

INTRODUCTION OF ABANDONED
HARDROCK MINES RECLAMATION
ACT

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 5, 2003

Mr. UDALL of Colorado. Mr. Speaker, today I am introducing the Abandoned Hardrock Mines Reclamation Act. This bill is designed to help promote the cleanup of abandoned and inactive hardrock mines that are a menace to the environment and public health throughout the country, but especially in the West. I introduced a similar bill in the 107th Congress. This bill contains a number of changes that were developed in consultation with interested parties, including representatives of the Western Governors' Association, the hardrock mining industry, and environmental groups. More detail regarding these changes is included at the end of this statement.

THE BACKGROUND

For over one hundred years, miners and prospectors have searched for and developed valuable "hardrock" minerals—gold, silver, copper, molybdenum, and others. Hardrock mining has played a key role in the history of Colorado and other States, and the resulting mineral wealth has been an important aspect of our economy and the development of essential products. However, as all westerners know, this history has too often been marked by a series of "boom" times followed by a "bust" when mines were no longer profitable. When these busts came, too often the miners would abandon their workings and move on, seeking riches over the next mountain. The resulting legacy of unsafe open mine shafts and acid mine drainages can be seen throughout the country and especially on the western public lands where mineral development was encouraged to help settle our region.

THE PROBLEMS

The problems caused by abandoned and inactive mines are very real and very large—including acidic water draining from old tunnels, heavy metals leaching into streams, killing fish and tainting water supplies, open vertical mine shafts, dangerous highwalls, large open pits, waste rock piles that are unsightly and dangerous, and hazardous, dilapidated structures.

And, unfortunately, many of our current environmental laws, designed to mitigate the impact from operating hardrock mines, are of limited effectiveness when applied to abandoned and inactive mines. As a result, many of these old mines go on polluting streams and rivers and potentially risking the health of people who live nearby or downstream.

OBSTACLES TO CLEANUP

Right now there are two serious obstacles to progress. One is a serious lack of funds for cleaning up sites for which no private person or entity can be held liable. The other obstacle is legal. While the Clean Water Act is one of the most effective and important of our environmental laws, as applied it can mean that someone undertaking to clean up an abandoned or inactive mine will be exposed to the same liability that would apply to a party responsible for creating the site's problems in the first place. As a result, would-be "good Samaritans" understandably have been unwilling to volunteer their services to clean up abandoned and inactive mines.

Unless these fiscal and legal obstacles are overcome, often the only route to clean up abandoned mines will be to place them on the Nation's Superfund list. Colorado has experience with that approach, so Coloradans know that while it can be effective it also has shortcomings. For one thing, just being placed on the Superfund list does not guarantee prompt cleanup. The site will have to get in line behind other listed sites and await the availability of financial resources. In addition, as many communities within or near Superfund sites know, listing an area on the Superfund list can create concerns about stigmatizing an area and potentially harming nearby property values.

We need to develop an alternative approach that will mean we are not left only with the options of doing nothing or creating additional Superfund sites—because while in some cases the Superfund approach may make the most sense, in many others there could be a more direct and effective way to remedy the problem.

WESTERN GOVERNORS WANT ACTION

For years, the Governors of our western States have recognized the need for action to address this serious problem. The Western Governors' Association has several times adopted resolutions on the subject. The most recent, adopted in August of 2001, was entitled "Cleaning Up Abandoned Mines" and was proposed by Governor Bill Owens of Colorado along with Governors Guinn of Nevada, Janklow of South Dakota, and Johnson of New Mexico. The bill I am introducing today is based directly on those recommendations by the Western Governors. It addresses both the lack of resources and the liability risks to those doing cleanups.

OUTLINE OF THE BILL

TITLE I. FUNDS FOR CLEANUPS

Title I addresses the lack of resources. It would create a reclamation fund paid for by a modest fee applied to existing hardrock mining operations. The fund would be used by the Secretary of the Interior to assist projects to reclaim and restore lands and waters adversely affected by abandoned or inactive hardrock mines.

A similar method already exists to fund clean up of abandoned coal mines. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides for fees on coal production.

Similarly, my bill provides for fees on mineral production from producing hardrock mines on Federal lands or lands that were Federal before issuance of a mining-law patent. Fees would be paid to the Secretary of the Interior and would be deposited in a new Abandoned Minerals Mine Reclamation Fund in the U.S. Treasury. Money in that fund would earn interest and would be available for reclamation of abandoned hardrock mines. The method of calculating fees is similar to that used by the State of Nevada, which collects production-based fees from mines in that State. Because over the years there have been proposals to establish royalties for hardrock production, in order to provide a greater return to the American people, they would require the Secretary of the Interior to reduce payments under this title so as to offset any royalties hardrock producers may pay in the future. This is intended to avoid possible inequitable treatment of a producer covered by both the royalty and Title I of this bill.

Funds in the new reclamation fund would be available for appropriation for grants to eligible States to complete inventories of abandoned hardrock mine sites, as mentioned above. A State with sites covered by the bill could receive a grant of up to \$2 million annually for this purpose. In addition, money from the fund would be available for cleanup work at eligible sites. To be eligible, a site would have to be within a State subject to operation of the general mining laws that has completed its State-wide inventory. Within those States, eligible sites would be those—(1) where former hardrock-mining activities had permanently ceased as of the date of the bill's enactment; (2) that are not on the National Priorities List under the Superfund law; (3) for which there are no identifiable owners or operators; and (4) that lack sufficient minerals to make further mining, re-mining, or reprocessing of minerals economically feasible. Sites designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 or subject to planned or ongoing response or natural resource damage action under the Superfund law would not be eligible for cleanup funding from the new reclamation fund. The Interior Department could use money from the fund to do cleanup work itself or could authorize use of the money for cleanup work by a holder of one of the new "good Samaritan" permits provided for in Title II of the bill.

TITLE II. PROTECTION FOR "GOOD SAMARITANS"

Title II addresses the threat of long-term liability. To help encourage the efforts of "good Samaritans," the bill would create a new program under the Clean Water Act under which qualifying individuals and entities could obtain permits to conduct cleanups of abandoned or inactive hardrock mines. These permits would give some liability protection to those volunteering to clean up these sites, while also requiring the permit holders to meet certain requirements. The bill specifies who can secure these permits, what would be required by way of a cleanup plan, and the extent of liability exposure. Notably, unlike regular Clean Water Act point-source ("NPDES") permits, these new permits would not require meeting specific standards for specific pollutants and would not impose liabilities for monitoring or long-term maintenance and operations. These permits would terminate upon completion of cleanup, if a regular Clean Water Act permit is issued for the same site, or if a permit holder encounters unforeseen conditions beyond the holder's control.

Together, these two parts of the bill could help us begin to address a problem that has frustrated Federal and State agencies throughout the country and make progress in cleaning up from an unwelcome legacy of our mining history.

DIFFERENCES BETWEEN THIS BILL AND THE PREVIOUS
VERSION

Since the introduction of my original bill in the 107th Congress, I have been working with a variety of people interested in this subject. My staff joined discussions with a group that included representation of the western States through the auspices of the Western Governors' Association, the mining industry (including hardrock mining companies in Colorado and the Colorado and national mining associations), the environmental community, and relevant State and Federal agencies. The discussions were very productive, and led to much progress toward developing consensus

solutions to a variety of concerns. This revised version of the bill reflects those discussions and I wish to express my personal thanks to those who participated. The significant changes in this version of the bill include the following:

TITLE I

Use of existing administrative system to disperse fees. At the request of the States, the bill requires the Secretary of the Interior to use the existing mine cleanup fund disbursement system under the Surface Mining Control and Reclamation Act (SMCRA). This will help facilitate the administration of the fund under the bill, reduced duplication and improve efficiency. For States that do not have a program under SMCRA, the Secretary is authorized to disperse funds in those eligible States as long as those States have a State-authorized abandoned mine cleanup program."

Allocation of funds to the States. The bill specifies that 25 percent of the funds collected by the fee shall go back to the States where such fees originated; 50 percent of the funds collected annually will be expended in eligible States in relation to the extent of mining activity that occurred in those States during the years 1900 to 1980 (that is, from the turn of the last century until enactment of Superfund (more formally, the Comprehensive Environmental Response, Compensation, and Liability Act (CRCLA)); and the balance of the fund will be used elsewhere at the discretion of the Secretary.

Fee Off-set in case a royalty is applied. During the discussions over the bill, the mining industry expressed concerns regarding the fee title provision. They indicated that, as a general matter, the industry is not opposed to helping fund the cleanup of abandoned mines, but they were concerned that in the context of any potential reform of the General Mining Law of 1872, miners may be required to pay a royalty for hardrock minerals extracted from public lands in addition to the fee imposed in this bill and thus subjecting them to paying twice. This bill addresses that concern by providing that a fee collected under this bill would be reduced by an amount equal to any royalty established in the future that is credited to the hardrock reclamation fund.

TITLE II

Delegation to the States. The bill expressly authorizes the EPA to delegate the authority to issue "good Samaritan" reclamation permits to eligible States. This was done at the request of the States.

Cooperating Parties. At the request of mining community representatives, the bill adds new provisions for "cooperating parties" that would be authorized to assist remediating parties with cleanup work under "good Samaritan" permits. These cooperating parties would also enjoy the liability protections afforded to full remediating parties. This will enable the mining industry to employ its expertise and capabilities to assist in the cleanups.

Long-term Protection. The bill requires that cleanup plans include an obligation that the cleanup efforts will be maintained and operated to ensure continued long-term benefits from work accomplished at each site.

Recoverable Value. At the request of many of the parties in the discussions, the bill allows remediating parties to beneficially use any materials found at the site during the cleanup. These materials could include any residual

hardrock minerals that are present at the site. However, any value recouped from any sale of these materials would have to be used to defray the costs of the cleanup or to help cleanup of other abandoned hardrock mines.

I think these changes are improvements that will further facilitate the cleanup of thousands of abandoned hardrock mines in the West.

FAMILY EDUCATION FREEDOM ACT

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 5, 2003

Mr. PAUL. Mr. Speaker, I rise today to introduce the Family Education Freedom Act, a bill to empower millions of working and middle-class Americans to choose a non-public education for their children, as well as making it easier for parents to actively participate in improving public schools. The Family Education Freedom Act accomplishes its goals by allowing American parents a tax credit of up to \$3,000 for the expenses incurred in sending their child to private, public, parochial, other religious school, or for home schooling their children.

The Family Education Freedom Act returns the fundamental principal of a truly free economy to American's education system: what the great economist Ludwig von Mises called "consumer sovereignty". Consumer sovereignty simply means consumers decide who succeeds or fails in the market. Businesses that best satisfy consumer demand will be the most successful. Consumer sovereignty is the means by which the free market maximizes human happiness.

Currently, consumers are less than sovereign in the education "market." Funding decisions are increasingly controlled by the federal government. Because "he who pays the piper calls the tune," public, and even private schools, are paying greater attention to the dictates of federal "educrats" while ignoring the wishes of the parents to an ever-greater degree. As such, the lack of consumer sovereignty in education is destroying parental control of education and replacing it with state control. Loss of control is a key reason why so many of America's parents express dissatisfaction with the educational system.

According to a study by The Polling Company, over 70 percent of all Americans support education tax credits! This is just one of numerous studies and public opinion polls showing that Americans want Congress to get the federal bureaucracy out of the schoolroom and give parents more control over their children's education.

Today, Congress can fulfill the wishes of the American people for greater control over their children's education by simply allowing parents to keep more of their hard-earned money to spend on education rather than force them to send it to Washington to support education programs reflective only of the values and priorities of Congress and the federal bureaucracy.

The \$3,000 tax credit will make a better education affordable for millions of parents. Mr. Speaker, many parents who would choose to send their children to private, religious, or

parochial schools are unable to afford the tuition, in large part because of the enormous tax burden imposed on the American family by Washington.

The Family Education Freedom Act also benefits parents who choose to send their children to public schools. Parents of children in public schools may use this credit to help improve their local schools by helping finance the purchase of educational tools such as computers or to ensure their local schools can offer enriching extracurricular activities such as music programs. Parents of public school students may also wish to use the credit to pay for special services, such as tutoring, for their children.

Increasing parental control of education is superior to funneling more federal tax dollars, followed by greater federal control, into the schools. According to a Manhattan Institute study of the effects of state policies promoting parental control over education, a minimal increase in parental control boosts students' average SAT verbal score by 21 points and students' SAT math score by 22 points! The Manhattan Institute study also found that increasing parental control of education is the best way to improve student performance on the National Assessment of Education Progress (NAEP) tests.

Clearly, enactment of the Family Education Freedom Act is the best thing this Congress could do to improve public education. Furthermore, a greater reliance on parental expenditures rather than government tax dollars will help make the public schools into true community schools that reflect the wishes of parents and the interests of the students.

The Family Education Freedom Act will also aid those parents who choose to educate their children at home. Home schooling has become an increasingly popular, and successful, method of educating children. Home schooled children out-perform their public school peers by 30 to 37 percentile points across all subjects on nationally standardized achievement exams. Home schooling parents spend thousands of dollars annually, in addition to the wages forgone by the spouse who forgoes outside employment, in order to educate their children in the loving environment of the home.

Ultimately, Mr. Speaker, this bill is about freedom. Parental control of child rearing, especially education, is one of the bulwarks of liberty. No nation can remain free when the state has greater influence over the knowledge and values transmitted to children than the family.

By moving to restore the primacy of parents to education, the Family Education Freedom Act will not only improve America's education, it will restore a parent's right to choose how best to educate one's own child, a fundamental freedom that has been eroded by the increase in federal education expenditures and the corresponding decrease in the ability of parents to provide for their children's education out of their own pockets. I call on all my colleagues to join me in allowing parents to devote more of their resources to their children's education and less to feed the wasteful Washington bureaucracy by supporting the Family Education Freedom Act.