



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources; Ashley Nichols
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Date: June 6, 2022
Subject: Hybrid Legislative Hearing on H.R. 2073 (Yarmuth), Appalachian Communities Health Emergency Act (ACHE) Act; H.R. 2505 (Cartwright), Coal Cleanup Taxpayer Protection Act; H.R. 4799 (Cartwright), Coal Royalty Fairness and Communities Investment Act of 2021; H.R. 7283 (Cartwright), Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines (STREAM) Act; and H.R. 7937 (Lamb), Revitalize, Enhance, and Nurture in Expanded Ways Our Abandoned Mine Lands (RENEW) Act

The Subcommittee on Energy and Mineral Resources will hold a hybrid legislative hearing on the five bills: H.R. 2073 (Yarmuth), the Appalachian Communities Health Emergency Act (ACHE) Act, H.R. 2505 (Cartwright), the Coal Cleanup Taxpayer Protection Act, H.R. 4799 (Cartwright), the Coal Royalty Fairness and Communities Investment Act of 2021, H.R. 7283 (Cartwright), the Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines (STREAM) Act, and H.R. 7937 (Lamb), the Revitalize, Enhance, and Nurture in Expanded Ways Our Abandoned Mine Lands (RENEW) Act, on **Thursday, June 9, 2022, at 9:30 a.m. EDT**, in room 1324 Longworth House Office Building and online via Cisco WebEx:

Republican Members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Ashley Nichols (Ashley.Nichols@mail.house.gov) **no later than Wednesday, June 8, at 4:30 p.m. EDT**, if their Member intends to participate in the committee room or remotely from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (Everett.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Coal mining is essential for American energy security, providing a reliable source of baseload power and gainful employment for thousands of Americans.



- Coal mining and associated mine reclamation is regulated by the Surface Mining Control and Reclamation Act (SMCRA) of 1977 (30 U.S.C. 1251 et seq.) and overseen by the Office of Surface Mining Reclamation and Enforcement (OSMRE) at the Department of the Interior. Additionally, the Bureau of Land Management (BLM) is responsible for coal leasing on over 570 million acres of federally owned land, primarily in Western states.¹ Coal production continues to be a major source of federal and state revenues.
- Under SMCRA, primary authority for regulation of surface mining and reclamation is delegated to states with approved regulatory programs. States are in the best position to regulate coal mining activities within their borders and states should maintain authority over bonding policies to ensure reclamation responsibilities are fulfilled.
- Four out of five bills considered during this hearing – H.R. 2073 (Yarmuth), H.R. 2505 (Cartwright), H.R. 4799 (Cartwright), and H.R. 7937 (Lamb) – would make domestic coal production less competitive, hurting the very communities they claim to help and exacerbating the worsening energy and inflation crisis.
- H.R. 7283 (Cartwright) is bipartisan legislation to allow states to use up to 30 percent of their allocations from the Abandoned Mine Reclamation Fund for water treatment purposes.

II. WITNESSES

Panel I:

- U.S. Rep. Matt Cartwright (D-PA)
- U.S. Rep. John Yarmuth (D-KY)

Panel II:

- Mr. Todd Parfitt, Director of Wyoming Department of Environmental Quality, Cheyenne, WY [*Republican witness*]
- Mr. John Dawes, Executive Director, Foundation for Pennsylvania Watersheds, Alexandria, PA
- Ms. Erin Savage, Central Appalachian Senior Program Manager, Appalachian Voices, Norton, VA
- Ms. Elaine Tanner, Program Director, Friends for Environmental Justice, Deane, KY

III. BACKGROUND

H.R. 2073 (Yarmuth), the Appalachian Communities Health Emergency Act (ACHE) Act

H.R. 2073 would place a moratorium on permitting for mountaintop removal (MTR) coal mining until an unknown number of health studies are conducted by the National Institute of Environmental Health Sciences, which operators would be required to fund. The moratorium would stay in place until the Secretary of Health and Human Services (HHS) determines that

¹ U.S. Bureau of Land Management. National Coal Statistics Table. <https://www.blm.gov/programs/energy-and-minerals/coal/coal-data>.

MTR does not present any health risks to individuals in the surrounding communities. MTR coal mining, a technique used exclusively in Appalachia, involves removing the tops of mountains with explosives to access coal seams underneath.² Due to historic coal mining trends, many of the more easily attainable coal reserves in Appalachia have been depleted, incentivizing alternative mining techniques such as MTR. Today, active MTR mining is conducted at nine mines.³ MTR operations, like all coal mining operations, are highly regulated by SMCRA.

Committee Democrats will likely discuss the cancellation of an Obama administration study on the health effects of MTR. In 2016, at the request of West Virginia,⁴ the Obama administration ordered a study by the National Academies of Science, Engineering, and Medicine (NAS) on potential health effects of MTR activities.⁵ NAS was directed to stop the study until further notice on August 18, 2017.⁶ OSMRE explained that the cancellation of the study was part of an agency-wide reevaluation of all grants over \$100,000.⁷

On February 11, 2019, Chairman Grijalva and Congressman Lowenthal sent a letter to the Department of the Interior asking why the study was halted before its conclusion.⁸ Subsequently, the Trump administration responded to a Question for the Record on the subject from a March 10, 2020, hearing before the Subcommittee on Energy and Mineral Resources, explaining that departmental review had uncovered similar studies performed by the Environmental Protection Agency (EPA) and HHS, making additional taxpayer expenditure on the NAS study unnecessary.⁹

H.R. 2505 (Cartwright), the Coal Cleanup Taxpayer Protection Act

Before an operator acquires a coal mining permit, they must first post a bond to ensure there are adequate funds to reclaim a mine site if the operator cannot complete the reclamation plan under their permit.¹⁰ These bonds are usually corporate surety bonds, collateral bonds, or self-bonds (which guarantee the costs of mine reclamation on the basis of an operator's own finances). Despite the relatively low number of self-bonds, Democrats have repeatedly voiced concerns about coal operators self-bonding, citing bankruptcies of some coal companies in recent years.

H.R. 2505 would prevent the use of self-bonding altogether, overruling current state discretion in how to best reclaim coal mines within their jurisdiction. Coal mining is heavily regulated in all respects, including bond requirements. To qualify for a self-bond, operators must have a net worth of \$10 million or more, fixed U.S. assets of at least \$20 million, and either have an "A" or higher bond rating or meet other specific financial ratios.¹¹

² U.S. Environmental Protection Agency. Mountaintop Mining Research. <https://www.epa.gov/water-research/mountaintop-mining-research>.

³ Staff briefing from National Mining Association. March 29, 2019.

⁴ OSM News Release. August 3, 2016. <https://www.osmre.gov/resources/newsroom/news/2016/080316.pdf>

⁵ *Id.*

⁶ Letter from Acting Director Glenda Owens to Dr. Elizabeth Eide, re: review of grants. August 18, 2017.

<http://i2.cdn.turner.com/cnn/2017/images/08/22/nas.letter.pdf>.

⁷ Letter from Acting Director Glenda Owens to Dr. Elizabeth Eide, re: review of grants. August 18, 2017.

⁸ Letter from Reps. Grijalva and Lowenthal to Acting Sec. Bernhardt, re: cancellation of NAS study. February 11, 2019.

⁹ *Id.*

¹⁰ U.S. Office of Surface Mining Reclamation and Enforcement. "Reclamation Bonds." <https://www.osmre.gov/resources/reclamation-bonds>.

¹¹ U.S. Office of Surface Mining Reclamation and Enforcement. "Reclamation Bonds." <https://www.osmre.gov/resources/reclamation-bonds>.

Coal mining states are in the best position to evaluate whether or not self-bonding would be an appropriate option for their local operators and financial circumstances. Today, twelve states authorize self-bonding, but not all of these states necessarily have active operations with self-bonds.¹² Further, while H.R. 2505 does not prohibit alternative bonding structures such as “bond pools,” it creates significant new reporting requirements before the state can receive approval to utilize such structures.¹³

H.R. 4799 (Cartwright), the Coal Royalty Fairness and Communities Investment Act of 2021

This bill would establish a fund in the Treasury known as the Coal Area Economic Revitalization Fund (the Fund). Under this bill, \$75 million of the revenues generated by royalties on federal coal leases would be deposited into the Fund annually. The Secretary of Commerce would receive \$70 million of this amount to provide grant assistance for economic growth and workforce development programs in coal communities, and the Secretary of Energy would receive the remaining \$5 million for carbon sequestration projects. H.R. 4799 does not specify if the \$75 million allocation to the Fund would come from the federal share of coal revenues or from the state share, potentially taking away funding that otherwise would have gone to state budgets to fund schools, public services, and conservation projects.

Additional concerns about this bill center on its proposed changes to the “assessment value” of federal coal, which directly affects the value on which the royalty is applied. This bill defines the assessment value as the proceeds from the first sale between unaffiliated parties (also referred to as an “arm’s length” sale). This mirrors attempts of the Obama-era valuation rule to apply the royalty at the point of the first unaffiliated sale, instead of the pre-existing coal valuation benchmarks.¹⁴ In 2021, the U.S. District Court for the District of Wyoming struck down the Obama administration’s rule. H.R. 4799 seeks to essentially undo the court’s decision and codify Obama-era regulations.¹⁵ If enacted, this provision could result in an unfairly high royalty on federal coal, instead of using the predictable valuation benchmarks.

H.R. 7283 (Cartwright), the Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines (STREAM) Act

The Infrastructure Investment and Jobs Act (IIJA) appropriated \$11.3 billion to the Abandoned Mine Lands (AML) trust fund for use by state AML programs to address AML created before enactment of the SMCRA in 1977.¹⁶ Previously, a per ton fee paid by coal operators was the primary source of funds for AML reclamation.¹⁷

AML work in the historic coal mining regions of Appalachia and the Midwest has required significant remediation of acid mine drainage (AMD) by building water treatment systems for

¹² Information provided by the Interstate Mining Compact Commission. June 4, 2022.

¹³ U.S. Office of Surface Mining Reclamation and Enforcement. “Reclamation Bonds.” <https://www.osmre.gov/resources/reclamation-bonds>.

¹⁴ 81 FR 43337.

¹⁵ James Marshall, Pamela King. “Judge deals blow to Obama fossil fuel royalty rule.” E&E News. September 9, 2021. <https://www.eenews.net/articles/judge-deals-blow-to-obama-fossil-fuel-royalty-rule/>

¹⁶ Public Law 117–58.

¹⁷ U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. Reclaiming Abandoned Mine Lands. <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands>.

polluted water.¹⁸ While addressing a safety hazard associated with AML can be effectively addressed by one-time construction projects, AMD treatment systems require ongoing efforts to operate and maintain the system, which must be funded by the states.

The historic fee-based AML program allows a state to set aside up to 30 percent of its annual AML grant in an interest-bearing account to cover the long-term costs of AMD treatment facilities.¹⁹ The IJA reauthorized collection of coal AML fees at reduced rates, as well as the “set aside” authority for states.²⁰ However, the IJA does not confer parallel “set aside” authority for the newly authorized treasury funds for AML projects. States are concerned that without “set aside” authority for the newly appropriated funds, long-term funding for AMD treatment will be insufficient. H.R. 7283 would allow states to set aside up to 30 percent of the funding provided by the treasury-sourced funds authorized in IJA for AMD treatment, consistent with the historic fee-based program. Eleven states currently utilize the AMD “set aside” accounts: Alabama, Illinois, Indiana, Kentucky, Maryland, Missouri, Pennsylvania, Ohio, Tennessee, Virginia, and West Virginia.²¹

H.R. 7937 (Lamb), the Revitalize, Enhance, and Nurture in Expanded Ways Our Abandoned Mine Lands (RENEW) Act

This bill makes the unlikely assumption that industry-wide bankruptcies in the coal industry will occur simultaneously, causing the actuarial assumptions used by surety bonding companies and state bond pools to potentially become invalid, essentially bankrupting them as well. Under Title V of SMCRA, coal companies are required to post a bond to ensure there are adequate funds to reclaim a mine site if the operator cannot complete the reclamation plan under their permit.²² This bill would authorize grants to bail out state programs that may experience a shortfall of funds needed for reclamation. Specifically, this bill authorizes \$385 million per year for each of Fiscal Years 2023-2032 for distribution to states and tribes with approved SMCRA regulatory programs, based upon the projected annual shortfall in reclamation funds.

H.R. 7937 would require states to adhere to multiple criteria to remain eligible for funds authorized under this bill. States have identified several problematic criteria, which will override state regulations and require states to meet requirements over and above those currently required by law.²³ For instance, the bill would require states to maintain bonding requirements that are not less stringent than those required before enactment of this bill. There is a backlog of state program amendments submitted by the states awaiting approval at OSMRE, some of which concern bonding requirements. Making funding contingent on an having an *approved* program amendment essentially makes states ineligible so long as the backlog at OSMRE continues.

Additionally, the bill would require that Davis-Bacon Act (Public Law 71-789) “prevailing wages” be paid to workers who are contracted by the states to conduct reclamation projects under this bill, which would require changes to purchasing regulations in some states. Finally,

¹⁸ Briefing from Interstate Mining Compact Commission to Energy and Mineral Resources Subcommittee Staff. May 26, 2022.

¹⁹ Public Law 95-87.

²⁰ Public Law 117-58.

²¹ Briefing from Interstate Mining Compact Commission to Energy and Mineral Resources Subcommittee Staff. May 26, 2022.

²² U.S. Office of Surface Mining Reclamation and Enforcement. “Reclamation Bonds.” <https://www.osmre.gov/resources/reclamation-bonds>.

²³ Briefing from Interstate Mining Compact Commission to Energy and Mineral Resources Subcommittee Staff. May 26, 2022.

the bill would require states to engage in “active facilitation of community engagement in the design and oversight of reclamation projects.” Following bond forfeiture, states must reclaim sites according to the existing reclamation plan that has already been approved as part of the permit. This requirement under H.R. 7937 would reopen the reclamation plan for each site upon bond forfeiture and give environmental groups veto power over projects, opening up the state to lawsuits on already approved reclamation plans and stalling the reclamation process.

IV. MAJOR PROVISIONS

H.R. 2073 (Yarmuth):

- Places a moratorium on permits for MTR mining until and unless: 1) the Director of the National Institute of Environmental Health Sciences (NAS), in consultation with the Administrator of the Environmental Protection Agency (EPA) and any other federal agencies the Director deems appropriate, conducts comprehensive studies on the health impacts of MTR coal mining on individuals in the surrounding communities and reports the results; and 2) the Secretary of Health and Human Services publishes a determination that MTR does not present any health risks to individuals in the surrounding communities.
- Until the Secretary of Health and Human Services (HHS) reaches a determination that there are no health risks from MTR to individuals in surrounding communities, the operator of an MTR project must conduct continuous monitoring of pollution and submit monthly reports.
- Costs to the federal government to conduct the health studies and continuous monitoring required under this Act will be reimbursed by a one-time fee on the operators conducting the MTR activities.

H.R. 2505 (Cartwright):

- Authorizes the Secretary of the Interior to approve an alternative bonding system as part of a state or federal program if it will result in no greater risk of financial liability to the state or federal government.
- Alternative bonding systems may only be approved after a state submits a report to the Secretary describing the following:
 - Bond forfeitures and reclamation costs in the state in the last seven years
 - A five-year forecast proving the proposed bond pool will be financially sound, based on proposed fees paid by operators, past and anticipated future financial performance of those operators, market projections, the anticipated number of annual mining operations, and anticipated reclamation costs
- The Secretary may not accept self-bonds upon enactment of this Act but may accept separate surety or collateral bonds consistent with existing liability regulations under SMCRA.
- Existing self-bonds must be replaced with another form of bond by the date of the permit renewal or any major permit modifications, whichever comes earlier.
- Within 90 days of enactment, the Secretary shall notify state regulatory authorities that allow self-bonding that state regulations must be amended to disallow self-bonding and to require operations with existing self-bonds to replace them with another form of bond.
- Within one year of enactment, the Secretary shall issue rules limiting acceptable surety bonds to minimize financial liability to the federal or state government, including:

- The maximum quantity of corporate surety bonds from any one corporate surety, as a percentage of total reclamation bonds in the state,
- The minimum percentage of surety bonds unrelated to activities under this Act required to reinsure corporate surety bonds,
- The minimum collateralization required for corporate surety bonds, and
- The minimum amount of cash assets a corporate surety must hold as a percentage of reclamation bonds.
- Existing corporate surety bonds must be modified or replaced within one year of the Secretary issuing a rule establishing new limitations on surety bonds as directed by this Act.
- Real property posted as collateral for a bond may not include coal, a coal mine, land that includes or is located above a coal mine, a coal processing facility or waste disposal site, coal mining equipment unlikely to retain resale value, or other property as determined by the Secretary.
- The Secretary shall reevaluate the value of any nonliquid collateral three years after it is posted for a bond and every three years after. “Nonliquid collateral” includes the first lien interests in real estate and equipment, and shall not include cash, letters of credit, certificates of deposit, investment grade securities, or federal, state, or municipal bonds.
- The Secretary may require executive compensation, including salaries and bonuses, to be included as collateral for a bond.

H.R. 4799 (Cartwright):

- Defines the “assessment value of coal” as the gross proceeds of the lessee’s first contract or transaction for the sale of federal coal between unaffiliated parties.
- If the Secretary of the Interior cannot identify any transaction between unaffiliated parties, then the assessment value shall be determined by the Secretary based on the coal price index as established by this Act.
- Sets a royalty rate of not less than 12.5 percent of the assessment value of coal.
 - The Secretary may lower this payment rate for underground mining operations.
- Directs the Secretary to compile a “coal price index,” defined as the average market price of federal coal at final sale of the assessment values of coal by type and quantity of coal.
- Requires the Comptroller General of the U.S. to submit a report to Congress on a review of the federal coal program, including the administration of the provisions under this Act, within 3 years of enactment and every 3 years thereafter for 15 years.
- Requires the Secretary to conduct a study with the National Academy of Sciences on the most equitable method for federal coal valuation. This study shall be submitted to Congress 18 months after enactment and every 5 years thereafter.
- Establishes a fund in the Treasury known as the “Coal Area Economic Revitalization Fund.” Each fiscal year that royalty revenues are available, \$75 million shall be deposited into the Fund, to be made available as follows:
 - \$70 million to the Secretary of Commerce to provide grant assistance for eligible projects under covered programs, and
 - \$5 million to the Secretary of Energy for large-scale projects to capture and store carbon dioxide emissions from industrial sources.
- Covered programs eligible for grant assistance are the Rural Business-Cooperative Service, the Office of Solid Waste and Emergency Response, the Department of Energy (DOE), the

Community Development Financial Institutions Fund, SelectUSA and the National Institute of Standards and Technology (NIST), the Corporation for National and Community Service, and the Office of Surface Mining Reclamation and Enforcement (OSMRE).

- Projects under covered programs are eligible for grant assistance from the Secretary of Commerce if they assist impacted communities in economic growth and/or workforce development.
 - Priority shall be given to projects that establish a clear link between the proposed project and how it will result in local and regional economic growth or job creation and training.
 - Impacted communities shall be directly consulted to determine greatest needs and projects shall be prioritized accordingly.
 - Selection of economic diversification projects shall include outreach to economic development organizations and unions, remediation of coal economy sites, business planning, available capital, and analysis other economic factors.
- Requires the Secretary of Energy to use amounts from the Fund for financial assistance in large-scale operations of carbon capture and storage projects from industrial sources.

H.R. 7283 (Cartwright):

- Authorizes states to set aside, in a separate account, up to 30 percent of the funds authorized in the Infrastructure Investment and Jobs Act for building operating, maintaining, and rehabilitating AMD treatment facilities.
- Requires states to amend state AML inventories to reflect use of funds for AMD treatment and report to the Office of Surface Mining Reclamation and Enforcement on the status and balance of amounts in the states' AMD set-aside accounts.

H.R. 7937 (Lamb):

- Amends the SMCRA to establish a grant program within the Office of Surface Mining Reclamation and Enforcement (OSMRE) to fund reclamation projects.
 - Authorizes the Secretary of the Interior to award grants to states and Indian tribes to carry out reclamation projects on sites where a performance bond was forfeited and found to be insufficient, or the cost of reclamation exceeds the value of any forfeited bond instrument.
 - Specifies that states and Indian tribes must meet the following criteria to be eligible for grants authorized under this section:
 1. Maintain bonding requirements no less stringent than the requirements in place on the date of enactment,
 2. Address deficiencies in its approved alternative bonding system on permitted coal mines as directed by the Secretary,
 3. Maintain an updated regulatory program,
 4. Demonstrate the use of all available legal remedies to recover reclamation costs from responsible parties,
 5. Pay prevailing wages for all laborers and mechanics employed by contractors for projects funded by grants authorized by this act, facilitate active

community engagement in the design and oversight of reclamation projects, and

6. Meet other requirements as the Secretary determines appropriate.
 - Requires states and tribes to apply for grant funding annually and report the projected annual shortfall in funding for reclamation with respect to all coal mines where the state or tribe forfeited a reclamation bond.
 - Authorizes \$385,000,000 for fiscal years 2023 through 2032, including \$1,000,000 for administrative expenses of the Secretary.
- Revises Section 705(a) of SMCRA, which authorizes the Secretary to make annual grants to states to assist in developing, administering, and enforcing state reclamation programs. H.R. 7937 specifies that, through fiscal year 2022, such grants may not exceed 80 percent of the total costs incurred during the first year, 60 percent of the total costs incurred during the second year and 50 percent of the costs incurred each year thereafter. In fiscal years 2023 and 2024, such grants shall not exceed 75 percent of the total costs incurred during each year, and for fiscal year 2025 and thereafter, grants shall not exceed 100 percent of the total costs incurred each year.

V. COST

None of the bills on this hearing received a formal Congressional Budget Office (CBO) cost analysis.

VI. ADMINISTRATION POSITION

The Biden administration's position on these bills is unknown at this time.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 2505](#)

[H.R. 4799](#)

[H.R. 7283](#)

[H.R. 7937 \(Lamb\)](#)