

109TH CONGRESS
2^D SESSION

H. R. 5071

To establish a pilot project for the remediation of abandoned and inactive hardrock mines in the Upper Animas River basin in southwestern Colorado.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2006

Mr. SALAZAR introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To establish a pilot project for the remediation of abandoned and inactive hardrock mines in the Upper Animas River basin in southwestern Colorado.

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. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Animas River Good Samaritan Mined Land Remediation
6 Pilot Project Act”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—Congress finds that—

9 (1) thousands of abandoned or inactive mines
10 exist in the West and elsewhere in the United States

1 that often cause acid mine drainage into our Na-
2 tion's waters;

3 (2) often, a person that is responsible for condi-
4 tions at abandoned or inactive mined land is not
5 identifiable or economically viable, resulting in an in-
6 ability to compel the person to clean up the mine
7 site;

8 (3) cleanup of these sites is hampered by liabil-
9 ity concerns and disagreements over how those con-
10 cerns should be addressed;

11 (4) a pilot program in a small geographic area
12 may demonstrate how best to address liability issues;

13 (5) only a small number of the hundreds of in-
14 active mines in the Upper Animas River basin in
15 San Juan County, Colorado, have been actively
16 mined since the 1940's;

17 (6) 29 total maximum daily load allocations
18 have been established pursuant to section 303(d) of
19 the Federal Pollution Control Act (33 U.S.C.
20 1313(d)) for particular metals in specific segments
21 of the Upper Animas River basin; and

22 (7) the Upper Animas River basin is one of 2
23 geographic areas nationwide chosen for intensive
24 study under the Department of Interior's Abandoned
25 Mine Lands Initiative.

1 (b) PURPOSE.—The purpose of this Act is to initiate
2 a 10-year pilot program in the Upper Animas River basin
3 which facilitates the cleanup of abandoned and inactive
4 mine sites in the basin that negatively impact water qual-
5 ity by limiting liability under sections 301, 302, and 402
6 of the Federal Water Pollution Control Act (33 U.S.C.
7 1311, 1313, 1342) for third parties not responsible for
8 the degradation but who take steps to improve water qual-
9 ity.

10 **SEC. 3. ABANDONED OR INACTIVE MINED LAND REMEDI-**
11 **ATION PERMITS.**

12 Section 402 of the Federal Water Pollution Control
13 Act (33 U.S.C. 1342) is amended by adding at the end
14 the following:

15 “(r) ABANDONED OR INACTIVE MINED LAND REME-
16 DIATION PERMITS.—

17 “(1) DEFINITIONS.—In this subsection, the fol-
18 lowing definitions apply:

19 “(A) ABANDONED OR INACTIVE MINED
20 LAND.—The term ‘abandoned or inactive mined
21 land’ means land located in the Animas River
22 watershed above Elk Creek in San Juan Coun-
23 ty, Colorado, formerly hardrock mined for
24 noncoal resources—

1 “(i) that is no longer actively mined
2 (and not in temporary shutdown) as of
3 January 1, 1992;

4 “(ii) that is not included on the Na-
5 tional Priorities List under the Com-
6 prehensive Environmental Response, Com-
7 pensation, and Liability Act of 1980 (42
8 U.S.C. 9601 et seq.); and

9 “(iii) for which there is no known re-
10 sponsible owner or operator.

11 “(B) RESPONSIBLE OWNER OR OPER-
12 ATOR.—The term ‘responsible owner or oper-
13 ator’ means a person, including a governmental
14 entity—

15 “(i) that is responsible for activities
16 conducted at abandoned or inactive mined
17 land that created conditions that cause or
18 contribute to the discharge of pollutants
19 from the abandoned or inactive mined
20 land; and

21 “(ii) that is financially capable of
22 compliance with the requirements of sec-
23 tions 301 and 302 and this section.

24 “(C) REMEDIATING PARTY.—The term ‘re-
25 mediating party’ means—

1 “(i) the United States, except with re-
2 spect to abandoned or inactive mined land
3 located on Federal land;

4 “(ii) the State of Colorado or political
5 subdivision thereof; or

6 “(iii) a person that is not—

7 “(I) responsible for activities con-
8 ducted at the site to be remediated
9 that caused or contributed to the dis-
10 charge of pollutants from the site; or

11 “(II) the owner of the site.

12 “(D) COOPERATING PARTY.—The term
13 ‘cooperating party’ means any person, including
14 a governmental entity, that is not the owner of
15 the site to be remediated or responsible for ac-
16 tivities conducted at the site to be remediated
17 that caused or contributed to the discharge of
18 pollutants from the site—

19 “(i) participates in the design or im-
20 plementation of the practices described in
21 paragraph (3)(B)(viii) with respect to such
22 site;

23 “(ii) participates in the design or im-
24 plementation of monitoring or other forms

1 of assessment described in paragraph
2 (3)(B)(x) with respect to such site; or

3 “(iii) raises, contributes, or admin-
4 isters funding or in-kind services for the
5 purposes described in paragraph
6 (3)(B)(viii) or (3)(B)(x) with respect to
7 such site.

8 “(2) PERMITS.—

9 “(A) IN GENERAL.—The Administrator
10 shall conduct beginning on the 90th day fol-
11 lowing the date of enactment of this subsection
12 a 10-year pilot project under which the Admin-
13 istrator, with the concurrence of the State of
14 Colorado, may issue, modify, enforce, or termi-
15 nate a permit issued under this section to a re-
16 mediating party for discharges associated with
17 remediation activity at abandoned or inactive
18 mined land and that modifies the otherwise ap-
19 plicable requirements of any other subsection of
20 this section or section 301, 302, or 401.

21 “(B) DELEGATION.—The Administrator
22 may delegate all or part of the authority under
23 subparagraph (A) to the State of Colorado.

24 “(3) PERMIT PROCESS.—

1 “(A) SCOPE.—A remediating party may
2 apply for a permit under this section for reme-
3 diation activities at abandoned or inactive
4 mined land from which there is or may be a
5 discharge of pollutants to waters of the United
6 States.

7 “(B) REMEDIATION PLAN.—A remediating
8 party that seeks a permit under subparagraph
9 (A) shall submit an application for the permit
10 that includes a remediation plan that—

11 “(i) identifies the remediating party
12 and any cooperating parties with respect to
13 the plan;

14 “(ii) identifies the geographic bound-
15 aries of the abandoned or inactive mined
16 land addressed by the plan, including a
17 verification that the land is abandoned or
18 inactive mined land;

19 “(iii) identifies the waters of the
20 United States affected by past mining ac-
21 tivities at the abandoned or inactive mined
22 land;

23 “(iv) describes the baseline conditions
24 of the waters at the time of the permit ap-
25 plication (including the nature and extent

1 of any pollutant causing an adverse water
2 quality impact);

3 “(v) describes the physical and chem-
4 ical conditions at, and pollutants from, the
5 abandoned or inactive mined land that are
6 causing adverse water quality impacts;

7 “(vi) describes the applicant’s reason-
8 able efforts to identify—

9 “(I) current owners and lessees
10 of the abandoned or inactive mined
11 land; and

12 “(II) any persons, including mine
13 operators, whose activities at or on
14 such land after October 18, 1972, cre-
15 ated conditions that cause or con-
16 tribute to the discharge of pollutants
17 from such land;

18 “(vii) describes the remediation goals
19 and objectives of the plan, including the
20 pollutant or pollutants to be addressed by
21 the plan;

22 “(viii) describes the practices, includ-
23 ing a schedule and estimated completion
24 date for implementing the practices, that
25 are proposed to reduce, control, mitigate,

1 or eliminate the adverse water quality im-
2 pacts described in clause (v), including—

3 “(I) in the case of a new remedi-
4 ation project, the preliminary system
5 design and construction, operation,
6 and maintenance plans; and

7 “(II) in the case of an existing
8 remediation project, available system
9 design and construction, operation,
10 and maintenance plans and any
11 planned improvements to the project;

12 “(ix) explains how the practices de-
13 scribed in clause (viii) are expected to re-
14 sult in furthering the objectives of existing
15 total maximum daily load allocations under
16 section 303(d) for the identified waters;

17 “(x) describes the monitoring or other
18 forms of assessment that will be under-
19 taken to evaluate the success of the prac-
20 tices described in clause (viii) during and
21 after implementation of such practices, rel-
22 ative to baseline conditions;

23 “(xi) describes a mechanism or meth-
24 od that will ensure the full net environ-
25 mental benefits of the project are realized

1 in the future even if ownership of the land
2 changes;

3 “(xii) describes contingency plans for
4 responding to foreseeable, unplanned, ad-
5 verse events;

6 “(xiii) provides a schedule for periodic
7 reporting on progress in implementing the
8 plan;

9 “(xiv) provides a budget for the plan
10 and identifies the funding sources that will
11 support the implementation of the plan;

12 “(xv) describes the applicant’s legal
13 authority to enter and conduct activities at
14 or on the abandoned or inactive mined
15 land to be addressed by the plan;

16 “(xvi) contains any additional infor-
17 mation requested by the Administrator to
18 clarify the plan and activities covered by
19 the plan; and

20 “(xvii) is signed by the applicant.

21 “(C) REVIEW OF APPLICATION.—

22 “(i) IN GENERAL.—The Administrator
23 shall review each permit application sub-
24 mitted under subparagraph (B), and deter-
25 mine whether the application meets the re-

1 requirements of subparagraph (B) and con-
2 tains all the information required by the
3 Administrator, within 90 days of the date
4 of such submittal.

5 “(ii) DISAPPROVAL.—If the Adminis-
6 trator determines that an application sub-
7 mitted under subparagraph (B) does not
8 meet the requirements of subparagraph
9 (B), the Administrator, shall notify the ap-
10 plicant that the application is disapproved,
11 explain the reasons for the disapproval,
12 and allow the applicant to submit a revised
13 application.

14 “(iii) APPROVAL.—If the Adminis-
15 trator determines that a permit application
16 submitted under subparagraph (B) meets
17 the requirements of subparagraph (B) and
18 contains all the information required by
19 the Administrator, the Administrator shall
20 notify the applicant of the proposed
21 issuance of the permit being applied for,
22 provide to the public notice in the San
23 Juan County, Colorado, and La Plata
24 County, Colorado, newspapers of, and an
25 opportunity to comment on, such proposed

1 issuance and hold a public hearing on such
2 proposed issuance in the Animas River wa-
3 tershed, Colorado.

4 “(D) ISSUANCE.—

5 “(i) DECISION TO ISSUE.—After no-
6 tice and opportunity for public comment on
7 a permit proposed to be issued for mined
8 land under subparagraph (C)(iii), the Ad-
9 ministrator may issue the permit to the ap-
10 plicant remediation party if the Adminis-
11 trator, with the concurrence of the State of
12 Colorado, determines that—

13 “(I) relative to the resources
14 available to the remediating party for
15 the proposed remediation activity, the
16 remediating party has made a reason-
17 able effort to identify persons under
18 subparagraph (B)(vi);

19 “(II) no responsible owner or op-
20 erator exists for the mined land; and

21 “(III) the remediation party has
22 demonstrated with reasonable cer-
23 tainty that the implementation of the
24 remediation plan will result in an im-
25 provement in water quality and will

1 further the goal of meeting existing
2 total maximum daily load allocations
3 applicable under section 303(d) taking
4 into consideration the resources avail-
5 able to the remediating party for the
6 proposed remediation activity.

7 “(ii) DECISION NOT TO ISSUE.—If the
8 Administrator decides not to issue the per-
9 mit to the applicant, the Administrator
10 shall notify the applicant of the reasons for
11 not issuing the permit not later than 30
12 days after the date of the decision.

13 “(E) MODIFICATION.—

14 “(i) IN GENERAL.—Not later than 15
15 days after the date of receipt of a written
16 request for modification of a permit issued
17 under subparagraph (D), the Adminis-
18 trator shall provide to the public notice of
19 such request. Not later than 30 days after
20 the last date on which such notice is pro-
21 vided, the Administrator shall approve or
22 disapprove the modification, unless a pub-
23 lic hearing is requested by a person, Indian
24 tribe, State agency, or local governmental
25 agency during such 30-day period.

1 “(ii) PUBLIC HEARING.—If a public
2 hearing is requested under clause (i), the
3 Administrator shall have 90 days begin-
4 ning on the date of such request to hold in
5 the Animas River watershed a public hear-
6 ing on the modification and approve or dis-
7 approve the modification.

8 “(iii) APPROVAL.—The Administrator
9 may only approve a permit modification
10 under this subparagraph if—

11 “(I) the State of Colorado con-
12 curs in such approval; and

13 “(II) the Administrator deter-
14 mines that the modified remediation
15 plan will comply with subparagraph
16 (D)(i)(III).

17 “(iv) ADMINISTRATIVE PROVISION.—
18 The Administrator shall ensure that a per-
19 mit modification approved under this sub-
20 paragraph is immediately reflected in, and
21 applicable to, the permit.

22 “(4) CONTENTS OF PERMIT.—

23 “(A) IN GENERAL.—A permit issued or
24 modified, or both, under this subsection shall—

1 “(i) include a remediation plan ap-
2 proved by the Administrator and any addi-
3 tional requirements that the Administrator
4 establishes under paragraph (10);

5 “(ii) provide for compliance with and
6 implementation of the remediation plan
7 and the additional requirements;

8 “(iii) establish a schedule for review
9 by the Administrator of compliance with
10 the conditions and limitations of the per-
11 mit; and

12 “(iv) exempt the remediating party or
13 any cooperating parties with respect to the
14 remediation plan from complying with any
15 other subsection of this section or with sec-
16 tion 301 or 302.

17 “(B) RECOVERABLE VALUE.—A remedi-
18 ation party for a permit issued or modified, or
19 both, under this subsection is not prohibited
20 from selling or using materials recovered during
21 the implementation of the remediation plan
22 under the permit, but the proceeds of any such
23 sale must be used to defray the costs of remedi-
24 ation of the mined land addressed in the permit

1 or the costs of remediation of other abandoned
2 or inactive mined lands.

3 “(5) FAILURE TO COMPLY.—If, during a review
4 conducted under paragraph (4)(A)(iii), on the re-
5 ceipt of a petition from any person, or for any other
6 appropriate reason, the Administrator determines
7 that the remediating party for a permit issued or
8 modified, or both, under this subsection has failed to
9 comply with the provisions of the permit, the Admin-
10 istrator may bring an enforcement action under sec-
11 tion 309.

12 “(6) STATE CERTIFICATION.—To the extent
13 that this subsection relates to water quality stand-
14 ards, a certification under section 401 shall not
15 apply to a permit issued or modified, or both, under
16 this subsection.

17 “(7) TERMINATION.—

18 “(A) MANDATORY.—The Administrator,
19 with the concurrence of the State of Colorado,
20 shall terminate a permit issued or modified, or
21 both, under this subsection if—

22 “(i) the remediating party completes
23 the implementation of the remediation
24 plan; or

1 “(ii) a discharge covered by the per-
2 mit becomes subject to a permit issued
3 under the other subsections of this section
4 that is not part of the implementation of
5 the remediation plan.

6 “(B) DISCRETIONARY.—The Adminis-
7 trator, with the concurrence of the State of Col-
8 orado, may terminate a permit issued or modi-
9 fied, or both, under this subsection if—

10 “(i) an event or condition is encoun-
11 tered that was not contemplated by the re-
12 mediation plan and is beyond the control
13 of the remediating party; or

14 “(ii) the remediating party fails to
15 conduct the remediation according to the
16 approved remediation plan.

17 “(C) NO ENFORCEMENT LIABILITY.—If a
18 permit is terminated under this paragraph, the
19 remediating party and any cooperating parties
20 with respect to the remediation plan shall not
21 be subject to enforcement under section 309 or
22 505 for any remaining discharges from the
23 abandoned or inactive mined land described in
24 the permit.

25 “(8) LIMITATIONS.—

1 “(A) EMERGENCY POWERS.—Nothing in
2 this subsection limits the authority of the Ad-
3 ministrator under section 504.

4 “(B) PRIOR VIOLATIONS.—Nothing in this
5 subsection or a permit issued or modified, or
6 both, under this subsection precludes an action
7 under section 309 or 505 or affects the relief
8 available in an action under such section, with
9 respect to a violation of this section or section
10 301(a) or 302 that occurred prior to the
11 issuance of a permit under this subsection.

12 “(C) OBLIGATION OF STATES AND INDIAN
13 TRIBES.—Except as expressly provided, nothing
14 in this subsection limits any obligation of a
15 State or Indian tribe under section 303.

16 “(D) OTHER DEVELOPMENT.—Nothing in
17 this subsection affects the applicability of this
18 Act (other than this subsection) to any develop-
19 ment of abandoned or inactive mined land (in-
20 cluding mineral exploration or mining) not de-
21 scribed in a permit issued by the Administrator
22 under this subsection.

23 “(9) LIABILITY OF OTHER PARTIES.—Nothing
24 in this subsection limits the liability under this Act
25 (other than this subsection) or any other law of any

1 person (other than the remediating party and any
2 cooperating parties) with respect to the remediation
3 plan for a permit approved or modified, or both,
4 under this subsection.

5 “(10) REGULATIONS.—Not later than 1 year
6 after the date of enactment of this subsection, the
7 Administrator, in consultation with the State of Col-
8 orado, tribal, and local officials and after providing
9 notice, an opportunity for comment, and a hearing,
10 shall issue regulations establishing generally applica-
11 ble requirements for remediation plans described in
12 paragraph (3)(B) and such other regulations as the
13 Administrator considers necessary to carry out this
14 subsection

15 “(11) FUNDING FOR IMPLEMENTING REMEDI-
16 ATION PLANS.—

17 “(A) IN GENERAL.—There is authorized to
18 be appropriated to the Administrator
19 \$30,000,000 to pay 85 percent of the costs of
20 designing and implementing remediation plans
21 for which permits are issued under this sub-
22 section. The remaining share of such costs may
23 be provided with funds or in-kind services by
24 private, local, State, or other Federal sources,
25 including grants under section 319.

1 “(B) PRIORITY.—The funds appropriated
2 under this paragraph shall be allocated first to
3 proposed remediation plans that are compara-
4 tively more likely than other proposed remedi-
5 ation plans to further the objectives of the ex-
6 isting total maximum daily load allocations
7 under section 303(d) with respect to discharges
8 from abandoned or inactive mined land.

9 “(12) REPORTS.—

10 “(A) IN GENERAL.—Not later than the
11 last day of each of the 2nd, 5th, 7th, and 10th
12 years of the pilot program conducted pursuant
13 to this subsection, the Administrator shall sub-
14 mit to Congress a report on the activities car-
15 ried out under this subsection.

16 “(B) CONTENTS.—The report under sub-
17 paragraph (A) shall, at a minimum—

18 “(i) identify each permit issued under
19 this subsection and associated remediating
20 party;

21 “(ii) identify the abandoned or inac-
22 tive mined land addressed by each permit
23 issued under this subsection (including the
24 water bodies and baseline water quality of
25 the water bodies affected by the land);

1 “(iii) summarize the remediation plan
2 associated with each permit issued under
3 this subsection, including the goals and ob-
4 jectives of the plan, the plan budget, and
5 the practices to be employed according to
6 the plan to reduce, control, mitigate, or
7 eliminate adverse water quality impacts on
8 such water bodies;

9 “(iv) identify the status of the imple-
10 mentation of each remediation plan associ-
11 ated with each permit issued under this
12 subsection (including specific progress that
13 permitted remediation activities have made
14 toward achieving the goals and objectives
15 of the remediation plan);

16 “(v) identify and describe any enforce-
17 ment action taken by the Administrator or
18 any civil action brought by a citizen con-
19 cerning a permit issued under this sub-
20 section (including the disposition of the
21 legal action); and

22 “(vi) include recommendations by the
23 Administrator for any modifications to this
24 subsection, or regulations issued under
25 paragraph (10) to implement this sub-

1 section, that would facilitate the improve-
2 ment of water quality through remediation
3 of abandoned or inactive mined land.

4 “(13) TERMINATION OF PERMITTING AUTHOR-
5 ITY.—The authority granted to the Administrator
6 under this subsection to issue an abandoned or inac-
7 tive mined land remediation permit terminates on
8 the date that is 10 years after the date of enactment
9 of this subsection.”.

○