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Critical minerals and precious metals: Executive power and what to expect

Critical minerals, including lithium, cobalt, nickel, rare earth elements, and dozens of other materials that underpin defense systems, electric vehicles, semiconductors, energy storage, and numerous other aspects of the national infrastructure of the US have become a key strategic and political focus of the Trump administration. The Trump administration has issued a number of executive orders directing federal agencies to both prioritize domestic mineral production and cut through permitting timelines, creating arguably the most permitting-friendly executive environment in decades and real commercial opportunity.

While the policy debate and rhetoric have focused overwhelmingly on battery and defense minerals, the legal architecture being reshaped by executive action governs all mining on federal lands, including the gold and silver mining industries. The reforms enacted today may reshape the precious metal industry, but a friendlier permitting climate does not make approvals litigation-proof, and that gap is where practitioners earn their keep.

For legal practitioners advising mining companies, investors, and project developers, the central question is whether executive action can deliver on its promises. Some tools are legally durable; others confront structural constraints no executive order can eliminate.

The executive order landscape

On the first day of taking office in his second term, Trump signed Executive Order 14156 declaring a national energy emergency and Executive Order 14154, Unleashing American Energy, which directed federal agencies to expedite permitting for energy and mineral projects and to review (and rescind) any prior regulations deemed to obstruct domestic production. In March 2025, Executive Order 14241, Immediate Measures to Increase American Mineral Production, went further still, directing use of the Defense Production Act (DPA) (even for gold), mandating new categorical exclusions under the National Environmental Policy Act (NEPA), and establishing aggressive timeline targets for agency review of mining permit applications. Notably, these federal initiatives do not address state-level permitting, which varies widely by jurisdiction and may independently delay or restrict projects regardless of federal reforms.

Agency culture shifts when the White House signals priorities and permitting timelines can compress with added resources. But culture shifts do not equate to statutes, and neither do executive orders, nor do they displace state permitting regimes; practitioners must distinguish between what these orders aspire to achieve and what the law actually permits.

What the law actually permits and what it does not

The core reality is that the major federal statutes governing mining permitting were not written by executive order and cannot be suspended by one. Consider the key constraints:

- NEPA requires environmental review for major federal actions. While the Council on Environmental Quality (CEQ) can set implementing regulations (and the administration has moved to reinstate the more permissive 2020

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CEQ rules), NEPA's statutory requirement for a "hard look" at environmental consequences remains. Courts enforce that requirement regardless of which CEQ regulations are currently in force.

- The Endangered Species Act (ESA) mandates section 7 consultation for any federal action that may affect a listed species. No executive order can waive this. Given that many of the most mineral-rich federal lands in the American West host threatened or endangered species, ESA consultation will remain a significant timeline driver.
- The Administrative Procedure Act (APA) requires that agency rules, including rules that streamline or modify permitting procedures, go through notice-and-comment rulemaking. Rules issued without that process are vulnerable to invalidation under the APA's arbitrary-and-capricious standard. Courts have not been reluctant to apply that standard in the natural resources context. Some examples include:
  - *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual*: the Supreme Court decision establishing the modern arbitrary-and-capricious framework that courts apply across all agency rulemaking, including in the natural resources context.
  - *National Mining Association v. US Army Corps of Engineers*: courts reviewed Corps permitting rules under the APA's arbitrary-and-capricious standard, invalidating rules that lacked adequate justification.
  - *Center for Biological Diversity v. US Fish and Wildlife Service*: multiple cases in which courts invalidated biological opinions or species listing decisions as arbitrary and capricious.
  - *The National Historic Preservation Act (NHPA), and section 106*: requires consultation with tribal nations and historic preservation interests before federal permits can be issued. This has become an increasingly powerful litigation lever, and it is one that executive orders cannot displace.

Gold mining operations in Nevada are among the most economically significant mining activity on US federal lands, making Nevada the fifth-largest gold-producing jurisdiction in the world, but have faced time-consuming NEPA litigation, ESA consultations triggered by various species, and section 106 challenges from tribal nations. Executive orders issued in Washington do not resolve any of those cases faster. The same will be true of the next generation of critical mineral projects, many of which will be located in the same Western landscapes and will likely encounter the same legal friction. Mineral projects take years, often spanning multiple administrations, to move from planning through construction and commercial production. Today's policies carry no guarantee against more restrictive federal policy before a project reaches production.

Additional constraints like the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overruled the four-decade-old *Chevron* doctrine add further complication. Under *Chevron USA, Inc. v. Natural Resources Defense Council*, courts deferred to a federal agency's reasonable interpretation of any ambiguous statute administered. That deference is now gone. Challengers need only convince a court that a different statutory reading is more persuasive, rather than demonstrate the agency was unreasonable.

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Which tools actually move the needle

Not all of the administration's mechanisms are equally durable, and practitioners advising clients need to be direct about the distinctions:

- Categorical exclusions (CEs) are the most legally robust mechanism available. A properly promulgated CE can eliminate the need for a full Environmental Impact Statement or Environmental Assessment for qualifying projects. The administration has directed agencies to create new CEs for critical mineral activities, and when that process is followed correctly, those exclusions should hold up. Importantly, CEs broadly apply across mining activities and are not limited to critical mineral projects, which could also positively impact gold and silver mine operators.
- The Defense Production Act (DPA) gives the president genuine statutory authority, including under section 303, to support domestic production of strategic and critical materials. DPA-backed loan guarantees and purchase commitments for critical minerals have broader legal support.
- Emergency designations are the weakest tool in this toolkit. Declaring an "energy emergency" may reorganize internal agency priorities and provide political cover for faster action, but it does not grant any additional permitting authority. Generally, courts are unlikely to treat an executive emergency declaration as authorization to bypass statutory environmental review.
- Lead agency and "One Federal Decision" frameworks, which consolidate multiagency permitting under a single coordinating agency with synchronized timelines, can produce genuine efficiency gains without raising significant legal vulnerability. The first Trump administration introduced this approach; the current administration has revived and expanded it. Crucially, this framework applies across the board to gold, silver, copper, and critical mineral projects alike, making it one of the most broadly useful reforms on the table for the mining sector as a whole.

Predicting the litigation wave

Legal practitioners should advise clients to plan for substantial litigation throughout this permitting reform period. Environmental and tribal advocacy organizations have already filed challenges to aspects of the administration's executive program, and project-specific litigation will intensify as streamlined approvals are issued for individual mines.

The most likely litigation pathways include:

- APA arbitrary-and-capricious challenges to agency actions taken without adequate notice-and-comment rulemaking;
- NEPA challenges targeting Environmental Assessments or categorical exclusion determinations that courts find inadequately supported;
- ESA section 7 challenges;
- NHPA section 106 challenges; and
- challenges following a change in administration and a shift in enforcement culture emboldens renewed litigation.

The federal district courts of the Western US, which handle the bulk of public lands litigation, have demonstrated a willingness to issue preliminary injunctions halting project activity pending full merits review. A mining company that

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breaks ground relying on a streamlined approval that is subsequently enjoined faces not only legal exposure, including potential shareholder litigation for public companies, but also serious financial harm.

The bottom line for practitioners and their clients

The current permitting-friendly executive environment for mineral development is a meaningful tailwind, and practitioners should acknowledge it plainly to clients. There is commercial opportunity in this moment, but there is a significant difference between a favorable regulatory environment and a legally secure one.

The legal architecture being tested and contested in the critical minerals context is the same one that has governed gold, silver, and copper mining on federal lands for generations. How the courts respond to the current wave of permitting reform will set precedents that reach well beyond battery minerals. Genuine, durable reform ultimately requires congressional action, not merely executive orders or guidance that is subject to change every four years.

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FIRM PROFILE

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