



Submitted Electronically to:
MiningPerformanceMetric@blm.gov

April 11, 2024

U.S. Bureau of Land Management
Mining Performance Metrics Team
MiningPerformanceMetric@blm.gov

RE: Comments on BLM's Draft Mining Performance Metrics

Dear BLM Mining Performance Metrics Team:

I. Introduction and Comments Summary

The Women's Mining Coalition (WMC) is providing these comments in response to the U.S. Bureau of Land Management's (BLM's) February 12, 2024 announcement that it is seeking comments on its draft mining performance metrics.¹ As described in BLM's announcement, the metrics are based in part on the recommendations and findings of the September 2023 Interagency Working Group's (IWG's) report entitled *Recommendations to Improve Mining on Public Lands*.

This letter presents WMC's concerns that the draft metrics are inadequate because they will fail to collect the sufficiently detailed information required to conduct a fact-based and thorough evaluation of BLM's permitting process so that BLM can identify and implement changes to improve the permitting process. As described below, BLM's proposed metrics do not fulfill the statutory requirements in Section 40206 of the Bipartisan Infrastructure Law (BIL) directing the Secretaries of the Interior and Agriculture to develop permitting performance metrics designed to improve the permitting process for critical minerals.

WMC strongly opposes BLM's proposed use of its Minerals and Land Records System (MLRS) given the difficulty in using this flawed and cumbersome system. Rather, WMC suggests creating project-specific information to be hosted on BLM's ePlanning Portal that tracks both the pre-plan submittal and the National Environmental Policy Act (NEPA) processes. Information should be developed to track the permitting process for both mineral exploration and mine development projects once the permitting process for a project is completed. Tables with recommended permit tracking steps are included with this letter for BLM's consideration.

About WMC

WMC is a grassroots organization with over 200 members nationwide. Our mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. WMC members work in all sectors of the mining industry including hardrock and industrial minerals, coal, energy generation, manufacturing, transportation, and service industries. We convene annual Washington, D.C. Fly-Ins to give our members an opportunity to meet with members of

¹ <https://www.blm.gov/announcement/blm-seeks-comment-mine-permitting-metrics>

Congress and their staffs, as well as with federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

WMC members have extensive experience with NEPA, including participating in the NEPA process to develop Environmental Assessments (EAs) and Environmental Impact Statements (EISs) for numerous proposed mineral projects on BLM-administered public lands and on National Forest System lands. WMC submitted detailed comments in 2022 in response to the IWG's Request for Information (RFI). On May 12, 2022, we provided testimony before the House Subcommittee on Energy and Mineral Resources that provided input on many of the questions posed in the RFI. We have reviewed the IWG Report in detail and are familiar with its recommendations.

For many years the WMC has advocated for a more streamlined and expeditious permitting process for exploration and mining projects. For decades the exceedingly long permitting process in the United States has made mine permitting uncertain and risky and has led some companies to look to more mining-friendly jurisdictions around the world for investing in mineral exploration and development. There has never been a clearly defined and time delimited process that a proponent can count on when starting down the permitting road in the U.S. Although the BLM's suggested metrics are a starting point, as we discuss below, they are overly simplified and will not fully capture the potential sources of delay in the permitting process for mineral exploration and mining projects on federal lands, nor do they include all aspects of such permitting. Namely, the proposal omits the rigorous permitting requirements pertaining to the exploration process, which is an integral and absolutely necessary starting point of any mine permitting process.

II. Bipartisan Infrastructure Law Section 40206 Requirements and Intent

Section 40206(e) of the BIL requires the Secretary of the Interior, acting through the Director of the BLM, and the Secretary of Agriculture, acting through the Chief of the Forest Service, to develop and publish a "performance metric for evaluating the progress made" by the agencies to "expedite the permitting of activities that will increase exploration for, and development of" domestic minerals, while maintaining environmental standards. Congress also directed that the public be given an opportunity to review the proposed permit performance metric. BLM's request for comments fulfills this public review requirement.

Congress directed that BLM prepare these metrics "using as a baseline the time quantified under subsection (d)(3)". Subsection (d)(3) requires the Director of the BLM to quantify the period of time typically required to complete each step associated with the development and processing of applications, operating plans, leases, licenses, permits, and other use authorizations for critical mineral-related activities on Federal land, taking into account aspects that affect the periods of time that are outside the agency's control such as judicial review, applicant decisions, or State and local government involvement.

These performance metrics should provide accountability and transparency of the agency's implementation of the Congressional mandate in Subsection (c) that the agency "shall complete the Federal permitting and review processes with maximum efficiency and effectiveness, while supporting vital economic growth" by establishing and adhering to timelines and schedules for

permitting of mineral-related activities on Federal lands and establishing clear, quantifiable, and temporal permitting performance goals, and tracking progress against those goals.

III. BLM's Oversimplified Proposed Metrics Do Not Satisfy Legislative Intent and Must be Expanded to Include Exploration Permitting

As discussed above, Subsection 40206(c) of the BIL includes detailed directives that require the Secretaries of the Interior and Agriculture to develop permitting performance metrics with the objective of “improv[ing] the quality and timeliness of Federal permitting and review process with respect to critical mineral production on Federal land.” The BLM has proposed the following three metrics that would be tracked using the MLRS.²

1. Percentage of operators that engage in pre-plan submittal coordination with BLM;
2. Percentage of milestones met from the mining pre-plan coordination agreements; and
3. Median time to complete NEPA reviews for mining plans.

BLM's proposed metrics oversimplify the level of analysis required to identify bottlenecks in the permitting process so they can be addressed and eliminated or at least minimized in response to the directive in the BIL Section 40206 to improve the permitting process.

Metric No. 1, the review of the percentage of operators that engage in pre-plan submittal coordination with BLM, will not provide meaningful data on how participating in the pre-planning process leads to shorter permitting timelines. Even if all operators are engaged in pre-planning coordination with the BLM, there is no guarantee that the permitting process will proceed more efficiently. Thus, this metric should focus more on actual data collection as opposed to trying to determine the number of operators who participate in the pre-planning process.

Metric No. 2, documenting the percentage of milestones met from the mining pre-plan coordination agreements, will only capture beneficial data that will enhance the permitting process if BLM commits to use this data to evaluate where there are bottlenecks in the process with the objective of identifying opportunities to eliminate or reduce these bottlenecks.

WMC recommends that BLM's performance metrics should be based on a project-by-project documentation of the key permitting milestones for that project once the permitting process has been completed by BLM issuing either a Finding of No Significant Impact (FONSI) for an EA or a Record of Decision (ROD) for an EIS. Then, on an annual basis, BLM should evaluate the key permitting milestone data for all the projects completed during that fiscal year to identify reoccurring bottlenecks associated with one or more of the steps and assess how the permitting process for future projects could be improved to eliminate or minimize the identified bottleneck(s).

Another shortcoming of the BLM's proposed metric is that it focuses solely on Mining Plans of Operation (MPO) and omits tracking the amount of time it takes BLM to authorize Exploration

² <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/mining-performance-metrics>

Plans of Operation (EPO). Not including exploration in BLM's permit metrics analysis is a serious omission which does not fulfill the statutory requirements in Subsections 40206(d), (e), and (f) of the BIL, which clearly includes exploration as well as mining. Excluding permit tracking for exploration projects overlooks a significant segment of the overall permitting process and the aggregate time required to secure BLM's approval of the multiple permits (e.g., several EPOs prior to the MPO) needed to explore for and discover minerals that are ultimately mined.

Many years of mineral exploration are typically required to discover a mineral project that can ultimately be developed into a mine, with permitting required during the entire exploration phase of the mineral lifecycle. An EPO requires BLM to prepare a NEPA document, usually an EA, which can take a year or more to complete. Because mineral exploration is an iterative data-gathering process, the exploration program for a project that has discovered a promising mineral deposit will typically require several EPO modifications, each of which requires a NEPA analysis that usually results in BLM preparing another EA.

BLM must include the cumulative permitting timeline for EPOs, subsequent EPO modifications, and eventually MPOs to satisfy Congressional intent to provide Congress with a complete picture of the total length of time for the mineral lifecycle permitting process. BLM must not restrict the permit tracking exercise to MPOs and the mining phase of the mineral lifecycle, which will generate faulty data that will paint an incomplete picture of the length of time required to permit a mine because it omits the permitting required to authorize the exploration work that is the precursor to mining.

BLM's proposal to use the MLRS to track the metrics is unacceptable because the MLRS is difficult to use and riddled with errors. It will not provide the public or Congress readily accessible and accurate information that is needed to examine and improve the permitting process as required in Subsection 40206(e) of the BIL to:

...develop and publish a performance metric for evaluating the progress made by the Executive branch to expedite the permitting of activities **that will increase exploration for, and development** of, domestic critical minerals, while maintaining environmental standards. (emphasis added)

The IWG Report identifies the protocol entitled "Statewide Project Management Process for EISs and EAs," that the Nevada BLM uses (Nevada Protocol) as a "Best Practice" for project permitting. (See IWG Report, Page 58.) Recommendation C.1 in the IWG Report specifically recommends that BLM "update and adopt the BLM-NV permitting process model as standard operating procedure nationwide." (IWG Report, Page 107.)

BLM's suggested first and second metrics appear to refer to the Nevada Protocol but are too generalized to provide meaningful information about the length of time it takes to advance from one step to the next and the cumulative length of time required to authorize EPOs and MPOs. Because each project will be different, BLM's progress-tracking metrics must be project-specific and provide sufficient detail to allow scrutiny of each of the required steps to determine which steps may be creating delays in the permitting process. The only way to achieve this level of analysis is to compile project-specific permitting data that documents the amount of time it took

the project proponent and BLM to reach the pre-plan submittal and NEPA process milestones once BLM has issued a FONSI or a ROD for that project.

IV. BLM Should Use the ePlanning Portal to Provide Information on Timelines for the Pre-Plan Submittal and NEPA Processes

Project-specific permitting timeline data should be made available on BLM's National NEPA Register³ (ePlanning portal) for all exploration and mining projects showing both the pre-plan submittal and NEPA stages of the permitting process once the permitting process for that project has been completed (i.e., BLM has issued either a FONSI or a ROD). BLM's ePlanning portal is currently used to provide limited information on the NEPA process and access to published NEPA documents. However, it does not currently provide information on the pre-plan submittal process. BLM should expand the use of its ePlanning portal to document the time it took to complete the pre-plan submittal process that is encouraged under the Nevada Protocol.

The ePlanning portal should also clearly document the length of time it took BLM to publish the required notices for a project's EIS in the Federal Register. These notices include the Notice of Intent (NOI) to Prepare an EIS and the Notices of Availability (NOAs) for the Draft and Final EIS documents. For many years there have been chronic and significant delays associated with BLM's review and publication processes for these Federal Register notices, which have added many months to the NEPA process for proposed mining projects. Federal Register notice review and publication delays are not a new problem and have hamstrung the EIS process for many years under both Democratic and Republican administrations. The ePlanning portal must provide project-specific information on the length of time between the BLM Field and State offices sending the NOI and NOA briefing documents to BLM officials in Washington, DC and the time it took for these officials to review the NOI and NOA briefing documents, finalize each NOI and NOA, and publish them in the Federal Register. To understand the source of the delays in publishing Federal Register notices, it is important to identify where those delays occur so that appropriate action can be taken to improve the Federal Register notices review and publication process.

BLM should manage the Federal Register notice review and publication process as a separate task that should not be conflated with any substantive review of Draft and Final EIS documents that BLM Washington, DC officials may wish to conduct. Although it may be appropriate for BLM Washington, DC officials to review some EIS documents, like BLM-wide or regional programmatic documents, BLM State, District, and Field office personnel have the necessary background and expertise to review NEPA documents for specific mining projects. Consequently, Washington, DC BLM officials should rely on this project-specific expertise.

BLM should compile metrics on the time it takes to complete the pre-plan submittal process under the Nevada Protocol for both proposed exploration and mining projects. The pre-plan submittal process for an EIS starts with a pre-application meeting and ends when BLM starts the NEPA process by publishing the NOI in the Federal Register to initiate public scoping. Under

³ <https://www.blm.gov/programs/planning-and-nepa/eplanning> and <https://www.blm.gov/programs/planning-and-nepa/eplanning>

the Nevada Protocol, project proponents for exploration projects are strongly encouraged to participate in a pre-application meeting prior to submitting an EPO and collecting baseline data. Developing data to quantify the duration of the pre-plan submittal process will provide important information on the length of the pre-plan submittal process, which for some projects can take several years to complete.

The length of the pre-plan submittal process can vary considerably from project to project. Factors influencing the length of time required to complete the pre-plan submittal process include how long it takes for the project proponent’s contractors to collect the required baseline data or the amount of time the project proponent needs to develop and finalize its exploration or mine plan. In considering the overall mine permitting process, it is important to consider the pre-plan submittal timespan to have an accurate picture of the level of effort necessary to collect the baseline data and to develop the engineering designs required to support and complete the pre-plan submittal process.

The following tables present recommendations for the permitting process milestones that should be tracked using the ePlanning portal:

- Tables 1A through 1C: The Federal Register Notices Review and Publication Processes
- Table 2: The NEPA Process for Mining Project EIS Documents
- Table 3: The NEPA Process for Exploration Project EA Documents

Table 1A – Notice of Intent Milestones Performance Metric Tracking

Nevada Protocol Milestone	Date Completed
BLM Field or District Office prepares Notice of Intent (NOI) documents and sends to BLM State Office	
BLM State Office and Regional Solicitor review the NOI documents	
BLM State Office sends NOI documents to BLM Washington, D.C. Office (BLM HQ)	
BLM HQ sends NOI to EPA and publishes the NOI in the Federal Register starting the public scoping portion of the NEPA process	
NOI Preparation & Publication Total Elapsed Time (Days)	

Table 1B – Notice of Availability for the Draft EIS Process Milestones Performance Metric Tracking

Nevada Protocol Milestone	Date Completed
BLM Field or District Office prepares Notice of Availability (NOA) documents and sends to BLM State Office	
BLM State Office and Regional Solicitor review the NOA documents	
BLM State Office sends NOA documents to BLM HQ	
BLM HQ sends NOA to EPA and publishes the NOA in the Federal Register starting the public comment period for the Draft EIS	
Draft EIS NOA Preparation & Publication Total Elapsed Time (Days)	

**Table 1C – Notice of Availability for the Final EIS Process Milestones
Performance Metric Tracking**

Nevada Protocol Milestone	Date Completed
BLM Field or District Office prepares Notice of Availability (NOA) documents and sends to BLM State Office	
BLM State Office and Regional Solicitor review the NOA documents	
BLM State Office sends NOA documents to BLM HQ	
BLM HQ sends NOA to EPA and publishes the NOA in the Federal Register starting the final appeal period	
Final EIS NOA Preparation & Publication Total Elapsed Time (Days)	

Table 2 EIS Document Preparation Process Milestones ⁴ Performance Metric Tracking

Nevada Protocol Milestone	Date Completed
BLM completes NOI public scoping process and BLM public scoping meetings	
<i>The Administrative Draft EIS (ADEIS) is prepared⁵</i>	
<i>Contractor or PP revises the ADEIS based on review by BLM and Cooperating Agencies (CAs) and prepares camera-ready Draft EIS</i>	
BLM publishes NOA in the Federal Register starting the 45-day (or longer) public comment period on the Draft EIS and holds public meetings	
<i>The public comments on the Draft EIS are analyzed and responses formed in the Administrative Final EIS (AFEIS), which is reviewed by BLM and the CAs</i>	
<i>The Final EIS is prepared</i>	
The Record of Decision (ROD) and NOA briefing documents for the Final EIS are prepared	
BLM State Office briefs BLM HQ on Final EIS and sends NOA for Final EIS to BLM HQ	
BLM HQ reviews NOA documents, files Final EIS with EPA and publishes NOA in the Federal Register	
30-day Final EIS availability period	
BLM signs ROD	
EIS Preparation & Publication Total Elapsed Time (Days)	

Table 3 EA Document Preparation Process Milestones⁶ Performance Metric Tracking

⁴ BLM must prepare an EIS for most mining projects.

⁵ Section 107(f) of Title III, Permitting Reform, of the Fiscal Responsibility Act of 2023 (Public Law 118-5, June 3, 2023) on “Sponsor Preparation” directs federal agencies to: “Prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency. Such agency may provide such sponsor with appropriate guidance and assist in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents.” Pursuant to Section 107(f), project proponents may elect to perform the tasks shown on Table 2 in italics.

⁶ BLM will prepare an EA for most exploration projects.

Nevada Protocol Milestone	Date Completed
Proponent and BLM have pre-application meeting and discuss baseline data requirements	
Proponent submits baseline studies and EPO	
Optional public scoping	
Proponent’s contractor works with BLM to develop Preliminary EA	
BLM notifies interested public about the availability of the Preliminary EA and asks for public comments	
BLM and contractor respond to public comments and finalize the EA	
BLM issues FONSI (or decides an EIS is necessary)	
EA Preparation & Publication Total Elapsed Time (Days)	

V. Conclusions

The WMC applauds the BLM for starting this conversation, but there are multiple aspects of this proposal that must be changed for it to have any positive and meaningful long-term effect on the mine permitting process. As we discuss above in Section III, the analysis must begin with the exploration process. Without exploration, there is no mining. As such, the timeline must include those initial permitting activities for exploration that could eventually result in locating an economic mineral deposit. If exploration timeframes are not included, the process of tracking only the three proposed metrics is flawed and incomplete, resulting in inaccurate data.

Clearly, the desired outcome of tracking metrics of any type is to better understand a process and then to enhance or augment that process such that the end product is useful and provides the information or data that is being sought. Also clearly, a process of such intricacy and detail as we have discussed herein requires more than just a high-level cursory analysis. To acquire meaningful and useful information, the BLM should consider collecting information on the permitting milestones shown in the tables in Section IV and adding a new section to the ePlanning portal to present the resulting information. For the reasons discussed above, the MLRS is not the appropriate vehicle for permit tracking.

Now, more than ever, the United States must have a clearly defined and time-delimited process by which a proponent can explore, assess, and then permit a new mining operation. Without such a process, the Administration’s push for a clean energy future simply will not happen. If we do not establish such a process soon, we will not achieve these future energy goals. The WMC looks forward to assisting the BLM in this process moving forward.

Finally, WMC will be sending a copy of this letter to the Secretary of Agriculture with a note that Section 40206 of the BIL requires *both* the Secretaries of the Interior and Agriculture to develop permit performance metrics. The permitting process for projects on National Forest System lands is also plagued by delays that need to be addressed to comply with Congress’ directive to improve and streamline the permitting process for critical minerals. To date, WMC has not seen a response from Secretary Vilsack to respond to this important Congressional mandate or to develop permit performance metrics.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Teresa A. Conner". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Teresa A. Conner
WMC Director
conner.associates.nv@gmail.com

A handwritten signature in purple ink, appearing to read "Debra W. Struhsacker". The signature is cursive and clearly legible.

Debra W. Struhsacker
WMC Co-Founder and Director
debra@struhsacker.com