



May 3, 2024

Speaker Mike Johnson
U.S. House of Representatives
568 Cannon House Office Building
Washington, DC 20515

Minority Leader Hakeem Jeffries
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, DC 20515

Re: Permitting reform and mining regulation

Dear Speaker Johnson, Minority Leader Jeffries, and Representatives,

As Congress considers permitting reform legislation, Outdoor Alliance, The Conservation Alliance, and the Outdoor Industry Association—the Protecting America’s Outdoors Coalition—write to express our community’s interest in hardrock mining reform to protect public lands and waters and advance the clean energy economy. Reforming America’s mining laws to facilitate a clean energy transition is a high priority for the outdoor recreation community, the outdoor industry, and conservation-minded business. To this end, we oppose the Mining Regulatory Clarity Act (H.R. 2925) and strongly support the Clean Energy Minerals Reform Act (H.R. 3495).

The global transition towards carbon-free electricity—a change which is vital for the future of outdoor recreation and the outdoor economy—will necessarily require an increase in mining for minerals needed to manufacture electric vehicle batteries, semiconductors, solar panels, and other applications. As mining projects move forward to support clean energy, it is essential that they advance with modern safeguards for public lands and frontline communities. The lack of such protections in the 1872 Mining Law—the outdated law that still governs hardrock mining on western public lands today—poses a major barrier for our community to support mining projects that might be needed for clean energy.

Currently, 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 Without proper regulation, these mining impacts threaten the outdoor recreation experience on federal public lands and also threaten America's growing \$1.1 trillion outdoor recreation economy, which employed five million people in 2022.³

To support a clean energy transition, protection of natural resources, greater certainty for responsible mine operators, and a fair return for taxpayers, we strongly support the reforms in H.R. 3495, the Clean Energy Minerals Reform Act (CEMRA). 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;
- Establishes royalties for hardrock mining;
- Requires permits for exploration and mining operations;
- Creates new pathways for protecting special places;
- Strengthens tribal consultation; and
- Addresses legacy mine pollution.

We also strongly oppose H.R. 2925, the Mining Regulatory Clarity Act (MRCA). The MRCA would exacerbate longstanding problems of the 1872 Mining Law by

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>.

³ U.S. Bureau of Economic Analysis, BEA 23-54, Outdoor Recreation Satellite Account, U.S. and States, 2022 (2023).

significantly expanding the rights conferred to claimants while increasing the likelihood that mining claimants might preclude other valid public lands users such as recreationists from accessing mining claims. As written, the MRCA would move hardrock mining policy in the wrong direction, with far-reaching implications for public lands and local economies. We are highly concerned by the expanded rights that the bill grants to mining claimants and by potential unintended consequences to recreation access, renewable energy development, and more.

The MRCA 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 disposal, the MRCA instead provides a broad guarantee that miners can “use, occupy, and conduct operations” in perpetuity—a right not granted by the 1872 Mining Law. The right to permanently use and occupy federal lands granted by § 2(e)(1)(B) would 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, and develop those claims, including for purposes only loosely related to mining. 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, potentially hindering local communities' ability to build infrastructure needed

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

to support recreation-related economic development. 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, at a time when a more modern hardrock mining policy is greatly needed, H.R. 2925 instead takes mining reform in the wrong direction. We encourage you to consider a more comprehensive approach to mining reform as envisioned by the Clean Energy Minerals Reform Act (H.R. 3495).

Best regards,



Louis Geltman
Vice President for Policy and Government Relations
Outdoor Alliance



Shoren Brown
Vice President, Public Affairs
The Conservation Alliance

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



A handwritten signature in black ink, appearing to read "Hannah Wintucky".

Hannah Wintucky
Government Affairs Manager
Outdoor Industry Association



TOGETHER WE ARE A FORCE™



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.