



Build Back Better Act Will Increase Mineral Imports and Weaken Supply Chains

The Build Back Better Act Will Nullify The Bipartisan Infrastructure Bill's Critical Minerals Provisions

The Bipartisan Infrastructure Bill Contains Provisions to Increase Domestic Production of Critical Minerals and Stimulate Domestic Battery Materials Processing Capacity

Critical Minerals Supply Chain and Reliability (Section 40206)

- Finds “the federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States,” and directs improving and “completing the Federal permitting and review processes with maximum efficiency and effectiveness, while supporting vital economic growth, by establishing and adhering to permitting schedules and deadlines....”

Battery Processing and Manufacturing (Section 40207)

- Establishes the Battery Material Processing Grant Program “to enhance the domestic processing capacity of minerals necessary for battery materials” that is predicated on obtaining the minerals from domestic mines that produce critical battery minerals like lithium, nickel, and cobalt.

The BLM Rulemaking in the Build Back Better Act Conflicts with the Permit Streamlining Directive in the Bipartisan Infrastructure Bill

- Section 71101 of the Build Back Better Act appropriates \$3 million for the U.S. Bureau of Land Management (BLM) to revise its 43 CFR Subpart 3809 regulations governing hardrock mining that appears to give BLM the funding to respond to a recent NGO rulemaking petition.
- The NGO’s petition seeks significant policy changes in BLM’s regulations that would erode Mining Law rights by giving the Secretary discretionary authority to say no to mining - even for critical minerals.
- In 2018, the U.S. EPA¹ found “BLM’s regulatory programs provide cradle-to-grave oversight of mining operations on the public lands” and:
 - Require compliance with general and specific performance standards and applicable federal and state laws and regulations;
 - Impose design, operating, closure, and reclamation requirements to ensure productive use of the land after mining; and
 - Mandate operators provide and maintain financial assurance to guarantee reclamation and authorize BLM to initiate bond forfeiture if an operator refuses or is unable to conduct reclamation.

U.S. Mines Already Comply With Stringent Environmental Rules – The BLM Rulemaking is a Solution in Search of a Problem That Will Delay Development of New Domestic Critical Minerals Mines

¹ Federal Register Vol. 83, No. 35, February 21, 2018, Page 7571.

The Build Back Better Act Land Withdrawal Will Place Public Lands Off Limits to Mining and Prevent Development of New Domestic Critical Minerals Mines

- Section 70709 is a vague land withdrawal measure that explicitly requires the Secretary of the Interior to withdraw lands from mineral development without specifying which lands or how much land.
- The apparent intent is to prohibit mining on selected western public lands administered by both BLM and the U.S. Forest Service and acquired lands in Minnesota and other states where BLM manages the mineral estate.
- This provision greatly expands the Secretary's current withdrawal authority under Section 204 of the Federal Land Policy and Management Act of 1976, essentially overriding Congress' plenary authority over managing the Nation's public lands and abrogating Congress' Constitutional obligations over federal properties.
- Any resulting withdrawals will result in Fifth Amendment takings claims on lands where mining claim owners and federal minerals lessees have spent hundreds of millions of dollars exploring and developing their landholdings.
- The proposed land withdrawals will increase the Nation's reliance on foreign sources of lithium, copper, silver, and other critical minerals that are essential to the Nation's clean energy future.

Withdrawing Lands Where Future Critical Minerals Mines Could be Developed is Nonsensical Given the Urgent Need to Produce Domestic Clean Energy Minerals and Reduce Mineral Imports From China

Although Mining Has A Miniscule Footprint On Public Lands Over 400 Million Acres Have Been Put Off Limits to Mining

- From 1980 to 2020, conservation and preservation lands where mining is prohibited expanded from 250 million to 400 million acres², proving that existing land withdrawal and conservation mechanisms can effectively set aside lands, making the Section 70709 land withdrawal requirement superfluous.
- Thanks to the U.S. environmental protection and health and safety laws enacted since the 1970s, U.S. mines are the cleanest and safest mines in the world.
- According to the GAO³, BLM and the Forest Service have authorized a mere 317,783 acres of mineral-related surface disturbance throughout the eleven western Mining Law states, which is a miniscule 0.05 percent of the federal mineral estate subject to the Mining Law.

Because Sections 71101 And 70709 Are Policy Directives, They Violate The Byrd Rule And Should Not Be Included In The Build Back Better Act

WMC's mission is to advocate for today's modern domestic mining industry which is essential to our Nation. WMC is a grassroots organization with members nationwide who work in all sectors of the mining industry including hardrock and industrial minerals, coal, energy generation, manufacturing, transportation, and service industries. WMC engages with members of Congress and their staff, federal land management and regulatory agencies, and state governments to discuss issues of importance to both the hardrock, coal, and industrial mining sectors.

For more information please contact Emily Arthun at Emily.arthun@wmc-usa.org or visit our website at: www.wmc-usa.org

² John D. Leshy, *America's Public Lands – A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021. (Mr. Leshy was the Department of the Interior Solicitor during the Clinton Administration.)

³ 2020 GAO, <https://www.gao.gov/assets/gao-20-461r.pdf>