

Community Benefit Agreements are key to mining battery minerals on public lands



By E. A. Holley

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Community Benefit Agreements are needed to integrate community priorities into project design and mining operations on public land in the USA, argues Elizabeth Holley.

Meeting energy transition goals for decarbonization will require huge increases in the production of battery minerals such as copper, cobalt, nickel, manganese, lithium and graphite. The USA is almost entirely dependent on imports for most of these minerals, and the potential for geopolitical supply chain disruption has led to new federal policies that prioritize domestic mining. The executive order ‘America’s Supply Chains’ calls for expansion of mining in the USA, while emphasizing improvements in environmental justice, Tribal consultation and community engagement. However, simultaneous attainment of these diverse goals has proved elusive. Nearly every recent proposal for a new mine in the USA has been met with community opposition on environmental or social grounds. Contested mining projects such as the proposed Resolution copper mine in Arizona, the Twin Metals and Polymet nickel–copper–cobalt mines in Minnesota, the Thacker Pass lithium mine in Nevada, the South32 manganese–zinc project in Arizona and the Graphite One project in Alaska illuminate the need for new policies and practices to ensure public benefit from mining on public lands and to align benefits and costs with community priorities.

Worldwide, many corporate and government-led engagement efforts around mining projects fail to meet, or even understand, community and Tribal priorities. Community engagement by mining companies usually consists of public information campaigns prior to development, followed by philanthropic ‘corporate social responsibility’ programmes during operations. Mining companies are generally reluctant to publicize a project’s preliminary design while feasibility

studies are ongoing, so community input comes late in the process, when the opportunity for substantive design changes has long passed. The US National Environmental Policy Act requires public and Tribal consultation on a project’s environmental review, but the onus for public engagement falls on the participating government agencies, instead of on the project proponents. Furthermore, although about 40% of the USA is public land, the public has little input on how those lands are used, or whether public benefits and costs are accrued. The still-active 1872 Mining Law presumes that federal lands should be mined where ore occurs. Companies do not pay royalties for hard-rock mining of these lands, and the cash bond requirements are often insufficient to cover major environmental issues, in many cases leaving taxpayers responsible for funding reclamation. Unsurprisingly, public opposition to mining projects plays out via community activism and protests and, increasingly in the USA, through litigation of permitting decisions. Some contested mining projects remain stalled indefinitely, others are cancelled, and some go forward despite opposition – all three are expensive propositions for the mining company. For opposition groups, such battles drain resources and rarely provide an opportunity to influence the design if the development does go forward.

If the USA is going to meet even a fraction of its demand for battery minerals by mining on public lands, we need a transformative model for public engagement and public benefit. I advocate for Community Benefit Agreements (CBAs) that deeply integrate community priorities into project design and operations, such as the Good Neighbor Agreement at the Stillwater and East Boulder Mines in Montana. This voluntary agreement between the mine and three non-profit citizen groups has been in place for nearly 25 years and is a hallmark example of company–community collaboration. The legally binding contract operates independently of the mine permitting framework to provide extra environmental protections, as well as stipulations on where and how

development can occur on public and private lands. The agreement was born out of conflict, when the Stillwater platinum–palladium mine sought to expand its operations by developing a second underground mine along a trout-fishing river, six miles from a wilderness area. Local residents formed a non-profit citizen group and filed a lawsuit contesting the water discharge permit. The suit was dismissed when the state legislature changed the laws, but the company was seeking financing and needed to avoid further litigation. Negotiating directly with the mining company, citizen groups materially influenced the proposed project by imposing stricter standards for water quality and employee transit and by restricting the locations of tailings disposal and mine-sponsored housing. The company funds the implementation, including third-party technical advisors. The citizen group signatories gave up the right to litigate the permits but can use contract arbitration to enforce the agreement. The agreement has withstood three changes in mine ownership since its inception, with successive operators recognizing the value of collaboration instead of contestation.

The Stillwater Good Neighbor Agreement is one of few CBAs in the mining sector of the USA, but the model is applicable to mining and energy projects worldwide, wherever there is a gap between regulatory requirements and public priorities. Although not a substitute for policy reform, CBAs can be implemented more quickly and are customizable to the project and its local context. Successful CBAs require citizens to invest time and effort to organize, to develop negotiating power and to monitor implementation. Mining companies must be willing to negotiate in good faith for mutual benefit. CBAs should be incentivized by lenders, shareholders and voluntary assurance programmes for responsible mining. CBAs can promote community priorities such as environmental protection, economic benefit and even collaborative operation or joint ownership. In my view, CBAs are a key tool for the USA and other nations aiming to produce battery minerals.

E. A. Holley ^{1,2} 

¹Department of Mining Engineering,
Colorado School of Mines, Golden, CO, USA.

²Payne Institute for Public Policy, Golden,
CO, USA.

 e-mail: eholley@mines.edu

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