Congress of the United States
Washington, DC 20515

June 19, 2008

The Honorable Carl Levin
Chairman
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

The Honorable John McCain
Ranking Member
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Levin and Ranking Member McCain:

We write to respectfully ask that you support section 2825 of the House version of the National Defense Authorization Act for Fiscal Year 2010. We would be grateful if you would include this provision in the Senate version of the bill. If the provision is not included, we hope you will not oppose its retention during conference negotiations.

Section 2825 is drawn from legislation (H.R. 1958) that was introduced by Mr. Pierluisi and that currently has 16 bipartisan co-sponsors. The provision will provide clear statutory authority for the Army Corps of Engineers to conduct cleanup of unexploded ordnance and related contamination in all areas of the U.S. military's former training ranges on Culebra Island, Puerto Rico. The Corps is currently conducting cleanup operations in limited areas of Culebra pursuant to the Formerly Used Defense Sites (FUDS) program. However, the Department of Defense has taken the position that a 1974 law prohibits the use of federal funds to decontaminate two areas on Culebra—the Northwest Peninsula and Flamenco Beach—that constituted the primary bombardment zone on the island and are thus likely to contain the greatest public safety and health hazards.

Under the FUDS program, DoD has investigated and cleaned more than 4,500 potentially contaminated sites in all 50 states, the District of Columbia, and U.S. territories on former military properties that were decommissioned before 1986—the year Congress provided explicit statutory authority for the cleanup of former military lands by DoD in the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499). Through FY2007, DoD had spent $3.4 billion on the cleanup of these FUDS properties across the nation, and planned to spend an additional $16.3 billion to complete all cleanup actions planned at that time. Despite the scope and reach of this national program, the two above military bombardment areas on Culebra have been excluded from this effort to protect the public because DoD claims that the 1974 law still prohibits federal expenditure for the cleanup, even though Congress later provided authority for this very purpose in the 1986 amendments to Superfund.

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To ensure that DoD has clear statutory authority to protect the public against safety and health hazards caused by its former military training activities, section 2825 would repeal the relevant provision of the 1974 law and treat Culebra like every other FUDS property: no better and no worse. In the 110th Congress, the House included this provision in passing the FY2009 National Defense Authorization Act, but the language was removed in conference, notwithstanding a letter from then-Senator Clinton in support of its retention. We have enclosed that letter.

The Navy conducted ship-to-shore bombing exercises and other live-fire training activities for over 70 years in unpopulated areas of Culebra and its surrounding waters. In 1974, Congress enacted the Reserve Forces Facilities Authorization Act, directing the Navy to cease operations in Culebra. Section 204(c) of the Act addressed the expenditure of federal funds for environmental cleanup, stating that "the present bombardment area on the island of Culebra shall not be utilized for any purpose that would require decontamination at the expense of the United States." The federal government in 1975 transferred ownership of some of the lands on Culebra—including the Northwest Peninsula and Flamenco Beach—to the Commonwealth of Puerto Rico for use as a public park or for public recreational purposes. In accordance with the 1974 Act, the deed provided that the Commonwealth would not hold the federal government responsible for the decontamination of the property or the costs thereof.

Section 204(c) of the 1974 Act and the deed provision disclaiming federal government responsibility for decontamination were consistent with federal policy in the mid-1970s, since there was no legal framework or authorities in place at the time of the conveyance that would have enabled the federal government to pay for the cleanup of the conveyed property. It should be emphasized that the thousands of other military properties that DoD also decommissioned before 1986 were not conveyed with a federal statutory commitment to clean up environmental contamination either, as the requirements that have governed the conveyance of contaminated federal property after that time were not enacted until the 1986 amendments to Superfund.

Considering the more recent 1986 amendments, the 1974 Act and the deed are now squarely at odds with current federal policy, which has been in place for more than 20 years. These amendments explicitly state that DoD is responsible for cleaning up contamination that it caused on current and former military facilities in the United States, including Puerto Rico and other U.S. territories. Accordingly, there is no principled basis to treat Culebra differently than the thousands of other formerly used defense sites conveyed to non-federal entities prior to 1986, all of which the federal government has the authority—and, indeed, the obligation—to decontaminate.

We thank you very much for your attention to this matter, and are at your disposal should you require any additional information. John Laufer (5-2615; Mr. Pierluisi) and Matthew Herrmann (5-1188; Ms. Bordallo) are good first points of contact.

Sincerely,

Pedro R. Pierluisi
Member of Congress

Madeleine Z. Bordallo
Member of Congress

cc: The Honorable Joe Lieberman, Member, Senate Armed Services Committee
The Honorable Daniel K. Akaka, Member, Senate Armed Services Committee
The Honorable Bill Nelson, Member, Senate Armed Services Committee
The Honorable Mel Martinez, Member, Senate Armed Services Committee
The Honorable Ike Skelton, Chairman, House Armed Services Committee
The Honorable Howard P. McKeon, Ranking Member, House Armed Services Committee

HILLARY RODHAM CLINTON
NEW YORK
SENATOR

RUSSELL SENATE OFFICE BUILDING
SUITE 476
WASHINGTON, DC 20510-3204
202-224-4451

COMMITTEES:
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United States Senate

WASHINGTON, DC 20510-3204

September 19, 2008

The Honorable Carl Levin
Chairman
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Ike Skelton
Chairman
House Armed Services Committee
2120 Rayburn House Office Building
Washington, D.C. 20510

The Honorable John W. Warner
Ranking Member
Senate Armed Services Committee
225 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Duncan Hunter
Ranking Member
House Armed Services Committee
2340 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairmen Levin and Skelton and Ranking Members Warner and Hunter:

I write to respectfully ask that you support section 2872 of the House version of the *National Defense Authorization Act for Fiscal Year 2009*.

Section 2872 would provide clear statutory authority for the Army Corps of Engineers to conduct clean up of former military training sites on Culebra Island, Puerto Rico. Culebra is located roughly 17 miles off the east coast of Puerto Rico. For over 70 years, the U.S. Navy conducted ship-to-shore bombing exercises and other live-fire training activities in unpopulated areas of Culebra and its surrounding waters.

As you may know, the Department of Defense (DOD) has taken the position that a 1974 law prohibits the use of federal funds to clean up the Northwest Peninsula and most of Flamenco Beach. These areas were the most heavily bombarded sites on Culebra, and are the ones most likely to contain safety and health hazards. The failure to include section 2872 in the final legislation will leave these areas as the only sites, out of the thousands of formerly used defense sites conveyed to non-federal entities before or after 1986, where the U.S. government says it lacks the authority to clean up contamination that it caused.

There is no principled reason to exclude these areas in this manner. The provision would not direct a certain amount or manner of cleanup, or elevate the cleanup of these sites above other former military properties. Rather, the provision simply makes clear that there be no impediment to the federally-funded decontamination of these areas. This language would bring the treatment of Culebra in line with modern federal policy that specifies the responsibility of the

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DOD to clean up contamination that it caused on both current and former military facilities in the United States, including Puerto Rico.

For these reasons, I request that you support the retention of section 2872 in the final bill.

Sincerely,

Hillary Rodham Clinton

Hillary Rodham Clinton