



MEMORANDUM

Date: May 24, 2023

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshel 
County Administrator

Re: **Pima County's Opposition to Mining Legislation Update**

On May 16, 2023, the Board of Supervisors approved Resolution 2023-12 opposing the Permitting for Mining Needs Act (H.R.209) and the Mining Regulatory Clarity Act (S.1281), and supporting meaningful mining reform. Since then, we became aware of H.R.2925, which is identical to S.1281.

On May 17, the County lobbying team, Steven Bloch and Michael Racy, along with Nicole Fyffe of my office, met with staff from Senator Sinema's and Congressman Ciscomani's offices.

The attached letters were transmitted to Senators Sinema and Kelly, and Congressman Grijalva and Ciscomani, along with the following message stating that we carefully reviewed the provisions of each bill to determine if the language could be changed to address the County's concerns and have unfortunately concluded that it cannot. These bills prioritize mining over other equally important interests and are likely to result in significant unintended consequences as described in detail in the attached letters. We urge the Arizona Congressional Delegation to oppose these bills and look forward to working with them on comprehensive mining reform consistent with the comprehensive, science-based and community informed conservation planning undertaken by our local community.

We are aware of a mining reform bill recently introduced by Congressman Grijalva, but the text of that bill is not yet available for review.

I will provide regular updates to the Board on these bills.

JKL/anc

Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator
Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Linda Mayro, Director, Office of Sustainability and Conservation
Ursula Nelson, Interim Director, Pima County Department of Environmental Quality
Eric Shepp, Director, Regional Flood Control District
Nicole Fyffe, Senior Advisor, County Administrator's Office
Marie Light, Principal Hydrologist, Pima County Department of Environmental Quality



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
115 N. CHURCH AVE., 2nd FLOOR, Suite 231, TUCSON, AZ 85701-1317
520-724-8661, FAX 520-724-8171

JAN LESHER
County Administrator

May 23, 2023

The Honorable Senator Mark Kelly
United States Senate
1661 N. Swan Rd., Suite 238
Tucson, Arizona 85712

Dear Senator Kelly:

On May 16, 2023, the Pima County Board of Supervisors approved the attached Resolution 2023-12 opposing the Permitting for Mining Needs Act (H.R.209) and the Mining Regulatory Clarity Act (S.1281), and supporting meaningful mining reform. Since then, we became aware of H.R.2925, which is identical to S.1281. All three of these bills contain similar language intended to legislatively reverse decisions by the U.S. District Court for Arizona and the Ninth Circuit Court of Appeals, which halted the construction of the proposed Rosemont mine on the eastern slopes of the Santa Rita Mountains, within the Coronado National Forest. Located south of Tucson, within Pima County, this mountain range provides disproportionately high amounts of water for runoff and ground water recharge for the greater Tucson basin, is recognized worldwide for its biodiversity, is culturally important to a number of tribes, and serves as a respite for Southern Arizonans. The ruling confirmed that the Forest Service should have required proof that the mining company's unpatented mining claims were valid before permitting the mining company to dump waste rock and tailings on public land.

All three bills contain language that would allow those with mining claims to "use, occupy and conduct operations on public land, with or without the discovery of a valuable mineral deposit." In addition, those with claims could carry out mining activities on other federal lands absent of claims. This legislation prioritizes mining over other equally important interests and is likely to result in significant unintended consequences. This legislation would remove the ability of federal land management agencies to balance the need for other equally important uses of public land. Furthermore, this legislation is not needed. The mining industry still has the ability to gain access to public land via land exchanges, special use permits, and other permitted means. However, because these actions are discretionary, they allow for an informed and balanced approach to managing a multitude of uses across public lands.

This legislation also has a number of unintended consequences that are alarming for the State of Arizona and Pima County. Not only would these bills increase the ability for nuisance claims on Federal land that could block other necessary federal projects and increase destructive speculation without mineral extraction, our understanding is that they could also impact split estate lands. Split estate lands are lands where the surface is owned separately from the subsurface mineral rights. In Arizona, this is a common occurrence. For instance, the surface can be owned privately, by a local government like Pima County, or managed in trust by the Arizona State Land Department; whereas the subsurface mineral rights are publically owned and managed by the Federal Government. Mining companies or others can make claim to these subsurface minerals, the exploration and development of which can significantly impair the rights of the surface owner to use the surface for its intended purposes.

As the Bureau of Land Management explains on their website:

“When the surface rights to a piece of land and the subsurface rights (such as the rights to develop minerals) are owned by different parties, the mineral rights often take precedence over other rights.”

In addition, the legislation essentially makes mill site claims moot, which were one way that mines could gain access to federal land for waste and tailings in areas that specifically did not have mineral value. Congressional or administrative mineral withdrawals would also be substantially impacted, or complicated. Valid unpatented mining claims are protected or excluded from withdrawals, but this legislation makes moot the concept of “validity.”

What is needed is comprehensive and meaningful mining reform, not these shortsighted changes that provide the mining industry with exclusive rights to public land.

Please know that Pima County is not anti-mining. The copper mines in Pima County have contributed significantly to national and international copper supplies. Pima County has a good relationship with our two largest copper producers, Freeport-McMoRan and ASARCO, and in particular has taken actions to support expansion of existing mining operations in the area southwest of Tucson. This area is less biologically diverse and more suitable for development, according to the County’s comprehensive Sonoran Desert Conservation Plan and U.S. Fish and Wildlife Service Section 10 permit, both of which were developed based on the best available science and informed by extensive public input. This area also has significant copper reserves for future development. Pima County has also worked cooperatively with two copper mining companies that proposed reopening an underground mine on Mt. Lemmon, north of Tucson, both of which voluntarily offered to comply with the County’s Sonoran Desert Conservation Plan and related conservation guidelines.

In summary, Pima County strongly opposes S.1281, H.R.2925 and H.R.209 and the damaging intended and unintended consequences to the public health, safety and welfare of our community. In addition, we continue to seek comprehensive mining reform akin to the

The Honorable Senator Mark Kelly

May 23, 2023

Page 3

comprehensive, science-based and community informed conservation planning undertaken by our local community in partnership with Federal agencies.

Sincerely,

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Jan Leshner

Pima County Administrator

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RESOLUTION NO. 2023- 12

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS
OPPOSING THE PERMITTING FOR MINING NEEDS ACT AND THE MINING REGULATORY CLARITY ACT,
AND SUPPORTING MEANINGFUL MINING REFORM**

WHEREAS, Pima County and the Pima County Board of Supervisors have long advocated for meaningful reform of the 1872 Mining Law, acknowledging that mining is necessary and should occur in places and with methods that protect the health, safety, and welfare of our County's residents; and

WHEREAS, on January 2, 2023, the "Permitting for Mining Needs Act of 2023" was introduced as H.R. 209 in the United States House of Representatives; and

WHEREAS, on April 25, 2023, the "Mining Regulatory Clarity Act" was introduced as S. 1281 in the United States Senate; and

WHEREAS, both Acts do not provide meaningful mining reform and instead would make it easier for mining companies to gain access to federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies; and

WHEREAS, both Acts would allow mining companies to "... use, occupy, and conduct operations on public land, with or without the discovery of a valuable mineral deposit." This includes dumping waste and tailings on federal land without the need to prove valid mining claims, as well as on federal land absent of claims; and

WHEREAS, both Acts would authorize actions where mining companies secure rights on our federal public lands through unpatented mining claims without proving that the claims are valid, actions that have occurred for too many years; and

WHEREAS, both Acts are intended to legislatively reverse recent decisions by the United States District Court for the District of Arizona ("District Court") in 2019 and the Ninth Circuit Court of Appeals ("Ninth Circuit") in 2022 halting the construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,500 acres of unpatented mining claims in the National Forest; and

WHEREAS, the District Court's ruling, which the Ninth Circuit later affirmed, confirmed a long-standing concern, raised by Pima County since the beginning of the Rosemont Mine federal review process in 2006, that Federal agencies such as the U.S. Forest Service failed to consider whether Rosemont held valid unpatented mining claims; and

WHEREAS, the District Court's ruling confirmed that the Forest Service needs to consider reasonable alternatives when reviewing mining proposals, providing the opportunity for a more balanced approach to public lands management.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Pima County Board of Supervisors opposes the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act, as well as any similar legislation that attempts to allow mining projects on public lands in areas without mining claims and in areas with unproven mining claims, and supports meaningful mining reform;
2. The Pima County Board of Supervisors calls on Arizona's Congressional delegation to oppose the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
3. The Pima County Board of Supervisors directs the County Administrator and the County's Federal lobbyists to take the necessary measures to communicate Pima County's opposition to the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
4. The Pima County Board of Supervisors directs that communications to our Congressional delegation emphasize Pima County's support for meaningful mining reform and our record of supporting mining projects in Pima County that adhere to local health, safety, and conservation guidelines;
5. The Pima County Board of Supervisors opposes piece-meal legislation that does not address the issue of mining reform comprehensively; and
6. The Pima County Board of Supervisors affirms support for the rulings by the District Court and the Ninth Circuit Court of Appeals, which is consistent with past resolutions and actions of the Pima County Board of Supervisors.


Passed by the Board of Supervisors of Pima County, this 16th day of May, 2023.

 **MAY 16 2023**
Chair, Pima County Board of Supervisors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Daniel Jurkowitz, Deputy County Attorney



COUNTY ADMINISTRATOR'S OFFICE

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115 N. CHURCH AVE., 2nd FLOOR, Suite 231, TUCSON, AZ 85701-1317
520-724-8661, FAX 520-724-8171

JAN LESHER
County Administrator

May 23, 2023

The Honorable Senator Kyrsten Sinema
United States Senate
20 E. Ochoa St.
Tucson, Arizona 85701

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This legislation also has a number of unintended consequences that are alarming for the State of Arizona and Pima County. Not only would these bills increase the ability for nuisance claims on Federal land that could block other necessary federal projects and increase destructive speculation without mineral extraction, our understanding is that they could also impact split estate lands. Split estate lands are lands where the surface is owned separately from the subsurface mineral rights. In Arizona, this is a common occurrence. For instance, the surface can be owned privately, by a local government like Pima County, or managed in trust by the Arizona State Land Department; whereas the subsurface mineral rights are publically owned and managed by the Federal Government. Mining companies or others can make claim to these subsurface minerals, the exploration and development of which can significantly impair the rights of the surface owner to use the surface for its intended purposes.

As the Bureau of Land Management explains on their website:

“When the surface rights to a piece of land and the subsurface rights (such as the rights to develop minerals) are owned by different parties, the mineral rights often take precedence over other rights.”

In addition, the legislation essentially makes mill site claims moot, which were one way that mines could gain access to federal land for waste and tailings in areas that specifically did not have mineral value. Congressional or administrative mineral withdrawals would also be substantially impacted, or complicated. Valid unpatented mining claims are protected or excluded from withdrawals, but this legislation makes moot the concept of “validity.”

What is needed is comprehensive and meaningful mining reform, not these shortsighted changes that provide the mining industry with exclusive rights to public land.

Please know that Pima County is not anti-mining. The copper mines in Pima County have contributed significantly to national and international copper supplies. Pima County has a good relationship with our two largest copper producers, Freeport-McMoRan and ASARCO, and in particular has taken actions to support expansion of existing mining operations in the area southwest of Tucson. This area is less biologically diverse and more suitable for development, according to the County’s comprehensive Sonoran Desert Conservation Plan and U.S. Fish and Wildlife Service Section 10 permit, both of which were developed based on the best available science and informed by extensive public input. This area also has significant copper reserves for future development. Pima County has also worked cooperatively with two copper mining companies that proposed reopening an underground mine on Mt. Lemmon, north of Tucson, both of which voluntarily offered to comply with the County’s Sonoran Desert Conservation Plan and related conservation guidelines.

In summary, Pima County strongly opposes S.1281, H.R.2925 and H.R.209 and the damaging intended and unintended consequences to the public health, safety and welfare of our community. In addition, we continue to seek comprehensive mining reform akin to the

The Honorable Senator Kyrsten Sinema

May 23, 2023

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Sincerely,

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Jan Leshner

Pima County Administrator

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OPPOSING THE PERMITTING FOR MINING NEEDS ACT AND THE MINING REGULATORY CLARITY ACT,
AND SUPPORTING MEANINGFUL MINING REFORM**

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WHEREAS, both Acts do not provide meaningful mining reform and instead would make it easier for mining companies to gain access to federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies; and

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WHEREAS, both Acts are intended to legislatively reverse recent decisions by the United States District Court for the District of Arizona ("District Court") in 2019 and the Ninth Circuit Court of Appeals ("Ninth Circuit") in 2022 halting the construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,500 acres of unpatented mining claims in the National Forest; and

WHEREAS, the District Court's ruling, which the Ninth Circuit later affirmed, confirmed a long-standing concern, raised by Pima County since the beginning of the Rosemont Mine federal review process in 2006, that Federal agencies such as the U.S. Forest Service failed to consider whether Rosemont held valid unpatented mining claims; and

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Passed by the Board of Supervisors of Pima County, this 16th day of May, 2023.

 **MAY 16 2023**
Chair, Pima County Board of Supervisors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Daniel Jurkowitz, Deputy County Attorney



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
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JAN LESHER
County Administrator

May 23, 2023

The Honorable Congressman Raúl Grijalva
United States House of Representatives
101 W. Irvington Rd., Bldg 4
Tucson, Arizona 85714

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The Honorable Congressman Raúl Grijalva

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Jan Leshner

Pima County Administrator

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 **MAY 16 2023**
Chair, Pima County Board of Supervisors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Daniel Jurkowitz, Deputy County Attorney



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
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JAN LESHER
County Administrator

May 23, 2023

The Honorable Congressman Juan Ciscomani
United States House of Representatives
1636 N. Swan Rd., Suite 200
Tucson, Arizona 85712

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On May 16, 2023, the Pima County Board of Supervisors approved the attached Resolution 2023-12 opposing the Permitting for Mining Needs Act (H.R.209) and the Mining Regulatory Clarity Act (S.1281), and supporting meaningful mining reform. Since then, we became aware of H.R.2925, which is identical to S.1281. All three of these bills contain similar language intended to legislatively reverse decisions by the U.S. District Court for Arizona and the Ninth Circuit Court of Appeals, which halted the construction of the proposed Rosemont mine on the eastern slopes of the Santa Rita Mountains, within the Coronado National Forest. Located south of Tucson, within Pima County, this mountain range provides disproportionately high amounts of water for runoff and ground water recharge for the greater Tucson basin, is recognized worldwide for its biodiversity, is culturally important to a number of tribes, and serves as a respite for Southern Arizonans. The ruling confirmed that the Forest Service should have required proof that the mining company's unpatented mining claims were valid before permitting the mining company to dump waste rock and tailings on public land.

All three bills contain language that would allow those with mining claims to "use, occupy and conduct operations on public land, with or without the discovery of a valuable mineral deposit." In addition, those with claims could carry out mining activities on other federal lands absent of claims. This legislation prioritizes mining over other equally important interests and is likely to result in significant unintended consequences. This legislation would remove the ability of federal land management agencies to balance the need for other equally important uses of public land. Furthermore, this legislation is not needed. The mining industry still has the ability to gain access to public land via land exchanges, special use permits, and other permitted means. However, because these actions are discretionary, they allow for an informed and balanced approach to managing a multitude of uses across public lands.

This legislation also has a number of unintended consequences that are alarming for the State of Arizona and Pima County. Not only would these bills increase the ability for nuisance claims on Federal land that could block other necessary federal projects and increase destructive speculation without mineral extraction, our understanding is that they could also impact split estate lands. Split estate lands are lands where the surface is owned separately from the subsurface mineral rights. In Arizona, this is a common occurrence. For instance, the surface can be owned privately, by a local government like Pima County, or managed in trust by the Arizona State Land Department; whereas the subsurface mineral rights are publically owned and managed by the Federal Government. Mining companies or others can make claim to these subsurface minerals, the exploration and development of which can significantly impair the rights of the surface owner to use the surface for its intended purposes.

As the Bureau of Land Management explains on their website:

“When the surface rights to a piece of land and the subsurface rights (such as the rights to develop minerals) are owned by different parties, the mineral rights often take precedence over other rights.”

In addition, the legislation essentially makes mill site claims moot, which were one way that mines could gain access to federal land for waste and tailings in areas that specifically did not have mineral value. Congressional or administrative mineral withdrawals would also be substantially impacted, or complicated. Valid unpatented mining claims are protected or excluded from withdrawals, but this legislation makes moot the concept of “validity.”

What is needed is comprehensive and meaningful mining reform, not these shortsighted changes that provide the mining industry with exclusive rights to public land.

Please know that Pima County is not anti-mining. The copper mines in Pima County have contributed significantly to national and international copper supplies. Pima County has a good relationship with our two largest copper producers, Freeport-McMoRan and ASARCO, and in particular has taken actions to support expansion of existing mining operations in the area southwest of Tucson. This area is less biologically diverse and more suitable for development, according to the County’s comprehensive Sonoran Desert Conservation Plan and U.S. Fish and Wildlife Service Section 10 permit, both of which were developed based on the best available science and informed by extensive public input. This area also has significant copper reserves for future development. Pima County has also worked cooperatively with two copper mining companies that proposed reopening an underground mine on Mt. Lemmon, north of Tucson, both of which voluntarily offered to comply with the County’s Sonoran Desert Conservation Plan and related conservation guidelines.

In summary, Pima County strongly opposes S.1281, H.R.2925 and H.R.209 and the damaging intended and unintended consequences to the public health, safety and welfare of our community. In addition, we continue to seek comprehensive mining reform akin to the

The Honorable Congressman Juan Ciscomani

May 23, 2023

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comprehensive, science-based and community informed conservation planning undertaken by our local community in partnership with Federal agencies.

Sincerely,

A handwritten signature in black ink, appearing to read 'JL' or 'Lesher', written in a cursive style.

Jan Lesher

Pima County Administrator

Attachment

c: The Honorable Chair and Members, Pima County Board of Supervisors
 Carmine DeBonis Jr., Deputy County Administrator
 Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer
 Steve Holmes, Deputy County Administrator
 Linda Mayro, Director, Office of Sustainability and Conservation
 Ursula Nelson, Interim Director, Pima County Department of Environmental Quality
 Eric Shepp, Director, Regional Flood Control District
 Nicole Fyffe, Senior Advisor, County Administrator's Office
 Marie Light, Principal Hydrologist, Pima County Department of Environmental Quality

RESOLUTION NO. 2023- 12

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS
OPPOSING THE PERMITTING FOR MINING NEEDS ACT AND THE MINING REGULATORY CLARITY ACT,
AND SUPPORTING MEANINGFUL MINING REFORM**

WHEREAS, Pima County and the Pima County Board of Supervisors have long advocated for meaningful reform of the 1872 Mining Law, acknowledging that mining is necessary and should occur in places and with methods that protect the health, safety, and welfare of our County's residents; and

WHEREAS, on January 2, 2023, the "Permitting for Mining Needs Act of 2023" was introduced as H.R. 209 in the United States House of Representatives; and

WHEREAS, on April 25, 2023, the "Mining Regulatory Clarity Act" was introduced as S. 1281 in the United States Senate; and

WHEREAS, both Acts do not provide meaningful mining reform and instead would make it easier for mining companies to gain access to federal lands at the expense of all other uses such as recreation, tourism, conservation, watershed protection, climate mitigation, traditional uses by Tribal Nations, cultural and historic preservation, healthy forest management, and other uses that contribute significantly to the local, state, and national economies; and

WHEREAS, both Acts would allow mining companies to "... use, occupy, and conduct operations on public land, with or without the discovery of a valuable mineral deposit." This includes dumping waste and tailings on federal land without the need to prove valid mining claims, as well as on federal land absent of claims; and

WHEREAS, both Acts would authorize actions where mining companies secure rights on our federal public lands through unpatented mining claims without proving that the claims are valid, actions that have occurred for too many years; and

WHEREAS, both Acts are intended to legislatively reverse recent decisions by the United States District Court for the District of Arizona ("District Court") in 2019 and the Ninth Circuit Court of Appeals ("Ninth Circuit") in 2022 halting the construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,500 acres of unpatented mining claims in the National Forest; and

WHEREAS, the District Court's ruling, which the Ninth Circuit later affirmed, confirmed a long-standing concern, raised by Pima County since the beginning of the Rosemont Mine federal review process in 2006, that Federal agencies such as the U.S. Forest Service failed to consider whether Rosemont held valid unpatented mining claims; and

WHEREAS, the District Court's ruling confirmed that the Forest Service needs to consider reasonable alternatives when reviewing mining proposals, providing the opportunity for a more balanced approach to public lands management.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Pima County Board of Supervisors opposes the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act, as well as any similar legislation that attempts to allow mining projects on public lands in areas without mining claims and in areas with unproven mining claims, and supports meaningful mining reform;
2. The Pima County Board of Supervisors calls on Arizona's Congressional delegation to oppose the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
3. The Pima County Board of Supervisors directs the County Administrator and the County's Federal lobbyists to take the necessary measures to communicate Pima County's opposition to the Permitting for Mining Needs Act and the Mining Regulatory Clarity Act;
4. The Pima County Board of Supervisors directs that communications to our Congressional delegation emphasize Pima County's support for meaningful mining reform and our record of supporting mining projects in Pima County that adhere to local health, safety, and conservation guidelines;
5. The Pima County Board of Supervisors opposes piece-meal legislation that does not address the issue of mining reform comprehensively; and
6. The Pima County Board of Supervisors affirms support for the rulings by the District Court and the Ninth Circuit Court of Appeals, which is consistent with past resolutions and actions of the Pima County Board of Supervisors.


Passed by the Board of Supervisors of Pima County, this 16th day of May, 2023.

 **MAY 16 2023**
Chair, Pima County Board of Supervisors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Daniel Jurkowitz, Deputy County Attorney