

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

June 13, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff—Joshua Hoffman  
Subcommittee on Energy and Mineral Resources (x5-9297)

Mark-Up: H.R. 3844 (Rep. Jody Hice), To establish the Energy and Minerals Reclamation Foundation to encourage, obtain, and use gifts, devises, and bequests for projects to reclaim abandoned mine lands and orphan oil and gas well sites, and for other purposes.  
**June 14 & 15, 2016; 1324 Longworth HOB**

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## **H.R. 3844, “Energy and Minerals Reclamation Foundation Establishment Act”**

### **Summary of the Bill**

On Wednesday, October 28, 2015, Representative Jody Hice (R-GA-10) introduced H.R. 3844. This bill establishes the Energy and Minerals Reclamation Foundation to encourage, obtain, and use gifts, devises, and bequests for projects to reclaim abandoned mine lands and orphan oil and gas well sites.

### **Cosponsors**

None

### **Background**

H.R. 3844 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 2015, which the Committee is continuing to investigate. Preliminary reports indicated the spills were caused by the Environmental Protection Agency (EPA).<sup>1</sup>

This bill establishes a new Energy and Mineral Reclamation Foundation to facilitate cleanup of abandoned mine lands (AML) and orphaned oil and gas well sites, specifically by assisting the Bureau of Land Management (BLM), other federal land management agencies, state agencies, and non-profit organizations to raise funds for the purpose of AML cleanup on both federal and non-federal lands. Current laws and policy impede voluntary and privately funded cleanup efforts.

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<sup>1</sup> See: <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399212>;  
<http://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=399238>

Supporters of this concept believe the freedom of the Foundation to solicit contributions from the general public will significantly increase the ability to guide money towards actions that will enhance and improve the quality of the environment. H.R. 3844, in concert with the Good Samaritan provisions in H.R. 3843, provides an opportunity to address the AML issue in a more robust fashion with the help of the American people interested in improving the quality of the environment for the betterment of society.

Though the Obama Administration has proposed imposing significant fee and tax increases on the mining industry as a means to address the AMLs, critics point out that these proposals would fail to address the problem in a timely manner. Recently, a witness for Earthworks testified that EPA's estimated cleanup costs for hard rock AML sites would be about \$50 billion, and advocated for a reclamation fee that would raise \$180 million per year.<sup>2</sup> At that rate, using EPA's estimate, it would take **277 years** to address just the hard rock AML problem. Additionally, it is estimated that there is at least \$9 billion dollars left in coal AML cleanup costs, primarily in Appalachia.<sup>3</sup>

For AML sites (pre-1977 coal and pre-1981 hardrock) and orphaned oil and gas well sites, there is generally no responsible party left to remediate the mine site or address downstream water quality issues caused by acid rock drainage or other contaminants resulting from the mining or oil and gas activity.

This bill provides an opportunity for people genuinely interested in environmental causes to contribute to a positive program with tangible results that will enhance and improve the quality of the environment, because the proposed Foundation will have the ability to solicit contributions from the general public and the private sector.

Congress has previously established foundations to support various missions within the Department of the Interior.<sup>4</sup> On November 4<sup>th</sup> the subcommittee held a legislative hearing on H.R. 3844.

## **Major Provisions**

### **Section 1: Short Title**

### **Section 2: Definitions**

### **Section 3: Establishment of the Energy and Minerals Reclamation Foundation**

This section establishes the Energy and Minerals Reclamation Foundation. The Foundation, a charitable and nonprofit corporation domiciled in the District of Columbia exists for the purpose of encouraging, obtaining, and using gifts, devises, and bequests of real and personal property for abandoned mine lands and orphaned oil and gas well site reclamation

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<sup>2</sup> See: <http://transportation.house.gov/uploadedfiles/2015-10-21-pagel.pdf>

<sup>3</sup> See: <http://transportation.house.gov/uploadedfiles/2015-10-21-cavazza.pdf>

<sup>4</sup> See, for example: <http://www.nationalparks.org/about-us> and <http://www.nfwf.org/whoware/Pages/home.aspx>

projects that further the conservation of natural, scenic, historic, scientific, educational, wildlife habitat, or recreational resources. The Foundation shall not participate or intervene in any political campaign on behalf of any candidate for public office. Of the amount available to the Foundation for expenditure each fiscal year, not more than 10 percent may be used for administrative expenses.

#### **Section 4: Board of Directors**

This section establishes the makeup of the Board of Directors with the following:

- The Board will have 15 Directors
- The Directors must be educated in or have experience in energy or minerals production; reclamation of mine lands or oil and gas fields; or energy and mineral resource financing, law, or research
- The Directors shall represent diverse areas of expertise relating to mining and mine reclamation, and development and reclamation of oil and gas fields
- The Directors shall serve without pay, but may be reimbursed by the Foundation for necessary traveling and subsistence expenses
- The Secretary of the Interior shall appoint the initial Directors in consultation with the Interstate Mining Compact Commission and the Interstate Oil and Gas Compact Commission
- Subsequent appointments shall be made by the Chairman with the advice and consent of a majority of the Directors
- The Director of the Office of Surface Mining of the Department of the Interior shall be an ex officio, nonvoting Director

#### **Section 5: Corporate Powers and Obligations**

This section defines the obligations of the Foundation and the power it has to fulfill those obligations. The powers of the Foundation under this subsection include the power to—

- Accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein
- Sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom
- Borrow money
- Sue and be sued

No lands or waters owned by the Foundation that are determined by the Secretary to be valuable for energy and mineral production, shall be subject to condemnation.

#### **Section 6: Administrative Services and Support**

For the purposes of assisting the Foundation in establishing an office and meeting initial administrative, project, and other startup expenses, the Secretary may provide to the Foundation

\$2,000,000 for each of fiscal years 2016 and 2017.

### **Section 7: Audits and Activities Summary**

The Foundation shall be treated as a corporation, and within 60 days after the end of each fiscal year, transmit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a summary of its proceedings and activities during such fiscal year.

### **Section 8: Relief with Respect to Certain Foundation Acts or Failure to Act**

The Attorney General may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate if the Foundation engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purpose; or refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do so.

### **Section 9: United States Release from Liability**

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation, nor shall the full faith and credit of the United States extend to any obligations of the Foundation.

### **Section 10:**

This section authorizes \$4,000,000 subject to appropriations, for the Secretary to carry out Section 6. It also authorizes \$3,000,000 for each of fiscal years 2016 through 2020 subject to appropriations, which shall be made available by the Secretary to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

### **Cost**

The cost is \$19 million over a five year period if the matching funds requirement is met, but would be significantly less with the Amendment in the Nature of a Substitute.

### **Administration Position**

Unknown at this time, although the Bureau of Land Management has previously expressed support for this concept.

### **Anticipated Amendments**

Rep. Hice is expected to introduce an Amendment in the Nature of a Substitute. The amendment will strengthen support for H.R. 3844 and address several of the concerns iterated at the November 4<sup>th</sup> legislative hearing. The following are the major changes to H.R. 3844.

First, the amendment redefines Orphaned Oil and Gas Well Sites and Abandoned Mine Lands to be either located on federally-managed lands, on lands or minerals that were federally-

managed during activities, or adversely impact federal lands. This definition still captures the majority of Orphaned Oil and Gas Wells and Abandoned Mine Lands.

Second, in addition to the missions of reclaiming Orphaned Oil and Gas Well sites and Abandoned Mine Lands, the amendment expands the Foundation's mission to include educational, technical, scientific, and other assistance or activities that support the management: wild free-roaming horses and burros; fish and wildlife and their habitats; National Conservation Lands; recreation resources; cultural and historic resources.

The amendment allows for any donations to be used exclusively for any of the existing missions of the Foundation at the bequest of the donor. Should no bequest be made the donation will be split equally amongst the reclamation mission and the expanded educational, technical, scientific, mission.

The amendment reduces the board of Directors from 15 members to 9 with expertise in the activities of the Foundation.

The amendment alters the appointment of Directors process to be made by the Secretary of the Interior after a 30 day public solicitation period for nominations for Directors.

The amendment prohibits the Foundation from using any funds to purchase real property.

The amendment prohibits the Foundation from using funds for any activity which is intended to influence legislation pending before Congress.

The amendment also reduces the funding to the Foundation from \$19 million over five years to \$10 million over five years.

**Effect on Current Law (Ramseyer):**

None