

**TESTIMONY of
TROY HEITHECKER
ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEMS
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Before the
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
Dec. 12, 2023**

**Concerning
S. 1281, Mining Regulatory Clarity Act of 2023
S. 1742, Clean Energy Minerals Reform Act of 2023**

Chair Cortez Masto, Ranking Member Lee, and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on two bills under the jurisdiction of the U.S. Forest Service (Forest Service).

S. 1281 – Mining Regulatory Clarity Act of 2023

The Forest Service’s responsibility to administer surface uses of National Forest System lands in connection with mining activities under the 1872 Mining Law is complex and important work, and we take that work seriously. The Mining Regulatory Clarity Act of 2023 would amend the Omnibus Budget Reconciliation Act of 1993 by changing how agencies treat activities ancillary to mining operations that are located on federal lands. The bill sets forth a process to allow mining operators to use, occupy, and conduct operations on public land regardless of whether a valuable mineral deposit has been discovered on the land. This bill addresses the decision in *Center for Biological Diversity, et al v. United States Fish & Wildlife*, 33 F.4th 1202 (9th Cir. 2022) (“*Rosemont Decision*”), which interpreted the requirements for use of the surface of National Forest System lands for mineral development under the 1872 Mining Law.

The Ninth Circuit’s decision in *Rosemont* represented a significant change in the way agency practice typically authorized use of National Forest System lands in connection with mining activities under the 1872 Mining Law, including for ancillary activities that are reasonably incidental to logical and sequential mining operations.

The Forest Service understands that the intent of the sponsor of S. 1281, the Mining Regulatory Clarity Act of 2023, is to clarify the agency’s administration of operations on mining claims under the Mining Law. While the Forest Service supports the goals of S. 1281, we believe that the bill, as currently written, would change the scope of rights under the Mining Law in ways that could have unintended consequences. We are therefore committed to working with the Sponsor and the Subcommittee on reforms that advance Administration priorities by providing certainty and stability for the industry, strengthening domestic mineral supply chains, protecting local and tribal communities, and advancing environmental standards that protect our air, water, land and citizens, all while ensuring a fair return to taxpayers. The Forest Service also notes that the Department of the Interior has issued a Solicitor’s M-Opinion that identifies options for operators potentially impacted by the *Rosemont* decision, and that the Forest Service has been working to address the impacts of the *Rosemont* decision administratively under

different authorities than the authorities that govern the Department of the Interior. The Forest Service would like to work with the Sponsor, the Subcommittee, and the Department of the Interior on improvements to the bill that address those impacts while limiting any potential unintended consequences.

S.1742 – Clean Energy Minerals Reform Act of 2023

The Clean Energy Minerals Reform Act of 2023 aims to amend the 1872 Mining Law to eliminate patenting of federal lands, collect royalties on hardrock minerals, establish a hardrock minerals reclamation fund, implement a permitting process, and encourage mineral withdrawals.

Eliminating Patenting:

Effective on October 1, 1994, Congress imposed a moratorium on spending appropriated funds for the acceptance or processing of mineral patent applications that had not yet reached a defined point in the patent review process. Since then, the rider has prevented the Department of the Interior from accepting new patent applications, including for National Forest System lands. The Department of Agriculture supports the proposal since it will simply codify current practices.

Royalties and Royalty Relief:

The proposed legislation would require royalty payments for production of locatable minerals from mining claims on public lands and set a royalty rate of not less than 5 percent and not greater than 8 percent based on gross income of production. The bill would allow the Secretary of the Interior to grant royalty relief to mining operations based on economic factors.

Generally, the proposal is outside the purview of the Forest Service because the agency administers the surface estate, and the Department of the Interior administers mining claims, rental, and royalty payments. However, the Forest Service recognizes the bill implements recommendations contained in the Interagency Working Group's Final Report on Recommendations to Improve Mining on Public Lands (IWG Report) aimed to ensure that the public receives fair compensation for mineral development on public lands – including National Forest System lands. To the extent these royalties generate revenue for the Forest Service to tackle abandoned mines on national forest system lands, support Tribes and communities impacted by mining operations, and ensure appropriate staffing and resources to administer its mining program, the Forest Service supports this provision of the proposed bill.

The Forest Service is not able to comment on royalty relief as this is a Department of the Interior-directed proposal.

Hardrock Minerals Reclamation Fund:

The bill identifies that revenues generated by mining on federal public lands would be deposited into a Hardrock Minerals Reclamation Fund for abandoned mine cleanup. Additionally, the fund would be bolstered by an abandoned mine reclamation fee of 1 to 3 percent.

The Forest Service supports a dedicated funding mechanism to address abandoned mine cleanup. Currently, the Forest Service's abandoned mine lands program relies on an annual allocation of funds used for both physical hazards removal and hazardous materials site remediation, to address close to 40,000 abandoned mine sites on NFS lands. Unlike coal mining operations administered by the Office of Surface Mining and Reclamation Enforcement, there is no dedicated fund set aside to address reclamation

of legacy mining features on NFS lands. The direct funding mechanism proposed in this bill would improve the Forest Service's ability to mitigate abandoned mine lands features.

Permits:

The proposed legislation would require exploration permits and mining operations permits on federal lands. Exploration permits would require the proponent to provide information, including, among other materials, an exploration plan, an assessment of potential impacts to ground and surface water, financial assurances, and a reclamation plan for any exploration operations. The proposed bill also would require mining permits, which would necessitate an initial description of the land and water resources in the area, an operations plan, financial assurances, and a reclamation plan. Permits issued under the proposed bill would be valid for 30 years and continue as long as production occurs.

The Forest Service regulations require that if proposed operations might cause a significant disturbance to surface resources, the proponent must provide a Notice of Intent (NOI) to operate. Based on the NOI, the Forest Service can determine if a Plan of Operations and NEPA analysis is needed. These proposed activities also include an expiration date. If mine operations continue beyond that expiration date, a revised plan is required. We support the intent of the provision to help balance conservation and mining on public lands, but would like to discuss this provision further with the committee and bill sponsor given the Forest Service already requires an approved mine plan of operations for proposed activities which might cause significant disturbance of surface resources, including exploration, development, production, and reclamation operations on mining claims.

Mineral Withdrawals:

Section 307 of the proposed bill requires the Forest Service to conduct a review, within three years of enactment, of National Forest System lands that are: suitable for Wilderness, Roadless Areas, areas included in the Wild and Scenic River System, and where mineral activities pose a reasonable likelihood of substantial impacts on National Conservation Area lands. Based on that review, the proposed bill would allow the Secretary of Agriculture to recommend, and the Secretary of the Interior to withdraw, those lands from availability under the Mining Law of 1872. The proposed legislation also removes the two-year segregation period from the date of the Secretary's determination and the twenty-year limit to administrative withdrawals.

The Forest Service advocates for a balance between the need for domestic critical mineral production to support a renewable energy economy and protecting the environment, and believes the existing process is sufficient to do both. To strike that balance, the Forest Service addresses surface resource protections in the NEPA analysis the agency conducts to evaluate any proposed mining operation. Through current land management processes, the Forest Service also evaluates and uses mitigation to minimize significant disturbance to resources—those mitigation measures become part of a mine plan of operations if the plan is approved. For NEPA analyses, the Forest Service takes a hard look at the environmental impacts of proposed operations, including any mitigations which would minimize impacts to surface resources associated with mining activities. The Forest Service also has allowances to limit land use in areas not withdrawn from mineral entry, such as in research natural areas.

The Forest Service is committed to working with the Sponsor to ensure that the review includes consideration of mineral potential reports and reasonably foreseeable development scenarios, as recommended in the IWG Report.

Tribal Consultation

The Forest Service is also implementing numerous Executive Orders, Presidential Memorandums, and Memorandums of Understanding that seek to strengthen relationships; better honor the role of sovereign Tribal nations; and further the Biden Administration's ambitious environmental justice goals. We support the requirement to consult with Tribes. The Forest Service manages millions of acres of land and waters that are significant to our Tribal partners. The Forest Service is committed to strengthening Tribal consultation and nation-to-nation relationships and the proposed legislation parallels that commitment.