

ABANDONED MINE LANDS HARDROCK RECLAMATION FUND

Legislative Proposal

SECTION 1. HARDROCK ABANDONED MINE RECLAMATION FUND.

(a) Establishment; administration.

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Hardrock Abandoned Mine Reclamation Fund” (hereinafter referred to as the “fund”) which shall be administered by the Secretary of the Interior.

(b) Sources of deposits to fund.

The fund shall consist of amounts deposited in the fund, from time to time derived from—

(1) the reclamation fees levied under section 2;

(2) donations by any persons, corporations, associations, and foundations for the purposes of this Act; and

(3) recovered moneys as provided for in this Act.

(c) State and Tribal funds.

Pursuant to an approved State or Tribal hardrock abandoned mine reclamation program required under section 6, States or Tribes receiving grants under this Act shall establish and administer abandoned hardrock mine reclamation funds (State or Tribal funds).

(d) Use of moneys.

Moneys in the fund shall be allocated pursuant to section 4 and may be used for the following purposes:

(1) reclamation and restoration of land and water resources adversely affected by past hardrock mining, including but not limited to—

(A) reclamation and restoration of abandoned hardrock mine exploration, extraction, processing, and waste disposal areas;

(B) sealing and filling abandoned underground entries and voids;

(C) planting of land adversely affected by past hardrock mining to prevent erosion and sedimentation;

(D) prevention, abatement, treatment, and control of water pollution created by hardrock mine drainage, including restoration of streambeds and construction and operation of water treatment plants; and

(E) prevention, abatement, and control of hardrock mine subsidence;

(2) enforcement and collection of the reclamation fee provided for in section 2 of this Act;

(3) restoration, reclamation, abatement, control, or prevention of the adverse effects of hardrock mining that constitute an emergency as provided for under this Act.

(4) grants to the States and Tribes to accomplish the purposes of this Act;

(5) administrative expenses of each State or Tribe to accomplish the purposes of this Act; and

(6) all other necessary expenses to accomplish the purposes of this Act.

(e) Availability of moneys; no fiscal year limitation.

Moneys from the fund shall be available to carry out the purposes of this title without fiscal year limitation and without further appropriation.

(f) General limitation on obligation authority.

(1) Beginning October 1, 2012, the Secretary shall, during each fiscal year, allocate not less than 95 percent of the amount deposited into the fund under subsection (b) from the previous fiscal year to Federal agencies, States, and Tribes with lands eligible for hardrock reclamation as described in this Act.

(2) For moneys deposited into the fund pursuant to section 11, the Secretary shall distribute all amounts to the State, Tribe, or Federal agency responsible for the recovery of those moneys.

SEC. 2. RECLAMATION FEE.

(a) Payment; rate.

(1) All operators of hardrock mining operations shall pay to the Secretary of the Interior, for deposit into the fund, a reclamation fee based on the tons of material displaced by the operation.

(2) The rate of payment for the reclamation fee shall be 7.8 cents per ton of material displaced for fiscal years 2012 through 2015.

(3) Beginning in 2016 and in each subsequent fiscal year, the Secretary may, after opportunity for public comment, promulgate regulations to adjust the fee rate, provided, however, that the adjusted fee shall be based on a rate per ton of material displaced by the hardrock mining operation and shall take effect at the beginning of the next fiscal year.

(b) Due date.

The reclamation fee shall be paid no later than 30 days after the end of each calendar quarter beginning on January 1, 2012. The Secretary shall establish a late fee schedule and impose such fees to encourage timely payment.

(c) Submission of statement.

In addition to the reclamation fee, all operators of hardrock mining operations shall submit a sworn and notarized statement of the amount of material displaced during the calendar quarter, the type and volume of mineral removed, and the method of mineral removal.

(d) Audits.

(1) The Secretary, or any duly designated officer, employee, or representative of the Secretary, shall conduct such audits of all hardrock mining operations including, without limitation, all hardrock exploration, extraction, processing, and waste disposal areas as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees assessed and compliance with the provisions of this Act.

(2) (A) For purposes of performing such audits, the Secretary or his designee shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, electronic data, and other relevant documents and records of any person subject to the provisions of this Act, which must be maintained by all operators of hardrock mining operations subject to this Act for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(B) If an operator of a hardrock mining operation does not maintain or make available books and records as required in this paragraph, the Secretary shall estimate the fee due under this section based upon the nature and acreage of the hardrock mining operation, plus an additional 20 percent.

(e) Penalties.

(1) Any person, corporate officer, agent or director, on behalf of a hardrock mine operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(2) Nothing in this section shall be construed as preempting any penalties, which could be punished by a fine, imprisonment, or both, under any other applicable Federal law.

(f) Failure to report or pay fees.

The President may withhold the issuance of new mining permits or other federal mining-related approvals to any person who has failed to report or pay the fees required by this section, and require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by this section."

(g) Civil action to recover fee.

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, along with statutory interest, from hardrock mine operators subject to the provisions of this Act in any court of competent jurisdiction in any action at law to compel payment of debts.

(h) Cooperation of other agencies.

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section.

SEC. 3. ADVISORY COUNCIL.

(a) Establishment; function.

The Secretary shall establish the Hardrock Abandoned Mine Lands Advisory Council to—

(1) advise the Secretary in the development and periodic review of criteria to rank the most dangerous and environmentally damaging hardrock abandoned mine sites; and

(2) recommend to the Secretary the sites to be funded based on the submissions from Federal agencies, States, and Tribes under section 7 of this Act.

(b) Members.

The Advisory Council shall consist of nine voting members, to be appointed by the Secretary, as follows—

(1) Three persons who have experience in the administration of a hardrock abandoned mine land reclamation program within a State or Tribe;

(2) Three persons who have experience in the administration of a hardrock abandoned mine land reclamation program within a Federal agency, except that the Advisory Council shall always contain one representative of the Bureau of Land Management and one representative of the Forest Service;

(3) A person who is recognized as an environmental representative active in the reclamation of hardrock abandoned mine sites;

(4) A person who is an employee or officer of a hardrock mining operation subject to the provisions of this Act; and

(5) A person representing the academic community with knowledge of reclamation of hardrock abandoned mine sites.

(c) Terms of service.

(1) Members of the Advisory Council shall be appointed for terms of 3 years, except that, of the members first appointed, three members shall be appointed for a term of 1 year and three members shall be appointed for a term of 2 years.

(2) A member may be reappointed to serve on the Advisory Council.

(3) A vacancy on the Advisory Council shall be filled in the same manner as the original appointment.

(d) Chairperson and procedures.

The Advisory Council shall elect a chairperson and establish such rules and procedures as it deems necessary or desirable.

(e) Employee Status.—A member of the Advisory Council shall not receive pay by reason of his service on the Council but may be reimbursed for travel expenses incurred in carrying out official duties in accordance with section 5703 of title 5, United States Code. A member shall not be considered an employee of the Federal Government by reason of any such service, except for the purposes of the following provisions of law:

(1) Chapter 81 of title 5, relating to compensation for work-related injuries;

(2) Chapter 171 of title 28 and any other Federal statute relating to tort liability; and

(3) If the member is a special Government employee (as opposed to a representative of outside interests), provisions relating to employee conduct, ethics, and conflict of interest in 18 U.S.C. chapter 11, 5 U.S.C. chapter 73, and the Ethics in Government Act of 1978 (5 U.S.C. Appendix).

(f) Administrative support.

The Secretary is authorized to provide to the Advisory Council such necessary administrative support as he determines to be appropriate and shall designate an appropriate officer to serve as the Secretary's liaison to the council.

(g) Applicable law.

The Advisory Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.) and, if terminated pursuant to subsection (f), may, at the discretion of the Secretary, be reconstituted with similar membership pursuant to the Federal Advisory Committee Act.

SEC. 4. ALLOCATION OF FUNDS.

(a) Allocation to Federal agencies, States, and Tribes.

(1) The Secretary shall allocate 90 percent of the amounts deposited into the fund during the previous fiscal year for distribution through grants to Federal agencies, States, and Tribes with lands and waters eligible for reclamation under this Act.

(2) In allocating the funds described in paragraph (1) above, the Secretary shall consider recommendations made by the Abandoned Hardrock Mine Lands Advisory Council.

(3) Federal agencies receiving funds under this section are required to:

(A) notify the Secretary, within 60 days of enactment of this Act for all existing mining permits, and within 60 days of approval for all subsequently approved mining permits or other Federal mining-related approvals granted to an operator of a hardrock mining;

(B) agree to withhold the issuance of all new mining permits or other Federal mining-related approvals to any person who has failed to report or pay the fees required by section 2; and

(C) require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by section 2.

(4) Any State or Tribe receiving funds under this section is required to have in place an abandoned mine reclamation program approved pursuant to the provisions of section 6.

(5) Funds allocated to a State, Tribe, or Federal agency under this section shall be returned and deposited into the fund for reallocation under this section during the next fiscal year if not expended within 5 years after the date of the grant award.

(b) Use of funds.

(1) The funds allocated through reclamation grants by the Secretary under this section shall only be used for annual reclamation project planning including scoping, construction, and program administration consistent with this Act.

(2) Where allocations provided from the fund are not sufficient to achieve reclamation or abate the hazard of a particular abandoned mine site, a Federal agency, State, or Tribe, or a combination thereof, may use funding from any other source not otherwise precluded by law in addition to the funds allocated pursuant to this section to address the reclamation of the abandoned mine.

(c) Administrative Grants.

(1) Up to 5 percent of the amounts deposited into the fund during the previous fiscal year may be allocated at the discretion of the Secretary through administrative grants to provide administrative support of not more than \$1.5 million annually to each State and Indian tribe with eligible land and water that is operating under an approved abandoned mine reclamation program.

(2) Administrative grants provided under this section are intended to help ensure the maintenance of approved reclamation programs, including through –

(A) the maintenance of the inventory established pursuant to section 8; and

(B) project planning and program administration, including the preparation of project applications pursuant to section 7.

(3) In making grants available under this subsection, the Secretary shall consider the extent of eligible lands and waters pursuant to section 5; the total amount of historical reclamation expenditures; and the outcome of any previous application of the ranking criteria developed pursuant to Section 3(a),.

(d) Emergency Abandoned Mine Land Issues.

Amounts available in the fund that are not allocated pursuant to subsection (a) or subsection (c) are authorized to be allocated to the Secretary for the purpose of carrying out the provisions of section 10 relating to emergencies.

SEC. 5. ELIGIBLE LANDS AND WATER.

(a) Eligible lands.

Except as provided in subsection (b), lands and waters eligible for reclamation grants under this Act are those that—

(1) have been mined for hardrock minerals or affected by such mining, exploration, processing;

(2) have been abandoned or left in inadequate reclamation status prior to the date of enactment of this Act; and

(3) pose a risk of physical hazards to persons or are a source of environmental degradation.

(b) Exception.

Sites and areas designated or eligible for remedial action under any other Act shall not be eligible for expenditures from the fund unless specifically authorized by the Secretary.

SEC. 6. STATE AND TRIBAL ABANDONED HARDROCK RECLAMATION PROGRAMS.

(a) Submission of State or Tribal Abandoned Hardrock Reclamation Plan.

If a State has within its borders or a Tribe on its Indian lands any eligible lands and water and it desires to receive funding from the Secretary for a hardrock abandoned mining reclamation program, it must submit to the Secretary a State or Tribal Abandoned Hardrock Reclamation Plan.

(b) Contents of a State or Tribal Hardrock Abandoned Reclamation Plan.

(1) Each State or Tribal Abandoned Hardrock Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the process used for identifying eligible lands and water, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this Act.

(2) The State or Tribal Abandoned Hardrock Reclamation Plan shall include provisions that require the State or Tribe to:

(A) notify the Secretary of all existing and new mining permits or other State or Tribal mining-related approvals granted to an operator of a hardrock mining operation within 60 days;

(B) agree to withhold the issuance of all new mining permits or other State or Tribal mining-related approvals to any person who has failed to report or pay the fees required by section 2;

(C) require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by section 2; and

(D) establish an appropriate State or Tribal account to serve as a State or Tribal hardrock abandoned mine reclamation fund to receive grants and funding under this Act.

(c) Approval of a State or Tribal Program; withdrawal.

(1) The Secretary shall approve a hardrock reclamation program when he determines that a State or Tribe has—

(A) developed and submitted a State or Tribal Abandoned Hardrock Reclamation Plan for the reclamation of hardrock abandoned mines;

(B) enacted the necessary State or Tribal legislation to implement the relevant provisions of this Act; and

(C) established an appropriate State or Tribal account to serve as a State or Tribal fund to receive grants from this title.

(2) The Secretary shall withdraw such approval if he determines upon the basis of information provided under this Act that the reclamation program is not in compliance with the regulations, procedures, guidelines, and requirements established by the Secretary under this Act.

SEC. 7. APPLICATION FOR HARDROCK MINING RECLAMATION FUNDS.

(a) Timing of application.

At regular intervals, as determined by the Secretary, but no less than annually, each Federal agency, or State, or Tribe with an approved reclamation program may submit to the Secretary an application for the administrative support of the approved hardrock abandoned mine reclamation program, the implementation of specific reclamation projects, or both.

(b) Contents of application for an administrative grant.

The application for an administrative grant shall include—

(1) a description of the program administrative activities to be accomplished during the grant period;

(2) estimated costs of proposed activities; and

(3) information and assessments demonstrating that the amounts requested are necessary to support specific reclamation objectives that will be submitted to the Secretary for funding consideration.

(c) Contents of application for a reclamation grant.

The application for a reclamation grant shall include—

(1) a general description of each proposed project, including the type of reclamation or planning activity to be performed, the general location, and the name of the landowner;

(2) an explanation as to why the Federal agency or State and Tribe selected each proposed project from among all of the eligible lands and water in its jurisdiction, including the extent of public involvement in the selection process, if any;

(3) a statement of the estimated benefits in such terms as: number of acres to be restored, miles of stream to be improved, acres of surface lands to be protected from subsidence, and population protected from subsidence, air and water pollution, and mine hazards;

(4) an estimated cost of each proposed project, including the actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses;

(5) an assessment of the project based on the criteria developed by the Advisory Council pursuant to section 3; and

(6) any other information requested by the Secretary, except the Secretary cannot require the application to include the submission of complete project plans and specifications.

SEC. 8. INVENTORY.

Notwithstanding any other provision of this Act, the Secretary shall, after opportunity for public comment, promulgate regulations to carry out the development and regular maintenance of a nationwide inventory of lands and waters that fit the criteria under section 5 and would be eligible for reclamation grants under this Act. The regulations shall establish standardized procedures for entering and maintaining data in the inventory.

SEC. 9. LIENS

(a) Filing of statement and appraisal; lien.

(1) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past hardrock mining practices on privately owned land, the Secretary or the State or Tribe, pursuant to an approved reclamation program, shall itemize the funds so expended and may file the statement of funds expended in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before and after the restoration, reclamation, abatement, control, or prevention of adverse

effects of past hardrock mining practices if the funds expended result in a significant increase in property value.

(2) The statement and appraisal filed under paragraph (1) shall constitute a lien upon the land which shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past hardrock mining practices.

(3) No lien shall be filed under this subsection against the property of any person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed hereunder.

(b) Petition.

(1) Within sixty days of the filing of a lien under subsection (a), the landowner may proceed as provided by local law to dispute the appraised increase in the market value of the land submitted under paragraph (a)(2), and seek a determination regarding the value of the lien.

(2) The amount reported by any proceedings pursuant to paragraph (1) to be the increase in value of the premises resulting from the restoration, reclamation, abatement, control, or prevention of the adverse effects of past hardrock mining practices shall constitute the amount of the lien and shall be recorded with the county office in which the land lies and which has the responsibility under local law for the recording of judgments against land.

(3) A lien filed pursuant to paragraph (2) shall supersede the initial lien filed pursuant to subsection (a).

(4) Any party aggrieved by the decision may appeal as provided by local law.

SEC. 10. EMERGENCY POWERS.

(a) Use of funds by the Secretary.

The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of hardrock mining on eligible federal lands and waters or on eligible lands and waters within states or Indian lands that do not have an approved abandoned hardrock reclamation program if the Secretary finds that—

(1) an emergency exists that constitutes a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining.

(b) Use of funds by States and Tribes.

States and Tribes with an approved abandoned hardrock reclamation program are eligible to receive and use funds allocated to the Secretary under section 4(d) for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of hardrock mining on eligible lands and waters, if the Secretary finds that—

(1) an emergency exists that constitutes a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining; and

(3) the expenses related to the administration and related activities associated with the emergency restoration, reclamation, abatement, control or prevention, including site investigation, development, design, and inspection, are funded by moneys other than those provided to the State or Tribe under this subsection.

(c) Right of entry to protect health and safety.

(1) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where an emergency exists and any other land that provides access to the land where an emergency exists in order to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining and to do all things necessary or expedient to protect the public health, safety, or general welfare.

(2) Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property or of trespass thereon. Funds expended for emergency work under this section and the benefits accruing to the land shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the land for any alleged damages by virtue of such entry.

(3) This provision is not intended to create new rights of action or eliminate existing immunities.

SEC. 11. RECOVERY.

(a) Right of recovery.

To the extent that a Federal agency or a State or Tribe uses money from the fund to restore, reclaim, abate, control, or prevent the adverse impacts of hardrock mining practices on eligible lands and waters as provided for in this Act, the Federal agency, State, or Tribe shall have a right of recovery against the persons or entities responsible for leaving those lands or waters in an inadequate reclamation status for which the expenditures from the fund were required.

(b) Distribution of recovered moneys.

Notwithstanding paragraph (b) of Section 1, any moneys recovered as a result of this section will be distributed during the next fiscal year in reclamation grants to the Federal agency, State, or Tribe that recovered the funds, and used for the purpose of restoration, reclamation, abatement, control, or prevention of the adverse impacts of hardrock mining.

SEC. 12. MISCELLANEOUS POWERS.

(a) Engage in work, promulgate rules and regulations, and carry out various activities to implement and administer this Act.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this Act.

(b) Engage in cooperative projects.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program shall have the power and authority to engage in cooperative projects under this Act with any Federal agency, any State and their governmental agencies, and any Tribe and related tribal authorities.

(c) Request for action to restrain interference with regard to this Act.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program may request the Attorney General, who is authorized to initiate, in addition to any other remedies provided for in this Act, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this Act.

(d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage.

(1) The Secretary or a State or Tribe operating under an approved abandoned hardrock mining reclamation program shall have the power and authority to construct and operate a plant or plants, including major interceptors and other facilities, for the control and treatment of water pollution resulting from mine drainage, the extent of which may be dependent on the ultimate use of the water.

(2) The provisions of this subsection are not intended to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*)

(e) Transfer of funds.

The Secretary may transfer funds to other appropriate departments, boards, commissions, and agencies of the United States for the purpose of carrying out the reclamation activities authorized by this Act.

(f) Liability.

(1) No Federal agency, State, or Tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a reclamation program approved under this section.

(2) This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the Federal agency, State or Tribe. For purposes of this paragraph, reckless, willful, or wanton misconduct shall constitute gross negligence.

SEC. 13. INTERAGENCY COOPERATION.

All departments, boards, commissions, and agencies of the United States shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer provisions of this Act.

SEC. 14. DEFINITIONS.

For the purposes of this Act—

(1) “Advisory Council” means the Abandoned Hardrock Mine Lands Advisory Council established pursuant to section 3;

(2) “Federal agency” means any Federal agency or Federally-owned and chartered corporation with responsibility for managing Federal lands, such as the Bureau of Land Management, Forest Service, and the National Park Service;

(3) “Federal lands” means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(4) “fund” means the Abandoned Hardrock Mine Reclamation Fund established pursuant to section 1;

(5) “hardrock” means any mineral mined under the 1872 Mining Law, 30 U.S.C. §§ 22-54, and with respect to State, Indian, and private lands, any minerals on those lands that would be considered hardrock minerals if such minerals had been mined under the 1872 Mining Law; provided, however, that if subsequent to the date of enactment of this Act, any minerals mined under the 1872 Mining Law are transferred from the requirements of the 1872 Mining Law to different statutory requirements, those minerals so transferred will continue to be subject to the provisions of this Act;

(6) “hardrock mining operations” means any activities or operations conducted to mine minerals under the 1872 Mining Law, 30 U.S.C. §§ 22-54, and, with respect to State, Indian, and private

lands, any activities or operations conducted on such lands to mine minerals that would be considered hardrock minerals if such minerals had been mined under the 1872 Mining Law; provided, however, that if subsequent to the date of enactment of this Act, any minerals mined under the 1872 Mining Law are transferred from the requirements of the 1872 Mining Law to different statutory requirements, those activities or operations conducted on lands to mine those minerals so transferred will continue to be subject to the provisions of this Act;

(7) “Indian lands” means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(8) “Indian tribe” means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(9) “material displaced” means crude ore plus waste dislodged from its geologic location at the time hardrock operations begins from surface, underground, and in-situ mines;

(10) “operator” means any person, partnership, or corporation engaged in hardrock mining who removes or intends to displace more than one thousand tons of material from its original geographic location;

(11) “person” means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(12) “processing” means processes downstream of beneficiation employed to prepare hardrock mineral ore into the final marketable product, including but not limited to smelting and electrolytic refining;

(13) “ton” means 2,000 pounds avoirdupois (.90718 metric ton);

(14) “Secretary” means the Secretary of the Interior, except where otherwise described;

(15) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

SEC. 15. OTHER FEDERAL LAWS AND AGENCIES.

(a) Construction of this Act as superseding, amending modifying, or repealing certain laws.

Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21a), the National Environmental Policy Act of 1969 (42 U.S.C. § 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to –

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. § 721-740).

- (2) The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801 et seq.).
- (3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. § 1251 et seq.), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.
- (4) The Clean Air Act, as amended (42 U.S.C. § 7401 et seq.).
- (5) The Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.).
- (6) The Refuse Act of 1899 (33 U.S.C. § 407).
- (7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. §§ 661-666c).
- (8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. § 181 et seq.).
- (9) The 1872 Mining Law (30 U.S.C. § 22-54).
- (10) The Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. § 1201 et seq.).
- (11) The Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601-9675).
- (12) The Federal Land Policy and Management Act of 1976, (43 U.S.C. § 1701 et seq.)
- (13) All Federal criminal statutes under title 18 of the United States Code.

(b) Effect on authority of Secretary or heads of other Federal agencies.

Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate hardrock abandoned mining operations on land under their jurisdiction.

(c) Major Federal action.

Approval of the State and Tribal abandoned mine land reclamation programs by the Secretary shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332).

Sectional Analysis

Section 1 HARDROCK ABANDONED MINE RECLAMATION FUND

This section creates the Hardrock Abandoned Mine Reclamation Fund on the books of the Treasury, names the funding sources that are deposited into the fund, lists the general uses of the fund, and provides that the moneys in the fund are generally available without further appropriation.

Sec. 2 RECLAMATION FEE

This section sets the initial rate of the fee (7.8 cents per ton of material displaced); a due date, recordkeeping and submission requirements, and authorizes penalties and enforcement actions for fee collection. This section authorizes the Secretary to promulgate regulations adjusting the fee rate after an initial period of no less than three years.

Sec. 3 ADVISORY COUNCIL

This section creates a nine-member council, comprised of individuals with abandoned mine land reclamation experience, governed the Federal Advisory Committee Act (FACA). Under this section, the council shall advise the Secretary in the development and periodic review of criteria for ranking hardrock AML sites, and recommend to the Secretary the sites to be funded based upon review of submissions for funding.

Sec. 4 ALLOCATION OF THE FUND

This section describes the mandatory distributions to Federal agencies and to States and Tribes for hardrock AML reclamation activities within their jurisdictions. Under this section, 90 percent of the fund shall be allocated to Federal agencies, States and Tribes with lands and water eligible for reclamation; up to 5 percent of the fund may be made available by the Secretary to provide administrative support to States and Indian Tribes with approved AML reclamation programs. Unallocated amounts available in the Fund are authorized to be allocated to the Secretary.

Sec. 5 ELIGIBLE LANDS AND WATER

This section defines lands and waters eligible for reclamation under this Act, limiting eligibility to lands mined for hardrock minerals and abandoned prior to the enactment of this Act that are not covered by any other program unless specifically authorized by the Secretary.

Sec. 6 STATE AND TRIBAL RECLAMATION PROGRAMS

This section mandates the submission of state and tribal reclamation plans; establishes what the reclamation plans must include; and authorizes the Secretary to grant and withdraw approval of the plans.

Sec. 7 APPLICATION FOR HARDROCK MINING RECLAMATION FUNDS

This section establishes the requirements of Federal, State and Tribal grant applications for funding of AML programs and projects.

Sec. 8 INVENTORY

This section requires the Secretary to promulgate regulations related to the development and maintenance of a nationwide inventory of eligible lands and waters.

Sec. 9 LIENS

This section authorizes the filing of liens upon private lands if reclamation performed under the Act has led to a significant increase in the value of property. Any moneys recovered as a result will be deposited in the Hardrock AML Fund pursuant to section 1.

Sec. 10 EMERGENCY POWERS

This section authorizes the Secretary to respond to emergency reclamation needs. This section provides the Secretary with the right to enter any land for emergency response actions.

Sec. 11 RECOVERY

This section provides a right of recovery against responsible parties to Federal, State, local, or Tribal agencies that use the fund for reclamation projects. The section authorizes the return of recovered funds to the agency that recovered them for use in its AML reclamation program.

Sec. 12 MISCELLANEOUS POWERS

This section provides miscellaneous authorities to the Secretary and to States and Tribes to accomplish the purposes of the Act, including the authority to issue regulations and enter into cooperative agreements.

Sec. 13 INTERAGENCY COOPERATION

This section requires federal agency cooperation with the Secretary in implementation of the Act.

Sec. 14 DEFINITIONS

This section sets forth the definitions used in the Act.

Sec. 15 OTHER FEDERAL LAWS AND AGENCIES

This section states that the Act is not intended to affect or supersede other environmental laws. The section contains a list of environmental laws are not superseded, amended, modified, or repealed by the proposed legislation.

REFORM HARDROCK MINING ON FEDERAL LANDS

Legislative Proposal

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hardrock Mineral Leasing Act of 2011”.

SEC. 2. LEASING PROGRAM FOR GOLD, SILVER, LEAD, ZINC, COPPER, URANIUM, AND MOLYBDENUM.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended by redesignating section 44 as section 51 and inserting after section 43 the following:

“SEC. 44. Prospecting permits, lands included, acreage.

“The Secretary is authorized, under such rules and regulations as he may prescribe, to grant any qualified applicant a prospecting permit which shall give the exclusive right to prospect for gold, silver, lead, zinc, copper, uranium, or molybdenum in lands belonging to the United States for a period of not exceeding two years: Provided, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land, in reasonably compact form.

“SEC. 45. Leases to permittees, survey of lands; royalties and annual rental.

“(a) Leases, royalties and rental.

“Upon showing to the satisfaction of the Secretary that valuable deposits of gold, silver, lead, zinc, copper, uranium, or molybdenum have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land included in the prospecting permit, as well as any nonmineral lands necessary for processing or milling operations, at a royalty of not less than 5 per centum of the quantity or gross value of the output of the gold, silver, lead, zinc, copper, uranium or molybdenum at the point of shipment to market, and the payment in advance of a rental of \$1 per acre per year, the rental paid for any one year to be credited against the royalties accruing for that year, the lands in such lease to be taken in reasonably compact form by legal subdivisions of the public land surveys.

“(b) Survey of lands.

“If the land has not been surveyed, the necessary survey shall be executed at the cost of the permittee, in accordance with regulations prescribed by the Secretary.

“(c) Lease terms, renewal.

“Leases under this section shall be for a period of 20 years with a preferential right in the lessee to renew for successive periods of 10 years upon such reasonable terms and conditions as may be prescribed by the Secretary, in consultation with the surface managing agency, unless otherwise provided by law at the expiration of such period.

“SEC. 46. Leases of lands not covered by permits or leases; acreage; annual rental.

“(a) Leasing of nonpermitted lands.

“Lands known to contain valuable deposits of gold, silver, lead, zinc, copper, uranium, and molybdenum that are not covered by permits or leases, as well as any nonmineral lands necessary for processing or milling operations, shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as the Secretary may adopt by regulation and in such areas as he shall fix, but shall not exceed two thousand five hundred sixty acres per lease.

“(b) Royalties and rental, terms.

“All leases issued under this section shall be conditioned upon the payment by the lessee of:

- (1) such royalty as may be fixed in the lease, which shall be not less than 5 percent of the gross value of the output of the gold, silver, lead, zinc, copper, uranium or molybdenum at the point of shipment to market; and
- (2) a rental of \$1 per acre per annum, to be paid in advance. The rental paid for any one year shall be credited against the royalties accruing for that year.

Leases under this section shall be for a period of 20 years with a preferential right in the lessee to renew for successive periods of 10 years upon such reasonable terms and conditions as may be prescribed by the Secretary, unless otherwise provided by law at the expiration of such period.

“SEC. 47. Lands containing other minerals.

“Prospecting permits or leases may be issued at the discretion of the Secretary under the provisions of this subchapter for deposits of gold, silver, lead, zinc, copper, uranium or molybdenum in public lands or federal mineral estates that also contain deposits of coal or other minerals on condition that such other deposits be reserved to the United States for disposal under applicable laws.

“SEC. 48. Disposition of royalties and rents from gold, silver, lead, zinc, copper, uranium, and molybdenum leases.

“Section 35 of this Act (30 U.S.C. 191) shall govern the disposition of all monies received from royalties and rentals under the provisions of this subchapter.

“SEC. 49. Laws Applicable.

“The general provisions of this Act (30 U.S.C. 181-196) shall apply to permits and leases under this subchapter.

“SEC. 50. Conversion of unpatented mining claim to noncompetitive lease

“(a) Conversion to noncompetitive lease.

“(1) The Secretary may, in his discretion, issue to the holder of an unpatented mining claim a noncompetitive lease for gold, silver, lead, zinc, copper, uranium, or molybdenum under the provisions of this section for the lands encompassed within such mining claim.

“(2) No claimant who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

“(b) Nonmineral lands.

“In any lease issued under subsection (a), the Secretary may, in his discretion, include nonmineral lands within the boundaries of any unpatented mill site associated with the unpatented mining claim to be converted to a noncompetitive lease.

“(c) Conditions for issuance.

“Issuance of noncompetitive leases under this section shall be conditioned upon—

“(1) (A) verification that the mining claim or site for which the noncompetitive lease is to be issued under subsection (a) is covered by a mining plan of operations that has been approved by the surface managing agency within 5 years of the petition for conversion under subsection (c)(4) and is in compliance with all applicable laws and regulations; or

“(B) If the mining claim or site is not covered by an approved mining plan of operations, a determination by the Secretary that the mining claim or site to be converted to a lease under this section was valid as of the date of this Act and as of the date of the petition for issuance of a noncompetitive lease;

“(2) relinquishment of the mining claims or sites;

“(3) concurrence of the surface managing agency, and any necessary and justifiable conditions for use and protection of nonmineral resources that agency may identify if other than the Bureau of Land Management;

“(4) a petition for issuance of a noncompetitive lease, together with the required rental and royalty, including back rental and royalty accruing from date of relinquishment, being filed with the Secretary;

“(5) A requirement in the lease for payment of rental, including back rentals accruing from the date of relinquishment, as applicable, of \$1 per acre per year;

“(6) A requirement in the lease for payment of royalty on the value of the output of gold, silver, lead, zinc, copper, uranium, or molybdenum at the mine, including all royalty on production made subsequent to the date of relinquishment;

“(7) A requirement in the lease to increase the applicable financial guarantee for operations under the lease or to provide a replacement financial guarantee if the existing financial guarantee does not meet the requirements under the applicable regulations; and

“(8) Publication in the Federal Register of a notice of the petition for conversion of the relinquished gold, silver, lead, zinc, copper, uranium, or molybdenum mining claim to a noncompetitive gold, silver, lead, zinc, copper, uranium, or molybdenum lease, including terms and conditions of conversion, such notice to be published at least thirty days in advance of the conversion, and a requirement in the lease for reimbursement of costs associated with the publication of such notice.

“(d) Effect of a petition on lands.

“The Secretary shall not issue any new lease affecting any of the lands covered by such mining claim for a reasonable period, as determined in accordance with regulations issued by the Secretary, after the filing of a petition for issuance of a noncompetitive lease under this section.

“(e) Effect of approved mining plan.

“The Secretary shall not be required to conduct environmental analysis under the National Environmental Policy Act before issuing a noncompetitive lease for any mining claim or site that satisfies the requirements of subsection (c)(1)(A), provided that surface disturbance authorized by such noncompetitive lease does not require a major modification to the approved mining plan of operations.

“(f) Area limitations.

“The area in any lease issued under this section shall not exceed the maximum area authorized by this Act to be leased to an individual or corporation.”

SEC. 3. AMENDMENTS TO MINERAL LEASING ACT GENERAL PROVISIONS.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended –

(a) in section 1 (30 U.S.C. 181) by striking “ or gas” the first place it appears in the first sentence and inserting in lieu thereof “gas, gold, silver, lead, zinc, copper, uranium, or molybdenum”;

(b) in section 34 (30 U.S.C. 182) by striking “or gas” and inserting in lieu thereof “gas, gold, silver, lead, zinc, copper, uranium, or molybdenum”;

(c) in section 27 (30 U.S.C. 184) by –

(1) inserting after subsection (d) the following new subsection:

“(e) Gold, silver, lead, zinc, copper, uranium, or molybdenum leases, acreage

“No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, gold, silver, lead, zinc, copper, uranium, or molybdenum leases or permits on an aggregate of more than 20,480 acres in any one State.”;

(2) striking in subsection (k) “or sodium” and inserting “sodium, gold, silver, lead, zinc, copper, uranium, or molybdenum”; and

(3) redesignating the subsections accordingly.

(d) In section 37 (30 U.S.C. 193) by inserting the caption “(a) **Disposition of coal, phosphate, sodium, potassium, oil, oil shale, gas.**” before the existing paragraph and adding the following new subsection:

“(b) Disposition of gold, silver, lead, zinc, copper, uranium, and molybdenum.

“The deposits of gold, silver, lead, zinc, copper, uranium, and molybdenum, herein referred to, in lands valuable for such minerals, shall be subject to disposition only in the form and manner provided in this chapter, except --

(1) as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716 and 1719); and

(2) except as to valid claims for such minerals existent on the date of this Act, and thereafter maintained in compliance with the laws under which initiated.”.

SEC. 4. AMENDMENTS TO THE MINING LAW OF 1872.

(a) The Mining Law of 1872 (30 U.S.C. 28f) is amended—

(1) in subsection (a) by—

(A) striking “of \$100”;

(C) inserting after “site” “in an amount specified in subsection (d) of this section.”; and

(2) by striking subsection (d) and inserting in lieu thereof—

“(d) Amount and Adjustment of claim maintenance fee.

“(1) For purposes of this section, the claim maintenance fee shall be in the amount of \$140.

“(2) Beginning with the assessment year that starts on September 1 of the year after enactment of this Act, and for each of the five assessment years thereafter, the claim maintenance fee required by this section shall increase \$10 per claim or site per year from the fee required for the preceding assessment year, after which the fee will be adjusted according to section 28j(c) of title 30, United States Code”.

(b) Notwithstanding any other provision of law, the Secretary of the Interior shall not accept or process any application for a patent under sections 2325, 2329, 2332, 2333, or 2337 of the Revised Statutes (30 U.S.C. 29, 35, 37, 38, and 42), except if the Secretary determines that:

(1) the patent application was filed with the Secretary on or before September 30, 1994; and

(2) for vein or lode claims, all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) were fully complied with by the applicant by that date, or

(3) for placer claims, all requirements established under sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) were fully complied with by the applicant by that date, or

(4) for mill site claims all requirements established under section 2337 of the Revised Statutes (30 U.S.C. 42) were fully complied with by the applicant by that date.

Sectional Analysis

SECTION 1. SHORT TITLE.

Establishes the short title of the Act as the “Hardrock Mineral Leasing Act of 2011”.

SEC. 2. LEASING PROGRAM FOR GOLD, SILVER, LEAD, ZINC, COPPER, URANIUM, AND MOLYBDENUM.

This section amends the Mineral Leasing Act to authorize a leasing program for certain hardrock minerals, including gold, silver, lead, zinc, copper, uranium, and molybdenum on lands belonging to the United States, and to apply a royalty of not less than 5 percent gross value.

Subsection (a) adds new sections to the MLA establishing authority for the Secretary to grant prospecting permits for the covered minerals; to issue and renew leases, including royalties and rentals, of the lands included in the prospecting permits; and for the disposition of royalties and rents collected from the production of the covered minerals, among other provisions. Also included are provisions authorizing the conversion of unpatented mining claims to noncompetitive leases.

SEC. 3. AMENDMENTS TO MINERAL LEASING ACT GENERAL PROVISIONS.

This section makes conforming amendments to the general provisions of the MLA.

SEC. 4. AMENDMENTS TO THE MINING LAW OF 1872.

Section 4 makes changes to the Mining Law of 1872 (30 U.S.C. 28f) to increase the claim maintenance fee by approximately forty percent over five years in lieu of the adjustments currently authorized under 30 U.S.C. 28f. Under the provisions of this section, the fee would initially be set at the current value of \$140 and, beginning with the assessment year that begins on the September 1 of the year following enactment, and for each of the next five assessment years, the claim maintenance fee would increase \$10 per claim or site per year.

At the end of that period, the fee would be adjusted according to the process at section 30 USC 28j(c).

Section 4 also makes permanent the existing moratorium on new mining patent applications, and creates an exception for the processing of existing “grandfathered” applications filed on or before September 30, 1994.