



H.R. 520: NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION ACT

Masquerading as a bill about “strategic and critical minerals,” HR 520 strips key water, health and community protections against the nation’s largest toxic polluter, the hardrock mining industry.

What Minerals are Critical?

Section 4 of HR 520 is overbroad. It defines nearly anything dug from the ground as a “critical” mineral including common minerals like sand and gravel. Sand is important for road and bridge building, but unless we can find it only on North Korean beaches, it is not a critical mineral.

Section 4. Defining “Strategic and critical minerals” as minerals necessary for:

- National defense, national security, energy infrastructure including pipelines, refining, power generation and transmission, renewable energy production, domestic manufacturing, agriculture, housing, telecommunications, healthcare, transportation infrastructure, or the economy, security, and balance of trade in the United States
- Critical minerals mines are infrastructure projects for 5 USC §601 EO 13604 on permitting of infrastructure projects



Photo 1: Nevada Senator William Stewart father of the General Mining Law of 1872

HR 520 Subverts the Role of Public Input in Mining Decisions

HR 520 effectively cuts communities out of the decision-making process. For more than 40 years, NEPA (National Environmental Policy Act) reviews have provided regulatory certainty and a transparent, fair process for permit seekers and communities to engage their government in mining permitting decisions. Section 5 of HR 520 does away with this well established process. Instead, the bill allows under-resourced state agencies to consider community input, and forces permit decisions within 30 months.

Section 5. Lead Agency Responsibilities

- In general, appoint a designee to minimize delays, set and adhere to deadlines, set permitting goals, track progress against those goals
- NEPA determinations
 - a. General - NEPA is satisfied where the lead agency determines that the state or other agency can adequately address:
 - i. Environmental impact



- ii. Adverse environmental effects
 - iii. Possible alternatives to permit issuance
 - iv. Relation between long and short term environmental uses and the maintenance and enhancement of long term productivity
 - v. Any irreversible and irretrievable commitment of resources (by the mining company) and
 - vi. Whether public participation ought to occur
 - b. Written Requirement- Is NEPA satisfied? Lead agency will decide within 90 days following receipt of a permit application (*NOTE: it does not say "completed" permit application*)
- Permit Coordination
- a. In general, the lead agency coordinates in order to:
 - i. Avoid duplicative reviews
 - ii. Minimize paperwork and
 - iii. Engage stakeholders and other agencies early on
 - b. Considerations- The lead agency shall consider:
 - i. Deferring to or relying on State agencies for reviews, baseline data, and analyses
 - ii. To the maximum extent practicable, consultations and reviews occur concurrently
 - c. Memorandum of Agency Agreement- lead agencies may enter in to memoranda of agreement with project sponsors, states, or other jurisdictional agencies
- Schedule for permitting process
- a. General- When the lead agency cannot decide whether a state agency can NEPA, the *mining company may force a scheduling agreement with deadlines* for:
 - i. Whether to do an Environmental Impact Statement (EIS) or an Environmental Assessment (EA)
 - ii. If so, the scope of the EIS or EA
 - iii. Scope and schedule for any baseline studies
 - iv. Preparation of a draft EIS or EA
 - v. Preparation for final EIS or EA
 - vi. Schedule for consultations- presumably ESA, NHPA, sacred sites etc.
 - vii. Schedule for reviewing public comment
 - viii. Publication of notices
 - ix. Any other final decisions

HR 520's One-Size-Fits-All Permitting Deadline

- Permit time limits- unless otherwise agreed, 30 months.

Section 5(d)(2) sets a permit deadline of 30 months. Speedier permitting does not improve the quality of agency decisions. Rushing these complex decisions serves neither the public nor the permit applicant. Ultimately, some places simply should not be mined. Mine proposals that generate considerable controversy, especially where the mining industry seeks copper or uranium from a sacred Native site or gold from underneath a Wilderness, may take longer than 30 months.

Nevertheless, a 2016 Government Accountability Office (GAO) reportⁱ concluded that the time the Federal Government spends permitting a mine averages just two years. According to GAO, longer than average permit times occur mainly where the permit applicant makes changes to their operational plans and fails to file timely and accurate updated information with the appropriate agency.

Congress should not mandate the pace of permitting any more than they should mandate commodity prices or market fluctuations - other major drivers of permit delays.



A Better Way

HR 520 threatens water resources, and limits the ability of mining-impacted communities to protect their land, water and health.

The bill also expands the overreach of the 1872 Mining Law that governs hardrock mining on public lands. Already, the mining industry enjoys privileged access to these so-called "critical minerals". The 1872 Mining Law allows:

- Multinational corporations to mine publicly-owned minerals without paying the taxpayers for them.
- The Law makes mining the "highest and best use" of public lands. Federal land managers do not deny mine proposals.
- In addition, loopholes in the Clean Water Act allow hardrock mines to dump their toxic waste in to our lakes.

Disenfranchising rural communities and polluting western waters is not a solution. What we need is reform to the 1872 Mining Law, in addition to research, recycling, and alternative sustainable metal sources. HR 520 takes us in the wrong direction. The hardrock mining industry should be clamoring to lead the world in better mining practices, not catering to the lowest common denominator.

ⁱ <http://www.gao.gov/products/GAO-16-165>

