

**Statement of
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**Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining**

**Hearing on
S. 1742, Clean Energy Minerals Reform Act
S. 1281, Mining Regulatory Clarity Act**

December 12, 2023

Introduction

Thank you for the opportunity to testify on S. 1742, the Clean Energy Minerals Reform Act, and S. 1281, the Mining Regulatory Clarity Act. These bills address issues related to the Federal mining programs managed by the Bureau of Land Management (BLM). Specifically, S. 1742 would make fundamental reforms to the General Mining Law of 1872 (Mining Law), changing the way that locatable minerals on public lands are developed, and S. 1281 would change claimant rights on Federal mining claims.

At the time of its enactment over 151 years ago, Congress designed the Mining Law to encourage mineral exploration and development on Federal lands and the settlement of the West. The law allowed citizens to freely explore public lands for valuable minerals (such as gold, silver, and copper), to stake a claim if minerals were discovered, and to patent the claim – gaining legal title to the land for a nominal cost – to encourage development of the minerals. In keeping with the era in which the law was enacted, Congress did not include any provisions to account for the environmental degradation that mining would have on its surrounding communities, nor did it provide for royalties or a comprehensive system to evaluate, permit, develop, and reclaim mines to ensure sustainable mining and healthy public lands for future generations. Future land management and environmental laws, such as the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, and others, would subsequently establish the legal and regulatory structure under which U.S. mining now operates.

The Mineral Leasing Act of 1920 and the Materials Act of 1947 established a process to provide the taxpayer with a financial return for those minerals that are disposed of through sale or lease. For minerals subject to disposal under the Mining Law, mining claimants are required to pay some fees, including one-time fees to record mining claims with the BLM, and a yearly maintenance fee unless certain waiver requirements are met. But the Mining Law does not require operators to report the quantity or type of minerals that are produced by their operations to the BLM and, most importantly, they pay no royalties to the U.S. government when they remove valuable mineral resources from public lands. This is in sharp contrast to the royalty

payments required for the extraction of oil, gas, coal, and other leasable minerals from public lands.

Over the years, the management of public lands has evolved to meet the needs of our nation. The Department of the Interior (Department) recognizes both the historic and defining contribution that mining provided in settling the West and the important role that mining will continue to play in meeting the growing need for responsibly sourced critical minerals to achieve our shared climate, infrastructure, and global competitiveness goals. However, we believe that the Mining Law is an inadequate structural framework and ultimately serves as an impediment to a robust and responsible domestic mining industry.

We appreciate the efforts of the Sponsors and the Subcommittee on these pressing issues, and we look forward to continuing to work with Congress in considering potential reforms to the Federal mining program.

S. 1742, Clean Energy Minerals Reform Act

S. 1742 would make significant changes to the way that the administration of mining operations occurs on Federal lands. Among other provisions, the bill would establish a royalty for any minerals produced from Federal lands, establish a new permitting process for exploration and mining, enact environmental and reclamation reforms to protect special areas from mining, and establish a funding source to ensure full remediation of legacy hardrock mining pollution.

Locatable Mineral Deposits (Title I)

Title I of S. 1742 would permanently codify the mining patent moratorium that Congress initially instituted in 1994 and has since included in annual appropriations bills. It would also prohibit the processing of any patent application if the land has been subsequently withdrawn from the general mining laws. Title I would increase the claim maintenance fee to \$200 per year and the location fee to a minimum of \$50, both of which would be adjusted every five years by the Secretary of the Interior (Secretary). Finally, Title I would allow the Secretary to void claims if the claimholder cannot demonstrate that it has been used exclusively for mineral activities.

The Department supports the adjustment of fees associated with mineral development on Federal lands, and strongly supports the use of claim maintenance fees above those needed to fund the BLM Mining Law Administration program for abandoned hardrock mine reclamation, which aligns with one of the recommendations of the Interagency Working Group on Mining Laws, Regulations, and Permitting (IWG). We would like to continue working with the Sponsor and the Subcommittee on some technical amendments, including ensuring that the bill maintains existing protections for withdrawn lands such as National Park System units. We would also like to work with the Sponsor and the Subcommittee on the most appropriate level for fees in the bill, since the Department notes that the next regularly-scheduled inflation adjustment to claim maintenance fees may bring them close to the level the bill currently specifies.

Royalties (Title II)

Title II would require any Federal mineral development to be subject to a minimum royalty of five percent, but not more than eight percent, of gross income. This title also allows the Secretary to set a royalty rate on individual minerals. However, Title II provides that no royalties will be

assessed on any existing mine that is in productive status under an approved mine plan as of the date of enactment.

The Department supports the establishment of a royalty for all minerals extracted from public lands, similar to how oil, gas, and coal production is currently managed, and as recently recommended by the IWG. The Department notes that hardrock mining is the only extractive industry on public lands that does not pay royalties, while nearly all states and other countries charge royalties on hardrock mineral production. In addition to providing taxpayers with a fair return for this important national resource, establishing a royalty rate for hardrock mineral production would also help provide funding that could be used to mitigate potential adverse environmental and social impacts from mineral development. This, in turn, would help improve economic and public health outcomes for underserved communities.

Mineral Activities (Title III)

Title III of S. 1742 requires those seeking to engage in surface-disturbing mineral activities above casual use on Federal land to obtain exploration or mining permits. In order to receive a permit for exploration activities, applicants would need to provide detailed information about their proposed activities, including an exploration plan demonstrating best management practices; a description of potential impacts to groundwater and surface water; evidence of adequate financial assurance; and reclamation, monitoring, and evaluation plans, among other requirements. Applicants for mining permits would be required to submit similar information, including a description of the condition of the land and water resources of the area before mining activities are initiated. Under the bill, mining permits would be for a term of 30 years and would continue thereafter so long as locatable minerals are produced in commercial quantities from the permit area; the bill does not specify a time duration for exploration permits.

In addition, Title III of S. 1742 requires that holders of mining permits pay a land use fee equal to four times the amount of the claim maintenance fee described in Title I for each 20 acres included within the permit area. This land use fee would be in addition to the claim maintenance fee and would be subject to adjustment as necessary to correspond to any adjustment in the claim maintenance fees as outlined in Title I. Furthermore, if mineral activities are discontinued for a period other than a temporary cessation approved by the Secretary or allowed under the specific permit, reclamation would be required to begin immediately.

Excluding the current requirement to establish trusts to fund long-term water treatment, Title III would also support performance-based reclamation standards and specific financial assurance requirements for operations conducted under an exploration or mining permit and require that such financial assurances are sufficient to cover the cost of long-term water treatment, if necessary.

Title III would further require – within 3 years of enactment – a complete review of most of the BLM’s National Conservation Lands, National Parks, National Wildlife Refuges, Areas of Critical Environmental Concern, and certain other Federal lands. After the completion of this review, Title III would authorize the Secretary to remove these lands from the operation of the Mining Law, subject to valid existing rights, based on the criteria outlined in section 202(c) of FLPMA. If the Secretary determines that these lands should be removed from the operation of

the Mining Law, they would be segregated until the applicable land use plan was revised or amended to reflect the removal. Such land use plan revisions or amendments would be required to be completed within 1 year.

Additionally, Title III of S. 1742 would require inspections of permitted mineral production activities at least once per quarter. After reclamation activities begin, inspections would be required at least twice per year. Finally, Title III would require the Secretary to conduct active, meaningful, and timely consultation with all applicable Tribes before undertaking any mineral activities that may have a direct, indirect, or cumulative impact to certain Tribal lands and interests.

The Department supports provisions in Title III that would govern Federal hardrock mineral resources similar to the way other mineral resources are managed on Federal lands; incorporate best management practices to avoid, minimize, and remediate potential impacts associated with mineral production activities; generate a fair return for the American taxpayer; and conserve unique resources in special areas. With respect to the review required by the bill, the Department notes that all of the BLM's National Conservation Lands would not be included. We recommend that the bill's definition of "National Conservation System unit" be amended to encompass all units of the BLM's National Conservation Lands. The Department also supports the Tribal consultation requirements in this Title, as they align with our commitment to strengthening the government-to-government relationship with Tribal Nations. Title III would enhance consultation, which will reduce conflicts with local communities and improve environmental, social, and economic outcomes, and thereby improve overall permitting times.

Hardrock Minerals Reclamation Fund (Title IV)

Title IV would establish a Hardrock Minerals Reclamation Fund (Fund). The Fund would be used in part to award grants to States and Tribes that have jurisdiction over abandoned hardrock mine land to reclaim that land, as authorized in the Bipartisan Infrastructure Law (BIL, Public Law 117-58). Additionally, Title IV would establish a new abandoned mine land reclamation fee of not less than one percent and not to exceed three percent of the value of mineral production each year. The revenue collected from the rents, royalties, claim maintenance fees, and other fees and penalties outlined in S. 1742 would also be deposited into the Fund.

There are estimated to be more than 500,000 legacy mining sites in the western U.S. alone, many of which pose public safety hazards or can cause environmental damage. Unlike for coal, where the industry pays a fee for each ton of coal mined to help reclaim unreclaimed legacy coal mines, there is currently no dedicated source of funding to address legacy abandoned hardrock mines. The Department greatly appreciates the efforts of the Sponsor and the Subcommittee to ensure that robust reclamation is a key part of any reforms on Federal mining and supports this Title, which is also consistent with IWG recommendations. The Department would like to continue working with the Sponsor to ensure that changes to reclamation requirements are consistent with the reclamation work authorized under the BIL. The Department notes that it is currently unclear whether the bill provides legal certainty for Good Samaritans working to remediate legacy pollution. We recommend – also in line with recommendations from the IWG – that the Sponsor and the Subcommittee ensure that the bill includes either a permanent or pilot program to

provide adequate liability protections for Good Samaritans wishing to undertake cleanup activities.

Transition Rules, Administrative Provisions, and Miscellaneous Provisions (Title V)

Title V includes various provisions that apply to mineral activities on any mining claim, millsite, or tunnel site occurring before the date of enactment, and it provides for a 10-year transition period to bring operations on those into compliance with the requirements of S. 1742. Title V also includes numerous provisions to enforce the bill’s requirements, including sections related to administrative and judicial review. Additionally, Title V makes various clarifying amendments to the Multiple Surface Use Act of 1955 regarding clay and the disposal of mineral materials. Finally, Title V requires a review of uranium development on Federal land by the National Academy of Sciences.

Given the scope of the reforms contained in S. 1742, the Department supports a transition period for mineral production activities ongoing at the time of enactment. The Department also has no objection to the required uranium study.

S. 1281, Mining Regulatory Clarity Act

S. 1281 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 S. 1281 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 S. 1281, 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.

Conclusion

Thank you for the opportunity to testify on these mining bills. The Department is committed to reforming Federal mineral production, and we look forward to working with the Sponsors and the Subcommittee to provide for responsible mineral development while advancing the Administration’s climate and clean energy goals.