

103D CONGRESS
1ST SESSION

H. R. 239

To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. LEHMAN introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MINING CLAIMS ON STOCK RAISING HOME-**
4 **STEAD ACT LANDS.**

5 (a) MINERAL ENTRY UNDER THE STOCK RAISING
6 HOMESTEAD ACT.—Section 9 of the Act of December 29,
7 1916, entitled “An Act to provide for stock-raising home-
8 steads, and for other purposes” (43 U.S.C. 29), is amend-
9 ed by adding the following at the end thereof:

1 “(b) EXPLORATION; LOCATION OF MINING CLAIMS;
2 NOTICES.—

3 “(1) IN GENERAL.—(A) Notwithstanding sub-
4 section (a) and any other provision of law to the
5 contrary, after the effective date of this subsection
6 no person other than the surface owner may enter
7 lands subject to this Act to explore for, or to locate,
8 a mining claim on such lands without—

9 “(i) filing a notice of intention to locate a
10 mining claim pursuant to paragraph (2); and

11 “(ii) providing notice to the surface owner
12 pursuant to paragraph (3).

13 “(B) Any person who has complied with the re-
14 quirements referred to in subparagraph (A) may,
15 during the authorized exploration period, in order to
16 locate a mining claim, enter lands subject to this Act
17 to undertake mineral activities related to exploration
18 that cause no more than a minimal disturbance of
19 surface resources and do not involve the use of
20 mechanized earthmoving equipment, explosives, the
21 construction of roads, drill pads, or the use of toxic
22 or hazardous materials.

23 “(C) The authorized exploration period referred
24 to in subparagraph (B) shall begin 30 days after no-
25 tice is provided under paragraph (3) with respect to

1 lands subject to such notice and shall end with the
2 expiration of the 90-day period referred to in para-
3 graph (2)(A) or any extension provided under para-
4 graph (2).

5 “(2) NOTICE OF INTENTION TO LOCATE A MIN-
6 ING CLAIM.—Any person seeking to locate a mining
7 claim on lands subject to this Act in order to engage
8 in the mineral activities relating to exploration re-
9 ferred to under paragraph (1)(B) shall file with the
10 Secretary of the Interior a notice of intention to lo-
11 cate a claim on the lands concerned. The notice shall
12 be in such form as the Secretary shall prescribe. The
13 notice shall contain the name and mailing address of
14 the person filing the notice and a legal description
15 of the lands to which the notice applies. The legal
16 description shall be based on the public land survey
17 or on such other description as is sufficient to per-
18 mit the Secretary to record the notice on the land
19 status records of the Secretary. Whenever any per-
20 son has filed a notice under this paragraph with re-
21 spect to any lands, during the 90-day period follow-
22 ing the date of such filing, or any extension thereof
23 pursuant to this paragraph, no other person (includ-
24 ing the surface owner) may—

1 “(A) file such a notice with respect to any
2 portions of such lands;

3 “(B) explore for minerals or locate a min-
4 ing claim on any portion of such lands; or

5 “(C) file an application to acquire any in-
6 terest in any portion of such lands pursuant to
7 section 209 of the Federal Land Policy and
8 Management Act of 1976 (43 U.S.C. 1719).

9 If, within such 90-day period, the person who filed
10 a notice under this paragraph files a plan of oper-
11 ations with the Secretary pursuant to subsection (f),
12 such 90-day period shall be extended until the ap-
13 proval or disapproval of the plan by the Secretary
14 pursuant to subsection (f).

15 “(3) NOTICE TO SURFACE OWNER.—Any per-
16 son who has filed a notice of intention to locate a
17 mining claim under paragraph (2) for any lands sub-
18 ject to this Act shall provide written notice of such
19 filing, by registered or certified mail with return re-
20 ceipt, to the surface owner (as evidenced by local tax
21 records) of the lands covered by the notice under
22 paragraph (2). The notice shall be provided at least
23 30 days before entering such lands and shall contain
24 each of the following:

1 “(A) A brief description of the proposed
2 mineral activities.

3 “(B) A map and legal description of the
4 lands to be subject to mineral exploration.

5 “(C) The name, address and phone num-
6 ber of the person managing such activities.

7 “(D) A statement of the dates on which
8 such activities will take place.

9 “(4) ACREAGE LIMITATIONS.—The total acre-
10 age covered at any time by notices of intention to lo-
11 cate a mining claim under paragraph (2) filed by
12 any person and by affiliates of such person may not
13 exceed 6,400 acres of lands subject to this Act in
14 any one State and 1,280 acres of such lands for a
15 single surface owner. For purposes of this para-
16 graph, the term ‘affiliate’ means, with respect to any
17 person, any other person which controls, is con-
18 trolled by, or is under common control with, such
19 person.

20 “(c) CONSENT.—Notwithstanding subsection (a) and
21 any other provision of law, after the effective date of this
22 subsection no person may engage in the conduct of min-
23 eral activities (other than those relating to exploration re-
24 ferred to in subsection (b)(1)B)) on a mining claim located
25 on lands subject to this Act without the written consent

1 of the surface owner thereof unless the Secretary has au-
2 thorized the conduct of such activities under subsection
3 (d).

4 “(d) AUTHORIZED MINERAL ACTIVITIES.—The Sec-
5 retary shall authorize a person to conduct mineral activi-
6 ties (other than those relating to exploration referred to
7 in subsection (b)(1)(B)) on lands subject to this Act with-
8 out the consent of the surface owner thereof if such person
9 complies with the requirements of subsections (e) and (f).

10 “(e) BOND.—(1) Before the Secretary may authorize
11 any person to conduct mineral activities the Secretary
12 shall require such person to post a bond or other financial
13 guarantee in an amount to insure the completion of rec-
14 lamation pursuant to this Act. Such bond or other finan-
15 cial guarantee shall ensure—

16 “(A) payment to the surface owner, after the
17 completion of such mineral activities and reclama-
18 tion, compensation for any permanent damages to
19 crops and tangible improvements of the surface
20 owner that resulted from mineral activities; and

21 “(B) payment to the surface owner of com-
22 pensation for any permanent loss of income of the
23 surface owner due to loss or impairment of grazing,
24 or other uses of the land by the surface owner to the
25 extent that reclamation required by the plan of oper-

1 ations would not permit such uses to continue at the
2 level existing prior to the commencement of mineral
3 activities.

4 “(2) In determining the bond amount to cover perma-
5 nent loss of income under paragraph (1)(B), the Secretary
6 shall consider, where appropriate, the potential loss of
7 value due to the estimated permanent reduction in utiliza-
8 tion of the land.

9 “(f) PLAN OR OPERATIONS.—(1) Before the Sec-
10 retary may authorize any person to conduct mineral activi-
11 ties on lands subject to this Act, the Secretary shall re-
12 quire such person to submit a plan of operations. Such
13 plan shall include procedures for—

14 “(A) the minimization of damages to crops and
15 tangible improvements of the surface owner;

16 “(B) the minimization of disruption to grazing
17 or other uses of the land by the surface owner; and

18 “(C) payment of a fee for the use of surface
19 during mineral activities equivalent to the loss of in-
20 come to the ranch operation as established pursuant
21 to subsection (g).

22 “(2) The Secretary shall provide a copy of the pro-
23 posed plan of operations to the surface owner at least 45
24 days prior to the date the Secretary makes a determina-
25 tion as to whether such plan complies with the require-

1 ments of this subsection. During such 45-day period the
2 surface owner may submit comments and recommend
3 modifications to the proposed plan of operations to the
4 Secretary.

5 “(3)(A) The Secretary shall, within 60 days of receipt
6 of the plan, approve the plan of operations if it complies
7 with the requirements of this Act, including each of the
8 following:

9 “(i) The proposed plan of operations is com-
10 plete and accurate.

11 “(ii) The person submitting the proposed plan
12 of operations has demonstrated that all other appli-
13 cable Federal and State requirements have been
14 met.

15 “(B) The Secretary shall notify the person submit-
16 ting a plan of operations of any modifications to such plan
17 required to bring it into compliance with the requirements
18 of this Act. If the person submitting the plan agrees to
19 modify such plan in a manner acceptable to the Secretary,
20 the Secretary shall approve the plan as modified. In the
21 event no agreement can be reached on the modifications
22 to the plan which, in the opinion of the Secretary, will
23 bring such plan into compliance with the requirements of
24 this Act, then the Secretary shall disapprove the plan and

1 notify both the surface owner and the person submitting
2 the plan of the decision.

3 “(C) The 60-day period referred to in subparagraph
4 (A) may be extended by the Secretary where additional
5 time is required to comply with other applicable require-
6 ments of law.

7 “(D) The Secretary shall suspend or revoke a plan
8 of operation whenever the Secretary determines, on the
9 Secretary’s own motion or on a motion made by the sur-
10 face owner, that the person conducting mineral activities
11 is in substantial noncompliance with the terms and condi-
12 tions of an approved plan of operations and has failed to
13 remedy a violation after notice from the Secretary within
14 the time required by the Secretary.

15 “(4) Final approval of a plan of operations under this
16 subsection shall be conditioned upon compliance with sub-
17 sections (e) and (g).

18 “(g) FEE.—The fee referred to in subsection (f)(1)
19 shall be—

20 “(1) paid to the surface owner by the person
21 submitting the plan of operations;

22 “(2) paid in advance of any mineral activities or
23 at such other time or times as may be agreed to by
24 the surface owner and the person conducting such
25 activities; and

1 “(3) established by the Secretary taking into
2 account the acreage involved and the degree of po-
3 tential disruption to existing surface uses during
4 mineral activities (including the loss of income to the
5 surface owner and such surface owner’s operations
6 due to the loss or impairment of existing surface
7 uses for the duration of the mineral activities), ex-
8 cept that such fee shall not exceed the fair market
9 value for the surface of the land.

10 “(h) RECLAMATION.—Lands affected by mineral ac-
11 tivities under a plan of operations approved pursuant to
12 subsection (f)(3) shall be reclaimed, to the maximum ex-
13 tent practicable, to a condition capable of supporting the
14 uses to which such lands were capable of supporting prior
15 to surface disturbance. Reclamation shall proceed as con-
16 temporaneously as practicable with the conduct of mineral
17 activities.

18 “(i) STATE LAW.—(1) Nothing in this Act shall be
19 construed as affecting any reclamation, bonding, inspec-
20 tion, enforcement, air or water quality standard or re-
21 quirement of any State law or regulation which may be
22 applicable to mineral activities on lands subject to this Act
23 to the extent that such law or regulation is not inconsis-
24 tent with this title.

1 “(2) Nothing in this Act shall be construed as affect-
2 ing in any way the right of any person to enforce or pro-
3 tect, under applicable law, the interest of such person in
4 water resources affected by mineral activities.

5 “(j) INSPECTIONS.—Should any surface owner of
6 land subject to this Act have reason to believe that they
7 are or may be adversely affected by mineral activities due
8 to any violation of the terms and conditions of a plan of
9 operations approved under subsection (f), such surface
10 owner may request an inspection of such lands. The Sec-
11 retary shall determine within 10 days of the receipt of the
12 request whether the request states a reason to believe that
13 a violation exists, except in the event the surface owner
14 alleges and provides reason to believe that an imminent
15 danger exists, the 10-day period shall be waived and the
16 inspection conducted immediately. When an inspection is
17 conducted under this paragraph, the Secretary shall notify
18 the surface owner and such surface owner shall be allowed
19 to accompany the inspector on the inspection.

20 “(k) DAMAGES FOR FAILURE TO COMPLY.—(1)
21 Whenever the surface owner of any land subject to this
22 Act has suffered any permanent damages to crops or tan-
23 gible improvements of the surface owner, or any perma-
24 nent loss of income due to loss or impairment of grazing,

1 or other uses of the land by the surface owner, if such
2 damages or loss result from—

3 “(A) any mineral activity undertaken without
4 the consent of the surface owner under subsection
5 (c) or an authorization by the Secretary under sub-
6 section (d); or

7 “(B) the failure of the person conducting min-
8 eral activities to remedy to the satisfaction of the
9 Secretary any substantial noncompliance with the
10 terms and conditions of a plan under subsection (f);
11 the surface owner may bring an action in the appropriate
12 United States district court for, and the court may award,
13 double damages plus costs for willful misconduct or gross
14 negligence.

15 “(2) The surface owner of any land subject to this
16 Act may also bring an action in the appropriate United
17 States district court for double damages plus costs for
18 willful misconduct or gross negligence against any person
19 undertaking any mineral activities on lands subject to this
20 Act in violation of any requirement of subsection (b).

21 “(3) Any double damages plus costs awarded by the
22 court under this subsection shall be reduced by the
23 amount of any compensation which the surface owner has
24 received (or is eligible to receive) pursuant to the bond
25 or financial guarantee required under subsection (e).

1 “(l) PAYMENT OF FINANCIAL GUARANTEE.—The
2 surface owner of any land subject to this Act may petition
3 the Secretary for payment of all or any portion of a bond
4 or other financial guarantee required under subsection (e)
5 as compensation for any permanent damages to crops and
6 tangible improvements of the surface owner, or any per-
7 manent loss of income due to loss or impairment of graz-
8 ing, or other uses of the land by the surface owner. Pursu-
9 ant to such a petition, the Secretary may use such bond
10 or other guarantee to provide compensation to the surface
11 owner for such damages and to insure the required rec-
12 lamation.

13 “(m) BOND RELEASE.—The Secretary shall release
14 the bond or other financial guarantee required under sub-
15 section (e) upon the successful completion of all require-
16 ments pursuant to a plan of operations approved under
17 subsection (f).

18 “(n) CONVEYANCE TO SURFACE OWNER.—The Sec-
19 retary shall take such actions as may be necessary to sim-
20 plify the procedures which must be complied with by sur-
21 face owners of lands subject to this Act who apply to the
22 Secretary to obtain title to interests in such lands owned
23 by the United States.

24 “(o) DEFINITIONS.—For the purposes of subsections
25 (b) through (n)—

1 “(1) The term ‘mineral activities’ means any
2 activity for, related to or incidental to mineral explo-
3 ration, mining, and beneficiation activities for any
4 locatable mineral on a mining claim. When used
5 with respect to this term—

6 “(A) the term ‘exploration’ means those
7 techniques employed to locate the presence of a
8 locatable mineral deposit and to establish its
9 nature, position, size, shape, grade and value;

10 “(B) the term ‘mining’ means the proc-
11 esses employed for the extraction of a locatable
12 mineral from the earth; and

13 “(C) the term ‘beneficiation’ means the
14 crushing and grinding of locatable mineral ore
15 and such processes are employed to free the
16 mineral from the other constituents, including
17 but not necessarily limited to, physical and
18 chemical separation techniques.

19 “(2) The term ‘mining claim’ means a claim lo-
20 cated under the general mining laws of the United
21 States (which generally comprise 30 U.S.C. chapters
22 2, 12A, and 16, and sections 161 and 162) subject
23 to the terms and conditions of subsections (b)
24 through (p) of this section.

1 “(3) The term ‘tangible improvements’ includes
2 agricultural, residential and commercial improve-
3 ments, including improvements made by residential
4 subdividers.

5 “(p) MINERALS COVERED.—Subsections (b) through
6 (o) of this section apply only to minerals not subject to
7 disposition under—

8 “(1) the Mineral Leasing Act (30 U.S.C. 181
9 and following);

10 “(2) the Geothermal Steam Act of 1970 (30
11 U.S.C. 100 and following); or

12 “(3) the Act of July 31, 1947, commonly
13 known as the Materials Act of 1947 (30 U.S.C. 601
14 and following).”.

15 (b) TECHNICAL CONFORMING AMENDMENT.—Sec-
16 tion 9 of the Act of December 29, 1916, entitled “An Act
17 to provide for stock-raising homesteads, and for other pur-
18 poses” (43 U.S.C. 299) is amended by inserting “(a) GEN-
19 ERAL PROVISIONS.—” before the words “That all entries
20 made”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this Act shall take effect 180 days after the date of enact-
23 ment.

24 (d) REGULATIONS.—The Secretary of the Interior
25 shall issue final regulations to implement the amendments

1 made by this Act not later than the effective date of this
2 Act. Failure to promulgate these regulations by reason of
3 any appeal or judicial review shall not delay the effective
4 date as specified in paragraph (c).

5 **SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL IN-**
6 **TEREST.**

7 (a) REPORT.—The Secretary of the Interior is di-
8 rected to submit a report to the Congress within 2 years
9 after the date of enactment of this Act on the acquisition
10 of mineral interests made after the date of enactment of
11 this Act by foreign firms on lands subject to the Act of
12 December 29, 1916, entitled “An Act to provide for stock-
13 raising homesteads, and for other purposes” (43 U.S.C.
14 299).

15 (b) DEFINITION.—For purposes of this section, the
16 term “foreign firm” means a business entity that conducts
17 business operations in the United States and is 51 percent
18 or more owned and controlled by a foreign person or
19 entity.

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