

**Statement of
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**Before the
U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources**

**Legislative Hearing on
H.R. 761, National Strategic and Critical Minerals Production Act
H.R. 1063, National Strategic and Critical Minerals Policy Act
March 21, 2013**

Introduction

Thank you for the opportunity to testify for the Department of the Interior on two bills pertaining to the development of strategic and critical mineral resources on our Nation's public lands: H.R. 761, the National Strategic and Critical Minerals Production Act, and H.R. 1063, National Strategic and Critical Minerals Policy Act. These bills seek to expedite the development of strategic, critical and rare earth minerals on public lands managed by the Departments of the Interior and of Agriculture. This statement addresses the provisions relevant to the Department of the Interior.

The Department shares the Committee's interest in identifying opportunities for increasing efficiencies in the development of rare earth elements and other critical mineral resources on our nation's public lands consistent with environmental protection and public involvement in agency decision-making. We also encourage finding ways to make permitting less complex, costly, and time-consuming. The Bureau of Land Management (BLM) would like to work with the Committee to further these shared goals.

The Department has concerns with these two bills. Public involvement in review of mining proposals and the formulation of alternatives – critical components of BLM's multiple-use management of public lands – would be constrained under H.R. 761, and therefore, the Department opposes H.R. 761. While the Department supports the goals of H.R. 1063, we have concerns and would like to work with the Committee to address them. The Department looks forward to continuing a dialogue with the Congress on these important matters.

Background

The BLM administers over 245 million surface acres of public land located in the 12 Western states, including Alaska, as well as 700 million acres of sub-surface mineral estate throughout the nation. The public lands not only produce commodities, but also offer hunting, angling, and other recreational opportunities that help provide economic stability and growth for local and regional communities. Under its multiple-use mandate, BLM is working with local communities, tribes, state regulators, industry, and other Federal agencies to promote

environmentally responsible development of mineral resources on Federal and Indian lands with a fair return to the American people.

The BLM manages mineral development under a number of different authorities, including the Federal Land Policy and Management Act, the Mineral Leasing Act of 1920, the Materials Act of 1947, and the Mining Law of 1872. Each of these authorities, along with BLM regulations and guidance, provides a legal framework for the development of minerals.

Global manufacturing demand for critical mineral commodities, including rare earth elements (REE), is on the rise, with increasing applications in consumer products such as renewable energy technology, computers, automobiles, aircraft, and other advanced technology products. While no REE are being mined on public lands at this time, some portions of the Federal mineral estate hold potential for REE development and deposits are being evaluated in three areas: the Bear Lodge Project in northeast Wyoming; the Bokan Mountain/Dotson Zone in southeastern Alaska; and potential expansion onto public lands of Molycorp's Mountain Pass exploration operations in California.

H.R. 761, National Strategic and Critical Minerals Production Act

The stated purpose of H.R. 761, the National Strategic and Critical Minerals Production Act of 2013, is to increase the flow of critical and strategic minerals to the U.S. manufacturing sector by expediting the critical mineral exploration and mine permitting process on public lands managed by the Departments of the Interior and Agriculture. However, H.R. 761 is drafted in such a manner as to cover virtually all hard rock mining on federal lands. H.R. 761 includes numerous provisions that circumvent sound Federal decision-making and existing law calling for the multiple uses of public lands, including public involvement, the application of the National Environmental Policy Act (NEPA), the management of permit applications, the review of *Federal Register* notices for such projects, and the handling by the courts of civil actions arising from disputes over mine proposals. The bill's provisions also could apply retroactively to an application for a mineral exploration or mine permit that is pending at the time of the bill's enactment, upon the request of the applicant to the lead agency. The legislation defines critical and strategic mineral mines as "infrastructure projects" so that they will fall under the March 22, 2012, Executive Order "Improving Performance of Federal Permitting and Review of Infrastructure Projects."

While the Department strongly supports the development of rare earth elements and other critical minerals, it strongly opposes H.R. 761. This legislation would remove many of the environmental safeguards for almost all types of hardrock mines on public lands, bypass evaluation of potential impacts under NEPA, and limit public involvement in agency decision-making.

Additionally, H.R. 761 lacks clarity on a number of issues, including how the rights of surface owners in split estate situations might be affected in an expedited review process. It is also unclear how Section 103, which requires maximizing recoverable resources while mitigating environmental impacts, would affect the Department's authority under the Federal Land Policy and Management Act to prevent "undue and unnecessary degradation of the public lands." H.R. 761 also does not discuss the consequences of missing the 30-month deadline on permitting

decisions and how state permitting authorities relate to this timeline. The provision allowing for retroactive application of the bill to permit applications could have the effect of requiring the BLM or another agency to abandon in-progress environmental reviews of proposed actions.

Some of the bill's provisions also duplicate actions the BLM has already implemented, including the formulation of memoranda of understanding among agencies and proponents, the concurrent gathering and review of data, and the appointment of project leads who are assigned to a project through completion.

Finally, the Department of the Interior defers to the Department of Justice regarding the provisions of H.R. 761 (Title II) pertaining to judicial review procedures.

H.R. 1063, National Strategic and Critical Minerals Policy Act

H.R. 1063 requires the Secretary of the Interior—through the BLM and the U.S. Geological Survey—to assess the capability of the United States to meet the demands for minerals essential to manufacturing competitiveness and economic and national security. It requires the Secretary, in consultation with the Secretary of Agriculture, to produce a report to Congress within 180 days of enactment that includes an inventory of the non-fossil-fuel mineral potential of lands under the jurisdiction of the BLM and the U.S. Forest Service. The report must identify anticipated mineral requirements for the U.S. manufacturing sector, current sources of these minerals, implications of shortages, timelines for mineral development projects on public lands, and the cost of litigation. In addition, the report must include an assessment of the Federal workforce and its ability to meet the challenges of the critical minerals issue. The report must also include an inventory of rare earth element potential on Federal lands, impediments and restrictions to exploration or development, and recommendations to reduce such impediments. Finally, the bill directs the USGS to conduct national and global assessments of critical mineral resources.

H.R. 1063 requires far-reaching analysis of vast amounts of data spanning the jurisdictions of the Departments of the Interior, Agriculture, Defense, Commerce, and Justice, as well as the Office of Personnel Management. While we share the goals of H.R. 1063, it would entail much more than producing a report, likely requiring the development and implementation of data tracking systems and an ongoing commitment of staff resources to gather, input, analyze, and update the data. The administrative time and cost of this work would exceed the 180 days and \$1 million authorized by the legislation. Regarding the national and global assessments of critical minerals, we note that these activities are already authorized by existing USGS authorities. These studies would require substantial resources and, absent authorized appropriations, would significantly impact other program mission activities.

We would like to work with the Committee and the other affected Departments to further the goals of the bill taking into account time and resource considerations. We would also like to work with the Committee to provide clarification on some provisions of the bills, such as the minerals under consideration and the designation of impediments and restrictions.

Thank you for the opportunity to testify on H.R. 761 and H.R. 1063. I will be glad to respond to questions.