

United States Senate

November 1, 2023

Mr. Eric Beightel
Executive Director
Federal Permitting Improvement Steering Council
1800 M Street, NW, Suite 6006
Washington, DC 20036

Mr. Beightel:

We write to express our concerns regarding the proposed rule, "Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act."¹ The mining of all minerals is essential to the development of domestic infrastructure, and accordingly, it is imperative the Federal Permitting Improvement Steering Council (FPISC) ensure that *all* mining projects – for *all* minerals – are equally considered “covered projects” for the purposes of Title 41 of the Fixing America’s Surface Transportation Act (FAST-41). Indeed, even the U.S. Department of the Interior’s own “Interagency Working Group on Mining Laws, Regulations, and Permitting” did not suggest this change is needed in a report it recently released regarding recommendations to reform domestic mining policies.²

The federal permitting process must be coordinated and transparent in order for the United States to efficiently permit new energy and infrastructure projects without undermining the value of critical taxpayer and private sector investments. Consequently, Congress first established FPISC in 2015 for the purpose of coordinating agency actions between federal environmental reviews and large-scale, critical, and "covered" infrastructure projects in the United States. FAST-41 defines “covered project” to include “*any* activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure,” regardless of the mineral used in the construction of that infrastructure.³

To that end, it still takes “anywhere from seven to ten years or more for a mining company to navigate through the federal application process and appeals process through litigative measures” before a domestic mining operation can come online.⁴ This is particularly problematic, given the pressing need for greater domestic sources of minerals to meet manufacturing, energy, infrastructure, and national security needs. Our nation’s duplicative and inefficient permitting process also puts the United States at a strategic disadvantage compared to other mining countries like Australia and Canada, which have permitting processes that consist

¹ “Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act,” 88 Fed. Reg. 63,350 (Sept. 22, 2023).

² See INTERAGENCY WORKING GRP. ON MINING LAWS, REGULATIONS, AND PERMITTING, RECOMMENDATIONS TO IMPROVE MINING LAWS ON PUB. LANDS (Sept. 2023).

³ 42 U.S.C. § 4370m(6).

⁴ Minerals Make Life, “Delays in the U.S. Mine Permitting Process Impair and Discourage Mining at Home,” NATIONAL MINING ASSOCIATION (July 9, 2015).

of two to three years.⁵ FPISC, in an effort to address this issue, subsequently voted in January 2021 to add all mining as a “covered sector,” without bias to the type of mineral.⁶

Permitting delays have been, and continue to be, one of the most significant risks to meeting domestic mineral production goals - a fact clearly recognized by FPISC in 2021. FPISC should be doing all it can to facilitate the addition of mining projects to the FPISC dashboard of covered projects, as significant investments are being made daily in such projects, regardless of the type of minerals being mined. Unfortunately, this misguided and shortsighted proposal disincentivizes such investment.

The nation needs these investments to match the increasing mineral demand necessary to support budding technologies, bolster domestic supply chains, and strengthen our nation's national defense to reduce our reliance on minerals from our geopolitical adversaries. While the global demand for critical minerals "would require six times more mineral inputs in 2040 than today," it should not be lost on FPISC the amount of other mined materials, such as crushed stone and gravel that are needed for domestic infrastructure.⁷

FPISC's proposal sends the wrong message to investors, industry stakeholders, and our nation's allies by that the United States should drastically limit the type of mining projects eligible under the improved permitting process to projects with primary or byproduct production of "critical minerals," defined by the U.S. Geological Survey (USGS). Not only does this subjective action contradict the FPISC's mission of delivering transparency and timeliness to the federal permitting process, but it also fails to consider the fact that different agencies have different definitions of “critical” or “strategic” minerals or materials. The lack of consideration of these varying differences in the proposal will undoubtedly limit the effectiveness of FPISC's actions and increase our nation's strategic vulnerabilities by making the United States more dependent on foreign sources of minerals. Ultimately, this proposal will hinder mining permitting predictability and efficiency while further empowering China with its near-monopoly on the global supply of critical minerals.

Thank you for your attention to this matter. We urge FPISC to abandon this proposal and use its existing authority to actively support all mining infrastructure projects to unleash America's national supply chains and processing capabilities. We look forward to a response from you no later than **November 30**.

Sincerely,



Dan Sullivan
United States Senator

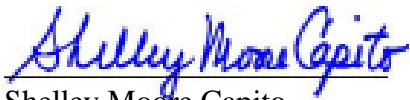


John Barrasso, M.D.
United States Senator

⁵ *Id.*

⁶ “Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act,” 86 Fed. Reg. 1,281 (Jan. 8, 2021).

⁷ “Data by State,” NATIONAL SAND STONE AND GRAVEL ASSOCIATION (last accessed Oct. 2, 2023).



Shelley Moore Capito
United States Senator



Joe Manchin III
United States Senator



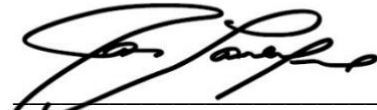
Catherine Cortez Masto
United States Senator




Ted Cruz
United States Senator



Bill Cassidy, M.D.
United States Senator



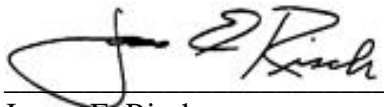
James Lankford
United States Senator



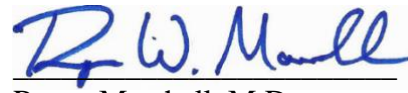
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United States Senator



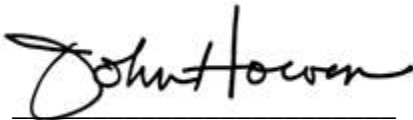
Kevin Cramer
United States Senator



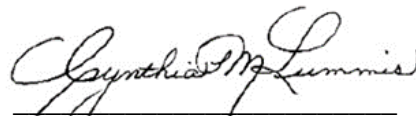
James E. Risch
United States Senator



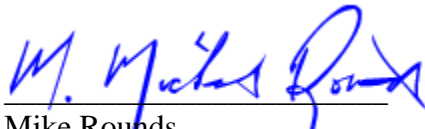
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United States Senator



John Hoeven
United States Senator



Cynthia M. Lummis
United States Senator



Mike Rounds
United States Senator



Katie Boyd Britt
United States Senator



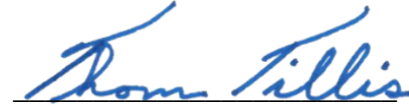
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Pete Ricketts
United States Senator



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Markwayne Mullin
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Mitt Romney
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