November 5, 2026

The Honorable Martin Heinrich
The Honorable Ben Ray Luján
The Honorable Teresa Leger Fernández
The Honorable Melanie Stansbury
The Honorable Gabe Vasquez

Re: Opposition to the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), S. 5653

Dear Senators Heinrich and Luján and Representatives Leger Fernández, Stansbury, and Vasquez:

On behalf of New Mexico Mining Watch, the undersigned organizations oppose the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), S. 5653, as introduced.

New Mexico Mining Watch (NMMW) is a statewide coalition of non-profit, public interest and community organizations dedicated to protecting New Mexico's land, air and water from the impacts of mineral extraction projects. NMMW represents a broad range of tribal and non-tribal communities affected by historic and current mining operations.

As the nation's top toxic polluter,[1] hardrock mining has polluted 40% of headwaters of western watersheds, leaving $20 - $54 billion in cleanup costs for the American taxpayer according to the U.S. Environmental Protection Agency. In New Mexico, 15,000 abandoned hardrock mines, including uranium mines and mills, contaminate community water supplies, air quality, tribal lands, and sacred sites.[2]

The antiquated 1872 Mining Law still governs mining on federal public lands, establishing mining as "the highest and best use" over other uses, such as recreation, hunting, grazing or

[1] U.S. EPA Toxic Release Inventory 2023. https://www.epa.gov/trinationalanalysis/releases-chemical-and-industry
[2] New Mexico Mining and Minerals Division, 2020. https://www.emnrd.nm.gov/officeofsecretary/wp-content/uploads/sites/2/OSMREGrantAwardJune152020.pdf

renewable energy. Moreover, mining companies can extract billions of dollars' worth of minerals from our nation's public lands without paying royalties, free from meaningful environmental safeguards, and with the exclusion of frontline community voices in federal mine permitting decisions.

Adding insult to injury, the U.S. Government Accountability Office (GAO) recently reported that the Bureau of Land Management's (BLM) lack of tracking of foreign companies' involvement in mining on public lands has led to handing over a portion of our nation's mineral wealth to foreign entities, potentially risking our mineral supply chain:

> "While there is limited available information on the full extent of foreign investment in mining on federal lands and parent-subsidiary relationships, GAO reviewed ownership information of 43 claimants and operators associated with critical mineral mines on federal lands. GAO determined ownership for 32 of those companies and found that 14 were subsidiaries of foreign entities. GAO found that none of the 14 had Chinese-owned parent companies, but in at least two cases, Chinese entities had financial interest in the foreign parent companies."[3]

Here in New Mexico, we are ground zero for the nation's current mining boom. Fueled by the Trump Administration's aggressive push to expand domestic mineral production and hundreds of regulatory rollbacks targeting the nation's bedrock environmental laws, mining activity is accelerating across the state.

We would like to call the New Mexico Congressional delegation's attention to the particular threats of destruction of the Greater Chaco Area, the Traditional Cultural Property of Mount Taylor, the Pecos Wilderness, and the Gila National Forest that this bill represents. We know all these areas are precious to our representatives, as well as to all New Mexicans, and in particular to the Indigenous stewards of the sacred landscapes.

Thousands of new mining claims are being staked on federal public lands, with half of all currently active claims in the state filed within the past five years. For example, this year the British-Australian multi-national mining company, Rio Tinto, staked claims through its U.S. exploration subsidiary on over 5,000 acres of the Gila National Forest north of Silver City adjacent to the Continental Divide National Scenic Trail. Concurrently, Celatus Copper staked claims on 1,012 acres of the Gila National Forest adjacent to the Gila River Middle Box, one of the river reaches included in the M.H. Dutch Salmon Greater Gila Wild and Scenic River Act (S. 1476) sponsored by Senator Heinrich. Gamma Resources, a Canadian firm, has declared their intentions with the Forest Service to explore for uranium in Canjilon, New Mexico, in the Chama

[3] Government Accountability Office, 2026 Critical Minerals: Limited Available Information on the Full Extent of Foreign Investment in Mining on Federal Lands. https://www.gao.gov/products/gao-27-108094

Watershed near historic land-grant communities (the Mesa Arc project). NovaCore, another Canadian company, has filed a petition to conduct exploratory mining for uranium in Catron County, on lands that will impact ranching communities and potentially the Gila National Forest. According to the BLM's Environmental Assessment of Public Land Order 7923, uranium and mining companies have 129 existing unpatented mining claims in areas in the Greater Chaco region, sacred to many sovereign nations in New Mexico. In each location where new uranium mines have been proposed, communities have risen up in near-universal opposition.

At the same time, existing mines in New Mexico are expanding and new mines are moving toward development, including uranium mines and a copper mine. The La Jara Mesa, Roca Honda, and Grants Precision uranium mining proposals are all located in the Grants Uranium Belt, threatening tribal community water supplies and Mount Taylor, a culturally and spiritually significant landscape. The Copper Flat Mine proposal located outside of Hillsboro in Sierra County will reduce water supplies for downstream users and the Lower Rio Grande.

Mineral extraction causes a range of permanent impacts that are impossible to fully mitigate, such as perpetual groundwater contamination, drawdown of water supplies, loss of biodiversity, ecosystem services, and cultural resources, and irreversible changes to the landscape and hydrologic balance. Tribal consultation and public participation along with access to judicial review required by the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and the Clean Water Act have been important vehicles for tribal and non-tribal communities to have a voice in federal land use decisions that impact our communities, public health, sacred sites, water supplies and environment.

We thank you for your hard work as champions of 1872 Mining Act reform, sponsoring bills to make corporations pay royalties for extracting minerals from federal public lands and to clean up pollution from abandoned hardrock mines, as well as your commitment to the protection of our public lands and our environment.

As organizations and communities on the front lines of mineral development in New Mexico, we know first hand the impacts of the mining industry on our state. It is from this perspective and within the historical and current mining context outlined above that we strongly oppose the BAAJA, as written. Furthermore, given the historic results of the November 3 election, we recommend delaying consideration of this bill until the next Congress, allowing more time to draft a bill that balances permitting reform with strong protections for communities, Tribal nations, and the environment.

Some of our NMMW organizations provided extensive comments in 2022 to the Interagency Working Group on Mining Regulations, Laws, and Permitting to reform federal mining laws. We recommended a range of solutions to antiquated mining laws and federal land management

regulations that would result in stronger protections for communities, Tribes, sacred and other special places, our environment, water supplies and wildlife.

However, community input was clearly not considered in writing the S. 5653. We are extremely disappointed that we and the broader environmental justice and conservation community were not consulted on the development of the S. 5653 as it relates to mineral development on federal public lands and in the broader context of the environmental consequences of federal actions.

The Act gives free reign to the mining industry and leaves federal regulators and communities unable to affect meaningful control over mining operations on federal lands, threatening our communities, water, and cultural resources.

The BAAJA gives mining companies unlimited access to our public lands without adequate compensation to the public

Incorporating S. 544 & H.R. 1366 The Mining Regulatory Clarity Act (MRCA), Section 2212 of BAAJA gives mining companies even more control over federal public lands than they currently have by eliminating the aggregate limit on the number of "mill sites" mining companies can claim to support their operations. Under the Act, companies can claim an unlimited number of 5-acre mill sites, provided they are "reasonably necessary" for mining activities in their plan of operation. This opens the door for mining companies to dramatically expand their footprint across public lands, creating unlimited waste rock piles, tailings storage facilities, roads, powerlines, and other infrastructure by claiming hundreds or even thousands of acres of mill-site claims.

Of additional concern, the Act places no conditions on mill-site claims to prevent foreign entities from having this unlimited access to our nation's public lands.

Under current law, mining companies are not able to carry out operations outside of their claims without obtaining additional permits. However, the MRCA provisions of S. 5653 would remove these requirements by defining all activities related to mining as "operations," even if they are not directly on a mining claim. This could allow mining companies to build ancillary infrastructure or dump mine waste on public lands without getting additional permits.

The annual fee the Act establishes of $400 per mill-site claim to support the needed cleanup of abandoned hardrock mines is woefully inadequate funding to address the nationwide mine cleanup liability of more than $50 billion. Nor does it compensate the public at all for the permanent loss of biological diversity, ecological services, watershed protection, cultural resources, recreational opportunities, or other uses of these lands. The BAAJA amplifies the

federal government's continued giveaway of our country's mineral wealth and public lands to the mining industry.

Furthermore, as the federal government heavily subsidizes the mining industry through grants, loans, and other forms of direct public financial assistance, the BAAJA bill guts the government's right to conduct environmental reviews of the projects that it may fund.[4] Environmental reviews of a company's operating plans are typically a precondition for giving away millions of dollars of taxpayer money to a company, but BAAJA eliminates the need for such a review. In addition to endangering health, the environment, and biodiversity, this is also an irresponsible lending practice.

BAAJA, coupled with the Trump Administration's rollback of environmental protections, will accelerate the net loss of biodiversity and degradation of ecological services on federal public lands from mining

Federal public lands comprise approximately 35% of New Mexico's land, supporting a large portion of the state's ~4,600 known species. New Mexico ranks 4th nationally in overall biodiversity.[5]

In a 2020 study reported in *Nature Communications*, the authors warn that "mining threats to biodiversity will increase as more mines target materials for renewable energy production and, without strategic planning, *these new threats to biodiversity may surpass those averted by climate change mitigation* (emphasis added)."[6] The bottom line is we won't be able to mine our way out of the climate crisis. Mineral extraction for renewable energy has its own inherent destructive impacts that will adversely affect biodiversity regardless of our progress toward clean energy goals if we are not strategic about where we allow mining to happen.

Biodiversity loss on federal public lands in New Mexico will be exacerbated by Section 2215 of the BAAJA by allowing mining companies to claim an unlimited number of 5-acre mill sites for "operations," with an overall net loss of biodiversity and ecological services from the mill-site provision. Although mining companies would pay an annual $400 fee per 5-acre mill site, these funds will be directed to clean up of existing messes left behind by mining companies and will not compensate the public for the loss in biodiversity and ecological values from an expanded mine footprint.

Federal land managers will be unable to meaningfully control the location of mill sites claimed for operations. Along with this Administration's rescission of the Roadless Rule, mining

[4] Earthworks, "Permitting Bill Text Would Strip our most basic protections" https://earthworks.org/blog/permitting-bill-text-would-strip-our-most-basic-federal-protections/
[5] Bureau of Land Management, https://www.blm.gov/programs/wildlife/threatened-and-endangered/state-te-data/new-mexico
[6] Sonter, L.J., Dade, M.C., Watson, J.E.M. et al. Renewable energy production will exacerbate mining threats to biodiversity. Nat Commun 11, 4174 (2020). https://doi.org/10.1038/s41467-020-17928-5

companies will be able to use the BAAJA's mill-site provision to build roads and mining infrastructure on as much previously protected Inventoried Roadless Areas (IRAs) with no limitations. By prohibiting road construction and reconstruction, IRAs were meant to protect ecological integrity by preventing habitat fragmentation caused by roads and development.

The BAAJA MRCA provisions in combination with the Roadless Rule rescission could have an enormous impact on the biological diversity of the Gila National Forest. Of particular concern is global mining giant Freeport-McMoRan's recent staking of 193 load claims over nearly 4,000 acres of the Gila National Forest. The Gila Wilderness and designated IRAs represent one of the largest roadless areas in the lower 48 states. A significant portion of the Freeport claims are located within an Inventoried Roadless Area that supports nine plant species of concern and threatened and endangered species, such as the Mexican spotted owl, lesser long-nosed bat, and Arizona montane vole.

This area is north of the company's Cobre Mine and may indicate a significant expansion of its mining operations onto federal public lands. If the MRCA provisions in BAAJA are approved, Freeport will be able to claim an unlimited number of mill sites for its mining operations. What could be the magnitude of mill site claims? It could be thousands of acres as evidenced by Freeport's current pursuit of a land exchange with BLM for 24,600 acres of public lands to accommodate waste rock storage and transportation corridors at its Lone Star and Morenci mines in Arizona. Freeport also has an application currently under review with BLM for an additional 940 acres of public lands to facilitate the management of waste rock including ancillary facilities like roads, utilities, drainage and water storage at the Chino Mine.

Provisions in the BAAJA that weaken the Endangered Species Act (ESA) may also lead to loss of threatened and endangered species and biological diversity from mineral extraction in New Mexico. The BAAJA cuts timeframes for Section 7 ESA consultations from 90 to 60 days and tries to push the responsibility to carry out those consultations onto states that may not have the capacity to carry out these reviews. The bill changes the ESA's long-standing definition of best available science potentially overturning the well-established legal principle that agencies can and must act to protect endangered species even in the face of scientific uncertainty. Moreover, restrictions to judicial reviews for ESA biological opinions combined with limits to NEPA reviews and judicial review (see below) will make it harder and more expensive to challenge ESA biological opinions and NEPA reviews when these laws have been violated.[7]

Currently, Summa Silver has begun an exploration plan of operations on the Gila National Forest near Mogollon, New Mexico. There are 12 active roost sites for the endangered Mexican spotted owl in the vicinity of the exploration project. If this project progresses to a mine plan of

[7] Earthjustice, 2026.
https://earthjustice.org/feature/bipartisan-american-affordability-and-jobs-act-2026-impact-guide#esa

operations, BAAJA provisions would weaken the ESA and NEPA reviews for this project with potential negative consequences for Mexican spotted owl populations in the area. Shorter deadlines and use of one or more categorical exclusions may limit the extent of biological and environmental assessments. Limitations on judicial review of a mine approval would make it difficult to get judicial relief if environmental reviews are inadequate.

The BAAJA weakens Clean Water Act protections

In a 2022 study, the U.S. Forest Service reported that national forests in the West comprise 19.2 percent of total land area yet contribute 46.3 percent of surface water supply that supports ecosystems and local economies.[8] These are the same public lands targeted by the mining industry for mineral extraction.

In New Mexico, it is estimated that we have lost 90% of our historical riparian areas. The state's 50-year Water Plan projects that we will see a 25% - 35% reduction in New Mexico's water supplies over the next several decades due to climate change.

Now is not the time to roll back federal Clean Water Act (CWA) protections. Yet, the Trump Administration continues its efforts to limit the CWA, so that, if recent federal proposed rules are adopted, more than 96% of New Mexico's streams and 88% of its wetlands will have lost federal protections. The BAAJA goes even further, exacerbating this situation.

Section 1204 of the BAAJA significantly weakens Clean Water Act Section 404 "dredge-and-fill" protections, making it easier for mineral extraction and other industries to destroy wetlands that are critically important for groundwater recharge, flood mitigation and water purification and filtering. It limits consideration of wildlife and flooding impacts in permitting decisions, and restricts EPA's ability to protect sensitive wetlands and other waters, and limits judicial authority to overturn illegally issued permits.[9] In addition, it increases current minimal impact thresholds for wetlands from ½ an acre to 2 acres. This means that more wetlands in New Mexico could be filled in or destroyed without public notice or oversight. Judicial review of projects that impact streams and wetlands, including mining projects, will be severely limited if BAAJA passes.

Under section 1205 of the BAAJA legal challenges to 404 permits, state 404 programs, and general-permit verifications must be filed within 150 days, and only parties that participated in the public comment period can sue. What is perhaps most troubling is that courts wouldn't be able to vacate or enjoin a permit, even if there are problematic and large impacts to wetlands and streams unless there's an 'imminent and substantial" danger, which is a prohibitively high bar.

[8] U.S. Forest Service, 2022. Quantifying the role of National Forest System and other forested lands in providing surface drinking water supply for the conterminous United States https://research.fs.usda.gov/treesearch/64978
[9] Earthjustice, 2026. https://earthjustice.org/feature/bipartisan-american-affordability-and-jobs-act-2026-impact-guide#cwa

Section 1203 of the BAAJA would increase National Pollutant Discharge Elimination System (NPDES) permit term limits from 5 years to 10 years. As it is, many permits are administratively continued beyond the 5 years, and realistically if permit terms were extended to 10 years we could expect to see many permits being in place for 15 years or more. This means for example, that multiple discharges from the Chevron Molycorp mine in northern New Mexico to the Red River would be locked in for a decade or more without the opportunity to add or adjust permit limits based on changing receiving water conditions or new science on emerging contaminants. The same is true for the Freeport-McMoRan Tyrone Mine's discharges to Mangas Creek, a tributary of the Gila River.

State and Tribal authority to review and condition federal permits, including 404 permits for mine sites, would be drastically reduced under the BAAJA. Section 401 of the Clean Water Act grants authority to states and Tribes to condition federal permits to protect state and Tribal waters. Section 1202 of BAAJA eviscerates this authority by limiting the type of requirements that states and Tribes can impose to a narrow set of water quality requirements under the Clean Water Act. In addition, any conditions must be set on "clear and convincing" evidence, and only the "least burdensome" option can be required.

The BAAJA Undermines Tribal Sovereignty and the Intent of the National Historic Preservation Act (NHPA)

Tribal Nations were not consulted in the development of this bill, despite the bill's enormous impacts on their rights to consultation. The All Pueblo Council of Governors passed a resolution against this bill on October 16, 2026.[10]

Under BAAJA, the federal law and agencies would define sacred places, not Tribal Nations themselves, undermining their sovereignty. The bill does not allow for sacred landscapes to be considered as sacred places, limiting the definition of sacred places to, "district, site, building, structure, or object" and "artifacts or material remains." This goes against the traditional belief systems of Indigenous communities in New Mexico, and poses a threat to culturally important landscapes being threatened by mining, such as the Mount Taylor and Chaco Canyon.

Under the BAAJA, a project could continue, even if a court finds an agency violated the NHPA. The NHPA is a critical method for Tribal Nations to get a say in how their traditional lands are managed. NHPA should not be treated as an optional process and should be required for a permit for a project to continue.

[10] All Pueblo Council of Governors. (2026). OPPOSING S. 5653, THE BIPARTISTAN AFFORDABILITY AND JOBS ACT OF 2026, AS INTRODUCED, (RESOLUTION NO. APCG 2026-15)

The BAAJA Weakens Meaningful Environmental Review, Public Participation, and Judicial Review in Mineral Extraction Decisions on Federal Public Lands

Industrial-scale mining is an inherently destructive activity that in many cases causes irreparable harm to the environment, landscapes, wildlife, and the hydrologic balance. The use of best available science and technical information, sufficient timelines for assessments, and comprehensive consideration of alternatives are critical to carrying out meaningful environmental review. The public must also have ample opportunity to participate in review of mineral development proposals that may impact their public health, environment and quality of life, and cultural resources. The BAAJA severely limits those opportunities, undercutting the democratic process in federal public lands decisionmaking.

In New Mexico, the Carson National Forest provides more than 10% of the drinking water supply for more than 600,000 people in the Rio Grande Basin.[11] The Canadian-owned, Vancouver-based Gamma Resources submitted a Notice of Intent to the Forest Service in February 2026 for uranium exploration outside of Canjilon in the Chama Basin. Senators Heinrich and Lujan and Representative Leger Fernandez oppose the uranium drilling proposal and earlier this year called on the Forest Service to conduct a full environmental review.[12]

Yet several provisions of the BAAJA will make it less likely that the Gamma Resources proposal would be thoroughly evaluated under a revised NEPA. Section 1105 would allow federal land managers to use one or multiple categorical exclusions to avoid or limit environmental review, while Section 1106 would restrict the use of new scientific or technical information after publication of the Notice of Intent to conduct an environmental review, as well as limit the consideration of alternatives to those of the mining applicant rather than alternatives that would mitigate environmental impacts.

Moreover, the public will be limited in its ability to meaningfully review, comment, and challenge mining projects like the Gamma Resources uranium exploration proposal. The BAAJA would reduce public participation in permitting by shortening timelines for environmental review and creating significant limits to judicial review under NEPA. Section 1106 establishes a 45- to 60-day public comment period for environmental impact statements, while Section 1110 requires individuals and organizations who challenge federal decisions to have submitted detailed comments upfront at the Notice of Intent or decision to produce an Environmental Impact Statement stage, identifying the specific issues they may in the future want to litigate. This is virtually impossible when baseline environmental and technical information is largely not available to the public this early in the process.

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[11] U.S. Forest Service, 2022. https://www.fs.usda.gov/research/publications/gtr/gtr_wo100/GTR-WO-100-Sup1.pdf

[12] https://www.energy.senate.gov/press/dem/heinrich-luj-n-leger-fern-ndez-call-on-forest-service-opposing-carson-national-forest-uranium-drilling-proposal-and-demanding-full-environmental-review-to-protect-chama-watershed/

Section 2201 also restricts the ability of Tribes, communities, and courts to challenge potentially harmful projects by narrowing the window for judicial review of major mining approvals under the Mining Law and Federal Land Policy and Management Act. The bill imposes a 150-day deadline for legal challenges and restricts courts' ability to halt projects when environmental reviews are found deficient or unlawful.[13] These changes will put a tremendous burden on Tribes and communities to identify and document complex environmental issues within short timelines, while reducing their ability to obtain judicial relief when federal agencies fail to adequately evaluate environmental impacts or decisions are found to violate the law.

Recommendations

The BAAJA will allow severe, and in some cases, irreparable harm to our communities, environment, and cultural resources from mineral extraction on federal public lands. The legislation undermines the democratic processes critical to ensuring that mining projects on federal lands disclose, consider, prevent and mitigate impacts to communities, local economies, and the environment and consult with sovereign Tribal Nations.

We encourage you to refer to the recommendations of the 2023 Interagency Working Group on Mining Regulations, Laws, and Permitting[14] as well as previous mining reform legislation sponsored by you, such as the Clean Energy Minerals Reform Act, to enact real reforms of federal mining laws that will stop the giveaway of our public lands and mineral wealth to mining companies, including foreign entities, and balance mineral extraction with other uses of federal lands in order to protect water supplies, ecological services and our cultural patrimony.

We also recommend that you consider the body of research that has examined the causes of permitting delays for energy and other projects, revealing the root of those delays to be "resource capacity, interagency coordination, and early, meaningful public engagement to address community concerns and mitigate impacts."[15] The misplaced focus of the BAAJA on federal permitting reform will result in significant harms to communities and the environment not only in New Mexico but across the country too.

Permitting reform must not come at the expense of our communities, water supplies, environment, cultural resources, and democratic processes. We urge you to oppose the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), S. 5653, as introduced.

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[13] Earthjustice, 2026. https://earthjustice.org/feature/bipartisan-american-affordability-and-jobs-act-2026-impact-guide#mining

[14] Department of Interior, 2023. Recommendations to Improve Mining on Public Lands https://www.doi.gov/sites/default/files/mriwg-report-final-508.pdf

[15] Environmental Law Institute, 2025. Dispelling the Myths of Permitting Reform and Identifying Effective Paths Forward https://www.eli.org/sites/default/files/files-pdf/55.DispellingTheMyths.pdf

Furthermore, given the historic results of the November 3rd election, we recommend delaying consideration of this bill until the next Congress, allowing more time to draft a bill that balances permitting reform with strong protections for communities, Tribal Nations, and the environment.

Sincerely,

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