

Union Calendar No. 20

103D CONGRESS
1ST SESSION

H. R. 239

[Report No. 103-44]

A BILL

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

MARCH 29, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

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

MARCH 29, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 5, 1993]

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,*

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

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

8 “(b) *EXPLORATION; LOCATION OF MINING CLAIMS;*
9 *NOTICES.*—

10 “(1) *IN GENERAL.*—(A) Notwithstanding sub-
11 section (a) and any other provision of law to the con-
12 trary, after the effective date of this subsection no per-
13 son other than the surface owner may enter lands sub-
14 ject to this Act to explore for, or to locate, a mining
15 claim on such lands without—

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

18 “(ii) providing notice to the surface owner
19 pursuant to paragraph (3).

20 “(B) Any person who has complied with the re-
21 quirements referred to in subparagraph (A) may,
22 during the authorized exploration period, in order to
23 locate a mining claim, enter lands subject to this Act
24 to undertake mineral activities related to exploration
25 that cause no more than a minimal disturbance of
26 surface resources and do not involve the use of mecha-

1 *nized earthmoving equipment, explosives, the con-*
2 *struction of roads, drill pads, or the use of toxic or*
3 *hazardous materials.*

4 *“(C) The authorized exploration period referred*
5 *to in subparagraph (B) shall begin 30 days after no-*
6 *tice is provided under paragraph (3) with respect to*
7 *lands subject to such notice and shall end with the ex-*
8 *piration of the 90-day period referred to in para-*
9 *graph (2)(A) or any extension provided under para-*
10 *graph (2).*

11 *“(2) NOTICE OF INTENTION TO LOCATE A MINING*
12 *CLAIM.—Any person seeking to locate a mining claim*
13 *on lands subject to this Act in order to engage in the*
14 *mineral activities relating to exploration referred to*
15 *under paragraph (1)(B) shall file with the Secretary*
16 *of the Interior a notice of intention to locate a claim*
17 *on the lands concerned. The notice shall be in such*
18 *form as the Secretary shall prescribe. The notice shall*
19 *contain the name and mailing address of the person*
20 *filing the notice and a legal description of the lands*
21 *to which the notice applies. The legal description shall*
22 *be based on the public land survey or on such other*
23 *description as is sufficient to permit the Secretary to*
24 *record the notice on the land status records of the Sec-*
25 *retary. Whenever any person has filed a notice under*

1 *this paragraph with respect to any lands, during the*
2 *90-day period following the date of such filing, or any*
3 *extension thereof pursuant to this paragraph, no other*
4 *person (including the surface owner) may—*

5 *“(A) file such a notice with respect to any*
6 *portions of such lands;*

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

9 *“(C) file an application to acquire any in-*
10 *terest in any portion of such lands pursuant to*
11 *section 209 of the Federal Land Policy and Man-*
12 *agement Act of 1976 (43 U.S.C. 1719).*

13 *If, within such 90-day period, the person who filed a*
14 *notice under this paragraph files a plan of operations*
15 *with the Secretary pursuant to subsection (f), such*
16 *90-day period shall be extended until the approval or*
17 *disapproval of the plan by the Secretary pursuant to*
18 *subsection (f).*

19 *“(3) NOTICE TO SURFACE OWNER.—Any person*
20 *who has filed a notice of intention to locate a mining*
21 *claim under paragraph (2) for any lands subject to*
22 *this Act shall provide written notice of such filing, by*
23 *registered or certified mail with return receipt, to the*
24 *surface owner (as evidenced by local tax records) of*
25 *the lands covered by the notice under paragraph (2).*

1 *The notice shall be provided at least 30 days before*
2 *entering such lands and shall contain each of the fol-*
3 *lowing:*

4 “(A) *A brief description of the proposed*
5 *mineral activities.*

6 “(B) *A map and legal description of the*
7 *lands to be subject to mineral exploration.*

8 “(C) *The name, address and phone number*
9 *of the person managing such activities.*

10 “(D) *A statement of the dates on which such*
11 *activities will take place.*

12 “(4) *ACREAGE LIMITATIONS.—The total acreage*
13 *covered at any time by notices of intention to locate*
14 *a mining claim under paragraph (2) filed by any*
15 *person and by affiliates of such person may not ex-*
16 *ceed 6,400 acres of lands subject to this Act in any*
17 *one State and 1,280 acres of such lands for a single*
18 *surface owner. For purposes of this paragraph, the*
19 *term ‘affiliate’ means, with respect to any person,*
20 *any other person which controls, is controlled by, or*
21 *is under common control with, such person.*

22 “(c) *CONSENT.—Notwithstanding subsection (a) and*
23 *any other provision of law, after the effective date of this*
24 *subsection no person may engage in the conduct of mineral*
25 *activities (other than those relating to exploration referred*

1 *to in subsection (b)(1)(B)) on a mining claim located on*
2 *lands subject to this Act without the written consent of the*
3 *surface owner thereof unless the Secretary has authorized*
4 *the conduct of such activities under subsection (d).*

5 “(d) *AUTHORIZED MINERAL ACTIVITIES.*—*The Sec-*
6 *retary shall authorize a person to conduct mineral activities*
7 *(other than those relating to exploration referred to in sub-*
8 *section (b)(1)(B)) on lands subject to this Act without the*
9 *consent of the surface owner thereof if such person complies*
10 *with the requirements of subsections (e) and (f).*

11 “(e) *BOND.*—(1) *Before the Secretary may authorize*
12 *any person to conduct mineral activities the Secretary shall*
13 *require such person to post a bond or other financial guar-*
14 *antee in an amount to insure the completion of reclamation*
15 *pursuant to this Act. Such bond or other financial guaran-*
16 *tee shall ensure—*

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

22 “(B) *payment to the surface owner of compensa-*
23 *tion for any permanent loss of income of the surface*
24 *owner due to loss or impairment of grazing or other*
25 *uses of the land by the surface owner to the extent*

1 *that reclamation required by the plan of operations*
2 *would not permit such uses to continue at the level*
3 *existing prior to the commencement of mineral activi-*
4 *ties.*

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

10 *“(f) PLAN OR OPERATIONS.—(1) Before the Secretary*
11 *may authorize any person to conduct mineral activities on*
12 *lands subject to this Act, the Secretary shall require such*
13 *person to submit a plan of operations. Such plan shall in-*
14 *clude procedures for—*

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

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

19 *“(C) payment of a fee for the use of surface dur-*
20 *ing mineral activities equivalent to the loss of income*
21 *to the existing surface operation as established pursu-*
22 *ant to subsection (g).*

23 *“(2) The Secretary shall provide a copy of the proposed*
24 *plan of operations to the surface owner at least 45 days*
25 *prior to the date the Secretary makes a determination as*

1 *to whether such plan complies with the requirements of this*
2 *subsection. During such 45-day period the surface owner*
3 *may submit comments and recommend modifications to the*
4 *proposed plan of operations to the 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 fol-*
8 *lowing:*

9 “(i) *The proposed plan of operations is complete*
10 *and accurate.*

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

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

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

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

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

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

18 “(1) paid to the surface owner by the person sub-
19 mitting the plan of operations;

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

24 “(3) established by the Secretary taking into ac-
25 count the acreage involved and the degree of potential

1 *disruption to existing surface uses during mineral ac-*
2 *tivities (including the loss of income to the surface*
3 *owner and such surface owner's operations due to the*
4 *loss or impairment of existing surface uses for the du-*
5 *ration of the mineral activities), except that such fee*
6 *shall not exceed the fair market value for the surface*
7 *of the land.*

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

16 *“(i) STATE LAW.—(1) Nothing in subsections (b)*
17 *through (p) of this section shall be construed as affecting*
18 *any reclamation, bonding, inspection, enforcement, air or*
19 *water quality standard or requirement of any State law*
20 *or regulation which may be applicable to mineral activities*
21 *on lands subject to this Act to the extent that such law or*
22 *regulation is not inconsistent with subsections (b) through*
23 *(p) of this section.*

24 *“(2) Nothing in subsections (b) through (p) of this sec-*
25 *tion shall be construed as affecting in any way the right*

1 *of any person to enforce or protect, under applicable law,*
2 *the interest of such person in water resources affected by*
3 *mineral activities.*

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

19 “(k) *DAMAGES FOR FAILURE TO COMPLY.—(1) When-*
20 *ever the surface owner of any land subject to this Act has*
21 *suffered any permanent damages to crops or tangible im-*
22 *provements of the surface owner, or any permanent loss of*
23 *income due to loss or impairment of grazing, or other uses*
24 *of the land by the surface owner, if such damages or loss*
25 *result from—*

1 “(A) any mineral activity undertaken without
2 the consent of the surface owner under subsection (c)
3 or an authorization by the Secretary under subsection
4 (d); or

5 “(B) the failure of the person conducting mineral
6 activities to remedy to the satisfaction of the Sec-
7 retary any substantial noncompliance with the terms
8 and conditions of a plan under subsection (f);
9 the surface owner may bring an action against the person
10 undertaking any mineral activities on lands subject to this
11 Act in the appropriate United States district court for, and
12 the court may award, double damages plus costs for willful
13 misconduct or gross negligence.

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

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

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

12 “(m) *BOND RELEASE.*—The Secretary shall release the
13 bond or other financial guarantee required under subsection
14 (e) upon the successful completion of all requirements pur-
15 suant to a plan of operations approved under subsection
16 (f).

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

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

1 “(1) The term ‘mineral activities’ means any ac-
2 tivity 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 with
5 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 na-
9 ture, position, size, shape, grade and value;

10 “(B) the term ‘mining’ means the processes
11 employed for the extraction of a locatable min-
12 eral 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 min-
16 eral from the other constituents, including but
17 not necessarily limited to, physical and chemical
18 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 to
23 the terms and conditions of subsections (b) through
24 (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 dis-*
7 *position 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 known*
13 *as the Materials Act of 1947 (30 U.S.C. 601 and fol-*
14 *lowing).”.*

15 “(b) *TECHNICAL CONFORMING AMENDMENT.—Section 9*
16 *of the Act of December 29, 1916, entitled “An Act to provide*
17 *for stock-raising homesteads, and for other purposes” (43*
18 *U.S.C. 299) is amended by inserting “(a) GENERAL PROVI-*
19 *SIONS.—” before the words “That all entries made”.*

20 “(c) *EFFECTIVE DATE.—The amendments made by this*
21 *Act shall take effect 180 days after the date of enactment.*

22 “(d) *REGULATIONS.—The Secretary of the Interior shall*
23 *issue final regulations to implement the amendments made*
24 *by this Act not later than the effective date of this Act. Fail-*
25 *ure to promulgate these regulations by reason of any appeal*

1 *or judicial review shall not delay the effective date as speci-*
2 *fied in paragraph (c).*

3 **SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL IN-**
4 **TEREST.**

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

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

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