

LYON COUNTY ECONOMIC DEVELOPMENT AND
ENVIRONMENTAL REMEDIATION ACT

NOVEMBER 2, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5347]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5347) to facilitate resolution of environmental remediation and reclamation, resolve potential liability of the United States, and promote economic development in Lyon County, Nevada, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Lyon County Economic Development and Environmental Remediation Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Findings.
- Sec. 4. Conveyance of land; resolution of Federal liability.
- Sec. 5. General provisions relating to the conveyance.

SEC. 2. DEFINITIONS.

In this Act:

- (1) *Atlantic richfield*.—The term “Atlantic Richfield” means the Atlantic Richfield Company, a Delaware corporation, or its successors or assigns.
- (2) *BLM*.—The term “BLM” means the Bureau of Land Management.

(3) *CERCLA*.—The term “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(4) *County*.—The term “County” means Lyon County, Nevada.

(5) *Federal selected lands*.—The term “Federal selected lands” means the approximately 2,062 acres of land managed by the BLM, located in five distinct parcels in Lyon County, Nevada, and generally depicted on the map entitled “Anaconda Copper Mine Site—Federal Parcels Proposed to be Acquired” and dated September 7, 2017.

(6) *Indian tribe*.—The term “Indian Tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(7) *Map*.—The term “Map” means the map entitled “Anaconda Copper Mine Site—Federal Parcels Proposed to be Acquired” and dated September 7, 2017.

(8) *Secretary*.—The term “Secretary” means the Secretary of the Interior.

(9) *Site*.—The term “Site” means the Anaconda Copper Mine Site located in Lyon County, Nevada.

(10) *State*.—The term “State” means the State of Nevada.

SEC. 3. FINDINGS.

Congress finds that—

(1) Atlantic Richfield is performing environmental response actions under CERCLA at the Site with the State’s Division of Environmental Protection in the lead oversight role;

(2) to comprehensively and efficiently facilitate the environmental remediation and reclamation at the Site, Atlantic Richfield requires access to land that is owned by the Federal Government;

(3) more than half of the acreage located within the Site’s boundaries is owned by the Federal Government and managed by the BLM, and, therefore, attempting to implement a CERCLA remedy on BLM-managed lands requires extensive coordination and can involve substantial delays and increased costs;

(4) because the historic releases and elements of the remedy do not follow existing property boundaries, reducing any inconsistent treatment based on land ownership will benefit cost management, efficiency of operations and maintenance, and long-term protectiveness;

(5) the United States may be designated as a potentially responsible party under CERCLA and accordingly could be assigned a significant liability share for CERCLA response costs;

(6) at the time of conveyance, the Federal selected lands will be unburdened by mining claims;

(7) the conveyance of the Federal selected lands will promote economic development within the County by consolidating private land for future mining activities;

(8) the BLM has routinely conveyed lands to potentially responsible parties to facilitate remedial actions;

(9) a legislated land conveyance is necessary to meet the remediation goals of the Site, promote economic development in the County, and for BLM and the United States to receive a covenant not to sue and indemnity for certain potential liabilities relating to the Site;

(10) the Federal selected lands contain contamination and hazardous waste, and therefore the fair market value of such lands is minimal;

(11) the United States potential CERCLA liability at the Site is substantially greater than the fair market value of the Federal selected lands; and

(12) the BLM and Atlantic Richfield have concluded that conveyance of the Federal selected lands to Atlantic Richfield in exchange for resolution of certain United States liabilities is reasonable, logical, advisable, and in the public interest.

SEC. 4. CONVEYANCE OF LAND; RESOLUTION OF FEDERAL LIABILITY.

(a) **FEDERAL SELECTED LANDS**.—Notwithstanding section 120(h) of CERCLA (42 U.S.C. 9620(h)), not later than 120 days after the date of the enactment of this Act, the Secretary shall convey all right, title, and interest (including mineral rights) of the United States in and to the Federal selected lands to Atlantic Richfield.

(b) **COVENANT NOT TO SUE AND INDEMNITY**.—Upon conveyance of the Federal selected lands under subsection (a), and for full and complete compensation for those lands, Atlantic Richfield shall—

(1) covenant not to sue and agree not to assert any claims or causes of action against the BLM or its contractors or employees with respect to CERCLA response costs that Atlantic Richfield has incurred or will incur at or relating to the Site; and

- (2) indemnify the United States against future liabilities that result from Atlantic Richfield's activities on the Federal selected lands after the conveyance.
- (c) EQUAL VALUE.—The value of the Federal selected lands is deemed to be equal to or less than the United States portion of the CERCLA response costs at the Site and no further valuation is required for the purposes of this Act or the conveyance of the Federal selected lands under this Act.

SEC. 5. GENERAL PROVISIONS RELATING TO THE CONVEYANCE.

(a) IN GENERAL.—The conveyance authorized by this Act shall be subject to the following terms and conditions:

- (1) EXISTING ENCUMBRANCES.—In the United States patent to be issued pursuant to this Act, the Secretary shall describe any existing known encumbrances in the patent. The terms of such encumbrances shall be prescribed by the Secretary not later than 30 days after the date of the enactment of this Act.
- (2) RIGHT OF RESCISSION.—This Act shall not be binding on either the United States or Atlantic Richfield if, not later than 45 days after the date of the enactment of this Act, Atlantic Richfield submits to the Secretary a duly authorized and executed resolution of the Company stating its intention not to enter into the conveyance authorized by this Act.
- (b) WITHDRAWAL.—Subject to valid existing rights, effective on the date of the enactment of this Act, the Federal selected lands are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws) and from disposition under all laws pertaining to mineral leasing.
- (c) PATENT.—The conveyance of the Federal selected lands under this Act shall be by United States patent acceptable to the Secretary and in conformity with applicable title standards of the Attorney General.
- (d) TRIBAL RIGHTS.—Not later than 30 days after the date of enactment of this Act, the Secretary shall initiate in government-to-government consultation with any Indian Tribe affected by the conveyance of the Federal selected lands regarding issues of concern to the affected Indian Tribe related to the land conveyance. Such consultation shall conclude within 90 days of its initiation. After the consultation under this subsection, the Secretary shall consult with Atlantic Richfield and seek to find mutually acceptable measures to address any identified concerns of the affected Indian Tribe.
- (e) TRIBAL RIGHTS UNAFFECTED.—Nothing in this Act alters or diminishes the treaty rights of any Indian Tribe.
- (f) STATE LAW UNAFFECTED.—Nothing in this Act modifies, expands, diminishes, amends, or otherwise affects any State law relating to the imposition, application, timing, or collection of a State tax.
- (g) COMPLIANCE WITH APPLICABLE LAWS.—The land transfer directed by this Act, and all determinations, authorizations, and actions taken by the Secretary pursuant to this Act, are deemed to be non-discretionary actions authorized and directed by Congress, and to comply with all applicable procedural and other requirements of the laws of the United States.
- (h) USE OF FEDERAL SELECTED LANDS.—Notwithstanding the former ownership of the Federal selected lands by the United States, such land shall be treated as non-Federal land after the conveyance of such lands to Atlantic Richfield.
- (i) ENVIRONMENTAL COMPLIANCE.—After the conveyance, Atlantic Richfield shall perform all response actions determined by the State Division of Environmental Protection to be necessary to protect human health and the environment with respect to any hazardous substance stored, released, or disposed of on the Federal selected lands. Response actions on the Federal selected lands shall be conducted in accordance with applicable Federal, State, and local laws pertaining to response, mining, and related activities on land in private ownership.
- (j) AVAILABILITY OF MAP.—The Map shall be on file and available for public inspection in the appropriate offices of the BLM.

PURPOSE OF THE BILL

The purpose of H.R. 5347 is to facilitate resolution of environmental remediation and reclamation, resolve potential liability of the United States, and promote economic development in Lyon County, Nevada.

BACKGROUND AND NEED FOR LEGISLATION

The Anaconda copper mine is located on approximately 3,500 acres of land in Lyon County, Nevada, immediately west of the city

of Yerington. Copper was first discovered in the area in the 1800s and commercial development began in the mid-20th century. The mine site includes both private and public lands managed by the Bureau of Land Management (BLM). In the mid-1970s, the mine was purchased by the Atlantic Richfield Company, which is now a subsidiary of British Petroleum.¹

During its operations, the mine produced 1.7 billion pounds of copper and 360 million tons of mineral material, the majority of which remains onsite.² The site occupies approximately 6 square miles and contains a large open-pit mine, 400 acres of waste rock, five leach pads on 250 acres, 3,000 acres of contaminated mine tailings and 1,300 acres of disposal ponds. Because mining and processing occurred prior to many modern environmental regulations, the processes used to extract copper from the mineral ore resulted in heavy metal contamination of the site and nearby drinking water wells.³

In 2000, the Nevada Department of Environmental Protection (NDEP) began managing cleanup of the site. Due to a lack of financial resources, NDEP requested that the U.S. Environmental Protection Agency (EPA) exercise its Superfund authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.).⁴ The Atlantic Richfield company is the responsible party for addressing environmental issues related to the mine and has paid \$19.5 million in damages awarded to nearby residents in a class action lawsuit.^{5 6} In 2015, the EPA recommended placing the site on its National Priorities List to qualify for federal funding for long-term clean up. After that, the State of Nevada sought funding solutions from private entities and requested formally that the EPA defer listing. EPA deferred the placement on the National Priorities List in February 2018.⁷ Cleanup costs for a portion of the site are estimated to exceed \$36 million⁸

As part of its land-use planning process, BLM designated these parcels as suitable for disposal. Transfer of these lands will ensure the availability of adequate fill and cover material for the environmental cleanup, provide area for access and temporary infrastructure and improve the viability of the site for future economically beneficial uses.

H.R. 5347 would transfer approximately 2,000 acres of federal lands managed by BLM located in Lyon County, Nevada, to the At-

¹*Anaconda Copper Mine, Lyon County, Nevada*, Nevada Division of Environmental Protection. <https://ndep.nv.gov/land/abandoned-mine-lands/anaconda-site> (last accessed July 13, 2018); *National Priorities List, Proposed Site: Anaconda Copper Mine*, Environmental Protection Agency, September 2016. <https://semspub.epa.gov/work/09/2400298.pdf> (last accessed July 13, 2018).

²*Anaconda Copper Mine, Lyon County, Nevada*, Nevada Division of Environmental Protection. <https://ndep.nv.gov/land/abandoned-mine-lands/anaconda-site> (last accessed July 13, 2018).

³*National Priorities List, Proposed Site: Anaconda Copper Mine*, Environmental Protection Agency, September 2016. <https://semspub.epa.gov/work/09/2400298.pdf> (last accessed July 13, 2018).

⁴*Ibid.*

⁵*Anaconda Copper Mine, Lyon County, Nevada*, Nevada Division of Environmental Protection. <https://ndep.nv.gov/land/abandoned-mine-lands/anaconda-site> (last accessed July 13, 2018).

⁶Associated Press (2015, December 26). EPA wants to declare abandoned Nevada copper mine a Superfund site. <http://www.latimes.com/nation/la-na-epa-nevada-mine-20151226-story.html> (last accessed July 13, 2018).

⁷*National Priorities List, Proposed Site: Anaconda Copper Mine*, Environmental Protection Agency, September 2016. <https://semspub.epa.gov/work/09/2400298.pdf> (last accessed July 13, 2018).

⁸*Anaconda Copper Mine, Lyon County, Nevada*, Nevada Division of Environmental Protection. <https://ndep.nv.gov/land/abandoned-mine-lands/anaconda-site> (last accessed July 13, 2018).

lantic Richfield company, or its successors. As a former owner and operator of the Site, Atlantic Richfield Company is uniquely situated as the only entity legally qualified under CERCLA Section 120(h) to acquire this federal land in its current condition. The legislation would also expedite the transfer process and allow the environmental cleanup to be managed more efficiently.

The Atlantic Richfield Company does not intend to hold this land long term but will transfer ownership to an unaffiliated entity that purchased most of the former mine site in the early 2000s and is currently investigating additional mining opportunities.

Both the Lyon County Commissioners and Yerington City Council recently adopted resolutions in support of H.R. 5347.⁹

COMMITTEE ACTION

H.R. 5347 was introduced on March 20, 2018, by Congressman Mark E. Amodei (R–NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. On July 17, 2018, the Subcommittee held a hearing on the bill. On July 18, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Tom McClintock (R–CA) offered an amendment designated #1; it was adopted by voice vote. Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 041; it was not adopted by a roll call vote of 14 ayes and 16 nays, as follows:

⁹Yerington City Council Resolution No. 2018-03; Lyon County Resolution No. 18–09.

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 07.18.18

Recorded Vote #:1

Meeting on / Amendment on: FC Markup Grijalva [041] to HR 5347 (Rep. Mark E. Amodei)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Clay, MO</i>			
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Ms. Velázquez, NY</i>			
Mr. McClintock, CA		X		Mr. Webster, FL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Bergman, MI		X	
Mr. Pearce, NM				Ms. Cheney, WY		X	
<i>Mr. Huffman, CA</i>	X			Mr. Johnson, LA			
Mr. Thompson, PA		X		Ms. González-Colón, PR			
<i>Mr. Lowenthal, CA</i>	X			Mr. Gianforte, MT		X	
Mr. Gosar, AZ		X		Mr. Curtis, UT			
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mr. Gallego, AZ</i>	X						
Mr. Tipton, CO		X					
<i>Ms. Hanabusa, HI</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Barragán, CA</i>	X						
Mr. Denham, CA		X					
<i>Mr. Soto, FL</i>	X			TOTAL:	14	16	

Congressman Ruben Gallego (D-AZ) offered an amendment designated 040; it was not adopted by a roll call vote of 14 ayes and 16 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 07.18.18

Recorded Vote #:2

Meeting on / Amendment on: FC Markup Gallego [040] to HR 5347 (Rep. Mark E. Amodei)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Clay, MO</i>			
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Ms. Velázquez, NY</i>			
Mr. McClintock, CA		X		Mr. Webster, FL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Bergman, MI		X	
Mr. Pearce, NM				Ms. Cheney, WY		X	
<i>Mr. Huffman, CA</i>	X			Mr. Johnson, LA			
Mr. Thompson, PA		X		Ms. González-Colón, PR			
<i>Mr. Lowenthal, CA</i>	X			Mr. Gianforte, MT		X	
Mr. Gosar, AZ		X		Mr. Curtis, UT			
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mr. Gallego, AZ</i>	X						
Mr. Tipton, CO		X					
<i>Ms. Hanabusa, HI</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Barragán, CA</i>	X						
Mr. Denham, CA		X					
<i>Mr. Soto, FL</i>	X			TOTAL:	14	16	

No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 16 ayes and 15 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 07.18.18

Recorded Vote #3

Meeting on / Amendment on: FC Markup Favorably Report HR 5347 (Rep. Mark E. Amodei)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Clay, MO</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Ms. Velázquez, NY</i>			
Mr. McClintock, CA	X			Mr. Webster, FL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Bergman, MI	X		
Mr. Pearce, NM				Ms. Cheney, WY	X		
<i>Mr. Huffman, CA</i>		X		Mr. Johnson, LA			
Mr. Thompson, PA	X			Ms. González-Colón, PR			
<i>Mr. Lowenthal, CA</i>		X		Mr. Gianforte, MT	X		
Mr. Gosar, AZ	X			Mr. Curtis, UT			
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mr. Gallego, AZ</i>		X					
Mr. Tipton, CO	X						
<i>Ms. Hanabusa, HI</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Barragán, CA</i>		X					
Mr. Denham, CA	X						
<i>Mr. Soto, FL</i>		X		TOTAL:	16	15	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 4, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5347, the Lyon County Economic Development and Environmental Remediation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5347—Lyon County Economic Development and Environmental Remediation Act

H.R. 5347 would require the Bureau of Land Management (BLM) to convey 2,062 acres of federal land to the Atlantic Richfield Company (ARC). Those lands are part of an abandoned copper mine that has been designated as a Superfund site. In 2018, ARC assumed responsibility for cleaning up the affected lands under the oversight of the state of Nevada.

Under the bill, ARC would agree not to bring legal action against BLM to obtain funds to cover cleanup costs at the site and to indemnify the federal government against liabilities stemming from the company's activities at the site. However, CBO has no basis for determining whether the federal government has any legal liability to fund cleanup efforts at the site, whether BLM could be held liable for ARC's future activities at the site, or whether a legal action would be brought against the federal government within the next 10 years.

Because the affected lands contain existing rights-of-way that generate proceeds for the federal government, CBO estimates that conveying those lands would reduce offsetting receipts, which are treated as reductions in direct spending. However, using information provided by BLM, CBO estimates that any such effects would be negligible.

Because enacting H.R. 5347 could affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 5347 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5347 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to facilitate resolution of environmental remediation and reclamation, resolve potential liability of the United States, and promote economic development in Lyon County, Nevada.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 5347 authorizes the conveyance of over 2,000 acres of land administered by Bureau of Land Management in Lyon County, Nevada to the Atlantic Richfield Company (Atlantic Richfield), a subsidiary of British Petroleum, to purportedly facilitate environmental remediation and reclamation of the Anaconda Copper Mine.

The land is a portion of the Anaconda Copper Mine Site, a contaminated former open-pit mine that spans roughly 3,400 acres of private and public land. During the Obama administration, the State of Nevada and the U.S. Environmental Protection Agency entered into an agreement to place the site on the Superfund National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). However, on February 5, 2018, former Environmental Protection Agency Administrator, Scott Pruitt, signed a deferral agreement with the State of Nevada. Under the agreement, the Nevada Division of Environmental Protection is responsible for overseeing Atlantic Richfield's investigation and cleanup of the site under Nevada state law. Certain criteria, including CERCLA equivalent cleanup, must be met or the EPA can choose to end the deferral and take over remediation by placing the site on the National Priorities List.

Now, with the deferral on the books, Atlantic Richfield is pursuing this bill to convey a portion of the site out of federal ownership. The bill's sponsor claims that the steep financial obligations imposed on the United States as a potentially liable party pursuant to CERCLA will be relieved by unburdening the land to Atlantic Richfield, which is why the bill does not require an appraisal or any form of compensation for the conveyance. Section 4 simply deems the value of the land to be equal to or less than the U.S. portion of the CERCLA response and transfers it to Atlantic Richfield.

Section 4 also includes a covenant not to sue and indemnifies the federal government against future liabilities. This does not functionally relieve the United States of its liability but would render it moot and prevent Atlantic Richfield from seeking compensation for the cleanup costs. Under Sec. 107 of CERCLA, past owners and operators of a site are deemed liable for the cleanup and remediation, which in the case of the Anaconda Mine, could include the Bureau of Land Management, putting Atlantic Richfield in a position to seek damages from the United States and recoup costs associated with the cleanup. However, at this point, the federal government's liability is only speculative. In fact, the Bureau of Land Management's testimony on the bill mentions that Department of Justice advises against admitting liability. Rather than heed that legal advice, the bill admits liability and uses that to justify a no-cost conveyance to Atlantic Richfield.

Once the land is conveyed to private ownership, Atlantic Richfield could initiate new mining activity concurrent with the cleanup. The value extracted from future mining operations could far surpass the cost of the cleanup and any potential liability assigned to the United States. What's more, EPA and the State of Nevada are still investigating the extent of contamination and there is limited information at this point in the cleanup process to determine the total cost. Without an appraisal there is no way to determine the value of the land, the subsurface mineral estate, or the cleanup cost, so it is unclear if this is a legitimate equal value exchange. To ensure a fair return for taxpayer owned assets, any conveyance of federal land should be accompanied by an appraisal and some form of equitable compensation.

In addition to conveying the land without an appraisal, Section 5 waives the typical environmental and cultural review requirements associated with a land conveyance or exchange. Waiving the public input and review requirements of the National Environmental Policy Act and the National Historic Preservation Act could have significant consequences, including the transfer of land that includes valuable cultural resources.

The Yerington Paiute tribe—based nine miles from the site—filed a lawsuit in Yerington Paiute Tribal Court against Atlantic Richfield and its parent company alleging intentional obfuscation of contamination at the site, including substances such as arsenic and uranium that may have contaminated groundwaters. The tribe has expressed concerns with transferring the land into private ownership and removing federal oversight. As an attempt to address these concerns, H.R. 5347 requires the Secretary of the Interior to initiate a government-to-government consultation with any Indian Tribes impacted by the conveyance within 30 days of enactment. The time it will take to complete meaningful consultation is unclear, so Indian, Insular, and Alaska Native Affairs Subcommittee Ranking Member Gallego offered an amendment to ensure consultation was completed prior to the execution of any other provisions of the bill. The majority voted down this safeguard for impacted tribal governments on a party line vote.

Lastly, the legislation orders Atlantic Richfield to perform all actions deemed necessary by Nevada's Division of Environmental Protection to safeguard human health and the environment from hazardous substances that may have been stored, released, or disposed of on the land being conveyed. However, without a bonding requirement or a reversionary interest, there is no guarantee Atlantic Richfield—a private company that could go bankrupt or fall victim to other unforeseen circumstances—will complete the cleanup once the land becomes private. Ranking Member Grijalva offered an amendment to require Atlantic Richfield to post a bond prior to receiving title to the land. This commonsense safeguard was rejected by the majority.

While we are aware of the State of Nevada's decision to seek a deferral agreement with the Environmental Protection Agency and assume all responsibility for overseeing the remediation of the site, it is unclear why the affected federal land should be conveyed to private ownership without any consideration for its value or the rights of impacted tribal governments.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

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