

December 11, 2023

The Honorable Joe Manchin  
Chair, Energy & Natural Resources Committee  
U.S. Senate  
Washington, DC 20510

Dear Chair Manchin and Members of the Senate Energy and Natural Resources Committee,

As organizations committed to the rapid and ethical electrification of the US transportation sector, we urge your action on the September 2023 Final Report *Recommendations to Improve Mining on Public Lands* developed by the Biden-Harris Administration's Interagency Working Group (IWG) on Mining Laws, Regulations, and Permitting.<sup>1</sup>

Electrifying vehicles is essential to reducing health-harming tailpipe emissions and addressing the climate crisis, both of which disproportionately impact Black, Indigenous, and other communities of color at home and abroad.<sup>2</sup> But mineral inputs are central to manufacturing electric vehicles, and the environmental and social harms of the mining industry are well documented. This reality requires bold action.<sup>3</sup>

The IWG's report provides recommendations for actions the Biden Administration and Congress should swiftly take to reduce these harms and secure the supply chain needed for a clean transportation transition. As recognized in the IWG's report,

*“The American public must have confidence that the minerals and materials used in our electric vehicle batteries...and other technology are sourced under responsible social, environmental, and labor standards—and that the Federal government wisely stewards our shared natural resources for both Americans today and future generations.”*

We firmly agree and we applaud the IWG for recognizing hard truths about the impacts of American mining on communities and environments, and for recognizing the inability of our current laws and regulations to protect people and places from these impacts.

While the recommendations in the IWG report alone are not enough to fully protect the environment, Indigenous peoples, and communities, the recommendations are necessary and achievable through updated laws and regulations. **The Biden Administration and Congress must take swift action to bring them into effect, including by updating both the Bureau of Land Management (BLM) and US Forest Service (USFS) mining regulations.**

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<sup>1</sup> Interagency Working Group on Mining Laws, Regulations, and Permitting. September 2023. Recommendations to Improve Mining on Public Lands. <https://www.doi.gov/sites/doi.gov/files/mriwg-report-final-508.pdf>

<sup>2</sup> US EPA. 20 September, 2021. Study Finds Exposure to Air Pollution Higher for People of Color Regardless of Region or Income. Overviews and Factsheets. <https://www.epa.gov/sciencematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-or-income>

<sup>3</sup> Business and Human Rights Resource Centre. 2023 update. Transition Minerals Tracker. <https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/>

### Access to and Use of Federal Lands

The US' mining law was enacted in 1872 to facilitate the settlement and colonization of the West. Land managers often incorrectly believe that their hands are tied under this law to protect other values on federally-managed lands. Sensitive environments and resources and other land uses such as recreation, grazing, hunting, renewable energy, and sacred sites were not considered when the law was written.<sup>4</sup>

The US mining law has not been updated in 150 years and, as recognized by the IWG, subsequently fails to meet the present needs of communities, Tribes, developers, and the environment. Similarly, the IWG noted that the Forest Service's half-a-century-old mining rules and the Department of the Interior's decades-old rules also need meaningful updates.

Supportive policy actions the Congress and the Administration can implement now include:

- Permanently ending patenting of Federal lands;
- Creating a Federal land planning and leasing system to better govern access to minerals on public lands;
- Developing a programmatic Environmental Impact Statement to guide leasing decisions;
- Amending regulations and policies to include consistent requirements and processes for obtaining access to lands and mineral resources and for obtaining approval to explore or operate on the lands;
- Clarifying agency authority to deny new permits or extensions on existing permits because of undue degradation or poor past performance;
- Requiring a royalty for mining on public lands, increasing claim maintenance fees and creating a reclamation fee for abandoned hardrock mine reclamation; and
- Prioritizing plans and projects with the highest environmental and social standards.

Improving extraction and permitting processes on Federal lands is only one part of creating sustainable mineral supply chains. Additional measures, including building a circular economy and requiring meaningful, robust, and early consultation between the Federal government and Tribal governments, as highlighted by the IWG recommendations, are also critical.

### Building a circular economy for minerals

We are pleased the IWG report acknowledges “the need to center all these [other] reforms as part of a circular economy to drive greater recycling, reuse, reprocessing, and technological breakthroughs to secure our clean energy future.”

Report recommendation C.14, “Promote a Circular Economy,” is an essential component of advancing a zero emission future while protecting communities and ecosystems from mineral extraction impacts. The report “...encourages Congress and Federal agencies to adopt policies that promote a circular economy, and to evaluate the extent to which actions that are authorized,

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<sup>4</sup> Earthworks, Earthjustice, and WORC. The 1872 Mining Law Fact Sheet. Available at [https://earthworks.org/wp-content/uploads/2021/09/FS\\_1872MiningLaw\\_EW-EJ-WORC\\_201903.pdf](https://earthworks.org/wp-content/uploads/2021/09/FS_1872MiningLaw_EW-EJ-WORC_201903.pdf)

funded, or carried out by the Federal government promote a circular economy.” Congress and the Administration can immediately take the following actions:

- Regulate battery design to ensure batteries can be disassembled, tested, and reconfigured for second life and recycling;
- Require manufacturers to include a digital product identifier (or “battery passport”) that makes accessible information on sourcing, battery chemistry, battery state of health, recycled content, and other key environmental and human rights information on all batteries;
- Set recovery rate targets for recycling facilities and targets for recycled content in batteries, similar to the E.U. Sustainable Batteries Law;
- Create a producer responsibility model that puts the onus on producers to collect and manage products at end-of-life, and ensure they are appropriately recycled, reused, repurposed, or refurbished;
- Build on language in the 2023 National Defense Authorization Act to establish a recycling program for EV batteries within the federal government; and
- Extend and expand funding for recycling and second-life applications, including research on efficient and low-impact recycling methods.

Importantly, any related industrial processes funded by the federal government must have strong safeguards in place to prevent air, water, and soil pollution. Recycling, processing, and other related facilities affecting Indigenous Peoples should require free, prior and informed consent (FPIC).

#### Prioritizing plans and projects with the highest environmental and social standards

Prioritizing mineral activities with the highest environmental and social standards is beneficial to both communities and businesses. We are glad to see the IWG recognizes that reducing harm is essential for, not at odds with, a thriving society and economy.

Report recommendation C.7, “Prioritize plans that maximize best environmental and social practices,” writes:

“...the BLM and USFS should prioritize processing applications for mineral exploration and mining operations that minimize resource impacts, demonstrate compliance with recognized and accepted voluntary standards and best practices to protect human health as well as cultural and environmental resources, strive to achieve beneficial reuse of impacted resources, and demonstrate early and meaningful engagement with Tribes and potentially affected communities... Conditioning Federal procurement on adherence to best practices, as is done for other products, should also be explored, as recommended in the E.O. 14017 100-Day Reports.””

Globally, legal requirements for companies to identify and address negative human rights and environmental impacts in their supply chains are growing. In addition to the recently passed EU Battery Directive, mandatory due diligence schemes are at various levels of the legislative process in Mexico, Canada, and in the legislatures of more than a dozen European countries. While the IWG recommendations fall short of mandatory due diligence, they are crucial steps forward to create a stronger regulatory environment for an ethical EV transition.

Moreover, the strongest standards cannot be met without full respect for the distinct, legally recognized rights of Tribal nations, which the IWG's report recommendation E.1 addresses: "Enact legislation to require meaningful, robust, and early consultation between the Federal government and Tribal governments." This is particularly important given the disproportionate impact experienced by Tribal communities globally. In the US, well over half of key battery minerals are located within 35 miles of Tribal reservations.<sup>5</sup> Mining reform will not secure ethical and strong domestic supply chains without the US government also strengthening its nation-to-nation relationship with Tribes.

Governments and businesses have the responsibility to respect, protect and uphold human rights<sup>6</sup> and doing so is materially good for businesses. A failure to implement strong protections and requirements for community consent also poses a quantifiable risk to industry. A [Harvard](#) study found "a mining project stands to lose approximately \$20 million per week in lost productivity as a result of production delays stemming from social conflict." The Investor Alliance for Human Rights, representing more than 200 institutional investors with over \$12 trillion in assets in 19 countries<sup>7</sup> synthesizes this issue well:

*"Mandatory human rights due diligence makes good business sense for companies, investors, and governments alike. Positive performance on human rights and proactive management of risks to people can attract investment and procurement opportunities for both companies and governments... Conversely, a failure to conduct proper human rights due diligence can impose significant costs on companies, and, as a result, on their investors."<sup>8</sup>*

## Conclusion

The Biden Administration and Congress must act now on these recommendations so the US EV transition does not come at the expense of vulnerable communities, ecosystems, and sacred sites. For too long, the mining industry, like many others, has driven inequality and destroyed communities rather than creating shared prosperity. We cannot use the same models that created these problems to get us out of them; we need massive changes and the IWG recommendations are an important start.

Thank you for your consideration. We look forward to working with you on the fullest implementation of the IWG recommendations.

Signed,

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<sup>5</sup> Bock, S. 3 June 2021. "Mining Energy-Transition Metals: National Aims Local Conflicts." MSCI.

<https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

<sup>6</sup> United Nations Office of the High Commissioner. "UN Guiding Principles on Business and Human Rights."

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>7</sup> Investor Alliance for Human Rights. "About Us." <https://investorsforhumanrights.org/about>

<sup>8</sup> Investor Alliance for Human Rights. "The investor case for mHRDD."

[https://investorsforhumanrights.org/sites/default/files/attachments/2020-04/The%20Investor%20Case%20for%20mHRDD%20-%20FINAL\\_0.pdf](https://investorsforhumanrights.org/sites/default/files/attachments/2020-04/The%20Investor%20Case%20for%20mHRDD%20-%20FINAL_0.pdf)

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GreenLatinos  
Interfaith Power and Light  
Natural Resources Defense Council (NRDC)  
Plug In America  
Public Citizen  
Sierra Club