

**Testimony of Lauren Pagel
Policy Director
Earthworks**

Subcommittee on Energy and Mineral Resources hearing titled “*Seeking Innovative Solutions for the Future of Hardrock Mining*”

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Thank you Chairman Gosar, Ranking Member Lowenthal, and Members of the Subcommittee for holding this hearing and the opportunity to testify before you. I am Lauren Pagel, Policy Director for Earthworks. For nearly 30 years, Earthworks has worked to protect communities and the environment from the adverse impacts of mineral and energy development while seeking sustainable solutions.

Innovative solutions exist to bring our mining laws into the 21st century and protect mining-impacted communities and western water resources. The United States mining industry currently benefits from open access to public lands under an antiquated mining law, large subsidies from American taxpayers, a uniform regulatory system that encourages investment and several mining-specific loopholes in our bedrock environmental laws.

These factors combine to prioritize hardrock mining industry profits over the communities and water resources that are negatively impacted by large hardrock mines. Meaningful reform of the outdated 1872 Mining Law is the innovative solution that will bring our mining laws and practices into the 21st century, giving the mining industry the certainty it needs, while providing a fair return to the taxpayer, maintaining community involvement in mining decisions and adequately balancing mining with other uses of public lands.

The mining industry in this country enjoys unprecedented access to hardrock minerals on public lands – minerals they receive for free under a law that was written to govern pick and shovel miners of 1872, not the large-scale industrial mining that exists today. Federal land managers at the Forest Service and Bureau of Land Management interpret the mining law to give mining precedence over all other uses of public lands – prioritizing mining over hunting, recreation, grazing or other beneficial uses.

In addition to royalty-free mining, mining companies receive enormous tax breaks for depleting our resources. An extremely favorable tax code permits a company to deduct a fixed percentage from their gross income according to the mineral extracted, ranging from 22% for uranium to 15% for silver and other hardrock minerals. In some cases this deduction, over the life of the mine, actually exceeds the cost of acquiring the mineral deposit. The result is a situation where mining companies not only pay virtually nothing for the public’s minerals, but also get paid by the government to mine public minerals

they were freely given. This subsidy, called the Percentage Depletion Allowance, costs taxpayers over \$500 million every year.

The mining industry also benefits from a consistent regulatory process set by the National Environmental Policy Act (NEPA). In fact, year after year, the United States is ranked as one of the world's best places for mining investment. With stable democratic institutions, courts that enforce contracts, favorable tax and environmental policy, and an orderly and reliable process for public input in permitting decisions, America is the one of the world's best place to mine.

Just ask the mining companies. According to the Fraser Institute – a center-right Canadian think tank who annually survey approximately 700 mining, exploration, development mining company managers and executives around the world -- Nevada, Utah, and Wyoming, routinely rank in the top 10 most attractive jurisdictions for mineral investment.

Despite the mining industry's complaints about permit times, according to a 2016 Government Accountability Office (GAO) report, the Bureau of Land Management spends on average two years permitting a mine. Two-year permit times is competitive with the other Western democracies with robust mining industries such as Australia, Canada, Chile, and Norway.

The truth is, mining companies create more permitting delays than agencies or regulations. According to the GAO, the main cause of permit delays is the permit applicant. Incomplete or poor quality application information, market fluctuations, or changes to mining plans lead to most delays. Even when the plans are fine, mining companies have further delayed by making changes (sometimes for perfectly legitimate reasons) to their plans after submission. GAO says this occurred 37 times over five years accounting for delays ranging from just a few weeks to seven years.

In addition to free minerals, profitable tax breaks, and a consistent regulatory process, the mining industry also benefits from lax regulation during mine operation and insufficient bonding and reclamation requirements after mine closure. Loopholes in the Clean Water Act and Resource Conservation and Recovery Act allow mining companies to dump their waste directly into our lakes, rivers, and streams. Hardrock mines are often some of the most expensive to clean up when they all too often find themselves on the Superfund National Priorities list. These funding shortfalls leave the public exposed to hazardous mining waste, and leave taxpayers to foot the cleanup bill because the EPA lacks the funds to perform adequate remediation. The hardrock mining industry lacks strong financial assurance regulations, despite the fact that the industry is this nation's top toxic polluter according to the Environmental Protection Agency's Toxics Release Inventory.

Several studies have shown that mines pollute ground and surface water, even when permit applicants claim they will not. In fact:

- a groundbreaking study found that 75% of mining operations pollute surrounding surface or groundwater, despite their robust environmental reviews that predict they won't,
- 74% of domestic gold mines have polluted waters with cyanide, arsenic, nitrates or other hazardous materials.
- 100% of copper sulfide mines experienced pipeline spills and accidental releases and 92% failed to control water treatment and collection leading to contaminated mine seepage

There are several examples of mines that have polluted nearby ground or surface water in a new report Earthworks released today titled "U.S. Gold Mines, Spills & Failures Report." The report cites 27 mines that have accidentally released, spilled, or failed to capture and treat mine impacted water, allowing it to pollute nearby waters.

For example, the Wharf mine, now owned by Coeur Mining Company, violated its surface water discharge permit with the release of biomass from its water treatment plant during the summer of 2007. The discharge affected fish populations in Annie Creek. Wharf also violated its permit limits for certain pollutants. Wharf was issued a civil penalty of \$214,930. Because of this and other spills and failures, groundwater has been polluted with nitrates, arsenic and cyanide. Annie Creek has been polluted with selenium, ammonia, cyanide, arsenic. Adverse impacts to surface water in Annie Creek resulted in a fish kill, and adverse impacts to the fish population.

Another Coeur Mining Company mine, the Kensington Mine, is a poster child for taking advantage of the Clean Water Act loophole to preserve mining industry profits at the expense of clean water. Because of the loophole, Coeur Alaska Mining Company was allowed to dump 200,000 gallons per day of a toxic wastewater slurry directly into Lower Slate Lake in the Tongass National Forest. The dumping, which will eventually deposit 4.5 million tons of solids in the lake, has turned what was once a pristine body of water into mine tailings disposal site.

The innovative solution to many of the challenges highlighted above is meaningful reform of the 1872 Mining Law. Earthworks encourages legislation that will provide a fair return to the taxpayer, create a robust reclamation fund to deal with our nation's abandoned mines problem, require mining companies to comply with 21st century operation and reclamation standards to protect clean water and allow mining to be properly balanced with other uses of public lands.

1. Fair Return

Since 1872, at least \$245 billion worth of public minerals like gold, silver, copper, and uranium have been mined with no return to the taxpayer. Only a value-based gross royalty will help ensure a fair return. Gross royalties link directly to the revenue mining companies receive from the sale of our minerals. Most Western mining states, 10 of 13, assess some form of gross royalty.

A net profits (also known as net proceeds) royalty, by contrast, enables a mining company to deduct their cost of doing business from their income before the royalty is charged. This royalty scheme allows extensive administrative, business and operating deductions, beyond those associated with processing mined ore into marketable commodities.

Two states, Alaska and Nevada, have a net proceeds royalty/fee. Between 2000 and 2005, Nevada mining operations sold \$16.4 billion of minerals (mostly gold), yet they only paid royalties of \$158 million, less than 1%. Half of the Nevada's mining operations paid no state royalties at all during that time. Alaska fared even worse. Between 1997 and 2007, Alaska collected only \$1.2 million in royalties despite the gold's value at more than \$1.2 billion.

This experience demonstrates that a net proceeds approach will not generate a fair return to the taxpayer, and a gross royalty is what is needed.

2) Reclamation fee

Modern mining needs modern rules. This includes dealing with the legacy costs mining has passed along to present and future taxpayers. Insulating taxpayers from the financial risks of old and abandoned mines requires a steady stream of dedicated funding. Otherwise, taxpayers will bear more of the clean up costs.

Earthworks estimates that there are over 550,000 abandoned hardrock mines in the United States, mostly in the West. The Interior Department has no comprehensive inventory of abandoned hardrock mines, and funds to clean up these sites remain limited. The Environmental Protection Agency (EPA) estimates the total cleanup costs could reach a staggering \$50 billion.

Western communities face significant burdens associated with these old mines. According to the EPA, at least 40 percent of the stream reaches in the headwaters of Western watersheds are polluted from mining. That's because many abandoned mine sites have significant acid mine drainage problems, which can persist for thousands of years if left untreated.

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— there is a small stream of revenue (on average about \$3.5 million) available to remediate only a few small sites a year, but it is not enough to address the serious problems posed by the 6,000 inventoried abandoned mines across the state, and the estimated 3,700 miles of rivers and streams polluted by harmful metals, primarily from abandoned mines.

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, the number of abandoned mine lands that cause safety or environmental hazards far

outweigh the funding available to restore them. A steady-stream of long-term funding for hardrock abandoned mine lands cleanup, similar to the coal abandoned mine fee and program, is essential to dealing with the scope of the problems western states face from abandoned mines.

3) Environmental and Operating Standards

Any meaningful plan for the future of mining should include general environmental performance and operational standards. The 1872 Mining Law has none. The Bureau of Land Management (BLM) 3809 mining regulations have undergone few significant changes since they were originally implemented in 1980. Under current law, there are no statutory environmental standards written specifically for hardrock mining. Neither the Clean Water Act nor Resource Conservation and Recovery Act protect groundwater from mining pollution, and there is no definition for how to reclaim a mine.

Environmental standards should be “performance based” or “outcome based”, indicating what the resources affected by mining need to look like from the initial dirt moving to the post-mining land use. The standards need not dictate how they are met, just lay out benchmarks for the industry during exploration, operation, closure, and post-closure. These include handling of soils, revegetation, and establishing and maintaining fish and wildlife habitat.

Operations must minimize damage to surface and groundwater resources, and result in minimal disturbance to the prevailing hydrologic balance. To meet water quality standards, operators must minimize the production of polluted water rather than relying on water treatment. They must receive specific direction to minimize acid mine drainage. Operators must also minimize the loss of water quantity.

Operational standards help mitigate some of the impacts mining activities commonly create during operation. These standards cover construction and maintenance of haul roads, impoundments, waste piles, and leaching pads. They provide direction for drilling holes, managing acid-forming materials, public safety, and other activities.

4) Balancing Mining with Competing Land Uses

The federal government currently interprets the 1872 Mining Law as mandating that mining is the highest and best use for public lands. This eliminates any discretion for federal land managers to balance mining with any other land use – recreation, conservation, hunting, drilling etc. Land managers should have clear authority to weigh competing land uses, especially in Wilderness Study Areas, Areas of Critical Environmental Concern, roadless areas, and lands in the Wild and Scenic River System.

In addition, citizens, local, state, and tribal governments should have the ability to put lands off limits to mining. Mining reform should enable these entities to petition the Secretary of the Interior to put lands that are important for other values, such as drinking water, off limits to mining.

I thank you for the opportunity to present Earthworks' view on seeking innovative solutions for the future of hardrock mining. We look forward to working with this subcommittee, and other stakeholders, to reform the Mining Law of 1872 to fully protect communities, the environment and taxpayers.