

**Assignment #5: Policy Brief on Resolution #SAC 22014: The General Mining Act of 1872
from National Congress of American Indians (NCAI)**

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POLICY HIGHLIGHT

THE GENERAL MINING ACT OF 1872 IS WIDELY REGARDED AS OUTDATED AND INSUFFICIENT TO MEET THE NEEDS OF TODAY'S LEGAL, ENVIRONMENTAL, AND CULTURAL LANDSCAPE. IT OFFERS NO PROTECTIONS FOR TRIBAL NATIONS WHOSE LANDS AND SACRED SITES ARE INCREASINGLY THREATENED BY THE GROWING DEMAND FOR CRITICAL MINERALS. AS THE UNITED STATES ACCELERATES ITS TRANSITION TO A CLEAN ENERGY ECONOMY, NCAI RESOLUTION #SAC-22-014 URGES TARGETED REFORMS TO THE LAW, SPECIFICALLY THE INCORPORATION OF FREE, PRIOR, AND INFORMED CONSENT (FPIC), MEANINGFUL AND CONSISTENT TRIBAL CONSULTATION, AND CLEAR AUTHORITY FOR FEDERAL AGENCIES TO DENY MINING PROPOSALS THAT WOULD RESULT IN IRREPARABLE HARM. THESE MEASURES ARE ESSENTIAL TO ENSURING RESPONSIBLE RESOURCE DEVELOPMENT THAT RESPECTS INDIGENOUS RIGHTS AND ENVIRONMENTAL INTEGRITY.

KEY ISSUES

Law prioritizes mining over tribal rights and sacred site preservation.

No federal requirement for tribal consultation or consent.

High mineral demand increases threats to Indigenous lands.

RECOMMENDATIONS

Amend the law to require FPIC for mining near tribal lands.

Establish a consistent, early-stage tribal consultation process.

Authorize federal agencies to reject harmful mining proposals.

Provide funding for tribal engagement in permitting processes.

ALTERNATIVES

FPIC Requirement: Stronger protections but longer project timelines.

STAKEHOLDERS IMPACTED

Tribal Nations

Federal agencies

Mining industry

Public interest groups

COSTS

Increased administrative responsibilities.

Potential delays in mining project approvals.

BENEFITS

Protects sacred sites and natural resources.

Upholds tribal sovereignty and rights.

Reduces legal disputes and improves agency trust.

CONCLUSION

MODERNIZING THE 1872 MINING LAW TO INCLUDE FPIC AND TRIBAL CONSULTATION IS ESSENTIAL FOR ETHICAL MINERAL DEVELOPMENT AND ENVIRONMENTAL JUSTICE. THIS REFORM HONORS INDIGENOUS RIGHTS AND ENSURES THAT THE CLEAN ENERGY TRANSITION DOES NOT REPEAT HISTORICAL INJUSTICES.



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Executive Summary

The General Mining Act of 1872 remains a cornerstone of U.S. mining regulation, yet it is drastically outdated and inadequate for today's social, cultural, and environmental landscape. Passed over 150 years ago, the law does not account for the rights and concerns of Tribal Nations whose lands and sacred sites are increasingly threatened by mining for critical minerals. As the U.S. transitions toward a clean energy economy, the demand for these minerals has skyrocketed, amplifying risks to Indigenous lands. This briefing focuses on NCAI Resolution #SAC-22-014, which advocates for reforming the 1872 law to require Free, Prior, and Informed Consent (FPIC), establish meaningful tribal consultation, and authorize federal agencies to reject mining proposals that pose irreparable harm.

Policy Background

Enacted during a period of aggressive westward expansion, the General Mining Act of 1872 was intended to promote mineral development on federal lands by allowing citizens to freely stake mining claims. Over time, the law has enabled the extraction of billions of dollars' worth of minerals, often with minimal environmental oversight or consultation with affected communities. It currently provides no requirements for Indigenous consultation, cultural site protection, or environmental justice considerations. As environmental standards and social expectations have evolved, other regulatory frameworks have emerged yet the 1872 law remains largely unchanged. Its structure inherently prioritizes mineral extraction over all other uses of federal land, creating conflict with conservation, cultural heritage, and tribal self-determination.



Comparison to Similar Policies

The deficiencies of the 1872 law are stark when compared to other legal frameworks. For example, Canada's Impact Assessment Act (2019) mandates Indigenous engagement throughout the environmental review process and incorporates Indigenous knowledge into assessments. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) sets the global standard for Indigenous consultation and requires FPIC before development projects proceed on traditional lands. In the U.S., the National Environmental Policy Act (NEPA) requires environmental assessments but falls short of mandating tribal consent or robust consultation. This makes the General Mining Act of 1872 an outlier, especially in the context of international human rights standards and domestic expectations for equity and sustainability.

Problem Statement

The General Mining Law of 1872 fails to protect tribal sacred sites, disregards the principle of Indigenous self-determination, and enables environmentally and culturally harmful mining practices. In the face of escalating mineral demand, particularly near Indigenous lands, the absence of legal safeguards for tribal consultation and consent is unacceptable and incompatible with the nation's commitments to environmental justice and equity.

Key Terms and Definitions

Hardrock Mining: The process of extracting valuable metals such as gold, silver, copper, lithium, and uranium from solid rock, typically using underground or open-pit techniques.



Free, Prior, and Informed Consent (FPIC): A principle that requires obtaining the voluntary and informed agreement of Indigenous peoples before undertaking projects that affect their lands, territories, and resources.

Sacred Sites: Specific geographic areas of spiritual, ceremonial, or cultural significance to Indigenous communities, often linked to traditional beliefs, histories, and practices.

NCAI (National Congress of American Indians): The oldest and largest national organization representing American Indian and Alaska Native tribal governments, dedicated to protecting and advancing tribal sovereignty and interests.

Policy Recommendations

- ❖ **Amend the General Mining Law of 1872** to require FPIC for all mining projects occurring on or near tribal lands.
- ❖ **Implement a standardized consultation framework** that begins at the earliest planning stages and is sustained throughout the permitting and development process.
- ❖ **Empower federal land managers** with the legal authority to reject mining operations that pose substantial harm to sacred sites, tribal lifeways, or environmental integrity.
- ❖ **Provide technical assistance and funding** for Tribal Nations to build internal capacity to engage in permitting processes as cooperating agencies.

These recommendations aim to modernize mining governance in a way that respects tribal sovereignty, ensures environmental justice, and aligns federal law with international norms.



Alternatives and Stakeholder Impacts

Recommendation 1

Require FPIC for Mining Projects *Pros*: Empowers Tribal Nations, provides clear protections for sacred sites, aligns with UNDRIP, improves long-term trust between tribes and federal agencies. *Cons*: May lead to longer permitting timelines; increased legal and administrative complexity for agencies and industry.

Stakeholders Affected

- ❖ **Tribal Nations**: Gain protections and input under FPIC, weaker benefits under non-FPIC options.
- ❖ **Federal Agencies**: Require additional capacity and training to implement robust consultation.
- ❖ **Mining Industry**: Faces more stringent regulatory processes, potential delays in project approval.
- ❖ **Public and Environmental Advocates**: Likely to support reforms that enhance transparency and sustainability.

Evaluation Plan

To measure the effectiveness of these reforms, a comprehensive evaluation plan should incorporate both qualitative and quantitative indicators. Key metrics should include the reduction in mining activity near culturally sensitive areas, the number and quality of tribal consultations



conducted annually, and levels of tribal satisfaction with federal consultation processes, assessed through surveys and public forums. Additionally, the plan should track the rate of Free, Prior, and Informed Consent (FPIC) compliance across new mining proposals and the adoption of best practices in consultation and site protection by federal agencies. To ensure transparency and accountability, the Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) should publish annual progress reports, with active oversight and participation from tribal representatives.

Projected Outcomes

With the adoption of these reforms, Tribal Nations would have a meaningful role in decisions affecting their territories. The legal framework would prioritize cultural preservation alongside mineral development. Mining operations would be better aligned with sustainability goals and tribal sovereignty. Public trust in federal agencies would likely improve, and international credibility regarding Indigenous rights would be strengthened. In addition, establishing formal mechanisms for FPIC and consultation would reduce legal disputes and community resistance, ultimately saving time and resources while producing more socially responsible projects.

Trade-offs

Costs	Benefits
Implementation costs related to staffing, training, and agency capacity-building.	Stronger protection for tribal sacred sites and natural resources.



Potential economic impact on the mining sector due to project delays or rejections.	Enhanced governance and tribal-federal relationships.
	Prevention of future litigation or reputational harm from harmful mining projects.
	Ethical and sustainable development of mineral resources.

Final Recommendation

The preferred policy option is to amend the 1872 General Mining Law to require FPIC and robust tribal consultation, combined with enhanced agency authority to deny projects that threaten sacred sites and tribal lifeways. This approach provides the most comprehensive protection for Tribal Nations while aligning with modern governance principles. The recommendation responds directly to the calls of Tribal Nations, especially as expressed through NCAI Resolution #SAC-22-014. It centers the leadership of Indigenous communities in safeguarding their own lands and cultures. The reform honors both legal and moral obligations to uphold tribal sovereignty while ensuring that the national shift to clean energy does not replicate the extractive injustices of the past. Stakeholders include not only Tribal Nations and federal agencies but also future generations, who deserve an energy system built on equity and respect.



References

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[General Mining Law 1872 Brief PDF](#)

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[NCAI Resolution #SAC-22-014 \(2022\) PDF](#)



Appendix A: Resolution #SAC-22-014



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-22-014

TITLE: Support for Mining Reform to Protect Sacred Sites

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Quasawat Indian Nation

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SOUTHWEST

Joe Garcia
Ojibay Chiricahua Pueblo

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the 1872 Mining Law was written 150 years ago and still governs the mining of hardrock minerals such as gold, silver, copper, uranium and other metals; and

WHEREAS, Department of Interior (DOI) and the Department of Agriculture (USDA) in the administration of the 1872 Mining Law favors hardrock mining over all other land uses, incorrectly limiting the ability of DOI and USDA to balance mining with competing uses, including the protection of our treaty rights, our natural resources, our cultures, ceremonies, traditional and sacred places, and tribal ways of life; and

WHEREAS, the 1872 Mining Law poses a serious threat to Tribal Nations' natural resources, cultures, ceremonies, traditional and sacred places, and ways of life; and

WHEREAS, the United States' shift away from fossil fuels to a clean energy economy that is more reliant on electric vehicles and renewable energy requires the use of more critical and other minerals, and many remaining untapped critical mineral deposits are located near tribal lands; and



WHEREAS, in Resolution #ABQ-19-049, the National Congress of American Indians called upon Congress to pass comprehensive legislative reform of the 1872 Mining Law that would prevent the extraction of mineral and other resources that would impact tribal sacred places and include robust consultation procedures that would ensure that government-to-government consultation takes place at the beginning stages of a planning process and continues throughout the process; and

WHEREAS, the transition to a clean energy economy should not disproportionately impact Tribal Nations; and

WHEREAS, DOI has convened the Interagency Working Group on Mining Reform to review and reform mining laws, regulations, and permitting; and

WHEREAS, the mining laws and regulations should be reformed to ensure the Free, Prior, and Informed Consent of Tribal Nations that federal land managers have authority to decide whether or not to approve mining plans of operation, and that they have authority to reject proposals that may cause irreparable harm to our natural resources, our cultures, ceremonies, traditional and sacred places, and tribal ways of life.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians calls upon the Department of the Interior and Department of Agriculture to support reform of the 1872 Mining Law and to update law, policy, and guidance to ensure the Free, Prior, and Informed Consent of Tribal Nations adversely impacted by mining activity, to provide for substantive protections for sacred sites and cultural heritage and resources, and to allow federal land managers to reject mining proposals that may cause irreparable harm to Tribal Nations' natural resources, cultures, ceremonies, traditional and sacred places, and tribal ways of life; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

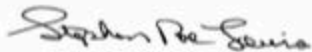
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2022 Annual Conference of the National Congress of American Indians, held in Sacramento, CA, October 30-November 4, 2022, with a quorum present.



Fawn Sharp, President

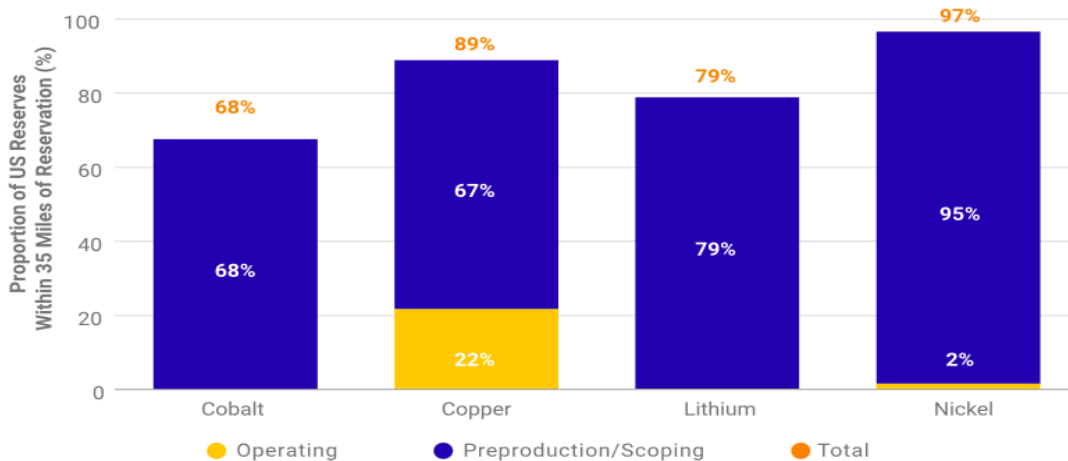
ATTEST:



Stephen Roe Lewis, Recording Secretary

Appendix B: Bar Graph of Metals Near Reservations

US Transition-Metal Reserves Within 35 Miles of Native American Reservations



Appendix C: Mines Near Reservations

US Mines' Proximity to Native American Reservations

