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Mike Nedd, Acting Director, Bureau of Land Management
1846 C St, NW
Washington, D.C.

Dear Acting Director Nedd:

Thank you for the opportunity to provide comment on the Bureau of Land Management's (BLM) request for input on the Bureau's planning and National Environmental Policy Act (NEPA) processes. As an organization that represents communities across the country impacted by hardrock mining, we are writing to help the BLM ensure its land use planning procedures are responsive to local needs.

F. "Right-sized" Environmental Analysis: How can the BLM more closely match the level of NEPA analysis to the scale of the action being analyzed?

Hardrock mining projects are among the largest projects BLM permits under NEPA. The scale of NEPA review should reflect the massive scale of the mines themselves.

Planning, permitting, and NEPA decisions in hardrock mining face unique legal and regulatory advantages. This is because the hardrock mining industry in this country already enjoys unprecedented access to hardrock minerals on public lands – minerals they receive for free under the antiquated 1872 Mining Law. Federal land managers at the Forest Service and BLM interpret the mining law to give mining precedence over all other uses of public lands – prioritizing mining over hunting, recreation, grazing or other beneficial uses.

Land managers should have clear authority to weigh competing land uses, especially in Wilderness Study Areas, Areas of Critical Environmental Concern, Roadless areas, and lands in the Wild and Scenic River System. In addition, citizens, local, state, and tribal governments should have the ability to put lands off limits to mining. Changes to the planning process should enable these entities to petition the Secretary of Interior to put lands that are important for other values, such as drinking water, off limits to mining.

The mining industry also benefits from a consistent regulatory process set by the NEPA. The regulatory certainty provided by NEPA explains, in part, why mining companies consistently rank the United States as one of the world's best places for mining investment. According to the Fraser Institute – a Canadian think tank who annually surveys mining, exploration and development companies around the world – Nevada, Utah, and Wyoming routinely rank in the top 10 most attractive jurisdictions for mineral investment.¹

Despite the mining industry rhetoric, as a general matter, the BLM acts rather efficiently in the permitting and NEPA review processes. According to a 2016 Government Accountability Office (GAO) report, the BLM spends on average two years permitting a mine.² Two-year permit times is competitive with the other Western democracies with robust mining industries such as Australia, Canada, Chile, and Norway.

According to the GAO, the main cause of permit delays is the permit applicant. Incomplete application information, changes to plans of operations, and market fluctuations lead to most delays. Even when the plans are fine, mining companies have further delayed by making changes (sometimes for perfectly legitimate reasons) to their plans after submission. GAO says this occurred 37 times over five years accounting for delays ranging from just a few weeks to seven years.

Speedier decisions do not lead to better decisions. Many modern mining proposals involve a level of technical complexity deserving of deliberate consideration. This is especially true for particularly controversial mining projects like those involving digging underneath a Wilderness Area³, harming an endangered species, or destroying a sacred site.⁴ Bigger mines can lead to bigger disasters, as British Columbia⁵ and Brazil⁶ recently experienced with failures from two mining waste dams. A streamlined permitting process stifles the voices of the communities that are potentially impacted by the proposed mine. Expedited procedures also harm the public's opportunity to inform themselves and regulators of the impacts these mines create.

Finally, the mining industry also benefits from lax regulation during operation and insufficient bonding and reclamation requirements. Loopholes in the Clean Water Act⁷ and Resource Conservation and Recovery Act allow mining companies to dump their waste into our lakes, rivers, and streams. Several studies have shown that mines pollute ground and surface water, even when permit applicants claim they will not. In fact, a groundbreaking study found that 75% of mining operations pollute surrounding surface or groundwater, despite their robust environmental reviews.⁸ A new study released just last week, finds that 74% of the domestic gold mines profiled have polluted waters with cyanide, arsenic, nitrates or other hazardous materials.⁹ 100% of copper sulfide mines experienced pipeline spills and accidental releases and 92% failed to control water treatment and collection leading to contaminated mine seepage.¹⁰

The real solutions for proper planning, permitting, and NEPA review is genuine reform of the 1872 Mining Law and an update to BLM's regulations at 43 CFR §3809. Bringing the mining law and BLM's regulations into the 21st century will lead to fewer conflicts and more responsible mining, while also better protecting our most precious resources.

Sincerely,

Lauren Pagel, Earthworks

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- ¹ <https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2015>
 - ² <http://www.gao.gov/products/GAO-16-165>
 - ³ https://www.earthworksaction.org/voices/detail/cabinets_montanore#.WXZV1NMrJKM
 - ⁴ https://www.earthworksaction.org/voices/detail/mount_taylor#.WXZWJtMrJKM
 - ⁵ https://www.earthworksaction.org/library/detail/post_mount_polley_tailings_dam_safety_in_british_columbia#.WXZQ09MrJKM
 - ⁶ https://www.earthworksaction.org/earthblog/detail/brazil_mine_spill_enough_is_enough#.WXZQjNMrJKM
 - ⁷ https://www.earthworksaction.org/issues/detail/loopholes_in_the_clean_water_act#.WXZfGtMrJKM
 - ⁸ https://www.earthworksaction.org/library/detail/comparison_of_predicted_and_actual_water_quality_at_hardrock_mines#.WXZfndMrJKM
 - ⁹ https://www.earthworksaction.org/media/detail/new_study_74_of_u.s._gold_mines_pollute_water#.WXZW59MrJKM
 - ¹⁰ https://www.earthworksaction.org/library/detail/us_copper_porphyry_mines#.WXZf5NMrJKM