

**H.R. 2925, H.R. 6862, H.R. 7003,
AND H.R. 7004**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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**LEGISLATIVE HEARING ON H.R. 2925, TO
AMEND THE OMNIBUS BUDGET RECONCILI-
ATION ACT OF 1993 TO PROVIDE FOR SECU-
RITY OF TENURE FOR USE OF MINING
CLAIMS FOR ANCILLARY ACTIVITIES, AND
FOR OTHER PURPOSES, “MINING REGU-
LATORY CLARITY ACT OF 2023”; H.R. 6862,
TO AMEND THE FAST ACT TO INCLUDE
CERTAIN MINERAL PRODUCTION ACTIVI-
TIES AS A COVERED PROJECT, AND FOR
OTHER PURPOSES; H.R. 7003, TO AMEND
THE NATIONAL LANDSLIDE PREPAREDNESS
ACT TO REAUTHORIZE SUCH ACT,
“NATIONAL LANDSLIDE PREPAREDNESS
ACT REAUTHORIZATION ACT OF 2024”; AND
H.R. 7004, TO AMEND THE MINERAL
LEASING ACT TO AMEND REFERENCES OF
GILSONITE TO ASPHALTITE**

**Wednesday, January 31, 2024
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:13 p.m. in Room 1324, Longworth House Office Building, Hon. Pete Stauber [Chairman of the Subcommittee] presiding.

Present: Representatives Stauber, Gosar, Graves, Fulcher, Curtis, Tiffany; Ocasio-Cortez, Kamlager-Dove, and Grijalva.

Also present: Representative Amodei; and DelBene.

Mr. STAUBER. The Subcommittee on Energy and Mineral Resources will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member.

I ask unanimous consent that the gentleman from Nevada, Mr. Amodei, and the gentlewoman from Washington, Ms. DelBene, be allowed to participate in today’s hearing.

Without objection, so ordered.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. PETE STAUBER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. STAUBER. Today, the Subcommittee on Energy and Mineral Resources will consider legislation that would ensure access to domestic mineral resources and support scientific research that will help us prepare and respond to natural hazards, including landslides. H.R. 2925, the bipartisan and bicameral Mining Regulatory Clarity Act sponsored by Representative Amodei, would restore long-standing interpretation of the Mining Law of 1872 and agency regulations governing hardrock mining policy on Federal lands.

In May 2022, the U.S. Court of Appeals for the Ninth Circuit affirmed a lower court's decision revoking an approved mine plan for the Rosemont Copper Mine Project, which is commonly referred to as the *Rosemont* decision. This decision limits the ability of the Forest Service to approve mining support facilities necessary for mining operations, impacting future mining projects across the country.

A mining claim is established by the payment of location fees and claim maintenance fees by an operator to the Department of the Interior. If an operator remains in good standing and continues to pay these fees, they are entitled to use the land within their claim for all proper mining-related purposes, including exploration, building access roads, and constructing office facilities, which are known as ancillary use activities.

Notably, nothing in this bill exempts mining activities from environmental review or other approvals necessary under the law. It simply affirms the right of the operator to perform all the activities needed to make a valid discovery.

As said by former DOI Solicitor Jorjani, "Requiring the discovery of a valuable mineral deposit before allowing any reasonably incident mining uses, including the removal of any minerals, puts the cart before the horse, since such uses and removal are necessary to make a discovery." So, think about it. If a mineral deposit needs to be found before exploration can take place, then how could minerals ever actually be discovered?

The *Rosemont* decision changed 40 years of mining regulation and over a century of interpretation of the mining law, and threatens new domestic mining projects on Federal lands. H.R. 2925 will correct this and codify long-standing policy, and provide the regulatory certainty needed for domestic mining projects to move forward.

H.R. 6862, sponsored by Representative Lamborn, would ensure that all hardrock mineral projects remain eligible for the streamlining benefits of the FAST-41 permitting dashboard. The Biden administration's recent proposal to allow only critical mineral projects to be placed on the permitting dashboard would exclude important domestic mining projects that are necessary for our modern economy, along with achieving this Administration's renewable energy goals.

For example, copper is not currently listed as a critical mineral, yet copper is essential for construction, renewable energy, and electric transmission. The permitting process for mining projects in the United States currently takes roughly 10 years or even more.

Meanwhile, demand for products of copper is skyrocketing, underscoring the need for streamlining the permitting process.

H.R. 6862 would ensure that projects aimed at producing all the hardrock minerals our country desperately needs would be eligible for the streamlining benefits of the FAST-41 process going forward, and would ultimately lessen our dependence on foreign adversarial nations for our mineral supplies.

H.R. 7004, sponsored by Representative Curtis, would amend the Mineral Leasing Act in each place that “gilsonite” is mentioned, to replace it with the appropriate generic terms, “asphaltite.” Gilsonite is a unique mineral that is produced on Federal lands in Utah. While the term “Gilsonite” has been trademarked since 1895, the use of the term in the Mineral Leasing Act has caused confusion in the marketplace by suggesting it is a generalized term for all forms of asphaltite. This has created challenges for American producers of Gilsonite, as reports of foreign producers of inferior products falsely labeling their products as Gilsonite have surfaced.

Finally, H.R. 7003, the National Landslide Preparedness Act Reauthorization Act of 2024, a bipartisan bill sponsored by Representative DelBene, would reauthorize the National Landslide Preparedness Act for Fiscal Years 2024 through 2028.

Landslide hazards are a threat to communities across the United States. And, notably, communities in the states of Washington and Alaska have experienced these devastating hazards firsthand in recent years. This bill would extend the National Landslide Hazard Reduction Program and the 3D Elevation Program, which are aimed at gathering and sharing data that will enable states and communities to reduce loss during the event of a landslide.

I thank the sponsors of these important bills for their work on these efforts, and I look forward to the testimony from our invited witnesses today.

I will now recognize the Ranking Member, Representative Ocasio-Cortez, for her opening statement.

STATEMENT OF THE HON. ALEXANDRIA OCASIO-CORTEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. OCASIO-CORTEZ. Thank you, Chairman.

In this Committee, we often hear calls for an increase in domestic mining to fuel the clean energy transition. But as we move to the clean energy future, we must be sure to prevent the injustices of the past. Unfortunately, under our 150-year-old mining law, we are bound to do just that. And that is correct. Today’s mining industry operates under a Federal law signed into effect more than 150 years ago.

The mining law gives the mining industry rights over public lands that any other industry would dream of. All other public land users and industries, oil and gas, ranchers, conservation, renewable energy, all go through a public planning process to make sure land use is fairly balanced. All other land users have to pay fair market value for the use of public land and oil, gas, and coal. They all pay a royalty back to the public, back to the taxpayers for the extraction of these public resources.

The mining industry, however, sits above all of that. Today, anyone can go out on open public lands, drive four stakes in the ground, and claim that land as their own, as long as they can prove there are minerals there to mine. The 1872 Mining Law gives that miner the exclusive right to that land. The government cannot say no, even if it is the perfect site for renewable energy, or if it is the only habitat for an endangered species. Tribes can't say no, no matter how sacred the landscape. This imbalance of power has resulted in over a century of ongoing toxic mines, scarring our landscape and poisoning our communities.

There is only one frail guardrail on which someone can stake a mining claim and claim all the rights to that public land. The 1872 Mining Law says a claim is only valid if it contains valuable minerals. That is, it is only valid if there is actually something there to mine. One of the bills on the agenda today, the Mining Regulatory Clarity Act, would strip that only guardrail away.

Under this bill, any mining claim would automatically be valid if the claimant pays a laughably small fee of \$10 per acre per year, no matter the validity of the mining claim. You are hearing that correctly. Any American, or notably, any American subsidiary of a foreign company could have the exclusive rights to our public lands for about \$10 per acre per year. Anyone who pays those nominal fees has the right to, and I quote, "occupy, use, and conduct operations" on their mining claims, no conditions, no exceptions. This law would apply to all of our public lands, including national parks, wilderness areas, and BLM land.

The mining industry claims this is just a minor tweak to existing laws to correct legal uncertainty, but the unintended consequences of this change would upend our public lands management. It would give away our public lands not even to the highest bidder, but to the fastest claimer. We don't have to imagine the chaos that this could create. We just have to look at the history of the mining law and all the ways bad actors have tried to exploit and misuse mining claims.

Today, over 1,100 mining claims remain active in our national parks, with their claim fees paid but without having been tested yet for a valuable mineral. Under this bill, all 1,100 claims in our national parks would become automatically valid. Anyone could conduct any "mining-related operations" on any of these one 1,100 claims. Someone could permanently bury part of Zion National Park in toxic mining waste. Someone else could use a claim on part of a trail into the Grand Canyon to deny access to their "prospecting site" unless hikers paid an access fee. And what a gift this bill would be to any Wall Street speculator trying to make a quick buck off our public lands.

Under this bill there would be no way to invalidate those speculative or potentially predatory claims. Any big-money bad actor could blanket our public lands in thousands of untouchable mining claims, and force any other public lands user to buy them out to build an energy transmission line, or a trail, or a renewable energy project.

This bill is not just a give-away to the mining industry. It is a wholesale giveaway of our public lands.

With that, I yield back.

Mr. STAUBER. Thank you very much. I will now recognize the Ranking Member of the Full Committee, Mr. Grijalva, for 5 minutes for his opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Mr. Chairman, and thank you for allowing me this opportunity.

[Chart.]

Mr. GRIJALVA. We stand at the edge of a whole new mining rush. And although times have changed dramatically since the first gold rush of the 1800s, sadly, the Mining Law of 1872 has not, and neither has the mining industry's destruction.

When we think of the gold rush, we often conjure up these Norman Rockwell-like images of a pick and shovel, miners and their trusty donkey, or people peacefully panning for gold in a stream. But the reality is that mining in the United States has always been toxic and, in many instances, deadly. In the first decades of the gold rush, industrial mining financed by large mining corporations blasted away entire mountainsides. Many of these mine sites are still abandoned and unclaimed today, leaching toxic mercury into the watersheds.

The fees to stake mining claims were dirt cheap even then. After all, it was the people who lived on those lands that paid the real price. Indigenous people who had lived in the West since time immemorial were systematically driven from their lands, eliminated, and enslaved. Settlers committed atrocities with the explicit encouragement and funding of the state governments and the help of the U.S. Army. We cannot ignore the history, and we cannot ignore this context.

The mining law empowered land grabs. Any American citizen could stake a claim on open public lands and have exclusive rights to the land and its minerals. People in power knew exactly what to do to secure these rights. The Daily Alta California newspaper wrote in 1849, "Whites are becoming impressed with the belief that it will be absolutely necessary to exterminate the savages before we can labor much longer in our mines with security." This is our history. This is the foundation of the Mining Law of 1872. Dispossession of Indigenous homelands was a feature, not a flaw.

The mining law endorsed colonial greed, environmental destruction, and the disregard for human life, all in the name of profit. Over the past 150 years, regulators have tried to rein in the worst excesses of this mining law through a patchwork of other laws. But the heart of the mining law, mining, above all else, remains unchanged. We cannot have meaningful tribal consultations as long as the mining industry has the automatic right to mine wherever they stake a claim. We cannot deny a mine on public lands, even if it would cause irreparable harm to the environment or sacred sites. This is unacceptable, and it should not be the basis for modern mining.

Unfortunately, the bills we are hearing today do nothing to address these flaws. They only make them cut even deeper. We need mining reform that gives the American people the freedom to choose, to be able to say yes or no to a particular mine at a

particular site. We need mining reform that puts mining on equal footing with the public interest. Only then can we truly create a modern, sustainable mining industry. My bill, the Clean Energy Mineral Reform Act, would do just that. But H.R. 2925 and H.R. 6862 take us in the opposite direction.

With that, Mr. Chairman, I yield back.

Mr. STAUBER. Thank you very much. We will now begin our Member panel who will speak on their legislation.

Mr. Lamborn cannot make it today, so without objection I would like to submit his comments for the record.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO

Thank you, Chairman Stauber. Today, we will hear testimony on my bill to ensure that all mining projects receive consideration under the Fixing America's Surface Transportation Act. Title 41 of this act, known as FAST-41, grants numerous departments with NEPA authority the ability to speed up the permitting process for infrastructure projects subject to the National Environmental Policy Act (NEPA) process. The entire reason that Congress passed this law in the first place was to

- improve consultation and coordination among government agencies during permitting;
- increase transparency by publicizing completion dates, timetables, authorizations and environmental reviews for all federal agencies with authority over these projects;
- and most importantly, get shovels in the ground for critical infrastructure projects more quickly and within a reasonable budget.

In 2021, hard rock mineral mining was added as a covered sector under FAST-41. Because it is so crucial to numerous emerging industries and is necessary to maintain our standard of living, safety, and technological superiority. Hardrock mining is crucial for items like copper, which is necessary to build out the transmission and distribution projects Americans will soon rely. We also need it for steel and iron, which builds everything from skyscrapers to cars, bridges to airplanes. Lastly, hardrock minerals are the basis for which critical minerals are mined. Critical minerals are produced as a byproduct of another, more common, host mineral and are necessary for even the Biden administration's lofty goals surrounding EV's and renewable energy buildouts.

It is strange then that, in September 2023, the Biden administration proposed a new rule regarding FAST-41 coverage. The rule, titled *Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act*,¹ redefines the covered mining sector so as to only cover critical mineral-based mining projects. The administration insists that this will prioritize critical mineral supply chain projects and will improve timeliness, but we know it for what it is: the Biden administration is overreaching in their quest to pursue a radical climate agenda by arbitrarily choosing winners and losers. The Biden administration relies heavily on the products that come from these mines, which makes their decision to shut down mines, such as the Twin Metals Copper Mine in Minnesota, and now the decision to remove mining from FAST-41 consideration, so puzzling.

Aside from the administration's focus on their climate agenda, I am also concerned about continuing to cede leadership in global mining to the Chinese. China has a chokehold on the mining and refining industry, so slowing down the permitting process, will further seed control of supply chains to our geopolitical rival.

"Critical minerals" are defined by the United States Geological Survey and are redefined every 3 years. Companies beginning the lengthy permitting and siting process may find that the mineral they have targeted has been removed from the

¹ <https://www.federalregister.gov/documents/2023/09/22/2023-20270/revising-scope-of-the-mining-sector-of-projects-that-are-eligible-for-coverage-under-title-41-of-the>

USGS list within the time frame that it took them to apply for the permit in the first placing, wasting millions of dollars and stifling investment.

If we want American mining to flourish, we must compete on a level playing field without the heavy hand of the federal government choosing who wins. Needlessly allowing the Chinese government to continue dominating the mining industry will only hurt global stability in the long run.

My bill returns hardrock mining to its original covered status under FAST-41 so that we may continue to expedite all mining projects across the U.S., ensuring domestic reliability and continued growth.

I urge all my colleagues to support this bill and look forward to hearing the testimony of the witnesses today on this important bill.

Mr. STAUBER. With that being said, we will begin with Mr. Curtis from Utah's 3rd Congressional District for his testimony on his bill.

Mr. Curtis.

**STATEMENT OF THE HON. JOHN R. CURTIS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. CURTIS. Thank you. I am incredibly proud of Utah's mining industry, as opposed to what you might have heard so far in this meeting.

As a matter of fact, Mr. Ranking Member, I am sorry you took that poster down. That is actually my district, and I am curious if you know what the closest Ferris Wheel is to Zion National Park. There are none within hundreds of miles.

I am curious if you know the closest skyscraper to Zion National Park. That would be Las Vegas.

And I just think it is disingenuous to show a poster like that that has no representation of the actual location, and I would love to have you and any Member from this Committee, actually, to Zion's National Park to talk about these issues in a realistic way that really can be productive and get something done.

I would like to talk a little bit about my bill, the Mineral Leasing Act, that changed gilsonite references to asphaltite. It gets a little bit into the weeds, but let me just explain quickly. Gilsonite, with a capital G, is currently only found in the Uintah Basin. The term Gilsonite, capital G, was trademarked in the late 1800s. Because gilsonite, lowercase g, was used as a term in the Mineral Leasing Act, adversaries like Iran are using it to sell an inferior product under the same name. The Mineral Leasing Act needs to be updated to ensure this critical mineral is produced in the United States, as opposed to similar but inferior products from our adversaries.

Additionally, I know Utahns mine more sustainably than anywhere else in the world. We should be proud of our resources and the ability to share them with the world in a responsible way. Moving forward, we need minerals, and we have to make a decision if we want these minerals to come from conditions that we can control and regulate, that are done responsibly, or do we want them to come from our adversaries like China, Iran, and shell companies.

I don't have an opportunity to introduce questions right now, but I am pleased that all the witnesses are here. But Mr. Mueller, I am especially grateful that you are here and look forward to your comments later on.

With that, Mr. Chairman, I yield my time.

Mr. STAUBER. Thank you very much, Representative Curtis. We will now recognize Mr. Amodei from Nevada's 2nd Congressional District for his testimony on his bill.

Mr. Amodei.

STATEMENT OF THE HON. MARK E. AMODEI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. AMODEI. Thank you, Mr. Chairman, for your indulgence, and please pass that on to the Ranking Member of the Subcommittee. And good afternoon, Mr. Ranking Member of the Committee as a whole.

I guess when it is your story, you can tell it however you want. And it is America, and it is anybody's right to do that, and that is fine. But I do want to point out a couple of things about H.R. 2925 since we are talking about history and more recent history. That decision, which was applied to the Forest Service, basically overturned multiple decades, nearly a half a century of what was recognized in terms of what it did to pursue a mining claim.

Now, when I say pursue a mining claim, that is not in a vacuum. Nobody has repealed NEPA, nobody is trying to repeal NEPA. Nobody is trying to wipe out cultural resources. Nobody is trying to wipe out all the myriad of steps that Federal land managers have to go through before they give somebody in modern mining America the ability to go try to extract minerals for a commercially viable purpose. You go through all those NEPA steps, which I haven't heard a peep about yet, which H.R. 2925 does nothing to change.

And not that anything is perfect, and not that things don't evolve as they are required to, but historical practices from 50 years ago or 150 years ago aren't what they are now.

And it is interesting to hear how the Mining Law of 1872, which anybody that can add goes, that is a long time, maybe we ought to update that. Absolutely we should, but it should be a collaborative thing, which has been an absolute impossibility for this Congress to achieve, at least in the time I have been around and before that. So, it is always interesting to hear it is terrible, and you shouldn't be able to do it, but oh, we need more money when you are going to do it. It makes you wonder where the priorities are, and just exactly what the No. 1 one is. Well, if we give you more money is it OK, or is it more OK, or what is it? It is like we need to be consistent.

Of course, it needs to be updated. It is 1872. But to try to bring what the cultural realities were of post-Civil War America into the present like it is something that the mining companies did is like, because I have news for you. It is not in a vacuum.

I am very proud of my state's Department of Environmental Protection record on how they go about permitting things, requiring mitigation, all those sorts of things, working in conjunction with Federal land managers for the Bureau of Land Management and the Forest Service. Nothing in H.R. 2925 goes, hey, that stuff you have been doing for 40 years, you don't have to do it anymore. Of course, you have to keep doing it.

So, let's just say what it is. No disrespect to the Ninth Circuit Court of Appeals, which applies in Nevada, but if you can't beat them head on and you can't beat them through the right side, maybe you come through the left side. Let's just be honest, nobody will say, "We think we have a viable mineral, but we have to go raise capital for that before you can really prove it."

And by the way, if you need a place for waste rock or you need a place for a processing site, whether that is a leach pad, or a mill site, or whatever, that is all in the approval. And nothing in this, in case somebody wants to say this, I defy you to find in the four pages of this language which says, "Oh, by the way, we can have our way with wilderness areas, that doesn't apply anymore, we have just repealed NEPA for wilderness areas." That is just one example, but let your conscience be your guide.

So, I will say this. And by the way, it is curious that at a time when this Administration is giving billions of dollars to lithium mining companies in Nevada to do what all mining companies have done for the last 40 years, we have to sit here and go, oh well, this *Rosemont* thing, this is an attack on truth and justice somehow.

I mean no disrespect. It is not my intent to impugn or offend.

And by the way, H.R. 2925's companion bill is a bipartisan bill by a Senator from Idaho and a Senator from Nevada and, as well as this bill, has bipartisan support. You look at the history of this, this language has been in legislation that 10 months ago passed the Floor of the House the 225 votes. But I guess maybe somebody tricked somebody, and there were secrets in there. I don't think there were.

So, all I would say is this, Mr. Chairman, Madam Ranking Member, and Mr. Committee Ranking Member is, I get it. I mean everybody has their political agendas, and that is just the way it is today. But let's talk about reality in this four-page bill. Let's talk about reality about modern mining in America. And let's do the right thing to restore some stability if you are really into, we need to responsibly exploit those resources which are available in our country which keep us from having to go overseas to do other stuff.

And with that, thank you for your generosity, Mr. Chairman, I yield back.

Mr. STAUBER. Thank you very much. I will now recognize Ms. DelBene from Washington's 1st Congressional District for her testimony on her bill.

STATEMENT OF THE HON. SUZAN K. DELBENE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Ms. DELBENE. Thank you. I want to thank the Chairman and Ranking Member for holding this important hearing and inviting me to provide testimony on H.R. 7003, my legislation to reauthorize the National Landslide Preparedness Act.

Landslides kill 20 to 50 people and cause between \$1.6 and \$3.2 billion in damage each year. And, unfortunately, this is a reality that folks back in my district know all too well. Nearly 10 years ago, Washington State experienced one of its worst natural disasters. In a matter of seconds a tragic landslide near Oso, Washington killed 43 people, destroyed over 40 homes, and severely damaged public infrastructure and private property. That

day forever changed the people of Oso, of Darrington, Arlington, and the Stillaguamish and Sauk-Suiattle Tribes, and they are still living with its scars today.

I remember going to Oso right after the disaster to support the community and families who had lost loved ones and their homes. Our first responders were the true heroes that day. They spent countless hours trying to save lives and recover loved ones. These were some of the most heartbreaking days of my time in Congress to see so much devastation in this close-knit community.

Following that landslide and that tragedy, I introduced in 2016 the National Landslide Preparedness Act. As the Oso landslide demonstrated, simply sending aid after a tragic national disaster is insufficient. We need to do more to invest in programs and research efforts to prevent future natural disasters from becoming national tragedies. I worked tirelessly to get the National Landslide Preparedness Act signed into law in 2021 with the support of many of you in this room today.

This law established a National Landslide Hazards Reduction Program through the U.S. Geological Survey to better identify and understand landslide risks, protect communities, save lives and property, and help improve emergency preparedness. It also authorized the 3D Elevation Program, which in the past few years has made incredible strides to update and coordinate the collection of enhanced, high-resolution topographical data across the country.

In addition to helping communities plan for and respond to natural hazards, this data is being used to improve public safety, national security, infrastructure, agriculture, and natural resource management. Through this law, significant progress has been made in landslide science, allowing communities to be better prepared for when landslides do occur.

In recent years, we have seen dramatic increases in extreme weather events. We need to do everything in our power to make sure that communities across the country continue to have the tools at their disposal to be prepared. Currently, the programs authorized by the National Landslide Preparedness Act will expire on September 30 of this year.

In the 3 years since the enactment, USGS and their partners have made incredible strides, and we must keep building on their progress. I introduced H.R. 7003, along with Representatives Schrier, Gluesenkamp Perez, and most of the Washington Delegation to reauthorize these programs through 2028.

This bill has bipartisan and bicameral support. Senators Cantwell and Murkowski will be leading the effort in the Senate.

Every state across the country faces landslide risks, which is why we must reauthorize these critical programs. Thank you again for the opportunity to speak on the need to reauthorize the National Landslide Preparedness Act.

And finally, Mr. Chairman, I would request unanimous consent to enter written testimony from Washington State geologist Casey Hanell; Snohomish County Senior Advisor on Resilience, Jason Biermann; and the Cowlitz County Commissioners into the record.

Mr. STAUBER. Without objection.

[The information follows:]

Statement for the Record

Casey R. Hanell
State Geologist and Director
Washington Geological Survey
Department of Natural Resources

Mr. Chairman, members of the subcommittee, my name is Casey Hanell, State Geologist and Director of the Washington Geological Survey (WGS). Thank you for the opportunity to provide testimony on behalf of WGS and the Washington Department of Natural Resources (DNR) on the critical importance of the reauthorization of the National Landslide Preparedness Act, H.R. 7003.

Washington is one of the most landslide-prone states in the nation and has hundreds of thousands of known and unknown landslides. Several of these landslides have been among the most devastating and deadly in U.S. history, such as the 2014 SR530 landslide, also known as the Oso landslide, that resulted in 43 fatalities; the 1998 Aldercrest-Banyon landslide that destroyed 137 homes; and the 2009 Nile landslide that blocked the Naches River, wrecked 14 homes, and left a critical cross-state highway impassable (Figure 1). Our steep terrain and extreme winter precipitation events can produce thousands of rapidly moving landslides in a period of a few hours, affecting entire regions of the state simultaneously. Additionally, the geologic conditions in many parts of our state are also prone to chronic slow-moving landslides that tear apart homes, roads, and other infrastructure.

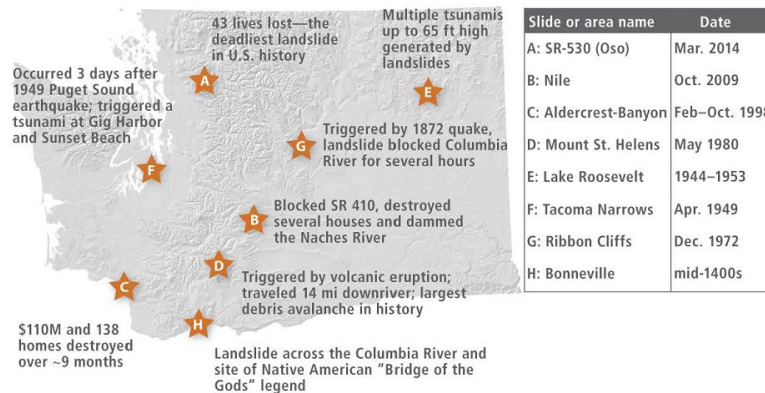


Figure 1. Several examples of significant historical landslides in Washington, demonstrating both the statewide nature of the hazard and the associated devastating consequences.

March 22, 2024, will mark 10 years since the Oso landslide, the deadliest landslide in US history. This slide tragically resulted in the deaths of 43 people and upended an entire community.

Because of that, we significantly ramped up our efforts to understand landslide hazards and associated risks. In the 10 years since the Oso Landslide, WGS started both a Landslide Hazards Program and a Lidar Program.

The Landslide Hazards Program uses lidar data to map landslides on a county-by-county basis and has completed landslide inventories in Whatcom, Snohomish, King, Pierce, Klickitat, and Skamania Counties (Figure 2). The mapping in these counties covers only 14% of the State, yet an astonishing 34,683 landslides were mapped. These inventories are used by planners, emergency managers, public works departments, and those who live or work where these hazards could impact their daily lives. They also assist local jurisdictions in making educated decisions about their assets, community safety, and growth management using the best-available science.

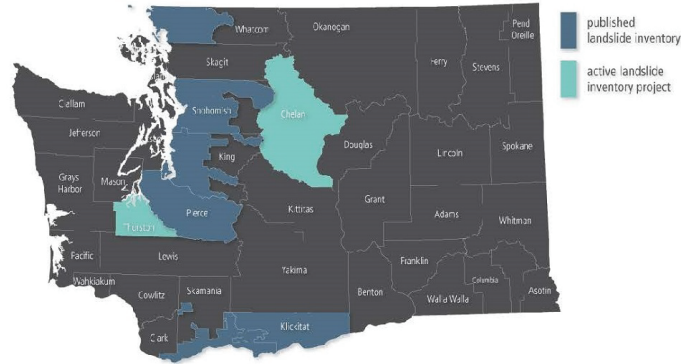


Figure 2. Counties in Washington that have completed or in progress landslide inventories. Inventory work has only been completed for 14% of the state and 34,683 landslides have already been mapped.

In the FY23 federal budget, \$1 million was appropriated to initiate the competitive grant program authorized by the National Landslide Preparedness Act. The grant program is currently under development within the United States Geological Survey (USGS). Once established, grant funding from this program will allow state and local funding to be leveraged with matching federal funding to accelerate the identification and understanding of landslide hazards and risks in Washington State and nationwide.

In addition to landslide inventory work, we are placing an increased focus on landslides that happen following wildfires, known as post-fire debris flows. Until recently, little research on post-fire debris flows was done in Washington State. Initial work in other areas of the Pacific Northwest shows that current models used for emergency post-fire debris flow hazard assessment, which were developed with data from outside the region, may be less accurate for Washington's geology and climate. More frequent and intense wildfire seasons in our state, combined with growing populations in the Wildland Urban Interface, put lives and infrastructure at greater risk from post-fire debris flow hazards. Debris flows can travel considerable distances, disrupting roadways and other infrastructure, destroying private property, and causing flooding (Figure 3). Due to their speed and magnitude, post-fire debris flows pose an immediate, critical threat to public safety.



Figure 3. A cabin that was destroyed in 2022 following a post-fire debris flow from an upslope wildfire burn scar.

Steep terrain and elevated wildfire risk in the northern portion of the eastern Cascades have historically resulted in a higher frequency of post-fire debris flows and flash floods relative to other parts of Washington. In Chelan County, debris flows and flash floods resulted in 14 fatalities at Squilchuck Creek (1925), 8 fatalities at Tenas Gorge (1942), and 4 fatalities at Preston Creek (1973). In Okanogan County on August 22, 2014, multiple debris flows originating from the Carlton Complex wildfire damaged homes and roads. Mud, boulders, and debris damaged approximately ten homes along State Highway 153.

Climate change and drought are increasing the fire hazard to the western Cascades as well—in 2022, the Bolt Creek Fire in the western Cascade foothills of King and Snohomish Counties burned 14,820 acres of steep terrain, creating a growing concern for post-fire debris flows near these more densely populated areas. Since 2017, we have recorded 119 debris flow or flash flood events in 13 burn scars (Figure 4). The National Landslide Preparedness Act supports our efforts in mapping these hazards, both before and after the fire has passed, increasing preparedness, mitigation, and recovery.

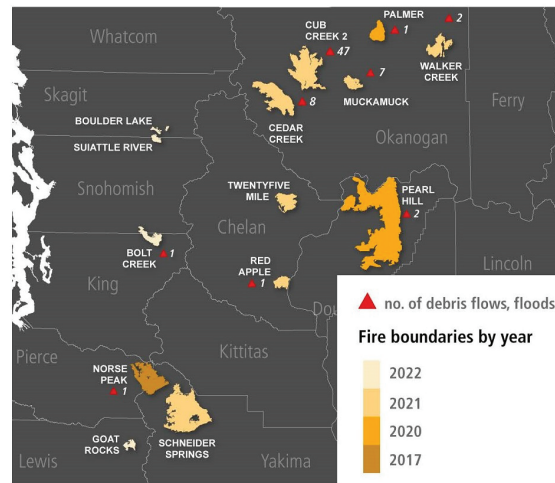


Figure 4. Map showing a selection of major wildfires from 2017 to 2022 and the number of debris flows and flash floods along separate drainages documented within the 2022 field season alone.

To improve regional hazard assessments and early warning efforts in the years following a fire, my agency is actively monitoring burned areas to correlate rainfall rates to the timing of debris flows and flash floods. By collecting data from on-the-ground observations, rain gauges, telemetered weather stations, and motion-activated cameras, we are building an inventory of geologic hazard events and associated weather conditions (Figures 5 and 6).



Figure 5. A rain gauge being installed in a burn scar to help improve early warning to communities downstream.



Figure 6. In early summer of 2023, a game camera installed by WGS captured a debris flow within the Cedar Creek burned area. The image on the left shows the stream on the alluvial fan weeks before the debris flow occurred, shown on the right. This debris flow impacted several homes and the common road for a community, which had already dealt with three previous debris flow events in recent years. Because a weather station was also deployed nearby, we can further refine rainfall thresholds and improve timing of emergency alerts to at-risk communities.

Since the establishment of the Washington Geological Survey's Lidar Program in 2015 in response to the Oso Landslide, the Survey has been collecting, compiling, processing, and distributing lidar data, not only to assist in identifying landslides, but for the benefit of the State.

A USGS-sponsored national study (Dewberry, 2022¹) was recently conducted to understand the costs, benefits, and future needs with respect to lidar. Data² for each state show the potential benefits from access to high-quality elevation data. For Washington State alone, the benefits are at least \$9,460,000 annually, or \$18,920,000 per biennium (Figure 7). Overall, lidar data and high-quality terrain data could provide \$13.5 billion in annual benefits for the nation.

¹Dewberry, 2022, 3D Nation Elevation Requirements and Benefits Study [accessed July 26, 2023, <https://www.dewberry.com/services/geospatial-mapping-and-survey/3d-nation-elevation-requirements-and-benefits-study>]

²Carlson, T., 2023, The 3D Elevation Program—Supporting Washington's economy: U.S. Geological Survey Fact Sheet 2022-3075, 2 p., accessed July 24, 2023, <https://doi.org/10.3133/fs20223075>.

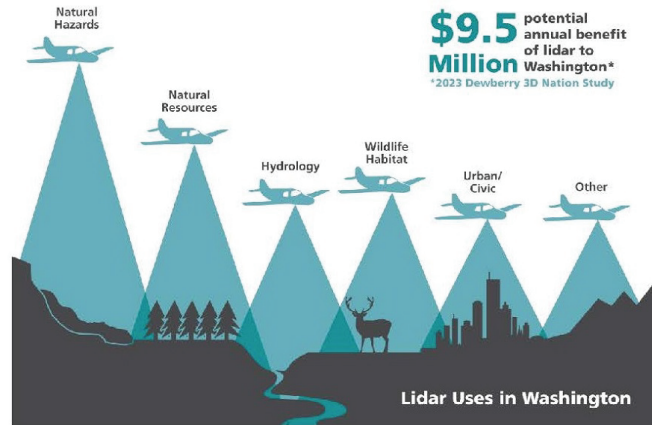


Figure 7. Examples of lidar uses in Washington that are part of the \$9.5 million potential annual benefits of statewide lidar coverage.

WGS has relied heavily on USGS 3DEP funding to support this work. Between 2016 and 2024, Washington State has collaborated with 3DEP on seven large-area lidar collections to support the goal of statewide lidar acquisition and refresh. This partnership has resulted in 32,632 square miles of lidar coverage for the state (Figure 8). 3DEP has also separately participated in at least four federal partner collections in Washington, adding an additional 22,351 square miles of lidar coverage. Dollar for dollar, 3DEP has almost matched the State's investment toward this critical goal—since 2016, 3DEP has contributed at least \$5.2 million to Washington State's lidar in addition to the State's \$7.1 million investment, which means that Washington truly appreciates and needs this program's partnership and support.

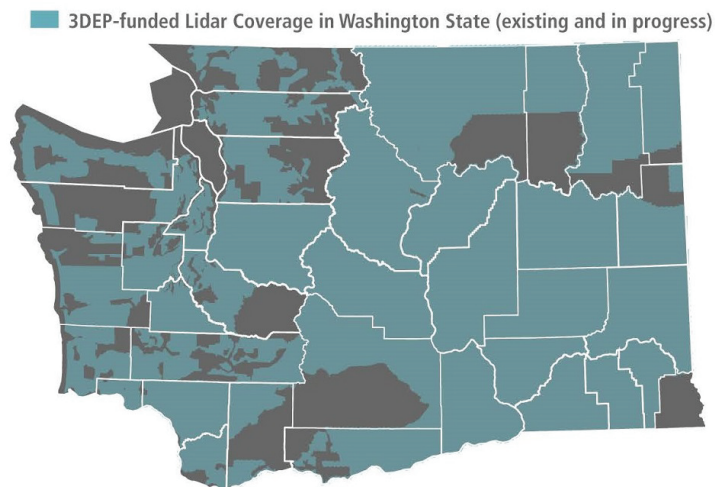


Figure 8. Map showing lidar coverage acquired in partnership with 3DEP for the state.

WGS is continuously receiving requests for more frequent lidar collection, as most natural resource, habitat, forestry, or conservation decisions in Washington use lidar as critical input to workflows and analyses. WGS is keenly aware of lidar needs and applications by local and state partners across the state who actively help

WGS to determine future collections, priorities, and standards.³ From these relationships, we know that the ideal statewide refresh rate for lidar is between five and ten years to see the ways our land is constantly changing. So, while Washington State has nearly achieved statewide lidar coverage, a greater, longer-term effort is imperative to ensure that collection is repeated on a predictable and useful timeline for the many uses across the state.

In addition to landslides, lidar is integral to WGS's work to assess other geologic hazards such as tsunami inundation and active faults which have the potential to generate earthquakes. It's also relied upon heavily to produce geological maps, conduct geothermal assessments, map critical minerals, and to regulate surface mines. Local jurisdictions require high-quality lidar data and refresh for urban growth planning and change detection. Local utilities use this data for grid hardening projects and planning. Conservation districts use this data to assist agriculture and irrigation districts in efficient land and resource management. State land managers use this data to determine forest health, assess timber harvest slope stability, and to site critical infrastructure. And numerous partners use this data to plan, manage, and determine the effectiveness of habitat restoration projects. The Washington Department of Ecology is also relying on 3DEP lidar data to update hydrology and stream network data through the USGS Elevation Derived Hydrography Program.

Through WGS partnership with 3DEP and participation in the federal/state inter-agency 3DEP Working Group, Washington has positioned itself to be a strong partner and advocate for achieving state and federal goals. Working with 3DEP expands our collection areas and reduces refresh timelines, taking a planned ten-year refresh cycle and reducing it to six years or fewer. And just as importantly, WGS values the ability to provide input on when, where, and what quality standards are used to help meet the needs of Washington partners.

The National Landslide Preparedness Act is important because landslides in Washington are frequent, posing significant threats to life and infrastructure. Inventories, susceptibility, and hazard maps for the state are far from complete, with 86% of the state yet to be mapped. Nationwide collaboration that includes funding for lidar and landslide research allows us to learn more about these hazards, saving lives and money. If the National Landslide Preparedness Act expires, we worry we will lose momentum on these important efforts.

Thank you again for the opportunity to provide testimony,

Statement for the Record

Jason Biermann
Senior Policy Advisor on Resilience
Snohomish County Executive's Office

Mr. Chairman, and members of the Committee, thank you for the opportunity to provide remarks on behalf of Snohomish County regarding the importance of maintaining this critical effort. I sincerely appreciate the opportunity to contribute our perspectives today on the vital work that you are undertaking in this legislative hearing. My name is Jason Biermann, and I currently serve as the Senior Policy Advisor on Resilience to Snohomish County Executive Dave Somers. Before assuming my current role, I spent 13 years in the County's Department of Emergency Management. I began there in 2009 as a program manager focused on hazard mitigation, became the deputy director in 2014, and served as the director from 2016 through 2022. I also served as the Chair of Washington's Emergency Management Council, which is statutorily mandated to provide an annual report to the Governor on the status of emergency preparedness throughout the state.

Located just north of Seattle, Snohomish County's 2200 square miles provides a beautiful, diverse, and dynamic home to almost 850,000 residents. Within our borders one can experience everything offered by the Puget Sound, the flowing waters of our river systems, and the heavily forested Cascade mountains. We contain large cities, most of which lie along Interstate-5 in the western third of the county, as well as small towns, unincorporated areas, and the lands of three Tribal

³ Washington Geological Survey, 2023, Washington State Lidar Plan: Washington Geological Survey, 29 p., accessed January 23, 2024, https://www.dnr.wa.gov/publications/ger_wa_lidar_plan_2023.pdf.

Nations. Because of our proximity to the “Ring of Fire,”¹ our residents and businesses face the constant threat of seismic and volcanic activity. In addition, we routinely experience significant flooding, severe weather, an increasing number of wildland fires, and the effects of landslides.

My testimony today emphasizes the real-world value of your continued support for the critical and innovative programs initiated by the National Landslide Preparedness Act, which is the focus of this hearing. The enhanced mapping and hazard research greatly increased our understanding of the extent to which landslides could affect our residents. This, in turn, led to better assessments of our county’s vulnerability to landslides and advancements in our ability to warn our residents. These programs remain essential for protecting lives and property, and for helping to ensure we invest in resilient infrastructure.

To better illustrate the importance of these programs, I offer first-hand insights from the response to a tragedy that happened in Snohomish County. At 10:37 a.m. on Saturday, March 22, 2014, a massive landslide occurred in unincorporated Snohomish County near the small community of Oso. Approximately 8,000,000 cubic meters of debris—mud, trees, and boulders—slammed into a neighborhood near the Stillaguamish River, claiming 43 lives and dozens of homes.² The SR-530 (Oso) slide also covered nearly 1000 linear feet of State Route 530 and destroyed the telecommunications fiber running along the road, effectively isolating the small town of Darrington, Washington.



For weeks, volunteers and first responders from state, local, and federal agencies searched the area for the remains of the victims. They located the final person on July 22, 2014, four months to the day after the slide occurred. In addition to those efforts, and for years following the slide, agencies from all levels of government and private/non-profit organizations worked to help the area recover from the devastation. They restored the road and communications, and they worked with the affected communities to help them heal and rebuild their vibrancy. We remain profoundly grateful for the assistance we received, both during and after the incident.

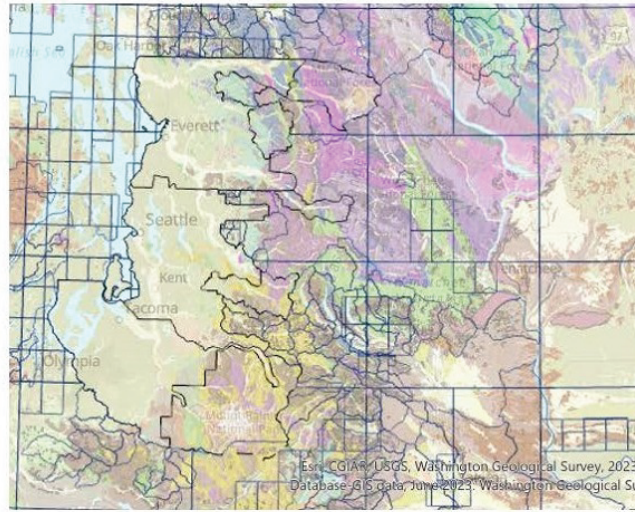
In the aftermath of the Oso slide, we learned much from our partners at the United States Geological Survey. They brought high-resolution digital topographic (lidar) data and modeling capabilities that helped understand the conditions that led to the slope, which had a long history of prior historical landslide activity, failing so catastrophically. They were also able to peer beneath our forested hillsides to uncover evidence of slide activity that has occurred throughout the preceding millennia.

What we learned, we used. Better mapping of our known landslide hazards revealed an estimated 60,000 people living in areas where steep slopes, soil types, and significant rainfall could combine to make the earth more prone to sudden, violent movement. We identified 12,400 structures as being potentially at risk of

¹According to the USGS, the Ring of Fire “is the most seismically and volcanically active zone in the world.” <https://www.usgs.gov/faqs/what-ring-fire>

²Iverson et al., Landslide mobility and hazards: implications of the 2014 Oso disaster, (Earth and Planetary Science Letters, January 2015).

slides, 95% of which were homes. This information helped us to swiftly develop a system for early detection and warning based on rainfall and other factors. We now routinely monitor the amount of moisture in the ground and issue countywide alerts when the risk of landslide becomes elevated during our rainy season. We began educating our residents to report when they see tilting trees or cracks in the ground. In a region where landslides occur frequently (see graphic), this helped tremendously.



It is important to note we applied these lessons learned not only to address the potential for landslides as large as the Oso slide, but to those that occur regularly throughout Snohomish County. Thankfully these minor slides do not cause casualties; however, they do disrupt transportation and commerce on our roads and railways, and they have on multiple occasions blocked access to residents trying to reach their homes. It is critical to note that we learned these things because of resources made available to us in the aftermath of a tragedy and believed, and continue to believe, that similar resources should be available to local jurisdictions across the Nation. Some of the most critical aspects of the assistance we received fall within the parameters of the National Landslide Preparedness Act, which benefits local jurisdictions throughout the country.

Specifically, in 2021 the National Landslide Preparedness Act (P.L. 116-323) began to provide these resources to local jurisdictions. Landslides occur in all 50 states and the U.S. territories, causing estimated damages exceeding \$2 billion and between 25 to 50 fatalities annually.³ The National Landslide Hazards Reduction Program, which the National Landslide Preparedness Act authorized, helps local communities to better understand their risk. It allows us to reduce our losses to landslides by making more informed decisions on land use and the placement of critical infrastructure. It has also expanded the ability of the USGS and NOAA/NWS to provide debris-flow warnings after wildland fires. In 2022, when the Bolt Creek Fire scorched nearly 15,000 acres of eastern Snohomish County and western King County, it brought federal expertise to help us make decisions about when to close U.S. Highway 2 and keep people safe from debris flows below the burn scar. Not only were their insights vital to our decision making, but they also helped us clearly explain the decisions to our residents and visitors. As we anticipate an increasing number of wildfires to affect Snohomish County, that federal expertise will remain invaluable.

Snohomish County strongly supports a reauthorization of the National Landslide Preparedness Act. Natural hazards can cause substantial damage throughout the Nation, but if armed with the appropriate information, local communities can take action to avoid and mitigate potential harm. The USGS earthquake, volcano, and

³U.S. Geological Survey. *Landslide hazards: A national threat*. (USGS Fact Sheet 2005-3156, 2005).

landslide programs help to strengthen our resilience to these hazards and protect our communities and residents from harm. All these hazards pose a risk to Snohomish County and our efforts to prepare for earthquakes and volcanoes have benefited greatly for many years. While the landslide program is newer than the earthquake and volcano programs, it is just as critical.

I hope my testimony conveys how important this reauthorization is to Snohomish County and to counties throughout the country. The support of our federal partners remains integral to our ability to keep our residents and businesses safe from landslides. Losing the resources and technology for mapping, ongoing monitoring, and research will have a significant, negative effect on our chances of preventing another tragedy like the one we endured nearly a decade ago.

Thank you for the opportunity to submit testimony, and I look forward to answering any questions you may have.

Board of Cowlitz County Commissioners

January 30, 2024

Hon. Bruce Westerman, Chairman
 Hon. Raúl Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Re: The Testimony from Cowlitz County, Washington regarding the Legislative Hearing on the National Landslide Preparedness Act Reauthorization Act

Chairman Westerman, Ranking Member Grijalva, and Members of the Committee:

Thank you for the opportunity to provide remarks in support of the National Landslide Preparedness Reauthorization Act. The impacts that landslides have had on our Cowlitz County are significant. Cowlitz County Washington is located in southwest Washington north and east of the Columbia River. This area is prone to landslides that impact public infrastructure (roadways, railroads and utilities) and private property. The following information highlights the impacts of landslides on local jurisdictions.

In the winter, it is not unusual for new landslides to occur as the result of extreme weather events or typical winter weather. In December 2015 there was a significant rainfall event that caused close to three dozen new landslides. During the active rainfall event Public Works had road crews out responding to calls of blocked roadways and flooding. As the majority of the event occurred during the night the road crews and Sheriff's Department were closing roads and notifying residents if they appeared to be in the line of danger. During this event one piece of equipment was washed away by a slide and a resident trapped in his home, fortunately neither were injured. Furthermore, as the roadways were closed where possible, detour routes were opened for residents and emergency responders. In addition to the closures of the local roadways Interstate 5 was closed limiting the access from the south. The succeeding morning, the Public Works Department completed initial assessments of the damage to determine what could be cleaned up and what needed a formal assessment. Cowlitz County called in a geotechnical engineer to assess the slides and determine if the location could be cleaned up or if an engineered solution was required. The County cleaned up more than two dozen slides and completed large long-term repairs of six other slides following this massive weather event.



Embankment Slide



Slide across Kalama River Road



Home and roadway damaged by a slide



Roadway closed by slide material



Rocks alongside a County Roadway



Embankment Failure

When a large scale occurs oftentimes the County will declare an emergency and send this declaration to the Governor with the hope that the State will declare an emergency to send on to the Federal government. This needs to occur to allow the County to be eligible for federal assistance. This process requires the Department of Emergency Management to coordinate with the County, the cities, and the utilities to estimate the damage that has occurred. The local jurisdictions then need to work with FEMA and FHWA for approval of eligibility of damage and the potential permanent repairs. This process requires extensive staff time for coordination of repairs and accounting of the work that has occurred.

In addition to fast moving slides, Cowlitz County has a large number of deep-seated slow-moving slides that are beyond our ability to repair. The slides are not eligible for federal funding even when they are reactivated during a large storm event. The County addresses these areas a number of ways depending on the scale of the slide and its location relative to the roadway. We have numerous locations where we maintain drainage facilities to remove the water from the slide area. These facilities include horizontal drains, trench drains and a pump station. Other slides are left as stretches of roadway with only a gravel surface that the County adds rock to as needed (it can vary from weekly to a few times a year). Other areas that do not respond to drainage solutions are paved with additional pavement added as needed. We also have areas that have jersey barriers at the toe of slope to prevent falling rocks from entering the roadway.



Section of roadway that needs to be frequently paved



Section of roadway that is maintained as gravel

When the County responds to landslides and install a long term repair the costs impact the budget for the year. There is an annual set aside for emergency response to landslides but large repairs will either be delayed for the next budget or they delay other projects that are planned. Fiscal impacts of engineering solutions for small slides (50 to 100 linear feet) that impact roadways vary by the type and height of the slide and can include drainage solutions (starting at \$200,000), buttresses (starting at \$500,000), or retaining walls (starting at \$1,000,000). There are also locations where a slide is above the roadway where rock scaling is appropriate and this process starts at \$500,000 for a small slide.



Rock buttress



Soldier pile retaining wall



In addition to the slides that are within the within the County's jurisdiction, Cowlitz County is home to one of the largest landslides in the United States that occurred in the City of Kelso. In 1998 a slow moving slide started in the City of Kelso that destroyed or made uninhabitable 140 homes. The City worked with FEMA to buy out owners, reestablish utilities to the homes that remained and demolish the homes that were purchased. The Washington State Department of Transportation (WSDOT) deals with three ongoing landslides on Interstate 5, State Route 4 and State Route 411. The slide on Interstate 5 occurs during large storm events and drops rocks and other debris onto the interstate shutting the roadway. This backs traffic up for miles, stops interstate commerce and interferes with emergency services. The only local north south alternate route is steep and windy and cannot be traversed safely by trucks. The closest alternate route for trucks includes driving the 30 miles back to Portland, Oregon and using Oregon State Route 30 to the Lewis and Clark Bridge. This detour adds a minimum of an hour of travel and is also prone to landslides. State Route 4 has a steep slope above the roadway that is prone to sliding onto the roadway and frequently requires rock scaling projects. State Route 411 between Kelso and Castle Rock has a deep seated landslide that WSDOT has chosen to overlay as needed, not repair.

Cowlitz County is also home to several areas of lahar flows (areas of volcanic mud flows) that are prone to erosion and failure. After Mount Saint Helens erupted the County and WSDOT worked to reopen the area that were covered by the massive mud flows. Many of the roadways were reconstructed on the lahar mate-

rials. In a large storm event, the County lost a set of culverts that were installed on top of the mud flow to reestablish an arterial serving the area. The resulting canyon was over 100 feet long and 40 feet deep. Fortunately for the residents and emergency responders there is an alternate route. This route adds approximately a half hour to the residents adjacent to the washout and emergency responders. Since the slide occurred the County has purchased and installed a temporary one lane 120' span bridge. We are currently in the process of designing a permanent bridge that we are planning to install in 2025. The expense to the County is over \$4,000,000 and was not eligible for emergency relief funds from FEMA or FHWA because it was a localized weather event.



Roadway approximately a week prior to washout



Roadway washout

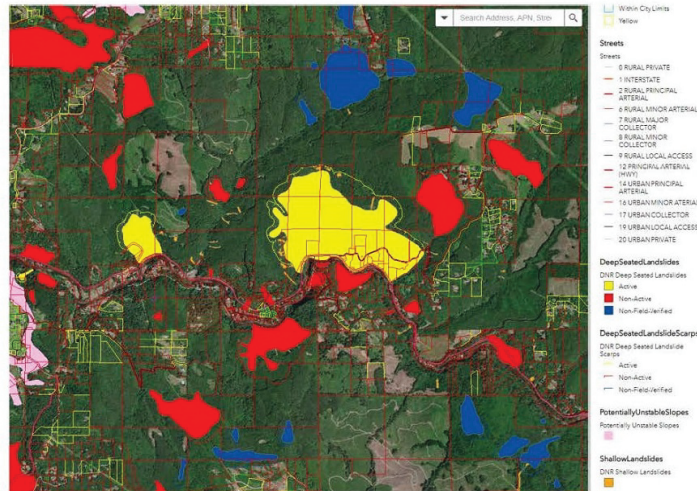


Temporary Bridge

WSDOT experienced a similar failure in 2023 on State Route 504, the route to the Mount Saint Helens. There were multiple people stranded beyond the slide at Johnson Ridge Observatory that needed to be evacuated by helicopter after spending the beyond the slide. WSDOT completed a temporary roadway to allow access to the stranded vehicles and scientific sites beyond the failure. This temporary roadway failed during the first rains of the winter and the roadway will not be reopened again until 2026 at the earliest.

In addition to the infrastructure damage caused by slides there are other ongoing impacts to the citizens of Cowlitz County. If a slide occurs on private property it is the property owner's responsibility to repair any damages that have occurred to the property. If the damage is significant, the owners could lose the use of the property.

In order to prevent additional structures from being impacted by landslides the County has adopted a Critical Area Ordinances that includes restrictions on construction. Prior to construction the developer must review the County maintained hazard map to determine if the parcel is impacted by landslides and address items contained in the ordinance. A snippet of this mapping is shown below.



Portion of the critical areas map accessed on the Cowlitz County website.

We would like to see continued support in our community to identify, prepare for emergency response and mitigate for known landslides to prevent interruptions to the lives of residents. These activities could include continued map updates, development of a Public Works inventory of slide impacted roadways that includes potential projects with costs, and mitigation projects.

Susan Eugenis,
Cowlitz County Engineer

Arne Mortensen,
Commissioner District 1

Dennis P. Weber,
Commissioner District 2

Richard R. Dahl,
Chairman District 3

Ms. DELBENE. Thank you, I yield back.

Mr. STAUBER. Thank you very much. We will now move to introduce our second panel of witnesses.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the “talk” button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. At the end of your 5 minutes, the light will turn red, and I will ask you to please complete your statement at that time.

I will also allow all witnesses to testify before Member questioning.

Our first witness is Dr. Steven Feldgus, and he is a Principal Deputy Assistant Secretary for Land and Minerals Management in the Department of the Interior, and is stationed right here in Washington, DC.

Dr. Feldgus, it is great to see you again, and you are now recognized for 5 minutes.

STATEMENT OF STEVEN FELDGUS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Dr. FELDGUS. Thank you very much, Chairman Stauber, Ranking Member Ocasio-Cortez, and Ranking Member Grijalva, members of the Subcommittee. My name is Steve Feldgus, and I am the Principal Deputy Assistant Secretary for Land and Minerals Management at the Department of the Interior. Thank you for the opportunity to testify on H.R. 2925, the Mining Regulatory Clarity Act; H.R. 7003, the National Landslide Preparedness Act Reauthorization Act; and H.R. 7004, which would amend the Mineral Leasing Act to modify certain terminology. These bills addressed issues related to the Federal mining and mineral leasing programs managed by the Bureau of Land Management and the National Landslide Hazards Reduction and 3D Elevation programs of the U.S. Geological Survey.

H.R. 2925, the Mining Regulatory Clarity Act, would amend the Mining Law of 1872 to significantly expand the rights of mining claimants on public lands. Currently, rights against the United States under the mining law are dependent upon numerous requirements, including making a “discovery of a valuable mineral deposit.” Prior to meeting these requirements, holders of mining claims might have rights against others, but courts have repeatedly held that these claimants do not have any compensable property rights against the United States.

H.R. 2925 would grant mining claimants the right to use, occupy, and conduct operations on public lands, even without the discovery of a valuable mineral on their claim. Claimants would only need to have paid the location fee and the claim maintenance fee, or for those claimants who qualify for a small minor waiver, complied with the required work assessment.

The consequences of H.R. 2925 would be far reaching and dramatic. It could encourage the filing of nuisance claims that attempt to interfere with or prevent other authorized uses, and could lead to unauthorized non-mining industrial uses and residential occupancy. Even if no unauthorized uses were carried out, attempting to extinguish such claims for other public purposes would likely require significant time and effort, and subject the Federal Government to numerous takings claims.

The Department’s understanding is that H.R. 2925 seeks to address the ruling in the Ninth Circuit’s *Rosemont* decision, and we share that goal. But it is important to note that we have already taken action to address that decision administratively by issuing a Solicitor’s M Opinion that identifies options for potentially impacted operators.

H.R. 7003 would reauthorize the National Landslide Preparedness Act, or NLPA, through 2028. The NLPA directed the USGS to create a program to identify and understand landslide hazards and risks, reduce losses from landslides, protect communities at risk from landslides, and help communication and emergency preparedness for landslide disasters and impacts.

The NLPA also authorized the USGS’ 3D Elevation Program to respond to the growing need for high-quality topographic data, and

for a wide range of other three-dimensional representations of the nation's natural and constructed features.

The Department supports reauthorization of the NLPA, and would like to work with the sponsor and the Subcommittee on minor amendments to the bill to aid implementation. Since my role at the Department of the Interior does not oversee the work of the U.S. Geological Survey, I would be happy to take any specific questions you might have on H.R. 7003 back to the USGS to provide a response for the record.

H.R. 7004 would amend the Mineral Leasing Act to replace the term "Gilsonite" with asphaltite. The Mineral Leasing Act identifies Gilsonite as a leasable mineral, but it does not contain any references to asphaltite. The Department's general understanding is that the term asphaltite can be considered a more inclusive term for all vein-type solid hydrocarbons, which includes Gilsonite.

The proposed change to the Mineral Leasing Act would not alter how these types of hydrocarbons would be leased. We do note that BLM would need to amend its regulations to reflect the change in the terminology, but the Department has no objection to H.R. 7004.

Finally, H.R. 6862 is also on the hearing agenda. The bill would prohibit the Federal Permitting Improvement Steering Council from finalizing a rule to amend the coverage of mining projects under the Fixing America's Surface Transportation Act by limiting it solely to critical mineral mining projects, including infrastructure constructed to support critical mineral supply chain activities, critical minerals beneficiation, processing, and recycling.

The Department defers to the Federal Permitting Improvement Steering Council regarding this proposed rule and any potential impacts associated with H.R. 6862.

Thank you again for the opportunity to testify on these bills, and I look forward to your questions.

[The prepared statement of Dr. Feldgus follows:]

PREPARED STATEMENT OF STEVE FELDGUS, PH.D., PRINCIPAL DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

ON H.R. 2925, H.R. 7003, AND H.R. 7004

Introduction

Thank you for the opportunity to testify on H.R. 2925, the Mining Regulatory Clarity Act; H.R. 7003, the National Landslide Preparedness Act Reauthorization Act; and H.R. 7004, which would amend the Mineral Leasing Act to modify certain terminology. These bills address issues related to the Federal mining and mineral leasing programs managed by the Bureau of Land Management (BLM) and the national landslide hazards reduction and 3D elevation programs of the U.S. Geological Survey (USGS). Specifically, H.R. 2925 would change claimant rights on Federal mining claims; H.R. 7003 would reauthorize the National Landslide Preparedness Act through 2028; and H.R. 7004 would change all references to the term "gilsonite" in the Mineral Leasing Act (MLA) to "asphaltite."

We appreciate the efforts of the Sponsors and the Subcommittee on the bills under consideration today, and we look forward to continuing to work with Congress as they move forward through the legislative process.

H.R. 2925, Mining Regulatory Clarity Act

H.R. 2925 would amend the Omnibus Budget Reconciliation Act of 1993 to expand the rights of mining claimants, with respect to locatable minerals, by defining the term "operations" to include various mining-related activities. These include any activity or work carried out in connection with prospecting, discovery and assessment, development, extraction, or processing; the reclamation of an area disturbed by any of these activities; and any action reasonably incident to these activities,

regardless of whether it is carried out on a mining claim, such as the construction and maintenance of any road, transmission line, pipeline, or any other necessary infrastructure or means of access on public land for a support facility.

This bill would also grant mining claimants the right to use, occupy, and conduct operations on public land with or without the discovery of a valuable mineral deposit, so long as they have paid the location fee and claim maintenance fee. In lieu of paying the claim maintenance fee, claimants who qualify for a small miner waiver may instead comply with the required work assessment under the general mining laws. Under the bill, claimants who have met these requirements would be considered to have satisfied any requirements under FLPMA for the payment of fair market value to the U.S. for the use of public land resources.

The Department is committed to working with the Sponsor and the Subcommittee on reforms that provide certainty and stability for the industry, strengthen domestic mineral supply chains, advance environmental sustainability, while ensuring a fair return to taxpayers. The Department's understanding is that H.R. 2925 seeks to address the ruling in *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 33 F.4th 1202 (9th Cir. 2022), commonly known as the *Rosemont* decision. While the Department supports the goals of H.R. 2925, it is important to note that we have already addressed this decision by issuing a Solicitor's M-Opinion that identifies options for operators potentially impacted by *Rosemont*, and we note that legislation to resolve this issue may be unnecessary.

Furthermore, the Department is concerned that, as written, this bill could lead to a number of serious unintended consequences. In particular, granting the right of use and occupancy to claimants prior to showing the discovery of a valuable mineral greatly expands the rights conferred under the Mining Law, and could encourage the filing of nuisance claims that attempt to interfere with or prevent other authorized uses of public lands such as grazing, hunting, off-highway vehicle use, energy development, and more. It could also lead to unauthorized non-mining industrial uses and residential occupancy—often referred to as “squatting”—which previously necessitated the development of regulations to address the issue. It is also important to note that discovery of a valuable mineral deposit should always be required on lands that have been withdrawn from mineral entry, such as units of the National Park System. The Department would like to work with the Sponsor and the Subcommittee on improvements to the bill that maintain the intent of the legislation while limiting potential unintended consequences.

H.R. 7003, National Landslide Preparedness Act Reauthorization Act

H.R. 7003 would reauthorize the National Landslide Preparedness Act (NLPA, P.L. 116-323) through 2028. The NLPA directed the Department, acting through the USGS, to create a program to identify and understand landslide hazards and risks; reduce losses from landslides; protect communities at risk from landslides; and help improve communication and emergency preparedness for landslide disasters and impacts. The NLPA also authorized the 3D Elevation Program (3DEP), managed by the USGS National Geospatial Program, to respond to the growing need for high-quality topographic data and for a wide range of other three-dimensional representations of the Nation's natural and constructed features.

The Department appreciates and supports reauthorization of the NLPA and would like to work with the Sponsor and the Subcommittee to consider amendments that would improve the ability to implement this vital authority along with our partners. Such amendments include clarifying that certain emergency-management and land-use decisions are appropriately made by State, Tribal, and local governments; technical corrections to reinforce the need to collect data to maintain quality and identify changes in the landscape that are essential criteria for landslide-hazard research; and technical changes to better reflect the current state of the 3DEP program's implementation and the ongoing need for data collection.

H.R. 7004, To amend the Mineral Leasing Act to amend references of gilsonite to asphaltite

H.R. 7004 would amend the Mineral Leasing Act (MLA) to replace the term “gilsonite” with “asphaltite.” The MLA identifies gilsonite as a leasable mineral, but it does not contain any references to asphaltite. The Department's general understanding is that the term asphaltite can be considered a more inclusive term for all vein-type solid hydrocarbons, which includes gilsonite. The proposed change to the MLA would not alter how these types of hydrocarbons would be leased. We note that the BLM would need to amend its regulations at 43 C.F.R. Parts 3000, 3140, and 3500 to reflect this change in terminology. While the Department does not object to H.R. 7004, we would welcome the opportunity to work with the Sponsor and the Subcommittee to include a definition for the term “asphaltite” in order to

minimize the potential for confusion regarding the intended reach of the change in terminology.

Conclusion

Thank you for the opportunity to testify on these bills.

QUESTIONS SUBMITTED FOR THE RECORD TO DR. STEVEN FELDGUS,
PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT,
DEPARTMENT OF THE INTERIOR

Dr. Feldgus did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Lamborn

Question 1. Dr. Feldgus, mineral mining was added to the FAST-41 only a few years ago, have there been any concerns that mining companies have been taking advantage of this acceleration process outside of the intent of the law? I don't understand when mines that are not even running yet are having these expedited opportunities stripped away.

Question 2. The Administration has said that they are prioritizing national defense and energy security priorities, and I also agree with this sentiment, it is what much of my time in Congress has worked hard to protect. Dr. Feldgus, would you concur that many of the green energies the Administration is prioritizing uses some of these hardrock minerals, such as Nickel and Copper use in electric vehicles? I believe these policies just seem contradictory to what the Biden administration is saying their priorities for national security, when these policy decisions are being made behind closed doors that undermine an all of the above approach to the energy sector. Additionally, the Natural Security issues regarding domestic mining vs the chokehold that China has on all mining and mineral refinement is very concerning to me.

Questions Submitted by Representative DelBene

Question 1. What have been the barriers to full implementation of the National Landslide Preparedness Act to date?

Question 2. What are the near-term priorities the Department of the Interior is working on with respect to implementation of the Act, and how will they be affected if the Act expires?

Ms. OCASIO-CORTEZ [presiding]. I thank the witness for his testimony.

Our next witness is Mr. Rich Haddock. He is the Senior Advisor for Barrick Gold, and is stationed in Bountiful, Utah.

Mr. Haddock, you are now recognized for 5 minutes.

STATEMENT OF RICH HADDOCK, SENIOR ADVISOR, BARRICK GOLD CORPORATION, BOUNTIFUL, UTAH

Mr. HADDOCK. Chairman Stauber, Ranking Member Ocasio-Cortez, and Ranking Member Grijalva, thank you for holding this hearing today and inviting me to testify. I appreciate the opportunity to testify in support of H.R. 2925 and also in support of H.R. 6862. And I thank Representative Lamborn and Representatives Amodei and Peltola for their leadership on these bills.

The Ninth Circuit decision in *Rosemont* and its progeny have added meaningless permitting steps, created uncertainty and delay, and at some sites made mine permitting unfeasible. H.R. 2925

reverses *Rosemont* and restores permitting of mine plans of operations to its pre-*Rosemont* status. It changes no other provision or precedent in the Mining Law. It changes none of the myriad of environmental laws to which mining is subject.

The advocacy that resulted in *Rosemont* was first reflected in the 1980 writings of then-Professor John Leshy. He wrote that to force Congress' hand to revamp the mining law, "It might even be appropriate for the Interior Department and the courts to consciously reach the results that make the Mining Law unworkable." One way to do that is to take away the miners' ability to permit a mine plan that includes the necessary surface features of a mine, such as the waste rock facilities, the truck shops, the roads, the pipelines, et cetera.

Surface use is supported by two long-standing concepts in the law. Ancillary use refers to the use of the surface of 20-acre lode claims near your mine workings for the essential mining-related activities and infrastructure. Mill sites are 5-acre claims that can be used for some ancillary facilities, but the land has to be non-mineral in character and, hence, usually further away from the mine. Eliminate these two uses, and the law does indeed become unworkable.

Prior to 1997, the lack of serious issues about ancillary use or mill sites was reflected in regulations going back 40 years, and in practice going back much further. But during the last days of the Clinton administration, then-Interior Solicitor John Leshy issues a novel legal opinion that a miner can only use one 5-acre mill site for each 20-acre lode claim, and then followed up with a second legal opinion that ancillary use could not be permitted unless the BLM first went through a claim validity process and proved the claimant's title was valid as against the United States as if it were going to be patented, as opposed to just being valid against rival claimants.

These opinions were truly an aberrant blip in this long-standing mining regulation and practice, but neither was used to block a mine. Congress stepped in and prohibited the application of the mill site opinion to mines then in the permitting process. To remove any lingering confusion, BLM rescinded the Leshy opinions and, in 2005 and 2008, promulgated regulations reiterating the long-standing interpretations. Those regulations are still in place.

Litigants nevertheless used the arguments from those rejected opinion and challenges to mine permitting repeatedly and lost until *Rosemont*. After losing in the D.C. District Court, some of the *Rosemont* lawyers are still challenging the mill site regulation on appeal, using the same Leshy theories.

Against this backdrop, the current Interior Solicitor has issued an opinion implementing *Rosemont* nationwide, not just in the Ninth Circuit, and respectfully, the opinion creates more issues for litigation and offers only unworkable solutions. The uncertainty and delay created by *Rosemont* and the Solicitor's Opinion need to be reversed.

I know there have been concerns expressed about the potential unintended consequences in this bill. I don't agree that the language does that. I know the intent is not that. We addressed that in the Senate hearing last month, and I am happy to address it

here today, as well, but I want you to know that those concerns can be resolved by the belt-and-suspenders approach with simple changes to the savings clause.

Now, to H.R. 6862. It was only 4 years ago that the FPISC voted to add all mining to FAST-41 eligibility to limit it now to only specific elements. It is at odds with policy geology, and is the fluid definition of critical minerals. The bill is consistent with the Biden administration's expressed intent of expediting major projects and promoting the health of the domestic mining industry.

On that latter point, it is important. Mining industries don't just instantly materialize when and just because you need them. All of the human expertise needs to be in place: mining engineers, metallurgists, geologists, environmental engineers, and more, and the equipment and supply chain to be able to respond to the evolving needs of technology and national security and discover and produce the minerals we need. Now, you can do that in part by keeping the entire mining industry viable without regard to the commodity through improved permitting.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Haddock follows:]

PREPARED STATEMENT OF RICH HADDOCK, SENIOR ADVISOR, BARRICK GOLD CORPORATION

ON H.R. 2925 AND H.R. 6862

Chairman Stauber, Ranking Member Ocasio-Cortez, and Members of the Subcommittee, thank you for inviting me to appear before you on behalf of Barrick Gold Corporation and give testimony on H.R. 2925, the Mining Regulatory Clarity Act of 2023, and H.R. 6862, to amend the FAST Act. We are pleased to support both bills, which in different ways address the problem of persistent and intractable permitting delays that keep the domestic mining industry from moving forward to meet national mineral needs. H.R. 2925, introduced by Nevada Congressman Mark Amodei, and co-sponsored by Congresswoman Mary Peltola, would resolve severe permitting uncertainty and litigation delays caused by a 2019 outlier court decision known as the "*Rosemont*" decision. Congressman Doug Lamborn's H.R. 6862 would block an ill-considered proposal by the Federal Permitting Improvement Steering Council to keep mining operations from accessing Fast 41's expedited permitting tools.

The House Natural Resources Committee and this Subcommittee have been leaders in investigating the reasons for permitting delays, and in proposing solutions, all with the goal of strengthening the United States' capacity to supply its own mineral needs. Your hearings have identified the need for expanded domestic mineral production, including mineral processing, so that the U.S. is not dependent on supply chains based in countries that may not remain reliable partners. The Committee has devoted significant time and attention to important permitting reform legislation, including Chairman Stauber's H.R. 209, the Permitting for Mining Needs Act of 2023, which includes the provisions of H.R. 2925. Barrick is grateful for your attention to these issues.

Barrick Gold Corporation

Barrick is the second largest gold producing company in the world and biggest gold producer in the United States. Barrick has gold and copper mining operations and projects in 13 countries in North and South America, Africa, Papua New Guinea, and Saudi Arabia.

Most of our U.S. gold production comes from Nevada where we operate Nevada Gold Mines LLC, a joint venture of Barrick and the Newmont Mining Corporation. Nevada Gold Mines is the largest gold-mining complex in the world, with more than 7,000 employees and 4,000 contractors, who employ thousands more people, in Nevada and around the country. These jobs pay average annual wages of \$94,000—higher than any other industry in Nevada.

Most of Nevada Gold Mines' operations take place on unpatented mining claims on public lands managed by the Bureau of Land Management. About 85% of the land in Nevada is owned and managed by the Federal Government, more than any other state. Not all of this federal land in Nevada is open to mining exploration and development. About 22 percent of the federal lands in the State is withdrawn from mineral entry and another five percent has been proposed for withdrawal for Greater Sage Grouse management.

Barrick is proud of the progress it is making globally on its sustainability objectives and practices. It is a process of continuous improvement. Of particular note in North America is our now decades-old dialogue with the Native American communities in northern Nevada, Southern Idaho and Western Utah. Our efforts have resulted in improved communications about a range of issues, including our future planned operations, processes for financially supporting community projects, cultural resources and cultural understanding. We have increased Native American employment. But I am proudest of the scholarship foundation we established in 2008 initially with the Western Shoshone tribes, but which with their generous consent has been extended to students from other Native American Tribes. The scholarship program provides financial assistance for university education and/or vocational/technical training for any eligible student. Over \$15 million has been donated to the foundation so far, with over 2,760 scholarships awarded. Graduates have moved forward to enter all walks of life. We are also proud of our 278 MW solar array in Nevada and work to decarbonize our mining operations. We are grateful for the letter of support we have received from the Native American tribes.

Before retiring as Barrick's General Counsel in 2022, I worked for Barrick for 25 years and was an in-house lawyer in the gold mining industry for 30 of the 39 years I have been practicing law. I also served as Barrick's global Vice-President of Environment for three years. I continue to serve as a Senior Advisor to the company.

H.R. 2925—The Mining Regulatory Clarity Act of 2023

Simply stated, H.R. 2925 is absolutely necessary because of one court's misreading of the Mining Law, federal land management authorities, and regulations implementing those laws. The "*Rosemont*" court vacated a plan of operations for the Rosemont copper mine because the Forest Service failed to confirm the "validity" of mining claims before it approved the mining plan.¹ That decision wreaked havoc on 100+ years of Mining Law interpretation, and 40+ years of federal permitting and land management regulations. The additional permitting burden and additional uncertainty caused by *Rosemont* and its growing progeny threatens to add years of litigation delay to virtually any proposed mining project on federal lands in the U.S., and in the worst case could make some mines unfeasible. This result has to be avoided. It is starkly contrary to Congress' and the Biden Administration's expressed desire to expedite mine permitting and to build up domestic mineral supply chains.

Mining Claims and Claim "Validity" Under the Mining Law of 1872

The Mining Law made lands in the public domain "free and open" to mining and activities reasonably related to mining.² Under the Law, a prospector can "locate" a lode mining claim on federal land.³ The prospector's right in that mining claim is a property right, enforceable against third parties, and subject to diminution or defeasance only by the ultimate title holder: the United States.⁴ Relying on the doctrine of *pedis possessio*, courts have recognized these property rights in unpatented mining claims for more than 100 years. Miners can use and occupy those claims for mining operations, subject, of course, to federal permitting requirements. Similar Mining Law provisions also allow use of non-mineral land—called mill sites—in certain circumstances.⁵

However, a person cannot locate a claim under the Mining Law for any purpose other than mining or activities directly relating to mining.⁶ Such a location is a nullity, void *ab initio*.

¹ *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 409 F. Supp. 3d 738 (D. Ariz. 2019), *aff'd* 33 F.3d 1202 (9th Cir. 2022).

² 30 U.S.C. § 22.

³ *Id.*

⁴ *Davis v. Nelson*, 329 F.2d 840, 846 (9th Cir. 1964).

⁵ 30 U.S.C. § 42.

⁶ *U.S. v. Bagwell*, 961 F.2d 1450 (9th Cir. 1992) ("good faith" standard limits possession of public lands to locators exploring for and developing minerals as contemplated by the Mining Law of 1872); John D. Leshy, *The Mining Law: A Study In Perpetual Motion*, (1987), 62

Until 1994, prospectors could go further, obtaining fee title in mining claims by applying for a patent. To obtain a patent, a prospector had to be able to prove the claim contained a valuable mineral “discovery.”⁷ Discovery requires a showing that the deposit can be mined, removed and marketed at a profit. Proof of such a discovery established the mining claim as “**valid**,” justifying the issuance of a patent to a prospector. Applying for patent was never required; the Mining Law allows the miner to stake a claim, work it, and remove and sell minerals from it without ever seeking a patent. The important point here is that proper location and maintenance of a mining claim affords the claimant substantial legal rights to use the land for mining purposes, without regard to whether the claim has undergone a validity examination.

Traditionally, claim “validity” as against the United States had to be proven only in two contexts: (1) patenting, as just described; and (2) withdrawal of federal lands from entry under the Mining Laws. The issue no longer arises in the patenting context because Congress imposed a moratorium on new patent applications in a 1994 appropriations bill,⁸ and the moratorium has been extended and reimposed every year since, remaining in place until today.

Claim validity remains relevant when the U.S. withdraws federal lands from mineral entry, either legislatively or administratively. After withdrawal, unpatented mining claims can be extinguished by the U.S. *unless* the claimant can show they contain a discovery, i.e., that they were “valid” as of the date of withdrawal.

Permitting Mines on Federal Lands

For more than forty years, the Bureau of Land Management and U.S. Forest Service have managed hard rock mining on federal lands through permitting regulatory programs that govern mining from initial exploration through mine closure.⁹ These similar sets of regulations require that operators submit to the agency a full mine plan of operations for agency review. Both sets of regulations cover mineral activities from initial exploration through production and reclamation, mine closure and post-closure maintenance, compliance with environmental performance standards—including all federal and state environmental laws—and financial assurance at each and every stage of the process for all facilities. The agencies have characterized their programs as “cradle to grave” regulations for mining on federal lands.¹⁰

Mine plans of operations must include provisions documenting all manner of environmental compliance and protections, including management of waste rock and other mining wastes, as well as placement of haul roads and access roads, power lines, pipelines, truck shops, and other mining-related infrastructure. Mining operations require significant land near the mine site upon which to conduct these mining operations. Some of these facilities can be located on mill sites, but the majority of them are located on mining claims. Throughout the long history of the Mining Law, miners put together land packages of lode claims and mill sites as made sense based on the geology and to support the operations necessary to for the mine. Pre-*Rosemont* the law was clear that a miner could use the surface of any lode claim for mining purposes—prospecting, mining, or processing operations, and uses reasonably incident thereto. Though these latter uses are commonly referred to as “ancillary,” it is a misnomer: without these crucial facilities, mining cannot happen.

Because claim validity is not and never has been a prerequisite to conducting mining activities on mining claims, BLM and Forest Service land management

(“entries on the federal lands under the Mining Law must be made for the purpose of engaging in mineral activity, and not for something else.”).

⁷ 30 U.S.C. § 29; *Cole v. Ralph*, 252 U.S. 286 (1920).

⁸ Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332 §§ 112-113, 108 Stat. 2499, 2519 (Sept. 30, 1994).

⁹ Forest Service regulations were initially adopted in 1979 and are published at 36 C.F.R. Subpart 228A and BLM regulations were initially adopted in 1981 and are published at 43 C.F.R. Subpart 3809. Both sets of regulations have been revised and updated since they initially adopted.

¹⁰ The Biden Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting examined these regulatory programs and affirmed their effectiveness in the final report issued in September 2023: “The U.S. has set a high standard for environmental regulations that apply to today’s mining operations.” IWG Report at p. 14; “Current mining operations occur under environmental policies and laws designed to manage the impact of mining on people and the environment. Environmental laws such as FLPMA, NEPA [and others] have been in place for approximately 50 years and have improved environmental practices associated with mining in the U.S.” *Id.* at 25; “Current mining operations on Federal land must comply with Interior’s and USFS’s general and specific performance and environmental protection regulatory standards for mining operations.” *Id.* at 28.

regulations do not require operators to submit information relating to mining claim status as part of a plan of operations, and the agencies have never restricted their review of the mine plan facilities to locations only on “valid” mining claims, or even on claims. Both BLM and Forest Service regulations define mining operations to include all lands of any type that are necessary to implement the approved mine plan.¹¹

The Origins of the “Rosemont” Theory

The *Rosemont* decision that threatens to upset these norms has its roots in the writings of Mining Law critics, who have sought legislative Mining Law reform since the 1980s. Apparently frustrated with the inability to gain traction for their preferred solution in Congress, a law professor named John Leshy wrote in 1987: “it might even be appropriate for the Interior Department and the courts to **consciously reach results that make [the Mining Law] unworkable.**”¹²

Professor Leshy later became Interior Solicitor Leshy in the Clinton Administration. His work as Solicitor included two Solicitor’s opinions designed to implement the ideas he wrote about in the 1980s. One, the so-called “Ancillary Use” Opinion, concluded a miner could not use the surface of a lode claim for activities that support mining unless that claim was legally “valid,” using that legal term as explained above.¹³ The other opinion, referred to as the “Mill Site” Opinion, concluded that miners could locate only one 5-acre mill site for each 20-acre mining claim.¹⁴ These opinions, which ignored BLM regulations and decades of practice and precedent under both the Mining Law and the Federal Land Policy Management Act (“FLPMA”), became the blueprint for mining law opponents in attacking the Mining Law administratively and in the courts for the next three decades. Although Solicitors’ opinions have no precedential value, they are binding on the Department of Interior while they remain in force, and these opinions clearly were intended to disrupt the administration of rights under the Mining Law. As Professor Leshy suggested a decade before, these legal opinions and related rulemakings were designed to make the Mining Law unworkable, presumably so that Congress would have to take up Mining Law reform as he envisioned it.

Congress did react, but perhaps not in the way Solicitor Leshy expected. In 1999, Congress prohibited the application of the Mill Site Opinion to any mine plan of operations that had been submitted for approval prior to issuance of the Opinion.¹⁵ Subsequent administrations, Republican and Democratic, rejected both Leshy Opinions and restored in rulemakings and policy statements the permitting rules that were in place for decades before Solicitor Leshy set out to disrupt them.

The Leshy opinions represent a short blip in an otherwise uninterrupted decades-long record of interpreting and administering the Mining Law and permitting mining operations on Federal lands. Even though the Department of Interior rejected the Leshy opinion and returned to its prior reading of law and regulations, anti-mining litigants have continued to press Leshy’s legal arguments—in lawsuit after lawsuit—to challenge the approval by BLM and the Forest Service of numerous mine plans. Those efforts failed repeatedly and consistently, both in administrative and judicial appeals, until 2019, when mining opponents challenged the Rosemont copper mine in the Federal District Court for the District of Arizona.

The Rosemont Decision

The Rosemont copper mine was a typical large, open pit copper mine proposed to be located on National Forest lands in Arizona. The open pit was on a mix of private land and unpatented mining claims. The Forest Service reviewed the proposed plan under its mining regulations at 36 C.F.R. pt. 228 and prepared an extensive environmental impact statement (“EIS”). The EIS evaluated five different configurations for the storage of waste rock and tailings. In the decision approving the plan, the Forest Service selected a particular alternative that had the smallest disturbance footprint and avoided an important cultural site. The Forest Service also approved a reclamation plan that would require that the waste rock and tailings storage areas be reclaimed and returned to the prior land uses—wildlife habitat and

¹¹ 43 C.F.R. § 3809.5; 36 C.F.R. § 228.3(a). Of course, as a practical matter, operators stake claims on all lands included in a proposed plan of operations to hold those claims against third parties.

¹² John D. Leshy, Reforming the Mining Law: Problems and Prospects, 9 *Pub. L. L. Review*, 1, 11 (1988) and John D. Leshy, The Mining Law: A Study in Perpetual Motion, 282 (1987).

¹³ Department of Interior, Solicitor’s Opinion M-37004, Use of Mining Claims for Purposes Ancillary to Mineral Extraction (Jan. 18, 2001).

¹⁴ Department of Interior, Opinion M-36988, Limitations on Patenting Millsites Under the Mining Law of 1872, (1997).

¹⁵ Consolidated Appropriations Act, 2000, Pub. L. No. 106-31, § 3006, 113 Stat. 57.

grazing—after mining was concluded. Consistent with practice since the inception of the Mining Law, the Forest Service did not investigate the status of any of the mining claims in the plan of operations and did not constrain its selection of the preferred alternative based on mining claim status. The Forest Service considered alternative locations for the waste rock and tailings without regard for mining claim boundaries or status.

Mining opponents challenged the Forest Service’s approval of the Rosemont plan of operation on numerous grounds, including that the Forest Service inappropriately approved the placement of waste rock and tailings on unpatented mining claims whose “validity” had not been established; in other words, an updated version of the long-abandoned Leshy Ancillary Use Opinion. After many defeats before administrative law judges and the courts, for the first time, a federal court agreed. The *Rosemont* court vacated the plan of operations.

The Forest Service and the *Rosemont* operator appealed to the Ninth Circuit Court of Appeals. Two judges in the three-judge panel affirmed the lower court’s decision, but on different reasoning. A third judge dissented, finding that the Forest Service properly reviewed the mining plan of operations under its surface management regulations.

***Rosemont* Fallout**

The 9th Circuit *Rosemont* majority’s holding is narrow but nevertheless problematic, based as it is on an incorrect reading of the agency administrative record. However, of more concern is the majority’s long discourse on the Mining Law. Though much of that narrative is unnecessary *dicta* to the court’s holding, it is taking hold in lower courts and at the Department of Interior, imposing new requirements and leaving mining regulation on federal lands incredibly muddled. Further litigation over the meaning of *Rosemont* is guaranteed unless Congress acts to remedy the problem.

The Thacker Pass Litigation

The myriad problems unleashed by the *Rosemont* cases are already on display. In a 2023 decision, the United States District Court for the District of Nevada applied *Rosemont* in a case challenging BLM’s approval of the Thacker Pass lithium mine in northern Nevada. The judge did not vacate the plan approval, but she directed BLM to inquire into the validity of certain mining claims on which the company planned to deposit tailings and waste rock.¹⁶ Opponents appealed that decision to the 9th Circuit. During the appeal, mining opponents argued that the Thacker Pass claims in question must be subjected to a detailed validity determination akin to the mineral examination required to support a patent application. The appeals court denied the appeal, concluding that the district court’s remand without vacatur was appropriate, and further finding appellants’ validity argument to be premature, ruling that those arguments properly should be raised at the district court level first. To date the *Thacker Pass* opponents have not returned to the Nevada district court, but under the general federal statute of limitations, they have six years to do so. This is just one of many legal questions raised but not resolved by the *Rosemont* decision.

The Mount Hope Mine Litigation

A more recent Nevada case illustrates even more dramatically the absurd impacts of *Rosemont* in the 9th Circuit. A Nevada Federal District Court relied on *Rosemont* to vacate BLM’s approval of the proposed Mount Hope molybdenum mine.¹⁷ The Mount Hope molybdenum mine has been seeking BLM approval for almost two decades. That deposit is considered one of the largest and highest-grade molybdenum deposits in the world.

The history of the Mount Hope Mine is a case study in permitting delays that can be caused by endless litigation. The proposed plan of operations for the Mount Hope Mine was originally submitted to BLM in June 2006. The notice of intent to prepare an EIS was published in the Federal Register in March 2007. The Draft EIS was made available for public comment in December 2011, and the final EIS was published in October 2012. The Record of Decision approving the project was issued one month later.

BLM’s decision approving the Mount Hope Mine was challenged by Great Basin Resource Watch and the Western Shoshone Defense Project. The Federal District Court for the District of Nevada upheld BLM’s decision in July 2014. Notably, in

¹⁶*Bartell Ranch v. McCullough*, 2023 U.S. Dist. LEXIS 19280 (D. Nev. 2023) (the “*Thacker Pass*” case).

¹⁷*Great Basin Resource Watch v. Dep’t of the Interior*, 2023 WL 2744682 (D. Nev. 2023).

that appeal, the plaintiffs argued that BLM erred when it did not confirm the validity of the Mount Hope mining claims before approving the plan of operations—the *Rosemont* argument. Consistent with every other decision on mining opponents’ ancillary use attacks up to that time, the Nevada court applied established precedent and rejected the argument, finding that the Mining Law did not require that BLM inquire into claim validity.

Plaintiffs appealed the 2014 decision to the Ninth Circuit Court of Appeals raising several environmental claims, but they did not pursue the claim validity argument. In December 2016, the 9th Circuit affirmed most of BLM’s decision, but remanded the project back to the agency for additional environmental analysis on two air quality issues, and asked BLM to clarify the legal status of certain springs. BLM completed that work and published a Draft Supplemental EIS (“SEIS”) for public review in February 2019, and a final SEIS in July 2019. The Record of Decision approving the project was reinstated the following month. The same plaintiffs challenged BLM’s decision *again*. In April, 2023, following briefing on the impact of the new *Rosemont* decision, the same federal judge who approved the project nine years earlier, vacated the decision and sent the project back to BLM to evaluate the project’s mining claims in light of the *Rosemont* decision. Eighteen years after Mount Hope submitted its plan of operations, and two decisions approving the mine plan, the project remains in limbo.

The *Thacker Pass* and *Mount Hope Mine* litigation illustrate just how disruptive and counterproductive the *Rosemont* decision has proven to be, and more litigation is certain. Both cases demonstrate that mining opponents’ efforts to pursue “results that make [the Mining Law] unworkable” are bearing fruit. The resulting uncertainty is intolerable for a country that says that it wants to encourage a domestic mining industry. H.R. 2925 is absolutely necessary to fix the *Rosemont* mess.

The Department of Interior May 2023 Solicitor’s Opinion

In response to *Rosemont*, the Solicitor of the Department of Interior issued an opinion in May 2023,¹⁸ binding on the agency, that extended the *Rosemont* court’s strained reading of the Mining Law beyond the 9th Circuit and applied it to BLM’s decision-making nationwide. The Opinion ignored the explicit text of the 3809 regulations and BLM’s application of those regulations over the past 40 years. Interior’s position is that the Solicitor’s Opinion, and perhaps some subsequent guidance that has not yet been made public, can resolve the practical problems created by the *Rosemont* decision, obviating the need for a legislative solution.

Barrick does not agree. Despite Interior’s efforts to resolve the many questions raised by *Rosemont*, the Solicitor’s Opinion creates more uncertainty, guarantees further legal challenges to mining projects, and undermines the stated policy of this administration and a bipartisan majority of this Congress to encourage domestic mineral exploration and production. Most importantly, the Solicitor’s Opinion ensures that mine projects on Federal land will face more permitting hurdles and delays.

The Solicitor’s Opinion directs BLM not to approve “plans of operations where the operator proposes to place significant waste or tailings facilities on mining claims where BLM’s record lacks evidence of the discovery of valuable mineral deposits underlying those facilities.” The Opinion does not advise how BLM should proceed where evidence of validity does not exist. The agency is given no guidance but to reject the proposed plan of operations. In such circumstances, the burden shifts back on to the operators to: 1) submit additional evidence, of the type in a “mineral potential report;” 2) “re-site the ancillary uses on mill sites (as appropriate);” 3) seek a land use authorization under other BLM regulations (i.e., a different permit); or 4) seek to acquire title to the needed land through a land exchange or sale.¹⁹

The Opinion effectively rewrites the 3809 regulations without any public notice or comment. The current regulations and 40 years of practice are dismissed in a footnote where the Solicitor, giving the “Leshy blip” more weight than its due, “acknowledges that the Department’s reading of the Mining Law has not remained static in the last several decades, and that BLM may have approved mining plans that, at least in part, are not strictly consistent with this memorandum.”²⁰

This Subcommittee should not assume that the new Solicitor’s Opinion will more effectively survive legal challenges than other prior opinions. For example, the majority opinion in the *Rosemont* case at the 9th Circuit swept aside in two sentences a 2020 Solicitor’s Opinion that comprehensively evaluated the Mining Law

¹⁸ Department of the Interior, Office of the M-37077, Use of Mining Claims for Mine Waste Deposition, and Rescission of M-37012 and M-37057, May 16, 2023.

¹⁹ Solicitor’s Opinion at 5-6.

²⁰ Solicitor’s Opinion at p. 9, n.7.

and BLM practice and interpretation, according the Opinion no deference because “the Solicitor has taken inconsistent positions” on the issue.²¹ The new Opinion is simply another inconsistent position that courts may well ignore.

The *Rosemont* decision left many questions unanswered—targets for further legal challenges. The Solicitor’s Opinion attempts to limit the *Rosemont* decision to its facts: an inquiry into claim validity is necessary only where an operator proposes to **permanently** occupy land with significant waste rock or tailings facilities. But mining opponents have already challenged that attempt to limit *Rosemont* impacts.

In the *Thacker Pass* litigation, for example, some plaintiffs argued that the *Rosemont* decision applied to every facility in the plan of operations, not just large “permanent” features as suggested by the Solicitor’s Opinion. If this argument were adopted by courts, pipelines, transmission lines, roads, stockpiles, processing facilities, and all other such uses could be sited only on valid mining claims. The *Thacker Pass* appeals court refused to entertain these arguments, but only because plaintiffs first raised them on appeal. This expansive interpretation of *Rosemont* remains on the table for further litigation.

The same *Thacker Pass* litigants complained to the 9th Circuit that BLM must conduct a full claim validity examination, like those that used to be conducted for patent applications, for each claim included in a plan of operations, and that the Nevada District Court’s decision instructing BLM to search for evidence of validity in its record is inconsistent with the 9th Circuit’s *Rosemont* ruling. As noted above, the 9th Circuit concluded that such an argument should be made in the first instance at the court below. Whether *Thacker Pass* opponents eventually challenge the BLM’s validity review remains to be seen, but it is certain that the issue will be litigated, whether in *Thacker Pass* or elsewhere.

Thus, despite the Department of Interior’s assurances, the Solicitor’s Opinion has resolved nothing. Mining opponents are challenging its reasoning and limits, and courts are not likely to be bound or even persuaded by the Opinion. The Opinion does not obviate the need for H.R. 2925.

The alternatives suggested by the Solicitor’s Opinion will also result in further uncertainties and delays, frustrating rather than speeding mine approvals. The BLM’s 3809 regulatory program was designed to review mining operations holistically. Requiring different permits and/or use authorizations—not to mention land sales or exchanges—for individual mine features will result in an absurd fragmenting of the permitting process, which can only mean more complexity, permitting delay, uncertainty, and metastasizing grounds for litigation. Under BLM’s 3809 regulations, mine plans are approved if the BLM finds that those plans include adequate measures to prevent “unnecessary or undue degradation,” the standard imposed by FLPMA and defined in the regulations. Rights-of-way and other permits are intended for different kinds of projects, such as discrete roads, and have different standards; they afford BLM more discretion in making decisions, and litigants more opportunities to challenge. *Rosemont*—and Interior’s attempt to address it—requires mine proponents to engage in a guessing game to determine which facilities should be permitted under which regulations. Issuing special use permits or rights-of-way for mining facilities, rather than permitting them through the mining-specific regulations governing plans of operations (as intended under FLPMA and done for decades) is a recipe for gridlock.

Criticism of H.R. 2925

I have reviewed letters and statements—provided to this Subcommittee and also submitted to the Senate Subcommittee on Public Lands, Forests, and Mining—criticizing H.R. 2925 (and its Senate companion S. 1281) and predicting dire consequences, including mines of unlimited size, unlimited land grabs, location of claims for non-mining purposes, and mining in National Parks and wilderness areas. These criticisms are misplaced. H.R. 2925 is a straightforward fix to a mine permitting problem created by a court decision that is an outlier in the jurisprudence. It simply restores the *status quo* that existed for decades before the *Rosemont* decision. It does not replace the Mining Law with a new framework. Rather it is a surgical amendment that restores the original intent of the Mining Law and keeps all other provisions and their relationship with other statutes, like FLPMA, intact. The opposition’s arguments are all based on the false premise that *Rosemont* was always the law and that it somehow was the sole governing principle that prevented their list of problems. H.R. 2925’s purpose is to cut off the harmful and counter-productive litigation over the meaning and extent of *Rosemont*, which, as I have illustrated above, is already underway. Nothing more, nothing less.

²¹ Center for Biological Diversity, 33 F.4th at 1216.

Every mine plan approval from the BLM or the Forest Service includes language disclaiming any decision on mining claim validity, emphasizing the long-established distinction between mining claims and rights, as determined by the Mining Law, and mine permitting as authorized and required by Interior and Forest Service land management statutes and rules. The definition of “operations” in H.R. 2925 tracks the regulatory definitions in the BLM and Forest Service regulations.

Arguments that H.R. 2925 will somehow expand mining into parks and other withdrawn areas are simply incorrect. Areas that are withdrawn from the operation of the mining laws—of which parks and wilderness areas are only two examples—remain unaffected by H.R. 2925 and subject to separate laws and regulations. As I explained at the beginning of this testimony, when land is withdrawn from mineral entry, either legislatively or administratively, existing mining claims can be extinguished by the United States, *except for claims that were “valid” on the date of withdrawal*.²² Any activity of any kind on such surviving valid claims would be subject to special rules that are more stringent and more restrictive than the rules that govern mining on lands open to mineral entry.

H.R. 2925 in no way affects—indeed it cannot affect—these surviving valid claims. The whole purpose of H.R. 2925 is to make clear the understanding of the law that existed prior to *Rosemont*: that property rights exist in mining claims even before a mineral discovery is made, and that claim validity need not be established before unpatented mining claims are used for mine-related activities in approved plans of operations. In contrast, any mining claim within a withdrawn area persists *only because it is valid*, i.e., that its owner has been able to establish a mineral discovery. Any other claim can be contested and extinguished by the United States. Critics make the same mistake as the *Rosemont* court, interpreting rights under the Mining Law as an “all or nothing” approach. In fact, as the Department of Interior and federal courts have recognized since 1872, the Mining Law offers a range of rights: the right to explore open land, the right to exclude rival claimants from properly located claims, the right to use lands to support mining, and, until 1994, the right to patent claims with a proven discovery of valuable minerals. Without the discovery, these rights fall short of the “valid existing right” historically needed to maintain possession of claims in withdrawn areas.

Arguments that H.R. 2925 will somehow make a mine’s footprint bigger are likewise incorrect. The miner has a huge economic incentive to minimize the size of its footprint. In the permitting process BLM will evaluate the location of all features, particularly the large features like waste rock dumps and tailings, and choose an alternative that meets the purpose and need of the project, and that is environmentally preferable. Size of waste rock dumps and tailings and their location is always a factor the BLM and the Forest Service consider when they evaluate a proposed mining plan under NEPA and their mining regulations.²³

Arguments that claims will now be used for non-mining purposes, are likewise spurious. Nothing in H.R. 2925 purports to change the existing law that a mining claim located for a purpose other than exploration and mining purposes is void *ab initio*. Rather the language is clear, tied back to the pre-*Rosemont* law and interpretation, that the surface of a lode claim can only be used for legitimate mining related purposes in an approved mining plan.

In summary, I believe that the intent and language of H.R. 2925 are simple and clear, but acknowledge the concerns that have been expressed. The Committee can easily resolve any such concerns with a belt and braces approach by expanding the savings clause in section 3 of the bill to make clear that H.R. 2925 does not create, change, or expand the rights associated with any mining claim in an area that has been withdrawn or is withdrawn in the future.

H.R. 6862

On September 22, 2023, the Federal Permitting Improvement Steering Council (“FPISC”) proposed to amend its existing regulations to limit application of the FAST-41 permitting process to projects that produce or process “critical minerals,”

²² *Lara v. Sec’y of the Interior*, 820 F.2d 1535, 1537 (9th Cir. 1987) (“[a] mining claimant has a right to possession [on withdrawn lands] only if he has made a mineral discovery on the claim.”).

²³ BLM regulations require that an operator “must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.” 43 C.F.R. 3809.420(a)(2).

as defined by the U.S. Geological Survey.²⁴ Congressman Lamborn’s bill, H.R. 6862, would block this unjustified and indefensible step. We support H.R. 6862.

The FPISC’s proposal is inconsistent with the Biden Administration’s expressed interest in expediting permitting of major projects and promoting the growth of the domestic mining industry. It was only four years ago that the FPISC voted to add mining to FAST 41 eligibility, without limiting access to projects that involve critical minerals. Since then, only a handful of mining projects have sought FAST-41 coverage.²⁵ Meanwhile, mining projects are compatible with the purposes of FAST-41 to expedite permitting of major infrastructure projects, and especially with FAST-41’s “objective” criteria: (1) the project is subject to NEPA review; (2) the project is likely to require a total investment of \$200 million or more; and (3) the project does not qualify for abbreviated review under any other law.²⁶

The FPISC offers no data that would justify limiting access for the mining industry to FAST-41 benefits. Few mining companies have asked to participate in FAST-41; there is no evidence that the process is being abused, or that FAST-41 is being burdened by too many requests for inclusion. There is simply no rational basis for the proposal.

Indeed, by limiting the type of mining projects eligible for the FAST-41 permitting process to those involving critical minerals identified by the USGS, the Biden administration would be barring projects to recover minerals identified on the Department of Defense’s Strategic and Critical Materials List and the Department of Energy’s Critical Materials List. Differentiating these high-priority minerals from those listed by USGS is the definition of arbitrary, and is inconsistent with the Administration’s national defense and energy security priorities. H.R. 6862 would prevent this exercise of bad policy.

In addition to opposition from the National Mining Association, Barrick, and others in the mining industry, the FPISC proposal is opposed by the National Infrastructure Alliance—a coalition of leading construction unions—and by a large contingent of bipartisan and bicameral Members of Congress. Further, during consideration of H.R. 4664, the FY2024 Financial Services and General Government Appropriations Act before the full House of Representatives, an amendment offered by Rep. Blake Moore (R-Utah)—which is nearly identical to H.R. 6862—was adopted unanimously by voice vote without opposition.

From 9th Cir briefs in Thacker Pass appeal

Bartell – Rosemont applies to everything

A. *Rosemont* Extends to LNC’s Water and Power Lines.

To start with, the district court got the scope and reasoning of *Rosemont* wrong. In *Rosemont*, this Court correctly explained that “discovery of valuable minerals is essential to the right to any occupancy—temporary or permanent—beyond the occupancy necessary for exploration.” 33 F.4th at 1220 (emphasis added). Accordingly, *Rosemont* extends to all project components of a mining project, contrary to the district court’s holding.

The Mine includes guard shacks, fencing, water wells, waste rock piles, a tailings stack, lithium processing facility, sulfuric acid plant, water pipelines, transmission lines, and more. 4-ER-613—619. All of these project features will occupy BLM land on Thacker Pass. The FEIS explains that LNC’s mining claims on Thacker Pass provide the surface estate necessary to justify this occupancy. 4-ER-612. Yet, LNC did not prove, and BLM did not find, that LNC’s mining claims are valid. 1-ER-15. Instead, BLM assumed validity based on the fact that much, though not all, of the Mine is located upon the McDermitt Caldera, which BLM assumed contains valuable lithium deposits. 1-ER-15; 4-ER-621. However, parts of

the Mine, in particular the water and transmission lines, are located outside the caldera, which is devoid of known mineralization. Compare 4-ER-605 with 4-ER-606. Appellants raised this issue with the district court. 3-ER-479—480; 2-ER-254—255.

The district court held that *Rosemont* extended only to the waste rock piles and CTFs associated with the Mine, and not other project features. 1-ER-17. The district court justification was merely that *Rosemont* only addressed legality of the Forest Service’s approval of a copper mine’s massive waste pile and, thus, the case should be extended no further. 1-ER-17. However, nothing in *Rosemont* supports limiting its holding to only waste rock piles.

This Court explained that “discovery of valuable minerals is essential to the right to any occupancy—temporary or permanent—beyond the occupancy necessary for exploration.” 33 F.4th at 1220. The cases relied on by this Court in *Rosemont* stand for the same rule of law. See *Union Oil Co. of Cal. v. Smith*, 340 U.S. 337, 346, 39 S.Ct. 308, 63 L.Ed. 631 (1951) (to “locate valid rights . . . a discovery of mineral is essential”); *Davis v. Nelson*, 329 F.2d 840, 844-45 (9th Cir. 1964) (the mining law grants two rights: “(1) the right to explore and purchase all valuable mineral deposits in lands belonging to the United States; and (2) the right to occupation and purchase of the lands in which valuable mineral deposits are found.”); see also *Barrone v. Hinkel*, 447 F.2d 80, 82 (9th Cir. 1971) (“In order for

²⁴ Revising the Scope of the Mining Sector of Project That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act, 88 Fed. Reg. 65350 (September 22, 2023)

²⁵ 88 Fed. Reg. at 65352-53.

²⁶ 88 Fed. Reg. at 65351.

a mineral claim on public lands to be valid it is necessary that the discovered mineral deposits be “valuable.”); *United States v. Rice*, 886 F.2d 334 (9th Cir. 1989) (evidence that claim is not located where actual deposit exists demonstrates lack of valid claims).

This Court’s broad holding in *Rosemont* means exactly what it says: that any mine-related occupancy of mineral claims must be preceded by a discovery of valuable minerals on each claim, which is clearly lacking here. Focusing on the water and power lines, BLM approved these project features, which are outside known zones of mineralization, simply because LNC had asserted mining claims over those lands.¹⁰ 4-ER-612; 4-ER-621; 4-ER-746. Pursuant to *Rosemont*, BLM should have first determined whether LNC’s claims were valid, before allowing LNC the right of occupation and effectively waiving RMP requirements.

There is no dispute that BLM’s approval of the water and power lines as part of the Mine constitutes “occupancy” of BLM’s lands. There is also no dispute that a

¹⁰ Whether the water and power lines were approved under BLM’s regulations at 43 C.F.R. § 3809 et seq. or 43 C.F.R. § 3715 et seq. is irrelevant. 43 C.F.R. § 3809.420(a)(3) requires that mining plans of operations be operated “[c]onsistent with the mining laws[.]” 43 C.F.R. § 3715.1 explains that any occupancy must be allowable under the mining laws. Therefore, whether approved pursuant to 43 C.F.R. § 3809 et seq. or 43 C.F.R. § 3715 et seq., the water and power lines must be consistent with the mining law. Because this Court determined that discovery of valuable minerals is a necessary prerequisite of occupancy under the mining law, occupancy approved pursuant to 43 C.F.R. § 3809 et seq. or 43 C.F.R. § 3715 et seq. must be preceded by a discovery of valuable minerals.

GBRW Reply brief – Rosemont requires a full claim validity examination (like a patent)

A. BLM’s Errors Are Serious and the District Court Abused Its Discretion When it Remanded Without Vacatur.

While this Court reviews the district court’s decision to remand without vacatur for abuse of discretion, “[a] misapplication of the correct legal rule constitutes an abuse of discretion.” *Puma Band of Luiseño Mission Indians of Puma & Yuima Reservation v. California*, 813 F.3d 1155, 1163 (9th Cir. 2015). A district court abuses its discretion if it “base[d] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Int’l of Cetaceans*

discovery of valuable minerals has not occurred on the mining claims providing the surface estate for the water and power lines. 1-ER-15. Pursuant to *Rosemont*, then, LNC has no right to occupy BLM’s lands with its water and power lines pursuant to 43 C.F.R. § 3809 et seq. or 43 C.F.R. § 3715 et seq. until valuable minerals are discovered on the claims underlying the water and power lines. Here, though, such a discovery of valuable minerals is likely impossible because the water and power lines will be located outside the McDermitt Caldera, admittedly beyond zones of lithium mineralization. 4-ER-621; 4-ER-746; compare 4-ER-605 with 4-ER-606.

This Court should affirm its holding in *Rosemont* that any mine-related occupancy of mineral claims must be preceded by a discovery of valuable minerals on *that claim*. Therefore, the Court should hold that BLM’s approval of occupation for the water and power lines was arbitrary and capricious.

Research v. Sea Shepherd Conservation Soc’y, 725 F.3d 940, 944 (9th Cir. 2013).¹¹

The district court misapplied the law here when it treated BLM’s responsibility to determine whether LNC had discovered valuable minerals on each mining claim it plans to permanently occupy with waste rock and tailings as a simple procedural error that could be easily “fixed.” See Order, 1-WWP-61-62. It is “undisputed” that BLM never determined whether LNC had discovered valuable minerals. Order, 1-WWP-26. This is a serious error because BLM approved the entire Project based on the erroneous assumption that LNC had valid existing rights under the Mining Law, which eliminated BLM’s discretion over the Project. Establishing the existence of valuable minerals is a fact-intensive, substantive inquiry that cannot be done on this record.

A locatable mineral, like lithium, is not “valuable” unless it is shown that it can be “extracted, removed, and marketed at a profit.” *Rosemont*, 33 F.4th at 1209, quoting *U.S. v. Coleman*, 390 U.S. 599, 602 (1968). “[T]he finding of some mineral, or even of a vein or lode, is not enough to constitute discovery – their extent and value are also to be considered.” *Converse v. Udall*, 399 F.2d 616, 619

¹¹ LNC erroneously asserts that that case stands for the proposition that a “court abuses discretion only if ruling rests on clearly erroneous evidentiary assessment.” LNC Resp. 104 (emphasis added). That is a mischaracterization of precedent.

(9th Cir. 1968). “[P]rofit over cost must be realizable from the material itself and it is that profit which must attract the reasonable man.” *Ideal Basic Indus., Inc. v. Mottom*, 542 F.2d 1364, 1369 (9th Cir. 1976).

The district court held that “some evidence” of general mineralization in the Project area established a “serious possibility” that BLM will be able to “substantiate” its decision on remand. Order, 1-WWPFR-61-62. That is not the test under the Mining Law for BLM to determine whether all the claims contain the requisite “discovery of a valuable mineral deposit.”

Valuable minerals must be discovered on each claim and “[a] discovery without the limits of the claim, no matter what its proximity, does not suffice.” *Waisley v. Hamner*, 223 U.S. 85, 91 (1912). Evidence of “general mineralization” thus cannot meet the marketability test. “Each lode claim must be independently supported by the discovery of a valuable mineral within the location as it is marked on the ground.” *Lombardo Turquoise Mining & Milling v. Hemmets*, 430 F.Supp. 429, 443 (D. Nev. 1977) *aff’d* 605 F.2d 562 (9th Cir. 1979). See also *Hennrich Min. Co. v. Tyak*, 419 F.2d 766, 768 (9th Cir. 1969)(valuable mineral deposit requirement cannot be met on one claim by relying on minerals on other claims).¹⁸

¹⁸ LNC continually, and erroneously, argues that WWP “conceded” that LNC has “discovered a valuable mineral deposit” in the mine pit. LNC Resp. 6, 15, 18. This argument highlights LNC’s misunderstanding of what constitutes a “valuable mineral deposit” under controlling law, including *Rosemont*, as mere “mineralization” does not qualify as a “valuable mineral deposit.”

The question is not, as BLM frames it, whether the evidence “foreclose[s]” existence of valuable minerals on each claim to be occupied by waste rock and tailings, it is whether it *establishes* their existence. BLM Resp. 105. BLM/LNC rely heavily on the fact, that in *Rosemont*, there was no evidence that valuable minerals had been found on the claims. But as the Circuit recognized, “that is legally irrelevant. The question is whether valuable minerals have been ‘found’ on the claims, not whether valuable minerals might be found.” 33 F.4th at 1222.

Here, just as in *Rosemont*, “[t]he undisputed that no valuable minerals have been found.” *Id.*; see BLM Ans. ¶119, 1-WWPFR-30 (admitting that BLM has not determined whether waste dump claims contain valuable minerals, as alleged in ¶119 of WWP’s Complaint). “[D]iscovery of valuable minerals is essential to the right to any occupancy—temporary or permanent—beyond the occupancy necessary for exploration.” *Rosemont*, 33 F.4th at 1220. The district court thus misapplied *Rosemont* in its decision not to vacate the illegal ROD.

Indeed, if any minerals exist on the waste dump/tailings claims, they cannot be credibly considered “valuable.” LNC made the economic decision to permanently bury them under 190 million tons of waste rock and tailings, essentially eliminating any future potential for mining. See LNC SJ Reply at 4, 2-WWPFR-103. That was the situation in both *Rosemont* (Ninth Circuit and district court) and the recent *Great Basin Resource Watch* decision, 2023 WL 27444682,

LNC argues that this long-established precedent only applies when a claimant is seeking a patent or proposing to mine in a withdrawn area (like a National Monument). LNC Resp. 102. That is not true. As *Rosemont* held, to have any right to occupy a mining claim post exploration, a claimant must show they have discovered “valuable minerals” on that claim. These cases all define what qualifies as a “valuable” mineral deposit. *Rosemont* dealt with the same situation here – requiring that the claimant show that all of its claims are valid before having any rights under the Mining Law and federal public land law to use and occupy those claims. Like here, the *Rosemont* mine was proposed on non-withdrawn lands open to claiming.

LNC also posits various theories that its claims are valid, or that it may file “millstone claims” that might support its assertions of the “valid rights” it needs to avoid most of the RMP provisions. LNC Resp. 100-101, 125-26. But as BLM concedes, any adjudication or review of the validity of LNC’s claims and purported “rights” under the Mining Law is for a future case on a future record.¹⁷

¹⁷ The National Mining Association (NMA), in its amicus brief, largely argues that the Circuit got it wrong in *Rosemont* when it found that post-exploration use and occupancy rights on mining claims can only be based on valid claims under the Mining Law. Dkt. 71. But neither BLM nor LNC appeal the district court’s application of *Rosemont* to this record, and thus NMA’s arguments are inapplicable to this case.

as the courts relied on the mining company’s plans to bury the waste dump lands as evidence that they did not contain valuable minerals: “As a threshold matter, *Rosemont*’s proposal to bury its 2,477 acres of unpatented mining claims under 1.9 billion tons of its own waste was a powerful indication that there was not a valuable mineral deposit underneath that land.” *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 409 F. Supp. 3d 738, 748 (D. Ariz. 2019). See also *Great Basin Resource Watch*, 2023 WL 27444682, at *5 (noting company’s plans to dump waste on its mining claims “suggests that the land does not contain the requisite valuable mineral deposits.”). On this record, and on these directly-relevant court rulings, LNC cannot rebut the presumption that its claims are invalid under the Mining Law, based on its own plans to forever bury these lands under 190 million tons of waste.

BLM’s new and rushed claim validity determination cannot cure BLM’s error because BLM does not deny that it was required determine whether LNC held valid existing rights before approving the Project. In *Rosemont*, this Circuit rejected the argument that an agency may determine whether a mining claimant holds valid existing rights after authorizing the claimant to occupy federal lands. See *Rosemont*, 33 F.4th at 1221 (rejecting argument that “the court erred in holding that the Service must assess the validity of *Rosemont*’s mining claims before approving *Rosemont*’s mining plan.”). Allowing BLM to backfill its ROD

conflicts with *Rosemont* and is another way in which the district court abused its discretion when it decided not to vacate the illegal ROD.

Where there is an “absence of analysis,” rather than a “flawed analysis,” by the agency, “the Court cannot determine whether there exists a serious possibility that the [agency would] be able to substantiate its decision on remand.” *Wildearth Guardians v. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 897 (D. Mont. 2020) (citing *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 151)(D.C. Cir. 1993)(internal quotation marks omitted).

The mining record does not support claim validity and LNC’s “rights,” especially due to the presumption that LNC’s decision to cover 1,300 acres with 190 million tons of waste shoves that the claim do not contain the requisite discovery of valuable minerals. The district court thus abused its discretion when it ignored controlling federal case law, and the facts of this case, in believing that BLM could easily substantiate the unlawful ROD.

The district court also failed to recognize the on-the-ground and practical nature of BLM’s errors. BLM could not lawfully approve a mine Project with no legally valid plan for disposing of waste rock and tailings. The ROD’s approval of blasting, ground clearing, facility construction and other operations (in addition to the 1,300 acres of the waste and tailings dumps) is premised on approval of a full and complete mine Plan of Operations (PoO) authorized pursuant to rights under

the Mining Law. But, as BLM admits, the ROD was legally invalid. The district court correctly held LNC had no legal right to use or occupy these 1,300 acres. As such, the ROD essentially approved what is now an incomplete and illegal mine.

As the *Rosemont* district court held, “the Forest Service accepted, without question, that those unpatented mining claims were valid. This was a critical error as it tainted the Forest Service’s evaluation of the Rosemont Mine from the start.” *Center for Biological Diversity*, 409 F. Supp. 3d at 747 (emphasis added). The same is true here, where BLM based its decision not to apply the ARMPA, as well as its overall review of the Project, on its illegal and unsupported assumption that BLM’s discretion over the Project was severely limited because LNC held statutory rights to occupy all of public lands at the site. The district court’s decision not to vacate the decision was deeply flawed, legally and factually.

QUESTIONS SUBMITTED FOR THE RECORD TO RICH HADDOCK, SENIOR ADVISOR, BARRICK GOLD CORPORATION

Questions Submitted by Representative Stauber

Question 1. Dr. Feldgus was asked if somebody located a mining claim and just after it was included in a national park, could the locator keep the claim from becoming part of the National Park? What would be the legal status of the claim, under existing law, and under H.R. 2925?

Answer. Dr. Feldgus answered that the claimant in this hypothetical would have “the right to use and occupy the claim.” His answer is incorrect, under existing law, or pursuant to H.R. 2925. The opportunistic claim locator in this hypothetical could not keep her claim from being included in the newly created national park. Federal lands within national parks are withdrawn from location under the mining laws. See 43 C.F.R. § 3811.2-2 (“The Mining in the Parks Act . . . effectively withdrew all National Parks and Monuments from location and entry” under the Mining Law). The withdrawal is subject only to “valid existing rights.” *Id.* This means that to keep the claim located just before the park was established, the claimant would have to prove that the claim was “valid,” i.e., that she had discovered a valuable mineral on her mining claim **as of the date of the Park’s creation**. Proving a mineral discovery requires exploration and voluminous data. Typically, that takes years of work, and millions of dollars of investment. It would be impossible to prove a mineral discovery on a claim located just before the creation of a national park, because there would be little or no exploration data to support it. The claim would be void. BLM could extinguish it.

The claim described in this hypothetical also would be void if H.R. 2925 were enacted. The Mining Regulatory Clarity Act changes nothing about how such a claim would be regarded under federal mining laws, or laws governing management of national parks. Indeed, H.R. 2925 has nothing to do with claim location or the status of claims in areas withdrawn from entry under the mining laws. All it does is re-establish the long-standing pre-*Rosemont* law that if you file a plan of operations with BLM to build a mine, you can use the surface of any of your claims **for mining-related purposes only** without having to prove the validity of that claim as against the United States.

H.R. 2925’s savings clause, especially as amended during the markup, places this matter beyond dispute. That language now provides (in relevant part): “Nothing in this subsection—(D) limits the right of the Federal Government to regulate mining and mining-related activities (including requiring claim validity examinations to establish the discovery of a valuable mineral deposit) in areas withdrawn from mining . . . ; or (E) restores any right (including a right of entry, use, or occupancy, or right to conduct operations) of a claimant that existed prior to the date

that the lands were closed to or withdrawn from location under the general mining laws and that has been extinguished by such closure or withdrawal.”

Further, any “valid” claims that do survive the creation of the national park would be governed by The Mining in the Parks Act, 54 U.S.C. 100732, and regulations promulgated by the National Park Service and codified at 36 C.F.R. Part 9. Those regulations impose additional procedural and substantive requirements on all mining claims in national parks. This means that a locator may be able to prove that his claim is “valid” and keep possession of it, but he cannot keep the claim from becoming part of the new national park. Further, even patented claims—those claims for which title has transferred from the U.S. to the claimant—are subject to The Mining in the Parks Act. NPS regulations implementing the Mining in the Parks Act “control activities within units of the National Park System resulting from the exercise of valid existing mineral rights on **patented or unpatented claims**” 36 C.F.R. § 9.1 (emphasis added). In other words, the Act regulates activity on all land—private and public—within the boundaries of a national park. The Park Service rules provide:

The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. **These regulations apply to all operations**, as defined herein, conducted within the boundaries of any unit of the National Park System.

Id. (emphasis added).

The legal status of mining claims within national park boundaries is not affected in any way by H.R. 2925.

Question 2. Dr. Feldgus was also asked if a nuisance claim were filed to interfere with a proposed solar project, wind project, or transmission line, could those projects be stopped or delayed under H.R. 2925 by the nuisance claim? Please explain the status of nuisance claims in this hypothetical, under existing law, and under H.R. 2925?

Answer. H.R. 2925 does not change the government’s authority or ability to manage federal lands for solar projects, wind projects, transmission lines, or the legal status of mining claims as they may relate to these projects. Nuisance claims are already addressed under existing law, and H.R. 2925 would not make it easier or more difficult to establish a nuisance claim, or make it easier or more difficult for BLM to extinguish the nuisance claim. BLM regulations and H.R. 2925 define “occupancy” to require activities that are “reasonably incident” to prospecting, exploring, mining or beneficiating locatable minerals, and calculated to lead to the extraction and beneficiation of minerals. See 43 C.F.R. § 3715.2 *see also* p. 5 below. Nuisance claims cannot meet these requirements. Further, occupancy cannot occur until the miner submits a notice or plan of operations to BLM. 43 C.F.R. §§ 3715.3-1–3-6. H.R. 2925 does not invalidate or amend these regulations. Occupancy in contravention of these requirements would violate existing law, and the law as amended by H.R. 2925. Any claim that is not located in a good faith effort to develop a mine is void *ab initio*. *U.S. v. Zimmer*, 81 IBLA 41, 43 (1984). Where claims are located before lands are segregated or withdrawn, BLM can contest and extinguish such claims unless the claimant can prove he has discovered a valuable mineral on the claims. Nuisance claimants will not be able to make this showing.

Wind and Solar Projects

BLM has taken specific action to address concerns about potential conflicts between mining claims and renewable energy projects. In 2013, BLM adopted rules allowing it to temporarily “segregate” lands included in a pending solar or wind energy generation right-of-way application. 78 Fed. Reg. 25204 (April 30, 2013) (regulations codified at 43 C.F.R. Part 2091). The preamble to the final rule noted that while such “situations are not common,” the rule would prevent claimants from placing encumbrances on public land that might delay processing of right-of-way applications, so that no claims may be located. BLM has segregated hundreds of thousands of acres for these purposes. See, e.g., 89 Fed. Reg. 7408 (Feb. 2, 2024) (Notice to Segregate Lands from Mineral Entry for the Proposed Libra Project in Mineral County, Nevada).

43 C.F.R. § 2804.25(f) also authorizes BLM to segregate such lands “if necessary for the orderly administration of the public lands.” “Segregation” under these rules

has the same effect as a withdrawal: it means that the lands segregated cannot be appropriated under the public land laws, including the Mining Law.¹ Other existing regulations allow BLM to withdraw lands in connection with various types of land disposals, including land sales, land exchanges, and transfers of lands to local governments and other entities. 43 C.F.R. Part 2300.

Transmission Lines

Transmission lines—as a linear overhead feature—present a different management issue for BLM, but one that would not be affected in any way by H.R. 2925. Rights of way for transmission lines can be, and frequently are, granted to third parties over mining claims. BLM may authorize rights of way over the surface of any claims subject to “valid existing rights.” 43 C.F.R. § 2805.14. Transmission lines and mining operations are compatible uses. Transmission lines may need to be moved if mineral deposits are identified and developed in an existing right-of-way. The cost of moving the transmission line would be borne by the mining claimant. We know of one gold mining project where transmission lines were moved at the miner’s expense to facilitate mineral development.

With this context, it becomes clear that the question posed to Dr. Feldgus in the hearing on January 31 was not based on situations that arise frequently in the real world. And Dr. Feldgus’ response—that nuisance claims could pose a real risk to renewable energy and transmission projects—reveals a lack of knowledge about his agency’s experience with nuisance claims.

As documented above, BLM has concluded that conflicts between mining claims and renewable energy projects “are not common,” but BLM nonetheless has addressed how it will deal with such conflicts. And transmission lines and mining claims clearly are compatible uses in the vast majority of cases. A nuisance claimant could not block a right-of-way grant for a transmission line. Additionally, the federal government knows for the most part where transmission lines are likely to be sited. Most of the major transmission line corridors on public and other federal lands in the western United States were designated by the government in 2009 pursuant to Section 368 of the Energy Policy Act of 2005. 42 U.S.C. § 15926. BLM, in consultation with other federal agencies, has recently conducted a review of these energy corridors and is in the process of amending resource management plans and preparing an environmental impact statement evaluating adjustments to the corridors. 88 Fed. Reg. 83959 (December 1, 2023).²

H.R. 2925 grants no new rights to a mining claimant. It *restores* rights by reversing the *Rosemont* decision, no more and no less.

Question 3. Dr. Feldgus was also asked if the holder of a group of nuisance claims could extract large sums of money from the federal government. Please explain the status of nuisance claims, under existing law, and under H.R. 2925?

Answer. An opportunist could locate mining claims under existing law and attempt to extract a payout from the U.S. to relinquish them, but the attempt would not be successful. The law as amended by H.R. 2925 would not change the outcome in any way. In my 30+ years working in the U.S. mining industry, I am unaware of anything like this ever happening. And H.R. 2925 does not make any changes to the law that would suddenly bolster opportunities for nuisance claimants to extract large sums of money from the federal government. All H.R. 2925 does is reverse *Rosemont* and reinstate the *status quo ante*: when a miner has progressed a mineral discovery on public lands and obtained approval of its plan of operations, the approved plan of operations can authorize use of the surface of the mining claims for mining related purposes without having to prove the validity of every claim.

We have been unable to locate any circumstance where the federal government has compensated nuisance claimants to remove them from federal lands. As noted above, any claim that is not located in a good faith effort to develop a mine is void *ab initio*; BLM can contest and extinguish it. By definition, nuisance claims are not located in a good faith effort to develop a mine. The supposed concern underlying the question to Dr. Feldgus is not rooted in any real-world scenario.

¹ BLM explained the distinction between segregations and withdrawals in the 2013 final rule preamble: “Segregations under this rule are not withdrawals. Temporary segregations are different from withdrawals in that segregations prevent certain uses of public lands for a short period of time, not to exceed four years for any type of segregation, while withdrawals are generally for longer terms (generally 20 years) and must be approved by an Assistant Secretary or a higher ranked position within the Department.” 83 Fed. Reg. at 25209.

² More information about the corridors and the ongoing planning effort is available at BLM’s landing page for the “West-Wide Energy Corridor. See <https://corridoreis.anl.gov/>, last visited on February 15, 2024.

On very rare occasions, the federal government has purchased *valid* claims to address a particular national interest. For example, in the late 1990s the government acquired mining claims from Crown Butte Mines, Inc. near Yellowstone National Park to foreclose future mining activity near the Park and facilitate clean-up of historic mine wastes from 100+ years of past mining.³ These were not nuisance claims; Crown Butte had invested \$65 million in the New World Mine, and was moving towards production.

There also have been circumstances where the owner of mining claims sought compensation under the Fifth Amendment when lands were withdrawn and mining prohibited. However, the U.S. typically challenges such attempts, and overcoming any such challenge imposes a heavy burden on claimants. The recent (2009) segregation and withdrawal of more than one million acres of federal land around Grand Canyon National Park has generated a number of administrative and judicial challenges that illustrate how federal land managers proceed in these circumstances. One of those is the case of Vane Minerals. Vane held 678 uranium mining claims in the withdrawn area and had invested more than \$8.5 million in uranium exploration. Vane brought suit in the Federal Court of Claims seeking compensation for its claims. The Court found that it could not hear the case until Vane: (1) proposed a plan of operations for uranium mining, and (2) completed a mineral examination confirming the validity of any claims. *Vane Minerals (US) LLC v. United States*, 116 Fed. Claims Rptr. 48 (2014). Doing all the work necessary to prepare and submit a plan of operations and complete a mineral examination would involve years of work and millions of additional dollars beyond those Vane already spent. That is a burden of time and expense that only viable mining projects could or would bear. No nuisance claimant would spend millions of dollars to drill and collect data trying to prove a discovery to extract money from the U.S., when the work and investment likely would demonstrate the opposite: that no mineral discovery existed and the claims were not valid. The Vane Minerals example demonstrates that even where a company makes a significant and legitimate investment in developing a mineral deposit and seeks compensation, it must meet a high burden to overcome U.S. opposition.

In short, it is unreasonable to think that the federal government would pay for nuisance claims. We have not been able to identify any such circumstance. As the savings clause of H.R. 2925 makes clear, nothing in that legislation changes the law relative to claim location or land withdrawals in such a way as to allow or encourage nuisance claims. The status of nuisance claims remains the same under H.R. 2925.

Question 4. Dr. Feldgus was asked if H.R. 2925 would allow a claimant to build a house on a mining claim, occasionally pan for gold, and claim that her occupancy was part of her operation? How would this activity be treated under existing law, and under H.R. 2925?

Answer. Under existing law, the occupancy would be illegal and would be extinguished. BLM has the tools—and uses them—to address illegal occupancy. Under BLM's mining surface use regulations, anybody building structures (including living quarters), storing equipment, or taking any other action that disturbs the surface of the public lands must first seek and obtain BLM approval. H.R. 2925 does not change those requirements.

In 1996, in response to concern over unauthorized uses of mining claims, the Bureau of Land Management (BLM) adopted new rules addressing use and occupancy of claims under the Mining Laws. 61 Fed. Reg. 37116 (July 16, 1996) (rules codified at 43 C.F.R. Subpart 3715). In order to occupy public lands under the mining laws for more than 14 calendar days in any 90-day period, a claimant must be engaged in activities that:

1. Are reasonably incident to mining;
2. Constitute substantially regular work;
3. Are reasonably calculated to lead to the extraction and beneficiation of minerals;
4. Involve observable on-the-ground activity that BLM may verify; and
5. Use appropriate equipment that is presently operable.

³William J. Clinton, Statement on Acquisition of the New World Mine (August 7, 1998) ("Today's action culminates an extraordinary collaboration by the administration, the State of Montana, Crown Butte, and conservationists to protect both Yellowstone and the economy it sustains"), available at The American Presidency Project, <https://www.presidency.ucsb.edu/node/224378>.

43 C.F.R. § 3715.2. In addition to these requirements, the occupancy must involve one or more of the following:

1. Protecting exposed, concentrated, or otherwise valuable minerals from theft or loss;
2. Protecting from theft or loss equipment which is regularly used, is not portable, and cannot be protected by means other than occupancy;
3. Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;
4. Protecting the public from surface uses, working, or improvements which, if left unattended, create a hazard to public safety; or
5. Being located in an area so isolated or lacking in access as to require the claimant or operator to remain on site in order to work a full shift (ordinarily 8 hours).

43 C.F.R. § 3715.2–1.

Most importantly, under BLM’s current regulations, the occupancy described in the hypothetical would be illegal unless the claimant first consulted with BLM explaining the need for and scope of the proposed occupancy, and then submitted either a notice or plan of operations for BLM review and approval. 43 C.F.R. §§ 3715.3, 3809.11, 3809.21. The operator must also submit a reclamation plan (including removal of any structures) and post financial assurance to guarantee that the reclamation plan is implemented at the miner’s expense.

Notably, the use and occupancy rules also include expedited enforcement measures. BLM may issue an immediate suspension order if use and occupancy is not reasonably incident to prospecting, mining, or processing operations; if the operator is not in compliance with all applicable Federal and State standards, including obtaining all required permits; or an immediate, temporary suspension is necessary to protect health, safety, or the environment. 43 C.F.R. § 3715.7-1. Operators who fail to comply with such an order may be subject to a civil action in federal court and BLM can demand monetary compensation for damages. 43 C.F.R. § 3715.7-2. BLM has issued 89 suspension orders since 2000 under the 3809 regulations, and 12 immediate suspension and 10 cessation orders under the 3715 regulations.⁴ The data demonstrate that BLM has the authority and enforcement tools it needs to deal with unauthorized use of mining claims.

Unauthorized occupancy of claims would be treated no differently under H.R. 2925 than it is under current law. H.R. 2925, as with existing rules, allows surface occupancy only for mining-related purposes. Claimants would still have to consult with BLM before any occupancy happened, and would have to justify their proposed activities as “reasonably incident to mining” and “reasonably calculated to lead to the extraction and beneficiation of minerals.” Occasional panning for gold does not meet the regulatory standard.

The questions posed to Dr. Feldgus in the January 31 Subcommittee hearing embody some of the most extreme allegations made by opponents of the Mining Regulatory Clarity Act. Opponents complain that H.R. 2925 would open the floodgates, allowing mines in National Parks, and proliferating nuisance claims, frustrating the ability of federal land managers to protect parks and other protected places. However, when the questions are examined closely, it becomes clear that the conduct they hypothesize has nothing to do with H.R. 2925. The legislation does one thing: it reinstates the law regarding mining-related uses of mining claims on public lands that existed prior to the *Rosemont* litigation. It does not enable or incentivize nuisance claims. It does not authorize or legitimize new mining claims in national parks or other lands withdrawn from mineral entry. It does not change the fact that pre-existing mining claims in withdrawn lands survive the withdrawal *only* if the claimant can prove the claim is “valid,” i.e., that it contains a discovery of a valuable mineral.

To address the concerns raised by critics, the H.R. 2925 savings clause was extensively amended at the Committee markup to make clear that the bill does not change the Mining Law’s provisions regarding claim location, or authorize new mining activity in lands withdrawn from mineral entry. The savings clause should

⁴Interagency Working Group, Recommendations to Improve Mining on Public Lands, Sept. 2023 at p. 32.

resolve concerns about abuse of H.R. 2925. It seems clear that those who continue to oppose H.R. 2925 do so because they do not want the permitting disruptions caused by the *Rosemont* case to be resolved.

Questions Submitted by Representative Lamborn

Question 1. Mr. Haddock, Barrick Gold mines gold and copper at this time, can you talk about the hardrock mining industry and perhaps opine a little on where these minerals are going? Are they for national security assets, do they help us secure the supply chain? Are they even in support of clean energies?

Answer. As you point out, Barrick produces copper and gold.

Copper

We produce both copper concentrates and cathode copper. Copper concentrates are crushed rock, still in mineral form, processed to separate and concentrate the copper bearing minerals. Copper cathode is produced by leaching elemental copper from the crushed rock and then passing an electrical current through the solvent to remove the copper. Barrick sells its copper concentrate to smelter operators that are typically part of metals trading companies. Barrick sells its cathode to metals trading companies and to end users who fabricate piping, wire, and other copper products. The metals trading companies sell the copper product from Barrick's mines onward into the global copper market.

Copper produced by Barrick and sold into the market is used for all of the traditional uses of copper as well as the uses that support the transition to clean energy. Put simply, copper is the "metal of electrification." Its traditional use includes the wiring in all buildings and infrastructure, including our homes, and virtually everything that uses electricity, including automobiles and, of course, military vehicles, aircrafts, and weapon systems, making copper an obvious national security asset. It is also important to recognize that in the next 25 years, the world will need to produce the same amount of copper that has been produced over the last 5,000 years just to meet global demand.⁵

The predicted spike in copper demand—if not an immediate emergency—should be a wake-up call for U.S. policymakers. Current U.S. mineral policy is not promoting the increased development of domestic copper supplies. Copper mines, like other mines and other major infrastructure projects, suffer from lengthy, multi-layered permitting processes, policy uncertainty, and inevitable delays from litigation. There appears to be growing bipartisan agreement in Congress that permitting reform is needed, but that emerging consensus has yet to produce permitting reform legislation. These hurdles lead to uncertainty for investors about the climate in the U.S. for mine projects. The U.S. Geological Survey's recent Mineral Commodity Summaries for 2024⁶ indicated that last year, the U.S. was 46 percent reliant on foreign sources of copper, which is the highest level recorded amount in the last decade. Without new domestic sources of copper, the percentage of foreign copper reliance is likely to grow.

Daniel Yergin, the Vice Chairman of S&P Global, recently summarized the increasing demand for copper, including "energy transition demand" in testimony before the Senate Energy and Natural Resources Committee.⁷ A few key facts from his testimony are as follows:

1. Each electric vehicle uses two and a half times more copper than a combustion car.
2. The global demand for copper will double over the next 12 years. U.S. demand will more than double in order to meet both traditional demand and energy transition demand over the same period.
3. The U.S. energy transition demand alone will be for 2.6 million tons of copper in the year 2035.
4. The US currently relies on Chile for 60% of its copper imports. The U.S. competes with China for sourcing copper from Chile.
5. There is a serious gap between projected worldwide copper supply and projected demand necessary to meet 2050 climate targets.

⁵ <https://www.worldbank.org/en/news/infographic/2019/02/26/climate-smart-mining>

⁶ <https://pubs.usgs.gov/periodicals/mcs2024/mcs2024.pdf>

⁷ Prepared Testimony of Daniel Yergin, U.S. Senate Committee on Energy and Natural Resources, September 28, 2023.

Other researchers have reached similar conclusions.⁸

Gold

By various processes that are customized to each of our precious metals mines, Barrick produces a product called gold “doré” (pronounced “door-A.”). Gold doré is a brick of gold about the size of a loaf of bread. The doré, though relatively pure, is then sent to a refinery where it is refined to 99.9% fine gold. The resulting gold bullion is sold on a global market. While major uses of gold over recent decades include use as a financial product to central banks, ETF’s and similar investment mechanisms, bullion investors, or in jewelry, it is an increasingly important component of technologies that are the foundation of modern life.

Like copper, gold is one of the primary metals used as a conductor of electricity. All computers, cellphones, cars, and anything else that runs on a chip contain some amount of gold. Because gold does not corrode it is used in those connections where reliability and durability are critical. Accordingly, gold is used in various applications in spacecraft because of the extreme conditions encountered in space along with limited ability to repair/replace nonfunctioning wiring and equipment. The U.S. Space Force relies on it. Our nation’s advanced weapons systems all use chips and therefore all use gold.

Gold is also increasingly used in cutting edge battery and fuel cell research and production because in certain alloy configurations it has been found to enhance battery life. Gold is used in medical technology, not just in instruments and dental applications, but in new nano-procedures for early detection and treatment of diseases, including cancer. Finally, advanced computing technologies, such as quantum computing and artificial intelligence, do and will continue to rely on gold in chips for superior conductivity, reliability, and durability.

Copper and Gold as National Security Assets

As surveyed above, both copper and gold have critical uses in defense, computing, and aerospace technology, making them important as national security assets. Although gold bullion is sold on global markets, the domestic gold mining industry is an advantage and benefit to the United States. The U.S. is the fifth largest global producer, behind China, Australia, Russia, and Canada, and the Nevada Gold Mines complex in northern Nevada is the largest gold-mining complex in the world. In an emergency, the U.S. would be able to produce enough gold to meet defense and other demands.

The U.S. also has significant copper reserves, but the difficulty in permitting new copper mines, along with the predicted dramatic increase in global demand, should be a warning signal to U.S. policymakers. As copper demand rises for energy transition, economic growth, and other needs, competition for global supplies will increase, along with prices. The U.S. needs its own domestic copper supplies.

I am not an expert with respect to why, when, and how much gold central banks buy and hold to support their currencies and economies. However, I can say that historically, gold has functioned as a currency and a store of wealth, and nations—including the U.S.—continue to own gold to support currencies. Despite currencies no longer being tied to a gold standard, gold remains very attractive compared to other reserve assets. It has no political risk, it cannot be debased, and it cannot be talked down in a currency war of words. Gold is not subject to cyber-attacks. Gold remains an important reserve asset—valued for its performance in times of crisis, its long-term store of value, and lack of default risk.

The current high gold prices—even as the U.S. economy grows and stock markets reach all-time high values—speak to rising global uncertainty about the future. As the U.S. Department of Commerce has recognized, “Economic security is national security.”⁹ Being able to produce such an important asset domestically in times of uncertainty and when global markets might be disrupted is therefore obviously important.

Mr. GRAVES [presiding]. Thank you. Our next witness is Mr. Craig Mueller, who is the President and CEO of American Gilsonite Company, and based out of Houston, Texas.

⁸See, McKinsey & Company, The net-zero materials transition: Implications for global supply chains. July 2023.

⁹U.S. Department of Commerce, Strengthen U.S. Economic and National Security, <https://2017-2021.commerce.gov/about/strategic-plan/strengthen-us-economic-and-national-security.html>, last visited February 19, 2024.

Mr. Mueller, you are recognized for 5 minutes.

**STATEMENT OF CRAIG MUELLER, PRESIDENT AND CEO,
AMERICAN GILSONITE COMPANY, HOUSTON, TEXAS**

Mr. MUELLER. Thank you, Mr. Chairman, Ranking Member Ocasio-Cortez, and distinguished members of the Committee. My name is Craig Mueller. I am the CEO of American Gilsonite Company, AGC for short. I appreciate the opportunity to testify today, and I especially want to thank Congressman John Curtis, who sponsored the bill I am here to discuss, along with three of his delegation from Utah's Congressional Delegation who joined him as original co-sponsors, Representatives Celeste Maloy, Blakemore, and Burgess Owens.

AGC is one of two enterprises in the Uintah Basin of north-eastern Utah that produce a naturally occurring carbon-based resin, an asphaltite called uintaite.

There are three types of asphaltites which differ mostly in terms of their carbon and sulfur content, specific gravity, and the temperature at which they soften. Apart from uintaite in the United States, there are two lower-quality asphaltites: grahamite, found in Argentina and other portions of the United States; and glance pitch, which is found principally in Iran and, to a lesser extent, Colombia.

Uintaite is unique, with its own chemical fingerprint that distinguishes it from other asphaltites in lab testing. Its strength, flexibility, extreme lightweight, and environmentally friendly profile make it a superior additive in drilling fluids and cementing applications, as well as improving performance and quality in asphalt, inks, paints, stains, construction materials, and foundry castings.

To fully appreciate the impetus behind H.R. 7004, a bit of history is in order. In 1885, geologist William Phipps Blake gave the asphaltite located in Utah its scientific name, uintaite. The following year our company's namesake, Samuel Gilson, began producing and selling uintaite. In 1895, the company registered a trademark for the name Gilsonite with the U.S. Patent Office. The company subsequently registered it in Germany, the UK, Japan, Ireland, and Brazil, and we are careful to keep our registrations current.

Later, in the wake of the 1970s energy crisis, America sought to reduce its dependence on foreign oil. The nation adopted a multifaceted approach, including fossil fuel alternatives. In 1976, the EPA stated there are no significant existing or anticipated processes for the recovery of U.S. tar sand hydrocarbon materials through at least the year 2000.

Nevertheless, in 1981, Congress amended the Mineral Leasing Act through a bill titled, "An Act to Facilitate and Encourage the Production of Oil from Tar Sand and Other Hydrocarbon Deposits." In the text of that bill, Congress mistakenly aggregated uintaite with tar sand, and significantly dubbed it lowercase "gilsonite," minus the Circle-R symbol that attaches to legally registered trademarks. Based on the substance of naming history alone, Congress erred in using Gilsonite generically for legislative purposes.

Here is why this is so important to American Gilsonite and our clients. Foreign competitors have long been marketing

mineralogically similar but inferior asphaltites labeled as Gilsonite. Unfortunately, the lowercase gilsonite in the MLA encourages this trademark infringement. When AGC defends its trademark in court, the company must overcome claims that Gilsonite is a valid generic term for a range of asphaltites that in truth are not identical in terms of their chemistry or their performance.

It is important to note that the primary offender is the nation of Iran. Iran produces glance pitch at a state-subsidized cost and sells it abroad as Gilsonite, including in the United States by trans-shipping product through countries such as Turkey, India, and China, in violation of U.S. sanctions. Given that a sizable portion of Iran's economy is supported by its government, it is reasonable to suspect that proceeds flow to Iranians' Revolutionary National Guard.

This bill simply corrects a 43-year-old legislative drafting error by substituting the word "asphaltite" for the word "gilsonite."

Mr. Chairman, we have worked with Customs and Border Protection and the State Department, yet such products are still finding their way into the United States. This simple legislative change would allow AGC's efforts to defend its trademark and allow for appropriate differentiation of the different types of asphaltites. Continuing to litigate "gilsonite" imposes a financial burden on our company, impacts employment, and distracts us from our mission of providing a solid supply chain for our clients.

Thank you for the time today. I will be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF CRAIG MUELLER, CEO, AMERICAN GILSONITE COMPANY
ON H.R. 7004

Good morning, Mr. Chairman and distinguished members of the Committee. My name is Craig Mueller, I am CEO of the American Gilsonite Company, AGC for short.

I appreciate the opportunity to testify this morning, and I especially want to thank Congressman John Curtis, who sponsored the bill I am here to discuss, along with three of his colleagues from Utah's congressional delegation who joined him as original co-sponsors: Representatives Celeste Maloy, Blake Moore, and Burgess Owens.

AGC is one of two enterprises in the Uinta Basin of northeastern Utah that produce a naturally occurring carbon-based resin, a type of asphaltite called uintaite. There are three types of asphaltites, which differ mostly in terms of their carbon and sulfur content, specific gravity, and the temperatures at which they soften. Apart from uintaite in the U.S., there are two lower quality asphaltites: grahamite found in Argentina and portions of the U.S., and glance pitch, which is found principally in Iran and to a lesser extent in Colombia.

Uintaite is unique, with its own chemical fingerprint that distinguishes it from other types of asphaltite in lab testing. Its strength, flexibility, extreme light weight and environmentally friendly profile make it a superior additive in drilling fluids and cementing applications, as well as improving performance and quality in asphalt, inks, paints, stains, construction materials, and foundry castings.

To fully appreciate the impetus behind H.R. 7004, a bit of history is in order. In 1885, geologist William Phipps Blake gave the asphaltite located in Utah its scientific name: uintaite. The following year, our company's namesake, Samuel Gilson, began producing and selling uintaite.

In 1895, the company registered a trademark for the name Gilsonite® with the U.S. Patent Office. The company subsequently registered it in Germany, the U.K., Japan, Ireland, and Brazil, and we are careful to keep our registrations current.

Later, in the wake of the 1970s energy crisis, America sought to reduce its dependence on foreign oil. The Nation adopted a multifaceted approach, including fossil fuel alternatives.

In 1976, the EPA stated, "There are no significant existing or anticipated processes for the recovery of United States' tar sand hydrocarbon materials" through at least the year 2000. Nevertheless, in 1981 Congress amended the Mineral Leasing Act through a bill titled, "An Act to facilitate and encourage the production of oil from tar sand and other hydrocarbon deposits."

In the text of that bill, Congress mistakenly aggregated uintaite with tar sand and, significantly, dubbed it lower-case "gilsonite" minus the Circle R symbol that attaches to legally registered trademarks. Based on the substance's naming history alone, Congress erred in using "gilsonite" generically for legislative purposes.

Here is why this is so important to AGC and our clients. Foreign competitors have long been marketing mineralogically similar but inferior asphaltites labeled as Gilsonite®. Unfortunately, the lower-case "gilsonite" in the MLA encourages this trademark infringement. When AGC defends its trademark in court, the company must overcome claims that "gilsonite" is a valid generic name for a range of asphaltites that in truth are not identical in terms of their chemistry or their performance.

It is important to note that the primary offender is the nation of Iran. Iran produces glance pitch at state-subsidized cost and sells it abroad as "gilsonite," including in the U.S. by transshipping product through third-party countries like Turkey, India and China in violation of U.S. sanctions. Given that a sizable portion of Iran's economy is controlled by its government, it is reasonable to suspect that proceeds flow to Iran's Islamic Revolutionary Guard.

This bill simply corrects a 43-year-old legislative drafting error by substituting the word "asphaltite" for the word "gilsonite."

Mr. Chairman, we have worked with Customs and Border Protection and the State Department, yet such product still finds its way into the U.S. This simple legislative change would aid AGC's efforts to defend our trademark and allow for appropriate differentiation of the different types of asphaltites. Continuing to litigate "gilsonite" imposes a financial burden on our company, impacts employment, and distracts us from our mission of maintaining a reliable supply chain for our clients.

Thank you again for the opportunity to testify today. We look forward to working with the Committee to ensure the bill's passage in the House and Senate, and I would be happy to answer any questions the Committee has at this time.

Mr. STAUBER [presiding]. Thank you very much for your testimony. Our next witness is Mr. Jeffrey Stiffarm, and he is the President of the Fort Belknap Indian Community, and he is stationed in Harlem, Montana.

Mr. Stiffarm, you are now recognized for 5 minutes.

STATEMENT OF JEFFREY STIFFARM, PRESIDENT, FORT BELKNAP INDIAN COMMUNITY, HARLEM, MONTANA

Mr. STIFFARM. Good afternoon, everyone, and thank you for your time and this honor to speak on behalf of our people back at Fort Belknap.

Mr. Chairman and members of the Subcommittee of Energy and Mineral Resources, my name is Jeffrey Stiffarm, and I am the President of the Fort Belknap Community in central Montana. I would like to talk about how hardrock mining has devastated the Fort Belknap Reservation, and to illustrate this tribe's opposition of the Mining Regulatory Clarity Act and vital need for meaningful reform of the 1872 Mining Law to prevent what happened to my people from happening to others.

The Fort Belknap Indian Reservation is the home of the Gros Ventre and Assiniboine Tribes. To us, we call ourselves the Aaniiih and the Nakoda people. Our reservation was established and set

aside for the Tribes' use by an Act of Congress in 1888. At the time, the Tribes received assurances from the U.S. Government that we would retain our rights to all water necessary to fulfill the purposes of the reservation, including waters originating from the Little Rocky Mountains that the tribal members used for irrigation, domestic supplies, and other purposes.

The original Fort Belknap Reservation included the Little Rocky Mountains, which are considered sacred by the Tribe's members, and were traditionally used by tribes for hunting, fishing, culture, and spiritual purposes. When gold was discovered in the Little Rockies in the 1880s, the Federal Government pressured our tribes to cede the gold-bearing areas of the reservation to the United States. Congress carved out the Little Rocky Mountains from the reservation boundaries in 1896.

[Slide.]

Mr. STIFFARM. As you can see on our map on the southern border, that little notch, that is what we call the Grinnell Notch. That was taken from our people in 1896. And the reason why our ancestors gave that up was there was threat of starvation of our people. That is where gold was found.

A Canadian-owned mining company, Pegasus Gold, filed claims on these lands. Two modern cyanide leach gold mines were approved and operated on these lands under BLM-approved plans of operations from 1981 to 2003. At its largest, the mining complex covered over 1,200 acres. The Zortman and Landusky mine sites are surrounded on three sides by the Fort Belknap Reservation, and sits at the headwaters of many creeks that eventually flow through the reservation. Leaching at the Zortman and Landusky mines resulted in vast amounts of acid mine drainage that contaminate the water supply that supports the Fort Belknap community and the town of Zortman.

[Slide.]

Mr. STIFFARM. As you can see in this next picture, the acid drainage from the mining, you can tell by the color of the water. And it is like that, and all that drainage is down into our reservation and into our towns and our homes. That caused a lot of sickness. We live with cancer, it causes a high rate of autism in our children.

We had some grassroots community members called protectors and Red Thunder back in the 1970s and 1980s fighting these mines. And here we are today, in 2024, still doing the same thing and fighting for our rights, for our lives, for our people.

This mining drainage on that first map we showed you, you saw the watershed where the water drained onto the reservation directly coming from the Little Rocky Mountains and where the mines were.

[Slide.]

Mr. STIFFARM. On this last picture, if you can put it up, please, that is the picture of our Sundance grounds. And to our people, that is the highest ceremony for us. It is like the Catholic cathedral. That is Mother Earth. And you can see in the front of that picture there, that orange, that is a creekbed running from the mines, acid tailings. And you can see the color of the rock.

Now, imagine that in your backyard, your homes, and your communities where you live, where you raise your children, or your

grandchildren are going to live. Would you allow that? I think not. But that is what is happening to our people at Fort Belknap, and we have been living in that for generations.

I thank you for your time, and I look forward to your questions. [Speaking Native language.]

[The prepared statement of Mr. Stiffarm follows:]

PREPARED STATEMENT OF JEFFREY STIFFARM, PRESIDENT, FORT BELKNAP
INDIAN COMMUNITY
ON H.R. 2925 AND H.R. 6862

I. Introduction

Mr. Chairman and Members of the Subcommittee on Energy and Mineral Resources, thank you for the opportunity to testify before you. My name is Jeffrey Stiffarm, and I am the President of the Fort Belknap Indian Community in Central Montana. I'd like to talk about how hard rock mining has devastated the Fort Belknap Reservation to illustrate the Tribes' opposition to the Mining Regulatory Clarity Act and the vital need for meaningful reform of the 1872 Mining Law to prevent what happened to my people from happening to others.

II. History of Mining in the Little Rocky Mountains

The Fort Belknap Indian Reservation is home to the Gros Ventre and Assiniboine Tribes. Our Reservation was established and set aside for the Tribes' use by an Act of Congress in 1888.¹

At that time, the Tribes received assurances from the United States government that we would retain our rights to all water necessary to fulfill the purposes of the Reservation, including waters originating in the Little Rocky Mountains that Tribal members used for irrigation, domestic supplies, and other purposes.²

The original Fort Belknap Reservation included the Little Rocky Mountains, which are considered sacred by Tribal members, and were traditionally used by the Tribes for hunting, fishing, cultural, and spiritual purposes.

When gold was discovered in the Little Rockies in the 1880s, the federal government pressured our Tribes to cede the gold-bearing areas of the Reservation to the United States. Congress carved out the Little Rocky Mountains from the Reservation's boundaries in 1896.³

A Canadian owned mining company, Pegasus Gold, filed claims on these lands and two modern cyanide leach gold mines were approved, and operated on these lands under BLM-approved Plans of Operations from 1981–2003.⁴ At its largest, the Zortman-Landusky mining complex covered over 1,200 acres.

III. The Contamination

The Zortman and Landusky mine sites are surrounded on three sides by the Fort Belknap Reservation and sit at the headwaters for many creeks that eventually flow through the Reservation.

Heap leaching at the Zortman-Landusky mines resulted in vast amounts of acid mine drainage that contaminated the water supply that supports the Fort Belknap Indian Community and the Town of Zortman.⁵

In fact, the Tribes are facing permanent surface and groundwater contamination and continue to suffer from multiple devastating and lasting harms to the Tribes' beneficial uses, including impairment of drinking water, fish and wildlife habitat,

¹ 25 Stat. 113 (May 1, 1888).

² See *Gros Ventre Tribe v. United States*, 469 F.3d 801, 804-05 (9th Cir. 2006); see also *Winters v. United States*, 207 U.S. 564, 567, 576 (1908) (recognizing Tribes' right to all waters flowing to and entering Reservation lands, "undiminished in quantity and undeteriorated in quality").

³ 29 Stat. 350 (1896).

⁴ U.S. Bureau of Land Management, Action Memorandum for Water Management at the Zortman And Landusky Mines, Non Time-Critical Removal Actions, Malta Field Office, Bureau of Land Management, Phillips County, Montana. September 2006.

⁵ *Montana Department of Environmental Quality v. Luke Ployhar Blue Arc LLC. et al.*, Case No. DV-2023-10. April 18, 2023. Finding of Fact, p. 3.

recreation, agricultural, and industrial uses.⁶ Acid mine drainage has likewise resulted in public health risks and continues to threaten the Tribes' powwow grounds, ceremonial and sacred sites, including other areas of cultural significance.

IV. Continued Contamination and Threats from New Mining

As stated by the U.S. District Court for Montana, “[i]t is undisputed that the Zortman-Landusky mines have devastated portions of the Little Rockies, and will have effects on the surrounding area, including the Fort Belknap Reservation, for generations. That devastation, and the resulting impact on tribal culture, cannot be overstated.”⁷

After Pegasus Gold declared bankruptcy, the mine was designated a CERCLA site under the Superfund program.⁸ On October 5, 2000, the Interior Secretary issued Public Land Order (PLO) 7464 withdrawing approximately 3,500 acres from new mine claims in order to facilitate CERCLA (Superfund) cleanup.⁹ Since then, state and federal agencies have contributed tens of millions of dollars for reclamation and water treatment at the site, and the BLM estimates that an additional \$2.2 million will be needed every year for water treatment for the foreseeable future.¹⁰

In order to continue the ongoing reclamation work, the BLM continued to establish mineral withdrawals to prevent new mining activities that could interfere with that work.¹¹ Unfortunately, a 2-day lapse in the mineral withdrawal renewal resulted in ten new mining claims being staked on BLM lands within the Zortman Landusky Reclamation Area¹²—jeopardizing the enormous investment in existing and ongoing reclamation work.

The owner of the company that staked the new claims, Blue Arc LLC, is currently the subject of an enforcement action by the State of Montana for alleged illegal exploration activities on other nearby lands.¹³

Under existing law, Blue Arc would not be able to move forward with a plan of operations on its mining claims within the mineral withdrawal without demonstrating that it has valid claims.¹⁴ If the Mining Regulatory Clarity Act were law, however, these claims would automatically be considered a “valid existing right,” which would establish a vested property right here and on mining claims on

⁶Montana Department of Environmental Quality, Landusky Metals Total Maximum Daily Loads and Framework Water Quality Improvement Plan, March 2012, Available at: <https://deq.mt.gov/files/water/wqpb/CWAIC/TMDL/M31-TMDL-01a.pdf>

⁷Gros Ventre Tribe, et al. v. United States, et al., No. CV 00-69-M-DWM, slip op. at 12 (D. Mont. June 28, 2004).

⁸U.S. Bureau of Land Management, Action Memorandum for Water Management at the Zortman And Landusky Mines, Non Time-Critical Removal Actions, Malta Field Office, Bureau of Land Management, Phillips County, Montana, September 2006.

⁹Please see PLO 7464 (65 FR 59463, Oct. 5., 2000) The Secretary has subsequently extended this mineral withdrawal in PLOs 7643, 7753, and 7841.

¹⁰U.S. Bureau of Land Management, Press Release, Withdrawal Established to Protect Zortman Landusky Mine Reclamation Site, September 9, 2022. Available at: <https://www.blm.gov/press-release/withdrawal-established-protect-zortman-landusky-mine-reclamation-site>

¹¹Id.

¹²Specifically, reclamation efforts within the Zortman-Landusky Reclamation Area were jeopardized by the Department of Interior's failure to maintain the mineral withdrawal protections between the expiration of PLO 7464 on October 4, 2020 and the segregation of lands under this proposed mineral withdrawal on October 7, 2020. This 48-hour lapse in protection allowed 10 mining claims to be staked on October 5, 2020 by Luke Ployhar/Blue Arc LLC on BLM lands within the mineral withdrawal boundaries.

¹³See Montana DEQ, Violation Letter #VLHRM20220330-00071 to Luke Ployhar/Blue Arc LLC, April 1, 2022 (The Montana Department of Environmental Quality recently issued notices of violations against Luke Ployhar/Blue Arc LLC for allegedly conducting exploration and mining activities at seven locations in Township 25N, Range 25E, Section 7 without a permit. The disturbance associated with these unpermitted and unbonded mining activities contributes further to the degradation of the reclamation efforts in the Zortman Landusky Reclamation Area.) Montana DEQ subsequently filed a request for a preliminary injunction to allow DEQ to reclaim the disturbed lands to prevent any additional infiltration of groundwater into the water treatment system and previously reclaimed areas . . . This order was issued in Phillips County District Court case DV-2023-10 (August 2023)

¹⁴The withdrawal of federal lands from mineral exploration and development does not apply to claimants with “valid existing rights” on mining claims previously located on the segregated lands. However, existing mining claims on lands going through the withdrawal process must be valid in order for the claim to be exempt from the segregative effects of a withdrawal notice. 43 C.F.R. § 2091.0-7. As BLM regulations currently state: “After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid.” 43 C.F.R. § 3809.100(a).

all federal public lands. This would interfere with the US Government's cleanup here, and come at the expense of protecting Tribal, environmental, and natural resources across the West.

This is a public health and safety threat of the highest magnitude. Future exploration or mining activities at the site not only threatens the health and welfare of tribal members and tens of millions in CERCLA clean-up work, it threatens to further desecrate sacred tribal land, including the potential to disturb the graves of relatives and ancestors of tribal members.

The 1872 Mining Law is an outdated law that has failed to protect communities like mine. It's hard to believe that Congress is considering legislation today that would make this law worse. The 1872 Mining Law must be reformed to better protect communities and Tribes, such as the legislation outlined in the Clean Energy Mineral Reform Act, introduced by Senator Heinrich and Congressman Grijalva.¹⁵

V. Closing

The water is flowing orange from acid mine drainage. The events at the Fort Belknap Indian Community are not unique. Other such scenarios exist and more will occur in the future if the 1872 Mining Regulatory Act is passed. And it won't just affect Indian Country. Our planet is in a vulnerable state. Unsubstantiated claims cannot be allowed.

Reform of U.S. mining laws must include meaningful consultation with Tribes and also the ability to say "no" to mines that would harm other important land uses. It cannot allow mining companies to trample communities and Indigenous rights by allowing a company to stake an indefinite number of claims and allow that company to move forward with activities on those claims without any demonstration that there are even valuable minerals there.

The Fort Belknap Tribes appreciate the opportunity to testify today against the Mining Regulatory Clarity Act, and to urge support for meaningful reform of the 1872 Mining Law.

VI. President Stiffarm's Press Quote In Full

The Fort Belknap Indian Community opposes the Mining Regulatory Clarity Act. The Gros Ventre and Assiniboine Tribes have been directly affected by mining atrocities and to this day, suffer the harmful effects of mining under the 1872 Mining Law. The Mining Regulatory Clarity Act would make this outdated law worse by allowing mining companies, including foreign-owned companies, to dispose of mine waste on public lands without demonstrating that the companies hold valid claims. The Fort Belknap Indian Community faces permanent surface and groundwater contamination from decades of hard rock mining in the Little Rocky Mountains on and adjacent to the Fort Belknap Reservation and continues to suffer from multiple devastating and lasting harms to the Tribes' beneficial uses, including impairment of drinking water, fish and wildlife habitat, recreation, agricultural, and industrial uses.

We urge Congress to reject legislative proposals that make this colonial-era law worse, and to move forward with meaningful reform of the 1872 Mining law as outlined in the Clean Energy Mineral Reform Act, introduced by Senator Heinrich and Congressman Grijalva.

¹⁵ <https://democrats-naturalresources.house.gov/media/press-releases/ranking-member-grijalva-sen-heinrich-introduce-mining-reform-legislation-to-protect-communities-tribal-consultation-and-environment->

When Science Wins

For more than 20 years, researchers at Aaniiih Nakoda College and the Fort Belknap Reservation's Environmental Protection Department have worked to document the harm done by an abandoned gold mine adjacent to the reservation. Their findings are now helping block efforts to restart exploration within the mine site.

By Paul Boyer
Native Science Report
May 31, 2022



South Big Horn Creek, which flows from the Zortman and Landusky Mines onto the reservation, is stained red from acid mine drainage. Aaniiih Nakoda College researchers found that the water was no longer able to support life. Photo courtesy of Aaniiih Nakoda College

For decades, a massive open pit gold mine on the southern border of the Fort Belknap Reservation of Montana methodically transformed a forested mountain landscape sacred to the Aaniiih and Nakoda people into a moonscape of craters and crushed rock. Highly acidic water, tainted by cyanide used to extract particles of gold and silver from ore, flowed down the mountains and onto reservation land, turning streams red and killing aquatic life.

The Zortman and Landusky Mines closed in 1997 when the value of gold dropped and Pegasus Gold Corp, its parent company, went bankrupt, but the damage remains and may be irreparable. Declared a federal Superfund site, millions of dollars are spent every year by the state of Montana to treat polluted water draining out of abandoned pits and leach fields. Experts say this work will continue “in perpetuity,” meaning, for all practical purposes, forever.



One of two water treatment plants constructed to neutralize acidic water draining from the mine. Because there is no way to stop the exposed rock from generating acidic runoff, mitigation must continue around the clock and “in perpetuity.” Photo by Paul Boyer

But the urge to squeeze profit from the land, despite its grim history and lasting harm, also remains. An effort is now underway to restart exploration and potentially renew mining on privately owned land within the mine’s boundaries and a short distance from the tanks, pipes, containment ponds and water treatment plant working around the clock to mitigate the damage already done.

This incongruous turn of events was triggered by a seemingly small bureaucratic oversight when, in 2020, a five-year federal moratorium on issuing mining claims expired 48 hours before a new moratorium, also known as a “mineral withdrawal,” was issued. During this two-day gap, according to a 2021 complaint filed by the Fort Belknap Indian Community and several conservation groups, ten claims were filed in the Zortman Landusky Reclamation Area by Blue Arc LLC, a mining exploration company owned by Luke Ployhar, who purchased mine claims totaling over 1,000 acres after Pegasus declared bankruptcy.

At first, it looked like Montana’s Department of Environmental Quality would give the green light to Blue Arc’s proposal to dig an exploratory trench in anticipation of renewed mining. That’s what many community members expected. Between 1979 and the mid 1990s, state and federal regulators approved eleven requests to expand mining operations with only minimal environmental review. These expansions happened despite strong opposition from the Fort Belknap Community.

But then something unexpected happened: In the wake of a public meeting held on January 4, 2022, the DEQ announced that it would require additional analysis of Blue Arc’s request, citing strong community opposition and what it called “conflicting evidence from credible and potentially expert sources.”

“This evidence raises substantial questions regarding whether significant impacts could occur to historical, archeological, social and cultural resources as a result of the proposed actions,” according to a DEQ statement. “Based on the current information before us, DEQ cannot say with certainty that potentially significant impacts do not exist.”

To say that the tribe and other mine opponents were surprised by this favorable ruling is putting it mildly. As a story in the Havre Daily News put it, “this decision came as a shock to many on Fort Belknap”—not simply because the project was at least temporarily blocked, but because tribal members were heard, and their arguments carried weight. Perhaps for the first time, they were called a “credible” and “potentially expert” source of information by an agency that many tribal activists had long viewed as their adversary.

Of course, the battle is not yet won, but this particular victory is evidence, some say, of the tribes' growing capacity to fight back. Initially, the Fort Belknap Community, constrained by limited resources, relied on the work of local environmental groups, recalled tribal Environmental Manager Ina Nez Perce. "They were fighting the fight," she said, but it was a lopsided battle against what was, for a time, the world's largest cyanide heap leach mine.

In the early 1990s, however, the work of citizen-activists was strengthened by leadership from the tribal government, Nez Perce said. The tribes' environmental protection office now has more staff and resources to monitor water quality and habitat conditions, and elected officials are also vocal advocates for the reservation's water quality and water rights.

But essential to this activism and political leadership is the growing research capacity of Aaniiih Nakoda College, the local tribal college, which has been gathering data on water quality for over 20 years and recently established, with \$3.5 million in funding from the National Science Foundation, the interdisciplinary Nic?-Mni (Water) Center to expand its research and share findings through an annual forum. Data collected by STEM faculty and Nic?-Mni staff provide compelling evidence of ongoing environmental damage to waterways, groundwater and ecological systems.

In a statement provided to the Daily Montanan following the DEQ ruling, Luke Ployhar, owner of Blue Arc, appeared to argue that the Zortman and Landusky Mines had not impacted tribal watershed, asserting, "Any and all claims by the Tribes of bad water extending onto their lands is a blatant falsehood. The water treatment facilities put in place by Pegasus Mining are able to capture and contain and process any historical elevated acidic waters."

In fact, data collected by the college paints a very different story. Examining water from streams flowing out of the mine's land and onto the reservation, tribal and college scientists have filled boxes with evidence documenting significant damage to several key waterways.

A paper coauthored by college scientists and students in the natural resources program, recently published in the White Clay and Nakoda Circle Speaker Environmental Newsletter, summarized findings from a years-long aquatic study managed by the college's EPA-funded Water Laboratory, a research program that predates the new Water Center. Purposefully following EPA procedures and protocols so that findings could be presented in court, the study found significant damage to key waterways, even years after mining ended.

King Creek, which has its headwaters in the mine, "remains a severely impacted drainage," according to the paper. Another stream, Swift Gulch, "has been totally disrupted by mining activity and reclamation efforts."

"With extensive field and laboratory studies we found that the contamination from the mine, as it continues toward the reservation, is rapidly moving downstream with rain or storm events," the paper reported, turning the water in some creeks bright red. Tailings and sediment collected along the drainages of these and other creeks found "heavy metal contamination with some exceeding health levels allowed in surface water."

"We have the water quality data to back up that water coming onto the reservation is impacted," said Mitchell Healy, the tribes' water quality coordinator, who holds an associate degree in natural resources from Aaniiih Nakoda College and a master's degree in environmental management from the University of Maryland University College. "It's from the mines. It's obvious. There are no ifs, ands or buts about it."

Additionally, data collected by Aaniiih Nakoda College faculty member Dan Kinsey and natural resource students also document the impact of polluted water on invertebrate life. Using fine-mesh kick nets to collect larvae and insects from several streams, he and the students report that most impacted streams are nearly lifeless.

"All of those drainages are polluted," said retired faculty member Liz McClain, summarizing findings from the accumulating data at the January 4 public meeting. "And the water is so polluted nothing will live in it."



Aaniiih Nakoda College faculty member Dan Kinsey (right) with students Teeha Roberts, Doug Anderson and Tia Zander collecting macroinvertebrates from North Fork of Little People's Creek.

Researchers also investigated the mine's impact on the larger ecosystem, including land that has been "reclaimed." Before mining, the mountainous region was forested and supported a rich variety of animal and plant life, with equally complex microbial life in the topsoil. Mining stripped away the soil, leaving deep cavities and acres of bare ground and crushed rock.

Much of this remains, but some parts have been covered with dirt and planted with grass, reflecting a long-standing approach to land reclamation that focuses more on covering an eyesore than on restoring a habitat. While this work softened the edges of excavated cavities, research conducted between 2002 and 2006 by Water Lab personnel, supported by funding from the USDA Tribal Colleges Research Grants Program and carried out in partnership with restoration ecologists at the University of Wyoming, found that soil in these reclaimed regions cannot break down organic matter as efficiently as soil in undisturbed parts of the surrounding mountains.

Analysis of two test sites found that soil contained "minimal levels of organic matter needed to support microbial activity as well as sustain plant growth and nutrient recycling," compared with undisturbed test sites, according to a paper published in *Circle Speaker*. College scientists caution that it is important to continue monitoring the soil to better understand the process of regeneration, but their work provides more evidence that the mine's harm is systemic, long term, and may require many years—possibly generations—to restore what was lost.



A view into the Landusky mine pit. Collectively, the Zortman and Landusky Mines encompass 1,200 acres of land that formerly belonged to the Fort Belknap Reservation. Photo by Paul Boyer

This evidence, combined with a history of mistrust toward state and federal officials, is shaping the response to the proposed exploration. State DEQ officials, speaking at the January 4 public meeting, argued that Luke Ployhar was only requesting approval for a relatively small exploratory trench. Tribal leaders and state environmental organizations who spoke at the meeting rejected this reassurance.

To insist that the proposal is only about a trench the size of a city bus and will have no environmental impacts “only serves the purpose of ignoring reality,” said Derf Johnson, a staff attorney with the Montana Environmental Information Center. “Mining exploration leads to mining. It’s the first step in what could be a whole range of activities and impacts.”

Multiple speakers also emphasized what they characterized as the DEQ’s track record of minimizing potential risk, inadequately investigating the damage done and failing to seek input from the tribe.

“Fort Belknap opposes this new mining permit that you guys are looking at for Luke Ployhar, based on the fact that, first of all, you guys didn’t consult the Tribes,” asserted Fort Belknap Community Tribal President Jeff Stiffarm. The only time that you did consult the Tribes was when we filed a lawsuit against you guys for not following your laws.”

Stiffarm also pressed the DEQ officials to explain how Ployhar was able to complete and submit all of the paperwork required for approval of excavation during the brief 48-hour gap in the moratorium. “Maybe it was you guys that notified Mr. Ployhar about this two-day window,” Stiffarm said. “There’s a lot of unanswered questions that you guys are not answering for us.”

At a deeper level, opposition to mining is guided by the spiritual significance of the Little Rocky Mountains, which are known, respectively, as Bii0 oto? (Fur Cap) and Jyahe widá (Island) Mountains by the Aaniiih and Nakoda nations.

“These mountains are our churches,” Stiffarm said. “That’s how sacred they are to us.”

In his statement made following the DEQ’s decision, Luke Ployhar charged that the Fort Belknap Community opposes his bid only because the tribes want to profit from the land. “Make no mistake, the tribes are interested in this area due to its significant economic possibilities and not cultural heritage.”

It’s a claim strenuously rejected by tribal members fighting renewed mining.

“Mr. Ployhar is mistaken, President Stiffarm said. “The Aaniiih and Nakoda people have zero interest in any more gold mining on or near our reservation . . . For years, we bathed in and ingested the chemical remnants of more than a century of gold mining. We are now continuously fighting to clean up and restore the safety of the waters flowing to our permanent homeland.”

The land where the mine now sits was originally part of the reservation, but sold to the federal government when prospectors discovered gold in the late 19th century. The acreage removed from tribal lands, known as the Grinnell Notch, is named after George Bird Grinnell, the federal government’s negotiator, who, many tribal members say, coerced tribal leaders into relinquishing the land.



The North Fork of Little People’s Creek, which is not impacted by mining, is used by college researchers as a control site. This is what all reservation streams should look like. Photo courtesy of Aaniiih Nakoda College.

Fort Belknap Community Environmental Manager Ina Nez Perce said it is her hope—one shared by many—that the land will be returned to the tribes and that, to the greatest extent possible, the damaged landscape will be restored and returned to its traditional cultural and spiritual uses.

The land is usable, she agreed—but not for mining. “That’s out of the question.”

For decades, the tribes had only limited ability to fight mining companies and their allies in government. The finding from the state DEQ, which acknowledges credible opposition to the planned exploration, suggests that a new era of empowerment is emerging, led by the continuing work of community activists, tribal leadership, and the growing research capacity of both Aaniiih Nakoda College and the tribal environmental protection office.

Even if mining companies and state officials don’t understand the cultural significance, said retired science faculty member Liz McClain, “science can beat them.”

Mr. STAUBER. Thank you for your testimony.

And our final witness today is Dr. John Metesh, and he is the President of the Association of American State Geologists and is stationed in Butte, Montana.

Dr. Metesh, you are now recognized for 5 minutes.

**STATEMENT OF JOHN J. METESH, PRESIDENT, ASSOCIATION
OF AMERICAN STATE GEOLOGISTS, BUTTE, MONTANA**

Dr. METESH. Chairman Stauber and members of the Subcommittee, thank you for the invitation to testify on H.R. 7003.

My name is John Metesh. I am the Montana State Geologist and Director of the Montana Bureau of Mines and Geology. I am testifying today as President of the Association of American State Geologists. AASG represents the directors and state geological surveys in 50 states and Puerto Rico.

The responsibility of each state survey varies depending on legislation and traditions, but most function as an information source for government and society on geology as it relates to water, energy development, mineral development, and geologic hazards, including, of course, landslides.

The sobering fact about landslides is that the geologic conditions under which they occur have been in place for millennia, or eons. The geologic structure that is the type of rock to make up the layers, their weaknesses, fractures, porosity that provides a pathway for water to infiltrate and flow between weak and strong layers, the slope in the hillside, the state of erosion from stream action along the base of the hill have all been in place waiting for a trigger.

And triggering events are familiar. Rain or snowmelt in excess of normal, forest and wildland fires that strip vegetation and roots and alter the soil, and earthquake just strong enough to finally break the bond between layers of rock, or even one too many passes with a Caterpillar at the base of a hill, or a combination of all the above.

As the sponsor mentioned, March 2024 will mark the 10th anniversary of the Oso landslide in northeast Washington State, the deadliest landslide in U.S. history. Heavy rainfall in the previous month triggered a slide that moved 70 million cubic feet, blocking the Stillaguamish River, destroying access roads, and tragically resulted in the death of 43 people and upending the community.

August 2024 will mark the 65th anniversary of the famous Madison Slide just outside Yellowstone Park in Montana. The trigger in this case was a larger-than-normal earthquake that caused nearly 1 billion cubic feet of rock to slide off the mountain, bury the Madison River, and flow hundreds of yards uphill on the opposite side of the valley. Twenty-six campers were buried in moments. Nineteen were never recovered. Three more people were lost in rockfalls and other landslides up the valley, another 250 were stranded.

The Landslide Preparedness Act established two programs: the National Landslide Hazard Reduction Program and the 3D Elevation Program, both of which are especially important to state surveys. Both programs have many important components, but I will use my time to highlight some of those in which state surveys have participated. In fact, the core program of the Landslide Hazard Reduction Program includes mapping and coordinating event response that has already fostered partnerships between the U.S. Geological Survey and the state surveys in Arizona, California, Colorado, Kentucky, North Carolina, Oregon, and, of course, Washington. And these partnerships are well on their way

to developing strategy, developing risk preparedness for their respective states.

The U.S. Landslide Inventory is an interactive map that provides landslide data from all sources, especially state surveys and USGS, and this is a crucial repository for new landslide data nationwide.

The second program under the Landslide Preparedness Act is the 3D Elevation Program, 3DEP. It also collects LiDAR data that are used to create detailed digital images of the Earth's surface with accuracy of centimeters. Its applications are wide-ranging in geologic studies, but for mapping landslides is a revolutionary tool. One of the best ways to assess risk of landslides is to find old landslides, and LiDAR has been instrumental in finding these features, even under dense vegetation.

Chairman Stauber and members of the Subcommittee, for these and many other reasons the Association of American State Geologists fully supports H.R. 7003. Thank you for your time.

[The prepared statement of Dr. Metesh follows:]

PREPARED STATEMENT OF JOHN J. METESH, PRESIDENT,
ASSOCIATION OF AMERICAN STATE GEOLOGISTS,
AND STATE GEOLOGIST AND DIRECTOR, MONTANA BUREAU OF MINES AND GEOLOGY
ON H.R. 7003

Chairman Stauber and other Members of the Subcommittee, thank you for the invitation to testify on H.R. 7003, the National Landslide Preparedness Act Reauthorization Act of 2024.

My name is John Metesh. I am the Montana State Geologist and Director of the Montana Bureau of Mines and Geology. I am testifying today as President of the Association of American State Geologist (AASG). AASG represents the directors of the state geological surveys in all 50 states and Puerto Rico. The responsibilities of each state survey vary, depending upon legislation and traditions. But most function as an information source for government and society on geology as it relates to water, energy development, mineral development, and geologic hazards—including, of course, landslides.

The sobering fact about landslides is that the geologic conditions under which they occur have been place for millennia or eons. The geologic structure—that is, the type of rock that make up the layers and their weakness, the fractures or porosity that provide pathways for water to infiltrate and flow between weak and strong layers, the slope of the hillside, the state of erosion from stream action along the base of the hill have all been in place for centuries or millennia or eons—waiting for a triggering event.

The triggering events are familiar: rain or snowmelt in excess of normal, forest or wildland fires that strip vegetation and roots and alter the soil, an earthquake just strong enough to finally break the bond between layers of rock, or even one too many passes with a caterpillar building a road at the base of a hill.

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The Landslide Preparedness Act established two programs: the National Landslide Hazards Reduction Program and the 3D Elevation Program—both of which are especially important to state surveys. Both programs have many important components, but I will use my time to highlight some of those in which state surveys have participated.

In fact, the core activities of the Landslide Hazards Reduction Program which include mapping and coordinating event response has already fostered partnerships between the USGS and state surveys in AZ, CA, CO, KY, NC, OR, and WA. These partnerships are well on their way to developing strategy and risk preparedness for their respective states.

The US landslide inventory is an interactive map that provides landslide data compiled from local, state, and federal agencies with links to the original sources. The data come from maps and reports published by state geologic surveys as well as the USGS. This will be a crucial repository of new landslide data nationwide, while each survey will be able to host their data on their own websites. These are the data that will help state and local government assess risk and assist in planning for development as well as preparedness.

Of course, AASG members look forward to participating in the nascent grant program. The USGS and AASG members share many cooperative funding efforts related to geology and groundwater. A new funding opportunity for state surveys to support our efforts to map, report, and assisting in preparedness is exciting—we look forward to the pending announcement in FY24.

The second program under the National Landslide Preparedness Act is the 3D Elevation Program, often referred to as 3DEP. This program coordinates efforts of many state and Federal agencies to collect and collate digital elevation data across the country. Digital Elevation Models, or DEMs, or lately LiDAR, or Light Detection and Ranging, are used to create detailed digital images of the earth's surface with an accuracy of centimeters. Its applications are wide ranging in geologic studies, but for mapping landslides—it is a revolutionary tool. One of the best ways to assess risk of landslides is to find old landslides and LiDAR has been instrumental in finding such features—even under dense vegetation.

Chairman Stauber and other Members of the Subcommittee, for these and many other reasons, the Association of American State Geologists fully supports H.R. 7003. Thank you for your time.

QUESTIONS SUBMITTED FOR THE RECORD TO JOHN J. METESH, PRESIDENT,
ASSOCIATION OF AMERICAN STATE GEOLOGISTS

Questions Submitted by Representative DelBene

Question 1. From the perspective of the Association of American State Geologists, what are the key parts of the act that state geological surveys would like to see implemented to make an immediate impact on landslide hazard preparedness at the local level?

Answer. The following components of the act would have important immediate impacts on landslide preparedness at the local level, in order of priority to state surveys:

Section 3.e.1: Many states have begun landslide/geohazard inventories in response to recent geohazards events; climate change as well as housing and transportation development in hazard-prone areas will likely increase the frequency of such events. The Cooperative Landslide Hazard Mapping and Assessment Grant Program, when implemented, will provide direct support to state geologic surveys to map and compile a digital inventory of landslide hazards in each state. The grant program funds will be matched by state funds—a model that has proven very successful in other programs in the USGS (eg National Cooperative Geologic Mapping Program).

Section 5.a.1: The 3D Elevation Program (“3DEP”) has proven to be crucial to state geologic surveys; these data have greatly enhanced our ability to map hydrologic features, seismic hazards/faults, aquifers, and pre-historic landslides as well as probability assessment of new landslides. Timely collection of Light Detection and Ranging (LiDAR) data are critical for identification of new and immediate threats to public safety. Of particular interest to state geologic surveys, clarification that 3DEP is intended to include ongoing refresh and improve resolution of 3D elevation data; repeated elevation surveys document how the landscape is changing over time and will help identify high-risk areas.

Section 3.b.5: Local emergency managers are reliant upon the National Landslide Preparedness Act Debris Flow Early Warning System. Large storm/large snowmelt events are becoming commonplace throughout the western states; housing and transportation development in debris-flow prone areas is increasing as is the need

for early warning systems. Similarly, wildland fires in upland areas require calibration of post-fire debris flow models to regional climates to inform timely evacuations.

Mr. STAUBER. Thank you very much. I want to thank you all for your testimony today.

The Chair will now recognize Members for 5 minutes of questioning, and I will recognize myself for 5 minutes.

Dr. Feldgus, in your written testimony you argue that the Mining Regulatory Clarity Act is unnecessary because the Department of the Interior issued a Solicitor's Opinion in May 2023 that addressed the issue at hand in the *Rosemont* decision. What would prevent this Administration or future administrations from rescinding this opinion?

Dr. FELDGUS. We think we have a number of options for operators that are facing a similar situation to *Rosemont*, and those options are laid out in the opinion, but they are not purely dependent on the opinion. Those options would remain.

Mr. STAUBER. Could another Solicitor in another administration in the future change your opinion on that?

Dr. FELDGUS. It is always possible.

Mr. STAUBER. Yes. There is actually nothing stopping this Administration or future administrations from rescinding the Solicitor's Opinion. If the Solicitor's Opinion were rescinded, would the issue at hand still be solved?

Dr. FELDGUS. I think the different ways to resolve this in the opinion would still be available to operators. What the opinion does is lay it out very clearly for the operators and for our field staff, so they know what those options are.

Mr. STAUBER. I think, Dr. Feldgus, it is clear the issue would not be solved without the opinion or enduring legislation like the bill before us today. We would be right back to the same problem without this legislation.

Mr. Haddock, I have heard that the Solicitor's Opinion raises more concerns than it actually settles, and that it does not provide the certainty that many operators need to move forward with the exploration and, ultimately, development phase of a domestic mining project. Would you like to expand upon this and respond to Dr. Feldgus' testimony?

Mr. HADDOCK. There are a few ways that I will highlight that it creates uncertainty.

The first is that it sets a standard for this validity determination that the *Rosemont* litigants have already indicated that they are going to challenge, that it does not establish the bar as high as proving that the claim could be patented and require that full mineral examination.

The alternatives that it creates are likewise untenable. They are things like land exchanges, and we have seen how those get litigated for decades before a project can be permitted. It proposes the use of rights-of-way for the surface uses, and that doesn't really accommodate some of the normal uses you would have. And the regulations for rights-of-way are basically static. The roads on a mine site have to change constantly as the mine changes.

And like any other Solicitor's Opinion, it can be swept away with a pen by a judge, and therefore it really doesn't create any certainty at all.

Mr. STAUBER. Yes, well said. Without a *Rosemont* fix in place, we are effectively giving the Administration the opportunity to shut down domestic mining, just like they did in northeastern Minnesota. What is stopping them from rescinding the Solicitor's Opinion in the future in order to shut down mining activity? As Dr. Feldgus testified, there is nothing holding them back.

And, frankly, we have seen this Administration go back on their word time and time again. During the 2020 election, then-candidate Biden told the American people we would mine, process, and manufacture right here in the United States during the time he was a candidate. Yet, during his time in office, President Biden has pulled mineral leases, off-shored work to countries using slave labor, and eliminated Buy American protections in the IRA-referenced EV charging stations.

In a more recent example, consider the debt ceiling passed by Congress just last year. Despite the President negotiating and signing it into law, the permitting reforms, his Administration is now blatantly disregarding the reforms included. In fact, the Chair of the Council on Environmental Quality testified before this Committee just last year that she would not be taking into account the law of the land and implementing the bipartisan reforms that were passed by Congress and signed by the President. This Administration cannot be trusted, and it especially cannot be trusted to support domestic mining.

Mr. Haddock, can you explain to the Committee the process of staking a claim, and what this entails, including regulations and timelines claimholders must abide by, and the consequences of not complying with these regulations, in 10 seconds?

[Laughter.]

Mr. HADDOCK. The land has to be open, you have to go out and you have to post the land, as was indicated at the beginning. You have to file a notice, you have to put the notice on the claim, and you have to file your documents with the BLM within 90 days and pay your fees. If you fail to do so, there is no claim, it is void.

Mr. STAUBER. Thank you very much. I will now turn it over to Ranking Member Ocasio-Cortez for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you so much, Chairman.

There have been some discussions about different interpretations of what is proposed today, but we have the Deputy Secretary right here, so we can just ask how the interpretation would be administratively.

Dr. Feldgus, under this legislation, if I filed a mining claim just before a national park was established, could I potentially prevent that national park from being designated on my claim?

Dr. FELDGUS. Thank you for the question. I don't think you could prevent the designation of a national park around your claim, but you would have the right to use and occupy that claim that you have staked.

Ms. OCASIO-CORTEZ. Thank you. And to reiterate, there are about 1,100 active mining claims within national parks presently. And under this legislation they would potentially all be deemed valid.

Dr. Feldgus, if I built a house on my claim and told the Federal Government that it was part of my mining operation, panned for gold every once in a while, would that be allowed if this law were to be passed?

Dr. FELDGUS. It is very difficult to tell exactly what would be allowed under this law, because it is a little bit vague, and these rights under the law have not been tested in court yet. But it would certainly be very time consuming and expensive for the Federal Government to try to address a situation like that.

Ms. OCASIO-CORTEZ. Thank you. And Dr. Feldgus, if I decided I wanted to prevent a new solar farm, a wind project, or a transmission line, and I filed a mining claim in the path of a project before the renewable energy project secured their rights of way, might I be able to stop or delay that project?

Dr. FELDGUS. That is certainly a concern under the legislation, yes.

Also, any other authorized use, whether it is grazing, recreation, and so on would be at risk.

Ms. OCASIO-CORTEZ. Thank you. And if I wanted to file a handful of these claims, known otherwise as “nuisance claims,” might I be able to potentially extract large sums of money from the Federal Government in exchange for giving up my claim?

Dr. FELDGUS. Yes, you would have probably a cause for a takings claim against the Federal Government.

Ms. OCASIO-CORTEZ. Thank you. And if the government suspected I was trying to use my mining claims to extract money from other land users, or even proved that I was using the land for something other than mining, would the Federal Government be able to effectively invalidate my mining claim under this proposal?

Dr. FELDGUS. Not quickly or cheaply. It would take quite some time.

Ms. OCASIO-CORTEZ. Interesting. You see, this bill includes extremely broad definitions of what it means to “use and occupy land” for “mining-related activities.” Almost anything would be allowed or the argument could be made that it is allowable, including dumping toxic mining waste, building housing on a mining claim in a national park, or even just claiming land to lock it up to make sure no one else can use it.

Anyone, and I do mean anyone, you, me, a family member, a foreign company through an American subsidiary, could gain permanent rights to occupy claimed public land for just about \$10 per acre per year. It sounds like a deal.

I recognize that we will need some quantity of new minerals to support the transition to clean energy. Nobody denies that. But I believe with significant reforms and a whole-of-supply-chain approach that maximizes efficiency and, importantly, recycling, we can achieve our clean energy future in a way that minimizes impact, protects tribal sovereignty, and supports labor and, importantly, equity.

Unfortunately, the bills on the agenda today do not support that path, but I look forward to us figuring out a way where we can accommodate all of these needs.

With that, I yield back to the Chair. Thank you.

Mr. STAUBER. Thank you very much. The Chair now recognizes Representative Graves from Louisiana for 5 minutes.

Mr. GRAVES. Thank you, Mr. Chairman. I appreciate all of you all being here today, and thank you for your testimony.

Dr. Feldgus, last time I looked, I think it was 2022, there were 280 mining applications that were still in a process backlog with the Department of the Interior. Do you know where that stands now?

Dr. FELDGUS. I don't have the backlog number on me right now, I am sorry, the number of mines that we are currently processing. But I will say we have approved 36 new mines in the past 3 years.

Mr. GRAVES. Thirty-six in 3 years. OK, so 12 a year with 280 again in 2022 that had been stuck in backlog.

On Friday, the Administration announced that they were going to effectively stop issuing export approval for liquefied natural gas. Did you support that decision?

Dr. FELDGUS. Well, I can't speak to that decision from another department.

Mr. GRAVES. Well, I mean, it is exporting natural gas. It is related to what you do, in terms of mineral production. Does that sound like it makes sense?

Dr. FELDGUS. We certainly process applications for gas drilling permits and oil drilling permits as they come in. But when it comes to what happens to that gas afterwards, that is not the purview of the Department of the Interior.

Mr. GRAVES. Sure. Well, I guess I disagree because you provide E&P approval, right?

Dr. FELDGUS. Which approval?

Mr. GRAVES. E&P, exploration and production.

Dr. FELDGUS. Oh, yes.

Mr. GRAVES. So, if you do that, why would you approve something if you believe there is not demand for it?

Dr. FELDGUS. Well, we approve permit applications as they come in.

Mr. GRAVES. Actually, you don't, and that is the problem, I think, where we are going right now.

[Chart.]

Mr. GRAVES. Dr. Feldgus, in 2022, 280 project backlogs, you have said you have approved 36 of them. We have all seen this chart, everybody has seen it, that shows the U.S. dependence upon critical minerals. It is absolutely extraordinary. It is not just the mining, it is also the processing and refining.

We have also seen predatory practices by countries like China. For example, when a cobalt mine was approved in my friend from Idaho's state, we saw this dumping of cobalt on U.S. markets, dropping prices down significantly.

Have you all had any conversations with the Department of Commerce about fair trade practices and ensuring that remedies are in place to ensure the level playing field for U.S. production?

Dr. FELDGUS. Yes, absolutely. We are involved in a number of interagency efforts as part of the Administration's all-of-government approach to try to increase mineral security in the United States.

Mr. GRAVES. So, you all are working with the Department of Commerce to put tariffs or ensure a fair trade with the United States and other countries in regard to——

Dr. FELDGUS. We are not involved in tariff policy, but we are involved in discussions about supply chains and other critical mineral issues.

Mr. GRAVES. Dr. Feldgus, this Administration has this policy of we are just going to not do anything. We are not going to approve mines, we are not going to allow for the export of liquefied natural gas, with this imaginary outcome being that there is not going to be demand for those things.

What we are seeing is the exact opposite. We are seeing, as our allies across the world are asking for more of our liquefied natural gas, they don't have to get it from Iran, they don't have to get it from Russia and other producers.

So, what we are seeing out of the Administration, it is consistent in that we are not approving projects that would actually improve our security, we are not carrying out policies that would be compatible with the data. For example, the fact that the Department of Energy shows there is going to be a 57 percent global demand increase for natural gas between now and 2050, why wouldn't we want to meet that demand? It doesn't make sense.

And, similarly, if you take the Biden administration's policies and what they are trying to do, the objectives they are trying to hit on electric vehicles, on renewable energy generation and deployment, you don't have anything close to the critical minerals that are required.

Look at what happened to our friends in Europe when they were dependent upon Russia for energy. Look at what happened to them. They effectively paid for themselves to be attacked. Look at what is happening when this Administration is carrying out awful energy policies to where Iran has profited to the tune of \$60 billion. And now we have our own troops that are dead because of the attack in Jordan. We are having our own ships that are being shot at. And we effectively have paid for it by bad energy policy and giving Iran \$60 billion that they are turning around and giving to their proxies.

So, Dr. Feldgus, what we are seeing right now is the same thing. We are seeing policies that are being carried out that are actually rewarding countries like China that are coming out and using those resources to challenge U.S. assets and interests all over the world. It doesn't make sense and it is not compatible with your own Biden administration's policies or objectives on EV deployment, renewable energy deployment, and others.

And I just urge that there be some reconciliation here. It is incredibly dangerous, and all we are doing is enriching our enemies. I yield back.

Mr. STAUBER. Thank you very much. The Chair now recognizes Representative Kamlager-Dove for 5 minutes.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair, and thank you to our witnesses for being here today.

President Stiffarm, I am especially grateful to see you here today. Too often, the conversation about our country's minerals

needs have left out those who would be, and already have been, impacted by these mining interests.

Many of the minerals needed for the energy transition are located near or within areas of cultural or environmental importance to Indigenous peoples: 97 percent of nickel, 89 percent of copper, 79 percent of lithium, and 68 percent of cobalt reserves and resources are within 35 miles of tribal lands. But as we have heard here today, mining is not a new threat to tribal lands.

President Stiffarm, can you briefly tell us about some of the environmental impacts of mining that have been left behind near your community?

Mr. STIFFARM. Thank you for your question. The impacts that have been left behind and what they did to our sacred lands and our Little Rockies is pretty devastating. It is a CERCLA site, so it is going to be perpetually looked at and cleaned up at the rate of \$2.2 million a year to help clean up and take care of that site.

And what I know about this is the water that drains onto the reservation, they don't have cleaning ponds or cleaning stations to filter out our water. They do to the towns south of us, Zortman and Landusky, they have clean drinking water. As a matter of fact, they drilled a deep well to pump water into those two communities, but they don't onto the Fort Belknap Indian Reservation.

Now, I will paint you a quick picture. Like I spoke about earlier, those mountains are like our church, our prayer. We go up there and we fast. Our Sundance Grounds are in those mountains. We go up there and we pray. We make offerings. Now, what if they had a mine right in the backyard of a church or synagogue, and they left it unattended, and the water and the ground got contaminated in one of these major cities, or even in one of our small towns? That would be a big issue.

But to me, the people, the first people of this country, the Native Americans, we are second-class citizens still. We are a third-world country. People don't take that into concern about how it affects our lives, our children's lives, our grandchildren's, and our future generations. And we are still battling this from 1888 to where we are here today.

And you take a look at that mining law, that was 1872. It has never been changed. And we were forced to be put on reservations and our treaties have been changed over, and over, and over that affects us. But these mining companies and these mining laws have never been touched. There is something wrong with that picture in that what is wrong with that picture, it boils down to profit, lining their pockets, and while our people are starving, 70 percent unemployment rate, suicide rate is very high amongst our people.

Ms. KAMLAGER-DOVE. So, President Stiffarm, rather than enacting legislation like this which tips the scales further towards the interests of the mining industry, what would you like to see?

Mr. STIFFARM. I would like to see these mining companies held accountable for what they leave behind, the devastation. I come here to speak for life for our people, not for profit. We just want to live like we used to. And we do live like that. We just practice our own language, our culture from centuries ago.

But what happened in the mountain that they did cut down, we called that Spirit Mountain, where they cut it pretty much in half,

and they used cyanide heap leach to extract the gold. It is still there. But we can't sit there and pray on it anymore because they took that away from us also.

Ms. KAMLAGER-DOVE. I want to thank you for your testimony, and I wanted to give you my time so that we could listen to you.

With that, Mr. Chair, I yield back.

Mr. STAUBER. Thank you very much. Next up is Representative Fulcher for 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman. To the panel, thank you for being here. I always learn something by being here, and I was able to go through some of the written testimony, as well, so thank you for that.

Mr. Chairman, my colleague from Louisiana talked about the Administration's policy when it comes to mineral extraction or exploration, certainly on public lands. And I think he has appropriately identified that it is largely a do-nothing strategy, and there are always reasons to do nothing. I think we all know that, and we can always figure out ways or reasons to do nothing.

But the reality is that we live in a world where there are certain minerals that we just need to have, and we need to have those for critical consumer use, we need to have those for military, for homeland security purposes. And somehow, some way we are going to get them, because of that demand and because of that critical need.

So, the question then goes to how do we get them? Do we get them as responsibly as we humanly can, and control the process, or do we do what we are all too often doing now and empower our enemies by purchasing from them, who have some or maybe little, very little environmental concerns or processes? And that is just the world that we live in.

So, Mr. Chairman, I want to thank you for your leadership. Over and over again, we bring things to the table to try to navigate this process and put some sanity into the real-life situation that we are all confronted with. And therein lies the list of bills that we have today. And I am thankful for the sponsors for bringing that.

I do have a question specifically for Mr. Haddock.

In your written testimony, you spoke about the criticisms of H.R. 2925, and the one that I would like you to expand on a little bit is how do you address the argument that we have already heard here, where this bill may lead to the use of mining claims for non-mining purposes? How do you address that?

Mr. HADDOCK. Thank you for that question. The answer to that is that this just simply returns the state of permitting to the way it was pre-*Rosemont*, and it doesn't change any other provision of the mining law, including the clear regulations in the BLM surface use regulations about the use of surface for inappropriate purposes.

The BLM has the ability at any time to go out and police their mining claims, and they do, and remove non-conforming uses. Any mining claim that is located for any purpose other than mining and prospecting purposes is void ab initio. It is a non-entity. And under the law the BLM can, as we have talked about, go out to file a lawsuit, and they can void the claim. But to say, well, let's not let anybody do that, it is kind of saying let's take away all of our deductions under the IRS because some people cheat on it.

The government has to enforce when people cheat, and they do.

Mr. FULCHER. All right. Thank you for that, Mr. Haddock. I appreciate you expanding on it.

I do have some other questions I am going to submit for the record.

But I have about a minute and a half left. I would like to yield that to the Chairman.

Mr. STAUBER. Thank you very much for yielding.

Dr. Feldgus, Representative Graves asked you how many new mines that this Administration has approved. I will ask you a little bit more specific. Are they new mines or mine modifications or expansions?

Dr. FELDGUS. I would have to go back and check exactly how many are expansions or modifications.

Mr. STAUBER. Do you want me to tell you? Two, and two were approved via EIS statement and one was lost in court and that was Resolution Copper. The EIS wasn't approved. They went to court and filed. Resolution Copper is not mining copper right now. We know that Resolution Copper will provide 25 percent of this nation's copper.

So, I want to be very accurate. You said 36. That is not accurate answering the question from Representative Graves. He said how many new mines, and you used Secretary Haaland's number, 36. Those are modifications and expansion. I want to be very clear. There have only been two, and the courts took away one.

My time is up, and I will refer to the Ranking Member of the Full Committee, Representative Grijalva, for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. And if I may, I would like to request unanimous consent to enter into the record section 2, lines 6 through 15 of H.R. 2025, dealing with the language issue.

Could somebody build a hotel? Could somebody build a waste dump? Could somebody build housing on that property? And the claimant shall have the right to use, this is according to the bill, the right to use, occupy, and conduct operations on public land with or without the discovery of a valuable mineral deposit if the claimant makes a timely payment on a location fee and the claim maintenance fee.

Mr. STAUBER. Without objection.

Mr. GRIJALVA. Thank you very much.

President Stiffarm, thank you for being here, sir, and most of the questions I was going to ask you, you answered in response to my colleagues here.

As you have been listening, mining is considered the highest and best use of our public lands, meaning if there are minerals present on the land and someone stakes a claim on eligible public land, then they get to mine that. And land managers and communities don't have a great deal of say, they don't have the right to say no to a project and much less have the right to significantly weigh in on the project prior to exploration and prior to development. These impact lives very directly.

And for the last 150 years, the mining industry has had to at least prove that there were valuable minerals on the land before they had the rights to claim it. The bill that I just referenced is so extreme that it takes that even a step further. The bill gives

anyone the ability to stake a mining claim, whether there are valuable minerals on the land or not, i.e. Rosemont needed that extra land so they could dump their waste there because community and state land was not available.

The reason for this change, mining companies want to dump toxic mining waste whenever they want to and as a convenience for the operation. Under this bill, the highest and best use of any public land would be, it is OK to dump toxic waste or any other thing the mining industry wants to get rid of.

President, can you tell us about this particular section, and more about the legislation and what it creates for your community as I referenced those points just now?

Mr. STIFFARM. Thank you for your question.

I guess how I have explained and how it is read in this, it brings it back to probably the 1800s when the Homestead Act was taken, when they were allowed to take our land, our Native peoples' land, as they wished.

With this law that you have here now, these mining companies, they stake claims anywhere and wherever they want. And it sounds like you guys are going to be doing that yourselves now, to take land, whether it is in a national park or unclaimed land, and claim it as a mining claim and take it as their own. That is what happened to us. That is what put us on reservations.

And where I see it now, you are all turning around on yourselves and letting these mining companies do it to you, do it to these people's lands here, the national parks or wherever they recreate, or wherever they think they want to find a claim at, claim that land as their own. I guess they come full circle. I see in my eyes where you all are going to allow these people to take your land as they took ours. That is the way I see it. Thank you, sir.

Mr. GRIJALVA. Thank you. And just to that point, I think there is historical context to what we are talking about, and I appreciate all the witnesses and their comments, that the moment is now. Yes, I don't disagree with that. This is real time. But there is a historical context here. And to merely open the floodgates to the use of our public lands without any protections, due process, community involvement on the part of the communities, including Indigenous communities across this country, is going back to a time that got us into this situation.

The reaction to mining in this country and the oppositions that you find at Rosemont and at Resolution in my home state of Arizona are not organic, they just pop up, there is a history there. And the San Carlos Tribe and the O'odham Tribe, and environmentalists are opposed to that because of the lack of transparency and the overpowering control that the mining industry has over the law of 1872. That has to change if we want sustainable, quality, good mining in this country.

With that, I yield back, sir.

Mr. STAUBER. Thank you very much. Next up, Representative Tiffany from Wisconsin for 5 minutes.

Mr. TIFFANY. Thank you.

Dr. Feldgus, do you believe the Ninth Circuit decision was ruled correctly on the *Rosemont* decision?

Dr. FELDGUS. I don't know if I should opine on court decisions.

Mr. TIFFANY. I was just reading in this, I think it was your testimony, I am reading here that there is basically great uncertainty, and you are just not sure, and we need to work through this.

Isn't the *Rosemont* decision leading basically to chaos in trying to sort it out?

Dr. FELDGUS. I don't believe so. We are able to move, we are advancing mines after the *Rosemont* decision. We are using the options that are laid out in our Solicitor's M Opinion to give companies an option for how they would like to move forward, and we are able to do that.

Mr. TIFFANY. Do you think companies are going to be able to mine post-*Rosemont*?

Dr. FELDGUS. I believe they are mining and we have approved mines post-*Rosemont*.

Mr. TIFFANY. How many mines have you approved?

Dr. FELDGUS. I can't tell you the exact number since *Rosemont*.

Mr. TIFFANY. Mr. Chairman, didn't you just cite that number?

Mr. STAUBER. Representative Tiffany, if I may—

Mr. TIFFANY. I will yield to the Chairman.

Mr. STAUBER. Representative Tiffany, Representative Graves asked Dr. Feldgus how many mines that they approved, and he stated there was 36. In fact, that is not accurate. When we talk about new mines, we are not talking about modifications or expansions. It is actually two for EV batteries and critical minerals.

Mr. TIFFANY. So, do you think that is going to be able to be sufficient to satisfy our needs for minerals here in the United States of America, just doing two mines over the course of, Mr. Chairman, if I could yield back to you, over the course of how many years?

Mr. STAUBER. The last 3 years.

Mr. TIFFANY. Do you think we are going to have a sufficient amount of critical minerals to be able to continue a life of prosperity in America?

Dr. FELDGUS. Well, that is why the Administration is in favor of increasing domestic mineral production, and why we put out a report last year with over 60 recommendations for how to improve mining and how to build more public trust and confidence in the process.

Mr. STAUBER. Representative Tiffany, will you yield to me?

Mr. TIFFANY. I would be happy to yield to you.

Mr. STAUBER. Dr. Feldgus, I can't let that comment go. You have shut down mines in northeastern Minnesota, the biggest copper nickel find in the world. Your Administration pulled the leases for political purposes. They wouldn't even let an EIS go forward. Ninety-five percent of our nickel is in that find, 88 percent of our cobalt, over a third of our copper and other platinum group metals. I can't let you get by with that statement that you support domestic mining.

In fact, with this Administration, Dr. Feldgus, that couldn't be further from the truth. They are working on Memorandums of Understanding with the Chinese Communist Party, who owned 15 of the 19 industrial mines in the Congo, no environmental standards, no labor standards, and use child slave labor. I can't let you, on behalf of the Administration, say that to the American people.

I yield back.

Mr. TIFFANY. Mr. Haddock, if we continue in this direction that we have seen over the, and I wouldn't say just the last 3 years, but over a series of administrations here, where we have seen this hostility towards mining, where are we headed, as a country?

Mr. HADDOCK. Well, ultimately, we will not be able to permit mines.

And the one comment I would make is I think there is a big misunderstanding about what *Rosemont* said. *Rosemont* didn't say that you have to be able to prove that you have a valuable mineral deposit to mine the mine. *Rosemont* said you had to prove you had a valuable mineral deposit to put the road to the mine. You never had to patent, and you don't have to patent a mine to operate it.

But with a decision like *Rosemont* hanging out there and continued moves to make permitting more difficult, we won't be able to mine.

Mr. TIFFANY. Are you challenging that decision?

Is anyone challenging the decision that came out of the Ninth Circuit?

Mr. HADDOCK. I do, I think it is wrong, and I think it needs to be reversed.

Mr. TIFFANY. Is anybody challenging it, though? Is it currently being challenged?

Mr. HADDOCK. It is used in numerous situations, and there are still open statutes of limitations periods. There are briefs that have been filed in other cases that suggest they are going to use *Rosemont* to make other arguments, including that you can't put even a transmission line across the claim until you have proved that it has a valuable mineral deposit.

Mr. TIFFANY. Mr. Chairman, I will just conclude with this.

Dr. Feldgus, I give you great credit for standing up here before the Administration. We have seen you doing this multiple times on behalf of the Administration. I would just go back to Superior, Wisconsin, when the President was just here in my district last week and talking about, boy, we have to build this infrastructure, and I am going to give a big, billion-dollar check to build this bridge that spans Minnesota and Wisconsin, which I support. But the price tag is \$1 billion.

And why is the price tag \$1 billion that is going into that, plus? It is because we are not producing those minerals and we don't have permitting, we don't have permitting reform that we could do this in less than 10 to 15 years. But we have the minerals to produce the steel that goes into that bridge in northern Minnesota, yet the Administration is stopping that from being produced.

How are we going to build infrastructure in America in a friendly environment where we can do it in a way that is not cost-prohibitive? And we can't do it. And President Biden and his Administration should stop this charade that they believe in building infrastructure in America because they are doing everything to kill it, including by killing mining projects.

I yield back.

Mr. STAUBER. Thank you very much. The Chair now recognizes Representative Gosar from Arizona for 5 minutes.

Dr. GOSAR. Thank you very much, Mr. Chairman. I appreciate the opportunity to discuss critical legislation initiatives that

address challenges facing our nation in the realms of mining, resource management, and the community safety.

The recent *Rosemont* decision by the U.S. Court of Appeals for the Ninth Circuit and the Biden administration's proposed rule regarding mining projects under the FAST-41 Act underscore the need for legislative clarity and foresight. Today, I want to highlight the *Rosemont* decision.

According to the AP article, the *Rosemont* decision conveys that the government must prove that "valuable minerals are present" on the land before they establish rights to adjacent land for waste disposal. Well, here is an obvious problem: how can you prove that valuable minerals are present if you can't even mine?

The answer is that it is impossible to prove this. Unless you actually get your hands dirty and start the process of extracting ore from the ground, there is no way to truly prove that a mine has valuable minerals. Essentially, you can't mine unless you prove valuable minerals are present, and you can't prove valuable minerals are present unless you mine. This harmful Catch-22 negatively affects my home state of Arizona, and neighboring Nevada suffers from the fallout also.

I represent a district that was founded because of minerals. They are essential to the communication and the national security of our country. I will continue to oppose the attacks on our mines by activist judges and the Biden administration.

Mr. Haddock, is the Mining Regulatory Clarity Act a bipartisan proposal?

Mr. HADDOCK. Yes.

Dr. GOSAR. How is this reflected in the outside support throughout the mineral supply chain and with the broader industry such as labor and workforce?

Mr. HADDOCK. Well, at this point I can tell you that our vendors are very concerned about it. Our contractors, the providers, the people who make the haul trucks.

And I can also tell you that our workers are very concerned about it, and I suspect that some of my colleagues back in Nevada are watching this hearing today, and this is of great importance to them and our 7,000 employees in Nevada.

Dr. GOSAR. So, what are some of the irrational outcomes of *Rosemont*?

Mr. HADDOCK. Well, there are many, but one of them is that the *Rosemont* decision taken to its extreme means that you actually have to dump your materials or build your facilities on top of the minerals you are supposed to be mining. That is how irrational it is.

But it also means that when the BLM, as they did in the *Rosemont* case, looked at the configuration of the mine and where the waste rock had to go, and they tried to make it compact and to avoid cultural resources and to avoid environmental values, it now means that you can't do that, that you have to spread it out, that you have to take the waste somewhere far away on some other piece of ground to do this.

Dr. GOSAR. Does the *Rosemont* decision present any risk to some existing mines?

Mr. HADDOCK. In the Solicitor's Opinion, they recognize that there is an issue there. And it was kind of an interesting footnote that they put at the end and said, well, we recognize that some mines might not have been exactly permitted with *Rosemont*, or consistent with this opinion, and said, well, your honors, you judges, if anybody challenges those mines, you should not upset those approvals, and there are a bunch of good reasons you should do that.

Of course, that is not enforceable against the courts, and the litigants can say whatever they want. We don't think you should be able to upset existing approvals, but I suppose someone could make that argument.

Dr. GOSAR. Got you. So, does this bill allow mining activities to occur in conservation areas, national parks, or prior withdrawn lands?

Mr. HADDOCK. It does not. Those are governed by their own regulations and statutes.

Dr. GOSAR. Does this bill create new property rights that were not previously part of the mining law?

Mr. HADDOCK. No, it does not. This bill is not about property rights. It is simply about how you permit a mine.

Dr. GOSAR. Why shouldn't we be concerned about the Grand Canyon and the Central Arizona Project, examples of inappropriate use of mining claims cited by the opponent of this bill?

Mr. HADDOCK. I would say that those are examples that show just the opposite, that shows the government can void claims that are located for inappropriate motives.

Dr. GOSAR. Should we be incentivizing mining in the United States? And if so, what is needed?

Mr. HADDOCK. Well, the one thing that I would love to see is the return of a Bureau of Mines, somebody who gathers all the data from we that are out operating on the ground commercially, thinks about that suite of things on the periodic table that are really important to the country, does research to find ways to extract those commercially, and keeps that database as a nation. Most nations do that, and we don't have anything like that now.

Dr. GOSAR. My last question for you is, are we stronger or weaker when we are dependent upon others for our natural resources?

Mr. HADDOCK. We are weaker.

Dr. GOSAR. So, this is a national security issue.

Mr. HADDOCK. Yes, sir.

Dr. GOSAR. There is a bigger plan here. This isn't the end of this issue, is it? There is something else behind this, right?

Mr. HADDOCK. I don't know.

Dr. GOSAR. Well, take it from me, there is.
I yield back.

Mr. STAUBER. Thank you very much. Before we wrap it up, the Ranking Member of the Full Committee, Ranking Member Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. I would just like unanimous consent to enter into the record a letter from the Patagonia Area Resource Alliance in my district in Arizona which is home to the first mining project considered under FAST-41. They

raise issues on that in opposition to H.R. 6862, and for the record, sir.

Mr. STAUBER. Without objection.

[The information follows:]

PATAGONIA AREA RESOURCE ALLIANCE
Patagonia, AZ

January 24, 2024

Full Committee Chairman Bruce Westerman
Full Committee Ranking Member Raul Grijalva
Sub-Committee Ranking Member Alexandria Ocasio-Cortez

Re: H.R. 6862

Greetings Representatives Westerman, Grijalva, and Ocasio-Cortez:

I write to you in opposition to H.R. 6862 (Rep Lamborn), a bill to amend the FAST Act to include certain mineral production activities as a covered project. This bill would codify Trump-era regulations that make all mining eligible for FAST-41. FAST-41's project-specific permitting timetables do not conform with the well-documented risks mining poses to land, waters, public health, and other resources, especially with tribal consultation requirements.

I live in Patagonia, AZ where an Australian mining company is currently operating the only mine project that is designated as a FAST-41 project; a designation received in July 2023. As a frontline community, we are very concerned about the impacts of 21st century industrialized mining activity in an area of rapidly declining groundwater and increasing drought. WATER IS LIFE—DON'T MINE IT AWAY!

The Town of Patagonia and Santa Cruz County are part of the Madrean Archipelago a region identified by scientists as one of the top regions in the world most in need of research and protection for species survival. These mountains are home to more than 100 federally designated endangered, sensitive, threatened species.

“Effective democratic governance depends upon informed public participation, and several international conventions and policy guidelines call for enhanced public participation in environmental management. Yet, large-scale resource development projects generally receive insufficient oversight by, and engagement with, civil society. And in the absence of effective supervision and public engagement, corporate and government vigilance can weaken, complacency increases, environmental and social standards decline, and risks increase. Such insufficient oversight, lower standards, and complacency can result in acute and catastrophic damage, such as oil spills, chemical explosions, mine disaster, over harvest and stock collapse; long-term, chronic environmental degradation; and social tension, mistrust, litigation, and even violence between local people and industry.” United Nations Environment Program Citizens’ Advisory Councils to Enhance Civil Society Oversight of Resource Industries by Richard Steiner.

Patagonia Area Resource Alliance (PARA) works to hold federal and state agencies to the laws and regulations on exploratory and mining activities in the Patagonia Mountains and the Sonoita Creek watershed; collaborates with Strategic Partners to (i) assure that any mining activities meet the highest science-based standards and (ii) protect the water, land, and wildlife of the Patagonia Mountains from the negative impacts of modern industrialized mining; and supports the expansion of the nature based restorative economy that depends on the remarkable biodiversity and cultural heritage of our region.

PARA is currently involved in two legal actions with respect to state water permits because AZ Department of Environmental Quality is not following state statutes nor complying with Clean Water Act regulations. PARA wrote to EPA in July and October 2023 requesting the federal agency exercise its oversight of the state agency.

PARA is one of the organizations involved in a lawsuit against the Coronado National Forest for its failure to perform a cumulative impacts analysis. PARA is also aware of several FOIAs to the Forest Service that have not yet been responded to. In the summers of 2021 and 2022, the Town of Patagonia asked the Coronado

Forest Service to conduct a comprehensive groundwater study. The Coronado provided an unsatisfactory response. How can any Plan of Operations be approved without knowing the impact that this massive activity will have on a unique hydrologic system?

PARA is working with the Town and the County on the process of drafting a Community Protection & Benefits Agreement. Both the Town of Patagonia and Santa Cruz County are designated as Participating Agents in this FAST-41 process for this project. WHO is the point of contact for how this process should work for the community and to be able to address issues and concerns as they arise. It is important for all information to be publicly available as this project moves through the NEPA process. When will we be able to review the Plan of Operations that has been accepted by the Coronado National Forest?

I end this letter with the same statement I opened with: I write to you in opposition to H.R. 6862 (Rep Lamborn), a bill to amend the FAST Act to include certain mineral production activities as a covered project. This bill would codify Trump-era regulations that make all mining eligible for FAST-41. FAST-41's project-specific permitting timetables do not conform with the well-documented risks mining poses to land, waters, public health, and other resources, especially with tribal consultation requirements.

CAROLYN SHAFER,
Board Co-Chair and Mission Coordinator

Mr. GRIJALVA. Thank you.

Mr. STAUBER. I would also like to, without objection, submit for the record testimony from the National Mining Association in support of H.R. 2925 and H.R. 6862; a letter from American Exploration and Mining Association expressing support for H.R. 2925, along with H.R. 6862; a letter from NMA and ZETA in support of H.R. 2925 and critical mineral development in the United States; a statement for the record from Advanced Energy United in support of H.R. 2925; a letter from the National Infrastructure Alliance in support of H.R. 6862; a bipartisan letter sent to the Federal Permitting Improvement Steering Council, signed by 22 Senators; a letter sent to the Federal Permitting Improvement Steering Council signed by Senator Christine Sinema, both of which are in opposition to the Biden administration's proposed rule to limit the FAST-41 covered sector list to critical mineral projects only; and also the most recent USGS mineral commodity summaries for 2024.

[The information follows:]

Statement for the Record
National Mining Association

America's mining industry supplies the essential materials necessary for every sector of our economy—from technology and healthcare to energy, transportation, infrastructure and national security. The National Mining Association (NMA) is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources.

We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of more than 280 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers. The NMA appreciates the opportunity to offer written testimony on behalf of the mineral and hardrock mining

industry in support of H.R. 2925—the Mining Regulatory Clarity Act of 2023—and H.R. 6862, which would amend the Fixing America’s Surface Transportation (FAST) Act to include certain mineral production activities as a covered project.

Introduction

Despite being home to vast mineral reserves, the U.S. is facing unprecedented and precarious mineral supply chain challenges. Our import reliance has been a well-documented and increasingly problematic issue for decades and has now become a crisis, exacerbated by pandemic and war-related supply chain challenges, and exponentially increasing mineral demands due to the rapid electrification of our economy. As documented by the U.S. Geological Survey (USGS), the U.S. reached record mineral import reliance in 2022 as imports made up more than one-half of the U.S. apparent consumption for 51 nonfuel mineral commodities—up from 2021, when only 47 commodities met that metric.¹ USGS numbers for 2023 are expected any day with this upward mineral import trend likely to continue.

There is recognition by some within the Biden-Harris administration of the immense challenge we now face and the importance of domestic mining to nearly every piece of the President’s agenda. Several of the administration’s early executive actions, including its comprehensive supply chain review, made clear the inherent vulnerabilities of our overreliance on mineral imports, the need for domestic mining support and lack of domestic processing and refining capabilities. Despite the rhetoric from the administration about the need to address the minerals challenge, actions have not lived up to the words.² There can be no mineral and supply chain security—no meeting the enormous mineral demand at our doorstep—without fundamental recognition that we need more domestic mining and the policies to achieve it.

Solutions to meet anticipated mineral demand, while simultaneously rebuilding our domestic supply chains, must be comprehensive. Friend-shoring of our minerals supply, however, cannot come in place of the essential work of standing up production and these supply chains at home. Regulatory certainty must be the cornerstone of minerals policies to enable the ramping up of domestic production and processing under our rigorous environmental and safety standards.

The NMA appreciates the opportunity to discuss the importance of regulatory certainty in the context of the legislation that is the subject of this hearing. The NMA strongly supports the bipartisan Mining Regulatory Clarity Act of 2023 (H.R. 2925) to restore long-standing interpretations of the Mining Law upheld by the U.S. Court of Appeals for the Ninth Circuit’s fundamentally flawed decision in *Center for Biological Diversity v. U.S. Fish & Wildlife Service* (Rosemont Decision). Additionally, the NMA strongly supports H.R. 6862, which prohibits the Federal Permitting Improvement Steering Council from finalizing, implementing or enforcing its proposed rule titled “Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act” (88 Fed. Reg. 65350; September 22, 2023). These bills restore regulatory certainty to strengthen the domestic mining industry and improve investor confidence.

Ever-increasing Demand for Minerals

The most mineral intensive moment in human history is upon us and the U.S. is woefully unprepared. Looking solely at demand coming from the electric vehicle market: the Energy Transitions Commission estimates up to 250 new mines may be required by 2030.³ Benchmark Minerals says we will need 384 new mines by

¹U.S. Geological Survey, 2023 Commodity Summary, available at <https://pubs.er.usgs.gov/publication/mcs2023>.

²The administration recently memorialized its policy recommendations with the Sept. 12, 2023, release of the White House Interagency Working Group (IWG) on Mining Regulations, Laws, and Permitting released its report, “Recommendations to Improve Mining on Public Lands.” The NMA strongly disagrees with the report’s overarching conclusion that fundamental reform of the Mining Law is necessary to achieve the best outcomes. The NMA’s comments to the IWG are available at <https://www.regulations.gov/comment/DOI-2022-0003-26954>. A recent NMA op-ed, the Biden mining policy train wreck, outlines concerns regarding many of the key policy recommendations is available at <https://elkodaily.com/opinion/column/commentary-the-biden-mining-policy-train-wreck/article/3036f00e-80c5-11ee-bc20-1bade970ae33.html>. These NMA concerns apply equally to provisions of S. 1742 that are similar to the IWG policy recommendations.

³Energy Transitions Commission, “Material and Resource Requirements for the Energy Transition,” July 2023; https://www.energy-transitions.org/wp-content/uploads/2023/07/ETC-Material-and-Resource-Requirements-ExecSummary_vF.pdf

2035.⁴ The Fraser Institute recently said 388 new mines must be built by 2030.⁵ It's clearly not a question of if we must mine, but where? The "where" matters because producing minerals here at home, as opposed to the administration's proposals to partner with countries such as Congo and Zambia, ensures mining will be conducted in accordance with the world's most stringent environmental, labor and safety regulations, while simultaneously creating high-paying American jobs.

The Biden administration has articulated a desire to scale back U.S. reliance on Chinese minerals. In April 2023, President Biden's national security adviser, Jake Sullivan, warned that "clean-energy supply chains are at risk of being weaponized in the same way as oil in the 1970s, or natural gas in Europe in 2022."⁶ In his remarks, he specifically mentioned concerns about minerals that form "the backbone of the clean-energy future."⁷ His concerns were a foretelling of future actions. In July 2023, China announced restrictions on the export of gallium and germanium, minerals integral to semiconductors, solar panels and missile systems. The U.S. is currently 100 percent reliant on China for these critical commodities. As accurately described by *The Wall Street Journal*, the action was "more than a trade salvo. It was a reminder of China's dominant hold over the world's mineral resources—and a warning of its willingness to use them in its escalating rivalry with the U.S."⁸ The July restrictions were followed by an October 2023 announcement by China setting export restrictions on graphite, a move Geoffrey Pyatt, Assistant Secretary of State for Energy Resources, called a "wake-up call" that reflects both the dangers and urgency the U.S. faces in ramping up critical mineral supply chains to meet its climate goals."⁹

China's willingness to employ such tactics for decades, has led to skyrocketing prices for many minerals and has required a drawdown of limited stockpiles that will last two to three months at most.¹⁰ A former U.S. Trade Representative for China notes that China's past retaliation patterns are the best clues for predicting what to expect next, and their most effective passive option would be an export suspension of key inputs that would "inflict direct, reciprocal pain."¹¹

China's dominance in mineral production and processing will take focused and durable policies to overcome. As the primary producer and/or supplier of mineral commodities listed as essential to U.S. economic and national security,¹² China controls more than 80–90 percent of global rare earth element production, nearly 90 percent of global mineral processing capabilities, as well as the market prices for rare earth elements at each step of the process. China also refines 68 percent of the world's cobalt, 65 percent of nickel, and 60 percent of battery grade lithium needed for electric vehicle batteries and energy technologies. Goldman Sachs Research also estimates the extent of the vertically integrated nature of China's dominance, with

⁴ <https://source.benchmarkminerals.com/article/more-than-300-new-mines-required-to-meet-battery-demand-by-2035>.

⁵ Fraser Institute, "Failure to Charge: A Critical Look at Canada's EV Policy," Nov. 2023; <https://www.fraserinstitute.org/sites/default/files/can-metal-mining-match-the-speed-of-planned-electric-vehicle-transition.pdf>.

⁶ Remarks by National Security Advisor Jake Sullivan on Renewing American Economic Leadership at the Brookings Institution, April 27, 2023. Available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/>.

⁷ Id.

⁸ Jon Emont, Wall Street Journal, China Controls Minerals That Run the World—and It Just Fired a Warning Shot at U.S., July 11, 2023. Available at <https://www.wsj.com/articles/china-controls-minerals-that-run-the-world-and-just-fired-a-warning-shot-at-u-s-5961d77b>.

⁹ E&E Greenwire, "State Dept. official: China's graphite restriction a 'wake-up call,'" November 2, 2023. Available at <https://subscriber.politicopro.com/article/eenews/2023/11/02/state-dept-official-chinas-graphite-restriction-a-wake-up-call-00125003>.

¹⁰ Reuters, "China gallium, germanium export curbs kick in; wait for permits starts," August 1, 2023. Available at <https://www.reuters.com/markets/commodities/chinas-controls-take-effect-wait-gallium-germanium-export-permits-begins-2023-08-01/>.

¹¹ The Hill, "China's retaliation playbook can't meet the US export control challenge," October 20, 2022; <https://thehill.com/opinion/international/3697077-chinas-retaliation-playbook-cant-meet-the-us-export-control-challenge/>.

¹² Notably this reliance comes despite existing U.S. resources. In the 2022 Mineral Commodity Summaries, the USGS indicated the U.S. had an estimated 48 million metric tons (mt) of copper that can be mined and processed economically, 69 million mt of cobalt, 340 million mt of nickel and 750 million mt of lithium. Regardless, in 2021, the U.S. imported 48 percent of U.S. consumption of nickel, 76 percent of cobalt, 45 percent of copper, and more than 25 percent of lithium.

65 percent of battery components, 71 percent of battery cells, and 57 percent of the world's electric vehicles being made in China.¹³

Notably, China's strong supply chain position does not result from an inherent geographic advantage in reserves for most materials, but rather from heavy non-market activities and government subsidization of mining, processing and manufacturing industries and excess capacity. With its much longer planning horizon, China has pursued its "Going Global" strategy since the late 1990s, which involves deployment of significant direct investments across the globe to secure mineral supply chains.^{14,15}

The Biden administration's electrification and national security objectives must begin with domestic mining. They cannot be achieved by outsourcing our mineral supply chains to countries like China, Russia and the Democratic Republic of Congo, all of which have far less environmental, safety and labor oversight, or in some cases none. Unfortunately, we only increase our dependence on these and other sources for our minerals needs when we stand in the way of opportunities to enact meaningful policies, instead choosing policies that limit or completely block responsible domestic mineral development.

The U.S. has all the ingredients necessary to counter China's global mineral dominance. However, the wrong policies are creating substantial setbacks to attaining such dominance. Today's legislation, the Mining Regulatory Clarity Act and H.R. 6862, are necessary help ensure U.S. minerals policy provides the necessary regulatory certainty to support responsible domestic mining.

Destabilizing The Mining Law

Backdrop: Rosemont Project and Subsequent Litigation

The decade-long Rosemont permitting process began in 2008 when it submitted a mining plan of operations and was subsequently followed by a draft environmental impact statement (EIS) in 2011 and a final EIS in late 2013. The U.S. Forest Service issued a final record of decision in 2017, but final approval was delayed until Rosemont received a Clean Water Act section 404 permit in 2019. The approved plan of operations included authorization to place waste rock on surrounding unpatented claims as a "use reasonably incident" to its operations.

Years of Litigation

Several environmental groups challenged the approval of the Rosemont project, including the placement of waste rock on the unpatented claims. The Rosemont litigation was a strategic assault on the Mining Law in an attempt to make it wholly unworkable, knowing that the economic viability of a mine depends upon the ability to use surrounding lands for activities incidental to mining, known as ancillary use activities. In 2019, the United States District Court for the District of Arizona issued a fundamentally flawed decision vacating the Forest Service's record of decision supporting the agency's approval of Rosemont plan of operations.¹⁶ The decision conflicted with more than a century of legal precedent, including numerous U.S. Supreme Court decisions, related to the Mining Law. The District Court's reversal focused on the failure of the Forest Service to confirm that the mining claims underlying proposed waste rock and tailings storage facilities were valid before approving

¹³ Goldman Sachs, "Resource realism: The geopolitics of critical mineral supply chains," Sept. 2023. <https://www.goldmansachs.com/intelligence/pages/resource-realism-the-geopolitics-of-critical-mineral-supply-chains.html>

¹⁴ Humphries, Marc. Congressional Research Service, "China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress," March 20, 2015. <http://fas.org/srg/crs/row/R43864.pdf>.

¹⁵ See also, USGS 2020 Investigation of U.S. Foreign Reliance on Critical Minerals (There are instances where the mineral deposit or mining and mineral processing operation of a commodity is partially or completely owned and (or) controlled by foreign companies with strong ties to their governments. For example, Chinese firms have purchased equity stake in lithium deposits and operations in Australia and Chile, niobium operations in Brazil, a rare earth deposit in Greenland, and cobalt operations in the D.R. Congo, Papua New Guinea, and Zambia (S&P Global Market Intelligence, 2020). Investigating China's investment in cobalt assets worldwide, Gulley and others (2019) found that when taking into account Chinese companies' ownership in foreign assets on an equity-share basis, China's share of global cobalt production increases from 2 to 14 percent for cobalt mine materials and from 11 to 33 percent for cobalt intermediate materials (figure 6). Furthermore, if the Chinese companies' equity shares of the production from these assets are assumed to be as secure as its domestic production, then these acquisitions have the effect of reducing China's NIR from 97 percent to an adjusted 68 percent, thereby reducing China's exposure to supply disruptions (Gulley and others, 2019.) p. 8.

¹⁶ *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 409 F. Supp. 3d 738 (D. Ariz. 2019).

the plan.¹⁷ In doing so, the court misconstrued existing legal precedent regarding rights conveyed by the Mining Law to owners of unpatented claims and the ability to use surface resources to further the development of those claims.

The district court decision was appealed and in May 2022, the United States Court of Appeals for the Ninth Circuit (9th Circuit) affirmed the underlying decision on slightly different grounds. The narrow and unprecedented reading of the Mining Law and U.S. Forest Service 36 C.F.R. §228 Subpart A regulations, severely restricts the Forest Service's ability to approve ancillary use activities incidental to mining operations.

The environmental groups involved in the Rosemont litigation have tried to further leverage the Rosemont decision to prevent other mining projects from moving forward nationwide. For example, they challenged the Lithium America's Thacker Pass project arguing the Rosemont decision rationale applied to Bureau of Land Management (BLM) authorizations as well as Forest Service. The U.S. District Court for the District of Nevada agreed but remanded the Thacker Pass permit back to the agency instead of invalidating it.¹⁸ The Mount Hope molybdenum mine suffered a similar fate later in 2023. These same groups have submitted comments on numerous other projects arguing they are unlawful under the Rosemont decision.

The Mining Regulatory Clarity Act (H.R. 2925)

The bipartisan legislation introduced in April 2023 by Representatives Mark Amodei (R-Nev.) and Mary Peltola (D-Alaska) reinstates much needed clarity in the face of the Rosemont decision. The legislation returns to the workable framework that existed prior to the fundamentally flawed Rosemont ruling, ensuring the fundamental ability to conduct responsible mining activities on federal lands.¹⁹ The legislation is a durable solution, vastly superior to what can be achieved through the May 2023 Solicitor's Opinion²⁰ issued by the Department of the Interior, especially considering courts' increasing reluctance to provide the appropriate deference to such opinions.

What H.R. 2925 Does Not Affect

Contrary to allegations of the bill's detractors, the legislation simply codifies the prior framework that existed before the Rosemont ruling—nothing more, nothing less. It provides no additional rights or allowable actions for a claim holder than what has existed, and worked, for decades before. It ensures a claim holder shall have the right to use, occupy and conduct operations with or without discovery of a valuable mineral deposit, which is the long-standing method utilized by BLM to evaluate proposed operations.

- **The legislation does not lock up federal lands:** The legislation does not change the requirements that a mining claim actually be used for mining purposes. A claim holder cannot simply ground a stake to mark a claim, pay a fee and file paperwork to lock up lands for purposes unrelated to mining as this would result in immediate suspension pursuant to BLM regulations.²¹ All standards for conducting mining operations under existing BLM regulations remain in effect as does the Mining Law's "good faith" doctrine. Pursuant to the doctrine, any claim located in "bad faith," or with no intention to extract minerals is void.²² Activities must be reasonably incident, constitute substantially regular work, be reasonably calculated to lead to the extraction and beneficiation of minerals, as verified by BLM official.

¹⁷*Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 33 F.3d 1202 (9th Cir. 2022).

¹⁸*Bartell Ranch LLC v. McCullough*, No. 321CV00080MMDCLB, 2023 WL 1782343, (D. Nev. Feb. 6, 2023)

¹⁹See, definition of operations at 36 CFR 228.3 which is mirrored in the legislation.

²⁰Department of the Interior, Office of the Solicitor, Use of Mining Claims for Mine Waste Deposition, and Rescission of M-37012 and M-37057, May 16, 2023. The NMA believes the opinion undermines regulatory certainty by raising more questions than it answers, offering unworkable solutions and undercutting well-understood and lawful interpretations of the Mining Law.

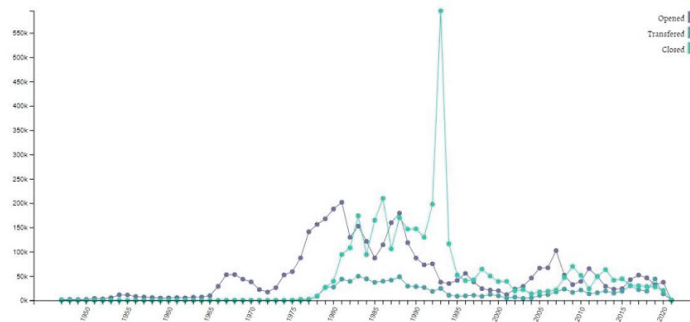
²¹See, use and occupancy regulations under the Mining Law at 43 CFR §3715.0-1, 43 CFR §3715.2, and 43 CFR §3715.7-1

²²See, generally, *U.S. v. Bagwell*, 961 F.2d 1450 (9th Cir. 1992) (The department can move forward to eject a claimant acting in bad faith without first contesting the claims) and *U.S. v. Nogueira*, 403 F.2d 816 (9th Cir. 1968) (A claim made in bad faith is void even if it is supported by a discovery).

Further, BLM data listing the amount of mining claims opened, closed or transferred demonstrates that since 1947 a steady and proportionate number of new claims are opened and closed each year.²³

Annual The United States Mining Claim Trends

Annual breakdown of The United States mining claim records between 2021 and 1947.



- **The legislation is complemented by exhaustive local, state, and federal environmental, cultural resource, reclamation, and financial assurance laws and regulations to ensure responsible operations:** Activities on BLM and Forest Service lands must meet all applicable laws and regulations. Under the Federal Land Policy and Management Act (FLPMA) section 302(b), activities must be conducted to prevent “unnecessary or undue degradation,” which requires compliance with applicable federal and state laws related to environmental protection and protection of cultural resources.²⁴ Furthermore, the standard is self-updating: the inherent nature of the standard allows for continual improvement. As federal and state laws are strengthened, so is the standard. Importantly, state environmental regulations of general applicability apply on federal lands and are not preempted by the General Mining Law or other federal laws.²⁵
- **The Mining Regulatory Clarity Act would not change access to public lands for recreation or conservation.** Under existing law, the public has “the conditional right to cross mining claims or sites for recreational and other purposes and to access federal lands beyond these boundaries.” Nor does the legislation reopen lands already placed off-limits to mining through congressional or administrative action, including wilderness, national parks, wildlife refuges, recreation areas and wild and scenic rivers. In summary, the legislation does not change or expand rights to locate or use mining claims in areas that have been withdrawn from mineral entry, administratively or by Congress.
- **Renewable energy projects on public lands will not be impacted.** In April 2013, the BLM published a final rule, “Segregation of Lands—Renewable Energy,” that allows the BLM to segregate public lands within a solar or wind application area from the operation of the public land laws, including the Mining Law, by publication of a Federal Register notice. The BLM uses this temporary segregation authority to preserve its ability to approve, with modifications, or deny proposed energy generation right-of-way (ROW), and to facilitate the orderly administration of the public lands, subject to valid existing rights.²⁶ Licenses, permits, cooperative agreements, or discre-

²³ Bureau of Land Management claim listings data. Available at <https://thediggings.com/usa/trends#table-annual-actions>. Note: a data outlier occurred in 1993 after the claims maintenance fee was implemented.

²⁴ Bureau of Land Management, “The Federal Land Policy and Management Act of 1976, as amended.” Available at https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf

²⁵ *California Coastal Comm’n v. Granite Rock Co.*, 480 U.S. 572 (1987).

²⁶ Federal Register, “Segregation of Lands—Renewable Energy,” (78 Fed. Reg. 25204, Apr. 13, 2013). Available at <https://www.federalregister.gov/documents/2013/04/30/2013-10087/segregation-of-lands-renewable-energy>

tionary land use authorizations of a temporary nature which would not impact lands identified in this notice of intent may be allowed with the approval of an authorized officer of the BLM during the segregation period. The BLM has exercised this authority at least 10 times in the last year.

- **The legislation does not undermine the rights of tribes.** The legislation does not speak to the rights of tribes, communities, or any stakeholders so it does not lessen any obligations under existing local, state, and federal regulations.
- **The legislation does not affect the existing BLM regulations that mandate validity determinations.** H.R. 2925 does not affect the existing BLM regulations that mandate validity determinations prior to approval of a mine plan of operations on lands that have been segregated or withdrawn from appropriation under the Mining Law.²⁷ To the extent there are remaining concerns about the application of this provision to withdrawn lands, the NMA believes a simple savings clause could be added to further clarify that nothing in H.R. 2925 affects the existing validity determination requirement for claims on segregated or withdrawn lands.

To amend the FAST Act To Include Certain Mineral Production Activities as a Covered Project (H.R. 6862)

H.R. 6862 respond to a misguided September 2023 proposed rule²⁸ from the Federal Permitting Improvement Steering Council (FPISC) to amend its existing regulations to limit application of the FAST-41 permitting process to projects that involve primary or byproduct production of “critical minerals” as defined by the U.S. Geological Survey.

This legislation, introduced by Representatives Doug Lamborn (R-Colo.) and Blake Moore (R-Utah), ensures that all mining projects, without bias, are eligible to utilize the permitting efficiencies provided by the FPISC permitting dashboard. The legislation also corrects the Biden administration’s shortsighted departure from FPISC’s unanimous 2020 vote to add all mining as a covered sector to the list of covered sectors eligible for the FPISC permitting process and the subsequent rulemaking that codified that vote.

Background: 2020 FPISC Vote and Proposal to Add Mining as a FAST41 Covered Sector

On January 15, 2020, the FPISC unanimously voted to include mining as a covered sector, a fact oddly omitted from the supplementary information section of the 2023 proposal. The press release accompanying the vote emphasized:

Minerals and metals are integral to many infrastructure projects and play a vital role in reducing our reliance on foreign sources of minerals for national and economic security, including expansion of U.S. production of renewable energy in wind turbines, solar panels and energy storage batteries. The development of non-energy mining operations routinely involves construction of a variety of infrastructure from buildings, roads and pipelines to electricity generation and wastewater treatment facilities.²⁹

The Council’s 2020 vote clearly recognized that mining projects involve the complex permitting processes that the Act was designed to facilitate. The NMA applauded mining’s inclusion as a means to ensure timely access to raw materials made available through domestic mining. The decision was important enough that later in 2020, FPISC proposed a rule to codify that vote.³⁰

The 2020 proposed rule specifically acknowledged that the complexity of permitting for major mining projects noting such projects can involve the construction of significant infrastructure, substantial investment, and, in certain circumstances, necessitate extensive Federal review and authorization. Accordingly, FPISC concluded that like other covered sectors, mining projects that satisfy the other

²⁷ 43 C.F.R. 3809.100, What special provisions apply to operations on segregated or withdrawn lands?

²⁸ Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act; <https://www.govinfo.gov/content/pkg/FR-2023-09-22/pdf/2023-20270.pdf>

²⁹ Permitting Dashboard, “Press Release: Federal Permitting Improvement Steering Council adds New Mining Sector,” Jan. 15, 2020. <https://web.archive.org/web/20200715234325/https://www.permits.performance.gov/about/news/new-sectors-fast-41>

³⁰ 85 Fed. Reg. 75998 (Nov. 27, 2020)

requirements of 42 U.S.C. 4370m(6) could benefit from the enhanced interagency coordination and permitting timeline predictability provided by FAST-41 coverage.

Importantly, by designating all mining as a FAST-41 sector in the 2020 proposal, the Council chose not to pick winners and losers among potentially qualified mining projects. Broadly, the proposed designation included “mining on and off federally managed lands, mining of federally managed and non-federally managed minerals, and mining of any mineral, ore, or raw material extracted from the ground, regardless of whether such mineral, ore, or raw material is used for energy production, manufacturing, or any other purpose.”³¹

January 2021 FPISC Final Rule

To finalize the 2020 proposed rule, the Council had to once again vote on the appropriateness of the including mining as a FAST-41 covered sector. That vote took place on Jan. 4, 2021 and a majority of the Council voted in favor of the proposal, with no votes against the proposal.³² Consequently, on Jan. 8, the FPISC promulgated the final rule, codifying, without changes, the 2020 proposed addition of mining as a covered sector.³³ The final rule appropriately recognized:

Mining is an appropriate FAST-41 sector precisely because mining projects can be complex and diverse, and can necessitate extensive and coordinated Federal and state environmental review and decision making. The more complex the permitting path, the more likely it is that a project will be able to benefit from the enhanced interagency coordination, transparency, and predictability that FAST-41 coverage provides.³⁴

2023 FPISC Proposed Rule Inexplicably Reverses Course

The September 2023 proposed rule is a sudden and arbitrary departure from FPISC’s 2020 vote and 2021 final rule to add all mining as a covered sector eligible for the FPISC permitting process. This recent narrowing of eligible projects is contrary to both the administration’s infrastructure objectives and the will of Congress and hamstringing the already limited activity by the Council, which to date has accepted only one mining project to the program.³⁵

By limiting the type of mining projects eligible for the FPISC permitting process, the Biden administration is wrongfully denying timeliness, efficiency, predictability and transparency to mining projects while continuing to call for more responsible and ethical mineral supply chains. This is little more than a shallow attempt to placate critics of any type of mining in the United States, which has globally leading environmental, health, and safety standards, while continuing to increase our nation’s mineral import reliance from geopolitical incumbents with little oversight of their mineral extraction.

Conclusion

What we are seeing is an explosion in mineral demand colliding with a geopolitical arms-race for development and control of integrated mineral supply chains. Matching the speed and scale of this rising demand requires the U.S. to recognize that mineral policy is now energy, climate and national security policy. To compete, we need access to our vast mineral resources and a permitting regime that enables the mining sector to respond to market signals and meet demand. Additional improvements to the permitting process should remain a high priority given the data provided by Dr. Daniel Yergin of S&P Global in testimony delivered in

³¹ 85 Fed. Reg. at 76000.

³² As articulated in the final rule, the Executive Director as well as Council members representing the Nuclear Regulatory Commission, Advisory Council on Historic Preservation, Department of Commerce, Department of Energy, Environmental Protection Agency, Army Corps of Engineers, Department of the Interior, Department of Agriculture, Department of Transportation, Department of Defense, and Department of Homeland Security, and the Chairman of CEQ voted in favor of the proposal. The Permitting Council member representing the Department of Housing and Urban Development and the Director of OMB abstained from the vote. The Permitting Council member representing the Federal Energy Regulatory Commission did not vote. *See*, final rule 86 Fed. Reg. 1281, at 1282.

³³ FPISC Final Rule, Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act, 86 Fed. Reg. 1281, Jan. 8, 2021.

³⁴ *Id.* at 1283.

³⁵ South32, “Hermosa confirmed as the first FAST-41 mining project,” <https://www.south32.net/news-media/latest-news/hermosa-confirmed-as-the-first-fast-41-mining-project>. May 2023.

September 2023.³⁶ He shared global data on 127 mines across the world that began production between 2002 and 2023, which demonstrated that a major new resource discovery today would not become a productive mine until 2040 at the earliest. He cautioned against overzealous attempts to source minerals primarily from allied countries while blocking domestic projects, noting that our allies are experiencing similar supply constraints, so availability is not guaranteed.

The right policies to support domestic mineral production and our supply chains must be forward-looking rather than regressive or the U.S. mineral supply chain—from mining through smelting and processing—will remain a shell of our true domestic potential. Promoting regulatory certainty doesn't mean that laws and regulations never change or that we aren't always seeking improvements. The NMA's members are committed to continuous environmental improvements, and routinely review developments across the globe for potential incorporation into their own operations.

The NMA applauds the work of this committee and strongly supports the Mining Regulatory Clarity Act of 2023 (H.R. 2925) and H.R. 6862. These pieces of legislation seek thoughtful and durable solutions to address our nation's disjointed minerals policy and prioritize domestic mineral security. Further, the regulatory certainty provided in these bills will enable responsible access to federal lands for mineral development and ease our nation's bureaucratic paralysis to provide for greater economic competitiveness and growth.

The NMA appreciates the opportunity to provide this testimony to the subcommittee and looks forward to working with Congress and the administration to support meaningful actions to increase the responsible domestic mineral supply chains for generations to come.

**American Exploration & Mining Association (AEMA)
Spokane Valley, WA**

January 30, 2024

Hon. Bruce Westerman, Chairman
Hon. Raúl Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Hon. Pete Stauber, Chairman
Hon. Alexandria Ocasio-Cortez, Ranking Member
Subcommittee on Energy and Mineral Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: January 31, 2024 Energy and Mineral Resources Subcommittee of the House
Natural Resources Committee Legislative Hearing on H.R. 2925 and H.R. 6862

Dear Chairman Westerman, Ranking Member Grijalva, Chairman Stauber and Ranking Member Ocasio-Cortez:

The American Exploration & Mining Association (AEMA) wishes to express our support for

H.R. 2925, the bipartisan Mining Regulatory Clarity Act, and H.R. 6862, to amend the Fixing America's Surface Transportation Act (FAST-41) to include certain mineral production activities as a covered project. Both pieces of legislation would help secure our mineral supply chains in the United States.

Who We Are and the Importance of the U.S. Minerals Mining Industry

AEMA is a 129-year-old, 1,800-member national trade association representing the mineral development and mining industry, with members residing across 46 states, 7 Canadian provinces or territories and 10 other countries. AEMA is the recognized national representative for the exploration sector, the junior mining sector, as well as mineral developers interested in maintaining access to public

³⁶Senate Energy and Natural Resources Committee: Hearing to Examine Opportunities to Counter the People's Republic of China's Control of Critical Mineral Supply Chains. Sept. 28, 2023

lands. Thus, AEMA represents the entire mining life cycle, from exploration to mineral extraction and then to reclamation and closure. More than 80 percent of our members are small businesses or work directly for small businesses.

American miners continue to play an indispensable role in building and defending our Nation. From foundations to roofs, power plants to wind farms, roads and bridges to communication grids and data storage centers, America's infrastructure begins and ends with minerals and mining.

There is no question that the minerals we produce are indispensable to modern society. They are also essential to fighting climate change, and for zero-emission technologies such as wind turbines, solar panels, storage batteries and EVs. As these technologies are deployed in ever-greater numbers, the demand for minerals is skyrocketing, and our Nation must do more to keep up.

Congress has taken note of this surge in demand, and through the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022, has decided—and we agree—that it is inappropriate, unwise and dangerous to rely on hostile, untrustworthy or unstable countries to supply our country's minerals. Congress has sent a clear message—**Now is the time to get serious about building a reliable mineral supply chain.** AEMA and its members stand ready to help build that supply chain right here in America.

Our members take great pride in producing the metals and other important minerals America needs for national and economic security, as well as the materials people use in their everyday lives. We are proud of our members' contributions across the communities and regions where they operate, many of which are rural areas facing significant economic and social development challenges. Notably, the U.S. mining industry is the safest, most environmentally responsible mining industry in the world. Our members have repeatedly demonstrated that mining and protecting the environment are compatible, as mineral producers make possible the development of society's basic needs and consistently minimize modern society's impacts on the environment.

We Need a Reliable Domestic Mineral Supply Chain

Recent global events have exposed the United States' supply chain vulnerabilities, highlighting the importance of an abundant and affordable supply of domestic minerals for America's future.

The fact is, global mineral demand is skyrocketing. As noted in a report from the International Energy Agency, keeping global temperature rise to below 2 degrees Celsius above preindustrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition—reaching net zero globally by 2050 as the Biden administration has called for—would require critical mineral inputs to increase sixfold by 2040.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese.

President Biden has promised to convert the entire U.S. Government fleet—about 640,000 vehicles by 2030—to EVs. That plan alone could require a 12-fold increase in U.S. lithium production to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt—and that's just for the U.S. government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. It's time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives. We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent.

Made in America must include "mined in America" and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

Recycling will play an important role in meeting increasing metal demand, but it will not be enough. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about ten percent of the minerals that will be needed.

The United States and our economy simply need more mines. According to the USGS' Mineral Commodity Summaries 2023, our country's import dependence for

key mineral commodities has doubled over the past two decades, with the United States now 100 percent import-reliant for 15 of its key minerals and more than 50 percent import-reliant for an additional 36 key mineral commodities. This foreign reliance continues despite the existence of significant mineral deposits of many of these commodities within our borders. Moreover, U.S. mineral import reliance continues to increase as mineral demand from essential industries, such as energy and transportation, soars. Notably, the World Bank sees mineral demand for advanced energy technologies jumping by nearly 500 percent by the year 2050.¹ Copper demand alone may rise as much as 350 percent by 2050, according to one estimate.²

Support for H.R. 2925, the Mining Regulatory Clarity Act

A major threat to the future of mining on U.S. public lands is the U.S. District Court's July 2019 decision in litigation challenging the Forest Service's approval of the Rosemont Mine, Rosemont Copper Company's proposed Arizona copper mine. The court's decision incorrectly restricts the rights to use public lands for mineral purposes to claims that contain a discovery of a valuable mineral deposit and interprets the Mining Law in a manner that interferes with claim owners' Mining Law rights to use public lands to explore for and develop minerals.

The Rosemont ruling incorrectly limited the jurisdiction of the Forest Service's surface management regulations to claims with a discovery of a valuable mineral deposit. The Bureau of Land Management's (BLM) and the Forest Service's regulations govern all aspects of locatable mineral activities to ensure all mineral activities comply with environmental protection mandates and to confirm that all mining facilities are reasonably incident to the mining project. Claim status is irrelevant in determining the applicability of these regulations.

It has always been Congress' intent that the law must support and encourage mining on public lands. Although Congress has amended the Mining Law and developed other laws pertaining to public lands management since 1872, the purpose of the Mining Law has not changed. Congress has repeatedly preserved the foundational rights under Section 22 of the Mining Law that authorize citizens to enter, use, and occupy public lands to explore for minerals and to develop mines.

We therefore strongly support the bipartisan Mining Regulatory Clarity Act (H.R. 2925). The legislation is a durable solution that simply codifies the decades-long framework prior to the Rosemont decision. This bill clearly recognizes that maintaining security of land tenure is essential for mining to occur on public lands and is especially important in light of the skyrocketing demand for minerals.

Support for H.R. 6862

The Federal Permitting Improvement Steering Council (FPISC) proposed a rule in September 2023 that would amend its regulations to limit the scope of mining projects eligible for coverage under Title 41 of the FAST Act solely to critical minerals mining projects, as defined by section 7002 of the Energy Act of 2020 and listed by the Director of the U.S. Geological Survey (USGS). AEMA's members have extensive first-hand experience with the Federal permitting process, and they are significantly impacted by permitting decisions from an array of Federal agencies. Thus, our members are key stakeholders when it comes to developing a more efficient, timely and effective Federal permitting process as envisioned under FAST-41.

AEMA vigorously opposes limiting eligibility solely to USGS-listed "critical" minerals projects, and in our formal comments we urged the FPISC to withdraw the proposal immediately. AEMA appreciates that the FPISC proposal expands the definition of the sector beyond "the process of extracting ore, minerals, or raw materials from the ground" to include "critical mineral beneficiation, processing, and recycling." This is consistent with the need to actually produce the final product minerals essential to the U.S. economy and recognizes that much of existing mineral processing currently occurs overseas, often in insecure jurisdictions. Given AEMA's support of the provision to expand the definition of the mining sector, we urge Congress to amend H.R. 6862 to include the expanded definition. However, we emphasize that this provision should not be limited to USGS-listed "critical" minerals.

It should not be forgotten that multiple federal agencies maintain their own lists of "critical minerals" or "critical materials," including the departments of Energy and Defense, among others. These lists are compiled for various reasons, not least of which is a mineral's importance to the economy or weapons platforms, thus underscoring its national security implications. FPISC gives no explanation why

¹ <https://pubdocs.worldbank.org/en/96171158875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

² <https://www.sciencedirect.com/science/article/abs/pii/S0959378016300802>

they selected the USGS list, but in doing so, they have elevated one agency's list in importance above the others.

FAST-41 was enacted to improve the timeliness, predictability, transparency, and accountability of the Federal environmental review and authorization processes for covered infrastructure projects. FAST-41 coverage does not predetermine or affect the outcome of any Federal decision-making process with respect to a covered project, nor modify any required environmental review or public or tribal consultation process.

Beyond mining, current FAST-41 sectors include renewable and conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, and manufacturing. It is important to remember that mining stands at the front of the supply chain for these and nearly every sector of our economy.

S&P Global published a report titled "Inflation Reduction Act: Impact on North America metals and mineral markets," which identified protracted permitting as a key factor in the shortage of minerals, stating: "extended and uncertain timelines for permitting in the U.S. and around the world are a major obstacle to bringing new [copper] supply online to narrow that shortfall." This report cites the complexity of lengthy, multi-agency permitting processes and post-permit litigation risks as the primary reasons that permitting is so difficult and fraught with uncertainties.

While AEMA's members stand ready to help, the need to address our permitting vulnerabilities is more urgent than ever; now is not the time to narrow mining sector eligibility. FPISC's 2021 vote to include mining as a covered sector clearly recognized that mining projects almost always involve the complex permitting processes that FAST-41 was designed to facilitate. FAST-41 provides a pathway to reduce permitting inefficiencies while retaining our world-class environmental protections, but it must be available to the entire mineral mining sector.

The surging global demand for minerals means other countries will be competing for the same limited supplies, which will challenge the United States' ability to obtain minerals from abroad. Although we may need to obtain some minerals from our allies, we must responsibly utilize our own resources whenever possible. Consequently, our objective must be to get more mines permitted in the United States. Unfortunately, the FPISC proposal to restrict FAST-41 eligibility to only "critical" minerals projects will result in fewer mines being permitted in a timely manner, not more.

Conclusion

Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. For example, the Mineral and Mining Policy Act (1970), FLPMA (1976), the National Minerals, Materials Policy Research and Development Act (1980), the Energy Act (2020), the IIJA (2021), and most recently the IRA (2022) all direct the executive branch agencies to respond to the Nation's need for domestic minerals.

Unfortunately, these Congressional directives have gone largely unheeded as more lands continue to be withdrawn from mineral entry and permitting timelines, costs, and risks have become intolerable. Our risky reliance on imported minerals is a direct result of five decades of ignoring Congress' clear directives that minerals should be mined from public lands to help satisfy the Nation's need for minerals. Despite the urgent need to increase domestic mining and reduce our dependency on foreign minerals, today it often takes 10 years or more to permit a mine.

The findings in the IIJA that "critical minerals are fundamental to the economy, competitiveness, and security of the United States" and that "the Federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States" must result in constructive action to streamline permitting and eliminate permitting impediments.

For the aforementioned reasons, we wholeheartedly support H.R. 2925 and H.R. 6862. We look forward to continuing to work with you to ensure America has a secure and affordable supply of the minerals and metals needed for our modern society.

Sincerely,

MARK COMPTON,
Executive Director

**National Mining Association
and
Zero Emission Transportation Association**

July 25, 2023

Hon. Kevin McCarthy, Speaker
Hon. Hakeem Jeffries, Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Hon. Chuck Schumer, Senate Majority Leader
Hon. Mitch McConnell, Senate Minority Leader
U.S. Senate
Washington, DC 20510

Dear Speaker McCarthy, Leader Jeffries, Majority Leader Schumer, and Minority Leader McConnell:

We write today in support of Section 444 within H.R. 4821, legislation which would provide the certainty needed for critical mineral production to continue in the United necessary for a cleaner and more secure energy future, we hope you will give every possible consideration to enacting this measure before the end of the year.

The legislative language contained in Section 444 within H.R. 4821 is reflective of the strong bipartisan support this provision enjoys in the U.S. Senate and the U.S. House of Representatives. In the Senate, corresponding bipartisan legislation (S. 1281; Mining Regulatory Clarity Act) has been introduced by Senators Cortez Masto, Rosen, Sinema, Risch, Crapo, and Murkowski and in the House of Representatives, Congressman Amodei and Peltola have introduced H.R. 2925. Their combined advocacy for this measure not only highlights the importance critical minerals play in our clean energy future, but also a substantial number of jobs across the United States attributable to responsible mining companies.

The necessity for this measure is highlighted by the fact that decisions stemming from *Center for Biological Diversity et al. v. U.S. Fish and Wildlife Service et al* have effectively paralyzed the ability for the United States to operate mines efficiently and responsibly. In the absence of the enactment of the Mining Regulatory Clarity Act, decades of precedent and investment in the clean energy economy and corresponding good-paying American jobs have been thrown into turmoil. The enactment of this legislation is the single best way to provide the appropriate amount of certainty needed to underpin the ability of the United States to meet the extraordinary mineral demand necessary to meet the challenge of clean energy future.

Thank you for your attention to this matter, your work to help improve the federal permitting process, and your public service.

Sincerely,

Rich Nolan,
President and CEO
National Mining Association

Albert Gore
Executive Director
Zero Emission Transportation
Association

Statement for the Record
Advanced Energy United
on H.R. 2925, Mining Regulatory Clarity Act of 2023

Dear Chair Westerman, Ranking Member Grijalva, Chair Stauber, Ranking Member Ocasio-Cortez, and members of the Committee:

Advanced Energy United (“United”) appreciates the opportunity to submit this statement for the record on H.R. 2925, the Mining Regulatory Clarity Act of 2023.

United is an association of businesses that educates, engages, and advocates for policies that allow our member companies to compete to power our economy with 100 percent clean energy. We work with decision makers at every level of government, as well as regulators of energy markets, to achieve this goal. The businesses we represent are lowering consumer costs, creating thousands of new jobs every year, and providing the full range of clean, efficient, and reliable energy and transportation solutions.

This goal of reaching a 100 percent clean energy future is what drove United’s endorsement of the Mining Regulatory Clarity Act when it was first introduced in the Senate; we were pleased to see the House companion bill introduced with similar, bipartisan support. Making the transition to a 100 percent clean, fully electrified economy necessitates the production of more critical resources, from lithium to nickel and copper to graphite. This understanding that our clean energy future is intrinsically tied to our national minerals policy is what led to the development of United’s policy principles on the mining, reuse, and recycling of critical minerals in early 2023. These principles—which pair the need for permitting reform that protects workers, surrounding communities, and the environment with comprehensive reuse and recycling policy—have served as our guide for evaluating bills in this space. In our view, the Mining Regulatory Clarity Act readily fits with these principles.

In order to build a robust supply chain for U.S. manufacturers of advanced energy technologies, we need to expand U.S. mineral production in a responsible and sustainable manner. By expanding mineral production here in the U.S., we are not only addressing the issue of foreign dependence for these commodities, but we are also ensuring that the mining will be subject to stringent U.S. regulations that protect workers, communities, and our natural resources. Unfortunately, the Rosemont decision, which prompted the need for this legislative clarification in the first place, injects in our view unnecessary uncertainty into the future of all domestic mining operations; if left unchecked, we fear it will ultimately prove detrimental for our supply chains and a *wholly* clean energy economy.

We see this bill as a necessary step to reestablish business certainty around our mining rules and regulations. It seeks only to maintain the status quo by reaffirming prior legal interpretations and historical applications of the law. We’re at a critical juncture for the clean energy future. While we will continue having larger conversations and working towards passage of a comprehensive permitting reform package, this bill represents a bipartisan proposal that can reasonably be agreed to right now in order to address a pressing need. Our industry is already facing growing demands amid our national clean energy transition and, as such, needs timely certainty on rules and regulations. This clarifying law is a step towards what the nation needs to secure domestic supply chains for the clean energy future.

As evidenced by this statement for the record, our statement for the record submitted to the Senate Energy and Natural Resources Committee last year, as well as our endorsement when the bill was first introduced, United supports this bipartisan legislation brought forward by Representatives Amodei and Peltola wishes to see it move expeditiously.

Sincerely,

HARRY GODFREY,
Managing Director

NATIONAL INFRASTRUCTURE ALLIANCE
Washington, DC

November 28, 2023

Mr. Eric Beightel, Executive Director
 Federal Permitting Improvement Steering Council
 1800 M Street, NW Suite 6006
 Washington, DC 20036

Re: Comments on Revising the Scope of the Mining Sector of Projects That Are Eligible for Coverage under Title 41 of the Fixing America's Surface Transportation Act

Dear Mr. Beightel:

The National Infrastructure Alliance opposes the Federal Permitting Improvement Steering Council's proposal limiting the coverage of Title 41 of the Fixing America's Surface Transportation Act to apply solely to critical mineral mining projects. The Council should support all mining infrastructure projects.

The National Infrastructure Alliance (NIA) is a coalition of North America's leading construction unions—the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Union, the International Union of Operating Engineers, the Laborers' International Union of North America, and the United Brotherhood of Carpenters and Joiners of America—representing over 1.7 million hardworking men and women in the United States and Canada. NIA unions build North America's transportation, energy, and water infrastructure, and the continent's abundant natural resources play a vital role in virtually all aspects of our work.

The Council unanimously voted to include mining as a covered sector under Title 41 of the Fixing America's Surface Transportation Act (FAST-41) back in January 2020. The vote clearly recognized that mining projects involve the complex permitting processes that the Act was designated to facilitate. By designating all mining as FAST-41 sector in the 2020 vote, the Council chose not to pick winners and losers among potentially qualified mining projects. The addition of mining as a covered sector provides a pathway to reduce permitting inefficiencies while retaining environmental protections.

The proposed rulemaking to limit the scope of the mining sector to only apply to critical mineral projects is short sighted. There are many minerals that are of vital importance to our economic and national security that are absent from the United States Geological Survey's (USGS) Critical Minerals List, which was recently updated in 2022. The most glaring omissions to the list are copper, silver, gold, lead, zinc, phosphate, and other minerals, which are indispensable to our infrastructure and are essential components of consumer products, military and defense equipment, numerous manufacturing sectors, medical applications, and other uses. Copper, for example, is the most widely used mineral for clean energy technologies, and it has a broad range of electronic and industrial applications, from batteries and motors to wind turbines. One modern offshore wind turbine requires over five tons of copper. In contrast to the USGS, the Department of Energy recently added copper to its list of critical materials.

Today, many minerals come from countries with the most egregious environmental and labor standards in the world—countries like Argentina, Chile, China, and the Democratic Republic of the Congo. Nearly 40% of the world's copper is mined in Chile and Peru, and most of the global supply is refined in China. The South American countries' environmental and labor records, where workplace hazards and occupational deaths frequently occur, raise significant concern. China's prominence in the sector presents a raft of policy considerations related to labor and human rights abuses, environmental degradation, national security threats, and more. The federal government's goal should be reducing our dependence on these countries and creating a stable, domestic supply chain and an efficient permitting process for mining minerals.

The National Infrastructure Alliance urges the Council to abandon this proposal limiting the coverage of Title 41 of the Fixing America's Surface Transportation Act to apply solely to critical mineral mining projects and maintain coverage for all mining projects.

Sincerely,

TERRY T. GEORGE,
Executive Vice President

UNITED STATES SENATE

November 1, 2023

Mr. Eric Beightel, Executive Director
 Federal Permitting Improvement Steering Council
 1800 M Street, NW, Suite 6006
 Washington, DC 20036

Mr. Beightel:

We write to express our concerns regarding the proposed rule, “Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act.”¹ The mining of all minerals is essential to the development of domestic infrastructure, and accordingly, it is imperative the Federal Permitting Improvement Steering Council (FPISC) ensure that *all* mining projects—for *all* minerals—are equally considered “covered projects” for the purposes of Title 41 of the Fixing America’s Surface Transportation Act (FAST-41). Indeed, even the U.S. Department of the Interior’s own “Interagency Working Group on Mining Laws, Regulations, and Permitting” did not suggest this change is needed in a report it recently released regarding recommendations to reform domestic mining policies.²

The federal permitting process must be coordinated and transparent in order for the United States to efficiently permit new energy and infrastructure projects without undermining the value of critical taxpayer and private sector investments. Consequently, Congress first established FPISC in 2015 for the purpose of coordinating agency actions between federal environmental reviews and large-scale, critical, and “covered” infrastructure projects in the United States. FAST-41 defines “covered project” to include “*any* activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure,” regardless of the mineral used in the construction of that infrastructure.³

To that end, it still takes “anywhere from seven to ten years or more for a mining company to navigate through the federal application process and appeals process through litigative measures” before a domestic mining operation can come online.⁴ This is particularly problematic, given the pressing need for greater domestic sources of minerals to meet manufacturing, energy, infrastructure, and national security needs. Our nation’s duplicative and inefficient permitting process also puts the United States at a strategic disadvantage compared to other mining countries like Australia and Canada, which have permitting processes that consist of two to three years.⁵ FPISC, in an effort to address this issue, subsequently voted in January 2021 to add all mining as a “covered sector,” without bias to the type of mineral.⁶

Permitting delays have been, and continue to be, one of the most significant risks to meeting domestic mineral production goals—a fact clearly recognized by FPISC in 2021. FPISC should be doing all it can to facilitate the addition of mining projects to the FPISC dashboard of covered projects, as significant investments are being made daily in such projects, regardless of the type of minerals being mined. Unfortunately, this misguided and shortsighted proposal disincentivizes such investment.

The nation needs these investments to match the increasing mineral demand necessary to support budding technologies, bolster domestic supply chains, and strengthen our nation’s national defense to reduce our reliance on minerals from our geopolitical adversaries. While the global demand for critical minerals “would require six times more mineral inputs in 2040 than today,” it should not be lost on FPISC the amount of other mined materials, such as crushed stone and gravel that are needed for domestic infrastructure.⁷

FPISC’s proposal sends the wrong message to investors, industry stakeholders, and our nation’s allies by that the United States should drastically limit the type

¹“Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act,” 88 Fed. Reg. 63,350 (Sept. 22, 2023).

²See Interagency Working Grp. on Mining Laws, Regulations, and Permitting, Recommendations to Improve Mining Laws on Pub. Lands (Sept. 2023).

³42 U.S.C. § 4370m(6).

⁴Minerals Make Life, “Delays in the U.S. Mine Permitting Process Impair and Discourage Mining at Home,” National Mining Association (July 9, 2015).

⁵*Id.*

⁶“Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act,” 86 Fed. Reg. 1,281 (Jan. 8, 2021).

⁷“Data by State,” National Sand Stone and Gravel Association (last accessed Oct. 2, 2023).

of mining projects eligible under the improved permitting process to projects with primary or byproduct production of “critical minerals,” defined by the U.S. Geological Survey (USGS). Not only does this subjective action contradict the FPISC’s mission of delivering transparency and timeliness to the federal permitting process, but it also fails to consider the fact that different agencies have different definitions of “critical” or “strategic” minerals or materials. The lack of consideration of these varying differences in the proposal will undoubtedly limit the effectiveness of FPISC’s actions and increase our nation’s strategic vulnerabilities by making the United States more dependent on foreign sources of minerals. Ultimately, this proposal will hinder mining permitting predictability and efficiency while further empowering China with its near-monopoly on the global supply of critical minerals.

Thank you for your attention to this matter. We urge FPISC to abandon this proposal and use its existing authority to actively support all mining infrastructure projects to unleash America’s national supply chains and processing capabilities. We look forward to a response from you no later than November 30.

Sincerely,

Dan Sullivan
United States Senator

Shelley Moore Capito
United States Senator

Catherine Cortez Masto
United States Senator

Bill Cassidy, M.D.
United States Senator

Michael S. Lee
United States Senator

James E. Risch
United States Senator

John Hoeven
United States Senator

Mike Rounds
United States Senator

Mike Crapo
United States Senator

Lisa Murkowski
United States Senator

Markwayne Mullin
United States Senator

John Barrasso, M.D.
United States Senator

Joe Manchin III
United States Senator

Ted Cruz
United States Senator

James Lankford
United States Senator

Kevin Cramer
United States Senator

Roger Marshall, M.D.
United States Senator

Cynthia M. Lummis
United States Senator

Katie Boyd Britt
United States Senator

Pete Ricketts
United States Senator

Thom Tillis
United States Senator

Mitt Romney
United States Senator

UNITED STATES SENATE

November 15, 2023

Mr. Eric Beightel, Executive Director
 Federal Permitting Improvement Steering Council
 1800 M Street, NW, Suite 6006
 Washington, DC 20036

Dear Mr. Beightel:

I am writing to express my concern regarding the effects of the Federal Permitting Improvement Steering Council's (FPISC) proposed rule titled "Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act" (proposed rule),¹ and to urge FPISC to continue utilizing as broad a definition of 'covered project' as permissible.

FPISC's federal permitting coordination process is a proven mechanism to hasten the permitting process for various essential infrastructure and energy projects. FAST-41 improves agency coordination and establishes two-year completion goals—creating a more efficient, predictable, and timely federal environmental review process for covered projects. This system provides certainty for investors, allowing projects to receive financing, while not sacrificing our commitments to environmental protection and community input. Arizona is home to the only mining project currently on the FAST-41 dashboard, and I was proud to lead key updates to the FAST-41 program in the Bipartisan Infrastructure Law that will continue to help grow our domestic supply chains—from extraction to processing and refining.

Large-scale mining operations often require significant investment, construction of infrastructure, and extensive federal reviews and authorizations. For this reason, mining was added as a FAST-41 sector in January 2021. FPISC's proposed rule, which limits mining projects covered under FAST-41 to critical mineral projects, as defined by the Department of the Interior (DOI) through the U.S. Geological Survey (USGS) runs counter to America's goals of responsible domestic critical mineral production. On-shoring this production strengthens our national security, reduces our reliance on foreign markets controlled by adversarial governments, fuels economic opportunities, and advances energy security. Unfortunately, the materials necessary to achieve this goal of independence go beyond those named in the proposed rule.

According to USGS, copper is not a designated critical mineral. This ignores the crucial nature of copper as a wiring component in renewable energy technologies, its importance to various defense systems, and the significant projected increases in global demand in the coming years.² Further, the lack of USGS designation runs counter to the Department of Energy's 2023 Critical Materials Assessment, which identifies copper as a key material with a "high risk of supply disruption" that is "integral to clean energy technologies."³

Under FPISC's proposed rule, copper mining projects will lose the opportunity to become FAST-41 covered projects. Exclusion from the FAST-41 program will allow these critical mining projects to experience unreasonable permitting delays at a time when copper production is more essential than ever.

If we are serious about reaching our nation's goals of reducing climate emissions, and securing domestic mineral supply chains, the proposed rule must take a more holistic look at all critical components—like copper—to be covered under the proposed rule.

Sincerely,

Kyrsten Sinema
 United States Senator

¹ "Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act," 88 Fed. Reg. 63,350 (Sept. 22, 2023).

² S&P Global, "Inflation Reduction Act: Impact on North America metals and minerals market". August 2023.

³ U.S. Department of Energy, Critical Materials Assessment. July 2023.

**U.S. Chamber of Commerce
Washington, DC**

February 6, 2024

Hon. Bruce Westerman, Chairman
Hon. Raúl Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

The U.S. Chamber of Commerce supports H.R. 2925, the “Mining Regulatory Clarity Act of 2023,” and we thank you for considering this important legislation.

Rapidly increasing demand for critical minerals coupled with advancing geopolitical instability makes developing a secure and reliable domestic supply chain for critical minerals vital. H.R. 2925 would help remove permitting obstacles for domestic critical mineral development and enable common sense construction and safety practices at potential mine sites by establishing a process to enable operators to use, occupy, and conduct operations on public land before mineral deposit have been positively identified.

The Chamber urges you to favorably report H.R. 2925.

Sincerely,

Neil L. Bradley,
Executive Vice President,
Chief Policy Officer,
and Head of Strategic Advocacy

Mr. STAUBER. I want to thank the witnesses for your valuable testimony and your time before our Committee today.

The members of the Subcommittee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Monday, February 5. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 3:52 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Grijalva**WESTERN SHOSHONE DEFENSE PROJECT
Elko, Nevada**

November 21, 2023

House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: Western Shoshone Defense Project Opposition to the Mining Regulatory Clarity Act

Dear President Biden, Senators and Representatives:

The Western Shoshone Defense Project (WSDP) firmly opposes the Mining Regulatory Clarity Act, which represents an unprecedented giveaway of public lands to mining corporations. Under the bill, mining corporations would gain a near unlimited right to occupy as much public land as they want for their mining operations. The companies would gain the right to dump waste, dispose of toxic tailings, bulldoze roads, and construct pipelines across public lands, even on lands of deep cultural and ecological significance to Western Shoshone people. We urge you to oppose the legislation, which would exacerbate the harms caused by the mining industry.

Western Shoshone to this day use, occupy, live, hunt, gather and pray on the land now called Nevada. In 1863, the Western Shoshone by way of treaty allowed safe passage through Western Shoshone territory. The 1863 Treaty of Ruby Valley also allowed mining, as mining was known in 1863 by people who did not understand or comprehend the English language. In 1864 Nevada became a state and eight short years later the 1872 Mining Law was established. This plan was orchestrated by a governmental body that foresaw a future of mining resources at the expense of everything the land has to offer including plant life, animal life, and the most important resource, water. This same governmental body would deceive the Western Shoshone people and would break their own laws in order to achieve the end goal. Since the coming of Europeans to our territory, the Western Shoshone have been forced to sacrifice everything for the “greater good” to “enhance the economy” while we watch that same entity destroy our land.

The Western Shoshone and the United States government have a long-drawn-out legal history, where the legal system is stacked against all Indigenous Nations in its jurisdiction. In 1999 and in the early 2000s the United Nations and other international legal fora have recognized that many of the legal problems and political obstacles facing the Western Shoshone people stem from the foundations of United States Federal Indian Law and Policy which falls far short of internationally recognized standards of Indigenous rights. These laws and policies which have been used against the Western Shoshone and other Indigenous peoples in the U.S. stem from antiquated, racist concept known as the “doctrine of discovery.” See *Johson v M’Intosh*, 21 U.S. (8 Wheat) 543 (1823). This “doctrine” claims that Indigenous Peoples are “heathen”, “savage” and “childlike in nature”.

The U.S. has been directed previously through international communication to review all existing laws and policies and to ensure they are in compliance with contemporary human rights standards. Our position continues to be that the antiquated laws such as the 1872 Mining Law, and aspects of federal Indian law such as the plenary power doctrine must be addressed and reformed as they continue to impact Indigenous peoples such as the Western Shoshone in an unequal and racist manner based on colonial concepts such as the doctrine of discovery.

Declaration of the violation of Western Shoshone rights to due process, equality under the law, and right to property by the Inter-American Commission on Human Rights (IACHR) is found in the (Final Report 75/02). On March 6, 2002 the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) confirmed the Inter American Commission’s decision and rendered a full Urgent Action decision (68(1)) against the United States. The decision specifically instructs the United States to stop any further actions on Western Shoshone lands and calls for the opening of an immediate dialogue.

As you know, we are currently in a time of change fundamentally, environmentally, culturally and spiritually. As leaders of this “free” world it is time for you to examine your hearts and consider righting the historical wrongs this government has done not only to the Western Shoshone but to all Indigenous peoples of this nation.

We now are especially concerned with this legislation because four key minerals that will be used for the energy transition—97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt—are located within 35 miles of Native American Reservations. In addition, many existing and proposed mines are located on “federal lands” that is actually treaty lands of the Western Shoshone as written in the 1863 Treaty of Ruby Valley.

The proposed legislation contains a series of provisions designed to undermine the Federal Government’s authority to safeguard public lands. Under Section 2(e)(1)(B) of the Mining Regulatory Clarity Act, mining companies would receive a statutory right to permanently occupy and bury public lands under tons of toxic waste. Further Section 2(e)(1)(A) grants mining companies automatic rights-of-way for new pipelines, transmission lines, and roads across public lands—eliminating a central provision of the Federal Land Policy Management Act that requires mining companies to receive a permit for such uses just like every other industry operating on federal lands. The mining law of 1872 is already overly permissive—having caused disastrous consequences for our Indigenous communities, our health and our sacred sites, and this legislation would only increase those harms in the future.

As individuals with backgrounds in environmental health, forestry and as outdoorsmen who once cared about the environment and who want to protect resources for future generations; ask yourselves if this legislation is one of “enhancing conservation through innovation” as is the mission of this body. Your yes vote on this legislation will negatively affect the future of the environment and people you are sworn to protect.

The Mining Regulatory Clarity Act is poised to have devastating consequences on our ancestral lands and resources. The creation of tribal sacrifice zones in the name of the clean energy transition must stop. Indigenous communities use what are now federal public lands for resource collection, ceremonies, and other traditional cultural uses. This Administration has vowed to safeguard our cultural resources and to listen to tribes. The Mining Regulatory Clarity Act will impair our ability to use our ancestral lands forever and we ask that you reject it.

Sincerely,

FERMINA STEVENS,
Director

Statement for the Record

Charlie Olsen
Energy and Public Lands Policy Manager

National Parks Conservation Association (NPCA)

NPCA Position on H.R. 2925, the Mining Regulatory Clarity Act of 2023

Dear Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the Energy and Mineral Resources Subcommittee:

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our 1.6 million members and supporters nationwide, and the undersigned organizations, I write to share our position on H.R. 2925, the Mining Regulatory Clarity Act of 2023.

We appreciate the subcommittee looking at the General Mining Act of 1872 and the need to bring our nation's mining system to the same standards as other types of extractive development on public lands. This is especially relevant due to the growing demand for minerals essential for the renewable energy transition and the subsequent growth of domestic mining on our public lands. Extreme flooding, drought, storms and fires pose a significant threat to the national park system, often destroying the unique landscapes, wildlife, ecosystems and cultural and historical objects that make these so special. We must take immediate action to reduce greenhouse gases from fossil fuels to prevent climate change from getting worse while preparing these treasured landscapes for the impacts they cannot avoid. This includes a rapid transition to renewable energy technologies.

Investments in the clean energy economy have grown significantly in recent years and need to grow exponentially in the years and decades ahead. The issue our nation faces is how do we get the materials necessary to build out these renewable energy technologies. Demand reduction through energy efficiency improvements, recycling and developing a robust circular economy are all helpful, but the reality is that some amount of mining is necessary. To fully transition to a renewable energy economy under current conditions requires more minerals and metals than we currently have in circulation today. The mining for these renewable energy minerals must be done with the highest environmental safeguards and with the greatest consideration for national parks, special places, sacred sites and local communities. We believe this means meaningful changes to the mining law.

H.R. 2925—The Mining Regulatory Clarity Act: NPCA opposes this bill, which disrupts the effective management of our public lands, including vital conservation efforts. While the proposed intent of the bill is pitched as a “fix” to the ancillary uses issue raised by the Rosemont Decision, H.R. 2925 goes **further than** fixing that decision by abolishing the discovery requirement altogether, one of the longest standing pieces of the claim system under the 1872 law. Under current law, the discovery of a valuable mineral must be proven on a claim for said claim to be considered valid. Without the discovery of a valuable mineral, a claim can be challenged, and the mineral rights revoked.

The proof of discovery is essential for conservation tools such as mineral withdrawals, monument designations and even the creation of new national parks. Importantly, when any of these conservation tools are used, *all existing and valid* rights are still preserved. Valid claims pose a threat to park resources due to the potential for new mining to happen as allowed under the Mining in the Parks Act. Under the proposed changes in H.R. 2925, there would no longer be a requirement for claimants to prove the discovery of a valuable mineral to hold or validate their claim to the land. This essentially removes the ability of the federal government to contest superfluous claims on lands reserved for conservation. Despite what proponents contend, **this legislation does NOT return the mining law to the status quo.**

Moreover, across the National Park System there are currently 1100 active mine claims held by private entities in 15 parks, covering thousands of acres. Many of these claims are already patented prior to the creation of the surrounding park, but many remain unpatented and therefore subject to the validity examination that H.R. 2925 would dramatically deteriorate. Under the legislation as written, the unpatented claims across the National Park Service (NPS) would effectively become private property and NPS would have insufficient power to challenge potentially damaging activities on these lands.

The Rosemont decision has apparently created new issues for mining companies, many of which have found other ways of addressing it already. By potentially undermining other conservation goals and important public lands, H.R. 2925 as written, is not the appropriate solution to this problem. Other options exist, such as those in the May 2023 DOI solicitor's opinion, for mining companies to pursue for their ancillary activities, such as Mill-site claims and tools available under the Federal Land Policy and Management Act (FLPMA). **Nevertheless, H.R. 2925 is the wrong approach for addressing this issue and would only exacerbate the threat of mining in our precious National Parks.**

NPCA supports a renewable energy transition and acknowledges some domestic mining may be necessary for the transition. We look forward to working with the subcommittee to meaningfully modernize our mining laws to both advance the development of less-damaging mining projects and to ensure that national parks and other special places, communities and the environment are not irreparably harmed. Ultimately, we believe that most mining operations are incompatible with the mandate of the National Park system to protect natural and cultural resources in perpetuity. Any reform must include the removal of the 1,100 active mine claims from the National Park System.

Thank you for considering our views. If you have any questions or need additional information, please contact me.

ORUTSARMIUT NATIVE COUNCIL
Bethel, AK

July 25, 2023

Re: Orutsararmiut Native Council's Opposition to the Mining Regulatory Clarity Act

Dear President Biden, Senators and Representatives:

The Orutsararmiut Native Council firmly opposes the Mining Regulatory Clarity Act, which represents an unprecedented giveaway of public lands to mining corporations. Under the bill, mining corporations would gain a near unlimited right to occupy as much public land as they wanted for their mining operations. The companies would gain the right to dump waste, dispose of toxic tailings, bulldoze roads, and construct pipelines across public lands, even on lands of deep cultural and ecological significance to Orutsararmiut Native Council. We urge you to oppose the legislation, which would exacerbate the harms caused by the mining industry.

We are especially concerned with this legislation because four key minerals that will be used for the energy transition—97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt—are located within 35 miles of Native American Reservations. In addition, many existing and proposed mines are located on federal lands adjacent to tribal lands. Our lives, unique culture, and safety are at stake on our Ancestral Lands. The threat to our ecosystem in which we truly depend upon is under immediate danger. Our Indigenous population will be decimated because our food security from our natural environment will disappear with any ecosystem imbalance.

The proposed legislation contains a series of provisions designed to undermine the Federal Government's authority to safeguard public lands. Under Section 2(e)(1)(B) of the Mining Regulatory Clarity Act, mining companies would receive a statutory right to permanently occupy and bury public lands under tons of toxic waste. Further Section 2(e)(1)(A) grants mining companies automatic rights-of-way for new pipelines, transmission lines, and roads across public lands—eliminating a central provision of the Federal Land Policy Management Act that requires mining companies to receive a permit for such uses just like every other industry operating on federal lands. The mining law of 1872 is already overly permissive—having caused disastrous consequences for our Indigenous communities, our health and our sacred sites, and this legislation would only increase those harms in the future.

The Mining Regulatory Clarity Act is poised to have devastating consequences on our ancestral lands and resources. The creation of tribal sacrifice zones in the name of the clean energy transition must stop. Indigenous communities use what are now federal public lands for resource collection, ceremonies, and other traditional cultural uses. This Administration has vowed to safeguard our cultural resources and to listen to tribes. The Mining Regulatory Clarity Act will impair our ability to use our ancestral lands forever and we ask that you reject it.

Sincerely,

BRIAN M. HENRY,
Executive Director

PIMA COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 2023-12

**OPPOSING THE PERMITTING FOR MINING NEEDS ACT
AND THE MINING REGULATORY CLARITY ACT, AND SUPPORTING
MEANINGFUL MINING REFORM**

WHEREAS, Pima County and the Pima County Board of Supervisors have long advocated for meaningful reform of the 1872 Mining Law, acknowledging that mining is necessary and should occur in places and with methods that protect the health, safety, and welfare of our County's residents; and

WHEREAS, on January 2, 2023, the "Permitting for Mining Needs Act of 2023" was introduced as H.R. 209 in the U.S. House of Representatives; and

WHEREAS, on April 25, 2023, the "Mining Regulatory Clarity Act" was introduced as S. 1281 in the U.S. Senate; and

WHEREAS, both Acts do not provide meaningful mining reform and instead would make it easier for mining companies to gain access to federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies; and

WHEREAS, both Acts would allow mining companies to ". . . use, occupy, and conduct operations on public land, with or without the discovery of a valuable mineral deposit." This includes dumping waste and tailings on federal land without the need to prove valid mining claims, as well as on federal land absent of claims; and

WHEREAS, both Acts would authorize actions where mining companies secure rights on our federal public lands through unpatented mining claims without proving that the claims are valid, actions that have occurred for too many years; and

WHEREAS, both Acts are intended to legislatively reverse recent decisions by the United States District Court for the District of Arizona ("District Court") in 2019 and the Ninth Circuit Court of Appeals ("Ninth Circuit") in 2022 halting the construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,500 acres of unpatented mining claims in the National Forest; and

WHEREAS, the District Court's ruling, which the Ninth Circuit later affirmed, confirmed a long-standing concern, raised by Pima County since the beginning of the Rosemont Mine federal review process in 2006, that Federal agencies such as the U.S. Forest Service failed to consider whether Rosemont held valid unpatented mining claims; and

WHEREAS, the District Court's ruling confirmed that the Forest Service needs to consider reasonable alternatives when reviewing mining proposals, providing the opportunity for a more balanced approach to public lands management.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Pima County Board of Supervisors opposes the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act, as well as any similar legislation that attempts to allow mining projects on public lands in areas without mining claims and in areas with unproven mining claims, and supports meaningful mining reform;
2. The Pima County Board of Supervisors calls on Arizona's Congressional delegation to oppose the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
3. The Pima County Board of Supervisors directs the County Administrator and the County's Federal lobbyists to take the necessary measures to communicate Pima County's opposition to the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
4. The Pima County Board of Supervisors directs that communications to our Congressional delegation emphasize Pima County's support for meaningful

mining reform and our record of supporting mining projects in Pima County that adhere to local health, safety, and conservation guidelines;

5. The Pima County Board of Supervisors opposes piece-meal legislation that does not address the issue of mining reform comprehensively; and
6. The Pima County Board of Supervisors affirms support for the rulings by the District Court and the Ninth Circuit Court of Appeals, which is consistent with past resolutions and actions of the Pima County Board of Supervisors.

Passed by the Board of Supervisors of Pima County, this 16th day of May, 2023.

Adelita S. Grijalva

Chair, Pima County Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Daniel Jurkowitz, Deputy County Attorney

**Pyramid Lake Paiute Tribe
Nixon, Nevada**

January 3, 2024

Re: Pyramid Lake Paiute Tribe Opposition to the Mining Regulatory Clarity Act

Dear President Biden, Senators and Representatives:

The Pyramid Lake Paiute Tribe firmly opposes the Mining Regulatory Clarity Act, which represents an unprecedented giveaway of public lands to mining corporations. Under the bill, mining corporations would gain a near unlimited right to occupy as much public land as they wanted for their mining operations. The companies would gain the right to dump waste, dispose of toxic tailings, bulldoze roads, and construct pipelines across public lands, even on lands of deep cultural and ecological significance to the Pyramid Lake Paiute Tribe. We urge you to oppose the legislation, which would exacerbate the harms caused by the mining industry.

We are especially concerned with this legislation because four key minerals that will be used for the energy transition—97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt—are located within 35 miles of Native American Reservations. In addition, many existing and proposed mines are located on federal lands adjacent to tribal lands.

The proposed legislation contains a series of provisions designed to undermine the Federal Government's authority to safeguard public lands. Under Section 2(e)(1)(B) of the Mining Regulatory Clarity Act, mining companies would receive a statutory right to permanently occupy and bury public lands under tons of toxic waste. Further Section 2(e)(1)(A) grants mining companies automatic rights-of-way for new pipelines, transmission lines, and roads across public lands—eliminating a central provision of the Federal Land Policy Management Act that requires mining companies to receive a permit for such uses just like every other industry operating on federal lands. The mining law of 1872 is already overly permissive—having caused disastrous consequences for our Indigenous communities, our health and our sacred sites, and this legislation would only increase those harms in the future.

The Mining Regulatory Clarity Act is poised to have devastating consequences on our ancestral lands and resources. The creation of tribal sacrifice zones in the name of the clean energy transition must stop. Indigenous communities use what are now federal public lands for resource collection, ceremonies, and other traditional cultural uses. This Administration has vowed to safeguard our cultural resources and to listen to tribes. The Mining Regulatory Clarity Act will impair our ability to use our ancestral lands forever and we ask that you reject it.

Sincerely,

STEVEN WADSWORTH,
Vice Chairman

SAN XAVIER DISTRICT OF THE TOHONO O'ODHAM NATION
Tucson, Arizona

January 26, 2024

President Joseph Biden
 The White House
 Washington, D.C.

Mark Kelly
 United States Senate

Krysten Sinema
 United States Senate

Congressman Raul Grijalva
 House of Representatives

Congressman Paul Gosar
 House of Representatives

Re: San Xavier District of the Tohono O'odham Nation's Opposition to the Mining
 Regulatory Clarity Act

Dear President Biden, and Honorable Senators, and Representatives:

The San Xavier District government of the Tohono O'odham Nation firmly opposes the Mining Regulatory Clarity Act, which represents an unprecedented giveaway of public lands to mining corporations. Under the bill, mining corporations would gain a near unlimited right to occupy as much public land as they wanted for their mining operations. Mining companies would gain the right to dump waste, dispose of toxic tailings, bulldoze roads, and construct pipelines across public lands, even on lands of deep cultural and ecological significance to the San Xavier District of the Tohono O'odham Nation. We urge you to oppose the legislation, which would exacerbate the harm caused by the mining industry.

We are especially concerned with this legislation because four key minerals that will be used for the energy transition—97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt—are located within 35 miles of Native American Reservations. In addition, many existing and proposed mines are located on federal lands adjacent to tribal lands.

Our people and our lands have been affected by Asarco Copper Mine adjacent and south of the San Xavier Indian Reservation since 1955. There is potential leakage of sulfates from the mine tailings to our aquifer. We are supporting local environmental groups opposing two proposed , mines on our ancestral lands affecting our cultural properties and prohibiting us from gathering natural resources on the lands. Hudbay, a Canadian based company, has proposed mining on the east and west slopes of the Santa Rita Mountain range “Cewe Duag” (long mountain in our language). They are Rosemont, and Copper World mines respectively.

The proposed legislation contains a series of provisions designed to undermine the Federal Government's authority to safeguard public lands. Under Section 2(e)(1)(B) of the Mining Regulatory Clarity Act, mining companies would receive a statutory right to permanently occupy and bury public lands under tons of toxic waste. Further Section 2(e)(1)(A) grants mining companies automatic rights-of-way for new pipelines, transmission lines, and roads across public lands—eliminating a central provision of the Federal Land Policy Management Act that requires mining companies to receive a permit for such uses just like every other industry operating on federal lands. The mining law of 1872 is already overly permissive—having caused disastrous consequences for our Indigenous communities, our health and our sacred sites, and this legislation would only increase those harms in the future.

The Mining Regulatory Clarity Act is poised to have devastating consequences on our ancestral lands and resources. The creation of tribal sacrifice zones in the name of the clean energy transition must stop. Indigenous communities use what are now federal public lands for resource collection, ceremonies, and other traditional cultural uses. This Administration has vowed to safeguard our cultural resources and to listen to tribes. The Mining Regulatory Clarity Act will impair our ability to use our ancestral lands forever and we ask that you reject it.

Sincerely,

AUSTIN NUNEZ,
Chairman

January 29, 2024

Representatives:

On behalf of our millions of members and supporters, the following conservation, climate, Indigenous and tribal-affiliated organizations call on you to oppose H.R. 2925, the so-called “Mining Regulatory Clarity Act.” We write to share the below concerns and reasons for opposition for the House Natural Resources Subcommittee on Energy & Mineral Resources hearing on H.R. 2925 on January 31, 2024.

The Mining Regulatory Clarity Act represents an unprecedented, de facto giveaway of America’s cherished public lands to mining corporations, upending and reversing over one hundred years of public land law precedent. Under the bill, anyone—for a nominal fee—gains permanent rights to occupy land, construct massive waste dumps, and build roads and pipelines across public lands to the detriment of all other values. This would preclude all other types of development and use, including renewable energy projects, recreation, and traditional cultural uses.

The Mining Regulatory Clarity Act is not a return to “status quo” as some proponents have argued. Instead, this legislation undermines the federal government’s long standing authority to safeguard public lands, threatening the protection of irreplaceable cultural, environmental, water, and economic resources. That’s because **the bill conveys mining claimants (including international mining conglomerates) with a right to permanently occupy federal public lands.** If an alternative use—like an electric transmission line or a renewable energy project—needed to cross “claimed” public lands, mining companies could extract large sums of money from the federal government in exchange for giving up their claim. As an example, if this bill were law in the 1900s, Grand Canyon National Park wouldn’t exist as it does today. Future Senator Ralph Cameron filed mining claims covering the famous Bright Angel Trail, but they were invalidated due to a lack of a valuable mineral deposit. Had S. 1281/H.R. 2925 been law, Cameron would have had a vested right to undertake a wide variety of exclusionary or destructive activities on these claims and those claims would have superseded the Grand Canyon National Monument’s (later National Park’s) protections. Under S. 1281, all future prospective protected lands could suffer this fate.

This legislation would lead to vast unintended consequences by allowing mining companies, and any individual, to easily weaponize it for their own gain. A person or company wishing to block a solar, wind, or transmission project could simply file a claim in the path of the project by pounding four stakes into the ground and paying a nominal fee and then exercise their new right to occupy the land to block it from moving forward.

Under Section 2(e)(1)(B) of S. 1281/H.R. 2925, mining companies would receive a statutory right to permanently occupy and bury our federal public lands under tons of toxic waste. Modern large scale mines often produce far more toxic waste than the minerals they extract, risking water contamination and other harms. Further, Section 2(e)(1)(A) grants mining companies automatic rights-of-way for far-flung infrastructure such as new pipelines, transmission lines, and roads across public lands. The change eliminates a central provision of the Federal Land Policy and Management Act (FLPMA) that requires mining companies to receive a permit for such uses, just like everyone else operating on public lands. Section 2(e)(2) would also eliminate FLPMA’s requirement that the mining company pay “fair market value” for using public lands for these facilities.

The Mining Regulatory Clarity Act was authored in reaction to recent court decisions that affirmed and enforced long-standing law. According to proponents of this egregious corporate handout, the need for this bill arises from a court case known as *Rosemont*, as well as two subsequent federal court rulings, where companies proposed using invalid mining claims to dump enormous quantities of waste generated at the mine site. The problem with that was obvious and courts blocked them: holding an invalid mining claim confers no right to use or occupy the lands covered by the claim unless a valuable mineral is discovered.

The proponents also argue that this legislation is essential to secure our clean energy supply chain. Contrary to industry’s sky-is-falling rhetoric about critical mineral supply shortages, there are a variety of ways to meet the demand for these minerals during our transition to a clean energy economy. This includes—in conjunction with carefully sited mines governed by high environmental standards—deep investment in a circular minerals economy that recycles and reuses the maximum amount of these minerals possible. In addition, mining companies have options to acquire the lands needed for new mines, waste sites, and processing

facilities without violating the law or seeking handouts from Congress. In fact, one large copper operation in Arizona, ASARCO's Ray Mine, recently obtained over 9,000 acres in an exchange to allow for continued mining. There cannot be a just and equitable transition to a carbon-free future, with legislation like this that sacrifices our lands, waters, public health, sacred sites and communities.

The mining law of 1872 is already overly permissive—mining has polluted the headwaters of 40 percent of western watersheds, fiscal assurances for clean up are routinely inadequate, and companies pay no royalties for the minerals they extract from public lands. Reform is needed to safeguard waters, communities, and the environment.

This bill would do the opposite, further tipping the scales away from communities, the environment, and our clean energy future—giving the mining industry the power to dictate how we use our public lands. Instead, Congress should work to balance our nation's clean energy mineral needs with all other public land uses, such as for renewable energy projects, cultural and historical resources, ranching, recreation, water resources, and wildlife. Our organizations ask you to oppose this legislation in all its forms and reject it as a part of any conversation around energy permitting.

Sincerely,

Alaska Clean Water Advocacy	Malach Consulting
Alaska Community Action on Toxics	Mother Kuskokwim Tribal Coalition
Alaska Wilderness League	Multicultural Alliance for a Safe Environment
Anthropocene Alliance	Native Movement
Arizona Faith Network	Natural Resources Defense Council
Arizona Mining Reform Coalition	Nevada Conservation League
Arizona Trail Association	New Mexico Environmental Law Center
Black Hills Clean Water Alliance	Northern Alaska Environmental Center
Californians for Western Wilderness	Northern Front Range Broadband of Great Old Broads for Wilderness
Cascade Forest Conservancy	Norton Bay Watershed Council
Center for Biological Diversity	Okanogan Highlands Alliance
Citizens Awareness Network	Oregon Natural Desert Association
Citizens to Protect Smith Valley, NV	Patagonia Area Resource Alliance
Clark County Adventure Riders (NV)	People of Red Mountain
Coalition for Wetlands and Forests	Physicians for Social Responsibility Pennsylvania
Conservation Northwest	Progressive Leadership Alliance of Nevada
Cook Inletkeeper	Public Citizen
Defenders of Wildlife	Quiet Use Coalition
Dot Lake Village	Save the Scenic Santa Ritas Association
Earthjustice	Save the South Fork Salmon, Inc.

Earthworks	Sierra Club
Endangered Species Coalition	Silver Valley Community Resource Center
Friends of Buckingham	Sky Island Alliance
Friends of the Kalmiopsis	Soda Mountain Wilderness Council
Friends of the Sonoran Desert	Southern Utah Wilderness Alliance
Gila Resources Information Project	Standing Trees
Great Basin Resource Watch	The Alaska Center
Great Bear Foundation	The Clinch Coalition
Healthy Environment Alliance of Utah	The Wilderness Society
Hispanic Access Foundation	Trustees for Alaska
Idaho Conservation League	Tucson Audubon Society
Idaho Rivers United	Uranium Watch
Information Network for Responsible Mining	WaterLegacy
Kahtoola, Inc	Western Mining Action Network-Indigenous Caucus
Kalmiopsis Audubon Society	Western Shoshone Defense Project
LEAD Agency, Inc.	Western Watersheds Project
League of Conservation Voters	Wild Arizona
Living Rivers	Wisconsin Mining
Los Padres ForestWatch	

**CITY OF TUCSON
RESOLUTION NO. 23626**

RELATING TO FEDERAL LEGISLATION; OPPOSING THE PERMITTING FOR MINING NEEDS ACT OF 2023 AND THE MINING REGULATORY CLARITY ACT, INTRODUCED IN THE CONGRESS AS H.R. 209, S. 1281 and H.R. 2925; CALLING ON ARIZONA'S CONGRESSIONAL DELEGATION TO OPPOSE THIS AND SIMILAR LEGISLATION; SUPPORTING THE CLEAN ENERGY AND MINERALS REFORM ACT; AND DECLARING AN EMERGENCY

WHEREAS, on January 2, 2023, the "Permitting for Mining Needs Act of 2023" was introduced as H.R. 209 in the U.S. House of Representatives; and

WHEREAS, on April 25, 2023, the "Mining Regulatory Clarity Act" was introduced as S. 1281 in the U.S. Senate (with an equivalent act introduced in the House as H.R. 2925); and

WHEREAS, both Acts do not provide meaningful mining reform and instead would make it easier for mining companies to gain access to federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies; and

WHEREAS, both Acts would allow mining companies to ". . . use, occupy, and conduct operations on public land, with or without the discovery of a valuable mineral deposit." This includes dumping waste and tailings on federal land without the need to prove valid mining claims, as well as on federal land absent of claims; and

WHEREAS, both Acts would authorize actions where mining companies secure rights on our federal public lands through unpatented mining claims without proving that the claims are valid, actions that have occurred for too many years; and

WHEREAS, both Acts are intended to legislatively reverse recent decisions by the United States District Court for the District of Arizona ("District Court") in 2019 and the Ninth Circuit Court of Appeals ("Ninth Circuit") in 2022 halting the construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,500 acres of unpatented mining claims in the National Forest; and

WHEREAS, the District Court's ruling, which the Ninth Circuit later affirmed, confirmed a long-standing concern, raised by Pima County since the beginning of the Rosemont Mine federal review process in 2006, that Federal agencies such as the U.S. Forest Service failed to consider whether Rosemont held valid unpatented mining claims; and

WHEREAS, the District Court's ruling confirmed that the Forest Service needs to consider reasonable alternatives when reviewing mining proposals, providing the opportunity for a more balanced approach to public lands management; and

WHEREAS, the proposed mining operations at Rosemont threaten an area of public lands that provide a disproportionately high amount of water for runoff and ground-water recharge for the Tucson basin, and are proposed for an area that is recognized worldwide for its extraordinary biodiversity; and

WHEREAS, the Clean Energy Minerals Reform Act, as sponsored by Sen. Heinrich and Rep. Grijalva, would enact meaningful mining reform, including the establishment of royalties on mining operations and a leasing system similar to what applies to oil and gas industries, while protecting national parks and monuments and other public lands and key environmental resources:

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor and Council opposes the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act, as well as any similar legislation, including but not limited to H.R. 209, S. 1281 and H.R. 2925, that attempts to allow mining projects on public lands in areas without mining claims and in areas with unproven mining claims; and that makes it easier for mining companies to gain access to

federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies.

SECTION 2. The Mayor and Council calls on Arizona's Congressional delegation to oppose the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act, as well as any similar legislation.

SECTION 3. The Mayor and Council supports the Clean Energy Minerals Reform Act, as sponsored by Sen. Heinrich and Rep. Grijalva, which would enact meaningful mining reform while protecting national parks and monuments and other public lands and key environmental resources; and call on Arizona's Congressional delegation to support this legislation.

SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution, including but not limited to taking measures necessary and appropriate to communicate the City of Tucson's opposition to the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act and its support for the Clean Energy Minerals Reform Act.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this Resolution become effective immediately, an emergency hereby is declared to exist, and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, June 6, 2023.

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

January 29, 2024

Hon. Bruce Westerman, Chairman
 Hon. Raúl Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chair Westerman, Ranking Member Grijalva, and Members of the House Committee on Natural Resources:

The undersigned organizations are writing on behalf of our millions of members across the country to express our support for reforming hardrock mineral extraction standards in the United States to better protect communities and the environment. Simultaneously, we write to express serious concerns about the Mining Clarity Regulatory Act, which represents an unprecedented, de facto giveaway of America's cherished public lands to mining corporations, upending and reversing over one hundred years of public land law precedent.

As organizations advocating for a zero-emission transportation future, we know that electrifying the vehicle fleet is an essential strategy to reducing fossil fuel emissions and addressing the climate crisis. Electric vehicles (EVs) also eliminate tailpipe emissions of harmful air pollutants that cause asthma and respiratory diseases, especially among Black, Indigenous, and other communities of color.¹ However, without adequate protections for workers, communities, and environments near mining and processing sites, we risk replicating the harms of fossil fuel extraction. The United States must commit to protecting people, communities, and special places as it pursues the clean energy transition.

Mining for hardrock minerals—the group of subterranean resources that include those necessary for EV batteries, including lithium, nickel, copper, and cobalt—is an extremely disruptive and harmful industry. In fact, metals mining is the U.S.' most toxic industry, according to the Environmental Protection Agency (EPA), responsible for 45% of toxics releases to air, water, and soil in 2020.² Modern mining uses highly specialized equipment to move billions of tons of soil, redirect rivers, and permanently alter landscapes. Mining generates an incredible amount of toxic waste, including tailings and perpetual acid drainage, which cause hazards to human and environmental health and must be sequestered and monitored, often for centuries.³ Tailings spills are increasing in frequency and severity around the world.⁴ Despite the potential for harm, mining is governed by a 151 year old statute from the U.S.'s initial settlement and colonization of the West. Given the projected increase in mining activity to source the rapid buildout of electric vehicles and renewable energy, we need to update our mining laws and rules to protect workers, communities, and the environment with the highest possible standards.

Indigenous communities are particularly vulnerable, since 97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt reserves and resources in the U.S. are located within 35 miles of Native American reservations.⁵ Expanding mining under our current mining law—passed in 1872—puts Indigenous communities at risk and perpetuates current and historic injustices.

There are many acts the United States government can take to ensure this transition is actually just and does not harm Indigenous and other mining-affected communities, including:

- Congress and the Administration can move to reform the 1872 Mining Law and the implementing rules to ensure mining companies are held to the highest environmental, human rights, and labor standards. Mining reform should allow for better oversight of mines to ensure compliance with standards, protection of sensitive ecosystems, and cleanup of old mine sites.

¹ US EPA, O. (2021, September 20). Study Finds Exposure to Air Pollution Higher for People of Color Regardless of Region or Income [Overviews and Factsheets]. <https://www.epa.gov/scienematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-or-income>

² Toxics Release Inventory—What is it? (n.d.). Earthworks. Retrieved May 19, 2023, from <https://earthworks.org/issues/toxics-release-inventory-what-is-it/>

³ Safety First: Guidelines for Responsible Mine Tailings Management. (2022, May 31). Earthworks. <https://earthworks.org/resources/safety-first/>

⁴ Protecting Communities from Tailings Disasters. (n.d.). Earthworks. Retrieved May 19, 2023, from <https://earthworks.org/issues/protecting-communities-from-tailings-disasters/>

⁵ Mining Energy-Transition Metals: National Aims, Local Conflicts. (2021, June 3). <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

- Congress and the Administration can take action to build a robust circular economy to reduce the need for virgin material extraction and increase the supply of more responsibly sourced materials.
- The Administration can uphold Indigenous peoples' right to Free, Prior, and Informed Consent, as guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples.
- The Administration can promote the use of robust community benefits agreements and other due diligence mechanisms that protect communities from environmental harm and ensure that workers have safe, high road jobs and a free and fair chance to join a union and collectively bargain.

As advocates committed to a healthier future, we support a truly just transition to clean transportation that does not come at the expense of Indigenous communities or the environment. We believe that it is possible to address climate change and reduce transportation emissions through vehicle electrification while protecting communities and the environment. However, the Mining Clarity Reform Act, which would give the mining industry the power to dictate how we use our public lands, does none of these things. We urge Congress and the Administration to take swift action to reform our mining laws and build a circular economy.

Sincerely,

Center for Biological Diversity	League of Conservation Voters (LCV)
Climate Reality Chicago Metro	MI Air MI Health
Earthjustice	Natural Resources Defense Council
Earthworks	Plug In America
Ecology Center	Public Citizen
Environmental Working Group (EWG)	Sierra Club
EVHybridNoire	Southwest Detroit Environmental Vision
GreenLatinos	United Women in Faith
Hip Hop Caucus	Warehouse Workers for Justice
IL Environmental Council	WE ACT for Environmental Justice
Interfaith Power & Light	

**HUALAPAI TRIBE
OFFICE OF THE CHAIRPERSON**

June 6, 2023

The President
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Re: Hualapai Tribe's Opposition to the Mining Regulatory Clarity Act

Dear President Biden, Senators and Representatives:

The Hualapai Tribe firmly opposes the Mining Regulatory Clarity Act, which represents an unprecedented giveaway of public lands to mining corporations. Under the bill, mining corporations would gain a near unlimited right to occupy as much public land as they wanted for their mining operations. The companies would gain the right to dump waste, dispose of toxic tailings, bulldoze roads, and construct pipelines across public lands, even on lands of deep cultural and ecological significance to the Hualapai Tribe. We urge you to oppose the legislation, which would exacerbate the harms caused by the mining industry.

We are especially concerned with this legislation because four key minerals that will be used for the energy transition—97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt—are located within 35 miles of Native American Reservations. In addition, many existing and proposed mines are located on federal lands adjacent to tribal lands. The Tribe is very concerned with a lithium exploration project located on Bureau of Land Management lands directly adjacent to tribal lands in the Big Sandy Valley that threatens Ha'Kamwe, a sacred medicinal spring. In addition, numerous notice-level activities are occurring throughout the Sandy Valley for a variety of minerals.

The proposed legislation contains a series of provisions designed to undermine the Federal Government's authority to safeguard public lands. Under Section 2(e)(1)(B) of the Mining Regulatory Clarity Act, mining companies would receive a statutory right to permanently occupy and bury public lands under tons of toxic waste. Further Section 2(e)(1)(A) grants mining companies automatic rights-of-way for new pipelines, transmission lines, and roads across public lands—eliminating a central provision of the Federal Land Policy Management Act that requires mining companies to receive a permit for such uses just like every other industry operating on federal lands. The mining law of 1872 is already overly permissive—having caused disastrous consequences for our Indigenous communities, our health and our sacred sites, and this legislation would only increase those harms in the future.

The Mining Regulatory Clarity Act is poised to have devastating consequences on our ancestral lands and resources. The creation of tribal sacrifice zones in the name of the clean energy transition must stop. Indigenous communities use what are now federal public lands for resource collection, ceremonies, and other traditional cultural uses. This Administration has vowed to safeguard our cultural resources and to listen to tribes. The Mining Regulatory Clarity Act will impair our ability to use our ancestral lands forever and we ask that you reject it.

Sincerely,

SHERRY J. PARKER,
Chairwoman

January 30, 2024

Hon. Pete Stauber, Chairman
Hon. Alexandria Ocasio-Cortez, Ranking Member
Subcommittee on Energy and Mineral Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: Advancing comprehensive mining legislation

Dear Chairman Stauber and Ranking Member Ocasio-Cortez:

The undersigned hunting, fishing, outdoor recreation, and conservation organizations are writing to share our perspective regarding the Mining Regulatory Clarity Act (H.R. 2925), which is being considered in the Energy and Mineral Resources Subcommittee's legislative hearing on January 31, 2024.

The Mining Regulatory Clarity Act seeks to address a narrow set of legal uncertainties stemming from the Rosemont judicial decision. However, H.R. 2925 goes far beyond the historic application of the 1872 Mining Law and in doing so jeopardizes fish and wildlife habitat and public lands. In short, the approach of this legislation is to simply make all mining claims valid—with or without the discovery of a valuable mineral deposit—so long as required fees are paid. While this approach would resolve uncertainty associated with the Rosemont decision, it would also create unintended consequences because it does not distinguish between lands that are open for mining and those that have been withdrawn from mining laws, such as wilderness areas and national monuments. This is problematic because numerous mining claims preexist designations for many of these areas, including approximately 1,100 mining claims in National Park units.

In the Rosemont case, the proponent had a valid mining claim. Its plan of operations, however, proposed to dispose of nearly two billion tons of waste rock on adjacent National Forest land. The District Court and the Ninth Circuit court of appeals found that Rosemont needed to establish they had a valid and existing right prior to allowing the dumping of the waste.

Under existing regulations, mining can only be allowed in protected areas if pre-existing claims are valid, meaning that there has been the discovery of a valuable mineral deposit.¹ This requirement establishes a high bar to meet before a valid right is established on mining claims within protected areas where mining is otherwise prohibited. However, if provisions of the Mining Regulatory Clarity Act were to become law, it would eliminate the valuable discovery standard, even in “protected” areas, and it would be unlawful to deny mining and exploration activities on all mining claims.

Moreover, under the proposed legislation these claimant rights also apply to incidental activities that are not located on mining claims, such as road construction across public land to access a mining claim. Importantly, these claimant rights do not just apply to plans of operations for commercial mining operations that were the focus of the Rosemont case—these provisions would extend to all phases of mining, including prospecting and exploration, which the Rosemont decision does not affect. The effect is that a claim holder in good standing would now have a right explicitly codified in law to not only mine on any claim upon which required fees have been paid, but to also construct reasonably incidental roads and other infrastructure, even just for the purposes of prospecting on a mining claim.

¹ See 43 CFR §3809.100, “after the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid.”

A more targeted, holistic solution is needed that not only provides certainty for the mining industry, but that also establishes a 21st century mining law that conserves and restores fish and wildlife habitat, sacred sites and drinking water supplies. We urge Congress to enact a comprehensive solution that provides a path forward balancing conservation with a sustainable domestic mining industry, including the following elements:

1. **Security of tenure.** Legislation to resolve uncertainties surrounding the Rosemont decision must be narrowly focused to address ancillary uses reasonably necessary and incident to a plan of operations to actually mine a valuable mineral deposit. These rights should not extend to prospecting and exploration activities. Additionally, exploration, mining or related activities should not be allowed in protected areas withdrawn from mining laws unless a valid right (i.e., valuable mineral discovery) was established prior to the protective designation.
2. **Modernize mining law.** Congress should establish a royalty and/or fee on the extraction of hardrock minerals from public lands that is both fair for the mining industry and that generates revenue to help clean up the legacy of abandoned hard rock mines. Additionally, a modern mining law should provide some level of discretion for public land management agencies to determine—upfront—lands available for mining activities. This is the same way public land management agencies determine lands suitable for oil and gas leasing and other industrial land uses. An analogue for Congress to consider is the Surface Coal Mine Reclamation Act and its Abandoned Mineland Fund which has generated more than \$11 billion to help clean up abandoned coal mines.
3. **Empower Good Samaritan cleanups:** Volunteer, third parties want to help clean up some of the tens of thousands of abandoned mines polluting the environment. Unfortunately, enormous liability risks preclude cleanup efforts. The Good Samaritan Remediation of Abandoned Hardrock Mines Act would create a pilot program that provides non-labile Good Samaritan parties with a targeted, narrow liability shield would allow projects to move forward that improve water quality for the environment and downstream communities impacted by abandoned mines.

We recognize that the Rosemont decision has created a great deal of uncertainty for mining on public lands that are open to mining, but a solution should not create uncertainty for the future of protected public lands. We stand ready to work collaboratively with lawmakers, the mining industry, and other public land stakeholders to chart a path forward for comprehensive legislation that helps clean up the mistakes of the past and prevents future impacts to clean water and healthy fish and wildlife habitat.

Sincerely,

Backcountry Hunters and Anglers

Theodore Roosevelt Conservation Partnership

Trout Unlimited

January 30, 2024

Hon. Pete Stauber, Chairman
 Hon. Alexandria Ocasio-Cortez, Ranking Member
 Subcommittee on Energy and Mineral Resources
 1324 Longworth House Office Building
 Washington, DC 20515

Re: Comments on H.R. 2925, scheduled to be heard by the subcommittee on
 January 31, 2024

Dear Congressmembers Stauber and Ocasio-Cortez:

We write to express our strong opposition to H.R. 2925. We have helped administer the Mining Law (while working in the Department of the Interior in both career and non-career positions) and have taught and written about Mining Law issues for many years.

Simply put, H.R. 2925 is the worst so-called “reform” of the Mining Law we have ever seen. It is shocking, and we use that word advisedly, in the way it opens to extortion the hundreds of millions of acres of national forests and other public lands to which the Mining Law applies.

The problem is apparent on the face of the act.

“A [mining] claimant **shall have the right to use, occupy**, and conduct operations on **public land . . . without discovery of a valuable mineral deposit, if . . .** the claimant makes a timely payment of the location fee . . . and the claim maintenance fee . . .” (emphasis added)

This text does not explicitly require a claimant to conduct “operations” in order to “use” or “occupy” public lands. Moreover, it defines “operations” very broadly, as “any activity reasonably incident to” things like “prospecting,” “exploration,” “development,” or “processing.”

In short, H.R. 2925 gives any locator or holder of a mining claim the “right to use [and] occupy . . . public land” for payment to the U.S. government of a mere \$205 per year per 20-acre claim. (Currently, the current claim location fee is \$40; the claim maintenance fee, \$165.) And it explicitly authorizes loosely defined “operations” on public land “regardless of whether that incidental activity is carried out on a mining claim . . .” This “Clarity Act” is such a mischievous giveaway of a “right to occupy public land” that it ought to be called the “Mining Charity Act.”

Consider what is likely to happen if the Clarity Act became law. Suppose X wants to occupy a lovely tract of public lands as a base for hunting, angling, a yoga retreat, or any of a myriad of other things. Or suppose X learns that a large tract of public land is being considered for, say, legitimate mineral activity, or for a site for a renewable energy project, a transmission line, a ski area, or for any number of other possible uses. Lacking all scruples, X seizes the opportunity the Clarity Act presents for making an easy buck (some might call it blackmail).

After checking to make sure the lands are open to new claim location (as tens of millions of acres are), it locates one or more mining claims, pays the \$205-per-claim fee, and begins to occupy the public lands claimed and other public lands in the vicinity.

Variation One: X brings along tools and devices that could be used for prospecting, and perhaps scratch a little dirt, to make a facial case for “prospecting” to meet the Clarity Act’s loose definition of an “operation.”

Variation Two: X builds a power generation or other kind of industrial facility on public lands (as noted above, whether or not it is actually on a mining claim is irrelevant under the Clarity Act’s definition of “operations”) and, if questioned, asserts that it is “reasonably incident” to mineral activity.

The U.S. government, Native American entities with ancestral connections to the lands, and other members of the public (which could include legitimate mineral developers¹) protest X's occupancy as interfering with legitimate uses and objectives served by public land.

What if anything can they do about it under the Clarity Act?

Nothing, so far as we can see.

Under current law, the government could challenge X's claim on the ground it has not made a discovery of a valuable mineral deposit. But the Clarity Act removes that vital tool from the government's toolbox.²

By eliminating the bedrock requirement that mining claims are not legally valid unless they are supported by a discovery of a valuable mineral deposit—a requirement that has been a fundamental part of the Mining Law for nearly 152 years—the proposed legislation leaves a buyout as the only practical way to eliminate such claims. And in the negotiation of the buyout amount, practically all the leverage would be with the claimant.

We are not just imagining this. The Mining Law has historically been subject to widespread abuse of exactly this kind. One notorious example arose more than a century ago, when for years Ralph Cameron used spurious mining claims he located on the most popular hiking trail in the Grand Canyon to extort money from park visitors. In the 1960s, Merle Zweifel located many thousands of mining claims over hundreds of thousands of acres of public lands with a similar objective, including along the proposed route of the Central Arizona Project aqueduct and on public land thought to be valuable for oil shale development in western Colorado.³ (His motivation, as he later admitted to a Wall Street Journal reporter, was “a lust for money.”⁴) It took years of litigation to eliminate Cameron's, Zweifel's and other similar abusive claims, and it was only possible because the abusers could not show a discovery of a valuable mineral deposit on their claims.⁵ H.R. 2925's grant of an open-ended “right to occupy” public lands would mean that would no longer work.

What makes this even more troublesome is that the so-called “problem” H.R. 2959 purports to address—the *Rosemont* court decision⁶—in fact does not shackle the legitimate mining industry.⁷ Hudbay Minerals, the foreign company seeking to develop Rosemont, made a deliberate decision to try to use regular mining claims (which it located on 2700 acres of national forest land) as the site for the huge waste dumps and tailings piles its mine would produce. Its decision left it vulnerable to the challenge that these claims did not support a valuable mineral deposit. In fact, both the geological evidence and Hudbay's intent to bury the claimed land under hundreds of millions of tons of waste rock and tailings convincingly demonstrated that the claims contained no valuable mineral deposits. Upon reaching that conclusion, the federal courts set aside the Forest Service's decision to allow Hudbay to use the public lands it claimed that way.

¹ It is stunning to us that, despite much contemporary discussion about reforming the Mining Law in order to facilitate the development of so-called “strategic minerals” on federal land, the industry and its allies are promoting legislation that would almost certainly thwart, rather than facilitate, their extraction!

² While the BLM and the Forest Service have rules regulating occupancy and other uses of mining claims (36 CFR Part 228; 43 CFR Part 3715), they would become unenforceable to the extent they are contradicted by the Clarity Act's new grant of a broad statutory right to “occupy” public land simply upon payment of the requisite fees.

³ These and similar abuses are recounted in detail, with sources, in Leshy, *The Mining Law: A Study in Perpetual Motion* (1987), at 77-83.

⁴ B. Newman, “Never Mined: Merle Zweifel Claims Acres of Public Land, But What Is He Up To?” Wall Street Journal, January 20, 1972, p. 1, col. 1.

⁵ See, e.g., *Cameron v. United States*, 252 U.S. 450 (1920); see also *United States v. Zweifel*, 508 F.2d 1150 (10th Cir.), cert. denied *sub nom. Roberts v. United States*, 423 U.S. 829 (1975).

⁶ *Center for Biological Diversity v. U.S. Fish & Wildlife Service*, 33 F.4th 1202 (9th Cir. 2022).

⁷ The industry and supporters of the Clarity Act have argued that the Ninth Circuit's ruling in the *Rosemont* case “clashes with numerous Supreme Court decisions over a century” (NMA witness, Dec. 12 Senate hearing). We have taught and written about the Mining Law for many decades and are aware of no such Supreme Court decisions. Had they existed, surely the Ninth Circuit would have had to grapple with them.

In fact, Hudbay had several other options to secure land for its waste/tailings dumps. It could have located “millsite” claims on the public land, something the Mining Law has permitted since 1872. (Millsite claims have long been routinely used by hardrock miners for such purposes.) Hudbay initially chose not to do that because millsites are smaller (maximum five acres, compared to 20 acres for a regular mining claim) and involve more red tape.⁸

Or, it could have sought to exchange lands it owned or acquired for more conveniently-located public lands, as several large mines found on public lands have done.

Or, it could have acquired non-federal lands in the vicinity to use for waste/tailings dumps. The availability of this option was made abundantly clear by Hudbay’s revelation when the Ninth Circuit Court of Appeals turned down its appeal. On *the very same day* the court decision was released, it announced that it had acquired approximately 4,500 acres of private land in the vicinity precisely for such use.⁹

Or, it could have applied for special use permits to use public lands under various laws. A recent Opinion by the Interior Department’s Solicitor addressed these and still other ways the hardrock mining industry could pursue large mining operations on federal land without the need for legislative “reform.”¹⁰

Although all those alternatives were *and still are* available to the hardrock mining industry, it and its allies have chosen instead to seek to have Congress intervene. But characterizing H.R. 2925 as simply a clarification in the law grossly understates the mischief it would cause. It would, we believe, likely prove to be nothing short of a public land policy disaster. Once that became clear, Congress would have to revisit the matter. In the meantime, the executive branch would likely be forced to limit the opportunity for abuse and extortion we have described by withdrawing all federal lands from the location of new mining claims.

Finally, it is remarkable that, in addition to wreaking havoc, H.R. 2925 makes no effort to correct obvious problems with the antiquated Mining Law. Most glaring is the fact that it gives mining companies a free ride, as they pay no royalty for the privilege of extracting valuable minerals from the public lands. Every other mineral owner in the nation—whether on state, tribal or private land—receives some value-based payment when it allows minerals to be extracted. (Congress itself, in legislation it adopted nearly a century ago, insisted that states must receive fair market value for minerals extracted from lands the U.S. gave them at statehood!¹¹)

Congress has required the U.S. to receive fair market value when fossil fuels or fertilizer minerals are extracted from public lands. But not when so-called hardrock minerals are extracted from public lands, including national forests, under the Mining Law of 1872.¹² Indeed, those lands may be the only ones on the entire planet where the landowner receives no such payment for such mining.

⁸ Around the time the federal district court issued its initial ruling, the company located mill sites as a kind of hedge against an adverse ruling.

⁹ See May 12, 2022 Press Release of Hudbay Minerals, The U.S. Department of Justice and Hudbay Receive Rosemont 9th Circuit Court Ruling; Hudbay Continues to Advance Copper World (May 12, 2022), found at <https://hudbayminerals.com/investors/press-releases/press-release-details/2022/The-U.S.-Department-of-Justice-and-Hudbay-Receive-Rosemont-9th-Circuit-Court-Ruling-Hudbay-Continues-to-Advance-Copper-World/default.aspx>.

¹⁰ Solicitor’s Opinion M-37077, Use of Mining Claims for Mine Waste Deposition, and Rescission of M-37012 and M-37057 (May 16, 2023), <https://www.doi.gov/media/document/m-37077-use-mining-claims-mine-waste-deposition-and-rescission-m-37012-and-m-37057-5>.

¹¹ See 44 Stat. 1026 (1927), codified at 43 U.S.C. § 870; see also *The Mining Law*, supra n. 3, at 328-39.

¹² It is also worth noting that the Mining Law covers not only metals like gold, silver, and copper, but also so-called “uncommon varieties” of common substances like sand, gravel, and building stone. 69 Stat. 368 (1955), codified at 30 U.S.C. § 611. If not an “uncommon variety,” such substances must be purchased from the government for fair market value. According to a recent GAO study, well over a hundred currently approved operations, covering tens of thousands of acres of public lands, produce “uncommon varieties” of common substances. <https://www.gao.gov/products/gao-20-461r>. The “uncommon variety” issue has given rise to a number of controversies, such as a recent one involving the vast expansion of a limestone quarry on public lands on the outskirts of Glenwood Springs, Colorado, triggering opposition from local governments and their allies. <https://loveglenwood.org/legal-action/glenwood-springs-citizens-alliance-v-u-s-bureau-of-land-management/>.

Even the National Mining Association recognizes that the free ride the industry enjoys is a defect requiring correction.¹³ Yet H.R. 2925 does nothing to redress it. Instead, it would exacerbate the Mining Law's serious defects by giving claimants effective control of vast tracts of public lands for the price of modest claim filing and maintenance fees.

For these reasons, we strongly urge the committee not to advance H.R. 2925. We appreciate your consideration of our views.

Sincerely,

John Leshy¹⁴

Sam Kalen¹⁵

Mark Squillace¹⁶

Bret Birdsong¹⁷



¹³See http://www.nma.org/pdf/041508_mining_law.pdf. To be sure, the NMA favors a net royalty that would apply only prospectively, to new mining claims; that is, they would continue to exempt from any royalty payment the hundreds of thousands of existing mining claims currently found on millions of acres of public land.

¹⁴Emeritus Professor, University of California College of the Law San Francisco, and former Associate Solicitor (1977–1980) and Solicitor (1993–2001), U.S. Department of the Interior.

¹⁵Visiting McKinney Family Chair in Environmental Law (2023–2024), IU Robert H. McKinney School of Law; William T. Schwartz Distinguished Professor of Law, University of Wyoming College of Law (for identification only).

¹⁶Raphael J. Moses Professor of Natural Resources Law, University of Colorado Law School (for identification only).

¹⁷Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas (for identification only).