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REINSTATEMENT OF CERTAIN MINE CLAIMS FOR SMALL MINERS

NOVEMBER 14, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 884]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 884) to amend the Omnibus Budget Reconciliation Act of 1993 to require the Bureau of Land Management to provide a claimant of a small miner waiver from claim maintenance fees with a period of 60 days after written receipt of 1 or more defects is provided to the claimant by registered mail to cure the 1 or more defects or pay the claim maintenance fee, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike all after the enacting clause and insert the following:

SECTION 1. SMALL MINER WAIVERS TO CLAIM MAINTENANCE FEES.

(a) DEFINITIONS.—In this section:

(1) COVERED CLAIMHOLDER.—The term “covered claimholder” means—

(A) the claimholder of the claims in the State numbered AA023149, AA023163, AA047913, AA047914, AA047915, AA047916, AA047917, AA047918, and AA047919 (as of December 29, 2004);

(B) the claimholder of the claim in the State numbered FF (as of December 29, 2004);

(C) the claimholder of the claims in the State numbered FF-58607, FF-58608, FF-58609, FF-58610, FF-58611, FF-58613, FF-58615, FF-58616, FF-58617, and FF-58618 (as of December 31, 2003); and

(D) the claimholder of the claims in the State numbered FF-53988, FF-53989, and FF-53990 (as of December 31, 1987).

(2) DEFECT.—The term “defect” includes a failure—

- (A) to timely file—
 - (i) a small miner maintenance fee waiver application;
 - (ii) an affidavit of annual labor associated with a small miner maintenance fee waiver application; or
 - (iii) an instrument required under section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)); and
- (B) to pay the required application fee for a small maintenance fee waiver application.
- (3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (4) STATE.—The term “State” means the State of Alaska.
- (b) TREATMENT OF COVERED CLAIMHOLDERS.—Notwithstanding section 10101(d) of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f(d)) and section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)), each covered claimholder shall, during the 60-day period beginning on the date on which the covered claimholder receives written notification from the Bureau of Land Management by registered mail of the opportunity, have the opportunity—
 - (1)(A) to cure any defect in a small miner maintenance fee waiver application (including the failure to timely file a small miner maintenance fee waiver application) for any prior period during which the defect existed; or
 - (B) to pay any claim maintenance fees due for any prior period during which the defect existed; and
 - (2) to cure any defect in the filing of any instrument required under section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)) (including the failure to timely file any required instrument) for any prior period during which the defect existed.
- (c) REINSTATEMENT OF CLAIMS DEEMED FORFEITED.—The Secretary shall reinstate any claim of a covered claimholder as of the date declared forfeited and void—
 - (1) under section 10104 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28i) for failure to pay the claim maintenance fee or obtain a valid waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f); or
 - (2) under section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) for failure to file any instrument required under section 314(a) of that Act (43 U.S.C. 1744(a)) for any prior period during which the defect existed if the covered claimholder—
 - (A) cures the defect; or
 - (B) pays the claim maintenance fee under subsection (b)(1)(B).

2. Amend the title so as to read:

“A bill to require the Bureau of Land Management to provide certain covered claimholders the opportunity to cure any defects in a small miner maintenance fee waiver application or pay the claim maintenance fee, and for other purposes.”

PURPOSE

The purpose of S. 884, as ordered reported, is to require the Bureau of Land Management (BLM) to provide certain covered claimholders the opportunity to cure any defects in a small miner maintenance fee waiver application or pay the claim maintenance fee.

BACKGROUND AND NEED

In 1993, as part of the Omnibus Budget Reconciliation Act (Public Law 103–66), Congress established an annual claim maintenance fee that is required to hold a mining claim on public land. At the same time, a small miner waiver was created to allow claimholders with 10 or fewer claims to avoid paying the fee as long as they have performed assessment work on the claims in the amount of \$100 per claim during the year and have certified in writing by September 1 that they hold 10 or fewer claims. Claimholders on public lands are also required to file an affidavit that they have performed assessment work on or before December

30 in compliance with section 314(c) of the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 1744(c)).

A mine claim is subject to forfeiture due to failure or tardiness in filing the required affidavit of assessment work; the small miner waiver application; the claim maintenance fee, or the small miner certification. While the Omnibus Budget Reconciliation Act provides an opportunity to cure any defects in a small miner waiver application within 60 days of a defect notification, BLM has ruled administratively that this grace period does not extend to a failure to file the small miner waiver application in a timely manner.

In a number of instances, the mine claims of small placer miners, along with associated operation plans, have been voided due to untimely submission of annual filings—errors the small miners assert were caused by BLM clerical mistakes, mailing delays, or for unexplained reasons. In these cases, BLM terminated the claims with no notification of defect or allowance to correct any error.

S. 884 provides four claimholders in Alaska who lost mine claims due to errors with an opportunity to cure any defect in the annual filing, including the failure to timely file the required application or instrument, and have the mine claims reinstated, as of the date the claim was declared forfeited and void.

LEGISLATIVE HISTORY

S. 884 was introduced by Senator Murkowski on April 6, 2017. The Subcommittee on Public Lands, Forests, and Mining held a hearing on the bill on July 26, 2017.

In the 114th Congress, Senator Murkowski introduced similar legislation, S. 1395, on May 20, 2015.

In the 113th Congress, Senator Murkowski introduced similar legislation, S. 366, on February 14, 2013. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 366 on April 25, 2013 (S. Hrg. 113–28).

In the 112th Congress, Senator Murkowski introduced a similar bill, S. 303, on February 8, 2011. The Subcommittee on Public Lands and Forests held a hearing on S. 303 on March 22, 2012 (S. Hrg. 112–642).

The Senate Committee on Energy and Natural Resources met in an open business session on October 2, 2018, and ordered S. 884 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 884, if amended as described herein.

COMMITTEE AMENDMENTS

During its consideration of S. 884, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The substitute amendment narrows the bill's scope to cover four Alaskan miners and removes the broader policy changes that required BLM to provide any small miner with the opportunity to fix waiver application defects and have their claims reinstated. The substitute amendment also made a number of technical corrections

and is further described in the section-by-section analysis. The title amendment reflects the changes made by the substitute amendment.

SECTION-BY-SECTION ANALYSIS

Section 1. Small miner waivers to claim maintenance fees

Subsection (a) defines key terms.

Subsection (b) provides each covered claimholder with the opportunity to cure any defect in a small miner maintenance fee waiver application or pay any claim maintenance due, and cure any defect in the filings required by section 314(c) of FLPMA (43 U.S.C. 1744(c)) within 60 days from the date the claimholder receives notification from BLM via registered mail of the opportunity.

Subsection (c) directs the Secretary of the Interior to reinstate any claim by a covered claimholder as of the date the claim was declared forfeited and void if the covered claimholder cures the defect or pays the claim maintenance fee that was the cause of the original forfeiture.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

Current law requires mining claimholders to pay claim maintenance fees each year or submit an application for a fee waiver and related paperwork to the Bureau of Land Management (BLM) by a filing deadline. If claimholders fail to do so they forfeit the claim. S. 884 would direct BLM to reinstate the forfeited mining claims of four claimholders in Alaska if those claimholders retroactively submit paperwork and pay fees. CBO estimates that any costs incurred by BLM to manage the reinstated claims would be insignificant and would be offset by the fees for that paperwork; thus, the net effect on spending subject to appropriation would be negligible.

Enacting S. 884 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 884 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 884 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 884. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 884, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 884, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the July 26, 2017, hearing on S. 884 follows:

TESTIMONY OF JOHN RUHS, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify today on S. 884. In communities across the country, hardrock mining provides jobs, supports a diverse and vital economy, and brings important commodities to market that are essential to maintaining a high quality of life for all Americans. The public lands are a significant source of these mineral resources, and mineral development is an important land use within the Bureau of Land Management's (BLM's) multiple-use mandate. The Department of the Interior (Department) greatly appreciates the work of Chairman Murkowski and the Subcommittee in support of environmentally-responsible mineral development from the nation's public lands.

S. 884 would require the BLM to allow mining claimants a chance to "cure" their failure to meet certain required filing deadlines. The bill would also give private relief to a small number of mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM appreciates the sponsor's work on this legislation and supports S. 884's goal of providing flexibility to small miners who have missed their filing deadlines. The BLM would welcome the opportunity to work with the sponsor and the Subcommittee on language to clarify the legislation and promote accountability.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1993 (maintenance fee statute) established an annual maintenance fee for unpatented mining claims, mill sites, and tunnel sites. This annual maintenance fee is currently set by regulation at \$155 per lode mining claim or site and \$155 per every 20 acres or portion thereof for a placer claim. The maintenance fee statute also gave the Secretary of the Interior (Secretary) the discretion to waive the annual maintenance fee for certain "small miners"—mining claimants who hold 10 or fewer claims or sites.

Following the enactment of the maintenance fee statute, the Department promulgated regulations that exercised the Secretary's discretion to allow the maintenance fee waiver for "small miners." These regulations state that in order to qualify for the waiver under the maintenance fee

statute, the mining claimant must, among other things, file a maintenance fee waiver certification that certifies he and all related parties hold 10 or fewer mining claims or sites. Under the original regulations, the deadline for filing the maintenance fee waiver certification for the upcoming assessment year was August 31, which was the same day as the statutory deadline for filing annual maintenance fees. When Congress changed the statutory annual maintenance fee deadline to September 1, the Department changed the deadline for maintenance fee waiver certifications to also be September 1 for the coming assessment year. The Secretary's decision to make the regulatory deadline for filing maintenance fee waiver certifications the same as the statutory deadline for paying annual mining claim maintenance fees took into consideration the statutory constraint that maintenance fee waivers could not legally or practically be sought any later than the deadline for the maintenance fee itself.

Unlike mining claimants who pay the annual maintenance fee, mining claimants who file maintenance fee waiver certifications are not exempt from the annual filing requirements in section 314 of the Federal Land Policy and Management Act (FLPMA). As such, mining claimants who file maintenance fee waivers certifications must also submit an annual filing—either an affidavit that they have done sufficient work on their claim in lieu of the maintenance fee, or a notice of intention to hold—on or before December 30, following the submission of the waiver and after the close of the assessment year for which a waiver was sought. Failure to submit either the waiver certification or the required filing under FLPMA results in forfeiture or abandonment of the mining claim by operation of law.

When Congress amended the maintenance fee statute in 1998 to change the filing deadline from August 31 to September 1, as noted above, it also amended the maintenance fee statute to allow mining claimants seeking a maintenance fee waiver to cure a “defective” waiver certification. The amendment required the BLM to give mining claimants filing timely “defective” maintenance fee waiver certifications notice of the defect and 60 days from the receipt of written notice to “cure” that defect or pay the annual maintenance fee due for the applicable assessment year. Failure of the mining claimant to cure the defect results in the forfeiture of the mining claim.

S.884

S.884 would amend the maintenance fee statute to allow mining claimants an opportunity to “cure” a defective maintenance fee waiver certification for any reason, including if the claimant failed to timely file the waiver. As under the current statute, mining claimants would have 60 days from the receipt of written notice to correct that defect or pay the applicable maintenance fee. The bill would also provide the same 60-day cure period for an un-

timely annual filing under section 314(a) of FLPMA. S.884 would also give private relief to certain mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM has concerns with the bill as written and would like to opportunity to work with the sponsor to better achieve the bill's goals.

ANALYSIS

Altering deadlines

The BLM generally supports the goals in Sec. 1(a) that would allow miners flexibility when filing the small miner fee waiver. As written, the BLM has concerns with the proposed legislation, as it would effectively eliminate the September 1 deadline in the maintenance fee statute as well as the annual filing deadlines in section 314(a) of FLPMA. Amending the maintenance fee statute and section 314 of FLPMA to make failure to timely file a curable defect would require the BLM to accept late filings after the deadline, no matter how late. This would shift the administrative review and notification to the BLM, increasing the cost of administering the mining law program. Further, it would enable a mining claimant to hold the mining claims or sites in suspense until the BLM is able to identify the deficiency and notify the mining claimant. This would effectively extend the applicable deadlines by removing any penalty for failing to comply in a timely manner. In an effort to limit the administrative burden, and hold miners accountable to timely pay the maintenance fee or file a timely maintenance fee waiver, the BLM would like to work with the sponsor on language to provide limitations on the number of times a small miner can have an untimely filing or perhaps institute a monetary fee associated with it.

Curing defective waivers

Under Sec. 1(a) of S. 884, if a mining claimant files either an untimely maintenance fee payment, an untimely maintenance fee waiver certification, or fails to make any filing at all, including a maintenance fee payment, the BLM would no longer be able to simply declare the mining claim or site void by operation of law, as authorized under the current maintenance fee statute since 1994. Rather, under this new provision, if any mining claimant fails to pay the annual maintenance fee or file a maintenance fee waiver certification by the deadline, the BLM would have to first determine whether each mining claimant qualifies as a "small miner" and, if so, would have to give notice and opportunity to cure—whether or not the mining claimant had any intention of paying the fee or filing a maintenance fee waiver certification. Moreover, because the BLM would have no way to determine if a mining claimant who qualified as a "small miner" had simply decided not to pay the fee or file the maintenance fee waiver certification and

intentionally relinquish their mining claims, the BLM would have to send a “defect” notice to all such mining claimants who fail to either timely pay their maintenance fees or timely file a maintenance fee waiver certification and give them the opportunity to cure.

Similar considerations apply with respect to the provisions in S. 884 that allow mining claimants an opportunity to “cure” defective annual filings under section 314 of FLPMA. In addition, the amendments to FLPMA need clarification for other reasons. Section 1(a) of the proposed legislation purports to limit the opportunity to “cure” only to “an affidavit of annual labor” and only where “associated with the application.” However, section 1(c) amends section 314 of FLPMA to extend the opportunity to “cure” to all required annual filings under section 314(a), regardless of whether it is an affidavit of annual assessment work, and regardless of whether it is associated with a maintenance fee waiver certification. These provisions appear to be potentially contradictory, and we would like the opportunity to work with the sponsor to clarify these requirements.

Covered claimholder

The mining claims described under Section 1(b) belonged to several different claimants in Alaska. Section 1(b) would give the mining claimants the opportunity to “cure” the defects that led to their mining claims being declared abandoned and void, consistent with the amendments to the maintenance fee statute and section 314 of FLPMA that are proposed here.

The first “covered claimholder” (for mining claims AA023149, AA023163, AA047913, AA047914, AA047915, AA047916, AA047917, AA047918, and AA047919) is from Girdwood, Alaska. The mining claimant held nine mining claims located in the Chugach National Forest in southeastern Alaska. The BLM determined these mining claims to be statutorily abandoned in January 2005 when the mining claimant failed to file annual assessment work documents in accordance with FLPMA, and the Interior Board of Land Appeals (IBLA) subsequently upheld the BLM’s decision to declare these mining claims null and void.

Finally, as the legislation is currently written, the BLM could not verify the remaining mining claim serial numbers identified in the bill. We would like to work with the sponsor to ensure that the bill text accurately identifies the mining claim serial numbers associated with the “covered claimholders” to whom this bill is seeking to provide relief. The BLM would welcome the opportunity to work with the sponsor on ways the Department can better serve the hardrock mining community.

CONCLUSION

Thank you again for the opportunity to testify on S. 884. I would be glad to answer your questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

