



Memorandum
Congressman Mark Amodei
Nevada's Second Congressional District

SUBJECT: House Natural Resources Energy and Mineral Resources Subcommittee Hearing on HR 2925
STAFF: Ken
DATE: 1/31/2024 [2:00pm; 1324 Longworth House Office Building]

Energy and Mineral Resources Subcommittee Members:

Bruce Westerman (R-AR) [Full Committee Chair]

Pete Stauber (R-MN) [Subcommittee Chair]

Wesley Hunt (R-TX) [Subcommittee Vice Chair]

Doug Lamborn (R-CO)

Rob Wittman (R-VA)

Paul Gosar (R-AZ)

Garret Graves (R-LA)

Daniel Webster (R-FL)

Russ Fulcher (R-ID)

John Curtis (R-UT)

Tom Tiffany (R-WI)

Matt Rosendale (R-MT)

Lauren Boebert (R-CO)

Mike Collins (R-GA)

John Duarte (R-CA)

Raúl M. Grijalva [Full Committee Ranking Member] (D-AZ)

Alexandria Ocasio-Cortez [Subcommittee Ranking Member] (D-NY)

Jared Huffman (D-CA)

Kevin Mullin (D-CA)

Sydney Kamlager-Dove (D-CA)

Seth Magaziner (D-RI)

Nydia M. Velázquez (D-NY)

Debbie Dingell (D-MI)

Grace Napolitano (D-CA)

Susie Lee (D-NV)

Witnesses:

Panel I - Members of Congress

Panel II:

- Dr. Steven Feldgus, Principal Deputy Assistant Secretary for Land and Minerals Management, Department of the Interior, Washington, DC [*H.R. 2925, H.R. 6862, H.R. 7003, and H.R. 7004*]
- Mr. Rich Haddock, Senior Advisor, Barrick Gold, Bountiful, UT [*H.R. 2925 and H.R. 6862*]
- Mr. Jeffrey Stiffarm, President, Fort Belknap Indian Community, Harlem, MT [*Minority Witness; H.R. 2925 and H.R. 6862*]
- Mr. Craig Mueller, President & CEO, American Gilsonite Company, Houston, TX [*H.R. 7004*]
- Dr. John Metesh, President, Association of American State Geologists, Butte, MT [*H.R. 7003*]

Rosemont Decision:

Background:

- In May 2022, the United States Court of Appeals for the Ninth Circuit affirmed a lower court decision revoking the U.S. Forest Service’s approval of a mining plan for the Rosemont Copper Mine Project in Arizona (*Center for Biological Diversity*, 33 F.4th 1202 (9th Cir. 2022) (*Rosemont* decision).
 - The Center for Biological Diversity and other environmental groups’ challenge to the Rosemont mine plan specifically concerned whether the Forest Service could approve disposal of overburden (waste rock) without first determining the validity of the mining claim that would be used.
- The Ninth Circuit declined a petition for a panel rehearing and denied a rehearing by the full court, making Rosemont Decision the law in the Ninth Circuit. The Ninth Circuit includes key western mining states such as Alaska, Arizona, Nevada, Montana and Idaho.
- The 9th Circuit Changed **40 Years** of Mining Regulation and Over a Century of Interpretation of the Mining Law.
- In the *Rosemont* litigation, NGOs tried a side assault on the Mining Law of 1872 – knowing that the economic viability of a mine depends upon the ability to use surrounding lands for activities incidental to mining – they advanced sham legal arguments about the rights to use those lands before courts unfamiliar with the nuances of the Mining Law.
 - Basically, the NGOs claimed those rights only arise if the Forest Service determines that all the claims are “valid” in the first place – a position contrary to the law and the Service’s regulations.
- The Ninth Circuit’s decision in this case limits the ability of the U.S. Forest Service to approve mining support facilities necessary for mining operations. The Rosemont decision requires that U.S. Forest Service approvals of ancillary facilities on mining claims be contingent on such claims being “valid.” This new requirement ignores longstanding precedent and specific U.S. Forest Service regulations that allow approvals of operations “on or off a mining claim,” so long as these operations meet environmental and regulatory standards.
 - Essentially, this decision requires discovery and determination of a valid mineral deposit, meaning operators must prove the existence of a commercially developable deposit on a claim, before a plan of operations that includes usage of the surface of that mining claim (such as for waste rock placements, mills, offices, roads, or transmission lines) can be approved.
- The NGOs like this argument because they know the near impossibility of determining validity (the existence of a commercially developable deposit) of every claim needed to secure rights to a deposit before the company has full access to mine and determine the full extent and grade of the minerology.
- If that argument succeeds, they can further argue that the Forest Service’s only choice for approving ancillary operations is under its Section 251 “special uses” regulations. Section 228—the regulations addressed by the Rosemont court—are the regulations under which mining projects receive approval of the broadly-defined activities that constitute mining operations. Section 251, specifically states that uses cannot involve the disposal of solid waste on forest lands.
- Under the 228 regulations, the Forest Service can impose reasonable conditions to protect natural resources but cannot materially interfere with reasonably necessary mining activities for a plan that otherwise complies with the law.
- In contrast, the Section 251 special use regulations provide broad discretion to deny any uses that are not “in the public interest.” Thus, pushing the application of the Section 251 regulations is simply a backdoor way for NGOs to limit mining by limiting ancillary uses of land.
- To their credit, the Department of Interior published a Solicitor’s opinion on the issue in May of 2023, which allows some disposal of waste rock in certain circumstances, but enactment of H.R. 2925 is needed to remedy the uncertainty created by the Rosemont decision for all mines on federal lands going forward.
- H.R. 2925 would restore the longstanding interpretation of the Mining Law of 1872 and regulatory requirements for mining approvals on federal lands and provide much needed certainty in response to the Rosemont decision.

H.R. 2925 - Mining Regulatory Clarity Act of 2023:

- You and Rep. Peltola (D-AK) introduced H.R. 2925 on 4/27/2023 specifically to rectify this. The bill was also introduced in the Senate by Sen. Cortez Masto (D-NV) and Sen. Risch (R-ID).
- The bill specifically amends the 1993 Omnibus Reconciliation Act, pertaining to the Mining Law, to address the restrictive Rosemont Decision, which requires mining plans to include only public lands proved to contain economically-valuable minerals, even if those lands are planned to be used for mining-support activities such as waste or processing sites.
- This bill reaffirms long-held practice and previous legal interpretation that some public land use under a mining claim inherently accompanies exploration and extraction activities for other mining-support activities.
- Similar language was included in H.R. 1, the Lower Energy Costs Act, which was passed in the House of Representatives on March 30, 2023, by a bipartisan vote of 225–204.
- Similar language was also included as an underlying provision (Sec. 444) in the FY 2024 Interior Appropriations Act (H.R. 4821), which passed the House of Representatives on November 3, 2023, by a bipartisan vote of 213-203.

Defined “Operations” Activities in this Bill:

- Prospecting
- Exploration
- Discovery and Assessment
- Development
- Extraction
- Processing

Additionally, this bill clarifies that any activity reasonably incident to an activity described above shall be an allowable ancillary activity, regardless of whether the incidental activity is carried out on the mining claim.

This bill does **NOT** make changes to allow for mining in wilderness areas and National Parks, as some alarmists have claimed.