August 30, 2022

Bureau of Land Management
Division of Solid Minerals
1849 C Street NW, Room 5645
Washington, DC 20240

Submitted via email: miningreform@ios.doi.gov

RE: Request for Information to Inform Interagency Working Group on Mining Regulations, Laws, and Permitting, Docket No. DO1–2022–0003

Dear Interagency Working Group on Mining Regulations:

On behalf of the Gila Resources Information Project and Amigos Bravos, please accept the following input regarding mining regulations, laws and permitting as requested pursuant to the Federal Register Notice of March 31, 2022, 87 Fed. Reg. 18811-12.

Founded in 1998, the Gila Resources Information Project (GRIP) promotes community health by protecting our environment and natural resources in southwestern New Mexico. We facilitate informed public participation in natural resource use decisions that will have profound and long-lasting impacts on the region's environmental and economic health. For nearly 25 years, GRIP has pushed mine operators and state regulators to ensure that copper mining is done responsibly in Grant County and across the state of New Mexico.

Amigos Bravos is a statewide New Mexico organization that works to protect and restore the waters of New Mexico. A key component of our work involves advocating for common sense regulations at the state and federal level to ensure that communities and watersheds are protected from the impacts of mining including from the volatile boom and bust economic cycles common with historic mining practices.

GRIP and Amigos Bravos serve as co-chairs of the New Mexico Mining Act Network.

We are pleased to provide you with perspectives from mining-impacted communities in New Mexico as you consider ways to modernize mining regulations per Executive Order (E.O.)

14017, ‘‘America’s Supply Chains,” the Infrastructure Investment and Jobs Act (IIJA); section 40206 of the IIJA, ‘‘Critical Minerals Supply Chains and Reliability,’’ and a petition for rulemaking pursuant to the Department’s regulations at 43 CFR part 14 from 9 Tribal and 31 conservation groups requesting ‘‘a rulemaking to strengthen and modernize [the Bureau of Land Management’s] regulations at 43 CFR part 3800 et seq.’’ Our organizations are petitioners for the rulemaking.

Additionally, GRIP and Amigos Bravos are signatories to the comment letters submitted by sovereign Indian tribes and nations, Indigenous organizations and conservation organizations pursuant to the Federal Register Notice of March 31, 2022, 87 Fed. Reg. 18811-12. The comments below are provided in addition to that input.

We appreciate that the Biden Administration is moving forward with modernization of mining regulations in the United States. We believe that the goal of this effort should be to revise policies, rules, and regulations to achieve environmentally and socially responsible mining in our country that minimizes risks to communities, the environment, and natural resources impacted by hardrock exploration and mineral development.

With demand for minerals projected to increase significantly over the next decade given the clean energy transition, it’s imperative that we reform mining laws to protect communities, Tribes, sacred and other special places, our environment, water supplies and wildlife.

We strongly recommend that the Interagency Working Group review the **Initiative for Responsible Mining Assurance (IRMA) (responsiblemining.net)** and consider incorporating into federal regulations this internationally-accepted set of standards and benchmarks for socially and environmentally responsible mining. Anglo American, Ford, BMW, Microsoft, Tiffany, and Corning have all joined IRMA, recognizing that using responsibly-sourced metals in their supply chain is an important societal goal and critical to their bottom line.

In a recent study reported in *Nature Communications*, the authors warn that “mining threats to biodiversity will increase as more mines target materials for renewable energy production and, without strategic planning, these new threats to biodiversity may surpass those averted by climate change mitigation.”[1]

In order to avoid exacerbation of the species extinction crisis from increased mineral exploration and development, **federal regulations should require that mining operations be designed and implemented to deliver at least no net loss, and preferably a net gain in important biodiversity values**, and the ecological processes that support those values, on an appropriate geographic scale and in a manner that will be self-sustaining after mine closure.[2]

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[1] Sonter, L.J., Dade, M.C., Watson, J.E.M. et al. Renewable energy production will exacerbate mining threats to biodiversity. Nat Commun 11, 4174 (2020). https://doi.org/10.1038/s41467-020-17928-5

[2] Initiative for Responsible Mining Assurance, Chapter 4.6 – Biodiversity, Ecosystem Services and Protected Areas. https://responsiblemining.net/wp-content/uploads/2018/08/Chapter_4.6_Biodiversity_EServices_PAs.pdf

The IRMA standard for biodiversity, ecosystem services and protected areas provides a hierarchy of measures to mitigate and manage impacts from existing and new mines on biodiversity and ecosystem services.

Additionally, **land management agencies should carry out strategic planning to identify and map critical biodiversity regions and withdraw them from mineral development** to ensure protection of biodiversity values and ecosystem services.

In addition to loss of biodiversity and ecosystem services, mining causes a range of permanent impacts that are impossible to fully mitigate, such as perpetual groundwater contamination and drawdown of water supplies.

In Grant County, New Mexico, the Chino and Tyrone copper mines consumptively use thousands of acre-feet annually of fossil groundwater in the regional aquifer that is the public drinking water supply for nearly 30,000 residents of Silver City and the Mining District, as well as rural residents that rely on domestic groundwater wells. Existing groundwater contamination is managed through hundreds of monitoring wells and pit dewatering to ensure polluted groundwater stays on site. At closure, these mines will require perpetual water pumping and treatment to maintain a cone of depression to prevent widespread contamination of groundwater and to mitigate toxic pit lakes to protect wildlife. For example, the Tyrone Mine at closure will pump and treat an estimated 11,000 acre-feet of groundwater annually. This is four times the amount of water Silver City currently uses every year.

Permitting mines that require perpetual care such as water treatment is irresponsible to future generations of Americans. In Grant County, the copper mines' use of the public's finite groundwater supplies poses a long-term existential threat for our communities, as perpetual treatment draws down critical public water supplies. Moreover, if perpetual treatment stops for some reason in the future, groundwater flow direction will change in just a matter of a few decades, and pollution will migrate off site and contaminate our water supplies.

The Interagency Working Group should refer to and consider the New Mexico Mining Act that expressly prohibits permitting of new mines that require perpetual care:[3]

> B. The director shall issue the permit for a new mining operation if the director finds that:
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> (1) the permit application is complete;
>
> (2) the permit application fee has been paid and the financial assurance is adequate and has been provided;

[3] https://law.justia.com/codes/new-mexico/2019/chapter-69/article-36/section-69-36-12/

(3) reclamation in accordance with the proposed reclamation plan is economically and technically feasible;

(4) *the mining operation is designed to meet without perpetual care* all applicable environmental requirements imposed by the New Mexico Mining Act and regulations adopted pursuant to that act and other laws following closure; (emphasis added)

Public participation requirements must be improved. Mining is an inherently destructive activity that in most cases causes irreparable harm to the environment, landscapes, wildlife, and the hydrologic balance. The public must be given ample opportunity to participate in review of exploration and mineral development proposals that may impact their public health, environment and quality of life.

- **Eliminate "Notice Level Operations"** to ensure transparent decision making by BLM and the Forest Service.
- **Make Mine Plans of Operation publicly available** by posting them on the BLM and USFS websites and ensuring that they are easy to find.
- **Extend public comment periods to a minimum of 90-days**. In most cases, mining proposal documentation is technical, dense, and very long. The public needs more time to review materials, understand proposals, and develop comments.
- **Improve public notice of public review processes.** The BLM and Forest Service should look for ways to improve outreach to communities potentially impacted by mining proposals. In many communities, a small-font notice in the legal section of a newspaper doesn't provide adequate public notice, as fewer and fewer people are subscribing to newspapers and language barriers may prevent access to information. The federal government has a responsibility to ensure meaningful public participation in natural resource use decisions and should look for multiple ways to inform the public and solicit input from communities. Working directly with local governments and community organizations can help close the gap in access to information.

Categorical exclusions under the National Environmental Policy Act should not be used for exploration or mineral development proposals, as mining projects, even preliminary exploratory drilling, almost always have a range of significant adverse impacts that warrant more rigorous review, mitigation, and public input.

In response to the Department of Interior's specific questions, we provide the following information:

1) How would the government need to structure efforts to achieve better coordination and collaboration between agencies during the permitting process in order to ensure that there is no weakening of environmental standards, tribal consultation, or public input opportunities?

- The government should put in place consistent standards and rules across agencies that apply to all phases of mining exploration and operations to achieve socially and environmentally responsible mining. Administrative procedures for tribal consultation and public input should be consistent across agencies.

- Federal agencies must improve consultation processes with state agencies with jurisdiction to regulate mining activities. For example, because groundwater supplies are regulated by state governments, federal agencies need to make sure that mining operations have sufficient water rights for operation and closure and that operation and closure will not cause impairment of other wells before permitting a mine. For example, the Copper Flat Mine in Sierra County, NM was permitted by BLM in 2019, but the mine does not have sufficient water rights to operate or for closure. The project is currently on hold.

2) Are there any states that stand out as particularly good or poor examples in terms of permitting and oversight of mining activities?

The New Mexico Mining Act[4] is often put forth as a good example of permitting and oversight of mining activities. We recommend that the Interagency Working Group review and consider New Mexico Mining Act requirements, however recognizing that it is deficient in a number of areas and does not fully ensure socially and environmentally responsible mining as outlined by the IRMA standards.

New Mexico Mining Act provisions and regulations[5] that can be looked to as a model include the prohibition of permitting new mines that require perpetual care (discussed above), requirements that new units at existing mines and new mines are "designed and operated using the most appropriate technology and the best management practices;" contemporaneous reclamation is required to the maximum extent practicable and in a manner that is consistent with the approved reclamation plan; and that the mining operation and completed reclamation shall meet the requirements established to assure protection of human health and safety, the environment, wildlife and domestic animals, including wildlife protection, cultural resources, hydrologic balance, minimize disturbance to riparian and wetland areas, subsidence, storm water management, among others.

Requirements that are deficient and should not be considered include allowing a third-party guarantee for financial assurance of up to 75% of the estimated reclamation cost. In New Mexico, parent company Freeport-McMoRan is allowed to guarantee the financial assurance of its subsidiary operations. This is very risky and could result in the public sector bearing most of the cost of cleanup and reclamation should the parent company default. No third party, parent company, or corporate guarantees should be allowed by state or federal agencies.

[4] New Mexico Statutes 69-36 https://law.justia.com/codes/new-mexico/2019/chapter-69/article-36/

[5] New Mexico Mining Act regulations 19.10 NMAC https://www.emnrd.nm.gov/mmd/mining-act-reclamation-program/hardrock-statute-and-regulations/

Additionally, under the NM Mining Act, no public notice or public participation is required for mining exploration and operations that cause disturbance of 40 acres or less. As discussed above, mining operations can cause significant disturbance and impairments to public health and the environment even at a small scale. Public notice and public participation should be provided for smaller projects without any threshold trigger.

3) What are the most significant human health and environmental risks associated with mining operations and how can they be better addressed?

Air quality – Mining operations create fugitive dust emissions from haul roads, blasting, crushing and other activities. Fugitive dust contains particles – both PM10 and PM2.5 - that can be inhaled, penetrating deep into the lungs. These pollutants are linked to respiratory health effects, such as asthma, chronic obstructive pulmonary disease, chronic bronchitis, emphysema and heart disease.

EPA does not require air quality monitoring of fugitive dust emissions at mines. Mine operators are required to obtain air quality permits that demonstrate through dispersion modeling that they will meet standards. Without air quality monitoring to confirm the modeling, it's hard to know if the modeling reflects reality. Mine operators are required to follow a dust control plan, and fugitive dust emissions must remain on site. However, that is often impossible to do and local communities, like Hanover and Fierro, New Mexico next to the Chino/Cobre Mine, are often impacted by dust, most critically during inversion events.

Air quality monitoring is necessary to evaluate how the dust control plan is performing and if the operator's Environmental Management Systems are functioning properly.

<u>Recommendations</u>:

- EPA needs to strengthen its requirements for fugitive dust control and mitigation for mining operations, including the requirement for air quality monitoring.

- Federal agencies should require formal fugitive dust monitoring and mitigation plans for mining operations. These formal plans can be enforceable by incorporating them into Mine Plans of Operation and permits. Formal mitigation and monitoring plans outline the following: air quality monitoring plan; the dust control measures that will be implemented as part of routine operations; the ambient air quality concentrations or wind speeds that will trigger specific actions on the operator's part e.g., cessation of specific operations during a high wind event; a formal mechanism for community members to report problems; evaluation of mitigation measures; a reporting mechanism to inform the local community about performance of Environmental Management Systems to control fugitive dust and how grievances were mitigated.

Stormwater Management – The IWG should consider requiring the use of an updated design standard of a 200 year/24-hour storm event for stormwater management across all agencies. Best professional design standards, which are typically recommended by firms throughout the U.S. and Canada, are to use a 200-year/24-hour storm event or in some cases a more conservative 500-year storm event criterion to prevent risk of spills and discharges of mine-impacted water to surface and groundwater.

Water Quality - We have signed on to coalition comments that recommend closing loopholes in the Clean Water Act for mining. In addition to these comments, we would recommend that mining operations be required to have NPDES permits regardless of whether or not the discharge is to a Water of the U.S under the federal Clean Water Act. As we know, discharges to surface water impact groundwater given the connection between surface and groundwater. Grant County residents, for example, are 100% dependent upon groundwater for their drinking water supply. Potentially toxic discharges to surface water from mining operations should not be allowed at all despite the jurisdictional status of the receiving water body, especially if that water body is used for drinking water or agriculture.

Water Supplies – As discussed above, water use at mines can draw down groundwater aquifers, threatening public water supplies for the present and future generations. Federal agencies should require groundwater monitoring and mitigation plans as part of Mine Plans of Operation and permitting to ensure that mine operators are accountable to local communities for impairment of public and domestic water supplies.

4) If the U.S. were to institute a royalty for hardrock minerals, what should the revenues be used for?

There are an estimated 15,000 abandoned mines in New Mexico. The mining industry has been allowed to free load off federal public land mineral resources for 150 years, causing widespread disturbance to the landscape, pollution of our surface and groundwater, and destruction of wildlife habitat. The U.S. must institute a royalty for hardrock minerals and use these revenues to cleanup and restore abandoned mine lands and mining Superfund sites.

5) Are there examples of financial assurance requirements in other jurisdictions that we should consider adopting in the U.S.?

As discussed above corporate or third-party guarantees should be prohibited. As we see massive shifts in global economies due to both impacts of climate change and efforts by governments to slow and mitigate climate, no large corporation, especially those deeply rooted in extractive industries -which is almost always the type of third-party guarantor for mining-related financial assurance, should be depended on to be financially viable to address costly and expansive mine cleanup and disaster response. More dependable financial assurance mechanisms such as cash trusts and bonds should be required.

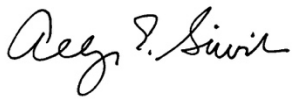
CERCLA guidance needs to be updated to address financial assurance needs at large hardrock

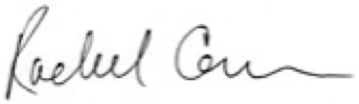
mine sites. Currently there isn't any CERCLA financial assurance guidance specific to hardrock mines, and as a default, EPA usually turns to guidance associated with RCRA sites which requires that only one form of financial assurance be used, presumably for administrative ease and because there isn't an appetite to juggle multiple financial assurance mechanisms at RCRA sites that typically have drastically smaller financial assurance amounts in comparison to large hard rock mines, where it is not unheard of to have financial assurance amounts in the hundreds of millions. This factor, combined with the fact that RCRA CERCLA guidance allows corporate third party guarantees, results in financial assurance typically being secured in 100% corporate third party financial assurance mechanisms. This is not appropriate for large hard rock mines. There is a need to establish CERCLA-specific financial assurance guidance for hard rock mines that either outright prohibits or drastically limits the percentage of corporate or third-party guarantees.

In addition, when mine sites are declared superfund sites, there is often a disconnect between state financial assurance requirements and federal requirements. Here in New Mexico we require at least 25% of financial assurance to be in non-corporate or third-party guarantee mechanism. Unfortunately, as financial assurance is transferred to the federal government under CERCLA, these stronger forms of financial assurance are at risk of being lost as financial assurance is switched to just one mechanism, which is typically a corporate guarantee.

Thank you for consideration of our comments.

Sincerely,





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