

Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman

Hearing Memorandum

November 2, 2015

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Kathy Benedetto (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing on H.R. 3843 (Rep. Doug Lamborn), To authorize for a 7-year period the collection of claim location and maintenance fees, and for other purposes.
November 4, 2015 at 10:30 AM; 1334 Longworth

H.R. 3843 (Rep. Doug Lamborn), “*Locatable Minerals Claim Location and Maintenance Fees Act of 2015*”

Summary of the Bill

On Wednesday, October 28, 2015, Congressman Doug Lamborn introduced H.R. 3843, the “*Locatable Minerals Claim Location and Maintenance Fees Act of 2015*,” to authorize for a 7-year period the collection of claim location and maintenance fees, and for other purposes. The bill was referred to the Committee on Natural Resources, and in addition to the Committees on Transportation and Infrastructure and Energy and Commerce.

Invited Witness

Mr. Geoffrey S. Plumlee, Ph.D.
Research Geochemist
Environment, Human Health, and Disasters
U.S. Geological Survey
Reston, Virginia

Mr. Eric Cavazza, P.E.
Director Bureau of Abandoned Mine Reclamation
Pennsylvania Department of Environmental Protection
Harrisburg, Pennsylvania
(*on behalf of the Interstate Mining Compact Commission and National Association of Abandoned Mine Land Programs*)

Ms. Sara Kendall, Director
Western Organization of Resource Councils
Washington, DC

Mr. Chris Wood
President/Chief Executive Officer
Trout Unlimited
Arlington, Virginia

Background

H.R. 3843 is part of the Committee's three-pronged response to the Gold King Mine and the Standard Mine spills that occurred in Colorado in August and September of this year, which the Committee is continuing to investigate and preliminary reports indicated were caused by the Environmental Protection Agency (EPA).¹

The U.S. Bureau of Reclamation, in the Department of the Interior's recent *Technical Evaluation of the Gold King Mine Incident Report*, "found that the conditions and actions that led to the Gold King Mine incident are not isolated or unique, and in fact are surprisingly prevalent. The standards of practice for reopening and remediating flooded inactive and abandoned mines are inconsistent from one agency to another. There are various guidelines for this type of work but there is little in actual written requirements that government agencies are required to follow when reopening an abandoned mine."² The report states:

"The incident at Gold King Mine is somewhat emblematic of the current state of practice in abandoned mine remediation. The current state of practice appears to focus attention on the environmental issues. Abandoned mine guidelines and manuals provide detailed guidance on environmental sampling, waste characterization, and water treatment, with little appreciation for the engineering complexity of some abandoned mine projects that often require, but do not receive, a significant level of expertise."³



The Gold King Mine spill, which turned the Animas River an ochre color this past August⁴, helped shine a national spotlight on the range of complex technical, legal, educational and funding related challenges that must be addressed in order to move forward with success in addressing abandoned mine lands (AML) not just in the Western U.S. but across the country.

Members of the Natural Resources Committee have developed a package of reforms to address these challenges, including:

¹ See: <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399212>;

<http://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=399238>

² <http://www.usbr.gov/docs/goldkingminereport.pdf> (pg. 1)

³ Ibid (pg. 2)

⁴ <http://www.newsweek.com/epa-causes-massive-colorado-spill-1-million-gallons-mining-waste-turns-river-361019>

- H.R. 3734, the “*Mining Schools Enhancement Act (MSEA)*,” introduced by Rep. Hardy of Nevada and co-sponsored by Congressman Ed Perlmutter (D-CO);
- H.R. 3843, the “*Locatable Minerals Claim Location and Maintenance Fees Act*,” introduced by Subcommittee Chairman Lamborn of Colorado; and,
- H.R. 3844, the “*Energy and Minerals Reclamation Foundation Establishment Act*,” introduced by Rep. Hice of Georgia.

H.R. 3843 establishes a Good Samaritan program that incentivizes private sector remediation of abandoned mine land. This directs the EPA to create ‘Good Samaritan’ permits which provide limited liability protections for industry, municipalities and non-profit groups equipped with the technical expertise to deal competently with abandoned mine lands.

This bill also authorizes the collection of Claim Location and Maintenance Fees by the BLM, and the establishment of an Inactive and Abandoned Non-Coal Mine Land Program, which have previously not been addressed by the authorizing committee. BLM’s Inactive and Abandoned Non-Coal Mine Land Program does receive funding through the annual appropriations process.

Claim Maintenance and Location fees were first instituted in the 1993 Interior and Related Agencies Appropriations bill which amended the 1872 mining law instituting an annual maintenance fee of \$100.00 per claim (\$5.00/acre) in lieu of the assessment work requirement. The language included a waiver for claim holders of ten or fewer claims if the claim owner continued to conduct their annual assessment work and file an affidavit with the BLM.

Claim location and maintenance fees were adjusted per law according to the Consumer Price Index for the assessment year beginning September 1, 2014, from \$34 - \$37 (location) and \$140 - \$155 (maintenance) per claim. This adjustment led to the relinquishing of 48,867 claims, at a cost to the federal government of more than \$8.5 million in revenue.⁵ At \$7.75 per acre, the United States has one of the highest land-holding-cost in the world for mineral exploration and development.

A portion of these fees are used by the BLM for the Mining Law Administration Program,⁶ the remainder of the money generated through these fees goes to the general fund of the Treasury. The money is not shared with the states. The states collect royalty or royalty equivalent taxes from operating mines and charge additional fees on a per claim basis.

Scope of the AML Problem - today there are as many as 400,000 abandoned mines across the Western states,⁷ some of which pose health and safety hazards and others that pose environmental risks as exemplified by the Gold King Spill.

⁵ U.S. Bureau of Land Management, FY2016 Budget Justification, at VII-196

⁶ http://www.blm.gov/wo/st/en/info/regulations/mining_claims.html

⁷ Oral Communication; USGS Briefing September 18, 2015.

It is important to note that the vast majority of AML features in the West are small prospect pits that do not present a health or safety issue or environmental problems. These are generally relatively shallow pits such as the one pictured here.



This particular pit exposes jasper, a form of microcrystalline quartz with iron inclusions, hence the red-orange color.⁸



The mid-West and Eastern states also have a serious AML problem from historic coal mining activities, including significant discharges of acid mine drainage.

An abandoned mine drainage tunnel - average flow is 1200 gpm. Porter Township, Schuylkill County, PA⁹

Many of the hardrock mines or workings were operated in the 1800s and early 1900s prior to the enactment of the Nation's environmental and land management laws in the late 1960s and 1970s that provide the regulatory framework that govern modern mining and reclamation practices in the United States. As such, hardrock AML sites are those that were abandoned before January 1, 1981, the date that BLM's 3809 mining regulations required by the Federal Land Policy and Management Act of 1976 (FLPMA), were finalized.

Coal operations began even earlier – in 1738 the first commercial coal mine near Richmond, VA began operations¹⁰ -- and have been regulated under a federal statute administered by the States since 1977 with the enactment of the Surface Mining Control and Reclamation Act (SMCRA) on August 3, 1977. Coal AML sites are those that were abandoned prior to enactment of SMCRA.

The owner or operator of a mine did not always have the authority to make decisions regarding the operation of the mine. Specifically, during World War II, federal agencies such as the U.S. Geological Survey (USGS), U.S. Bureau of Mines (USBM), War Production Board, Office of Price Administration, and the War Manpower Commission, controlled which mines operated, their hours of operation, which strategic metals were produced, and production and price levels. All gold mines, with one exception, were ordered shut down during this time

⁸ <http://tinkup.blogspot.com/>

⁹ http://ecore restoration.montana.edu/mineland/photos/browse_topic.asp?TopicList=Improper+Practices

¹⁰ <http://www.netl.doe.gov/keyissues/historyofcoaluse.html>

period. In fact, the federal government used the threat of seizure to ensure that mines complied with its orders.

The actions by the federal government during World War II caused the abandonment of many mines. As a result, the federal government in many cases shares responsibility with the mining industry for environmental remediation and reclamation of mine sites operated prior to the enactment of our Federal and State framework of environmental and land management laws and regulations.

The need for Good Samaritans - Many of the Western States have partnered with industry to address problem sites and have remediated, reclaimed or secured numerous sites. In several instances the cleanup was paid for by the hardrock mining industry. In addition, several federal agencies have programs for remediation of AML sites located on Federal land.

In 1997, the BLM and the U.S. Forest Service began working in earnest to address the hardrock AML problem on public lands often in concert with other partners such as States and local municipalities. In 2010, BLM initiated an outreach program to claim holders to assist in securing physical hazards from hardrock AML features located within their claim boundaries.¹¹

While progress has been made in addressing some of the problem sites, there are legal barriers to creating a more aggressive and substantial program that relies on the expertise and resources of the mining industry and other parties acting as “Good Samaritans” in helping to clean up hardrock AML sites.

The principle legal challenges include the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Clean Water Act (CWA) liability. Under current law, a mining company, non-profit organization, government or individual acting as a “Good Samaritan” runs the risk of being held liable for historic discharges and other existing safety and environmental problems.

The Good Samaritan would be given partial relief from the CWA and CERCLA for existing conditions but would be held responsible for the work that they perform. The Environmental Protection Agency (EPA) would issue a permit to the Good Samaritan, authorizing the activity.

Two States have led the way in demonstrating that limiting liability can help to leverage resources and produce more and better results in AML clean-up. In 1999, Pennsylvania enacted the “Environmental Good Samaritan Act” encouraging volunteers to improve areas impacted by mineral extraction. To date, 50 projects have been initiated. South Dakota also developed a State-industry partnership program that provides some CERCLA liability relief and a streamlined regulatory and administrative process. More than 65 AML sites in the Black Hills have been remediated and reclaimed.

¹¹ http://www.blm.gov/wo/st/en/info/newsroom/2010/october/NR_10_07_2010.html

Major Provisions of the Bill

Title I—Mining Claim Location and Maintenance Fees

- Authorizes the collection of Claim Location (\$37) and Maintenance Fees (\$155/year) for a 7 year period.
- Suspends annual maintenance fees and waves cost recovery for validity exams in areas segregated or withdrawn from mineral entry that were previously open to entry. If the claim owner pursues exploration and development of the claim or is actively mining, annual claim maintenance fees are not suspended. This addresses the Arizona withdrawal and the proposed 11 million acre withdrawal outlined in the Land Use Plans.
- Requires that validity exams and mineral reports required for areas segregated or withdrawn from mineral entry be conducted by a ‘Certified Mineral Examiner’ and reviewed by a ‘Certified Mineral Review Examiner.’
- Directs the USGS to enter into an MOU with BLM, USFS and OSM to facilitate the development and maintenance of the United States Mineral Deposit Database Project (USMIN), an interactive data base of mine features and mineral districts in the US. Allows BLM to use \$1 million appropriated for Mining Law Administration (money from claim fees) to fund the USMIN database.

Title II—Department of the Interior Inactive and Abandoned Non-Coal Mine Land Program

- Authorizes an existing program at BLM that has been funded through the appropriations process but not authorized.
- Requires BLM and Forest Service to identify a minimum of 20 AML priority sites on federal lands that are suitable for Good Samaritan remediation. Allows for Public involvement in site selection.
- Authorizes \$17,000,000 to be appropriated FY-2016 through FY-2020. Currently annual appropriations are slightly less than \$17 million.

Title III—Good Samaritan Remediation of Abandoned Mine Land Demonstration Program

- Directs the EPA to establish a ‘Good Samaritan’ permit for remediation of coal and non-coal AML sites.
- Provides limited liability relief Under the CWA and CERCLA for existing conditions.

- Requires the Permitting agency to develop site specific benchmarks for water quality and environmental remediation based on pre-mining conditions and conditions on site at the time the permit is issued.
- Requires that the environment be improved, does not require that the Good Samaritan achieve current water quality standards. Allows for reprocessing of tailings and other mineralized material if it aids in the remediation of the site.
- Streamlines process requirements under the National Environmental Policy Act, while requiring public notice and comment, including notice to communities downstream of a proposed Good Samaritan Cleanup project located in headwater drainage systems.
- Allows Good Samaritans to use remediation projects as ‘offsite mitigation.’
- Allows for State and Tribal Primacy.
- Directs the agencies in cooperation with the Interstate Mining Compact Commission to contract with the National Research Council, Board of Earth Sciences and Resources to evaluate the program and make recommendations for improvements and possible reauthorization. Authorizes the use of money from claim fees to pay for the study.

Administration Position

Unknown at this time, although the Director of the Office of Surface Mining (OSM) has been supportive of Good Samaritan Legislation in the past and has experience with State Good Samaritan programs from his tenure in Pennsylvania.

Cost

CBO has not scored the legislation.