

**Domestic mining** is a crucial part of the Biden administration's efforts to secure critical mineral supplies for technology, defense, and energy applications, notably domestic battery supply chains. In February 2021, **President Biden** issued an executive order mandating a review of vulnerabilities in domestic supply chains. The administration then released its Fundamental Principles for Domestic Mining Reform in February 2022 and invoked the Defense Production Act in April 2022 to fund the mining, processing, and recycling of [lithium](#), nickel, cobalt, graphite, and manganese.

In Congress, the passing of the **Inflation Reduction Act** (IRA) will help further incentivize and support bringing new critical mineral production online domestically by creating a new tax credit for mines producing critical minerals. In addition to this tax credit, the IRA will provide \$500 million in Defense Production Act funding. It will also extend an existing EV battery subsidy, which includes a condition that a percentage of the critical metals in [EV batteries](#) are sourced from the United States or a Free Trade Agreement (FTA) partner. With a potential increase in domestic critical mineral mining on the horizon, NGO interest in and engagement on social, environmental, and human rights issues in the U.S. mining sector is growing. To better understand their concerns and priorities, ERM recently conducted research on what actions NGOs want to see in the U.S. critical minerals mining space. As part of this research, ERM interviewed six influential NGOs actively engaged in U.S. mining conversations. We also supplemented these interviews by reviewing reports and articles published in the last two years by Earthjustice, Earthworks, Friends of the Earth, Natural Resources Defense Council, Oxfam, Sierra Club, The Nature Conservancy, and Human Rights Watch. Five key findings emerged from this research.

### **NGOs are pushing the federal government to consider how to balance security of supply with human rights and environmental protections**

The NGOs we spoke with acknowledged the importance of critical minerals from a decarbonization and an energy security perspective. However, they also share a growing concern that the mining industry has latched on to this strategic imperative narrative to ram projects through development processes without adequate consideration of their impacts. To limit these concerns, [NGOs](#) would like to see governments, companies, and other stakeholders balance security of supply considerations with human rights and environmental protections. The U.S. can follow Europe's example in achieving this balance. One global human rights NGO we spoke with noted that the conversation around human rights and environmental protection in Europe is far more nuanced and advanced than in the US.

NGOs are not just advocating for protections in domestic mining, they are also offering

solutions to achieve them. One of these solutions is through regulatory and permitting reforms that would: produce stronger requirements for site closure and remediation; establish a royalty for mining on public lands; provide greater discretion to land managers to deny proposed projects; and create stronger project consultation requirements. The federal government already has a blueprint for these solutions as the Clean Energy Minerals Reform Act of 2022 introduced in the 117th Congress includes many of them.

Another solution offered by NGOs includes attaching higher human rights and environmental standards to projects that have received federal funds. Again, an outline for this solution already exists. In a report on potential lithium extraction in the US, the Nature Conservancy noted that any federal or state mining incentives should only be rewarded or offered to the project with the least impactful extraction approaches.

**Downstream levers - especially pressure from automakers - are key to raising social and environmental standards**

The NGOs we interviewed consider pressuring downstream users to improve their responsible sourcing standards to be a key lever to strengthen miners' social and environmental performance. Those interviewed noted that pressure from automakers is rising, with high social, environmental, and human rights performance an increasingly common prerequisite for direct sourcing deals between miners and automakers. For example, BMW, Mercedes-Benz, Ford, General Motors, Volkswagen, and Tesla have all already signed on to the Initiative for Responsible Mining Assurance (IRMA).

**European regulatory developments** will also create knock-on performance pressures in the U.S. While there is a clear incentive for US automakers to source battery metals domestically, selling their electric vehicles to European markets is likely to remain a priority too. As such, a global environmental NGO we spoke with noted that automakers are unlikely to source battery metals from U.S. mines perceived to have environmental or social issues for fear of running afoul of EU due diligence laws.

Consumer pressure is also rising due to civil society awareness campaigns around critical minerals sourcing. One of the global environmental NGOs we spoke with reported anecdotally that one automaker it works with received three emails inquiring about the sourcing of its battery metals when it launched its first electric vehicle ten years ago. It now receives thousands of emails from consumers inquiring about sourcing.

**NGOs perceive existing regulation to be poorly implemented**

NGOs we spoke with expressed concern and frustration that existing mining regulation is poorly implemented.

First, they noted that there is uneven capacity and mining expertise across state and federal

governments to provide adequate oversight and review of the environmental permitting process for miners. One environmental justice NGO noted that state and federal agencies involved in permitting processes are overwhelmed and understaffed, often struggle to disclose project information to the general public in a timely fashion, and are unable to undertake more detailed due diligence. These factors have fueled a perception among communities that regulators are either unwilling or unable to do their job, eroding trust. Second, is a perceived lack of government independence. NGOs we spoke with alleged that federal and state governments are focused on facilitating mining projects rather than providing robust and independent development oversight because of regulatory capture. Two US-based NGOs noted that because the General Mining Law of 1872 is often interpreted to make mining the de facto best use for federal lands, regulators, particularly at the state level, feel that while they can put conditions on development, they cannot say “no” to projects.

Lastly, NGOs noted that poor coordination between state and federal governments means that permitting processes at the state and federal levels are not always aligned. For example, an environmental justice NGO shared that in Nevada, the federal government once permitted a different mine plan than the state, allowing the mine to go below the water table, which the planned permitted by the state had prohibited.

### **NGOs view community consultation processes as weak**

NGOs believe that community consultation processes across the US mining sector are extremely weak. Among those we interviewed, there was a perception that companies provide communities with too little information too late. They also note that many companies are unwilling to meaningfully adjust their plans in response to community concerns. One grassroots NGO shared that project impacts are rarely comprehensively disclosed to communities at early stages, and they alleged that project-affected stakeholders only learn about impacts once the Environmental Impact Statement process begins. Another NGO noted that many companies only consult with communities on a narrow range of mine design options deemed to be the most economically attractive, even when there are alternatives that perform better from an impact management perspective. For example, the National Environmental Policy Act does not mandate the consideration of a minimum number of options, it only requires that a no-development option is included. This dynamic makes it challenging for communities to engage in a transparent conversation about the economic advantages or disadvantages of any given proposal and to understand how economic factors weigh against social and environmental impacts. There was palpable frustration among NGOs that mining companies fail to recognize the

link between insufficient consultation and project delays. Interviewees widely expressed the view that insufficient consultation coupled with a lack of meaningful community engagement inevitably hardens opposition and pushed stakeholders toward more adversarial methods – including protest and litigation.

NGOs are also concerned about the human rights risks that weak consultation creates. An international NGO we interviewed noted the US is backsliding on protecting the rights of human rights and environmental advocates, with many states criminalizing protest of large-scale development projects. A global human rights NGO echoed this point, expressing concern that a hypothetical large-scale protest that was subsequently criminalized and repressed – along the line of the Dakota Access Pipeline (DAPL) unrest – could catalyze social conflicts.

### **Improving future consultation processes**

There were divergent views among the NGOs we spoke with on how to address consultation issues. Several NGOs advocated for companies conducting consultations during the mine design stage to enable affected communities to provide meaningful input into design decisions. One global environmental NGO questioned the feasibility of such design consultation, noting that most communities do not have the technical expertise to opine on different mine design proposals and the relative advantages or disadvantages of these. However, there was a general consensus that there should be a mechanism to facilitate meaningful community input into projects that, even without granting an explicit veto, gives communities more power to attach conditions or stipulations to development.

Other NGOs suggested using independent assessors to review mine plans and permitting applications on the behalf of communities. An environmental justice NGO noted that, given limited government capacity, communities too often receive information exclusively from companies, distorting relationships. One NGO noted that independent assessors could help communities formulate questions and provide more detailed analysis on specific concerns. To fund these reviews, the NGO suggested establishing a trust fund, analogous to the Superfund concept, using fiscal contributions from the mining sector.

### **NGOs view industry standards with skepticism, though the Initiative for Responsible Mining Assurance is generally perceived as robust**

The NGOs we spoke with generally did not view unilaterally developed industry standards as meaningful. For example, several interviewees noted the **International Council on Mining and Metals (ICMM)** Performance Expectations are too broad to be meaningful and are not adequately overseen. By contrast, the Initiative for Responsible Mining Assurance (IRMA) was widely viewed as robust. One US-based NGO described it as “the best out

there.” This was largely because [IRMA](#) was developed in a multistakeholder environment that helped ensure transparency and civil society participation.

The skyrocketing demand for [critical minerals](#) to fuel the green energy revolution has pushed interest in domestic mining projects in the US to new heights. Our research shows that NGOs acknowledge the need for domestic supply but warn against rapid development without sufficient consultation or robust regulatory oversight.

Source: Sustainability Institute