To improve the permitting process for mining on Federal land, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mr. STAUBER (for himself, Mr. NEWHOUSE, Mr. CRENSHAW, Mrs. BOEBERT, Mr. GRAVES of Louisiana, Mr. CALVERT, Mr. FINSTAD, Mr. OWENS, Mr. MCCLINTOCK, Mrs. FISCHBAUGH, Mr. STEWART, Ms. TENNEY, Mr. OBERNOLTE, Mr. BENTZ, Mr. RESCHENTHALER, Mr. FULCHER, and Mr. EMMER) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To improve the permitting process for mining on Federal land, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Permitting for Mining Needs Act of 2023”.

SEC. 2. DEFINITIONS.

In this Act:  

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(1) BYPRODUCT.—The term “byproduct” has the meaning given such term in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

(2) INDIAN TRIBE.—The term “Indian Tribe” has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(3) MINERAL.—The term “mineral” means any mineral of a kind that is locatable (including, but not limited to, such minerals located on “lands acquired by the United States”, as such term is defined in section 2 of the Mineral Leasing Act for Acquired Lands) under the Act of May 10, 1872 (Chapter 152; 17 Stat. 91).

(4) SECRETARY.—Except as otherwise provided, the term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam;

(E) American Samoa;

(F) the Commonwealth of the Northern Mariana Islands; and
(G) the United States Virgin Islands.

SEC. 3. MINERALS SUPPLY CHAIN AND RELIABILITY.

Section 40206 of the Infrastructure Investment and Jobs Act (30 U.S.C. 1607) is amended—

(1) in the section heading, by striking “CRITICAL MINERALS” and inserting “MINERALS”;

(2) by amending subsection (a) to read as follows:

“(a) DEFINITIONS.—In this section:

“(1) LEAD AGENCY.—The term ‘lead agency’ means the Federal agency with primary responsibility for issuing a mineral exploration or mine permit or lease for a mineral project.

“(2) MINERAL.—The term ‘mineral’ has the meaning given such term in section 2 of the Permitting for Mining Needs Act of 2023.

“(3) MINERAL EXPLORATION OR MINE PERMIT.—The term ‘mineral exploration or mine permit’ means—

“(A) an authorization of the Bureau of Land Management or the Forest Service, as applicable, for exploration for minerals that requires analysis under the National Environmental Policy Act of 1969;
“(B) a plan of operations for a mineral project approved by the Bureau of Land Management or the Forest Service; or

“(C) any other Federal permit or authorization for a mineral project.

“(4) MINERAL PROJECT.—The term ‘mineral project’ means a project—

“(A) located on—

“(i) a mining claim, millsite claim, or tunnel site claim for any mineral;

“(ii) lands open to mineral entry; or

“(iii) a Federal mineral lease; and

“(B) for the purposes of exploring for or producing minerals.”;

(3) in subsection (b), by striking “critical” each place such term appears;

(4) in subsection (c)—

(A) by striking “critical mineral production on Federal land” and inserting “mineral projects”;

(B) by inserting “, and in accordance with subsection (h)” after “to the maximum extent practicable”;

(C) by striking “shall complete the” and inserting “shall complete such”;

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(D) in paragraph (1), by striking “critical mineral-related activities on Federal land” and inserting “mineral projects”;

(E) in paragraph (8), by striking the “and” at the end;

(F) in paragraph (9), by striking “procedures.” and inserting “procedures; and”; and

(G) by adding at the end the following:

“(10) deferring to and relying on baseline data, analyses, and reviews performed by State agencies with jurisdiction over the environmental or reclamation permits for the proposed mineral project.”;

(5) in subsection (d)—

(A) by striking “critical” each place such term appears; and

(B) in paragraph (3), by striking “mineral-related activities on Federal land” and inserting “mineral projects”;

(6) in subsection (e), by striking “critical”;

(7) in subsection (f), by striking “critical” each place such term appears;

(8) in subsection (g), by striking “critical” each place such term appears; and

(9) by adding at the end the following:

“(h) OTHER REQUIREMENTS.—
“(1) Memorandum of Agreement.—For purposes of maximizing efficiency and effectiveness of the Federal permitting and review processes described under subsection (c), the lead agency in the Federal permitting and review processes of a mineral project shall (in consultation with any other Federal agency involved in such Federal permitting and review processes, and upon request of the project applicant, an affected State government, local government, or an Indian Tribe, or other entity such lead agency determines appropriate) enter into a memorandum of agreement with a project applicant where requested by applicant to carry out the activities described in subsection (c).

“(2) Timelines and Schedules for NEPA Reviews.—

“(A) Deadlines.—Any timelines or schedules established under subsection (c)(1) relating to a review under section 102(2)(C) of the National Environmental Policy Act of 1969 shall require that the review process not exceed—

“(i) 12 months for an environmental assessment; and
“(ii) 24 months for an environmental impact statement.

“(B) EXTENSION.—A project applicant may enter into 1 or more agreements with a lead agency to extend the deadlines described in clauses (i) and (ii) of subparagraph (A) by, with respect to each such agreement, not more than 6 months.

“(C) ADJUSTMENT OF TIMELINES.—At the request of a project applicant, the lead agency and any other entity which is a signatory to a memorandum of agreement under paragraph (1) may, by unanimous agreement, adjust—

“(i) any deadlines described in subparagraph (A); and

“(ii) any deadlines extended under subparagraph (B).

“(3) DOCUMENT PREPARED BY PROJECT APPLICANT.—The lead agency with respect to a mineral project may adopt an environmental impact statement or environmental assessment prepared by or for a project applicant with respect to such project if such document fulfills the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.
“(4) Effect on pending applications.— Upon a written request by a project applicant, the requirements of this subsection shall apply to any application for a mineral exploration or mine permit or mineral lease that was submitted before the date of the enactment of the Permitting for Mining Needs Act of 2023.”.

SEC. 4. FEDERAL REGISTER PROCESS IMPROVEMENT.

Section 7002(f) of the Energy Act of 2020 (30 U.S.C. 1606(f)) is amended—

(1) in paragraph (2), by striking “critical” both places such term appears; and

(2) by striking paragraph (4).

SEC. 5. DESIGNATION OF MINING AS A COVERED SECTOR FOR FEDERAL PERMITTING IMPROVEMENT PURPOSES.

Section 41001(6)(A) of the FAST Act (42 U.S.C. 4370m(6)(A)) is amended by inserting “minerals production,” before “or any other sector”.

SEC. 6. TREATMENT OF ACTIONS UNDER PRESIDENTIAL DETERMINATION 2022–11 FOR FEDERAL PERMITTING IMPROVEMENT PURPOSES.

(a) In general.—Except as provided by subsection (c), an action described in subsection (b) shall be—
(1) treated as a covered project, as defined in
section 41001(6) of the Fixing America’s Surface
Transportation Act (42 U.S.C. 4370m(6)), without
regard to the requirements of that section; and
(2) included in the Permitting Dashboard main-
tained pursuant to section 41003(b) of that Act (42
13 U.S.C. 4370m–2(b)).

(b) ACTIONS DESCRIBED.—An action described in
this subsection is an action taken by the Secretary of De-
fense pursuant to Presidential Determination 2022–11
(87 Fed. Reg. 19775; relating to certain actions under
section 303 of the Defense Production Act of 1950) to
create, maintain, protect, expand, or restore sustainable
and responsible domestic production capabilities
through—

(1) supporting feasibility studies for mature
mining, beneficiation, and value-added processing
projects;
(2) byproduct and co-product production at ex-
sting mining, mine waste reclamation, and other in-
dustrial facilities;
(3) modernization of mining, beneficiation, and
value-added processing to increase productivity, envi-
ronmental sustainability, and workforce safety; or
(4) any other activity authorized under section 303(a)(1) of the Defense Production Act of 1950 (50 U.S.C. 4533(a)(1)).

(c) EXCEPTION.—An action described in subsection (b) may not be treated as a covered project or be included in the Permitting Dashboard under subsection (a) if the project sponsor (as defined in section 41001(18) of the Fixing America’s Surface Transportation Act (42 U.S.C. 4370m(18))) requests that the action not be treated as a covered project.

SEC. 7. MINERAL EXPLORATION ACTIVITIES WITH LIMITED SURFACE DISTURBANCE.

Notwithstanding any other provision of law, not later than 15 calendar days after receiving a notice in such time, place, and manner as the applicable Secretary determines appropriate describing the exploration activities and subsequent reclamation activities, the Secretary of the Interior with respect to lands administered by the Secretary, and the Secretary of Agriculture with respect to National Forest System lands, shall—

(1) review and determine completeness of the notice; and

(2) allow mineral exploration activities other than casual use to proceed if—
(A) the surface disturbance on Federal land will not exceed 5 acres;

(B) the Secretary determines that the notice is complete; and

(C) financial assurance is provided.

SEC. 8. USE OF MINING CLAIMS FOR ANCILLARY ACTIVITIES.

Section 10101 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f) is amended by adding at the end the following:

“(e) Security of Tenure.—

“(1) In general.—

“(A) In general.—A claimant shall have the right to use, occupy, and conduct operations on public land, with or without the discovery of a valuable mineral deposit, if—

“(i) such claimant makes a timely payment of the location fee required by section 10102 and the claim maintenance fee required by subsection (a); or

“(ii) in the case of a claimant who qualifies for a waiver under subsection (d), such claimant makes a timely payment of the location fee and complies with the re-
quired assessment work under the general
mining laws.

“(B) OPERATIONS DEFINED.—For the
purposes of this paragraph, the term ‘opera-
tions’ means—

“(i) any activity or work carried out
in connection with prospecting, exploration,
processing, discovery and assessment, de-
development, or extraction with respect to a
locatable mineral;

“(ii) the reclamation of an area dis-
turbed by an activity described in subpara-
graph (A); and

“(iii) any activity reasonably incident
to an activity described in subparagraphs
(A) or (B), whether on a mining claim or
not, including the construction and mainte-
nance of facilities, roads, transmission
lines, pipelines, and any other necessary
infrastructure or means of access on public
land.

“(2) FULFILLMENT OF FEDERAL LAND POLICY
AND MANAGEMENT ACT.—A claimant that fulfills
the requirements of this section and section 10102
shall be deemed to satisfy the requirements of any
provision of the Federal Land Policy and Management Act that requires the payment of fair market value to the United States for use of public lands and resources relating to use of such lands and resources authorized by the general mining laws.

“(3) SAVINGS CLAUSE.—Nothing in this subsection may be construed to diminish—

“(A) the rights of entry, use, and occupancy of a claimant under the general mining laws; or

“(B) the rights of a claimant under the general mining laws.”.

SEC. 9. ENSURING CONSIDERATION OF URANIUM AS A CRITICAL MINERAL.

(a) IN GENERAL.—Section 7002(a)(3)(B)(i) of the Energy Act of 2020 (30 U.S.C. 1606(a)(3)(B)(i)) is amended to read as follows:

“(i) oil, oil shale, coal, or natural gas;”.

(b) UPDATE.—Not later than 60 days after the date of the enactment of this section, the Secretary, acting through the Director of the United States Geological Survey, shall publish in the Federal Register an update to the final list established in section 7002(c)(3) of the En-
ergy Act of 2020 (30 U.S.C. 1606(c)(3)) in accordance with subsection (a) of this section.

SEC. 10. LIMITATION ON JUDICIAL REVIEW.

(a) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal lead agency for a mining project shall be barred unless it is filed not later than 120 days after the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed.

(b) SAVINGS CLAUSE.—Nothing in this section shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.