



Congress Must Oppose the Permitting Side Deal That Will Weaken Bedrock Environmental Laws and Undermine Environmental Justice

1. Senator Manchin's dirty deal will rush more polluting mines.

Under the proposal, nearly 70% of projects qualifying for expedited permitting and weakened environmental reviews are extractives, including mining. There is little evidence that mining or renewable energy development would benefit from faster or weaker reviews. According to the Government Accountability Office (GAO), mines average two years to permit. The primary cause of delay stems from incomplete information provided by the mining company, often to underfunded agencies.¹ Mining company data reveals that 90% of exploration permits are granted within 18 months. The federal Permitting Dashboard shows that many solar and wind projects complete their National Environmental Policy Act reviews on time.²

2. This extractive industry wishlist will disproportionately harm women and Indigenous frontline communities.

The side deal would cut out frontline community voices and fast track mining, mostly located within 35 miles of Tribal reservations.³ Mining and other extractive operations also perpetuate violence against Indigenous women and girls,⁴ often by non-Indigenous men living in nearby "man camps." Congress must not sacrifice Indigenous women and communities and other frontline communities to allow the mining industry to profit off the energy transition.

3. This bill would gut the National Environmental Policy Act (NEPA), our bedrock environmental law.

¹ GAO: Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More <https://www.gao.gov/products/gao-16-165>

² Brett Hartl, "Weakening environmental safeguards won't help renewable energy," the Hill, <https://thehill.com/opinion/energy-environment/3612087-weakening-environmental-safeguards-wont-help-renewable-energy/>.

³ Samuel Block, "Mining Energy-Transition Metals: National Aims, Local Conflicts," MSCI, <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>.

⁴ The National Congress of American Indians, "Resolution #ANC-22-007 TITLE: Supporting Indigenous Safety through Opposing Man-Camps for Thacker Pass," <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/1948.pdf>

Mining-affected communities depend upon laws like NEPA to learn more about mining proposals and to suggest alternatives to improve social and environmental outcomes. This is especially important since most hardrock mining occurs under the 150 year old General Mining Law—a permissive law that encourages the mining industry to claim public lands as their own, pay no royalty nor reclamation fee, and cause great expense to the public.⁵ Hardrock mining is the #1 toxic polluter in the US. According to the EPA, mining operations have polluted 40% of western watersheds’ headwaters and estimates for clean up costs already total \$50 billion.⁶

This side deal tilts the scale even more heavily in the mining industry’s favor. Mining companies could demand their preferred agency elevate their preferred mine plans and preemptively limit the time and scope of public review. Other projects will get designated for special fast-track treatment, allowing mining companies to select shorter comment periods that limit the public’s access to information and ability to meaningfully participate. Worse still, whole categories of mining or mineral processing projects may be excluded from meaningful study.

4. This dirty deal is a direct contradiction of President Biden’s climate promises and it would take us farther from meeting our global climate commitments.

Even with the recently-passed Inflation Reduction Act, US climate policy still falls short of our domestic and international emissions reductions commitments.⁷ The side deal’s focus on increasing extractive developments, responsible for half of the world’s carbon emissions,⁸ takes us further away from achieving a just energy transition.

Congress must unequivocally reject this side deal and any other legislation that weakens our core environmental laws, undermines environmental justice, or further benefits extractive industries.

Instead, Congress can address frontline communities’ permitting and environmental justice concerns through passing the Environmental Justice for All⁹ and Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT)¹⁰ Acts (HR 2021 and HR 3587, respectively). Congress should also uphold Indigenous peoples’ right to Free, Prior, and Informed consent (FPIC) by operationalizing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labor Organization’s Convention 169.

For any questions on transition minerals or hardrock mining, contact Aaron Mintzes at Earthworks (amintzes@earthworks.org), Chelsea Hodgkins at Oxfam (Chelsea.Hodgkins@oxfam.org), or Blaine Miller-McFeeley at Earthjustice (bmcfeeley@earthjustice.org).

⁵ “1872 Mining Law,” Earthworks, <https://earthworks.org/issues/1872-mining-law/>.

⁶ “1872 Mining Law,” Earthworks, <https://earthworks.org/issues/1872-mining-law/>.

⁷ “Country Summary: USA,” Climate Action Tracker, <https://climateactiontracker.org/countries/usa/>.

⁸ “Why does extractives matter?” United Nations Environmental Program, <https://www.unep.org/explore-topics/extractives/why-does-extractives-matter>

⁹ Congress.gov, “H.R.2021 - Environmental Justice For All Act,” <https://www.congress.gov/bill/117th-congress/house-bill/2021?q=%7B%22search%22%3A%5B%22Environmental+Justice+for+All+Act%22%2C%22Environmental%22%2C%22Justice%22%2C%22for%22%2C%22All%22%2C%22Act%22%5D%7D&s=3&r=2>.

¹⁰ Congress.gov, “H.R.3587 - Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act,” <https://www.congress.gov/bill/117th-congress/house-bill/3587?q=%7B%22search%22%3A%5B%22hr+3587%22%2C%22hr%22%2C%223587%22%5D%7D&s=1&r=1>.