

Interagency Working Group on Mining Laws, Regulations, and Permitting Release Final Report on Proposed U.S. Mining Reforms on Public Lands

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by Wells Parker and Kayla Weiser-Burton

In the Fall of 2023, the Interagency Working Group on Mining Laws, Regulations, and Permitting (“IWG”) released its final report containing recommendations to reform how mining is conducted on public lands (the “Final Report”). The IWG was formed to convene experts across various agencies and receive input from the public in order to assess the adequacy of the existing regulatory scheme governing domestic hardrock mining, and to determine whether changes to that scheme were necessary to satisfy the goals set forth in the E.O. 14017 100-Day reviews. 87 Fed. Reg. 18811 (Mar. 31, 2022).

The Final Report included a range of recommendations, including those which would require legislative action by Congress, those which would require Federal agencies to promulgate or amend existing regulations, and other recommendations that may be achieved by updating Federal or agency policies. Some of the key recommendations which substantially differ from current mining regulation include the following:

- **Leasing System** - The Final Report recommends replacing the current mine claim location system with a leasing system by amending the General Mining Law of 1872 to permanently end patenting of Federal lands, and developing for use a leasing system that would provide access to hardrock minerals on public lands. *Id.* at 99. Additionally, the IWG recommended that once a leasing system is established, a programmatic Environmental Impact Statement to incorporate mining into land use planning processes be prepared and adopted for the eleven contiguous Western states and Alaska. *Id.* at 97.
- **Royalties** - The Final Report recommends that Congress enact a royalty for hardrock mineral production from Federal lands, with a minimum of four percent and a maximum of eight percent. *Id.* at 104. The IWG is not taking a stance on whether such a royalty would apply only to new mines, expansions on existing mines, or on all new and existing mines and operations.
- **Dirt Tax** - In addition to the federal royalty approach to obtain fair compensation for taxpayers for those minerals extracted from Federal lands, the Final Report also includes a recommendation for Congress to adopt a 7-cent per ton fee on “material displaced by hardrock mining.” *Id.* at 105. The IWG notes that this fee could be applied in conjunction with other means of funding reclamation for abandoned mine

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- *Permitting Reform* - The Final Report recommends the project management process used by the Bureau of Land Management (“BLM”) Nevada state office be updated to reflect the additional recommendations made in the Final Report, and be made standard procedure nationwide for both BLM and the United States Forest Service (“USFS”). *Id.* at 107. The project management process as currently implemented is designed to provide consistency and coordination between the project proponent and State and Federal agencies and Tribes, and includes a number of Memorandums of Understanding between BLM and EPA, and BLM and USFS to coordinate the development of NEPA documents for proposed mining operations. *Id.* at 58. The Final Report also recommends the development of project schedules to be made public, and standardizing the information by BLM and USFS which is necessary for exploration plans, mine plans, and relevant permit applications and NEPA submissions. *Id.* at 108. Of note, the IWG does not address the additional directives for permitting reform as stated in the Infrastructure Investment and Jobs Act or in the Fiscal Responsibility Act.

We will be monitoring Congressional action and regulatory proposals on the IWG recommendations and will report on further material developments. If you have any questions or would like to learn more about the Final Report, please contact us.