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Mining Law 2026

A practical cross-border resource to inform legal minds

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Expert Analysis Chapter

Q&A Chapters

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The U.S. legal system consists of many levels of codified and uncodified federal, State, and local laws. The government's regulatory authority at each level may originate from constitutions, statutes, administrative regulations or ordinances, and judicial common law (including case law from courts). The U.S. Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting State and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, State, and local statutes and administrative regulations.

1.2 Which Government body/ies administer the mining industry?

Federal and State governments have developed comprehensive regulatory schemes for mining. Although the United States is a common law jurisdiction, U.S. mining law often resembles mining law in civil law countries because the regulatory schemes are set out in detailed codifications. See, e.g., 43 C.F.R. §§ 3000.0-5-3936.40 (the U.S. Department of the Interior Bureau of Land Management (the "BLM") minerals management regulations). However, these mining law codifications are subject to precedential interpretation by courts pursuant to common law principles (and, in some situations, by quasi-judicial administrative bodies). Similar to where the government's regulatory authority originates, U.S. mining law may originate from federal, State, and local laws, including constitutions, statutes, administrative regulations or ordinances, and judicial and administrative body common law. Determining which level of government has jurisdiction over mining activities largely depends on surface and mineral ownership. If mining in the United States occurs on federal land, the federal government usually owns both the surface and mineral estates. On this land, federal law primarily governs mineral ownership, operations, and environmental compliance, with State and local governments having concurrent or independent authority over certain aspects of land mining projects (e.g., permitting, water rights and access authorisations). The BLM manages disposition of minerals on federal land, and the surface-managing agency, in this case the U.S. Forest Service (the "USFS"), governs the surface effects of mining.

If the resource occurs on private land, estate ownership is a matter of State contract and real property law, although operations and environmental compliance are still regulated by applicable federal and State laws. U.S. property law permits the surface estate and mineral estate to be held by different owners (a "split estate"). Estate ownership on State-owned land is regulated by State law, and operations and environmental compliance are regulated by applicable federal and State laws. Although, some States permit local zoning ordinances to regulate mining. Land use of private land is a matter of State law.

1.3 Describe any other sources of law affecting the mining industry.

The General Mining Law of 1872 (the "GML"), 30 U.S.C. §§ 21-54, 611-615, as amended, remains the principal law governing locatable minerals on federal lands. The GML affords U.S. citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry, and to locate mill sites for mining-related activities. Locatable minerals include non-metallic minerals (lithium, fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals (including gold, silver, lead, copper, zinc, and nickel). Locating these mineral deposits entitles the locator to certain possessory interests including:

a. unpatented mining claims, which provide the locator with an exclusive possessory interest in surface and subsurface lands and the right to develop the minerals; and
b. patented mining claims, which pass the full fee title from the federal government to the locator, effectively converting the property to private land – although a mining patent moratorium has been in place since 1994, and no new patents are being issued.

Other minerals on federal lands are "leasable" and are governed under separate statutes and regulations. The Federal Land Policy and Management Act of 1976 (the "FLPMA") (43 U.S.C. §§ 1701-1787) governs federal land use, including access to, and exercise of, GML rights on lands administered by the BLM and the USFS. The FLPMA recognises "the Nation's need for domestic sources of minerals" (43 U.S.C. § 1701(a)(12)), and provides that the FLPMA will not impair GML rights, including, but not limited to, the rights of ingress and egress (43 U.S.C. § 1732(b)). The BLM and USFS have promulgated the extensive FLPMA mining regulations (see, e.g., 36 C.F.R. §§ 228.1-228.116, 43 C.F.R. §§ 3000.0-5-3936.40). The National Environmental Policy Act ("NEPA") (42 U.S.C. §§ 4321-4370m-12) requires federal agencies to prepare an environmental impact statement ("EIS") for all major federal actions significantly affecting the quality of the human environment. In the first quarter of 2025, NEPA underwent its most substantive transformation in

nearly 50 years as the implementation of NEPA regulations were addressed by Executive Orders from President Trump (aspects of which are discussed at question 9.1 specifically addressing these changes). Mining operations on federal lands or with a federal *nexus* will generally involve an EIS, or a less intensive environmental assessment ("EA"), examining their potential environmental impact. In the past, due to the significant consultation and public comment requirements of preparing an EIS, which generally resulted in a lengthy process involving many years, project proponents often choose to initiate their projects without using federal land or implicating federal approvals where possible. The required timelines for both the EA and EIS process have dramatically decreased with the implementation of changes made by these Executive Orders as described more below. The NEPA process traditionally also involved the consideration of other substantive environmental statutes.

The U.S. Securities and Exchange Commission (the "SEC") regulates mineral resources and reserves reporting by entities subject to SEC filing and reporting requirements, aiming to provide investors with "a more comprehensive understanding of the registrant's mining properties". The SEC's reporting classification system is based on the SEC's 1992 "Industry Guide 7", which provides for a declaration only of proven and probable reserves. On October 31, 2018, the SEC adopted new rules for its reporting classification system that were effective January 1, 2021, which can be found under Regulation S-K Subpart 1300. The newer rules require additional disclosures for mining companies, including exploration results, mineral resources, and mineral reserves bringing the SEC disclosure requirements more in line with the disclosure standards of Canada's National Instrument 43-101 and the Committee for Mineral Reserves International Reporting Standards. These rules require registrants with material mining operations to disclose information in their public filings regarding their mineral resources, in addition to their mineral reserves.

In September 2023, the Federal Permitting Improvement Steering Council (also known as the Permitting Council), which administers Title 41 of the FAST Act Program (Fixing America's Surface Transportation Act) ("FAST-41"), proposed to revise the scope of what constitutes a mining infrastructure project for eligibility under the FAST-41 permitting system to focus on those involving critical mineral projects and the critical minerals supply chain. The FAST-41 program was designed to streamline qualifying infrastructure projects' federal permitting review and processes by providing public transparency into the permitting process and coordination across federal agencies to reduce unnecessary delays. FAST-41 projects have, in certain instances prior to the changes imposed by the Trump Administration, resulted in the final permitting status being reached 18 months faster, which was significantly faster that those not in the program. Updates to the FAST-41 program are discussed in more detail in question 2.2 below.

In March 2024, the SEC adopted new climate disclosure rules that would require registrants to provide climate related disclosures in their annual reports and registration statements, beginning with annual reports for the year ending December 31, 2025. Applicable companies would have to provide details of its Scope 1 greenhouse gas ("GHG") emissions (direct emissions that are owned or controlled by a company) and Scope 2 GHG emissions (indirect emissions a company causes that come from purchased energy), but were allowed some delay for disclosure. At the time of the adoption, disclosure of Scope 3 GHG emissions (indirect emissions resulting from assets not controlled or owned by a company but are indirectly affected in the company's value chain) was not required. The SEC voted in March 2025, one year after its adoption of these new climate disclosure rules, to stop defending these rules, and so, at this point, these climate disclosure rules are currently not being enforced.

In June 2024, the District of Columbia Court of Appeals, in *Earthworks v. U.S. Department of the Interior*, settled a long dispute starting in 1999 with a BLM regulation that limited mill sites for mining claims. Mill sites are important for storing waste rock and tailings disposal. Under the GML, multiple mill sites can be located per claim so long as no mill site exceeds five acres. Originally, the BLM proposed that only one mill site could be claimed for each mining claim; however, in 2003, in connection with its Final Rule, the BLM ruled that mill sites may be "reasonably necessary" for "efficient…milling or mining operations". The 2024 ruling from the District of Columbia Court of Appeals upheld the BLM's Final Rule from 2003, stating that a mining claim can have more than one mill site as long as the mill site is "reasonably necessary to be used" for mining operations.

On May 27, 2025, the Supreme Court rejected an appeal by the Apache Stronghold to block a land transfer of the Tonto National Forest land, also known as the Oak Flats to Resolution Copper. The Oak Flats land is required for the Resolution Copper Mining Project in Arizona and the Apache group argues that the land is a sacred religious site necessary for ceremonies and other cultural practices. The Apache Stronghold filed suit in 2021 and has continued to argue, among other things, that allowing the transfer of this land will result in violation of its religious rights and practices under the Religious Freedom Restoration Act. After the Supreme Court's rejection, on June 20, 2025, the USFS provided the final EIS and draft Record of Decision for the project, starting the 60-day clock for which the land transfer has to occur. On August 15, 2025, a district judge denied another request by the Apache Stronghold to block the transfer, which was set to occur on August 20, 2025. One day before this land transfer was set to occur, the 9th U.S. Circuit Court of Appeals granted a temporary pause to the land transfer related to the USFS required environmental review.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

The Trump Administration has been focused on spurring U.S. mining and critical mineral production and facilitating the processing of critical minerals in the United States, in efforts to reduce reliance on foreign critical mineral and processing capabilities. To further its goals, the Trump Administration has released a number of Executive Orders focused on the U.S. critical minerals sector and launched a Section 232 national security investigation into copper imports, which resulted in a 50% tariff on imports of copper. The first order released on January 20, 2025, titled "Unleashing American Energy", encouraged energy exploration and production, focused on making the United States a global energy leader in rare earth mineral production, and suspended many of the scheduled disbursements under the Inflation Reduction Act enacted in August 2022 (the "IRA") by the Biden Administration to aid green energy measures, such as government-provided tax credits, grants and loan programmes. In March, President Trump released the Executive Order titled "Immediate Measures to Increase American Mineral Production", which mandated several agencies involved in the permitting of mineral production to provide within 10 days of such order a list of all mineral production projects currently in the permitting phase, proposed addressing the treatment of waste rock and tailings under the GMA, required a listing from the Secretary of the Interior for

new federal lands for mineral projects, and also required the U.S. International Development Finance Corporation and Exim-Import Bank of the United States ("EXIM") to develop proposals and programmes for the financing of domestic mineral production. This March Executive Order also very notably defined copper, uranium, potash, and gold as "minerals", all minerals that had been previously excluded from the 2022 Critical Minerals List. On July 4, 2025, President Trump also signed into law the One Big Beautiful Bill Act (the "OBBBA"), which phased out several of the IRA tax credits, grants and loan programmes. The OBBBA generally targeted reducing tax credits and funding programmes for solar and wind projects, but did also phase out some of the tax credits for certain critical mineral projects.

Finally, the proposed Mining Regulatory Clarity Act, under consideration by the U.S. Congress, but not yet enacted, is intended to "fix" the barriers generated by the Rosemont litigation (the assumption by the USFS of valid mining claims for the land planned for tailings and waste rock) by setting forth a process that would allow mine operations to use, occupy, and conduct "ancillary" operations on public land regardless of whether a mineral deposit has been discovered on the land. In the past Congress, the bill was approved by the House of Representatives, but not the Senate. It has been reintroduced in the current 119th Congress.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

Pursuant to the Executive Orders mentioned under question 2.1, the Trump Administration has continued this trend of optimising the permitting review process through these Executive Orders, by mandating that federal agencies identify priority projects that can be immediately approved or for which permits can be immediately issued, and further to take all necessary or appropriate actions within the agency's authority to expedite and issue the relevant permits or approvals. The recent Executive Orders further directed agencies to select mineral production projects for the "Permitting Dashboard" established under Section 41003 of FAST-41, which required a 15-day turnaround from the Permitting Council to publish any projects selected as "transparency projects", by establishing schedules for expedited review. Prior to this mandate by the Trump Administration, there was only one mining project to receive FAST-41 coverage, the South 32 Hermosa Project (a zinc and manganese mining and processing operation). There are now more than 30 total mining projects that are involved in the FAST-41 program. Eight of these FAST-41 projects are considered "Covered Projects" and as such will be provided the benefit of a coordinated permitting timetable with active management by the Permitting Council; the remaining are considered "Transparency Projects" that are posted on the FAST-41 Dashboard in the interest of transparency for public visibility.

In response to the recent Executive Orders, under its Make More in America Initiative, so far in 2025, EXIM has now approved multiple financings for critical mineral projects in the United States, including a zinc project in New York, an antimony and gold project in Idaho, and a gold project in Nevada, and it is expected that this list of approved projects will continue to grow.

Further, as mentioned above, NEPA has substantially changed this past year, and with the amount of domestic and foreign investments into the U.S. critical minerals market, it remains to be seen how these NEPA changes will expedite the permitting process and ultimate timelines for these many U.S. mining projects, ultimately encouraging more investment domestically or internationally.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

The GML affords U.S. citizens the opportunity to explore for, discover and purchase certain valuable mineral deposits on federal lands open for mineral entry. The process for developing locatable mineral rights on federal lands under the GML involves:

a. discovery of a "valuable mineral deposit", which under federal law means that a prudent person would be justified in developing the deposit with a reasonable prospect of developing a successful mine, and that the claims can be mined and marketed at a profit;
b. locating mining claims by posting notice and marking claim boundaries;
c. recording mining claims by filing a location certificate with the proper BLM State office within 90 days of the location date and recording pursuant to county requirements;
d. maintaining the claim through assessment work or paying an annual maintenance fee; and
e. additional requirements for mineral patents (as mentioned above, there is a moratorium on patents).

Reconnaissance on federal lands with leasable minerals generally requires the issuance of an exploration permit or lease. Although the GML and the Mineral Lands Leasing Act of 1920 (30 U.S.C. §§ 181-287), as amended, require mine claimants, permittees and lessees to be U.S. citizens, a "citizen" can include a U.S.-incorporated entity that is wholly owned by non-U.S. entities or corporations. There generally are no restrictions on foreign acquisition of these types of U.S. mining rights through parent-subsidiary corporate structures.

3.2 What rights are required to conduct exploration?

Depending on the stage and extent of exploration work and the amount of ground that is disturbed, additional permits and licences required to conduct mining activities may include:

a. a mine plan of operations;
b. a reclamation plan and permits;
c. air quality permits;
d. water pollution permits (pollutant discharge elimination system discharge permit, storm water pollution prevention plan, spill prevention control and a countermeasure plan);
e. dam safety permits;
f. artificial pond permits;
g. hazardous waste materials storage and transfer permits;
h. well drilling permits;
i. road use and access authorisations, right-of-way authorisations; and
j. water rights.

3.3 What rights are required to conduct mining?

See the response to questions 2.1 and 2.2.

3.4 Are different procedures applicable to different minerals and on different types of land?

The GML governs locatable minerals, which include non-metallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones) and metallic minerals (including gold, silver, lead,

copper, zinc, and nickel). The Mineral Lands Leasing Act establishes a prospecting permit and leasing system for all deposits of coal, phosphate, sodium, potassium, oil, gas, oil shale, and gilsonite on lands owned by the United States, including National Forests. In addition, sulphur deposits found on public lands in Louisiana and New Mexico are leasable, as are geothermal steam and associated geothermal resources, uranium, and hard rock mineral resources. These same deposits found in some acquired federal lands, including acquired forest lands, are leasable under a similar statute. The Materials Disposal Act of 1947 (30 U.S.C. §§ 601-615), as amended, provides for the disposal of common minerals found on federal lands, including, but not limited to, cinders, clay, gravel, pumice, sand or stone, or other materials used for agriculture, animal husbandry, building, abrasion, construction, landscaping and similar uses. These minerals may be sold through competitive bids, non-competitive bids in certain circumstances or through free use by government entities and non-profit entities. Minerals on State-owned land are made available under the individual State's statutory and regulatory scheme.

3.5 Are different procedures applicable to natural oil and gas?

The Mineral Lands Leasing Act provides U.S. citizens the opportunity to obtain a prospecting permit or lease for coal, gas, gilsonite, oil, oil shale, phosphate, potassium, and sodium deposits on federal lands. The process for obtaining a permit or lease involves filing an application with the federal agency office with jurisdiction over the affected land. Depending on the type of permit or lease applied for, applicants may be required to:

a. pay rental payments;
b. file an exploration plan;
c. pay royalty payments based on production; or
d. furnish a bond covering closure and reclamation costs.

These permits and leases are often subject to conditions and stipulations directed at protecting resource values.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

Only U.S. citizens or U.S. companies can hold locatable and leasable minerals on federal lands, but foreign companies may form U.S. subsidiaries to secure such rights. States do not generally restrict the ownership of mineral leases based on the type of entity.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

U.S. mining laws generally do not restrict or limit foreign investment. Although the GML and Mineral Lands Leasing Act require mine claimants, permittees and lessees to be U.S. citizens, a "citizen" can include a U.S.-incorporated entity that is wholly owned by non-U.S. entities or corporations. There are generally no restrictions on foreign acquisition of these types of U.S. mining rights through parent-subsidiary corporate structures. The Mineral Lands Leasing Act, Mineral Leasing Act for Acquired Lands, and Reorganization Plan No. 3 require that the holder of a mineral lease or prospecting permit must be a citizen of the United States (30 U.S.C. § 181, 352, 43 C.F.R. § 3502.10(a)). Corporations organised under the laws of the United States or any State or territory of the United States may qualify to hold leases or prospecting permits. While foreign persons are permitted to be shareholders, the citizenship of the shareholders is significant. The country of citizenship of each shareholder must be a country that does not deny similar or like privileges to U.S. citizens (30 U.S.C. § 181 (such countries are referred to as "non-reciprocal countries")). Disclosure of foreign ownership is not required unless it meets the 10% threshold (43 C.F.R. § 3502.30(b)). Therefore, even foreign stockholders from non-reciprocal countries may own less than 10%. Foreign investments are subject to U.S. national security laws. The Committee on Foreign Investment in the United States, for example, is an inter-agency committee chaired by the Secretary of the Treasury that has authority to review foreign investments to protect national security and make recommendations to the President to block the same (50 U.S.C. § 4565). The President may exercise this authority if they find that the foreign interest might take action impairing national security and other provisions of the law do not provide them with appropriate authority to act to protect national security (50 U.S.C. § 4565(d)(4)). Foreign employees are governed by general U.S. immigration laws, and are required to obtain a work visa or other authorisation. A limited number of visas are available for skilled workers, professionals and non-skilled workers, but these workers must be performing work for which qualified U.S. workers are not available (8 U.S.C. § 1153(b)(3)(C)).

4.3 Are there any change of control restrictions applicable?

The GML does not contain change of control restrictions.

4.4 Are there requirements for ownership by indigenous persons or entities?

The GML does not contain requirements for ownership by indigenous persons or entities. See the response to question 9.1.

4.5 Does the State have free carry rights or options to acquire shareholdings?

There are no carry rights or shareholding options under federal law, although production royalties are usually required on leasable minerals that are governed by the Mineral Leasing Act. In connection with President Trump's passing of the OBBBA, the royalty rate for coal was reduced from 12.5% to 7%. Many States charge royalties on mineral operations on State-owned lands, and charge taxes that function like royalties on other lands, such as severance taxes, mine licence taxes or resource excise taxes. These functional royalties can vary depending on land ownership and the minerals extracted.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are no specific provisions relating to processing, refining or beneficiating mined minerals in U.S. law, except for general environmental laws and laws governing permitting requirements.

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

There are currently no specific restrictions on the sale or export of extracted or processed minerals, unless deemed a national security risk by the U.S. Department of Homeland Security or State Department, but the Trump Administration has, as a result of its recent 232 investigation on the effects of copper imports, ordered a 50% tariff in place on the import of copper and derivative products. The Trump Administration has also, as a result of the investigation, authorised the Secretary of Commerce under the Defence Production Act to require, commencing in 2027, 25% of high-quality copper scrap produced in the United States to be sold in the United States and 25% of copper input materials produced in the United States to be sold in the United States, with such amounts to rise incrementally to 40% by 2029.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

No, except that the transferee must be qualified to hold the interest. See the response to question 4.2.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes, locatable and leasable minerals on federal lands can be mortgaged or otherwise used as security, subject to the underlying mineral ownership rights of the government. Leasehold rights in State- and privately owned minerals can also be used as security, subject to any restrictions in the lease. See the response to question 17.1.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Under the GML, reconnaissance activities that do not cause surface disturbance can generally be conducted on any lands open for mining, and exploration and mining can occur after locating an unpatented mining claim. Unpatented mining claims provide the locator with exclusive possessory surface and mineral interests. Ownership of State-land minerals is controlled by State law and varies by State. State laws generally are similar to federal laws in that the title remains with the State until the minerals are severed pursuant to statutory procedures. However, land ownership in the United States can be severed into surface and subsurface estates, creating a split estate where the surface and mineral rights can be held by different parties. The ability to sever the unified estate depends on land ownership. Federal land mineral interests are regulated by federal laws and titles cannot be generally transferred to private citizens until the minerals have been severed. Under the GML, locatable mineral claims may be patented, transferring the title to the locator; however, as mentioned earlier, there has been a patent moratorium in place since 1994. Severance of private land estates is governed by State law, and, generally, private citizens are free to split their surface and mineral estates. Once the mineral estate is severed and enters the private market, the title to the minerals can be bought, sold, leased or rented as a matter of contract and real property law, subject to reservations in the severance document and applicable laws. The federal government, particularly in the western U.S., may have reserved the mineral estate to itself when it transferred ownership of the surface lands to private citizens or State governments, which could affect the surface owners' ability to alienate the minerals. In some areas, it is common to have different minerals leased to different parties.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, such rights may be held in undivided shares, and this is a common practice.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore for or mine secondary minerals?

Generally, the holder of a mining claim or lease for a primary mineral is entitled to extract from a claim/lease those "associated minerals", or secondary minerals, which may be economically recovered along with the primary mineral(s). Particular leasable minerals and minerals on State- or privately owned land are made available depending on the terms of the lease.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled also to exercise rights over residue deposits on the land concerned?

Generally, the holder of a mining claim or lease may exercise rights over residue deposits on the land concerned. However, certain residue deposits may be subject to ownership by another party and may not be contemplated by a mining lease.

7.5 Are there any special rules relating to offshore exploration and mining?

Yes. There are special federal and State rules relating to offshore exploration and mining, depending on whether exploration and mining are taking place in State-owned or federal waters. Generally, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, *et seq.*, provides the U.S. Bureau of Ocean Energy Management (the "BOEM") and related agencies with the authority to manage minerals on the U.S. outer continental shelf. Minerals may be offered for lease by the BOEM in accordance with federal regulations at 30 C.F.R. Parts 580–582.

In July 2024, the International Seabed Authority, an intergovernmental body based out of Kingston, Jamaica, which includes 168 Member States and the European Union (established out of the 1982 United Nations Convention on the Law of the Sea), met to negotiate a new Mining Code that will regulate deep-sea mining, but such code has not yet been fully negotiated.

On April 24, 2025, the Trump Administration released an Executive Order titled "Unleashing America's Offshore Critical Minerals Resources" with the goal of accelerating responsible development of seabed mineral resources, and it also mandated the Secretary of Commerce with the National Oceanic Atmospheric Association to expedite the process for reviewing and issuing seabed mineral exploration licence and permits in U.S. and international waters. The House Committee

had a hearing shortly thereafter in which it announced that the BOEM's failure to lease areas within the Exclusive Economic Zones poses a heavy burden on seabed mining. On June 25, 2025, the Department of the Interior announced its new policy to bolster the U.S. offshore mining industry, which includes, among other things, instruction to the BOEM to streamline environmental reviews and extend prospecting permits from three- to five-year duration, and the consolidation of exploration, testing and mining plans into a single review by the BOEM.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

See the responses to questions 1.3, 3.1 and 7.1. The FLPMA governs federal land use, including access to, and exercise of, GML rights on lands administered by the BLM and the USFS. The FLPMA recognises "the Nation's need for domestic sources of minerals", and provides that the FLPMA must not impair GML rights, including, but not limited to, rights of ingress and egress. However, the FLPMA also provides that mining authorisations must not "result in unnecessary or undue degradation of public lands". BLM and USFS have promulgated extensive FLPMA mining regulations. Not all federal lands are open to mineral entry, including national parks, national monuments, most Reclamation Act project areas, military reservations, wilderness areas, and wild and scenic river corridors. Upon making a discovery of valuable minerals, the locator of a federal mining claim receives the "exclusive right of possession and enjoyment" of all "veins, lodes, and ledges throughout their entire depth" that have apexes within the mining claim. The locator also receives the exclusive right to possess all surface areas within the claim for mining purposes, but the United States retains the right to manage the surface of the property for other purposes. A locator's possessory rights are considered vested property rights in real property with full attributes and benefits of ownership exercisable against third parties, and these rights may be sold, transferred and mortgaged. In most States, the owner of the mineral estate on private land has the right to use as much of the surface as is reasonably necessary to exploit the mineral estate, but such rights are usually qualified and limited in various ways.

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Federal mining laws do not require community engagement or corporate responsibility. Those projects that require NEPA review, however, will be subject to public notice and comment requirements and the review will involve consideration of the project's cultural, societal and economic impacts. State laws may impose a "public interest" standard for projects requiring State approval. For example, mining operations that require State water rights may need to show that the use of the water is in the "public interest", which may include consideration of wildlife, fisheries and aquatic habitat values. The law governing split estates generally requires both the mineral estate owner and the surface estate owner to proceed with "due regard" for the other, and to "accommodate" the use of the other. The holder of mining rights is entitled to use as much of the surface and subsurface as is "reasonably necessary" to exploit its interest in the minerals, but this entitlement must be balanced against the surface owner's right to use his property. Federal and State legislation has granted additional protections to surface owners.

8.3 What rights of expropriation exist?

There is little risk of expropriation of mining operations by government seizure or political unrest. Rights may only be expropriated following due process and the payment of due compensation to the holder.

9 Environmental and Social

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Historically, NEPA was administered by the Council on Environmental Quality (the "CEQ"), and was a federal government-wide framework of environmental laws implicated by mining on federal lands. NEPA required federal agencies to take a "hard look" at the environmental consequences of its projects before action was taken. After this assessment and review process, the agencies were required to prepare an EIS for all major federal actions significantly affecting the quality of the human environment. The agency would first prepare an EA to determine whether the effects were significant. If the effects were significant, the agency would prepare the more comprehensive EIS. If the effects were insignificant, the agency generally would issue a finding of no significant impact, ending the process. NEPA did not dictate a substantive outcome; however, the analysis generally required consideration of other substantive environmental statutes and regulations, including the Clean Air Act (42 U.S.C. §§ 7401-7671q), the Clean Water Act (33 U.S.C. §§ 1251-1388), and the Endangered Species Act (16 U.S.C. §§ 1531-1544).

In February 2025, following the Unleashing American Energy Executive Order mentioned above, the CEQ rescinded its NEPA implemented regulations, and suggested the various federal agencies implement their own guidelines with swift permitting approvals to meet deadlines while prioritising efficiency over other ambiguous policy objectives. On July 3, 2025, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, the Department of Energy, the Department of the Interior, the Department of Defence and several other agencies, released their own regulations and procedures to implement NEPA. The Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado* on May 29, 2025 confirmed that these agencies are not to be "micromanaged" by the courts and confirmed the ability of the agencies to establish limits on the scope of their environmental reviews. Some of these agencies cited or relied on the *Seven County* "substantial deference" threshold, giving them the flexibility for their determination of their respective NEPA cases. These agencies will not have to consider all the "cumulative" or "remote" impacts of a project that were once required under the prior NEPA procedures and instead can consider a more limited scope of factors, which should result in the approval of more projects. Finally, with the passing of the OBBBA, a new fast track payment option was introduced where project developers can pay 125% of the review costs for an accelerated review, with the agencies having to finalise the EA process within 180 days and the EIS process within one year. Prior to these recent changes, the NEPA project frequently took several years.

Mining projects on federal lands, or that otherwise have a federal *nexus*, will likely have to go through some level of NEPA environmental review, but the implementation of these

new agency NEPA guidelines should significantly impact the review process. State laws may also require environmental analysis. Where analysis is required by different agencies, it may be possible to pursue an agreement among the agencies to allow the operator to produce one comprehensive environmental review document that all agencies can rely on. Third parties may still sue the federal agency completing the review to ensure that the agency considered all relevant factors and had a rational basis for the decisions made based on the facts found, but the courts' deliberation or consideration of the management in these matters will likely change. That being said, prosecuting the litigation may extend the project approval process timeline.

State laws may also include closure and reclamation requirements, including water and air pollution controls, re-contouring and revegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects often can address both federal and State requirements through a single closure and reclamation plan and financial guarantee.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The FLPMA requires the BLM and the USFS to prevent "unnecessary or undue degradation" of public lands (43 U.S.C. § 1732(b)). Plan-level operations require a plan of operations that includes a detailed reclamation plan (43 C.F.R. §§ 3809.11, 3809.401). BLM reclamation standards include saving topsoil for reshaping disturbed areas, erosion and water control measures, toxic materials measures, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitats (43 C.F.R. § 3809.420). Mining in BLM Wilderness Areas additionally requires that surface disturbances be "reclaimed to the point of being substantially unnoticeable in the area as a whole" (43 C.F.R. § 3802.0-5(d)).

Under the USFS' mining rules, mining activities on National Forest lands must be conducted "so as to minimise adverse environmental impacts on National Forest System surface resources" (36 C.F.R. § 228.1). Operators must take measures that will "prevent or control on-site and off-site damage to the environment and forest surface resources", including erosion control and landslides, water run-off control, toxic materials control, reshaping and re-vegetation where reasonably practicable, and rehabilitation of fish and wildlife habitat (36 C.F.R. § 228.8(g)). State laws may also include closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and revegetation, fish and wildlife protections, and reclamation bonding requirements. Mining projects can often address both federal and State requirements through a single closure and reclamation plan and financial guarantee. Federal and State laws generally require financial guarantees prior to commencing operations to cover closure and reclamation costs. These reclamation bonds ensure that the regulatory authorities will have sufficient funds to reclaim the mine site if the permittee fails to complete the reclamation plan approved in the permit.

9.3 What liabilities does a mining company face in the event that mining activities result in ground water or other contamination affecting third parties?

Pursuant to the National Forest System regulations, upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within one year of the conclusion of operations, unless a longer time is allowed, mining companies must reclaim the surface disturbed in operations by taking such measures as will prevent or control on-site and off-site damage to the environment and forest surface resources, including control of water runoff and isolation and removal or control of toxic materials (36 C.F.R. § 228.8(g)). See also the response to questions 9.1 and 9.2.

9.4 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

See the response to question 9.2.

9.5 Are there any social responsibility requirements (such as to invest in local infrastructure and communities) under applicable law or regulation?

There are currently no requirements in the United States for mining companies to invest in local infrastructure and communities or enter into Community Benefit Agreements ("CBAs") like in other parts of the world.

9.6 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Individual counties and municipalities may impose certain zoning requirements on lands subject to their jurisdiction; however, zoning requirements are less likely to apply where mining operations are located away from residential areas.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The United States contains numerous reservations comprising federal lands set aside by treaty or an administrative directive for specific Native American tribes or Alaska Natives. Tribal reservation titles are generally held by the United States in trust for the tribes, and the U.S. Bureau of Indian Affairs administers the reservations. Alaska Native lands are owned and administered by Alaska Native corporations. Mineral development within the tribal reservations and Alaska Native lands requires negotiation with the appropriate administrator.

Tribal cultural interests are considered through NEPA and two specific laws. The National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101, *et seq.*, requires an analysis that includes social and cultural impacts, and may require tribal consultation. Section 106 of NHPA requires federal agencies to inventorise historic properties on federal lands and lands subject to federal permitting, and to consult with interested parties and the State Historic Preservation Office (54 U.S.C. § 306108). The Native Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013, imposes procedural requirements that apply to inadvertent discovery and intentional excavation of tribal graves and cultural items on federal or tribal lands. Locatable minerals found on American Indian reservations are subject to lease only. Under the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108, tribes may enter private negotiations with mineral developers for the exploration and extraction, subject to the Secretary of the Interior's approval.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

The Federal Mine Safety and Health Act, 30 U.S.C. § 801-966, requires the Mine Safety and Health Administration (the "MSHA") to inspect all mines each year to ensure safe and healthy work environments (30 U.S.C. § 813). The MSHA is prohibited from giving advance notice of an inspection, and may enter mine property without a warrant (30 U.S.C. § 813). The MSHA regulations set out detailed health and safety standards for preventing hazardous and unhealthy conditions, including measures addressing fire prevention, air quality, explosives, aerial tramways, electricity use, personal protection, illumination and others. See, e.g., 30 C.F.R. Part 56 (safety and health standards for surface metal and non-metal mines). The MSHA regulations also establish requirements for: testing; evaluating and approving mining products; miner and rescue team training programmes; and notification of accidents, injuries, and illnesses at the mine (30 C.F.R. §§ 5.10-36.50, 46.1-49.60, 50.10).

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

See the response to question 11.1.

12 Administrative Aspects

12.1 Is there a central titles registration office?

Yes. Both the BLM and individual counties in each State maintain records concerning title to surface and mineral interests in federal lands. State agencies typically maintain records for State-owned minerals. Documents affecting a title to private minerals are typically recorded in the county records of the county in which the lands are located.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes. Appeals may be made to administrative tribunals and to the judicial system.

13 Constitutional Law

13.1 Is there a constitution that has an impact upon rights to conduct reconnaissance, exploration and mining?

The U.S. Constitution and federal laws are the supreme law of the land, generally pre-empting conflicting State and local laws. In many legal areas, the different authorities have concurrent jurisdiction, requiring regulated entities to comply with multiple levels of regulation. Mining on federal lands, for example, is generally subject to multiple layers of concurrent federal, State, and local statutes and administrative regulations.

13.2 Are there any State investment treaties that are applicable?

Many international treaties of general application apply to mining industry investment by foreign persons into the United States, but none specifically address investment in the mining industry or trading in various minerals. See the response to question 15.2 for further information.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

There are no federal taxes specific to minerals extraction. General federal, State, county and municipal taxes apply to mining companies, including income taxes, payroll taxes, sales taxes, property taxes and use taxes. Federal tax laws generally do not distinguish between domestic and foreign mining operators. However, if a non-U.S. citizen acquires real property, the buyer must deposit 10% of the sale's price in cash with the U.S. Internal Revenue Service as insurance against the seller's income tax liability. The cash requirement can be problematic for a cash-strapped buyer that may have purchased the mine property with stock. There are no federal duties on minerals extraction. Taxation schemes in individual States vary widely.

For the 2025 assessment year, locatable minerals claimants must pay an annual maintenance fee of $200 per claim *in lieu* of performing assessment work required pursuant to the GML and the FLPMA (43 C.F.R. §§ 3834.11(a), 3830.21). Failure to perform assessment work or pay a maintenance fee will open the claim to relocation by a rival claimant as if no location had been made (43 C.F.R. § 3836.15). Certain waivers and deferments apply. Leasable minerals permittees and lessees must pay annual rent based on acreage. The rental rates differ by mineral and some rates increase over time (43 C.F.R. § 3504.15). Prospecting permits automatically terminate if rent is not paid on time; the BLM will notify late lessees that they have 30 days to pay (43 C.F.R. § 3504.17).

14.2 Are there royalties payable to the State over and above any taxes?

There are generally no royalties levied on the extraction of federally owned locatable minerals. Production royalties are generally required on fuel minerals and other minerals governed by the Mineral Leasing Act. Many States charge royalties on mineral operations on State-owned lands and taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes. These functional royalties can differ depending on land ownership and the minerals extracted.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

As noted above, State and local governments have concurrent or independent authority over certain aspects of mining projects (e.g., permitting, water rights and access authorisations). Ownership of State-owned land and minerals is controlled by State law and varies by State. State laws generally are similar to federal laws in that a title remains with the State until the minerals are severed pursuant to statutory procedures. State and local laws may impose a "public interest" standard for projects requiring State approval. State laws may also include

closure and reclamation requirements, including, for example, water and air pollution controls, re-contouring and re-vegetation, fish and wildlife protections, and reclamation bonding requirements. Many State laws require financial guarantees prior to commencing operations to cover closure and reclamation costs. In addition, some States charge royalties on mineral operations on State-owned lands and impose taxes that function like a royalty on all lands, such as severance taxes, mine licence taxes, or resource excise taxes.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Chapter 11 of the North American Free Trade Agreement ("NAFTA") among the United States, Canada and Mexico requires equal treatment between the NAFTA country's own citizens and those from another NAFTA country, and requires that the NAFTA country protect those investors and their investments. Among the most important protections are the broad prohibitions on "expropriation" of the investor's rights, including a prohibition on the NAFTA country implementing measures "tantamount to expropriation" except in accordance with approved criteria, and requiring payment of compensation resulting from losses incurred by the investor. In August 2018, Mexico and the United States announced that they had come to terms on a new trade agreement that preserved much of NAFTA but introduced a number of significant changes. Subsequently, in September 2018, Canada agreed to join the new trade agreement; the pact was signed on November 30, 2018, and went into effect on July 1, 2020.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Under the GML, rights in unpatented mining claims can be abandoned by non-payment of annual maintenance fees. Minerals leased under federal law (energy minerals such as coal), minerals owned by States, and minerals owned by private entities can only be abandoned in accordance with the terms of the lease or other grant from the mineral owner to the holder of the right to develop the minerals.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Under the GML, there is no obligation to relinquish an exploration or mining right after a certain period of time. The terms of federal mineral leases, State mineral leases or private leases may contain such provisions.

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes. Under the GML, unpatented mining claims may be cancelled for failure to pay annual maintenance fees, or, in some instances, the federal government can challenge the validity of unpatented mining claims for failure to make a valid discovery of a valuable mineral. The terms of federal, State and private leases often contain default provisions allowing cancellation upon failure to comply with conditions of the lease.

17 Mining Finance: Granting and Perfecting Security

17.1 In relation to the financing of mines, is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

In a mining finance transaction, it is common for both a Security Agreement and a Mortgage to be entered into among the parties, whereby the borrower obtaining the financing has granted certain security interests to the lender to secure its loan obligations. The Security Agreement will include the grant of a security interest by the borrower in specific categories of its personal property assets (equipment, inventory, vehicles, accounts receivable, bank accounts, etc.) to secure the borrower's obligation to pay back the loan. The security interest is a statutory creation and is generally governed under the Uniform Commercial Code (the "UCC"). A Mortgage is a common law creation, and is a document whereby a borrower grants a security interest to the lender in its interest in real property (tracts of land, mineral interests, mill site, etc.).

17.2 Can security be taken over real property (land), plant, machinery and equipment (whether underground or overground)? Briefly, what is the procedure?

See the response to question 17.1. Once a Security Agreement is executed, a UCC financing statement should be filed listing the exact name of the borrower as the debtor, and the lender as the secured party, including their addresses and a sufficient description of the collateral under the Security Agreement. This description will often be referred to as an "all assets" description, reflecting a grant under the Security Agreement in a listing of all of the various types of personal property assets of the borrower. While perfection of a security interest depends on the local jurisdiction where the collateral or the borrower is located, the UCC financing statement should generally be filed with the Secretary of State where the borrower is organised to perfect the security interests in the collateral granted under the Security Agreement (although there are certain instances where the UCC financing statement should be filed elsewhere). County level filings (which could be in the form of a UCC financing statement or the Mortgage) can be made to perfect a grant of a security interest in fixtures (certain personal property affixed to the real property) and as-extracted minerals. There are requirements that the UCC financing statement be continued every five years to maintain perfection. Once a Mortgage is executed, to perfect the security interest in the real property collateral granted under the Mortgage, an original executed Mortgage (or copy thereof, if permitted in the applicable county) should be recorded in the real property records where the property is located.

Finally, it is important to note that because the GML and Mineral Lands Leasing Act require mine claimants, permittees and lessees to be U.S. citizens, in mine financings where the lender or agent (acting for a syndicate of lenders) is a foreign entity, a mine collateral agent that is a U.S. entity will likely be appointed by the lenders to hold the collateral on behalf of

such parties. The borrower will grant a security interest in the collateral to the mine collateral agent, and the mine collateral agent will be authorised to take all necessary administrative and enforcement actions with respect to the collateral on behalf of the lenders and/or agent.

17.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

A borrower can grant a security interest to a lender in its rights and interests to collect under its receivables and related contracts, and generally prior to a default, the borrower can continue to collect all amounts due or to become due to it under such receivables and related contracts. Upon a default, generally, the lender can notify the obligors under such receivables that the borrower has assigned its rights to collect such amounts due thereunder and direct such obligor to make such payments to the lender. Prior to a default, the borrower is generally not required to provide notice to the obligor that it has granted a security interest to the lender in its rights to receive payment under such receivables and related contracts. The obligor could, however, run a UCC lien search and if the lender's security interest has been perfected by the filing of a UCC, the obligor could be put on notice that certain of the borrower's assets (including such receivables and contract rights) have been pledged to the lender.

17.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

See the response to question 17.1. Yes, a security interest in deposit accounts can be granted. A borrower will generally grant a security interest to the lender in its accounts in a Security Agreement. Under the UCC, to perfect a security interest in a deposit account, "control" over that deposit account must be established, and control requires that either the borrower maintains a deposit account directly with the lender, the lender is the actual owner of the account (by being listed on the account), or the parties obtain an account control agreement with the borrower's depository bank.

17.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes, a security interest in equity in a company can be granted by the entity that holds such equity, regardless of whether the equity is certificated (evidenced by a numbered certificate) or uncertificated (evidenced by a book entry). The security interest in the equity will generally be granted pursuant to a Pledge Agreement that is entered into between a borrower or parent company and a lender. A UCC financing statement will perfect the security interest in the pledged equity; however, if the equity interests are certificated, the holder of such equity certificates with a valid security interest grant will generally have priority over other secured parties (those only having filed a UCC financing statement) by having control and possession of the equity certificates.

17.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The fees related to recording security instruments is dependent on the type of document, how voluminous the document is, where the document is being recorded, and in certain instances, the value of the property being encumbered by such document. The filing fees at the county clerk level for a simple "all assets" UCC financing statement are approximately $15–$30. The filing costs for a Mortgage with a several hundred-page property description could be much more expensive, as county clerk offices generally charge a first page fee ($4–$10) and then a less expensive fee ($0.50–$2) for each additional page. Further, in certain jurisdictions, a Mortgage recordation tax is charged when recording a Mortgage that is based on the value of the indebtedness being secured by such Mortgage (and in some jurisdictions, the term of the Mortgage).

17.7 Do the filing, notifications or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

See answer to question 17.6. The process of filing a UCC financing statement and receiving recordation evidence back from the applicable Secretary of State is generally a very quick process that usually only takes a few days. It may take several weeks to receive the recorded Mortgage from a county clerk's office after processing for filing (and that process may take longer depending on the length of the property exhibits as well as if any indexing of tracts is required). The process of filing and receiving evidence of a recorded Mortgage with the BLM may also take up to a few months.

17.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment at a mining operation?

See the response to questions 17.1 through 17.8. The steps outlined above are consistent with taking security over a mine and its mining operations.

18 Other Matters

18.1 What actions, if any, could be taken by the Government to encourage further foreign direct investment in the mining industry?

This is not applicable.

Meaghan Connors is a Partner in the Banking & Finance practice of Mayer Brown's Houston office. She represents financial institutions and borrowers in connection with various types of financings. Her experience includes secured and unsecured commercial transactions such as project financing, credit facilities for working capital, asset-based financings, acquisitions, refinancings, high-yield debt offerings, restructurings, and distressed lending. Meaghan has a particular emphasis on the energy-related industries (hard rock mining and oil and gas pipeline). Meaghan also has extensive experience in cross-border financings with complicated collateral arrangements, and frequently represents foreign financial institutions with both U.S. and international matters in bank financings.
Meaghan remains at the forefront of the presidential administration policy changes impacting the critical minerals market, frequently writing articles, presenting and participating as an expert panellist in discussions about the role of critical minerals domestically and globally.

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