

Testimony of Cathy Carlson, Policy Advisor, EARTHWORKS
Before the Senate Energy and Natural Resources Committee on S. 796 and S. 140,
Pending Mining Reform Legislation
July 14, 2009

Thank you Mr. Chairman and Members of the Committee for the opportunity to speak to you today about the importance of reforming the Mining Law of 1872. I have been working to update this century old statute for over 20 years, and I am pleased to see the Chairman's leadership in introducing legislation and conducting this hearing.

EARTHWORKS is a national conservation organization dedicated to protecting communities and the environment from destructive mineral development, here in the United States and internationally. We work closely with broad coalitions of local government, Native Americans, citizen groups and other conservation organizations to improve the policies governing hard rock mining and oil and gas development.

Reforming the Mining Law has been a priority for our organization since it was created in 1987. We have had some success in effectively eliminating the patenting of federal lands through the annual appropriations process, and this policy should now be made permanent. We also worked with this Committee to remove oil shale from the jurisdiction of the Mining Law. All energy minerals, such as coal, oil, oil shale and uranium, should be managed under the Mineral Leasing Act. Uranium is the only energy mineral still subject to the Mining Law.

Now is the time to update the overall mining policies governing hardrock minerals on federal lands, and we urge you to include the following principles:

1. Eliminate patenting of federal lands
2. Establish a royalty for mineral production and a fee for use of federal lands for mineral activities
3. Enable land managers to deny mining activities on federal lands where conflicts exist with other resource values.
4. Adopt comprehensive reclamation requirements for all mining, with particular consider to protecting water resources that could be polluted by mining
5. Ensure that a financial assurance is in place and adequate to cover the costs of reclaiming mines
6. Create an abandoned mine program with adequate funding to begin to address the backlog of public safety and pollution from these old mines while creating jobs and economic development opportunities in the region.

S. 796, the Hardrock Mining and Reclamation Act of 2009, addresses many of these reforms. I suggest a few changes to the bill and it should be adopted by the Committee with those amendments. S. 140, the Abandoned Mine Reclamation Act of 2009 also represents an important step forward in mining reform. If the Committee is unable to reach agreement on a broader package of reforms, I encourage it to move S. 140, but EARTHWORKS prefers to see a more comprehensive approach to mining reform, such as S. 796.

The Need for Mining Law Reform

Communities across the West are dealing with the potentially destructive impacts of mineral development on federal lands.

This Committee heard last year about the challenges that the Town of Crested Butte and Gunnison County, Colorado were experiencing as they balance their robust tourism economy with the threat of mineral activity in their watershed. There is a new molybdenum mine proposed above the Town of Crested Butte that could result in a permanent source of pollution into the Town's drinking water supply. Some of the federal land was patented under the Mining Law about a decade ago, over the Town's objections. Now, it is unclear whether federal land managers have the authority to deny a mining operation on that portion of the project that will be on federal lands, even if the Town's drinking water source is threatened.

The Native American community in the southwestern United States is rallying to protect Mt. Taylor, a sacred site in New Mexico. Previous uranium development left behind a legacy of radioactive waste and groundwater contamination for the Pueblo communities. Now there is interest in a new uranium mining operation on Mt. Taylor that the Native Americans believe would destroy this important cultural treasure on federal lands. The local community is working to create a designation for this area to recognize its cultural value under state law, because there is no mechanism to protect this important cultural resource under the Mining Law of 1872.



photo of Mt. Taylor by grace tee/flickr

In Arizona, there is substantial local opposition to the development of a new copper project in the Santa Rita Mountains south of Tucson. According to mining company executives, the Forest Service cannot deny the mining operation because the Mining Law of 1872 does not give the land manager the authority to say no to mining.

In Idaho, the City of Boise expressed concern about the prospect of a new gold mine above the City that would be located in their drinking water supply. The City deserves the right to protect its drinking water, which is such a critical resource in the West. However, the federal land managers don't recognize their authority to balance mineral activities with the demands for clean drinking water, because of the Mining Law of 1872.

Some of our most precious natural lands are also at risk.

Literally hundreds of new claims have been staked in the past few years near Grand Canyon National Park, which is one of the hallmarks of the National Park System and sees over 5 million visitors annually. The prospect of uranium development has raised concern from Park officials and the Metropolitan Water District of Los Angeles, which would receive the tainted waters if the uranium development pollutes the Colorado River. Congress responded in 2008 with an emergency withdrawal of the land around Grand Canyon National Park, but no action has been taken. Under the Mining Law, uranium development could take place across this landscape, threatening the resources within the Park.

A new silver mine is also being considered under the Cabinet Mountain Wilderness Area in Montana. This area is home to grizzly bears and was set aside by Congress for its outstanding natural values. There is no mechanism to protect the Wilderness Area under the Mining Law.



Pond above the mine proposed in Cabinet Mountains
Photo credit: Doug Day

These are just a few examples of why we need to update this law. We need to be able to give communities the ability to balance the demand for minerals with the long-term needs of their citizens. We also need to protect critical drinking water supplies and our outstanding natural areas in the West.

Key Provisions in S. 796

S. 796, the Hardrock Mining and Reclamation Act, represents a significant step forward in managing mineral resources on federal lands in the West.

S. 796 would create a process to look at the most valuable federal lands in the West and determine whether mineral activities should occur there. Currently, mineral activities can take place in wilderness study areas, on lands of critical environmental concern and along wild and scenic river corridors. There are also mining activities proposed near National Conservation System units such as the Grand Canyon National Park, which should be evaluated to determine if mining is an appropriate use of federal land in that area.

S. 796 would update our financial assurance or reclamation bonding policy for mineral activities that take place on federal lands. In the past “bust” cycles of this boom and bust industry, American taxpayers had to foot the bill for clean up of dozens of mine sites that were left unreclaimed after the mining companies declared bankruptcy in Colorado, Montana, South Dakota and Nevada. We need to protect the public from further liability in the event a company cannot meet its environmental obligations.

This bill would establish a comprehensive program for permitting and enforcement of mineral activities. Under existing law, the enforcement authority of federal land managers to protect other resource values on federal lands is limited. S. 796 would eliminate loopholes that allow small scale but potentially highly destructive activities to occur on federal lands without a permit. The Forest Service currently allows operations of 5 acres or less to operate on federal lands without a permit and with little oversight and management of these operations.

S. 796 falls short in its consideration of the water-related impacts of mining. The bill would require companies to avoid the creation of acid mine drainage to the extent practicable, but clearly allows mineral activities to be approved that could pollute federal water supplies and the drinking water of downstream communities. The bill provides for long-term financial assurances to cover the costs of water treatment, but Congress should go further and deny mining operations that will become permanent sources of pollution on federal lands in the West.

S. 796 should also be strengthened to clarify the role of the federal land management agency in balancing the demands for minerals against other uses. Communities, mineral companies and the public all witnessed the divergent interpretations of “undue or unnecessary” degradation by changing Administrations and the courts in the past several years. If the Secretary of the Interior and the Secretary of Agriculture are given clear authority to protect other public values in the prevention of “undue or unnecessary degradation,” as the bill suggests, that authority should be explicit.

Finally, we note that the definition of National Conservation System Units varies in different statutes. We suggest that the definition of a National Conservation System Unit in the Hardrock Mining and Reclamation Act include National Wilderness Areas, which

would be consistent with the definition from Alaska National Interest Lands Conservation Act, or ANILCA.

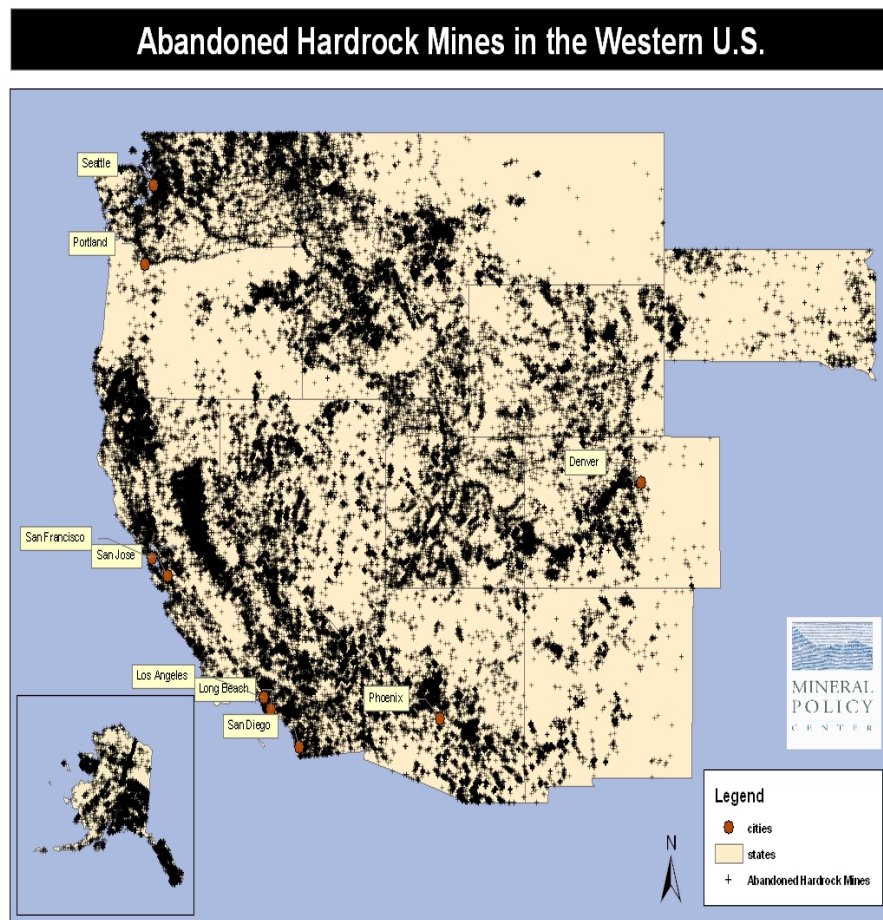
Mining Law Reform Creates Economic Opportunity

S. 796, and S. 140 will have an immediate impact in the West in the creation of jobs and economic opportunity on rural lands. The western United States is littered with abandoned mines. Many of these mine sites generate acid mine drainage and other pollutants that degrade water resources. According to the Environmental Protection Agency, abandoned hardrock mines pollute roughly 40 % of the headwaters of the streams and rivers in the West.

There is no comprehensive inventory of the extent of the abandoned mine problem in the West. The U.S. Geological Survey produced some estimates and several states have also estimated the number of mine sites, “features” and openings, which are summarized in the table below and on the map on the following page. Each mine may contain multiple “features” or “openings.”

Table 1. Western State Inventory of Abandoned Hardrock Mine Sites

Arizona	Estimated 100,000 “openings”
California	Estimated 47,000 mines
Colorado	23,000 mines, including coal sites
Idaho	8,800 mines
Montana	6,000 mines inventoried
Nevada	Estimated 200,000 – 500,000 mine “features” at 166,000 mines
New Mexico	Estimated 15,000 mines
Oregon	140 mines inventoried
South Dakota	900 mines in the Black Hills area
Utah	20,000 mine features, including coal
Washington	3,800 mines inventoried



S. 796 and S. 140 would create, for the first time, a comprehensive abandoned mine restoration program for hardrock minerals in the West. This program will create jobs for local citizens in rural communities to clean up abandoned sites. Once restored, these lands increase in value and provide an economic boost for the local economy.

Congress already recognized the economic value of abandoned mine restoration in the economic stimulus funding that was appropriated earlier this year. As part of that bill, the Bureau of Land Management and Forest Service all received funding for hardrock abandoned mine restoration. Here are just a few examples of the work that is underway with these funds:

- BLM is investing in the clean up at the Helen Mine in the Mayacmas Mining District, located in northern Napa and southern Lake Counties, California. The state found high levels of mercury contaminating the water at this site, and California Office of Health Hazard Assessment issued a fish advisory warning due to the mercury contamination in the fish population. Restoration efforts will start this year to remediate the water pollution associated with this mine.

- The Crystal Hill Mining District is located near La Garita in the San Luis Valley in Colorado. BLM identified the need to establish closures at these mines at least 5 years ago. With stimulus funding, these safety hazards will be addressed this year.
- The Rip Van Winkle mine is located in the Merrimac Mining District near Elko Nevada. It was identified by the BLM as a priority for restoration because of the acid mine drainage discharging from the site into Maggie Creek and potentially reaching the Humboldt River. The site characterization work has been completed for this site and now the reclamation work can proceed this year.

The 2009-2010 funding for abandoned mine restoration as part of the economic stimulus is very helpful to start restoration efforts, but it is just the tip of the iceberg. Abandoned mine restoration is estimated to cost \$50 BILLION.

The reclamation funding generated by this legislation could amount to substantial funding for abandoned mine clean up in the West. Senator Bingaman's bill includes a land use fee, a royalty on new mineral production and a reclamation fee to generate revenues for this program. S. 140 would also establish a royalty for new and existing mines and a reclamation fee on mineral production.

The U.S. Geological Survey estimates minerals commodities production each year in its mineral commodity summaries. S. 796 and S. 140 both include a reclamation fee of at least 0.3 percent of the mineral production value to fund an abandoned mine program. Using U.S. Geological Survey data, EARTHWORKS estimate that a reclamation fee of 0.3 percent would generate about \$50 million annually, minus processing, beneficiation and transportation costs (which can be discounted in the Bingaman bill).

There is no definitive estimate of the benefit of a royalty from federal lands, because the amount of federal land production is unknown. EARTHWORKS' best guess is that about 10% of the overall metals production comes from federal lands. A royalty of 4 percent for existing mines, which is included in the Feinstein bill, could generate another \$60 million in revenue for abandoned mine restoration. Senator Bingaman's bill takes a more modest approach, and would establish a royalty only for new mining operations. This approach would not generate any revenue in the near future, until new mines on federal lands are approved and brought into production.

Based on the 2006 review of environmental impact statements prepared by Jim Kuipers and Ann Maest, EARTHWORKS estimates that at least 70,000 acres of mineral activities are permitted on federal lands in the West. The land use fee would be established that charges mining companies \$500 for each 20 acres of federal land in the permit area. This land use fee could generate \$1.75 million for abandoned mine restoration.

The claim maintenance fee is also increased in S. 796, and would be \$10/claim higher than the current fee charged by the Department of the Interior. EARTHWORKS anticipates that these funds would be used primarily to cover the costs of administering the program.

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 could offset some of the layoffs occurring around the industry due to the current economic climate.

The 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.

S. 796 would establish the revenues for abandoned mine restoration and ensure that these revenues are available on a continuous basis and not subject to annual appropriations. Given the problems associated with the coal abandoned mine fund and its unobligated balances, the Committee is wise not to repeat the mistakes made in the coal program and ensure that the funding is actually used for hardrock abandoned mine restoration.

Its Time to Act

EARTHWORKS appreciates Senator Bingaman's leadership in bringing the debate over mining reform to the Senate Energy and Natural Resources Committee. We also applaud Senator Feinstein's continued interest in finding revenues to help create jobs and economic prosperity in old mining communities that are plagued with abandoned mines. We encourage the Committee to move forward on mining reform legislation and approve a bill in Committee.