Testimony of Lauren Pagel
Policy Director
Earthworks

Subcommittee on Energy and Mineral Resources oversight hearing titled "*Mining in America: The Administration's Use of Claim Maintenance Fees and Cleanup of Abandoned Mine Lands."*

June 13, 2013

Thank you Chairman Lamborn, Ranking Member Holt and Members of the Subcommittee for the opportunity to speak to you today about mining in America, the claim maintenance fee and abandoned hardrock mines.

Earthworks is a non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral development. We work closely with a broad coalition of local governments, Native Americans, citizen groups and other conservation organizations to improve the policies governing hardrock mining and oil and gas development.

Earthworks believes the claim maintenance fee is an important tool to protect the nation's interest in our public lands. In addition to being the only federal government revenue received from mining the public's minerals, the claim maintenance fee helps protect the public against land fraud and speculation.

The claim maintenance fee is essential because the antiquated 1872 Mining Law is still the law of the land when it comes to the disposition of publicly owned hardrock minerals on publicly owned lands.

Aside from the claim maintenance fee and a nominal initial claim location fee, the mining industry pays NOTHING to the owners of these valuable minerals - the taxpayers of the United States. This is in marked contrast to the royalties that the coal, oil and natural gas industries pay to taxpayers, and to the royalties that hardrock mining companies pay to other countries, and to one another.

Free taxpayer minerals are just part of the story. The hardrock mining industry receives hundreds of millions of dollars a year in tax breaks as part of the Percentage Depletion Allowance, and also receives indirect subsidies for not having to comply with key provisions of some of our most important environmental laws. Despite the fact that mine waste and tailings frequently contain toxic chemicals such as arsenic, cadmium, and lead, the industry is exempt from much of the Resource Conservation and Recovery Act, which governs the fate and transport of hazardous waste. The hardrock mining industry also enjoys two loopholes in the Clean Water Act that allow mining companies to dump their waste directly into streams, wetlands and lakes.

The cherry on top of this subsidies and loopholes sundae is the fact that the industry has left a legacy of pollution and stuck taxpayers with the bill. 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, and funds to clean up these sites remain limited. The cost to clean up these abandoned sites will be staggering. According to the Environmental Protection Agency (EPA), the total cleanup costs could reach $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.

Abandoned uranium mines pose the added threat of radiation exposure to the list of concerns. Surface and underground uranium mines produce waste material, which contains naturally occurring radioactive materials in addition to the heavy metals found in most hardrock mine waste. When these toxic materials become exposed to the environment through mining activities, they can be mobilized in air and water. Continued exposure to radioactive materials such as radium and thorium causes serious health problems. The EPA estimates there are at least 4,000 abandoned uranium mines in 14 western states, with most situated in Colorado, Utah, New Mexico, Arizona, and Wyoming.

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 AML 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. We support comprehensive reform of the 1872 Mining Law that includes both a royalty and a reclamation fee, similar to the legislation introduced by Congressmen Markey, Holt and Grijalva.

According to a State of Montana study of abandoned mines, each million dollars spent will create 65 jobs. Many of these jobs are good, high paying jobs that rural communities need in these tough economic times. In addition to job creation, restoration activity would also take degraded lands and put them into productive use. This will benefit local communities and the private landowners who have abandoned mines on their property, and help communities who currently must treat their water supplies for heavy metals and other pollution from abandoned mines.

As part of its most recent budgets, the Obama Administration proposed a 1% reclamation fee on all hardrock mining, similar to the fee paid by coal mines. This fee would generate $200 million per year to fund abandoned mine restoration, creating an estimated 13,000 jobs per year for the mining industry. In addition to a reclamation fee, the Administration proposed a modest royalty to be paid to the owners of minerals taken from public lands – the taxpayer.

The monies collected by the BLM from the claim maintenance fee are partially used to administer the claims system and the limited regulations that govern mining on public lands. Monies generated above $36 million/year are deposited in the general fund. In FY2012, approximately $30 million were so deposited.

Earthworks advocates that claim maintenance fee revenue currently deposited in the general fund should instead be used for the much needed cleanup of abandoned mine lands. Currently, the BLM and Forest Service are appropriated about $40 million a year to clean up these orphaned mines. Using the current EPA estimate for the cost to clean up these sites, it will take 1, 250 years to clean up all the current hardrock abandoned mine lands – not counting the new sites being created by mines that are permitted with known perpetual pollution issues. If the extra $30 million a year from claim fees is used for AML clean up, the time it would take to clean up these mines decreases to 714 years. And if the Obama Administration's proposed abandoned hardrock mine reclamation fee were enacted, it would take 185 years. While $30 million is not nearly sufficient to deal with the scope of the problem of abandoned mine lands, it is a start.

The claim maintenance fee is also a very important tool to reduce fraudulent claims. In 1990, before Congress created the claim maintenance fee, the GAO explored the issue of fraudulent mining claims in a report entitled "Unauthorized Activities Occurring on Hardrock Mining Claims." They found:

> "The President's fiscal year 1991 budget estimates that a $100 annual holding fee would clear about 225,000 claims in fiscal year 1991 alone. This also would likely eliminate the unauthorized activities occurring on these claims. The higher the annual fee, the higher the likelihood that invalid, inactive, and abandoned claims will be cleared and the higher the likelihood that unauthorized activities will be eliminated."

The actual result dwarfed the GAO's initial predictions. In FY 1993, the last year before the fee, there were 2,857,958, active claims. By FY 1994, the first year of the fee, active claims fell to 330,112. The number of claims on public lands dropped by 2.5 million due to this fee; a whopping 89% of the mining claims were not worth the nominal mineral claim fee. Weeding out invalid, inactive, and abandoned claims, benefited legitimate miners who could stake their own valid claims on these newly available lands.

The right to mine under the 1872 Mining Law is only vested if you have a valid claim. According to case law, a claim is valid only if a prudent person could reasonably expect to mine the mineral deposit at a profit while complying with all applicable statutes and regulations. Unfortunately, the federal government usually only checks the validity of mining claims within areas withdrawn from mining.

Most claim holders do not have to prove they have found anything valuable to stake and maintain a claim under the 1872 Mining Law. The claim maintenance fee serves as a low-threshold proxy for the economic commitment of the claimant . If a claim holder does not think their claim is worth $140 per year to them, it most likely does not contain a valuable mineral deposit or the reasonable prospect of a valuable mineral deposit.

However, because the claim maintenance fee is so low, and because the 1872 Mining Law is interpreted such that claim holders are not required to prove a mineral discovery under normal circumstances, some mining companies preemptively hold claims simply to preserve the exclusive option to mine at some point in the future. In this circumstance, companies do not know if their claims are worth anything, and until market conditions justify the expense, they do not bother finding out.

The situation changes, however, when the lands containing the claims are withdrawn from mineral entry. If a company has not done sufficient exploration to prove the validity of its claims prior to the federal government's initial segregation or withdrawal of the land, it cannot do so once the land is segregated or withdrawn.

In 2009, the Interior Department proposed a withdrawal of lands adjacent to the Grand Canyon National Park -- a 20 year withdrawal which encompassed 3,500 pre-existing mining claims. That withdrawal was finalized in 2012.

On some of those pre-existing claims, the claim holders had not conducted exploration sufficient to prove their claims -- despite the fact that the latest claim in the withdrawal area was filed six months prior to the withdrawal, and many claims were filed many years prior. Because of the case law interpretation of the 1872 Mining Law, these claim holders are allowed to continue to hold, explore and mine these claims, but only if their claims were valid at the time of the withdrawal.

The $140 claim maintenance fee and the requirement that the mineral deposit be viable is a small price to pay for an industry that is profiting by mining public

minerals for free, and spending a significant amount of money on lobbying and political contributions. Last year, Newmont Mining Corporation made over $2 billion in profits, and spent over $1.2 million on lobbying and political contributions. The National Mining Association spent $5.7 million. It is important to note that small miners, those who own less that 10 claims (about 200 acres) are exempt from the claim maintenances fee.

The bottom line is, scrutinizing the claim maintenance fee, bemoaning the fact that mining claims should have a valuable mineral deposit in order to be valid and obfuscating the issues around abandoned mine cleanup does nothing to deal with the issues that plague mining in this country. The public does not, and should not, trust an industry that is exempt from important environmental laws, and picks minerals from the taxpayers pockets using an 140+ year old law while polluting our air, land and water. If the mining industry is serious about mining in a less damaging way and paying their fair share, the answer is clear. Reforming the 1872 Mining Law in a way that protects taxpayers, communities and the environment is the only reasonable action that needs to be taken.