by 400 to 600 percent over the next several decades, and for minerals such as lithium and graphite, demand will increase by as much as 4,000 percent.”

So Mr. Nolan, how is our ability to meet what you just heard, the Biden Administration’s climate goals, how is that impacted by the 9th Circuit, the Rosemont Decision, and how is our ability to develop domestic critical minerals impacted by that decision?

Mr. NOLAN. Senator, thank you for the question.

First off, I want to congratulate your State of Nevada for being the number one destination, worldwide, for minerals investment, just announced this year. So congratulations.

Senator CORTEZ MASTO. Thank you.

Mr. NOLAN. The Rosemont Decision has had a significant chilling effect on projects being able to expand and move forward. I think there is a very important piece of legislation that you brought forward to clarify the important regulations and codify them that allows for insular use on public lands to make sure that we can continue to produce and meet the minerals and necessary needs that are currently now being sourced back and forth from China to the United States. So I appreciate your leadership on that issue and leadership on the Subcommittee on Mining for this Committee.

Senator CORTEZ MASTO. Thank you.

And I want to note that we just had—there is a recent editorial in the Las Vegas Sun saying that Rosemont is a wake-up call. And it referenced the decision and it said, and I quote, “The mining industry needs to work harder on environmental issues and also pressure the bad actors among them to reform their ways. Simultaneously, environmentalists, who want to see the green energy revolution continue, suddenly have a deeply vested interest in the success of mining for minerals essential for that future.” We have labor. We have clean energy. We have mining at the table before us. Let me ask you, and Mr. Nolan, maybe start with you. What will your industries be doing to work with all the stakeholders to find that path? Because I do think there is a path forward.

Mr. NOLAN. We are constantly outreaching in the local communities with our members to make sure that we are doing front-end consultation with tribes, with local community stakeholders, to make sure that we have the input as these projects come forward, because there has been a sea change in understanding about the importance of what we need to do to get these minerals to the mar-

ketplace so that we can bring forward these new technologies and really support the electrification of the economy.

Senator CORTEZ MASTO. Anyone else regarding that engagement? I am curious.

Mr. GRUMET. Just in terms of the moment we are in, you know, I am here on behalf of the Clean Energy Industry, which is the energy industry. The scope and scale of what we have to achieve in this country can only happen if all of the different aspects of the energy industry are coming together, and that is why we are working closely with regional organizations, with the American Petroleum Institute, with the National Gas Association, with the Nuclear Energy Institute, because the equation is that we need clean energy for security and climate. We need critical minerals for clean energy. There is no way around that equation. And if we don't do it here in the U.S., we don't achieve those national security benefits.

So look, I think we have given you all an easy job here to simply just put all of this consensus together into a nifty piece of legislation.

[Laughter.]

Mr. GRUMET. Mutual.

Senator CORTEZ MASTO. Mr. Ulrich.

Mr. ULRICH. Senator, from a natural gas perspective, we need to ensure that we have credible and transparent emission reduction measures and numbers in place. We are doing that at Jonah Energy. That is why we signed on to the oil and gas methane project, first U.S. based company to do it. The American public—you, and everybody else—deserves to have a very clear understanding of where we stand with emission reductions and how good we can get. And we are well on our way.

Senator CORTEZ MASTO. Thank you.

I know my time is almost up. Can I just touch on the workforce piece? Because I think this is crucial. It is important that we include that development, that partnership, that we are including that workforce in this future. And so, Ms. Shuler, do you have any other thoughts on how we continue to support that workforce?

Ms. SHULER. Well, workers will be at the center of all of this. I said in my opening that permitting reform affects every aspect of the economy, if you think about it, and we have not talked a lot about manufacturing and siting a lot of these facilities, these chip fabs, you know, the battery and EV facilities, but I think the idea here is constructive partnerships. And you have seen it here, and we think labor can actually be a bridge, can be the place where everybody can, you know, coalesce. So we want to play that role and we want to help you get there.

Senator CORTEZ MASTO. Thank you.

And Mr. Chair, I know my time is up. One final thing. You touched it on your opening. Royalties.

The CHAIRMAN. Always, always.

Senator CORTEZ MASTO. Let me just say, thank you for the hearing we had last Congress because we had that discussion. We had mining at the table. And if I recall, mining was willing to be a part of that discussion and a part of how we address that issue of your concern. Yes.

The CHAIRMAN. I know we can do this. Let me just, first of all, say on behalf of the entire Committee here, I want to thank you all. It has been a wonderful hearing. I think everyone has enjoyed it. The most important thing is, we are going to make something happen and you are going to be a very big part of that.

I hope you all have been thinking about the first question I asked you about the three. If you would share that with us, the three that you have—and I want to say a few other things that the Senator brought up, so many good points.

The whole thing that we are trying to do is mature an industry. I want people to know that also, carbon capture and sequestration, if the EPA does not give us permits for Class VI wells, which they have not, that means they are trying to strangle you with a thousand cuts. They're trying to go one way without the other. They know it is a balanced approach. So don't tell me that you are going to invest in carbon capture and sequestration when we can't get a permit to basically sequester the carbon that we capture. These are the games being played. I know it. They know I know it. And we are not going to let them get away with it. And we will shut everything down until they start playing exactly how the bill was written and the intent.

So I want all of you to know that very clearly. So if you can talk to the Administration, tell them we are all on the same side. We want energy security. We want fossil cleaner than anywhere in the world. And we want to develop the new technology for the future. That's not too hard to understand in that bill. That is what we call energy security.

So reveal to us your three top picks.

Mr. Ulrich, we will start with you.

Mr. ULRICH. Mr. Chairman, thank you, and okay.

The CHAIRMAN. Number one, two, and three.

Mr. ULRICH. Yup, Number one—meaningful NEPA reform.

The CHAIRMAN. Got you.

Mr. ULRICH. And that is certainly on tiering. Obviously, expedite judicial review periods—two.

The CHAIRMAN. Review periods. Got you.

Mr. ULRICH. Three—prioritize LNG exports out of the Rockies to the West Coast.

The CHAIRMAN. Great.

President.

Ms. SHULER. Echo that. Timelines for NEPA reviews. Deadlines for those environmental impact statements so that we can create certainty for developers. The second thing, I guess, with enabling the President to designate a list of priority projects for permitting so that we can raise up critical minerals and transmission as part of that. Expand eligibility for federal permitting improvements during committee programs to include energy projects, new technology, and critical minerals, mining, et cetera. Those are the three.

The CHAIRMAN. Mr. Nolan.

Mr. NOLAN. Well, first, I want to echo your comments about CCS. If that does not work, it is a dead end for us, so.

The CHAIRMAN. Well, yes, it is no different than what we have done with capturing methane. And let me just tell you the crazy thing about—I have to bring this up. I could not figure it out. I

said, why are we flaring so much out West on public lands? Why are we flaring so much? And then they basically want to shut everybody down because you are flaring methane. That's a marketable product. They cannot get a permit for a pipeline to take the methane off so they are killing them with a thousand cuts. So we said fine, there is no fine. You cannot fine them if you will not give them a permit to take the product to market. Just common-sense stuff, right?

Go ahead, I am sorry.

Mr. NOLAN. So in hardrock, I guess it would start with ancillary use and clarifying that provision in that decision. We need to get that fixed. We have talked a lot about legal challenge limitations. Two-year EIS is something that, I think, you have supported in the past, and then certainly, this Committee has done a lot of work with their concern about the reliability issues of the grid and making sure we can keep our optionality open with the coal fleet.

The CHAIRMAN. Thank you.

Mr. Grumet.

Mr. GRUMET. Senator Manchin, I want to start by saying I agree with you on CCS. Also, I should tell you that my wife started working at EPA about six months ago. So you may be undermining marital bliss in this situation.

[Laughter.]

The CHAIRMAN. We got hope now, maybe we got hope.

Mr. GRUMET. The top three. Transmission with a focus on connecting the balkanized interregions together. NEPA reform, but I will also add with a focus on public lands, particularly the Outer Continental Shelf. We are really losing opportunities when it comes to the tremendous offshore wind possibility. And then, I am going to add a little more on the spiritual side—all-of-the-above competition with purpose, right? The place where this debate goes off the rails is when people think that all-of-the-above means we have empty mines. We don't have empty mines. We want a competition of all these different technologies to achieve security, economic growth, and climate security.

And so, I think if we understand that—if the people outside of this room understood that that is what you were all saying, we would be in a much better place.

The CHAIRMAN. And finally, I will say this before we adjourn. I would like for all of you and everyone in the room here, if you will, when you leave this room, support bipartisan permitting reform—not my bill, not Senator Barrasso's bill, not Senator Capito's bill, not Senator Carper's bill or whoever is putting bills in. We need a little bit of all four of them to make this work. And if we go out and say, well, I support this one and that one, it just divides us further. We can get together much quicker if we are all in this. And I think we are. We want this done and everybody wants it done.

With that, the Committee will have until the close of business tomorrow to submit additional questions for the record. Again, thank you all.

The meeting is adjourned.

[Whereupon, at 12:08 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
May 11, 2023 Hearing: *Opportunities for Congress to Reform the Permitting Process*
for Energy and Mineral Projects
Question for the Record Submitted to Mr. Jason Grumet

Question from Senator Mike Lee

Question 1: You represent wind, solar, and hydrogen companies. As you can attest, permitting problems are not limited to mining or oil and gas. Oftentimes an energy project can be studied, reviewed, permitted, ground broken, construction initiated – maybe even completed – but you can still lose your permit (or lease).

- What does that do for your ability to plan future investments?

Answer: Thank you for the question. Uncertainty is the Achilles heel of energy project development and continues to needlessly undermine our nation's ability to achieve its national security, economic and climate goals. The two major sources of uncertainty for clean energy projects are a lack of predictability in the timelines for the original permitting process, as well as legal challenges to projects after permits have been issued. In other words, the uncertainty isn't so much about ensuring a specific outcome on any given project as it is about viable projects getting delayed or cancelled simply because they can't wait the amount of time it currently takes to get a final answer that would allow them to move forward.

The Fiscal Responsibility Act's permitting reforms - particularly as they relate to NEPA - will help alleviate some of this existing uncertainty by creating reasonable timelines on the decision-making process for environmental reviews. However, the Fiscal Responsibility Act does not impose a timeline between when an agency receives an application and when it begins the NEPA process, or when authorizations (such as a Record of Decision) must be issued after the conclusion of the NEPA process. In order to effectively plan future investments capable of achieving the nation's national security, economic and climate goals, we urge Congress to address the full spectrum of timelines in the federal permitting process this year.

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Questions for the Record Submitted to Mr. Rich Nolan

Questions from Ranking Member John Barrasso

Question 1: It takes, on average, about seven to ten years to permit a mine in the United States. The process is complex and can involve many federal, state, and local permits. Some projects never reach the point of final approval or denial, but instead the developer abandons their proposed project because the permitting process has no end in sight.

- a. Does our current permitting process incentivize investment in mineral development in the United States?

Response: Our current mine permitting process deters the investment that is necessary to meet anticipated mineral demand, blunting our nation's ability to compete globally. 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 minerals.

In its most recent report of global investment in mining exploration and production, S&P Global consistently ranks Canada and Australia as the most favored regions for mining investment,¹ which by comparison, have similar environmental standards and practices as the U.S., but take between two and three years to permit a mine. In the U.S., it takes an average of seven to 10 years or longer to permit a mine. This is completely out of step with the dramatic increases in minerals production that will be needed in the coming decades to keep up new technologies, infrastructure, manufacturing and even with the administration's own energy and supply chain goals.

Permitting delays have been, and continue to be, one of the most significant risks to meeting domestic mineral production goals. As the permitting process for important projects across the U.S. drags on, geopolitical rivals are taking advantage of our bureaucratic inertia.

- b. What are the biggest obstacles to timely permitting and how should Congress address them?

Response: Opening or expanding a mine in the U.S. typically involves multiple agencies and the navigation of tens or even hundreds of permitting processes at the local, state and federal levels, with little transparency into status, delays arising from duplication among

¹ S&P Global Market Intelligence, [World Exploration Trends](#), April 2022, p. 13.

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federal and state agencies, an absence of firm timelines for completing environmental assessments, and failures in coordination of responsibilities between various agencies.

The American Energy Security Act, the Spur Permitting of Underdeveloped Resources (SPUR) Act, and the Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency (RESTART) Act set lead agencies to coordinate the permitting process; improve the timeliness of the permitting process through enforceable environmental review and judicial deadlines; maintain access to mineralized federal lands unless specifically withdrawn by Congress; maintain decades of essential mining regulatory practice to not only ensure U.S. competitiveness but to prevent impediments to domestic production; provides more certainty to timing of legal reviews; support a domestic uranium industry for critical nuclear energy production; and unlocks innovation by not supporting prescriptive policies.

These policy recommendations are commonsense changes that would provide regulatory certainty to investors that the U.S. seeks to attract on a global scale in the mineral supply chain. Instead of only pursuing mineral supplies from foreign sources or exporting domestically extracted materials for further refinement, processing and smelting, the NMA supports improvements in the permitting process that would secure the entirety of the U.S. supply chain and lessen vulnerabilities from outside sources, including from geopolitical threats.

Question 2: Even after a mine is permitted, the mine does not necessarily get built immediately because lawsuits almost always challenge the permits.

- a. Please explain what the litigation process looks like from start to end.

Response: Litigation associated with nearly every stage of the permitting process for large-scale mining projects is becoming more and more inevitable. Environmental groups and project opponents have found it to be an effective tool in delaying or draining a project of its financial resources in the hopes that a project proponent will abandon the project. Typically, litigation adds an additional three to five years onto the already lengthy permitting process associated with developing a mine in the U.S.

- b. How should Congress address excessive litigation?

Response: Legitimate legal challenges are a part of any public process. However, the ability to file legal challenges should not be open-ended in perpetuity; it should be subject to time constraints and required to be targeted and within the scope of the proposed project to ensure that relevant concerns are addressed. Providing certainty to the timing of legal reviews through judicial reforms is necessary to strike the appropriate balance between the rights of the concerned and those of project proponents.

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Question 3: Permitting a mine can take a decade, and litigation can leave these projects in uncertainty for years after a permit is issued. To what extent does the current permitting process and associated litigation increase the costs of developing a mine?

Response: A 2015 study,² *Permitting, Economic Value and Mining in the United States*, shows how delays in the U.S. mine permitting process can diminish the value of a minerals project. On average, a domestic mining project can lose a third of its value as it waits for numerous permits necessary begin production and navigates inevitable legal challenges, and the longer the wait the greater the chance the mine will no longer be worth the investment. In short, lengthy delays associated with permitting reviews and legal challenges compromise the commercial viability of mining projects by increasing costs, reducing the net present value of investments and impairing financing.

Questions from Senator Mike Lee

Question 1: The mining industry has created millions of jobs – jobs that support entire communities all across the country in states like Utah, Nevada, and West Virginia. But sadly, because of our broken permitting process, skyrocketing demand for minerals is being met primarily by China and Russia, not here in America.

- Would the mining industry invest more in development in the U.S., creating high-paying, productive jobs, if the federal government could guarantee that your project is safe from environmental litigation once you obtain the green light from a regulatory body?

Response: Providing certainty to the timing of legal reviews through judicial reforms is necessary to strike the appropriate balance between the rights of the concerned and those of project proponents. That said, judicial reforms without corresponding permitting reforms only solves part of the equation, leaving mining projects trapped in a limbo of duplicative, unpredictable, endless and costly reviews without a decision point.

Question 2: The durability of a permit hinges on the creativity of radical environmental groups and willing judges to find deficiencies in the agency’s NEPA process. Many times, perhaps almost all the time, the NEPA “flaws” concocted by environmental groups would not have had an impact on the eventual outcome of the NEPA process.

For instance, a court may find that a previous administration should have zigged instead of zagged in calculating the cumulative impacts to climate change for a coal mining project, even though the eventual outcome of the EIS would have been the same.

- What would you do to build durability into final agency actions?

² SNL Metals & Mining, [Permitting, Economic Value and Mining in the United States](#), (2015)

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Response: Regulatory certainty is the linchpin of durable project outcomes and is an essential element to luring back the global investment in mining in the U.S. which has been lost over the past over two decades. Providing this durability, in part, comes from needed judicial reforms, at the very least placing time limits (shorter than the generally applicable six year statute of limitations) on the ability to challenge a project to provisions excluding projects from judicial review. Limiting legal challenges to entities that participated in the comment process and to issues raised in such comments should also be considered in order to provide (1) the opportunity to address concerns during the permitting process and (2) put agencies and project applicants on notice. Mining companies routinely strive to work with their experienced federal regulators to ultimately find paths forward to conduct a project. Forum-shopped third party lawsuits injects such uncertainty in the process, and can result in ill-considered decisions from courts that have little expertise second guessing federal regulators and upending years of industry operations. The current uncertainty impairs the U.S.' global mining competitiveness.

Question from Senator John W. Hickenlooper

Question 1: We doubtlessly need to bring on considerable new critical mineral production in order to electrify transportation and build new generation technologies.

At the same time, the legacy of mining in the West has left us with tens of thousands of unreclaimed hardrock mines, leaving many Western communities worried about getting the short end of a new mining boom. Coloradans remember the shock of the 2015 Gold King Mine spill, when the Animas River ran orange from a spill at an abandoned mine.

In the Bipartisan Infrastructure Law, Congress established a program for abandoned hardrock mine reclamation, but that program still needs to be robustly funded.

- As the mining industry prepares for new opportunities to help us meet today and tomorrow's energy challenges, what steps are you taking to build trust in our communities and restore our environment to full health?

Response: Trust is essential to a mining company's ability to conduct operations in and near communities. A first step to secure the industry's social license to operate is addressing legacy hardrock abandoned mine lands (AML), which have no legal owner and existed before modern regulatory policies were in place. The mining industry strongly supports addressing legacy AMLs, including Congress providing robust funding to implement Section 40704 of the Infrastructure Investment and Jobs Act.

Section 40704 required the Department of the Interior to establish a program to "inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land." This specific bipartisan provision was included during consideration of the legislation in the Senate Energy and Natural Resources Committee and contained a \$3 billion authorization, although, these funds remain unappropriated.

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Appropriating at least \$287 million – which the Government Accountability Office reports is the annual average spent by federal agencies to clean up abandoned hardrock mines – for fiscal year 2024 is a crucial catalyst to jumpstart this important initiative. In addition, the NMA has urged Congress to include report language in its Fiscal Year 2024 appropriations legislation directing the Bureau of Land Management to use this funding to stand up an abandoned hardrock mine reclamation program pursuant to the requirements of IIJA, including a Tribal and state grant program and transfers to the Department of Agriculture (USDA) for eligible activities on National Forests.

The mining industry also strongly supports the passage of Good Samaritan legislation to promote abandoned mine reclamation and backs the use of federal programs that incentivize the reprocessing of tailings and mine waste, including investments in new technologies, to help secure our mineral supply chains. An example of effective legislation to stand up a Good Samaritan program is Senator’s Martin Heinrich (D-N.M.) and Sen. Jim Risch (R-Idaho) bipartisan [S. 3571](#). Last Congress’ introduction was the first bipartisan Good Samaritan bill introduced since 2009. S. 3571 gained the support of 19 bipartisan cosponsors, 9 Republican and 10 Democratic, and would create a pilot program to grant Good Samaritan permits and liability protections for cleanup of 15 low risk abandoned mines.

Working together, the mining industry, conservation organizations, the federal government, and other stakeholders have an opportunity to support cleanup activities that benefit not both rural communities, the environment and habitat.

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for Energy and Mineral Projects
Questions for the Record Submitted to Mr. Paul Ulrich

Questions from Ranking Member John Barrasso

Question 1: Jonah Energy prides itself on producing some of the world’s cleanest natural gas. Third parties have verified Jonah’s success in reducing methane emissions at its operations.

Is fixing the permitting process for interstate natural gas pipelines and liquefied natural gas export terminals an important priority for customers who want to access Jonah’s clean natural gas, including international customers?

Yes, in fact it is critical that a more efficient and workable permitting process for any interstate infrastructure is achieved. Both domestic and international customers would benefit greatly from Wyoming’s clean natural gas supply. This allows for the reliability of natural gas with the benefits of a lower carbon footprint. Thus enabling domestic and international reductions of emissions.

Question 2: In your written testimony, you state that “The effects of litigation on federal oil and gas permitting in Wyoming are significant.” You explain that activist groups recently filed lawsuits against 18 oil and gas lease sales in Wyoming. Some of these leases were issued as far back as 2015.

You also state that the Bureau of Land Management (BLM) “is not approving drilling permits on these leases because of the potential that the courts may cancel them in subsequent phases of the litigation.” This is based on a [new policy](#) that BLM under the Biden administration has adopted.

- a. Is the Biden administration essentially giving activist groups what they want – a halt to drilling – without requiring them to win in court?

The currently litigated leases in Wyoming (over 2 million acres) are in limbo with no action of any kind being approved or considering during the pendency of the various lawsuits that impact the leases. This results in a very clear taking of valid existing rights and has handed the plaintiffs with a “win” without a court ruling. This inaction on valid existing leases has halted development on significant acreage throughout Wyoming.

- b. What impact does this policy have on the ability of a company like Jonah to plan for and invest in energy production on federal lands?

This “policy” has severe negative impact on our ability to continue development in impacted acreage. Investment and planning for future production of clean natural gas has effectively been shut down for the leases impacted. Investment, tax revenue, jobs and other benefits from our development has been halted.

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Questions for the Record Submitted to Mr. Paul Ulrich

Questions from Senator Mike Lee

Question 1: Oftentimes an energy project can be studied, reviewed, permitted, ground broken, construction initiated – maybe even completed – but you can still lose your permit (or lease).

- What does that do for your ability to plan future investments?

The possibility of losing a permit or lease, or the rights associated with either, makes continued investment on federal lands difficult. Planning for the significant amount of risk associated with federal land development is expensive and puts good operators at a distinct disadvantage. There are numerous examples over the past 15 years of project proponents eventually throwing in the towel and not electing to endure the delays, cost and uncertainty and cancelling much needed energy projects.

Ultimately, the impact is felt by the American taxpayer that does not get the opportunity to realize the jobs, tax revenue and energy security associated with these projects.

Question 2: Your company, Jonah Energy, has developed a good reputation for its responsible methane practices. Do you believe that there are strong market incentives in place to motivate voluntary emission mitigation efforts?

There are market incentives in some cases. Utilities and some regulators are coming to the realization that natural gas, produced cleanly, continues to provide reliability and affordability with environmental benefits in carbon reduction. Those realizations have led to some strong market incentives. A lot of work needs to be done to raise awareness of just how clean natural gas can be produced and why the market should embrace differentiated natural gas. All energy has impact and an honest discussion needs to be had that recognizes that and incentivizes any energy producer that goes above and beyond.

Question 3: In your testimony you recommend strengthening the multiple use mandate of our public lands. What steps should the Interior Department take to bring this about?

The Federal Land Policy and Management Act gave the Bureau of Land Management its multiple use mandate. This mandate directs that the many productive uses for public lands may be utilized and balances—including energy development, recreation use, mining, grazing, and timber harvesting. The BLM needs to adhere to its statutory mandate and protect multiple use policy on federal lands.

I would urge the BLM to abandon its proposed Public Lands Rule which would implement a restrictive definition of conservation as multiple use. This would revert more than 50 years of policy which has recognized the value of managing federal land for multiple use. The proposed rule would also create “conservation leases” which would take land out of consideration for energy development for a decade or more. For these reasons, I urge Congress to pass Ranking Member Barrasso’s bill to require the Director of the BLM to withdraw its proposed rule related entitled, “Conservation and Landscape Health.”

U.S. Senate Committee on Energy and Natural Resources
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Questions for the Record Submitted to Mr. Paul Ulrich

Question from Senator John W. Hickenlooper

Question 1: We are going to need a lot of new energy resources brought online to meet the energy challenges of the 21st century.

You spoke eloquently about the unique role that Wyoming plays in meeting our energy needs across a range of different resources and technologies – something I can vouch for as the former governor of the state to your South.

What would it mean for the State of Wyoming and for our national energy future if Congress simultaneously made it easier to build both interstate transmission lines and interstate pipelines?

Reform measures aimed at interstate transmission and natural gas pipelines would allow Wyoming the ability to fulfill our mission as an “all of the above” state regarding energy production and supply. We have some of the nation’s cleanest produced natural gas, outstanding wind resources and the possibility of nuclear in our future. We just need to have greater access to market. Enhancing our transmission and pipeline capacity on an accelerated timeframe would be of great benefit.

Statement for the Record by the
 AMERICAN PUBLIC POWER ASSOCIATION (APPA)
 Submitted to the
 Senate Energy & Natural Resources Committee
 For the May 11, 2023, Hearing to
 Examine Opportunities for Congress to Reform the Permitting Process for Energy and Mineral Projects

The American Public Power Association (APPA) appreciates the opportunity to submit a statement for the record for the Senate Energy & Natural Resources Committee hearing titled, “Full Committee Hearing to Examine Opportunities for Congress to Reform the Permitting Process for Energy and Mineral Projects.”

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ.

APPA supports efforts in Congress to streamline the federal permitting and siting process, eliminate excessive regulatory barriers, and ensure more predictable and timely decisions from relevant federal agencies. These reforms are urgently needed to meet the growing demand for electricity, and to ensure reliability as more intermittent resources are added to the grid. APPA appreciates your leadership and the committee's work on these important issues. *[See APPA Resolution 23-08, “In Support of Federal Effort to Reform the Energy Infrastructure Permitting Process.”]*

General Reforms

APPA has long sought clarity and certainty from environmental review and permitting regulations and laws. Despite an abundance of resources and potential projects to meet the rapidly growing demand for electricity, permitting red tape, needlessly burdensome regulations, and conflicts between state and federal priorities have slowed energy infrastructure development to a crawl.

APPA believes common-sense reforms to the federal permitting process are not an “either or” proposition, but instead that they can be done in a way that protects the environment while ensuring energy infrastructure can be built in a timely manner, allowing public power utilities to continue providing affordable, reliable power to their customers.

Broadly, Congress should provide sustained funding and support training to ensure agencies have sufficient resources to accelerate coordinated reviews and permits. Congress should also create a secure interagency information sharing portal to allow for ease of file sharing, coordination, and notification to all agencies simultaneously when new documents are uploaded.

Electric Transmission

APPA supports prudent investment in our nation's electric transmission infrastructure. However, we are concerned by proposals that would significantly expand Department of Energy (DOE) or Federal Energy Regulatory Commission (FERC) authority over the siting or permitting of individual transmission facilities, which are primarily within the jurisdiction of state and local governments. APPA prefers that permitting reform not include cost allocation principles or measures, particularly any that could lead to unreasonable increases in transmission costs for public power utilities and their customers, many of which have already seen significant increases in transmission costs in recent years. *[See Public Power's Concerns About Rising Transmission Costs (June 2021).]*

Instead, Congress should recognize that current proposals on permitting reform, including necessary changes to the National Environmental Policy Act (NEPA), reasonable deadlines for federal agencies, and proposals that will provide industry with more clarity and certainty will also make it easier to permit electric transmission projects. Further, Congress must allow appropriate time for expanded authorities, including backstop siting authority under section 216 of the Federal Power Act, and transmission-specific funding, totaling over \$5 billion from the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, to be fully implemented before considering fundamental changes to transmission cost allocation and siting. Congress should also recognize that FERC has active notices of proposed rulemaking on transmission planning and cost allocation and backstop siting authority.

Congress should consider requiring DOE to prioritize transmission projects that include joint ownership opportunities for public power and other load-serving entities when selecting new transmission projects for federal funding and support. Doing so can promote more collaborative and effective planning processes, reduce project costs and simplify cost allocation, and help bolster local support for transmission projects. *[See APPA Resolution 23-02, "On Promoting Transmission Joint Ownership Opportunities for Public Power Utilities."]*

National Environmental Policy Act (NEPA)

Again, APPA strongly believes that the federal permitting process can be reformed in such a way that protects the environment while providing public power utilities with the certainty and clarity they need to invest in the infrastructure needed to power their communities now and into the future.

Specifically, Congress should support environmental reviews that harmonize processes across the federal government and promote one lead federal agency, concurrent reviews, tiering, and other mechanisms that would streamline the review process. Congress should codify definitive timelines for environmental impact statements (EIS) and environmental assessments (EA), with a transparent process for extension. Importantly, the "clock" for a timeline should start after a permit application is submitted or upon the execution of a project memorandum of understanding.

Additionally, Congress should maximize the use of categorical exclusions (CE) for all energy infrastructure projects that meet certain standards to maximize efficiency. Expanding the use of CEs will conserve agency resources for actions that are otherwise more complex and require further environmental review. Congress should support programmatic reviews where the agency is approving several similar actions or projects in a region or nationwide, a large-scale utility corridor project, for example, or a suite of ongoing, proposed, or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary, like federal land or a specific facility. This will reduce delays caused by insufficient federal staffing and reduce the need to prepare and review redundant documents.

Congress should also direct agencies to use existing studies and analyses of projects impacts by other federal agencies, states, or local governments rather than recreate them for use in environmental reviews. During the scoping process, agencies should be required to review and determine if prior analyses address the issue under review and how such information should be utilized and incorporated.

Finally, Congress must reduce redundancy in the NEPA process by allowing the adoption of NEPA reviews without recirculating the final EIS, EA, or CE. After the review of a complete federal EIS, EA, or CE, and determination that an agency's action (whether cooperating or non-cooperating) is adequately covered by the original EIS, EA or CE, the lead agency should grant the adoption of the final environmental reviews documents through the issuance of record of decision (ROD), finding of no significant impact (FONSI), or documentation of CE adoption. Currently, an adopting agency must publish the final EIS before the ROD if it is not a cooperating agency.

U.S. Army Corps of Engineers

Congress should establish a time requirement for the Army Corps of Engineers to provide approved jurisdictional determinations as no such time limit currently exists.

Water Quality Certification (WQC)

Congress should encourage prompt action and decision-making on water quality certifications (WQC) under section 401 of the Clean Water Act (CWA). The scope of the WQC should be limited to water quality issues only. Congress should also ensure the period for state review of the WQC begins with “receipt” of a “certification request” and not when a state deems the request valid or complete. These changes provide long-sought consistency and clarity on when the period for review is triggered. Finally, Congress should encourage consistent state agency CWA Section 401 permitting requirements by allowing applicants to make reasonable modifications to their applications while maintaining environmental protections when conditions change without initiating a new section 401 process.

Endangered Species Act (ESA)

Congress should encourage the adoption of the National Historic Preservation Act (NHPA) and ESA consultation when multiple agencies are required to analyze similar project impacts, where applicable. This should reduce coordination times and redundancy when permitting agencies are reviewing a project that has already satisfied the requirements under NHPA and ESA. Congress should also adopt a statutory definition of “habitat” to provide clarity, consistency, and predictability, on the scope of areas designated as “critical habitats.” The definition of “habitat” should only cover areas that are actually habitable at the time of critical habitat designation. Regardless of whether a “habitat” is currently inhabited by a protected species, it should, at the time of a “critical habitat” designation, display the presence of physical or biological features that can support one or more life stages and, ultimately, the conservation of that protected species.

Conclusion

APPA commends the committee for holding today’s hearings and the ongoing efforts to reform the federal permitting process. APPA looks forward to working with you on legislative solutions that will provide the clarity and certainty public power utilities need as they continue to work tirelessly to provide reliable, affordable, and sustainable electricity to their customers and your constituents.

Attachments:

- APPA Priorities for Energy Infrastructure Permitting Reform (May 2023);
- APPA Resolution 23-08, “In Support of Federal Effort to Reform the Energy Infrastructure Permitting Process;”
- APPA Resolution 23-02, “On Promoting Transmission Joint Ownership Opportunities for Public Power Utilities;”
- Public Power’s Concerns About Rising Transmission Costs (June 2021).



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APPA Priorities for Energy Infrastructure Permitting Reform

APPA supports efforts in Congress to streamline the federal permitting and siting process, eliminate excessive regulatory barriers, and ensure more predictable and timely decisions from relevant federal agencies. Reform is urgently needed to meet the growing demand for electricity, and to ensure reliability as more intermittent resources are added to the grid. Congress should recognize that current proposals on permitting reform, including necessary changes to the National Environmental Policy Act (NEPA), reasonable deadlines for federal agencies, and proposals that will provide industry with more clarity and certainty will also make it easier to permit electric transmission projects.

Transmission

- Permitting and siting reforms designed to only impact electric transmission projects must not significantly expand Department of Energy (DOE) or Federal Energy Regulatory Commission (FERC) authority over the siting of individual transmission facilities, which are primarily within the jurisdiction of state and local governments.
- APPA strongly prefers that cost allocation principles or measures not be included in permitting and siting reform legislation, however, should they be, they must not lead to significant increases in transmission costs for public power utilities and their customers.
- Congress must allow appropriate time for the expanded authorities, including backstop siting authority under Federal Power Act Section 216, and transmission-specific funding, totaling over \$5 billion from the Infrastructure and Investment Jobs Act and the Inflation Reduction Act, to be fully implemented before considering fundamental changes to transmission cost allocation and siting. Congress should further recognize that FERC has active notices of proposed rulemaking on transmission planning and cost allocation and backstop siting authority.
- Congress should direct DOE to prioritize transmission projects that include joint ownership opportunities for public power and other load-serving entities when selecting new transmission projects for federal funding or support.

General Reforms

- Congress should create an interagency sharing portal for information that is secured and meets all agency firewall restrictions. The portal should allow for ease of file sharing, coordination at one location, and notification to all agencies at one time when a document is loaded.
- Congress should offer sustained funding and support training to ensure agencies have sufficient resources to accelerate coordinated reviews and permits.

National Environmental Policy Act

- Congress should support environmental reviews that harmonize processes across the federal government and promote one lead federal agency, concurrent reviews, tiering, and other mechanisms to streamline the review process.
- Congress should codify definitive timelines for environmental impact statements (EIS) (i.e., two years) and environmental assessments (EA) (i.e., one year), with a transparent process for an extension. The "clock" should commence after the permit application is submitted or the execution of a project memorandum of understanding.
- Congress should maximize the use of categorical exclusions (CEs) for all energy infrastructure projects that meet certain standards to maximize efficiency. Expanding the use of CEs will

conserve agency resources for actions that are otherwise more complex and require further environmental review.

- Congress should support programmatic reviews where the agency is approving several similar actions or projects in a region or nationwide (e.g., a large-scale utility corridor project) or a suite of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary (i.e., federal land or facility). Doing so will reduce delays caused by insufficient federal staffing and the need to prepare and review redundant documents.
- Congress should direct agencies to use existing studies and analyses of project impacts by other federal agencies, states, or local governments rather than recreate them for use in environmental reviews. In addition, during the scoping process, agencies should be required to review and determine whether prior analyses address the issue under review and how such information should be utilized and incorporated.
- Congress should reduce redundancy in the NEPA process by allowing the adoption of NEPA reviews without recirculating the final EIS, EA, or CE. After the review of a complete federal EIS, EA, or CE, and determination that an agency's action (whether cooperating or non-cooperating) is adequately covered by the original EIS, EA or CE, the lead agency should grant the adoption of the final environmental reviews documents through the issuance of record of decision (ROD), finding of no significant impact (FONSI) or documentation of CE adoption. Currently, an adopting agency must publish the final EIS before the ROD if they are not a cooperating agency.

U.S. Army Corps of Engineers

- Congress should establish a time requirement for the Army Corps of Engineers to issue approved jurisdictional determinations (AJD). Currently, there is no time limit for the Corps to provide AJDs after they are requested.

Water Quality Certification (WQC) under section 401 of the Clean Water Act (CWA)

- Congress should encourage prompt action and decision-making, limiting the scope of the WQC to water quality issues only (i.e., preclude suspending the clock or other efforts to avoid the one-year requirement).
- Congress should ensure the period for state review of the WQC begins with "receipt" of a "certification request" and not when a state deems the request valid or complete. These changes provide long-sought consistency and clarity on when the period for review is triggered.
- Congress should encourage consistent state agency CWA section 401 permitting requirements by allowing applicants to make reasonable modifications to their applications while maintaining environmental protections when conditions change without initiating a new section 401 process.

Endangered Species Act (ESA)

- Congress should encourage the adoption of the National Historic Preservation Act (NHPA) and ESA consultation when multiple agencies are required to analyze similar project impacts, where applicable. This should reduce coordination times and redundancy when permitting agencies are reviewing a project which has already satisfied the requirements under NHPA and ESA.
- Congress should adopt a statutory definition of "habitat" to provide clarity, consistency, and predictability, on the scope of areas designated as "critical habitats." The definition of "habitat" should only cover areas that are actually habitable at the time of critical habitat designation. Regardless of whether a "habitat" is currently inhabited by a protected species, it should, at the time of a "critical habitat" designation, display the presence of physical or biological features that can support one or more life stages and, ultimately, the conservation of that protected species.

Resolution 23-08

Sponsors: Florida Municipal Power Agency; WPPI Energy; Oklahoma Municipal Power Authority; Vermont Public Power Supply Authority

In Support of Federal Effort to Reform the Energy Infrastructure Permitting Process

1 The energy utility industry is undergoing an unprecedented transition—moving from highly reliable
 2 centralized systems powered primarily by conventional fuels to more decentralized systems that rely
 3 heavily on cleaner, intermittent generation sources. The clean energy transition requires significant
 4 investments in energy infrastructure to reduce emissions and electrify other sectors of the economy, but
 5 must maintain grid reliability and affordability for all customers. Federal permitting policies must be
 6 streamlined to ensure that this much-needed energy infrastructure—generating facilities, transmission and
 7 distribution lines, and interstate natural gas pipelines—can be built to meet the growing demand for
 8 cleaner energy resources and to ensure sufficient and affordable dispatchable resources are available to
 9 back-up intermittent generation. Permitting reform must also be done to enable access to additional oil
 10 and natural gas reserves needed to ensure a reliable and affordable power system during the clean energy
 11 transition.

12
 13 Public power and the electric sector have long sought clarity and certainty from environmental review and
 14 permitting regulations and laws. Despite an abundance of resources and potential projects to meet the
 15 rapidly growing demand for electricity, the United States is faced with a constrained grid. Permitting red
 16 tape, needlessly burdensome regulations environmental regulations, and conflicts between state and
 17 federal priorities have slowed energy infrastructure development to a crawl. Common-sense reforms to
 18 the federal permitting process are not an “either or” proposition. They can be done in a way that protects
 19 the environment while ensuring energy infrastructure can be built in a timely manner to provide
 20 affordable and reliable power for all.

21
 22 Improved regulatory predictability allows industries, like the electric sector, to plan and invest with
 23 confidence while enhancing economic productivity and efficiency. Improvements would also encourage
 24 many states and localities to follow federal leadership in approving infrastructure projects and land
 25 management activities. Taking action to streamline the federal permitting and siting process, eliminate
 26 excessive regulatory barriers, and ensure more timely decisions from relevant federal agencies will
 27 encourage and allow for the necessary development of these needed energy projects.

28
 29 **NOW, THEREFORE, BE IT RESOLVED:** That the American Public Power Association (APPA)
 30 urges federal policymakers to streamline federal permitting and siting rules to help facilitate the
 31 construction of energy infrastructure necessary to provide affordable and reliable electricity and to
 32 integrate more renewables onto the grid; and

33

34 **BE IT FURTHER RESOLVED:** That APPA supports federal policies, including policies for
35 implementing the National Environmental Policy Act, that avoid unwarranted regulatory impediments to
36 building needed energy infrastructure; and

37

38 **BE IT FURTHER RESOLVED:** That APPA supports conducting environmental reviews and
39 permitting processes in a concurrent, coordinated, consistent, predictable, and timely manner sufficient to
40 support sound decisions regarding federal agency actions, such as approving new infrastructure projects
41 for all energy types; and

42

43 **BE IT FURTHER RESOLVED:** That APPA encourages the Federal Energy Regulatory Commission to
44 promote electric transmission siting and permitting by facilitating open and transparent transmission
45 planning processes that prioritize reliably meeting the needs of public power utilities and other load-
46 serving entities.

Resolution 23-02

**Sponsors: Municipal Electric Systems of Oklahoma; Braintree Electric Light Department;
Oklahoma Municipal Power Authority; WPPI Energy; Illinois Municipal Electric Agency**

On Promoting Transmission Joint Ownership Opportunities for Public Power Utilities

1 Federal policymakers are devoting significant efforts to promoting the deployment of new transmission
2 infrastructure to support system reliability and accommodate an evolving resource mix, particularly the
3 anticipated growth in renewable resources. The American Public Power Association (APPA) supports
4 legislative and regulatory policies that promote prudent and cost-effective investment in the nation's
5 transmission infrastructure for the benefit of consumers.

6

7 The opportunity for public power utilities and other non-public utility entities (such as electric
8 cooperatives) to have ownership interests in new transmission facilities can serve as a valuable tool in
9 promoting new cost-effective transmission development while providing many other benefits.

10

11 There are many examples inside and outside of regional transmission organization and independent
12 system operator (together, "RTOs") regions of joint transmission expansion efforts and groups established
13 to jointly own transmission facilities on behalf of not-for-profit load serving entities. Public power
14 utilities have participated in these types of jointly owned transmission arrangements for many years.
15 While some public power utilities have access to joint ownership opportunities, this is not the case
16 everywhere. The joint ownership model can address many of the typical obstacles that public power
17 utilities may face when trying to own transmission individually, particularly larger, regionally planned
18 projects.

19

20 Participation of public power utilities in joint ownership arrangements can provide numerous benefits.
21 Responsibility for building and owning the transmission grid is spread more broadly among entities
22 serving loads in a region, which can promote more collaborative and effective regional transmission
23 planning, which leads to a more cost-effective and resilient grid. Coordination through joint ownership
24 can help avoid disputes, both during transmission planning, as well as in cost allocation.

25

26 Public power participation in joint ownership arrangements provides economic benefits to public power
27 utilities and their customers. Joint ownership of transmission facilities provides public power utilities with
28 revenues that help offset the impacts of escalating transmission rates. And by offsetting transmission
29 costs, joint ownership can make it easier for public power communities to support needed transmission
30 facilities while also making regional cost allocation issues easier to resolve. In many cases, participation
31 of not-for-profit public power utilities in transmission projects provides financial benefits to the broader
32 region relative to transmission ownership by incumbent public utility transmission providers alone.

33
 34 The ownership diversity gained by including public power in joint ownership arrangements can also help
 35 with the acquisition of rights-of-way and permits by having a broader and more diverse set of utilities
 36 advocating for projects at the state level. Public power participation can bolster state and local support for
 37 projects.
 38
 39 Engaging more rural communities can be an additional public policy benefit of joint ownership
 40 arrangements that include public power. The rate-reducing effects of bringing public power transmission
 41 investment into rural areas can also make the regions more competitive in expanding and/or attracting
 42 new industries.
 43
 44 Finally, public power joint ownership of transmission facilities is a structural solution that can mitigate
 45 the transmission market power of incumbent public utilities where this is a pressing policy concern.
 46
 47 The Federal Energy Regulatory Commission (FERC) has consistently recognized the benefits of the
 48 participation of non-public utilities in jointly owned transmission projects. FERC has numerous tools it
 49 can use under the Federal Power Act (FPA) to encourage joint ownership opportunities for non-public
 50 utilities, including, but not limited to, FERC's authority to: (i) establish the requirements for transmission
 51 planning by public utilities, including RTOs; (ii) tailor any consideration of transmission incentives to
 52 recognize and promote the many benefits of non-public utility joint ownership; (iii) impose conditions on
 53 public utility mergers; and (iv) ensure that all sellers authorized to charge market-based rates have
 54 mitigated their generation and transmission market power.
 55
 56 APPA has consistently opposed incentive rates of return on construction of transmission facilities, which
 57 are regulated monopolies, because such incentives increase the cost of transmission service to consumers
 58 and often do not provide a real incentive to build needed transmission. However, FERC has the authority
 59 to provide incentives and if it exercises that authority, it should do so in a manner that results in needed
 60 transmission facilities being built at reasonable cost, and that promotes joint investment in and ownership
 61 of transmission by public power and cooperative utilities.
 62
 63 **NOW, THEREFORE, BE IT RESOLVED:** That the American Public Power Association (APPA)
 64 believes that the opportunity for not-for-profit load-serving utilities, including public power utilities, to
 65 have ownership interests in new transmission facilities can serve as a valuable tool in promoting new
 66 cost-effective transmission development while providing many other benefits; and

67

68 **BE IT FURTHER RESOLVED:** That APPA urges Congress to encourage and support joint ownership
69 of transmission by not-for-profit load-serving utilities, including public power utilities; and

70

71 **BE IT FURTHER RESOLVED:** That APPA urges the Federal Energy Regulatory Commission (FERC)
72 to use its authority under the Federal Power Act to encourage joint ownership opportunities for public
73 power utilities and other not-for-profit load-serving utilities, including, but not limited to, FERC's
74 authority to: (i) establish the requirements for transmission planning by public utilities, including regional
75 transmission organizations and independent system operators; (ii) tailor any consideration of
76 transmission incentives to recognize and promote the many benefits of non-public utility joint ownership;
77 (iii) impose conditions on public utility mergers; and (iv) ensure that all sellers authorized to charge
78 market-based rates have mitigated their generation and transmission market power.



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Public Power's Concerns About Rising Transmission Costs

The American Public Power Association (APPA) supports prudent investment in our nation's electric transmission infrastructure. We are concerned, however, about the potential cost impacts of a significant transmission build out. Transmission rates paid by APPA members have been increasing substantially in some regions, and this trend is expected to continue.

Based on performance metrics information submitted to the Federal Energy Regulatory Commission (FERC) by regional transmission organizations and independent system operators (RTOs/ISOs), the following table shows the changes (in dollars per megawatt hour (MWh)) in the primary wholesale cost components between 2014 and 2018. While energy costs have declined in that time frame, transmission costs have increased substantially.

	CAISO		ISO-NE		MISO		PJM		SPP	
	2014-2018 Change									
Energy	(\$4.4)	-8.6%	(\$9.6)	-18.6%	(\$7.8)	-21.0%	(\$14.9)	-28.0%	(\$6.9)	-21.8%
Capacity	N/A	N/A	\$23.9	279.4%	<(\$0.01)	-37.5%	\$3.0	33.5%	N/A	N/A
Transmission	\$3.9	48.3%	\$3.7	26.1%	\$0.9	33.7%	\$2.9	49.8%	\$2.4	41.7%
Total	\$1.0	1.6%	\$16.9	21.5%	(\$6.9)	-17.0%	(\$10.2)	-14.5%	(\$4.5)	-11.7%

The U.S. Energy Information Administration's [2020 Annual Energy Outlook](#) reference case projects this trend to continue, forecasting that rising transmission and distribution costs will offset much of the expected decrease in generation costs through 2050.

Individual public power utilities and joint action agencies have also reported very substantial transmission cost increases, including the following representative examples:

- A California joint action agency's transmission rates in the California ISO more than tripled between 2009 and 2019.
- A Delaware joint action agency's transmission rates in PJM Interconnection more than quadrupled between 2006 and 2019.
- An Iowa joint action agency's transmission rates in the Midcontinent ISO region increased over 265 percent between 2008 and 2020.
- A Missouri public power utility's share of transmission base plan upgrade costs in the Southwest Power Pool (SPP) rose from approximately \$14,000 per month in 2012 to well over \$400,000 per month in 2018.

- An Oklahoma joint action agency's transmission costs in SPP rose from approximately \$14.2 million in 2012 to more than \$27 million in 2018 despite essentially flat load growth.

These rising costs are primarily attributable to a steady increase in transmission investment across the United States. APPA recognizes that there are legitimate drivers for the increase in transmission investment, including the integration of renewable resources, replacement of aging infrastructure, and system hardening and resilience. APPA's concerns about rising transmission costs should not be equated with opposition to transmission investment in general. However, maintaining transmission costs at an affordable level for consumers must be a key touchstone in evaluating transmission policy choices.



May 11, 2023

The Honorable Joe Manchin, Chairman
U.S. Senate Committee on Energy and Natural Resources
United States Senate
307 Dirksen Office Building
Washington, DC 20510

The Honorable John Barrasso, Ranking Member
U.S. Senate Committee on Energy and Natural Resources
United States Senate
307 Dirksen Office Building
Washington, DC 20510

Senators Manchin and Barrasso:

On behalf of ConservAmerica, a non-profit organization dedicated to market based, common sense solutions to our nation's environment and energy challenges, I write in support of meaningful legislation to reform and modernize our nation's permitting process.

A cleaner, sustainable, and prosperous future requires the deployment of new, lower emissions sources of energy, and the expansion and modernization of our aging infrastructure system. While Congress has made significant resources available toward these ends through the Energy Act of 2020, the Infrastructure Investment and Jobs Act, the CHIPS and Science Act, and the Inflation Reduction Act, our existing permitting and regulatory approval processes are sidelining resources, stopping projects, and limiting the benefits of those policies.

America has made great strides in protecting its natural resources, expanding clean energy and manufacturing technologies, and in protecting public health and safety. Yet, many of the laws that helped pave the way for these successes were adopted nearly fifty years ago and need to be modernized to adapt to the scale and pace of today's challenges. As it stands now, the inefficiencies and uncertainties embedded within the permitting process are thwarting economic development, limiting our ability to make environmental and infrastructure improvements, and creating unacceptable risks to public health and safety.

The scope of the problem spans the economy and includes transportation projects that would move people and goods more efficiently; energy production, transmission, and distribution upgrades that would reduce emissions and increase reliability and affordability; advancements in information technology that would help keep our competitive edge and expand access to all Americans; water infrastructure improvements and access to safe drinking water; and land and forest management practices that would improve agricultural productivity, help contain wildfires, and reduce the impact of extreme weather events like flooding and droughts.

Given the scale and breadth of the challenges we face, it is simply unacceptable that government approval processes for these projects are the single biggest obstacle to action; meanwhile, the problems these projects are intended to solve get worse, and the direct and indirect financial costs of inaction compound. America is prepared to meet today's environment, energy, and infrastructure challenges. But these are problems that we must *build* our way out of, and we need to act now.

Fortunately, members of this Committee are now focused on permitting reform, and there are several proposals on the table that would provide relief while simultaneously protecting our environment, public health, and historic resources. These include provisions within the U.S. House of Representatives' recently passed H.R. 1, the "Lower Energy Costs Act"; Senator Manchin's "Building American Energy Security Act"; Senator Barrasso's "Spur Permitting of Underdeveloped Resources (SPUR) Act"; and Senator Capito's "Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency (RESTART) Act."

As members of this and other committees of jurisdiction weigh the specific policies to adopt, we ask that any legislation include reasonable, predictable, and enforceable timeframes for agency action; improved transparency requirements, and measures that provide project developers with sensible assurances that their investments will not be left stranded by excessive or frivolous litigation, or arbitrary and capricious actions. In addition, we believe the legislation should be broadly applicable to the dozens of existing laws and regulatory requirements at issue; it also should not be limited to specific technologies or industries.

ConservAmerica applauds you for your hard work and dedication to addressing this issue and stands ready to assist you and your staff in passing legislation.

Sincerely,



Todd Johnston
Vice President

Copy: Senator Carper, Chair, Committee on Environment and Public Works
Senator Capito, Ranking Member, Committee on Environment and Public Works

Senate Energy and Natural Resources Committee
Hearing to examine opportunities for Congress to reform the permitting process for
energy and mineral projects
Statement from Senator James Risch
May 11, 2023

As I have discussed in this Committee very recently, we have a project being proposed and permitted in Idaho—the Lava Ridge Wind Energy project—by an out of state company, that has been met with near unanimous opposition in Idaho. Why I bring this up again today in a permitting reform discussion is to discuss what justifies building these projects in places, like Idaho, where they are completely unwanted.

These projects are proposed because of the potential to export the electricity to other states that have set clean energy standards and forced retirement of generation that doesn't meet their arbitrary policy goals. Now in turn, these states don't have enough resources to fulfill their energy needs, and they are turning to places like Idaho. To warrant constructing these projects far from where the power will actually be used is generally contingent on the hope that long transmission lines would be sited, permitted, and built quickly.

These are transmission lines that have not yet been approved by states but that these companies desperately need to make their projects feasible—notwithstanding whether state and local officials in Idaho actually agree they should be constructed.

As we have this permitting discussion, I am extremely concerned that the transmission legislation we have seen from the other side of the aisle will present a backdoor for companies like this to go around states even further by using the federal government to authorize the transmission for their projects without the backing of the state, at the cost of ratepayers who won't benefit from the power and don't support the project in the first place. I can assure you the federal government does not understand the economic, reliability, and energy needs of Idaho better than the state and local officials who live in and serve these communities.

As we continue to consider permitting reform, I surely hope this Committee doesn't move forward with legislation like the draft before us that undercuts state authority, passes unnecessary costs on to consumers, and will further incentivize unwanted projects like Lava Ridge.

Earthjustice • The Wilderness Society • Earthworks • League of Conservation Voters • Center for Biological Diversity • Natural Resources Defense Council • Sierra Club • Southern Utah Wilderness Alliance • Defenders of Wildlife • Hispanic Access Foundation • Alaska Clean Water Advocacy • Alaska Community Action on Toxics • Alaska Wilderness League • Anthropocene Alliance • Arizona Faith Network • Arizona Mining Reform Coalition • Arizona Trail Association • Black Hills Clean Water Alliance • Californians for Western Wilderness • Cascade Forest Conservancy • Citizens Awareness Network • Citizens to Protect Smith Valley, NV • Clark County Adventure Riders (NV) • Coalition for Wetlands and Forests • Conservation Northwest • Cook Inletkeeper • Dot Lake Village • Endangered Species Coalition • Friends of Buckingham • Friends of the Kalmiopsis • Friends of the Sonoran Desert • Gila Resources Information Project • Great Basin Resource Watch • Great Bear Foundation • Healthy Environment Alliance of Utah (HEAL Utah) • Idaho Conservation League • Idaho Rivers United • Information Network for Responsible Mining • Kahtoola, Inc • Kalmiopsis Audubon Society • LEAD Agency, Inc. • Living Rivers • Los Padres ForestWatch • Malach Consulting • Mother Kuskokwim Tribal Coalition • Multicultural Alliance for a Safe Environment • Native Movement • Nevada Conservation League • New Mexico Environmental Law Center • Northern Alaska Environmental Center • Northern Front Range Broadband of Great Old Broads for Wilderness • Norton Bay Watershed Council • Okanogan Highlands Alliance • Oregon Natural Desert Association • Patagonia Area Resource Alliance • People of Red Mountain • Physicians for Social Responsibility Pennsylvania • Progressive Leadership Alliance of Nevada • Public Citizen • Quiet Use Coalition • Save the Scenic Santa Ritas Association • Save the South Fork Salmon, Inc. • Silver Valley Community Resource Center • Sky Island Alliance • Soda Mountain Wilderness Council • Standing Trees • The Alaska Center • The Clinch Coalition • Trustees for Alaska • Tucson Audubon Society • Uranium Watch • WaterLegacy • Western Mining Action Network- Indigenous Caucus • Western Shoshone Defense Project • Western Watersheds Project • Wild Arizona • Wisconsin Mining Impact • Xplore Outside

May 09, 2023

Senators & Representatives,

On behalf of our millions of members and supporters, the following 78 conservation, climate, Indigenous and tribal-affiliated organizations call on you to oppose S. 1281 and H.R. 2925, the so-called “Mining Regulatory Clarity Act.”

The Mining Regulatory Clarity Act represents an unprecedented, de facto giveaway of America’s cherished public lands to mining corporations, upending and reversing over one hundred years of public land law precedent. Under the bill, anyone—for a nominal fee—gains permanent rights to occupy land, construct massive waste dumps, and build roads and pipelines across public lands to the detriment of all other values. This would preclude all other types of development and use, including renewable energy projects, recreation, and traditional cultural uses.

The Mining Regulatory Clarity Act is not a return to “status quo” as some proponents have argued. Instead, this legislation undermines the federal government’s long standing authority to safeguard public lands, threatening the protection of irreplaceable cultural, environmental, water, and economic resources. That’s because **the bill conveys mining claimants (including international mining conglomerates) with a right to permanently occupy federal public lands.** If an alternative use—like an electric transmission line or a renewable energy project—needed to cross “claimed” public lands, mining companies could extract large sums of money from the federal government in exchange for giving up their claim. As an example, if this bill were law in the 1900’s, Grand Canyon National Park wouldn’t exist

as it does today. Future Senator Ralph Cameron filed mining claims covering the famous Bright Angel Trail, but they were invalidated due to a lack of a valuable mineral deposit. Had S. 1281/H.R. 2925 been law, Cameron would have had a vested right to undertake a wide variety of exclusionary or destructive activities on these claims and those claims would have superseded the Grand Canyon National Monument's (later National Park's) protections. Under S. 1281, all future prospective protected lands could suffer this fate.

This legislation would lead to vast unintended consequences by allowing mining companies, and any individual, to easily weaponize it for their own gain. A person or company wishing to block a solar, wind, or transmission project could simply file a claim in the path of the project by pounding four stakes into the ground and paying a nominal fee and then exercise their new right to occupy the land to block it from moving forward.

Under Section 2(e)(1)(B) of S. 1281/H.R. 2925, mining companies would receive a statutory right to permanently occupy and bury our federal public lands under tons of toxic waste. Modern large scale mines often produce far more toxic waste than the minerals they extract, risking water contamination and other harms. Further, Section 2(e)(1)(A) grants mining companies automatic rights-of-way for far-flung infrastructure such as new pipelines, transmission lines, and roads across public lands. The change eliminates a central provision of the Federal Land Policy and Management Act (FLPMA) that requires mining companies to receive a permit for such uses, just like everyone else operating on public lands. Section 2(e)(2) would also eliminate FLPMA's requirement that the mining company pay "fair market value" for using public lands for these facilities.

The Mining Regulatory Clarity Act was authored in reaction to recent court decisions that affirmed and enforced longstanding law. According to proponents of this egregious corporate handout, the need for this bill arises from a court case known as *Rosemont*, as well as two subsequent federal court rulings, where companies proposed using invalid mining claims to dump enormous quantities of waste generated at the mine site. The problem with that was obvious and courts blocked them: holding an invalid mining claim confers no right to use or occupy the lands covered by the claim unless a valuable mineral is discovered.

The proponents also argue that this legislation is essential to secure our clean energy supply chain. Contrary to industry's sky-is-falling rhetoric about critical mineral supply shortages, there are a variety of ways to meet the demand for these minerals during our transition to a clean energy economy. This includes—in conjunction with carefully sited mines governed by high environmental standards—deep investment in a circular minerals economy that recycles and reuses the maximum amount of these minerals possible. In addition, mining companies have options to acquire the lands needed for new mines, waste sites, and processing facilities without violating the law or seeking handouts from Congress. In fact, one large copper operation in Arizona, ASARCO's Ray Mine, recently obtained over 9,000 acres in an exchange to allow for continued mining. There cannot be a just and equitable transition to a carbon-free future, with legislation like this that sacrifices our lands, waters, public health, sacred sites and communities.

The mining law of 1872 is already overly permissive—mining has polluted the headwaters of 40 percent of western watersheds, fiscal assurances for clean up are routinely inadequate, and companies pay no royalties for the minerals they extract from public lands. Reform is needed to safeguard waters, communities, and the environment.

This bill would do the opposite, further tipping the scales away from communities, the environment, and our clean energy future—giving the mining industry the power to dictate how we use our public lands. Instead, Congress should work to balance our nation’s clean energy mineral needs with all other public land uses, such as for renewable energy projects, cultural and historical resources, ranching, recreation, water resources, and wildlife. Our organizations ask you to oppose this legislation in all its forms and reject it as a part of any conversation around energy permitting.

Sincerely,

Alaska Clean Water Advocacy
 Alaska Community Action on Toxics
 Alaska Wilderness League
 Anthropocene Alliance
 Arizona Faith Network
 Arizona Mining Reform Coalition
 Arizona Trail Association
 Black Hills Clean Water Alliance
 Californians for Western Wilderness
 Cascade Forest Conservancy
 Center for Biological Diversity
 Citizens Awareness Network
 Citizens to Protect Smith Valley, NV
 Clark County Adventure Riders (NV)
 Coalition for Wetlands and Forests
 Conservation Northwest
 Cook Inletkeeper
 Defenders of Wildlife
 Dot Lake Village
 Earthjustice
 Earthworks
 Endangered Species Coalition
 Friends of Buckingham
 Friends of the Kalmiopsis
 Friends of the Sonoran Desert
 Gila Resources Information Project
 Great Basin Resource Watch
 Great Bear Foundation
 Healthy Environment Alliance of Utah (HEAL Utah)
 Hispanic Access Foundation
 Idaho Conservation League
 Idaho Rivers United
 Information Network for Responsible Mining
 Kahtoola, Inc
 Kalmiopsis Audubon Society
 LEAD Agency, Inc.
 League of Conservation Voters
 Living Rivers
 Los Padres ForestWatch
 Malach Consulting

Mother Kuskokwim Tribal Coalition
Multicultural Alliance for a Safe Environment
Native Movement
Natural Resources Defense Council
Nevada Conservation League
New Mexico Environmental Law Center
Northern Alaska Environmental Center
Northern Front Range Broadband of Great Old Broads for Wilderness
Norton Bay Watershed Council
Okanogan Highlands Alliance
Oregon Natural Desert Association
Patagonia Area Resource Alliance
People of Red Mountain
Physicians for Social Responsibility Pennsylvania
Progressive Leadership Alliance of Nevada
Public Citizen
Quiet Use Coalition
Save the Scenic Santa Ritas Association
Save the South Fork Salmon, Inc.
Sierra Club
Silver Valley Community Resource Center
Sky Island Alliance
Soda Mountain Wilderness Council
Southern Utah Wilderness Alliance
Standing Trees
The Alaska Center
The Clinch Coalition
The Wilderness Society
Trustees for Alaska
Tucson Audubon Society
Uranium Watch
WaterLegacy
Western Mining Action Network- Indigenous Caucus
Western Shoshone Defense Project
Western Watersheds Project
Wild Arizona
Wisconsin Mining Impact
Xplore Outside

May 11, 2023

Re: Permitting Reform of Hardrock Mines

Dear Chairman Manchin, Ranking Member Barrasso, and Members of the Energy and Natural Resources Committee,

As your committee considers changes to the energy and mine permitting processes, on behalf of the undersigned, we write to ask you to prioritize efforts that would balance public health, community input, and the protection of watersheds, wildlife habitat and cultural and historic resources on America's public lands and wildlife. Similarly, we respectfully urge your committee to strongly oppose efforts that would exacerbate deficiencies in the existing mining law and result in an unnecessary increase in mining on federal public lands that risks irreplaceable protected lands, special places, endangered and sensitive wildlife, tribal sacred sites, and culturally significant sites under the guise of a clean energy transition.

Improvements to the Mine Permitting Process

We acknowledge that growing demand for certain materials may require new hardrock mines, including some on federal public lands. However, there are better ways to source minerals than allowing entities to stake claims without requiring the discovery of a valuable mineral deposit or imposing arbitrary environmental review timelines. Necessary changes include those considered last Congress in the Clean Energy Minerals Reform Act of 2022. Converting to a leasing system for hardrock minerals—just like the one that oil and gas companies use today—would help provide certainty to the permitting process and result in more timely and socially acceptable decisions.

Congress has already invested significant time and resources into permitting reform for mining. The Inflation Reduction Act (IRA) included \$1 billion to support timely and effective environmental reviews across federal agencies, which should lead to better, more equitable outcomes, and help avoid litigation. Additionally, the Fiscal 2023 budget will help fund public lands management agencies to perform more thorough mining reviews.

These resources for mine permitting build upon those in the Infrastructure Investment in Jobs Act (IIJA). IIJA made permanent the Fixing America's Surface Transportation Act Permitting Council (Permitting Council), which, in January 2021, added hardrock mining as a covered sector. In November 2022, the Administration announced the Permitting Council will devote \$5 million in support of more meaningful consultations with federally recognized tribes in hardrock mine permitting.

IIJA also required the Interior Department to identify process improvements to hardrock mine permitting. A coalition of tribes, indigenous-led organizations, and conservation groups have also petitioned Interior for rules that, if finalized, would result in more timely decisions for hardrock mine permits without sacrificing necessary public input. In response to both, the administration convened the mining reform Interagency Working Group which should recommend mining rule improvements, consistent with the petition. These updates would also help lead to a fair hardrock mine permitting process, delivering more certainty to both claimants and impacted communities.

Mine Permitting Must Be Modernized, Centering on Historically Impacted Communities

Current mining law has allowed for the pollution of America's environment and waterways, placing additional unjust burdens on communities who have already borne the brunt of our nation's toxic mining legacy. Already, America is littered with hundreds of thousands of abandoned mines that the Environmental Protection Agency (EPA) estimates have polluted 40% of the headwaters of western U.S. watersheds and will cost taxpayers more than \$50 billion to clean up. Under current law, taxpayers are potentially liable for billions more in cleanup costs at currently operating mines—including treatment of water in perpetuity, risking the health of already threatened Western watersheds—because there is no legal requirement for mining companies to remediate lands and waters.

Historical examples of mining companies being given unfettered access to minerals with little to no environmental safeguards have had severely negative consequences—a prime example is found in Navajo Nation's experience with uranium mining, milling, and toxic pollution. Navajo Nation is situated directly in America's uranium mining belt, and in the 1950's and 1960's fervent uranium development left residents with myriad health risks due to radiation exposure through polluted water and land. Today over 500 of these mines remain unremediated across the Navajo Nation, where they continue to impact residents' health. Navajo Nation residents are 67 times more likely to live without running water than other residents across the country—and many water sources on the Navajo Nation are contaminated as a result of uranium mining and milling operations. In 2016, researchers with Northern Arizona University discovered high levels of uranium contamination in the water supply of Sanders, Arizona, a small town just outside of the Navajo Nation whose residents are mostly Navajo. It was later discovered that the state had known of the contamination since 2003, but regulators failed to notify the residents of Sanders until after NAU researchers presented their results to the community. The Navajo Nation is not alone. Past and ongoing impacts of uranium operations on Native communities are extensive.

Any Changes to Mine Permitting Must Explicitly Include Protections for America's Special Places

Expanding mineral activities on federal public lands without modernizing our mining laws could threaten some of our nation's most treasured areas. Previous mine permitting proposals have sought to scale back protections for millions of acres of tribal sacred sites, culturally significant places, and iconic natural places. While mining is not permitted within the boundaries of National Parks, mining activities pollute the air and water that crosses the boundaries of protected lands. Insufficiently regulated mining in the name of clean energy development promotes a false choice by risking key lands that we need to conserve for our own health and wellbeing. We urge the committees to reject any legislation that puts important American lands, waters, and wildlife at risk of pollution and degradation.

Conclusion

We respectfully urge you to oppose permitting efforts that would exacerbate deficiencies in the existing mining law and result in risking irreplaceable protected lands, special places, tribal sacred sites, and wildlife from an unnecessary increase in mining on federal public lands. There are common-sense solutions to improve mine permitting and promote responsible mining that Congress should consider, including the Clean Energy Minerals Reform Act of 2022. Additional resources, updated rules, and thoughtful IJA and IRA implementation will also drive mine permitting efficiency. Thank you for your consideration.

Sincerely,

The Wilderness Society

Earthworks

Earthjustice

Sierra Club

National Parks Conservation Association

Defenders of Wildlife

Center for Biological Diversity

League of Conservation Voters

Natural Resources Defense Council

Conservation Lands Foundation

Friends of the Earth

Alaska Wilderness League

Grand Canyon Trust

Southern Utah Wilderness Alliance

Oregon Natural Desert Association

Friends of the Sonoran Desert

Northeastern Minnesotans for Wilderness

Arizona Faith Network

New Mexico & El Paso Interfaith Power and Light

Los Padres ForestWatch

Sisters of Mercy of the Americas Justice Team	Northern Alaska Environmental Center
Arizona Trail Association	Conservation Northwest
Wilderness Workshop	Citizens to Protect Smith Valley (NV)
Progressive Leadership Alliance of Nevada	Uranium Watch
Living Rivers	Western Watersheds Project
Save the Scenic Santa Ritas	Hispanic Federation
Idaho Conservation League	Kamloops Moms For Clean Air
Weber Sustainability Consulting	Black Hills Clean Water Alliance
Sheep Mountain Alliance	Wild Arizona
Idaho Rivers United	Brooks Range Council
Multicultural Alliance for a Safe Environment	Okanogan Highlands Alliance
Red Water Pond Road Community Association	MEIC
Arizona Mining Reform Coalition	American Friends Service Committee
Office of Peace, Justice and Integrity of Creation, Sisters of Charity of New York	
Red WaterPond Road Community	Tucson Audubon Society
BlueWater Valley Downstream Alliance.	River Alliance of Wisconsin
Friends of the Kalmiopsis	Kalmiopsis Audubon Society
Information Network for Responsible Mining	Cook Inletkeeper
Endangered Species Coalition	Rivers Without Borders
Laguna -Acoma Coalition for a Safe Environment	
Healthy Environmental Alliance of Utah	
Malach Consulting	