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**Testimony of Glenn Miller on AB 321
(Financial Assurance for Mine Reclamation)**

Assembly Committee on Natural Resources, Agriculture and Mining

April 2, 2003

My name is Glenn Miller. I am speaking in support of AB 321. For the record, I am currently a professor in the Department of Environmental and Resource Sciences at the University of Nevada, and am also Director of the Graduate Program in Environmental Sciences and Health. I have a Ph.D. in Agricultural Chemistry from UC Davis. I am a member of several environmental organizations interested in mining. Also, a disclaimer for the record, I am not speaking on behalf of the University of Nevada, or for that matter, any of the environmental organizations to which I belong.

I have had an interest in mining issues in Nevada for over 20 years, and have followed the evolution of the mining industry from when it produced less than \$300 million a year in minerals to one that peaked at over \$3 billion. During this period a large portion of my research at UNR has focused mining closure issues of acid mine drainage, precious metals pit lakes and closure of precious metals heaps. My research group is currently involved with remediation of acid mine drainage at the Leviathan Mine. I was an active participant in development of Nevada's mining reclamation legislation 14 years ago and the subsequent development of regulations that were implemented as part of that legislation. I believe strongly that all of those involved in mining reclamation can be proud of the benefits and progress that have evolved during the past 14 years. I think that most will agree that this legislation has caused the agencies, the mining industry and the public to focus on closure of mines following extraction of ore. While there are still many unresolved issues with closure, it is significant that the closure problems that we are now discussing is much less severe than some of the mining sites from the past that are now Superfund sites. The legislature, the state and federal regulatory agencies and the mining industry have made substantial progress in the area of reclamation. I also want to note that Newmont Mining Company had a major impact getting mining legislation passed in the 1989 legislative session, and it would not have passed without their critically important efforts at the end of that session. They continued to actively participate in development of regulations for that legislation by hiring Norm Greenwald to write most of the first draft of the regulations.

The issue being considered today in AB 321 is the type of financial surety that is required to ensure that closure will be completed. As has been demonstrated many times in the past, mines can create a substantial environmental and safety liability, particularly open pit mines. This liability will ultimately rest on someone. In order to increase the probability that this liability would not become a public liability, the 1989 legislation required that mining companies post a financial surety prior to opening up a mine. Mining is a temporary use of the land, although the impacts of an open pit mine can last for literally thousands of years, and a poorly closed mine can be a long term source of ground water contamination, surface water contamination, loss of wildlife habitat and visual impacts. A properly closed mine is one that does not present a substantial risk for pollution, is left in a safe and stable configuration, and has a productive post-mining land use. Because the impacts of an improperly closed mine can last for a very long time, the legislature determined that even private land needed a financial surety to ensure closure. Over the time frame of centuries and beyond, all land is public land.

In my experience with working with the mining industry, having resources for adequate closure of a mine does a great deal to ensure that closure will be completed. Jim Kuipers will discuss the types of secure sureties that exist for mining, but a corporate guarantee is not one of these secure financial instruments. In fact, it is no more than a promise that the mining company will be financially strong when the time comes to close a mine. .

The problem with this promise is that the financial strength of a company today is no guarantee that the company will have sufficient funds in the future to close a mine. It is similar to predicting the price of gold 10 years in the future, or predicting the financial strength of airlines or energy companies.

Mining is a financially risky business. Several examples exist where a previously strong company was forced into bankruptcy by a combination of bad luck, bad planning or overly optimistic geologists. There are more than 10 mining companies that have gone bankrupt that operated mines in Nevada, and include the moderately large companies Pegasus, Arimetco, Atlas and Alta. Each one of these has left a closure problem in Nevada. Only one of these, Arimetco, had a corporate guarantee at one of its recently purchased mines. In this case, Arimetco bought the Paradise Peak Mine from FMC Gold (renamed Meridian). The corporate guarantee was transferred to the new company. This corporate bond was for \$3,467,000, with a secure bond of \$1,157,000. Even if the entire bond had been secure, most would agree that it would have been far less than required to close the mine properly. In this regard, both the NDEP and the federal agencies are learning the cost of closure, if it needs to be performed by the agency.

You will hear comments from others that suggest that new procedures have been implemented that substantially reduce the risk of a corporate guarantee, including frequent review of the financial strength of a company. The problem with this review is that once a company can no longer meet the standard, they are probably in trouble financially and cannot get a bonding company to guarantee that an expensive closure will take place. A surety bond is no more than a separate company agreeing to guarantee that the mining company will actually do the closure. The bonding company must meet reinsurance standards and they are not going to be willing or able to provide a bond for a poor risk. If Nevada won't accept liability through a corporate bond, it becomes doubtful that any separate company will do so either. Thus, when a company begins to go south, it is not the time to ask for tens of millions of dollars. The NDEP will be faced with the decision of whether to force the mine into immediate closure, throwing workers out of a job, or allowing the company to continue in hopes that they will be able to secure a bond sometime in the future- not an easy predicament.

The liability will rest on someone for closure. Without a secure and accepted bond or other appropriate surety, this liability will rest on the Nevada public. For normal surety bonds, a bonding company will take the risk that the company will be financially able to close. With a corporate bond, the Nevada taxpayer assumes that liability, but we do it for free.

These risks are non-trivial. While the area around Paradise Peak may not be the most valuable country, nearly all of the mines that presently have a corporate bond are located in the Humboldt River Basin. If one of these companies goes under, the risk to surface and groundwater would be substantial.

A corporate guarantee requires a company to be reasonably financially strong at present, based on a series of criteria that were developed in 1990. Currently, only Newmont, Barrick and Glamis have corporate guarantees. However, of the total closure costs estimated for Nevada mines of \$550 million, about \$240 million exists as corporate guarantees, with Newmont having over \$160

million of this. These are all strong companies at present, and we all hope that they will continue to provide strong employment of Nevada citizens, pay taxes and provide a return to their investors.

Can large and presently financially viable companies get in serious economic problems? In fact, at least two have had very serious financial problems in recent years. Anaconda was a previously very strong mining company, but lost its financial strength when some of its profitable mines in Chile were nationalized, and when some of the historic mines no longer were as productive. In this case ARCO purchased the assets of Anaconda, and they now have this very large liability. I understand that this acquisition was one of the 10 worst purchases in history. More recently, ASARCO, a major and powerful mining company 10 years ago, was acquired by a Mexican mining company, Grupo Mexico. ASARCO had at least one highly profitable mine in South America, and Grupo Mexico appears to be transferring that mine to a different corporation and appears ready to cut the rest of the company loose in the U.S., with a greater closure liability (estimated to be \$200 million to over \$600 million) than assets. Large mining companies do indeed get into financial trouble.

Elimination of corporate guarantees would not be so important if mining companies would uniformly set money aside for closure in a secure account. It would seem appropriate that a company would internalize the costs of closure by setting aside funds when the ore runs out. This appears not to be the case, however, and the ability of at least one major mining company to pay for closure of mines in Nevada appears to rest on the ability of the company to continue to find new ore bodies that can pay for closure of the older properties. Unfortunately costly closures may ultimately overwhelm the ability of a company to continue.

For companies with significant international holdings, it is also difficult to include the closure liabilities being created by those mines for determining whether a company can close a mine in Nevada. In one sense, Nevada taxpayers are affected by the regulatory stance of Peru, Indonesia, Australia and Ghana. If these countries suddenly alter their regulatory requirements, it may well have a major affect on the ability of a company to close a Nevada mine.

Nevada is very likely to continue to have a strong mining industry far into the future. However, paying for a secure closure instrument that reduces the liability of Nevada taxpayers should be a simple cost of doing business in Nevada. The proposed legislation phases out corporate bonding over the next five years. It is a fair and reasonable method for placing the liability where it should be- on those that created the disturbance. The recent substantial increase in gold prices will considerably lighten the financial burden. Even if only \$10 of the recent \$50-\$70 increase in gold prices is used, the entire corporate guarantee can be replaced with money in the bank and cover the cost of mine closure for every one of the mines presently under a corporate guarantee. The time is right to protect Nevadans and remove this liability from Nevada taxpayers.