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March 7, 2022

Ms. Eve Barnett  
Policy and Intergovernmental Affairs Analyst  
Office of Intergovernmental and External Affairs  
Office of the Secretary, Department of the Interior  
Washington, D.C. 20240

Re: **Docket No. DOI-2021-0016: Request for Information to Inform Interagency Efforts to Develop the American Conservation and Stewardship Atlas (Vol. 87, No. 2 – Tuesday, January 4, 2022, pp. 235 – 236)**

Dear Ms. Barnett:

## **I. Introduction**

The Women's Mining Coalition (WMC) is submitting these comments in response to the Secretary of the Interior's request for information on the types of conservation efforts that should be included in the American Conservation and Stewardship Atlas (Atlas) that the Secretary is developing along with the other federal agencies that are participating in an Interagency Working Group (IWG) comprised of the Council on Environmental Quality (CEQ), Department of Agriculture (USDA), and Department of Commerce (DOC) through the National Oceanic and Atmospheric Administration (NOAA). WMC members have a great deal of experience with mineral exploration and development projects that include extensive environmental protection measures designed to avoid, minimize, and mitigate environmental impacts consistent with federal and state laws governing these activities. We are therefore well qualified to discuss the conservation efforts that are an integral part of modern mineral resource development activities. Many of our comments reflect this expertise and focus on how mineral activities are compatible with and support broad conservation objectives.

WMC is a grassroots organization with members nationwide. Our members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and mining-related distribution, manufacturing, transportation, and service industries. We endeavor to meet regularly with members of Congress and their staff, and federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

## **II. Lack of a Clearly Defined Purpose**

Since the 30 by 30 Initiative was declared pursuant to Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, there has been no clearly defined purpose or set of goals delineated by the



Department of Interior (DOI). The April 14, 2021 letter from members of the House Committee on Natural Resources to Secretary Haaland described significant concerns about the lack of information regarding this initiative. WMC shares these concerns. There remain numerous unanswered questions regarding the following:

- The precise quantification of lands already under some form of protection; and quantification of potential new lands that would fall under this initiative;
- The feasibility of pulling additional lands into the public land management system when there are already countless issues around current management;
- How local opposition would be addressed; and
- The lack of economic analyses of lands proposed for inclusion into this initiative and the resulting impacts to local communities.

Additionally, WMC is especially concerned about the lack of analysis on the impact of including new lands under this initiative and simultaneously making it more difficult if not impossible to explore for and develop minerals. The 30 by 30 Initiative flies in the face of the Administration's purported desires to obtain domestic sources of the minerals needed to increase the use of clean energy (solar power, wind energy, etc.) and improve the mineral supply chain.

In point of fact, the May and December 2021 progress reports for this initiative do not include any mention of exploration and mining as one of the many multiple uses of public lands, which is of significant concern to WMC. Uncertainty around if and how this initiative may restrict access to public lands for exploration, mining, and other multiple uses and potentially impede access to nearby private lands is equally disconcerting.

### **III. Conservation versus Preservation**

WMC is concerned that the conservation goal outlined in the Conserving and Restoring America the Beautiful Initiative (30 by 30 Initiative) inappropriately conflates conservation and preservation. Conservation versus preservation are two distinctly different land management objectives with important differences between them. The National Geographic Society does an excellent job of explaining the differences between conservation and preservation<sup>1</sup>:

*Conservation is similar to preservation, but while both relate to the protection of nature, they strive to accomplish this task in different ways. Conservation seeks the sustainable use of nature by humans, for activities such as hunting, logging, or mining, while preservation means protecting nature from human use.*

*This difference is illustrated by how the United States manages its public lands. The goal of National Parks, for instance, is preservation with an emphasis on causing minimal change to the*

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<sup>1</sup> <https://www.nationalgeographic.org/encyclopedia/conservation/>



*landscape or environment, meanwhile National Forests can be used for cattle grazing, lumber, hunting, and recreation.*

Going forward, it is imperative that the IWG carefully distinguish between the two and not blur the distinction between conservation and preservation. Recognizing the distinction between conservation and preservation land management principles would help the IWG clearly define the goals of the 30 by 30 Initiative.

The federal laws governing management of federal lands establish very different directives for conservation and preservation. Most public lands are governed by laws designed to promote conservation. Examples of conservation-based statutes include the Federal Land Policy and Management Act of 1976 (FLPMA) for lands that are administered by the U.S. Bureau of Land Management (BLM.) On National Forest System lands that are managed by the U.S. Forest Service, conservation-focused statutes include the Multiple Use-Sustained Yield Act (MUSY), and National Forest Management Act (NFMA).<sup>2</sup>

A key principle of these conservation-based land management statutes is that the Nation's public lands and National Forests are to be managed in a way that balances natural resource use and development, grazing, recreation, logging, and other multiple uses with environmental protection and conservation objectives. For example, in FLPMA Section 102(a)(7) Congress directs the Nation's public lands be managed "on the basis of multiple use and sustained yield unless otherwise specified by law." In compliance with FLPMA Section 102(a)(2), BLM must perform periodic and systematic inventories of public lands through a land use planning process that is coordinated with other State and Federal planning purposes.

In creating the Atlas, the IWG should use the BLM land use plans developed pursuant to the existing FLPMA-mandated land use planning process and the U.S. Forest Service's Land and Resource Management Plans as the foundations for its future inventory of lands for inclusion in the Atlas. The IWG should avoid creating a duplicative inventory process.

FLPMA Section 102(a)(4) constrains the authority of the Executive Branch to "withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive Branch may withdraw lands without legislative action." Given this directive, the 30 by 30 Initiative cannot be used to put large swaths of land off-limits to multiple uses including mineral exploration and development.

FLPMA Section 102(a)(12) specifically directs that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." The future actions of the IWG must comply with this directive – especially in light of the growing awareness of the vulnerability of U.S. supply chains for critical minerals, food, and other essential consumer products and industrial raw materials as discussed below in Section IV.

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<sup>2</sup> See, e.g., Federal Land Policy and Management Act (FLPMA), 43 U.S.C.A. § 1702, et seq.; Multiple Use-Sustained Yield Act (MUSY), 16 U.S.C.A. § 531, et seq.; National Forest Management Act (NFMA), 16 U.S.C.A. § 1600, et seq.



In directing management of public lands for multiple uses, FLPMA also establishes an important environmental protection and conservation land use management principle. FLPMA Section 302(b) expressly mandates that all uses of BLM-administered public lands must prevent unnecessary or undue degradation (UUD).

In 1980, BLM created a special regulatory program, the 43 CFR 3809 surface management regulations for locatable minerals, to ensure all mineral activities comply with the FLPMA UUD environmental protection standard. BLM developed the 3809 regulations expressly to implement the UUD mandate:

The purposes of this subpart are to: Prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws. Anyone intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas. This subpart establishes procedures and standards to ensure that operators and mining claimants meet this responsibility. (43 CFR 3809.1(a))

Section 420 of the 3809 regulations includes a comprehensive list of environmental performance standards that provide detailed requirements for complying with the UUD standard. The U.S. Forest Service has comparable regulations governing mineral activities on National Forest System Lands at 36 CFR Subpart 228A.

Agencies have a duty under these laws and regulations to manage federal lands to balance multiple uses and conservation. Despite this obligation, EO 14008 does not define conservation or acknowledge the conservation, restoration, and preservation directives in FLPMA and other relevant statutes.

#### **IV. The First Step: IWG Needs to Prepare an Inventory of Lands Currently Identified for Preservation or Conservation Purposes**

Before the IWG can embark on the goal of identifying 30 percent of the Nation's lands and waters for conservation by 2030, it is essential to know how much land and water is already managed for conservation purposes. A related and equally important question is how much land and water has already been designated for preservation purposes. Quantifying the amount of land and water that is already selected for conservation and preservation is essential baseline data that must be the foundation for future initiatives to identify additional conservation and preservation lands.

A great deal of land and water is already managed for conservation or set aside for preservation. John Leshy, Esq., the Department of the Interior (DOI) Solicitor during the Clinton administration, recently published a book entitled "*On Common Ground: A History of America's Public Lands*"<sup>3</sup> that presents data showing that out of the 600 million acres of reserved public lands, conservation and preservation principles already govern roughly 400 million acres. Consequently, these lands are functionally off-limits to development, including mining.

According to Mr. Leshy, during the period from 1980 to 2020, the acres of conservation and preservation lands grew from 250 million to 400 million. These statistics show that existing land withdrawal and

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<sup>3</sup> <https://yalebooks.yale.edu/book/9780300235784/our-common-ground>



conservation measures are effective in placing special land use management restrictions on vast swaths of land. Indeed, these tools have already designated an enormous 66 percent of the Nation's public lands for special management purposes. The significant amount of lands that are already managed for conservation and preservation calls into question the need for a new initiative to identify 30 percent of the Nation's lands and waters as conservation lands. Mr. Leshy's research suggests that goal has been eclipsed twofold.

Rather than looking for additional lands and waters to conserve, WMC suggests the IWG conduct an inventory of *existing* conservation and preservation lands and waters to identify those lands and waters where conditions are not optimal and where these lands and waters could benefit from investments to improve, remediate, or restore the quality of the environment. Examples of widespread environmental challenges on U.S. public lands, some of which are designated for conservation and preservation purposes, include the effects of wildfire, insect infestations, the spread of noxious and invasive species, feral horse and burro populations that greatly exceed appropriate herd management levels, water quality problems and safety hazards at abandoned mines, and impacts due to drought. The IWG's priority should be to take care of and improve the lands and waters already chosen for conservation and preservation purposes as opposed to adding additional lands for those purposes.

Because there are insufficient funds to repair and ameliorate conditions on existing conservation lands and waters, it is inappropriate to create new conservation lands and waters that will require ongoing and future maintenance. It makes no sense to increase the public's financial burden for managing public lands and conservation waters.

Proper procedures must be followed in conjunction with delineating new conservation lands including compliance with BLM's and the Forest Service's land use and resource management planning authorities and regulations and preparation of National Environmental Policy Act of 1969 (NEPA)<sup>4</sup> documents to carefully evaluate the consequences of designating lands for special conservation purposes. NEPA directs all agencies of the Federal Government to conduct NEPA analyses which give "appropriate consideration in decisionmaking along with economic and technical considerations." (Sec. 102 (B)) when proposing "...major Federal actions significantly affecting the quality of the human environment..." (Sec. 102 (C)). In light of the provisions of this Act and the agencies' land use planning procedures, land conservation proposals suggested pursuant to the 30 by 30 Initiative cannot simply be designated by Executive fiat under the Initiative. Each designation should be treated as a major Federal action subject to NEPA, which will consume agency resources to prepare costly and time-consuming NEPA documents. The NEPA analyses must include and carefully evaluate the Mineral Potential Reports discussed below.

## **V. The 30 by 30 Initiative and Atlas Must Consider the Country's Urgent Need for Minerals to Reduce Mineral Imports and to Build Clean Energy Infrastructure**

Since 1995, the U.S. reliance on foreign minerals has nearly doubled. In 1995 we imported 100 percent of just eight minerals and 50 percent or more of 16 minerals. Today, we import 100 percent of 17

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<sup>4</sup> Pub. L. 91-190, U.S.C. 4321 – 4347



minerals and 50 percent or more for another 30 minerals<sup>5</sup>. At this rate, in another 26 years we will be completely or partially reliant on foreign countries for over 90 minerals.

The country's current and future reliance on foreign minerals – including critical minerals – will be exacerbated if new lands are deemed more important for conservation and thereby subject to land use restrictions that make mining more difficult or even impossible. Before the 30 by 30 Initiative and Atlas designate new conservation lands where mining is significantly constrained or prohibited, the U.S. Geological Survey (USGS) should prepare Mineral Potential Reports to assess the potential presence of mineral resources that should remain available for responsible exploration and development.

Because minerals are essential to all aspects of our lives including but not limited to our economy, national defense, conventional and renewable energy infrastructure, manufacturing, communications, and technology, conservation decisions must carefully balance the Nation's need for minerals with its conservation objectives. Thanks to the modern federal and state laws and regulations governing mining, conservation objectives and mine development are not mutually exclusive. The environmental protection mandates, reclamation requirements, and financial assurance programs that guarantee mines will be reclaimed, ensure a long-term conservation outcome at today's mines.

Minerals like copper, lithium, antimony, vanadium, nickel, cobalt, rare earths, uranium, silver, and gold are needed to achieve the Nation's clean energy and carbon emission reduction goals. The Biden Administration recognizes the urgent need for domestic supplies of the minerals needed to build clean energy infrastructure and manufacture clean energy equipment such as wind turbines, solar panels, and lithium-ion batteries for electric vehicles and energy storage, among other things. If, however, the lands containing these resources are put off limits because they are incorporated into the 30 by 30 Initiative, the pursuit of these clean technologies becomes difficult if not impossible due to the lack of an adequate mineral supply to manufacture these technologies.

The Administration recently focused on the urgent need to strengthen domestic mineral supply chains in its February 24, 2022 policy statement entitled "The Biden-Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022"<sup>6</sup>:

**Invest in sustainable domestic production and processing of critical minerals.** From rare earths in our electric motors and generators to the carbon fiber used for airplanes, the United States must ensure we are not dependent on foreign or single sources for critical minerals... Today, as part of the Mining Innovations for Negative Emissions Resources (MINER) Program, DOE is also releasing a \$44 million funding opportunity to provide commercial-ready technologies that give the United States a net-zero or net negative emissions pathway toward increased domestic supplies of copper, nickel, lithium, cobalt, rare earth elements, and other critical elements required for a clean energy transition. These and other efforts to secure a reliable, sustainable, and diverse supply of critical minerals and materials will help the United States meet its climate goals while creating good paying jobs and boosting U.S. competitiveness.

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<sup>5</sup> <https://pubs.er.usgs.gov/publication/mcs2021>

<sup>6</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022/>



Consequently, the 30 by 30 Initiative and the Atlas must carefully consider the Biden Administration's policy priorities to strengthen domestic supply chains for the minerals that are essential in clean energy infrastructure and technology.

The 2021 International Energy Agency Report entitled "*The Role of Critical Minerals in Clean Energy Transitions*"<sup>7</sup> summarizes and quantifies the need for minerals to support the transition from fossil fuels to clean energy as follows:

"An energy system powered by clean energy technologies differs profoundly from one fueled by traditional hydrocarbon resources. Solar photovoltaic (PV) plants, wind farms and electric vehicles (EVs) generally require more minerals to build than their fossil fuel-based counterparts. A typical electric car requires six times the mineral inputs of a conventional car and an onshore wind plant requires nine times more mineral resources than a gas-fired plant. Since 2010 the average amount of minerals needed for a new unit of power generation capacity has increased by 50% as the share of renewables in new investment has risen.

The types of mineral resources used vary by technology. Lithium, nickel, cobalt, manganese and graphite are crucial to battery performance, longevity and energy density. Rare earth elements are essential for permanent magnets that are vital for wind turbines and EV motors. Electricity networks need a huge amount of copper and aluminum, with copper being a cornerstone for all electricity-related technologies.

The shift to a clean energy system is set to drive a huge increase in the requirements for these minerals...In a scenario that meets the Paris Agreement goals...total [minerals] demand rises significantly over the next two decades to over 40% for copper and rare earth elements, 60-70% for nickel and cobalt, and almost 90% for lithium. EVs and battery storage have already displaced consumer electronics to become the largest consumer of lithium and are set to take over from stainless steel as the largest end user of nickel by 2040."

In response to the Administration's focus on clean energy and the universal recognition of the enormous increase in the projected demand for minerals to achieve clean energy and decarbonization, the 30 by 30 Initiative and Atlas must avoid imposing land management restrictions that impede mineral exploration and development and recognize the conservation practices in place at modern mineral exploration projects and mining operations. New exploration and mining operations are already considerably restricted or even banned on more than half of all federally-own land. The 30 by 30 Initiative appears to be intent on restricting even more of these lands which will make the mining industry's job even more difficult. Mineral deposits are naturally occurring geologic phenomena that exist where Mother Nature put them and that are subsequently found by lucky and talented geologists. They cannot be moved to different locations to accommodate ill-considered policies that don't reflect this geologic reality.

## **VI. Recognize and Support Abandoned Mine Land Reclamation as an Important Conservation Effort**

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<sup>7</sup> <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary>



The IWG should designate reclamation and restoration of lands impacted by pre-regulation, abandoned mines as an important conservation tool that would improve environmental conditions and abate safety hazards at old locatable minerals mines throughout the western U.S. and at midwestern and eastern coal mines. Removing or minimizing the liability obstacles impeding Good Samaritan reclamation of mine sites developed long before the enactment of modern environmental protection laws and regulations and for which there is no viable owner would be a significant step in increasing and stimulating conservation efforts.

Although WMC has serious concerns about the recently announced Biden-Harris Mining Law Reform Principles<sup>8</sup>, we strongly support the suggestion in Principle No. 5 that addresses the liability barriers that currently chill private- and public-sector investment in reclaiming old and abandoned mines:

Congress should...provide legal certainty for Good Samaritans working to remediate legacy pollution, including providing for permits and, as appropriate, exemptions from or specialized provisions of environmental laws and regulations that may otherwise dissuade Good Samaritans from undertaking cleanup activities. This should include consideration of projects which may responsibly extract critical minerals from legacy mine wastes, thereby avoiding the need for additional greenfield mine development.”

## VII. Conclusion

WMC appreciates this opportunity to respond to the Secretary’s request for information to inform the IWG’s efforts to develop the Atlas. WMC recognizes the importance of conservation. Many of our members are directly responsible for implementing environmental protection and conservation measures at the mineral exploration projects and mine sites where they are employed. We would welcome the opportunity to engage with the IWG in the future to provide examples of the many successful conservation measures in place at today’s mines.

Respectfully,

A handwritten signature in black ink that reads "Teresa Conner".

Teresa Conner  
Director, Women’s Mining Coalition

A handwritten signature in blue ink that reads "Debra W. Struhsacker".

Debra Struhsacker  
Co-Founder and Director Women’s Mining  
Coalition

For more information about WMC, please contact us at [Emily.arthun@wmc-usa.org](mailto:Emily.arthun@wmc-usa.org)  
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<sup>8</sup> <https://www.doi.gov/sites/doi.gov/files/biden-harris-administration-fundamental-principles-for-domestic-mining-reform.pdf>