



The National Mining Association
October 2020
Minerals CEO Virtual Meeting
Will Begin at 3:00 p.m. Eastern



NMA Minerals CEO Virtual Meeting

October 7, 2020

AGENDA

Welcome and Introductions

Phil Baker

Safety Share

Phil Baker

NMA/RealClearPolitics Minerals Event Recap

Ashley Burke

New Minerals Executive Order

Rich Nolan

Mining Law/Funding AML Cleanups

- Working Group Report
- Congressional & Administration Outlook for 2021

Katie Sweeney
Rich Nolan/Ryan Jackson

DOI Solicitor's Opinion on Mining Law

Katie Sweeney

Permitting Reforms

- Federal Permitting Improvement Steering Council to Codify Mining Vote
- Proposed BLM and Forest Service Mining Regulations
- Final Endangered Species Act Reforms
- Corps Compensatory Mitigation Policy for Mining
- National Environmental Policy Act Litigation

Ryan Jackson
Ryan Jackson
Katie Sweeney
Caitlin McHale
Katie Sweeney

Good Samaritan Engagement

Tawny Bridgeford

Global Industry Standard on Tailings Management (formerly Global Tailings Review)

Veronika Shime

Trade

Veronika Shime

Adjournment

Phil Baker

NMA – REALCLEARPOLITICS EVENT

1,195 live viewers

278 advanced registrants

- Participants included decisionmakers from the Hill, across government agencies, media and third parties
- Recording will be promoted for several weeks

Panel 1

Congressman Guy Reschenthaler (R-PA)

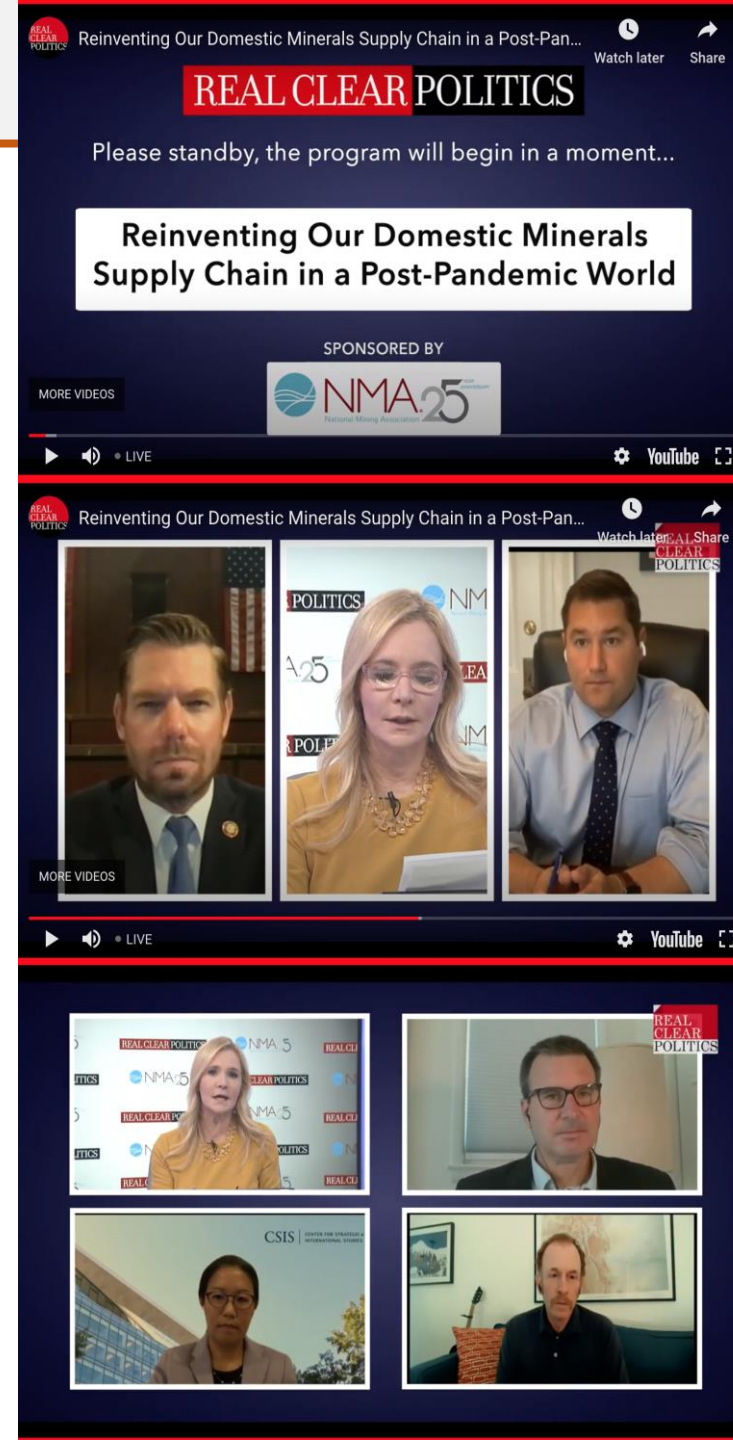
Congressman Eric Swalwell (D-CA)

Panel 2

Morgan Bazilian: Director of the Payne Institute, Professor of Public Policy, Colorado School of Mines

Joe Bryan: Senior Fellow, Atlantic Council Global Energy Center

Jane Nakano: Senior Fellow, Center for Strategic and International Studies



NEW PRESIDENTIAL MINERALS EXECUTIVE ORDER

Last week, President Trump issued a new executive order addressing the need for new domestic mining

“Executive Order on Addressing the Threat to the Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries” characterizes the U.S. reliance on imports for minerals as a substantial threat to the country

This national emergency calls for enhanced mining production and processing for critical minerals, rare earth materials, and expands the administration’s focus to include mineral production beyond the Department of Interior (DOI) listed minerals

The executive order also focuses on the need to strengthen supply chains against vulnerabilities and reduce delays for permitting for domestic mineral production



BACKDROP – MINING LAW WORKING GROUP

NMA AML/Royalty Workgroup Efforts

Guided by NMA principles, discussions have focused on refining approach to:

- Royalty, including rate, timing and deductions
- Grandfathering of existing claims
- Use of claims maintenance fees to partially fund AML cleanups
- Use of other fees to provide additional AML funding

“So if members are interested in reasonable legislation that understands the unique challenges and disadvantages of mining on public lands and that protects our prospectors and miners who put tremendous time and certainly tremendous resources to find, explore, risk and prove up our mineral deposits, **then I’m ready....”**

- Sen. Lisa Murkowski (R-AK)

June 25, 2020, U.S. Senate Energy and Natural Resources Committee hearing on the Impact of COVID-19 on Mineral Supply Chains



MINING LAW WORKING GROUP

Assignment: Develop Legislative Provisions Consistent with NMA Principles

Task 1: Evaluate 2009 Draft Industry Legislation

- Net Proceeds Royalty: rate, deductions and calculations
- Grandfathering of existing claims
- Use of excess claims maintenance fees to help fund Abandoned Mine Lands (AML) cleanups
- Consideration of other fees to address criticism that prospective royalty will not generate any near-term AML funds

Products Associated with Task 1

- Term sheet for 2009 draft legislation to ensure common understanding of key royalty terms
- Alternative calculations for royalty and instructions for use
- Identification of minerals produced from federal lands
- List of non-royalty fees included in past legislation
- Compilation of Congressional Budget Office (CBO) estimates of revenues raised by past legislation
- Compilation of data on number of AML sites, existing funds for AML and estimated cleanup costs

MINING LAW – AML WORKING GROUP

Preliminary Recommendations

- Defer push to move any legislation during current Congress given tremendous uncertainty created by Nevada legislature tax proposals and presidential election politics
- Continue regular working group meetings to be prepared for 117th Congress
- May not want to start with 5% net royalty if 5% is industry's desired ceiling
- Expand conversations with key senators

Outstanding Discussions

- Identifying a “credible” amount for AML funding, especially in the early years when the royalty only applies prospectively
- Potential different grandfathering approaches besides existing claims

BIDEN AND MINING LAW

Historic Views Circa 1995 – Rhetoric to Overcome

- Obama-Biden budget
- “Foreign companies get the gold, and the American taxpayer gets the shaft”
- Harris co-sponsor of Udall *Hardrock Mining and Reclamation Act of 2019 (S. 1386)* / Hardrock Royalty and Reclamation Fee amendment



CONGRESSIONAL OUTLOOK FOR MINING LAW

Senate Energy Committee



CHAIRMAN
LISA MURKOWSKI



RANKING MEMBER
JOE MANCHIN



Republican Members

JOHN BARRASSO - WY
MIKE LEE - UT



JAMES E. RISCH - ID
STEVE DAINES - MT



BILL CASSIDY - LA
CORY GARDNER - CO



CINDY HYDE-SMITH - MS
JOHN HOEVEN - ND



MARTHA MCSALLY - AZ



Democratic Members

RON WYDEN - OR
MARIA CANTWELL - WA



MARTIN HEINRICH - NM
DEBBIE STABENOW - MI



MAZIE K. HIRONO - HI
ANGUS S. KING, JR. - ME



BERNARD SANDERS - VT
CATHERINE CORTEZ MASTO - NV

DOI SOLICITOR'S MINING LAW OPINION

“Authorization of Reasonably Incident Mining Uses on Lands Open to the Operation of the Mining Law of 1872”

- Spurred by the Rosemont decision and NMA advocacy
- Reaffirms DOI's interpretations on claim validity determinations and ancillary uses
- Rejects former Solicitor Leshy opinions on millsites and ancillary uses, which were designed to make the Mining Law unworkable
- The opinion's detailed explanations of the legal principles and historic implementation should assist 21st century judges in understanding the esoteric nature of the Mining Law and prevent similar future misconstructions
- At NMA's urging was submitted by the federal government in the Earthworks litigation to rebut Earthworks position that mining claim validity determinations are required prior to mine plan approval for lands open to mining

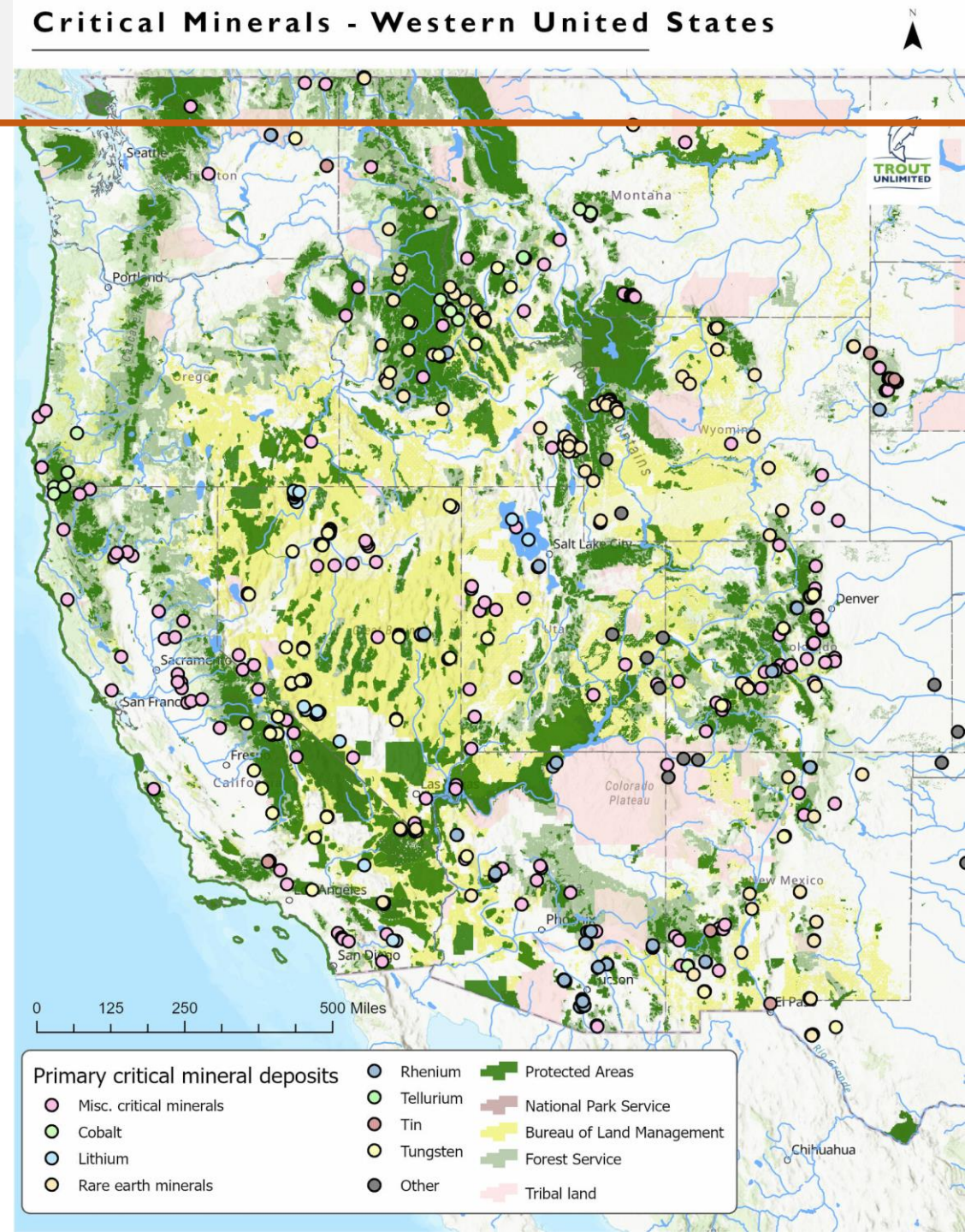


PERMITTING REFORMS

Progress Continues

Agency Actions

- Federal Permitting Improvement Steering Council Rulemaking
- Proposed BLM and Forest Service Mining Regulations
- Final Endangered Species Act Reforms
- Corps Compensatory Mitigation Policy for Mining



PERMITTING

Federal Permitting Improvement Steering Council

Background

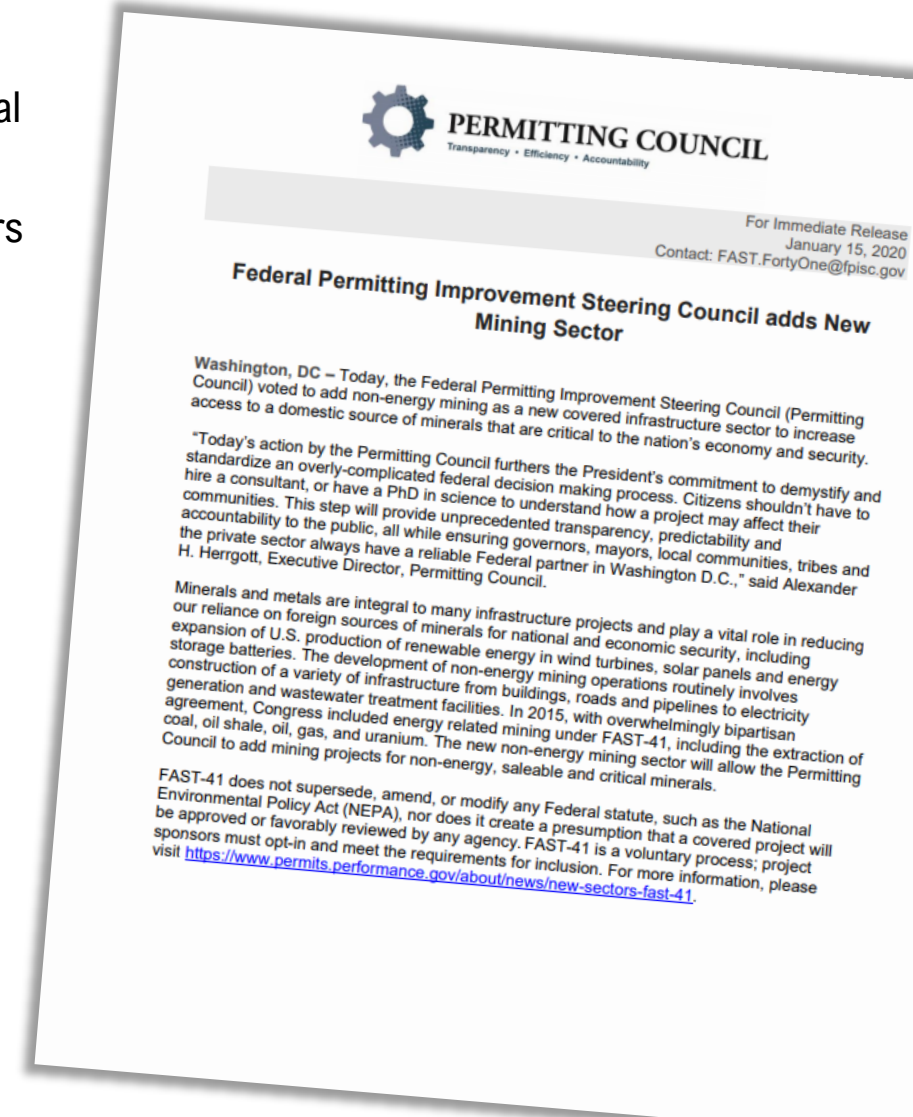
- The Federal Permitting Improvement Steering Council (FPISC) was enacted to improve the timeliness, predictability and transparency of the federal environmental review and authorization process for covered infrastructure projects
- In January, the FPISC voted to add non-energy mining to the list of covered sectors

Status

- This summer, the White House Counsel's office raised concerns that although the law creating FPISC allows it to vote to add new sectors, FPISC should do a formal rulemaking to add new sectors
- Last month, FPISC submitted a proposed rule for Office of Management and Budget (OMB) review that would codify that vote

Next Steps

- NMA is working to ensure quick interagency review since all agencies involved in this rule already voted in January to approve non-energy mining as a new sector
- NMA is working to secure a short public comment period
- We will alert you when the rule is published in the Federal Register, which will initiate the public comment period



PERMITTING

BLM and Forest Service Mining Regulations

Background

- The BLM and U.S. Forest Service have listed updating mining regulations (§3809 and §228A regulation) on the federal government's unified regulatory agenda throughout this administration
- NMA has worked throughout this administration with both federal agencies on the development of updated regulations
- The BLM revisions would streamline authorizations under the Mining Law, improve security of tenure for mining claimants and reduce cost recovery for mineral examinations
- The Forest Service revisions are expected to expedite review of proposed mineral operations and increase consistency with BLM regulations
 - Key provision will allow small-scale exploration projects to move forward in months versus years

Status + Next Steps

- NMA expects the U.S. Forest Service to transmit its rule to the Office of Management and Budget for review this week/month



PERMITTING

Endangered Species Act (ESA) Reforms

Background

- The Fish & Wildlife Service (FWS) has worked throughout this administration to amend its ESA regulations to ease regulatory burdens without sacrificing species' protection and recovery goals
- Major reforms finalized in 2019, but DOI wants to finalize additional improvements by year end

Status + Next Steps

- Proposed changes to definition of habitat
 - Habitability is a prerequisite to a critical habitat designation
 - NMA comments in support submitted in September
- Proposed changes to how lands can be excluded from critical habitat designations
 - Clarification for the first time that federal lands are not automatically ineligible for exclusion consideration
 - More expansive list of social and economic factors to consider when excluding lands
 - Comments due Oct. 8



PERMITTING

Corps Compensatory Mitigation Policy for Mining

- NMA has been working with the Corps since the beginning of the current administration to develop a mining-specific regulatory guidance letter (RGL) that would address member concerns with the 2008 Mitigation Rule and provide flexibilities
- RGL's issuance was delayed several times this year due to other Corps priorities
- RGL will take into consideration the mitigation and reclamation activities that are already required at mine sites when calculating compensatory mitigation which will reduce mitigation costs and streamline permitting
- NMA is continuing forceful advocacy with Corps leadership and the administration to push it across the finish line this year



NATIONAL ENVIRONMENTAL POLICY ACT LITIGATION

Reforms at Risk in the Courts and the New Congress

- Council on Environmental Quality Reforms to the National Environmental Policy Act (NEPA) went into effect Sept. 15
- 17 Environmental Groups filed a complaint in the U.S. District Court for the Western District of Virginia on July 29
 - Chamber-led industry group intervenes in defense of new rules
 - Judge denies motion to stay implementation of the rules on Sept. 11
- Coalition of 20 environmental justice, outdoor recreation and conservation groups filed in the U.S. District Court for the District of Northern California on July 29
- A coalition of environmental justice groups filed in the U.S. District Court for the Southern District of New York on August 6
- A coalition of 21 states, the District of Columbia and Guam filed in the U.S. District Court for the District of Northern California on August 28
- Congressional Review Act candidate
 - Would preclude any "substantially similar" regulation
 - House already included rider in EPA-Interior appropriations bill to block implementation
 - Republicans in both houses introduce legislation to codify

GOOD SAMARITAN ENGAGEMENT

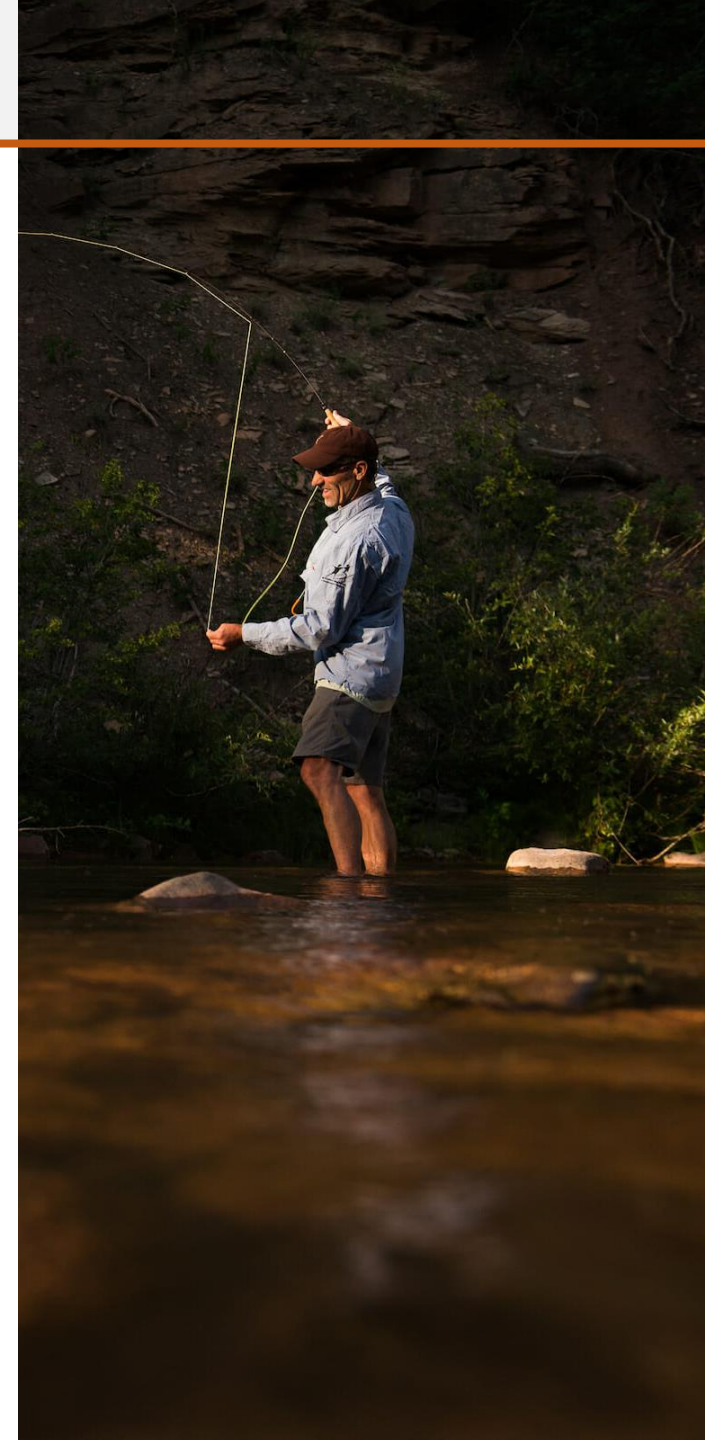
Building Relationships and Finding Common Ground

Two-year collaboration with Trout Unlimited opens doors

- Good Samaritan pilot project legislation
- Good Samaritan administrative reforms
- Critical minerals campaign

New EPA office to accelerate Western hardrock mining reclamation

- Oversight for federal hardrock sites west of Mississippi River
- Central contact point for other impacted federal agencies, states and tribes
- Development of innovative technologies and adaptive management approaches to address legacy pollution
- Support voluntary projects to improve conditions at abandoned mines



GLOBAL INDUSTRY STANDARD ON TAILINGS MANAGEMENT

Background

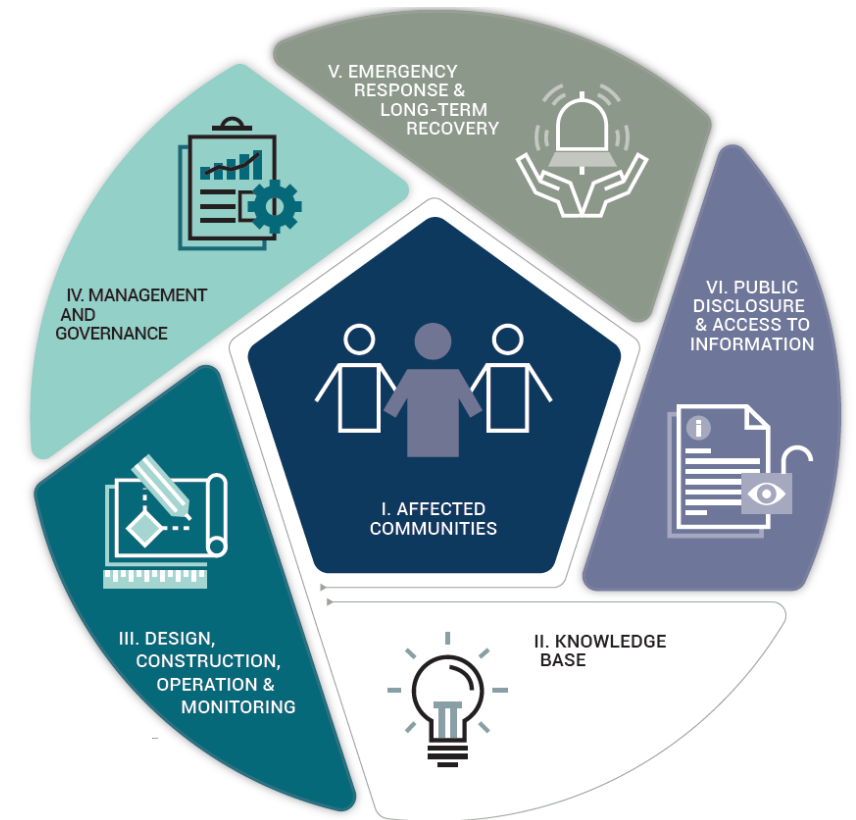
- Catastrophic tailings failures heightened scrutiny from investors and stakeholders and spurred calls for increased reporting and oversight
- In 2019, the International Council of Mining and Metals (ICMM), United Nations Environment Program (UNEP) and the Principles for Responsible Investment (PRI) convened an independent Global Tailings Review (GTR) to develop a global standard for tailings management
- Inability to reach consensus and COVID-19 resulted in delays into 2020, however in August, the convenors launched the Global Industry Standard on Tailings Management (GISTM)

Status

- ICMM members have committed that all facilities with 'Extreme' or 'Very high' potential consequences will implement the standard within three years from launch, and all other sites within five years
- Developing two supplemental products;
 - Protocol for assessors to use when validating companies against the standard
 - Supporting guidance on governance and a performance-based, risk-informed (PBRI) approach to the technical management of tailings facilities, not to raise additional expectations from the standard

Next Steps

- Advocate reciprocity among reporting frameworks to avoid duplication and reduce reporting burden



TRADE AGREEMENTS

- Trade Barriers Persist
- Advocate to Protect Investments and Markets

Background

- In 2020 the administration maintained its aggressive stance on trade policies utilizing executive orders and unilateral actions to force trade negotiations
- Currently the U.S. is in bi- or multilateral trade agreement with 20 countries

Status

- Bilateral trade agreements in active negotiation: United Kingdom, Kenya
- NMA member products (precious metals, boron, cobalt, lead, titanium, phosphates, phosphides and rare earths) successfully included in China Phase 1 mandatory procurement; China not complying
- Significant trade barriers remain

Next Steps

- Continued engagement with various federal departments and agencies to maximize sustainable trade opportunities
- Advocate for the inclusion of key Investor State Dispute Settlement Protections (ISDS) in trade agreements moving forward
- Upcoming agreements: European Union and Brazil; China Phase 2 is doubtful
- Advance parallel strategies for either presidential outcome and leverage Congress





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