John Fognani, Chris Reagen Author Lexology Article on Mining

By John D. Fognani, Chris Reagen | June 8, 2022

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Haynes Boone Partner **John Fognani** and Associate **Chris Reagen** authored the USA chapter in *Lexology's 2022Getting The Deal Through Mining Report*. Mining continues to be one of the most talked about sectors of the U.S. economy because of its critical importance to the electric vehicle and other "green" or carbon-reducing technologies. Lexology's law guides provide an overview of specialist areas of the law in various international jurisdictions.

Below is an excerpt:

Rare Earth and Critical Minerals

The Trump administration utilized the 69-year-old Defense Production Act of 1950 to address the shortfall of capabilities within the defense industrial base to produce rare earth elements and to address the necessity for increased domestic production of critical or strategic minerals to decrease reliance on sources from other nations. President Biden followed with an Executive Order titled Securing America's Critical Supply Chains (Executive Order 14017), which is intended to focus on government evaluation and assessment of U.S. supply chains regarding critical and rare earth minerals and metals believed essential to the national and economic security of the United States and to undertake a comprehensive review of America's supply chains regarding such minerals and metals. Copper and uranium do not fall within the Biden administration's executive mandate. The Executive Order requires a 100-day review by several federal agencies of U.S. supply chains pertaining to rare earth elements and large capacity batteries, among other things.

The Biden Administration's Impact on Planned Mining Projects

In addition to legislative and reform efforts that can dramatically impact the United States mining industry, the Biden administration has taken actions to delay and possibly kill certain planned projects. For instance, Rio Tinto's Resolution copper mine permitting project in Arizona has been substantially delayed by the Biden administration pending issues raised by environmentalists and certain Native American tribes. In fact, the Biden administration reversed the Trump administration's prior approval of the project. The copper mine project has also been the focus of efforts in the House of Representatives to block mine construction altogether through potential legislation. Additionally, the Biden administration, in another effort to abandon an approval provided by the

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Trump administration, has filed a complaint in federal district court to halt the mining project through enforcement of environmental protections at Northern Dynasty Minerals' Pebble mine project in Bristol Bay, Alaska, due to tribal and fishery concerns. Similarly, the Biden administration has held up or cancelled mining leases related to two different Minnesota mining projects (namely, sulfide-ore mining in the Rainy River Watershed and an underground cobalt, copper and nickel mine project near the Boundary Waters Canoe Area Wilderness).

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