

December 8, 2023

Senators,

On behalf of our millions of members and supporters, the following conservation, climate, Indigenous and tribal-affiliated organizations call on you to oppose S. 1281, the so-called “Mining Regulatory Clarity Act.” We write to share the below concerns and reasons for opposition for the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining on December 12<sup>th</sup> 2023.

**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 1900’s, 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right to undertake a wide variety of exclusionary or destructive activities on these claims and those claims would have superseded the Grand Canyon National Monument’s (later National Park’s) protections.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 longstanding 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,

Center for Biological Diversity  
Defenders of Wildlife  
Earthjustice  
Earthworks  
Endangered Species Coalition  
GreenLatinos  
Information Network for Responsible Mining  
League of Conservation Voters  
Native Movement  
Natural Resources Defense Council  
Patagonia  
Public Citizen  
Sierra Club  
The Wilderness Society

Uranium Watch  
Western Watersheds Project  
Alaska Clean Water Advocacy  
Alaska Community Action on Toxics  
Alaska Longline Fishermen's Association  
Alaska Wilderness League  
Anthropocene Alliance  
Arizona Faith Network  
Arizona Mining Reform Coalition  
Arizona Trail Association  
Arkansas Valley Conservation Coalition  
Black Hills Clean Water Alliance  
Californians for Western Wilderness  
Cascade Forest Conservancy  
Citizens Awareness Network  
Citizens to Protect Smith Valley, NV  
Clark County Adventure Riders (NV)  
Coalition for Wetlands and Forests  
Coalition to Save the Menominee River  
Conservation Northwest  
Cook Inletkeeper  
Dot Lake Village  
Friends of Buckingham  
Friends of the Inyo  
Friends of the Kalmiopsis  
Friends of the Sonoran Desert  
Gila Resources Information Project  
Grand Canyon Trust  
Great Basin Resource Watch  
Great Bear Foundation  
Healthy Environment Alliance of Utah (HEAL Utah)  
Hispanic Access Foundation  
Idaho Conservation League  
Idaho Rivers United  
Kahtoola, Inc  
Kalmiopsis Audubon Society  
LEAD Agency, Inc.  
Living Rivers  
Los Padres ForestWatch  
Malach Consulting  
Mother Kuskokwim Tribal Coalition  
Multicultural Alliance for a Safe Environment  
Nevada Conservation League  
New Mexico Environmental Law Center  
New Mexico Sportsmen  
New Mexico Wild  
Northern Alaska Environmental Center  
Northern Front Range Broadband of Great Old Broads for Wilderness

Norton Bay Watershed Council  
Okanogan Highlands Alliance  
Oregon Natural Desert Association  
Patagonia Area Resource Alliance  
People of Red Mountain  
Physicians for Social Responsibility Pennsylvania  
Progressive Leadership Alliance of Nevada  
Quiet Use Coalition  
Rio Grande Indivisible, New Mexico  
San Juan Citizens Alliance  
Save Our Cabinets  
Save the Scenic Santa Ritas Association  
Save the South Fork Salmon, Inc.  
Silver Valley Community Resource Center  
Sisters of Mercy of the Americas Justice Team  
Sky Island Alliance  
Soda Mountain Wilderness Council  
Southern Utah Wilderness Alliance  
Standing Trees  
The Alaska Center  
The Clinch Coalition  
Trustees for Alaska  
Tucson Audubon Society  
WaterLegacy  
Western Mining Action Network- Indigenous Caucus  
Western Shoshone Defense Project  
Wild Arizona  
Wisconsin Mining