

WORC

Western Organization of Resource Councils

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**House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
Legislative Hearing on H.R. 3843 and H.R. 3844**

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Thank you, Chairman Lamborn and Ranking Member Lowenthal, for the opportunity to testify this morning.

The Western Organization of Resource Councils, or WORC, is a regional network of eight grassroots community organizations with 12,200 members in seven states, including Dakota Resource Council (ND), Dakota Rural Action (SD), Idaho Organization of Resource Councils, Northern Plains Resource Council (MT), Oregon Rural Action, Powder River Basin Resource Council (WY), Western Colorado Congress, and Western Native Voice (MT).

I'd like to begin by thanking the Subcommittee for its interest in addressing the persistent problem of reclaiming abandoned mines and oil and gas well sites. Many of WORC's members farm and ranch on lands overlying or neighboring hard rock mines, coal mines, and oil and gas deposits. WORC and its member groups have a longstanding and multifaceted interest in reclamation policy, and appreciate the opportunity to offer our perspective.

The August fifth Gold King Mine disaster with its three million gallon blow out is an urgent reminder of some of the worst risks posed by failed reclamation and bonding policies. These failures are not unique to this one mine, or even to the hard rock mining industry and its regulators. To address these failures, regulators must ensure that hard rock, coal, and oil and gas operators reclaim sites as soon as possible, that reclamation bonds are adequate to ensure that all sites are cleaned up before they become catastrophic threats, and that sufficient funds are available for third parties to step in and remediate and reclaim sites in the event that bonds are not sufficient. We hope this legislation and this hearing are just the first actions by the Committee to address these urgent problems.

H.R. 3843: Locatable Minerals Claim Location and Maintenance Fees Act of 2015

H.R. 3843's three titles address three important areas. We strongly support the establishment of an abandoned hard rock mine program as provided in Title II. Our primary initial question is about the level of funding. Currently, the BLM and Forest Service are appropriated about \$40 million a year to clean up orphaned mines. Would the \$17 million per year authorized by the bill for fiscal years 2016 through 2020 add to this appropriation or replace it? Even if the intent is to add to existing funds, why only \$17 million? Why not direct all funds collected from the claim maintenance fee that are not used to administer the claims system toward abandoned mine land reclamation. In FY2012, this amounted to \$30 million, which was directed to the general fund.

We also support H.R. 963, introduced by Representatives Grijalva, DeFazio and Lowenthal, which would facilitate the cleanup of abandoned hard rock mines with a reclamation fee of seven cents per ton while creating tens of thousands of reclamation jobs across the West far into the future.

Our primary concern with Title I of H.R. 3843 is that it appears to provide additional rights to claimants, beyond what is provided under the 1872 Mining Law. Currently, miners only hold a right against the government when a valuable mineral deposit is found on a claim. If an area is withdrawn from mining, only claims where valuable deposits can be validated remain in effect. However, Sec. 102(e) appears to extend a right against the government prior to the discovery of valuable mineral deposits, which would overturn 100 years of precedent.

Regarding the bill's Good Samaritan title, WORC acknowledges that it is important to stretch cleanup funds as far as possible, and that it would be difficult to restore streams at some abandoned mine sites to the applicable water quality standards. For these reasons, we have supported the concept at the core of Good Samaritan legislative – reducing water quality standards and liability for third parties that want to clean up abandoned mines – for over fifteen years.

However, we have only supported legislation that addresses our concerns in the following areas:

- Good Samaritans should be held responsible for at least maintaining baseline conditions, and should be held liable for returning a site to the condition documented in the baseline analysis.
- Potentially responsible parties should not be allowed to qualify as Good Samaritans. Reduced water quality standards and liability waivers should only apply to mines that are truly abandoned, and not to sites that are inactive, in bankruptcy proceedings or permitted.
- Any revenue generated through the use or sale of minerals should be required to be used for additional remediation to prevent profiting from cleaning up a site to anything less than Clean Water Act standards.

- Good Samaritan legislation should sunset after ten years to allow Congress to extend the legislation if it is a success, but ensure that it will automatically lapse if it is not.
- Legislation should be limited to abandoned hard rock mine sites, and should not include coal sites where clean ups are occurring at a much higher rate thanks to the coal abandoned mine land fee and program.

H.R. 3844: Energy and Minerals Reclamation Foundation Act of 2015

Similar to H.R. 3843 and other Good Samaritan legislation, H.R. 3844 has the admirable goal of reclamation of abandoned sites, but we have a number of questions about the bill as introduced:

- Is the purpose sufficiently clear and specific to guide the award of grants and contracts?
- Should the purpose be expanded? For example, should it include remediation of polluted water supplies? What about projects to remediate contaminated agricultural soils?
- If Congress does follow through and appropriate funds, should federal funds be focused on federal sites?
- The bill applies to hard rock mines abandoned before 1981 and coal mines abandoned before 1977, but all orphaned oil and gas sites. Should the bill be limited to historic oil and gas sites?

Our larger concern with both pieces of legislation, however, is that they will not solve the problem of abandoned mine and orphaned well sites. These approaches work at the edges of a problem that is fundamentally caused by limited statutory authority, outdated regulations, weak enforcement and insufficient oversight.

Hard Rock

Abandoned hard rock mine sites are one of the major sources of water pollution in western states. These sites release sediments, heavy metals and other toxic chemicals into community water supplies, are harmful to fish and wildlife, and often impact local economies.

There is still no comprehensive inventory of abandoned hard rock mines in the United States, but Earthworks has estimated that there are over 550,000 sites, mostly in the West. The cost to clean up these sites will be staggering – \$50

billion according to the EPA – but funds remain limited, which is by far the largest obstacle.

Currently, the BLM and Forest Service are appropriated about \$40 million a year to clean up these orphaned mines. Using EPA's current cost estimate, at this rate it will take 1,250 years to clean up all the current hard rock abandoned mine lands.

A few states provide additional funds. In Montana, there is a small stream of revenue (on average about \$3.5 million) from the state severance tax and coal abandoned mine land funds available to remediate a few small sites each year, but it is not enough to address the serious problems posed by the 6,000 inventoried abandoned mines across the state, and the estimated 3,700 miles of rivers and streams polluted by harmful metals, primarily from abandoned mines.

In other states, such as California and New Mexico, there are few sources of funds available to correct this pervasive problem in old mining districts. As a result, the number of abandoned mine lands that cause safety or environmental hazards far outweigh the funding available to restore them.

Unfortunately, there are many other old mines just like the Gold King Mine – messy, complicated and incredibly expensive to clean up. Even the temporary water treatment plant at the Gold King Site will cost \$1.78 million to set up, and \$20,000 a week to operate.

Good Samaritans may be able to tackle some small projects that improve water quality, and we commend them for it, but Good Samaritans can do nothing to help tackle these larger problem sites – that must be done by skilled reclamation professionals with monies from a significant, reliable and dedicated cleanup fund similar to the coal abandoned mine land fee and program.

Coal

The federal Surface Mining Control and Reclamation Act (SMCRA) was enacted to ensure that coal mining operations would be reclaimed in a complete and timely fashion, including restoration of disturbed land, water and habitat features, to their pre-mining integrity and productivity. As a safety net and incentive to ensure full and timely reclamation, SMCRA requires coal companies to post significant reclamation bonds as collateral for the risks that coal-mining entails. Bonds are released back to companies in phases only after reclamation standards are demonstrated.

Yet, after decades of mining in the West, it is becoming increasingly clear that coal companies are still not being held accountable for failing to protect and restore these lands to their original state as required by federal law. WORC, the

National Wildlife Federation and the Natural Resources Defense Council released a report¹ which documents the following:

- After decades of mining across 450 square miles of disturbed mined land in Montana, North Dakota, and Wyoming, only 46 square miles has met the reclamation requirements for final phase III and IV bond release. This calls into question the industry's prospects of successfully reclaiming the harsh, brittle and semi-arid ecosystems of Western states.
- The gap between acres of land disturbed by mining and acres released from reclamation bond continues to grow, and with it grows the outstanding bond liabilities of coal companies. The largest mines have bonds in excess of \$300,000,000 apiece.
- Some states allow larger coal companies to "self bond" their mining reclamation obligations rather than collateralize them with financial assurance instruments. The alarmingly weak financial state of nearly all large coal companies mining in the West raises serious questions about the companies' capacity to fulfill reclamation requirements, as well as the likelihood that some or all of the nearly \$2 billion burden of mine reclamation will be left to U.S. taxpayers.

Oil and Gas

In the current economic climate, we are facing both the threat and the reality of bankruptcies, forfeitures and a new generation of orphaned oil and gas wells that was theoretical during the boom years. This is particularly true for federal oil and gas sites because BLM bonding policies have long lagged behind requirements in most states. While the BLM has made some improvements to its bond review policies and procedures in recent years, current bonding policy is a failure as evidenced by the growing number of bankrupt companies and orphaned federal wells across public and private split estate lands in the West.

In two reports issued in 2010 and 2011,² the GAO found that:

- As of December 2008, the BLM held 3,879 bonds valued at \$162 million, covering 16,809 leases and 88,357 wells – an average of \$9,600 per lease or \$1,800 per well.
- The minimum bond amount in current federal rules for individual leases (\$10,000) was set in 1960 and the minimum bond amounts for statewide (\$25,000) and nationwide (\$150,000) bonds were set in 1951.

1 See *Undermined Promise II* at <http://www.underminedpromise.org/>.

2 See GAO-10-245, *Oil and Gas Bonds: Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells* and GAO-11-292: *Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability*.

- If adjusted to 2009 dollars, individual bond minimums would be set at \$59,000, statewide bond minimums would be set at \$177,000 and nationwide bond minimums would be set at \$1.1 million.
- The BLM paid \$3.8 million to clean up 295 federal oil and gas wells in ten states from 1988-2009. Due to variations in the surface and subsurface disturbance, the amount spent per well ranged from \$100 to \$582,829, with an average of \$12,788 per well.
- The BLM had identified 144 additional orphaned federal oil and gas wells in seven states, at a predicted cost of \$1,683,490 for 102 wells, or \$16,504 per well. However, 5,100 wells had been idle for seven or more years. Of these, 2,313 had been idle for 25 years or more.

In 2013, the BLM issued a new Instruction Memorandum (IM 2013-151) governing bond adequacy reviews that improved its process for bond reviews and increases. Under the new policy, every oil and gas bond must be reviewed at least once every five years and there is a formula by which wells and operators are assigned points that are supposed to determine how much a bond should be increased. Risk factors that trigger bond increases include idle wells, deep wells, wells producing low amounts of oil and gas, and the number and type of violations.

Despite the increased number of bond reviews and bond increases since implementation of IM 2013-151, the number of orphaned wells continues to grow, making it clear that the additional changes are needed to ensure that federal wells are reclaimed, and that taxpayers and landowners do not have to pay to plug, abandon and reclaim federal wells. For example, in Wyoming the state Oil and Gas Conservation Commission has pulled bonds for approximately 15 oil and gas operators encompassing nearly 4,000 state and fee wells for failure to comply with reporting and testing requirements. Many of these companies are either bankrupt or non-existent, and owe the BLM, private landowners and state and local governments for past-due royalties and taxes as well as reclamation costs. These same companies also have numerous federal wells but the BLM has failed to timely require additional bonding or uphold reporting or royalty payments.³

As referenced above, the BLM's actual costs and estimates to reclaim decades-old oil and gas wells range from \$12,800-16,504 per well, but costs to reclaim modern oil and gas wells are much higher.

Researchers at the University of Wyoming documented actual costs for the state to reclaim 255 wells in Wyoming from 1997-2007 to be \$29,136 per well.⁴

³ Frosch and Gold, *How 'Orphan' Wells Leave States Holding the Cleanup Bag*, Wall Street Journal, February 25, 2015.

⁴ Anderson and Coupal, *Economic Issues and Policies Affecting Reclamation In Wyoming's Oil and Gas Industry*, Presented at the 2009 National Meeting of the American Society of Mining and Reclamation, Billings, MT.

Researchers at Carnegie Melon University found that, while the Pennsylvania Department of Environmental Protection estimates that “the total cost to plug and restore the site of a well approximately 914 m (3000 feet) in depth averages \$60,000”, in some cases costs have been substantially higher. “For instances, in 2010, Cabot Oil and Gas Corporation estimated that it spent \$2,190,000 to properly abandon three vertical Marcellus Shale gas wells in Susquehanna County, Pennsylvania, about \$700,000 per well.”⁵

Recommendations

The two bills before you today acknowledge what our members see as a growing crisis. We urge you to commit to a more comprehensive suite of actions designed to halt the spread of abandoned and orphaned sites, as well as reclaim those that exist. WORC recommends the following actions:

1. Institute hard rock and oil and gas reclamation fees similar to the fee paid by the coal industry. If an abandoned mine reclamation fund existed, Silverton, Colorado may have been able to clean up surrounding old mines years before they became catastrophic threats.
2. Urge BLM and OSM to update bonding rules and require bonds for all federal mines and well sites to be set at the estimated cost of reclamation. Bonds set at the cost of reclamation are the best way to ensure that reclamation occurs.
3. Change the definition of “idle well” from a well that has been shut in or temporarily abandoned for seven years or longer to a well that has been shut in or temporarily abandoned for 12 months or longer.

⁵ Mitchell and Casman, *Economic Incentives and Regulatory Framework for Shale Gas Well Site Reclamation in Pennsylvania*, Environmental Science and Technology, 2011.