

WORC's comments to the Bonding Task Force

October 11, 2002

Tom Fulton
Deputy Assistant Secretary, Land and Minerals Management
U.S. Department of Interior
1849 C Street, NW
Washington, DC 20240

Dear Deputy Assistant Secretary Fulton,

The Western Organization of Resource Councils and its member groups are very concerned about efforts by the mining industry to weaken financial assurance requirements for hard rock mining, coal mining and oil and gas drilling.

We do not believe the industry has made a convincing case that there is a long-term crisis in the availability of financial assurance. Further, any weakening of financial assurance provisions will be a disincentive for companies to operate responsibly and make it easier to shift the costs of multi-million dollar clean-ups to the American public. We urge you to carefully consider the impacts that these changes would have on taxpayers, landowners, communities and the environment in the West, and throughout the country.

Although numerous companies say they are unable to secure surety bonds, very little has been reported in the media or by Wall Street analysts about a "bonding crisis" that could threaten the future of the extraction industry. Companies are not issuing dire predictions, and a search of analyst reports on publicly traded mining companies hardly mentions the issue. When we searched SEC filings by about a dozen mining companies over the past two years only five mention the issue, and those that do generally portray it not so much as a crisis, but rather as a factor that could increase costs. Arch Coal, Barrick Gold, BHP Billiton, Freeport-McMoRan, Massey Energy, Newmont Mining Corporation, Placer Dome Inc. and Rio Tinto Group fail to mention the issue at all.

We understand that bonds may, in some cases, be difficult for companies to secure or otherwise be unavailable. Insurance companies are more reluctant to issue reclamation bonds, but that is related to what is widely expected to be a short-term economic downturn and to the fact that too many companies have not reliably been paying to clean up their own costly and dangerous messes. If the surety industry is unwilling to shoulder the risks of mining and oil and gas development cleanups, why should taxpayers?

Federal laws and regulations do, however, allow for other types of financial assurance, and many companies have responded to the current situation by posting cash or its equivalent, such as letters of credit. The bond for the Stillwater Mining Company's East Boulder Project in Nye, Montana, for example, recently went from \$4 to \$12 million. When the company could not secure a bond, it provided a letter of credit, despite financial hard times for the company. Rio Tinto and Kennecott Mining testified at a June

23 House Energy and Mineral Resources Subcommittee hearing that they have also posted cash equivalents. In fact, we have not found a single example of a company that was unable to meet federal requirements with a financial assurance mechanism of some sort.

Nonetheless, the current industry proposals call for a number of changes that would dramatically weaken financial assurances:

" Corporate guarantees: We are particularly concerned about the hard rock mining industry's proposal to allow corporate guarantees, which are little more than promises that sites will be cleaned up and offer little or no protection in the event a company files for bankruptcy or otherwise fails to reclaim its operations.

" Long-term financial assurance: We strongly urge you to accept only the most solid forms of financial guarantees for long-term reclamation, and to require them for a period of time that's sufficient to ensure treatment for as long as is needed - in perpetuity when necessary. Since companies continue to knowingly propose mines that will cause acid drainage into surface and groundwater that will last until long after the life of the mines, and regulatory agencies knowingly grant permits for these mines, it would be disingenuous to fail to provide solid financial assurance mechanisms that guarantee that water will be treated for as long as is necessary.

Corporate guarantees are particularly ill suited as a long-term financial assurance mechanism. It is questionable whether regulators can sufficiently predict that a company will be able to honor its clean-up pledge five or ten years from now, but making the same predictions for a company's fiscal health a hundred years or more into the future seems about as reliable as gazing into a crystal ball.

" Release standards: Industry proposes to streamline what it refers to as "burdensome" release procedures, such as providing for public input into when financial assurances should be released and requiring some financial assurance to be retained for a period of time after reclamation is completed. These requirements provide much-needed checks and balances that protect taxpayers, communities and the environment and should not be abandoned. WORC has often urged DOI to strengthen public participation requirements, which provide the agencies with the considerable knowledge, observations and experience of the local citizens who are often intimately familiar with a given project. Phased in releases are a relatively low-cost and effective way to ensure that reclamation is successful over the long haul.

" Financial assurance amounts: It is our experience that existing financial assurance amounts are often not high enough and should be raised, not lowered. There are numerous examples of corporate bankruptcies that have left behind financial assurances insufficient to meet reclamation costs that run into the hundreds of millions of dollars. As a result of the limited willingness or ability of taxpayers to fund these clean ups, local communities are often forced to bear health risks from unreclaimed sites.

The Center for Science in Public Participation and the National Wildlife Federation have documented insufficient financial assurances of up to \$1 billion in their report, "Hardrock Reclamation Bonding Practices in the Western United States." The existence of potential unfunded liability on this scale presents the very real possibility that the hard rock mining industry's legacy of half a million abandoned mines across the country with a clean up bill of at least \$32 billion will be expanded in the future.

While the BLM's new "3809" rules begin to correct this problem for hard rock mines, and states like Montana and New Mexico have updated their financial assurance requirements, other sectors are still under bonded. Current federal law and regulations require minimum financial assurances for the oil and gas industry of just \$10,000 per lease, \$25,000 for all leases in a state or \$150,000 for multiple states, regardless of the number of wells drilled.

With hundreds of oil and gas wells on a single lease not uncommon, financial assurance amounts can be as low as \$50 per well. For example, Gunnison Energy Corporation in Delta County, Colorado, has posted a \$25,000 bond to cover up to 400-500 coal bed methane wells. This bond is ridiculously lower than BLM's own estimates of reclamation costs and wholly inadequate to cover cleanup bills if the company fails to adequately reclaim the site. According to the BLM's Office of Fluid Minerals, the estimated costs of plugging and rehabilitating abandoned wells range from \$2,415 to \$75,000 each, and the costs of reclaiming the associated well sites vary from \$200 to \$5,000 each.

The woefully inadequate minimum amounts for oil and gas bonding set under the Mineral Leasing Act invite widespread abuse and disregard for damage to surface owners' land, water resources and the environment by implying that drillers have limited obligations for cleanup operations and reclamation. Not surprisingly, the oil and gas sector has its share of reclamation failures. The bankrupt Emerald Restoration and Production Company left state and federal resource managers with approximately \$250,000 in bonds to pay for an estimated \$4 million in reclamation costs on 120 abandoned oil wells in northern Campbell County, Wyoming.

We ask the Task Force to include raising oil and gas financial assurance amounts in its recommendations. BLM Director Kathleen Clarke told landowners in Gillette, Wyoming on April 24, 2002 that the agency needs to deal with bonds and be sure that oil and gas operations are financially covered for the cost of reclamation. We couldn't agree more.

We believe that mining and oil and gas companies can "do it right" and clean up their own operations as a cost of doing business. A dependable financial assurance program provides a reliable incentive for them to do so, and protects taxpayers, landowners and local communities in the event that they fail to do so.

In closing, WORC was one of seventy-one environmental, taxpayer and community groups that requested that the Task Force hold additional meetings with local and regional stakeholders before making its recommendations. People in local communities

have significant knowledge, expertise and insights on these issues that would benefit the Task Force, and will live with the impacts of any changes you recommend for longer than the regulated industries. A single meeting with public interest groups in Washington, D.C. months into the process is not sufficient to address the issues at stake and ensure a balance of input between industry and public interest groups. We are extremely disappointed that the Task Force chose not to grant our request for additional public meetings and urge you to reconsider.

Sincerely,

Richard Parks
Chair, Hard Rock Issue Team

Nancy Sorenson
Chair, Powder River Basin Resource Council

Mark Fix
Chair, Coalbed Methane Task Force
Northern Plains Resource Council