



EARTHWORKS

## S. 1113: Critical Minerals Policy Act of 2012

S. 1113 (a substitute for HR 4402), co-authored by Senators Lisa Murkowski (R- AK) and Jeff Bingaman (D- NM), is a backdoor attempt to redefine minerals “critical” to the United States, and then muffle the voices of the communities and the environment potentially impacted by mining of these “critical” minerals.

A Department of Energy study and pro-industry think tank surveys of mining companies<sup>1</sup> indicate that existing U.S. mining oversight does not impede critical minerals development.

Earthworks opposes this bill because:

- We don’t need to sacrifice environmental and community protections to encourage critical minerals development.
- Proposals to change how the public participates in decisions affecting public lands should allow the public to participate in the shaping of the proposal – including a full debate and a recorded vote.

### Bill Summary

- S 1113 defines rare earth elements (REE) as “critical” minerals, and charges the Interior Secretary with developing a methodology to select nine others.
- Charges the Interior Secretary to assess U.S. reserves of these critical minerals and their production costs and report findings to Congress. This assessment will review regulations, laws, taxes, fees, and permit programs that delay exploration or make it economically unviable.
- Make recommendations – administrative, regulatory and statutory – to fast-track permitting of mining/production of “critical” minerals.
- Provides a nonguaranteed, one time appropriation to clean up abandoned hardrock mines that would fund only a tenth of a percent of the amount required for full cleanup.<sup>2</sup>

### S 1113 -- A solution in search of a problem

The fundamental assumption underlying this bill is that U.S. environmental oversight and the associated permitting process put the U.S. at a competitive disadvantage when it comes to attracting mining investment development. This is simply not true:

- New rare earth elements (the underlying cause of this bill as mentioned below) mining and production is coming online around the world, including the Mountain Pass Mine in California.
- The Department of Energy’s review<sup>3</sup> of minerals needed for new energy technologies (including REE) found that the lack of global ability to process rare earth minerals, and lack of investor confidence in the weak global economy are the major constraints to rare earth or critical mineral production – not U.S. permitting.
- In its annual survey of mining companies, the Fraser Institute (a center-right Canadian think tank) indicates that U.S. mining policies actually are a relative competitive advantage, not disadvantage<sup>4</sup>.

Independent of REE considerations and global competitiveness, S 1113 would have the Interior Secretary use an overbroad definition for “critical” mineral – so broad that the Secretary would have to survey most mineral activities in the United States.



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## Background – China’s (temporary) control over rare earth elements

China has manipulated the rare earths elements (REE) market -- which is critical to technology manufacturing -- so that they currently control the vast majority of global REE production.

But China doesn’t host the majority of the world’s REE reserves, and their market manipulations have caused prices to rise to the point where other REE production is about to come online. For example, the shuttered REE mine in California (Mountain Pass, owned by Molycorp) is scheduled to reopen in the coming year.

Critical and strategic minerals bills are introduced every Congress that would eliminate or reduce the essential role of the National Environmental Policy Act in the mine permitting process on public lands.

Because of concerns over China’s current control over the REE market, these critical minerals bills have legs in the 112th Congress. HR 4402 has already passed the House: it defines “strategic” minerals so broadly as to include almost any mineral, and exempts strategic minerals mines from NEPA review.

## S 1113 – A potentially dangerous bill for communities and the environment

The 1872 Mining Law governs the extraction of minerals on public lands, including REE. This antiquated statute was intended to govern picks, shovels, and mules, not modern mining. As a result, the law contains virtually no environmental protections, and federal land managers interpret it to practically force them to permit mining wherever a claim is filed, no matter if the land might have better uses.

Consequently, if S 1113 “streamlined” the permitting process (particularly NEPA), the public and the environment would be exposed to the environmental risks associated with hardrock mining: acid mine drainage, water pollution in perpetuity, etc. In addition, most rare earth elements are highly radioactive and are often found in concentrations of other radioactive materials.

Additionally, REE deposits are located near environmentally sensitive areas like Lehmi Pass in Idaho/Montana close to portions of Yellowstone National Park, and Music Valley, California just to the northeast of Joshua Tree National Park.<sup>5</sup>

It is only through the permitting process that communities can make their concerns heard about mining’s impacts on public health and the environment. S 1113 would have us study our rare earth needs -- which could yield benefits. But we gain nothing from weakening the permitting process, which after all, is a just a study of a different kind: the study of the impacts of a mine proposal on the local community and environment.

<sup>1</sup> Fraser Institute (A free and prosperous world through choice, markets and responsibility) Survey of Mining Companies: 2011/2012, <http://bit.ly/Fraser-mining-survey-2011-12>. For analysis, see footnote 3 link.

<sup>2</sup> EPA estimates abandoned hardrock mine cleanup could cost \$50 billion. S1113 would provide up to \$76 million.

<sup>3</sup> U.S. Department of Energy, Critical Minerals Strategy, December 2010, p. 92

<sup>4</sup> Lauren Pagel Testimony before the U.S. House Subcommittee on Energy and Mineral Resources on HR 4402, the National Strategic and Critical Minerals Production Act of 2012, <http://bit.ly/HR4402-PagelTestimony>

<sup>5</sup> Long, K.R., Van Gosen B.S., Foley N.K., and Cordier, Daniel 2010, The Principal Rare Earth Elements Deposits of the *United States- A Summary of Domestic Deposits and a Global Perspective*: U.S. Geological Survey Scientific Investigations Report 2010-5220, p. 36 and 53 Available at <http://pubs.usgs.gov/sir/2010/5220/>.