



June 14, 2006

The Honorable James Inhofe
Chairman, Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington DC 20510

The Honorable James Jeffords
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington DC 20510

Dear Senator Inhofe and Senator Jeffords:

Thank you for making time on the Committee's schedule to explore the issue of water pollution from abandoned hardrock mines in the United States. EARTHWORKS has been working for over a decade to develop initiatives to clean up these old mine sites and to address the pollution problems associated with them, particularly in the West.

EARTHWORKS is a non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral development. In the early 1990's, EARTHWORKS assessed the scope of the abandoned mine problem and estimated that there are over 550,000 abandoned hardrock mines in the U.S., mostly in the West. To date, there is still no comprehensive inventory of abandoned hardrock mines.

The cost to clean up these abandoned sites will be staggering. Total clean-up costs range from \$32 - \$72 billion.

Western communities face significant burdens associated with these old mines. According to the Environmental Protection Agency, at least 40 percent of the stream reaches in the headwaters of western watersheds are polluted from abandoned mines. Downstream communities pay the costs to clean up water polluted from abandoned mines for domestic use. Polluted waters affect recreation, agriculture, and impact property values. Fish and wildlife resources are also negatively impacted.

The single largest obstacle to the restoration of abandoned hardrock mines is the lack of funding. In states like Montana—where revenues exist from a state severance tax and the state is authorized to restore abandoned mines with revenues from the coal abandoned mine land fund—the pollution from abandoned mines is being addressed. In other states, such as California and

New Mexico, there are few sources of funds available to correct this pervasive problem in old mining districts. As a result, little effort has been made to restore water quality affected by abandoned mines.

EARTHWORKS recognizes the concern that has been expressed about the liability under existing environmental laws that may occur when a state, tribal, or local government attempts to restore water quality affected by abandoned mines. We support a narrow exemption to the federal Clean Water Act that enables states, tribes, or local governments to clean up abandoned mines without incurring Clean Water Act liability.

The goal of any water restoration effort should be to achieve applicable Clean Water Act standards. However, we recognize that economic and technological constraints exist, and in some cases water quality may be improved but the overall standard may not be achieved.

EARTHWORKS supported several legislative proposals that have been introduced in previous Congresses in an attempt to resolve this question about liability under the Clean Water Act. There is a narrow point of apparent agreement among some of the conservation organizations involved with abandoned mine clean up, the western States, and some industry representatives that a waiver of Clean Water Act liability is warranted to correct the damage that is occurring from the polluted mine sites.

The Environment and Public Works Committee now has two legislative proposals pending for consideration—S. 1848, the Cleanup of Inactive and Abandoned Mines Act, and S. 2780, the Good Samaritan Clean Watersheds Act. S. 1848, introduced in the 109th Congress by Senators Salazar and Allard creates a new program for mining companies and other interests to claim exemption from many environmental laws in order to clean up abandoned hardrock mines, and possibly to recover additional minerals from these old sites. The bill's laundry list of blanket exemptions from our nation's most important environmental laws is unnecessary and unwarranted. It would effectively create a new mining regulatory program with few environmental controls, and would not produce much restoration activity at abandoned sites around the West.

S. 2780 is more narrowly drafted, requiring the holder of the mine permit to demonstrate that environmental improvement will occur, and anyone with existing liability for the environmental damage for the mine site could not receive a waiver of liability as part of a restoration project.

S. 2780 has three fundamental flaws, however. First, the legislation includes a blanket waiver of liability under CERCLA. In over a decade of debate about obstacles to environmental clean up of abandoned mines, CERCLA liability is rarely mentioned. There are existing administrative mechanisms available to the Environmental Protection Agency and the states to avoid liability under CERCLA for abandoned mine restoration, such as Administrative Orders on Consent.

Second, the waiver of liability would be available to anyone who attempts to make the environment better. This standard of review for a permit is so vague that it could be rendered meaningless. Collecting trash and cleaning up debris could improve the environment, but should not qualify for a waiver under two of the Nation's premier environmental laws. The legislation

should contain an objective standard for determining if a permit is issued. As stated previously, we believe that achieving water quality standards should be the goalpost for any clean up effort, taking into account the site specific conditions and funds available for restoration.

Finally, and most importantly, there is no source of funding identified to clean up the hundreds of thousands of abandoned mines in the U.S. Any legislation should include some mechanism to pay the costs of restoration efforts. Without adequate funding, there will be little accomplished on the ground.

Thank you for the opportunity to present the views of EARTHWORKS on this important topic. We appreciate the Committee's consideration of abandoned mines and their attendant pollution.

Sincerely,

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