

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for the establishment of a Hardrock Minerals Reclamation Fund.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.**

**S. 2657**

To support innovation in advanced geothermal research and development, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. UDALL (for himself, Mr. HEINRICH, Mr. BENNET, Ms. HARRIS, Mr. MARKEY, and Ms. STABENOW) to the amendment (No. \_\_\_\_\_) proposed by Ms. MURKOWSKI

Viz:

1 At the appropriate place, insert the following:

2 **SEC. \_\_\_\_\_. HARDROCK MINING AND RECLAMATION.**

3 (a) DEFINITIONS.—In this section:

4 (1) ABANDONED HARDROCK MINE STATE.—The  
5 term “abandoned hardrock mine State” means each  
6 of the States of Alaska, Arizona, California, Colo-  
7 rado, Idaho, Montana, Nevada, New Mexico, North  
8 Dakota, Oregon, South Dakota, Utah, Washington,  
9 and Wyoming.

1           (2) FEDERAL LAND.—The term “Federal land”  
2 means any land and any interest in land that is—

3                   (A) owned by the United States; and

4                   (B) open to location of mining claims  
5 under the general mining laws.

6           (3) FUND.—The term “Fund” means the  
7 Hardrock Minerals Reclamation Fund established by  
8 subsection (c)(1).

9           (4) INDIAN LAND.—The term “Indian land”  
10 means land that is—

11                   (A) held in trust for the benefit of an In-  
12 dian tribe or member of an Indian tribe; or

13                   (B) held by an Indian tribe or member of  
14 an Indian tribe, subject to a restriction by the  
15 United States against alienation.

16           (5) INDIAN TRIBE.—The term “Indian tribe”  
17 has the meaning given the term in section 4 of the  
18 Indian Self-Determination and Education Assistance  
19 Act (25 U.S.C. 5304).

20           (6) HARDROCK MINERAL.—The term “hardrock  
21 mineral” has the meaning given the term “locatable  
22 mineral” except that—

23                   (A) legal and beneficial title to the mineral  
24 need not be held by the United States; and

1 (B) paragraph (7)(B) does not apply to  
2 this paragraph.

3 (7) LOCATABLE MINERAL.—

4 (A) IN GENERAL.—The term “locatable  
5 mineral” means any mineral—

6 (i) the legal and beneficial title to  
7 which remains in the United States; and

8 (ii) that is not subject to disposition  
9 under—

10 (I) the Mineral Leasing Act (30  
11 U.S.C. 181 et seq.);

12 (II) the Geothermal Steam Act of  
13 1970 (30 U.S.C. 1001 et seq.);

14 (III) the Act of July 31, 1947  
15 (commonly known as the “Materials  
16 Act of 1947”) (30 U.S.C. 601 et  
17 seq.); or

18 (IV) the Act of August 7, 1947  
19 (commonly known as the “Mineral  
20 Leasing Act for Acquired Lands”) (30  
21 U.S.C. 351 et seq.).

22 (B) EXCLUSIONS.—The term “locatable  
23 mineral” does not include any mineral that is—

1 (i) subject to a restriction against  
2 alienation imposed by the United States;  
3 and

4 (ii) held in trust by the United States  
5 for, or owned by, any Indian tribe or mem-  
6 ber of an Indian tribe, as defined in sec-  
7 tion 2 of the Indian Mineral Development  
8 Act of 1982 (25 U.S.C. 2101).

9 (8) SECRETARY.—The term “Secretary” means  
10 the Secretary of the Interior.

11 (b) ROYALTY.—

12 (1) IN GENERAL.—Subject to paragraphs (3)  
13 and (4), production of all locatable minerals from  
14 any mining claim located under the general mining  
15 laws shall be subject to a royalty established by the  
16 Secretary by regulation of not less than 5 percent,  
17 and not more than 8 percent, of the gross income  
18 from mining for production of all locatable minerals.

19 (2) ROYALTY RATE.—The regulation shall es-  
20 tablish a reasonable royalty rate for each locatable  
21 mineral subject to a royalty under this subsection  
22 that may vary based on the locatable mineral con-  
23 cerned.

24 (3) NO ROYALTY FOR FEDERAL LAND SUBJECT  
25 TO EXISTING PERMIT.—No royalty under paragraph

1 (1) shall be required for production on Federal land  
2 that—

3 (A) is subject to an approved plan of oper-  
4 ations or an operations permit on the date of  
5 the enactment of this Act; and

6 (B) produces valuable locatable minerals in  
7 commercial quantities on the date of enactment  
8 of this Act.

9 (4) ROYALTY RELIEF.—

10 (A) IN GENERAL.—Subject to subpara-  
11 graph (B), in order to promote the greatest ul-  
12 timate recovery pursuant to a mining permit or  
13 a plan of operations under which production in  
14 commercial quantities has occurred and in the  
15 interest of conservation of natural resources,  
16 the Secretary may reduce any royalty otherwise  
17 required for all or part of a mining operation  
18 under paragraph (1), on a showing by clear and  
19 convincing evidence by the person conducting  
20 mineral activities under the operations or min-  
21 ing permit or plan of operations that, without  
22 the reduction in royalty, production would not  
23 occur.

24 (B) EFFECTIVE DATE.—Any reduction in  
25 a royalty provided for by this paragraph shall

1 not be effective until 60 days after the date on  
2 which the Secretary—

3 (i) publishes public notice of the roy-  
4 alty reduction; and

5 (ii) submits to the Committee on En-  
6 ergy and Natural Resources of the Senate  
7 and the Committee on Natural Resources  
8 of the House of Representatives notice and  
9 a statement of the reasons for granting the  
10 royalty reduction.

11 (5) FEDERAL LAND NOT SUBJECT TO EXISTING  
12 OPERATIONS PERMIT.—Production from any Federal  
13 land not specifically approved for mineral extraction  
14 under a plan of operations or an operations permit  
15 in existence on the date of enactment of this Act  
16 shall be subject to the royalty described in para-  
17 graph (1).

18 (6) DEPOSIT.—Amounts received by the United  
19 States as royalties under this subsection shall be de-  
20 posited in the Fund.

21 (c) HARDROCK MINERALS RECLAMATION FUND.—

22 (1) ESTABLISHMENT.—There is established in  
23 the Treasury of the United States a separate ac-  
24 count, to be known as the “Hardrock Minerals Rec-  
25 lamation Fund”, consisting of—

1 (A) any amounts collected under sub-  
2 section (b);

3 (B) any amounts collected under sub-  
4 section (d); and

5 (C) any income on investments under para-  
6 graph (2).

7 (2) INVESTMENT.—

8 (A) IN GENERAL.—The Secretary shall no-  
9 tify the Secretary of the Treasury of any por-  
10 tion of the Fund that the Secretary determines  
11 is not required to meet current withdrawals.

12 (B) ELIGIBLE INVESTMENTS.—The Sec-  
13 retary of the Treasury shall invest portions of  
14 the Fund identified under subparagraph (A) in  
15 public debt securities with maturities suitable  
16 for the needs of the Fund.

17 (3) INTEREST.—Investments in public debt se-  
18 curities shall bear interest at rates determined by  
19 the Secretary of the Treasury, taking into consider-  
20 ation current market yields on outstanding market-  
21 place obligations of the United States of comparable  
22 maturity.

23 (4) ADMINISTRATION.—The Fund shall be ad-  
24 ministered by the Secretary, acting through the Di-

1 rector of the Office of Surface Mining Reclamation  
2 and Enforcement.

3 (5) EXPENDITURES.—Subject to paragraph (7),  
4 amounts in the Fund may, without fiscal year limi-  
5 tation and without further appropriation—

6 (A) be expended by the Secretary for the  
7 purposes described in paragraph (7);

8 (B) be transferred by the Secretary to the  
9 Director of the Bureau of Land Management,  
10 the Chief of the Forest Service, the Director of  
11 the National Park Service, the Director of the  
12 United States Fish and Wildlife Service, or the  
13 head of any other Federal agency, that devel-  
14 ops, implements, and has the ability to carry  
15 out all or a significant portion of a reclamation  
16 program under this subsection; or

17 (C) be transferred by the Secretary to an  
18 Indian tribe or a State with an approved rec-  
19 lamation program, as provided in paragraph  
20 (6).

21 (6) STATE AND TRIBAL RECLAMATION PRO-  
22 GRAMS.—

23 (A) IN GENERAL.—Each State having  
24 within the borders of the State, or Indian tribe  
25 having within the borders of the reservation of



1 the Indian tribe, mined land that is eligible for  
2 reclamation under this subsection may submit  
3 to the Secretary a reclamation program for the  
4 land.

5 (B) APPROVAL.—If the Secretary deter-  
6 mines that a State or Indian tribe has devel-  
7 oped and submitted a program for reclamation  
8 of abandoned mines consistent with the prior-  
9 ities established under paragraph (7)(C) and  
10 has the ability and necessary State or tribal leg-  
11 islation to implement this subsection, the Sec-  
12 retary shall—

- 13 (i) approve the program; and  
14 (ii) grant to the State or Indian tribe  
15 the exclusive responsibility and authority  
16 to implement the approved program.

17 (C) WITHDRAWAL OF APPROVAL.—The  
18 Secretary shall withdraw the approval and au-  
19 thorization if the Secretary determines that the  
20 State or tribal program is not in compliance  
21 with procedures, guidelines, and requirements  
22 established by the Secretary.

23 (D) APPROVAL OF EXISTING PROGRAMS.—  
24 Subject to subparagraph (C), any State pro-  
25 gram in an abandoned hardrock mine State or

1 tribal program for reclamation of abandoned  
2 mines approved under title IV of the Surface  
3 Mining Control and Reclamation Act of 1977  
4 (30 U.S.C. 1231 et seq.) before the date of en-  
5 actment of this Act and in good standing with  
6 the Secretary as of that date shall be consid-  
7 ered approved under this subsection.

8 (7) USE AND OBJECTIVES OF THE FUND.—

9 (A) USE.—

10 (i) IN GENERAL.—The Secretary may,  
11 without fiscal year limitation and without  
12 further appropriation, use amounts in the  
13 Fund for the reclamation and restoration  
14 of land and water resources adversely af-  
15 fected by past hardrock minerals and min-  
16 ing and related activities in abandoned  
17 hardrock mine States and on Indian land  
18 located within the exterior boundaries of  
19 abandoned hardrock mine States, including  
20 the conduct of activities—

21 (I) to protect public health and  
22 safety;

23 (II) to prevent, abate, treat, and  
24 control water pollution created by

1 abandoned mine drainage, including  
2 activities conducted in watersheds;

3 (III) to reclaim and restore aban-  
4 doned surface and underground mined  
5 areas;

6 (IV) to reclaim and restore aban-  
7 doned milling and processing areas;

8 (V) to backfill, seal, or otherwise  
9 control abandoned underground mine  
10 entries;

11 (VI) to revegetate land adversely  
12 affected by past mining activities—

13 (aa) to prevent erosion and  
14 sedimentation; and

15 (bb) for any other reclama-  
16 tion purpose;

17 (VII) to control surface subsid-  
18 ence due to abandoned underground  
19 mines; and

20 (VIII) to enhance fish and wild-  
21 life habitat.

22 (ii) DETERMINATION.—Before ex-  
23 pending amounts in the Fund for the pur-  
24 poses described in clause (i), the Secretary  
25 shall make a determination that there is no

1 continuing reclamation responsibility of the  
2 claim holder, operator, or other person who  
3 abandoned the site before completion of  
4 the required reclamation under Federal or  
5 State law.

6 (B) ALLOCATION.—Of the amounts depos-  
7 ited in the Fund each fiscal year—

8 (i) 20 percent shall be allocated by the  
9 Secretary for expenditure by the Secretary  
10 or, if a State or Indian tribe has an ap-  
11 proved program pursuant to paragraph  
12 (6), by the State or Indian tribe, in the  
13 States in which, or on Indian land on  
14 which, hardrock minerals are produced,  
15 based on a formula reflecting existing pro-  
16 duction in the State or on the land of the  
17 Indian tribe;

18 (ii) 30 percent shall be allocated by  
19 the Secretary for expenditure by the Sec-  
20 retary or, if a State or Indian tribe has an  
21 approved program pursuant to paragraph  
22 (6), by the State or Indian tribe, in the  
23 States and on Indian land using a formula  
24 based on the quantity of hardrock minerals  
25 historically produced in the State or from

1 the Indian land before the date of enact-  
2 ment of this Act;

3 (iii) 25 percent shall be allocated by  
4 the Secretary for expenditure on Federal  
5 land;

6 (iv) 10 percent shall be available to  
7 the Secretary for grants under subpara-  
8 graph (E);

9 (v) 10 percent shall be available to the  
10 Secretary for grants under subparagraph  
11 (F); and

12 (vi) 5 percent shall be available for  
13 administrative expenses of the United  
14 States, Indian tribes, and the States to ac-  
15 complish the purposes of this subsection.

16 (C) PRIORITIES.—

17 (i) IN GENERAL.—Subject to clause  
18 (ii), expenditures from the Fund shall be  
19 based on the following priorities:

20 (I) The conduct of activities to  
21 protect public health and safety from  
22 the adverse effects of past hardrock  
23 mineral mining activities, including  
24 activities addressing surface water  
25 and groundwater contaminants.

1                   (II) The conduct of activities to  
2                   restore land, water, and fish and wild-  
3                   life resources degraded by the adverse  
4                   effects of past hardrock mineral min-  
5                   ing activities, including restoration ac-  
6                   tivities in watershed areas.

7                   (ii) MULTIPLE PRIORITIES.—In com-  
8                   plying with the priorities established under  
9                   this subparagraph, funds may be expended  
10                  for reclamation activities under clause  
11                  (i)(II) before the completion of all reclama-  
12                  tion projects under clause (i)(I) if the ex-  
13                  penditure of the funds for reclamation ac-  
14                  tivities under clause (i)(II) is made in con-  
15                  junction with reclamation activities under  
16                  clause (i)(I).

17                  (iii) MINIMUM EXPENDITURE.—Not-  
18                  withstanding clauses (i) and (ii), not less  
19                  than 25 percent of the expenditures by the  
20                  Secretary on Federal lands for any year  
21                  shall be for the purposes described in  
22                  clause (i)(II).

23                  (D) ELIGIBLE LAND AND WATER.—

24                  (i) IN GENERAL.—Amounts may be  
25                  expended for reclamation activities under

1 this paragraph only with respect to land or  
2 water resources if the land or water re-  
3 sources have been—

4 (I) affected by hardrock mineral  
5 mining activities; and

6 (II) abandoned or left in an inad-  
7 equate reclamation status.

8 (ii) SPECIFIC SITES AND AREAS NOT  
9 ELIGIBLE.—Section 411(d) of the Surface  
10 Mining Control and Reclamation Act of  
11 1977 (30 U.S.C. 1240a(d)) shall apply to  
12 expenditures from the Fund.

13 (iii) INVENTORY.—

14 (I) IN GENERAL.—The Secretary  
15 shall—

16 (aa) prepare and maintain a  
17 publicly available inventory of  
18 abandoned hardrock minerals  
19 mines on Federal land, State  
20 land, other publicly owned land,  
21 private land, and any abandoned  
22 mine on Indian land that may be  
23 eligible for expenditures under  
24 this paragraph; and

1 (bb) submit to Congress an  
2 annual report that describes the  
3 progress in reclaiming the sites  
4 listed on the inventory.

5 (II) MAXIMUM EXPENDITURE.—

6 The Secretary shall expend not more  
7 than \$5,000,000 to carry out the in-  
8 ventory required by this clause.

9 (E) GRANTS TO CERTAIN STATES AND IN-  
10 DIAN TRIBES.—

11 (i) IN GENERAL.—The Secretary shall  
12 use amounts made available under sub-  
13 paragraph (B)(IV) to make grants to  
14 States (other than abandoned hardrock  
15 mine States) and Indian tribes to carry out  
16 reclamation and restoration of land and  
17 water resources adversely affected by past  
18 hardrock minerals and mining activities,  
19 including the conduct of activities de-  
20 scribed in subparagraph (A)(i).

21 (ii) DETERMINATION.—Before award-  
22 ing a grant under this subparagraph, the  
23 Secretary shall make a determination that  
24 there is no continuing reclamation respon-  
25 sibility of any person who abandoned the



1 site before completion of required reclama-  
2 tion under Federal or State law.

3 (iii) CRITERIA.—The Secretary shall  
4 establish by regulation the procedures and  
5 criteria for awarding grants under this  
6 subparagraph, which shall include—

7 (I) consistency with the priorities  
8 established under subparagraph  
9 (C)(i); and

10 (II) priority for those projects for  
11 which Federal funding is not available  
12 under other laws or programs.

13 (F) GRANTS TO PUBLIC ENTITIES AND  
14 NONPROFIT ORGANIZATIONS.—The Secretary  
15 shall use amounts made available under sub-  
16 paragraph (B)(v) to make grants to public enti-  
17 ties (including State fish and game agencies  
18 and local governments) and nonprofit organiza-  
19 tions (based on criteria established by the Sec-  
20 retary by regulation) to carry out activities that  
21 support collaborative restoration projects to im-  
22 prove fish and wildlife habitat affected by past  
23 hardrock minerals and mining activities, includ-  
24 ing activities that—

1 (i) improve water quality and quan-  
2 tity;

3 (ii) restore watersheds in which his-  
4 toric mining dewatered or otherwise frag-  
5 mented stream habitats;

6 (iii) restore instream habitat condi-  
7 tions necessary to support aquatic species;

8 (iv) restore vegetative cover and  
9 streamside areas to control erosion and im-  
10 prove conditions for fish and wildlife;

11 (v) control and remove noxious weeds  
12 and invasive species associated with his-  
13 toric mining disturbances that affect fish  
14 and wildlife;

15 (vi) restore fish and wildlife habitat in  
16 cases in which previous hardrock minerals  
17 and mining activity limits fish and wildlife  
18 productivity;

19 (vii) protect and restore fish and wild-  
20 life habitat in areas affected by historic  
21 minerals and mining activity; and

22 (viii) mitigate impacts to watersheds  
23 affected by past hardrock minerals and  
24 mining activities.

25 (G) RESPONSE OR REMOVAL ACTIONS.—

1 (i) IN GENERAL.—Reclamation and  
2 restoration activities conducted under this  
3 paragraph that constitute a removal or re-  
4 medial action under section 101 of the  
5 Comprehensive Environmental Response,  
6 Compensation, and Liability Act of 1980  
7 (42 U.S.C. 9601) shall be conducted only  
8 with the concurrence of the Administrator  
9 of the Environmental Protection Agency.

10 (ii) MEMORANDUM OF UNDER-  
11 STANDING.—The Secretary and the Ad-  
12 ministrator of the Environmental Protec-  
13 tion Agency shall enter into a memo-  
14 randum of understanding to establish pro-  
15 cedures for consultation, concurrence,  
16 training, the exchange of technical exper-  
17 tise, and the conduct of joint activities, as  
18 appropriate, that provide assurances that  
19 reclamation or restoration activities under  
20 this paragraph shall not be conducted in a  
21 manner that—

22 (I) increases the costs or likeli-  
23 hood of removal or remedial actions  
24 under the Comprehensive Environ-  
25 mental Response, Compensation, and

1 Liability Act of 1980 (42 U.S.C. 9601  
2 et seq.); or

3 (II) to the maximum extent prac-  
4 ticable, avoids oversight by multiple  
5 agencies.

6 (d) ABANDONED MINE LAND RECLAMATION FEE.—

7 (1) IMPOSITION OF FEE.—Each operator of a  
8 hardrock minerals mining operation shall pay to the  
9 Secretary, for deposit in the Fund, a reclamation fee  
10 in an amount established by the Secretary by regula-  
11 tion of not less than 1 percent, and not more than  
12 3 percent, of the value of the production from the  
13 hardrock minerals mining operation for each cal-  
14 endar year.

15 (2) VALUE OF PRODUCTION.—For purposes of  
16 this subsection, the Secretary shall determine the  
17 value of production in the same manner as provided  
18 under subsection (b)(1).

19 (3) PAYMENT DEADLINE.—The reclamation fee  
20 shall be paid not later than 60 days after the end  
21 of each calendar year beginning with the first cal-  
22 endar year occurring after the date of enactment of  
23 this Act.

1           (4) DEPOSIT OF REVENUES.—Amounts received  
2           by the Secretary under paragraph (1) shall be de-  
3           posited into the Fund.

4           (5) EFFECT.—Nothing in this subsection re-  
5           quires a reduction in, or otherwise affects, any simi-  
6           lar fee required under any law (including regula-  
7           tions) of any State.