

**H.R. 4817, A BILL TO AMEND THE SURFACE
MINING CONTROL AND RECLAMATION
ACT OF 1977 TO CLARIFY THAT UNCER-
TIFIED STATES AND INDIAN TRIBES
HAVE THE AUTHORITY TO USE CERTAIN
PAYMENTS FOR CERTAIN NON-COAL
RECLAMATION PROJECTS.**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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CLARIFY THAT UNCERTIFIED STATES AND
INDIAN TRIBES HAVE THE AUTHORITY TO
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**Thursday, September 23, 2010
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1334, Longworth House Office Building, Hon. Jim Costa [Chairman of the Subcommittee] presiding.

Present: Representatives Costa, Heinrich, and Lamborn.

**STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. COSTA. The Subcommittee on Energy and Mineral Resources will now come to order. Our subject matter this morning is H.R. 4817, a bill that would amend the Surface Mining Control and Reclamation Act of 1977 and to clarify that uncertified states and Indian tribes have authority to use certain payments for certain non-coal reclamation projects. This is an issue that has been around for awhile. It affects many states, particularly in the West, as we try to deal with reclamation efforts.

There is, I think, bipartisan support to try to make the changes that are reflected in this legislation. It is not the first time such legislation has been introduced. What the Chair will do this morning is first hear a fellow colleague, a witness, Congressman Teague from New Mexico, who will speak on the measure that has been introduced, and then we have a panel, and we will follow the same process that we always do with both the first witness and the other panel members, five minutes for comments, and then we will follow up with questions or comments by members of the Subcommittee.

Before we begin with our first witness, our colleague, who we are pleased to have here, I would be remiss if I didn't appropriately recognize two people that are no longer going to be with us. I don't

know whether or not this is the last Subcommittee hearing that we will have in this Congress. It quite possibly could be, and the fact is that all the members of this Subcommittee, all the members of the Congress, work very hard, but we work very hard with our staff, and the staff of the committees and subcommittees really, I think, make up the heart and soul of any legislative body.

Two individuals here that I have had the pleasure to work with since I came to Congress have done just a tremendous job in terms of their passion, in terms of their hard work, in terms of their tenacity for detail and, probably most importantly, I guess sometimes is their propensity to put up with people like myself. I am talking about Members of Congress. It is clearly important that we recognize Deborah Lanzone, who sent out a notice a few weeks ago that she was going to make this her swan song.

I guess, Deborah, I wore out your patience, but the fact is you have worked for a number of Congresses on this Committee. You have also worked in previous administrations in the Department of the Interior. I know how much you care about good public policy. I know how focused you are in trying to work in a bipartisan manner. I know that you have always, always tried to put forth good public policy in an objective way. I have really appreciated that hard work even when, on occasion, we have disagreed; and I have learned and I have grown as a result of your hard work and your input. I know other members of the Subcommittee and the full Committee have as well.

Wendy, you too are departing. Deborah Lanzone and Wendy Van Asselt are part of a team that has allowed this Chair and this Subcommittee to work at a level that I think reflects the best that we have in Congress, so Steve, I don't know what we are going to do without these two people when they are gone, but we are in trouble, not that any of us are replaceable. The fact is, Wendy and Deborah, on behalf of members of the Subcommittee, I want to thank you for a job well done.

I want to thank you for always being there for us, and on behalf of the Subcommittee, I want to wish both of you the very best, you and your families and friends, as you pursue future endeavors. I just ask that you don't forget us, that you come by and you continue to bless us with your goodwill and your hard work. I wish you every success in your future endeavors, clearly, and I will defer to the Ranking Member here at this time.

Mr. LAMBORN. Mr. Chairman, I want to, before I say anything else, echo your remarks about the gratitude of the members of this Committee for the service of Ms. Lanzone. When it is done well, many Americans don't know the service given by the staff here on Capitol Hill. The personnel and Committee staff often work long hours with little of the recognition that we receive as Members for their hard work. I know that because of her tenure on the Hill and the challenges this Committee has faced over the last year, that she has served your members and this Committee well.

In closing, I would like to share one quick story. On Inauguration morning, before having coffee at the White House, First Lady Michelle Obama handed Laura Bush a present. Inside was a leather-bound journal inscribed with a quote from Louis L'Amour, the great western writer, and the quote said, "There will come a

time when you believe everything is finished, yet that will be the beginning,” so I would like to extend thanks to her for her service on behalf of all the Republican members of the Committee, and I wish her the very best on her new beginning.

[Applause.]

Mr. LAMBORN. And I would like to thank Wendy for all of her hard work for this Committee and wish her the best of luck in her new adventures in Seattle, Washington.

Mr. COSTA. Thank you, Ranking Member Lamborn, for those kind words. Deborah, Wendy, we thank you very much. If Jim Zoia hadn't been in your way, who knows what—I am sorry, Jim.

[Laughter.]

Mr. COSTA. We do really appreciate the good work that Deborah and Wendy have done, and we are going to miss you. That is for sure, so thank you so very much. Doug and I don't have a gold watch to give, but if we did, it is there in spirit and heart and clearly we know you are going to continue to do good work. Thank you so much really.

Let me begin now with the opening statement, and then the Ranking Member will make his opening statement, and then we will get to the order of the day with Mr. Teague's comments on the measure.

As I said at the outset, we are here about an important measure that involves public health and safety, and that is the cleanup of abandoned mines. Mr. Teague introduced this measure with Mr. Luján and Mr. Heinrich, who are part of the Subcommittee. Mr. Teague will explain the bill. Let me make a few remarks quickly. This isn't the first time that the Subcommittee has examined the problems with abandoned mines. We held hearings here in Washington and in Sacramento within the last several years. A former colleague of ours had a bill that addressed this.

In 2008, the Government Accountability Office estimated that there are across the country 161,000 abandoned hard rock mines in the West. In California, we have about 40,000 of them. I mean, it goes all the way back to the gold rush, of course, and the challenge we have is that there aren't a lot of resources to clean up these mines. That is the bottom line, and that is why funds were provided for states and Indian tribes by the Department of the Interior's Office of Surface Mining and Reclamation Enforcement that have been important, but like a lot of efforts, it has not been enough.

The Office of Surface Mining, under the amendments of the Surface Mining Control and Reclamation Act of 1977, can provide grants and clean up sites for hard rock sites as well as coal mining sites. Historically, the Office of Surface Mining has provided more than \$3 billion since that time to clean up environmental hazards that have affected over 300,000 acres. Eleven states and tribes have used roughly \$200 million of those funds to clean up hard rock sites across the country.

However, in recent years, the Department of the Interior policies have restricted the use of some of the abandoned mine land monies asserting that they need to be directed only for coal site reclamation. I will not argue that cleaning up those coal site mines is important, but we are trying to get some fairness. We are trying to

get some equity here. H.R. 4817 would ensure that uncertified states can use all of the grants and payments they receive for either coal site reclamation or to clean up hazard sites for non-coal sites.

This bill doesn't change or increase the amount of funding distributed to states. That remains the same were this measure to become law. I think the Subcommittee has consistently heard testimony that one of the most important things we can do to protect the public from abandoned mines is to be smart about how we prioritize the cleanup. That is one of the things I have argued about in California. While we have 40,000 sites in California, they don't all pose the same hazard, and we need to do a better job in prioritizing that.

Some obviously are far more hazardous than others, and since we don't have enough money to do all the cleanup, it is just common sense, as my mother used to say, that we prioritize, that we get the best bang for our dollar, and I think that is what this bill is trying to do. I look forward to hearing the testimony from our witnesses, Mr. Teague, and then the second panel. With that, I will defer to the Ranking Member, Mr. Lamborn from Colorado, for any statement he may have.

[The prepared statement of Chairman Costa follows:]

**Statement of The Honorable Jim Costa, Chairman,
Subcommittee on Energy and Mineral Resources**

Today we will consider a bill that addresses an important public health and safety issue: the cleanup of abandoned mines. My colleague, Mr. Teague, introduced H.R. 4817 with Mr. Lujan and Mr. Heinrich; I'll let Mr. Teague explain the bill, including its importance to his fine state of New Mexico. However, I do want to make a few remarks, drawing on my experience chairing this Subcommittee's examination of abandoned mine problems at hearings here in Washington and in Sacramento. In 2008, the Government Accountability Office estimated that there are at least 161,000 abandoned hardrock mines in the West. California alone has 40,000 sites that threaten public health and safety. There are very few sources of funding for the cleanup of those dangerous hardrock mines. That's why the funds provided to States and Indian tribes by the Department of the Interior's Office of Surface Mining Reclamation and Enforcement have been so important. The Office of Surface Mining, under amendments to the Surface Mining Control and Reclamation Act of 1977, can provide grants to clean up sites used for hardrock sites as well as coal mining sites. Historically, the Office of Surface Mining has provided more than \$3 billion to eliminate safety and environmental hazards on more than 300,000 acres. 11 states and several tribes have used roughly \$200 million of those funds to clean up hardrock sites. However, in recent years, Department of Interior policies have restricted use of some Abandoned Mine Land monies, asserting they must be used only for coal site reclamation. H.R. 4817 would ensure that uncertified states can use all the AML grants and payments they receive for either coal site reclamation or to clean up hazardous non-coal sites. This bill does not change or increase the amount of funding distributed to the States. This Subcommittee has consistently heard testimony that one of the most important things we can do to protect the public from abandoned mines is to be smart about prioritizing sites for cleanup, and to direct limited resources to those places of greatest need—regardless of what mineral was mined at the site. I think that's what this bill is trying to do. That seems like common sense. I look forward to hearing from our witnesses on the details of this bill.

**STATEMENT OF HON. DOUG LAMBORN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. Thank you, Mr. Chairman, and I want to thank you for holding this hearing today. Before we focus on today's hear-

ing, I would like to take just a moment to raise a concern about the erosion of this Committee's jurisdiction. As you know, Mr. Chairman, this Subcommittee holds jurisdiction over the nation's energy and mineral resources and the majority of the programs under the United States Geological Survey. Today, the Science and Technology Committee will be marking up legislation addressing the serious issue of rare earth mineral availability, manufacture of the products utilizing rare earth minerals, and fostering domestic research into new uses for rare earth minerals.

Unfortunately, this Committee hasn't had a chance to address this issue during this Congress. However, the fact that we haven't addressed this issue doesn't mean that other committees have free rein to abscond with our areas of jurisdiction. I am concerned that the Science Committee bill being debated today establishes within the Department of Energy a new center whose duties are clearly duplicative of the operations of the U.S. Geological Survey.

I would hope that before the Science Committee bill reaches the House Floor that this Committee will assert its jurisdiction and have an opportunity to examine this duplication, direct the valuable resources of the American people to the agencies with real expertise and protect the jurisdiction of this Committee. Now, that issue stated, today's hearing will examine H.R. 4817 introduced by our colleague, Representative Teague of New Mexico.

This bill clarifies the original Congressional intent of Section 409 of the Surface Mining Control and Reclamation Act that allows states and tribes to use SMCRA AML funds to address high priority coal and non-coal AML sites. The Department of the Interior reinterpreted the intent of Congress for allowable uses of the Section 409 permits through a Solicitor's Opinion and their Final Rule for the 2006 amendments to SMCRA to prohibit the use of Section 409 and prior balance replacement funds for non-coal projects.

That is why I wish that this Committee could have addressed this legislation in the 110th Congress when it was H.R. 5661 introduced by the former Ranking Member of this Committee, Representative Steve Pearce of New Mexico. In some ways, I wish this Committee would have addressed broader, responsible mining law reform for hard rock cleanup like H.R. 3201, which I introduced to address mining law reform, or H.R. 3203, which I introduced to provide Good Samaritan protections for the cleanup of abandoned mines.

The Good Samaritan legislation, in particular, would have provided an incentive for private companies, municipalities and non-profit organizations to work on the cleanup of abandoned hard rock mines creating private-sector jobs while improving the quality of the environment and addressing safety issues associated with abandoned mine lands. Yet, it wasn't heard before this Committee. While this legislation before the Committee today may be a piece of the puzzle in addressing our non-coal abandoned mine land issues in the West, it also gives a reminder of the commitment of this Administration to stripping the funding from certified states and tribes.

I know we will hear in testimony again today that this Administration believes it is more important to eliminate the funding to the certified states rather than honor the hard-fought compromise

reached in 2006 that requires the Federal Government to send the certified states their 50 percent share of the AML fee levied on coal production. It is the states' money, and they should be able to use it as they see fit. I will close, Mr. Chairman, by saying that this is likely our last hearing of this Congress. I want to thank you for your leadership over the last two years.

Although we have had a few disagreements, I have enjoyed working together in addressing one of the most challenging years in oil and gas policy in a generation. Once again, I want to thank you for holding this hearing. I welcome our witnesses, and I look forward to their testimony. Mr. Chairman, I yield back.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, Ranking Republican,
Subcommittee on Energy and Mineral Resources**

Thank you, Mr. Chairman; I want to thank you for holding this hearing today.

RARE EARTH'S

Before we focus on today's hearing I would like to take a second to raise a concern about the erosion of this Committee's jurisdiction. As you know Mr. Chairman, this Subcommittee holds jurisdiction over the Nation's energy and mineral resources and the majority of the programs under the United States Geological Survey. Today, the Science and Technology Committee will be marking up legislation addressing the serious issue of rare earth mineral availability, manufacture of the products utilizing rare earth minerals and fostering domestic research into new uses of rare earth minerals. Unfortunately, this committee hasn't had a chance to address this issue during this Congress, however, the fact that we haven't addressed the issue doesn't mean that other Committee's have free reign to abscond with our areas of jurisdiction.

I am concerned that the Science Committee bill being debated today establishes within the Department of Energy a new Center whose duties are clearly duplicative of the operations of the U.S. Geological Survey. I would hope that before the Science Committee bill reaches the House floor this committee will assert their jurisdiction and have an opportunity to examine this duplication, direct the valuable resources of the American people to the agencies with real expertise, and protect the jurisdiction of this Committee.

LEGISLATION HISTORY

That issue settled, today's hearing will examine H.R. 4817, introduced by our colleague Rep. Teague of New Mexico. This bill clarifies the original Congressional intent of section 409 of the Surface Mining Control and Reclamation Act (SMCRA) that allows states and tribes to use SMCRA AML funds to address high priority coal and non-coal AML sites. DOI reinterpreted the intent of Congress for allowable uses of the section 409 permits through a Solicitor's Opinion and their final Rule for the 2006 amendments to SMCRA to prohibit the use of section 409 and "prior balance replacement" funds for non-coal projects, that is why I wish this Committee could have addressed this legislation in the 110th Congress when it was H.R. 5661, introduced by the former Ranking Member of this Committee, Rep. Steve Pearce of New Mexico.

In some ways, I wish this Committee would have addressed broader responsible mining law reform for hard rock clean up like H.R. 3201 which I introduced to address mining law reform. Or H.R. 3203, which I introduced, to provide "Good Samaritan" protections for the cleanup of abandoned mines. The good sam legislation in particular would have provided an incentive for private companies, municipalities and non-profit organizations to work on the clean-up of abandoned hard rock mines creating private sector jobs while improving the quality of the environment and addressing safety issues associated with abandoned mined lands and yet it wasn't heard before this committee.

While this legislation before the Committee today may be a piece of the puzzle in addressing our non-coal abandoned mine land issues in the west. It also gives us a reminder of the commitment of this administration to stripping the funding away from certified states and tribes. I know we will hear in testimony again today that this administration believes it is more important to eliminate the funding to the certified states rather than honor the hard fought compromise reached in 2006 that requires the federal government to send the certified states their 50 percent

share of the AML fee levied on coal production. It is the states' money and they should be able to use it as they see fit..

CLOSE

I will close Mr. Chairman by saying that as this is likely our last hearing of this Congress, I want to thank you for your leadership over the last two years although we have had our disagreements, I have enjoyed working together in addressing one of the most challenging years in oil and gas policy in a generation.

Once again, I want to thank you for holding this hearing, I welcome our witnesses and I look forward to hearing their testimony. Mr. Chairman I yield back.

Mr. COSTA. Thank you very much, gentleman from Colorado. I appreciate your comments and the good work that you have done as a member of the Subcommittee, the Ranking Member and the efforts that you have made toward bipartisan cooperation. You are correct. It has been a difficult year in our country for resource-related issues. Let us begin now with our first witness. We would like to recognize The Honorable Harry Teague from the great State of New Mexico, who is the sponsor of this legislation, for his testimony.

The Chairman is somewhat flexible, but we would still like to apply the same rules, Congressman Teague, to your five-minute statement, and then we will go to any comments or questions after that. You know the rules. Thank you.

STATEMENT OF HON. HARRY TEAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. TEAGUE. Thank you. Thank you, Chairman Costa, and members of the Committee for holding this important hearing today on H.R. 4817, legislation to make Surface Mining Controls and Reclamation Act, or SMCRA, funding eligible for the remediation of old uranium mines and mills in New Mexico and other states. I am proud to introduce this bill with Senator Jeff Bingaman and my New Mexico House colleagues, Congressmen Luján and Heinrich, both members of this Committee.

As you know, Department of the Interior regulations affected after passage of the 2006 amendments to SMCRA, currently restrict New Mexico from using the SMCRA funding for uranium site cleanup. According to the current interpretation of the law, SMCRA is only available for coal site cleanup in New Mexico. New Mexico disagrees with this interpretation and would like to use the SMCRA funds for uranium cleanup, which is a bigger need in our state.

Despite the efforts of our delegation, the Department of the Interior has refused to allow for more flexibility in the use of SMCRA funds for states that aren't certified as having completed coal site cleanup. Here are the facts about my bill: New Mexico currently has \$14.5 million in SMCRA funds available; 137 uranium sites in New Mexico need remediation; the cleanup of the sites would create on average 10 jobs per site. This is a common sense win-win bill for my State of New Mexico, would address the legacy of contamination at sites around New Mexico, and would create over 1,000 good jobs in rural New Mexico doing it.

Passing H.R. 4817 will help people in New Mexico, in Cibola County and McKinley County, and across the state. That is why I am proud to join with the delegation to bring this bill forward. It

is the right thing to do for the people that we represent. My bill is supported by the New Mexico State Legislature, New Mexico Mining Association, the City of Grants, McKinley County Chamber of Commerce, the Association of Commerce and Energy, the Village of Milan and McKinley County, among many others.

I also look forward to hearing the testimony of my friend, Governor Antonio of the Laguna Pueblo. I thank the Committee for their attention and urge them to bring this legislation to the House Floor for a vote as soon as possible. Thank you.

[The prepared statement of Mr. Teague follows:]

**Statement of The Honorable Harry Teague, a Representative in Congress
from the State of New Mexico**

Thank you Chairman Rahall, Chairman Costa, and members of the committee for holding this important hearing on H.R. 4817, legislation to make Surface Mining Control and Reclamation Act, or SMCRA, funding eligible for the remediation of old uranium mines and mills in New Mexico and other states. I was proud to introduce this bill with Senator Jeff Bingaman and my New Mexico House colleagues, Congressmen Luján and Heinrich, both members of this committee.

As you know, Department of Interior regulations affected after passage of the 2006 amendments to SMCRA currently restrict New Mexico from using the SMCRA funding for uranium site clean-up. According to current interpretation of the law, SMCRA is only available for coal site clean-up in New Mexico.

New Mexico disagrees with this interpretation and would like to use the SMCRA funds for uranium clean up, which is a bigger need in our state. Despite the efforts of our delegation, the Department of Interior has refused to allow for more flexibility in the use of SMCRA funds for states that aren't certified as having completed coal site cleanup.

Here are the facts about my bill.

- New Mexico currently has \$14.5 million in SMCRA funds available
- 137 uranium sites in New Mexico need remediation
- The cleanup of the sites would create on-average 10 jobs per site.

This is a common-sense, win-win bill for my state of New Mexico. We address the legacy of contamination at sites around New Mexico. And we create over 1,000 good jobs in rural New Mexico doing it.

Passing H.R. 4817 will help people in New Mexico, in Cibola County and McKinley County and across the state. That's why I'm proud to join with the delegation bring this bill forward: It's the right thing to do for the people we represent.

My bill is supported by the New Mexico State Legislature, the New Mexico Mining Association, the City of Grants, the McKinley County Chamber of Commerce, the Association of Commerce and Industry, the Village of Milan, and McKinley County, among many others.

I also look forward to hearing the testimony of my friend Governor Antonio of the Laguna Pueblo.

I thank the committee for their attention and urge them to bring this legislation to the House floor for a vote as soon as possible.

Mr. COSTA. Very impressive, Congressman Teague. I was obviously going to give you some flexibility within the five-minute rule, but I appreciate your concise testimony and to the point. Let me just ask a general question and some other members have others. Of course, we have our other panel to get to. In New Mexico, as you stated, there is a particular focus, and I know Congressman Pearce at the time had informed me of that as well with uranium.

Uranium was a very important and still is a vital mineral to our defense and energy needs in this country, and New Mexico has a large uranium source in that. In California, as I noted, we have 40,000 abandoned mines, a lot go back to the gold rush era, but they vary. Has New Mexico taken, and with your delegation and Senator Bingaman, an effort to prioritize how that cleanup is?

I guess I am trying to understand because a lot of it was a part of our energy but also our strategic needs for national defense, where the role and the responsibility of the Federal Government is on cleanup. I mean, is there a nexus there? Is it all just in the hands of New Mexico, or are some of these cleanup sites still the responsibility of the Federal Government? I guess I am trying to understand how that prioritization thing has been developed within your state.

Mr. TEAGUE. No, sir, Mr. Chairman. I think you stated it very well. I mean, I know that with California having 40,000 to the 137 that we have don't seem like very many, but it really is a big problem in those 137 sites, but also as you said, each site poses a different level of danger, and there has been some prioritizing of what needs to be done where. I personally think that for the energy needs of our country going forward that we are going to need the uranium to create electricity with nuclear energy.

I think before we can move forward in these areas with that, I think we are going to have to separate the legacy problems that we have at these 137 sites from any new business that we are trying to do in the future, but it is extremely important, and I think it is the U.S. government's responsibility to clean these 137 sites.

Mr. COSTA. So you are saying then in all 137 cases in New Mexico, you believe it is the Federal Government's responsibility to pursue the cleanup?

Mr. TEAGUE. I believe that these should offer the assistance all the way through, and of the 137, as you said about your 40,000, some of them don't pose that much risk. They are going to be minor to clean up, but I do think that we need the support and the help of the Federal Government to clean them up, yes, sir.

Mr. COSTA. I want to defer to the gentleman here first. Did you have a point of order?

Mr. HEINRICH. I just wanted to ask to return to that when he is done with his testimony because I want to add a few things to what the Congressman from southern New Mexico said.

Mr. COSTA. Sure. OK. I will defer to the Ranking Member here, and then we will go through the regular order. Mr. Lamborn?

Mr. LAMBORN. Thank you, Mr. Chairman. This won't take long. You have done a good job of explaining the bill, so I don't have any questions at this point, and I will look forward to further testimony through the rest of the morning. Thank you for being here.

Mr. TEAGUE. Thank you.

Mr. COSTA. Thank you. The gentleman from New Mexico, a co-sponsor of the measure, Mr. Heinrich?

Mr. HEINRICH. Chairman, first I want to thank my colleague for his leadership on this. This has been something that the State obviously has been working on for a long time, members of the Legislature, people like Congressman Teague and his predecessor, but that whole issue of who is responsible I think is something that has never been adequately addressed in a way that is meaningful for the communities in these areas.

There are a number of different kinds of mines. There are those where the uranium was mined directly for the government as part of the Cold War effort.

Mr. COSTA. Right. And that was the point that my question was to, and I was trying to get some clarity in those instances.

Mr. HEINRICH. Of those, there is typically a direct line of DOD responsibility. However, there is typically no money for the cleanup even though the responsibility is legally there.

Mr. COSTA. And there is no debate on that point that it is the responsibility of the Department of Defense for cleanup purposes?

Mr. HEINRICH. I believe that is correct. Then, there are other mine sites where the uranium was mined for the Cold War efforts, but mined by a private company and then sold to the government. In those cases, the legal responsibility under current law does not necessarily fall on the U.S. Government even though the mining operations were for the purpose of supporting our strategic arms stockpile, and then there are private mine sites where the uranium was mined and then sold to the private market for the purpose of power generation, so there are sort of three different categories there.

Mr. COSTA. Categories.

Mr. HEINRICH. And there are typically in some cases of the third, there are responsible parties who the state is pursuing to clean those things up. The difficulty is oftentimes in that second category where there were private companies at the time doing the mining, oftentimes they are long gone, but the impacts to the communities are still there, and I think that is why it is so important to take this approach of allowing the SMCRA funds to be able to be used at the discretion of the states on higher-priority sites where there may be no legal responsible party that can be pursued at this time.

Mr. COSTA. Are you familiar, I guess it may be a question to our second panel, but of the efforts of the prioritization that has taken place in those three categories based upon risk assessment, risk management?

Mr. HEINRICH. I know that the Environment Department monitors and prioritizes hard rock sites across the state. They do that oftentimes on the basis of both public health and the exposure to particularly ground and surface water and that there are a handful of mine sites, a few hard rock in the northern part of the state that are prioritized quite high, but many of their high priority sites have to do with uranium because of the potential or real ground water contamination and the potential for public health issues with the wells that are exposed to that groundwater contamination.

Mr. COSTA. Mr. Teague, anything you would like to add?

Mr. TEAGUE. Yes, a couple of things. The State of New Mexico is in the process of prioritizing all of them and ranking them in their need, but they don't have that completed yet, but the New Mexico Environmental Department is in the process of doing that. One other thing I would like to say, and I think everybody knows because my colleague, Congressman Heinrich, did a good job of explaining the different ones, but really what we have is we have a situation where this uranium was needed for the United States to win the Cold War with the Soviet Union and Cibola and McKinley Counties of New Mexico made some pretty good sacrifices to help our country.

I don't think that we should ask them to continue to sacrifice. We should clean their sites and their water up.

Mr. COSTA. Very good. All right. You have done a good job on your explanation of the bill. The members of the Committee have had a chance to make comments, and let us proceed now with the next panel. Hearing no opposition, we will grant Mr. Teague the opportunity to sit in here with the Subcommittee if you choose to do that. All right. Hearing no opposition, you can come up here and grab a seat.

Our second panel, we have three witnesses: Glenda Owens, the Deputy Director of the Office of Surface Mining and Reclamation and Enforcement; Ms. Loretta Pineda, the Director of the Division of Reclamation and Mining and Safety of Colorado Department of Natural Resources from Congressman Lamborn's state; and The Honorable John Antonio, Governor of the Pueblo Laguna, is that correct? Please, three witnesses, come forward for your testimony.

I suspect all of you in various ways have testified before. For those of you who are not familiar with the rules here of the Subcommittee and Natural Resources I guess in front of the center witness there is a little box there that has three lights on it, and when I recognize you, it will be green, and it will remain green for four minutes, and then on the fifth minute, it will turn yellow, and at the end of that minute, it will turn red, and then your chair disappears.

[Laughter.]

Mr. COSTA. No, we don't do that, but I like to say that just to kind of get you relaxed, but we do appreciate, witnesses, if you have written testimony, and it exceeds five minutes, please for the sake of the Subcommittee and the staff, we can submit that and summarize your comments within the five minutes, and if your written statement is within five minutes, and you feel more comfortable reading it, that is fine as well, so we would like to begin with our first witness that the Chair now recognizes Ms. Glenda Owens for your testimony, and would you please begin? Is your microphone on there?

STATEMENT OF GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Ms. OWENS. Is that better?

Mr. COSTA. Yes, that is better. You might bring it a little closer to you. We want to hear you.

Ms. OWENS. Good morning, Chairman Costa, and members of the Subcommittee, and thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement regarding H.R. 4817. We look forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977. While we share the concern about non-coal abandoned mine sites, we cannot support H.R. 4817 because it is inconsistent with the Administration's goal of ensuring expeditious coal reclamation of high priority abandoned coal sites before the reclamation fee terminates in 2021.

Through SMCRA, Congress established OSM for two basic purposes: First, to ensure that the nation's coal mines operate in a manner that protects citizens and the environment during mining and to restore the land to beneficial use following mining; second, to implement an abandoned mine land program to address the haz-

ards and environmental degradation created by two centuries of weakly regulated coal mining that occurred prior to SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund. The money has been used primarily to reclaim lands and water adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Since 2006, Section 411[h][1] of SMCRA has precluded uncertified states and tribes from using funds that they receive under that section for non-coal reclamation.

H.R. 4817 would amend SMCRA to allow uncertified states and tribes to use funds received under Section 411[h][1] for reclamation activities on non-coal mine sites. The President's proposed Fiscal Year 2011 budget in addition to reducing spending also proposes to limit the use of AML monies to high-priority coal reclamation projects. The Department, therefore, cannot support H.R. 4817 because it is inconsistent with the Fiscal Year 2011 budget request.

While we recognize the dangers that abandoned hard rock mines pose, the current challenging economic conditions, coupled with this Administration's commitment to fiscal responsibility heighten the need for AML funds to be focused on the core objective of high-priority coal reclamation projects. However, we share the concern about non-coal abandoned mines sites, and OSM would be happy to work with Congress and this Committee to explore other options to address abandoned non-coal mine reclamation problems.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with you to ensure that the nation's abandoned mine lands are adequately reclaimed.

[The prepared statement of Ms. Owens follows:]

Statement of Glenda Owens, Deputy Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior

Mr. Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding H.R. 4817. I look forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

H.R. 4817 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation; while the President's Budget proposed to limit SMCRA payments to high priority coal sites. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is inconsistent with the President's Budget.

The FY 2011 President's Budget includes a proposal to focus AML funds on the high-priority coal reclamation sites in order to ensure that the most hazardous issues can be addressed before the AML fee expires. In addition to terminating unrestricted payments to certified states and tribes, the proposal will require all non-certified states to use their funding only for high priority coal reclamation projects.

Background

Through SMCRA, Congress established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in

the Abandoned Mine Reclamation Fund (Fund). OSM, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since FY1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, OSM's fee collection authority would have expired August 3, 1992. However, Congress extended the fees and fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990. The Energy Policy Act of 1992 extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

The AML reclamation program was established in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices." The second priority was "the protection of public health, safety, and general welfare from adverse effects of coal mining practices." The third priority was "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices."

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or Indian tribe with a federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary's share to "historic coal" funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid 1990's.

Last, SMCRA required OSM to allocate 40% to "Federal expense" funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund OSM operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Indian tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general wel-

fare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe.

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006. Public Law 109-432. The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. One change extended OSM's reclamation fee collection authority through September 30, 2021. The statutory fee rates were reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts which would have been distributed as State share for fee collections for certified States are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation is further increased by the amount that previously was allocated to RAMP.

Since 2006, the Department has interpreted the language of SMCRA section 411(h) to require that OSM use grants to provide funds to eligible States and Indian tribes and to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation.

H.R. 4817

Under SMCRA, states can use some of the AML funds they receive for non-coal reclamation. H.R. 4817 would amend SMCRA to allow noncertified states and tribes to use their mandatory funds received under Section 411(h)(1) from their unappropriated AML Fund balance for reclamation activities on non-coal mine sites. Noncertified states and tribes can already use the funds they receive from the "state share" and "historic coal" formulas for non-coal reclamation.

When Secretary Salazar appeared before the Committee on Energy and Natural Resources to testify about the FY 2011 President's Budget for the Department of the Interior, he noted that in developing a balanced budget request for FY 2011, tough choices had to be made. The budget, in addition to eliminating unrestricted payments to certified states, also proposes limiting the use of AML payments to priority coal reclamation projects. The Department cannot support H.R. 4817 because it is inconsistent with the Fiscal Year 2011 budget.

In an effort to focus the AML program on coal reclamation before the reclamation fee terminates, the President's FY 2011 budget proposes to restrict the use of AML funds by noncertified states to high priority coal reclamation. Because H.R. 4817 is inconsistent with the Administration's goal of ensuring expeditious coal reclamation, we cannot support this bill.

While we recognize the dangers that abandoned hard rock mines can pose, AML funding needs to be focused on the highest priority problems Congress originally identified in 1977. The challenging economic conditions, coupled with this Administration's commitment to fiscal responsibility, only heighten the need for AML funds to be devoted to the highest priority coal problems. We note that the administration has continued to invest in AML, both through the Bureau of Land Management and National Park Service American Recovery and Reinvestment Act of 2009 funding and the FY 2011 President's Budget to address hardrock mine reclamation on Federal Lands.

We share the concern about non-coal abandoned mine sites and would be happy to share the expertise gained administering SMCRA and work with the Congress and this committee as we seek to address abandoned non-coal mine problems.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with the Subcommittee to ensure that the Nation's abandoned mine lands are adequately reclaimed.

Mr. COSTA. Well, thank you very much. I understand I guess about the part about consistency with this next year's budget vis-à-vis cleanup. In the several years I have tried to understand the 1977 act, I am still trying to understand the consistency in SMCRA. I hate these acronyms.

Ms. OWENS. That is a challenge.

Mr. COSTA. Yes, because I think what is consistent about SMCRA is its inconsistency, but that is an editorial comment on my part. Our next witness is Ms. Loretta Pineda, who is the Director of the Division of Reclamation of Mining and Safety in Colorado Department of Natural Resources, and we are looking forward to hearing your testimony on this important legislation. Thank you, Ms. Pineda.

STATEMENT OF LORETTA PINEDA, DIRECTOR, DIVISION OF RECLAMATION, MINING AND SAFETY, COLORADO DEPARTMENT OF NATURAL RESOURCES

Ms. PINEDA. Thank you. Good morning. My name is Loretta Pineda.

Mr. COSTA. I am sorry. Pineda, right?

Ms. PINEDA. Yes, thank you.

Mr. COSTA. I apologize. Pineda?

Ms. PINEDA. Pineda.

Mr. COSTA. Mucho gusto.

Ms. PINEDA. Don't take up some of my minutes here.

[Laughter.]

Mr. COSTA. No, no, no. The Chairman is very good about that.

Ms. PINEDA. OK. Thank you.

Mr. COSTA. It is on my time.

Ms. PINEDA. OK.

Mr. COSTA. Ms. Pineda.

Ms. PINEDA. Thank you. I serve as the Director of the Division of Reclamation Mining and Safety within the Colorado Department of Natural Resources. I am appearing today on behalf of the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs. I appreciate the opportunity to appear before the Subcommittee today to present our views on H.R. 4817. The 30 states and tribes represented by these two organizations strongly support this important amendment to Title IV of the Surface Mining Control and Reclamation Act.

Mr. Chairman, nationally, abandoned mine lands continue to have significant adverse effects on people and the environment. As state and tribal governments, we continue to aggressively pursue programs and partnerships to address hard rock AML programs through a variety of state and Federal funding sources. For states with active coal mining operations within their borders, the most consistent source of AML funding has been Title IV grants under SMCRA. Section 409 of the Act allows the states to use these grants at high-priority non-coal AML sites, and that work is generally limited to safeguarding hazards to public safety, such as closing mine openings.

In December 2006, Congress amended Title IV of SMCRA and, among other things, distributed certain AML funds to states in an amount equal to those previously allocated under SMCRA but never appropriated. However, while Section 409 was not changed or amended in any way, the Interior Department through both a Solicitor's Opinion and Final Rule has now interpreted SMCRA to prohibit this enhanced funding from being used for non-coal projects. This is a significant blow to states such as New Mexico,

Utah and Colorado that have previously used SMCRA AML funds to address many of the more serious hard rock AML problems.

At stake for these three states is about \$9 million annually, and without access to these funds, New Mexico will have to forego an average of 200 non-coal AML closures each year. Colorado will have to postpone some 350 closures, and Utah will have to shelve upwards of 500 closures. H.R. 4817 would remedy the Interior Department's unfortunate interpretation of the 2006 amendment, and as such, we strongly support the bill. That interpretation not only disregards the fact that Section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by OSM during the consideration of the legislation that non-coal could continue to be undertaken with these AML funds.

The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to lower-priority coal sites while leaving dangerous non-coal sites unaddressed. OSM has argued that prior balance replacement funds are fundamentally distinct from 402[g] monies distributed from the fund. This according to OSM is due to the fact that these prior balance replacement funds are paid from the U.S. Treasury and have not been allocated under Section 402[g][1].

The fact is these funds were originally allocated under Section 402[g][1], are due and owing pursuant to the operation of that section and did not change their color simply because they are paid from a different source. Without the operation of Section 402[g][1] in the first place, there would be no unappropriated state tribal share balances. There was no intention to condition or restrict the previously improved mechanisms and procedures that states were using to apply these monies to high-priority coal and non-coal problems.

To change the rules based on such justification is inappropriate and inconsistent with the law. The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM's proposed budget for Fiscal Year 2011. Therein, OSM is proposing to further restrict the ability of states to expend AML funds on non-coal reclamation projects. This will apparently occur as part of a legislation proposal that the Administration intends to pursue in the 111th Congress.

We are uncertain exactly what OSM has in mind with respect to this aspect of the proposal, but we suspect it has to do with clarifying the very issue that is the subject of 4817. For all we know, it could be even farther reaching. For the same reasons that Congress needs to clarify this misinterpretation for non-coal AML work, it should also do so for the Acid Mine Drainage, AMD, set aside program. Section 402[g][6] has since 1990 allowed a state and tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem.

We therefore urge the Committee to amend H.R. 4817 to correct the current policy interpretation by the Interior and allow the use of unappropriated state and tribal share balance for the acid mine drainage set aside fund. Thank you for the opportunity to submit this statement on 4817. I would be happy to answer any questions.

[The prepared statement of Ms. Pineda follows:]

**Statement of Loretta Pineda, Director, Division of Reclamation,
Mining and Safety, Colorado Department of Natural Resources**

My name is Loretta Pineda and I serve as the Director of the Division of Reclamation, Mining and Safety within the Colorado Department of Natural Resources. I am appearing today on behalf of the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAML P). I appreciate the opportunity to appear before the Subcommittee today to present our views on H.R. 4817, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects. Both of the organizations I represent today strongly support this critical amendment to SMCRA.

The Interstate Mining Compact Commission (IMCC) is an organization of 24 states located throughout the country that together produce some 95% of the Nation's coal, as well as important hardrock and other noncoal minerals. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. Over the years, IMCC has worked with the states and others to identify the nature and scope of the abandoned mine land problem, along with potential remediation options.

The NAAML P is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the NAAML P administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining (OSM) pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87).

Mr. Chairman, nationally, abandoned mine lands continue to have significant adverse effects on the environment. Some of the types of environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, sedimentation, chemical release, and acid mine drainage. Safety hazards associated with abandoned mines account for deaths and/or injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years, are scattered throughout the United States. The sites are located on private, state and public lands.

Over the years, several studies have been undertaken in an attempt to quantify the hardrock AML cleanup effort. In 1991, IMCC and the Western Governors' Association completed a multi-volume study of inactive and abandoned mines that provided one of the first broad-based scoping efforts of the national problem. Neither this study, nor any subsequent nationwide study, provides a completely reliable and fully accurate on-the-ground inventory of the hardrock AML problem. Both the 1991 study and a recent IMCC compilation of data on hardrock AML sites were based on available data and professional judgment. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do demonstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that remediation costs are very large.

Across the country, the number of abandoned hardrock mines with extremely hazardous mining-related features has been estimated at several hundred thousand. Many of the states and tribes report the extent of their respective AML problem using a variety of descriptions including mine sites, mine openings, mine features or structures, mine dumps, subsidence prone areas, miles of unreclaimed highwall, miles of polluted waterways, and acres of unreclaimed or disturbed land. Some of the types of numbers that IMCC has seen reported in our Noncoal Mineral Resources Survey and Report and in response to information we have collected for the Government Accountability Office (GAO) and others include the following gross estimated number of abandoned mine sites: Alaska - 1,300; Arizona - 80,000; California - 47,000; Colorado - 7,300; Montana - 6,000; Nevada - 16,000; Utah - 17,000 to 20,000; New York - 1,800; Virginia - 3,000; Washington - 3,800; Wyoming - 1,700. Nevada reports over 200,000 mine openings; New Mexico reports 15,000 mine hazards or openings; Minnesota reports over 100,000 acres of abandoned mine lands and South Carolina reports over 6,000 acres.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. And although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states are intimately familiar with the highest priority problems within their borders and also

know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm.

Today, state agencies are working on hardrock abandoned mine problems through a variety of limited state and federal funding sources. Various federal agencies, including the U.S. Environmental Protection Agency, Bureau of Land Management, U.S. Forest Service, U.S. Army Corps of Engineers and others have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states with our hardrock AML work and, as states take on a larger role for hardrock AML cleanups into the future, we will continue to coordinate with our federal partners. However, most of these existing federal grants are project specific and do not provide consistent funding. For states with coal mining, the most consistent source of AML funding has been the Title IV grants under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites.

In December 2006, Congress significantly amended the SMCRA AML program to, among other things, distribute funds to states in an amount equal to that previously allocated under SMCRA but never appropriated. However, while Section 409 was not changed or amended in any way, the Interior Department, through both a Solicitor's Opinion (M-37014) and final rule (73 Fed. Reg. 67576), has now interpreted SMCRA to prohibit this enhanced funding from being used for noncoal projects. This is a significant blow to states such as New Mexico, Utah and Colorado that have previously used SMCRA AML funds to address many of the more serious hardrock AML problems within their borders.

H.R. 4817 would remedy the Interior Department's unfortunate interpretation of the 2006 Amendments and as such we strongly support the bill. That interpretation not only disregards the fact that section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by OSM during the consideration of the legislation that noncoal work could continue to be undertaken with these AML funds. The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to lower priority coal sites while leaving dangerous noncoal sites unaddressed. While OSM will argue that this may impact the amount of funding available to uncertified states to address high priority coal problems, Congress did not seem overly concerned with this result but rather deferred to its original framework for allowing both high priority coal and noncoal sites to be addressed.

In its final rule implementing the 2006 amendments to SMCRA (at 73 Fed. Reg. 67576, et seq.), OSM continued to abide by its argument that "prior balance replacement" funds (i.e. the unappropriated state and tribal share balances in the AML Trust Fund) are fundamentally distinct from section 402(g) moneys distributed from the Fund. This, according to OSM, is due to the fact that these prior balance replacement funds are paid from the U.S. Treasury and have not been allocated under section 402(g)(1). This is a distinction of convenience for the Interior Department's interpretation of the 2006 Amendments and has no basis in reason or law. The fact is, these funds were originally allocated under section 402(g)(1), are due and owing pursuant to the operation of section 402(g)(1), and did not change their "color" simply because they are paid from a different source. Without the operation of section 402(g)(1) in the first place, there would be no unappropriated (i.e. "prior") state and tribal share balances. The primary reason that Congress appears to have provided a new source for paying these balances is to preserve a balance in the AML Trust Fund to 1) generate continuing interest for the UMW Combined Benefit Trust Fund and 2) to insure that there was a reserve of funding left after fee collection terminates in 2021 to address any residual high priority historic coal problems. There was never an intent to condition or restrict the previously approved mechanisms and procedures that states and tribes were using to apply these moneys to high priority coal and noncoal problems. To change the rules based on such a justification is inappropriate and inconsistent with law.

The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM's proposed budget for Fiscal Year 2011. Therein, OSM is proposing to further restrict the ability of states to expend AML funds on noncoal reclamation projects. This will apparently occur as part of a legislative proposal that the Administration supposedly intends to pursue in the 111th Congress. While the primary focus of that proposal will be the elimination of future AML funding for states and tribes that are certified under Title IV of SMCRA (which we adamantly oppose), OSM's explanation of its proposal also contains the following language: "Similarly, the proposal will require that payments to noncertified States are only used for high-priority coal problems." We are uncertain exactly what OSM has in

mind with respect to this aspect of the legislative proposal, but we suspect it has to do with clarifying the very issue that is the subject of H.R. 4817. For all we know, it could be even farther reaching.

For the same reasons that Congress needs to clarify this misinterpretation for noncoal AML work, it should also do so for the acid mine drainage (AMD) set aside program. Section 402(g)(6) has, since 1990, allowed a state or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem. OSM's recent policy (and now regulatory) determination is denying the states the option to set aside moneys from that portion of its grant funding that comes from "prior balance replacement funds" each year to mitigate the effects of AMD on waters within their borders. AMD has ravaged many streams throughout the country, but especially in Appalachia. Given their long-term nature, these problems are technologically challenging to address and, more importantly, are very expensive. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. Congress clearly understood the magnitude of this challenge given the fact that it increased the amount of money that states could set aside for this purpose from 10 to 30 percent in the 2006 Amendments. We therefore urge the Committee to amend H.R. 4817 to correct the current policy interpretation by Interior and allow the use of unappropriated state and tribal share balances ("prior balance replacement funds") for the AMD set aside, similar to the use of these balances for noncoal work. Suggested amendatory language is attached to our statement.

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. There are numerous success stories from around the country where the states' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and objectives of set forth by Congress when SMCRA was first enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of H.R. 4817 will further these congressional goals and objectives.

In support of our position on H.R. 4817, we also request that you include for the record the attached resolution (No. 07-8) adopted by the Western Governors that urges the continued use of funds collected or distributed under Title IV of SMCRA for the reclamation of high priority, hard-rock abandoned mines. This resolution is in support of the Western Governors' policy statements B.4 and B.5.

Thank you for the opportunity to present our views on H.R. 4817. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

**Suggested Amendment to H.R. 4817 to include the AMD set-aside account
(Amendments are in bold and italics)**

A Bill

To amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal ***and acid mine drainage*** reclamation projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

- (a) ***Reclamation Fee—Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting "and section 411(h)(1)" after "paragraphs (1) and (5)".***
- (b) ***Filling of Voids and Sealing Tunnels.***—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting "***and section 411(h)(1)***" after "section 402(g)".
- (c) ***Use of Funds.***—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by striking "section 403" and inserting "***section 402(g)(6), 403 or 409.***"

Cleaning Up Abandoned Mines in the West

A. BACKGROUND

1. Mining has a long history in the West. The western states are rich in hardrock minerals like gold, silver and copper as well as coal, much of it low sulfur.

Hardrock Mines

2. Historic hardrock mining in the West, unregulated until recent years, has left a legacy of thousands of historic abandoned mines, which pose a threat to human health and safety and to the environment. These historic mines pre-date modern federal and state environmental regulations which were enacted in the 1970s. Often a responsible party for these mines is not identifiable or not economically viable enough to be compelled to clean up the site. Thousands of stream miles are impacted by drainage and runoff from such mines, one of the largest sources of adverse water quality impacts in several Western states.
3. Cleanup of abandoned hardrock mines is hampered by two issues—lack of funding and concerns about liability. Both of these issues are compounded by the land and mineral ownership patterns in mining districts. It is not uncommon for there to be dozens of parties with partial ownership or operational histories associated with a given site.
4. Recognizing the potential for economic, environmental and social benefits to downstream users of impaired streams, Western states, municipalities, federal agencies, volunteer citizen groups and private parties have come together across the West to try to clean up some of these abandoned hardrock sites. However, due to questions of liability, many of these Good Samaritan efforts have been stymied.
5. Potential liability exists for Good Samaritans under Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permit program because a party can inherit liability for any discharges from an abandoned mine site remaining after their cleanup efforts, even though the volunteering remediating party had no previous responsibility or liability for the site, and has reduced the water quality impacts from the site by completing a cleanup project.
6. Potential liability exists for Good Samaritans under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
7. Liability concerns also prevent mining companies from going back into historic mining districts and re-mining old abandoned mine sites or doing volunteer cleanup work. While this could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for cleaning up the entire abandoned mine site.

Coal Mines

8. Congress authorized creation of the Abandoned Mine Land (AML) Program under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program is funded by fees from current coal production. The coal AML program provides funding to states to restore lands mined for coal and abandoned or left inadequately restored before August 3, 1977.
9. Section 409 of SMCRA also authorizes states to use AML grant funds to address high priority non-coal mine hazards. While the state AML programs are limited to using SMCRA funds to only address public health and safety hazards at abandoned non-coal mines, and not purely environmental threats, the state programs have employed this provision to make a dent in the public safety threats posed by abandoned mines.
10. In December 2006, Congress amended Title IV of SMCRA to reauthorize the fee collection authority, to provide for the distribution of the unappropriated stateshare balance of the AML Trust Fund, to increase the minimum program funding to \$3 million per year. Section 409 of SMCRA was not amended and no limits were placed on non-coal projects.
11. However, the Office of Surface Mining (OSMRE) adopted rules to severely limit certain states from using AML funds for non-coal mine hazards. For Colorado, New Mexico and Utah, over 70% of their funds are now off limits for non-coal projects. These states are required to fund lower priority coal mine reclamation projects while higher priority non-coal hazards would remain unfunded. The Administration is also proposing to deny AML funds to states which have “certified” completion of coal AML projects, contrary to agreements codified in 2006.

12. The new interpretation of SMCRA by OSMRE conflicts with the clear language of the law authorizing the use of coal AML funds for high priority non-coal mine hazards. OSMRE's new interpretation will leave the public exposed to significant hazards to public health and safety at abandoned non-coal mines being ignored while states are required to expend coal AML funds at lower priority coal mine sites.

B. GOVERNORS' POLICY STATEMENT

Hardrock Mines

1. Western Governors believe Congress should amend the Clean Water Act to protect volunteering remediating parties who conduct authorized remediation from becoming legally responsible under section 301(a) and section 402 of the CWA for any continuing discharges from the abandoned mine site after completion of a cleanup project, provided that the remediating party—or "Good Samaritan"—does not otherwise have liability for that abandoned or inactive mine site. Legislative and administrative remedies to address potential CERCLA liabilities should also be considered.
2. The Governors encourage federal land management agencies, such as the U.S. Bureau of Land Management, the National Park Service and the U.S. Forest Service, as well as support agencies, such as the U.S. Environmental Protection Agency, the U.S. Geological Survey and the U.S. Army Corps of Engineers, to coordinate their abandoned hardrock mine cleanup efforts with state efforts to avoid redundancy and unnecessary duplication, and to employ the expertise and knowledge of state AML programs.
3. Western Governors urge Congress to designate a dedicated source of funding for the cleanup of abandoned hardrock mines.

Coal Mines

4. Western Governors urge the Administration to uphold the intent of Congress to allow states to exercise discretion on the use of their AML grant funds to address high priority non-coal abandoned mine hazards and to return funds due "certified" states under existing law.
5. Western Governors urge Congress to adopt legislation to restore the flexibility under SMCRA for the states to use AML funds at both coal and high priority noncoal abandoned mine sites and to ensure appropriate liability protections remain in place.

C. GOVERNORS' MANAGEMENT DIRECTIVES

1. WGA staff will advance the policy positions stated above in appropriate venues as warranted and report to Governors and Staff Council on progress and impediments.
2. WGA shall transmit this resolution to Congress, the Secretary of the Interior, Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget and other appropriate parties as warranted.

Mr. COSTA. Even though I intruded upon your time, you still made it. How about that? I was going to give you additional time. What you are actually saying, and we will get to that in the questions, but in the 2006 amendments that took place, the interpretation by the Department of the Interior has not reflected the will of Congress as to how those funds could be in a discretionary fashion utilized for the purpose of cleanup, and that is a point I want to get back to when we get to Q&A.

Our last witness is John Antonio, the Governor of the Laguna Tribe, and we appreciate the fact that you are here, and we look forward to hearing your comments.

STATEMENT OF THE HONORABLE JOHN ANTONIO, GOVERNOR, PUEBLO OF LAGUNA

Mr. ANTONIO. Thank you, Mr. Chairman. Mr. Costa, Mr. Lamborn, Mr. Teague and Mr. Heinrich.

Mr. COSTA. At home they say Costa, but it is Costa.

Mr. ANTONIO. OK. I appreciate the opportunity to be here. As was mentioned, I am John Antonio, Governor for the Pueblo Laguna in New Mexico, and I bring greetings from our 8,200-member-strong Laguna located probably about 40 minutes or so west of Albuquerque, New Mexico, in our great state. Again, I want to thank you for the opportunity. I come here with an urgent plea to help us reclaim the world's largest open-pit uranium mine.

Mining began in 1953. It eventually closed in 1982, so we had a history of about 30 years of mining, first by Anaconda Company, which was eventually acquired by ARCO. During the span of mining, they removed over 400 million tons of earth to mine about 24 tons of uranium ore. The original lease was about 8,000 acres. You can see on your exhibits the extent of the mining, the devastation, and in the red circle, you see a village called Paguete, which is home to about 1,500 tribal members.

Mr. COSTA. How do you pronounce the name of the Village?

Mr. ANTONIO. Paguete. Paguete Village.

Mr. COSTA. Paguete.

Mr. ANTONIO. One of our six villages. Again, this village has been impacted over the life of the mine, not only during the 30 years, but 57 years later. A lot more area has been impacted by the wind-blown dust and the perennial streams that pass through. Fifty-seven years later we are still impacted, and many people have suffered. Many have died from radiation-related illnesses, cancers, respiratory illnesses, and there has been a report of a direct link to diabetes, which we do have high incidents.

In fact, my mom and two sisters are affected by radiation exposure with the diabetes issues, a lot of my uncles, relatives. A lot of our people have perished because the cancer is related. We did have many reclamation efforts in 1989 through 1995 with a \$43 million settlement from ARCO. However, very minimal reclamation was achieved at that time. In the 1980s, BLM put a cost of about \$400 million to adequately reclaim.

We still have high-grade ore piles sitting on a lot of wind-blown dust. The erosion continues on some of these areas that have been capped with topsoil. Efforts to clean up have been again very minimal. The Department of the Interior has issued a record of decision, and we continue to monitor various contamination parameters with our own funds. As far as trying to do our part, we have entered into partnerships with Environmental Protection Agency. They conducted an area radiological survey as you see in the different exhibits the extent of the contamination.

We are also now looking at the homes because some of the homes were built with rocks that were coming from the mine area as a result of the overburden removal. We also submitted an application to EPA to designate a site as a superfund site. We also approved to establish our own air and water quality standards to protect ourselves from future mining. We also approved a moratorium against future uranium mining. However, it only protects our area.

We also entered in June of 2010 with EPA an MOU to address the uranium mine contamination. With New Mexico Department of Health, we have also implemented a study. The study has indicated that there are high levels of uranium contamination in the urine, and so we continue to follow up. We have also entered part-

nerships with U.S. Geological Survey. They are going to look at the dispersion of radiation contamination through soil, water, dust, et cetera. We make a plea to end the suffering of our people. Thank you very much.

[The prepared statement of Mr. Antonio follows:]

**Statement of The Honorable John E. Antonio, Sr.,
Governor of the Pueblo of Laguna**

I. INTRODUCTION

This statement is submitted by the Pueblo of Laguna (“Pueblo” or “Laguna”) to apprise the Committee of the Pueblo’s efforts to reclaim lands once used for the extraction of uranium ore and to assist the Committee in assessing the Pueblo’s need for funds to use for certain non-coal reclamation projects.

The Pueblo of Laguna is a federally recognized Indian tribe located 45 miles west of Albuquerque, New Mexico, and has approximately 8,200 members who are affiliated with six (6) different villages. The Pueblo’s lands consist of approximately 590,000 acres in Cibola, Sandoval, and Bernalillo counties, and contain the site of what was once the world’s largest open pit uranium mine; the Jackpile-Paguate Mine. The Jackpile-Paguate Mine, which began operating in 1953, was finally shut down in 1982 but then laid dormant for 7 years before reclamation activities began. During that time, stockpiled waste was blown into surrounding areas, including the Paguate Village, located just 30 yards from the mine. In addition, rain caused waste from the mine to flow into surface water tributaries. After years of negotiating with the company who conducted the mining, minimal reclamation efforts began in 1989 and were completed in 1995. However, there still remain piles of high grade ore on the surface and within some of the exposed open pits.

Despite efforts to reclaim the mine after it closed, the mine continues to have a tremendous impact on the long-term health and environmental landscape at the Pueblo. Many Pueblo members who worked in the mine or lived near the mine suffer from cancer-related illnesses and other health conditions. Two surface water tributaries near the mine, the Rio Moquino, and the Rio San Jose have since tested positive for radiation contamination. Groundwater is also at risk for radiation contamination. Because water is scarce in our arid part of New Mexico, the contamination of our water resources is devastating to our people and the entire region. Although no official studies have been conducted to establish a direct correlation between the mining activities and the increase in cancer among individuals who live near or worked in the mine, significant statistical information is being compiled on former mine workers applying for benefits under the Radiation Exposure Compensation Act (“RECA”). Many of these applicants have been diagnosed with cancer-related illnesses.

In addition, other studies that are now being conducted may show a direct correlation between uranium mining activities and various respiratory and kidney problems, and may even extend to problems related to diabetes. Testimony on these and related issues was presented to a State Legislative Interim Subcommittee in Grants, New Mexico in 2009, on the impacts of uranium mining.

As a result of our experiences with mining, the Pueblo is opposed to any new mining on or near Pueblo lands. In 2007, our Tribal Council passed a resolution to establish a moratorium on any uranium mining and development. However, in the event that mining is permitted near our lands, the Pueblo seeks to be included in the process by having a voice to express our concerns about having adequate protections in place.

II. MINING AT LAGUNA

A. Uranium Mining, Generally

Uranium, a silvery-white, radioactive metal similar in appearance to a piece of silver or steel, is never found in its pure form in nature. It is always found combined with other elements into different chemical compounds, which are highly poisonous. Uranium has been used to make material for nuclear weapons and to make fuel for nuclear power plants. Deposits of minerals that include large amounts of uranium, large enough to make mining worthwhile are rare. However, the “Four Corners” area of Arizona, Colorado, New Mexico and Utah contains some of the richest deposits of uranium ores in the world. Open pit mining is used when the ore is close to the surface and involves removing the “overburden,” or top layers of soil and rock that cover the ore. The overburden is hauled off and often stored in huge piles. Underground mining requires drilling, blasting and digging into the earth and the ore

is obtained by the use of elevators. Holes are drilled to provide ventilation because the decay of uranium results in a radioactive gas called radon. Radon can build up in underground mines causing serious health problems for miners. In addition, underground water can cause problems. Once the uranium is obtained, the next process is "milling," or removing the valuable mineral from the mined ore. The ore is crushed and then mixed with water to form slurry. The slurry is mixed with chemicals to separate out the uranium ore from the rest of the rock, referred to as "leaching." The liquid containing the uranium ore, or "leachate," is then filtered from the rest of the slurry and further concentrated by a precipitation process. Water is then removed and the precipitate is dried to produce "yellowcake," which is then packaged and shipped to an enrichment plant. Material left over from the milling process is referred to as "tailing," which are still dangerous because of the radioactive elements they contain.

B. Uranium Mining at Laguna

The Grants Mineral Belt, which stretches from east of Gallup, New Mexico to Laguna, New Mexico and includes Laguna Pueblo lands, has especially rich uranium deposits. In May 1952, the Anaconda Mining Company (later Atlantic Richfield or ARCO) entered into a lease with the Pueblo to mine uranium on 4,988 acres of Laguna land near the Village of Paguete. Additional leases were signed in 1963 and 1976 for 2,560 and 320 more acres, respectively, for a total of 8,000 acres. As a result, Anaconda operated one of the world's largest open pit uranium mines at the Pueblo from 1953 until 1982. Before the first lease was signed with the Pueblo, Anaconda had signed an agreement with the U.S. Atomic Energy Commission ("Commission"), which made Anaconda the sole ore-buying agent for the Commission. In fact, a majority of uranium produced on Indian land between 1950 and 1968 went to the Commission.

Anaconda utilized three (3) open pit mines and 9 underground mines at Laguna to produce 24 million tons of uranium-bearing ore. More than 400 million tons of earth had to be moved to obtain the ore. Mining conducted from the 9 underground mines primarily began in the 1970's. The Jackpile-Paguete Mine, located near the Village of Paguete, was the deepest open pit mine at 625 feet. The mine operated 24 hours a day, 7 days a week, 365 days a year for 30 years and employed as many as 800 tribal members. At its peak, the mine employed the majority of the workforce at Laguna and neighboring communities.

ARCO closed the mine on March 1, 1982, after which it laid dormant for 7 years before any efforts to reclaim the mine began. More than 2,000 acres of land and several pits needed to be reclaimed. One pit measured over 600 feet deep, and a few pits were filled with contaminated water that had seeped up over the years. A draft environmental impact statement found ARCO primarily responsible and recommended reclaiming the mine because the site was a public health and safety hazard, noting that more serious hazards would develop if the site was left unreclaimed. Reclamation began in 1989 after ARCO and the Pueblo reached an agreement by which the Pueblo would perform the reclamation. However, the \$43 million provided by ARCO was well below the estimated \$400 million required to fully reclaim the mine. The Pueblo tried to reclaim the mine as best as possible, despite the lack of funding and the fact that there were no standards for reclaiming a uranium mine in place at the time.

In reclaiming the mine, the Laguna Construction Company used the overburden to partially backfill some of the pits. It was specially sloped and terraced to keep it in place and prevent wind and rain from washing it away. Next, a layer of rock, or shale, of up to 12 feet thick was put into the pits to keep radiation from coming up into the air. An additional foot and a half of topsoil was placed over the top and seeded with grasses and other native plants. High grade ore piles that were still on the surface were covered with layers of top soil and reseeded with native vegetation. The Pueblo's reclamation process, the first attempt in the world to reclaim an open pit uranium mine, was completed in 1995, but the Pueblo continues to monitor the mine and its ongoing impacts. And, because the \$43 million provided by ARCO only enabled the Pueblo to conduct minimal reclamation, much work still remains to be done to fully reclaim the mine and reduce the health and environmental impacts.

III. MINING IMPACTS ON LAGUNA

The Village of Paguete, whose village boundaries lie only 30 yards from the edge of the largest open pit in the mining area, was significantly affected by the mining activity. In this village of approximately 1500 residents, blasting caused old stone and mud houses to crack apart, and dust from the mine coated homes, crops, and clothes. Paguete residents on the south and eastern sides of the village, closest to

the mine, recall dust that seemed to linger for hours after a blast and cracks on the walls of homes.

Despite the minimal reclamation efforts, former mining employees as well as Pueblo members living in Paguate and downwind continue to report growing numbers of cancer-related illnesses. Contaminated surfaces and groundwater sources still exist. Of the 24 million tons of ore mined from the Jackpile-Paguate Mine, approximately 23.7 million tons were left as waste, which are still dangerous because of radioactive elements they contain. In addition, water that flows through the old mine, including the Rio Moquino and the Rio Paguate, is contaminated from radioactive elements. Many Laguna members have died, and others suffer from high incidences of diabetes, reportedly linked to radiation exposure attributed to uranium mining. In addition, radiation exposure can cause damage that may not show up for 10–40 years.

Currently, little is known about the stability of the radioactive pollutants and additional risks, which may involve migration into local groundwater supplies or into the atmosphere. Meanwhile, the mine continues to have a tremendous impact on the long-term health and environmental landscape at the Pueblo, where many residents and former mine employees continue to experience deleterious health effects. The mine contaminated parts of the reservation with toxic, radioactive materials and miners who worked at the Jackpile Mine were not warned of the exposure to radiation, including radon gas and radioactive dust.

IV. CONSULTATION AND COLLABORATION WITH U.S. ENVIRONMENTAL PROTECTION AGENCY FOR POSSIBLE DESIGNATION OF THE JACKPILE-PAGUATE MINE SITE AS A SUPERFUND SITE.

During the month of August, 2009, the Environmental Protection Agency (EPA) contacted the Pueblo to see if an Aerial Radiological Survey could be conducted of the entire Grants Mineral Belt area, which includes Pueblo lands and the Jackpile mine site. The purpose of the aerial flyover was to: 1) identify any structures with elevated radiological activity and which might have been associated with historic uranium mining activity at Jackpile; 2) data collected from this survey would allow EPA to focus its ground resources on those structures with elevated radiological activity; 3) EPA would analyze the results of the data to determine if any remediation is needed; 4) the report, along with the analysis would be given to the Pueblo; and 5) the collected data could potentially be used to secure funds to assist with any remediation.

On September 29, 2009, representatives from the EPA Region 6 Office came before the Pueblo Council and gave a presentation that included their request for the aerial radiological survey, and a request to enter into an MOU to formalize a partnership to deal with any air, water, environmental, and cultural resources impacts as a result of any mining activity. On October 13, 2009, Mr. Larry Starfield, Acting Regional Administrator for Region 6 and several of his staff members came before the Pueblo Council to formally consult with the Council on a government-to-government basis for the following purposes: 1) to discuss how further consultation should take place, i.e., informal vs. formal type of discussions on issues/concerns; 2) the effects of uranium mining on the tribe's air, land, water, and cultural resources; and 3) what type of communications can be agreed upon by both parties during further consultation.

EPA also explained that they were developing a five (5) year Comprehensive Plan on how to deal with uranium issues. This Plan could set out a good communication plan between the Pueblo and EPA; set out certain activities that both EPA and the Pueblo can be involved with; and would also provide that there be a working partnership between EPA and the Pueblo to try and resolve any issues/concerns that the Pueblo has. Representatives from the Pueblo reviewed the Comprehensive Plan and made several comments and/or suggestions on edits to the Plan. EPA also wanted to develop a Data Base of information on uranium issues and wants to work with the Pueblo on how this information can be collected, stored and retrieved for use by all parties—tribe, state and federal governments.

In answer to the question of whether the Jackpile mine site might qualify as a superfund site, it was indicated that the environmental conditions have to be evaluated first to see if the site meets a minimum threshold for qualifying as a superfund site. This evaluation would require a Hazard Ranking Score (HRS), which is a ranking score that EPA would use to see where the Jackpile mine ranks as compared to all other sites throughout the country. After the discussion, the Pueblo Council passed Resolution No. 10–10, approving of the submittal of an application for designation of the Jackpile Mine site as a Superfund Site.

EPA also developed a proposed MOU and presented it to Council for its review. After several meetings and long discussions over the contents of the MOU, the

Council and representatives from the EPA Region 6 Office entered into a formal MOU on June 22, 2010.

V. STUDY BY THE NEW MEXICO DEPARTMENT OF HEALTH'S ENVIRONMENTAL EPIDEMIOLOGY BUREAU ON THE HEALTH IMPACTS OF URANIUM MINING.

A presentation was made to the Pueblo Council by Dr. Jana Gunnell, on a request to conduct a study on the effects of uranium mining and the study would concentrate on: 1) testing a participant's drinking water source for uranium; 2) testing a participant's urine specimen for uranium; and 3) conducting a survey with each participant.

It was explained that funding in the amount of \$40,000 was allocated during the 2007 regular session of the State legislature under Senate Bill 611 to "develop a testing protocol, develop and establish a health registry, contract with appropriate testing laboratories and coordinate affected parties in regard to a voluntary testing program for military veterans who may have been exposed to depleted uranium or other isotopes in the Persian Gulf war or in the current Iraq or Afghanistan conflict."

Based on the results from 2007–2008, the Environmental Health Epidemiology Bureau (EHEB) was approved to utilize the funds differently from what was stated in the legislation for a variety of reasons. First, there were a fairly small number of veterans who could be recruited and of those, only 31 out of 83 chose to obtain an isotopic analysis (37%). Second, a health registry for veterans already exists. The Veterans Administration (VA) has a Depleted Uranium Follow-Up Program that has been in existence since 1993. Any veteran who believes he or she was exposed to depleted uranium may participate. Finally, the total uranium in urine is the result used to determine the potential for uranium to cause adverse health effects, regardless of whether there is a depleted uranium component.

The Council approved to allow this study to go forward and information was disseminated out to the public that there were approximately 50 slots for community members to participate in the survey. This study has been completed and initial results have indicated that some tribal members have elevated levels of uranium in their urine. As a follow-up to the uranium study, the National Center for Environmental Health, Centers for Disease Control and Prevention (CDC) is conducting its own study, to see if people who live in an area where there are high levels of uranium in the environment have an increased risk for kidney disease.

VI. U.S. GEOLOGICAL SURVEY - URANIUM AND DUST RESEARCH PROJECT

On July 20, 2010, a presentation was made by Dr. Tanya Gallegos, from the U.S. Geological Survey Office out of Denver, Colorado. The purpose of the proposed research project is to understand the dispersion of wastes from the Jackpile-Paguete mine through the air, water and soil. The purpose of the study was to: 1) look at the effects of the Jackpile mine on the environment; 2) see how the wind and water has moved the uranium from the Jackpile mine site area to other areas of the reservation and how far; 3) has the air, soil and water been contaminated; and 4) provide information needed to ultimately develop methods for remediation and ground water restoration.

Dr. Gallegos explained that much of the work to be performed in this study would occur out in the field, where there would be a collection of water samples, dust samples, mine waste, radiometric survey, collection of surface soils from various areas in and around the mine site, and also have a measurement of the water parameters—how the water from some small streams may have carried contaminants from the mine site downstream. The timeframe for the study was to commence in September, 2010, and the expected duration was to be about one (1) month. It was also explained that there may be a need to revisit some sites at a later time to collect more dust samples. On August 10, 2010, the Pueblo Council approved to allow the USGS Uranium Study to go forward.

VII. PUSH FOR RADIATION EXPOSURE COMPENSATION ACT (RECA) AMENDMENTS AND REFORM OF THE MINING LAW OF 1872.

The Pueblo has been actively involved in working with the New Mexico Congressional delegation to amend the Radiation Exposure Compensation Act to cover former uranium workers beyond the 1972 cutoff period. As was indicated in the first portion of this testimony, the Jackpile-Paguete Mine did not close until 1982, ten years after the cutoff date under RECA. Many of these post '71 mine workers suffer the same health effects as those pre-'71 workers, and should be afforded the same opportunity to receive the benefits that RECA contemplated for affected uranium workers.

VIII. CONCLUSION

Based on the Pueblo's experience with the Jackpile Mine, the Pueblo is opposed to any further mining on or near Pueblo lands. The Pueblo fears that the State of New Mexico, the U.S. Department of Agriculture, and the U.S. Forest Service will permit additional uranium exploration and mining because of the current high demand for uranium, fueled by dwindling uranium stockpiles from existing sources and new orders for a large number of nuclear-fueled power plants worldwide. The State of New Mexico is currently looking at re-opening several mining and milling sites to again mine and mill uranium in efforts to create more jobs and boost its economy. Because of these new efforts and the Pueblo's first-hand experience in dealing with both the health and environmental impacts of mining uranium, and the fact that there would be new dangers from mining and milling of uranium to downwind and downstream water users, the Pueblo has taken steps to start developing its own air and quality standards.

Many federal lands adjoin Indian Country and share water resources essential to the health and welfare of tribes. Therefore, the Pueblo believes that it is imperative that any new legislation include adequate environmental standards to protect the health and welfare of the adjoining tribal communities. In addition, the Pueblo would like to see the establishment of a Hardrock Reclamation account for the clean-up of hardrock mines, and the establishment of a hardrock community impact assistance account fund.

In closing, thank you for allowing the Pueblo to testify before this Committee. The Pueblo has been exploring the various options, alternatives, and opportunities to get funds to deal with the clean-up of the Jackpile-Paguate uranium mine site for years. What has been done with the limited resources that were made available from the settlement with the ARCO company was far less than what is needed to adequately deal with the health and environmental problems that still exist to this day at that site. We respectfully request the Committee's favorable consideration of amending the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes do have the authority to use certain payments for certain non-coal reclamation projects. If you have any questions, please do not hesitate to contact m

Mr. COSTA. Thank you very much, Governor Antonio. When you show these maps as a part of your testimony, is it your understanding because you talked about pilings on sides of road, and I suspect there are also tailings on watershed areas, have these been prioritized to your knowledge either by the State of New Mexico or the Bureau of Indian Affairs or the Department of Energy as to which pose the greatest health risks to the affected tribal areas that you speak on behalf of?

Mr. ANTONIO. OK. Right now, if you look at the map again, the Paguate Village, you can see just immediately to the right there or to the east you see the kind of the orange color? Well, that is a high-priority area because that is where the mine is located, again just right next to the village.

Mr. COSTA. OK.

Mr. ANTONIO. A little bit south where you see that other red part, there is an old reservoir there, and that basically became a sediment entrapment for all the debris coming down through—

Mr. COSTA. OK. But this isn't just your views or the tribe's views, this is also reflected by the State of New Mexico and other people who have done risk assessments?

Mr. ANTONIO. Yes. We have talked to the Legislature, the Governors and, of course, our Congressional representatives, and this is a priority area.

Mr. COSTA. All right. Let me go on, Ms. Pineda. I am glad that you cited in your testimony the sections in the existing law, 1977, and the changes that were made in the amendments of 2006, and your argument basically is that the Department of the Interior now

is not fulfilling what the original intent of Congress, is that correct?

Mr. ANTONIO. Correct.

Mr. COSTA. I am talking to Ms. Pineda.

Mr. ANTONIO. Excuse me. OK. Sorry.

Ms. PINEDA. Yes, and I guess I would further remark that originally in 1977 when SMCRA was created the funding comes from reclamation fees put on current coal operators, and every year money was collected and then appropriated back to the states, and over the past 25 to 30 years, not all of the money was necessarily appropriated back due to budget situations or whatever was occurring so the fund was accumulating in terms of money not being appropriated back to the states, so our argument is that had we been getting that money all along during the course of the last 30 years, we would have been able to be spending that money on non-coal projects or whatever.

Mr. COSTA. And I would argue that you are in the best position to make those determinations far better than we are here in Washington.

Ms. PINEDA. What the priorities are?

Mr. COSTA. Right.

Ms. PINEDA. I believe so, yes.

Mr. COSTA. And you have made assessments based upon hazards and risk assessment and risk management for health?

Ms. PINEDA. Yes. Yes, back in 1980 when we first received the AML program, Colorado in addition to all the other 30 states and tribes did a national inventory, and in addition to that, we did a state inventory, so we have inventoried all the areas for both coal and hard rock so that we can determine where it is best to spend the money, whether it is on coal projects or on non-coal projects, so we are really kind of just asking for that flexibility for the states and tribes, and we may end up spending some funds on coal projects because some states have coal fires, subsidence issues that they need to deal with.

We also recognize that we have these non-coal problems, so basically what the states are asking for is flexibility in that funding.

Mr. COSTA. Ms. Owens, you I think stated obviously the Administration's position and as I heard it particularly as it referenced your priorities for 2011 and what is in the budget, but is it your view that the amendments of 2006 allow the Department of the Interior the determination to set these priorities notwithstanding the monies that can be provided for states to make their own determinations? I mean, in this case, notwithstanding the goals of cleaning up coal mines, and I am not arguing that point.

Obviously, there is a priority there, but also these funds were provided to have a breakdown for states and tribes to also be able to address their issues.

Ms. OWENS. Correct. Yes, that is true, Chairman Costa, and I just want to say that Section 409 of SMCRA was not amended in 2006. It did then, and it does now allow the uncertified states and tribes to use their state and tribal share and also their historic coal share for non-coal reclamation. That hasn't changed. The states and tribes can continue to use those distributions for non-coal reclamation.

Mr. COSTA. But under that section, isn't it correct that the states and tribes also have two other funding segments within that they can utilize?

Ms. OWENS. Well, under 409, what they can use is the state and historic share, which is one distribution and also the historic coal share, which is a second distribution. What 411[h][1] does is precludes the use of fire balance replacement funds by uncertified states on non-coal reclamation.

Mr. COSTA. All right. I may want to get back to that, but my time has expired. The Ranking Member, Congressman from Colorado, Doug Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman, and before I ask any questions, I would like to ask unanimous consent to include the Western Governors' Association Resolution that Ms. Pineda referred to and attached to her testimony.

Mr. COSTA. Without opposition, so ordered.

Mr. LAMBORN. For the record. OK. Thank you. Ms. Pineda, it is good to have you here. It is always good to talk to a fellow Coloradan, so thank you for your testimony. On a related issue, we have some Good Samaritan proposals that have been proposed here in Congress. I have one that has been proposed, for instance. You have experience with the Animas River Basin and Good Samaritan efforts. Can you tell us about that and how successful they have been?

Ms. PINEDA. Yes. The Animas River Stakeholders Group is a very active kind of local watershed in the Silverton area in San Juan County, and they have been promoting and doing several reclamation and remediation projects along the upper Animas. In terms of the Colorado AML program, what we have provided under SMCRA funds is just basically safeguarding hazards because that is really the only priority that we can use SMCRA funds for are kind of health and safety issues related to non-coal.

In addition to that, we have partnered with the Bureau of Land Management and also the U.S. Forest Service to do several cleanup projects that have helped water quality issues along the upper Animas in terms of dealing with mine waste and mine tailings, so we have probably done over 50 reclamation remediation projects working along the Animas River doing kind of mine tailings and mine waster projects.

The real challenge there is that because of liability issues under the Clean Water Act dealing with draining adits, adits that are draining, high-pollution, acid mind drainage, we are unable to really touch those because some of the liability provisions that are in the Clean Water Act, and no one really wants to have that liability long term, so the legislation put forward by yourself and others in Congress would hopefully amend the Clean Water Act so that we could have Good Samaritans, we could have state agencies, local governments, watershed groups, industry help and participate in those kinds of cleanups because they can be very expensive when you are looking at kind of long-term water treatment.

In terms of SMCRA and the kinds of funding that we can use in that watershed, we have been able to help tremendously in safeguarding a lot of those sites and then using other funding that we were able to get to do the remediation work, and as you know, the

Silverton area and in Leadville, in Idaho Springs, Central City, Clear Creek County, it is a very high-tourist area with a lot of people visiting the high country, so we want to make sure that they all have a very safe visit.

Mr. COSTA. What part of Colorado?

Ms. PINEDA. What?

Mr. COSTA. What part of Colorado?

Ms. PINEDA. All parts of Colorado.

Mr. LAMBORN. Silverton.

Ms. PINEDA. I am sorry. Silverton is the area that——

Mr. COSTA. No. That is lovely country. I just wanted to make sure I understood it.

Ms. PINEDA. Yes.

Mr. COSTA. What a lovely state I keep telling all my friends in Colorado.

Ms. PINEDA. Well, we want you to have a safe visit there.

Mr. COSTA. Of course. Go ahead. I am sorry to interrupt. I will add to your time.

Mr. LAMBORN. Anything to add to that about Good Samaritan legislation, or at this point I would like to open it up for either of the other two witnesses. I know that the intentions are good, but there are always unforeseen consequences, and for a Good Samaritan to right now currently pick up liability when they are just trying to help out would discourage probably 100 percent of anyone who would otherwise offer their services.

Ms. PINEDA. Right.

Mr. LAMBORN. Do any of our other two witnesses care to comment on that issue of Good Samaritan legislation?

Ms. OWENS. I am not familiar with the Good Samaritan legislation, so I wouldn't——

Mr. COSTA. I didn't hear you. I am sorry.

Ms. OWENS. I said that I am not familiar with the Good Samaritan legislation, so I couldn't speak to it.

Mr. COSTA. OK.

Mr. ANTONIO. I understand Good Samaritan means somebody that is there to help out, so anybody that can help us out, we will take all the help we can get. Thank you.

Mr. LAMBORN. All right. Well, thank you all for being here and for your testimony. I yield back, Mr. Chairman.

Mr. ANTONIO. Thank you very much.

Mr. COSTA. I really think at the crux of this, and I believe probably the legislation would not be necessary if it weren't for a Department of the Interior memorandum of opinion M-37014 that issued by the Solicitor on December 5, 2007, that interpreted the amendment to Section 411 to prohibit uncertified states and Indian tribes from unappropriated balance amounts for non-coal mine hazards, and it is this memorandum that has created the problem and has taken the discretion away from states like Colorado and tribes like yours with Laguna.

The Department has already opined on the legislation, but frankly I guess that means they believe that the memorandum of understanding was appropriate, and that is where we differ. Mr. Heinrich, for your five minutes for comments or questions?

Mr. HEINRICH. Thank you, Chairman. Ms. Owens, I wanted to ask you as Congressman Teague mentioned earlier, most of the uranium sites in the southwest date to the Cold War era when our nation's uranium reserves were used to build up our nuclear arsenal. New Mexico's miners and mill workers, as well as the entire community really in Cibola and McKinley County, really played a critical role in our national security during that time, and many of us believe that they deserve recognition and compensation for the things that they have suffered along the way to produce at those uranium sites.

I wanted to ask you if the Administration opposes the use of SMCRA funds for reclamation of uranium mines, how do you propose that we pay for the cleanup of these sites that were essential to our national security for decades?

Ms. OWENS. Well, Congressman Heinrich, as I said, there is a provision for some portion of the AML funding to be used for non-coal cleanup, and that is found in Section 409 of the Act. We recognize and appreciate the problems that are posed by non-coal hazards. However, because of this Administration's focus on the cleanup of high-priority coal problems under SMCRA while we have the extension of the fund, we have to be supportive, and we do support that money being used for the high-priority coal cleanup.

Mr. HEINRICH. Ms. Pineda, I wanted to ask you other than SMCRA funds, what other Federal funds are available to your department for hard rock mine reclamation?

Ms. PINEDA. Thank you for that question. Currently, we do get funding from the Bureau of Land Management and also from the U.S. Forest Service. The issue with that funding though is that it is for BLM properties and U.S. Forest Service properties, so mostly on Federal land, so we still have a lot of unpatented claims or claims that are on private property that we still need to safeguard. We are very diligent and efficient in using all of the different kinds of funding that are available.

In Colorado, I am lucky to also get some state funding that I can match with watersheds and other groups to do abandoned mine land cleanup, and I know that New Mexico, Utah and our other states and partners are all very diligent in getting as much funding as we can and to use it as efficiently as we can.

Mr. HEINRICH. If you add the funding stream that Ms. Owens mentioned to any state funding you have plus what is available through the BLM and the Forest Service, does it even begin to meet the unmet needs that you have in Colorado?

Ms. PINEDA. Well, currently we have 23,000 abandoned mines in Colorado, so we are very cognizant of the fact that we have to prioritize because we will probably never be able to really reach every problem, and not only do we have safeguarding, but as Congressman Lamborn mentioned, we have acid mine drainage problems, and a lot of other problems that would require enormous amounts of funding.

I can assure you that all of the states and tribes that are involved in getting abandoned mine funding for coal or for non-coal are very diligent in working with local governments and watershed groups and just trying to partner and make the dollars go as far

as they can, and a lot of this money also does translate into jobs and to other opportunities for local communities.

Mr. HEINRICH. Thank you, Governor Antonio, I wanted to ask in addition to some of the health issues you mentioned, cancer and other diseases that mine workers and their families have experienced, are there currently issues with water contamination with the Pueblo's water supplies because of the Jackpile Mine?

Mr. ANTONIO. We are concerned in that close proximity there because of the groundwater contamination. I know in the history of the mine there were some potable water that eventually was abandoned because of that contamination, so we are concerned. There are some reported high levels of contamination in some of the water, but we have to constantly monitor those.

Mr. HEINRICH. Thank you, Governor. Mr. Chair, I will finish up just by asking unanimous consent to be able to add to the record a letter that I have from the New Mexico legislation, which has worked on this issue for many years.

Mr. COSTA. Without objection, so ordered. Let me just close by saying clearly, Ms. Owens, as you indicated, the states and tribes do have the utilization of the other two sources of funding as I noted and you pointed out, but the dispute here is really on the other source of funding here in which prior that memorandum states and tribes, as I understand it, did have the discretionary use of those funds.

As I look down the breakdown here in the last fiscal year, for the State of Colorado, and I am going to round the numbers out a bit, but under the state's share, they got \$1,855,000 on the state's share, on the historical share on the coal, Colorado got \$1.26 million, but the larger share, the prior balance replacement funds that Director Pineda spoke about was \$4.2 million, or 58 percent of the total, of which they have no discretion and thus the purpose of their testimony here today, and the same thing with New Mexico.

New Mexico got \$1.1 million of the state's share, \$308,00 of the historical coal share, but the largest share, \$3 million plus from the prior balance replacement funds are 66 percent. The State of New Mexico has no ability to utilize in a way that they thing would be best for its tribes and for its priorities within the state and vis-à-vis going back to the memorandum again, therein lies the rub, and that is why they want to pursue this legislation.

Ms. OWENS. I just want to make one comment on that memorandum that you refer to. The memorandum didn't make the law. It merely interpreted it.

Mr. COSTA. I know, and I am glad you raised that because let us put a fine point on it. I am one regardless if it is a Democratic or Republican Administration get a little tired, I am being polite this morning, I am in a good mood, I get a lot more than tired, but I get frustrated when any Executive Branch decides that they are going for their own purposes interpret the will of Congress that I think is in direct conflict with what that will of Congress was and the clarity of it, and what you are saying is well, notwithstanding the law, we take a broad interpretation. We have issued this memorandum, and these are our priorities.

Ms. OWENS. Actually, Chairman, I am not saying that we take a broad interpretation of the law. I am saying that the memo-

random opinion read the two provisions that said that the money could be used for 402[g][1], which is the state and tribal share, and for 402[g][5], which is the historic coal share. That is all it did. It said what this allows you to do is use this money, and what this allows you to do is use the other money, and weren't attempting to do anything more than that.

Mr. COSTA. Well, the net effect of that as it breaks down the dollars that are available, in essence, then the majority of the funds—at least as I saw this breakdown in this fiscal year for the States of Colorado, New Mexico and Utah—the majority of the funds are going for the priorities that the Department of the Interior has established and not necessarily the priorities that the states and the tribes have established. I think that is why we had this legislation introduced.

It is a problem. We are going to have to continue to work on this I believe, and I commend my colleagues for raising this issue once again. As I said, a previous measure was introduced that first raised this issue, and we are going to have to work this out. That is the bottom line. I want to thank all the witnesses for their testimony. I thank the staff, my Republican colleagues and their staff members for the fine job you do in the event that this is our last hearing for the session.

Once again, we want to congratulate Deborah Lanzone and Wendy Van Asselt for the good work that they have done, and we wish you the very best, and obviously we continue to look forward to working with everyone as we try to deal with the problems that this Subcommittee faces on energy and minerals for our nation on public lands. This Subcommittee is now adjourned. Thank you.

[Whereupon, at 11:14 a.m., the Committee was adjourned.]

[NOTE: The following documents submitted for the record have been retained in the Committee's official files.]

- Heaton, Hon. John A., State Representative, New Mexico State Legislature, Letter dated September 20, 2010, addressed to Chairman Jim Costa.
- Indall, John J. and Adela M. Duran, Counsel, Uranium Producers of New Mexico, Testimony and attachments dated September 23, 2010.
- Richardson, Hon. Bill, Governor, State of New Mexico, Testimony dated September 23, 2010.

