

Federal Legislation Regarding Mining – Overview

H.R. 1937: National Strategic and Critical Minerals Production Act of 2015 (passed House on 10/22/2015)

<https://www.govtrack.us/congress/bills/114/hr1937> (Formerly introduced in 2013 as H.R. 761 and S. 1600)

Sponsored by Rep. Amodei (R-NV)

Principal provisions:

Sec. 3 – defines virtually any mineral (including any used for energy production or in manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure) as a strategic and critical mineral.

Sec. 102 – Deems the requirements of National Environmental Policy Act of 1969 to have been satisfied if the lead agency determines that any state or federal agency has or will address specified factors.

Sec. 103 – Declares the priority of the lead agency is to maximize mineral resource development.

Sec. 202 – Bars any lawsuit unless filed within 60 days of the final federal agency action (currently 6 years)

Sec. 205 – Severely restricts any federal court from granting an injunction against mining activities, even where agency decision violated federal law

Sec. 206 – Prohibits any recovery of any costs or attorney fees under the Equal Access to Justice Act when a successful lawsuit is brought

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

(introduced on 10/28/15;

reported out of committee 6/15/2016).

<https://www.govtrack.us/congress/bills/114/hr3843>

Sponsored by Rep. Lamborn (R-CO)

Touted as a “Good Samaritan” abandoned mine clean-up bill, but includes poison pills:

Sec. 102 – eliminates any maintenance/assessment requirements on any withdrawn lands (monument, wilderness, etc), cementing these claims in withdrawn areas. Eliminates the ‘discovery’ of a valuable mineral deposit requirement from the 1872 Mining Law, granting full rights to use and occupancy of federal lands by the mere staking of claim and paying the required fee. This provision would automatically validate all mining claims in any withdrawn area.

Sec. 303 to 311 – establishes a “Good Samaritan” clean up program, with a broad definition of “Good Samaritan”, no requirement for a plan to ensure clean up to existing water quality standards, and exempts all permits from any environmental review procedures of the National Environmental Policy Act (NEPA)

Sens. Bennett (D-CO) and Gardner(R-CO) and Rep. Tipton (R-CO) Good Samaritan discussion draft

This discussion draft (not yet introduced in either House or Senate) was released to the public on January 19, 2016.

This proposal – named the “Good Samaritan Cleanup of Orphan Mines Act” – is designed to allow Good Samaritans the opportunity to apply for a permit under a State or Indian tribe's program or from the EPA to assist in the environmental cleanup of orphan mines across the United States. As currently drafted, this proposed legislation more narrowly defines who can be a “Good Samaritan” to avoid exploitation of the law for the benefit of new mining operations, and is narrowly tailored to exempt Good Samaritan cleanup efforts from liability at orphan mines only from those provisions necessary under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. At the same time, the bill holds Good Samaritans liable under all laws if they fail to comply with the terms of their permit, but provides an exception if the failure results in only minor impacts. Lastly, the legislation expires in 10 years, which provides Congress the opportunity to determine if the Good Samaritan program contributed to the cleanup of orphan mines resulting in a cleaner environment and improved water quality conditions.

1872 Mining Law reform

Given the prospective Republican control of the House, Senate, and White House, any meaningful reform of the 1872 Mining Law is unlikely. The departure of Sen. Reid (D-NV), who has effectively blocked 1872 reform in the Senate, does offer some opportunities to develop champions for reform in the Senate. Recent introduced versions of 1872 Mining Law Reform that would place a royalty on mineral extraction, ensure environmental protections, and help clean up abandoned mines were introduced in the 114th Congress, but are unlikely to see any action:

H.R. 963: Hardrock Mining Reform and Reclamation Act of 2015 (introduced 2/13/2015).

<https://www.govtrack.us/congress/bills/114/hr963> sponsored by Rep. Grijalva (D-NM)

S. 2254: Hardrock Mining and Reclamation Act of 2015 (introduced 11/5/2015)

<https://www.govtrack.us/congress/bills/114/s2254> sponsored by Sen. Udall (D-NM)

Jeffrey C. Parsons, Senior Attorney
Western Mining Action Project
P.O. Box 349, Lyons, CO 80540
(303) 823-5738