Response to Assertions Regarding the Mining Reform Clarity Act (MRCA), S. 544

Supporters of the MRCA have made a number of misleading statements regarding what the bill does, and does not, do.

(1) The MRCA is needed to allow mining companies to use federal public lands for waste dumping, which was curtailed by the *Rosemont* Ninth Circuit court decision.

A central provision in the MRCA expands the ability of mining companies to file additional "millsite" claims to accommodate the large acreages needed at large open-pit gold and other mineral mines. *Yet current law already allows mining companies to file as many millsite claims as needed to support mining operations.* Earthworks v. U.S. Dept. of the Interior, 105 F.4th 449 (D.C. Cir. 2024) (upholding 2003 Interior regulation allowing as many as millsite claims as needed in support of a mining operation). Thus, under controlling court precedent and long-standing federal regulation and policy, the MRCA is not needed, because companies already have expansive rights to file as many valid millsites as needed to cover waste dumping, etc. (the issue in the *Rosemont* decision). In fact, mining companies have already begun, since the *Rosemont* decision, to file millsite claims to cover proposed waste and tailings dumps, cyanide heap leach facilities, etc. – which have been repeatedly approved by the federal land agencies (BLM/USFS) in recent years.

(2) The MRCA is a *minor* change in federal public land and mining laws, as except for allowing additional millsite claims, the MRCA does not provide any additional rights to mining companies, nor adversely impacts other uses of federal land, such as for energy projects, livestock grazing, Native American cultural sites, wildlife, water supply, recreation, etc.

That is one of the central concerns with the MRCA, for it *does* establish new, and broad, statutory rights in mining companies, at the expense of all other public land resources/values. Under the MRCA, if an activity is included in an approved "plan of operations," the company obtains a statutory right to use public lands, eliminating the federal land agency's (BLM/USFS) discretion that currently exists. The operator would have the statutory right to "(B) use or occupy public land in accordance with an approved plan of operations." (S. 544 (MRCA), p. 4, lines 7-8).

Critically, under the proposed codification of the definition of "operations," anything associated with a mining plan would now have a statutory right to use those lands. MRCA p. 2, lines 9-14. That definition is extremely broad, which would create rights even on lands without any claim at all:

> "Operations means all functions, work, facilities, and activities on public lands in connection with prospecting, exploration, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws; reclamation of disturbed areas; and **all other reasonably incident uses, whether on a mining claim or not**, including the construction of roads, transmission lines, pipelines, and other means of access across public lands for support facilities." 43 CFR §3809.5 (emphasis added).

For example, under current law, a mining company needs to seek a discretionary Right-of-Way (under the 1976 Federal Land Policy and Management Act) for such public land uses as a water pipeline, electrical transmission line, etc., often far away from the actual mine. The MRCA would eliminate the agency's discretion over these lands and facilities (and remove the applicant's duty to pay "fair market value" for use of public land under FLPMA).

The agency's ability to facilitate energy development, and to protect grazing lands, wildlife habitat, watersheds and water supply, cultural resources, recreation, etc., would be eliminated, as the company would have a **statutory right** to "use and occupy" all of the lands included in its plan of operations, "whether on a mining claim or not."

(3) The MRCA preserves the balance among uses/users of public lands.

The MRCA would actually do the opposite – eliminating the "multiple use" doctrine that has existed for 60 years on the public lands – in favor of any "use or occupation" included in the mining company's plan of operations. No other industry, or user, has such statutory rights, as all are subject to the multiple-use doctrine, which balances the competing public land values under an overarching "public interest" framework.

(4) The MRCA does not overturn the *Rosemont* decision.

Yes, it does – overturning the fundamental recognition of the *Rosemont* decision – that statutory rights under the Mining Law cannot be assumed by the agency without evidence that such is the case (i.e., that "valuable mineral deposits" exist on mining claims). For example, in the "savings clause," the MRCA preserves the authority of the federal agency to require that operations proposed in withdrawn areas be covered by valid claims. MRCA p. 5, line 12-17.

But that means that for **non-withdrawn lands** – *the vast majority of public lands in the West* – the claimant does **not** have to provide evidence of claim validity to assert rights under the Mining Law. That directly contradicts the basic holding of the *Rosemont* decision, that if a company asserts rights under the Mining Law, it has to show that those rights indeed exist.

To date, except for one mining project that would have destroyed federal reserved water rights protecting livestock grazing in Nevada, no mining project has been stopped or curtailed due to the *Rosemont* decision.

Also, by codifying the expansive definition of "operations," it essentially adopts the argument from the mining industry in the *Rosemont* case that any aspect of a mining plan is covered by a right under the Mining Law – an argument that was rejected by the courts as contrary to over 100 years of federal court precedent. Under the MRCA, mining companies would now have the statutory right to ''use or occupy public land in accordance with an approved plan of operations" – at the expense of all other public lands uses/resources/values. (S. 544 (MRCA), p. 4, lines 7-8).

(5) The MRCA would not allow mining companies to block energy development or other uses of public land.

It would. Under the MRCA, as long as the company has an approved plan of operations, it obtains statutory rights to "use and occupy" all the public lands associated with its plan. Under the expansive and broad definition of "operations" codified by the MRCA, companies would not even need to file mining claims outside of the ore body, as any activity "reasonably incident" to the mining would have a right to "use or occupy" all those federal lands, "whether on a mining claim or not."

Energy projects (and all other uses of public land) would be blocked if they might interfere with a mining company's right to "use or occupy" any lands contained in the expansive plan of operations boundary. Other valued uses of public lands will be subservient to, and very likely precluded by, the company's use/occupancy of the vast acreages contained with the company's plan.

Although someone would not be able to file so-called "nuisance claims" unrelated to mining to block other uses (which is not allowed under current law anyway), any lands within an expansive plan of operations, often covering thousands of acres, would be dedicated to mining, at the expense of other legitimate uses of public lands.

(6) Currently withdrawn/protected lands would not be affected, nor would the government's ability to withdraw lands in the future.

The government could still withdraw lands, but future withdrawals would be subject to the new statutory rights encompassed within a plan of operations that was approved before the withdrawal.