



# **Position Statement**

## **Mining Law Reform**

### **and**

## **Critical Minerals**

### **Executive Summary**

The world has changed a lot since the Mining Law was enacted in 1872. The west has been settled, and the Nation is no longer looking to dispose of the public lands. Technology has made great advances since the early days of mineral exploration and mining. However, there is still a need to explore for and develop minerals from the public lands. Many of the minerals critically needed for modern technological advancement are located on public lands; and new uses are continually emerging, for example, lithium for electric vehicle batteries. The BLM needs to recognize the national security value of the critical mineral resources located on the public lands and ensure policies support the appropriate exploration and development of these resources. Despite advances in technology, finding mineral resources, developing a working mine, and reclaiming the land after mining still takes considerable financial resources and commitment. Any amendments to the Mining Law would need to recognize the economic and national security value of mineral resources to the citizens of the United States and to the states where the mining takes place.

### **Background**

The 1872 Mining Law was one of a number of public land laws passed by Congress in the late 1800's to encourage settlement, development, and private ownership of the public domain in the western United States. These laws enabled United States citizens to claim, settle on, and ultimately acquire title to the federal lands. The Secretary of the Interior is responsible for the laws and regulations for the implementation of the 1872 Mining Law in the 11 western states and Alaska. Mineral development is also recognized as an appropriate multiple use under Section 103(c) of the Federal Land Policy and Management Act of 1976 (FLPMA). The BLM issued an Instruction Memorandum (IM 2025-009) on November 4, 2024 that provided policies to improve the efficiency and effectiveness of processing and approving mining plans of operations for Mining Law minerals under the regulations, including a pre-plan of operations coordination process. Through a Memorandum of Understanding with the Department of the Interior (DOI), the U.S. Forest Service (USFS) is responsible for permitting, exploration and extraction of 1872 Mining Law minerals on National Forests.

The DOI in February 2022 released a paper outlining "Administration Fundamental Principles for Domestic Mining Reform" with recommendations for mining standards, critical minerals supply,

recycling, royalties, reclamation, land-use planning, permitting, protection of special places, tribal consultation, best available science, and agency mining expertise. The Department in September 2023 also released a Report “Reforms Needed to Promote Responsible Mining on Public Lands” from an Interagency Mining Law Reform Working Group that included a recommendation for the Secretary to promulgate regulations to eliminate the discretionary mining claim Small Miner Waiver program. That Report referenced a 2018 Office of Inspector General Report, which found that the Small Miner Waiver program was “essentially an honor system” which was potentially subject to waste, fraud and abuse.

The Secretary of Interior is required by the Energy Act of 2020 to prepare and update every three years a list of critical minerals. The USGS, on behalf of the Secretary, on February 22, 2022 published an updated list of 50 mineral commodities deemed critical under the definition provided in the Act. These are aluminum (bauxite), antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum group metals, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc and zirconium. Of these 50 mineral commodities, only barite, beryllium, fluorspar, lithium, magnesium, palladium, platinum group minerals, and zinc are produced in any significant amount in the U.S. The public lands contain geologic environments now being explored for the rare earth elements. Additional geologic environments for nickel, tin and tungsten also exist on the public lands.

On February 24, 2021, the President signed Executive Order (EO) 14017 on America’s Supply Chains, ordering federal agencies to identify vulnerabilities in key U.S. supply chains and develop policy recommendations to make these supply chains more resilient, diverse, and secure. This EO led to a review of risks in the supply chains of four sectors: Semiconductor manufacturing and advanced packaging, High-capacity batteries (including electric vehicle batteries), Critical minerals and strategic materials (including rare earth elements), and Pharmaceuticals and active pharmaceutical ingredients. The Administration then announced key findings from the reviews directed under EO14017. One of the key findings in the final report where the BLM within the DOI and the USFS within the Department of Agriculture (USDA) could immediately make a difference-- is as follows:

*Identify potential sustainable production and processing locations for critical minerals:* “The United States’ non-fuel mineral resources are significantly under-mapped relative to those of other developed nations. The USDI should seek expanded funding and staffing for the U.S. Geological Survey’s (USGS) Mineral Resources Program. The USGS and the major U.S. public land agencies (*BLM and USFS*), the Department of the Interior and the USDA, also should establish a new interagency task force to develop a plan to identify specific locations of key strategic and critical materials in the United States.”

Sporadic attempts have been made to amend or repeal the 1872 Mining Law. Since the amendment in 1955 that made sand and gravel and other common stone salable under the Materials Act, there have been only two amendments to the mining law, as follows:

1. Section 302(b) of the FLPMA provides that “the Secretary shall...take any action necessary to prevent unnecessary or undue degradation of the lands.” FLPMA effectively made 1872 Mining Law exploration and development subject to the National Environmental Policy Act (NEPA) and other provisions of law designed to protect the multiple use values of public lands.
2. The Omnibus Budget Reconciliation Act of August 10, 1993, required mining claimants, for the first time, to pay a fee to hold their claims from year to year. That fee is now \$200 per lode claim and for each 20 acres in a placer claim. It is adjusted every five years in accordance with the Consumer Price Index. This act also provided the Secretary of the Interior the discretion to waive the annual assessment fee for small miners (those holding ten or fewer claims) if the small miner meets the Assessment Work Requirements found at 30 U.S.C. 28–28e.

Regarding the fee waiver program, a BLM analysis a few years ago indicated that upwards of 85 percent of small miners are in non-compliance with the requirements of the program. However, the BLM and the USFS do not have the field staff or the legal resources to pursue these non-compliance cases and to take the legal action necessary to bring them into compliance. This program costs about \$3 million annually to manage the paperwork and upwards of \$5 million is lost annually to the United States Treasury for forgone Maintenance Fees. Furthermore, it adds very little value to producing minerals on federal land.

There are some 450 million acres of federal lands in the United States managed by the BLM and the USFS. However, millions of acres have been placed off limits to the 1872 Mining Law through land withdrawals to preserve other important values. It is important that sufficient federal lands remain open to mineral entry for exploration and discovery of valuable critical mineral deposits. The supply chain for these mineral resources is critical and federal lands will be valuable targets for future domestic critical and strategic mineral resources and reserves.

### **PLF Position**

1. **Proposed Amendments to the 1872 Mining Law:** Some of the proposed amendments to the 1872 Mining Law over the years have included eliminating mining claims in favor of a mineral leasing system, giving Federal land managers more discretion in approving exploration and mining activities, and imposing a royalty payment system. The PLF supports a more realistic approach to mining law reform. We do not agree that eliminating the basic mining claim location process is prudent. This concept provides the right for any citizen of the United States to continue to explore for and locate mining claims on Forest Service and BLM public lands without a permit, provided there is no or negligible disturbance to the land. However, the PLF has identified changes that should be made to modernize the 1872 Mining Law, and to address significant issues that have persisted over the years. These amendments would still provide the incentives to explore for these minerals that are so difficult to discover and develop.
2. **Locatable Minerals:** Only metallic minerals (native metallic or those minerals that result in metallic products) and minerals that have been determined by the Secretary of the Interior as Critical should be locatable under any amendment to the mining law. Uranium is not currently on the critical minerals list, but because of its inherent value for future energy production, it

should remain a locatable mineral under the mining law. Any amendments to the mining law should also include natural precious gemstones of intrinsic value originally formed, or embedded, in igneous or metamorphic rocks. There should be only one form of mining claim under any amendment to the mining law instead of three forms of mining claims that exist under the current law. The claim would cover any mineral(s) subject to the mining law, be in rectangular form, and conform to the Public Land Survey System.

3. **Rocks or Minerals That Would Not Be Locatable:** Those rocks or minerals in layered (by water or by wind) sedimentary deposits should not be locatable. These include rocks and minerals such as bentonite, gypsum, pumicite, limestone; or building stone of any composition whether it be igneous, sedimentary, or metamorphic; and except for any mineral listed herein that is already covered under the Mineral Leasing Act of 1920 or the Materials Act of 1947 and 1955. Meteorites are objects of antiquity and are not locatable.
4. **Environmental Safeguards:** The National Environmental Policy Act (NEPA) is an overarching statute that covers all discretionary Federal actions of any nature and under any statute. The same applies to EPA health standards under the Clean Air Act, Clean Water Act and other related acts. All mining exploration and mining projects, whether under the existing 1872 Mining Law or any amendments to the law, must therefore continue to be required to comply with all federal environmental laws. Permitting under any amendments to the law should also meet the requirements of regulations from the Forest Service and the BLM. This should also include requirements for a pre-plan of operations consultation and coordination process with the BLM to improve the efficiency and effectiveness of processing and approving mining plans under the regulations. Any amendment to this law should also address financial guarantees to ensure meaningful mitigating measures are identified, and appropriate reclamation is completed during exploration, construction, development, and closure of a mine. However, the conditions, terms and amounts of financial guarantees should be left to the Secretary to implement by rulemaking.
5. **Small Miner Waiver:** The small miner annual assessment fee waiver program should be eliminated. This program was authorized by Congress in 1993, and the discretion to implement the program was given to the Secretary of the Interior. As discussed in the background above, the program costs are quite high, it appears to have a significant non-compliance problem, and does not appear to serve as an incentive to the production of minerals on federal land. Further, adding more BLM staff and Mining Law attorneys to review assessment affidavits and appeals made from these reviews would not be a wise business decision.
6. **Patenting of Mining Claims:** Patents under the mining law should be eliminated, subject to valid existing rights. Few if any mining claim patents have been issued within the last 20 – 30 years.
7. **Royalty:** Any amendment to the 1872 Mining Law should include a 3% gross royalty on production, based on the value of the mineral at its first point of sale. No allowances would be allowed for any kind of expense. Of this amount: 2% would go to the U.S. Treasury, and 1% would go to the State from whence mined.

8. **Reclamation and Abandoned Mines Program:** Any amendment to the 1872 Mining Law should include provisions for a Reclamation and Abandoned Mines Program, funded by fees collected through the BLM Mining Law Program. These fees in 2023 amounted to some \$102.7 million (BLM Public Land Statistics 2023). One third of this money collected during each calendar year should go towards reclaiming abandoned mined land, abandoned mine hazards, and dangerous situations created by abandoned operations on BLM and Forest Service lands. These funds could also be used to pursue past mining operators or companies who have abandoned exploration and mining projects.
9. **Valid Existing Rights for the Government:** Any amendment to the 1872 Mining Law should ensure that the United States is able to assert valid existing rights on mining claims if there is an approved government project of any kind, in any approved annual budget for that agency, unless:
  - a. The mining claimant has received an approved Plan of Operation for the claims that the government wishes to encumber by the time the project was approved, or unless...
  - b. The mining claimant can demonstrate a discovery of a valuable mineral, as of the date of the approved government project on the same land encumbered by the approved government project.
10. **Cost Recovery:** The BLM has implemented regulatory requirements, under existing authorities, for the collection of cost recovery fees for processing Mining Law related activities including environmental reviews under NEPA or compliance requirements under other federal laws. These existing cost recovery requirements should be supported by any amendments to the Mining Law.
11. **Mineral Policy:** The BLM should update and reissue the BLM Energy and Mineral Policy, dated August 26, 2008 (Information Bulletin 2008-107), to recognize that public lands are an important source of the Nation's mineral resources, including critical and strategic mineral resources. The BLM policy should be updated to include critical minerals that are defined to be (i) a non-fuel mineral or mineral material essential to the economic and national security of the United States, (ii) the supply chain of which is vulnerable to disruption, and (iii) that serves an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security.
12. **Withdrawals:** The BLM needs to reinforce the Department of the Interior's policy and guidance on land withdrawals (Departmental Manual, Chapter 1, 603 DM 1), to ensure full review procedures are followed before withdrawals (closures to mining claim locations under the 1872 Mining Law) are implemented by the BLM. The Department and the BLM should request that the USGS and State Geologists, through the interagency task force recommended by the findings in the Report prepared pursuant to EO 14017, identify Federal lands that are closed or open to operations under the 1872 Mining Law and are believed to be target areas for critical and strategic minerals. The Department and the BLM would then make a determination on whether these withdrawals are in the best interest of the United States.