Testimony of Chris Wood
President and CEO of Trout Unlimited
United States Senate Committee on Energy and Natural Resources
Public Lands, Forests, and Mining Subcommittee Hearing
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Chair Cortez Masto, Ranking Member Lee, and Subcommittee Members:

My name is Chris Wood. I am the President and CEO of Trout Unlimited (TU). Thank you for inviting me to testify on the Clean Energy Minerals Reform Act of 2023 (S.1742) and the Mining Regulatory Clarity Act of 2023 (S.1281).

TU's mission is to bring together diverse interests to care for and recover rivers and streams so our children can experience the joy of wild and native trout and salmon. In pursuit of this mission, TU has long been involved in mining issues, from advancing policies to foster responsible mining, to protecting special places such as Bristol Bay in Alaska, to working with the mining industry to clean up legacy pollution from abandoned mine lands (AML).

Domestic mineral production helped to build our nation, won two world wars, fueled westward expansion, and provides the raw materials for modern society. Domestic mining of critical minerals, for example, is an important part of transitioning to a clean energy economy. At the same time, mining that often occurred before the era of modern environmental laws left hundreds of thousands of abandoned mines that dot the landscape like ticking time bombs waiting to release their toxic brew of lead, zinc, cadmium, arsenic, and other toxins. How we proceed from this point forward is one of the most important policy questions before Congress and we thank the subcommittee for its focus on these critical issues.

There is an obvious path forward if we are creative and work together, and TU is committed to helping, however we can.

There is no constituency for acid mine waste and orange rivers. They do not have a lobby shop working for them here in the nation's capital. There is, however, a bipartisan commitment to clean up abandoned mines, encourage responsible mining, and propel the needs of a clean energy future, while making our rivers and streams cleaner.

Trout Unlimited stands ready to help the bill sponsors and Congress achieve these objectives and I offer the following testimony on behalf of TU and its more than 350,000 members and supporters nationwide.

Historic mining left widespread pollution that must be addressed

In 1872, the General Mining Law was a progressive law designed to spur settlement of the West. Anyone with a claim was able to mine with little if any oversight – polluting waterways, stripping mountainsides and changing the landscape of the West with little regard to, nor knowledge of, health, safety or environmental impacts. The impacts of those legacy mines pollute our lands and waters today.

In fact, the EPA has estimated that 40 percent of western headwater streams are deleteriously affected by abandoned hard rock mines. To be certain, improvements in environmental regulations have helped stem many of the worst effects of mining, but reforms remain important for funding abandoned mine clean up and the protection of fish and wildlife, sacred sites, and water supplies.

A 2020 Government Accountability Office report[1] estimates there are more than 533,000 abandoned hardrock mines on lands managed by the Forest Service, Bureau of Land Management, Park Service, and Environmental Protection Agency (EPA). On average, these agencies spend approximately $287 million annually identifying, cleaning up, and monitoring abandoned hardrock mines—adding up to approximately $2.9 billion in spending between 2008 and 2017. An analysis conducted by TU found that approximately 110,000 miles of streams – enough to circle the Earth four times – are listed as impaired for heavy metals or acidity, and abandoned mines are a major source of these impairments. Of these impaired stream miles, 20 percent are in areas that contain native trout and salmon while 52 percent are in areas that are important drinking water sources.

We must do better. The vast majority of these sites are not Superfund type problems. They are easily correctible, relatively small scale engineering projects. The problem is that certain provisions of two of the most important environmental laws, CERCLA and the Clean Water Act provide a profound disincentive for organizations such as mine that had nothing to do with the creation of the waste but want to make things better. The saying is trite, but true: we have allowed the perfect to be the enemy of the good.

While not the focus of this legislative hearing, the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023* (S. 2781) is proof that the mining industry and conservation interests can not only find common ground on mining issues, but that we can come together to build bipartisan coalitions and advance important policies. With 26 Senators supporting this legislation—13 Democratic and 13 Republican – several of whom are members of the Subcommittee, it shows that there can be a path forward on mining policy that is grounded in trust and compromise. We thank Senators Heinrich and Risch for their determined leadership on Good Samaritan legislation and showing us all what is possible when we apply common sense to common problems for the common good.

In 2004, I established TU's abandoned mine reclamation program. My thinking at the time was, "this is such a commonsense fix. How hard can this be?" The intervening 19 years have answered that question. Over the years, we have completed dozens of abandoned mine reclamation projects across the western states in cooperation with state and federal agencies and private sector partners. TU recently expanded our efforts into Alaska, and we aspire to do even more in the coming years. To date, these projects have restored more than 200 stream miles across the West.

Our technical, partner-based approach has enabled us to become a non-profit leader in abandoned mine restoration. Many of those projects would not be possible without the financial and technical support from our private industry partners. Foundations such as the Tiffany & Company Foundation and companies such as Freeport McMoRan, Kinross Gold Corporation, Newmont Mining, Integra Resources and Ouray Silver Mines Incorporated, provide valuable financial support and expertise that allows TU to leverage matching funds to accomplish meaningful reclamation that benefit rivers and local communities, alike.

We and our partners have shown that by working together we can make a difference cleaning up the scourge of abandoned mines. However, to address this pervasive problem on the scale it demands, we need Good Samaritan legislation and a dramatic increase in funding.

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[1] GAO-20-238, *Information on Number of Mines, Expenditures, and Factors That Limit Efforts to Address Hazards* https://www.gao.gov/products/GAO-20-238

Funding barriers to progress that Congress must address

Tens of thousands of abandoned legacy mines negatively affect our nation's waters every single day. This is a completely fixable problem.

Just about every commodity produced off of our public lands has an associated royalty or fee that helps to address remediation from legacy development. We respect and appreciate that mining companies must make years, and often millions of dollars, in investments before they can mine, but there should be a common-sense royalty to help pay for the clean-up of legacy mines. We urge Congress to enact a royalty and/or fee structure for minerals extracted from public lands. We do it with oil and natural gas. We do it with coal. We do it with timber. And there is no reason we should not do it with hardrock minerals.

As noted previously, federal agencies have spent roughly $287 million per year to address abandoned mines, and estimates put the total future cost of cleaning up abandoned mines at as much as $54 billion. To be certain, not all abandoned mines are created equal. Some pollution is more harmful to people (and fish!) than others, but it is important that any new royalty and/or fees are both fair for the mining industry and generate enough revenue to make substantial progress cleaning up abandoned mines.

The *Clean Energy Minerals Reform Act* would achieve these objectives by establishing an adjustable royalty between 5% and 8% of the gross income from mining locatable minerals on public lands. TU nor I are expert on royalties associated with hard rock mining, but certainly reasonable people can come together and determine a fair royalty that would allow the industry to plan with certainty while providing relief from the abandoned mine crisis. Revenues generated from these royalties would then be dedicated for the purposes of the Abandoned Hardrock Mine Reclamation Program established by Section 40704 of the Infrastructure Investment and Jobs Act, including inventorying, reclaiming and remediating abandoned hardrock mine lands.

Importantly, this royalty would only apply to new mining operations. Additionally, royalty relief should be provided if production would not occur without a reduction in royalty. Taken together, this would ensure a fair return on the production of locatable minerals on federal lands, create flexibility necessary for a sustainable domestic mining industry, and generate much needed funding to finally begin tackling the abandoned mine crisis. We urge your support for these provisions.

A clean energy transition relies on critical mineral supply chains

The Biden Administration has established the lofty and laudable goal of the United States reaching 100 percent carbon pollution-free electricity by 2035. This does not come without cost. According to the International Energy Agency, the energy sector's overall need for critical minerals could increase by as much as six times by 2040. Critical minerals such as lithium, cobalt, tellurium and rare earth elements are important in electric vehicles, solar panels and wind turbines, and non-critical base metals such as nickel and copper will likewise see increased demand.

As I said earlier, supplying this demand and securing supply chains for these minerals is important to meet clean energy goals. Before seeking new sources of raw materials, we should prioritize and fully utilize alternatives, such as recycling, substitutes to critical minerals, reprocessing old mine waste piles (while cleaning up the remaining abandoned mines) and ash material, and engineering advancements to reduce use and the need for new mines.

Abandoned mine cleanups have the potential to remediate sites while also recovering minerals from mining waste that help to meet the need for critical minerals. At the same time, mining for both critical and non-critical minerals is likely to increase, and it is crucial that extracting and processing critical minerals be done responsibly with an emphasis on avoiding, minimizing, and mitigating impacts to fish, wildlife, and drinking water supplies.

However, even with advancements in recycling to help meet demand, domestic mining is and will continue to be an important part of the solution to meet the clean energy and critical minerals challenge before the nation.

Increased domestic mining creates challenges but also opportunities—Federal land management agencies must have the proper authorities to manage and embrace risk

A critical minerals mining "rush" that is driven by clean energy will create new environmental and social challenges, and the subcommittee is right to take a hard look at the Mining Law of 1872 as well as the implications of the Rosemont judicial decision. We are encouraged that S.1742 and S. 1281 are being considered together at this hearing and we urge Congress to continue to approach the issue in an integrated manner.

An integrated and balanced path forward means both reasonable updates to the 1872 Mining Law and reasonable fixes to legal uncertainties to the mining industry stemming from the Rosemont decision.

Importantly, public land management agencies need better tools and resources to manage mining. Much progress has been made in the field of mining to minimize impacts from operations, including greater consideration of fish and wildlife habitat. But the fact is that there needs to be some measure of discretion given to agencies to decide whether to allow mining in critical habitats, community drinking water supplies, or sacred sites, for example.

Some places such as Bristol Bay or the Upper Yellowstone are not appropriate for mining. But it should not take an act of Congress or for the EPA to intervene in dramatic fashion to stop ill-advised mining proposals.

As they do with every other multiple use on public lands, public land managers should have the discretion to determine lands that are suitable for mining. Ensuring equal consideration for all public land uses – including conservation – will allow for sound, science-based decisions. The *Clean Energy Minerals Reform Act* would do this by allowing for mineral withdrawals utilizing criteria enumerated in the Federal Land Policy and Management Act for the development and revision of land use plans, including weighing long-term benefits to the public against short-term benefits; coordination with state and local governments; observing the principles of multiple use and sustained yield; and assuring consideration of state, local, and Tribal plans.

In addition to advancing these provisions, we also encourage Congress to consider opportunities at the local land use planning level (i.e., Forest Plans and Resource Management Plans) for local Forest Service and BLM officials to make "suitability decisions" for lands open to claim staking. This would be similar to how the Forest Service and BLM make lands available for oil and gas leasing, grazing and timber harvest. These decisions are in effect for the duration of the plan (intended to be 10-15 years) but may be adjusted sooner through a land use plan amendment. For lands that a forest plan or resource management plan identify as open for claim staking, self-initiation for mining claims, exploration and mining would continue as it does today and has for 151 years.

Rosemont court decision

Lastly, I want to address the so-called Rosemont court decision and the *Mining Regulatory Clarity Act*. 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 nearby national forest land where the project proponent had not discovered valuable mineral deposits. The District Court and the Ninth Circuit Court of Appeals found that Rosemont needed to establish that they had a valid and existing right prior to allowing disposal of the waste.

The Rosemont decision has created a great deal of uncertainty for mining on public lands, and resolving this uncertainty is something that Congress should address. The solution, however, should not create additional uncertainty, and we encourage amendments that will ensure the legislation is narrowly targeted to address specific challenges resulting from the Rosemont decision.

The *Mining Regulatory Clarity Act* tethers claim validity and security of tenure to the payment of location fees and claim maintenance fees. So long as these fees are paid, mining claims would be valid, with or without the discovery of a valuable mineral deposit. While this approach would resolve the Rosemont decision, 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 protected areas, including approximately 1,100 mining claims in National Park units according to the National Park Service.

For instance, in 2018 Secretary of the Interior Ryan Zinke approved, and Congress later enacted into law, the withdrawal of 30,000 acres of national forest lands in Montana on the doorstep of Yellowstone National Park. Across the political spectrum there was agreement that this was a place where mining is not appropriate.

Under existing regulations[1], mining can only be allowed in these types of protected areas if preexisting claims are valid, meaning that there has been the discovery of a valuable mineral deposit. This requirement establishes a high bar to meet before a valid right is established on mining claims within protected areas. 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 could be unlawful to deny prospecting, mining and exploration activities on all such mining claims.

Moreover, under the proposed legislation these rights could also be construed to 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 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 also for reasonably incident activities, including constructing ancillary roads and other infrastructure across public lands – 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."

To prevent these unintended consequences, we encourage amendments that would narrowly focus the legislation Rights for ancillary uses, for example, 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 was established prior to the protective designation.

Conclusion

We have fought, bickered, and disagreed over mining on public lands for over 100 years. Certainly, there is a commonsense compromise within our reach that would fund and make it easier to clean up abandoned mines; and allow that certain landscapes are inappropriate for mining while addressing the legal and regulatory certainty needed by the mining industry to help us transition to a clean energy future.

You have TU's commitment to work in good faith to strike a balance we can all support.

Thank you for the opportunity to testify today. Trout Unlimited appreciates the leadership of the subcommittee to explore these complex issues and seek solutions that bring stakeholders together and make a difference for the environment and communities around the country.