



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

August 29, 2024

FILED ELECTRONICALLY VIA whcnaa@bia.gov

Dr. Steve Feldgus, Principal Deputy Assistant Secretary
Land and Minerals Management
U.S. Department of the Interior
1849 C St NW
Washington, DC 20240

Re: Critical Minerals Consultation

Dear Principal Deputy Assistant Secretary Feldgus,

The Mille Lacs Band of Ojibwe (the “Band”) welcomes the opportunity to consult with the Department of the Interior and other federal agencies regarding the Biden-Harris Administration’s critical minerals supply chain initiatives. The Band submits this letter in furtherance of the consultation process and the initial consultation meeting of July 30, 2024. The Band appreciates the Department of the Interior’s commitment to implement Executive Order 13175, and the Department’s efforts to ensure regular, meaningful, and robust consultation with Tribal Nations.¹

The Mille Lacs Band of Ojibwe is a federally recognized Anishinaabe Tribal nation located in east-central Minnesota with about 5,000 enrolled Band members. We

¹ Presidential Executive Order 13175 (November 6, 2000); Presidential Memorandum on Tribal Consultation and Strengthening Nation-Nation Relationships (January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>; U.S. Secretary of the Interior, A Detailed Plan for Improving Interior’s Implementation of E.O. 13175 (2021), <https://www.doi.gov/sites/doi.gov/files/detailed-plan-for-improving-interiors-implementation-of-e.o.-13175-omb-submission.pdf>; Dept. of the Interior Policy on Consultation with Indian Tribes (Nov. 30, 2022), https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4_2.pdf; Dept. of the Interior Procedures for Consultation with Indian Tribes (Nov. 30, 2022), https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-5_2.pdf.

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Misi-zaaga'igani Anishinaabeg, as we call ourselves in our own language, have a 61,000 acre Reservation established under the 1855 Treaty of Washington (10 Stat. 1165) and exercise governmental jurisdiction over lands in the Minnesota counties of Aitkin, Crow Wing, Kanabec, Mille Lacs, Morrison, and Pine. We further exercise our treaty-protected reserved rights in territories ceded in the 1837 Treaty of St. Peters (7 Stat. 536) and 1842 Treaty of La Pointe (7 Stat. 591), which span from east central Minnesota, across northern Wisconsin, and into the western portion of the upper peninsula of Michigan, including the portions of Lake Superior in Minnesota, Wisconsin, and Michigan. Our Anishinaabe traditional areas extend from western Québec to eastern British Columbia in Canada, and spanning Montana, North Dakota, northern Minnesota, northern Wisconsin, Michigan, northwestern Ohio, northern Indiana, northern and western Illinois, and southeastern Wisconsin in the United States. Our Migration Story places our people along the Atlantic Seaboard over a millennium ago; approximately 400 years ago, our ancestors migrated westward to our current home where the “food grows upon the waters.” The sacred food that brought our ancestors to this territory is Manoomin, or wild rice, which remains a central feature of our cultural practices and environmental stewardship. With even older stories of our presence in other parts of Turtle Island (how we refer to North America), every part of this land has some degree of connection to our people.

The Band agrees that it is essential for the United States to transition from a fossil-fuel based economy to a cleaner energy economy for the continued survival of our planet and species. The Band also recognizes that an assortment of critical minerals will be required in this cleaner energy transition, and that many of these minerals must be extracted from the earth using methods that result in new forms of environmental harm and degradation. The cleaner energy technologies on which we currently rely to power this energy transition, including lithium-ion batteries, wind turbines and solar panels, are made from minerals that must be dug or leached out of the ground or recovered from recycled materials. Demand for some of these key clean energy minerals, such as graphite, lithium and cobalt, is expected to grow by 400–600% by 2050 to meet the additional demand from the cleaner energy transition.²

In the race to quickly transition our economy, we risk repeating the same environmental and social harms of the fossil fuel industry. If the mining industry is

² See Press Release, White House, FACT SHEET: Securing a Made in America Supply Chain for Critical Minerals (Feb. 22, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/22/fact-sheet-securing-a-made-in-america-supply-chain-for-critical-minerals/>; Dept. of Energy, Office of Fossil Energy and Carbon Mgmt., “Producing Domestic Sources of Critical Minerals to Support a Clean Energy Economy” (June 6, 2022), <https://www.energy.gov/fecm/articles/producing-domestic-sources-critical-minerals-support-clean-energy-economy#:~:text=As%20we%20move%20toward%20our,as%20much%20as%204%2C000%20percent.>

allowed to co-opt the cleaner energy transition into a push for more poorly regulated mining³, the resulting sacrifice zones created by the fossil fuel industry will, absent strong regulation, shift to those communities disproportionately impacted by mining, especially Indigenous communities.⁴

As you know, the United States has a trust responsibility to Tribal Nations, rooted in unique treaty-making relationships and obligations, Congressional action, and the United States' fundamental commitment to support Tribal sovereignty, self-government, and economic prosperity. Because Tribal Nations are the original caretakers of the lands and waters that now comprise the United States, it is especially important that agencies like the Department of the Interior continue to seek out, respect, and incorporate Tribal Nations and Indigenous perspectives in decision-making, particularly with regard to environmental issues. Our traditional ecological knowledge is invaluable in this time of climate crises and Tribal Nations are essential partners for environmental protection as the United States—and the world—embark on this energy transition.

The United States has the opportunity to set the global gold standard for environmentally friendly and pro-worker mining policies and practices, and the regulatory structures that enforce such a gold standard. That foundation begins with robust community engagement, strong environmental protections, and intentional consultation with Tribal Nations to protect sacred sites and cultural resources. Most importantly, this transition cannot happen on the backs of Indigenous peoples.

As a Tribal nation with rich ties to the land, lakes, and seas, and a proud history of working to fulfill our duty as stewards of the environment, we appreciate that the Department of the Interior is engaging Tribal Nations in its multi-stakeholder strategy, in recognition of the tremendous value of Tribal Nations as partners. We are committed to further partnership-building and ongoing discussions with the Department of the Interior to ensure that the critical minerals supply chain initiatives are pursued with respect for the federal trust responsibility and environmental stewardship. But we must remind you,

³ See e.g., Press Release, Nat'l Mining Assoc., NMA Statement on Twin Metals' Mineral Leases Withdrawal (Jan. 26, 2022), <https://nma.org/2022/01/26/nma-statement-on-twin-metals-mineral-leases-withdrawal/>; Press Release, Nat'l Mining Assoc., The U.S. is Backsliding on Reducing Mineral Import Reliance (June 3, 2024), <https://nma.org/2024/06/03/us-backsliding-on-reducing-mineral-import-reliance/>; Press Release, Nat'l Mining Assoc., NMA Condemns Biden Administration Unwarranted Project Reversal, Land Withdrawal (June 28, 2024), <https://nma.org/2024/06/28/nma-condemns-biden-administration-unwarranted-project-reversal-land-withdrawal/>.

⁴ See e.g., Christos Zografos & Paul Robbins, *Green Sacrifice Zones, or Why a Green New Deal Cannot Ignore the Cost Shifts of Just Transitions*, 3 ONE EARTH 543 (2020); Dayna Nadine Scott & Adrian A. Smith, "Sacrifice Zones" in the Green Energy Economy: Toward an Environmental Justice Framework, 62:3 MCGILL L.J. 861 (2017).

Tribal Nations like the Band are not merely yet another “stakeholder”. We are beneficiaries of a trust obligation held by the United States, including the Department of the Interior, as our trustee. The protection of our resources and way of life must be the paramount principle guiding federal policy and practice in the extraction and processing of critical minerals.

Accordingly, The Band asks that the Department of the Interior consider the following priorities and objectives as it continues to consider mining reform and whether and how critical minerals can be responsibly extracted:

- **Establish Protections for Ecologically Critical and/or Culturally Significant Places:** Some places are too ecologically critical or culturally significant to mine, and current law leaves too many Indigenous sacred lands without protections from mining interests. Reforms must give land managers the ability to choose other land uses like conservation, outdoor recreation, and historic preservation over a potential mining project that could irreparably harm land, water, and cultural resources. Domestically and internationally, Indigenous communities have borne the brunt of the toxic legacy of mining impacts.⁵ Cleanup of these legacy sites and the prohibition of new mining on sites that are culturally or ecologically significant to Indigenous communities are critical to ensure that the actions of the past, which shifted environmental burdens to Indigenous communities, are not repeated. Indigenous communities should be meaningfully consulted about projects on and around their lands from Day One.
- **Require the Free, Prior, and Informed Consent (“FPIC”) of Indigenous Communities:** FPIC should be the governing standard for any federal agency tasked with funding or approving permits for mining-related projects and should be incorporated into any mining reform package. Further, companies that receive funding from the federal government should be held to the highest human rights and environmental standards. Therefore, FPIC should immediately apply to any company that obtains funding from the Interior, Energy, or Defense Departments for mineral-related projects.
- **Strengthen Environmental Protections at Every Stage of the Process:** Under current laws, mining companies have no obligation to mine responsibly with

⁵ See e.g., J. Lewis et al., “Mining and Environmental Health Disparities in Native American Communities,” 4 CURRENT ENV’T. HEALTH REP. 130-141 (2017) (finding that over 160,000 abandoned mines in Western USA pose specific and exacerbated health risks to Native American communities); Interagency Working Group on Mining Laws, Regulations, and Permitting, *Recommendations to Improve Mining on Public Lands* 8, 14-18, 21-24, 27-28, 33-36 (2023) (describing disproportionate harms to Tribal communities related to mineral extraction and mining).

minimal environmental impacts. Companies can pollute the land, air, and water surrounding their mining projects and leave taxpayers to fix the damage. New reforms must hold mining companies accountable through strong industry-specific environmental standards. Environmental oversight and accountability must continue through every stage of a mining project—including reclamation and rehabilitation of decommissioned and abandoned mines.

- **Amend the General Mining Law of 1872 to Require Royalty Payments and Fair Compensation to Taxpayers:** For 150-years, mining companies have avoided paying any royalties on the resources they extract from our public lands. The minerals found on public lands belong primarily to the Indigenous communities from whom the United States took them, and secondarily, to the general public. The General Mining Law must be reformed to provide a fair return to those Indigenous communities and to taxpayers. The sweetheart deal ensuring royalty-free profits to mining companies must be terminated to ensure that the benefit of any mining project on public lands is properly shared.
- **Mandate Inspection, Enforcement, and Bonding Provisions:** Reforms must require frequent inspections and provide federal agencies with the enforcement mechanisms to impose fines and violations for non-compliance with project specifications and permit conditions. Agencies must also be empowered to deny new mining permits to companies with repeated patterns of abuse. Tribes should have a seat at the table during enforcement actions or discussions involving financial assurances. Historically bad actors cannot continue to exploit the system to the detriment of Tribes.
- **Establish a Dedicated Mine Reclamation Fund:** Over 500,000 abandoned mines litter the country and pose major dangers to public health and safety, particularly for Indigenous communities.⁶ We need an Abandoned Mine Fund to locate, identify, and reclaim abandoned mines to protect precious water resources and those living in the surrounding communities.
- **Prioritize Recycling Policies and Infrastructure:** We also need federal policies to incentivize mineral recycling rather than new mineral mining. These policies would spur the growth of a domestic recycling industry to create thousands of

⁶ See U.S. Gov't Accountability Off., GAO-20-238, *Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors That Limit Efforts to Address Hazards* 18 (2020) (total number of identified abandoned hardrock mine features within Forest Service, BLM, Park Service, and EPA jurisdiction is at least 533,652); Interagency Working Group on Mining Laws, Regulations, and Permitting, *Recommendations to Improve Mining on Public Lands* 8, 21-22, 36 (2023) (describing proximity between active, prospective, and abandoned mines and Native American lands).

good-paying new jobs while sourcing minerals locally and sustainably, without requiring the destruction of our special places. Policies supporting this circular economy should include everything from battery labeling requirements to producer responsibility systems and tax incentives. We have the opportunity now to prioritize circular economies for minerals, including robust recycling infrastructure, and to ensure that where mining is conducted, it proceeds as sustainably as possible and only in appropriate locations with robust community involvement from a project's inception to remediation.

The Band is hopeful that the Biden-Harris Administration will address these questions and incorporate the issues and priorities highlighted above as it continues to develop its plans and policies for the green energy transition and critical minerals mining initiative. We look forward to continuing the conversation about this important issue and appreciate the Department's commitment to robust ongoing consultation.

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Sincerely,



Virgil Wind
Chief Executive
Mille Lacs Band of Ojibwe

cc: Kelly Applegate, Commissioner of Natural Resources, Mille Lacs Band of Ojibwe