

May 16, 2022

Dear President Biden,

We, the undersigned organizations, appreciate the steps you've taken to invest in clean energy and help further lead the world in this transition. However, it's essential that this be done properly, and this does not include using the Defense Production Act (DPA) to subsidize mining, which we oppose. In the event that this Cold War era tool is utilized, we urge you to institute strong cultural, environmental, and due diligence standards for implementing any DPA mechanisms for sourcing lithium, nickel, cobalt, graphite, manganese or other metals pursuant to Presidential Determination (PD) Number 2022-11.¹

The clean energy era can avoid repeating the mistakes of the fossil fuel era by meeting the demand for critical minerals in the most sustainable way possible: by recycling, reusing, and extending the life of materials we already have. Research shows that circular economy solutions such as recycling can significantly reduce demand.² By prioritizing demand reduction strategies like mineral recycling, reuse, and substitution, the country and the world can move away from extraction reliance. The European Union has voted to enact legislation (EU Battery Directive) requiring recycled content, mandatory takeback, and other battery policies, which the US should use as the foundation for building our own circular economy infrastructure.³

Where new mining is necessary, we must take special care to protect communities, biodiversity, and natural resources, particularly those relied on by Indigenous peoples and protected by treaties.

The undersigned respectfully urge you to implement the following reforms in advance of implementing this PD, and must be applied to all DPA funded projects and companies:

- Require free, prior, and informed consent (FPIC) from all Indigenous communities for all stages of DPA subsidized activities;
- Require that strong anti-corruption measures are in place to strengthen accountability, including the requirement for US-listed extractive companies to disclose all project-level payments to governments around the world as required by section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) (1504 rule);

¹ See Presidential Determination No. 2022-11 of March 31, 2022. Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended (87 Fed. R. Seg. 19775 April 6, 2022).

² Institute for Sustainable Futures, University of Technology, Sydney: Reducing new mining for electric vehicle battery metals: responsible sourcing through demand reduction strategies and recycling. (April 2021) <https://earthworks.org/publications/recycle-dont-mine/>

³ See [EU Council Press Release: Sustainable batteries: member states ready to start negotiations with Parliament \(March 17, 2022\)](#).

- After the Securities and Exchange Commission (SEC) finalizes a strong 1504 rule, the US should consider rejoining the Extractive Industries Transparency Initiative (EITI);
- Protect public and ancestral lands from undue degradation including substantial harm to important environmental, historical, cultural, biodiverse, or other resources, including specific Indigenous resources protections;⁴
- Require best practices and plans for managing mine waste tailings, climate impacts, and financial assurances, including those for long-term water treatment; and
- Institute an enforcement system with independent auditing and remedies.

The Administration Should Impose Binding Due Diligence Requirements for Companies to Respect Human Rights and the Environment

Companies and projects that receive taxpayer support through the Defense Production Act or other means must have mandatory due diligence standards to align with the commitments of the Biden Administration. Voluntary certification schemes like [Initiative for Responsible Mining Assurance \(IRMA\)](#) are positive starts but cannot replace the need for binding obligations for mining companies to respect human rights and the environment, throughout their entire value chains. Evidence has shown that relying solely on non-binding measures is insufficient to deliver effective solutions to Environmental and Social Governance (ESG) issues.

The [UN Guiding Principles on Business and Human Rights](#) (UNGPs), the OECD [Due Diligence Guidance for Responsible Business Conduct](#) guidelines, and supporting guidance on mineral supply chains provide the starting framework for responsible business conduct. These guidelines are internationally recognized, critical tools to advance responsible business conduct and address inequality. They create an ongoing obligation of companies to implement robust due diligence to identify and address the severe impacts these businesses cause the planet and people, women and girls in particular, in due consultation with affected rights-holders. Business directors should have oversight and responsibility for performing due diligence.

There is a growing global movement to legally require companies to undertake human rights due diligence across their supply chains. In addition to the recently passed EU Battery Directive, mandatory due diligence schemes are being proposed by civil society and/or at various levels of the legislative process in [Mexico](#), [Canada](#), in the EU, and in the legislatures of more than a [dozen European countries](#). The US risks falling further behind if it does not adopt its own legally-binding human rights due diligence schemes.

The Administration Should Address the Generational Trauma Caused by Government Subsidized Mining Activities

⁴ See [Revising Hardrock Mining Regulations to Protect Communities, Water, and Natural and Cultural Resources \(March 2021\)](#).

Although we oppose using the DPA for subsidizing mining, we recognize it presents an opportunity for this administration to live up to the President’s promise to address “the historic injustices that too many mining operations have left behind.”⁵ Those injustices stem, in part, from settler-colonial policies, sometimes enforced by the American Cavalry, that disproportionately harmed Indigenous people during the 19th century precious metals rush.⁶ Departments of Defense and Energy mining subsidies compounded this generational trauma during the 20th century uranium rush.⁷

We do appreciate the administration’s commitments to Justice40,⁸ environmental justice,⁹ and Indigenous Traditional Ecological Knowledge (ITEK).¹⁰ We also support the Interior Department’s new Missing and Murdered Unit,¹¹ which seeks to address the staggering rates of violence against Indigenous persons— much of which is connected to extraction. These commitments compel the Administration to use this PD, as well as the interagency working group on mining reform,¹² to reduce demand, require FPIC, due diligence, transparency, and update our mining laws and rules.

Thank you for your consideration.

Sincerely,

Brooks Range Council
Coalition to SAVE the Menominee River, Inc.
Cook Inletkeeper

⁵ See [President Biden’s remarks on February 22, 2022](#).

⁶ See Gregory Michno (2016), *The Deadliest Indian War in the West*, The Snake Conflict, 1864-1868.

⁷ See [Eastern Navajo Dine’ Against Uranium Mining \(ENDAUM\) et al. Petition before the Inter-American Commission on Human Rights \(July 2021\)](#). See also DOI Press Release: Secretary Haaland Takes Equity & Inclusion to the Next Level at SXSW (March 17, 2022). In pertinent part: “I know first-hand what it looks like to have a toxic, abandoned mine in my community. I’ve seen families struggle with the health impacts of that, and with the environmental degradation of what detonating dynamite every day for 30 years caused, while the largest open pit uranium mine in the world was made. The company then simply abandoned it when it was no longer cost effective, and it took decades to remedy.”

⁸ See [FACT SHEET: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government \(Jan 27, 2021\)](#).

⁹ See Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7,491 (Jan. 26, 2021); Executive Order 13,985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7,009 (Jan. 20, 2021);

¹⁰ See [Office of Science and Technology Policy Memorandum on Indigenous Traditional Ecological Knowledge in Federal Decision Making](#) (Nov. 15, 2021).

¹¹ DOI Press Release (April 2021): [Secretary Haaland creates new missing and murdered unit to pursue justice for missing and murdered American Indians and Alaskan Natives](#)

¹² See [87 Fed. Reg. 18811 \(Mar. 31, 2022\)](#).

Cultural Survival
Earthjustice
Earthworks
Endangered Species Coalition
Friends of Buckingham
Friends of the Earth US
Friends of the Kalmiopsis
Great Bear Foundation
GreenLatinos
Idaho Conservation League
Information Center "Indigenous Russia"
Information Network for Responsible Mining
International Campaign for Responsible Technology
International Indigenous Fund for Development and Solidarity "Batani"
Malach Consulting
Maryknoll Office for Global Concerns
Mining Impact Coalition of Wisconsin
Multicultural Alliance for a Safe Environment
Natural Resources Defense Council
Northeastern Minnesotans for Wilderness
Northern Alaska Environmental Center
Nuclear Information and Resource Service
Oil Change International
Okanogan Highlands Alliance
Oxfam America
People of Red Mountain
Progressive Leadership Alliance of Nevada (PLAN)
Project HEARD
Publish What you Pay - US
Rivers Without Borders
Save The Scenic Santa Ritas
Sierra Club
Sisters of Mercy of the Americas Justice Team
Upper Peninsula Environmental Coalition
WaterLegacy
Waterway Advocates
Weber Sustainability Consulting