THE ENERGY PERMITTING REFORM ACT: MINING PROVISIONS

Background

The Energy Permitting Reform Act of 2024 (introduced by Senators Joe Manchin and John Barrasso) would increase oil and gas extraction on public lands, allow approvals of liquefied natural gas (LNG) exports regardless of their impact on the climate or public health, and facilitate the construction of more fossil fuel infrastructure that would lock us into decades of fossil fuel use. Additionally, it would undermine the few protections that regulate how mining operations are conducted on public lands and limit the ability of local communities to seek justice in the courts.

This bill is an expansive giveaway of our public lands to mining companies, worsening the already outdated 1872 mining law, disrupting balanced public land management, and expanding the mining industry's ability to override other uses of public lands (including the siting of clean energy projects).

Sec. 210: Expands Mining Industry Access to Public Lands

Section 210 of the bill allows companies to claim indefinite numbers of millsites on public land, without meaningful limitations, where multinational mining companies can permanently dump toxic waste and construct infrastructure like pipelines and roads. These millsites could block public lands from being used for more suitable purposes, such as renewable energy projects, watershed protection, cultural resources and recreation. This provision would remove any effective limits on millsites and eliminate the requirement that such claims must be located only on non-mineral land, a key feature that prevents lands with valuable minerals from being buried under waste or made inaccessible.

Several additional provisions would weaken, if not negate, over a century of precedent that 1) requires operators to find valuable minerals before they gain rights to extract them under the mining law and 2) limits those rights to within the boundaries of a valid mining claim. These longstanding legal requirements have served a critical role in protecting public lands from overexploitation under our permissive mining law. But, through a series of convoluted subsections, this legislation could render those requirements meaningless.

- Codifying 43 C.F.R. 3809.5: Section 210(a)(c)(1)(B) would codify a regulation that defines all activities related to mining under the term "operations," even if they are not directly on a mining claim. This is problematic because the government and mining industry have argued that this regulation means mining companies have a limitless right to conduct operations on public lands. Though courts have rejected that argument, the proposed legislation arguably sanctions it, giving mining companies free reign to conduct a wide variety of activities (such as building pipelines) without obtaining the necessary permits and Rights-of-Way which protect against adverse impacts on the environment and cultural sites. These permits have been required for every industrial user of public lands since the passage of the Federal Land Policy and Management Act (FLPMA) in 1976, but this bill could create an exemption that applies only to mining companies.

- **Possessory Rights:** Furthermore, Section 210(a)(c)(2)(B) would give operators the right to use all public land covered by an approved plan of operations, regardless of whether their mining claims are valid. The net result of these two sections ((c)(1)(B) and (c)(2)(B)) essentially gives mining companies a nearly unlimited right to mine on and develop public lands in addition to getting to dump that waste on an indefinite amount of public lands under the millsites provision.
- **The Savings Clause:** Finally, Section 210(a)(c)(8)(D) states that mining companies still have to prove that there are valuable mineral deposits on claims within lands that have been withdrawn from mining. However, the exclusion of similar language for claims on unwithdrawn lands could be read by a court to imply that such checks are no longer needed for claims on unwithdrawn lands, which make up the vast majority of most public lands. It also suggests that federal laws about mining would only apply to withdrawn lands, potentially undoing over a century of laws that cover unwithdrawn lands.

Conclusion

Section 210 would shift the balance of power away from communities, the environment, and the clean energy future, giving the mining industry even greater control over public lands than they already enjoy under the regressive 1872 Mining Law. Instead of approving this massive giveaway, Congress should be enacting legislation that would, as identified by the Interagency Working Group on Mining Laws, Regulations, and Permitting, close loopholes for foreign companies, improve environmental standards, and create competitive leasing to balance the nation's clean energy mineral needs with other public land uses, such as renewable energy projects, cultural and historical resources, ranching, recreation, water resources, and wildlife.