



December 11th, 2023

Sen. Catherine Cortez Masto
Chair, Subcommittee on Public Lands, Forests, and Mining
520 Hart Senate Office Building
Washington, DC 20510

Sen. Mike Lee
Ranking Member, Subcommittee on Public Lands, Forests, and Mining
363 Russell Senate Office Building
Washington, D.C. 20510

RE: December 12th Subcommittee Hearing on Hardrock Mining Legislation.

Dear Chair Cortez Masto, Ranking Member Lee, and members of the Subcommittee:

On behalf of the human-powered outdoor recreation community, the outdoor industry, and conservation-minded businesses, we write to express strong support for the Clean Energy Minerals Reform Act of 2023 (S. 1742) and strong opposition to the Mining Regulatory Clarity Act of 2023 (S. 1281).

Improving federal mining policy and accelerating our society's transition towards renewable energy are both critically important priorities for our communities. To this end, S. 1742 would make long-overdue updates to U.S. mining policy that would allow hardrock mining projects to proceed in a more responsible way while making mining more responsive to concerns around environmental justice, conservation values, and outdoor recreation. Conversely, S. 1281 would exacerbate some of the most egregious aspects of America's outdated mining laws, making it more difficult for communities to protect themselves from pollution, while harming taxpayers and further degrading important environmental, cultural, and recreational values on public lands.

The outdoor recreation community and the outdoor economy are profoundly affected by hardrock mining. Improperly sited mines have the potential to irreversibly degrade outdoor recreation resources like rivers, trails, and climbing

areas, as well as important cultural sites and conservation lands—often areas that our community considers irreplaceable. Recreationists are also affected by legacy mining pollution, which the EPA estimates has polluted 40% of headwaters in western U.S. watersheds.¹ At least 140,000 abandoned hardrock mine features exist across federal public lands, many of which pose physical hazards to people, as well as environmental hazards that threaten public health, wildlife, and aquatic ecosystems.² Together, these mining impacts threaten the outdoor recreation experience on federal public lands and also threaten America’s growing \$1.1 trillion outdoor recreation economy.

The outsized impacts of mining on outdoor recreation stem in large part from the 1872 Mining Law, a relic of the era of westward expansion that still governs hardrock mining on federal public lands in the west today. The law considers mining to be the highest and best use of public lands and gives mining companies unfettered access to public lands in a way that no other user group enjoys. Under the law, mining companies do not pay royalties to the federal government, and land managers are often hamstrung in their ability to say no to projects that would have unacceptably deleterious effects on other resource values. The 1872 Mining Law also pre-dates the modern environmental movement and modern forms of outdoor recreation and does not provide adequate safeguards for sensitive environmental resources that are important to our community. These concerns collectively create an enormous level of uncertainty with regard to future mining threats to recreation lands, making it more difficult for our community to support mining projects that may be needed to support the renewable energy transition.

Our comments on individual bills are outlined below.

¹ U.S. Environmental Protection Agency, EPA-840-B-00-001, Liquid Assets 2000: America’s Water Resources at a Turning Point (2000).

² Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards. United States Government Accountability Office. March 2020. Report to the Ranking Member, Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, U.S. Senate, <https://www.gao.gov/products/gao-20-238>.

Clean Energy Minerals Reform Act of 2023 (S. 1742)

Our organizations strongly support the Clean Energy Minerals Reform Act of 2023 (CEMRA), which proposes greatly needed reforms to the 1872 Mining Law. For more than 150 years, the law has elevated hardrock mining above other uses of federal public lands, including outdoor recreation, and has encouraged irresponsible mineral development without environmental standards or a meaningful return for taxpayers. CEMRA provides a comprehensive, long overdue update to federal mining policy that, if passed, would provide the planning guidance, environmental safeguards, and taxpayer protections needed to support a necessary responsible increase in federal production of critical minerals. We especially appreciate that CEMRA:

- *Eliminates patenting of federal lands.* § 101 would permanently end the practice of patenting federal lands, whereby individuals and corporations can purchase public lands from the federal government at a nominal price. Although Congress has imposed temporary moratoriums on new patent applications since 1994, a permanent fix is needed for this outdated policy.
- *Establishes royalties for hardrock mining.* Title II would establish royalties to help ensure that taxpayers see more of the financial benefits of hardrock mining on federal lands. Revenues would support the Hardrock Minerals Reclamation Fund established in Title IV.
- *Requires permits for exploration and mining operations.* Sections 302 and 303 would establish a permitting system for hardrock mine exploration and mining operations, respectively. These permit systems would help prevent degradation of public lands and mandate better planning for mining activities.
- *Creates new pathways for protecting special places.* Section 307 creates a process by which local land managers review important conservation areas, including Areas of Critical Environmental Concern, Wilderness-quality lands, and eligible Wild & Scenic Rivers, and make a determination as to whether lands should be withdrawn from mining. This section also allows states, Tribes, and local governments to petition the federal government to withdraw lands from mining.
- *Strengthens tribal consultation.* Tribes deserve consistent, early opportunities to consult with federal agencies about mining proposals before permitting

decisions are made. § 310 would require that tribal consultations be conducted in accordance with the 2022 Presidential Memorandum on Uniform Standards for Tribal Consultation,³ providing consistency for the consultation process related to mining.

- *Address legacy mining pollution.* Title IV would create a Hardrock Minerals Reclamation Fund that would carry out the abandoned hardrock mine cleanup program established by Section 40704 of the Infrastructure Investment and Jobs Act. Funds for the program would come from a portion of royalties, rents, and fees generated by other provisions of CEMRA. This cleanup program is greatly needed to remediate ongoing issues like soil contamination and acid mine drainage that cause public health and safety issues for outdoor recreationists and others.

These reforms are critically needed to bring hardrock mining policy into the 21st century. Our organizations encourage you to advance this important legislation in the 118th Congress.

Mining Regulatory Clarity Act of 2023 (S. 1281)

Our organizations strongly oppose the Mining Regulatory Clarity Act of 2023 (MRCA), which would grant mining companies a permanent right to use and occupy mining claims on federal lands regardless of whether a valuable mineral deposit has been discovered. This legislation was developed partly in response to the recent *Rosemont* court decision, which blocked the Rosemont copper mine in Arizona.⁴ In *Rosemont*, the 9th Circuit affirmed an earlier decision invalidating Hudbay Minerals' proposal to store large amounts of mining waste on claims nearby the actual mine site, where valuable minerals had not been discovered. The court found that, because they lacked a valuable mineral deposit, the mining claims proposed for waste storage were invalid and thus conferred no right to Hudbay Minerals to use and occupy lands.

Rather than taking a targeted approach to addressing mining waste storage, the MRCA instead provides a broad guarantee that miners can “use, occupy, and

³ Uniform Standards for Tribal Consultation, 87 Fed. Reg. 74479 (December 5, 2022).

⁴ *Center for Biological Diversity v. U.S. Fish & Wildlife Service*, 33 F.4th 1202 (9th Cir. 2022).

conduct operations” in perpetuity—a right not granted by the 1872 Mining Law. This amounts to a significant weakening of the already-inadequate 1872 Mining Law and has far-reaching implications for multiple public lands values, as well as for frontline communities.

We are highly concerned that the right to permanently use and occupy federal lands granted by § 2(e)(1)(B) could amount to a *de facto* privatization of public land, whereby mining companies could assert a right to preclude other uses of public land within mining claims, including recreational uses. Because of the chaotic claim staking system facilitated by the 1872 Mining Law, hundreds of thousands of mining claims exist across federal public lands, many of which overlap with popular outdoor recreation destinations. Under the MRCA, claimants could foreseeably prevent access to these sites or charge a fee for visitors. This could create significant new barriers to building and improving recreation infrastructure like trail systems that would bisect a mining claim. A version of this scenario infamously played out in the early 1900s when future Senator Ralph Cameron argued that a series of mining claims along the popular Bright Angel Trail in what is now Grand Canyon National Park allowed him to charge a fee to tourists visiting the trail. In this case, Cameron’s claims were found invalid due to a lack of a valuable mineral deposit.⁵ By granting claimants a permanent right to occupy federal lands regardless of whether a valuable mineral deposit has been discovered, the MRCA invites similar types of abuses, exacerbating mining’s burden on taxpayers and precluding other uses of public lands.

In short, S. 1281 takes mining reform in the wrong direction. We encourage the Subcommittee to instead focus on CEMRA and other mining reform efforts that protect outdoor recreation and other critical public lands values and help develop systems that support orderly and responsible mining.

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Thank you for holding this important hearing. We look forward to working with you to modernize hardrock mining and transition our society towards clean energy.

⁵ *Cameron v. United States*, 252 U.S. 450, 456 (1920).



Best regards,

A handwritten signature in black ink, appearing to read "Louis J. Geltman".

Louis Geltman
Vice President for Policy and Government Relations
Outdoor Alliance

A handwritten signature in black ink, appearing to read "Shoren Brown".

Shoren Brown
Vice President, Public Affairs
The Conservation Alliance

A handwritten signature in black ink, appearing to read "Rich Harper".

Rich Harper
Director of Government Affairs
Outdoor Industry Association



Our Organizations

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes.

The Conservation Alliance is an organization of like-minded businesses whose collective contributions support grassroots environmental organizations and their efforts to protect wild places where outdoor enthusiasts recreate. Alliance funds have played a key role in protecting rivers, trails, wildlands and climbing areas. Membership in the Alliance is open to all companies who care about protecting our most threatened wild places for habitat and outdoor recreation. Since its inception in 1989, The Conservation Alliance has contributed more than \$21 million, helped to protect more than 51 million acres of wildlands; protect 3,107 miles of rivers; stop or remove 34 dams; designate five marine reserves; and purchase 14 climbing areas. For complete information on The Conservation Alliance, see www.conservationalliance.com.

Based in Boulder, Colorado, with offices in Washington, D.C., Outdoor Industry Association (OIA) is a catalyst for meaningful change. A member-based collective, OIA is a passionate group of business leaders, climate experts, policy makers, and outdoor enthusiasts committed to sustainable economic growth and climate positivity while protecting—and growing access to—the benefits of the outdoors for everyone. For more than 30 years, OIA has catalyzed a thriving outdoor industry by supporting the success of every member company across four critically aligned areas: market research, sustainability, government affairs, and inclusive participation. OIA delivers success for its members through education, events, and business services in the form of solutions and strategies, consultation, collaboration, and opportunities for collective action. For more information, visit outdoorindustry.org.