



Laura Granier

Partner
775.327.3089
Reno
lkgranier@hollandhart.com



Erica Nannini

Associate
775.327.3103
Reno
eknannini@hollandhart.com



Karol Kahalley

Of Counsel
303.290.1060
Denver
kkahalley@hollandhart.com

Renewables Need More Domestic Production of Minerals

Insight — March 1, 2023

POWER Magazine

Climate legislation such as the Inflation Reduction Act, which aims to cut U.S. greenhouse gas emissions up to 43% below 2005 levels by 2030, has shifted the already critical need for domestic minerals into overdrive. The ability to meet rapidly growing demand depends largely on eliminating obstacles to domestic production.

There are immediate opportunities to process permits more efficiently under existing laws, such as eliminating unnecessary delays in the *Federal Register* publication of notices. For example, notices of intent and availability are published to inform the public that a federal agency intends to prepare an environmental analysis, or will be making a version of that analysis available for public review and comment. This involves no substantive decision, yet could add 12 months to 24 months to the process.

The Biden administration has recognized the urgent concerns, including national security, the environment, and human rights abuses overseas, that require a shift to domestic production of critical minerals. President Biden in February 2021 ordered a review of vulnerabilities in our critical mineral and material supply chains. The assessment released in June 2021 found that the U.S. over-reliance on foreign sources and adversarial nations for critical minerals and materials posed national and economic security threats, requiring the Department of the Interior to identify sites where critical minerals could be produced and processed in the U.S.

These efforts build on a decades-long congressional directive. More than 40 years ago, Congress declared “the continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production” in the National Materials and Minerals Policy, Research and Development Act of 1980 (NMMPA). At that time, Congress expressed frustration with the lack of progress in domestic mineral development 10 years after enacting the Mining and Minerals Policy Act of 1970 (MMPA), which declared a “national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals ... and mineral reclamation industries.”

With the increasing urgency to reduce the nation's dependence on foreign critical minerals, Congress has now directed the “Executive Office of the President to act immediately to promote the goals contained in the MMPA among the various departments and agencies,” and amended the NMMPA to require federal agencies to “avoid duplication of effort, prevent

unnecessary paperwork, and minimize delays in the administration of applicable laws (including regulations) and the issuance of permits and authorizations necessary to explore for, develop, and produce critical minerals.”

Congress also mandated that the agencies “facilitate the availability, development, and environmentally responsible production of domestic resources to meet national material or critical mineral needs.” Congress acted again to encourage the development of domestic supply chains for critical minerals through the Infrastructure and Jobs Act in November 2021, which requires agencies to take immediate and constructive actions to increase domestic mineral production.

The federal agencies have pockets of excellence that could provide blueprints for complying with these urgent directives, and eliminating the unnecessary delay in the Federal Register publication process is just one example. While the Interagency Working Group had launched a broad examination of questions including possible reform of the 1872 Mining Law, that law is a land tenure law. Permitting concerns must be addressed through environmental laws. Recent suggestions to change to a leasing system for critical minerals could create significant obstacles with litigation and uncertainty in the process, and have a substantial chilling effect on investment.

The issue of demand outstripping supply is only worsening. Lithium demand is expected to grow from 263,000 metric tons in 2019 to 2,114,000 metric tons in 2030. Demand for lithium batteries for electric vehicles (EVs) alone is expected to increase by more than 1,200% between 2021 and 2040. The lack of lithium supply will be a limiting factor to achieving domestic and global climate change goals.

While innovation in renewables production should remain a focus, the need for domestic production of minerals will persist. For example, innovative industry efforts to reduce or eliminate the need for cobalt in EV batteries are underway to curb U.S. reliance on countries producing cobalt, but nickel is used as a primary replacement for cobalt and is also primarily sourced outside the U.S. Moving toward increased reliance on untapped domestic critical mineral deposits will ensure that mining practices to procure minerals critical to our green energy future adhere to the “highest environmental, labor, and sustainability standards” in the world.

The key to walking back U.S. reliance on foreign minerals is immediate action to implement the clear congressional directives to prioritize permitting efficiencies. Given its vested interest in the production of critical minerals, the renewable energy industry should be a vocal part of efforts to identify local field offices of federal permitting agencies that have successfully implemented permitting timelines, and lobby the administration and executive agencies to use those experiences more broadly to find efficiencies in the regulatory process.

—Karol Kahalley, Esq. is experienced in minerals law and of counsel

at Holland & Hart. Laura Granier, Esq. is a partner at Holland & Hart, advising energy and mining clients. Erica Nannini, Esq. is an associate at Holland & Hart, working with renewable energy developers and mining companies.

Reprinted with permission from the March 1, 2023 online edition of Power Magazine © 2023 Access Intelligence, LLC - All Rights Reserved. Further duplication without permission is prohibited, contact Wright's Media at (877) 652-5295 or email accessintel@wrightsmedia.com.