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August 30, 2022

Mr. Steve Feldgus
Deputy Assistant Secretary, Land and Minerals Management
Department of the Interior
Bureau of Land Management
Division of Solid Minerals
1849 C Street NW, Room 5645
Washington, DC 20240

Re: Request for Information to Inform Interagency Working Group on Mining Regulations, Laws, and Permitting (FR Vol 87, No.62, pp. 18811-18812)

Dear Mr. Feldgus,

The Alaska Miners Association (AMA) appreciates the opportunity to respond to the March 31, 2022 request by the Interagency Working Group (IWG) on Mining Regulations, Laws and Permitting for information on the mining industry in the United States. The IWG was formed in response to the 100-day report issued June 8, 2021 pursuant to Executive Order (E.O.) 14017, "America's Supply Chains."

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

Within Alaska's borders there are five large-scale operating hardrock mines: The Red Dog zinc and lead mine in Northwestern Alaska, the Fort Knox gold mine near Fairbanks, the Pogo gold mine near Delta Junction, the Kensington gold mine in Southeast Alaska, and the Greens Creek silver, lead, and gold mine in Southeast. There are also three large hardrock projects currently in the permitting process: the Donlin gold project and the Pebble copper, gold, and molybdenum project, both in Southwestern Alaska, and Manh Choh, a gold project in Interior Alaska. Finally, while there are currently 50 significant exploration projects in Alaska, there are seven large hardrock projects considered to be in advanced exploration. Advanced exploration status is defined by a mineral prospect with defined or known reserves, having undergone robust environmental baseline studies and engineering evaluation, and in pursuit of a permit application in the foreseeable future.

Aside from large-scale hardrock mining, Alaska is home to the vast majority of the nation's placer miners. Placer mining is conducted differently than large-scale hardrock mining, through a practice of excavating sand and gravel soils and using water separation to recover gold. While the placer mining process is done differently, the industry is still heavily regulated and Alaska's 150 placer mining operations stand to be significantly impacted by changes considered by the IWG. A fact sheet outlining placer mining regulation in

Alaska on private, State of Alaska, United States Forest Service, and Bureau of Land Management lands may be accessed [here](#).

Alaska’s operating large and placer hardrock mines, exploration projects, and supporting activities account for considerable economic and community benefits. Mining companies pay the largest share of local taxes to communities in Northwest, Interior, and Southeast Alaska, totaling \$44 million in 2021. The mines also pay local sales tax on the purchases of their goods and services, such as the instance of \$727,000 from the Greens Creek Mine sales tax revenue to the City and Borough of Juneau in 2021. In 2021, mining provided the State of Alaska with \$83 million in revenues through taxes, royalties, and payments to state-owned entities.

Mining also significantly contributes to Alaska Native Corporations (ANCs). We detail the Alaska Native Claims Settlement Act (ANCSA), which established ANCs, and industry partnerships with ANCs further in this letter under the appropriate IWG question. ANCs own 44 million acres of privately held land that were selected for their economic potential. In 2021, mining at the Red Dog mine provided \$161 million to the NANA Regional Corporation, of which \$98 million was redistributed to the other ANCs per Section 7(v) of ANCSA.

Mining jobs in Alaska are some of the best in the state. In 2021, direct mining industry employment (meaning those working in or at a mine) totaled 5,400 jobs and \$625 million in annual wages. Multiplier effects, meaning a job that exists because of mining, brings industry employment up to 10,800 jobs and \$985 million in wages. These are stable, often year-round jobs that can support a family: the average annual wage for an Alaska miner is \$115,000. This is twice the state average for all economic sectors.

Perhaps most significant is the distribution of mining employment in Alaska. Mining employees live in over 95 Alaska communities, half of which are found in rural Alaska and in Alaska Native communities, where few other jobs are available. These are depicted by the yellow dots on this statewide map:





With the right regulatory climate in place, mining employment in Alaska could soar. The advanced exploration projects defined above, if developed, would add an estimated 3,000 of these high-paying jobs for Alaskans.

Lastly, the community benefits seen from mining activity in Alaska is impressive and appreciated. Last year, Alaska's mines and projects spent \$640 million on goods and services within the state of Alaska, with Alaska businesses, keeping that spend in the communities.

Sources: please see [*The Economic and Community Benefits of Alaska's Mining Industry*](#) report

It is with the mining industry's major contributions in mind that we submit comments on the IWG Request for Information to urge policies that incentivize responsible mineral development for our state.

Background for IWG Request for Information

There are several policy directives that have spurred the formation of the IWG and the RFI that this letter will address. On February 24, 2021, President Biden signed [Executive Order 14017](#), "America's Supply Chains" which contained a directive for the Federal Government to establish an *"interagency team with expertise in mine permitting and environmental law to identify gaps in statutes and regulations that may need to be updated to ensure new production meets strong environmental standards throughout the lifecycle of the project, ensure meaningful community consultation and consultation with tribal nations, respecting the government to government relationship at all stages of the mining process, and examine opportunities to reduce time, cost, and risk of permitting without compromising these strong environmental and consultation bookmark."*

On September 16, 2021, DOI received a Petition for Rulemaking from nine tribal and 31 conservation groups requesting "a rulemaking to strengthen and modernize [the Bureau of Land Management's] regulations at 43 CFR 3800 et seq."

Finally, with the passage of the Infrastructure Investment and Jobs Act (IIJA); section 40206 on "Critical Minerals Supply Chains and Reliability," directs the Secretaries of the Interior and Agriculture to submit a report to Congress by November 15, 2022, that "identifies additional measures, including regulatory and legislative proposals, if appropriate, that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals."

The comments following are organized by the 12 questions posed by the IWG in the RFI. As the Federal Register notice indicates, the questions are not meant to be comprehensive, but rather to than inform the public about the breadth of issues to be considered under federal hardrock mining regulation. Due to the nationwide scope posed under the IWG, AMA enthusiastically endorses the comments submitted by the National Mining Association (NMA) and the American Exploration & Mining Association (AEMA). These organizations have expansive technical and legal expertise and have great abilities to represent the mining industry across America, which is of course diverse in geography, climate, socioeconomics, and other characteristics. For our comments, we have chosen to focus on mining specifically in Alaska. It is our hope that the IWG will review these comments and observe that Alaska has one of the best regulatory systems in the world that protects and enhances the environment before, during, and long after development. Alaska also has structures in place to ensure positive and meaningful relationships with Alaska Native organizations and shareholders as well as the communities in which mining activity takes place. There

should be no question that the vast mineral resources Alaska has can contribute to growing mineral demand worldwide, and our federal regulatory system should accommodate for that.

AMA Responses to the Request for Information Questions

RFI Question 1:

Would alternatives to the existing claim system, such as leasing, or adjustments to the current system, such as incorporating mining into comprehensive federal lands use assessments and planning, lead to better outcomes for communities, environment and a secure domestic supply of minerals? If so, how should such an alternative or adjusted system be structured?

United States Mining Law (Mining Law of 1872 § 1, 17 Stat. 91) governs access to public lands in which United States citizens can explore for and obtain mineral rights (*we discuss this in further detail in the RFI Question 8 on the subject*). The existing system provides for self-initiation in which claims are pursued by private parties and deposits are explored for their development potential. Once a deposit is identified as prospective, activities must meet environmental protection requirements and obtain necessary approvals. The current system works well and frequently fosters the development of small or early stage mines in areas where the resource would otherwise go untapped. The private claimants assume the major cost burden of exploration and development, and the claims system incentivizes them to go out and find new sources of valuable critical minerals. Per the U.S. goals of maximizing domestic mineral supply chains, this system must be retained.

A leasing system eliminates the private sector initiation by having the government regulate the decisions of private parties' investments, and likely would precipitate a cascade of governmental delays and regulatory costs, thereby driving small businesses away with no apparent benefit to the nation. It is not likely that the U.S. would allow non-competitive leasing, and the very process of running a public leasing system would lead to revelations and speculation about the area, which severely curtails enthusiasm for exploration. Both AEMA's and NMA's comments describe in detail why the metal mining sector is completely different from the oil and gas sector, including how it takes decades to bring a metal mine into production and the importance of secure land tenure that this requires, so we ask that you consider their comments in this regard. Further, any major changes to existing Federal systems will cause significant disruptions for decades as agencies determine how to implement them and project proponents must assess how to work within them. This will inevitably discourage U.S. investment in mining projects at a time where we have immediate needs for critical and strategic domestic mineral supplies.

Finally, from an Alaska perspective, we disagree with the suggestion in the question that major changes will lead to "better outcomes" for communities and the environment. All five of the large producing hardrock mines in Alaska (Pogo, Kensington, Red Dog, Greens Creek, and Kensington) are very well regarded by their surrounding communities and have strong records of protecting the environment. It can be assumed that our development projects, permitted under the same federal and state laws, will be the same.

RFI Question 2:

Are there international mining best practices or standards that the United States should consider adopting, or encourage the U.S. mining industry to adopt? If so, which practices or standards and what improvements or benefits would they provide?

First, we call your attention to our answers to the RFI's permitting and financial assurance questions to illustrate Alaska's best practices and standards accounting for why we have one of the best regulatory systems in the world. Other countries consistently look to the U.S. and its mining professionals for guidance on how to develop and implement their own mining regulatory programs from an environmental protection standpoint.

In fact, we would contend that there are best mining practices, both from industry and agency, in Alaska that the United States should consider adopting. A prime example is the Alaska Department of Natural Resources Office of Project Management and Permitting (OPMP), which coordinates the review of large scale projects in the State. Because of the technical complexity of mining projects and potential impacts needing to be evaluated, companies will often opt to enter into a coordination program with OPMP. OPMP facilitates all interagency coordination, from local, state, and federal agencies involved, and the goal is to achieve all regulatory requirements in an efficient manner that minimizes duplication. Of course, every proposed project is different and involves a different mix of agencies, permitting requirements, statutory responsibilities, and resource management responsibilities. Companies soliciting OPMP coordination enter into a Reimbursable Service Agreement (RSA) in which the company is billed for the agency personnel's time and all resources expended, resulting in no cost to the government and taxpayers. The OPMP model ensures coordination and cooperation to permit projects in a timely manner, fosters communication and public engagement, and does not require public dollars. It is a win-win, and a model the IWG should consider in its recommendations.

We contend that individual state regulatory agencies, with their knowledge of their unique environments, should be the only governments evaluating new practices and standards and that should be done in collaboration with industry experts. This is certainly the case for Alaska: we believe that nobody protects our environment better than the Alaskans who live, work, and play in the state they call home.

However, even with the strong State of Alaska mechanisms in place, our federal permitting deficiencies results in permitting still taking far too long and harboring far too much uncertainty. As AEMA and NMA discuss in their comments, one area where the U.S. could borrow from other countries is permitting reform. As an example, in Canada and Australia, permitting takes 2-3 years on average versus upwards of a decade in the U.S. In Canada, one reason for this is Province-led well harmonized environmental assessment and permitting processes. In the U.S. including Alaska, limited federal agency resources, the lack of rules for interagency cooperation, and inconsistent approaches for every project leads to endless permitting delays, low public confidence in the results of the process, and significant litigation risk. Further, at the local level in Alaska, state agencies often appear to recognize the local, regional, statewide, and national importance of moving mining projects forward. The Administration talks broadly about the immediate need for minerals but on a project-specific consistently acts to discourage investment and development. Additionally, the IWG should recognize States like Alaska that have strong mining regulatory programs and experienced agency personnel, and use this information to encourage greater cooperation among the Federal and State agencies. The IWG should also consider greater deference to state primacy of federal programs in the NEPA process.

RFI Question 3:

If the U.S. were to place royalties on hardrock minerals produced from public domain lands, what factors should be considered and what structures would best protect the interests of the taxpayer while responsibly incentivizing production? In addition, if royalties were collected, how should those revenues be allocated?

First, the IWG must reflect that hardrock royalty mining discussions have been taking place between government and industry for many years, and due to the consistently punitive proposals that lack any understanding of industry economics, addressing a final solution has stalled each time. Industry has presented before Congress explaining the difference between oil and gas and hardrock mining processes and why the gross royalty used in the energy sector is unworkable for hardrock minerals. Oil, gas, and coal have tremendously different geologic characteristics than hardrock deposits, and are also more abundant. By comparison, discovering and developing a hardrock mineral deposit takes much longer and requires a much larger investment.

Although the federal government has made some of its lands available for mineral exploration, it does not bear the immense cost and effort required to find, produce, and process valuable hardrock minerals. Mining companies invest their own funds in a way that already benefits federal taxpayers. Despite these high costs and daunting odds against discovering a valuable mineral deposit that has the feasibility to become a mine, the current Mining Law incentivizes the private-sector investment in a way that transforms undeveloped federal land into economic benefit.

A reasonable royalty structure should be based on the value of the federal government's ownership of the minerals as they are found in the ground, as currently they are worth nothing until the private sector invests massive capital into their extraction, crushing, milling, smelting, refining, and otherwise preparing a mineral product to become salable. The NMA and AEMA extensively detail the amount of mining done on federal public lands, dwindling production, comparisons between gross and net royalty structures and why gross royalties are inappropriate, and what constitutes an appropriate royalty structure for hardrock mining. We encourage the IWG to work to understand what will provide for a reasonable royalty received by the federal government that allows for ongoing and increased mineral development. Make no mistake: establishment of a punitive royalty structure for hardrock mining will lead to significantly less mining on federal lands. It is prudent for the federal government to pursue a structure that works to obtain royalty revenue for itself without entering into a cost burden of its own, and not eliminate the revenue stream in the process.

RFI Question 4:

What changes to financial assurance requirements for mining should be considered?

From a nationwide perspective, we maintain that no changes are required to existing financial assurance requirements underneath the BLM or U.S. Forest Service, nor do we believe there is any need to establish any new requirements. The comprehensive set of federal and state environmental laws and regulations and the existing financial assurance mechanisms in place today were deemed sufficient to protect the environment in the Environmental Protection Agency's decision to not impose additional financial assurance requirements under the Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) in 2018. This followed nearly three years of agency analysis, through two federal Administrations in which the EPA ultimately concluded the environmental regulations and financial assurance requirements for mining fully protect the environment and that a new EPA program would be

duplicative and unnecessary. In its finding, the agency wrote, “EPA has analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulations...[T]he degree and duration of risk associated with the modern production, transportation, treatment, storage or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of [additional EPA] financial responsibility requirements for this sector.”

In its decision, EPA acknowledged that past mining practices at legacy mines, prior to our nation’s stringent environmental laws, are no longer observed today and using those as a barometer to evaluate today’s heavily regulated mines is inappropriate. The decision and 2018 final rule withstood judicial review: in *Idaho Conservation League et al versus Andrew Wheeler and the U.S. Environmental Protection Agency*, the U.S. Court of Appeals for the District of Columbia agreed with EPA’s findings and upheld the agency’s decision that a new financial assurance program for the hardrock mining industry was unwarranted. In July 2019, the Court denied the Petitioners’ request for the Court to vacate EPA’s final rulemaking.

AMA wishes to take this one step further and highlight this response from an Alaska perspective. The financial assurance in place for mines in the State of Alaska is second to none, and the requirement and insurance to ensure a mine cannot harm the environment is an area that Alaska shines above competing jurisdictions.

In addition to the strict regulatory oversight that takes place at mines in Alaska, which is discussed under other answers to RFI questions in this letter, it is State of Alaska law that a mine’s plan for reclaiming the land when the mine life ends must be approved by the Commissioner of the Alaska Department of Natural Resources (DNR) **before** operations are allowed to begin. This applies to all companies, regardless of where they are headquartered, and all mines, regardless of land ownership. Any company in the world operating on any piece of land in Alaska must meet this requirement. There is also tailored financial assurance, meaning, if for some reason the state must step in and perform the reclamation of the site, the money is accessible to the government(s) to cover the cost. The financial assurance amount is also required to be approved and bonded before operations begin.

Financial assurance held by agencies isn’t a fund for companies to use to perform their own reclamation – this is funds guaranteed to the State, so that in the event a company is unable to perform the cleanup, the public and taxpayers are not responsible for the costs. Alaska law, AS 27.19, requires that mining companies put up the financial assurance before mining which reflects the “reasonable and probable cost of reclamation.” All large mines – hardrock and coal – are required to provide the state financial assurance calculated to be the full, actual cost of reclamation. The level of detail that goes into this is significant. The cost of reclamation and post-closure care and maintenance are determined by an exacting process where each cost item is scrutinized by the regulators. These cost items include volumes of material to be moved, current costs of fuel, labor, and fuel, water treatment costs, and even costs for grass seed used for revegetation. These cost items are reviewed at least every 5 years, and DNR can review the financial assurance more often if operations significantly change, or if sudden price increases significantly impact the reclamation cost (and for any other reason, for that matter).

Financial assurance guarantees, the amount and the plan, are reviewed and potentially recalculated every five years, or earlier if necessary, a system unique to Alaska. In the last few decades, like any industry, mining has had occasional bankruptcies. **But during that time, Alaska has had no mine leave land unreclaimed, and not spent a single public dollar reclaiming mine land from this era.**

Table summarizing the financial assurance in place at operating mines and reclaimed/closed mines:

Mine	Status	Amount
Usibelli Coal	Operating	\$11,121,192
Greens Creek	Operating	\$92,000,000
Kensington	Operating	\$30,000,000
Pogo	Operating	\$71,908,000
Red Dog	Operating	\$580,000,000
Fort Knox	Operating	\$102,255,000
True North	Reclaimed	\$620,336
Rock Creek	Reclaimed	\$263,522
Illinois Creek	Reclaimed	\$1,000,000
Ryan Lode	Reclaimed	\$12,140
Nixon Fork	Suspended	\$6,033,000
		\$812,413,190

Based on all of the above, the IWG should recommend no changes to existing financial assurance requirements for modern mines across the nation and allow for the existing structure to continue working successfully. What it should instead focus on is how to encourage reclamation and cleanup of historic mines as discussed in the response to the next question.

RFI Question 4:

How might the U.S. best support reclamation of existing Abandoned Mine Lands (AML) sites including the development of meaningful good Samaritan proposals as well as remining and reprocessing of mine tailings and waste, where feasible?

Alaska's large-scale hardrock mining industry is quite young, with our operating mines today all being permitted after our nation's environmental laws were enacted. While Alaska's lands don't contain the amount of AML sites with the level of need as exists in the contiguous U.S., we have still keenly followed the nationwide dialogue with an interest in seeing a workable Good Samaritan law and/or policy.

Private mining companies that have no legal tie, historical connection, or any other responsibility to an abandoned mine want to volunteer to restore some of the AML sites that exist today. However, liability risks under CERCLA and other statutes limit or impede the work Good Samaritans can do.

CERCLA Section 107(a) states that owners, operators, arrangers, and transporters of a "facility" where there has been a "release" or "threatened release" of a "hazardous substance" as all of those terms are defined in CERCLA Section 101 may be liable for the entire cost of remediating the impacted site. This potential for liability for an entire legacy AML site has stopped most AML remediation. The Clean Water Act has a similar preclusive effect because it is illegal to "discharge a pollutant" from a "point source" to "navigable waters," except in compliance with a permit (Clean Water Act Section 301(a), 33 U.S.C. § 1311(a)). Thus, any efforts to prevent AML site discharges to water would require a permit or subject the would-be cleanup volunteer to liability under the Clean Water Act.

Reclamation of AML sites has largely been a nationwide discussion for decades. While we appreciate the goal to reclaim legacy mining sites, many of the Mining Law bills that have been introduced in Congress during the past 30 years have fallen short on the necessary provisions that will enable reclamation and eliminate the liability. During this time, the mining industry has advocated for bipartisan legislation to facilitate AML cleanup by addressing the statutory liability issues that are a serious barrier to Good Samaritan AML cleanup efforts. Industry has actively worked with members of Congress, EPA, non-profit organizations, and others to craft workable legislation to facilitate AML cleanups.

The current version of S. 3571, “Good Samaritan Remediation of Abandoned Hardrock Mines Act” (the “Good Sam Bill”), is a good start to a long-term solution. It establishes a seven-year pilot program for fifteen Good Samaritan remediation projects of orphan mine sites on Federal, State, Tribal and private lands. The pilot program is limited to orphaned sites (i.e., sites without a liable responsible owner or operator). This pilot program is designed for environmentally lower risk projects and involves activities designed to result in partial or complete remediation of the orphan mine site, improving or enhancing water quality or site-specific soil quality or otherwise protecting human health and the environment. The projects authorized in this bipartisan bill would begin to pave the way towards addressing liability issues at AML sites that do not have complex water quality issues. We strongly urge the IWG to consider and support S. 3571.

In addition to considering S. 3571, we urge the IWG to work with NMA and AEMA on further developing the Good Sam concept, be it prioritization of AML sites, the right funding structure, and further roles industry can play in eliminating hazards and improving the environment at AMLs and inactive mines.

RFI Question 5:

What would a successful mine reclamation program include? Are there existing programs that the U.S. should adopt?

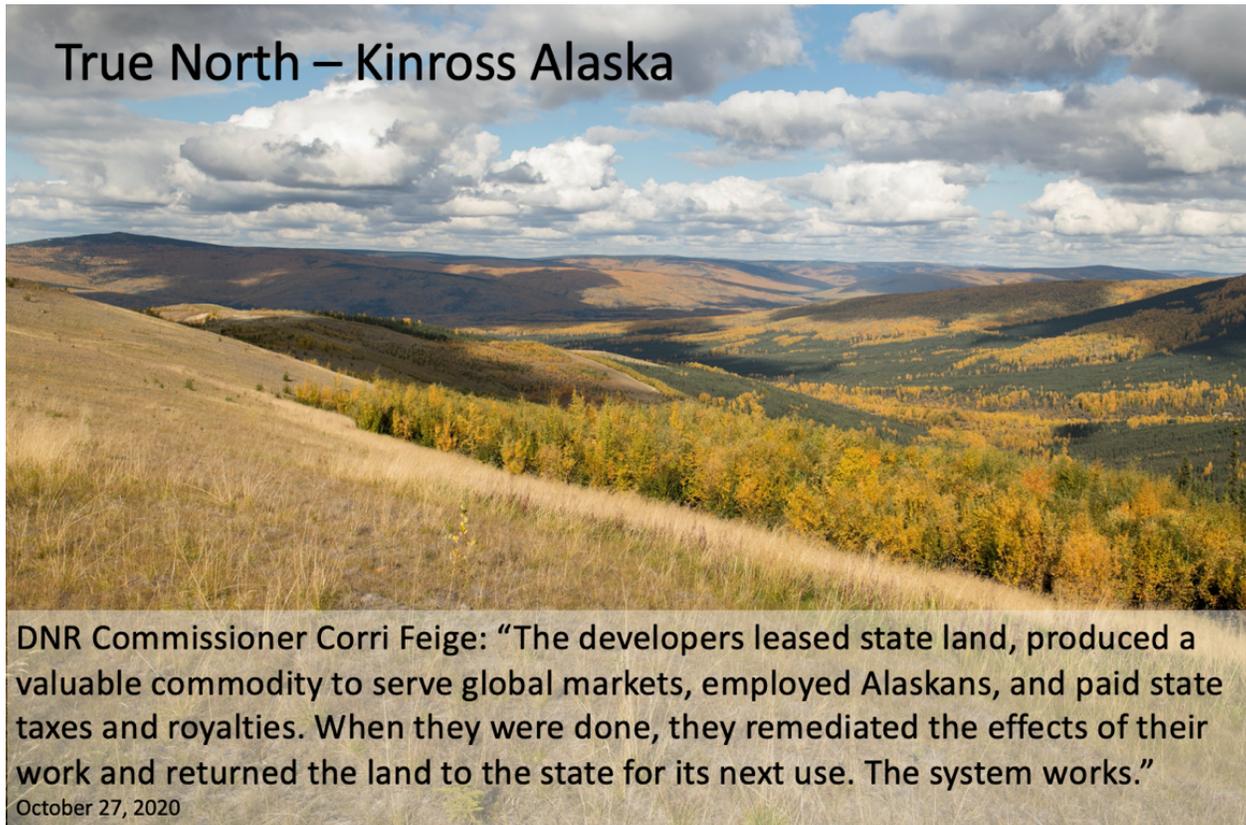
Successful reclamation programs are tailored toward the environment in which a mine is proposed. For Alaska, a reclamation method and strategy for lands located in the temperate rainforests of Ketchikan should be much different than those above the Arctic Circle in Kotzebue. A nationwide program must take this same approach: reclamation effective in parts of Alaska is going to be done in a significantly different fashion than that done in arid Arizona. So, a successful reclamation program is predicated upon a local and region-based relationship between industry and regulatory agencies in which both parties design the right site-specific solutions.

Reclamation programs play the important role of minimizing the potential for future environmental damage and preparing the site for beneficial use after mining. Depending on location, reclamation generally involves such activities as regrading and reshaping the disturbed land to conform with adjacent land forms and to minimize erosion; removing footprint infrastructure like structures and roads, management of introduced substances, establishing self-sustaining vegetation, and potentially post-mining monitoring, maintenance, or treatment.

This has worked and continues to work well in Alaska for mines on all types of land ownership. While DNR is responsible for approval of reclamation plans, requirements from federal land owners like BLM and U.S. Forest Service apply. Alaska’s Department of Environmental Conservation (DEC) works closely with DNR to ensure that reclamation plans and financial assurance fully address long-term post-closure care and

maintenance requirements, including water management and treatment. This is fully addressed in each of the substantial financial assurance amounts for Alaska mines cited above. Overall, like other States such as Nevada, the IWG should cite the strong elements and performance of reclamation and closure programs, including working with the BLM and Forest Service as needed. Given this, there is absolutely no need to establish new national Federal requirements that will inevitably disrupt and duplicate the existing state programs and adversely affect mineral development opportunities. If there are states needing improvements to their processes, those states should be empowered to develop their own reclamation programs in consultation with the operators on their lands and with assistance from the federal government – not instruction, but assistance. We would recommend that the IWG look at the Alaska and State of Nevada programs for examples of best practices and successful outcomes.

Please observe a modern success story for Alaska: the True North mine. To be clear, this was not an abandoned site, it was a mine operated by Kinross, the operator of Fort Knox, and when mine closure was necessary, they reclaimed the land and their financial assurance remains in place. Its fully reclaimed status is a spotlight:



RFI Question 7:

How can Tribes and local communities be effectively engaged early in the process to ensure that they have meaningful input into the development of mine proposals?

AMA assumes the IWG is soliciting feedback on how the federal regulatory system can find improvements to engaging with tribes and local communities. Alaska’s mining industry prides itself on its engagement

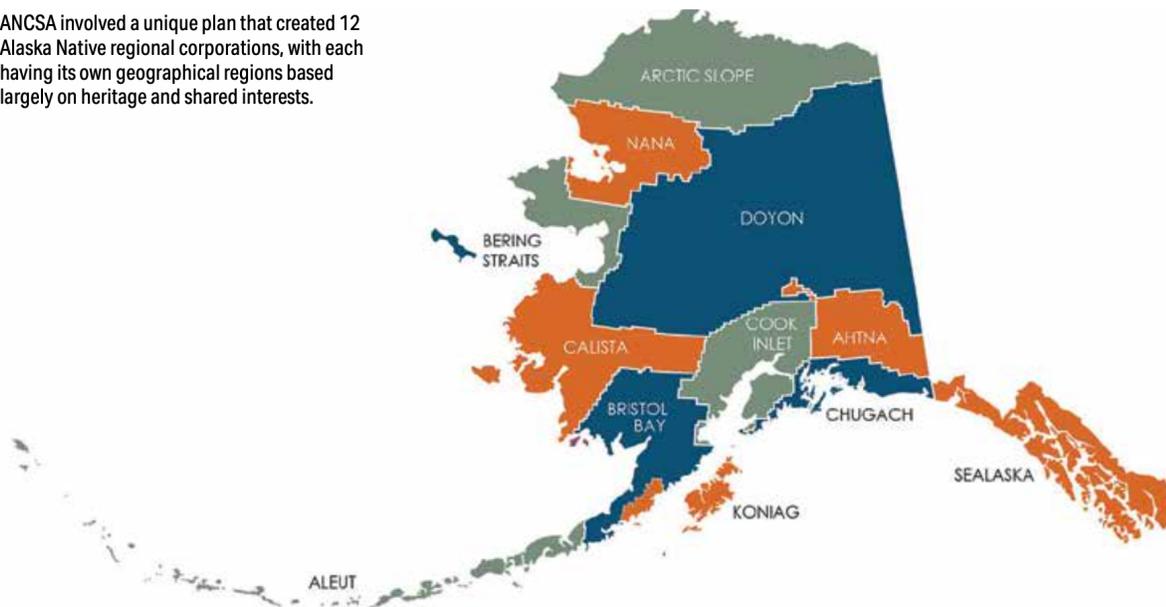
with the communities we work in and the residents who live there, and engagement with them isn't just a practice, it is a core value.

Alaska Native Claims Settlement Act (ANCSA)

First, we urge the IWG to recognize that Alaska Native land ownership and organization is substantially different than how much of the contiguous U.S. addressed Native American traditional lands. Signed into law on Dec. 18, 1971, the Alaska Native Claims Settlement Act, commonly referred to as ANCSA, involved a unique plan to organize Alaska Natives into 12 regional corporations, with each having its own geographical regions based largely on heritage and shared interests. More than 200 village corporations were also established under ANCSA. Corporations were designated 43.7 million acres of lands and \$962 million in compensation for relinquished lands.

Map of Alaska's ANCSA regions:

ANCSA involved a unique plan that created 12 Alaska Native regional corporations, with each having its own geographical regions based largely on heritage and shared interests.



From the early discussions about settling Alaska Native land claims, there was recognition that some regions were richer in natural resources and therefore had more potential for economic prosperity. This was addressed through ANCSA Section 7(i), which requires regional corporations to contribute 70% of net revenues from resource development on ANCSA lands into a pool that is distributed among the 12 ANCSA regional corporations. In turn, Section 7(j) requires that half of the Section 7(i) payments received are distributed to the respective village corporations within each of the ANCSA regions. This creates economic activity that otherwise would not occur in recipient regions and provides village corporations with vital funding for educational programs and scholarships; programs for elders; business investments; shareholder dividends; and corporate expenses such as overhead and taxes.

With ownership of lands and established corporations, Alaska Native people have been able to both thrive economically but also maintain their traditional way of life. Today, ANCSA regional and village corporations, and their business subsidiaries, make up 18 of the top 20 Alaska-owned businesses listed on the Top 49ers, an annual list published each year by the Alaska Business magazine that ranks Alaska-owned companies by gross revenue.

Involvement of ANCs with mining activity has resulted in tremendous economic benefits to the corporations' shareholders. 52% of the year-round jobs at the Red Dog mine and 47% of the employees at the Upper Kobuk Minerals Project are filled by NANA ANC shareholders. Donlin Project employs around 54% Alaska Native workers and Pebble Project 66% during its permitting stages. Business operations created and owned by ANCs service these mines and projects. Extensive educational programs and entities have been established to increase these numbers and benefits to ensure as many local, Alaska Native shareholders can have opportunities at the projects on their lands and in their communities.

AMA encourages the IWG to understand as much as possible about the structure created by ANCSA. It is revered worldwide as a model that enables opportunity and partnership, and creates a venue for addressing concerns and resolving conflict. We have attached a valuable PDF titled "Alaska Native Claims" that outlines the history, the law, and how the ANCs are flourishing today.

We also urge the IWG to emphasize the government's commitments to recognize the ANCs must be included in all consultation efforts for mining projects to ensure that their shareholders views are heard.

Engagement with Alaska Native people and communities

What is equally, if not more important than economic benefit is the meaningful engagement that takes place between industry and local community members at the earliest stage possible. We have found that tribes and local community members, businesses and organizations can be effectively engaged early in the life cycle of a mining project when there is a concerted effort by mineral exploration and mining companies to establish proactive and meaningful communication with all stakeholders. Therefore, we take it very seriously, from the time we begin exploring an area and through the duration of a project's life. Modern companies understand that early communication with local community members, organizations and businesses, and tribal governments encompasses critical corporate outreach activities throughout the life of a project. Companies also understand that these relationships are most effective where they are mutually beneficial and create long-term positive impacts for all groups.

A shining example of effective engagement early in the process is the one that took place at the Red Dog Mine. In 1974, NANA chose lands covering what would later become Red Dog Mine as a portion of the 2 million acres of lands it was allotted under ANCSA, but the selections had not yet been finalized. In 1979 and 1980, a mining company staked these same federal lands with mining claims and the drilling results revealed an exceptional deposit. At the time, NANA was opposed to the company working in the region and was making headway in gaining ownership of the land through ANCSA. As a result, the young Native corporation sued, and the company was served with an injunction which prompted the mining company to fire back with a lawsuit of its own. Then, the company chose an action that cemented the future of Red Dog – it chose diplomacy over conflict. They reached out to NANA to begin a dialogue to understand the issues and opposition to development in the region, which resulted in a unique development and lease agreement. NANA gained ownership of the lands hosting the fantastically high-grade zinc deposit and the company was allowed to develop and operate the globally significant mine.

NANA's desire to enter into a partnership between land owner and operator was predicated upon four mandates:

- Protect subsistence and the Iñupiaq way of life.
- Create lasting jobs for NANA shareholders.
- Provide opportunities for NANA's youth.
- Act as a catalyst for regional economic benefits.

The mining industry's willingness to respect the values of the people in the NANA region and find areas of mutual interests formed the foundation of what is now one of the strongest and most successful indigenous people-mining company partnerships in the world. In addition to resolving the early on issues, the partnership enables ongoing cooperation such as the establishment of the Red Dog Subsistence Committee. Made up of hunters and Elders from the two closest communities to the mine, it acts independently to prioritize subsistence and provide guidance to the mine operators on management techniques to accommodate subsistence practices. With Committee input, Red Dog has implemented strict environmental policies like halting ore truck traffic on the port road when caribou are crossing, organizing shipping schedules to accommodate marine mammal hunts, dust control measures, and regular water quality sampling. See an overview of the Red Dog Subsistence Committee [here](#).

The Red Dog Mine is a shining example of tribal, ANC, and community input, but it is not the only one. More recently built mines in Alaska and development projects on the horizon have embodied the Red Dog model and kept its success in mind when moving to establish early and meaningful dialogues with tribal governments and local community members, businesses and organizations near their operations.

Alaska's mining industry wants to build long-term, collaborative and beneficial working relationships with all stakeholders. It benefits us in industry, too. Companies' efforts to work collaboratively with all stakeholders, including tribes, have resulted in important improvements and refinements to a project proponent's proposed Plan of Operations to reduce project impacts, preserve public access, enhance environmental outcomes, and identify ways to benefit local communities. The information learned from this valuable engagement could not have been obtained any other way, and this discourse is achieving productive and collaborative outcomes across the country, and certainly within Alaska.

RFI Question 8:

How could updates to the Mining Law of 1872, or other relevant statutes, help provide more certainty and timeliness in the permitting process?

First, this question couples two significantly different things that govern the mining industry in the United States. One is the Mining Law of 1872 and the other is the "other relevant statutes" posed in the question, which contains dozens that regulate mining, such as the Clean Air Act, Clean Water Act, NEPA, many State laws and regulations, and so on.

The General Mining Act of 1872 authorized and governs prospecting and mining for minerals such as gold, platinum, and silver on federal public lands. When approved in 1872, it codified the informal system of acquiring and protecting mining claims, formed by prospectors in California and Nevada from the late 1840s through the 1860s, during Gold Rushes. All citizens of the United States of America 18 years or older have the right under the 1872 mining law to locate a lode (hardrock) or placer (gravel) mining claim on

federal lands open to mineral entry. These claims may be located once a discovery of a locatable mineral is made. The law has been amended several times with updates and there is an ongoing discussion to overhaul it completely, which one can assume is one of the main drivers for this entire IWG exercise.

Changes to the Mining Law of 1872 will provide neither certainty or timeliness in the permitting process. Instead, the proposed changes would provide more uncertainty and more delays. The Mining Law does not address the permitting and regulatory processes where certainty and timeliness are an issue. Let us be clear: no change to the Mining Law of 1872 will increase certainty and timeliness.

The way this question is asked demonstrates the problem that has persisted for years, which is an allegation that the Mining Law of 1872 is “outdated” and doesn’t sufficiently protect the environment without acknowledging the major environmental laws that have been enacted and implemented in recent decades.

What would increase certainty and timeliness is compliance with the existing “other relevant statutes,” which will detail recommendations in the next answer.

RFI Question 9:

What improvements can be made to the mine permitting process without reducing opportunities for public input or limiting the comprehensiveness of environmental reviews?

As mentioned previously, there are ample improvements that can be made to the process to permit more timely that do not sacrifice environmental protection or public engagement opportunities. First, we must look at the existing process that is supposed to be followed according to our federal and state statutes and regulations.

The planning and environmental study, review, testing, and approval process to permit a large mine in Alaska takes many years from start to finish, with dozens of local, state and federal government agencies involved in that process. See a chart provided by DNR for an overview of federal and states permits needed:

No Single Permit to Mine: there are many permits & authorizations

Mine permitting is a mixture of State, Federal and local permitting requirements.
Each project is unique.

STATE	FEDERAL
<ul style="list-style-type: none"> • Plan of Operations (DNR) • Reclamation and Bonding (DNR) • Waste Management Permits and Bonding (ADEC) • CWA Section 402 APDES Water Discharge Permit • Certification of ACOE Permits (ADEC) • Sewage Treatment System Approval (ADEC) • Air Quality Permits (ADEC) • Fish Habitat and Fishway Permits (ADF&G) • Water Rights (DNR) • Right of Way/Access (DNR/DOT) • Tidelands Leases (DNR) • Dam Safety Certification (DNR) • Cultural Resource Protection (DNR) • Monitoring Plan (Surface/Groundwater/Wildlife) (DNR/DEC/DFG) 	<ul style="list-style-type: none"> •US EPA Air Quality Permit review •US EPA Safe Drinking Water Act (UIC Permit) •US ACOE S. 404 Dredge and Fill Permit •US ACOE S. 10 Rivers and Harbors Act •US ACOE S. 106 Historical & Cultural Resources Protection •NMFS Threatened & Endangered Species Act Consultation •NMFS Marine Mammal Protection Act •NMFS Essential Fish Habitat •NMFS Fish and Wildlife Coordination Act •USFWS Threatened & Endangered Species Act Consultation •USFWS Bald Eagle Protection Act Clearance •USFWS Migratory Bird Protection •USFWS Fish & Wildlife Coordination Act

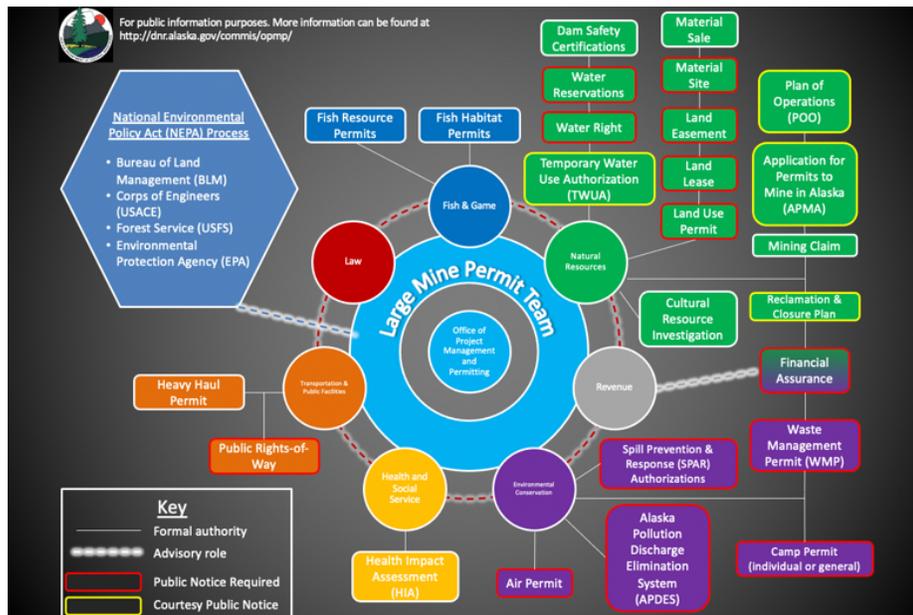
These are only some of the permits required!




The permits listed here are what is typical for a mine on State or Privately owned land. Where Federal permits are required (which is almost always the case), exhaustive NEPA requirements also apply. A mine permitted on federally owned land brings additional permit requirements to meet BLM and USFS regulatory requirements.

Like the reclamation plan, permits are tailored for the project, plan, and site and they contain multiple stipulations in addition to compliance with statutes and regulations. Meaning, agencies often prescribe additional practices to be performed by the mine that are outside of or in addition to the governing laws.

Following is another diagram from DNR that demonstrates the public involvement process:



There are 13 permits where public notice is required, and an additional four where public notice is done by the State of Alaska as a courtesy. Every current and proposed metal project in Alaska has numerous opportunities for public and tribal input. The process is transparent and designed to ensure the public has a voice in the mining activity in our state.

In summary, in Alaska, we see no gap in the current statutory and regulatory requirements that apply to mineral mining projects. As such, we strongly urge the IWG to focus on recommendations on how to make the existing programs work better, especially streamlining and making more consistent the NEPA process instead of suggesting burdensome and unnecessary new requirements.

We must establish consistent federal NEPA and permitting programs across projects implemented by experienced agency personnel who not only understand environmental issues but also the risks of not moving important mineral projects forward. In Alaska, what we have found is that inconsistencies in NEPA implementation, confounded by interagency disagreements leads to endless permitting and litigation delays. Certainly, project proponents need to be held accountable when they do not meet their obligations but Federal agencies need to also be accountable when they do not get things done in a timely and responsible manner.

Specifically, the NEPA reforms created by the Council of Environmental Quality (CEQ) in 2020 provided

many commonsense, procedural changes to the NEPA process that are essential to improving its implementation and reducing the litigation risk that inconsistency brings; while still adhering to the basic tenets of the statute that allow for meaningful public input and support the federal decision-making process. These include well-reasoned bounds on timing, with exceptions for extraordinary situations, page limits, guidelines on proponent involvement, and particularly rules for interagency cooperation including procedures for issue resolution. They also provide for high level agency accountability for not adhering to the requirements, which is especially important given the potentially significant implications on the viability of the critical and strategic mineral projects that our members represent.

AMA urges the IWG to support the key elements of the 2020 regulations and urge CEQ to retain these important regulations. CEQ should defer any further NEPA rulemaking until it can assess the success of the 2020 rules. We believe you will find this to be a successful path to improving the mine permitting process.

RFI Question 10:

What types of incentives would be appropriate to encourage the development of critical minerals, and what is the proper definition of a “critical mineral mine?”

Incentivizing mineral development

There is nothing that incentivizes mining companies more than knowing their expectations of a predictable permitting process will not be turned upside down by fundamental alteration of laws, regulations or policies.

It cannot be overstated: the mining industry faces many barriers that serve as disincentives to mineral exploration, development and investment. The lingering process is fraught with uncertainty and overly expensive, and it sends strong and repetitive signals that mining is not welcome in our country. These factors, paired with relentless litigation, chill investment in U.S. mineral exploration and development that adversely affects critical minerals projects.

As fittingly described by the World Bank: *“Governments need to adopt the fundamental principle of ‘no surprises’ if they are to avoid developing a reputation for sovereign risk, thus affecting investment in their countries.”*

However, our current federal Administration has spent the last year making surprises like the cancellation of 2020’s improvements to NEPA, new definition of Waters of the United States, reimposition of the Roadless Rule for the Tongass National Forest, and now, this DOI workgroup to review “needed changes” to hardrock mining when all that is needed is improvements.

It is far too premature to discuss incentives for development. We must fix our regulatory problems, and development will be encouraged from there.

Proper definition of critical mineral mine

“Critical minerals” has become an overly common term, almost generic, and everywhere we turn we hear about critical and strategic minerals. A rule Alaska miners live by is, “critical means you need it, and strategic means you don’t have it.” And we have a problem with both.

Recent USGS inventories have chosen to overlook copper, gold, silver, and more, observing that the US has adequate supply in domestic deposits, but has ignored that said supplies are in the ground and the projects proposing to mine them are being told no. We would offer that a proper and appropriate definition of what constitutes “critical” would be to analyze what minerals the world needs now and also to project where demand is going. With the Biden Administration’s alternative energy goals, copper is the most *critical mineral* needed in electrification. The U.S. does not produce enough copper for today’s needs, and that shortage is going to intensify. The IWG should recommend that critical mineral inventories and programs include what Americans truly need, and not just what is novel or popular.

RFI Question 11:

Are there areas that should be off-limits from mining, and if so, how should those be identified?

The General Mining Law permits access to lands that are “open to exploration.” Such lands are only available in 19 of the 50 states, largely in the West and including Alaska. The President, Congress, and federal land management agencies have the legal authority—that they exercise regularly—to withdraw federal public land for other purposes and preclude mining.

In Alaska, more than 56% of federal lands are set aside as Conservation System Units (CSUs) that are off limits to any extractive resource use or potential development. The Alaska National Interest Lands and Conservation Act (ANILCA) defines CSUs to include “any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument” (see ANILCA Sec 102(4)). Millions of acres of state lands are in “protected status” such as State Parks, State Recreation Areas, State Wildlife Sanctuaries and Refuges, and more. In Alaska, over 40% of the state’s entire land mass is already in areas that by definition should be considered managed exclusively for Conservation (see table below). This is an area larger than the entire states of California and Washington combined.

In addition, there are additional non-CSU federal lands in Alaska with very restrictive management. Alaska has vast acreages of National Forest, Bureau of Land Management and State of Alaska public lands that are open to some potential resource development but must still be managed to protect environmental values, and under existing federal and state laws, are required to be retained in public ownership.

Alaska National Wildlife Refuges	77 million acres
Alaska National Parks, Monuments and Preserves	54 million acres
Tongass National Forest Wilderness	6 million acres
Chugach National Forest Wilderness Study Area	2 million acres
BLM Steese National Conservation Area	1.2 million acres
BLM White Mountains National Recreation Area	1 million acres
Alaska State Parks	3.4 million acres
Alaska State Wildlife Areas	3.4 million acres
TOTAL	148 million acres

At least 148 million acres out of Alaska’s 365 million acres, or more than 40% of Alaska, is “permanently protected” as summarized in this table.

With our stringent environmental standards, any potential project in any area currently open to development should be allowed to apply for evaluation through science and law. If the project can't meet the standards, then it should not be allowed to proceed. Setting aside additional public lands as "off limits" further jeopardizes our ability to produce minerals we need, and sends a bad message for investment. Both the Regional Management Plans for the Bering Sea Western Interior and Central Yukon included alternatives that would close off (or severely limit) mining and, as importantly, critical infrastructure on millions of additional acres. As stated in comments on both of these, such actions are entirely unnecessary and especially egregious because the actual critical and strategic mineral potential on these lands is not fully defined. These alternatives are kneejerk reactions to broad calls for more preservation without any real evaluation of the negative consequences of prohibiting development. Moreover, because of the "checkerboard" of land ownership and remaining unresolved Native land claims in Alaska, they also could significantly impact ANCs from developing their lands and minerals. As such, setting areas off limits in any fashion can be direct violation of ANCSA and ANILCA.

When Congress passed ANILCA in 1980, it declared that no more land withdrawals were necessary in Alaska, and placed specific limits on the federal administration's efforts to withdraw additional lands. These are often referred to as ANILCA's "No More" clauses. Congress' intent is stated in ANILCA Section 101(d):

"This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent the proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and this Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviate thereby."

Congress included in ANILCA two very specific restrictions on federal administrative actions:

1. ANILCA Section 1326(a) limits federal administrative authority (e.g., limits size of Antiquities Act withdrawals) to 5,000 acres without Congressional approval; and
2. ANILCA Section 1326(b) prohibits single purpose studies to establish new conservation areas in Alaska.

Despite this, withdrawals seem likely under Executive Order 14008 in which President Biden set a goal of preserving and restoring 30 percent of U.S. lands and waters by 2030 using the American Conservation and Stewardship Atlas/Conserving and Restoring the America the Beautiful (30x30) effort.

We encourage the IWG to further study the [Who Owns Alaska](#) document, which details land ownership, Conservation System Units, and other information to consider when deliberating creating more off limits areas.

RFI Question 12:

What science and data should be included in any decisions to permit and develop mines?

We will reiterate the strength of the regulatory process that permits mining projects, which is built upon the sound science and data gathered throughout that process. It requires using objective, and often peer-reviewed, scientific information when an agency is evaluating a proposal to mine on public lands. This is often referred to as “best available science.” The integrity of permitting and authorization decisions depends on the use of reliable, transparent, and objective information to prevent federal agencies from manipulating data in order to reach a result-driven decision. It is our view that there can be nothing more critical than best available science and the objective management of it, and it is our hope that the IWG agrees.

Conclusion

As stated in the background on page 1, the directive to DOI is motivated by an Executive Order that states to “reduce time, cost, and risk of permitting” and a law passed by Congress less than a year ago that directs to “identify regulatory and legislative proposals to increase timeliness of permitting” for exploration and development. Yet the RFI cites a Petition for Rulemaking, wherein the second paragraph of the document says: *“For far too long, mining companies have had free rein to decimate lands of cultural importance to tribes and public lands at enormous cost to people, wildlife, and these beautiful wild places of historic and cultural significance. The harm is undeniable, severe, and irreparable. Reforming these rules will prevent more damage, help us transition to green infrastructure, and leave a livable planet to future generations.”* It is our hope that the IWG, through this exercise, receives the information needed to capture the reality of today’s modern mining industry and that policies that grow domestic mining in our country are outlined in the November 2022 report to Congress. AMA stands ready to work with the entire IWG team to assist with needs for Alaska-specific mining data.

Thank you for the opportunity to submit these comments, and for your dialogue with the industry to date.

Sincerely,



Deantha Skibinski
Executive Director