

December 12, 2023

The Honorable Joe Manchin
Chairman, Committee on Energy and Natural
Resources
United States Senate
306 Hart Senate Office Building
Washington D.C. 20510

The Honorable John Barrasso
Ranking Member, Committee on Energy and
Natural Resources
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Re: Advancing comprehensive mining legislation

The undersigned hunting, fishing, outdoor recreation, and conservation organizations are writing to share our perspective regarding mining legislation before the Senate Energy and Natural Resources Committee, including the *Mining Regulatory Clarity Act* (S. 1281/H.R.2925), which includes provisions passed by the House of Representatives in Section 20307 of the Lower Energy Costs Act (H.R. 1). The provisions included in the *Mining Regulatory Clarity Act* go far beyond the historic application of the 1872 Mining Law and jeopardize fish and wildlife habitat and public lands. We request that Congress address unintended consequences in the *Mining Regulatory Clarity Act* or similar legislation, and that it be paired with legislation that modernizes the 1872 Mining Law.

The *Mining Regulatory Clarity Act* seeks to address legal uncertainties stemming from the Rosemont judicial decision. 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 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unintended consequences because it does not distinguish between lands that are open for mining and those that have been withdrawn from mining laws, such as wilderness areas and national monuments.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 preexisting 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 absolute 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.

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.”

Importantly, these absolute rights do not just apply to plans of operations for commercial mining operations; these provisions would extend to all phases of mining, including prospecting and exploration. 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.

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 absolute 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 & Anglers

National Deer Association
Theodore Roosevelt Conservation Partnership
Trout Unlimited