



June 8, 2022

WHAT YOU NEED TO KNOW ABOUT Mining on Federal Land

PRO POINTS

- **Critical minerals such as lithium and nickel are taking on new importance** in a world trying to transition to clean energy, with demand for these minerals expected to soar given their use in products including solar panels and electric vehicle batteries.
- **Mining on federal land is governed by the General Mining Act of 1872**, which allows individuals and companies to stake claims on mineral discoveries and — unlike oil and gas — does not require a federal royalty to be paid on extracted minerals.
- **The United States largely relies on foreign countries for extraction and processing of critical minerals.** Chile, Australia, Argentina and China dominate lithium extraction, while Indonesia, the Philippines and Russia are the leading nickel producers.
- **Congressional Democrats have introduced legislation in the House and Senate** that would impose a federal royalty on mineral extraction, establish a mine cleanup fund and enhance tribal consultation requirements. But not all Democrats are on board, much less Republicans.
- **The Biden administration and Democrats are trying to walk a line**, balancing the need for critical minerals and desire to boost domestic production against the knowledge that mining may not be the most popular or politically appetizing issue.

HOW WE GOT HERE

The General Mining Act has been amended several times since it became law, but its core components are largely unchanged: Prospective miners are able to stake claim at a location, do not need to pay a royalty for extracted minerals and do not need to enter into a leasing system, unlike oil, natural gas and coal.

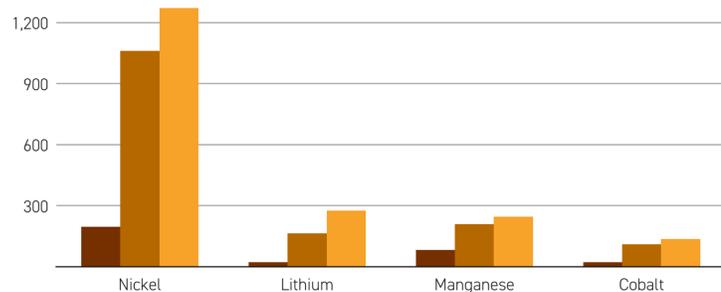
Tensions over mining in general have been building as foreign countries have secured production and processing supremacy over the U.S. Republicans have criticized Democrats for pushing clean energy solutions, while not supporting policies needed to produce EV batteries and solar panels. Russia's invasion of Ukraine increased calls for the U.S. to wean off its reliance on foreign countries for minerals.

Democrats have tried multiple times this century — including in 2015, 2017 and 2019 — to reform the law and make mining companies pay a royalty rate to afford taxpayers some benefit of opening up public land to private industry. The latest effort came just last year during the Build Back Better negotiations, when a federal royalty rate for hard rock mining made it into a House version of the bill before being stripped out of the still unpassed legislation.

Clean energy drives increased demand for critical minerals

Demand in thousand tons

■ 2020 ■ 2030 ■ 2040



Note: 2020 demand is an estimate.
Source: International Energy Agency
Madi Alexander / POLITICO



Last month, Rep. Raúl Grijalva (D-Ariz.) and Sen. Martin Heinrich (D-N.M.) introduced versions of the Clean Energy Minerals Reform Act, which would impose a federal royalty, establish a cleanup fund, strengthen tribal consultation requirements and bar mining on certain special or sacred sites. Some \$300 billion worth of metals have been extracted with no royalty paid, according to a fact sheet from Grijalva's office. The bills would also create a competitive bidding process for mineral leases, eliminate language identifying mining as the "highest and best use" of public lands and give the Interior Department greater enforcement authority for certain violations.

The legislation also would let the Interior Department charge lower rates for leases where "production would not occur without the reduction in royalty." The bills have co-sponsors in both chambers and the support of groups like Earthworks, Earthjustice, the Sierra Club and the National Wildlife Federation.

The Biden administration supports the legislation. But a key Democrat, Sen. Catherine Cortez Masto of Nevada, was not consulted, a spokesperson previously told POLITICO. Cortez Masto, who is up for reelection this year, blocked Democrats' efforts to keep a mining royalty in the Build Back Better bill last year. Sen. Joe Manchin (D-W.Va.), chair of the Senate Energy and Natural Resources Committee, reportedly promised Cortez Masto that he would prevent efforts to impose a royalty.

Republicans have largely mocked the idea of charging mining companies more during a time of record inflation and surging demand for critical minerals. And many say it flies in the face of the Biden administration's push to speed up deployment of clean technologies and wean off fossil fuels. Republican members of the House Energy and Mineral Resources subcommittee lashed out at Democrats for considering this mining reform bill, while the Interior Department simultaneously canceled oil leases as gasoline prices skyrocket.

WHAT'S NEXT

The House version of the bill got a subcommittee hearing in May, and a committee markup for the bill was delayed until September. There has been no movement on the Senate version of the bill.

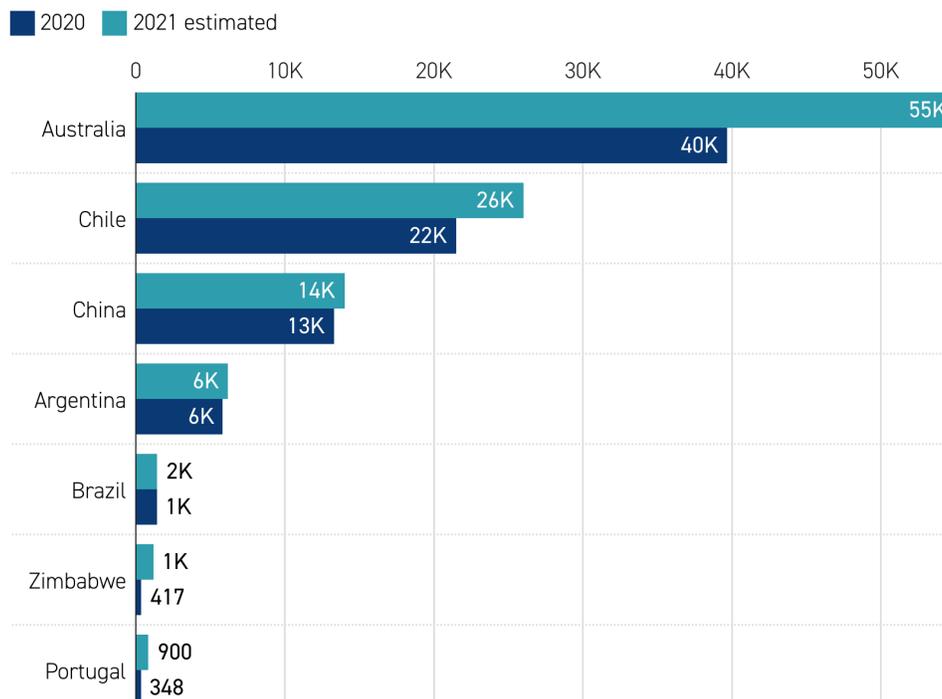
The broader debate over mining has also funneled its way through to a specific mining proposal at the doorstep of the nation's most visited wilderness area: the Boundary Waters Canoe Area Wilderness in northeast Minnesota. After the Biden administration canceled leases for a proposed mine from Twin Metals Minnesota, a subsidiary of the Chilean company Antofagasta plc, Rep. Betty McCollum (D-Minn.) introduced legislation to permanently bar mining in the region. The Boundary Waters Wilderness Protection and Pollution Prevention Act got a House subcommittee hearing last month.

Twin Metals had proposed tapping the world's largest undeveloped reserve of copper and nickel, the Duluth Complex, which contains about 95 percent of U.S. nickel resources, 88 percent of its cobalt, 75 percent of its platinum group metals and a third of its copper.



Australia dominates worldwide lithium production

Lithium production in metric tons



Note: The U.S. Geological Survey withheld the exact tonnage for the United States to protect trade secrets.

Source: U.S. Geological Survey

Madi Alexander / POLITICO

While almost all Democrats believe mining companies should have to pay a royalty on extracted minerals, there are also real questions about whether a new fee to mine is the best way to incentivize domestic mineral production during a time of soaring demand. While the administration canceled the Twin Metals leases, it is praising proposed mining projects in North Carolina and Nevada, invoking the Defense Production Act to boost critical minerals supply, and establishing a working group to reform mining law.

But when it comes to both the Boundary Waters Wilderness Protection and Pollution Prevention Act, and the Clean Energy Minerals Reform Act, opposition is lining up and poised to play a role in the bills' fate. Republicans are pushing instead for a streamlined permitting process to make the path for new mines less complicated and to provide certainty for investment in the industry — and have introduced legislation to that effect. It takes an average of seven to 10 years to open a new mine in the U.S., according to the National Mining Association, far longer than other countries. The Republican-authored legislation, which has stalled in the Democratic-controlled Congress, could offer a window into proposed mining policy changes should the GOP win back power in November.

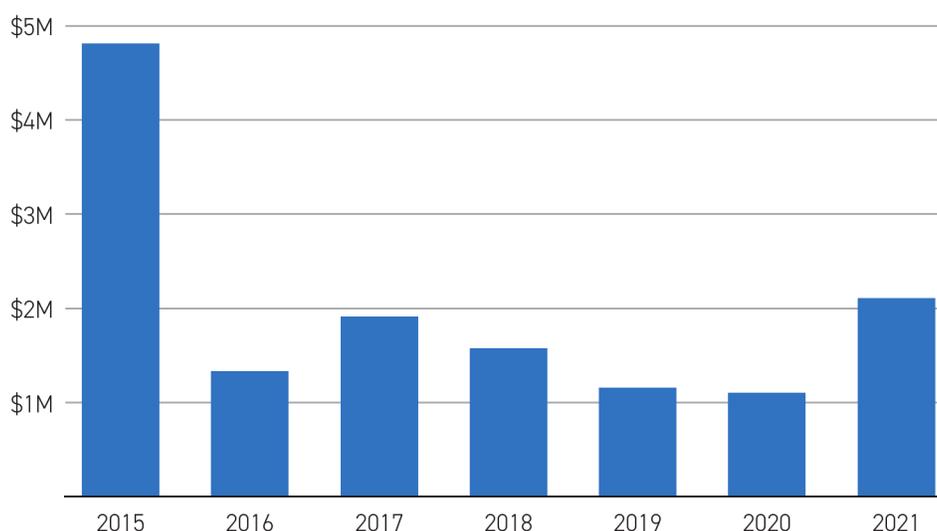
Both the NMA and the Women's Mining Coalition are fighting the two Democratic-led mining reform bills. Ashley Burke, a spokesperson for the NMA, told POLITICO that the group has "long



indicated a willingness to compromise on mining law reform” — including a royalty — but that such reforms “must be done thoughtfully” and any royalty should be focused on net revenue. The NMA doubled its lobbying spending in 2021 compared with the prior two years as mining reform talks accelerated in the Build Back Better bill. Cortez Masto was the top recipient of campaign contributions this election cycle from an NMA-aligned political action committee. And in the first quarter of this year, the NMA shelled out \$513,000 on lobbying – the most the group has spent in any Q1 since 2015.

Mining group nearly doubled lobbying spending in 2021 from prior year

Dollars spent on lobbying by the National Mining Association



Source: OpenSecrets
Madi Alexander / POLITICO

POWER PLAYERS

- **Rep. Raúl Grijalva** : The Arizona Democrat is the sponsor of the House version of the mining reform bill. He recently criticized Biden for invoking the Defense Production Act to boost critical mineral supplies.
- **Sen. Martin Heinrich** : The New Mexico Democrat is the sponsor of the Senate version of the mining reform bill.
- **The National Mining Association:** NMA, the industry’s leading trade and advocacy association, opposes both the proposed reforms included in the Clean Energy Minerals Reform Act and the Boundary Waters Wilderness Protection and Pollution Prevention Act.