

Rocky Flats Coalition of Local Governments

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July 25, 2005

Senator Wayne Allard
521 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Allard,

Thank you for the opportunity to provide comment on S. 1251, "The Rocky Flats Environmental Technology Site Act of 2005."

The Board of Directors of the Rocky Flats Coalition of Local Governments has long advocated for the acquisition from willing sellers at fair market value all outstanding mineral rights underlying Rocky Flats. As we expressed in our May 6, 2002 letter to you (attached), our support for "The Rocky Flats National Wildlife Refuge Act of 2001" was in part predicated on acquiring all outstanding mineral rights. We therefore unanimously and strongly endorse the intent of S. 1251 as we believe it represents an important step towards acquisition of these rights.

In addition, thank you for working with Senator Salazar to secure \$10 million in the Senate Energy and Water Appropriations bill towards acquisition of essential minerals as defined in S. 1251. Through discussions with you and your staff, we are acutely aware of the challenge the Colorado delegation has faced in prior years in securing necessary appropriations for acquisition of these minerals.

We understand from your staff that S. 1251 will likely be attached to the Fiscal Year 2006 National Defense Authorization bill. As you prepare an amendment based on S. 1251, we respectfully suggest the following changes.

First, while the Coalition supports the principles laid out in S. 1251, we believe this bill does not go far enough. The Coalition understands the "essential mineral rights", as defined in the bill, are limited to four parcels in the western and northern buffer zone and include minerals that the U.S. Fish and Wildlife Service deems necessary for transitioning Rocky Flats to the Department of the Interior. We also understand acquisition of these parcels would satisfy any potential natural resource damage (NRD) claim that the Natural Resource Trustees could bring.

We are concerned that limiting acquisition of minerals to these rights is not in the best interest of the community. With hindsight we now know the federal government erred when it opted not to acquire privately-held minerals when the buffer zone was expanded in the early 1970s. While many minerals underlying Rocky Flats may not be commercially viable in 2005, in future years we do not want to have to go back to Congress to push for acquisition of the non-essential mineral rights in order to protect the Rocky Flats National Wildlife Refuge.

Towards this end, the Coalition supports H.R. 2111 sponsored by Rep. Udall and Rep. Beauprez. This bill provides the Secretary of the Interior with the authority to acquire all outstanding mineral interests at Rocky Flats by purchase, exchange, issuance of credits, or any combination thereof. We recognize the Armed Services Committee does not have jurisdiction over Interior, but given that S. 1251 and H.R. 2111 are not mutually exclusive, we ask that you evaluate how the principles captured in H.R. 2111 can be merged into S. 1251. In doing so, we hope that Congress will authorize acquisition of all minerals within the Rocky Flats boundaries, not just the essential minerals as defined in S. 1251.

We are also concerned that in trying to settle all NRD claims, S. 1251 may unwisely absolve DOE of any future natural resource liabilities resulting from future releases. Specifically, while DOE has removed significant amounts of contamination, sufficient contamination remains which, if released, could damage additional natural resources both on-site and off-site. While we hope such a scenario is unlikely, we nonetheless believe DOE should remain liable not just for remediating such releases as provided under CERCLA, but also for any associated impacts to natural resources.

We understand from conversations with your staff that you are seeking to indemnify DOE only for releases that are known at the time the Administrative Record is certified, not future releases or unknown releases. Section 3(a)(2)(C)(i) could be read to indemnify DOE against NRD claims associated with future releases, so we ask that this section be modified to achieve our shared goal.

Further, because the Coalition believes the federal government should seek to acquire all minerals underlying Rocky Flats, with the exception of the active mines, we request that the authorization for appropriations not be limited to \$10 million as currently provided in S. 1251. We further believe the minerals authorized to be acquired must be expanded to include all Rocky Flats minerals, not just the essential minerals as agreed to by USFWS and the Trustees.

In addition, we further request that the provision limiting appropriations to 2006 be struck. While we support the intent of actively pursuing these minerals in the upcoming fiscal year, we are not confident that the minerals contemplated under S. 1251, or the other minerals that we request the federal government try to acquire, can be acquired in such a narrow timeframe.

Finally, the Coalition requests that the federal government assess the financial impacts to the surrounding communities of not mining any minerals that are acquired, including any increases in costs for rock products resulting from a decrease in the quantities that can be mined and brought to market. Specifically, the Coalition requests that the federal government provide an assessment of future local construction costs that would result due to the acquisition of the

mineral rights, including the impacts resulting from future transportation costs which would be much higher to haul rock from further away if this local rock source is no longer available.

Again, on behalf of the Board of Directors, thank you for introducing S. 1251. We look forward to continuing to work with you and the Colorado congressional delegation on these important issues.

Sincerely,

/s/

Shaun McGrath
Chairman

Cc: Senator Ken Salazar
Representative Mark Udall
Representative Bob Beauprez